

Table with 3 columns of names: Cooksey, Coyne, Crane, Cummings, Cunningham, Davis (FL), Davis (IL), Davis (VA), DeGette, Delahunt, Dicks, Dingell, Doggett, Dooley, Dreier, Dunn, Edwards, Ehlers, Ehrlich, Engel, Eshoo, Etheridge, Evans, Farr, Fawell, Fazio, Flake, Foglietta, Ford, Frank (MA), Frelinghuysen, Frost, Ganske, Gekas, Gibbons, Gilchrest, Gilman, Gonzalez, Goodlatte, Goodling, Granger, Greenwood, Gutknecht, Hamilton, Hastings (FL), Hefner, Hinchey, Hinojosa, Hobson, Hooley, Horn, Houghton, Hyde, Jackson (IL), Jenkins, John, Johnson (CT), Johnson (WI), Johnson, E. B., Johnson, Sam, Kasich, Kelly, Kennedy (MA), Kennedy (RI), Kennelly, Kind (WI), Klug, Knollenberg, Kolbe, LaFalce, Lampson, Lantos, Latham, Lewis (CA), Lewis (GA), Linder, Lofgren, Lowey, Luther, Maloney (CT), Maloney (NY), Manton, Markey, Matsui, McCarthy (MO), McCollum, McDermott, Meehan, Minge, Moakley, Mollohan, Morella, Nadler, Neal, Northup, Nussle, Oxley, Packard, Pastor, Paxon, Pease, Peterson (MN), Pickett, Pitts, Portman, Price (NC), Pryce (OH), Quinn, Ramstad, Reyes, Roemer, Rogan, Rogers, Rothman, Roukema, Roybal-Allard, Sabo, Sanchez, Sandlin, Sawyer, Schumer, Scott, Serrano, Sessions, Shaw, Shays, Sherman, Shimkus, Shuster, Sisisky, Skaggs, Skeen, Skelton, Slaughter, Smith (TX), Smith, Adam, Snyder, Souder, Stokes, Tanner, Tauscher, Thomas, Thurman, Tierney, Turner, Vento, Visclosky, Watkins, Waxman, Weldon (FL), Wexler, White, Wolf, Young (FL)

and technological skills useful for patent or trademark examination, as the case may be. (b) TRAINERS OF EXAMINERS.—The Patent and Trademark Office shall develop an incentive program to retain as employees patent examiners and trademark examiners of the primary examiner grade or higher who are eligible for retirement, for the sole purpose of training patent examiners and trademark examiners who have not achieved the grade of primary examiner."

(b) CLERICAL AMENDMENT.—The table of contents for chapter 1 of title 35, United States Code, is amended by adding at the end the following:

"15. Patent and trademark examiner training."

SEC. 103. LIMITATIONS ON PERSONNEL.

Section 3(a) of title 35, United States Code, is amended by adding at the end the following: "The Office shall not be subject to any administratively or statutorily imposed limitation on positions or personnel, and no positions or personnel of the Office shall be taken into account for purposes of applying any such limitation."

Page 26, line 10, strike "121" and insert "104".

Page 28, line 15, strike "122" and insert "105".

Page 30, strike line 3 and all that follows through page 46, line 23, and insert the following:

SEC. 106. EFFECTIVE DATE.

This title, and the amendments made by this title, shall take effect 30 days after the date of the enactment of this Act.

Amend the table of contents accordingly.

It was decided in the { Yeas 133 negative } Nays 280

36.14 [Roll No. 89] AYES—133

NOT VOTING—20

Table with 3 columns of names: Andrews, Ballenger, Cubin, Deutsch, Diaz-Balart, Furse, Hoekstra, Inglis, Kilpatrick, Kingston, Rush, Sanford, Schiff, Smith (OR), Taylor (MS), Taylor (NC), Towns, Velazquez, Wise, Yates

So the amendment was agreed to.

36.13 RECORDED VOTE

A recorded vote by electronic device was ordered in the Committee of the Whole on the following amendment submitted by Mr. HUNTER:

Page 4, strike line 1 and all that follows through page 26, line 9 and insert the following:

TITLE I—PATENT AND TRADEMARK SYSTEM REVISIONS

SEC. 101. SECURE PATENT EXAMINATION.

Section 3 of title 35, United States Code, is amended by adding at the end the following:

"(f) All examination and search duties for the grant of United States letters patent are sovereign functions which shall be performed within the United States by United States citizens who are employees of the United States Government."

SEC. 102. PATENT AND TRADEMARK EXAMINER TRAINING.

(a) IN GENERAL.—Chapter 1 of title 35, United States Code, is amended by adding at the end the following new section:

"§ 15. Patent and trademark examiner training

IN GENERAL.—All patent examiners and trademark examiners shall spend at least 5 percent of their duty time per annum in training to maintain and develop the legal

Table with 3 columns of names: Abercrombie, Bachus, Baker, Baldacci, Barcia, Barr, Bartlett, Bilbray, Bilirakis, Bonior, Bono, Brown (OH), Burton, Calvert, Campbell, Chenoweth, Clement, Coburn, Combust, Condit, Crapo, Danner, DeFazio, Doolittle, Doyle, Emerson, English, Ensign, Everett, Ewing, Filner, Foley, Forbes, Gallegly, Gephardt, Gibbons, Goode, Goodling, Goss, Graham, Gutierrez, Hall (TX), Hansen, Hayworth, Hefley, Herger, Hill, Holden, Hostettler, Hoyer, Hulshof, Hunter, Istook, Jackson-Lee, Jones, Kanjorski, Kaptur, Kildee, King (NY), Kleczka, Klink, Kucinich, Largent, LaTourette, Lewis (KY), Lipinski, LoBiondo, Lucas, Manzullo, Martinez, Mascara, McCarthy (NY), McHale, McHugh, McInnis, McKeon, McKinney, McNulty, Metcalf, Mica, Miller (CA), Mink, Moran (KS), Moran (VA), Myrick, Neumann, Ney, Norwood, Oberstar, Obey, Olver, Ortiz, Pallone, Pappas, Pascrell, Petri, Pombo, Pomeroy, Radanovich, Rahall, Regula, Riley, Rivers, Rohrabacher, Ros-Lehtinen, Royce, Ryun, Salmon, Sanders, Saxton, Scarborough, Schaefer, Dan, Schaffer, Bob, Sessions, Skelton, Smith (NJ), Smith, Linda, Snowbarger, Solomon, Spence, Stark, Stump, Talent, Tiahrt, Traficant, Walsh, Wamp, Waters, Watts (OK), Weldon (FL), Weller, Whitfield, Young (AK)

NOES—280

Table with 3 columns of names: Ackerman, Aderholt, Allen, Archer, Armev, Baesler

Table with 3 columns of names: Barrett (NE), Barrett (WI), Barton, Bass, Bateman, Becerra, Bentsen, Bereuter, Berman, Berry, Bishop, Blagojevich, Bliley, Blumenauer, Blunt, Boehlert, Boehner, Bonilla, Borski, Boswell, Boucher, Boyd, Brady, Brown (CA), Brown (FL), Bryant, Bunning, Burr, Buyer, Callahan, Camp, Canady, Cannon, Capps, Cardin, Carson, Castle, Chabot, Chambliss, Christensen, Clayton, Clyburn, Coble, Collins, Conyers, Cook, Cooksey, Costello, Cox, Coyne, Cramer, Crane, Cummings, Cunningham, Davis (FL), Davis (IL), Deal, DeGette, Delahunt, DeLauro, DeLay, Dellums, Dickey, Dicks, Dingell, Dixon, Doggett, Dreier, Duncan, Dunn, Edwards, Ehlers, Ehrlich, Engel, Eshoo, Etheridge, Evans, Farr, Fattah, Fawell, Fazio, Flake, Foglietta, Ford, Fowler, Fox, Frank (MA), Franks (NJ), Frelinghuysen, Frost, Ganske, Gejdenson, Gekas, Gilchrest, Gillmor, Gilman, Gonzalez, Goodlatte, Gordon, Granger, Green, Greenwood, Gutknecht, Hall (OH), Hamilton, Harman, Hastert, Hastings (FL), Hastings (WA), Hefner, Hilleary, Hilliard, Hinchey, Hinojosa, Hobson, Hooley, Horn, Houghton, Hutchinson, Hyde, Jackson (IL), Jefferson, Jenkins, John, Johnson (CT), Johnson (WI), Johnson, E.B., Johnson, Sam, Kasich, Kelly, Kennedy (MA), Kennedy (RI), Kennelly, Kim, Kind (WI), Klug, Knollenberg, Kolbe, LaFalce, LaHood, Lampson, Lantos, Latham, Lazio, Leach, Levin, Lewis (CA), Lewis (GA), Linder, Livingston, Lofgren, Lowey, Luther, Maloney (CT), Maloney (NY), Manton, Markey, Matsui, McCarthy (MO), McCollum, McCrery, McDade, McDermott, McGovern, McIntosh, McIntyre, Meehan, Meek, Menendez, Millender, McDonald, Miller (FL), Minge, Moakley, Molinaro, Mollohan, Morella, Murtha, Nadler, Neal, Nethercutt, Northup, Nussle, Owens, Oxley, Packard, Parker, Pastor, Paul, Paxon, Payne, Pease, Pelosi, Peterson (MN), Peterson (PA), Pickering, Pickett, Pitts, Porter, Portman, Poshard, Price (NC), Pryce (OH), Quinn, Ramstad, Rangel, Reyes, Riggs, Rodriguez, Roemer, Rogan, Rogers, Rothman, Roukema, Roybal-Allard, Sabo, Sanchez, Sandlin, Sawyer, Schumer, Scott, Sensenbrenner, Serrano, Shadegg, Shaw, Shays, Sherman, Shimkus, Shuster, Sisisky, Skaggs, Skeeen, Slaughter, Smith (MI), Smith (TX), Smith, Adam, Snyder, Souder, Spratt, Stabenow, Stearns, Stenholm, Stokes, Strickland, Stupak, Sununu, Tanner, Tauscher, Tauzin, Thomas, Thompson, Thornberry, Thune, Thurman, Tierney, Torres, Turner, Upton, Vento, Visclosky, Watkins, Watt (NC), Waxman, Weldon (PA), Wexler, Weygand, White, Wicker, Wolf, Woolsey, Wynn, Young (FL)

NOT VOTING—20

Table with 3 columns of names: Andrews, Ballenger, Cubin, Deutsch, Diaz-Balart, Furse, Hoekstra, Inglis, Kilpatrick, Kingston, Rush, Sanford, Schiff, Smith (OR)

Taylor (MS) Towns Wise
Taylor (NC) Velazquez Yates

So the amendment was not agreed to. After some further time, The SPEAKER pro tempore, Mr. KOLBE, assumed the Chair.

When Mr. BARRETT of Nebraska, Acting Chairman, pursuant to House Resolution 116, reported the bill back to the House with an amendment adopted by the Committee.

The previous question having been ordered by said resolution.

The following amendment, reported from the Committee of the Whole House on the state of the Union, was agreed to:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the "21st Century Patent System Improvement Act".

SEC. 2. TABLE OF CONTENTS.

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—PATENT AND TRADEMARK OFFICE MODERNIZATION

Sec. 101. Short title.
 Subtitle A—United States Patent and Trademark Office

Sec. 111. Establishment of Patent and Trademark Office as a Government corporation.

Sec. 112. Powers and duties.

Sec. 113. Organization and management.

Sec. 114. Management Advisory Board.

Sec. 115. Conforming amendments.

Sec. 116. Trademark Trial and Appeal Board.

Sec. 117. Board of Patent Appeals and Interferences.

Sec. 118. Suits by and against the Office.

Sec. 119. Annual report of Director.

Sec. 120. Suspension or exclusion from practice.

Sec. 121. Funding.

Sec. 122. Extension of surcharges on patent fees.

Sec. 123. Transfers.

Sec. 124. GAO study and report.
 Subtitle B—Effective Date; Technical Amendments

Sec. 131. Effective date.

Sec. 132. Technical and conforming amendments.

Subtitle C—Miscellaneous Provisions

Sec. 141. References.

Sec. 142. Exercise of authorities.

Sec. 143. Savings provisions.

Sec. 144. Transfer of assets.

Sec. 145. Delegation and assignment.

Sec. 146. Authority of Director of the Office of Management and Budget with respect to functions transferred.

Sec. 147. Certain vesting of functions considered transfers.

Sec. 148. Availability of existing funds.

Sec. 149. Definitions.
 Subtitle D—Under Secretary of Commerce for Intellectual Property Policy

Sec. 151. Under Secretary of Commerce for Intellectual Property Policy.

Sec. 152. Relationship with existing authorities.

TITLE II—EXAMINING PROCEDURE IMPROVEMENTS; PUBLICATION WITH PROVISIONAL ROYALTIES; TERM EXTENSIONS; FURTHER EXAMINATION

Sec. 201. Short title.
Sec. 202. Publication.
Sec. 203. Time for claiming benefit of earlier filing date.
Sec. 204. Provisional rights.

Sec. 205. Prior art effect of published applications.
Sec. 206. Cost recovery for publication.
Sec. 207. Conforming changes.
Sec. 208. Patent term extension authority.
Sec. 209. Further examination of patent applications.
Sec. 210. Last day of pendency of provisional application.
Sec. 211. Reporting requirement.
Sec. 212. Effective date.

TITLE III—PROTECTION FOR PRIOR DOMESTIC USERS OF PATENTED TECHNOLOGIES

Sec. 301. Short title.
Sec. 302. Defense to patent infringement based on prior domestic commercial or research use.
Sec. 303. Effective date and applicability.

TITLE IV—ENHANCED PROTECTION OF INVENTORS' RIGHTS

Sec. 401. Short title.
Sec. 402. Invention promotion services.
Sec. 403. Technical and conforming amendment.
Sec. 404. Effective date.

TITLE V—MISCELLANEOUS IMPROVEMENTS

Sec. 501. Provisional applications.
Sec. 502. International applications.
Sec. 503. Plant patents.
Sec. 504. Electronic filing.
Sec. 505. Divisional applications.
Sec. 506. Publications.

TITLE I—PATENT AND TRADEMARK OFFICE MODERNIZATION

SEC. 101. SHORT TITLE.

This title may be cited as the "Patent and Trademark Office Modernization Act".

Subtitle A—United States Patent and Trademark Office

SEC. 111. ESTABLISHMENT OF PATENT AND TRADEMARK OFFICE AS A GOVERNMENT CORPORATION.

Section 1 of title 35, United States Code, is amended to read as follows:

"§ 1. Establishment

"(a) ESTABLISHMENT.—The United States Patent and Trademark Office is established as a wholly owned Government corporation subject to chapter 91 of title 31, separate from any department of the United States, and shall be an agency of the United States under the policy direction of the Secretary of Commerce. For purposes of internal management, the United States Patent and Trademark Office shall be a corporate body not subject to direction or supervision by any department of the United States, except as otherwise provided in this title.

"(b) OFFICES.—The United States Patent and Trademark Office shall maintain its principal office in the metropolitan Washington, D.C. area, for the service of process and papers and for the purpose of carrying out its functions. The United States Patent and Trademark Office shall be deemed, for purposes of venue in civil actions, to be a resident of the district in which its principal office is located, except where jurisdiction is otherwise provided by law. The United States Patent and Trademark Office may establish satellite offices in such other places as it considers necessary and appropriate in the conduct of its business.

"(c) REFERENCE.—(1) For purposes of this title, the United States Patent and Trademark Office shall also be referred to as the 'Office' and the 'Patent and Trademark Office'.

"(2) As used in this title, the term 'Under Secretary' means the Under Secretary of Commerce for Intellectual Property Policy."

SEC. 112. POWERS AND DUTIES.

Section 2 of title 35, United States Code, is amended to read as follows:

"§ 2. Powers and duties

"(a) IN GENERAL.—The United States Patent and Trademark Office, subject to the policy direction of the Secretary of Commerce—

"(1) shall be responsible for the granting and issuing of patents and the registration of trademarks;

"(2) may, in support of the Under Secretary, assist with studies, programs, or exchanges of items or services regarding domestic and international law of patents, trademarks, and other matters;

"(3)(A) may, in support of the Under Secretary, assist with studies and programs conducted cooperatively with foreign patent and trademark offices and international organizations, in connection with patents, trademarks, and other matters; and

"(B) with the concurrence of the Secretary of State, may authorize the transfer of not to exceed \$100,000 in any year to the Department of State for the purpose of making special payments to international intergovernmental organizations for studies and programs for advancing international cooperation concerning patents, trademarks, and other matters; and

"(4) shall be responsible for disseminating to the public information with respect to patents and trademarks.

The special payments under paragraph (3)(B) shall be in addition to any other payments or contributions to international organizations described in paragraph (3)(B) and shall not be subject to any limitations imposed by law on the amounts of such other payments or contributions by the United States Government.

"(b) SPECIFIC POWERS.—The Office—

"(1) shall have perpetual succession;

"(2) shall adopt and use a corporate seal, which shall be judicially noticed and with which letters patent, certificates of trademark registrations, and papers issued by the Office shall be authenticated;

"(3) may sue and be sued in its corporate name and be represented by its own attorneys in all judicial and administrative proceedings, subject to the provisions of section 7;

"(4) may indemnify the Director, and other officers, attorneys, agents, and employees (including members of the Management Advisory Board established in section 5) of the Office for liabilities and expenses incurred within the scope of their employment;

"(5) may establish regulations, not inconsistent with law, which—

"(A) shall govern the conduct of proceedings in the Office;

"(B) shall be made after notice and opportunity for full participation by interested public and private parties;

"(C) shall facilitate and expedite the processing of patent applications, particularly those which can be filed, stored, processed, searched, and retrieved electronically, subject to the provisions of section 122 relating to the confidential status of applications;

"(D) may govern the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office; and

"(E) shall recognize the public interest in continuing to safeguard broad access to the United States patent system through the reduced fee structure for small entities under section 41(h)(1) of this title;

"(F) provide for the development of a performance-based process that includes quan-

titative and qualitative measures and standards for evaluating cost-effectiveness and is consistent with the principles of impartiality and competitiveness;

“(6) may acquire, construct, purchase, lease, hold, manage, operate, improve, alter, and renovate any real, personal, or mixed property, or any interest therein, as it considers necessary to carry out its functions;

“(7)(A) may make such purchases, contracts for the construction, maintenance, or management and operation of facilities, and contracts for supplies or services, without regard to the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 and following), the Public Buildings Act (40 U.S.C. 601 and following), and the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 and following); and

“(B) may enter into and perform such purchases and contracts for printing services, including the process of composition, platemaking, presswork, silk screen processes, binding, microform, and the products of such processes, as it considers necessary to carry out the functions of the Office, without regard to sections 501 through 517 and 1101 through 1123 of title 44;

“(8) may use, with their consent, services, equipment, personnel, and facilities of other departments, agencies, and instrumentalities of the Federal Government, on a reimbursable basis, and cooperate with such other departments, agencies, and instrumentalities in the establishment and use of services, equipment, and facilities of the Office;

“(9) may obtain from the Administrator of General Services such services as the Administrator is authorized to provide to other agencies of the United States, on the same basis as those services are provided to other agencies of the United States;

“(10) may, when the Director determines that it is practicable, efficient, and cost-effective to do so, use, with the consent of the United States and the agency, government, or international organization concerned, the services, records, facilities, or personnel of any State or local government agency or instrumentality or foreign government or international organization to perform functions on its behalf;

“(11) may determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, subject to the provisions of this title and the Act of July 5, 1946 (commonly referred to as the ‘Trademark Act of 1946’);

“(12) may retain and use all of its revenues and receipts, including revenues from the sale, lease, or disposal of any real, personal, or mixed property, or any interest therein, of the Office, including for research and development and capital investment, subject to the provisions of section 10101 of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. 41 note);

“(13) shall have the priority of the United States with respect to the payment of debts from bankrupt, insolvent, and decedents’ estates;

“(14) may execute, in accordance with its bylaws, rules, and regulations, all instruments necessary and appropriate in the exercise of any of its powers; and

“(15) may provide for liability insurance and insurance against any loss in connection with its property, other assets, or operations either by contract or by self-insurance.

In exercising the Director’s powers under paragraphs (6) and (7)(A), the Director shall consult with the Administrator of General Services when the Director determines that it is practicable, efficient, and cost-effective to do so.

“(c) CONSTRUCTION.—Nothing in this section shall be construed to nullify, void, can-

cel, or interrupt any pending request-for-proposal let or contract issued by the General Services Administration for the specific purpose of relocating or leasing space to the United States Patent and Trademark Office.”.

SEC. 113. ORGANIZATION AND MANAGEMENT.

Section 3 of title 35, United States Code, is amended to read as follows:

“§ 3. Officers and employees

“(a) DIRECTOR.—

“(1) IN GENERAL.—The management of the United States Patent and Trademark Office shall be vested in a Director of the United States Patent and Trademark Office (in this title referred to as the ‘Director’), who shall be a citizen of the United States and who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be a person who, by reason of professional background and experience in patent or trademark law, is especially qualified to manage the Office.

“(2) DUTIES.—

“(A) IN GENERAL.—The Director shall be responsible for the management and direction of the Office, including the issuance of patents and the registration of trademarks, and shall perform these duties in a fair, impartial, and equitable manner.

“(B) CONSULTING WITH THE MANAGEMENT ADVISORY BOARD.—The Director shall consult with the Management Advisory Board established in section 5 on a regular basis on matters relating to the operation of the Office, and shall consult with the Advisory Board before submitting budgetary proposals to the Office of Management and Budget or changing or proposing to change patent or trademark user fees or patent or trademark regulations.

“(C) SECURITY CLEARANCES.—The Director, in consultation with the Director of the Office of Personnel Management, shall maintain a program for identifying national security positions and providing for appropriate security clearances.

“(3) TERM.—The Director shall serve a term of 5 years, and may continue to serve after the expiration of the Director’s term until a successor is appointed and assumes office. The Director may be reappointed to subsequent terms.

“(4) OATH.—The Director shall, before taking office, take an oath to discharge faithfully the duties of the Office.

“(5) COMPENSATION.—The Director shall be paid an annual rate of basic pay not to exceed the maximum rate of basic pay of the Senior Executive Service established under section 5382 of title 5, including any applicable locality-based comparability payment that may be authorized under section 5304(h)(2)(C) of title 5. In addition, the Director may receive a bonus in an amount up to, but not in excess of, 50 percent of such annual rate of basic pay, based upon an evaluation by the Secretary of Commerce of the Director’s performance as defined in an annual performance agreement between the Director and the Secretary. The annual performance agreement shall incorporate measurable organization and individual goals in key operational areas as delineated in an annual performance plan agreed to by the Director and the Secretary. Payment of a bonus under this paragraph may be made to the Director only to the extent that such payment does not cause the Director’s total aggregate compensation in a calendar year to equal or exceed the amount of the salary of the President under section 102 of title 3.

“(6) REMOVAL.—The Director may be removed from office by the President. The President shall provide notification of any such removal to both Houses of Congress.

“(7) DESIGNEE OF DIRECTOR.—The Director shall designate an officer of the Office who

shall be vested with the authority to act in the capacity of the Director in the event of the absence or incapacity of the Director.

“(b) OFFICERS AND EMPLOYEES OF THE OFFICE.—

“(1) COMMISSIONERS.—The Director shall appoint a Commissioner for Patents and a Commissioner for Trademarks for terms that shall expire on the date on which the Director’s term expires. The Commissioner for Patents shall be a person with demonstrated experience in patent law and the Commissioner for Trademarks shall be a person with demonstrated experience in trademark law. The Commissioner for Patents and the Commissioner for Trademarks shall be the principal management advisers to the Director on all aspects of the activities of the Office that affect the administration of patent and trademark operations, respectively.

“(2) OTHER OFFICERS AND EMPLOYEES.—The Director shall—

“(A) appoint such officers, employees (including attorneys), and agents of the Office as the Director considers necessary to carry out the functions of the Office; and

“(B) define the authority and duties of such officers and employees and delegate to them such of the powers vested in the Office as the Director may determine.

The Office shall not be subject to any administratively or statutorily imposed limitation on positions or personnel, and no positions or personnel of the Office shall be taken into account for purposes of applying any such limitation.

“(3) TRAINING OF EXAMINERS.—The Patent and Trademark Office shall develop an incentive program to retain as employees patent and trademark examiners of the primary examiner grade or higher who are eligible for retirement, for the sole purpose of training patent and trademark examiners.

“(c) CONTINUED APPLICABILITY OF TITLE 5.—Officers and employees of the Office shall be subject to the provisions of title 5 relating to Federal employees. Section 2302 of title 5 applies to the Office, notwithstanding subsection (a)(2)(C) of such section.

“(d) ADOPTION OF EXISTING LABOR AGREEMENTS.—The Office shall adopt all labor agreements which are in effect, as of the day before the effective date of the Patent and Trademark Office Modernization Act, with respect to such Office (as then in effect).

“(e) CARRYOVER OF PERSONNEL.—

“(1) FROM PTO.—Effective as of the effective date of the Patent and Trademark Office Modernization Act, all officers and employees of the Patent and Trademark Office on the day before such effective date shall become officers and employees of the Office, without a break in service.

“(2) OTHER PERSONNEL.—Any individual who, on the day before the effective date of the Patent and Trademark Office Modernization Act, is an officer or employee of the Department of Commerce (other than an officer or employee under paragraph (1)) shall be transferred to the Office if—

“(A) such individual serves in a position for which a major function is the performance of work reimbursed by the Patent and Trademark Office, as determined by the Secretary of Commerce;

“(B) such individual serves in a position that performed work in support of the Patent and Trademark Office during at least half of the incumbent’s work time, as determined by the Secretary of Commerce; or

“(C) such transfer would be in the interest of the Office, as determined by the Secretary of Commerce in consultation with the Director.

Any transfer under this paragraph shall be effective as of the same effective date as referred to in paragraph (1), and shall be made without a break in service.

“(3) ACCUMULATED LEAVE.—The amount of sick and annual leave and compensatory time accumulated under title 5 before the effective date described in paragraph (1), by those becoming officers or employees of the Office pursuant to this subsection, are obligations of the Office.

“(f) TRANSITION PROVISIONS.—

“(1) INTERIM APPOINTMENT OF DIRECTOR.—On or after the effective date of the Patent and Trademark Office Modernization Act, the President shall appoint an individual to serve as the Director until the date on which a Director qualifies under subsection (a). The President shall not make more than one such appointment under this subsection.

“(2) CONTINUATION IN OFFICE OF CERTAIN OFFICERS.—(A) The individual serving as the Assistant Commissioner for Patents on the day before the effective date of the Patent and Trademark Office Modernization Act may serve as the Commissioner for Patents until the date on which a Commissioner for Patents is appointed under subsection (b).

“(B) The individual serving as the Assistant Commissioner for Trademarks on the day before the effective date of the Patent and Trademark Office Modernization Act may serve as the Commissioner for Trademarks until the date on which a Commissioner for Trademarks is appointed under subsection (b).”.

SEC. 114. MANAGEMENT ADVISORY BOARD.

Chapter 1 of part I of title 35, United States Code, is amended by inserting after section 4 the following:

“§ 5. Patent and Trademark Office Management Advisory Board

“(a) ESTABLISHMENT OF MANAGEMENT ADVISORY BOARD.—

“(1) APPOINTMENT.—The United States Patent and Trademark Office shall have a Management Advisory Board (hereafter in this title referred to as the ‘Advisory Board’) of 12 members, 4 of whom shall be appointed by the President, 4 of whom shall be appointed by the Speaker of the House of Representatives, and 4 of whom shall be appointed by the majority leader of the Senate. Not more than 3 of the 4 members appointed by each appointing authority shall be members of the same political party.

“(2) TERMS.—Members of the Advisory Board shall be appointed for a term of 4 years each, except that of the members first appointed by each appointing authority, 1 shall be for a term of 1 year, 1 shall be for a term of 2 years, and 1 shall be for a term of 3 years. No member may serve more than 1 term.

“(3) CHAIR.—The President shall designate the chair of the Advisory Board, whose term as chair shall be for 3 years.

“(4) TIMING OF APPOINTMENTS.—Initial appointments to the Advisory Board shall be made within 3 months after the effective date of the Patent and Trademark Office Modernization Act, and vacancies shall be filled within 3 months after they occur.

“(5) VACANCIES.—Vacancies shall be filled in the manner in which the original appointment was made under this subsection. Members appointed to fill a vacancy occurring before the expiration of the term for which the member’s predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member’s term until a successor is appointed.

“(6) COMMITTEES.—The Chair shall designate members of the Advisory Board to serve on a committee on patent operations and on a committee on trademark operations to perform the duties set forth in subsection (e) as they relate specifically to the Office’s patent operations, and the Office’s trademark operations, respectively.

“(b) BASIS FOR APPOINTMENTS.—Members of the Advisory Board shall be citizens of the

United States who shall be chosen so as to represent the interests of diverse users of the United States Patent and Trademark Office, including inventors, and shall include individuals with substantial background and achievement in corporate finance and management.

“(c) APPLICABILITY OF CERTAIN ETHICS LAWS.—Members of the Advisory Board shall be special Government employees within the meaning of section 202 of title 18.

“(d) MEETINGS.—The Advisory Board shall meet at the call of the chair, not less than every 6 months, to consider an agenda set by the chair.

“(e) DUTIES.—The Advisory Board shall—

“(1) review the policies, goals, performance, budget, and user fees of the United States Patent and Trademark Office, and advise the Director on these matters; and

“(2) within 60 days after the end of each fiscal year, prepare an annual report on the matters referred to in paragraph (1), transmit the report to the President and the Committees on the Judiciary of the Senate and the House of Representatives, and publish the report in the Patent and Trademark Office Official Gazette.

“(f) COMPENSATION.—Members of the Advisory Board shall be compensated for each day (including travel time) during which they are attending meetings or conferences of the Advisory Board or otherwise engaged in the business of the Advisory Board, at the rate which is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

“(g) ACCESS TO INFORMATION.—Members of the Advisory Board shall be provided access to records and information in the United States Patent and Trademark Office, except for personnel or other privileged information and information concerning patent applications required to be kept in confidence by section 122.”.

SEC. 115. CONFORMING AMENDMENTS.

(a) DUTIES.—Chapter 1 of title 35, United States Code, is amended by striking section 6.

(b) REGULATIONS FOR AGENTS AND ATTORNEYS.—Section 31 of title 35, United States Code, and the item relating to such section in the table of sections for chapter 3 of title 35, United States Code, are repealed.

SEC. 116. TRADEMARK TRIAL AND APPEAL BOARD.

Section 17 of the Act of July 5, 1946 (commonly referred to as the “Trademark Act of 1946”) (15 U.S.C. 1067) is amended to read as follows:

“SEC. 17. (a) In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Director shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration.

“(b) The Trademark Trial and Appeal Board shall include the Director, the Commissioner for Patents, the Commissioner for Trademarks, and administrative trademark judges who are appointed by the Director.”.

SEC. 117. BOARD OF PATENT APPEALS AND INTERFERENCES.

Chapter 1 of title 35, United States Code, is amended by striking section 7 and inserting after section 5 the following:

“§ 6. Board of Patent Appeals and Interferences

“(a) ESTABLISHMENT AND COMPOSITION.—There shall be in the United States Patent and Trademark Office a Board of Patent Ap-

peals and Interferences. The Director, the Commissioner for Patents, the Commissioner for Trademarks, and the administrative patent judges shall constitute the Board. The administrative patent judges shall be persons of competent legal knowledge and scientific ability who are appointed by the Director.

“(b) DUTIES.—The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, review adverse decisions of examiners upon applications for patents and shall determine priority and patentability of invention in interferences declared under section 135(a). Each appeal and interference shall be heard by at least 3 members of the Board, who shall be designated by the Director. Only the Board of Patent Appeals and Interferences may grant rehearings.”.

SEC. 118. SUITS BY AND AGAINST THE OFFICE.

Chapter 1 of part I of title 35, United States Code, is amended by inserting after section 6 the following new section:

“§ 7. Suits by and against the Office

“(a) ACTIONS UNDER UNITED STATES LAW.—Any civil action or proceeding to which the United States Patent and Trademark Office is a party is deemed to arise under the laws of the United States. The Federal courts shall have exclusive jurisdiction over all civil actions by or against the Office.

“(b) REPRESENTATION BY THE DEPARTMENT OF JUSTICE.—The United States Patent and Trademark Office shall be deemed an agency of the United States for purposes of section 516 of title 28.

“(c) PROHIBITION ON ATTACHMENT, LIENS, ETC.—No attachment, garnishment, lien, or similar process, intermediate or final, in law or equity, may be issued against property of the Office.”.

SEC. 119. ANNUAL REPORT OF DIRECTOR.

Section 14 of title 35, United States Code, is amended to read as follows:

“§ 14. Annual report to Congress

“The Director shall report to the Congress, not later than 180 days after the end of each fiscal year, the moneys received and expended by the Office, the purposes for which the moneys were spent, the quality and quantity of the work of the Office, and other information relating to the Office. The report under this section shall also meet the requirements of section 9106 of title 31, to the extent that such requirements are not inconsistent with the preceding sentence. The report required under this section shall not be deemed to be the report of the United States Patent and Trademark Office under section 9106 of title 31, and the Director shall file a separate report under such section.”.

SEC. 120. SUSPENSION OR EXCLUSION FROM PRACTICE.

Section 32 of title 35, United States Code, is amended by inserting before the last sentence the following: “The Director shall have the discretion to designate any attorney who is an officer or employee of the United States Patent and Trademark Office to conduct the hearing required by this section.”.

SEC. 121. FUNDING.

Section 42 of title 35, United States Code, is amended to read as follows:

“§ 42. Patent and Trademark Office funding

“(a) FEES PAYABLE TO THE OFFICE.—All fees for services performed by or materials furnished by the United States Patent and Trademark Office shall be payable to the Office.

“(b) USE OF MONEYS.—Moneys from fees shall be available to the United States Patent and Trademark Office to carry out, to the extent provided in appropriations Acts, the functions of the Office. Moneys of the Office not otherwise used to carry out the functions of the Office shall be kept in cash on

hand or on deposit, or invested in obligations of the United States or guaranteed by the United States, or in obligations or other instruments which are lawful investments for fiduciary, trust, or public funds. Fees available to the Office under this title shall be used for the processing of patent applications and for other services and materials relating to patents. Fees available to the Office under section 31 of the Act of July 5, 1946 (commonly referred to as the "Trademark Act of 1946"; 15 U.S.C. 1113), shall be used only for the processing of trademark registrations and for other services and materials relating to trademarks."

SEC. 122. EXTENSION OF SURCHARGES ON PATENT FEES.

(a) IN GENERAL.—Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. 41 note) is amended to read as follows: "**SEC. 10101. PATENT AND TRADEMARK OFFICE USER FEES.**

"(a) SURCHARGES.—There shall be a surcharge on all fees authorized by subsections (a) and (b) of section 41 of title 35, United States Code, in order to ensure that the amounts specified in subsection (c) are collected.

"(b) USE OF SURCHARGES.—Notwithstanding section 3302 of title 31, United States Code, all surcharges collected by the Patent and Trademark Office—

"(1) shall be credited to a separate account established in the Treasury and ascribed to the activities of the United States Patent and Trademark Office as offsetting collections,

"(2) shall be collected by and available to the United States Patent and Trademark Office for all authorized activities and operations of the Office, including all direct and indirect costs of services provided by the office, and

"(3) shall remain available until expended.

"(c) ESTABLISHMENT OF SURCHARGES.—The Director of the United States Patent and Trademark Office shall establish surcharges under subsection (a), subject to the provisions of section 553 of title 5, United States Code, in order to ensure that \$119,000,000, but not more than \$119,000,000, are collected in fiscal year 1999 and each fiscal year thereafter.

"(d) APPROPRIATIONS ACT REQUIRED.—Notwithstanding subsections (a) through (c), no fee established by subsection (a) shall be collected nor shall be available for spending without prior authorization in appropriations Acts."

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1998.

SEC. 123. TRANSFERS.

(a) TRANSFER OF FUNCTIONS.—Except to the extent that such functions, powers, and duties relate to the direction of patent or trademark policy, there are transferred to, and vested in, the United States Patent and Trademark Office all functions, powers, and duties vested by law in the Secretary of Commerce or the Department of Commerce or in the officers or components in the Department of Commerce with respect to the authority to grant patents and register trademarks, and in the Patent and Trademark Office, as in effect on the day before the effective date of this title, and in the officers and components of such Office.

(b) TRANSFER OF FUNDS AND PROPERTY.—The Secretary of Commerce shall transfer to the United States Patent and Trademark Office, on the effective date of this title, so much of the assets, liabilities, contracts, property, records, and unexpended and unobligated balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Department of

Commerce, including funds set aside for accounts receivable, which are related to functions, powers, and duties which are vested in the Patent and Trademark Office by this title.

SEC. 124. GAO STUDY AND REPORT.

The Comptroller General shall conduct a study of and, not later than the date that is 2 years after the effective date of this title, submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on—

(1) the operations of the Patent and Trademark Office as a Government corporation; and

(2) the feasibility and desirability of making the trademark operations of the Patent and Trademark Office a separate Government corporation or agency.

Subtitle B—Effective Date; Technical Amendments

SEC. 131. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect 4 months after the date of the enactment of this Act.

SEC. 132. TECHNICAL AND CONFORMING AMENDMENTS.

(a) AMENDMENTS TO TITLE 35.—

(1) The item relating to part I in the table of parts for chapter 35, United States Code, is amended to read as follows:

"I. United States Patent and Trademark Office 1".

(2) The heading for part I of title 35, United States Code, is amended to read as follows:

"PART I—UNITED STATES PATENT AND TRADEMARK OFFICE".

(3) The table of chapters for part I of title 35, United States Code, is amended by amending the item relating to chapter 1 to read as follows:

"1. Establishment, Officers and Employees, Functions 1".

(4) The table of sections for chapter 1 of title 35, United States Code, is amended to read as follows:

"CHAPTER 1—ESTABLISHMENT, OFFICERS AND EMPLOYEES, FUNCTIONS

"Sec.

- "1. Establishment.
- "2. Powers and duties.
- "3. Officers and employees.
- "4. Restrictions on officers and employees as to interest in patents.
- "5. Patent and Trademark Office Management Advisory Board.
- "6. Board of Patent Appeals and Interferences.
- "7. Suits by and against the Office.
- "8. Library.
- "9. Classification of patents.
- "10. Certified copies of records.
- "11. Publications.
- "12. Exchange of copies of patents with foreign countries.
- "13. Copies of patents for public libraries.
- "14. Annual report to Congress."

(5) Section 41(h) of title 35, United States Code, is amended by striking "Commissioner of Patents and Trademarks" and inserting "Director".

(6) Section 155 of title 35, United States Code, is amended by striking "Commissioner of Patents and Trademarks" and inserting "Director".

(7) Section 155A(c) of title 35, United States Code, is amended by striking "Commissioner of Patents and Trademarks" and inserting "Director".

(8) Section 302 of title 35, United States Code, is amended by striking "Commissioner of Patents" and inserting "Director".

(9) Section 303(b) of title 35, United States Code, is amended by striking "Commissioner's" and inserting "Director's".

(10)(A) Except as provided in subparagraph (B), title 35, United States Code, is amended by striking "Commissioner" each place it appears and inserting "Director".

(B) Chapter 17 of title 35, United States Code, is amended by striking "Commissioner" each place it appears and inserting "Commissioner of Patents".

(11) Section 41(a)(8)(A) of title 35, United States Code, is amended by striking "On" and inserting "on".

(12) Section 157(d) of title 35, United States Code, is amended by striking "Secretary of Commerce" and inserting "Director".

(13) Section 181 of title 35, United States Code, is amended in the third paragraph by striking "Secretary of Commerce under rules prescribed by him" and inserting "Director under rules prescribed by the Patent and Trademark Office".

(14) Section 188 of title 35, United States Code, is amended by striking "Secretary of Commerce" and inserting "Patent and Trademark Office".

(15) Section 202(a) of title 35, United States Code, is amended by striking "iv)" and inserting "(iv)".

(b) OTHER PROVISIONS OF LAW.—

(1)(A) Section 45 of the Act of July 5, 1946 (commonly referred to as the "Trademark Act of 1946"; 15 U.S.C. 1127), is amended by striking "The term 'Commissioner' means the Commissioner of Patents and Trademarks." and inserting "The term 'Director' means the Director of the United States Patent and Trademark Office."

(B) The Act of July 5, 1946 (commonly referred to as the "Trademark Act of 1946"; 15 U.S.C. 1051 and following), except for section 17, as amended by section 116 of this Act, is amended by striking "Commissioner" each place it appears and inserting "Director".

(2) Section 9101(3) of title 31, United States Code, is amended by adding at the end the following:

"(R) the United States Patent and Trademark Office."

(3) Section 500(e) of title 5, United States Code, is amended by striking "Patent Office" and inserting "United States Patent and Trademark Office".

(4) Section 5102(c)(23) of title 5, United States Code, is amended to read as follows:

"(23) administrative patent judges and designated administrative patent judges in the United States Patent and Trademark Office;"

(5) Section 5316 of title 5, United States Code (5 U.S.C. 5316) is amended by striking "Commissioner of Patents, Department of Commerce.", "Deputy Commissioner of Patents and Trademarks.", "Assistant Commissioner for Patents.", and "Assistant Commissioner for Trademarks."

(6) Section 9(p)(1)(B) of the Small Business Act (15 U.S.C. 638(p)(1)(B)) is amended to read as follows:

"(B) the Director of the United States Patent and Trademark Office; and"

(7) Section 12 of the Act of February 14, 1903 (15 U.S.C. 1511) is amended by striking "(d) Patent and Trademark Office;" and redesignating subsections (a) through (g) as paragraphs (1) through (6), respectively.

(8) Section 19 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831r) is amended—

(A) by striking "Patent Office of the United States" and inserting "United States Patent and Trademark Office"; and

(B) by striking "Commissioner of Patents" and inserting "Director of the United States Patent and Trademark Office".

(9) Section 182(b)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2242(b)(2)(A)) is amended by striking "Commissioner of Patents and Trademarks" and inserting "Director of the United States Patent and Trademark Office".

(10) Section 302(b)(2)(D) of the Trade Act of 1974 (19 U.S.C. 2412(b)(2)(D)) is amended by striking "Commissioner of Patents and Trademarks" and inserting "Director of the United States Patent and Trademark Office".

(11) The Act of April 12, 1892 (27 Stat. 395; 20 U.S.C. 91) is amended by striking "Patent Office" and inserting "United States Patent and Trademark Office".

(12) Sections 505(m) and 512(o) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(m) and 360b(o)) are each amended by striking "Patent and Trademark Office of the Department of Commerce" and inserting "United States Patent and Trademark Office".

(13) Section 702(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 372(d)) is amended by striking "Commissioner of Patents" and inserting "Director of the United States Patent and Trademark Office".

(14) Section 105(e) of the Federal Alcohol Administration Act (27 U.S.C. 205(e)) is amended by striking "United States Patent Office" and inserting "United States Patent and Trademark Office".

(15) Section 1295(a)(4) of title 28, United States Code, is amended—

(A) in subparagraph (A) by inserting "United States" before "Patent and Trademark"; and

(B) in subparagraph (B) by striking "Commissioner of Patents and Trademarks" and inserting "Director of the United States Patent and Trademark Office".

(16) Section 1744 of title 28, United States Code is amended—

(A) by striking "Patent Office" each place it appears in the text and section heading and inserting "United States Patent and Trademark Office";

(B) by striking "Commissioner of Patents" and inserting "Director of the United States Patent and Trademark Office"; and

(C) by striking "Commissioner" and inserting "Director".

(17) Section 1745 of title 28, United States Code, is amended by striking "United States Patent Office" and inserting "United States Patent and Trademark Office".

(18) Section 1928 of title 28, United States Code, is amended by striking "Patent Office" and inserting "United States Patent and Trademark Office".

(19) Section 151 of the Atomic Energy Act of 1954 (42 U.S.C. 2181) is amended in subsections c. and d. by striking "Commissioner of Patents" and inserting "Director of the United States Patent and Trademark Office".

(20) Section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182) is amended by striking "Commissioner of Patents" each place it appears and inserting "Director of the United States Patent and Trademark Office".

(21) Section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457) is amended—

(A) in subsection (c) by striking "Commissioner of Patents" and inserting "Director of the United States Patent and Trademark Office (hereafter in this section referred to as the 'Director')"; and

(B) by striking "Commissioner" each subsequent place it appears and inserting "Director".

(22) Section 12(a) of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5510(a)) is amended by striking "Commissioner of the Patent Office" and inserting "Director of the United States Patent and Trademark Office".

(23) Section 1111 of title 44, United States Code, is amended by striking "the Commissioner of Patents,".

(24) Section 1114 of title 44, United States Code, is amended by striking "the Commissioner of Patents,".

(25) Section 1123 of title 44, United States Code, is amended by striking "the Patent Office,".

(26) Sections 1337 and 1338 of title 44, United States Code, and the items relating to those sections in the table of contents for chapter 13 of such title, are repealed.

(27) Section 10(i) of the Trading With the Enemy Act (50 U.S.C. App. 10(i)) is amended by striking "Commissioner of Patents" and inserting "Director of the United States Patent and Trademark Office".

(28) Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(A) in paragraph (1)—

(i) by striking "and" before "the chief executive officer of the Resolution Trust Corporation";

(ii) by striking "and" before "the Chairperson of the Federal Deposit Insurance Corporation";

(iii) by striking "or" before "the Commissioner of Social Security"; and

(iv) by inserting "or the Director of the United States Patent and Trademark Office;" after "Social Security Administration"; and

(B) in paragraph (2)—

(i) by striking "or" before "the Veterans' Administration"; and

(ii) by striking "or the Social Security Administration" and inserting "the Social Security Administration, or the United States Patent and Trademark Office".

Subtitle C—Miscellaneous Provisions

SEC. 141. REFERENCES.

(a) IN GENERAL.—Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a department or office from which a function is transferred by this title—

(1) to the head of such department or office is deemed to refer to the head of the department or office to which such function is transferred; or

(2) to such department or office is deemed to refer to the department or office to which such function is transferred.

(b) SPECIFIC REFERENCES.—Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Patent and Trademark Office—

(1) to the Commissioner of Patents and Trademarks is deemed to refer to the Director of the United States Patent and Trademark Office;

(2) to the Assistant Commissioner for Patents is deemed to refer to the Commissioner for Patents; or

(3) to the Assistant Commissioner for Trademarks is deemed to refer to the Commissioner for Trademarks.

SEC. 142. EXERCISE OF AUTHORITIES.

Except as otherwise provided by law, a Federal official to whom a function is transferred by this title may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this title.

SEC. 143. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Secretary of Commerce, any officer or employee of any office transferred by this title, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this title, and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date), shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law.

(b) PROCEEDINGS.—This title shall not affect any proceedings or any application for any benefits, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office transferred by this title, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this title had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.

(c) SUITS.—This title shall not affect suits commenced before the effective date of this title, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Commerce or the Secretary of Commerce, or by or against any individual in the official capacity of such individual as an officer or employee of an office transferred by this title, shall abate by reason of the enactment of this title.

(e) CONTINUANCE OF SUITS.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and under this title such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred by this title shall apply to the exercise of such function by the head of the Federal agency, and other officers of the agency, to which such function is transferred by this title.

SEC. 144. TRANSFER OF ASSETS.

Except as otherwise provided in this title, so much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with a function transferred to an official or agency by this title shall be available to the official or the head of that agency, respectively, at such time or times as the Director of the Office of Management and Budget directs for use in connection with the functions transferred.

SEC. 145. DELEGATION AND ASSIGNMENT.

Except as otherwise expressly prohibited by law or otherwise provided in this title, an official to whom functions are transferred under this title (including the head of any office to which functions are transferred under this title) may delegate any of the functions so transferred to such officers and employees of the office of the official as the official may designate, and may authorize successive

re delegations of such functions as may be necessary or appropriate. No delegation of functions under this section or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the function.

SEC. 146. AUTHORITY OF DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET WITH RESPECT TO FUNCTIONS TRANSFERRED.

(a) DETERMINATIONS.—If necessary, the Director of the Office of Management and Budget shall make any determination of the functions that are transferred under this title.

(b) INCIDENTAL TRANSFERS.—The Director of the Office of Management and Budget, at such time or times as the Director shall provide, may make such determinations as may be necessary with regard to the functions transferred by this title, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this title. The Director shall provide for the termination of the affairs of all entities terminated by this title and for such further measures and dispositions as may be necessary to effectuate the purposes of this title.

SEC. 147. CERTAIN VESTING OF FUNCTIONS CONSIDERED TRANSFERS.

For purposes of this title, the vesting of a function in a department or office pursuant to reestablishment of an office shall be considered to be the transfer of the function.

SEC. 148. AVAILABILITY OF EXISTING FUNDS.

Existing appropriations and funds available for the performance of functions, programs, and activities terminated pursuant to this title shall remain available, for the duration of their period of availability, for necessary expenses in connection with the termination and resolution of such functions, programs, and activities, subject to the submission of a plan to the Committees on Appropriations of the House and Senate in accordance with the procedures set forth in section 605 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act 1997.

SEC. 149. DEFINITIONS.

For purposes of this title—

(1) the term "function" includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and

(2) the term "office" includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

Subtitle D—Under Secretary of Commerce for Intellectual Property Policy

SEC. 151. UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY POLICY.

(a) APPOINTMENT.—There shall be within the Department of Commerce an Under Secretary of Commerce for Intellectual Property Policy, who shall be appointed by the President, by and with the advice and consent of the Senate. On or after the effective date of this title, the President may appoint an individual to serve as the Under Secretary until the date on which an Under Secretary qualifies under this subsection. The President shall not make more than 1 appointment under the preceding sentence.

(b) DUTIES.—The Under Secretary of Commerce for Intellectual Property Policy, under the direction of the Secretary of Commerce, shall perform the following functions with respect to intellectual property policy:

(1) In coordination with the Under Secretary of Commerce for International Trade,

promote exports of goods and services of the United States industries that rely on intellectual property.

(2) Advise the President, through the Secretary of Commerce, on national and international intellectual property policy issues.

(3) Advise Federal departments and agencies on matters of intellectual property protection in other countries.

(4) Provide guidance, as appropriate, with respect to proposals by agencies to assist foreign governments and international intergovernmental organizations on matters of intellectual property protection.

(5) Conduct programs and studies related to the effectiveness of intellectual property protection throughout the world.

(6) Advise the Secretary of Commerce on programs and studies relating to intellectual property policy that are conducted, or authorized to be conducted, cooperatively with foreign patent and trademark offices and international intergovernmental organizations.

(7) In coordination with the Department of State, conduct programs and studies cooperatively with foreign intellectual property offices and international intergovernmental organizations.

(c) DEPUTY UNDER SECRETARIES.—To assist the Under Secretary of Commerce for Intellectual Property Policy, the Secretary of Commerce shall appoint a Deputy Under Secretary for Patent Policy and a Deputy Under Secretary for Trademark Policy as members of the Senior Executive Service in accordance with the provisions of title 5, United States Code. The Deputy Under Secretaries shall perform such duties and functions as the Under Secretary for Intellectual Property Policy shall prescribe.

(d) COMPENSATION.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

"Under Secretary of Commerce for Intellectual Property Policy."

(e) FUNDING.—Funds available to the United States Patent and Trademark Office shall be made available for all expenses of the office of the Under Secretary for Intellectual Property Policy, subject to prior approval in appropriations Acts. Amounts made available under this subsection shall not exceed 2 percent of the projected annual revenues of the Patent and Trademark Office from fees for services and goods of that Office. The Secretary of Commerce shall determine the budget requirements of the office of the Under Secretary for Intellectual Property Policy.

SEC. 152. RELATIONSHIP WITH EXISTING AUTHORITIES.

Nothing in section 151 shall derogate from the duties of the United States Trade Representative as set forth in section 141 of the Trade Act of 1974 (19 U.S.C. 2171).

TITLE II—EXAMINING PROCEDURE IMPROVEMENTS: PUBLICATION WITH PROVISIONAL ROYALTIES; TERM EXTENSIONS; FURTHER EXAMINATION

SEC. 201. SHORT TITLE.

This title may be cited as the "Examining Procedure Improvements Act".

SEC. 202. PUBLICATION.

Section 122 of title 35, United States Code, is amended to read as follows:

"§ 122. Confidential status of applications; publication of patent applications

"(a) CONFIDENTIALITY.—Except as provided in subsection (b), applications for patents shall be kept in confidence by the Patent and Trademark Office and no information concerning applications for patents shall be given without authority of the applicant or owner unless necessary to carry out the provisions of an Act of Congress or in such special circumstances as may be determined by the Director.

"(b) PUBLICATION.—

"(1) IN GENERAL.—(A) Subject to paragraph (2), each application for patent, except applications for design patents filed under chapter 16 of this title and provisional applications filed under section 111(b) of this title, shall be published, in accordance with procedures determined by the Director, promptly after the expiration of a period of 18 months from the earliest filing date for which a benefit is sought under this title. At the request of the applicant, an application may be published earlier than the end of such 18-month period.

"(B) No information concerning published patent applications shall be made available to the public except as the Director determines.

"(C) Notwithstanding any other provision of law, a determination by the Director to release or not to release information concerning a published patent application shall be final and nonreviewable.

"(2) EXCEPTIONS.—(A) An application that is no longer pending shall not be published.

"(B) An application that is in the process of being reviewed by the Atomic Energy Commission, the Department of Defense, or a defense agency pursuant to section 181 of this title shall not be published until the Director has been notified by the Atomic Energy Commission, the Secretary of Defense, or the chief officer of the defense agency, as the case may be, that in the opinion of the Atomic Energy Commission, the Secretary of Defense, or such chief officer, as the case may be, publication or disclosure of the invention by the granting of a patent would not be detrimental to the national security of the United States.

"(C) An application that is subject to a secrecy order pursuant to section 181 of this title shall not be published.

"(D) An application filed by a small business concern entitled to reduced fees under section 41(h)(1) of this title, by an individual who is an independent inventor entitled to reduced fees under such section, or by an institution of higher education (as defined in section 1202 of the Higher Education Act of 1965) entitled to reduced fees under such section 41(h)(1) shall not be published until a patent is issued thereon, except upon the request of the applicant, or in any of the following circumstances:

"(i) In the case of an application under section 111(a) for a patent for an invention for which the applicant intends to file or has filed an application for a patent in a foreign country, the Commissioner may publish, at the discretion of the Commissioner and by means determined suitable for the purpose, no more than that data from such application under section 111(a) which will be made or has been made public in such foreign country. Such a publication shall be made only after the date of the publication in such foreign country and shall be made only if the data is not available, or cannot be made readily available, in the English language through commercial services.

"(ii) If the Commissioner determines that a patent application which is filed after the date of the enactment of this paragraph—

"(I) has been pending more than 5 years from the effective filing date of the application,

"(II) has not been previously published by the Patent and Trademark Office,

"(III) is not under any appellate review by the Board of Patent Appeals and Interferences,

"(IV) is not under interference proceedings in accordance with section 135(a),

"(V) is not under any secrecy order pursuant to section 181,

"(VI) is not being diligently pursued by the applicant in accordance with this title, and

"(VII) is not in abandonment,

the Commissioner shall notify the applicant of such determination.

“(iii) An applicant which received notice of a determination described in clause (ii) may, within 30 days of receiving such notice, petition the Commissioner to review the determination to verify that subclauses (I) through (VII) are all applicable to the applicant’s application. If the applicant makes such a petition, the Commissioner shall not publish the applicant’s application before the Commissioner’s review of the petition is completed. If the applicant does not submit a petition, the Commissioner may publish the applicant’s application no earlier than 90 days after giving such a notice.

“(iv) If after the date of the enactment of this paragraph a continuing application has been filed more than 6 months after the date of the initial filing of an application, the Commissioner shall notify the applicant under such application. The Commissioner shall establish a procedure for an applicant which receives such a notice to demonstrate that the purpose of the continuing application was for reasons other than to achieve a delay in the time of publication of the application. If the Commissioner agrees with such a demonstration by the applicant, the Commissioner shall not publish the applicant’s application. If the Commissioner does not agree with such a demonstration by the applicant or if the applicant does not make an attempt at such a demonstration within a reasonable period of time as determined by the Commissioner, the Commissioner shall publish the applicant’s application.

“(E)(i) Upon the request at the time of filing by an applicant that is a small business concern or an independent inventor entitled to reduced fees under section 41(h)(1) of this title, the application shall not be published in accordance with paragraph (1) until 3 months after the Director makes a second notification to such applicant on the merits of the application under section 132 of this title. The Director may require applicants that no longer have the status of a small business concern or an independent inventor to so notify the Director not later than 15 months after the earliest filing date for which a benefit is sought under this title.

“(ii) Applications filed pursuant to section 363 of this title, applications asserting priority under section 119 or 365(a) of this title, and applications asserting the benefit of an earlier application under section 120 or 365(c) of this title shall not be eligible for a request pursuant to this subparagraph.

“(iii) Applications asserting the benefit of an earlier application under section 121 shall not be eligible for a request pursuant to this subparagraph unless filed within 2 months after the date on which the Director required the earlier application to be restricted to 1 of 2 or more inventions in the earlier application.

“(iv) In a request under this subparagraph, the applicant shall certify that the invention disclosed in the application was not and will not be the subject of an application filed in a foreign country.

“(v) The Director may establish appropriate procedures and nominal fees for making a request under this subparagraph.

“(F)(i) In a case in which an applicant, after making a request under subparagraph (E)(i), determines to file an application in a foreign country, the applicant shall notify the Director promptly. The application shall then be published in accordance with the provisions of paragraph (1).

“(ii) The Director may establish appropriate fees to cover the costs of processing notifications under clause (i), including the costs of any special handling of applications resulting from the initial request under subparagraph (E)(i).

“(F) No fee established under this section shall be collected nor shall be available for spending without prior authorization in appropriations Acts.

“(c) PRE-ISSUANCE OPPOSITION.—The provisions of this section shall not operate to create any new opportunity for pre-issuance opposition. The Director may establish appropriate procedures to ensure that this section does not create any new opportunity for pre-issuance opposition.”.

SEC. 203. TIME FOR CLAIMING BENEFIT OF EARLIER FILING DATE.

(a) IN A FOREIGN COUNTRY.—Section 119(b) of title 35, United States Code, is amended to read as follows:

“(b)(1) No application for patent shall be entitled to this right of priority unless a claim is filed in the Patent and Trademark Office, at such time during the pendency of the application as is required by the Director, that identifies the foreign application by specifying its application number, the country in or for which the application was filed, and the date of its filing.

“(2) The Director may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim, and may require the payment of a surcharge as a condition of accepting an untimely claim during the pendency of the application.

“(3) The Director may require a certified copy of the original foreign application, specification, and drawings upon which it is based, a translation if not in the English language, and such other information as the Director considers necessary. Any such certification shall be made by the intellectual property authority in the foreign country in which the foreign application was filed and show the date of the application and of the filing of the specification and other papers.”.

(b) IN THE UNITED STATES.—Section 120 of title 35, United States Code, is amended by adding at the end the following: “No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as is required by the Commissioner. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept unavoidably late submissions of amendments under this section.”.

SEC. 204. PROVISIONAL RIGHTS.

Section 154 of title 35, United States Code, is amended—

(1) in the section caption by inserting “; provisional rights” after “patent”; and

(2) by adding at the end the following new subsection:

“(d) PROVISIONAL RIGHTS.—

“(1) IN GENERAL.—In addition to other rights provided by this section, a patent shall include the right to obtain a reasonable royalty from any person who, during the period beginning on the date of publication of the application for such patent pursuant to section 122(b) of this title, or in the case of an international application filed under the treaty defined in section 351(a) of this title designating the United States under Article 21(2)(a) of such treaty, the date of publication of the application, and ending on the date the patent is issued—

“(A)(i) makes, uses, offers for sale, or sells in the United States the invention as claimed in the published patent application or imports such an invention into the United States; or

“(ii) if the invention as claimed in the published patent application is a process, uses, offers for sale, or sells in the United States

or imports into the United States products made by that process as claimed in the published patent application; and

“(B) had actual notice of the published patent application and, where the right arising under this paragraph is based upon an international application designating the United States that is published in a language other than English, a translation of the international application into the English language.

“(2) RIGHT BASED ON SUBSTANTIALLY IDENTICAL INVENTIONS.—The right under paragraph (1) to obtain a reasonable royalty shall not be available under this subsection unless the invention as claimed in the patent is substantially identical to the invention as claimed in the published patent application.

“(3) TIME LIMITATION ON OBTAINING A REASONABLE ROYALTY.—The right under paragraph (1) to obtain a reasonable royalty shall be available only in an action brought not later than 6 years after the patent is issued. The right under paragraph (1) to obtain a reasonable royalty shall not be affected by the duration of the period described in paragraph (1).

“(4) REQUIREMENTS FOR INTERNATIONAL APPLICATIONS.—The right under paragraph (1) to obtain a reasonable royalty based upon the publication under the treaty defined in section 351(a) of this title of an international application designating the United States shall commence from the date that the Patent and Trademark Office receives a copy of the publication under such treaty of the international application, or, if the publication under the treaty of the international application is in a language other than English, from the date that the Patent and Trademark Office receives a translation of the international application in the English language. The Director may require the applicant to provide a copy of the international publication of the international application and a translation thereof.”.

SEC. 205. PRIOR ART EFFECT OF PUBLISHED APPLICATIONS.

Section 102(e) of title 35, United States Code, is amended to read as follows:

“(e) the invention was described in—

“(1) an application for patent, published pursuant to section 122(b) of this title, by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) of this title shall have the effect under this subsection of a national application published under section 122(b) of this title only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language, or

“(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, or”.

SEC. 206. COST RECOVERY FOR PUBLICATION.

The Director of the United States Patent and Trademark Office shall recover the cost of early publication required by the amendment made by section 202 by adjusting the filing, issue, and maintenance fees under title 35, United States Code, by charging a separate publication fee, or by any combination of these methods.

SEC. 207. CONFORMING CHANGES.

The following provisions of title 35, United States Code, are amended:

(1) Section 11 is amended in paragraph 1 of subsection (a) by inserting “and published applications for patents” after “Patents”.

(2) Section 12 is amended—

(A) in the section caption by inserting “and applications” after “patents”; and

(B) by inserting “and published applications for patents” after “patents”.

(3) Section 13 is amended—

(A) in the section caption by inserting “and applications” after “patents”; and

(B) by inserting “and published applications for patents” after “patents”.

(4) The items relating to sections 12 and 13 in the table of sections for chapter 1, as amended by section 132(a)(4) of this Act, are each amended by inserting “and applications” after “patents”.

(5) The item relating to section 122 in the table of sections for chapter 11 is amended by inserting “; publication of patent applications” after “applications”.

(6) The item relating to section 154 in the table of sections for chapter 14 is amended by inserting “; provisional rights” after “patent”.

(7) Section 181 is amended—

(A) in the first paragraph—

(i) by inserting “by the publication of an application or” after “disclosure”; and

(ii) by inserting “the publication of the application or” after “withhold”;

(B) in the second paragraph by inserting “by the publication of an application or” after “disclosure of an invention”;

(C) in the third paragraph—

(i) by inserting “by the publication of the application or” after “disclosure of the invention”; and

(ii) by inserting “the publication of the application or” after “withhold”; and

(D) in the fourth paragraph by inserting “the publication of an application or” after “and” in the first sentence.

(8) Section 252 is amended in the first paragraph by inserting “substantially” before “identical” each place it appears.

(9) Section 284 is amended by adding at the end of the second paragraph the following: “Increased damages under this paragraph shall not apply to provisional rights under section 154(d) of this title.”

(10) Section 374 is amended to read as follows:

“§ 374. Publication of international application: Effect

“The publication under the treaty defined in section 351(a) of this title of an international application designating the United States shall confer the same rights and shall have the same effect under this title as an application for patent published under section 122(b), except as provided in sections 102(e) and 154(d) of this title.”

(1) Section 135(b) of title 35, United States Code, is amended to read as follows:

“(b)(1) A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an issued patent may only be made in an application if—

“(A) such a claim is made prior to 1 year after the date on which the patent was granted; and

“(B) the applicant files evidence which demonstrates that the applicant is prima facie entitled to a judgment relative to the patent.

“(2)(A) A claim which is the same as, or for the same or substantially the same subject matter as, a claim of a published application may only be made in an application filed after the date of publication of the published application if, except in a case to which subparagraph (B) applies—

“(i) such a claim is made prior to 1 year after the date of publication of the published application; and

“(ii) the applicant of the application filed after the date of publication of the published application files evidence that demonstrates that the applicant is prima facie entitled to a judgment relative to the published application.

“(B) If the applicant of the application filed after the date of publication of the pub-

lished application alleges that the invention claimed in the published application was derived from that applicant, such a claim may only be made if that applicant files evidence which demonstrates that the applicant is prima facie entitled to a judgment relative to the published application.”

SEC. 208. PATENT TERM EXTENSION AUTHORITY.

Section 154(b) of title 35, United States Code, is amended to read as follows:

“(b) TERM EXTENSION.—

“(1) BASIS FOR PATENT TERM EXTENSION.—

“(A) DELAY.—Subject to the limitations set forth in paragraph (2), if the issue of an original patent is delayed due to—

“(i) a proceeding under section 135(a) of this title, including any appeal under section 141, or any civil action under section 146, of this title,

“(ii) the imposition of an order pursuant to section 181 of this title,

“(iii) review by the Board of Patent Appeals and Interferences or by a Federal court in a case in which the patent was issued pursuant to a decision in the review reversing an adverse determination of patentability, or

“(iv) an unusual administrative delay by the Patent and Trademark Office in issuing the patent, the term of the patent shall be extended for the period of delay.

“(B) ADMINISTRATIVE DELAY.—For purposes of subparagraph (A)(iv), an unusual administrative delay by the Patent and Trademark Office is the failure to—

“(i) make a notification of the rejection of any claim for a patent or any objection or argument under section 132 of this title or give or mail a written notice of allowance under section 151 of this title not later than 14 months after the date on which the application was filed;

“(ii) respond to a reply under section 132 of this title or to an appeal taken under section 134 of this title not later than 4 months after the date on which the reply was filed or the appeal was taken;

“(iii) act on an application not later than 4 months after the date of a decision by the Board of Patent Appeals and Interferences under section 134 or 135 of this title or a decision by a Federal court under section 141, 145, or 146 of this title in a case in which allowable claims remain in an application;

“(iv) issue a patent not later than 4 months after the date on which the issue fee was paid under section 151 of this title and all outstanding requirements were satisfied; or

“(v) issue a patent within 3 years after the filing date of the application in the United States, if the applicant—

“(I) has not obtained further limited examination of the application under section 209 of the Examining Procedure Improvements Act;

“(II) has not benefitted from an extension of patent term under clause (i), (ii), or (iii) of paragraph (1)(A);

“(III) has not sought or obtained appellate review by the Board of Patent Appeals and Interferences or by a Federal Court other than in a case in which the patent was issued pursuant to a decision in the review reversing an adverse determination of patentability; and

“(IV) has not requested any delay in the processing of the application by the Patent and Trademark Office.

“(2) LIMITATIONS.—(A) The total duration of any extensions granted pursuant to either clause (iii) or (iv) of paragraph (1)(A) or both such clauses shall not exceed 10 years. To the extent that periods of delay attributable to grounds specified in paragraph (1) overlap, the period of any extension granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed.

“(B) The period of extension of the term of a patent under clause (iv) of paragraph (1)(A), which is based on the failure of the Patent and Trademark Office to meet the criteria set forth in clause (v) of paragraph (1)(B), shall be reduced by the cumulative total of any periods of time that an applicant takes to respond in excess of 3 months after the date on which the Patent and Trademark Office makes any rejection, objection, argument, or other request.

“(C) The period of extension of the term of a patent under this subsection shall be reduced by a period equal to the time in which the applicant failed to engage in reasonable efforts to conclude prosecution of the application. The Director shall prescribe regulations establishing the circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application in order to ensure that applicants are appropriately compensated for any delays by the Patent and Trademark Office in excess of the time periods specified in paragraph (1)(B).

“(D) No patent the term of which has been disclaimed beyond a specified date may be extended under this section beyond the expiration date specified in the disclaimer.

“(3) PROCEDURES.—The Director shall prescribe regulations establishing procedures for the notification of patent term extensions under this subsection and procedures for contesting patent term extensions under this subsection.”

SEC. 209. FURTHER EXAMINATION OF PATENT APPLICATIONS.

Section 132 of title 35, United States Code, is amended—

(1) in the first sentence by striking “Whenever” and inserting “(a) Whenever”; and

(2) by adding at the end the following:

“(b) The Director shall prescribe regulations to provide for the further limited examination of applications for patent at the request of the applicant. The Director may establish appropriate fees for such further limited examination and shall be authorized to provide a 50 percent reduction on such fees for small entities that qualify for reduced fees under section 41(h)(1) of this title.

SEC. 210. LAST DAY OF PENDENCY OF PROVISIONAL APPLICATION.

Section 119(e) of title 35, United States Code, is amended by adding at the end the following:

“(3) If the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the period of pendency of the provisional application shall be extended to the next succeeding secular or business day.”

SEC. 211. REPORTING REQUIREMENT.

The Director of the United States Patent and Trademark Office shall report to the Congress not later than April 1, 2001, and not later than April 1 of each year thereafter, regarding the impact of publication on the patent applications filed by applicants who are independent inventors entitled to reduced fees under section 41(h)(1) of title 35, United States Code. The report shall include information concerning the frequency and number of initial and continuing patent applications, pendency, interferences, reexaminations, rejection, abandonment rates, fees, other expenses, and other relevant information related to the prosecution of patent applications.

SEC. 212. EFFECTIVE DATE.

(a) SECTIONS 202 THROUGH 207.—Sections 202 through 207, and the amendments made by such sections, shall take effect on April 1, 1998, and shall apply to all applications filed under section 111 of title 35, United States Code, on or after that date, and all international applications designating the United States that are filed on or after that date.

(b) SECTIONS 208 THROUGH 210.—The amendments made by sections 208 through 210 shall take effect on the date of the enactment of this Act and, except for a design patent application filed under chapter 16 of title 35, United States Code, shall apply to any application filed on or after June 8, 1995.

TITLE III—PROTECTION FOR PRIOR DOMESTIC USERS OF PATENTED TECHNOLOGIES

SEC. 301. SHORT TITLE.

This title may be cited as the “Protection for Prior Domestic Commercial and Research Users of Patented Technologies Act”.

SEC. 302. DEFENSE TO PATENT INFRINGEMENT BASED ON PRIOR DOMESTIC COMMERCIAL OR RESEARCH USE.

(a) DEFENSE.—Chapter 28 of title 35, United States Code, is amended by adding at the end the following new section:

“§ 273. Prior domestic commercial or research use; defense to infringement

“(a) DEFINITIONS.—For purposes of this section—

“(1) the terms ‘commercially used’, ‘commercially use’, and ‘commercial use’ mean the use in the United States in commerce or the use in the design, testing, or production in the United States of a product or service which is used in commerce, whether or not the subject matter at issue is accessible to or otherwise known to the public;

“(2) in the case of activities performed by a nonprofit research laboratory, or nonprofit entity such as a university, research center, or hospital, a use for which the public is the intended beneficiary shall be considered to be a use described in paragraph (1) if the use is limited to activity that occurred within the laboratory or nonprofit entity or by persons in privity with that laboratory or nonprofit entity before the effective filing date of the application for patent at issue, except that the use—

“(A) may be asserted as a defense under this section only by the laboratory or nonprofit entity; and

“(B) may not be asserted as a defense with respect to any subsequent use by any entity other than such laboratory, nonprofit entity, or persons in privity;

“(3) the terms ‘used in commerce’, and ‘use in commerce’ mean that there has been an actual sale or other arm’s-length commercial transfer of the subject matter at issue or that there has been an actual sale or other arm’s-length commercial transfer of a product or service resulting from the use of the subject matter at issue; and

“(4) the ‘effective filing date’ of a patent is the earlier of the actual filing date of the application for the patent or the filing date of any earlier United States, foreign, or international application to which the subject matter at issue is entitled under section 119, 120, or 365 of this title.

“(b) DEFENSE TO INFRINGEMENT.—(1) A person shall not be liable as an infringer under section 271 of this title with respect to any subject matter that would otherwise infringe one or more claims in the patent being asserted against such person, if such person had, acting in good faith, commercially used the subject matter before the effective filing date of such patent.

“(2) The sale or other disposition of the subject matter of a patent by a person entitled to assert a defense under this section with respect to that subject matter shall exhaust the patent owner’s rights under the patent to the extent such rights would have been exhausted had such sale or other disposition been made by the patent owner.

“(c) LIMITATIONS AND QUALIFICATIONS OF DEFENSE.—The defense to infringement under this section is subject to the following:

“(1) DERIVATION.—A person may not assert the defense under this section if the subject

matter on which the defense is based was derived from the patentee or persons in privity with the patentee.

“(2) NOT A GENERAL LICENSE.—The defense asserted by a person under this section is not a general license under all claims of the patent at issue, but extends only to the subject matter claimed in the patent with respect to which the person can assert a defense under this chapter, except that the defense shall also extend to variations in the quantity or volume of use of the claimed subject matter, and to improvements in the claimed subject matter that do not infringe additional specifically claimed subject matter of the patent.

“(3) EFFECTIVE AND SERIOUS PREPARATION.—With respect to subject matter that cannot be commercialized without a significant investment of time, money, and effort, a person shall be deemed to have commercially used the subject matter if—

“(A) before the effective filing date of the patent, the person actually reduced the subject matter to practice in the United States, completed a significant portion of the total investment necessary to commercially use the subject matter, and made an arm’s-length commercial transaction in the United States in connection with the preparation to use the subject matter; and

“(B) thereafter the person diligently completed the remainder of the activities and investments necessary to commercially use the subject matter, and promptly began commercial use of the subject matter, even if such activities were conducted after the effective filing date of the patent.

“(4) BURDEN OF PROOF.—A person asserting the defense under this section shall have the burden of establishing the defense.

“(5) ABANDONMENT OF USE.—A person who has abandoned commercial use of subject matter may not rely on activities performed before the date of such abandonment in establishing a defense under subsection (b) with respect to actions taken after the date of such abandonment.

“(6) PERSONAL DEFENSE.—The defense under this section may only be asserted by the person who performed the acts necessary to establish the defense and, except for any transfer to the patent owner, the right to assert the defense shall not be licensed or assigned or transferred to another person except in connection with the good faith assignment or transfer of the entire enterprise or line of business to which the defense relates.

“(7) ONE-YEAR LIMITATION.—A person may not assert a defense under this section unless the subject matter on which the defense is based had been commercially used or actually reduced to practice more than one year prior to the effective filing date of the patent by the person asserting the defense or someone in privity with that person.

“(d) UNSUCCESSFUL ASSERTION OF DEFENSE.—If the defense under this section is pleaded by a person who is found to infringe the patent and who subsequently fails to demonstrate a reasonable basis for asserting the defense, the court shall find the case exceptional for the purpose of awarding attorney’s fees under section 285 of this title.

“(e) INVALIDITY.—A patent shall not be deemed to be invalid under section 102 or 103 of this title solely because a defense is established under this section.”.

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 28 of title 35, United States Code, is amended by adding at the end the following new item:

“273. Prior domestic commercial or research use; defense to infringement.”.

SEC. 303. EFFECTIVE DATE AND APPLICABILITY.

This title and the amendments made by this title shall take effect on the date of the

enactment of this Act, but shall not apply to any action for infringement that is pending on such date of enactment or with respect to any subject matter for which an adjudication of infringement, including a consent judgment, has been made before such date of enactment.

TITLE IV—ENHANCED PROTECTION OF INVENTORS’ RIGHTS

SEC. 401. SHORT TITLE.

This title may be cited as the “Enhanced Protection of Inventors’ Rights Act”.

SEC. 402. INVENTION PROMOTION SERVICES.

Part I of title 35, United States Code, is amended by adding after chapter 4 the following new chapter:

“CHAPTER 5—INVENTION PROMOTION SERVICES

“Sec.

“51. Definitions.

“52. Contracting requirements.

“53. Standard provisions for cover notice.

“54. Reports to customer required.

“55. Mandatory contract terms.

“56. Remedies.

“57. Records of complaints.

“58. Fraudulent representation by an invention promoter.

“59. Rule of construction.

“§ 51. Definitions

“For purposes of this chapter—

“(1) the term ‘contract for invention promotion services’ means a contract by which an invention promoter undertakes invention promotion services for a customer;

“(2) the term ‘customer’ means any person, firm, partnership, corporation, or other entity who enters into a financial relationship or a contract with an invention promoter for invention promotion services;

“(3) the term ‘invention promoter’ means any person, firm, partnership, corporation, or other entity who offers to perform or performs for, or on behalf of, a customer any act described under paragraph (4), but does not include—

“(A) any department or agency of the Federal Government or of a State or local government;

“(B) any nonprofit, charitable, scientific, or educational organization, qualified under applicable State law or described under section 170(b)(1)(A) of the Internal Revenue Code of 1986; or

“(C) any person duly registered with, and in good standing before, the United States Patent and Trademark Office acting within the scope of that person’s registration to practice before the Patent and Trademark Office; and

“(4) the term ‘invention promotion services’ means, with respect to an invention by a customer, any act involved in—

“(A) evaluating the invention to determine its protectability as some form of intellectual property, other than evaluation by a person licensed by a State to practice law who is acting solely within the scope of that person’s professional license;

“(B) evaluating the invention to determine its commercial potential by any person for purposes other than providing venture capital; or

“(C) marketing, brokering, licensing, selling, or promoting the invention or a product or service in which the invention is incorporated or used, except that the display only of an invention at a trade show or exhibit shall not be considered to be invention promotion services.

“§ 52. Contracting requirements

“(a) IN GENERAL.—(1) Every contract for invention promotion services shall be in writing and shall be subject to the provisions of this chapter. A copy of the signed written contract shall be given to the customer at

the time the customer enters into the contract.

"(2) If a contract is entered into for the benefit of a third party, such party shall be considered a customer for purposes of this chapter.

"(b) REQUIREMENTS OF INVENTION PROMOTER.—The invention promoter shall—

"(1) state in a written document, at the time a customer enters into a contract for invention promotion services, whether the usual business practice of the invention promoter is to—

"(A) seek more than 1 contract in connection with an invention; or

"(B) seek to perform services in connection with an invention in 1 or more phases, with the performance of each phase covered in 1 or more subsequent contracts; and

"(2) supply to the customer a copy of the written document together with a written summary of the usual business practices of the invention promoter, including—

"(A) the usual business terms of contracts; and

"(B) the approximate amount of the usual fees or other consideration that may be required from the customer for each of the services provided by the invention promoter.

"(c) RIGHT OF CUSTOMER TO CANCEL CONTRACT.—(1) Notwithstanding any contractual provision to the contrary, a customer shall have the right to terminate a contract for invention promotion services by sending a written letter to the invention promoter stating the customer's intent to cancel the contract. The letter of termination must be deposited with the United States Postal Service on or before 5 business days after the date upon which the customer or the invention promoter executes the contract, whichever is later.

"(2) Delivery of a promissory note, check, bill of exchange, or negotiable instrument of any kind to the invention promoter or to a third party for the benefit of the invention promoter, without regard to the date or dates appearing in such instrument, shall be deemed payment received by the invention promoter on the date received for purposes of this section.

"§ 53. Standard provisions for cover notice

"(a) CONTENTS.—Every contract for invention promotion services shall have a conspicuous and legible cover sheet attached with the following notice imprinted in boldface type of not less than 12-point size:

"YOU HAVE THE RIGHT TO TERMINATE THIS CONTRACT. TO TERMINATE THIS CONTRACT, YOU MUST SEND A WRITTEN LETTER TO THE COMPANY STATING YOUR INTENT TO CANCEL THIS CONTRACT. THE LETTER OF TERMINATION MUST BE DEPOSITED WITH THE UNITED STATES POSTAL SERVICE ON OR BEFORE FIVE (5) BUSINESS DAYS AFTER THE DATE ON WHICH YOU OR THE COMPANY EXECUTE THE CONTRACT, WHICHEVER IS LATER.

"THE TOTAL NUMBER OF INVENTIONS EVALUATED BY THE INVENTION PROMOTER FOR COMMERCIAL POTENTIAL IN THE PAST FIVE (5) YEARS IS _____. OF THAT NUMBER, _____ RECEIVED POSITIVE EVALUATIONS AND _____ RECEIVED NEGATIVE EVALUATIONS.

"IF YOU ASSIGN EVEN A PARTIAL INTEREST IN THE INVENTION TO THE INVENTION PROMOTER, THE INVENTION PROMOTER MAY HAVE THE RIGHT TO SELL OR DISPOSE OF THE INVENTION WITHOUT YOUR CONSENT AND MAY NOT HAVE TO SHARE THE PROFITS WITH YOU.

"THE TOTAL NUMBER OF CUSTOMERS WHO HAVE CONTRACTED WITH THE INVENTION PROMOTER IN THE PAST FIVE (5) YEARS IS _____. THE TOTAL NUM-

BER OF CUSTOMERS KNOWN BY THIS INVENTION PROMOTER TO HAVE RECEIVED, BY VIRTUE OF THIS INVENTION PROMOTER'S PERFORMANCE, AN AMOUNT OF MONEY IN EXCESS OF THE AMOUNT PAID BY THE CUSTOMER TO THIS INVENTION PROMOTER IS _____.

"THE OFFICERS OF THIS INVENTION PROMOTER HAVE COLLECTIVELY OR INDIVIDUALLY BEEN AFFILIATED IN THE LAST TEN (10) YEARS WITH THE FOLLOWING INVENTION PROMOTION COMPANIES: (LIST THE NAMES AND ADDRESSES OF ALL PREVIOUS INVENTION PROMOTION COMPANIES WITH WHICH THE PRINCIPAL OFFICERS HAVE BEEN AFFILIATED AS OWNERS, AGENTS, OR EMPLOYEES). YOU ARE ENCOURAGED TO CHECK WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE, THE FEDERAL TRADE COMMISSION, YOUR STATE ATTORNEY GENERAL'S OFFICE, AND THE BETTER BUSINESS BUREAU FOR ANY COMPLAINTS FILED AGAINST ANY OF THESE COMPANIES.

"YOU ARE ENCOURAGED TO CONSULT WITH AN ATTORNEY OF YOUR OWN CHOOSING BEFORE SIGNING THIS CONTRACT. BY PROCEEDING WITHOUT THE ADVICE OF AN ATTORNEY REGISTERED TO PRACTICE BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE, YOU COULD LOSE ANY RIGHTS YOU MIGHT HAVE IN YOUR IDEA OR INVENTION."

"(b) OTHER REQUIREMENTS FOR COVER NOTICE.—The cover notice shall contain the items required under subsection (a) and the name, primary office address, and local office address of the invention promoter, and may contain no other matter.

"(c) DISCLOSURE OF CERTAIN CUSTOMERS NOT REQUIRED.—The requirement in the notice set forth in subsection (a) to include the "TOTAL NUMBER OF CUSTOMERS WHO HAVE CONTRACTED WITH THE INVENTION PROMOTER IN THE PAST FIVE (5) YEARS" need not include information with respect to customers who have purchased trade show services, research, advertising, or other nonmarketing services from the invention promoter, nor with respect to customers who have defaulted in their payments to the invention promoter.

"§ 54. Reports to customer required

"With respect to every contract for invention promotion services, the invention promoter shall deliver to the customer at the address specified in the contract, at least once every 3 months throughout the term of the contract, a written report that identifies the contract and includes—

"(1) a full, clear, and concise description of the services performed to the date of the report and of the services yet to be performed and names of all persons who it is known will perform the services; and

"(2) the name and address of each person, firm, corporation, or other entity to whom the subject matter of the contract has been disclosed, the reason for each such disclosure, the nature of the disclosure, and complete and accurate summaries of all responses received as a result of those disclosures.

"§ 55. Mandatory contract terms

"(a) MANDATORY TERMS.—Each contract for invention promotion services shall include in boldface type of not less than 12-point size—

"(1) the terms and conditions of payment and contract termination rights required under section 52;

"(2) a statement that the customer may avoid entering into the contract by not making a payment to the invention promoter;

"(3) a full, clear, and concise description of the specific acts or services that the invention promoter undertakes to perform for the customer;

"(4) a statement as to whether the invention promoter undertakes to construct, sell, or distribute one or more prototypes, models, or devices embodying the invention of the customer;

"(5) the full name and principal place of business of the invention promoter and the name and principal place of business of any parent, subsidiary, agent, independent contractor, and any affiliated company or person who it is known will perform any of the services or acts that the invention promoter undertakes to perform for the customer;

"(6) if any oral or written representation of estimated or projected customer earnings is given by the invention promoter (or any agent, employee, officer, director, partner, or independent contractor of such invention promoter), a statement of that estimation or projection and a description of the data upon which such representation is based;

"(7) the name and address of the custodian of all records and correspondence relating to the contracted for invention promotion services, and a statement that the invention promoter is required to maintain all records and correspondence relating to performance of the invention promotion services for such customer for a period of not less than 2 years after expiration of the term of such contract; and

"(8) a statement setting forth a time schedule for performance of the invention promotion services, including an estimated date in which such performance is expected to be completed.

"(b) INVENTION PROMOTER AS FIDUCIARY.—To the extent that the description of the specific acts or services affords discretion to the invention promoter with respect to what specific acts or services shall be performed, the invention promoter shall be deemed a fiduciary.

"(c) AVAILABILITY OF INFORMATION.—Records and correspondence described under subsection (a)(7) shall be made available after 7 days written notice to the customer or the representative of the customer to review and copy at a reasonable cost on the invention promoter's premises during normal business hours.

"§ 56. Remedies

"(a) IN GENERAL.—(1) Any contract for invention promotion services that does not comply with the applicable provisions of this chapter shall be voidable at the option of the customer.

"(2) Any contract for invention promotion services entered into in reliance upon any material false, fraudulent, or misleading information, representation, notice, or advertisement of the invention promoter (or any agent, employee, officer, director, partner, or independent contractor of such invention promoter) shall be voidable at the option of the customer.

"(3) Any waiver by the customer of any provision of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

"(4) Any contract for invention promotion services which provides for filing for and obtaining utility, design, or plant patent protection shall be voidable at the option of the customer unless the invention promoter offers to perform or performs such act through a person duly registered to practice before, and in good standing with, the Patent and Trademark Office.

"(b) CIVIL ACTION.—(1) Any customer who is injured by a violation of this chapter by an invention promoter or by any material false or fraudulent statement or representation, or any omission of material fact, by an

invention promoter (or any agent, employee, director, officer, partner, or independent contractor of such invention promoter) or by failure of an invention promoter to make all the disclosures required under this chapter, may recover in a civil action against the invention promoter (or the officers, directors, or partners of such invention promoter) in addition to reasonable costs and attorneys' fees, the greater of—

“(A) \$5,000; or

“(B) the amount of actual damages sustained by the customer.

“(2) Notwithstanding paragraph (1), the court may increase damages to not more than 3 times the amount awarded.

“(C) REBUTTABLE PRESUMPTION OF INJURY.—For purposes of this section, substantial violation of any provision of this chapter by an invention promoter or execution by the customer of a contract for invention promotion services in reliance on any material false or fraudulent statements or representations or omissions of material fact shall establish a rebuttable presumption of injury.

“§ 57. Records of complaints

“(a) RELEASE OF COMPLAINTS.—The Director shall make all complaints received by the United States Patent and Trademark Office involving invention promoters publicly available, together with any response of the invention promoters.

“(b) REQUEST FOR COMPLAINTS.—The Director may request complaints relating to invention promotion services from any Federal or State agency and include such complaints in the records maintained under subsection (a), together with any response of the invention promoters.

“§ 58. Fraudulent representation by an invention promoter

“Whoever, in providing invention promotion services, knowingly provides any false or misleading statement, representation, or omission of material fact to a customer or fails to make all the disclosures required under this chapter, shall be guilty of a misdemeanor and fined not more than \$10,000 for each offense.

“§ 59. Rule of construction

“Except as expressly provided in this chapter, no provision of this chapter shall be construed to affect any obligation, right, or remedy provided under any other Federal or State law.”

SEC. 403. TECHNICAL AND CONFORMING AMENDMENT.

The table of chapters for part I of title 35, United States Code, is amended by adding after the item relating to chapter 4 the following:

“5. Invention Promotion Services 51”.
SEC. 404. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect 60 days after the date of the enactment of this Act.

TITLE V—MISCELLANEOUS IMPROVEMENTS

SEC. 501. PROVISIONAL APPLICATIONS.

(a) ABANDONMENT.—Section 111(b)(5) of title 35, United States Code, is amended to read as follows:

“(5) ABANDONMENT.—Notwithstanding the absence of a claim, upon timely request and as prescribed by the Director, a provisional application may be treated as an application filed under subsection (a). Subject to section 119(e)(3) of this title, if no such request is made, the provisional application shall be regarded as abandoned 12 months after the filing date of such application and shall not be subject to revival thereafter.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to any provisional application filed on or after June 8, 1995.

SEC. 502. INTERNATIONAL APPLICATIONS.

Section 119 of title 35, United States Code, is amended—

(1) in subsection (a), by inserting “or in a WTO member country,” after “or to citizens of the United States,”; and

(2) by adding at the end the following new subsections:

“(f) APPLICATIONS FOR PLANT BREEDER'S RIGHTS.—Applications for plant breeder's rights filed in a WTO member country (or in a UPOV Contracting Party) shall have the same effect for the purpose of the right of priority under subsections (a) through (c) of this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents.

“(g) DEFINITIONS.—As used in this section—

“(1) the term ‘WTO member country’ has the same meaning as the term is defined in section 104(b)(2) of this title; and

“(2) the term ‘UPOV Contracting Party’ means a member of the International Convention for the Protection of New Varieties of Plants.”

SEC. 503. PLANT PATENTS.

(a) TUBER PROPAGATED PLANTS.—Section 161 of title 35, United States Code, is amended by striking “a tuber propagated plant or”.

(b) RIGHTS IN PLANT PATENTS.—The text of section 163 of title 35, United States Code, is amended to read as follows: “In the case of a plant patent, the grant shall include the right to exclude others from asexually reproducing the plant, and from using, offering for sale, or selling the plant so reproduced, or any of its parts, throughout the United States, or from importing the plant so reproduced, or any parts thereof, into the United States.”

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply on the date of the enactment of this Act. The amendment made by subsection (b) shall apply to any plant patent issued on or after the date of the enactment of this Act.

SEC. 504. ELECTRONIC FILING.

Section 22 of title 35, United States Code, is amended by striking “printed or typewritten” and inserting “printed, typewritten, or on an electronic medium”.

SEC. 505. DIVISIONAL APPLICATIONS.

(a) IN GENERAL.—Section 121 of title 35, United States Code, is amended—

(1) in the first sentence by striking “If” and inserting “(a) If”; and

(2) by adding at the end the following new subsections:

“(b) In a case in which restriction is required on the ground that two or more independent and distinct inventions are claimed in an application, the applicant shall be entitled to submit an examination fee and request examination for each independent and distinct invention in excess of one. The examination fee shall be equal to the filing fee, including excess claims fees, that would have applied had the claims corresponding to the asserted independent and distinct inventions been presented in a separate application for patent. For each of the independent and distinct inventions in excess of one for which the applicant pays an examination fee within two months after the requirement for restriction, the Director shall cause an examination to be made and a notification of rejection or written notice of allowance provided to the applicant within the time period specified in section 154(b)(1)(B)(i) of this title for the original application. Failure to meet this or any other time limit set forth in section 154(b)(1)(B) of this title shall be treated as an unusual administrative delay under section 154(b)(1)(A)(iv) of this title.

“(c) An applicant who requests reconsideration of a requirement for restriction under this section and submits examination fees

pursuant to such requirement shall, if the requirement is determined to be improper, be entitled to a refund of any examination fees determined to have been paid pursuant to the requirement.”

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date that is 2 years after the date of the enactment of this Act and shall apply to applications for patent filed on or after such effective date.

SEC. 506. PUBLICATIONS.

Section 11 of title 35, United States Code, is amended by adding at the end the following:

“(c) The Patent and Trademark Office shall make available for public inspection during regular business hours all solicitations issued by the Office for contracts for goods or services, and all contracts entered into by the Office for goods or services.”

The bill, as amended, was ordered to be engrossed and read a third time, was read a third time by title.

The question being put, *viva voce*,

Will the House pass said bill?

The SPEAKER pro tempore, Mr. KOLBE, announced that the yeas had it.

So the bill was passed.

A motion to reconsider the vote whereby said bill was passed was, by unanimous consent, laid on the table.

Ordered, That the Clerk request the concurrence of the Senate in said bill.

§36.15 CLERK TO CORRECT ENGROSSMENT

On motion of Mr. KOLBE, by unanimous consent,

Ordered, That in the engrossment of the foregoing bill the Clerk be authorized to correct section numbers, punctuation, and cross references, and to make such other technical and conforming changes as may be necessary to reflect the actions of the House in amending the bill.

§36.16 CORAL REEF ECOSYSTEMS

Mr. SAXTON, pursuant to House Resolution 117, moved to suspend the rules and agree to the following concurrent resolution (H. Con. Res. 8); as amended:

Whereas coral reefs are among the world's most biologically diverse and productive marine habitats, and are often described as the tropical rain forests of the oceans;

Whereas healthy coral reefs provide the basis for subsistence, commercial fisheries, and coastal and marine tourism and are of vital economic importance to coastal States and territories of the United States including Florida, Hawaii, Georgia, Texas, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;

Whereas healthy coral reefs function as natural, regenerating coastal barriers, protecting shorelines and coastal areas from high waves, storm surges, and accompanying losses of human life and property;

Whereas the scientific community has long established that coral reefs are subject to a wide range of natural and anthropogenic threats;

Whereas the United States has taken measures to protect national coral reef resources through the designation and management of several marine protected areas, containing reefs of the Flower Garden Banks in the Gulf of Mexico, the Florida Keys in south Florida, and offshore Hawaii, Puerto Rico, the Virgin Islands, and American Samoa;