

110TH CONGRESS
2D SESSION

H. R. 6344

To provide emergency authority to delay or toll judicial proceedings in United States district and circuit courts, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2008

Mr. DELAHUNT (for himself, Mr. PENCE, Mr. CONYERS, Mr. HENSARLING, Mr. DUNCAN, Mrs. JONES of Ohio, Mrs. CHRISTENSEN, and Mr. GALLEGLY) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide emergency authority to delay or toll judicial proceedings in United States district and circuit courts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Responsive Govern-
5 ment Act of 2008”.

1 **SEC. 2. EMERGENCY AUTHORITY TO DELAY OR TOLL JUDI-**
2 **CIAL PROCEEDINGS.**

3 (a) IN GENERAL.—Chapter 111 of title 28, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 **“§ 1660. Emergency authority to delay or toll judicial**
7 **deadlines**

8 “(a) TOLLING IN DISTRICT COURTS.—

9 “(1) IN GENERAL.—In the event of a natural
10 disaster or other emergency situation requiring the
11 closure of courts or rendering it impracticable for
12 the United States Government or a class of litigants
13 to comply with deadlines imposed by any Federal or
14 State law or rule that applies in the courts of the
15 United States, the chief judge of a district court
16 that has been affected may exercise emergency au-
17 thority in accordance with this section.

18 “(2) SCOPE OF AUTHORITY.—(A) The chief
19 judge may enter such order or orders as may be ap-
20 propriate to delay, toll, or otherwise grant relief
21 from the time deadlines imposed by otherwise appli-
22 cable laws or rules for such period as may be appro-
23 priate for any class of cases pending or thereafter
24 filed in the district court or bankruptcy court of the
25 district.

1 “(B) Except as provided in subparagraph (C),
2 the authority conferred by this section extends to all
3 laws and rules affecting criminal and juvenile pro-
4 ceedings (including, prearrest, post-arrest, pretrial,
5 trial, and post-trial procedures), civil actions, bank-
6 ruptcy proceedings, and the time for filing and per-
7 fecting an appeal.

8 “(C) The authority conferred by this section
9 does not include the authority to extend—

10 “(i) any statute of limitation for a criminal
11 action; or

12 “(ii) any statute of limitation for a civil ac-
13 tion, if—

14 “(I) the claim arises under the laws of
15 a State; and

16 “(II) extending the limitations period
17 would be inconsistent with the governing
18 State law.

19 “(3) UNAVAILABILITY OF CHIEF JUDGE.—If
20 the chief judge of the district is unavailable, the au-
21 thority conferred by this section may be exercised by
22 the district judge in regular active service who is
23 senior in commission or, if no such judge is avail-
24 able, by the chief judge of the circuit that includes
25 the district.

1 “(4) HABEAS CORPUS UNAFFECTED.—Nothing
2 in this section shall be construed to authorize sus-
3 pension of the writ of habeas corpus.

4 “(b) CRIMINAL CASES.—In exercising the authority
5 under subsection (a) for criminal cases, the court shall
6 consider the ability of the United States Government to
7 investigate, litigate, and process defendants during and
8 after the emergency situation, as well as the ability of
9 criminal defendants as a class to prepare their defenses.

10 “(c) TOLLING IN COURTS OF APPEALS.—

11 “(1) IN GENERAL.—In the event of a natural
12 disaster or other emergency situation requiring the
13 closure of courts or rendering it impracticable for
14 the United States Government or a class of litigants
15 to comply with deadlines imposed by any Federal or
16 State law or rule that applies in the courts of the
17 United States, the chief judge of a court of appeals
18 that has been affected or that includes a district
19 court so affected may exercise emergency authority
20 in accordance with this section.

21 “(2) SCOPE OF AUTHORITY.—The chief judge
22 may enter such order or orders as may be appro-
23 priate to delay, toll, or otherwise grant relief from
24 the time deadlines imposed by otherwise applicable
25 laws or rules for such period as may be appropriate

1 for any class of cases pending in the court of ap-
2 peals.

3 “(3) UNAVAILABILITY OF CHIEF JUDGE.—If
4 the chief judge of the circuit is unavailable, the au-
5 thority conferred by this section may be exercised by
6 the circuit judge in regular active service who is sen-
7 ior in commission.

8 “(4) HABEAS CORPUS UNAFFECTED.—Nothing
9 in this section shall be construed to authorize sus-
10 pension of the writ of habeas corpus.

11 “(d) ISSUANCE OF ORDERS.—The Attorney General
12 or the Attorney General’s designee may request issuance
13 of an order under this section, or the chief judge of a dis-
14 trict or of a circuit may act on his or her own motion.

15 “(e) DURATION OF ORDERS.—An order entered
16 under this section may not toll or extend a time deadline
17 for a period of more than 14 days, except that, if the chief
18 judge (whether of a district or of a circuit) determines that
19 an emergency situation requires additional extensions of
20 the period during which deadlines are tolled or extended,
21 the chief judge may, with the consent of the judicial coun-
22 cil of the circuit, enter additional orders under this section
23 in order to further toll or extend such time deadline.

24 “(f) NOTICE.—A court issuing an order under this
25 section—

1 “(1) shall make all reasonable efforts to pub-
2 licize the order, including announcing the order on
3 the web sites of all affected courts and the web site
4 of the Federal judiciary; and

5 “(2) shall, through the Director of the Adminis-
6 trative Office of the United States Courts, send no-
7 tice of the order, including the reasons for the
8 issuance of the order, to the Committee on the Judi-
9 ciary of the Senate and the Committee on the Judi-
10 ciary of the House of Representatives.

11 “(g) REQUIRED REPORTS.—A court issuing one or
12 more orders under this section relating to an emergency
13 situation shall, not later than 180 days after the date on
14 which the last extension or tolling of a time period made
15 by the order or orders ends, submit a brief report to the
16 Committee on the Judiciary of the Senate, the Committee
17 on the Judiciary of the House of Representatives, and the
18 Judicial Conference of the United States describing the
19 orders, including—

20 “(1) the reasons for issuing the orders;

21 “(2) the duration of the orders;

22 “(3) the effects of the orders on litigants; and

23 “(4) the costs to the judiciary resulting from
24 the orders.

1 “(h) EXCEPTIONS.—The notice under subsection
2 (f)(2) and the report under subsection (g) are not required
3 in the case of an order that tolls or extends a time deadline
4 for a period of less than 14 days.”.

5 (b) CLERICAL AMENDMENT.—The table of sections
6 at the beginning of chapter 111 of title 28, United States
7 Code, is amended by adding at the end the following new
8 item:

“1660. Emergency authority to delay or toll judicial deadlines.”.

9 **SEC. 3. WAIVER OF PATENT AND TRADEMARK REQUIRE-**
10 **MENTS IN CERTAIN EMERGENCIES.**

11 Section 2 of title 35, United States Code, is amended
12 by adding at the end the following new subsection:

13 “(e) WAIVER OF REQUIREMENTS IN CERTAIN EMER-
14 GENCIES.—The Director may waive statutory provisions
15 governing the filing, processing, renewal, and maintenance
16 of patents, trademark registrations, and applications
17 therefor to the extent the Director considers necessary in
18 order to protect the rights and privileges of applicants and
19 other persons affected by an emergency or a major dis-
20 aster, as those terms are defined in section 102 of the
21 Robert T. Stafford Disaster Relief and Emergency Assist-
22 ance Act (42 U.S.C. 5122). A decision not to exercise, or
23 a failure to exercise, the waiver authority provided by this
24 subsection shall not be subject to judicial review.”.

1 **SEC. 4. AUTHORITY OF DIRECTOR OF PTO TO ACCEPT LATE**
2 **FILINGS.**

3 (a) **AUTHORITY.**—Section 156 of title 35, United
4 States Code, is amended by adding at the end the fol-
5 lowing new subsection:

6 “(i) **DISCRETION TO ACCEPT LATE FILINGS IN CER-**
7 **TAIN CASES OF UNINTENTIONAL DELAY.**—

8 “(1) **IN GENERAL.**—The Director may accept
9 an application under this section that is filed not
10 later than three business days after the expiration of
11 the 60-day period provided in subsection (d)(1) if
12 the applicant files a petition, not later than five
13 business days after the expiration of that 60-day pe-
14 riod, showing, to the satisfaction of the Director,
15 that the delay in filing the application was uninten-
16 tional.

17 “(2) **TREATMENT OF DIRECTOR’S ACTIONS ON**
18 **PETITION.**—If the Director has not made a deter-
19 mination on a petition filed under paragraph (1)
20 within 60 days after the date on which the petition
21 is filed, the petition shall be deemed to be denied. A
22 decision by the Director to exercise or not to exer-
23 cise, or a failure to exercise, the discretion provided
24 by this subsection shall not be subject to judicial re-
25 view.”

26 (b) **FEE FOR LATE FILINGS.**—

1 (1) IN GENERAL.—In order to effect a patent
2 term extension under section 156(i) of title 35,
3 United States Code, the patent holder shall pay a
4 fee to the United States Treasury in the amount
5 prescribed under paragraph (2).

6 (2) FEE AMOUNT.—

7 (A) FEE AMOUNT.—The patent holder
8 shall pay a fee equal to—

9 (i) \$65,000,000 with respect to any
10 original application for a patent term ex-
11 tension, filed with the United States Pat-
12 ent and Trademark Office before the date
13 of the enactment of this Act, for a drug in-
14 tended for use in humans that is in the
15 anticoagulant class of drugs; or

16 (ii) the amount estimated under sub-
17 paragraph (B) with respect to any other
18 original application for a patent term ex-
19 tension.

20 (B) CALCULATION OF ALTERNATE
21 AMOUNT.—The Director shall estimate the
22 amount referred to in subparagraph (A)(ii) as
23 the amount equal to the sum of—

24 (i) any net increase in direct spending
25 arising from the extension of the patent

1 term (including direct spending of the
2 United States Patent and Trademark Of-
3 fice and any other department or agency of
4 the Federal Government);

5 (ii) any net decrease in revenues aris-
6 ing from such patent term extension; and

7 (iii) any indirect reduction in revenues
8 associated with payment of the fee under
9 this subsection.

10 The Director, in estimating the amount under
11 this subparagraph, shall consult with the Direc-
12 tor of the Office of Management and Budget,
13 the Secretary of the Treasury, and either the
14 Secretary of Health and Human Services or (in
15 the case of a drug product subject to the Act
16 commonly referred to as the “Virus-Serum-
17 Toxin Act”; 21 U.S.C. 151–158) the Secretary
18 of Agriculture.

19 (3) NOTICE OF FEE.—The Director shall in-
20 form the patent holder of the fee determined under
21 paragraph (2) at the time the Director provides no-
22 tice to the patent holder of the period of extension
23 of the patent term that the patent holder may effect
24 under this subsection.

1 (4) ACCEPTANCE REQUIRED.—Unless, within
2 15 days after the Director provides notice to the
3 patent holder under paragraph (3), the patent hold-
4 er accepts the patent term extension in writing to
5 the Director, the patent term extension is rescinded
6 and no fees shall be due under this subsection by
7 reason of the petition under section 156(i)(1) of title
8 35, United States Code, pursuant to which the Di-
9 rector provided the notice.

10 (5) PAYMENT OF FEE.—The extension of a pat-
11 ent term of which notice is provided under para-
12 graph (3) shall not become effective unless the pat-
13 ent holder pays the fee required under paragraph
14 (2) not later than 60 days after the date on which
15 the notice is provided.

16 (6) FEE PAYMENT NOT AVAILABLE FOR OBLI-
17 GATION.—Fees received under this subsection are
18 not available for obligation.

19 (7) DIRECTOR DEFINED.—Except as otherwise
20 provided, in this subsection, the term “Director”
21 means the Under Secretary of Commerce for Intel-
22 lectual Property and Director of the United States
23 Patent and Trademark Office.

24 (c) APPLICABILITY.—

1 (1) IN GENERAL.—This section and the amend-
2 ments made by this section shall apply to any appli-
3 cation—

4 (A) that is made on or after the date of
5 the enactment of this Act; or

6 (B) that, on such date of enactment, is
7 pending before the Director or as to which a de-
8 cision of the Director is eligible for judicial re-
9 view.

10 (2) TREATMENT OF CERTAIN APPLICATIONS.—

11 In the case of any application described in para-
12 graph (1)(B), the 5-day period prescribed in section
13 156(i)(1) of title 35, United States Code, as added
14 by subsection (a) of this section, shall be deemed to
15 begin on the date of the enactment of this Act.

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