

105TH CONGRESS  
1ST SESSION

# S. 421

To amend title 35, United States Code, to establish the Patent and Trademark Office as a Government corporation, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 11, 1997

Mr. LAUTENBERG introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To amend title 35, United States Code, to establish the Patent and Trademark Office as a Government corporation, 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 “Patent and Trademark  
5 Office Reform Act”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—UNITED STATES PATENT AND TRADEMARK OFFICE

- Sec. 101. Establishment of Patent and Trademark Office as a Government corporation.
- Sec. 102. Powers and duties.
- Sec. 103. Organization and management.
- Sec. 104. Management Advisory Board.
- Sec. 105. Conforming amendments.
- Sec. 106. Trademark Trial and Appeal Board.
- Sec. 107. Board of Patent Appeals and Interferences.
- Sec. 108. Suits by and against the Office.
- Sec. 109. Annual report of Commissioner.
- Sec. 110. Suspension or exclusion from practice.
- Sec. 111. Funding.
- Sec. 112. Audits.
- Sec. 113. Transfers.
- Sec. 114. Nonapplicability of Federal workforce reductions.

#### TITLE II—EFFECTIVE DATE; TECHNICAL AMENDMENTS

- Sec. 201. Effective date.
- Sec. 202. Technical and conforming amendments.

#### TITLE III—MISCELLANEOUS PROVISIONS

- Sec. 301. References.
- Sec. 302. Exercise of authorities.
- Sec. 303. Savings provisions.
- Sec. 304. Transfer of assets.
- Sec. 305. Delegation and assignment.
- Sec. 306. Authority of Director of the Office of Management and Budget with respect to functions transferred.
- Sec. 307. Certain vesting of functions considered transfers.
- Sec. 308. Availability of existing funds.
- Sec. 309. Definitions.

#### TITLE IV—UNDER SECRETARY FOR INTELLECTUAL PROPERTY

- Sec. 401. Under Secretary for Intellectual Property.

1 **TITLE I—UNITED STATES PAT-**  
 2 **ENT AND TRADEMARK OF-**  
 3 **FICE**

4 **SEC. 101. ESTABLISHMENT OF PATENT AND TRADEMARK**  
 5 **OFFICE AS A GOVERNMENT CORPORATION.**

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

1 **“§ 1. Establishment**

2       “(a) ESTABLISHMENT.—The United States Patent  
3 and Trademark Office is established as a wholly owned  
4 Government corporation subject to chapter 91 of title 31,  
5 separate from any department of the United States, and  
6 shall be an agency of the United States under the policy  
7 direction of the Secretary of Commerce. For purposes of  
8 internal management, the United States Patent and  
9 Trademark Office shall be a corporate body not subject  
10 to direction or supervision by any department of the Unit-  
11 ed States, except as otherwise provided in this title.

12       “(b) OFFICES.—The United States Patent and  
13 Trademark Office shall maintain its principal office in the  
14 metropolitan Washington, D.C. area, for the service of  
15 process and papers and for the purpose of carrying out  
16 its functions. The United States Patent and Trademark  
17 Office shall be deemed, for purposes of venue in civil ac-  
18 tions, to be a resident of the district in which its principal  
19 office is located, except where jurisdiction is otherwise pro-  
20 vided by law. The United States Patent and Trademark  
21 Office may establish satellite offices in such other places  
22 as it considers necessary and appropriate in the conduct  
23 of its business.

24       “(c) REFERENCE.—For purposes of this title, the  
25 United States Patent and Trademark Office shall also be

1 referred to as the ‘Office’ and the ‘Patent and Trademark  
2 Office’.”.

3 **SEC. 102. POWERS AND DUTIES.**

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

6 **“§ 2. Powers and duties**

7 “(a) IN GENERAL.—The United States Patent and  
8 Trademark Office shall be responsible for—

9 “(1) the granting and issuing of patents and  
10 the registration of trademarks;

11 “(2) conducting studies, programs, or ex-  
12 changes of items or services regarding domestic and  
13 international law of patents, trademarks, and related  
14 matters, the administration of the Office, or any  
15 other function vested in the Office by law, including  
16 programs to recognize, identify, assess, and forecast  
17 the technology of patented inventions and their util-  
18 ity to industry;

19 “(3) authorizing or conducting studies and pro-  
20 grams cooperatively with foreign patent and trade-  
21 mark offices and international organizations, in con-  
22 nection with the granting and issuing of patents and  
23 the registration of trademarks; and

24 “(4) disseminating to the public information  
25 with respect to patents and trademarks.

1 “(b) SPECIFIC POWERS.—The Office—

2 “(1) shall have perpetual succession;

3 “(2) shall adopt and use a corporate seal, which  
4 shall be judicially noticed and with which letters pat-  
5 ent, certificates of trademark registrations, and pa-  
6 pers issued by the Office shall be authenticated;

7 “(3) may sue and be sued in its corporate name  
8 and be represented by its own attorneys in all judi-  
9 cial and administrative proceedings, subject to the  
10 provisions of section 7;

11 “(4) may indemnify the Commissioner, and  
12 other officers, attorneys, agents, and employees (in-  
13 cluding members of the Management Advisory  
14 Board established in section 5) of the Office for li-  
15 abilities and expenses incurred within the scope of  
16 their employment;

17 “(5) may adopt, amend, and repeal bylaws,  
18 rules, regulations, and determinations, which—

19 “(A) shall govern the manner in which its  
20 business will be conducted and the powers  
21 granted to it by law will be exercised;

22 “(B) shall be made after notice and oppor-  
23 tunity for full participation by interested public  
24 and private parties;

1           “(C) shall facilitate and expedite the proc-  
2           essing of patent applications, particularly those  
3           which can be filed, stored, processed, searched,  
4           and retrieved electronically, subject to the provi-  
5           sions of section 122 relating to the confidential  
6           status of applications; and

7           “(D) may govern the recognition and con-  
8           duct of agents, attorneys, or other persons rep-  
9           resenting applicants or other parties before the  
10          Office, and may require them, before being rec-  
11          ognized as representatives of applicants or  
12          other persons, to show that they are of good  
13          moral character and reputation and are pos-  
14          sessed of the necessary qualifications to render  
15          to applicants or other persons valuable service,  
16          advice, and assistance in the presentation or  
17          prosecution of their applications or other busi-  
18          ness before the Office;

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

24          “(7)(A) may make such purchases, contracts  
25          for the construction, maintenance, or management

1 and operation of facilities, and contracts for supplies  
2 or services, without regard to the provisions of the  
3 Federal Property and Administrative Services Act of  
4 1949 (40 U.S.C. 471 and following), the Public  
5 Buildings Act (40 U.S.C. 601 and following), and  
6 the Stewart B. McKinney Homeless Assistance Act  
7 (42 U.S.C. 11301 and following); and

8 “(B) may enter into and perform such pur-  
9 chases and contracts for printing services, including  
10 the process of composition, platemaking, presswork,  
11 silk screen processes, binding, microform, and the  
12 products of such processes, as it considers necessary  
13 to carry out the functions of the Office, without re-  
14 gard to sections 501 through 517 and 1101 through  
15 1123 of title 44;

16 “(8) may use, with their consent, services,  
17 equipment, personnel, and facilities of other depart-  
18 ments, agencies, and instrumentalities of the Fed-  
19 eral Government, on a reimbursable basis, and co-  
20 operate with such other departments, agencies, and  
21 instrumentalities in the establishment and use of  
22 services, equipment, and facilities of the Office;

23 “(9) may obtain from the Administrator of  
24 General Services such services as the Administrator  
25 is authorized to provide to other agencies of the

1 United States, on the same basis as those services  
2 are provided to other agencies of the United States;

3 “(10) when the Commissioner determines that  
4 it is practicable, efficient, and cost-effective to do so,  
5 may use, with the consent of the United States and  
6 the agency, government, or international organiza-  
7 tion concerned, the services, records, facilities, or  
8 personnel of any State or local government agency  
9 or instrumentality or foreign government or inter-  
10 national organization to perform functions on its  
11 behalf;

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

18 “(12) may retain and use all of its revenues  
19 and receipts, including revenues from the sale, lease,  
20 or disposal of any real, personal, or mixed property,  
21 or any interest therein, of the Office, including for  
22 research and development and capital investment;

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

1           “(14) may accept monetary gifts or donations  
2           of services, or of real, personal, or mixed property,  
3           in order to carry out the functions of the Office;

4           “(15) may execute, in accordance with its by-  
5           laws, rules, and regulations, all instruments nec-  
6           essary and appropriate in the exercise of any of its  
7           powers; and

8           “(16) may provide for liability insurance and  
9           insurance against any loss in connection with its  
10          property, other assets, or operations either by con-  
11          tract or by self-insurance.

12          “(c) CONSTRUCTION.—Nothing in this section shall  
13          be construed to nullify, void, cancel, or interrupt any pend-  
14          ing request-for-proposal let or contract issued by the Gen-  
15          eral Services Administration for the specific purpose of re-  
16          locating or leasing space to the United States Patent and  
17          Trademark Office.”.

18          **SEC. 103. ORGANIZATION AND MANAGEMENT.**

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

21          **“§ 3. Officers and employees**

22                  “(a) COMMISSIONER.—

23                          “(1) IN GENERAL.—The management of the  
24                          United States Patent and Trademark Office shall be  
25                          vested in a Commissioner of the United States Pat-

1 ent and Trademark Office (in this title referred to  
2 as the ‘Commissioner’), who shall be a citizen of the  
3 United States and who shall be appointed by the  
4 President, by and with the advice and consent of the  
5 Senate. The Commissioner shall be a person who, by  
6 reason of professional background and experience in  
7 patent or trademark law, is especially qualified to  
8 manage the Office.

9 “(2) DUTIES.—

10 “(A) IN GENERAL.—The Commissioner  
11 shall be responsible for the management and di-  
12 rection of the Office, including the issuance of  
13 patents and the registration of trademarks, and  
14 shall perform these duties in a fair, impartial,  
15 and equitable manner.

16 “(B) ADVISING THE PRESIDENT.—The  
17 Commissioner shall advise the President,  
18 through the Secretary of Commerce, on the op-  
19 eration of the Office.

20 “(C) CONSULTING WITH THE MANAGE-  
21 MENT ADVISORY BOARD.—The Commissioner  
22 shall consult with the Management Advisory  
23 Board established in section 5 on a regular  
24 basis on matters relating to the operation of the  
25 Office, and shall consult with the Board before

1 submitting budgetary proposals to the Office of  
2 Management and Budget or changing or pro-  
3 posing to change patent or trademark user fees  
4 or patent or trademark regulations.

5 “(D) SECURITY CLEARANCES.—The Com-  
6 missioner, in consultation with the Director of  
7 the Office of Personnel Management, shall  
8 maintain a program for identifying national se-  
9 curity positions and providing for appropriate  
10 security clearances.

11 “(3) TERM.—The Commissioner shall serve a  
12 term of 5 years, and may continue to serve after the  
13 expiration of the Commissioner’s term until a suc-  
14 cessor is appointed and assumes office. The Com-  
15 missioner may be reappointed to subsequent terms.

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

19 “(5) COMPENSATION.—The Commissioner shall  
20 receive compensation at the rate of pay in effect for  
21 level II of the Executive Schedule under section  
22 5313 of title 5 and, in addition, may receive as a  
23 bonus awarded by the Secretary, an amount up to  
24 the equivalent of the annual rate of basic pay for  
25 such level II, based upon an evaluation by the Sec-

1       retary of Commerce of the Commissioner’s perform-  
2       ance as defined in an annual performance agreement  
3       between the Commissioner and the Secretary. The  
4       annual performance agreement shall incorporate  
5       measurable goals as delineated in an annual per-  
6       formance plan agreed to by the Commissioner and  
7       the Secretary.

8               “(6) REMOVAL.—The Commissioner may be re-  
9       moved from office by the President. The President  
10       shall provide notification of any such removal to  
11       both Houses of Congress.

12               “(7) DESIGNEE OF COMMISSIONER.—The Com-  
13       missioner shall designate an officer of the Office who  
14       shall be vested with the authority to act in the ca-  
15       pacity of the Commissioner in the event of the ab-  
16       sence or incapacity of the Commissioner.

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

18               “(1) ASSISTANT COMMISSIONERS.—The Com-  
19       missioner shall appoint an Assistant Commissioner  
20       for Patents and an Assistant Commissioner for  
21       Trademarks for terms that shall expire on the date  
22       on which the Commissioner’s term expires. The As-  
23       sistant Commissioner for Patents shall be a person  
24       with demonstrated experience in patent law and the  
25       Assistant Commissioner for Trademarks shall be a

1 person with demonstrated experience in trademark  
2 law. The Assistant Commissioner for Patents and  
3 the Assistant Commissioner for Trademarks shall be  
4 the principal policy and management advisers to the  
5 Commissioner on all aspects of the activities of the  
6 Office that affect the administration of patent and  
7 trademark operations, respectively.

8 “(2) OTHER OFFICERS AND EMPLOYEES.—

9 “(A) IN GENERAL.—The Commissioner  
10 shall—

11 “(i) appoint such officers, employees  
12 (including attorneys), and agents of the  
13 Office as the Commissioner considers nec-  
14 essary to carry out the functions of the Of-  
15 fice;

16 “(ii) fix the compensation of such offi-  
17 cers and employees, except as otherwise  
18 provided in this section; and

19 “(iii) define the authority and duties  
20 of such officers and employees and dele-  
21 gate to them such of the powers vested in  
22 the Office as the Commissioner may deter-  
23 mine.

24 “(B) LIMITATIONS.—The Office shall not  
25 be subject to any administratively or statutorily

1           imposed limitation on positions or personnel,  
2           and no positions or personnel of the Office shall  
3           be taken into account for purposes of applying  
4           any such limitation.

5           “(c) LIMITS ON COMPENSATION.—Except as other-  
6 wise provided by law, the annual rate of basic pay of an  
7 officer or employee of the Office may not be fixed at a  
8 rate that exceeds, and total compensation payable to any  
9 such officer or employee for any year may not exceed, the  
10 annual rate of basic pay in effect for the Commissioner  
11 for that year involved. The Commissioner shall prescribe  
12 such regulations as may be necessary to carry out this  
13 subsection.

14           “(d) INAPPLICABILITY OF TITLE 5 GENERALLY.—  
15 Except as otherwise provided in this section, officers and  
16 employees of the Office shall not be subject to the provi-  
17 sions of title 5 relating to Federal employees.

18           “(e) CONTINUED APPLICABILITY OF CERTAIN PRO-  
19 VISION OF TITLE 5.—

20           “(1) IN GENERAL.—The following provisions of  
21 title 5 shall apply to the Office and its officers and  
22 employees:

23           “(A) Section 2302 (relating to prohibited  
24 personnel practices).

1           “(B) Section 3110 (relating to employment  
2 of relatives; restrictions).

3           “(C) Subchapter II of chapter 55 (relating  
4 to withholding pay).

5           “(D) Subchapters II and III of chapter 73  
6 (relating to employment limitations and political  
7 activities, respectively).

8           “(E) Chapter 71 (relating to labor-man-  
9 agement relations), subject to paragraph (2)  
10 and subsection (g).

11           “(F) Section 3303 (relating to political  
12 recommendations).

13           “(G) Subchapter II of chapter 61 (relating  
14 to flexible and compressed work schedules).

15           “(2) COMPENSATION SUBJECT TO COLLECTIVE  
16 BARGAINING.—

17           “(A) IN GENERAL.—Notwithstanding any  
18 other provision of law, for purposes of applying  
19 chapter 71 of title 5 pursuant to paragraph  
20 (1)(D), basic pay and other forms of compensa-  
21 tion shall be considered to be among the mat-  
22 ters as to which the duty to bargain in good  
23 faith extends under such chapter.

24           “(B) EXCEPTIONS.—The duty to bargain  
25 in good faith shall not, by reason of subpara-

1 graph (A), be considered to extend to any bene-  
2 fit under title 5 which is afforded by paragraph  
3 (1), (2), (3), or (4) of subsection (f).

4 “(C) LIMITATIONS APPLY.—Nothing in  
5 this subsection shall be considered to allow any  
6 limitation under subsection (c) to be exceeded.

7 “(f) PROVISIONS OF TITLE 5 THAT CONTINUE TO  
8 APPLY, SUBJECT TO CERTAIN REQUIREMENTS.—

9 “(1) RETIREMENT.—(A) The provisions of sub-  
10 chapter III of chapter 83 and chapter 84 of title 5  
11 shall apply to the Office and its officers and employ-  
12 ees, subject to subparagraph (B).

13 “(B)(i) The amount required of the Office  
14 under the second sentence of section 8334(a)(1) of  
15 title 5 with respect to any particular individual shall,  
16 instead of the amount which would otherwise apply,  
17 be equal to the normal-cost percentage (determined  
18 with respect to officers and employees of the Office  
19 using dynamic assumptions, as defined by section  
20 8401(9) of such title) of the individual’s basic pay,  
21 minus the amount required to be withheld from such  
22 pay under such section 8334(a)(1).

23 “(ii) The amount required of the Office under  
24 section 8334(k)(1)(B) of title 5 with respect to any  
25 particular individual shall be equal to an amount

1       computed in a manner similar to that specified in  
2       clause (i), as determined in accordance with clause  
3       (iii).

4           “(iii) Any regulations necessary to carry out  
5       this subparagraph shall be prescribed by the Office  
6       of Personnel Management.

7           “(C) The United States Patent and Trademark  
8       Office may supplement the benefits provided under  
9       the preceding provisions of this paragraph.

10          “(2) HEALTH BENEFITS.—(A) The provisions  
11       of chapter 89 of title 5 shall apply to the Office and  
12       its officers and employees, subject to subparagraph  
13       (B).

14          “(B)(i) With respect to any individual who be-  
15       comes an officer or employee of the Office pursuant  
16       to subsection (h), the eligibility of such individual to  
17       participate in such program as an annuitant (or of  
18       any other person to participate in such program as  
19       an annuitant based on the death of such individual)  
20       shall be determined disregarding the requirements of  
21       section 8905(b) of title 5. The preceding sentence  
22       shall not apply if the individual ceases to be an offi-  
23       cer or employee of the Office for any period of time  
24       after becoming an officer or employee of the Office  
25       pursuant to subsection (h) and before separation.

1           “(ii) The Government contributions authorized  
2           by section 8906 of title 5 for health benefits for any-  
3           one participating in the health benefits program pur-  
4           suant to this subparagraph shall be made by the Of-  
5           fice in the same manner as provided under section  
6           8906(g)(2) of title 5 with respect to the United  
7           States Postal Service for individuals associated  
8           therewith.

9           “(iii) For purposes of this subparagraph, the  
10          term ‘annuitant’ has the meaning given such term  
11          by section 8901(3) of title 5.

12          “(C) The Office may supplement the benefits  
13          provided under the preceding provisions of this para-  
14          graph.

15          “(3) LIFE INSURANCE.—(A) The provisions of  
16          chapter 87 of title 5 shall apply to the Office and  
17          its officers and employees, subject to subparagraph  
18          (B).

19          “(B)(i) Eligibility for life insurance coverage  
20          after retirement or while in receipt of compensation  
21          under subchapter I of chapter 81 of title 5 shall be  
22          determined, in the case of any individual who be-  
23          comes an officer or employee of the Office pursuant  
24          to subsection (h), without regard to the require-  
25          ments of section 8706(b) (1) or (2) of such title, but

1 subject to the condition specified in the last sentence  
2 of paragraph (2)(B)(i) of this subsection.

3 “(ii) Government contributions under section  
4 8708(d) of such title on behalf of any such individ-  
5 ual shall be made by the Office in the same manner  
6 as provided under paragraph (3) thereof with re-  
7 spect to the United States Postal Service for individ-  
8 uals associated therewith.

9 “(C) The Office may supplement the benefits  
10 provided under the preceding provisions of this para-  
11 graph.

12 “(4) EMPLOYEES’ COMPENSATION FUND.—(A)  
13 Officers and employees of the Office shall not be-  
14 come ineligible to participate in the program under  
15 chapter 81 of title 5, relating to compensation for  
16 work injuries, by reason of subsection (d).

17 “(B) The Office shall remain responsible for re-  
18 imbursing the Employees’ Compensation Fund, pur-  
19 suant to section 8147 of title 5, for compensation  
20 paid or payable after the effective date of the Patent  
21 and Trademark Office Reform Act in accordance  
22 with chapter 81 of title 5 with regard to any injury,  
23 disability, or death due to events arising before such  
24 date, whether or not a claim has been filed or is  
25 final on such date.

1 “(g) LABOR-MANAGEMENT RELATIONS.—

2 “(1) LABOR RELATIONS AND EMPLOYEE RELA-  
3 TIONS PROGRAMS.—The Office shall develop labor  
4 relations and employee relations programs with the  
5 objective of improving productivity, efficiency, and  
6 the quality of working life of Office employees, incor-  
7 porating the following principles:

8 “(A) Such programs shall be consistent  
9 with the merit principles in section 2301(b) of  
10 title 5.

11 “(B) Such programs shall provide veterans  
12 preference protections equivalent to those estab-  
13 lished by sections 2108, 3308 through 3318,  
14 and 3320 of title 5.

15 “(C)(i) The right to work shall not be sub-  
16 ject to undue restraint or coercion. The right to  
17 work shall not be infringed or restricted in any  
18 way based on membership in, affiliation with, or  
19 financial support of a labor organization.

20 “(ii) No person shall be required, as a con-  
21 dition of employment or continuation of employ-  
22 ment—

23 “(I) to resign or refrain from vol-  
24 untary membership in, voluntary affiliation

1 with, or voluntary financial support of a  
2 labor organization;

3 “(II) to become or remain a member  
4 of a labor organization;

5 “(III) to pay any dues, fees, assess-  
6 ments, or other charges of any kind or  
7 amount to a labor organization;

8 “(IV) to pay to any charity or other  
9 third party, in lieu of such payments, any  
10 amount equivalent to or a pro rata portion  
11 of dues, fees, assessments, or other charges  
12 regularly required of members of a labor  
13 organization; or

14 “(V) to be recommended, approved,  
15 referred, or cleared by or through a labor  
16 organization.

17 “(iii) This subparagraph shall not apply to  
18 a person described in section 7103(a)(2)(v) of  
19 title 5 or a ‘supervisor’, ‘management official’,  
20 or ‘confidential employee’ as those terms are  
21 defined in section 7103(a) (10), (11), and (13)  
22 of such title.

23 “(iv) Any labor organization recognized by  
24 the Office as the exclusive representative of a  
25 unit of employees of the Office shall represent

1           the interests of all employees in that unit with-  
2           out discrimination and without regard to labor  
3           organization membership.

4           “(2) ADOPTION OF EXISTING LABOR AGREE-  
5           MENTS.—The Office shall adopt all labor agreements  
6           which are in effect, as of the day before the effective  
7           date of the Patent and Trademark Office Reform  
8           Act, with respect to such Office (as then in effect).

9           “(h) CARRYOVER OF PERSONNEL.—

10           “(1) FROM PTO.—Effective as of the effective  
11           date of the Patent and Trademark Office Reform  
12           Act, all officers and employees of the Patent and  
13           Trademark Office on the day before such effective  
14           date shall become officers and employees of the Of-  
15           fice established under this Act or may be reassigned  
16           to the Office of the Under Secretary for Intellectual  
17           Property, without a break in service.

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

24           “(A) such individual serves in a position  
25           for which a major function is the performance

1 of work reimbursed by the Patent and Trade-  
2 mark Office, as determined by the Secretary of  
3 Commerce;

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

9 “(C) such transfer would be in the interest  
10 of the Office, as determined by the Secretary of  
11 Commerce in consultation with the Commis-  
12 sioner.

13 Any transfer under this paragraph shall be effective  
14 as of the same effective date as referred to in para-  
15 graph (1), and shall be made without a break in  
16 service.

17 “(3) NONSEPARATION.—No person who be-  
18 comes an officer or employee of the Office under this  
19 subsection shall, for a period of 1 year after the ef-  
20 fective date of the Patent and Trademark Office Re-  
21 form Act, be subject to separation as a consequence  
22 of the establishment of the Office.

23 “(4) ACCUMULATED LEAVE.—The amount of  
24 sick and annual leave and compensatory time accu-  
25 mulated under title 5 before the effective date de-

1 scribed in paragraph (1), by those becoming officers  
2 or employees of the Office pursuant to this sub-  
3 section, are obligations of the Office.

4 “(5) TERMINATION RIGHTS.—Any employee re-  
5 ferred to in paragraph (1) or (2) of this subsection  
6 whose employment with the Office is terminated  
7 during the 2-year period beginning on the effective  
8 date of the Patent and Trademark Office Reform  
9 Act shall be entitled to rights and benefits, to be af-  
10 farded by the Office, similar to those such employee  
11 would have had under Federal law if termination  
12 had occurred immediately before such date. An em-  
13 ployee who would have been entitled to appeal any  
14 such termination to the Merit Systems Protection  
15 Board, if such termination had occurred immediately  
16 before such effective date, may appeal any such ter-  
17 mination occurring within this 2-year period to the  
18 board under such procedures as it may prescribe.

19 “(6) CONTINUATION IN OFFICE OF CERTAIN  
20 OFFICERS.—“(A) The individual serving as the As-  
21 sistant Commissioner for Patents on the day before  
22 the effective date of the Patent and Trademark Of-  
23 fice Reform Act may serve as the Assistant Commis-  
24 sioner for Patents until the date on which an Assist-

1       ant Commissioner for Patents is appointed under  
2       subsection (b).

3           “(B) The individual serving as the Assistant  
4       Commissioner for Trademarks on the day before the  
5       effective date of the Patent and Trademark Office  
6       Reform Act may serve as the Assistant Commis-  
7       sioner for Trademarks until the date on which an  
8       Assistant Commissioner for Trademarks is ap-  
9       pointed under subsection (b).

10       “(i) COMPETITIVE STATUS.—For purposes of ap-  
11      pointment to a position in the competitive service for  
12      which an officer or employee of the Office is qualified,  
13      such officer or employee shall not forfeit any competitive  
14      status, acquired by such officer or employee before the ef-  
15      fective date of the Patent and Trademark Office Reform  
16      Act, by reason of becoming an officer or employee of the  
17      Office pursuant to subsection (h).

18       “(j) SAVINGS PROVISIONS.—

19           “(1) IN GENERAL.—Compensation, benefits,  
20      and other terms and conditions of employment in ef-  
21      fect immediately before the effective date of the Pat-  
22      ent and Trademark Office Reform Act, whether pro-  
23      vided by statute or by rules and regulations of the  
24      former Patent and Trademark Office or the execu-  
25      tive branch of the Government of the United States,

1 shall continue to apply to officers and employees of  
2 the Office, until changed in accordance with this sec-  
3 tion (whether by action of the Director or other-  
4 wise).

5 “(2) PROVISIONS SPECIFIC TO BASIC PAY.—(A)

6 With respect to any individual who becomes an offi-  
7 cer or employee of the Office pursuant to subsection  
8 (h), the rate of basic pay for such officer or em-  
9 ployee may not, on or after the effective date of the  
10 Patent and Trademark Office Reform Act, be less  
11 than the rate in effect immediately before such effec-  
12 tive date, except—

13 “(i) pursuant to a collective-bargaining  
14 agreement entered into under this section; or

15 “(ii) for inefficiency, neglect of duty, or  
16 misconduct, on the part of such individual.

17 “(B) For purposes of this paragraph, the term  
18 ‘basic pay’ includes any amount considered to be  
19 part of basic pay for purposes of subchapter III of  
20 chapter 83 or chapter 84 of title 5.

21 “(k) REMOVAL OF QUASI-JUDICIAL EXAMINERS.—

22 The Office may remove a patent examiner or examiner-  
23 in-chief, or a trademark examiner or member of a Trade-  
24 mark Trial and Appeal Board, only for such cause as will  
25 promote the efficiency of the Office.”.

1 **SEC. 104. MANAGEMENT ADVISORY BOARD.**

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

4 **“§ 5. Patent and Trademark Office Management Advi-**  
5 **sory Board**

6 “(a) ESTABLISHMENT OF MANAGEMENT ADVISORY  
7 BOARD.—

8 “(1) APPOINTMENT.—The United States Pat-  
9 ent and Trademark Office shall have a Management  
10 Advisory Board (hereafter in this title referred to as  
11 the ‘Board’) of 12 members, 4 of whom shall be ap-  
12 pointed by the President, 4 of whom shall be ap-  
13 pointed by the Speaker of the House of Representa-  
14 tives in consultation with the minority leader of the  
15 House of Representatives, and 4 of whom shall be  
16 appointed by the majority leader of the Senate in  
17 consultation with the minority leader of the Senate.

18 “(2) TERMS.—Members of the Board shall be  
19 appointed for a term of 4 years each, except that of  
20 the members first appointed by each appointing au-  
21 thority, 1 shall be for a term of 1 year, 1 shall be  
22 for a term of 2 years, and 1 shall be for a term of  
23 3 years. No member may serve more than 1 term.

24 “(3) CHAIR.—The President shall designate the  
25 chair of the Board, whose term as chair shall be for  
26 4 years.

1           “(4) TIMING OF APPOINTMENTS.—Initial ap-  
2           pointments to the Board shall be made within 3  
3           months after the effective date of the Patent and  
4           Trademark Office Reform Act, and vacancies shall  
5           be filled within 3 months after they occur.

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

15          “(6) COMMITTEES.—The Chair shall designate  
16          members of the Board to serve on a committee on  
17          patent operations and on a committee on trademark  
18          operations to perform the duties set forth in sub-  
19          section (e) as they relate specifically to the Office’s  
20          patent operations, and the Office’s trademark oper-  
21          ations, respectively.

22          “(b) BASIS FOR APPOINTMENTS.—Members of the  
23          Board shall be citizens of the United States who shall be  
24          chosen so as to represent the interests of diverse users  
25          of the United States Patent and Trademark Office, and

1 shall include individuals with substantial background and  
2 achievement in corporate finance and management.

3 “(c) APPLICABILITY OF CERTAIN ETHICS LAWS.—

4 Members of the Board shall be special Government em-  
5 ployees within the meaning of section 202 of title 18.

6 “(d) MEETINGS.—The Board shall meet at least  
7 quarterly and at any time at the call of the chair to con-  
8 sider an agenda set by the chair.

9 “(e) DUTIES.—The Board shall—

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

14 “(2) within 60 days after the end of each fiscal  
15 year, prepare an annual report on the matters re-  
16 ferred to in paragraph (1), transmit the report to  
17 the President, the Commissioner, and the Commit-  
18 tees on the Judiciary of the Senate and the House  
19 of Representatives, and publish the report in the  
20 Patent and Trademark Office Official Gazette.

21 “(f) COMPENSATION.—Members of the Board shall  
22 be compensated for each day (including travel time) dur-  
23 ing which they are attending meetings or conferences of  
24 the Board or otherwise engaged in the business of the  
25 Board, at the rate which is the daily equivalent of the an-

1 nual rate of basic pay in effect for level III of the Execu-  
2 tive Schedule under section 5314 of title 5, and while away  
3 from their homes or regular places of business they may  
4 be allowed travel expenses, including per diem in lieu of  
5 subsistence, as authorized by section 5703 of title 5.

6 “(g) ACCESS TO ASSISTANCE AND INFORMATION.—

7 “(1) ASSISTANCE.—The Office shall provide at  
8 the request of the Board such assistance as is nec-  
9 essary for the Board to perform its functions.

10 “(2) INFORMATION.—Members of the Board  
11 shall be provided access to records and information  
12 in the United States Patent and Trademark Office,  
13 except for personnel or other privileged information  
14 and information concerning patent applications re-  
15 quired to be kept in confidence by section 122.”.

16 **SEC. 105. CONFORMING AMENDMENTS.**

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

19 (b) REGULATIONS FOR AGENTS AND ATTORNEYS.—  
20 Section 31 of title 35, United States Code, and the item  
21 relating to such section in the table of sections for chapter  
22 3 of title 35, United States Code, are repealed.

1 **SEC. 106. TRADEMARK TRIAL AND APPEAL BOARD.**

2 Section 17 of the Act of July 5, 1946 (commonly re-  
3 ferred to as the “Trademark Act of 1946”) (15 U.S.C.  
4 1067) is amended to read as follows:

5 “SEC. 17. (a) In every case of interference, opposition  
6 to registration, application to register as a lawful concur-  
7 rent user, or application to cancel the registration of a  
8 mark, the Commissioner shall give notice to all parties and  
9 shall direct a Trademark Trial and Appeal Board to deter-  
10 mine and decide the respective rights of registration.

11 “(b) The Trademark Trial and Appeal Board shall  
12 include the Commissioner, the Assistant Commissioner for  
13 Patents, the Assistant Commissioner for Trademarks, and  
14 members competent in trademark law who are appointed  
15 by the Commissioner.”.

16 **SEC. 107. BOARD OF PATENT APPEALS AND INTER-**  
17 **FERENCES.**

18 Chapter 1 of title 35, United States Code, is amended  
19 by striking section 7 and inserting after section 5 the fol-  
20 lowing:

21 **“§ 6. Board of Patent Appeals and Interferences**

22 “(a) ESTABLISHMENT AND COMPOSITION.—There  
23 shall be in the United States Patent and Trademark Of-  
24 fice a Board of Patent Appeals and Interferences. The  
25 Commissioner, the Assistant Commissioner for Patents,  
26 the Assistant Commissioner for Trademarks, and the ex-

1 examiners-in-chief shall constitute the Board. The examiners-in-chief shall be persons of competent legal knowledge and scientific ability.

4       “(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 Commissioner. Only the Board of Patent Appeals and Interferences may grant rehearings.”.

13 **SEC. 108. SUITS BY AND AGAINST THE OFFICE.**

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

17 **“§ 7. Suits by and against the Office**

18       “(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.

24       “(b) REPRESENTATION BY THE DEPARTMENT OF JUSTICE.—The United States Patent and Trademark Of-

1 fice shall be deemed an agency of the United States for  
2 purposes of section 516 of title 28.

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

7 **SEC. 109. ANNUAL REPORT OF COMMISSIONER.**

8 Section 14 of title 35, United States Code, is amend-  
9 ed to read as follows:

10 **“§ 14. Annual report to Congress**

11 “Not later than 180 days after the end of each fiscal  
12 year, the Commissioner shall report to Congress the mon-  
13 eys received and expended by the Office, the purposes for  
14 which the moneys were spent, the quality and quantity of  
15 the work of the Office, and other information relating to  
16 the Office. The report under this section shall also meet  
17 the requirements of section 9106 of title 31, to the extent  
18 that such requirements are not inconsistent with the pre-  
19 ceding sentence. The report required under this section  
20 shall be deemed to be the report of the United States Pat-  
21 ent and Trademark Office under section 9106 of title 31,  
22 and the Commissioner shall not file a separate report  
23 under such section.”.

1 **SEC. 110. SUSPENSION OR EXCLUSION FROM PRACTICE.**

2 Section 32 of title 35, United States Code, is amend-  
3 ed by inserting before the last sentence the following: “The  
4 Commissioner shall have the discretion to designate any  
5 attorney who is an officer or employee of the United  
6 States Patent and Trademark Office to conduct the hear-  
7 ing required by this section.”.

8 **SEC. 111. FUNDING.**

9 (a) IN GENERAL.—Chapter 4 of title 35, United  
10 States Code, is amended by striking section 42 and insert-  
11 ing the following:

12 **“§ 42. Patent and Trademark Office funding**

13 “(a) FEES PAYABLE TO THE OFFICE.—All fees for  
14 services performed by or materials furnished by the  
15 United States Patent and Trademark Office shall be pay-  
16 able to the Office.

17 “(b) USE OF MONEYS.—Moneys from fees shall be  
18 available to the United States Patent and Trademark Of-  
19 fice to carry out the functions of the Office. Moneys of  
20 the Office not otherwise used to carry out the functions  
21 of the Office shall be kept in cash on hand or on deposit,  
22 or invested in obligations of the United States or guaran-  
23 teed by the United States, or in obligations or other in-  
24 struments which are lawful investments for fiduciary,  
25 trust, or public funds. Fees available to the Office under  
26 this title shall be used for the processing of patent applica-

1 tions and for other services and materials relating to pat-  
2 ents. Fees available to the Office under section 31 of the  
3 Act of July 5, 1946 (commonly referred to as the ‘Trade-  
4 mark Act of 1946’; 15 U.S.C. 1113), shall be used only  
5 for the processing of trademark registrations and for other  
6 services and materials relating to trademarks.

7       “(c) BORROWING AUTHORITY.—The United States  
8 Patent and Trademark Office is authorized to issue from  
9 time to time for purchase by the Secretary of the Treasury  
10 its debentures, bonds, notes, and other evidences of in-  
11 debtedness (hereafter in this subsection referred to as ‘ob-  
12 ligations’) to assist in financing its activities. Borrowing  
13 under this subsection shall be subject to prior approval  
14 in appropriations Acts. Such borrowing shall not exceed  
15 amounts approved in appropriation Acts. Any borrowing  
16 under this subsection shall be repaid only from fees paid  
17 to the Office. Such obligations shall be redeemable at the  
18 option of the Office before maturity in the manner stipu-  
19 lated in such obligations and shall have such maturity as  
20 is determined by the Office with the approval of the Sec-  
21 retary of the Treasury. Each such obligation issued to the  
22 Treasury shall bear interest at a rate not less than the  
23 current yield on outstanding marketable obligations of the  
24 United States of comparable maturity during the month  
25 preceding the issuance of the obligation as determined by

1 the Secretary of the Treasury. The Secretary of the Treas-  
2 ury shall purchase any obligations of the Office issued  
3 under this subsection and for such purpose the Secretary  
4 of the Treasury is authorized to use as a public-debt trans-  
5 action the proceeds of any securities issued under chapter  
6 31 of title 31, and the purposes for which securities may  
7 be issued under that chapter are extended to include such  
8 purpose. Payment under this subsection of the purchase  
9 price of such obligations of the United States Patent and  
10 Trademark Office shall be treated as public debt trans-  
11 actions of the United States.

12 “(d) REFUND.—The Commissioner may refund any  
13 fee paid by mistake or any amount paid in excess of that  
14 required.”.

15 (b) EXTENSION OF SURCHARGES ON PATENT  
16 FEES.—

17 (1) IN GENERAL.—Section 10101 of the Omni-  
18 bus Budget Reconciliation Act of 1990 (35 U.S.C.  
19 41 note) is amended by striking subsections (a)  
20 through (c) and inserting the following:

21 “(a) SURCHARGES.—There shall be a surcharge on  
22 all fees authorized by subsections (a) and (b) of section  
23 41 of title 35, United States Code, in order to ensure that  
24 the amounts specified in subsection (c) are collected.

1       “(b) USE OF SURCHARGES.—Notwithstanding sec-  
2 tion 3302 of title 31, United States Code, all surcharges  
3 collected by the United States Patent and Trademark Of-  
4 fice—

5               “(1) shall be credited to a separate account es-  
6 tablished in the Treasury and ascribed to the United  
7 States Patent and Trademark Office activities in the  
8 Department of Commerce as offsetting collections;

9               “(2) shall be collected by and made available to  
10 the United States Patent and Trademark Office for  
11 all authorized activities and operations of the Office,  
12 including all direct and indirect costs of services pro-  
13 vided by the Office; and

14               “(3) shall remain available until expended.

15       “(c) ESTABLISHMENT OF SURCHARGES.—The Com-  
16 missioner of the United States Patent and Trademark Of-  
17 fice shall establish surcharges under subsection (a), sub-  
18 ject to the provisions of section 553 of title 5, United  
19 States Code, in order to ensure that \$119,000,000, but  
20 not more than \$119,000,000, are collected in fiscal year  
21 1999 and each fiscal year thereafter.

22       “(d) APPROPRIATIONS ACT REQUIRED.—Notwith-  
23 standing subsections (a) through (c), no fee established  
24 by subsection (a) shall be collected nor shall be available

1 for spending without prior authorization in appropriations  
2 Acts.”.

3           (2) **EFFECTIVE DATE.**—The amendments made  
4 by paragraph (1) shall take effect on October 1,  
5 1998.

6 **SEC. 112. AUDITS.**

7 Chapter 4 of title 35, United States Code, is amended  
8 by adding at the end the following new section:

9 **“§ 43. Audits**

10       “(a) **IN GENERAL.**—Financial statements of the  
11 United States Patent and Trademark Office shall be pre-  
12 pared on an annual basis in accordance with generally ac-  
13 cepted accounting principles. Such statements shall be au-  
14 dited by an independent certified public accountant chosen  
15 by the Commissioner. The audit shall be conducted in ac-  
16 cordance with standards that are consistent with generally  
17 accepted Government auditing standards and other stand-  
18 ards established by the Comptroller General, and with the  
19 generally accepted auditing standards of the private sec-  
20 tor, to the extent feasible. The Commissioner shall trans-  
21 mit to the Committees on the Judiciary of the House of  
22 Representatives and the Senate the results of each audit  
23 under this subsection.

24       “(b) **REVIEW BY COMPTROLLER GENERAL.**—The  
25 Comptroller General may review any audit of the financial

1 statement of the United States Patent and Trademark Of-  
2 fice that is conducted under subsection (a). The Comptrol-  
3 ler General shall report to Congress and the Office the  
4 results of any such review and shall include in such report  
5 appropriate recommendations.

6 “(c) AUDIT BY COMPTROLLER GENERAL.—The  
7 Comptroller General may audit the financial statements  
8 of the Office and such audit shall be in lieu of the audit  
9 required by subsection (a). The Office shall reimburse the  
10 Comptroller General for the cost of any audit conducted  
11 under this subsection.

12 “(d) ACCESS TO OFFICE RECORDS.—All books, fi-  
13 nancial records, report files, memoranda, and other prop-  
14 erty that the Comptroller General deems necessary for the  
15 performance of any audit shall be made available to the  
16 Comptroller General.

17 “(e) APPLICABILITY IN LIEU OF TITLE 31 PROVI-  
18 SIONS.—This section applies to the Office in lieu of the  
19 provisions of section 9105 of title 31.”.

20 **SEC. 113. TRANSFERS.**

21 (a) TRANSFER OF FUNCTIONS.—Except to the extent  
22 that such functions, powers, and duties relate to the direc-  
23 tion of patent or trademark policy, there are transferred  
24 to, and vested in, the United States Patent and Trade-  
25 mark Office all functions, powers, and duties vested by

1 law in the Secretary of Commerce or the Department of  
2 Commerce or in the officers or components in the Depart-  
3 ment of Commerce with respect to the authority to grant  
4 patents and register trademarks, and in the Patent and  
5 Trademark Office, as in effect on the day before the effec-  
6 tive date of this Act, and in the officers and components  
7 of such Office.

8 (b) **TRANSFER OF FUNDS AND PROPERTY.**—The  
9 Secretary of Commerce shall transfer to the United States  
10 Patent and Trademark Office, on the effective date of this  
11 Act, so much of the assets, liabilities, contracts, property,  
12 records, and unexpended and unobligated balances of ap-  
13 propriations, authorizations, allocations, and other funds  
14 employed, held, used, arising from, available to, or to be  
15 made available to the Department of Commerce, including  
16 funds set aside for accounts receivable, which are related  
17 to functions, powers, and duties which are vested in the  
18 United States Patent and Trademark Office by this Act.

19 **SEC. 114. NONAPPLICABILITY OF FEDERAL WORKFORCE**  
20 **REDUCTIONS.**

21 No full-time equivalent position in the United States  
22 Patent and Trademark Office shall be eliminated to meet  
23 the requirements of section 5 of the Federal Workforce  
24 Restructuring Act of 1994 (5 U.S.C. 3101 note).

1       **TITLE II—EFFECTIVE DATE;**  
 2       **TECHNICAL AMENDMENTS**

3   **SEC. 201. EFFECTIVE DATE.**

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

7   **SEC. 202. TECHNICAL AND CONFORMING AMENDMENTS.**

8       (a) AMENDMENTS TO TITLE 35.—

9           (1) The item relating to part I in the table of  
 10 parts for chapter 35, United States Code, is amend-  
 11 ed to read as follows:

**“I. United States Patent and Trademark Office ..... 1”.**

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

14           **“PART I—UNITED STATES PATENT AND**  
 15                   **TRADEMARK OFFICE”.**

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

**“1. Establishment, Officers and Employees, Functions ..... 1”.**

19          (4) The table of sections for chapter 1 of title  
 20 35, United States Code, is amended to read as fol-  
 21 lows:

22           **“CHAPTER 1—ESTABLISHMENT, OFFICERS**  
 23                   **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.”.

1           (5) The table of sections for chapter 4 of title  
 2           35, United States Code, is amended by adding after  
 3           the item relating to section 42 the following:

“43. Audits.”.

4           (6) Section 41(a)(8)(A) of title 35, United  
 5           States Code, is amended by striking “On” and in-  
 6           serting “on”.

7           (b) OTHER PROVISIONS OF LAW.—

8           (1) Section 9101(3) of title 31, United States  
 9           Code, is amended by adding at the end the follow-  
 10          ing:

11                   “(R) the United States Patent and Trade-  
 12                   mark Office.”.

13          (2) Section 500(e) of title 5, United States  
 14          Code, is amended by striking “Patent Office” and  
 15          inserting “United States Patent and Trademark Of-  
 16          fice”.

17          (3) Section 5102(c)(23) of title 5, United  
 18          States Code, is amended by striking “Patent and

1 Trademark Office, Department of Commerce” and  
2 inserting “United States Patent and Trademark Of-  
3 fice”.

4 (4) Section 5314 of title 5, United States Code,  
5 is amended by adding at the end the following:  
6 “Under Secretary for Intellectual Property, Depart-  
7 ment of Commerce.”.

8 (5) Section 5315 of title 5, United States Code,  
9 is amended by adding at the end the following: “In-  
10 spector General, United States Patent and Trade-  
11 mark Office.”.

12 (6) Section 5316 of title 5, United States Code  
13 (5 U.S.C. 5316) is amended by striking “Commis-  
14 sioner of Patents, Department of Commerce.”,  
15 “Deputy Commissioner of Patents and Trade-  
16 marks.”, “Assistant Commissioner for Patents.”,  
17 and “Assistant Commissioner for Trademarks.”.

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

21 “(B) the Commissioner of the United  
22 States Patent and Trademark Office; and”.

23 (8) Section 12 of the Act of February 14, 1903  
24 (15 U.S.C. 1511) is amended by striking “(d) Pat-  
25 ent and Trademark Office;” and redesignating sub-

1 sections (a) through (g) as paragraphs (1) through  
2 (6), respectively.

3 (9) Section 1127 of title 15, United States  
4 Code, is amended by striking “Commissioner of Pat-  
5 ents and Trademarks” and inserting “Commissioner  
6 of the United States Patent and Trademark Office”.

7 (10) Section 19 of the Tennessee Valley Au-  
8 thority Act of 1933 (16 U.S.C. 831r) is amended—

9 (A) by striking “Patent and Trademark  
10 Office of the United States” and inserting  
11 “United States Patent and Trademark Office”;  
12 and

13 (B) by striking “Commissioner of Patents”  
14 and inserting “Commissioner of the United  
15 States Patent and Trademark Office”.

16 (11) Section 182(b)(2)(A) of the Trade Act of  
17 1974 (19 U.S.C. 2242(b)(2)(A)) is amended by  
18 striking “Commissioner of Patents and Trade-  
19 marks” and inserting “Under Secretary for Intellec-  
20 tual Property”.

21 (12) Section 302(b)(2)(D) of the Trade Act of  
22 1974 (19 U.S.C. 2412(b)(2)(D)) is amended by  
23 striking “Commissioner of Patents and trademarks”  
24 and inserting “Under Secretary for Intellectual  
25 Property”.

1           (13) The Act of April 12, 1892 (27 Stat. 395;  
2           20 U.S.C. 91) is amended by striking “Patent Of-  
3           fice” and inserting “United States Patent and  
4           Trademark Office”.

5           (14) Sections 505(m) and 512(o) of the Federal  
6           Food, Drug, and Cosmetic Act (21 U.S.C. 355(m)  
7           and 360b(o)) are each amended by striking “Patent  
8           and Trademark Office of the Department of Com-  
9           merce” and inserting “United States Patent and  
10          Trademark Office”.

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

16          (16) Section 2151t–1(b)(1) of title 22, United  
17          States Code, is amended by striking “Patent and  
18          Trademark Office” and inserting “Under Secretary  
19          for Intellectual Property”.

20          (17) Section 105(e) of the Federal Alcohol Ad-  
21          ministration Act (27 U.S.C. 205(e)) is amended by  
22          striking “United States Patent Office” and inserting  
23          “United States Patent and Trademark Office”.

24          (18) Section 1744 of title 28, United States  
25          Code is amended—

1 (A) by striking “Patent Office” each place  
2 it appears in the text and section heading and  
3 inserting “United States Patent and Trade-  
4 mark Office”; and

5 (B) by striking “Commissioner of Patents”  
6 and inserting “Commissioner of the United  
7 States Patent and Trademark Office”.

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

10 (A) in subparagraph (A) by inserting  
11 “United States” before “Patent and Trade-  
12 mark”; and

13 (B) in subparagraph (B) by striking  
14 “Commissioner of Patents and Trademarks”  
15 and inserting “Commissioner of the United  
16 States Patent and Trademark Office”.

17 (20) Section 1745 of title 28, United States  
18 Code, is amended by striking “United States Patent  
19 Office” and inserting “United States Patent and  
20 Trademark Office”.

21 (21) Section 1928 of title 28, United States  
22 Code, is amended by striking “Patent Office” and  
23 inserting “United States Patent and Trademark  
24 Office”.

1           (22) Section 151 of the Atomic Energy Act of  
2           1954 (42 U.S.C. 2181) is amended in subsections c.  
3           and d. by striking “Commissioner of Patents and  
4           Trademarks” and inserting “Commissioner of the  
5           United States Patent and Trademark Office”.

6           (23) Section 152 of the Atomic Energy Act of  
7           1954 (42 U.S.C. 2182) is amended by striking  
8           “Commissioner of Patents and Trademarks” each  
9           place it appears and inserting “Commissioner of the  
10          United States Patent and Trademark Office”.

11          (24) Section 160 of the Atomic Energy Act of  
12          1954 (42 U.S.C. 2190) is amended—

13                 (A) by striking “United States Patent Of-  
14                 fice” and inserting “United States Patent and  
15                 Trademark Office”; and

16                 (B) by striking “Commissioner of Patents”  
17                 and inserting “Commissioner of the United  
18                 States Patent and Trademark Office”.

19          (25) Section 305(c) of the National Aeronautics  
20          and Space Act of 1958 (42 U.S.C. 2457(c)) is  
21          amended by striking “Commissioner of Patents” and  
22          inserting “Commissioner of the United States Pat-  
23          ent and Trademark Office”.

24          (26) Section 12(a) of the Solar Heating and  
25          Cooling Demonstration Act of 1974 (42 U.S.C.

1 5510(a)) is amended by striking “Commissioner of  
2 the Patent Office” and inserting “Commissioner of  
3 the United States Patent and Trademark Office”.

4 (27) Section 1111 of title 44, United States  
5 Code, is amended by striking “the Commissioner of  
6 Patents,”.

7 (28) Section 1114 of title 44, United States  
8 Code, is amended by striking “the Commissioner of  
9 Patents,”.

10 (29) Section 1123 of title 44, United States  
11 Code, is amended by striking “the Patent Office,”.

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

16 (31) Section 10(i) of the Trading With the  
17 Enemy Act (50 U.S.C. App. 10(i)) is amended by  
18 striking “Commissioner of Patents” and inserting  
19 “Commissioner of the United States Patent and  
20 Trademark Office”.

21 (32) Section 11 of the Inspector General Act of  
22 1978 (5 U.S.C. App.) is amended—

23 (A) in paragraph (1)—

1 (i) by striking “and” before “the chief  
2 executive officer of the Resolution Trust  
3 Corporation;”;

4 (ii) by striking “and” before “the  
5 Chairperson of the Federal Deposit Insur-  
6 ance Corporation;”;

7 (iii) by striking “or” before “the Com-  
8 missioner of Social Security,”; and

9 (iv) by inserting “or the Commis-  
10 sioner of the United States Patent and  
11 Trademark Office;” after “Social Security  
12 Administration;” and

13 (B) in paragraph (2)—

14 (i) by striking “or” before “the Veter-  
15 ans’ Administration,”; and

16 (ii) by striking “or the Social Security  
17 Administration” and inserting “the Social  
18 Security Administration, or the United  
19 States Patent and Trademark Office”.

20 **TITLE III—MISCELLANEOUS**  
21 **PROVISIONS**

22 **SEC. 301. REFERENCES.**

23 Any reference in any other Federal law, Executive  
24 order, rule, regulation, or delegation of authority, or any

1 document of or pertaining to a department or office from  
2 which a function is transferred by this Act—

3 (1) to the head of such department or office is  
4 deemed to refer to the head of the department or of-  
5 fice to which such function is transferred; or

6 (2) to such department or office is deemed to  
7 refer to the department or office to which such func-  
8 tion is transferred.

9 **SEC. 302. EXERCISE OF AUTHORITIES.**

10 Except as otherwise provided by law, a Federal offi-  
11 cial to whom a function is transferred by this Act may,  
12 for purposes of performing the function, exercise all au-  
13 thorities under any other provision of law that were avail-  
14 able with respect to the performance of that function to  
15 the official responsible for the performance of the function  
16 immediately before the effective date of the transfer of the  
17 function under this Act.

18 **SEC. 303. SAVINGS PROVISIONS.**

19 (a) **LEGAL DOCUMENTS.**—All orders, determinations,  
20 rules, regulations, permits, grants, loans, contracts, agree-  
21 ments, certificates, licenses, and privileges—

22 (1) that have been issued, made, granted, or al-  
23 lowed to become effective by the President, the Sec-  
24 retary of Commerce, any officer or employee of any  
25 office transferred by this Act, or any other Govern-

1       ment official, or by a court of competent jurisdic-  
2       tion, in the performance of any function that is  
3       transferred by this Act, and

4               (2) that are in effect on the effective date of  
5       such transfer (or become effective after such date  
6       pursuant to their terms as in effect on such effective  
7       date),

8 shall continue in effect according to their terms until  
9 modified, terminated, superseded, set aside, or revoked in  
10 accordance with law by the President, any other author-  
11 ized official, a court of competent jurisdiction, or operation  
12 of law.

13       (b) PROCEEDINGS.—This Act shall not affect any  
14 proceedings or any application for any benefits, service,  
15 license, permit, certificate, or financial assistance pending  
16 on the effective date of this Act before an office trans-  
17 ferred by this Act, but such proceedings and applications  
18 shall be continued. Orders shall be issued in such proceed-  
19 ings, appeals shall be taken therefrom, and payments shall  
20 be made pursuant to such orders, as if this Act had not  
21 been enacted, and orders issued in any such proceeding  
22 shall continue in effect until modified, terminated, super-  
23 seded, or revoked by a duly authorized official, by a court  
24 of competent jurisdiction, or by operation of law. Nothing  
25 in this subsection shall be considered to prohibit the dis-

1 continuance or modification of any such proceeding under  
2 the same terms and conditions and to the same extent that  
3 such proceeding could have been discontinued or modified  
4 if this Act had not been enacted.

5 (c) SUITS.—This Act shall not affect suits com-  
6 menced before the effective date of this Act, and in all  
7 such suits, proceedings shall be had, appeals taken, and  
8 judgments rendered in the same manner and with the  
9 same effect as if this Act had not been enacted.

10 (d) NONABATEMENT OF ACTIONS.—No suit, action,  
11 or other proceeding commenced by or against the Depart-  
12 ment of Commerce or the Secretary of Commerce, or by  
13 or against any individual in the official capacity of such  
14 individual as an officer or employee of an office trans-  
15 ferred by this Act, shall abate by reason of the enactment  
16 of this Act.

17 (e) CONTINUANCE OF SUITS.—If any Government of-  
18 ficer in the official capacity of such officer is party to a  
19 suit with respect to a function of the officer, and under  
20 this Act such function is transferred to any other officer  
21 or office, then such suit shall be continued with the other  
22 officer or the head of such other office, as applicable, sub-  
23 stituted or added as a party.

24 (f) ADMINISTRATIVE PROCEDURE AND JUDICIAL RE-  
25 VIEW.—Except as otherwise provided by this Act, any

1 statutory requirements relating to notice, hearings, action  
2 upon the record, or administrative or judicial review that  
3 apply to any function transferred by this Act shall apply  
4 to the exercise of such function by the head of the Federal  
5 agency, and other officers of the agency, to which such  
6 function is transferred by this Act.

7 **SEC. 304. TRANSFER OF ASSETS.**

8       Except as otherwise provided in this Act, so much  
9 of the personnel, property, records, and unexpended bal-  
10 ances of appropriations, allocations, and other funds em-  
11 ployed, used, held, available, or to be made available in  
12 connection with a function transferred to an official or  
13 agency by this Act shall be available to the official or the  
14 head of that agency, respectively, at such time or times  
15 as the Director of the Office of Management and Budget  
16 directs for use in connection with the functions trans-  
17 ferred.

18 **SEC. 305. DELEGATION AND ASSIGNMENT.**

19       Except as otherwise expressly prohibited by law or  
20 otherwise provided in this Act, an official to whom func-  
21 tions are transferred under this Act (including the head  
22 of any office to which functions are transferred under this  
23 Act) may delegate any of the functions so transferred to  
24 such officers and employees of the office of the official as  
25 the official may designate, and may authorize successive

1 redelegations of such functions as may be necessary or ap-  
2 propriate. No delegation of functions under this section  
3 or under any other provision of this Act shall relieve the  
4 official to whom a function is transferred under this Act  
5 of responsibility for the administration of the function.

6 **SEC. 306. AUTHORITY OF DIRECTOR OF THE OFFICE OF**  
7 **MANAGEMENT AND BUDGET WITH RESPECT**  
8 **TO FUNCTIONS TRANSFERRED.**

9 (a) DETERMINATIONS.—If necessary, the Director of  
10 the Office of Management and Budget shall make any de-  
11 termination of the functions that are transferred under  
12 this Act.

13 (b) INCIDENTAL TRANSFERS.—The Director of the  
14 Office of Management and Budget, at such time or times  
15 as the Director shall provide, may make such determina-  
16 tions as may be necessary with regard to the functions  
17 transferred by this Act, and to make such additional inci-  
18 dental dispositions of personnel, assets, liabilities, grants,  
19 contracts, property, records, and unexpended balances of  
20 appropriations, authorizations, allocations, and other  
21 funds held, used, arising from, available to, or to be made  
22 available in connection with such functions, as may be nec-  
23 essary to carry out the provisions of this Act. The Director  
24 shall provide for the termination of the affairs of all enti-  
25 ties terminated by this Act and for such further measures

1 and dispositions as may be necessary to effectuate the pur-  
2 poses of this Act.

3 **SEC. 307. CERTAIN VESTING OF FUNCTIONS CONSIDERED**  
4 **TRANSFERS.**

5 For purposes of this Act, the vesting of a function  
6 in a department or office pursuant to reestablishment of  
7 an office shall be considered to be the transfer of the func-  
8 tion.

9 **SEC. 308. AVAILABILITY OF EXISTING FUNDS.**

10 Existing appropriations and funds available for the  
11 performance of functions, programs, and activities termi-  
12 nated pursuant to this Act shall remain available, for the  
13 duration of their period of availability, for necessary ex-  
14 penses in connection with the termination and resolution  
15 of such functions, programs, and activities.

16 **SEC. 309. DEFINITIONS.**

17 For purposes of this Act—

18 (1) the term “function” includes any duty, obli-  
19 gation, power, authority, responsibility, right, privi-  
20 lege, activity, or program; and

21 (2) the term “office” includes any office, ad-  
22 ministration, agency, bureau, institute, council, unit,  
23 organizational entity, or component thereof.

1     **TITLE IV—UNDER SECRETARY**  
2     **FOR INTELLECTUAL PROPERTY**

3     **SEC. 401. UNDER SECRETARY FOR INTELLECTUAL PROP-**  
4                     **ERTY.**

5             (a) APPOINTMENT.—There is established in the De-  
6     partment of Commerce, an Under Secretary for Intellec-  
7     tual Property, who shall be appointed by the President by  
8     and with the advice and consent of the Senate. Pending  
9     appointment of the Under Secretary by and with the ad-  
10    vice and consent of the Senate, the individual serving as  
11    Commissioner of Patents and Trademarks prior to the en-  
12    actment of the Act shall perform the functions of the  
13    Under Secretary.

14            (b) FUNCTIONS.—The Under Secretary for Intellec-  
15    tual Property, under the direction of the Secretary of  
16    Commerce, shall—

17                (1) advise the President, through the Secretary  
18                of Commerce, on national and international intellec-  
19                tual property policy issues;

20                (2) advise the Secretary of Commerce on inter-  
21                national trade issues concerning intellectual prop-  
22                erty;

23                (3) promote in international trade the United  
24                States industries that rely on intellectual property;

1           (4) advise Federal agencies on ways to improve  
2 intellectual property protection in other countries  
3 through economic assistance and international trade;

4           (5) review and coordinate all proposals by agen-  
5 cies to assist foreign governments and international  
6 intergovernmental agencies in improving intellectual  
7 property protection;

8           (6) carry on studies related to the effectiveness  
9 of intellectual property protection throughout the  
10 world; and

11          (7) in coordination with the Department of  
12 State, carry on studies cooperatively with foreign in-  
13 tellectual property offices and international intergov-  
14 ernmental organizations.

15          (c) CONSULTATION.—In connection with the per-  
16 formance of this section, the Under Secretary for Intellec-  
17 tual Property shall, in advance of major policy initiatives,  
18 consult with the Commissioner of the United States Pat-  
19 ent and Trademark Office and the Register of Copyrights.

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