

107TH CONGRESS
1ST SESSION

S. 1323

Entitled the “SBIR and STTR Foreign Patent Protection Act of 2001”.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2001

Mr. KERRY introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

A BILL

Entitled the “SBIR and STTR Foreign Patent Protection Act of 2001”.

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 “SBIR and STTR For-
5 eign Patent Protection Act of 2001”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds that—

8 (1) small business concerns represent approxi-
9 mately 96 percent of all exporters of goods;

1 (2) there has been dynamic growth in the num-
2 ber of small business concerns exporting goods, and
3 the dollar value of their exports;

4 (3) despite such growth, small business con-
5 cerns encounter problems in obtaining financing for
6 exports;

7 (4) growth in United States exports will depend
8 primarily on technology innovation, making the pro-
9 tection of intellectual property in the global market
10 of special national interest;

11 (5) the costs of filing for initial patent protec-
12 tion in foreign markets can be prohibitive for small
13 business concerns involved in the Small Business In-
14 novation Research Program (referred to in this sec-
15 tion as “SBIR”) and the Small Business Technology
16 Transfer Program (referred to in this section as
17 “STTR”), representing an insurmountable barrier to
18 obtaining the protection needed to pursue the inter-
19 national markets;

20 (6) to overcome such barriers and to maximize
21 the Federal investment in the SBIR and STTR pro-
22 grams, the Small Business Administration should be
23 authorized to provide grants to be used to under-
24 write the costs of initial foreign patent applications
25 by SBIR and STTR awardees; and

1 (7) a program established to provide such
2 grants should, over time, become self funding.

3 **SEC. 3. ESTABLISHMENT OF GRANT PILOT PROGRAM.**

4 Section 9 of the Small Business Act (15 U.S.C. 638)
5 is amended by adding at the end the following:

6 “(w) FOREIGN PATENT PROTECTION GRANT PILOT
7 PROGRAM.—

8 “(1) GRANTS AUTHORIZED.—The Adminis-
9 trator shall make grants from the Fund established
10 under paragraph (6) for the purpose of assisting
11 SBIR and STTR awardees in seeking foreign patent
12 protection in accordance with this subsection.

13 “(2) NUMBER OF GRANTS.—The Administrator
14 shall make grants under this subsection to not more
15 than—

16 “(A) a total of 100 SBIR and STTR
17 awardees in fiscal year 2003;

18 “(B) a total of 200 SBIR and STTR
19 awardees in fiscal year 2004;

20 “(C) a total of 300 SBIR and STTR
21 awardees in fiscal year 2005; and

22 “(D) a total of 400 SBIR and STTR
23 awardees in each of fiscal years 2006 and 2007.

24 “(3) GRANT PURPOSES.—Grants made under
25 this subsection shall be used by awardees to under-

1 write costs associated with initial foreign patent ap-
2 plications for technologies or products developed
3 under the SBIR or STTR program, and for which
4 an application for United States patent protection
5 has already been filed.

6 “(4) CONSIDERATIONS.—In awarding grants
7 under this subsection, the Administrator shall
8 consider—

9 “(A) the size and financial need of the ap-
10 plicant;

11 “(B) the potential foreign market for the
12 technology;

13 “(C) the time frames for filing foreign pat-
14 ent applications; and

15 “(D) such other factors as the Adminis-
16 trator deems relevant.

17 “(5) GRANT AMOUNTS.—The amount of a
18 grant made to any SBIR or STTR awardee under
19 this subsection may not exceed \$25,000, and no
20 awardee may receive more than 1 grant under this
21 subsection.

22 “(6) ESTABLISHMENT OF REVOLVING FUND.—
23 There is established in the Treasury of the United
24 States a revolving fund, which shall be—

1 “(A) known as the ‘SBIR and STTR For-
2 foreign Patent Protection Grant Fund’ (referred
3 to in this subsection as the ‘Fund’);

4 “(B) administered by the Office of Tech-
5 nology of the Administration; and

6 “(C) used solely to fund grants under this
7 subsection and to pay the costs to the Adminis-
8 tration of administering those grants.

9 “(7) ROYALTY FEES.—

10 “(A) IN GENERAL.—Each recipient of a
11 grant under this subsection shall pay a fee to
12 the Administration, to be deposited into the
13 Fund, based on the export sales receipts or li-
14 censing fees, if any, from the product or tech-
15 nology that is the subject of the foreign patent
16 petition.

17 “(B) ANNUAL INSTALLMENTS BASED ON
18 RECEIPTS.—The fee required under subpara-
19 graph (A)—

20 “(i) shall be paid to the Administra-
21 tion in annual installments, based on the
22 export sales receipts or licensing fees de-
23 scribed in subparagraph (A) that are col-
24 lected by the grant recipient in that cal-
25 endar year;

1 “(ii) shall not be required to be paid
2 in any calendar year in which no export
3 sales receipts or licensing fees described in
4 subparagraph (A) are collected by the
5 grant recipient; and

6 “(iii) shall not exceed, in total, the
7 lesser of—

8 “(I) an amount between 3 per-
9 cent and 5 percent, as determined by
10 the Administrator, of the total export
11 sales receipts and licensing fees re-
12 ferred to in subparagraph (A); or

13 “(II) 4 times the amount of the
14 grant received.

15 “(8) ADMINISTRATIVE PROVISIONS.—Not later
16 than 180 days after the date of enactment of this
17 subsection, the Administrator shall—

18 “(A) issue such regulations as are nec-
19 essary to carry out this subsection; and

20 “(B) establish appropriate application and
21 other administrative procedures, as the Admin-
22 istrator deems necessary.

23 “(9) REPORT.—The Administrator shall, on
24 January 31, 2006, submit a report to the Congress

1 on the grants authorized by this subsection, which
2 report shall include—

3 “(A) the number of grant recipients under
4 this subsection since the date of enactment of
5 this subsection;

6 “(B) the number of such grant recipients
7 that have made foreign sales (or granted li-
8 censes to make foreign sales) of technologies or
9 products developed under the SBIR or STTR
10 program;

11 “(C) the total amount of fees paid into the
12 Fund by recipients of grants under this sub-
13 section in accordance with paragraph (7);

14 “(D) recommendations for any adjustment
15 in the percentages specified in paragraph
16 (7)(B)(iii)(I) or the amount specified in para-
17 graph (7)(B)(iii)(II) necessary to reduce to zero
18 the cost to the Administration of making grants
19 under this subsection; and

20 “(E) any recommendations of the Adminis-
21 trator regarding whether authorization for
22 grants under this subsection should be ex-
23 tended, and any necessary legislation related to
24 such an extension.

1 “(10) AUTHORIZATION OF APPROPRIATIONS.—

2 There is authorized to be appropriated to the Fund,

3 to remain available until expended—

4 “(A) \$2,500,000 for fiscal years 2003;

5 “(B) \$5,000,000 for fiscal year 2004;

6 “(C) \$7,500,000 for fiscal year 2005; and

7 “(D) \$10,000,000 for each of fiscal years

8 2006 and 2007.”.

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