

One Hundred Tenth Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Thursday,
the third day of January, two thousand and eight*

An Act

To amend title 35, United States Code, and the Trademark Act of 1946 to provide that the Secretary of Commerce, in consultation with the Director of the United States Patent and Trademark Office, shall appoint administrative patent judges and administrative trademark judges, and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

**SECTION 1. APPOINTMENT OF ADMINISTRATIVE PATENT JUDGES AND
ADMINISTRATIVE TRADEMARK JUDGES.**

(a) ADMINISTRATIVE PATENT JUDGES.—Section 6 of title 35, United States Code, is amended—

(1) in subsection (a)—

(A) in the second sentence, by striking “Deputy Commissioner” and inserting “Deputy Director”; and

(B) in the last sentence, by striking “Director” and inserting “Secretary of Commerce, in consultation with the Director”; and

(C) by adding at the end the following:

“(c) AUTHORITY OF THE SECRETARY.—The Secretary of Commerce may, in his or her discretion, deem the appointment of an administrative patent judge who, before the date of the enactment of this subsection, held office pursuant to an appointment by the Director to take effect on the date on which the Director initially appointed the administrative patent judge.

“(d) DEFENSE TO CHALLENGE OF APPOINTMENT.—It shall be a defense to a challenge to the appointment of an administrative patent judge on the basis of the judge’s having been originally appointed by the Director that the administrative patent judge so appointed was acting as a de facto officer.”.

(b) ADMINISTRATIVE TRADEMARK JUDGES.—Section 17 of the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”, approved July 5, 1946 (commonly referred to as the “Trademark Act of 1946”; 15 U.S.C. 1067), is amended—

(1) in subsection (b)—

(A) by inserting “Deputy Director of the United States Patent and Trademark Office”, after “Director,”; and

(B) by striking “appointed by the Director” and inserting “appointed by the Secretary of Commerce, in consultation with the Director”; and

(2) by adding at the end the following:

“(c) AUTHORITY OF THE SECRETARY.—The Secretary of Commerce may, in his or her discretion, deem the appointment of

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an administrative trademark judge who, before the date of the enactment of this subsection, held office pursuant to an appointment by the Director to take effect on the date on which the Director initially appointed the administrative trademark judge.

“(d) DEFENSE TO CHALLENGE OF APPOINTMENT.—It shall be a defense to a challenge to the appointment of an administrative trademark judge on the basis of the judge’s having been originally appointed by the Director that the administrative trademark judge so appointed was acting as a de facto officer.”.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*