

109TH CONGRESS  
2D SESSION

# H. R. 5120

To amend title 35, United States Code, to conform certain filing provisions within the Patent and Trademark Office.

---

## IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 2006

Mr. JENKINS (for himself, Mr. DELAHUNT, Mr. DUNCAN, and Mr. MEEHAN) introduced the following bill; which was referred to the Committee on the Judiciary

---

## A BILL

To amend title 35, United States Code, to conform certain filing provisions within the Patent and Trademark Office.

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. FINDINGS.**

4       The Congress finds the following:

5               (1) The Congress historically has provided vig-  
6       orous support for innovation in the useful arts by es-  
7       tablishing a system of patent protection for products  
8       and processes.

9               (2) Through section 156 of title 35, United  
10       States Code, the Congress sought to promote the de-

1       velopment of innovative drugs by granting patent  
2       term restoration to companies to recover a portion  
3       of the patent term for such drugs that was con-  
4       sumed during the approval process conducted by the  
5       Food and Drug Administration.

6               (3) Consistent with the historic purpose of pro-  
7       moting innovation, patent legislation, and subse-  
8       quent rules promulgated by the United States Pat-  
9       ent and Trademark Office (PTO), have routinely  
10      given the PTO wide discretion to excuse late filings  
11      and other mistakes that might otherwise result in  
12      the forfeiture of underlying patent rights.

13              (4) Contrary to this routine practice, however,  
14      under section 156 of title 35, United States Code,  
15      the PTO has no discretion to excuse a filing that is  
16      even one day late.

17              (5) In order to be consistent with the intent of  
18      protecting patent rights and promoting further inno-  
19      vation, the PTO should be granted limited, cir-  
20      cumscripted discretion to consider patent term res-  
21      toration applications filed in an untimely manner.

1 **SEC. 2. FILING OF APPLICATIONS FOR EXTENSIONS OF A**  
2 **PATENT TERM.**

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

6 “(i) UNINTENTIONAL DELAY.—The Director may ac-  
7 cept an application under this section that is filed not later  
8 than 5 days after the expiration of the 60-day period pro-  
9 vided in subsection (d)(1) if the applicant files a petition  
10 showing, to the satisfaction of the Director, that the delay  
11 in filing the application was unintentional. Such petition  
12 must be filed with the application in the case of an appli-  
13 cation filed on or after the date of the enactment of this  
14 subsection and must be filed not later than 5 days after  
15 such date of enactment in the case of an application  
16 which, on such date of enactment, is pending, is the sub-  
17 ject of a request for reconsideration of a denial of a patent  
18 term extension under this section, or has been denied a  
19 patent term extension under this section in a case in which  
20 the period for seeking reconsideration of such denial has  
21 not yet expired. The Director shall make a determination  
22 on a petition under this subsection not later than 30 days  
23 after the date on which the petition is received. If no de-  
24 termination has been made on the petition within that 30-  
25 day period, the petition shall be deemed to be denied.”.

1 (b) REVIVAL FEES.—Section 41(a)(7) of title 35,  
2 United States Code, is amended—

3 (1) by striking “or for an” and inserting “for  
4 an”; and

5 (2) by inserting after “reexamination pro-  
6 ceeding,” the following: “or for an unintentionally  
7 delayed application for patent term extension,”.

8 (c) EFFECTIVE DATE.—The amendments made by  
9 this section shall take effect on the date of the enactment  
10 of this Act, and shall apply to any application for patent  
11 term extension under section 156 of title 35, United  
12 States Code, which—

13 (1) is filed on or after the date of the enact-  
14 ment of this Act; or

15 (2) on such date of enactment—

16 (A) is pending;

17 (B) is the subject of a request for reconsid-  
18 eration of a denial of a patent term extension  
19 under section 156; or

20 (C) has been denied a patent term exten-  
21 sion under such section 156 in a case in which  
22 the period for seeking reconsideration of such  
23 denial has not yet expired.

○