H. R. 1778

To amend title 35, United States Code, to allow the Director of the United States Patent and Trademark Office to accept late filings in certain cases of unintentional delay.

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 2007

Mr. DELAHUNT (for himself, 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 allow the Director of the United States Patent and Trademark Office to accept late filings in certain cases of unintentional delay.

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

SECTION 1. AUTHORITY OF DIRECTOR OF PTO TO ACCEPT LATE FILINGS.

(a) Authority.—Section 2 of title 35, United States Code, is amended by adding at the end the following new subsection:

“(e) DISCRETION TO ACCEPT LATE FILINGS IN CERTAIN CASES OF UNINTENTIONAL DELAY.—
“(1) IN GENERAL.—The Director may accept any application or other filing made by—

“(A) an applicant for, or owner of, a patent after the applicable deadline set forth in this title with respect to the application or patent, or

“(B) an applicant for, or owner of, a mark after the applicable deadline under the Trademark Act of 1946 with respect to the registration or other filing of the mark, to the extent that the Director considers appropriate, if the applicant or owner files a petition within 30 days after such deadline showing, to the satisfaction of the Director, that the delay was unintentional.

“(2) TREATMENT OF DIRECTOR’S ACTIONS ON PETITION.—If the Director has not made a determination on a petition filed under paragraph (1) within 60 days after the date on which the petition is filed, the petition shall be deemed to be denied. A decision by the Director not to exercise, or a failure to exercise, the discretion provided by this subsection shall not be subject to judicial review.

“(3) OTHER PROVISIONS NOT AFFECTED.—

This subsection shall not apply to any other provi-
sion of this title, or to any provision of the Trademark Act of 1946, that authorizes the Director to accept, under certain circumstances, applications or other filings made after a statutory deadline or to statutory deadlines that are required by reason of the obligations of the United States under any treaty.

“(4) DEFINITION.—For purposes of this subsection, the ‘Trademark Act of 1946’ refers to 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 (15 U.S.C. 1051 et seq.).”.

(b) APPLICABILITY.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply to any application or other filing—

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

(B) that, on such date of enactment, is pending before the Director or is subject to judicial review.

(2) TREATMENT OF PENDING APPLICATIONS AND FILINGS.—In the case of any application or fil-
ing described in paragraph (1)(B), the 30-day period
prescribed in section 2(e)(1) of title 35, United
States Code, as added by subsection (a) of this sec-
tion, shall be deemed to be the 30-day period begin-
ing on the date of the enactment of this Act.