

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5322

To provide authority to the Director of the United States Patent and Trademark Office to set or adjust patent and trademark fees, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 18, 2010

Mr. CONYERS (for himself and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To provide authority to the Director of the United States Patent and Trademark Office to set or adjust patent and trademark fees, 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 Funding Stabilization Act of 2010”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) DIRECTOR.—The term “Director” means  
9 the Under Secretary of Commerce for Intellectual

1 Property and Director of the United States Patent  
2 and Trademark Office.

3 (2) FUND.—The term “Fund” means the  
4 United States Patent and Trademark Office Public  
5 Enterprise Fund established under section 4(b).

6 (3) OFFICE.—The term “Office” means the  
7 United States Patent and Trademark Office.

8 (4) PATENT PUBLIC ADVISORY COMMITTEE.—  
9 The term “Patent Public Advisory Committee”  
10 means the Patent Public Advisory Committee estab-  
11 lished under section 5(a)(1) of title 35, United  
12 States Code.

13 (5) TRADEMARK ACT OF 1946.—The term  
14 “Trademark Act of 1946” means the Act entitled  
15 “Act to provide for the registration and protection  
16 of trademarks used in commerce, to carry out the  
17 provisions of certain international conventions, and  
18 for other purposes”, approved July 5, 1946 (15  
19 U.S.C. 1051 et seq.) (commonly referred to as the  
20 “Trademark Act of 1946” or the “Lanham Act”).

21 (6) TRADEMARK PUBLIC ADVISORY COM-  
22 MITTEE.—The term “Trademark Public Advisory  
23 Committee” means the Trademark Public Advisory  
24 Committee established under section 5(a)(1) of title  
25 35, United States Code.

1 **SEC. 3. FEE SETTING AUTHORITY.**

2 (a) IN GENERAL.—

3 (1) AUTHORITY.—The Director may set or ad-  
4 just by rule any fee established or charged by the  
5 Office under section 41 or 376 of title 35, United  
6 States Code, or under section 31 of the Trademark  
7 Act of 1946 (15 U.S.C. 1113), or any other fee es-  
8 tablished or charged by the Office under any other  
9 provision of law, for the filing or processing of any  
10 submission to the Office, or for any other service  
11 performed by or materials furnished by the Office,  
12 subject to paragraph (2).

13 (2) FEES TO RECOVER COSTS.—Fees may be  
14 set or adjusted under paragraph (1) only to recover  
15 the aggregate estimated costs to the Office for proc-  
16 essing, activities, services, and materials relating to  
17 patents (in the case of patent fees) and trademarks  
18 (in the case of trademark fees), including adminis-  
19 trative costs of the Office with respect to such pat-  
20 ent or trademark fees (as the case may be).

21 (b) SMALL AND MICRO ENTITIES.—The fees set or  
22 adjusted under subsection (a) for filing, processing,  
23 issuing, and maintaining patent applications and patents  
24 shall be reduced by 50 percent with respect to the applica-  
25 tion of such fees to any small entity that qualifies for re-  
26 duced fees under section 41(h)(1) of title 35, United

1 States Code, and shall be reduced by 75 percent with re-  
2 spect to the application of such fees to any micro entity  
3 as defined in section 123 of that title (as added by sub-  
4 section (f) of this section).

5 (c) REDUCTION OF FEES IN CERTAIN FISCAL  
6 YEARS.—In each fiscal year, the Director—

7 (1) shall consult with the Patent Public Advi-  
8 sory Committee and the Trademark Public Advisory  
9 Committee on the advisability of reducing any fees  
10 described in subsection (a); and

11 (2) after the consultation required under para-  
12 graph (1), may reduce such fees.

13 (d) ROLE OF THE PUBLIC ADVISORY COMMITTEE.—  
14 The Director shall—

15 (1) not less than 45 days before publishing any  
16 proposed fee under subsection (a) in the Federal  
17 Register, submit the proposed fee to the Patent Pub-  
18 lic Advisory Committee or the Trademark Public  
19 Advisory Committee, or both, as appropriate;

20 (2)(A) provide the relevant advisory committee  
21 described in paragraph (1) a 30-day period following  
22 the submission of any proposed fee, on which to de-  
23 liberate, consider, and comment on such proposal;

1 (B) require that, during such 30-day period, the  
2 relevant advisory committee hold a public hearing  
3 relating to such proposal; and

4 (C) assist the relevant advisory committee in  
5 carrying out such public hearing, including by offer-  
6 ing the use of the resources of the Office to notify  
7 and promote the hearing to the public and interested  
8 stakeholders;

9 (3) require the relevant advisory committee to  
10 make available to the public a written report setting  
11 forth in detail the comments, advice, and rec-  
12 ommendations of the committee regarding the pro-  
13 posed fee; and

14 (4) consider and analyze any comments, advice,  
15 or recommendations received from the relevant advi-  
16 sory committee before setting or adjusting (as the  
17 case may be) the fee.

18 (e) PUBLICATION IN THE FEDERAL REGISTER.—

19 (1) PUBLICATION AND RATIONALE.—The Di-  
20 rector shall—

21 (A) publish any proposed fee change under  
22 this section in the Federal Register;

23 (B) include, in such publication, the spe-  
24 cific rationale and purpose for the proposal, in-

1 including the possible expectations or benefits re-  
2 sulting from the proposed change; and

3 (C) notify, through the Chair and Ranking  
4 Member of the Committees on the Judiciary of  
5 the Senate and the House of Representatives,  
6 the Congress of the proposed change not later  
7 than the date on which the proposed change is  
8 published under subparagraph (A).

9 (2) PUBLIC COMMENT PERIOD.—The Director  
10 shall, in the publication under paragraph (1), pro-  
11 vide the public a period of not less than 45 days in  
12 which to submit comments on the proposed change  
13 in fees.

14 (3) PUBLICATION OF FINAL RULE.—The final  
15 rule setting or adjusting a fee under this section  
16 shall be published in the Federal Register and in the  
17 Official Gazette of the Patent and Trademark Of-  
18 fice.

19 (4) CONGRESSIONAL COMMENT PERIOD.—A fee  
20 set or adjusted under subsection (a) may not become  
21 effective before the end of the 45-day period begin-  
22 ning on the day after the date on which the Director  
23 publishes the final rule adjusting or setting the fee  
24 under paragraph (3).

1           (5) RULE OF CONSTRUCTION.—Rules pre-  
2           scribed under this section shall not diminish—

3                   (A) the rights of an applicant for a patent  
4                   under title 35, United States Code, or for a  
5                   trademark under the Trademark Act of 1946;  
6                   or

7                   (B) any rights under a ratified treaty.

8           (f) MICRO ENTITY DEFINED.—

9                   (1) IN GENERAL.—Chapter 11 of title 35,  
10                  United States Code, is amended by adding at the  
11                  end the following new section:

12       **“§ 123. Micro entity defined.**

13                  “(a) IN GENERAL.—For purposes of this title, the  
14                  term ‘micro entity’ means an applicant who makes a cer-  
15                  tification that the applicant—

16                       “(1) qualifies as a small entity, as defined in  
17                       regulations issued by the Director;

18                       “(2) has not been named as an inventor on  
19                       more than 4 previously filed patent applications,  
20                       other than applications filed in another country, pro-  
21                       visional applications under section 111(b), or inter-  
22                       national applications filed under the treaty defined  
23                       in section 351(a) for which the basic national fee  
24                       under section 41(a) was not paid;

1           “(3) did not, in the calendar year preceding the  
2           calendar year in which the examination fee for the  
3           application is being paid, have a gross income, as de-  
4           fined in section 61(a) of the Internal Revenue Code  
5           of 1986, exceeding 3 times the median household in-  
6           come for that preceding calendar year, as reported  
7           by the Bureau of the Census; and

8           “(4) has not assigned, granted, or conveyed,  
9           and is not under an obligation by contract or law to  
10          assign, grant, or convey, a license or other ownership  
11          interest in the application concerned to an entity  
12          that, in the calendar year preceding the calendar  
13          year in which the examination fee for the application  
14          is being paid, had a gross income, as defined in sec-  
15          tion 61(a) of the Internal Revenue Code of 1986, ex-  
16          ceeding 3 times the median household income for  
17          that preceding calendar year, as reported by the Bu-  
18          reau of the Census.

19          “(b) APPLICATIONS RESULTING FROM PRIOR EM-  
20          PLOYMENT.—An applicant is not considered to be named  
21          on a previously filed application for purposes of subsection  
22          (a)(2) if the applicant has assigned, or is under an obliga-  
23          tion by contract or law to assign, all ownership rights in  
24          the application as the result of the applicant’s previous  
25          employment.



1       “(c) FOREIGN CURRENCY EXCHANGE RATE.—If the  
2 gross income of an applicant or entity for a calendar year,  
3 for purposes of paragraph (3) or (4) of subsection (a),  
4 is reported in a currency other than United States dollars,  
5 the average exchange rate for that currency, as reported  
6 by the Internal Revenue Service, during that calendar year  
7 shall be used to determine whether the gross income ex-  
8 ceeds the threshold specified in paragraph (3) or (4) of  
9 subsection (a).”.

10           (2) CONFORMING AMENDMENT.—Chapter 11 of  
11 title 35, United States Code, is amended by adding  
12 at the end the following new item:

“123. Micro entity defined.”.

13           (g) EFFECTIVE DATE; SUNSET.—

14           (1) EFFECTIVE DATE.—This section and the  
15 amendments made by this section shall take effect  
16 on the date of the enactment of this Act.

17           (2) SUNSET.—

18           (A) IN GENERAL.—The authority to estab-  
19 lish and adjust fees under subsection (a) shall  
20 terminate upon the expiration of the 10-year  
21 period beginning on the date of the enactment  
22 of this Act.

23           (B) CLARIFICATION.—The termination of  
24 authority under subparagraph (A) does not

1 apply to the requirement and authority under  
2 subsection (c).

3 **SEC. 4. PATENT AND TRADEMARK OFFICE FUNDING.**

4 (a) FUNDING.—

5 (1) IN GENERAL.—Section 42 of title 35,  
6 United States Code, is amended—

7 (A) in subsection (b), by striking “Patent  
8 and Trademark Office Appropriation Account”  
9 and inserting “United States Patent and  
10 Trademark Office Public Enterprise Fund”;  
11 and

12 (B) in subsection (c), in the first sen-  
13 tence—

14 (i) by striking “To the extent” and all  
15 that follows through “fees” and inserting  
16 “Fees”; and

17 (ii) by striking “shall be collected by  
18 and shall be available to the Director” and  
19 inserting “shall be collected by the Direc-  
20 tor and shall be available until expended”.

21 (2) EFFECTIVE DATE.—

22 (A) IN GENERAL.—The amendments made  
23 by paragraph (1) shall take effect on October 1,  
24 2011.

1 (B) TERMINATION OF APPROPRIATION.—  
2 The provisions of any appropriation Act that—  
3 (i) are enacted before the effective  
4 date set forth in subparagraph (A),  
5 (ii) make amounts available pursuant  
6 to section 42(c) of title 35, United States  
7 Code, and  
8 (iii) are in effect on the effective date  
9 set forth in subparagraph (A),  
10 shall cease to be effective on that effective date,  
11 and any unexpended amounts made available  
12 pursuant to such section shall be transferred in  
13 accordance with subsection (b)(5).

14 (b) USPTO REVOLVING FUND.—

15 (1) ESTABLISHMENT.—There is established in  
16 the Treasury of the United States a revolving fund  
17 to be known as the “United States Patent and  
18 Trademark Office Public Enterprise Fund”. Any  
19 amounts in the Fund shall be available for use by  
20 the Director without fiscal year limitation.

21 (2) DERIVATION OF RESOURCES.—There shall  
22 be deposited into the Fund the following:

23 (A) Any fees collected under sections 41,  
24 42, and 376 of title 35, United States Code. If  
25 such fees are collected by, and payable to, the

1 Director, the Director shall transfer such  
2 amounts to the Fund.

3 (B) Any fees collected under section 31 of  
4 the Trademark Act of 1946 (15 U.S.C. 1113).

5 (3) EXPENSES.—Amounts deposited into the  
6 Fund under paragraph (2) shall be available, with-  
7 out fiscal year limitation, to cover—

8 (A) all expenses, to the extent consistent  
9 with the limitation on the use of fees set forth  
10 in section 42(c) of title 35, United States Code  
11 (including all administrative and operating ex-  
12 penses), that are determined in the discretion of  
13 the Director to be ordinary and reasonable and  
14 are incurred by the Director for the continued  
15 operation of all services, programs, activities,  
16 and duties of the Office, as such services, pro-  
17 grams, activities, and duties are described  
18 under—

19 (i) title 35, United States Code; and

20 (ii) the Trademark Act of 1946; and

21 (B) all expenses incurred pursuant to any  
22 obligation, representation, or other commitment  
23 of the Office.

24 (4) CUSTODIANS OF MONEY.—Notwithstanding  
25 section 3302 of title 31, United States Code, any

1 funds received by the Director and transferred to  
2 Fund, or any amounts directly deposited into the  
3 Fund, may be used—

4 (A) to cover the expenses described in  
5 paragraph (3); and

6 (B) to purchase obligations of the United  
7 States, or any obligations guaranteed by the  
8 United States.

9 (5) UNEXPENDED BALANCES.—Any unex-  
10 pended balances in any accounts held on behalf of  
11 the Director, or the Office, including in the Patent  
12 and Trademark Office Appropriation Account in the  
13 Treasury of the United States, shall be transferred  
14 to the Fund and shall remain available until ex-  
15 pended.

16 (c) ANNUAL REPORT.—Not later than 60 days after  
17 the end of each fiscal year, the Director shall submit a  
18 report to Congress that—

19 (1) summarizes the operations of the Office for  
20 the preceding fiscal year, including financial details  
21 and staff levels broken down by each major activity  
22 of the Office;

23 (2) details the operating plan of the Office, in-  
24 cluding specific expense and staff needs for the up-  
25 coming fiscal year;

1           (3) describes the long-term modernization plans  
2 of the Office;

3           (4) sets forth details of any progress towards  
4 such modernization plans made in the previous fiscal  
5 year; and

6           (5) includes the results of the most recent audit  
7 carried out under subsection (e).

8 (d) ANNUAL SPENDING PLAN.—

9           (1) IN GENERAL.—Not later than 30 days after  
10 the beginning of each fiscal year, the Director shall  
11 notify the Committees on Appropriations of both  
12 Houses of Congress of the plan for the obligation  
13 and expenditure of the total amount of the funds for  
14 that fiscal year in a manner consistent with section  
15 605 of the Science, State, Justice, Commerce, and  
16 Related Agencies Appropriations Act, 2006 (Public  
17 Law 109–108; 119 Stat. 2334).

18           (2) CONTENTS.—Each plan under paragraph  
19 (1) shall—

20           (A) summarize the operations of the Office  
21 for the current fiscal year, including financial  
22 details and staff levels with respect to major ac-  
23 tivities; and

1 (B) detail the operating plan of the Office,  
2 including specific expense and staff needs, for  
3 the current fiscal year.

4 (e) AUDIT.—The Director shall, on an annual basis,  
5 provide for an independent audit of the financial state-  
6 ments of the Office. Such audit shall be conducted in ac-  
7 cordance with generally acceptable accounting procedures.

8 (f) BUDGET.—In accordance with section 9301 of  
9 title 31, United States Code, the Fund shall prepare and  
10 submit each year to the President a business-type budget  
11 in such manner, and before such date, as the President  
12 prescribes by regulation for the budget program.

13 (g) EFFECTIVE DATE.—Subsections (b) through (f)  
14 and this subsection shall take effect on October 1, 2011.

15 **SEC. 5. FEES FOR PATENT SERVICES.**

16 (a) GENERAL PATENT SERVICES.—Subsections (a)  
17 and (b) of section 41 of title 35, United States Code, is  
18 amended to read as follows:

19 “(a) GENERAL FEES.—The Director shall charge the  
20 following fees:

21 “(1) FILING AND BASIC NATIONAL FEES.—

22 “(A) On filing each application for an  
23 original patent, except for design, plant, or pro-  
24 visional applications, \$330.

1           “(B) On filing each application for an  
2 original design patent, \$220.

3           “(C) On filing each application for an  
4 original plant patent, \$220.

5           “(D) On filing each provisional application  
6 for an original patent, \$220.

7           “(E) On filing each application for the re-  
8 issue of a patent, \$330.

9           “(F) The basic national fee for each inter-  
10 national application filed under the treaty de-  
11 fined in section 351(a) entering the national  
12 stage under section 371, \$330.

13           “(G) In addition, excluding any sequence  
14 listing or computer program listing filed in an  
15 electronic medium as prescribed by the Direc-  
16 tor, for any application the specification and  
17 drawings of which exceed 100 sheets of paper  
18 (or equivalent as prescribed by the Director if  
19 filed in an electronic medium), \$270 for each  
20 additional 50 sheets of paper (or equivalent as  
21 prescribed by the Director if filed in an elec-  
22 tronic medium) or fraction thereof.

23           “(2) EXCESS CLAIMS FEES.—

24           “(A) IN GENERAL.—In addition to the fee  
25 specified in paragraph (1)—



1           “(i) on filing or on presentation at  
2           any other time, \$220 for each claim in  
3           independent form in excess of 3;

4           “(ii) on filing or on presentation at  
5           any other time, \$52 for each claim (wheth-  
6           er dependent or independent) in excess of  
7           20; and

8           “(iii) for each application containing a  
9           multiple dependent claim, \$390.

10          “(B) MULTIPLE DEPENDENT CLAIMS.—

11          For the purpose of computing fees under sub-  
12          paragraph (A), a multiple dependent claim re-  
13          ferred to in section 112 or any claim depending  
14          therefrom shall be considered as separate de-  
15          pendent claims in accordance with the number  
16          of claims to which reference is made.

17          “(C) REFUNDS; ERRORS IN PAYMENT.—

18          The Director may by regulation provide for a  
19          refund of any part of the fee specified in sub-  
20          paragraph (A) for any claim that is canceled  
21          before an examination on the merits, as pre-  
22          scribed by the Director, has been made of the  
23          application under section 131. Errors in pay-  
24          ment of the additional fees under this para-

1 graph may be rectified in accordance with regu-  
2 lations prescribed by the Director.

3 “(3) EXAMINATION FEES.—

4 “(A) IN GENERAL.—

5 “(i) For examination of each applica-  
6 tion for an original patent, except for de-  
7 sign, plant, provisional, or international  
8 applications, \$220.

9 “(ii) For examination of each applica-  
10 tion for an original design patent, \$140.

11 “(iii) For examination of each applica-  
12 tion for an original plant patent, \$170.

13 “(iv) For examination of the national  
14 stage of each international application,  
15 \$220.

16 “(v) For examination of each applica-  
17 tion for the reissue of a patent, \$650.

18 “(B) APPLICABILITY OF OTHER FEE PRO-  
19 VISIONS.—The provisions of paragraphs (3) and  
20 (4) of section 111(a) relating to the payment of  
21 the fee for filing the application shall apply to  
22 the payment of the fee specified in subpara-  
23 graph (A) with respect to an application filed  
24 under section 111(a). The provisions of section  
25 371(d) relating to the payment of the national

1 fee shall apply to the payment of the fee speci-  
2 fied in subparagraph (A) with respect to an  
3 international application.

4 “(4) ISSUE FEES.—

5 “(A) For issuing each original patent, ex-  
6 cept for design or plant patents, \$1,510.

7 “(B) For issuing each original design pat-  
8 ent, \$860.

9 “(C) For issuing each original plant pat-  
10 ent, \$1,190.

11 “(D) For issuing each reissue patent,  
12 \$1,510.

13 “(5) DISCLAIMER FEE.—On filing each dis-  
14 claimer, \$140.

15 “(6) APPEAL FEES.—

16 “(A) On filing an appeal from the exam-  
17 iner to the Board of Patent Appeals and Inter-  
18 ferences, \$540.

19 “(B) In addition, on filing a brief in sup-  
20 port of the appeal, \$540, and on requesting an  
21 oral hearing in the appeal before the Board of  
22 Patent Appeals and Interferences, \$1,080.

23 “(7) REVIVAL FEES.—On filing each petition  
24 for the revival of an unintentionally abandoned ap-  
25 plication for a patent, for the unintentionally delayed

1 payment of the fee for issuing each patent, or for an  
2 unintentionally delayed response by the patent owner  
3 in any reexamination proceeding, \$1,620, unless the  
4 petition is filed under section 133 or 151, in which  
5 case the fee shall be \$540.

6 “(8) EXTENSION FEES.—For petitions for 1-  
7 month extensions of time to take actions required by  
8 the Director in an application—

9 “(A) on filing a first petition, \$130;

10 “(B) on filing a second petition, \$360; and

11 “(C) on filing a third or subsequent peti-  
12 tion, \$620.

13 “(b) MAINTENANCE FEES.—

14 “(1) IN GENERAL.—The Director shall charge  
15 the following fees for maintaining in force all pat-  
16 ents based on applications filed on or after Decem-  
17 ber 12, 1980:

18 “(A) 3 years and 6 months after grant,  
19 \$980.

20 “(B) 7 years and 6 months after grant,  
21 \$2,480.

22 “(C) 11 years and 6 months after grant,  
23 \$4,110.

24 “(2) GRACE PERIOD; SURCHARGE.—Unless pay-  
25 ment of the applicable maintenance fee under para-

1 graph (1) is received in the Office on or before the  
2 date the fee is due or within a grace period of 6  
3 months thereafter, the patent shall expire as of the  
4 end of such grace period. The Director may require  
5 the payment of a surcharge as a condition of accept-  
6 ing within such 6-month grace period the payment  
7 of an applicable maintenance fee.

8 “(3) NO MAINTENANCE FEE FOR DESIGN OR  
9 PLANT PATENT.—No fee may be established for  
10 maintaining a design or plant patent in force.”.

11 (b) DELAYS IN PAYMENT.—Subsection (c) of section  
12 41 of title 35, United States Code, is amended—

13 (1) by striking “(c)(1) The Director” and in-  
14 serting:

15 “(c) DELAYS IN PAYMENT OF MAINTENANCE  
16 FEES.—

17 “(1) ACCEPTANCE.—The Director”.

18 (2) by striking “(2) A patent” and inserting  
19 “(2) EFFECT ON RIGHTS OF OTHERS.—A patent”;  
20 and

21 (3) by moving the remaining text of paragraphs  
22 (1) and (2) 2 ems to the right.

23 (c) PATENT SEARCH FEES.—Subsection (d) of sec-  
24 tion 41 of title 35, United States Code, is amended to  
25 read as follows:

1 “(d) PATENT SEARCH AND OTHER FEES.—

2 “(1) PATENT SEARCH FEES.—

3 “(A) IN GENERAL.—The Director shall  
4 charge a fee for the search of each application  
5 for a patent, except for provisional applications.  
6 The Director shall establish the fees charged  
7 under this paragraph to recover an amount not  
8 to exceed the estimated average cost to the Of-  
9 fice of searching applications for patent either  
10 by acquiring a search report from a qualified  
11 search authority, or by causing a search by Of-  
12 fice personnel to be made, of each application  
13 for patent.

14 “(B) SPECIFIC FEES.—For purposes of de-  
15 termining the fees to be established under this  
16 paragraph, the cost to the Office of causing a  
17 search of an application to be made by Office  
18 personnel shall be deemed to be—

19 “(i) \$540 for each application for an  
20 original patent, except for design, plant,  
21 provisional, or international applications;

22 “(ii) \$100 for each application for an  
23 original design patent;

24 “(iii) \$330 for each application for an  
25 original plant patent;

1                   “(iv) \$540 for the national stage of  
2                   each international application; and

3                   “(v) \$540 for each application for the  
4                   reissue of a patent.

5                   “(C) APPLICABILITY OF OTHER PROVI-  
6                   SIONS.—The provisions of paragraphs (3) and  
7                   (4) of section 111(a) relating to the payment of  
8                   the fee for filing the application shall apply to  
9                   the payment of the fee specified in this para-  
10                  graph with respect to an application filed under  
11                  section 111(a). The provisions of section 371(d)  
12                  relating to the payment of the national fee shall  
13                  apply to the payment of the fee specified in this  
14                  paragraph with respect to an international ap-  
15                  plication.

16                  “(D) REFUNDS.—The Director may by  
17                  regulation provide for a refund of any part of  
18                  the fee specified in this paragraph for any ap-  
19                  plicant who files a written declaration of ex-  
20                  press abandonment as prescribed by the Direc-  
21                  tor before an examination has been made of the  
22                  application under section 131, and for any ap-  
23                  plicant who provides a search report that meets  
24                  the conditions prescribed by the Director.

1           “(E) REQUIREMENTS FOR SEARCHES.—

2           The Director shall require that any search by a  
3           qualified search authority that is a commercial  
4           entity is conducted in the United States by per-  
5           sons that—

6                     “(i) if individuals are United States  
7                     citizens; and

8                     “(ii) if business concerns, are orga-  
9                     nized under the laws of the United States  
10                    or any State and employ United States  
11                    citizens to perform the searches.

12           “(F) APPLICATIONS SUBJECT TO SECRECY  
13           ORDER.—A search of an application that is the  
14           subject of a secrecy order under section 181 or  
15           otherwise involves classified information may  
16           only be conducted by Office personnel.

17           “(G) CONFLICTS OF INTEREST.—A quali-  
18           fied search authority that is a commercial enti-  
19           ty may not conduct a search of a patent appli-  
20           cation if the entity has any direct or indirect fi-  
21           nancial interest in any patent or in any pending  
22           or imminent application for patent filed or to be  
23           filed in the Office.

24           “(2) OTHER FEES.—



1           “(A) IN GENERAL.—The Director shall es-  
2           tablish fees for all other processing, services, or  
3           materials relating to patents not specified in  
4           this section to recover the estimated average  
5           cost to the Office of such processing, services,  
6           or materials, except that the Director shall  
7           charge the following fees for the following serv-  
8           ices:

9                   “(i) For recording a document affect-  
10                  ing title, \$40 per property.

11                  “(ii) For each photocopy, \$.25 per  
12                  page.

13                  “(iii) For each black and white copy  
14                  of a patent, \$3.

15           “(B) COPIES FOR LIBRARIES.—The yearly  
16           fee for providing a library specified in section  
17           12 with uncertified printed copies of the speci-  
18           fications and drawings for all patents in that  
19           year shall be \$50.”.

20           (d) FEES FOR SMALL ENTITIES.—Subsection (h) of  
21           section 41 of title 35, United States Code, is amended to  
22           read as follows:

23                   “(h) FEES FOR SMALL ENTITIES.—

24                           “(1) REDUCTIONS IN FEES.—Subject to para-  
25                           graph (3), fees charged under subsections (a), (b),

1 and (d)(1) shall be reduced by 50 percent with re-  
2 spect to their application to any small business con-  
3 cern as defined under section 3 of the Small Busi-  
4 ness Act, and to any independent inventor or non-  
5 profit organization as defined in regulations issued  
6 by the Director.

7 “(2) SURCHARGES AND OTHER FEES.—With re-  
8 spect to its application to any entity described in  
9 paragraph (1), any surcharge or fee charged under  
10 subsection (c) or (d) shall not be higher than the  
11 surcharge or fee required of any other entity under  
12 the same or substantially similar circumstances.

13 “(3) REDUCTION FOR ELECTRONIC FILING.—  
14 The fee charged under subsection (a)(1)(A) shall be  
15 reduced by 75 percent with respect to its application  
16 to any entity to which paragraph (1) applies, if the  
17 application is filed by electronic means as prescribed  
18 by the Director.”.

19 (e) TECHNICAL AMENDMENTS.—Section 41 of title  
20 35, United States Code, is amended—

21 (1) in subsection (e), in the first sentence, by  
22 striking “The Director” and inserting “WAIVER OF  
23 FEES; COPIES REGARDING NOTICE.—The Direc-  
24 tor”;

1           (2) in subsection (f), by striking “The fees”  
2           and inserting “ADJUSTMENT OF FEES.—The fees”;  
3           (3) by repealing subsection (g); and  
4           (4) in subsection (i)—  
5                 (A) by striking “(i)(1) The Director” and  
6                 inserting the following:  
7                 “(i) ELECTRONIC PATENT AND TRADEMARK  
8                 DATA.—  
9                 “(1) MAINTENANCE OF COLLECTIONS.—The  
10                 Director”;  
11                 (B) by striking “(2) The Director” and in-  
12                 serting the following:  
13                 “(2) AVAILABILITY OF AUTOMATED SEARCH  
14                 SYSTEMS.—The Director”;  
15                 (C) by striking “(3) The Director” and in-  
16                 serting the following:  
17                 “(3) ACCESS FEES.—The Director”; and  
18                 (D) by striking “(4) The Director” and in-  
19                 serting the following:  
20                 “(4) ANNUAL REPORT TO CONGRESS.—The Di-  
21                 rector”.  
22           (f) ADJUSTMENT OF TRADEMARK FEES.—Section  
23           802(a) of division B of the Consolidated Appropriations  
24           Act, 2005 (Public Law 108–447)) is amended—

1           (1) in the first sentence, by striking “During  
2           fiscal years 2005, 2006 and 2007”, and inserting  
3           “Until such time as the Director sets or adjusts the  
4           fees otherwise,”; and

5           (2) in the second sentence, by striking “During  
6           fiscal years 2005, 2006, and 2007, the” and insert-  
7           ing “The”.

8           (g) **EFFECTIVE DATE.**—The amendments made by  
9           this section shall take effect on the date of the enactment  
10          of this Act.

11          **SEC. 6. TEMPORARY SURCHARGE.**

12          (a) **SURCHARGE.**—There shall be a surcharge of 15  
13          percent, rounded by standard arithmetic rules, on fees  
14          charged or authorized by sections 41(a), (b), (d)(1), and  
15          132(b) of title 35, United States Code, subject to the fol-  
16          lowing:

17                 (1) The surcharge shall be separate from, and  
18                 in addition to, any other surcharge that may be re-  
19                 quired pursuant to any provision of title 35, United  
20                 States Code, or other provision of law.

21                 (2) The surcharge under this subsection shall  
22                 take effect on the 10th day after the date of the en-  
23                 actment of this Act, and shall remain in effect  
24                 through September 30, 2011.

1           (3) The receipts collected as a result of the sur-  
2 charge under this subsection shall be available to the  
3 Office without fiscal year limitation, for all author-  
4 ized activities and operations of the Office.

5           (b) ELECTRONIC FILING INCENTIVE.—

6           (1) IN GENERAL.—Notwithstanding any other  
7 provision of this section, the fee charged for each ap-  
8 plication for an original patent, except for a design,  
9 plant, or provisional application, shall be increased  
10 by \$400 for an application that is not filed by elec-  
11 tronic means as prescribed by the Director. The fee  
12 established by this subsection shall be reduced 50  
13 percent for small entities that qualify for reduced  
14 fees under section 41(h)(1) of title 35, United States  
15 Code.

16           (2) EFFECTIVE DATE.—This subsection shall  
17 take effect upon the expiration of the 60-day period  
18 beginning on the date of the enactment of this Act.

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