

117TH CONGRESS
1ST SESSION

S. 2773

To amend the Leahy-Smith America Invents Act to address satellite offices of the United States Patent and Trademark Office, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2021

Mr. LEAHY (for himself and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the Leahy-Smith America Invents Act to address satellite offices of the United States Patent and Trademark Office, 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 “Unleashing American
5 Innovators Act of 2021”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

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

1 (2) OFFICE.—The term “Office” means the
2 United States Patent and Trademark Office.

3 (3) PATENT PRO BONO PROGRAMS.—The term
4 “patent pro bono programs” means the programs
5 established pursuant to section 32 of the Leahy-
6 Smith America Invents Act (35 U.S.C. 2 note).

7 (4) SOUTHEAST REGION OF THE UNITED
8 STATES.—The term “southeast region of the United
9 States” means the area of the United States that is
10 comprised of the States of Virginia, North Carolina,
11 South Carolina, Georgia, Florida, Tennessee, Ala-
12 bama, Mississippi, Louisiana, and Arkansas.

13 **SEC. 3. SATELLITE OFFICES.**

14 (a) AMENDMENTS TO PURPOSE AND REQUIRED CON-
15 SIDERATIONS.—Section 23 of the Leahy-Smith America
16 Invents Act (35 U.S.C. 1 note) is amended—

17 (1) in subsection (b)—

18 (A) in paragraph (1)—

19 (i) by striking “increase outreach ac-
20 tivities to”; and

21 (ii) by inserting after “Office” the fol-
22 lowing: “, including by increasing outreach
23 activities, including to individual
24 innovators, small businesses, veterans, and
25 any other demographic group or category

1 of innovators that the Director may deter-
2 mine, after notice in the Federal Register,
3 to be underrepresented in patent filings”;
4 and

5 (B) by striking paragraph (2) and insert-
6 ing the following:

7 “(2) enhance patent examiner and administra-
8 tive patent judge retention, including patent exam-
9 iners and administrative patent judges from eco-
10 nomically, geographically, and demographically di-
11 verse backgrounds;” and

12 (2) in subsection (c)(1)—

13 (A) in subparagraph (D), by striking
14 “and” at the end;

15 (B) in subparagraph (E), by striking the
16 period at the end and inserting “; and”; and

17 (C) by adding at the end the following:

18 “(F) with respect to each office established
19 after January 1, 2021, shall consider the prox-
20 imity of the office to anchor institutions (such
21 as hospitals primarily serving veterans and in-
22 stitutions of higher education) and populations
23 that the Director may determine to be under-
24 represented in patent filings, including rural
25 populations.”.

1 (b) SOUTHEAST REGIONAL OFFICE.—

2 (1) IN GENERAL.—Not later than 3 years after
3 the date of enactment of this Act, the Director shall
4 establish a satellite office of the Office in the south-
5 east region of the United States.

6 (2) CONSIDERATIONS.—When establishing the
7 office required under paragraph (1), the Director
8 shall consider the following:

9 (A) The number of patent-intensive indus-
10 tries located near the selection site.

11 (B) How many research-intensive institu-
12 tions, including institutions of higher education,
13 are located near the selection site.

14 (C) The State and local government legal
15 and business frameworks that support intellec-
16 tual property-intensive industries located near
17 the selection site.

18 (c) STUDY ON ADDITIONAL SATELLITE OFFICES.—
19 Not later than 2 years after the date of enactment of this
20 Act, the Director shall complete a study to determine
21 whether additional satellite offices of the Office are nec-
22 essary to—

23 (1) achieve the purposes described in section
24 23(b) of the Leahy-Smith America Invents Act (35
25 U.S.C. 1 note), as amended by this section; and

1 (2) increase participation in the patent system
2 by women, people of color, veterans, individual in-
3 ventors, or members of any other demographic, geo-
4 graphic, or economic group that the Director may
5 determine to be underrepresented in patent filings.

6 **SEC. 4. COMMUNITY OUTREACH OFFICES.**

7 (a) ESTABLISHMENT.—

8 (1) IN GENERAL.—Subject to paragraphs (2)
9 and (3), not later than 5 years after the date of en-
10 actment of this Act, the Director shall establish not
11 fewer than 2 community outreach offices in each re-
12 gion of the United States that, as of that date of en-
13 actment, is served by—

14 (A) a satellite office of the Office; or

15 (B) the principal office of the Office.

16 (2) RESTRICTION.—No community outreach of-
17 fice established under paragraph (1) may be located
18 in the same State as—

19 (A) the principal office of the Office; or

20 (B) any satellite office of the Office.

21 (3) REQUIREMENT FOR NORTHERN NEW ENG-
22 LAND REGION.—

23 (A) IN GENERAL.—The Director shall es-
24 tablish not less than 1 community outreach of-
25 fice under this subsection in the northern New

1 England region, which shall serve the States of
2 Vermont, New Hampshire, and Maine.

3 (B) CONSIDERATIONS.—In determining
4 the location for the office required to be estab-
5 lished under subparagraph (A), the Director
6 shall give preference to a location in which—

7 (i) as of the date of enactment of this
8 Act—

9 (I) there is located not less than
10 1 public institution of higher edu-
11 cation and not less than 1 private in-
12 stitution of higher education; and

13 (II) there are located not more
14 than 15 registered patent attorneys,
15 according to data from the Office of
16 Enrollment and Discipline of the Of-
17 fice; and

18 (ii) according to data from the 2012
19 Survey of Business Owners conducted by
20 the Bureau of the Census, less than 45
21 percent of the firms are owned by women,
22 minorities, or veterans.

23 (b) PURPOSES.—The purposes of the community out-
24 reach offices established under subsection (a) are to—

1 (1) further achieve the purposes described in
2 section 23(b)(1) of the Leahy-Smith America In-
3 vents Act (35 U.S.C. 1 note), as amended by this
4 Act;

5 (2) partner with local community organizations,
6 institutions of higher education, research institu-
7 tions, and businesses to create community-based
8 programs that—

9 (A) provide education regarding the patent
10 system; and

11 (B) promote the career benefits of innova-
12 tion and entrepreneurship; and

13 (3) educate prospective inventors, including vet-
14 erans, individual inventors, and individuals from de-
15 mographic, geographic, or economic groups that the
16 Director may determine to be underrepresented in
17 patent filings, about all public and private resources
18 available to potential patent applicants, including the
19 patent pro bono programs.

20 (c) SUBORDINATE TO SATELLITE OFFICES.—The
21 community outreach offices established under this section
22 shall be subordinate, and report directly, to the principal
23 office of the Office or the satellite office of the Office that
24 corresponds to the region in which that community out-
25 reach office is located, as applicable.

1 **SEC. 5. UPDATES TO THE PATENT PRO BONO PROGRAM.**

2 (a) STUDY AND UPDATES.—

3 (1) IN GENERAL.—Not later than 1 year after
4 the date of enactment of this Act, the Director
5 shall—

6 (A) complete a study of the patent pro
7 bono programs; and

8 (B) submit the results of the study re-
9 quired under subparagraph (A) to the Com-
10 mittee on the Judiciary of the Senate and the
11 Committee on the Judiciary of the House of
12 Representatives.

13 (2) SCOPE OF THE STUDY.—The study required
14 under paragraph (1)(A) shall—

15 (A) assess—

16 (i) whether the patent pro bono pro-
17 grams, as in effect on the date on which
18 the study is commenced, are sufficiently
19 serving veterans, individual inventors, and
20 members of demographic, geographic, and
21 economic groups that the Director may de-
22 termine to be underrepresented in patent
23 filings;

24 (ii) whether the patent pro bono pro-
25 grams are sufficiently funded to serve pro-
26 spective participants;

1 (iii) whether the participation require-
2 ments of the patent pro bono programs, in-
3 cluding the requirement to demonstrate
4 knowledge of the patent system, serve as a
5 deterrent for prospective participants;

6 (iv) the degree to which prospective
7 inventors are aware of the patent pro bono
8 programs;

9 (v) the degree to which the length of
10 prosecution time for pro bono applicants
11 serves as a deterrent for attorneys to par-
12 ticipate in the patent pro bono programs;
13 and

14 (vi) any other issue the Director de-
15 termines appropriate; and

16 (B) make recommendations for such ad-
17 ministrative and legislative action as may be ap-
18 propriate.

19 (b) USE OF RESULTS.—Upon completion of the study
20 required under subsection (a), the Director shall work
21 with the Patent Pro Bono Advisory Council, existing re-
22 gional programs, and intellectual property law associations
23 across the United States to update the patent pro bono
24 programs in response to the findings of the study.

1 (c) EXPANSION OF INCOME ELIGIBILITY.—The Di-
 2 rector shall work with and support existing (as of the date
 3 of enactment of this Act) regional programs and intellec-
 4 tual property law associations across the United States to
 5 expand eligibility for the patent pro bono programs to an
 6 individual living in a household, the gross household in-
 7 come of which is not more than 400 percent of the Federal
 8 poverty line.

9 **SEC. 6. PRE-PROSECUTION PATENTABILITY ASSESSMENT**
 10 **PILOT PROGRAM.**

11 (a) PILOT PROGRAM.—Not later than 1 year after
 12 the date of enactment of this Act, the Director shall estab-
 13 lish a pilot program to assist first-time prospective patent
 14 applicants in assessing the viability of a potential patent
 15 application submitted by such a prospective applicant.

16 (b) CONSIDERATIONS.—In developing the pilot pro-
 17 gram required under subsection (a), the Director shall es-
 18 tablish—

19 (1) a notification process to notify a prospective
 20 patent applicant seeking an assessment described in
 21 that subsection that any assessment so provided may
 22 not be considered an official ruling of patentability
 23 from the Office;

1 (2) conditions to determine eligibility for the
2 pilot program, taking into consideration available re-
3 sources;

4 (3) reasonable limitations on the amount of
5 time to be spent providing assistance to each indi-
6 vidual first-time prospective patent applicant; and

7 (4) procedures for referring prospective patent
8 applicants to legal counsel, including through the
9 patent pro bono programs.

10 **SEC. 7. FEE REDUCTION FOR SMALL AND MICRO ENTITIES.**

11 (a) TITLE 35.—Section 41(h) of title 35, United
12 States Code, is amended—

13 (1) in paragraph (1), by striking “50 percent”
14 and inserting “75 percent or more, at the discretion
15 of the Director,”; and

16 (2) in paragraph (3), by striking “75 percent”
17 and inserting “90 percent or more, at the discretion
18 of the Director,”.

19 (b) LEAHY-SMITH AMERICA INVENTS ACT.—Section
20 10(b) of the Leahy Smith America Invents Act (35 U.S.C.
21 41 note) is amended by striking “75 percent” and insert-
22 ing “90 percent or more, at the discretion of the Direc-
23 tor,”.

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