

PATENTS FOR HUMANITY ACT OF 2021

APRIL 27, 2022.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. NADLER, from the Committee on the Judiciary,
 submitted the following

R E P O R T

[To accompany H.R. 5796]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5796) to amend title 35, United States Code, to establish a competition to award certificates that can be redeemed to accelerate certain matters at the Patent and Trademark Office, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for the Legislation	2
Hearings	4
Committee Consideration	4
Committee Votes	4
Committee Oversight Findings	4
Committee Estimate of Budgetary Effects	4
New Budget Authority and Congressional Budget Office Cost Estimate	4
Duplication of Federal Programs	5
Performance Goals and Objectives	5
Advisory on Earmarks	5
Section-by-Section Analysis	5
Changes in Existing Law Made by the Bill, as Reported	6

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Patents for Humanity Act of 2021”.

SEC. 2. AWARD OF CERTIFICATES TO ACCELERATE CERTAIN MATTERS AT THE PATENT AND TRADEMARK OFFICE.

(a) AWARD.—Chapter 2 of title 35, United States Code, is amended by adding at the end the following:

“§ 28. Award of certificates to accelerate certain matters at the Patent and Trademark Office

“(a) ESTABLISHMENT.—There is established a competition, to be held not less frequently than biennially, to award eligible entities certificates that can be redeemed to accelerate one of the following matters:

“(1) An ex parte reexamination proceeding, including one appeal to the Patent Trial and Appeal Board from that proceeding.

“(2) An application for a patent, including one appeal to the Patent Trial and Appeal Board from that application.

“(3) An appeal to the Patent Trial and Appeal Board of a claim twice rejected in a patent application or reissue application or finally rejected in an ex parte reexamination, without accelerating the underlying matter which generated the appeal.

“(4) A matter identified under subsection (d)(4).

“(b) ADMINISTRATION.—The Director shall administer the competition established by subsection (a).

“(c) APPLICATION.—An eligible entity seeking an award under subsection (a) shall submit to the Director an application, at such time, in such manner, and containing such information as the Director may require.

“(d) RULEMAKING AUTHORITY.—With respect to the competition established by subsection (a), the Director shall conduct a rulemaking proceeding to promulgate rules on the—

“(1) entities eligible to receive an award;

“(2) process and metrics by which applications are judged, including the criteria for selecting judges for the competition;

“(3) factors that will be considered in selecting the eligible entities that receive an award; and

“(4) additional matters for which a certificate described under subsection (a) may be awarded.

“(e) PROMOTION OF COMPETITION.—The Director shall promote the competition through the satellite offices established pursuant to section 1.

“(f) TREATMENT AS SUCCESSOR.—The competition established under subsection (a) shall be treated as a successor to the Patents for Humanity Program (established in the notice entitled ‘Humanitarian Awards Pilot Program’, published at 77 Fed. Reg. 6544 (February 8, 2012)).

“(g) ELIGIBLE ENTITY DEFINED.—In this section, the term ‘eligible entity’ means a entity that—

“(1) submits an application under subsection (c) for a patent that addresses a humanitarian issue; and

“(2) is eligible to receive an award under subsection (d)(1).”.

(b) RULE OF CONSTRUCTION.—Nothing in this section, or the amendments made by this section, may be construed as prohibiting the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office from administering the competition established by section 28 of title 35, United States Code, as added by subsection (a), before the date on which all rules are promulgated under the rulemaking proceeding required by subsection (d) of such section.

(c) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 2 of title 35, United States Code, is amended by adding at the end the following:

“28. Award of certificates to accelerate certain matters at the Patent and Trademark Office.”.

Purpose and Summary

H.R. 5796, the “Patents for Humanity Act of 2021,” codifies a program at the United States Patent and Trademark Office (USPTO or Office) designed to incentivize patented inventions directed at or used to advance humanitarian goals. H.R. 5796 establishes a competition that provides this category of invention a small award in the form of a certificate redeemable to expedite certain matters before the Office.

Background and Need for the Legislation

In 2012, the USPTO published a final rule announcing a “Humanitarian Awards Pilot Program” designed to “incentivize the dis-

tribution of patented technologies to address humanitarian needs” following a request for comments in September 2010.¹ The final rule established the pilot program as an awards competition that allowed patent owners to submit program applications (separate from their original application for a patent) “describing what actions they have taken with their patented technology to address humanitarian needs among an impoverished population or further research by others on humanitarian technologies.”² Awardees received additional public recognition and a small reward in the form of being able to expedite a different matter before the Office.³ The pilot program was originally set to run for 12 months.⁴

To enter the competition, applicants submitted a program application explaining “how the applicants’ actions have increased the use of patented technology to address humanitarian issues.”⁵ The final rule defined “humanitarian issue” as “one significantly affecting the public health or quality of life of an impoverished population.”⁶ Applications were considered by independent judges in four separate categories: (1) medical technology; (2) food and nutrition; (3) clean technology; and (4) information technology.⁷ The final rule further specified details on who could apply (patent owners, patent applicants in limited cases, and licensees in limited cases), how independent judges would be selected, and the criteria for selecting the winner or winners in each category.⁸

The final rule established a public awards ceremony for the awardees and specified that each would receive a certificate to accelerate certain proceedings before the Office, including the examination of an original patent application, an *ex parte* reexamination, or an (*ex parte*) reissue proceeding, but specifically excluding *inter partes* reviews (IPRs) and post grant reviews (PGRs).⁹

After the completion of the pilot program, the USPTO made Patents for Humanity an annual award program.¹⁰ The permanent program is essentially the same as the pilot program with a slightly different set of award categories: (1) medicine; (2) nutrition; (3) sanitation; (4) household energy; and (5) living standards.¹¹ Information about the upcoming application process for the 2022 cycle, as well as information about past recipients, can be found at the Patents for Humanity landing page on the USPTO website.¹²

In the 116th Congress, Pub. L. 116–316, the Patents for Humanity Program Improvement Act, was signed into law on January 5, 2021. This Act allowed the certificates awarded in the Patents for Humanity Program to be transferable, thereby allowing the recipient to sell the acceleration certification if the recipient does not want to use the acceleration certificate themselves.

H.R. 5796 codifies the USPTO’s Patents for Humanity program by establishing a competition, to be held at least biennially and ad-

¹ Humanitarian Awards Pilot Program, 77 Fed. Reg. 6544, 6544 (Feb. 8, 2012).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 6545.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 6545–46.

⁹ *Id.* at 6546.

¹⁰ Patents for Humanity Program, 79 Fed. Reg. 18670 (Apr. 3, 2014).

¹¹ *Id.* at 18671.

¹² U.S. Patent and Trademark Office, *Patents for Humanity*, <https://www.uspto.gov/ip-policy/patent-policy/patents-humanity>.

ministered by the Office, to award an entity that submits an application for a patent that addresses a humanitarian issue a certificate that can be redeemed to accelerate one of the following matters: (1) an ex parte reexamination proceeding, including one appeal to the Patent Trial and Appeal Board from that proceeding; (2) a patent application, including one appeal to the Patent Trial and Appeal Board from that application; and (3) an appeal to the Patent Trial and Appeal Board of a claim twice rejected in a patent application or reissue application or finally rejected in an ex parte reexamination, without accelerating the underlying matter which generated the appeal. H.R. 5796 also requires the USPTO to promulgate rules on the entities eligible to receive an award and the process and metrics by which applications are to be judged.

Hearings

For the purposes of clause 3(c)(6)(A) of House rule XIII, the Committee on the Judiciary held no meetings on H.R. 5796 in the 117th Congress.

Committee Consideration

On December 8, 2021, the Committee met in open session and ordered the bill, H.R. 5796, favorably reported as amended, by a voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of House rule XIII, the Committee advises that no rollcall votes occurred during the Committee's consideration of H.R. 5796.

Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of House Rule X, are incorporated in the descriptive portions of this report.

Committee Estimate of Budgetary Effects

Pursuant to clause 3(d)(1) of House rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

New Budget Authority and Congressional Budget Office Cost Estimate

Pursuant to clause 3(c)(2) of House rule XIII and section 308(a) of the Congressional Budget Act of 1974, and pursuant to clause (3)(c)(3) of House rule XIII and section 402 of the Congressional Budget Act of 1974, the Committee has requested but not received from the Director of Congressional Budget Office a budgetary analysis and a cost estimate of this bill.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 5796 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program. H.R. 5796 treats the competition established by the Act as a successor to the USPTO's Patents for Humanity Program, established in the *Humanitarian Awards Pilot Program*, 77 Fed. Reg. 6544 (Feb. 8, 2012).

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H.R. 5796 would incentivize the creation and distribution of patented technologies to address humanitarian needs by creating a competition that awards recipients a certificate redeemable to accelerate select matters before the USPTO.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, H.R. 5796 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of House Rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short Title. Section 1 sets forth the short title of the bill as the "Patents for Humanity Act of 2021."

Sec. 2. Award of Certificates to Accelerate Certain Matters at the Patent and Trademark Office. Section 2(a) amends Title 35 to add a new section 28:

New section 28(a) establishes a competition, to be held no less frequently than biennially, with an award of an examination acceleration certificate redeemable in three different contexts (in an ex parte reexamination proceeding, including one appeal within the Office, in a patent application, including one appeal within the Office, and in an appeal within the Office from a patent application or reissue, or finally rejected in an ex parte reexamination, without accelerating the underlying proceeding), as well as additional matters that may be designated by the Director under a new rulemaking.

New section 28(b) provides that the Director shall administer this competition.

New section 28(c) provides that applicants shall submit applications in accordance with the Director's requirements about timing and contents.

New section 28(d) provides the Director with rulemaking authority to designate eligible entities for an award, the judge and award selection criteria, and additional matters for which an award might be issued.

New section 28(e) provides that the Director shall promote the competition through the USPTO's satellite offices.

New section 28(f) provides that the competition established by the Act shall be considered a successor to the program established

under *Humanitarian Awards Pilot Program*, 77 Fed. Reg. 6544 (Feb. 8, 2012).

New section 28(g) sets forth the definition of “eligible entity” as an entity that submits an application for a patented invention that addresses a humanitarian issue and is eligible under the rules promulgated by the Director.

Section 2(b) provides that the Director may continue to administer the awards program established under federal regulations until a rulemaking is conducted pursuant to this Act.

Section 2(c) provides for technical and conforming amendments.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

TITLE 35, UNITED STATES CODE

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PART I—UNITED STATES PATENT AND TRADEMARK OFFICE

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CHAPTER 2—PROCEEDINGS IN THE PATENT AND TRADEMARK OFFICE

Sec.

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28. *Award of certificates to accelerate certain matters at the Patent and Trademark Office.*

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§28. *Award of certificates to accelerate certain matters at the Patent and Trademark Office*

(a) *ESTABLISHMENT.—There is established a competition, to be held not less frequently than biennially, to award eligible entities certificates that can be redeemed to accelerate one of the following matters:*

(1) *An ex parte reexamination proceeding, including one appeal to the Patent Trial and Appeal Board from that proceeding.*

(2) *An application for a patent, including one appeal to the Patent Trial and Appeal Board from that application.*

(3) *An appeal to the Patent Trial and Appeal Board of a claim twice rejected in a patent application or reissue application or finally rejected in an ex parte reexamination, without accelerating the underlying matter which generated the appeal.*

(4) *A matter identified under subsection (d)(4).*

(b) *ADMINISTRATION.—The Director shall administer the competition established by subsection (a).*

(c) *APPLICATION.*—An eligible entity seeking an award under subsection (a) shall submit to the Director an application, at such time, in such manner, and containing such information as the Director may require.

(d) *RULEMAKING AUTHORITY.*—With respect to the competition established by subsection (a), the Director shall conduct a rulemaking proceeding to promulgate rules on the—

- (1) entities eligible to receive an award;
- (2) process and metrics by which applications are judged, including the criteria for selecting judges for the competition;
- (3) factors that will be considered in selecting the eligible entities that receive an award; and
- (4) additional matters for which a certificate described under subsection (a) may be awarded.

(e) *PROMOTION OF COMPETITION.*—The Director shall promote the competition through the satellite offices established pursuant to section 1.

(f) *TREATMENT AS SUCCESSOR.*—The competition established under subsection (a) shall be treated as a successor to the Patents for Humanity Program (established in the notice entitled “Humanitarian Awards Pilot Program”, published at 77 Fed. Reg. 6544 (February 8, 2012)).

(g) *ELIGIBLE ENTITY DEFINED.*—In this section, the term “eligible entity” means a entity that—

- (1) submits an application under subsection (c) for a patent that addresses a humanitarian issue; and
- (2) is eligible to receive an award under subsection (d)(1).

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