

107TH CONGRESS
2D SESSION

S. 1754

AN ACT

To authorize appropriations for the United States Patent and Trademark Office for fiscal years 2003 through 2008, 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 Authorization Act of 2002”.

1 **SEC. 2. AUTHORIZATION OF AMOUNTS AVAILABLE TO THE**
2 **PATENT AND TRADEMARK OFFICE.**

3 (a) IN GENERAL.—There are authorized to be appro-
4 priated to the United States Patent and Trademark Office
5 for salaries and necessary expenses for each of the fiscal
6 years 2003 through 2008 an amount equal to the fees esti-
7 mated by the Secretary of Commerce to be collected in
8 each such fiscal year, respectively, under—

9 (1) title 35, United States Code; and

10 (2) the Act entitled “An Act to provide for the
11 registration and protection of trademarks used in
12 commerce, to carry out the provisions of certain
13 international conventions, and for other purposes”,
14 approved July 5, 1946 (15 U.S.C. 1051 et seq.)
15 (commonly referred to as the Trademark Act of
16 1946).

17 (b) ESTIMATES.—Not later than February 15, of
18 each fiscal year, the Undersecretary of Commerce for In-
19 tellectual Property and the Director of the Patent and
20 Trademark Office (in this Act referred to as the Director)
21 shall submit an estimate of all fees referred to under sub-
22 section (a) to be collected in the next fiscal year to the
23 chairman and ranking member of—

24 (1) the Committees on Appropriations and Ju-
25 diciary of the Senate; and

1 (2) the Committees on Appropriations and Ju-
 2 diciary of the House of Representatives.

3 **SEC. 3. ELECTRONIC FILING AND PROCESSING OF PATENT**
 4 **AND TRADEMARK APPLICATIONS.**

5 (a) ELECTRONIC FILING AND PROCESSING.—Not
 6 later than December 1, 2004, the Director shall complete
 7 the development of an electronic system for the filing and
 8 processing of patent and trademark applications, that—

- 9 (1) is user friendly; and
- 10 (2) includes the necessary infrastructure to—
- 11 (A) allow examiners and applicants to send
 12 all communications electronically; and
- 13 (B) allow the Office to process, maintain,
 14 and search electronically the contents and his-
 15 tory of each application.

16 (b) AUTHORIZATION OF APPROPRIATIONS.—Of
 17 amounts authorized under section 2, there are authorized
 18 to be appropriated to carry out subsection (a) of this sec-
 19 tion not more than \$50,000,000 for each of fiscal years
 20 2003 and 2004. Amounts made available under this sub-
 21 section shall remain available until expended.

22 **SEC. 4. ANNUAL REPORTS ON STRATEGIC PLAN.**

23 In each of the 5 calendar years following the date
 24 of enactment of this Act, the Secretary of Commerce shall

1 submit a report to the Committees on the Judiciary of
 2 the Senate and the House of Representatives on—

- 3 (1) the progress made in implementing the 21st
- 4 Century Strategic Plan issued on June 3, 2002; and
- 5 (2) any amendments made to the plan.

6 **SEC. 5. DETERMINATION OF SUBSTANTIAL NEW QUESTION**
 7 **OF PATENTABILITY IN REEXAMINATION PRO-**
 8 **CEEDINGS.**

9 (a) IN GENERAL.—Sections 303(a) and 312(a) of
 10 title 35, United States Code, are each amended by adding
 11 at the end the following: “The existence of a substantial
 12 new question of patentability is not precluded by the fact
 13 that a patent or printed publication was previously cited
 14 by or to the Office or considered by the Office.”.

15 (b) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply with respect to any determination
 17 of the Director of the United States Patent and Trade-
 18 mark Office that is made under section 303(a) or 312(a)
 19 of title 35, United States Code, on or after the date of
 20 the enactment of this Act.

21 **SEC. 6. APPEALS IN INTER PARTES REEXAMINATION PRO-**
 22 **CEEDINGS.**

23 (a) APPEALS BY THIRD-PARTY REQUESTER IN PRO-
 24 CEEDINGS.—Section 315(b) of title 35, United States
 25 Code, is amended to read as follows:

1 “(b) THIRD-PARTY REQUESTER.—A third-party
2 requester—

3 “(1) may appeal under the provisions of section
4 134, and may appeal under the provisions of sec-
5 tions 141 through 144, with respect to any final de-
6 cision favorable to the patentability of any original
7 or proposed amended or new claim of the patent;
8 and

9 “(2) may, subject to subsection (c), be a party
10 to any appeal taken by the patent owner under the
11 provisions of section 134 or sections 141 through
12 144.”.

13 (b) APPEAL TO BOARD OF PATENT APPEALS AND
14 INTERFERENCES.—Section 134(c) of title 35, United
15 States Code, is amended by striking the last sentence.

16 (c) APPEAL TO COURT OF APPEALS FOR THE FED-
17 ERAL CIRCUIT.—Section 141 of title 35, United States
18 Code, is amended in the third sentence by inserting “, or
19 a third-party requester in an inter partes reexamination
20 proceeding, who is” after “patent owner”.

21 (d) EFFECTIVE DATE.—The amendments made by
22 this section apply with respect to any reexamination pro-

- 1 ceeding commenced on or after the date of the enactment
- 2 of this Act.

Passed the Senate June 26, 2002.

Attest:

Secretary.

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