

# ***In the House of Representatives, U. S.,***

*December 6, 2006.*

*Resolved*, That the bill from the Senate (S. 1785) entitled “An Act to amend chapter 13 of title 17, United States Code (relating to the vessel hull design protection), to clarify the distinction between a hull and a deck, to provide factors for the determination of the protectability of a revised design, to provide guidance for assessments of substantial similarity, and for other purposes”, do pass with the following

## **AMENDMENTS:**

Strike out all after the enacting clause and insert:

**1    *SECTION 1. TABLE OF CONTENTS.***

**2        *The table of contents of this Act is as follows:***

*Sec. 1. Table of contents.*

***TITLE I—VESSEL HULL DESIGN PROTECTION***

*Sec. 101. Short title.*

*Sec. 102. Designs protected.*

*Sec. 103. Definitions.*

***TITLE II—INTELLECTUAL PROPERTY PROVISIONS***

*Sec. 201. Sense of Congress relating to Bayh-Dole Act.*

*Sec. 202. Filing of applications for extensions of a patent term.*

1    ***TITLE I—VESSEL HULL DESIGN***  
 2                   ***PROTECTION***

3    ***SEC. 101. SHORT TITLE.***

4           *This title may be cited as the “Vessel Hull Design Pro-*  
 5    *tection Amendments of 2006”.*

6    ***SEC. 102. DESIGNS PROTECTED.***

7           *Section 1301(a) of title 17, United States Code, is*  
 8    *amended by striking paragraph (2) and inserting the fol-*  
 9    *lowing:*

10                   “(2) *VESSEL FEATURES.*—*The design of a vessel*  
 11       *hull or deck, including a plug or mold, is subject to*  
 12       *protection under this chapter, notwithstanding section*  
 13       *1302(4).”.*

14   ***SEC. 103. DEFINITIONS.***

15       *Section 1301(b) of title 17, United States Code, is*  
 16    *amended—*

17                   (1) *in paragraph (2), by striking “vessel hull,*  
 18       *including a plug or mold,” and inserting “vessel hull*  
 19       *or deck, including a plug or mold,”;*

20                   (2) *by striking paragraph (4) and inserting the*  
 21    *following:*

22                   “(4) *A ‘hull’ is the exterior frame or body of a*  
 23       *vessel, exclusive of the deck, superstructure, masts,*  
 24       *sails, yards, rigging, hardware, fixtures, and other at-*  
 25       *tachments.”; and*

1           (3) *by adding at the end the following:*

2           “(7) A ‘deck’ is the horizontal surface of a vessel  
3           that covers the hull, including exterior cabin and  
4           cockpit surfaces, and exclusive of masts, sails, yards,  
5           rigging, hardware, fixtures, and other attachments.”.

6           ***TITLE II—INTELLECTUAL***  
7           ***PROPERTY PROVISIONS***

8   ***SEC. 201. SENSE OF CONGRESS RELATING TO BAYH-DOLE***  
9           ***ACT.***

10          (a) *FINDINGS.—The Congress finds the following:*

11               (1) *Article I, section 8, clause 8, of the United*  
12               *States Constitution provides that Congress shall have*  
13               *the power “[t]o promote the Progress of Science and*  
14               *useful Arts, by securing for limited Times to Authors*  
15               *and Inventors the exclusive Right to their respective*  
16               *Writings and Discoveries”.*

17               (2) *The 96th Congress enacted Public Law 96–*  
18               *517, entitled “An Act to amend the patent and trade-*  
19               *mark laws” (commonly known as the “Bayh-Dole*  
20               *Act”, in honor of its two lead sponsors in the Senate,*  
21               *the Honorable Birch Bayh and the Honorable Bob*  
22               *Dole), in 1980.*

23               (3) *For 15 to 20 years before the enactment of*  
24               *the Bayh-Dole Act, Members of Congress considered,*

1       *discussed, and deliberated on the proper resolution of*  
2       *issues implicated by the Act.*

3               *(4) Before the enactment of the Bayh-Dole Act,*  
4       *the United States was confronted by great economic*  
5       *uncertainty and presented with unprecedented new*  
6       *challenges from foreign industrial competition.*

7               *(5) Before 1980, only 5 percent of patents owned*  
8       *by the Federal Government were used by the private*  
9       *sector—a situation that resulted in the American peo-*  
10       *ple being denied the benefits of further development,*  
11       *disclosure, exploitation, and commercialization of the*  
12       *Government’s patent portfolio.*

13               *(6) The Bayh-Dole Act established a “single, uni-*  
14       *form national policy designed to . . . encourage pri-*  
15       *vate industry to utilize government financed inven-*  
16       *tions through the commitment of the risk capital nec-*  
17       *essary to develop such inventions to the point of com-*  
18       *mercial application”, and eliminated the 26 different*  
19       *Federal agency policies that had existed regarding the*  
20       *use of the results of federally funded research and de-*  
21       *velopment.*

22               *(7) The Bayh-Dole Act fundamentally changed*  
23       *the Federal Government’s patent policies by enabling*  
24       *inventors or their employers to retain patent rights in*  
25       *inventions developed as part of federally funded re-*

1        *search grants, thereby promoting licensing and the*  
2        *leveraging of contributions by the private sector to-*  
3        *wards applied research, and facilitating the transfer*  
4        *of technology from the laboratory bench to the market-*  
5        *place.*

6                *(8) Examples of the tangible products and tech-*  
7        *nologies that have resulted from the Bayh-Dole Act*  
8        *include, inter alia, an improved method for pre-*  
9        *serving organs for transplant, a lithography system to*  
10       *enable the manufacture of nano-scale devices, the de-*  
11       *velopment of new chemotherapeutic agents, the dis-*  
12       *covery of new therapies for the treatment of patients*  
13       *diagnosed with rheumatoid arthritis, and countless*  
14       *other advances in materials, electronics, energy, envi-*  
15       *ronmental protection, and information technologies.*

16               *(9) These new therapies, technologies, and inven-*  
17       *tions, which have resulted from the collaborative envi-*  
18       *ronment fostered by the Bayh-Dole Act, have directly*  
19       *contributed to the ability of medical researchers to*  
20       *discover and commercialize new treatments that al-*  
21       *leviate patient suffering, enhance the ability of doc-*  
22       *tors to diagnose and treat disease, and target prom-*  
23       *ising new medical research.*

24               *(10) The Bayh-Dole Act has stimulated two of*  
25       *the major contemporary scientific trends of the last*

1        *quarter century—the development of the biotechnology*  
2        *and information communications industries—and the*  
3        *Act is poised to continue playing a central role in*  
4        *new fields of innovative activities, including*  
5        *nanotechnology.*

6            *(11) The Bayh-Dole Act has resulted in benefit-*  
7        *ting taxpayers by generating millions of dollars in*  
8        *annual licensing royalties for universities and non-*  
9        *profit institutions—revenues that are reinvested in*  
10       *furtherance of additional research and education pro-*  
11       *grams.*

12           *(12) The incentives provided under the Act and*  
13        *the exchange of technology and research between and*  
14        *among the research community, small businesses, and*  
15        *industry, have resulted in new cooperative ventures*  
16        *and the emergence of sophisticated high-technology*  
17        *businesses, which provide a major catalyst for innova-*  
18        *tion and entrepreneurial activity.*

19           *(13) More than 4,000 new companies have been*  
20        *created to develop and market academic research and*  
21        *development since 1980, and it is estimated that*  
22        *nearly 2300 of these companies were still in operation*  
23        *at the end of fiscal year 2003.*

24           *(14) Lita Nelsen, director of the Technology Li-*  
25        *censing Office at the Massachusetts Institute of Tech-*

1        *nology, has described the Bayh-Dole Act as “one of the*  
 2        *most successful pieces of economic development and*  
 3        *job-creation legislation in recent history”.*

4            *(15) The Bayh-Dole Act was described in a 2002*  
 5        *article in The Economist (US) as “[p]ossibly the most*  
 6        *inspired piece of legislation to be enacted in America*  
 7        *over the past half-century. . . . More than anything,*  
 8        *this single policy measure helped to reverse America’s*  
 9        *precipitous slide into industrial irrelevance”.*

10          *(16) The Government Accountability Office*  
 11        *(GAO) found that university administrators and*  
 12        *small business representatives considered the Bayh-*  
 13        *Dole Act to have had “a significant impact on their*  
 14        *research and innovation efforts”.*

15          *(17) A study of business executives found that 9*  
 16        *out of 10 identified the Bayh-Dole Act as an “impor-*  
 17        *tant factor” in decisions to fund research and devel-*  
 18        *opment in academia.*

19          *(18) Howard Bremer, who served as patent*  
 20        *counsel to the Wisconsin Alumni Research Founda-*  
 21        *tion from 1960 to 1988, once observed that, “[o]ne*  
 22        *important factor . . . is that the success was achieved*  
 23        *without cost to the taxpayer. In other words, no sepa-*  
 24        *rate appropriation of government funds was needed to*  
 25        *establish or manage the effort”.*

1           (19) A 1998 GAO study found that the law had  
2           a positive impact on all involved and that the in-  
3           creased commercialization of federally funded research  
4           that resulted from implementation of the Act had  
5           positively affected both the Federal Government and  
6           the American people.

7           (20) The President’s Council of Advisors on  
8           Science and Technology reported to the President in  
9           May 2003 that the Act “dramatically improved the  
10          nation’s ability to move ideas from research and de-  
11          velopment to the marketplace and into commerce”  
12          and that the system put in place for transferring tech-  
13          nology from nonprofit institutions, which includes  
14          universities and Government laboratories, to the pri-  
15          vate sector has worked well.

16          (21) The Bayh-Dole Act states, “[i]t is the policy  
17          and objective of the Congress to promote the utiliza-  
18          tion of inventions arising from federally-supported re-  
19          search or development; . . . to promote collaboration  
20          between commercial concerns and nonprofit organiza-  
21          tions, including universities; . . . to promote the com-  
22          mercialization and public availability of inventions  
23          made in the United States by United States industry  
24          and labor; [and] to ensure that the Government ob-  
25          tains sufficient rights in federally-supported inven-



1        *tions to meet the needs of the Government and protect*  
2        *the public against nonuse or unreasonable use of in-*  
3        *ventions”.*

4            *(22) The Congress finds that the policies and ob-*  
5        *jectives of the Bayh-Dole Act have been achieved and*  
6        *that the patent law has played a critical role in stim-*  
7        *ulating technological advances and disclosing useful*  
8        *technical information to the public.*

9            *(23) The Congress finds that federally-funded re-*  
10       *search at universities and Government laboratories*  
11       *and the partnerships between such nonprofit institu-*  
12       *tions and the private sector play a critical role in de-*  
13       *veloping the technologies that allow the United States*  
14       *to lead the world in innovation.*

15           *(24) The Bayh-Dole Act and its subsequent*  
16       *amendments, which include the Trademark Clarifica-*  
17       *tion Act of 1984 (Public Law 98-620), have played a*  
18       *vital role in enabling the United States to become re-*  
19       *nowned as the world leader in scientific research, in-*  
20       *novation, ingenuity, and collaborative research that*  
21       *involves institutions of higher education and the pri-*  
22       *rate sector.*

23        *(b) SENSE OF CONGRESS.—It is the sense of Congress*  
24       *that—*

1           (1) *the Bayh-Dole Act (Public Law 96–517) has*  
 2           *made substantial contributions to the advancement of*  
 3           *scientific and technological knowledge, fostered dra-*  
 4           *matic improvements in public health and safety,*  
 5           *strengthened the higher education system in the*  
 6           *United States, served as a catalyst for the develop-*  
 7           *ment of new domestic industries that have created*  
 8           *tens of thousands of new jobs for American citizens,*  
 9           *strengthened States and local communities across the*  
 10          *country, and benefitted the economic and trade poli-*  
 11          *cies of the United States; and*

12          (2) *it is appropriate that the Congress reaffirm*  
 13          *its commitment to the policies and objectives of the*  
 14          *Bayh-Dole Act by acknowledging its contributions*  
 15          *and commemorating the silver anniversary of its en-*  
 16          *actment.*

17   **SEC. 202. FILING OF APPLICATIONS FOR EXTENSIONS OF A**  
 18                                   **PATENT TERM.**

19          (a) *FINDINGS.—The Congress finds the following:*

20               (1) *The Congress historically has provided vig-*  
 21               *orous support for innovation in the useful arts by es-*  
 22               *tablishing a system of patent protection for products*  
 23               *and processes.*

24               (2) *Through section 156 of title 35, United*  
 25               *States Code, the Congress sought to promote the devel-*

1      *opment of innovative drugs by granting patent term*  
 2      *restoration to companies to recover a portion of the*  
 3      *patent term for such drugs that was consumed during*  
 4      *the approval process conducted by the Food and Drug*  
 5      *Administration.*

6            (3) *Consistent with the historic purpose of pro-*  
 7      *moting innovation, patent legislation, and subsequent*  
 8      *rules promulgated by the United States Patent and*  
 9      *Trademark Office (PTO), have routinely given the*  
 10     *PTO wide discretion to excuse late filings and other*  
 11     *mistakes that might otherwise result in the forfeiture*  
 12     *of underlying patent rights.*

13           (4) *Contrary to this routine practice, however,*  
 14     *under section 156 of title 35, United States Code, the*  
 15     *PTO has no discretion to excuse a filing that is even*  
 16     *one day late.*

17           (5) *In order to be consistent with the intent of*  
 18     *protecting patent rights and promoting further inno-*  
 19     *vation, the PTO should be granted limited, cir-*  
 20     *cumscribed discretion to consider patent term restora-*  
 21     *tion applications filed in an untimely manner.*

22     (b) *FILING OF APPLICATIONS.—*

23           (1) *IN GENERAL.—Section 156 of title 35,*  
 24     *United States Code, is amended by adding at the end*  
 25     *the following new subsection:*

1       “(i) *UNINTENTIONAL DELAY.*—*The Director may ac-*  
2 *cept an application under this section that is filed not later*  
3 *than 5 days after the expiration of the 60-day period pro-*  
4 *vided in subsection (d)(1) if the applicant files a petition*  
5 *showing, to the satisfaction of the Director, that the delay*  
6 *in filing the application was unintentional. Such petition*  
7 *must be filed with the application in the case of an applica-*  
8 *tion filed on or after the date of the enactment of this sub-*  
9 *section and must be filed not later than 5 days after such*  
10 *date of enactment in the case of an application which, on*  
11 *such date of enactment, is pending, is the subject of a re-*  
12 *quest for reconsideration of a denial of a patent term exten-*  
13 *sion under this section, or has been denied a patent term*  
14 *extension under this section in a case in which the period*  
15 *for seeking reconsideration of such denial has not yet ex-*  
16 *pired. The Director shall make a determination on a peti-*  
17 *tion under this subsection not later than 30 days after the*  
18 *date on which the petition is received. If no determination*  
19 *has been made on the petition within that 30-day period,*  
20 *the petition shall be deemed to be denied.”.*

21               (2) *REVIVAL FEES.*—*Section 41(a)(7) of title 35,*  
22 *United States Code, is amended—*  
23               (A) *by striking “or for an” and inserting*  
24               *“for an”; and*

1           (B) by inserting after “reexamination pro-  
2           ceeding,” the following: “or for an unintention-  
3           ally delayed application for patent term exten-  
4           sion,”.

5           (3) *EFFECTIVE DATE.*—*The amendments made*  
6           *by this section shall take effect on the date of the en-*  
7           *actment of this Act, and shall apply to any applica-*  
8           *tion for patent term extension under section 156 of*  
9           *title 35, United States Code, which—*

10           (A) *is filed on or after the date of the enact-*  
11           *ment of this Act; or*

12           (B) *on such date of enactment—*

13                   (i) *is pending;*

14                   (ii) *is the subject of a request for recon-*  
15                   *sideration of a denial of a patent term ex-*  
16                   *tension under section 156; or*

17                   (iii) *has been denied a patent term ex-*  
18                   *tension under such section 156 in a case in*  
19                   *which the period for seeking reconsideration*  
20                   *of such denial has not yet expired.*

Amend the title so as to read “An Act to make certain improvements relating to intellectual property, and for other purposes.”.

Attest:

*Clerk.*

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

**S. 1785**

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**AMENDMENTS**