

115TH CONGRESS
2D SESSION

S. 2601

To amend the Leahy-Smith America Invents Act to extend the period during which the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office may set or adjust certain fees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 22, 2018

Mr. COONS (for himself and Mr. HATCH) 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 extend the period during which the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office may set or adjust certain 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 “Building Innovation
5 Growth through Data for Intellectual Property Act” or the
6 “BIG Data for IP Act”.

1 **SEC. 2. DEFINITIONS.**

2 In this Act—

3 (1) the term “advanced data science analytics”
4 means techniques, such as artificial intelligence, ma-
5 chine learning, and other methods of analyzing large
6 data sets, that are used to make policy recommenda-
7 tions;

8 (2) the term “Director” means the Under Sec-
9 retary of Commerce for Intellectual Property and
10 Director of the Office;

11 (3) the term “Office” means the United States
12 Patent and Trademark Office;

13 (4) the term “PPAC” means the Patent Public
14 Advisory Committee of the Office; and

15 (5) the term “TPAC” means the Trademark
16 Public Advisory Committee of the Office.

17 **SEC. 3. FINDINGS.**

18 Congress finds the following:

19 (1) Section 10(a) of the Leahy-Smith America
20 Invents Act (35 U.S.C. 41 note) grants the Director
21 the authority to “set or adjust by rule any fee estab-
22 lished, authorized, or charged under title 35, United
23 States Code, or the Trademark Act of 1946. . . . to
24 recover the aggregate estimated costs to the Office
25 for processing, activities, services, and materials re-
26 lating to patents (in the case of patent fees) and

1 trademarks (in the case of trademark fees), includ-
2 ing administrative costs of the Office”.

3 (2) The Office has worked with PPAC, TPAC,
4 and the public to engage in a fee-setting process
5 that is transparent, as envisioned by the Leahy-
6 Smith America Invents Act (Public Law 112–29;
7 125 Stat. 284).

8 (3) Since 2011, the Office has used this fee-set-
9 ting authority to implement a sustainable funding
10 model with an operating reserve, which allows the
11 Office to invest in long-term projects, including cru-
12 cial infrastructure upgrades that are necessary for a
13 21st century intellectual property office, regardless
14 of whether there are temporary fluctuations in pat-
15 ent or trademark filings.

16 (4) The infrastructure upgrades described in
17 paragraph (3) include the use of advanced data
18 science analytics, which will help to—

19 (A) improve productivity and quality with
20 respect to the issuance of patents and trade-
21 marks; and

22 (B) ensure—

23 (i) the consistent application of laws
24 by nearly 9,000 patent examiners and
25 trademark examining attorneys; and

1 (ii) the certainty and strength of Fed-
 2 erally-granted rights that are foundational
 3 to the economy of the United States.

4 **SEC. 4. EXTENSION OF SUNSET.**

5 Section 10(i)(2) of the Leahy-Smith America Invents
 6 Act (35 U.S.C. 41 note) is amended by striking “the 7-
 7 year period beginning on the date of the enactment of this
 8 Act” and inserting “the 10-year period beginning on the
 9 date of enactment of the BIG Data for IP Act”.

10 **SEC. 5. REPORT.**

11 Not later than 2 years after the date of enactment
 12 of this Act, the Director shall submit to Congress a report
 13 that includes—

14 (1) the status of the capabilities of the informa-
 15 tion technology systems of the Office with respect
 16 to—

17 (A) the examination of patents and trade-
 18 marks; and

19 (B) proceedings conducted before the—

20 (i) Patent Trial and Appeal Board of
 21 the Office; and

22 (ii) Trademark Trial and Appeal
 23 Board of the Office;

1 (2) a 5-year plan for further modernization of
2 the information technology systems described in
3 paragraph (1); and

4 (3) an accounting of the use by the Office of
5 advanced data science analytics, including from com-
6 mercially available sources, to improve the patent
7 and trademark examination process where appro-
8 priate, including—

9 (A) a description of how the Office uses
10 advanced data science analytics with respect to
11 the examination of patents and trademarks
12 to—

13 (i) improve consistency;

14 (ii) detect common sources of error;

15 and

16 (iii) improve productivity;

17 (B) a 5-year plan for further development
18 of advanced data science analytics for the uses
19 described in subparagraph (A); and

20 (C) a description of how the findings made
21 as a result of the uses of advanced data science
22 analytics under subparagraph (A) shall be made
23 available to the public on a regular basis.

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