

## EXECUTIVE SESSION

## NOMINATION OF M. PATRICIA SMITH TO BE SOLICITOR FOR THE DEPARTMENT OF LABOR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider Executive Calendar No. 474, the nomination of M. Patricia Smith to be Solicitor for the Department of Labor.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The legislative clerk read the nomination of M. Patricia Smith, of New York, to be Solicitor for the Department of Labor.

## CLOTURE MOTION

Mr. REID. I have a cloture motion at the desk, and I ask that it be reported.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

## CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of M. Patricia Smith, of New York, to be Solicitor for the Department of Labor.

Harry Reid, Tom Harkin, Jeff Bingaman, Mark Begich, Byron L. Dorgan, Edward E. Kaufman, Barbara Boxer, Benjamin L. Cardin, Robert Menendez, Kay R. Hagan, Sheldon Whitehouse, Barbara A. Mikulski, Jon Tester, Roland W. Burris, Kirsten E. Gillibrand, Bill Nelson, Mary L. Landrieu.

Mr. REID. Mr. President, I ask unanimous consent that the mandatory quorum be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. I further ask unanimous consent that the vote on the motion to invoke cloture on the nomination occur at 5:30 p.m., Monday, February 1.

The PRESIDING OFFICER. Without objection, it is so ordered.

## LEGISLATIVE SESSION

Mr. REID. I ask unanimous consent that the Senate resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

## EXECUTIVE SESSION

## NOMINATION OF MARTHA N. JOHNSON TO BE ADMINISTRATOR, GENERAL SERVICES ADMINISTRATION

Mr. REID. I now ask unanimous consent that the Senate proceed to executive session to consider Calendar No. 188, the nomination of Martha Johnson to be Administrator of General Services.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read the nomination of Martha N. Johnson, of Maryland, to be Administrator, General Services Administration.

## CLOTURE MOTION

Mr. REID. I have a cloture motion at the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

## CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Martha N. Johnson, of Maryland, to be Administrator of General Services.

Harry Reid, Joseph I. Lieberman, Jeff Bingaman, Mark Begich, Byron L. Dorgan, Edward E. Kaufman, Barbara Boxer, Benjamin L. Cardin, Robert Menendez, Kay R. Hagan, Sheldon Whitehouse, Barbara A. Mikulski, Jon Tester, Blanche L. Lincoln, Roland W. Burris, Kirsten E. Gillibrand, Bill Nelson, Mary L. Landrieu.

Mr. REID. I ask unanimous consent the mandatory quorum be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

## LEGISLATIVE SESSION

Mr. REID. I ask unanimous consent that the Senate resume legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

## TRADEMARK TECHNICAL AND CONFORMING AMENDMENT ACT OF 2010

Mr. REID. I ask unanimous consent that the Senate now proceed to the consideration of S. 2968.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2968) to make certain technical and conforming amendments to the Lanham Act.

There being no objection, the Senate proceeded to consider the bill.

Mr. LEAHY. Mr. President, legislation will facilitate trademark owners' maintenance of protection for their brands. I appreciate the Senate acting swiftly to pass this bill. Trademark protection is critical both for businesses that have invested in creating a reliable product, and for consumers who trust a "brand name" product to be safe and of high quality.

Last Congress, I authored legislation to provide our law enforcement community with the tools, resources, and intragovernmental coordination necessary to combat intellectual property theft. Theft of intellectual property harms our businesses, weakens our economy, and costs jobs. I am proud that the legislation, the Prioritizing Resources and Organization of Intellectual Property, or PRO-IP, Act, was co-

sponsored by a bipartisan group of 21 Senators, and was signed into law.

The Senate Judiciary Committee has held numerous hearings in recent years on the importance of intellectual property protection. In 2004, Burton Snowboards, a successful Vermont business, testified before the Judiciary Committee about how small businesses were being harmed by the rise in intellectual property theft. I am pleased that this administration is taking intellectual property protection seriously, and that it recognizes that effective enforcement of our intellectual property laws is an important component of our economic recovery.

The legislation we are introducing today is focused on the process for maintaining trademark protection. It is a targeted bill that will improve the efficiency of the trademark maintenance system. Inefficiencies cost businesses money, which can lead to higher prices for consumers and can cost workers their jobs. When Congress has an opportunity to take waste out of a government process, it should do so on a bipartisan basis. That is what we are doing today. This bill will harmonize the system for submitting maintenance filings to the United States Patent and Trademark Office, USPTO. Maintenance filings are required for continuing the protection of a trademark. Our legislation will also permit the Director of the USPTO to permit applicants to correct good faith and harmless errors and will make several technical amendments within our trademark laws.

This legislation also requires a study of how the current system can better protect small businesses from abuses of the trademark system by larger corporations. Congress provides strong enforcement tools to intellectual property owners, as we should, to deter infringing activity and to remove counterfeit products from the market. I have become concerned, however, that large corporations are at times abusing the substantial rights Congress has granted them in their intellectual property to the detriment of small businesses. In fact, we saw a high-profile case like this in Vermont last year involving a spurious claim against Rock Art Brewery in Morrisville. When a corporation exaggerates the scope of its rights far beyond a reasonable interpretation in an attempt to bully a small business out of the market, that is wrong. This legislation therefore directs the Secretary of Commerce, in coordination with the Intellectual Property Enforcement Coordinator, to consider options for protecting small businesses from such harassing litigation, while ensuring that legitimate trademark infringement actions are handled efficiently and expeditiously by the courts.

This is commonsense legislation, and I thank all Senators for supporting it.

Mr. REID. I ask unanimous consent the bill be read three times and passed,

the motion to reconsider be laid on the table with no intervening action or debate, and any statements relating to this matter be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 2968) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2968

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Trademark Technical and Conforming Amendment Act of 2010.”

#### SEC. 2. DEFINITION.

For purposes of this Act, the term “Trademark Act of 1946” means the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”, approved July 5, 1946 (commonly referred to as the “Lanham Act”; 15 U.S.C. 1051 et. seq.).

#### SEC. 3. TECHNICAL AND CONFORMING AMENDMENTS.

(a) CERTIFICATES OF REGISTRATION.—Section 7 of the Trademark Act of 1946 (15 U.S.C. 1057) is amended—

(1) by inserting “United States” before “Patent and Trademark Office” each place that term appears;

(2) in subsection (b), by striking “registrant’s” each place that appears and inserting “owner’s”;

(3) in subsection (e)—

(A) by striking “registrant” each place that term appears and inserting “owner”; and

(B) in the third sentence, by striking “or, if said certificate is lost or destroyed, upon a certified copy thereof”; and

(4) by amending subsection (g) to read as follows:

“(g) CORRECTION OF PATENT AND TRADEMARK OFFICE MISTAKE.—Whenever a material mistake in a registration, incurred through the fault of the United States Patent and Trademark Office, is clearly disclosed by the records of the Office a certificate stating the fact and nature of such mistake shall be issued without charge and recorded and a printed copy thereof shall be attached to each printed copy of the registration and such corrected registration shall thereafter have the same effect as if the same had been originally issued in such corrected form, or in the discretion of the Director a new certificate of registration may be issued without charge. All certificates of correction heretofore issued in accordance with the rules of the United States Patent and Trademark Office and the registrations to which they are attached shall have the same force and effect as if such certificates and their issue had been specifically authorized by statute.”.

(b) INCONTESTABILITY OF RIGHT TO USE MARK UNDER CERTAIN CONDITIONS.—Section 15 of the Trademark Act of 1946 (15 U.S.C. 1065) is amended—

(1) by striking “right of the registrant” and inserting “right of the owner”;

(2) by amending paragraph (1) to read as follows:

“(1) there has been no final decision adverse to the owner’s claim of ownership of such mark for such goods or services, or to the owner’s right to register the same or to keep the same on the register; and”;

(3) in paragraph (2), by inserting “United States” before “Patent and Trademark Office”.

(c) APPEAL TO COURTS.—Section 21 of the Trademark Act of 1946 (15 U.S.C. 1071) is amended—

(1) by inserting “United States” before “Patent and Trademark Office” each place that term appears;

(2) in subsection (a)(1), by inserting “or section 71” after “section 8”; and

(3) in subsection (b)(4), by striking “If there be” and inserting “If there are”.

(d) CONFORMING REQUIREMENTS FOR AFFIDAVITS.—

(1) DURATION, AFFIDAVITS AND FEES.—Section 8 of the Trademark Act of 1946 (15 U.S.C. 1058) is amended to read as follows:

#### “SEC. 8. DURATION, AFFIDAVITS AND FEES.

“(a) TIME PERIODS FOR REQUIRED AFFIDAVITS.—Each registration shall remain in force for 10 years, except that the registration of any mark shall be canceled by the Director unless the owner of the registration files in the United States Patent and Trademark Office affidavits that meet the requirements of subsection (b), within the following time periods:

“(1) Within the 1-year period immediately preceding the expiration of 6 years following the date of registration under this Act or the date of the publication under section 12(c).

“(2) Within the 1-year period immediately preceding the expiration of 10 years following the date of registration, and each successive 10-year period following the date of registration.

“(3) The owner may file the affidavit required under this section within the 6-month grace period immediately following the expiration of the periods established in paragraphs (1) and (2), together with the fee described in subsection (b) and the additional grace period surcharge prescribed by the Director.

“(b) REQUIREMENTS FOR AFFIDAVIT.—The affidavit referred to in subsection (a) shall—

“(1)(A) state that the mark is in use in commerce;

“(B) set forth the goods and services recited in the registration on or in connection with which the mark is in use in commerce;

“(C) be accompanied by such number of specimens or facsimiles showing current use of the mark in commerce as may be required by the Director; and

“(D) be accompanied by the fee prescribed by the Director; or

“(2)(A) set forth the goods and services recited in the registration on or in connection with which the mark is not in use in commerce;

“(B) include a showing that any nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark; and

“(C) be accompanied by the fee prescribed by the Director.

“(c) DEFICIENT AFFIDAVIT.—If any submission filed within the period set forth in subsection (a) is deficient, including that the affidavit was not filed in the name of the owner of the registration, the deficiency may be corrected after the statutory time period, within the time prescribed after notification of the deficiency. Such submission shall be accompanied by the additional deficiency surcharge prescribed by the Director.

“(d) NOTICE OF REQUIREMENT.—Special notice of the requirement for such affidavit shall be attached to each certificate of registration and notice of publication under section 12(c).

“(e) NOTIFICATION OF ACCEPTANCE OR REFUSAL.—The Director shall notify any owner who files any affidavit required by this section of the Director’s acceptance or refusal thereof and, in the case of a refusal, the reasons therefor.

“(f) DESIGNATION OF RESIDENT FOR SERVICE OF PROCESS AND NOTICES.—If the owner is not

domiciled in the United States, the owner may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the last designated address, or if the owner does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.”.

(2) AFFIDAVITS AND FEES.—Section 71 of the Trademark Act of 1946 (15 U.S.C. 1141k) is amended to read as follows:

#### “SEC. 71. DURATION, AFFIDAVITS AND FEES.

“(a) TIME PERIODS FOR REQUIRED AFFIDAVITS.—Each extension of protection for which a certificate has been issued under section 69 shall remain in force for the term of the international registration upon which it is based, except that the extension of protection of any mark shall be canceled by the Director unless the holder of the international registration files in the United States Patent and Trademark Office affidavits that meet the requirements of subsection (b), within the following time periods:

“(1) Within the 1-year period immediately preceding the expiration of 6 years following the date of issuance of the certificate of extension of protection.

“(2) Within the 1-year period immediately preceding the expiration of 10 years following the date of issuance of the certificate of extension of protection, and each successive 10-year period following the date of issuance of the certificate of extension of protection.

“(3) The holder may file the affidavit required under this section within a grace period of 6 months after the end of the applicable time period established in paragraph (1) or (2), together with the fee described in subsection (b) and the additional grace period surcharge prescribed by the Director.

“(b) REQUIREMENTS FOR AFFIDAVIT.—The affidavit referred to in subsection (a) shall—

“(1)(A) state that the mark is in use in commerce;

“(B) set forth the goods and services recited in the extension of protection on or in connection with which the mark is in use in commerce;

“(C) be accompanied by such number of specimens or facsimiles showing current use of the mark in commerce as may be required by the Director; and

“(D) be accompanied by the fee prescribed by the Director; or

“(2)(A) set forth the goods and services recited in the extension of protection on or in connection with which the mark is not in use in commerce;

“(B) include a showing that any nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark; and

“(C) be accompanied by the fee prescribed by the Director.

“(c) DEFICIENT AFFIDAVIT.—If any submission filed within the period set forth in subsection (a) is deficient, including that the affidavit was not filed in the name of the holder of the international registration, the deficiency may be corrected after the statutory time period, within the time prescribed after notification of the deficiency. Such submission shall be accompanied by the additional

deficiency surcharge prescribed by the Director.

“(d) NOTICE OF REQUIREMENT.—Special notice of the requirement for such affidavit shall be attached to each certificate of extension of protection.

“(e) NOTIFICATION OF ACCEPTANCE OR REFUSAL.—The Director shall notify the holder of the international registration who files any affidavit required by this section of the Director’s acceptance or refusal thereof and, in the case of a refusal, the reasons therefor.

“(f) DESIGNATION OF RESIDENT FOR SERVICE OF PROCESS AND NOTICES.—If the holder of the international registration of the mark is not domiciled in the United States, the holder may designate, by a document filed in the United States Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the last designated address, or if the holder does not designate by a document filed in the United States Patent and Trademark Office the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark, such notices or process may be served on the Director.”.

#### SEC. 4. STUDY AND REPORT.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary of Commerce, in consultation with the Intellectual Property Enforcement Coordinator, shall study and report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on—

(1) the extent to which small businesses may be harmed by litigation tactics by corporations attempting to enforce trademark rights beyond a reasonable interpretation of the scope of the rights granted to the trademark owner; and

(2) the best use of Federal Government services to protect trademarks and prevent counterfeiting.

(b) RECOMMENDATIONS.—The study and report required under paragraph (1) shall also

include any policy recommendations the Secretary of Commerce and the Intellectual Property Enforcement Coordinator deem appropriate.

#### ADDITIONAL TEMPORARY EXTENSION OF SMALL BUSINESS PROGRAMS

Mr. REID. Mr. President, I now ask unanimous consent that the Senate proceed to the consideration of H.R. 4508.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4508) to provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and any statements related to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 4508) was ordered to a third reading, was read the third time, and passed.

#### STAR PRINT—S. 2939

Mr. REID. Mr. President, I now ask unanimous consent that S. 2939 be star printed with the changes at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### ORDERS FOR FRIDAY, JANUARY 29, 2010

Mr. REID. Mr. President, I ask unanimous consent that when the Senate

completes its business today, it adjourn until 9:30 a.m. on Friday, January 29; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate proceed to a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### PROGRAM

Mr. REID. Mr. President, there will be no rollcall votes during tomorrow’s session of the Senate. The next vote will be at 5:30 p.m. Monday. That vote will be on the motion to invoke cloture on the nomination of Patricia Smith to be Solicitor for the Department of Labor.

#### ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. REID. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that it adjourn under the previous order.

There being no objection, the Senate, at 6:41 p.m., adjourned until Friday, January 29, 2010, at 9:30 a.m.

#### CONFIRMATION

Executive nomination confirmed by the Senate, Thursday, January 28, 2010:

#### FEDERAL RESERVE SYSTEM

BEN S. BERNANKE, OF NEW JERSEY, TO BE CHAIRMAN OF THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM FOR A TERM OF FOUR YEARS.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE’S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.