

**SA 599. Mr. COBURN (for himself, Mr. DeMint, Mrs. Feinstein, Mrs. Boxer, Mr. Udall of Colorado, Mr. Enzi, and Mr. Burr) submitted an amendment intended to be proposed by him to the bill H.R. 1249, to amend title 35, United States Code, to provide for patent reform; which was ordered to lie on the table; as follows:**

On page 137, line 1, strike all through page 138, line 9, and insert the following:

**SEC. 22. PATENT AND TRADEMARK OFFICE FUNDING.**

(a) *Definitions.*--In this section, the following definitions shall apply:

(1) **DIRECTOR.**--The term "Director" means the Director of the United States Patent and Trademark Office.

(2) **FUND.**--The term "Fund" means the public enterprise revolving fund established under subsection (c).

(3) **OFFICE.**--The term "Office" means the United States Patent and Trademark Office.

(4) **TRADEMARK ACT OF 1946.**--The term "Trademark Act of 1946" means an Act entitled "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 (15 U.S.C. 1051 et seq.) (commonly referred to as the "Trademark Act of 1946" or the "Lanham Act").

(5) **UNDER SECRETARY.**--The term "Under Secretary" means the Under Secretary of Commerce for Intellectual Property.

(b) *Funding.*--

(1) **IN GENERAL.**--Section 42 of title 35, United States Code, is amended--

(A) in subsection (b), by striking "Patent and Trademark Office Appropriation Account" and inserting "United States Patent and Trademark Office Public Enterprise Fund"; and

(B) in subsection (c), in the first sentence--

(i) by striking "To the extent" and all that follows through "fees" and inserting "Fees"; and

(ii) by striking "shall be collected by and shall be available to the Director" and inserting "shall be collected by the Director and shall be available until expended".

(2) **EFFECTIVE DATE.**--The amendments made by paragraph (1) shall take effect on the later of--

(A) October 1, 2011; or

(B) the first day of the first fiscal year that begins after the date of the enactment of this Act.

(c) *USPTO Revolving Fund.*--

(1) **ESTABLISHMENT.**--There is established in the Treasury of the United States a revolving fund to be known as the "United States Patent and Trademark Office Public Enterprise Fund". Any amounts in the Fund shall be available for use by the Director without fiscal year limitation.

(2) **DERIVATION OF RESOURCES.**--There shall be deposited into the Fund on or after the effective date of subsection (b)(1)--

(A) any fees collected under sections 41, 42, and 376 of title 35, United States Code, provided that notwithstanding any other provision of law, if such fees are collected by, and payable to, the Director, the Director shall transfer such amounts to the Fund, provided, however, that no funds collected pursuant to section 9(h) of this Act or section 1(a)(2) of Public Law 111-45 shall be deposited in the Fund; and

(B) any fees collected under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113).

(3) **EXPENSES.**--Amounts deposited into the Fund under paragraph (2) shall be available, without fiscal year limitation, to cover--

(A) all expenses to the extent consistent with the limitation on the use of fees set forth in section 42(c) of title 35, United States Code, including all administrative and operating expenses, determined in the discretion of the Under Secretary to be ordinary and reasonable, incurred by the Under Secretary and the Director for the continued operation of all services, programs, activities, and duties of the Office relating to patents and

trademarks, as such services, programs, activities, and duties are described under--

(i) title 35, United States Code; and

(ii) the Trademark Act of 1946; and

(B) all expenses incurred pursuant to any obligation, representation, or other commitment of the Office.

(d) *Annual Report.*--Not later than 60 days after the end of each fiscal year, the Under Secretary and the Director shall submit a report to Congress which shall--

(1) summarize the operations of the Office for the preceding fiscal year, including financial details and staff levels broken down by each major activity of the Office;

(2) detail the operating plan of the Office, including specific expense and staff needs for the upcoming fiscal year;

(3) describe the long term modernization plans of the Office;

(4) set forth details of any progress towards such modernization plans made in the previous fiscal year; and

(5) include the results of the most recent audit carried out under subsection (f).

(e) *Annual Spending Plan.*--

(1) **IN GENERAL.**--Not later than 30 days after the beginning of each fiscal year, the Director shall notify the Committees on Appropriations of both Houses of Congress of the plan for the obligation and expenditure of the total amount of the funds for that fiscal year in accordance with section 605 of the

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Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006 (Public Law 109-108; 119 Stat. 2334).

(2) **CONTENTS.**--Each plan under paragraph (1) shall--

(A) summarize the operations of the Office for the current fiscal year, including financial details and staff levels with respect to major activities; and

(B) detail the operating plan of the Office, including specific expense and staff needs, for the current fiscal year.

(f) *Audit.*--The Under Secretary shall, on an annual basis, provide for an independent audit of the financial statements of the Office. Such audit shall be conducted in accordance with generally acceptable accounting procedures.

(g) *Budget.*--The Fund shall prepare and submit each year to the President a business-type budget in a manner, and before a date, as the President prescribes by regulation for the budget program.

(h) *Surcharge.*--Notwithstanding section 11(i)(1)(B), amounts collected pursuant to the surcharge imposed under section 11(i)(1)(A) shall be credited to the United States Patent and Trademark Office Public Enterprise Fund.