

104TH CONGRESS
1ST SESSION

H. R. 2533

To amend title 35, United States Code, to establish the United States Intellectual Property Organization, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 25, 1995

Mr. MOORHEAD (both by request) (for himself and Mrs. SCHROEDER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 35, United States Code, to establish the United States Intellectual Property Organization, 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 “United States Intellec-
5 tual Property Organization Act of 1995”.

6 **SEC. 2. FINDINGS.**

7 The Congress of the United States finds that—

8 (a) the granting of patents and the registration
9 of trademarks by the United States have promoted

1 the useful arts, strengthened the United States econ-
2 omy, improved interstate and international com-
3 merce, and benefited consumers by increasing the
4 types of products and services available to the public
5 and by providing the public with the ability to distin-
6 guish between competing products and services;

7 (b) the Patent and Trademark Office has per-
8 formed the duties respecting the examination of pat-
9 ent and trademark applications, the granting of pat-
10 ents, and the registration of trademarks;

11 (c) the Patent and Trademark Office currently
12 has numerous services and products that the users
13 of those services or products generally pay to re-
14 ceive;

15 (d) because there are a large number of trans-
16 actions, the revenues from fees associated with the
17 services and products defray the cost of delivering
18 those services and products;

19 (e) because of the increasing demand for serv-
20 ices and the changing nature of those services, the
21 Patent and Trademark Office needs to be able to re-
22 spond quickly to changes in demand or workload;

23 (f) for the above reasons, the Patent and
24 Trademark Office needs flexibility in budgetary, fis-
25 cal, and other management matters;

1 (g) a restructured organization would provide
2 the necessary flexibility for the entity to meet its ob-
3 ligations and ensure that the patent and trademark
4 laws are promptly and efficiently administered; and

5 (h) the United States Intellectual Property Or-
6 ganization should succeed to the duties of the Patent
7 and Trademark Office respecting the examination of
8 patent and trademark applications.

9 **TITLE I—UNITED STATES INTELLECTUAL**
10 **PROPERTY ORGANIZATION**

11 **Subtitle A—Establishment; Powers and**
12 **Duties; Organization and Management**

13 **SEC. 101. ESTABLISHMENT OF THE ORGANIZATION.**

14 Section 1 of title 35, United States Code, is amended
15 to read as follows:

16 **“§ 1. Establishment**

17 “(a) ESTABLISHMENT.—There is hereby established
18 a body corporate to be known as the “United States Intel-
19 lectual Property Organization” which shall be a unique
20 agency of the Department of Commerce and report to the
21 Secretary of Commerce, subject to the policy direction of
22 the Under Secretary of Commerce for Intellectual Prop-
23 erty with respect to patents and trademarks, and which
24 is to—

1 “(1) perform all duties respecting the examina-
2 tion of patent applications;

3 “(2) perform all duties respecting the examina-
4 tion of trademark applications;

5 “(3) disseminate patent and trademark infor-
6 mation to the public; and

7 “(4) perform all other duties the responsibility
8 for which is established by the Congress or that are
9 necessary for the administration of the Organization.

10 “(b) OFFICES.—The United States Intellectual Prop-
11 erty Organization shall maintain an office for the service
12 of process in the District of Columbia or the metropolitan
13 area thereof, and shall be deemed, for purposes of venue
14 in civil actions, to be a resident of the District of Colum-
15 bia. The Organization may establish offices in such other
16 place or places as it may deem necessary or appropriate
17 in the conduct of its business.

18 “(c) REFERENCE.—For purposes of this title, the
19 United States Intellectual Property organization shall also
20 be referred to as the ‘Organization’.”.

21 **SEC. 102. POWERS AND DUTIES.**

22 Section 2 of title 35, United States Code is amended
23 to read as follows:

1 **§2. Power and duties**

2 “(a) The Organization, under the policy direction of
3 the Under Secretary of Commerce for Intellectual Prop-
4 erty with respect to patents and trademarks, shall have
5 the powers to carry out the functions and duties that are
6 authorized by law with respect to—

7 “(1) the examination of patent and trademark
8 applications;

9 “(2) carrying on studies, programs, or ex-
10 changes of items or services regarding domestic and
11 international patent and trademark law or the ad-
12 ministration of the Organization, or any other mat-
13 ter included in the organic acts for which the Orga-
14 nization is responsible; and

15 “(3) carrying on programs and studies coopera-
16 tively with foreign patent and trademark offices and
17 international intergovernmental organizations or au-
18 thorizing such programs and studies to be carried
19 on, in connection with the examination of patent and
20 trademark applications.

21 “(b) In order to accomplish the purposes of this Act,
22 the Organization—

23 “(1) shall have perpetual succession unless dis-
24 solved by Act of Congress;

25 “(2) shall adopt and use a corporate seal, which
26 shall be judicially noticed;

1 “(3) may sue and be sued in its corporate
2 name;

3 “(4) may indemnify the Chief Executive Officer,
4 officers, attorneys, agents and employees of the Or-
5 ganization for liabilities and expenses incurred with-
6 in the scope of their employment;

7 “(5) may adopt, amend, and repeal bylaws,
8 rules, and regulations, governing the manner in
9 which its business will be conducted and the power
10 granted to it by law will be exercised;

11 “(6) if it is determined by the Administrator of
12 General Services and the Secretary of Commerce
13 that the Organization can acquire real property
14 more cost effectively for the Organization than the
15 General Services Administration, may acquire, con-
16 struct, purchase, lease, hold, manage, operate, and
17 alter any property real, personal, or mixed, or any
18 interest therein, as it deems necessary in the trans-
19 action of its business, and sell, lease, grant, and dis-
20 pose of such property, as it deems necessary to ef-
21 fectuate the purposes of this title, for periods of time
22 or for terms that the Organization deems necessary,
23 without regard to the provisions of the Federal
24 Property and Administrative Services Act of 1949
25 (40 U.S.C. 471 et seq.), as amended, the Public

1 Buildings Act of 1959, as amended (40 U.S.C. 601
2 et seq.), the McKinney Act (42 U.S.C. 11411–12),
3 and section 759 of title 40 (the “Brooks Act”) (40
4 U.S.C. 759, as amended: *Provided*, That if the Ad-
5 ministrator undertakes such activities on behalf of
6 the Organization, the Administrator shall have the
7 authority to charge the Organization for the actual
8 cost of undertaking these activities, but the Adminis-
9 trator shall exempt the Organization from paying
10 the approximate commercial charges provided for in
11 subsection 490(j) of title 40: *Provided further*, That
12 the Chief Executive Officer shall develop a results-
13 oriented acquisition and property disposal process
14 that must include quantitative and qualitative meas-
15 ures and standards for evaluating (1) the cost effec-
16 tiveness of the acquisition process and (2) the extent
17 to which the acquisition of goods and services cost
18 effectively satisfy the needs for which the items were
19 acquired. The process shall be consistent with the
20 principles of impartiality and competitiveness;

21 “(7)(A) may make purchases, contracts for the
22 construction, alteration, maintenance, or manage-
23 ment and operation of facilities and contracts for the
24 supplies or services, except personal services, after
25 advertising, in such manner and at such times suffi-

1 ciently in advance of opening bids, as the Organiza-
2 tion shall determine to be adequate to insure notice
3 and an opportunity for competition: *Provided*, That
4 advertising shall not be required when the Organiza-
5 tion determines that the making of any such pur-
6 chase or contract without advertising is necessary in
7 the interest of furthering the purposes of this title,
8 or that advertising is not reasonably practicable;

9 “(B) may enter into and perform such pur-
10 chases and contracts for printing services, to include
11 the process of composition, platemaking, presswork,
12 silk screen processes, binding, microform, and the
13 end items of such processes, as it deems necessary
14 to effectuate the functions of the Organization, with-
15 out regard to sections 501 through 517 and 1101
16 through 1123 of title 44;

17 “(C) Notwithstanding subparagraphs (A) and
18 (B) above, procurement procedures, including those
19 related to advertising, shall be applied consistent
20 with all obligations under international agreements
21 on government procurement to which the United
22 States is a signatory. The Organization shall issue
23 internal guidelines, as appropriate, to ensure consist-
24 ency with such obligations;

1 “(8) may use, with their consent, services,
2 equipment, personnel, and facilities of other civilian
3 or military agencies and instrumentalities of the
4 Federal Government, on a reimbursable basis, and,
5 on a similar basis, to cooperate with such other
6 agencies and instrumentalities in the establishment
7 and use of services, equipment, and facilities of the
8 Organization;

9 “(9) may obtain from the Administrator of the
10 General Services Administration such services as he
11 or she is authorized to provide to agencies of the
12 United States, on the same basis as those services
13 are provided to other agencies of the United States;

14 “(10) may use, with the consent of the agency,
15 government, or organization concerned, the services,
16 records, facilities, or personnel of any State or local
17 government agency or instrumentality or foreign
18 government or international organization to perform
19 necessary functions on the Organization’s behalf;

20 “(11) may enter into and perform such con-
21 tracts, leases, cooperative agreements, or other
22 transactions with international, foreign and domestic
23 public agencies and private organizations and per-
24 sons as needed in the conduct of its business and on

1 such terms as it deems appropriate, subject only to
2 applicable laws;

3 “(12) except as otherwise provided in section
4 10101 of the Omnibus Budget Reconciliation Act of
5 1990, as amended (35 U.S.C. 41 note) may, as a fi-
6 nancially self-sustaining Federal organization with-
7 out reliance upon general taxpayer revenues, retain
8 and utilize all of its revenues and receipts, including
9 revenues from the sale, lease, or disposal of any
10 property, real, personal or mixed, or any interest
11 therein, of the Organization, including research and
12 development and capital investment;

13 “(13) shall have the priority of the United
14 States with respect to the payment of debts out of
15 bankrupt, insolvent, and decedents’ estates;

16 “(14) may accept monetary gifts or donations
17 of services, or of property, real, personal, mixed, tan-
18 gible or intangible, in aid of any purposes herein au-
19 thorized. The Chief Executive Officer shall establish
20 written rules setting forth the criteria to be used in
21 determining whether or not the acceptance of con-
22 tributions of monetary gifts or donations or services,
23 or of property, real, personal, mixed, tangible or in-
24 tangible under this subsection would reflect unfavor-
25 ably upon the ability of the Organization, or any em-

1 ployee of the Organization, to carry out its respon-
2 sibilities of official duties in a fair and objective
3 manner, or would compromise the integrity or the
4 appearance of the integrity of its programs or any
5 official involved in those programs;

6 “(15) may execute, in accordance with its by-
7 laws, rules and regulations, all instruments nec-
8 essary and appropriate in the exercise of any of its
9 powers;

10 “(16) may provide for liability insurance and
11 insurance against any loss in connection with its
12 property, other assets or operations either by con-
13 tract or by self-insurance; and

14 “(17) shall pay any settlement or judgment en-
15 tered against it or arising from the act or omission
16 of any officer or employee of the Organization from
17 the funds of the Organization and not from amounts
18 available under section 1304 of title 31.”.

19 **SEC. 103. ORGANIZATION AND MANAGEMENT.**

20 Section 3 of title 35, United States Code, is amended
21 to read as follows:

22 **“§ 3. Officers, employees, and Inspector General**

23 “(a) OFFICERS.—

24 “(1) CHIEF EXECUTIVE OFFICER.—The man-
25 agement of the Organization shall be vested in a

1 Chief Executive Officer who shall be a citizen of the
2 United States and who shall be appointed by the
3 Secretary of Commerce. The Chief Executive Officer
4 shall be a person who, by reason of professional ex-
5 perience regarding patents or trademarks and of
6 management experience, is especially qualified to
7 manage the Organization: *Provided, however,* That
8 the office of Chief Executive Officer becomes vacant
9 or the Chief Executive Officer becomes incapaci-
10 tated, the Secretary may appoint an existing officer
11 of the Organization to act in such office until the of-
12 fice is filled.

13 “(2) OTHER OFFICERS.—The Secretary shall
14 appoint an officer principally responsible for the ex-
15 amination of patent applications, who shall be the
16 principal adviser to the Chief Executive Officer on
17 all issues affecting the Organization’s patent exam-
18 ining operations, and an officer principally respon-
19 sible for the examination of trademark applications,
20 who shall be the principal advisor to the Chief Exec-
21 utive Officer on all issues affecting the Organiza-
22 tion’s trademark examining operations.

23 “(b) DUTIES.—The Chief Executive Officer—

24 “(1) shall be responsible for the management
25 and direction of the Organization, including the ex-

1 amination of patent and trademark applications, and
2 may delegate these responsibilities to the officers
3 and employees of the Organization whose perform-
4 ance of these duties shall be subject to the Chief Ex-
5 ecutive Officer’s review;

6 “(2) shall be subject to the direction of the
7 Under Secretary of Commerce for Intellectual Prop-
8 erty on patent and trademark policy matters;

9 “(3) shall receive as basic compensation for a
10 calendar year an amount not to exceed the equiva-
11 lent of the annual rate of basic pay for level I of the
12 Executive Schedule under section 5312 of title 5
13 and, in addition, may receive as a bonus awarded by
14 the Secretary, an amount up to the equivalent of the
15 annual rate of basic pay for level I, based upon the
16 Secretary’s evaluation of the Chief Executive Offi-
17 cer’s performance—

18 “(A) as defined in an annual performance
19 agreement between the Chief Executive Officer
20 and the Secretary incorporating measurable
21 goals in such specific areas as productivity,
22 cycle times, efficiency, cost-reduction, innovative
23 ways of delivering patent and trademark serv-
24 ices, and customer satisfaction, as delineated in
25 an annual performance plan, and

1 “(B) as reflected in an annual report on
2 the results of the Organization’s performance, a
3 copy of which shall be provided to the Office of
4 Management and Budget and the Congress:

5 *Provided, however,* That the Secretary shall provide
6 the Director of the Office of Management and Budg-
7 et the opportunity to review, before any bonus is
8 awarded, the annual performance standards, the
9 level of the proposed bonus, and any information
10 that the Secretary forwards regarding the bonus;

11 “(4) shall serve on the basis of a six-year con-
12 tract with the Secretary, so long as performance, as
13 set forth in the annual performance agreement, is
14 satisfactory, and

15 “(5) shall, before taking office, take an oath to
16 discharge faithfully the duties thereof.

17 “(c) STATUS OF OFFICERS AND EMPLOYEES.—Offi-
18 cers and employees of the Organization shall be officers
19 and employees of the United States as defined by sections
20 2104 and 2105, title 5. Except as otherwise provided in
21 this section, officers and employees of the Organization
22 shall be subject to the provisions of title 5 relating to Fed-
23 eral employees.

24 “(d) The Chief Executive Officer shall affix the com-
25 pensation and number of, appoint, and direct all employ-

1 ees of the Organization that he deems necessary to effect
2 the provisions of this title, consistent with chapter 23, title
3 5, United States Code; such determination of number, ap-
4 pointment, and compensation (including any awards) to
5 be made without regard to any other of the provisions of
6 title 5, United States Code, except that the principle of
7 veteran's preference shall apply with regard to appoint-
8 ment.

9 “(e) LIMIT ON COMPENSATION.—Except as otherwise
10 provided by law, no officer or employee of the Organiza-
11 tion other than the Chief Executive Officer shall receive
12 basic compensation for a calendar year that exceeds the
13 equivalent of the basic rate of pay for the Senior Executive
14 Service ES–6 (5 U.S.C. 5382). Total compensation, in-
15 cluding compensation based on performance (but not in-
16 cluding benefits or contribution to retirement systems),
17 may not exceed the equivalent of the basic rate of pay
18 for level I of the Executive Schedule under section 5312
19 of title 5.

20 “(f) ESTABLISHMENT OF CLASSIFICATION, APPOINT-
21 MENT, AND COMPENSATION SYSTEMS.—Notwithstanding
22 the provisions of title 5, United States Code, the Chief
23 Executive Officer shall have sole and exclusive discretion:

24 “(1) over the establishment, amendment, or re-
25 peal of any position classification system, any system

1 to determine the qualifications and procedures for
2 appointment; any compensation and award system
3 except gainsharing, including wages and compensa-
4 tion based on performance, and over any supplement
5 to contributions of the Organization to the retire-
6 ment and benefits programs; and

7 “(2) to fix and adjust rates of pay without re-
8 gard to the provisions of chapter 53 of title 5, Unit-
9 ed States Code and abolish positions and layoff em-
10 ployees without regard to the provisions of chapter
11 35 of title 5, except that the principle of veteran’s
12 preference shall apply in any layoff system.

13 “(g) SPECIFIC EXEMPTIONS FROM TITLE 5.—To ac-
14 complish the above, the following provisions of title 5,
15 United States Code, shall not apply to the Organization
16 and its employees:

17 “(1) Chapter 31 (employment authorities) ex-
18 cept for the provision governing nepotism (5 U.S.C.
19 3110).

20 “(2) Chapter 33 (examination, selection, and
21 placement); except that the provisions governing rec-
22 ommendations of Senators or Representatives (5
23 U.S.C. 3303), selective service registration (5 U.S.C.
24 3328), the oath of office (5 U.S.C. 3331), and em-
25 ployee affidavits (5 U.S.C. 3333) and the principle

1 of veteran's preference, shall apply to the Organiza-
2 tion and its employees.

3 “(3) Chapter 35 (retention preference, restora-
4 tion, and reemployment), except the principle of vet-
5 eran's preference shall apply to any layoff system.

6 “(4) Chapter 43 (performance appraisal).

7 “(5) Chapter 45 (incentive awards).

8 “(6) Chapter 51 (classification).

9 “(7) Chapter 53, subchapter 3 (general pay
10 rates).

11 “(h) APPLICATION OF TITLE 5.—The provisions of
12 chapters 83 (Civil Service Retirement System), 84 (Fed-
13 eral Employees Retirement System), 87 (life insurance),
14 and 89 (health insurance) of title 5 shall apply to the offi-
15 cers and employees of the Organization. The Organization
16 may supplement the benefits provided under chapters 83
17 and 84 from time to time. The Organization also may sup-
18 plement the benefits provided under chapters 87 and 89
19 to its officers and employees.

20 “(i) PAYMENTS FOR BENEFITS.—

21 “(1) The Organization shall make such pay-
22 ments to the Employees' Compensation Fund as are
23 required by section 8147 of title 5.

24 “(2) The Organization shall pay to the Civil
25 Service Retirement and Disability Fund—

1 “(A) such employee deductions and agency
2 contributions as are required by sections 8334,
3 8422, and 8423 of title 5;

4 “(B) such additional agency contributions
5 as are determined necessary by the Office of
6 Personnel Management to pay, in combination
7 with the sums under paragraph (1), the normal
8 cost (determined using dynamic assumptions) of
9 retirement benefits for the employees of the Or-
10 ganization who are subject to subchapter III of
11 chapter 83 of title 5; and

12 “(C) such additional amounts, not to ex-
13 ceed two percent of the amounts under para-
14 graphs (1) and (2), as are determined necessary
15 by the Office of Personnel Management to pay
16 the cost of administering retirement benefits for
17 the Organization’s employees and retirees and
18 their survivors (which amounts shall be avail-
19 able to the Office as provided in section
20 8348(a)(1)(B) of title 5).

21 “(3)(A) The Organization shall pay to the Em-
22 ployees’ Life Insurance Fund—

23 “(i) such employee deductions and agency
24 contributions as are required by sections 8707
25 and 8708(a) of title 5; and

1 “(ii) such amounts as are determined nec-
2 essary by the Office of Personnel Management
3 under subparagraph (2)(C) of this subsection to
4 reimburse the Office for contributions under
5 section 8708(d) of title 5.

6 “(B) The Organization shall pay to the Em-
7 ployees Health Benefits Fund—

8 “(i) such employee payments and agency
9 contributions as are required by section 8906
10 (a) through (f) of title 5, and

11 “(ii) such amounts as are determined nec-
12 essary by the Office of Personnel Management
13 under subparagraph (2)(C) of this subsection to
14 reimburse the Office for contributions under
15 section 8905(g)(1) of title 5.

16 “(C) The amounts required under subpara-
17 graphs (A)(ii) and (B)(ii) of this paragraph shall
18 pay the Government contributions for retired em-
19 ployees who retire from the Organization after the
20 date of transfer, the survivors of such retired em-
21 ployees, and survivors of employees of the Organiza-
22 tion who die after the date of transfer, prorated to
23 reflect the portion of the total civilian service of such
24 employees and retired employees that was performed
25 for the Organization after the date of transfer.

1 “(4) The Organization shall pay to the Thrift
2 Savings Fund such employee and agency contribu-
3 tions as are required by section 8432 of title 5.

4 “(j) JOINT LABOR-MANAGEMENT COMMITTEE.—The
5 Organization shall establish a joint committee, which will
6 include an equal number of members appointed by the Or-
7 ganization and employees who are designated by its labor
8 organizations accorded exclusive recognition under chapter
9 71 of title 5 to assist the Chief Executive Officer by mak-
10 ing recommendations concerning the design and imple-
11 mentation of any position classification system, and any
12 system to determine qualifications and procedures for em-
13 ployment, any compensation and awards system, and con-
14 tributions of the Organization to retirement and benefits
15 programs.

16 “(k) RESTRICTIONS ON FTE NOT APPLICABLE.—
17 The Organization shall not be subject to any restriction
18 or limitation on the number of full-time equivalent Federal
19 employees it may employ unless such restriction or limita-
20 tion is made applicable to the Organization through an
21 amendment to this subsection. Beginning with the first
22 full fiscal period following enactment of this bill, the num-
23 ber of full-time equivalent Federal employees available to
24 the Organization shall be adjusted annually by a percent-
25 age equivalent to the projected change as determined by

1 the Secretary of Commerce in patent and trademark appli-
2 cation filings, respectively, for each fiscal year. The projec-
3 tion shall be based upon a linear regression model taking
4 into account productivity changes.

5 “(l) INSPECTOR GENERAL.—The Inspector General
6 of the Department of Commerce shall carry out all respon-
7 sibilities and duties required of him or her, and shall have
8 all powers and authorities vested in him or her, by the
9 Inspector General Act of 1978 (5 U.S.C. App. 3) as
10 amended, with respect to the programs, operations, and
11 activities of the Organization.”.

12 **SEC. 104. DEFINITIONS.**

13 Section 6 of title 35 of the United States Code is
14 amended to read as follows:

15 **“§ 6. Definitions**

16 “As used in this title, the following terms have the
17 meanings indicated:

18 “(a) The term ‘Chief Executive Officer’ means
19 the chief executive officer of the United States Intel-
20 lectual Property Organization.

21 “(b) The term ‘Commissioner’ means the Com-
22 missioner of Patent and Trademarks.

23 “(c) The term ‘Department’ means the Depart-
24 ment of Commerce.

1 “(d) The term ‘intellectual property’ shall in-
2 clude rights in inventions; in trademarks, service
3 marks, and commercial names and designations; in
4 literary, artistic and scientific works; in perform-
5 ances of performing artists, phonograms and broad-
6 casts; in industrial designs; in trade secrets and sci-
7 entific discoveries; in semiconductor chip layout de-
8 signs; in geographical indications; and all other
9 rights resulting from intellectual activity in the in-
10 dustrial, scientific, literary, or artistic fields.

11 “(e) The term ‘organic statutes’ includes this
12 Act and the Federal statutes that confer authority
13 upon and refer specifically to the Office, the United
14 States Intellectual Property Organization, the Com-
15 missioner, or the Chief Executive Officer, including
16 the Patent Act (35 U.S.C. 1, et seq.) and the Trade-
17 mark Act (15 U.S.C. 1051 et seq.).

18 “(f) The term ‘Organization’ means the United
19 States Intellectual Property Organization.

20 “(g) The terms ‘Patent and Trademark Office’
21 and ‘Office’ mean the Patent and Trademark Of-
22 fice of the Department of Commerce.

23 “(h) The term ‘Secretary’ means the Secretary
24 of Commerce.”.

1 **Subtitle B—Trademark Trial and Appeal**
2 **Board; Board of Patent Appeals and**
3 **Interferences; Suits By and Against the**
4 **Organization**

5 **SEC. 105. TRADEMARK TRIAL AND APPEAL BOARD.**

6 Section 17 of the Act of July 5, 1946 (commonly
7 called the Trademark Act of 1946), as amended, is amend-
8 ed to read as follows:

9 “(a) FUNCTION.—In every case of interference, oppo-
10 sition to registration, application to register as a lawful
11 concurrent user, or application to cancel the registration
12 of a mark, the Chief Executive Officer of the United
13 States Intellectual Property Organization shall give notice
14 to all parties and shall direct a Trademark Trial and Ap-
15 peal Board to determine and decide the respective rights
16 of registration.

17 “(b) COMPOSITION.—The Trademark Trial and Ap-
18 peal Board shall include the Chief Executive Officer, the
19 officer of the Organization principally responsible for the
20 examination of trademarks, the officer of the Organization
21 principally responsible for the examination of patents, and
22 members competent in trademark law who are appointed
23 by the Secretary of Commerce. Each case shall be heard
24 by at least three members of the Board.”.

1 **SEC. 106. BOARD OF PATENT APPEALS AND INTER-**
2 **FERENCES.**

3 Section 7 of title 35, United States Code is amended
4 to read as follows:

5 **“§ 7. Board of Patent Appeals and Interferences**

6 “(a) COMPOSITION.—There shall be in the United
7 States Intellectual Property Organization a Board of Pat-
8 ent Appeals and Interferences. The Chief Executive Offi-
9 cer, the officer of the Organization principally responsible
10 for the examination of patents, the officer of the Organiza-
11 tion principally responsible for the examination of trade-
12 marks, and the examiners-in-chief shall constitute the
13 Board. The examiners-in-chief shall be appointed by the
14 Secretary of Commerce and shall be persons of competent
15 legal knowledge and scientific ability.

16 “(b) FUNCTION.—The Board of Patent Appeals and
17 Interferences shall, on written appeal of an applicant, re-
18 view adverse decisions of examiners upon applications for
19 patents and shall determine priority and patentability of
20 invention in interferences declared under section 135(a)
21 of this title. Each appeal and interference shall be heard
22 by at least three members of the Board. Only the Board
23 of Patent Appeals and Interferences may grant
24 rehearings.”.

1 **SEC. 107. SUITS BY AND AGAINST THE ORGANIZATION.**

2 (a) Sections 8 through 14 of this title (35 U.S.C. 8,
3 9, 10, 11, 12, 13, and 14) are renumbered 9, 10, 11, 12,
4 13, 14, and 15, respectively.

5 (b) The following new section is added to this title:

6 **“§8. Suits by and against the Organization**

7 “(a) ACTIONS UNDER UNITED STATES LAW.—Any
8 civil action, suit, or proceeding to which the Organization
9 is a party is deemed to arise under the laws of the United
10 States. Exclusive jurisdiction over all civil actions by or
11 against the Organization is in the Federal courts as pro-
12 vided by law. For purposes of filing suits, the Chief Execu-
13 tive Officer shall be the head of the agency.

14 “(b) CONTRACT CLAIMS.—Any action, suit, or pro-
15 ceeding against the Organization founded upon contract
16 shall be subject to the limitations and exclusive remedy
17 provided in sections 1346(a)(2) and 1491 through 1509
18 of title 28, whether or not such contract claims are cog-
19 nizable under sections 507, 1346, 1402, 1491, 1496,
20 1497, 1501, 1503, 2071, 2072, 2411, 2501, and 2512 of
21 title 28. For purposes of the Contract Disputes Act of
22 1978 (41 U.S.C. 601), the Chief Executive Officer shall
23 be deemed to be the agency head with respect to contract
24 claims arising with respect to the Organization.

25 “(c) TORT CLAIMS.—Any action, suit, or proceeding
26 against the Organization founded upon tort shall be sub-

1 ject to the limitations and exclusive remedies provided in
2 subsection 1346(b) and sections 2671 through 2680 of
3 title 28, whether or not such tort claims are cognizable
4 under section 1346(b) of title 28.

5 “(d) FEDERAL REMEDIES APPLY.—Any action, suit,
6 or proceeding against the Organization based upon civil
7 rights laws shall be subject to the limitations and exclusive
8 remedies provided for other Federal Government executive
9 agencies under 42 U.S.C. 2000e–16, 29 U.S.C. 633a, 29
10 U.S.C. 791 et seq., and 29 U.S.C. 206(d).

11 “(e) PROHIBITION ON ATTACHMENTS, LIENS,
12 ETC.—No attachment, garnishment, lien, or similar proc-
13 ess, intermediate or final, in law or equity, may be issued
14 against property of the Organization.”

15 **SEC. 108. ANNUAL MANAGEMENT REPORT.**

16 Section 15 of title 35, United States Code, as redesign-
17 nated by section 107 of this Act, is amended to read as
18 follows:

19 **“§ 15. Reports to Congress**

20 “(a) ANNUAL REPORT ON MONIES AND STATIS-
21 TICS.—The Chief Executive Officer shall report to the
22 President and the Congress annually the monies received
23 and expended, statistics concerning the work of the Orga-
24 nization, and other information relating to the Organiza-
25 tion as may be useful to the Congress or the public.

1 “(b) MANAGEMENT REPORT.—The Chief Executive
2 Officer shall prepare and submit to the President and the
3 Congress an annual management report as required by
4 section 9106 of title 31.”.

5 **Subtitle C—Fees; Organization Moneys;**
6 **Borrowing; Audits**

7 **SEC. 109. FEES.**

8 “(a) ESTABLISHMENT OF FEE SCHEDULE.—Section
9 41 of title 35 of the United States Code is amended to
10 read as follows:

11 **“§41. Fees**

12 “Consistent with section 553 of title 5, the Organiza-
13 tion shall recommend a schedule to the Secretary of fees
14 to be levied for the services rendered and products pro-
15 vided in carrying out its activities. Any schedule of fees,
16 or revision thereof, before it is promulgated, must be ap-
17 proved by the Secretary.”.

18 (b) PRINCIPLES FOR DEVELOPING FEE SCHED-
19 ULES.—In the course of the deliberations to propose modi-
20 fications to the fee schedule, the Organization shall be
21 guided by the following principles:

22 (1) The fees shall be fair and equitable and
23 shall give due consideration to the objectives of the
24 patent and trademark systems.

1 (2) Financial relief, in the form of a 50 percent
2 reduction of the major fees for filing a patent appli-
3 cation, and issuing and maintaining a patent, shall
4 be provided to individual inventors and non-profit
5 organizations. Such financial relief shall be provided
6 to small business concerns as defined in section 3 of
7 the Small Business Act (15 U.S.C. 632) and by reg-
8 ulations established by the Small Business Adminis-
9 tration.

10 (3) Fees shall be established, in the aggregate,
11 in such a manner that all costs of operating and
12 maintaining the Organization shall be recovered, in-
13 cluding depreciation, capital expenditures, and pay-
14 ments in lieu of taxes, if any, and to provide the
15 reimbursement under section 1503c(d) of title 15,
16 United States Code (15 U.S.C. 1503c(d)).

17 (4) Fees for the processing of trademark reg-
18 istrations and for other services and materials relat-
19 ed to trademarks shall be calculated based solely
20 upon the full cost of, and capital expenditures for,
21 such trademark operations. Furthermore, trademark
22 revenues shall be used exclusively for the processing
23 of trademark registrations and for other services and
24 materials related to trademarks, including a fair
25 share of allocated general and administrative sup-

1 port costs and the reimbursement provided under
2 section 1503c(d) of title 15, United States Code (15
3 U.S.C. 1503c(d)).

4 (5) Fees for the processing of patent grants
5 and for other services and materials related to pat-
6 ents shall be calculated based solely upon the full
7 cost of, and capital expenditures for, such patent op-
8 erations. Furthermore, patent revenues shall be used
9 exclusively for the processing of patent grants and
10 for other services and materials related to patents,
11 including a fair share of allocated general and ad-
12 ministrative support costs and the reimbursement
13 provided under section 1503c(d) of title 15, United
14 States Code (15 U.S.C. 1503c(d)).

15 (c) TRANSITION PROVISION FOR FEES.—The fee
16 schedule promulgated by the Patent and Trademark Of-
17 fice, which is in effect immediately prior to the enactment
18 of this legislation, shall remain in full force and effect until
19 such time as the Secretary of Commerce has established
20 and promulgated a schedule of fees.

21 (d) EXEMPTION FROM SEQUESTRATION ORDERS.—
22 Section 255(g)(1)(A) of the Balanced Budget and Emer-
23 gency Deficit Control Act of 1985 (2 U.S.C. 905(g)(a)(A))
24 is amended by inserting after the “Tennessee Valley Au-

1 thority fund . . .” the following, “United States Intellec-
2 tual Property Fund”.

3 (e) CONFORMING AMENDMENTS TO OBRA.—Section
4 10101 of the Omnibus Reconciliation Act of 1990 (35
5 U.S.C. 41 note), as amended, is amended as follows:

6 (1) In subsection (a), by striking the phrase
7 “by subsections (a) and (b)”.

8 (2) In subsections (b)(1)(A) and (b)(2)(A), by
9 striking “Patent and Trademark activities in the
10 Department of Commerce” and inserting in lieu
11 thereof “United States Intellectual Property Organi-
12 zation”.

13 (3) In subsections (b) and (c), by striking all
14 other references to “Patent and Trademark Office”
15 and substituting therefor “United States Intellectual
16 Property Organization”.

17 (4) In subsection (c), by striking “Commis-
18 sioner of Patents and Trademarks” and inserting in
19 lieu thereof “Chief Executive Officer of the United
20 States Intellectual Property Organization”.

21 (5) Notwithstanding the provisions of any other
22 law, except insofar as such law amends this sen-
23 tence, on October 1, 1998, the provisions of section
24 10101, as they apply to the Organization, shall cease
25 to apply to the revenues of the Organization.

1 (f) RECOMMEND TRADEMARK FEE SCHEDULE.—
2 Subsection 31(a) of the Act of July 5, 1946 (commonly
3 referred to as the Trademark Act of 1946), as amended,
4 is amended to read as follows:

5 “(a) Consistent with section 553 of title 5, the Orga-
6 nization shall recommend to the Secretary a schedule of
7 fees to be levied for the services rendered and products
8 provided in carrying out its activities. Any schedule of
9 fees, or revision therefore, before it is promulgated, must
10 be approved by the Secretary.”.

11 (g) PCT FEES.—Section 371 of title 35, United
12 States Code, is amended to read as follows:

13 **“§ 376. Fees required**

14 “The required payment of the international fee and
15 the handling fee, which amounts are specified in the Regu-
16 lations, shall be paid in United States currency. The Orga-
17 nization shall charge national fees as provided in section
18 41 of this title and may also charge the following fees:

19 “(a) A transmittal fee (see section 361(d)).

20 “(b) A search fee (see section 361(d)).

21 “(c) A supplemental search fee (to be paid
22 when required).

23 “(d) A preliminary examination fee and any ad-
24 ditional fees (see section 362(b)).

1 “(b) AUTHORITY TO INVEST.—Upon the request of
2 the Organization, the Secretary of the Treasury shall in-
3 vest such portion of the Fund as is not, in the judgment
4 of the Organization, required to meet current withdrawals.
5 Such investments shall be in public debt securities with
6 maturities suitable to the needs of the Fund, as deter-
7 mined by the Organization, and bearing interest at rates
8 determined by the Secretary of the Treasury, taking into
9 consideration current market yields on outstanding mar-
10 ketable obligations of the United States of comparable ma-
11 turities. The income on such investments shall be credited
12 to and form a part of the Fund.

13 “(c) AUTHORITY TO ISSUE OBLIGATIONS.—To assist
14 in financing its activities, the Organization is authorized
15 after October 1, 1998 to issue obligations, to the Secretary
16 of the Treasury and the Secretary of the Treasury may,
17 at his or her discretion, purchase such obligations, pro-
18 vided that the amount of such obligations outstanding at
19 any one time does not exceed \$2,000,000,000 and pro-
20 vided further that expenditures (including capital invest-
21 ment and interest on borrowing) are fully offset by the
22 Organization’s revenues in each fiscal year. For such pur-
23 pose, the Secretary of the Treasury is authorized to use
24 as a public debt transaction the proceeds of the sale of
25 any securities hereafter issued under chapter 31 of title

1 31 of the United States Code and the purposes for which
2 securities may be issued under that chapter are extended
3 to include such purchases. Each purchase of obligations
4 by the Secretary of the Treasury shall be upon such terms
5 and conditions as to yield a return at a rate not less than
6 a rate determined by the Secretary of the Treasury, taking
7 into consideration the current yields on outstanding mar-
8 ketable obligations of the United States of comparable ma-
9 turity. The Secretary of the Treasury may sell, upon such
10 terms and conditions and at such price or prices as deter-
11 mined by the Secretary of the Treasury, any of the obliga-
12 tions acquired under this subsection. All purchases and
13 sales by the Secretary of the Treasury of such obligations
14 under this subsection shall be treated as public debt trans-
15 actions of the United States. Funds obtained by the Orga-
16 nization from the issuance of such obligations shall be
17 credited to and form part of the Fund.

18 “(d) FORM OF PAYMENT.—All fees for services per-
19 formed by or materials furnished by the United States In-
20 tellectual Property Organization will be payable to the Or-
21 ganization.”.

22 **SEC. 111. AUDITS.**

23 Chapter 4 of part I of title 35, United States Code,
24 is amended by adding at the end the following new section:

1 **“§ 43. Audits**

2 “The Organization shall reimburse the Inspector
3 General for the full cost of any audit conducted by the
4 Inspector General or an external auditor under section
5 9105 of title 31 as determined by the Inspector General.”.

6 **Subtitle D—Transfers; Use of Organization**
7 **Name; Transition Provisions; Technical**
8 **and Conforming Amendments**

9 **SEC. 112. TRANSFERS.**

10 (a) TRANSFER OF FUNCTIONS, POWERS, AND DU-
11 TIES.—Except as otherwise provided in this Act, on the
12 effective date of this Act, there are hereby transferred to,
13 and vested in, the United States Intellectual Property Or-
14 ganization all functions, powers and duties vested by law
15 in the Secretary of Commerce or the Department of Com-
16 merce or in officers or components in the Department
17 with respect to the authority to examine patent and trade-
18 mark applications, and in the Patent and Trademark Of-
19 fice, and in the officers and components of such Office.

20 (b) TRANSFER OF ASSETS, LIABILITIES, ETC.—The
21 Secretary of Commerce is authorized and directed, without
22 need of further appropriation, to transfer to the United
23 States Intellectual Property Organization, on the effective
24 date of this Act, those assets, liabilities, contracts, prop-
25 erty, records, and unexpended and unobligated balances
26 of appropriations, authorizations, allocations and other

1 funds employed, held, used, arising from, available or to
2 be made available to the Department of Commerce (inclu-
3 sive of funds set aside for accounts receivable which are
4 related to functions, powers and duties which are vested
5 in the Organization by this Act).

6 (c) TRANSFER OF INVESTED CAPITAL.—From time
7 to time, and at least at the close of each fiscal year, the
8 United States Intellectual Property Organization shall pay
9 into the Treasury as miscellaneous receipts interest on the
10 invested capital transferred to the Organization under
11 subsection (b) less the cumulative total of invested capital
12 repaid to the general fund. The rate of interest shall be
13 determined by the Secretary of the Treasury taking into
14 consideration the average market yield on outstanding
15 marketable obligations of the United States with remain-
16 ing periods to maturity of approximately one year during
17 the month preceding each fiscal year. Interest payments
18 may be deferred, but any interest payments so deferred
19 shall themselves bear interest.

20 **SEC. 113. USE OF ORGANIZATION NAME.**

21 Chapter 1 of part I of title 35, United States Code,
22 is amended by adding at the end the following new section:

23 **“§ 16. Use of Organization name**

24 “No individual, association, partnership, or corpora-
25 tion, except the Organization, shall hereafter use words

1 'United States Intellectual Property Organization,' 'Pat-
2 ent and Trademark Office,' or any combination of such
3 words, as the name or part thereof under which such indi-
4 vidual or entity shall do business. Violations of the fore-
5 going may be enjoined by any Federal court at the suit
6 of the Organization. In any such suit, the Organization
7 shall be entitled to statutory damages of \$1,000 for each
8 day during which such violation continues or is repeated
9 and, in addition, may recover actual damages flowing from
10 such violation.'".

11 **SEC. 114. TRANSITION PROVISIONS.**

12 (a) CONTINUATION OF CONTRACTS, ETC.—Except as
13 provided elsewhere in this Act, all contracts, agreements,
14 leases and other business instruments, and licenses, per-
15 mits and privileges that have been afforded to the Patent
16 and Trademark Office prior to the effective date of this
17 Act, shall continue in effect as if the United States Intel-
18 lectual Property Organization had executed such con-
19 tracts, agreements, leases or other business instruments
20 which have been made in the exercise of functions which
21 are transferred to the Organization by this Act.

22 (b) CONTINUATION OF RULES.—Until changed by
23 the United States Intellectual Property Organization, any
24 procedural and administrative rules applicable to particu-
25 lar functions over which the Organization acquires juris-

1 diction on the effective date of this Act shall continue in
2 effect with respect to such particular functions.

3 (c) CESSATION OF CERTAIN ORDERS, ETC.—Unless
4 otherwise provided by this Act, as related to the functions
5 vested in the United States Intellectual Property Organi-
6 zation by this Act, all orders, determinations, rules, regu-
7 lations, and privileges of the Department of Commerce
8 shall cease to apply to the Organization on the effective
9 date of this Act, except for those which the Organization
10 determines shall continue to be applicable.

11 (d) TRANSFER NOT AFFECTING OTHER PROCEED-
12 INGS.—Except as provided elsewhere in this Act, the
13 transfer of functions related to and vested in the United
14 States Intellectual Property Organization by this Act shall
15 not affect judicial, administrative, or other proceedings
16 which are pending at the time this Act takes effect, and
17 such proceedings shall be continued by the Organization.

18 (e) TRANSITION PROVISIONS FOR EMPLOYEES.—

19 (1) REASSIGNMENT.—On the effective date of
20 this Act and without a break in service, all officers
21 and employees of the Office on the day before the
22 effective date of this Act will become officers and
23 employees of the Organization or will be reassigned
24 to the Office of the Under Secretary for Intellectual
25 Property within the Department.

1 (2) NO SEPARATIONS OR REDUCTIONS IN COM-
2 PENSATION.—No officer or employee of the Office
3 who becomes an officer or employee of the Organiza-
4 tion shall, for a period of one year after the effective
5 date of this Act, be subject to separation or to any
6 reduction in compensation as a consequence of the
7 establishment of the Organization.

8 (f) TRANSITION PROVISIONS FOR LABOR AGREE-
9 MENTS.—All orders, determinations, rules, and regula-
10 tions regarding compensation and benefits and other
11 terms and conditions of employment in effect for the Of-
12 fice and its officers and employees on the day before the
13 effective date of this Act shall continue in effect with re-
14 spect to the Organization and its officers and employees
15 until modified, superseded, or set aside by the Organiza-
16 tion. The collective bargaining agreements between the
17 Patent and Trademark Office and National Treasury Em-
18 ployees Union 243, dated March 13, 1993, the Patent and
19 Trademark Office and the National Treasury Employees
20 Union 245, dated July 20, 1993, and the Patent and
21 Trademark Office and the Patent Office Professional As-
22 sociation, dated October 6, 1986, as well as the recogni-
23 tion of the three units, shall remain in effect until modi-
24 fied, superseded, or set aside by the parties.

1 **SEC. 115. TECHNICAL AND CONFORMING AMENDMENTS.**

2 (a) Section 5314 of title 5, United States Code is
3 amended by adding at the end “Under Secretary of Com-
4 merce for Intellectual Property.”.

5 (b) Section 9101(3) of title 31, United States Code,
6 is amended by adding at the end the following:

7 “(O) the United States Intellectual Prop-
8 erty Organization.”.

9 (c) Section 602(d) of the Federal Property and Ad-
10 ministrative Services Act of 1949 (40 U.S.C. 474), is
11 amended—

12 (1) in paragraph (20) by striking “or” after the
13 semicolon;

14 (2) in paragraph (21) by striking the period
15 and inserting “; or”; and

16 (3) by adding at the end the following:

17 “(22) the United States Intellectual Property
18 Organization.”.

19 (d) Title 35, United States Code is amended—

20 (1) in section 13 by striking “at the rate for
21 each year’s issue established for this purpose in sec-
22 tion 41(d) of this title”;

23 (2) in section 111 by striking “required by law”
24 and inserting “established by the Chief Executive
25 Officer”;

1 (3) in section 131 by striking the second occur-
2 rence of “Commissioner” and inserting “Under Sec-
3 retary for Intellectual Property”;

4 (4) in the third sentence of subsection 135(2)
5 by striking “Commissioner” and inserting “Under
6 Secretary for Intellectual Property”;

7 (5) in subsection 153—

8 (A) by striking “Commissioner” and in-
9 serting “Under Secretary for Intellectual Prop-
10 erty”; and

11 (B) by striking “under the seal of the Pat-
12 ent and Trademark Office,”

13 (6) in section 251 by striking “Commissioner”
14 in all occurrences and insert “Under Secretary for
15 Intellectual Property”;

16 (7) in section 254 by striking the second occur-
17 rence of “Commissioner” and inserting “Under Sec-
18 retary for Intellectual Property”;

19 (8) in section 302 by inserting “established”
20 before the word “pursuant”;

21 (9) in subsection 307(a) by striking “Commis-
22 sioner” and inserting “Under Secretary for Intellec-
23 tual Property”;

1 (10) in section 371(c)(1) by striking “provided
2 in section 41(a)” and inserting “established under
3 section 41”;

4 (11) in all other occurrences by striking the
5 words “Commissioner of Patents and Trademarks”
6 and “Commissioner” (insofar as the word refers to
7 the Commissioner of Patents and Trademarks) and
8 inserting “Chief Executive Officer”; and

9 (12) by striking the words “Patent and Trade-
10 mark Office” whenever they appear and inserting
11 “United States Intellectual Property Organization”.

12 (e) The Act of July 5, 1946 (commonly known as
13 the Trademark Act of 1946), as amended (chapter 22 of
14 title 15), is amended—

15 (1) in paragraph 1(d)(1), second sentence, by
16 striking “in the Patent and Trademark Office” and
17 inserting “by the Under Secretary for Intellectual
18 Property”;

19 (2) in subsection 2(d)—

20 (A) by striking “Patent and Trademark
21 Office” and inserting “United States”; and

22 (B) in the second and third sentences by
23 striking “Commissioner” and inserting “Under
24 Secretary for Intellectual Property”;

25 (3) in section 7—

1 (A) in subsection (a) by striking “under
2 the seal of the Patent and Trademark Office
3 and shall be signed by the Commissioner” and
4 inserting “and shall be signed by the Under
5 Secretary for Intellectual Property”;

6 (B) in subsection (d) by striking “Commis-
7 sioner” and inserting “Under Secretary for In-
8 tellectual Property”;

9 (C) in subsection (e) by striking “Commis-
10 sioner” in all occurrences and inserting “Under
11 Secretary for Intellectual Property”;

12 (D) in subsection (g) by striking “Commis-
13 sioner” and inserting “Under Secretary for In-
14 tellectual Property”; and

15 (E) in subsection (h) by striking “Commis-
16 sioner” and inserting “Under Secretary for In-
17 tellectual Property”;

18 (4) in subsection 12(a) by striking “shall refer
19 the application to the examiner in charge of the reg-
20 istration of marks”;

21 (5) in section 45 by striking “The term Com-
22 missioner means the Commissioner of Patents and
23 Trademarks.” and inserting “The term Chief Execu-
24 tive Officer” means the Chief Executive Officer of
25 the United States Intellectual Property Organization

1 and the term “Under Secretary for Intellectual
2 Property” shall mean the Under Secretary for Intel-
3 lectual Property within the Department of Com-
4 merce.”;

5 (6) in all other occurrences by striking the
6 words “Commissioner of Patents and Trademarks”
7 and “Commissioner” (insofar as the word refers to
8 the Commissioner of Patents and Trademarks) and
9 inserting “Chief Executive Officer”; and

10 (7) by striking the words “Patent and Trade-
11 mark Office” whenever they appear and inserting
12 “United States Intellectual Property Organization”.

13 (f) Section 500(e) of title 5, United States Code, is
14 amended by striking “the Patent Office” and “the United
15 States Intellectual Property Organization”.

16 (g) Subsection 5102(c) of title 5, United States Code,
17 by striking paragraph (23) and redesignating paragraphs
18 (24) through (30) as paragraphs (23) through (29).

19 (h) Section 5316 of title 5, United States Code, is
20 amended—

21 (1) by striking “Commissioner of Patents, De-
22 partment of Commerce”;

23 (2) by striking “Deputy Commissioner for Pat-
24 ents”;

1 (3) by striking “Assistant Commissioner for
2 Patents”; and

3 (4) by striking “Assistant Commissioner for
4 Trademarks”.

5 (i) Subparagraph 9(p)(1)(B) of the Small Business
6 Act (15 U.S.C. 638(p)(1)(B)) is amended by striking
7 “Commissioner of Patents and Trademarks” and insert-
8 ing “Under Secretary for Intellectual Property”.

9 (j) Section 4 of the Act of February 14, 1903 (15
10 U.S.C. 1511) is amended by striking “(d) Patent and
11 Trademark Office;” and redesignating subsections (a)
12 through (g) as paragraphs (1) through (6), respectively.

13 (k) Section 19 of the Tennessee Valley Authority Act
14 of 1933 (16 U.S.C. 831r) is amended—

15 (1) by striking “Patent and Trademark Office”
16 and inserting “United States Patent and Trademark
17 Organization”; and

18 (2) by striking “Commissioner of Patents and
19 Trademarks” and inserting “Chief Executive Officer
20 of the United States Intellectual Property Organiza-
21 tion”.

22 (l) Subparagraph 2320(d)(1)(A)(ii) of title 18,
23 United States Code, is amended by striking “Patent Of-
24 fice” and inserting “United States Patent and Trademark
25 Organization”.

1 (m) Section 1526(a) of title 19, United States Code
2 (19 U.S.C. 1526(a)) is amended by striking “Patent and
3 Trademark Office” and inserting in lieu thereof “United
4 States Intellectual Property Organization”.

5 (n) Sections 2242(b)(2)(A) and 2412(b)(2)(D) of
6 title 19, United States Code (19 U.S.C. 2242(b)(2)(A)
7 and 2412(b)(2)(D)) are amended by striking “Commis-
8 sioner of Patents and Trademarks” and inserting in lieu
9 thereof “Under Secretary of Commerce for Intellectual
10 Property”.

11 (o) The Act of April 12, 1892 (27 Stat. 395; 20
12 U.S.C. 20) is amended by striking “Patent Office” and
13 inserting “United States Intellectual Property Organiza-
14 tion”.

15 (p) Subsections 505(m) and 512(o) of the Federal
16 Food, Drug, and Cosmetic Act (21 U.S.C. 355(m) and
17 360b(o)) are amended by striking “Patent and Trademark
18 Office” and inserting “United States Intellectual Property
19 Organization”.

20 (q) Subsection 702(d) of the Federal Food, Drug,
21 and Cosmetic Act (21 U.S.C. 372) is amended by striking
22 “Commissioner of Patents” and inserting “Chief Execu-
23 tive Officer of the United States Intellectual Property Or-
24 ganization”.

1 (r) Section 2151t-1 of title 22, United States Code
2 (22 U.S.C. 2151t-1) is amended by striking “Patent and
3 Trademark Office” and inserting in lieu thereof “Under
4 Secretary of Commerce for Intellectual Property”.

5 (s) Section 305a of title 25, United States Code (25
6 U.S.C. 305a) is amended by striking “Patent and Trade-
7 mark Office” and inserting in lieu thereof “United States
8 Intellectual Property Organization”.

9 (t) Subsection 105(e) of the Federal Alcohol Adminis-
10 tration Act (27 U.S.C. 205(e)) is amended by striking
11 “Patent Office” and inserting “United States Intellectual
12 Property Organization”.

13 (u) Paragraph 1295(a)(4) of title 28, United States
14 Code, is amended—

15 (1) by striking “Patent and Trademark Office”
16 and inserting “United States Intellectual Property
17 Organization”; and

18 (2) striking “Commissioner of Patents and
19 Trademarks” and inserting “Chief Executive Officer
20 of the United States Intellectual Property Organiza-
21 tion”.

22 (v) Section 1744 of title 28, United States Code, is
23 amended—

1 (1) by striking “Patent Office” each place it
2 appears and inserting “United States Intellectual
3 Property Organization”;

4 (2) by striking “Commissioner of Patents” and
5 inserting “Chief Executive Officer of the United
6 States Intellectual Property Organization”; and

7 (3) by striking “Commissioner” and inserting
8 “Chief Executive Officer”.

9 (w) Section 1745 of title 28, United States Code, is
10 amended by striking “Patent Office” and inserting
11 “United States Intellectual Property Organization”.

12 (x) Section 1928 of title 28, United States Code, is
13 amended by striking “Patent Office” and inserting
14 “United States Intellectual Property Organization”.

15 (y) Section 2181 (c) and (d) of title 42, United States
16 Code (42 U.S.C. 2181 (c) and (d)) are amended by strik-
17 ing “Commissioner of Patents” and inserting in lieu there-
18 of “Chief Executive Officer of the United States Intellec-
19 tual Property Organization”.

20 (z) Section 160 of the Atomic Energy Act of 1954
21 (42 U.S.C. 2190) is amended—

22 (1) by striking “Patent Office” and inserting
23 “United States Intellectual Property Organization”;
24 and

1 (2) by striking “Commissioner of Patents” and
2 inserting “Chief Executive Officer”.

3 (aa) Subsection 305(c) of the National Aeronautics
4 and Space Act of 1958 (42 U.S.C. 2457(c)) is amended—

5 (1) by striking “Commissioner of Patents” and
6 inserting “Chief Executive Officer of the United
7 States Intellectual Property Organization”; and

8 (2) by striking “Commissioner” and inserting
9 “Chief Executive Officer”.

10 (bb) Subsection 12(a) of the Solar Heating and Cool-
11 ing Demonstration Act of 1974 (42 U.S.C. 5510(a)) is
12 amended by striking “Commissioner of Patent Office” and
13 inserting “Chief Executive Officer of the United States In-
14 tellectual Property Organization”.

15 (cc) Section 1111 of title 44, United States Code, is
16 amended by striking “Commissioner of Patents” and in-
17 serting “Chief Executive Officer of the United States In-
18 tellectual Property Organization”.

19 (dd) Sections 1114 and 1123 of title 44, United
20 States Code, are amended by striking “Commissioner of
21 Patents”.

22 (ee) Sections 1337 and 1338 of title 44, United
23 States Code, and the items relating to those sections in
24 the table of contents for chapter 13 of such title are re-
25 pealed.

1 (ff) Subsection 10(I) of the Trading With the Enemy
2 Act (50 U.S.C. App. 10(i)) is amended by striking “Com-
3 missioner of Patents” and inserting “Chief Executive Offi-
4 cer of the United States Intellectual Property Organiza-
5 tion”.

6 (gg) Section 5 of Public Law 103–226 is amended
7 as follows:

8 (1) In paragraph (a) by adding “and the Unit-
9 ed States Intellectual Property Organization” follow-
10 ing “General Accounting Office,”.

11 (2) In subsection (b), by striking paragraphs
12 (3) through (6) and inserting the following:

13 “(3) 1,998,200 during fiscal year 1996;

14 “(4) 1,958,200 during fiscal year 1997;

15 “(5) 1,917,300 during fiscal year 1998; and

16 “(6) 1,877,400 during fiscal year 1999.”.

17 **Subtitle E—Separability; Effective Date;**

18 **Report of the Secretary**

19 **SEC. 116. SEPARABILITY.**

20 If any provision of this Act or the application thereof
21 to any person or circumstance is held invalid, the remain-
22 der of this Act, and the application of such provision to
23 other persons or circumstances shall not be affected there-
24 by.

1 **SEC. 117. EFFECTIVE DATE.**

2 This Act shall take effect 6 months after the date
3 of the enactment of this Act.

4 **SEC. 118. REPORT OF THE SECRETARY.**

5 Not later than five years from the effective date of
6 this Act, the Secretary of Commerce shall provide to the
7 President and the Congress a report on the operation and
8 effectiveness of the provisions of this Act and the costs
9 associated therewith. As part of the report, the Secretary
10 shall include (a) the Secretary's recommendation as to
11 whether the Organization should continue to exist and (b)
12 any recommendations for legislation the Secretary deems
13 necessary or appropriate as a result of his or her analysis
14 of the operation and effectiveness of the Act and the costs
15 associated therewith. The Secretary shall provide to the
16 President and the Congress additional reports that comply
17 with the requirements of this section every six years after
18 the submission of the first report. The preceding sentence
19 shall cease to be effective upon the enactment of legisla-
20 tion to terminate the Organization or to amend this Act.

21 **TITLE II—UNDER SECRETARY FOR**
22 **INTELLECTUAL PROPERTY**

23 **SEC. 201. UNDER SECRETARY FOR INTELLECTUAL PROP-**
24 **ERTY.**

25 (A) APPOINTMENT.—There shall be within the De-
26 partment of Commerce, an Under Secretary of Commerce

1 for Intellectual property, who shall be appointed by the
2 President by and with the advice and consent of the Sen-
3 ate.

4 (b) DUTIES.—The Under Secretary for Intellectual
5 Property, under the direction of the Secretary of Com-
6 merce, shall perform the following functions with respect
7 to intellectual property policy:

8 (1) Grant patents and register trademarks.

9 (2) Advise the Secretary on all aspects of intel-
10 lectual property policy, legislation, and issues, in-
11 cluding international trade issues concerning intel-
12 lectual property.

13 (3) Advise the Chief Executive Officer of the
14 United States Intellectual Property Organization on
15 patent and trademark policy as provided in section
16 2(a) of title 35, United States Code, as amended.

17 (4) Promote in international trade the United
18 States industries that rely on intellectual property.

19 (5) Advise the Secretary of State, the United
20 States Trade Representative, and other appropriate
21 department and agency heads, subject to the author-
22 ity of the Secretary, on international intellectual
23 property issues.

1 (6) Advise Federal agencies on ways to improve
2 intellectual property protection in other countries
3 through economic assistance and international trade.

4 (7) Review and coordinate all proposals by
5 agencies to assist foreign governments and inter-
6 national intergovernmental agencies in improving in-
7 tellectual property protection.

8 (8) Carry on studies related to the effectiveness
9 of intellectual property protection throughout the
10 world.

11 (9) Advise the Secretary on programs and stud-
12 ies which the Organization is carrying on coopera-
13 tively, or is authorizing to be carried on, with for-
14 eign patent and trademark offices and international
15 intergovernmental organizations in connection with
16 the examination of patent and trademark applica-
17 tions.

18 (10) In coordination with the Department of
19 State, carry on studies cooperatively with foreign in-
20 tellectual property offices and international intergov-
21 ernmental organizations.

22 (c) DEPUTY UNDER SECRETARIES.—The Under Sec-
23 retary for Intellectual Property shall be assisted by two
24 Deputy Under Secretaries of Commerce for Intellectual
25 Property. The Deputy Under Secretaries shall be ap-

1 pointed by the Secretary of Commerce to non-career posi-
2 tions within the Senior Executive Service and shall be
3 compensated in accordance with the provisions of title V,
4 United States Code. The Deputy Under Secretaries shall
5 perform such duties and functions as the Under Secretary
6 for Intellectual Property shall prescribe.

7 (d) FUNDING.—The offices of the Under Secretary
8 for Intellectual Property shall be financially supported
9 through reimbursement from the United States Intellec-
10 tual Property Organization, in lieu of all other payments
11 by the Organization, upon determination of requirements
12 by the Secretary and in an amount not to exceed two (2)
13 percent of the Organization’s projected annual revenues
14 from fees for services and goods.

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