

104TH CONGRESS
2D SESSION

S. 1961

To establish the United States Intellectual Property Organization, to amend the provisions of title 35, United States Code, relating to procedures for patent applications, commercial use of patents, reexamination reform, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 16, 1996

Mr. HATCH introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To establish the United States Intellectual Property Organization, to amend the provisions of title 35, United States Code, relating to procedures for patent applications, commercial use of patents, reexamination reform, 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 “Omnibus Patent Act
5 of 1996”.

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1 **TITLE I—UNITED STATES INTEL-**
 2 **LECTUAL PROPERTY ORGANI-**
 3 **ZATION**

4 **SEC. 101. SHORT TITLE.**

5 This title may be cited as the “United States Intellec-
 6 tual Property Organization Act of 1996”.

7 **Subtitle A—Establishment of the**
 8 **United States Intellectual Prop-**
 9 **erty Organization**

10 **SEC. 111. ESTABLISHMENT OF THE UNITED STATES INTEL-**
 11 **LECTUAL PROPERTY ORGANIZATION AS A**
 12 **GOVERNMENT CORPORATION.**

13 (a) ESTABLISHMENT.—The United States Intellec-
 14 tual Property Organization is established as a wholly
 15 owned Government corporation subject to chapter 91 of
 16 title 31.

1 (b) OFFICES.—The United States Intellectual Prop-
2 erty Organization shall maintain an office in the District
3 of Columbia, or the metropolitan area thereof, for the
4 service of process and papers and shall be deemed, for pur-
5 poses of venue in civil actions, to be a resident of the dis-
6 trict in which its principal office is located. The United
7 States Intellectual Property Organization may establish
8 offices in such other places as it considers necessary or
9 appropriate in the conduct of its business.

10 (c) REFERENCE.—For purposes of this title, the
11 United States Intellectual Property Organization shall
12 also be referred to as the “Organization” and the “Intel-
13 lectual Property Organization”.

14 **SEC. 112. POWERS AND DUTIES.**

15 (a) IN GENERAL.—The United States Intellectual
16 Property Organization shall be responsible for—

17 (1) the granting and issuing of patents and the
18 registration of trademarks and copyrights;

19 (2) conducting studies, programs, or exchanges
20 of items or services regarding domestic and inter-
21 national patent, trademark, and copyright law, the
22 administration of the Organization, or any other
23 function vested in the Organization by law;

24 (3)(A) authorizing or conducting studies and
25 programs cooperatively with foreign patent, trade-

1 mark, and copyright offices and international orga-
2 nizations, in connection with the granting and issu-
3 ing of patents and the registration of trademarks
4 and copyrights; and

5 (B) with the concurrence of the Secretary of
6 State, authorizing the transfer of not to exceed
7 \$100,000 in any year to the Department of State
8 for the purpose of making special payments to inter-
9 national intergovernmental organizations for studies
10 and programs for advancing international coopera-
11 tion concerning patents, trademarks, copyrights, and
12 related matters; and

13 (4) disseminating to the public information with
14 respect to patents, trademarks, and copyrights.

15 (b) SPECIAL PAYMENTS.—The special payments
16 under subsection (a)(3)(B) may be in addition to any
17 other payments or contributions to international organiza-
18 tions and shall not be subject to any limitations imposed
19 by law on the amounts of such other payments or con-
20 tributions by the United States Government.

21 (c) SPECIFIC POWERS.—The Organization—

22 (1) shall have perpetual succession;

23 (2) shall adopt and use a corporate seal, which
24 shall be judicially noticed and with which letters pat-
25 ent, certificates of trademark registrations, certifi-

1 cates of copyright registrations, and papers issued
2 by the Organization shall be authenticated;

3 (3) may sue and be sued in its corporate name
4 and be represented by its own attorneys in all judi-
5 cial and administrative proceedings, subject to the
6 provisions of section 114;

7 (4) may indemnify the Commissioner of Intel-
8 lectual Property, and other officers, attorneys,
9 agents, and employees (including members of the
10 Management Advisory Boards of the Patent Office,
11 Trademark Office, and Copyright Office) of the Or-
12 ganization for liabilities and expenses incurred with-
13 in the scope of their employment;

14 (5) may adopt, amend, and repeal bylaws, rules,
15 regulations, and determinations, which—

16 (A) shall govern the manner in which its
17 business will be conducted and the powers
18 granted to it by law will be exercised; and

19 (B) shall be made after notice and oppor-
20 tunity for full participation by interested public
21 and private parties;

22 (6) may acquire, construct, purchase, lease,
23 hold, manage, operate, improve, alter, and renovate
24 any real, personal, or mixed property, or any interest

1 therein, as it considers necessary to carry out its
2 functions;

3 (7)(A) may make such purchases, contracts for
4 the construction, maintenance, or management and
5 operation of facilities, and contracts for supplies or
6 services, without regard to the provisions of the Fed-
7 eral Property and Administrative Services Act of
8 1949 (40 U.S.C. 471 et seq.), the Public Buildings
9 Act (40 U.S.C. 601 et seq.), and the Stewart B.
10 McKinney Homeless Assistance Act (42 U.S.C.
11 11301 et seq.); and

12 (B) may enter into and perform such purchases
13 and contracts for printing services, including the
14 process of composition, platemaking, presswork, silk
15 screen processes, binding, microform, and the prod-
16 ucts of such processes, as it considers necessary to
17 carry out the functions of the Organization, without
18 regard to sections 501 through 517 and 1101
19 through 1123 of title 44, United States Code;

20 (8) may use, with their consent, services, equip-
21 ment, personnel, and facilities of other departments,
22 agencies, and instrumentalities of the Federal Gov-
23 ernment, on a reimbursable basis, and cooperate
24 with such other departments, agencies, and instru-

1 mentalities in the establishment and use of services,
2 equipment, and facilities of the Organization;

3 (9) may obtain from the Administrator of Gen-
4 eral Services such services as the Administrator is
5 authorized to provide to other agencies of the United
6 States, on the same basis as those services are pro-
7 vided to other agencies of the United States;

8 (10) may use, with the consent of the United
9 States and the agency, government, or international
10 organization concerned, the services, records, facili-
11 ties, or personnel of any State or local government
12 agency or instrumentality or foreign government or
13 international organization to perform functions on
14 its behalf;

15 (11) may determine the character of, and the
16 necessity for, its obligations and expenditures and
17 the manner in which they shall be incurred, allowed,
18 and paid, subject to the provisions of title 35 United
19 States Code, the Act of July 5, 1946 (commonly re-
20 ferred to as the Trademark Act of 1946), and the
21 Act of October 19, 1976 (commonly referred to as
22 the Copyright Act of 1976);

23 (12) may retain and use all of its revenues and
24 receipts, including revenues from the sale, lease, or
25 disposal of any real, personal, or mixed property, or

1 any interest therein, of the Organization, including
2 for research and development and capital invest-
3 ment;

4 (13) shall have the priority of the United States
5 with respect to the payment of debts from bankrupt,
6 insolvent, and decedents' estates;

7 (14) may accept monetary gifts or donations of
8 services, or of real, personal, or mixed property, in
9 order to carry out the functions of the Organization;

10 (15) may execute, in accordance with its by-
11 laws, rules, and regulations, all instruments nec-
12 essary and appropriate in the exercise of any of its
13 powers;

14 (16) may provide for liability insurance and in-
15 surance against any loss in connection with its prop-
16 erty, other assets, or operations either by contract or
17 by self-insurance; and

18 (17) shall pay any settlement or judgment en-
19 tered against it from the funds of the Organization
20 and not from amounts available under section 1304
21 of title 31, United States Code.

22 (d) REPEAL OF SURCHARGE RESTRICTIONS.—Sec-
23 tion 10101 of the Omnibus Budget Reconciliation Act of
24 1990 (35 U.S.C. 41 note) is repealed.

1 **SEC. 113. ORGANIZATION AND MANAGEMENT.**

2 (a) OFFICES.—The United States Intellectual Prop-
3 erty Organization shall consist of—

- 4 (1) the United States Patent Office;
5 (2) the United States Trademark Office; and
6 (3) the United States Copyright Office.

7 (b) COMMISSIONER.—

8 (1) IN GENERAL.—The management of the
9 United States Intellectual Property Organization
10 shall be vested in a Commissioner of Intellectual
11 Property (hereafter in this title referred to as the
12 “Commissioner”), who shall be a citizen of the Unit-
13 ed States and who shall be appointed by the Presi-
14 dent, by and with the advice and consent of the Sen-
15 ate. The Commissioner shall be a person who, by
16 reason of professional background and experience in
17 patent, trademark, or copyright law, is especially
18 qualified to manage the Organization.

19 (2) DUTIES.—(A) The Commissioner shall be
20 responsible for the Management and direction of the
21 Organization and shall perform this duty in a fair,
22 impartial, and equitable manner.

23 (B) The Commissioner shall advise the Presi-
24 dent, through the Secretary of Commerce, of all ac-
25 tivities of the office undertaken in response to obli-
26 gations of the United States under treaties and exec-

1 utive agreements, or which relate to cooperative pro-
2 grams with those authorities of foreign governments
3 that are responsible for granting patents, registering
4 trademarks or copyrights, or other intellectual prop-
5 erty rights. The Commissioner shall be the principal
6 advisor to the President, through the Secretary of
7 Commerce, on policy matters relating to intellectual
8 property rights, and shall recommend to the Presi-
9 dent, through the Secretary of Commerce, changes
10 in law or policy which may improve the ability of
11 United States citizens to secure and enforce patent
12 rights, trademark rights, copyrights, or other intel-
13 lectual property rights in the United States or in
14 foreign countries.

15 (C) At the direction of the President, the Com-
16 missioner may represent the United States in inter-
17 national negotiations on matters of intellectual prop-
18 erty, or may designate an officer or officers of the
19 Organization to participate in such negotiations.

20 (D) The Commissioner, in consultation with the
21 Director of the Office of Personnel Management,
22 shall maintain a program for identifying national se-
23 curity positions and providing for appropriate secu-
24 rity clearances.

1 (E) Except as otherwise provided in this title,
2 the Commissioner shall ensure that—

3 (i) the United States Patent Office, the
4 United States Trademark Office, and the Unit-
5 ed States Copyright Office, respectively, shall—

6 (I) prepare all appropriation requests
7 under section 1108 of title 31, United
8 States Code, for each office for submission
9 by the Commissioner;

10 (II) adjust fees to provide sufficient
11 revenues to cover the expenses of such of-
12 fice; and

13 (III) expend funds derived from such
14 fees for only the functions of such office;
15 and

16 (ii) each such office is not involved in the
17 management of any other office.

18 (3) OATH.—The Commissioner shall, before
19 taking office, take an oath to discharge faithfully the
20 duties of the Organization.

21 (4) COMPENSATION.—The Commissioner shall
22 receive compensation at the rate of pay in effect for
23 level II of the Executive Schedule under section
24 5313 of title 5, United States Code.

1 (5) REMOVAL.—The Commissioner shall serve
2 at the pleasure of the President.

3 (6) DESIGNEE OF COMMISSIONER.—The Com-
4 missioner shall designate an officer of the Organiza-
5 tion who shall be vested with the authority to act in
6 the capacity of the Commissioner in the event of the
7 absence or incapacity of the Commissioner.

8 (c) OFFICERS AND EMPLOYEES OF THE OFFICE.—

9 (1) COMMISSIONERS OF PATENTS, TRADE-
10 MARKS, AND COPYRIGHTS.—The Commissioner shall
11 appoint a Commissioner of Patents, a Commissioner
12 of Trademarks, and a Commissioner of Copyrights
13 under section 3 of title 35, United States Code, sec-
14 tion 53 of the Act of July 5, 1946 (commonly re-
15 ferred to as the Trademark Act of 1946), and sec-
16 tion 701 of title 17, United States Code, respec-
17 tively, as amended by this Act. The Commissioner of
18 Patents, the Commissioner of Trademarks, and the
19 Commissioner of Copyrights shall be the principal
20 policy advisors to the Commissioner of Intellectual
21 Property.

22 (2) OTHER OFFICERS AND EMPLOYEES.—The
23 Commissioner shall—

24 (A) appoint an Inspector General and such
25 other officers, employees (including attorneys),

1 and agents of the Organization as the Commis-
2 sioner considers necessary to carry out its func-
3 tions;

4 (B) fix the compensation of such officers
5 and employees, except as provided in subsection
6 (e); and

7 (C) define the authority and duties of such
8 officers and employees and delegate to them
9 such of the powers vested in the Organization
10 as the Commissioner may determine.

11 (3) PERSONNEL LIMITATIONS.—The Organiza-
12 tion shall not be subject to any administratively or
13 statutorily imposed limitation on positions or person-
14 nel, and no positions or personnel of the Organiza-
15 tion shall be taken into account for purposes of ap-
16 plying any such limitation.

17 (d) LIMITS ON COMPENSATION.—Except as other-
18 wise provided by law, the annual rate of basic pay of an
19 officer or employee of the Organization may not be fixed
20 at a rate that exceeds, and total compensation payable to
21 any such officer or employee for any year may not exceed,
22 the annual rate of basic pay in effect for the Commissioner
23 of the year involved. The Commissioner shall prescribe
24 such regulations as may be necessary to carry out this
25 subsection.

1 (e) APPLICABILITY OF TITLE 5, UNITED STATES
2 CODE, GENERALLY.—Except as otherwise provided in this
3 section, officers and employees of the Organization shall
4 be subject to the provisions of title 5, United States Code,
5 relating to Federal employees.

6 (f) TITLE 5, UNITED STATES CODE, EXCLUSIONS.—
7 The following provisions of title 5, United States Code,
8 shall not apply to the Organization or its officers and em-
9 ployees:

10 (1) Chapter 31 (relating to authority for em-
11 ployment).

12 (2) Chapter 33 (relating to examination, selec-
13 tion, and placement), except that the provisions re-
14 lating to a preference eligible shall apply to the Or-
15 ganization and its employees.

16 (3) Chapter 35 (relating to retention pref-
17 erence, restoration, and reemployment).

18 (4) Chapter 43 (relating to performance ap-
19 praisal).

20 (5) Chapter 45 (relating to incentive awards).

21 (6) Chapter 51 (relating to classification).

22 (7) Subchapter III of chapter 53 (relating to
23 General Schedule pay rates).

24 (g) PROVISIONS OF TITLE 5, UNITED STATES CODE,
25 RELATING TO CERTAIN BENEFITS.—

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), officers and employees of the Organiza-
3 tion shall remain subject to chapters 83 (relating to
4 the Civil Service Retirement System), 84 (relating to
5 the Federal Employees' Retirement System), 87 (re-
6 lating to life insurance), and 89 (relating to health
7 insurance) of title 5, United States Code.

8 (2) EXCEPTION.—The Organization may, with
9 respect to officers and employees of the Organiza-
10 tion, by regulation—

11 (A) provide for benefits to supplement the
12 benefits otherwise provided under such chapter
13 83 or 84, as the case may be; or

14 (B) change the benefits provided under
15 such chapter 87 or 89, so long as the changes
16 do not result in benefits under either chapter
17 becoming, on the whole, less favorable than the
18 benefits which would then otherwise be available
19 under such chapter had such changes not been
20 made.

21 (h) LABOR-MANAGEMENT RELATIONS.—Chapter 71
22 of title 5, United States Code (relating to labor-manage-
23 ment relations), shall apply with respect to the Organiza-
24 tion and its employees, except that—

1 (1) the Organization shall not bargain over the
2 establishment, implementation, amendment, or re-
3 peal of—

4 (A) any system of classification of employ-
5 ees;

6 (B) any compensation system, including
7 wages and compensation based on performance,
8 and contributions of the Organization to the re-
9 tirement and benefits programs; or

10 (C) any system to determine qualifications
11 and procedures for employment; and

12 (2) in any other matter, the Organization may
13 negotiate only with respect to—

14 (A) procedures which management officials
15 of the Organization observe in exercising any
16 authority under section 7106 of title 5, United
17 States Code; and

18 (B) appropriate arrangements for employ-
19 ees adversely affected by the exercise of any au-
20 thority under section 7106 of title 5, United
21 States Code.

22 (i) CARRYOVER OF PERSONNEL.—

23 (1) FROM PTO OR THE COPYRIGHT OFFICE.—
24 Effective as of the effective date of this title, all offi-
25 cers and employees of the Patent and Trademark

1 Office or the Copyright Office on the day before
2 such effective date shall become officers and employ-
3 ees of the Organization, without a break in service.

4 (2) OTHER PERSONNEL.—(A) Any individual
5 who, on the day before the effective date of this title,
6 is an officer or employee of the Department of Com-
7 merce (other than an officer or employee under
8 paragraph (1)) shall be transferred to the Organiza-
9 tion if—

10 (i) such individual serves in a position for
11 which a major function is the performance of
12 work reimbursed by the Patent and Trademark
13 Office, as determined by the Secretary of Com-
14 merce;

15 (ii) such individual serves in a position
16 that performed work in support of the Patent
17 and Trademark Office during at least half of
18 the incumbent's work time, as determined by
19 the Secretary of Commerce; or

20 (iii) such transfer would be in the interest
21 of the Organization, as determined by the Sec-
22 retary of Commerce in consultation with the
23 Commissioner.

24 (B) Any transfer under this paragraph shall be
25 effective as of the same effective date as referred to

1 in paragraph (1), and shall be made without a break
2 in service.

3 (3) ACCUMULATED LEAVE.—The amount of
4 sick and annual leave and compensatory time accu-
5 mulated under title 5, United States Code, before
6 the effective date described in paragraph (1), by any
7 individual who becomes an officer or employee of the
8 Organization under this subsection, are obligations
9 of the Organization.

10 (4) TERMINATION RIGHTS.—Any employee re-
11 ferred to in paragraph (1) or (2) of this subsection
12 whose employment with the Organization is termi-
13 nated during the 1-year period beginning on the ef-
14 fective date of this title shall be entitled to rights
15 and benefits, to be afforded by the Organization,
16 similar to those such employee would have had
17 under Federal law if termination had occurred im-
18 mediately before such date. An employee who would
19 have been entitled to appeal any such termination to
20 the Merit Systems Protection Board, if such termi-
21 nation had occurred immediately before such effec-
22 tive date, may appeal any such termination occur-
23 ring within such 1-year period to the Board under
24 such procedures as it may prescribe.

1 (5) CONTINUATION IN OFFICE OF CERTAIN OF-
2 FICERS.—(A) The individual serving as the Commis-
3 sioner of Patents and Trademarks on the day before
4 the effective date of this title shall serve as the Com-
5 missioner of Intellectual Property until replaced
6 under section 113(b)(5).

7 (B) The individual serving as the Assistant
8 Commissioner of Patents on the day before the ef-
9 fective date of this title shall serve as the Commis-
10 sioner of Patents until the date on which a Commis-
11 sioner of Patents is appointed under section 3 of
12 title 35, United States Code, as amended by this
13 Act.

14 (C) The individual serving as the Assistant
15 Commissioner of Trademarks on the day before the
16 effective date of this title shall serve as the Commis-
17 sioner of Trademarks until the date on which a
18 Commissioner of Trademarks is appointed under
19 section 53 of the Act of July 5, 1946 (commonly re-
20 ferred to as the Trademark Act of 1946), as amend-
21 ed by this Act.

22 (D) The individual serving as the Register of
23 Copyrights on the day before the effective date of
24 this title shall serve as the Commissioner of Copy-
25 rights until the date on which a Commissioner of

1 Copyrights is appointed under section 701 of title
2 17, United States Code, as amended by this Act.

3 (j) COMPETITIVE STATUS.—For purposes of appoint-
4 ment to a position in the competitive service for which an
5 officer or employee of the Organization is qualified, such
6 officer or employee shall not forfeit any competitive status,
7 acquired by such officer or employee before the effective
8 date of this title, by reason of becoming an officer or em-
9 ployee of the Organization under subsection (h).

10 (k) SAVINGS PROVISIONS.—Compensation, benefits,
11 and other terms and conditions of employment in effect
12 immediately before the effective date of this title, whether
13 provided by statute or by rules and regulations of the
14 former Patent and Trademark Office, the former Copy-
15 right Office, or the executive branch of the Government
16 of the United States, shall continue to apply to officers
17 and employees of the Organization, until changed in ac-
18 cordance with this section (whether by action of the Com-
19 missioner or otherwise).

20 (l) REMOVAL OF QUASI-JUDICIAL EXAMINERS.—The
21 Organization may remove a patent examiner or examiner-
22 in-chief, or a trademark examiner or member of a Trade-
23 mark Trial and Appeal Board only for such cause as will
24 promote the efficiency of the Office.

1 **SEC. 114. UNITED STATES PATENT OFFICE.**

2 (a) ESTABLISHMENT OF THE PATENT OFFICE AS A
3 SEPARATE ADMINISTRATIVE UNIT.—Section 1 of title 35,
4 United States Code, is amended to read as follows:

5 **“§ 1. Establishment**

6 “(a) ESTABLISHMENT.—The United States Patent
7 Office is established as a separate administrative unit of
8 the United States Intellectual Property Organization,
9 where records, books, drawings, specifications, and other
10 papers and things pertaining to patents shall be kept and
11 preserved, except as otherwise provided by law.

12 “(b) REFERENCE.—For purposes of this title, the
13 United States Patent Office shall also be referred to as
14 the ‘Office’ and the ‘Patent Office’.”.

15 (b) POWERS AND DUTIES.—Section 2 of title 35,
16 United States Code, is amended to read as follows:

17 **“§ 2. Powers and duties**

18 “The United States Patent Office shall be responsible
19 for—

20 “(1) granting and issuing patents;

21 “(2) conducting studies, programs, or ex-
22 changes of items or services regarding domestic and
23 international patent law, the administration of the
24 Office, or any other function vested in the Office by
25 law, including programs to recognize, identify, as-

1 sess, and forecast the technology of patented inven-
2 tions and their utility to industry;

3 “(3) authorizing or conducting studies and pro-
4 grams cooperatively with foreign patent offices and
5 international organizations, in connection with the
6 granting and issuing of patents; and

7 “(4) disseminating to the public information
8 with respect to patents.”.

9 (c) ORGANIZATION AND MANAGEMENT.—Section 3 of
10 title 35, United States Code, is amended to read as fol-
11 lows:

12 **“§ 3. Officers and employees**

13 “(a) COMMISSIONER.—

14 “(1) IN GENERAL.—The management of the
15 United States Patent Office shall be vested in a
16 Commissioner of Patents (hereafter in this title re-
17 ferred to as the ‘Commissioner’), who shall be a citi-
18 zen of the United States and who shall be appointed
19 by the Commissioner of Intellectual Property and
20 shall serve at the pleasure of the Commissioner of
21 Intellectual Property. The Commissioner of Patents
22 shall be a person who, by reason of professional
23 background and experience in patent law, is espe-
24 cially qualified to manage the Office.

25 “(2) DUTIES.—

1 “(A) IN GENERAL.—The Commissioner
2 shall be responsible for all aspects of the man-
3 agement, administration, and operation of the
4 Office, including the issuance of patents, and
5 shall perform these duties in a fair, impartial,
6 and equitable manner.

7 “(B) ADVISING THE COMMISSIONER OF IN-
8 TELLECTUAL PROPERTY.—The Commissioner
9 of Patents shall advise the Commissioner of In-
10 tellectual Property of all activities of the Office
11 undertaken in response to obligations of the
12 United States under treaties and executive
13 agreements, or which relate to cooperative pro-
14 grams with those authorities of foreign govern-
15 ments that are responsible for granting patents.
16 The Commissioner of Patents shall be the prin-
17 cipal advisor to the Commissioner of Intellec-
18 tual Property on matters of patent law and
19 shall recommend to the Commissioner of Intel-
20 lectual Property changes in law or policy which
21 may improve the ability of United States citi-
22 zens to secure and enforce patent rights in the
23 United States or in foreign countries.

24 “(C) CONSULTATION WITH THE MANAGE-
25 MENT ADVISORY BOARD.—The Commissioner

1 shall consult with the Management Advisory
2 Board established in section 5 on a regular
3 basis on matters relating to the operation of the
4 Office, and shall consult with the Board before
5 submitting budgetary proposals to the Office of
6 Management and Budget or changing or pro-
7 posing to change patent user fees or patent reg-
8 ulations.

9 “(3) OATH.—The Commissioner shall, before
10 taking office, take an oath to discharge faithfully the
11 duties of the Office.

12 “(4) COMPENSATION.—The Commissioner shall
13 receive compensation at the rate of pay in effect for
14 level III of the Executive Schedule under section
15 5313 of title 5.

16 “(b) OFFICERS AND EMPLOYEES.—The Commis-
17 sioner shall appoint a Deputy Commissioner of Patents
18 who shall be vested with the authority to act in the capac-
19 ity of the Commissioner in the event of the absence or
20 incapacity of the Commissioner. In the event of a vacancy
21 in the Office of Commissioner, the Deputy Commissioner
22 shall fill the office of Commissioner until a new Commis-
23 sioner is appointed and takes office. Other officers, attor-
24 neys, employees, and agents shall be selected and ap-
25 pointed by the Commissioner, and shall be vested with

1 such powers and duties as the Commissioner may deter-
2 mine.”.

3 (d) MANAGEMENT ADVISORY BOARD.—Chapter 1 of
4 part I of title 35, United States Code, is amended by in-
5 serting after section 4 the following:

6 **“§ 5. Patent Office Management Advisory Board**

7 “(a) ESTABLISHMENT OF MANAGEMENT ADVISORY
8 BOARD.—

9 “(1) APPOINTMENT.—The United States Pat-
10 ent Office shall have a Management Advisory Board
11 (hereafter in this title referred to as the ‘Board’) of
12 5 members, who shall be appointed by the President
13 and shall serve at the pleasure of the President. Not
14 more than 3 of the 5 members shall be members of
15 the same political party.

16 “(2) CHAIR.—The President shall designate a
17 Chair of the Board, whose term as chair shall be for
18 3 years.

19 “(3) TIMING OF APPOINTMENTS.—Initial ap-
20 pointments to the Board shall be made within 3
21 months after the effective date of the United States
22 Intellectual Property Organization Act of 1996. Va-
23 cancies shall be filled in the manner in which the
24 original appointment was made under this sub-
25 section within 3 months after they occur.

1 “(b) BASIS FOR APPOINTMENTS.—Members of the
2 Board shall be citizens of the United States who shall be
3 chosen so as to represent the interests of diverse users
4 of the United States Patent Office, and shall include indi-
5 viduals with substantial background and achievement in
6 corporate finance and management.

7 “(c) APPLICABILITY OF CERTAIN ETHICS LAWS.—
8 Members of the Board shall be special Government em-
9 ployees within the meaning of section 202 of title 18.

10 “(d) MEETINGS.—The Board shall meet at the call
11 of the Chair to consider an agenda set by the Chair.

12 “(e) DUTIES.—The Board shall—

13 “(1) review the policies, goals, performance,
14 budget, and user fees of the United States Patent
15 Office, and advise the Commissioner on these mat-
16 ters; and

17 “(2) within 60 days after the end of each fiscal
18 year—

19 “(A) prepare an annual report on the mat-
20 ters referred to in paragraph (1);

21 “(B) transmit the report to the Commis-
22 sioner of Intellectual Property, the President,
23 and the Committees on the Judiciary of the
24 Senate and the House of Representatives; and

1 “(C) publish the report in the Patent Of-
2 fice Official Gazette.

3 “(f) COMPENSATION.—Each member of the Board
4 shall be compensated for each day (including travel time)
5 during which such member is attending meetings or con-
6 ferences of the Board or otherwise engaged in the business
7 of the Board, at the rate which is the daily equivalent of
8 the annual rate of basic pay in effect for level III of the
9 Executive Schedule under section 5314 of title 5, and
10 while away from such member’s home or regular place of
11 business such member may be allowed travel expenses, in-
12 cluding per diem in lieu of subsistence, as authorized by
13 section 5703 of title 5.

14 “(g) ACCESS TO INFORMATION.—Members of the
15 Board shall be provided access to records and information
16 in the United States Patent Office, except for personnel
17 or other privileged information and information concern-
18 ing patent applications required to be kept in confidence
19 by section 122.”.

20 “(e) CONFORMING AMENDMENTS.—Section 6 of title
21 35, United States Code, and the item relating to such sec-
22 tion in the table of contents for chapter 1 of title 35, Unit-
23 ed States Code, are repealed.

1 (f) BOARD OF PATENT APPEALS AND INTER-
 2 FERENCES.—Section 7 of title 35, United States Code, is
 3 amended to read as follows:

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

5 “(a) ESTABLISHMENT AND COMPOSITION.—There
 6 shall be in the United States Patent Office a Board of
 7 Patent Appeals and Interferences. The Commissioner, the
 8 Deputy Commissioner, and the examiners-in-chief shall
 9 constitute the Board. The examiners-in-chief shall be per-
 10 sons of competent legal knowledge and scientific ability.

11 “(b) DUTIES.—

12 “(1) IN GENERAL.—The Board of Patent Ap-
 13 peals and Interferences shall, on written appeal of
 14 an applicant, a patent owner, or a third-party re-
 15 quester in a reexamination proceeding—

16 “(A) review adverse decisions of examin-
 17 ers—

18 “(i) upon applications for patents; and

19 “(ii) in reexamination proceedings;

20 and

21 “(B) determine priority and patentability
 22 of invention in interferences declared under sec-
 23 tion 135(a).

24 “(2) HEARINGS.—Each appeal and interference
 25 shall be heard by at least 3 members of the Board,

1 who shall be designated by the Commissioner of Pat-
2 ents. Only the Board of Patent Appeals and Inter-
3 ferences may grant rehearings.”.

4 (g) ANNUAL REPORT OF COMMISSIONER.—Section
5 14 of title 35, United States Code, is amended to read
6 as follows:

7 **“§ 14. Annual report to Congress**

8 “(a) IN GENERAL.—Not later than 180 days after
9 the end of each fiscal year, the Commissioner shall report
10 to the Commissioner of Intellectual Property and to the
11 Congress on—

12 “(1) the total of the moneys received and ex-
13 pended by the Office;

14 “(2) the purposes for which the moneys were
15 spent;

16 “(3) the quality and quantity of the work of the
17 Office; and

18 “(4) other information relating to the Office.

19 “(b) ADDITIONAL REQUIREMENTS.—The report
20 under this section shall also meet the requirements of sec-
21 tion 9106 of title 31, to the extent that such requirements
22 are not inconsistent with subsection (a).”.

23 (h) PRACTICE BEFORE PATENT OFFICE.—

24 (1) IN GENERAL.—Section 31 of title 35, Unit-
25 ed States Code, is amended to read as follows:

1 **“§ 31. Regulations for agents and attorneys**

2 “The Commissioner may prescribe regulations gov-
 3 erning the recognition and conduct of agents, attorneys,
 4 or other persons representing applicants or other parties
 5 before the Office. The regulations may require such per-
 6 sons, before being recognized as representatives of appli-
 7 cants or other persons, to show that they are of good
 8 moral character and reputation and are possessed of the
 9 necessary qualifications to render to applicants or other
 10 persons valuable service, advice, and assistance in the
 11 presentation or prosecution of their applications or other
 12 business before the Office.”.

13 (2) DESIGNATION OF ATTORNEY TO CONDUCT
 14 HEARING.—Section 32 of title 35, United States
 15 Code, is amended in the first sentence by deleting
 16 “Patent and Trademark Office” and inserting “Pat-
 17 ent Office” and by inserting before the last sentence
 18 the following: “The Commissioner shall have the dis-
 19 cretion to designate any attorney who is an officer
 20 or employee of the United States Patent Office to
 21 conduct the hearing required by this section.”.

22 (i) FUNDING.—

23 (1) ADJUSTMENT OF FEES.—Section 41(f) of
 24 title 35, United States Code, is amended to read as
 25 follows:

1 “(f) The Commissioner, after consulting with the
2 Patent Office Management Advisory Board pursuant to
3 section 3(a)(2)(C) of this title, may, by regulation, adjust
4 the fees established in this section.”.

5 (2) PATENT OFFICE FUNDING.—Section 42 of
6 title 35, United States Code, is amended to read as
7 follows:

8 **“§ 42. Patent Office funding**

9 “(a) FEES PAYABLE TO THE OFFICE.—All fees for
10 services performed by or materials furnished by the Unit-
11 ed States Patent Office shall be payable to the Office.

12 “(b) USE OF MONEYS.—Moneys of the United States
13 Patent Office not otherwise used to carry out the functions
14 of the Office shall be kept in cash on hand or on deposit,
15 or invested in obligations of the United States or guaran-
16 teed by the United States, or in obligations or other in-
17 struments which are lawful investments for fiduciary,
18 trust, or public funds. Fees available to the Commissioner
19 of Patents under this title shall be used for the processing
20 of patent applications and for other services and materials
21 relating to patents.

22 “(c) CONTRIBUTION TO THE OFFICE OF THE COM-
23 MISSIONER OF INTELLECTUAL PROPERTY.—The Patent
24 Office shall contribute one-third of the annual budget of
25 the Office of the Commissioner of Intellectual Property.”.

1 **SEC. 115. UNITED STATES TRADEMARK OFFICE.**

2 (a) ESTABLISHMENT OF THE UNITED STATES
3 TRADEMARK OFFICE AS A SEPARATE ADMINISTRATIVE
4 UNIT.—The Act of July 5, 1946 (commonly referred to
5 as the Trademark Act of 1946) is amended—

6 (1) by redesignating titles X and XI as titles XI
7 and XII, respectively;

8 (2) by redesignating sections 45, 46, 47, 48,
9 49, 50, and 51 as sections 61, 71, 72, 73, 74, 75,
10 and 76, respectively; and

11 (3) by inserting after title IX the following new
12 title:

13 **“TITLE X—UNITED STATES**
14 **TRADEMARK OFFICE**

15 **“SEC. 51. ESTABLISHMENT.**

16 “(a) ESTABLISHMENT.—The United States Trade-
17 mark Office is established as a separate administrative
18 unit of the United States Intellectual Property Organiza-
19 tion.

20 “(b) REFERENCE.—For purposes of this chapter, the
21 United States Trademark Office shall also be referred to
22 as the ‘Office’ and the ‘Trademark Office’.

23 **“SEC. 52. POWERS AND DUTIES.**

24 “The United States Trademark Office shall be re-
25 sponsible for—

26 “(1) the registration of trademarks;

1 “(2) conducting studies, programs, or ex-
2 changes of items or services regarding domestic and
3 international trademark law or the administration of
4 the Office;

5 “(3) authorizing or conducting studies and pro-
6 grams cooperatively with foreign trademark offices
7 and international organizations, in connection with
8 the registration of trademarks; and

9 “(4) disseminating to the public information
10 with respect to trademarks.

11 **“SEC. 53. OFFICERS AND EMPLOYEES.**

12 “(a) COMMISSIONER.—

13 “(1) IN GENERAL.—The management of the
14 United States Trademark Office shall be vested in a
15 Commissioner of Trademarks, who shall be a citizen
16 of the United States and who shall be appointed by
17 the Commissioner of Intellectual Property and shall
18 serve at the pleasure of the Commissioner of Intel-
19 lectual Property. The Commissioner of Trademarks
20 shall be a person who, by reason of professional
21 background and experience in trademark law, is es-
22 pecially qualified to manage the Office.

23 “(2) DUTIES.—

24 “(A) IN GENERAL.—The Commissioner
25 shall be responsible for all aspects of the man-

1 agement, administration, and operation of the
2 Office, including the registration of trademarks,
3 and shall perform these duties in a fair, impar-
4 tial, and equitable manner.

5 “(B) ADVISING THE COMMISSIONER OF IN-
6 TELLECTUAL PROPERTY.—The Commissioner
7 of Trademarks shall advise the Commissioner of
8 Intellectual Property of all activities of the Of-
9 fice undertaken in response to obligations of the
10 United States under treaties and executive
11 agreements, or which relate to cooperative pro-
12 grams with those authorities of foreign govern-
13 ments that are responsible for registering trade-
14 marks. The Commissioner of Trademarks shall
15 be the principal advisor to the Commissioner of
16 Intellectual Property on matters of trademark
17 law and shall recommend to the Commissioner
18 of Intellectual Property changes in law or policy
19 which may improve the ability of United States
20 citizens to secure and enforce trademark rights
21 in the United States or in foreign countries.

22 “(C) CONSULTATION WITH THE MANAGE-
23 MENT ADVISORY BOARD.—The Commissioner
24 shall consult with the Trademark Office Man-

1 agement Advisory Board established under sec-
2 tion 54—

3 “(i) on a regular basis on matters re-
4 lating to the operation of the Office; and

5 “(ii) before submitting budgetary pro-
6 posals to the Office of Management and
7 Budget or changing or proposing to change
8 trademark user fees or trademark regula-
9 tions.

10 “(D) PUBLICATIONS.—(i) The Commis-
11 sioner may print, or cause to be printed, the
12 following:

13 “(I) Certificates of trademark reg-
14 istrations, including statements and draw-
15 ings, together with copies of the same.

16 “(II) The Official Gazette of the Unit-
17 ed States Trademark Office.

18 “(III) Annual indexes of trademarks
19 and registrants.

20 “(IV) Annual volumes of decisions in
21 trademark cases.

22 “(V) Pamphlet copies of laws and
23 rules relating to trademarks and circulars
24 or other publications relating to the busi-
25 ness of the Office.

1 “(ii) The Commissioner may exchange any
2 of the publications specified under clause (i) for
3 publications desirable for the use of the Trade-
4 mark Office.

5 “(3) OATH.—The Commissioner shall, before
6 taking office, take an oath to discharge faithfully the
7 duties of the Office.

8 “(4) COMPENSATION.—The Commissioner shall
9 receive compensation at the rate of pay in effect for
10 level III of the Executive Schedule under section
11 5313 of title 5, United States Code.

12 “(b) OFFICERS AND EMPLOYEES.—The Commis-
13 sioner shall appoint a Deputy Commissioner of Trade-
14 marks who shall be vested with the authority to act in
15 the capacity of the Commissioner in the event of the ab-
16 sence or incapacity of the Commissioner. In the event of
17 a vacancy in the office of Commissioner, the Deputy Com-
18 missioner shall fill the office of Commissioner until a new
19 Commissioner is appointed and takes office. Other offi-
20 cers, attorneys, employees, and agents shall be selected
21 and appointed by the Commissioner, and shall be vested
22 with such powers and duties as the Commission may de-
23 termine.

1 **“SEC. 54. TRADEMARK OFFICE MANAGEMENT ADVISORY**
2 **BOARD.**

3 “(a) ESTABLISHMENT OF MANAGEMENT ADVISORY
4 BOARD.—

5 “(1) APPOINTMENT.—The United States
6 Trademark Office shall have a Management Advi-
7 sory Board (hereafter in this title referred to as the
8 ‘Board’) of 5 members, who shall be appointed by
9 the President and shall serve at the pleasure of the
10 President. Not more than 3 of the 5 members shall
11 be members of the same political party.

12 “(2) CHAIR.—The President shall designate a
13 Chair of the Board, whose term as chair shall be for
14 3 years.

15 “(3) TIMING OF APPOINTMENTS.—Initial ap-
16 pointments to the Board shall be made within 3
17 months after the effective date of the United States
18 Intellectual Property Organization Act of 1996. Va-
19 cancies shall be filled in the manner in which the
20 original appointment was made under this section
21 within 3 months after they occur.

22 “(b) BASIS FOR APPOINTMENTS.—Members of the
23 Board shall be citizens of the United States who shall be
24 chosen so as to represent the interests of diverse users
25 of the United States Trademark Office, and shall include

1 individuals with substantial background and achievement
 2 in corporate finance and management.

3 “(c) APPLICABILITY OF CERTAIN ETHICS LAWS.—
 4 Members of the Board shall be special Government em-
 5 ployees within the meaning of section 202 of title 18.

6 “(d) MEETINGS.—The Board shall meet at the call
 7 of the Chair to consider an agenda set by the Chair.

8 “(e) DUTIES.—The Board shall—

9 “(1) review the policies, goals, performance,
 10 budget, and user fees of the United States Trade-
 11 mark Office, and advise the Commissioner on these
 12 matters; and

13 “(2) within 60 days after the end of each fiscal
 14 year—

15 “(A) prepare an annual report on the mat-
 16 ters referred to under paragraph (1);

17 “(B) transmit the report to the Commis-
 18 sioner of Intellectual Property, the President,
 19 and the Committees on the Judiciary of the
 20 Senate and the House of Representatives; and

21 “(C) publish the report in the Trademark
 22 Office Official Gazette.

23 “(f) COMPENSATION.—Each member of the Board
 24 shall be compensated for each day (including travel time)
 25 during which such member is attending meetings or con-

1 ferences of the Board or otherwise engaged in the business
2 of the Board, at the rate which is the daily equivalent of
3 the annual rate of basic pay in effect for level III of the
4 Executive Schedule under section 5314 of title 5, United
5 States Code, and while away from such member's home
6 or regular place of business such member may be allowed
7 travel expenses, including per diem in lieu of subsistence,
8 as authorized by section 5703 of title 5, United States
9 Code.

10 “(g) ACCESS TO INFORMATION.—Members of the
11 Board shall be provided access to records and information
12 in the United States Trademark Office, except for person-
13 nel or other privileged information.

14 **“SEC. 55. ANNUAL REPORT TO CONGRESS.**

15 “(a) IN GENERAL.—Not later than 180 days after
16 the end of each fiscal year, the Commissioner shall report
17 to the Commissioner of Intellectual Property and to the
18 Congress on—

19 “(1) the moneys received and expended by the
20 Office;

21 “(2) the purposes for which the moneys were
22 spent;

23 “(3) the quality and quantity of the work of the
24 Office; and

25 “(4) other information relating to the Office.

1 “(b) ADDITIONAL REQUIREMENTS.—The report
2 under this section shall meet the requirements of section
3 9106 of title 31, United States Code, to the extent that
4 such requirements are not inconsistent with subsection
5 (a).

6 **“SEC. 56. TRADEMARK OFFICE FUNDING.**

7 “(a) FEES PAYABLE TO THE OFFICE.—All fees for
8 services performed by or materials furnished by the Unit-
9 ed States Trademark Office shall be payable to the Office.

10 “(b) USE OF MONEYS.—Moneys of the United States
11 Trademark Office not otherwise used to carry out the
12 functions of the Office shall be kept in cash on hand or
13 on deposit, or invested in obligations of the United States
14 or guaranteed by the United States, or in obligations or
15 other instruments which are lawful investments for fidu-
16 ciary, trust, or public funds. Fees available to the Commis-
17 sioner under this chapter shall be used for the registration
18 of trademarks and for other services and materials relat-
19 ing to trademarks.

20 “(c) CONTRIBUTION TO THE OFFICE OF THE COM-
21 MISSIONER OF INTELLECTUAL PROPERTY.—The Trade-
22 mark Office shall contribute one-third of the annual budg-
23 et of the Office of the Commissioner of Intellectual Prop-
24 erty.”.

1 (b) TRADEMARK TRIAL AND APPEAL BOARD.—Sec-
2 tion 17 of the Act of July 5, 1946 (commonly referred
3 to as the Trademark Act of 1946) (15 U.S.C. 1067) is
4 amended to read as follows:

5 “SEC. 17. (a) In every case of interference, opposition
6 to registration, application to register as a lawful concur-
7 rent user, or application to cancel the registration of a
8 mark, the Commissioner shall give notice to all parties and
9 shall direct a Trademark Trial and Appeal Board to deter-
10 mine and decide the respective rights of registration.

11 “(b) The Trademark Trial and Appeal Board shall
12 include the Commissioner, the Deputy Commissioner of
13 Trademarks, and members competent in trademark law
14 who are appointed by the Commissioner.”.

15 (c) DETERMINATION OF FEES.—Section 31(a) of the
16 Act of July 5, 1946 (commonly referred to as the Trade-
17 mark Act of 1946) (15 U.S.C. 1067(a)) is amended by
18 striking the second and third sentences and inserting the
19 following: “Fees established under this subsection may be
20 adjusted by the Commissioner, after consulting with the
21 Trademark Office Management Advisory Board in accord-
22 ance with section 53(a)(2)(C) of this Act.”.

23 **SEC. 116. UNITED STATES COPYRIGHT OFFICE.**

24 (a) ESTABLISHMENT OF THE COPYRIGHT OFFICE AS
25 A SEPARATE ADMINISTRATIVE UNIT.—Section 701 of

1 title 17, United States Code, is amended to read as fol-
2 lows:

3 **“§ 701. The Copyright Office: establishment, general**
4 **responsibilities, and organization**

5 “(a) ESTABLISHMENT.—The United States Copy-
6 right Office is established as a separate administrative
7 unit of the United States Intellectual Property Organiza-
8 tion. For purposes of this title, the United States Patent
9 Office shall also be referred to as the ‘Office’ and the
10 ‘Copyright Office’.

11 “(b) COMMISSIONER.—

12 “(1) IN GENERAL.—The management of the
13 United States Copyright Office shall be vested in a
14 Commissioner of Copyrights, who shall be a citizen
15 of the United States and who shall be appointed by
16 the Commissioner of Intellectual Property and shall
17 serve at the pleasure of the Commissioner of Intel-
18 lectual Property. The Commissioner shall be a per-
19 son who, by reason of professional background and
20 experience in copyright law is especially qualified to
21 manage the Office.

22 “(2) DUTIES.—

23 “(A) IN GENERAL.—The Commissioner
24 shall be responsible for all aspects of the man-
25 agement, administration, and operation of the

1 Office, including all administrative functions
2 and duties under this title, except as otherwise
3 specified.

4 “(B) ADVISING THE COMMISSIONER OF IN-
5 TELLECTUAL PROPERTY.—The Commissioner
6 of Copyrights shall advise the Commissioner of
7 Intellectual Property of all activities of the Of-
8 fice undertaken in response to obligations of the
9 United States under treaties and executive
10 agreements, or which relate to cooperative pro-
11 grams with those authorities of foreign govern-
12 ments that are responsible for the administra-
13 tion of the copyright laws of those countries.
14 The Commissioner of Copyrights shall be the
15 principal advisor to the Commissioner of Intel-
16 lectual Property on matters of copyright law
17 and shall recommend to the Commissioner of
18 Intellectual Property changes in law or policy
19 which may improve the ability of United States
20 citizens to secure and enforce copyrights in the
21 United States or in foreign countries.

22 “(C) CONSULTATION WITH THE MANAGE-
23 MENT ADVISORY BOARD.—The Commissioner
24 shall consult with the Management Advisory
25 Board established under section 711 on a regu-

1 lar basis on matters relating to the operation of
2 the Office, and shall consult with the Board be-
3 fore submitting budgetary proposals to the Of-
4 fice of Management and Budget or changing or
5 proposing to change Copyright Office fees or
6 regulations.

7 “(3) OATH.—The Commissioner shall, before
8 taking office, take an oath to discharge faithfully the
9 duties of the Office.

10 “(4) COMPENSATION.—The Commissioner shall
11 receive compensation at the rate of pay in effect for
12 level III of the Executive Schedule under section
13 5313 of title 5.

14 “(c) OFFICERS AND EMPLOYEES.—The Commis-
15 sioner shall appoint a Deputy Commissioner of Copyrights
16 who shall be vested with the authority to act in the capac-
17 ity of the Commissioner in the event of the absence or
18 incapacity of the Commissioner. In the event of a vacancy
19 in the office of Commissioner, the Deputy Commissioner
20 shall fill the office of Commissioner until a new Commis-
21 sioner is appointed and takes office. Other officers, attor-
22 neys, employees, and agents shall be selected and ap-
23 pointed by the Commissioner, and shall be vested with
24 such powers and duties as the Commissioner may deter-
25 mine.

1 “(d) ANNUAL REPORT TO CONGRESS.—

2 “(1) IN GENERAL.—Not later than 180 days
3 after the end of each fiscal year, the Commissioner
4 shall make an annual report to the Commissioner of
5 Intellectual Property and to the Congress on—

6 “(A) the moneys received and expended by
7 the Office;

8 “(B) the purposes for which the moneys
9 were spent;

10 “(C) the quality and quantity of the work
11 of the Office; and

12 “(D) other information relating to the Of-
13 fice.

14 “(2) ADDITIONAL REQUIREMENTS.—The report
15 under this section shall also meet the requirements
16 of section 9106 of title 31, to the extent that such
17 requirements are not inconsistent with paragraph
18 (1).”.

19 (b) COPYRIGHT OFFICE REGULATIONS.—Section 702
20 of title 17, United States Code, is amended to read as
21 follows:

22 **“§ 702. Copyright Office regulations**

23 “The Commissioner of Copyrights is authorized to es-
24 tablish regulations not inconsistent with law for the ad-

1 ministration of the functions and duties made the respon-
2 sibility of the Commissioner under this title.”.

3 (c) COPYRIGHT OFFICE FEES.—Section 708 of title
4 17, United States Code, is amended to read as follows:

5 **“§ 708. Copyright Office funding**

6 “(a) COPYRIGHT OFFICE FEES.—The following fees
7 shall be payable to the Copyright Office—

8 “(1) on filing each application under section
9 408 for registration of a copyright claim or for a
10 supplementary registration, including the issuance of
11 a certificate of registration if registration is made,
12 \$20;

13 “(2) on filing each application for registration
14 of a claim for renewal of a subsisting copyright
15 under section 304(a), including the issuance of a
16 certificate of registration if registration is made,
17 \$20;

18 “(3) for the issuance of a receipt for a deposit
19 under section 407, \$4;

20 “(4) for the recordation, as provided by section
21 205, of a transfer of copyright ownership or other
22 document covering not more than one title, \$20; for
23 additional titles, \$10 for each group of not more
24 than 10 titles;

1 “(5) for the filing, under section 115(b), of a
2 notice of intention to obtain a compulsory license,
3 \$12;

4 “(6) for the recordation, under section 302(c),
5 of a statement revealing the identity of an author of
6 an anonymous or pseudonymous work, or for the
7 recordation, under section 302(d), of a statement re-
8 lating to the death of an author, \$20 for a document
9 covering not more than one title; for each additional
10 title, \$2;

11 “(7) for the issuance, under section 706, of an
12 additional certificate of registration, \$8;

13 “(8) for the issuance of any other certification,
14 \$20 for each hour or fraction of an hour consumed
15 with respect thereto;

16 “(9) for the making and reporting of a search
17 as provided by section 705, and for any related serv-
18 ices, \$20 for each hour or fraction of an hour
19 consumed with respect thereto; and

20 “(10) for any other special services requiring a
21 substantial amount of time or expense, such fees as
22 the Commissioner may fix on the basis of the cost
23 of providing the service.

24 “(b) FEES ON BASIS OF PREPARATION COSTS.—The
25 Commissioner is authorized to fix the fees for preparing

1 copies of Copyright Office records, whether or not such
2 copies are certified, on the basis of the cost of such prepa-
3 ration.

4 “(c) APPLICABILITY OF FEES TO THE GOVERN-
5 MENT.—The fees prescribed by or under this section are
6 applicable to the United States Government and any of
7 its agencies, employees, or officers, but the Commissioner
8 has discretion to waive the requirement of this subsection
9 in occasional or isolated cases involving relatively small
10 amounts.

11 “(d) DETERMINATION OF FEES.—The Commissioner
12 of Copyrights, after consulting with the Management Ad-
13 visory Board in accordance with section 701(b)(2)(C),
14 may, by regulation, adjust the fees specified under sub-
15 section (a).

16 “(e) USE OF MONEYS.—Moneys of the United States
17 Copyright Office not otherwise used to carry out the func-
18 tions of the Office shall be kept in cash on hand or on
19 deposit, or invested in obligations of the United States or
20 guaranteed by the United States, or in obligations or other
21 instruments which are lawful investments for fiduciary,
22 trust, or public funds. Fees available to the Commissioner
23 under this title shall be used for the registration of copy-
24 rights and for other services and materials relating to
25 copyrights.

1 “(f) CONTRIBUTION TO OFFICE OF THE COMMIS-
 2 SIONER OF INTELLECTUAL PROPERTY.—The Copyright
 3 Office shall contribute one-third of the annual budget of
 4 the Office of the Commissioner of Intellectual Property.”.

5 (d) COPYRIGHT OFFICE MANAGEMENT ADVISORY
 6 BOARD.—Chapter 7 of title 17, United States Code, is
 7 amended by adding after section 710 the following new
 8 section:

9 **“§ 711. Copyright Office Management Advisory Board**

10 “(a) ESTABLISHMENT OF MANAGEMENT ADVISORY
 11 BOARD.—

12 “(1) APPOINTMENT.—The United States Copy-
 13 right Office shall have a Management Advisory
 14 Board (hereafter in this title referred to as the
 15 ‘Board’) of 5 members, including the Librarian of
 16 Congress and 4 additional members who shall be ap-
 17 pointed by the President and shall serve at the
 18 pleasure of the President. Not more than 3 of the
 19 5 members shall be members of the same political
 20 party.

21 “(2) CHAIR.—The President shall designate a
 22 chair of the Board, whose term as chair shall be for
 23 3 years.

24 “(3) TIMING OF APPOINTMENTS.—Initial ap-
 25 pointments to the Board shall be made within 3

1 months after the effective date of the United States
2 Intellectual Property Organization Act of 1996. Va-
3 cancies shall be filled in the manner in which the
4 original appointment was made under this sub-
5 section within 3 months after they occur.

6 “(b) BASIS FOR APPOINTMENTS.—Members of the
7 Board shall be citizens of the United States chosen to rep-
8 resent the interests of diverse users of the United States
9 Copyright Office, and shall include individuals with sub-
10 stantial background and achievement in corporate finance
11 and management.

12 “(c) APPLICABILITY OF CERTAIN ETHICS LAWS.—
13 Members of the Board shall be special Government em-
14 ployees within the meaning of section 202 of title 18.

15 “(d) MEETINGS.—The Board shall meet at the call
16 of the chair to consider an agenda set by the chair.

17 “(e) DUTIES.—The Board shall—

18 “(1) review the policies, goals, performance,
19 budget, and fees of the United States Copyright Of-
20 fice, and advise the Commissioner on these matters;
21 and

22 “(2) within 60 days after the end of each fiscal
23 year—

24 “(A) prepare an annual report on the mat-
25 ters referred to in paragraph (1);

1 “(B) transmit the report to the Commis-
2 sioner of Intellectual Property, the President,
3 and the Committees on the Judiciary of the
4 Senate and the House of Representatives; and

5 “(C) publish the report in the Federal
6 Register.

7 “(f) COMPENSATION.—Each member of the Board
8 shall be compensated for each day (including travel time)
9 during which such member is attending meetings or con-
10 ferences of the Board or otherwise engaged in the business
11 of the Board, at the rate which is the daily equivalent of
12 the annual rate of basic pay in effect for level III of the
13 Executive Schedule under section 5314 of title 5, and
14 while away from such member’s home or regular place of
15 business such member may be allowed travel expenses, in-
16 cluding per diem in lieu of subsistence, as authorized by
17 section 5703 of title 5.

18 “(g) ACCESS TO INFORMATION.—Members of the
19 Board shall be provided access to records and information
20 in the United States Copyright Office, except for person-
21 nel or other privileged information.”.

22 (e) USE OF ADMINISTRATIVE LAW JUDGES FOR
23 COPYRIGHT ROYALTY DISPUTES.—

24 (1) IN GENERAL.—Section 801 of title 17,
25 United States Code, is amended—

1 (A) by amending the section heading to
2 read as follows:

3 **“§ 801. Copyright royalty disputes”;**

4 (B) by amending subsection (a) to read as
5 follows:

6 “(a) IN GENERAL.—The Commissioner may employ
7 administrative law judges to conduct proceedings and
8 make determinations in accordance with this chapter.”;

9 (C) in subsection (b)—

10 (i) in the matter preceding paragraph
11 (1) by striking “copyright arbitration roy-
12 alty panels” and inserting “proceedings
13 conducted by administrative law judges”;

14 (ii) in paragraph (2)(A) in the second
15 sentence by striking “copyright arbitration
16 royalty panels” and inserting “administra-
17 tive law judge”; and

18 (iii) in paragraph (3) by striking
19 “Register of Copyrights” and inserting
20 “Commissioner”; and

21 (D) by striking subsections (c) and (d).

22 (2) REPEAL OF ARBITRATION ROYALTY PAN-
23 ELS.—Section 802 of title 17, United States Code,
24 is repealed.

1 (3) INSTITUTION AND CONCLUSION OF PRO-
2 CEEDINGS.—Section 803 of title 17, United States
3 Code, is amended—

4 (A) by redesignating such section as sec-
5 tion 802;

6 (B) in subsection (a)—

7 (i) in paragraph (1)—

8 (I) in the first sentence by strik-
9 ing “after such date of enactment,
10 may file a petition with the Librarian
11 of Congress” and inserting “or an ad-
12 ministrative law judge after such date
13 of enactment may file a petition with
14 the Commissioner”; and

15 (II) by striking the second and
16 third sentence and inserting the fol-
17 lowing: “The Commissioner shall
18 make a determination as to whether
19 the petitioner has such a significant
20 interest in the royalty rate in which
21 an adjustment is requested. If the
22 Commissioner determines that the pe-
23 titioner has such a significant inter-
24 est, the Commissioner shall cause no-
25 tice of this determination, with the

1 reasons therefor, to be published in
2 the Federal Register, together with
3 the notice of commencement of pro-
4 ceedings under this chapter.”;

5 (ii) in paragraph (4)(B)—

6 (I) by striking “Librarian of
7 Congress” and inserting “Commis-
8 sioner”;

9 (II) by striking “convene a copy-
10 right arbitration royalty panel. The
11 arbitration panel” and inserting
12 “refer the matter to an administrative
13 law judge. The administrative law
14 judge”; and

15 (III) in the third sentence by
16 striking “arbitration panel” and in-
17 serting “administrative law judge”;
18 and

19 (iii) in paragraph (5) by striking “Li-
20 brarian of Congress” and inserting “Com-
21 missioner”;

22 (C) in subsection (b)—

23 (i) in the first sentence—

24 (I) by striking “Copyright Roy-
25 alty Tribunal or the Librarian of Con-

1 gress” and inserting “Commissioner”;

2 and

3 (II) by striking “Librarian” and

4 inserting “Commissioner”;

5 (ii) in the second sentence by striking

6 “Librarian” and inserting “Commis-

7 sioner”; and

8 (iii) in the third sentence by striking

9 “or the Librarian of Congress” and insert-

10 ing “, the Librarian of Congress, or the

11 Commissioner”;

12 (D) in subsection (c) by striking “Librar-

13 ian of Congress” and inserting “Commis-

14 sioner”; and

15 (E) in subsection (d) by striking “Librar-

16 ian of Congress” and inserting “Commis-

17 sioner”.

18 (4) APPEAL AND JUDICIAL REVIEW.—Chapter 8

19 of title 17, United States Code (as amended by this

20 section), is further amended by adding at the end

21 the following new section:

22 **“§ 803. Proceedings, appeals, and judicial review**

23 “(a) PROCEEDINGS.—

24 “(1) IN GENERAL.—Administrative law judges

25 shall conduct arbitration proceedings and other pro-

1 proceedings under this chapter in accordance with sub-
2 chapter II of chapter 5 of title 5, for the purpose of
3 making their determinations in carrying out the pur-
4 poses set forth in section 801. An administrative law
5 judge shall act on the basis of a fully documented
6 written record, prior decisions of the Copyright Roy-
7 alty Tribunal, prior copyright arbitration panel de-
8 terminations, rulings by the Librarian of Congress,
9 and decisions by the Commissioner under this chap-
10 ter.

11 “(2) SUBMISSION OF RELEVANT INFORMATION
12 BY PARTIES.—Any copyright owner who claims to be
13 entitled to royalties under section 111, 114, 116, or
14 119, any person entitled to a compulsory license
15 under section 114(d), any person entitled to a com-
16 pulsory license under section 115, or any interested
17 copyright party who claims to be entitled to royalties
18 under section 1006, may submit relevant informa-
19 tion and proposals to an administrative law judge in
20 proceedings applicable to such copyright owner or
21 interested copyright party, and any other person
22 participating in such proceedings may submit such
23 relevant information and proposals to the adminis-
24 trative law judge conducting the proceedings.

1 “(3) RATEMAKING PROCEEDING.—In rate-
2 making proceedings, the parties to the proceedings
3 shall bear the entire cost thereof in such manner
4 and proportion as the administrative law judge shall
5 direct.

6 “(4) DISTRIBUTION PROCEEDINGS.—In dis-
7 tribution proceedings, the parties shall bear the cost
8 in direct proportion to their share of the distribu-
9 tion.

10 “(b) REPORT TO THE COMMISSIONER.—No later
11 than 180 days after publication of the notice in the Fed-
12 eral Register initiating a proceeding under this chapter,
13 the administrative law judge conducting the proceeding
14 shall report to the Commissioner its determination con-
15 cerning the royalty fee or distribution of royalty fees, as
16 the case may be. Such report shall be accompanied by the
17 written record, and shall set forth the facts that the ad-
18 ministrative law judge found relevant to the determina-
19 tion.

20 “(c) APPEAL TO COMMISSIONER.—

21 “(1) IN GENERAL.—Any party may file an ap-
22 peal of any determination reported by an adminis-
23 trative law judge under subsection (b) with the Com-
24 missioner. Such appeal shall be filed no later than

1 10 days after the date on which the Commissioner
2 receives the report.

3 “(2) EFFECT OF NO APPEAL.—If an appeal is
4 not filed within the 10-day period as provided under
5 paragraph (1) the determination of the administra-
6 tive law judge shall be final and may not be ap-
7 pealed to any officer of the Copyright Office or the
8 Intellectual Property Organization, or any court of
9 the United States.

10 “(3) DETERMINATION APPEALED.—If an ap-
11 peal is filed within the 10-day period as provided
12 under paragraph (1) the Commissioner shall review
13 the determination of the administrative law judge
14 and make a final determination. The Commissioner
15 shall make such determination no later than 60 days
16 after the date on which the Commissioner receives
17 the report of the administrative law judge.

18 “(4) PUBLISHING OF DETERMINATION.—The
19 Commissioner shall—

20 “(A) publish in the Federal Register the
21 determination of the administrative law judge
22 and the determination of the Commissioner;

23 “(B) publicize such determinations in such
24 other manner as the Commissioner considers
25 appropriate; and

1 “(C) make the report of the administrative
2 law judge and the accompanying record avail-
3 able for public inspection and copying.

4 “(d) JUDICIAL REVIEW.—

5 “(1) IN GENERAL.—

6 “(A) APPEAL.—The determination of the
7 Commissioner shall—

8 “(i) be a final administrative action;

9 “(ii) constitute an exhaustion of rem-
10 edies; and

11 “(iii) no later than 30 days after the
12 date of the determination of the Commis-
13 sioner, may be appealed to the United
14 States Court of Appeals for the Federal
15 Circuit.

16 “(B) EFFECT OF NO APPEAL.—If no ap-
17 peal is brought within the 30-day period as pro-
18 vided under subparagraph (A), the determina-
19 tion of the Commissioner—

20 “(i) is final, and the royalty fee or de-
21 termination with respect to the distribution
22 of fees, as the case may be, shall take ef-
23 fect as set forth in the determination; and

1 “(ii) may not be appealed to any offi-
2 cer of the Intellectual Property Organiza-
3 tion or any court of the United States.

4 “(2) JURISDICTION OF COURT.—The court
5 shall have jurisdiction—

6 “(A)(i) to modify or vacate a determina-
7 tion of the Commissioner only if it finds, on the
8 basis of the record before the Commissioner,
9 that the Commissioner acted in an arbitrary
10 manner; and

11 “(ii) if the court modifies the decision of
12 the Commissioner, to enter the court’s deter-
13 mination with respect to the amount or dis-
14 tribution of royalty fees and costs, to order the
15 repayment of any excess fees, and to order the
16 payment of any underpaid fees, and the interest
17 pertaining respectively thereto, in accordance
18 with its final judgment; and

19 “(B) to further vacate the decision of the
20 administrative law judge or the Commissioner
21 and remand the case to the Commissioner for
22 proceedings in accordance with subsection (a).

23 “(3) EFFECT OF PENDENCY OF APPEAL.—The
24 pendency of an appeal under this subsection shall
25 not relieve persons obligated to make royalty pay-

1 ments under sections 111, 114, 115, 116, 118, 119,
2 or 1003 who would be affected by the determination
3 on appeal to deposit the statement of account and
4 royalty fees specified in those sections.

5 “(f) ADMINISTRATIVE MATTERS.—

6 “(1) DEDUCTION OF COSTS FROM ROYALTY
7 FEES.—The Commissioner may, to the extent not
8 otherwise provided under this title, deduct from roy-
9 alty fees deposited or collected under this title the
10 reasonable costs incurred by the Copyright Office
11 under this chapter. Such deduction may be made be-
12 fore the fees are distributed to any copyright claim-
13 ants. If no royalty pool exists from which their costs
14 can be deducted, the Commissioner may assess the
15 reasonable costs directly to the parties to the most
16 recent relevant proceeding.

17 “(2) POSITIONS REQUIRED FOR ADMINISTRA-
18 TION OF COMPULSORY LICENSING.—Section 307 of
19 the Legislative Branch Appropriations Act, 1994,
20 shall not apply to employee positions in the Copy-
21 right Office that are required to be filled in order to
22 carry out section 111, 114, 115, 116, 118, or 119
23 or chapter 10.”.

24 “(5) TECHNICAL AND CONFORMING AMEND-
25 MENTS.—(A) The table of sections for chapter 8 of

1 title 17, United States Code, is amended to read as
2 follows:

3 **“CHAPTER 8—COPYRIGHT ROYALTY**
4 **DISPUTES**

“Sec.

“801. Copyright royalty disputes.

“802. Institution and conclusion of proceedings.

“803. Proceedings, appeals, and judicial review.”.

5 (B) Section 111(d)(2) of title 17, United States
6 Code, is amended by striking “a copyright arbitra-
7 tion royalty panel” and inserting “an administrative
8 law judge under chapter 8”.

9 (C) Section 111(d)(4)(B) of title 17, United
10 States Code, is amended by striking “convene a
11 copyright arbitration royalty panel” and inserting
12 “refer the matter to an administrative law judge”.

13 (D) Section 115(c)(3)(D) of title 17, United
14 States Code, is amended—

15 (i) in the first sentence by striking “section
16 803(a)(1)” and inserting “section 802(a)(1)”;

17 (ii) in the first sentence by striking “con-
18 vene a copyright arbitration royalty panel to de-
19 termine and publish in the Federal Register”
20 and inserting “refer the matter to an adminis-
21 trative law judge to determine”;

1 (iii) in the third sentence by striking
2 “copyright arbitration royalty panel may” and
3 inserting “administrative law judge may”; and

4 (iv) by inserting after the first sentence
5 “The Commissioner shall publish such schedule
6 in the Federal Register.”.

7 (E) Section 118(b)(3) of title 17, United States
8 Code, is amended—

9 (i) in the first sentence by striking “con-
10 vene a copyright arbitration royalty panel to de-
11 termine and publish in the Federal Register”
12 and inserting “refer the matter to administra-
13 tive law judge to determine”;

14 (ii) in the second sentence by striking
15 “copyright arbitration royalty panel may” and
16 inserting “administrative law judge may”; and

17 (iii) by inserting after the first sentence
18 “The Commissioner shall publish such schedule
19 in the Federal Register.”.

20 (F) Section 118(d) of title 17, United States
21 Code, is amended by striking “a copyright arbitra-
22 tion royalty panel” and inserting “an administrative
23 law judge”.

24 (G) Section 119(b)(4)(B) of title 17, United
25 States Code, is amended by striking “convene a

1 copyright arbitration royalty panel” and inserting
 2 “refer the matter to an administrative law judge”.

3 (H) Section 1006(c) of title 17, United States
 4 Code, is amended by striking “convene a copyright
 5 arbitration royalty panel which” and inserting “refer
 6 the matter to an administrative law judge who”.

7 (I) Section 1007(c) of title 17, United States
 8 Code, is amended by striking “convene a copyright
 9 arbitration royalty panel” and inserting “refer the
 10 matter to an administrative law judge”.

11 (f) COPYRIGHT APPEALS BOARD.—

12 (1) IN GENERAL.—The provisions of title 17,
 13 United States Code, are amended by adding after
 14 chapter 11 the following new chapter:

15 **“CHAPTER 12—COPYRIGHT APPEALS**
 16 **BOARD**

“Sec.
 “1201. Establishment.
 “1202. Appeals.
 “1203. Judicial review.

17 **“§ 1201. Establishment**

18 “There is established the Copyright Appeals Board
 19 within the Copyright Office. The Copyright Appeals Board
 20 shall include the Commissioner, the Deputy Commissioner
 21 of Copyrights, and members competent in copyright law
 22 who are appointed by the Commissioner.

1 **“§ 1202. Appeals**

2 “In any case of opposition to copyright registration
3 or other determination of the Copyright Office relating to
4 copyrights (other than any determination made under
5 chapter 8) the Commissioner shall give notice to all parties
6 and shall direct the Copyright Appeals Board to review
7 any such determination.

8 **“§ 1203. Judicial review**

9 “Any final decision of the Copyright Appeals Board
10 may be appealed to the United States Court of Appeals
11 for the Federal Circuit.”.

12 (2) TECHNICAL AND CONFORMING AMEND-
13 MENT.—The table of chapters for title 17, United
14 States Code, is amended by adding after the item re-
15 lating to chapter 11 the following new item:

“12. Copyright Appeals Board 1201”.

16 **SEC. 117. SUITS BY AND AGAINST THE ORGANIZATION.**

17 (a) IN GENERAL.—

18 (1) ACTIONS UNDER UNITED STATES LAW.—
19 Any civil action or proceeding to which the United
20 States Intellectual Property Organization is a party
21 is deemed to arise under the laws of the United
22 States. The Federal courts shall have exclusive juris-
23 diction over all civil actions by or against the Orga-
24 nization.

1 (2) CONTRACT CLAIMS.—Any action or proceed-
2 ing against the Organization in which any claim is
3 cognizable under the Contract Disputes Act of 1978
4 (41 U.S.C. 601 et seq.) shall be subject to such Act.
5 For purposes of such Act, the Commissioner shall be
6 deemed to be the agency head with respect to con-
7 tract claims arising with respect to the Organization.
8 Notwithstanding any provision of title 28, United
9 States Code, any other action or proceeding against
10 the Organization founded upon contract may be
11 brought in an appropriate district court.

12 (3) TORT CLAIMS.—(A) Any action or proceed-
13 ing against the Organization in which any claim is
14 cognizable under the provisions of section 1346(b)
15 and chapter 171 of title 28, United States Code,
16 shall be governed by those provisions.

17 (B) Any other action or proceeding against the
18 Organization founded upon tort may be brought in
19 an appropriate district court without regard to the
20 provisions of section 1346(b) and chapter 171 of
21 title 28, United States Code.

22 (4) PROHIBITION ON ATTACHMENT, LIENS, OR
23 SIMILAR PROCESS.—No attachment, garnishment,
24 lien, or similar process, intermediate or final, in law

1 or equity, may be issued against property of the Or-
2 ganization.

3 (5) SUBSTITUTION OF ORGANIZATION AS
4 PARTY.—If the Organization determines that the of-
5 ficer or employee was acting within the scope of his
6 employment with the Organization, the Organization
7 shall be substituted as defendant in any civil action
8 or proceeding against an officer or employee of the
9 Organization. If the Organization refuses to certify
10 scope of employment, the officer or employee may at
11 any time before trial petition the court to find and
12 certify that the officer or employee was acting within
13 the scope of his employment. Upon certification by
14 the court, the Organization shall be substituted as
15 the party defendant. A copy of the petition shall be
16 served upon the Organization. In any such civil ac-
17 tion or proceeding to which paragraph (3)(A) ap-
18 plies, the provisions of section 1346(b) and chapter
19 171 of title 28, United States Code, shall apply in
20 lieu of this paragraph.

21 (b) RELATIONSHIP WITH JUSTICE DEPARTMENT.—

22 (1) EXERCISE BY ORGANIZATION OF ATTORNEY
23 GENERAL'S AUTHORITIES.—Except as provided in
24 this section, with respect to any action or proceeding
25 in which the Organization is a party or an officer or

1 employee thereof is a party in his official capacity,
2 the Organization, officer, or employee may exercise,
3 without prior authorization from the Attorney Gen-
4 eral, the authorities and duties that otherwise would
5 be exercised by the Attorney General on behalf of
6 the Organization, officer, or employee under title 28,
7 United States Code, or other laws.

8 (2) APPEARANCES BY ATTORNEY GENERAL.—

9 Notwithstanding paragraph (1), at any time the At-
10 torney General may, in any action or proceeding de-
11 scribed in paragraph (1), file an appearance on be-
12 half of the Organization or the officer or employee
13 involved, without the consent of the Organization or
14 the officer or employee. Upon such filing, the Attor-
15 ney General shall represent the Organization or such
16 officer or employee with exclusive authority in the
17 conduct, settlement, or compromise of that action or
18 proceeding.

19 (3) CONSULTATIONS WITH AND ASSISTANCE BY

20 ATTORNEY GENERAL.—The Organization may con-
21 sult with the Attorney General concerning any legal
22 matter, and the Attorney General shall provide ad-
23 vice and assistance to the Organization, including
24 representing the Organization in litigation, if re-
25 quested by the Organization.

1 (4) REPRESENTATION BEFORE SUPREME
2 COURT.—The Attorney General shall represent the
3 Organization in all cases before the United States
4 Supreme Court.

5 (5) QUALIFICATIONS OF ATTORNEYS.—An at-
6 torney admitted to practice to the bar of the highest
7 court of at least one State in the United States or
8 the District of Columbia and employed by the Orga-
9 nization may represent the Organization in any legal
10 proceeding in which the Organization or an officer
11 or employee of the Organization is a party or inter-
12 ested—

13 (A) regardless of whether the attorney is a
14 resident of the jurisdiction in which the pro-
15 ceeding is held; and

16 (B) notwithstanding any other pre-
17 requisites of qualification or appearance re-
18 quired by the court or administrative body be-
19 fore which the proceeding is conducted.

20 **SEC. 118. FUNDING.**

21 (a) IN GENERAL.—The activities of the United
22 States Intellectual Property Organization and each Office
23 of the Organization shall be funded entirely through fees
24 payable to the United States Patent Office (under section
25 42 of title 35, United States Code), the United States

1 Trademark Office (under section 56 of the Act of July
2 5, 1946 (commonly known as the Trademark Act of
3 1946)), and the United States Copyright Office (under
4 section 708 of title 17, United States Code), subject to
5 the provisions of subsection (b).

6 (b) BORROWING AUTHORITY.—

7 (1) IN GENERAL.—The United States Intellec-
8 tual Property Organization is authorized to issue
9 from time to time for purchase by the Secretary of
10 the Treasury its debentures, bonds, notes, and other
11 evidences of indebtedness (hereafter in this sub-
12 section referred to as “obligations”) to assist in fi-
13 nancing the activities of the United States Patent
14 Office, the United States Trademark Office, and the
15 United States Copyright Office.

16 (2) BORROWING AUTHORITY.—Any borrowing
17 under this subsection shall be repaid only from fees
18 paid to the Office for which such obligations were is-
19 sued. Such obligations shall be redeemable at the op-
20 tion of the Organization before maturity in the man-
21 ner stipulated in such obligations and shall have
22 such maturity as is determined by the Organization
23 with the approval of the Secretary of the Treasury.
24 Each such obligation issued to the Treasury shall
25 bear interest at a rate not less than the current yield

1 on outstanding marketable obligations of the United
2 States of comparable maturity during the month
3 preceding the issuance of the obligation as deter-
4 mined by the Secretary of the Treasury.

5 (3) PURCHASE OF OBLIGATIONS.—The Sec-
6 retary of the Treasury shall purchase any obligations
7 of the Organization issued under this subsection and
8 for such purpose the Secretary of the Treasury is
9 authorized to use as a public-debt transaction the
10 proceeds of any securities issued under chapter 31
11 of title 31, United States Code, and the purposes for
12 which securities may be issued under that chapter
13 are extended to include such purpose.

14 (4) TREATMENT.—Payment under this sub-
15 section of the purchase price of such obligations of
16 the United States Intellectual Property Organization
17 shall be treated as public-debt transactions of the
18 United States.

19 **SEC. 119. MANAGEMENT REPORT.**

20 The report of the Commissioner of Patents (as re-
21 quired by section 14 of title 35, United States Code), the
22 report of the Commissioner of Trademarks (as required
23 under section 55 of the Act of July 5, 1946 (commonly
24 known as the Trademark Act of 1946)), and the report
25 of the Commissioner of Copyrights, as required by section

1 701(c) of title 17, United States Code, shall collectively
2 be deemed to be the report of the United States Intellec-
3 tual Property Organization under section 9106 of title 31,
4 United States Code, and the Commissioner of Intellectual
5 Property shall not file a separate report under such sec-
6 tion.

7 **SEC. 120. AUDITS.**

8 (a) IN GENERAL.—Financial statements of the Unit-
9 ed States Intellectual Property Organization shall be pre-
10 pared on an annual basis in accordance with generally ac-
11 cepted accounting principles. Such statements shall be au-
12 dited by an independent certified public accountant chosen
13 by the Commissioner. The audit shall be conducted in ac-
14 cordance with standards that are consistent with generally
15 accepted Government auditing standards and other stand-
16 ards established by the Comptroller General of the United
17 States, and with the generally accepted auditing standards
18 of the private sector, to the extent feasible. The Commis-
19 sioner shall transmit to the Committees on the Judiciary
20 of the Senate and the House of Representatives the results
21 of each audit under this subsection.

22 (b) REVIEW BY COMPTROLLER GENERAL OF THE
23 UNITED STATES.—The Comptroller General of the United
24 States may review any audit of the financial statement
25 of the Intellectual Property Organization that is conducted

1 under subsection (a). The Comptroller General of the
2 United States shall report to the Congress and the Organi-
3 zation the results of any such review and shall include in
4 such report appropriate recommendations.

5 (c) AUDIT BY COMPTROLLER GENERAL OF THE
6 UNITED STATES.—The Comptroller General of the United
7 States may audit the financial statements of the Organiza-
8 tion and such audit shall be in lieu of the audit required
9 by subsection (a). The Organization shall reimburse the
10 Comptroller General of the United States for the cost of
11 any audit conducted under this subsection.

12 (d) ACCESS TO OFFICE RECORDS.—All books, finan-
13 cial records, report files, memoranda, and other property
14 that the Comptroller General of the United States deems
15 necessary for the performance of any audit shall be made
16 available to the Comptroller General of the United States.

17 (e) APPLICABILITY IN LIEU OF TITLE 31, UNITED
18 STATES CODE, PROVISIONS.—This section applies to the
19 Office in lieu of the provisions of section 9105 of title 31,
20 United States Code.

21 **SEC. 121. TRANSFERS.**

22 (a) TRANSFER OF FUNCTIONS.—Except as otherwise
23 provided in this title, there are transferred to, and vested
24 in, the United States Intellectual Property Organization
25 all functions, powers, and duties vested by law in the Sec-

1 retary of Commerce or the Department of Commerce or
2 in the officers or components in the Department of Com-
3 merce with respect to the authority to grant patents and
4 register trademarks, and in the Patent and Trademark
5 Office, as in effect on the day before the effective date
6 of this title, and in the officers and components of such
7 office.

8 (b) TRANSFER OF FUNDS AND PROPERTY.—The
9 Secretary of Commerce shall transfer to the United States
10 Intellectual Property Organization, on the effective date
11 of this title, so much of the assets, liabilities, contracts,
12 property, records, and unexpended and unobligated bal-
13 ances of appropriations, authorizations, allocations, and
14 other funds employed, held, used, arising from, available
15 to, or to be made available to the Department of Com-
16 merce, including funds set aside for accounts receivable
17 which are related to functions, powers, and duties which
18 are vested in the Intellectual Property Organization by
19 this title.

20 **Subtitle B—Effective Date;**
21 **Technical Amendments**

22 **SEC. 131. EFFECTIVE DATE.**

23 This title and the amendments made by this title
24 shall take effect 4 months after the date of the enactment
25 of this Act.

1 **SEC. 132. TECHNICAL AND CONFORMING AMENDMENTS.**

2 (a) AMENDMENTS TO TITLE 35.—

3 (1) TABLE OF PARTS.—The item relating to
4 part I in the table of parts for title 35, United
5 States Code, is amended to read as follows:

“I. United States Patent Office 1.”

6 (2) HEADING.—The heading for part I of title
7 35, United States Code, is amended to read as fol-
8 lows:

9 **“PART I—UNITED STATES PATENT OFFICE”.**

10 (3) TABLE OF CHAPTERS.—The table of chap-
11 ters for part I of title 35, United States Code, is
12 amended by amending the item relating to chapter
13 1 to read as follows:

“1. Establishment, Officers and Employees, Functions 1”.

14 (4) TABLE OF SECTIONS.—The table of sections
15 for chapter 1 of title 35, United States Code, is
16 amended to read as follows:

17 **“CHAPTER 1—ESTABLISHMENT, OFFICERS**
18 **AND EMPLOYEES, FUNCTIONS**

“Sec.

“1. Establishment.

“2. Powers and duties.

“3. Officers and employees.

“4. Restrictions on officers and employees as to interest in patents.

“5. Patent Office Management Advisory Board.

“6. Duties of Commissioner.

“7. Board of Patent Appeals and Interferences.

“8. Library.

“9. Classification of patents.

“10. Certified copies of records.

“11. Publications.

“12. Exchange of copies of patents with foreign countries.

“13. Copies of patents for public libraries.

“14. Annual report to Congress.”.

1 (5) COMMISSIONER OF PATENTS AND TRADE-
2 MARKS.—(A) Section 41(h)(1) of title 35, United
3 States Code, is amended by striking “Commissioner
4 of Patents and Trademarks” and inserting “Com-
5 missioner”.

6 (B) Section 155 of title 35, United States Code,
7 is amended by striking “Commissioner of Patents
8 and Trademarks” and inserting “Commissioner”.

9 (C) Section 155A(c) of title 35, United States
10 Code, is amended by striking “Commissioner of Pat-
11 ents” and inserting “Commissioner”.

12 (6) PATENT AND TRADEMARK OFFICE.—The
13 provisions of title 35, United States Code, is amend-
14 ed by striking “Patent and Trademark Office” each
15 place it appears and inserting “Patent Office”.

16 (b) AMENDMENTS TO THE TRADEMARK ACT OF
17 1946.—

18 (1) REFERENCES.—All amendments in this
19 subsection refer to the Act of July 5, 1946 (com-
20 monly referred to as the Trademark Act of 1946).

21 (2) AMENDMENTS RELATING TO COMMIS-
22 SIONER.—Section 61 (as redesignated by section
23 115(a)(2) of this Act) is amended by striking the
24 undesigned paragraph relating to the definition of

1 the term “Commissioner” and inserting the follow-
2 ing:

3 “The term ‘Commissioner’ means the Commissioner
4 of Trademarks.”.

5 (3) AMENDMENTS RELATING TO PATENT AND
6 TRADEMARK OFFICE.—(A) Section 1(a)(1) is
7 amended by striking “Patent and Trademark Of-
8 fice” and inserting “Trademark Office”.

9 (B) Section 1(a)(2) is amended by striking
10 “Patent and Trademark Office” and inserting
11 “Trademark Office”.

12 (C) Section 1(b)(1) is amended by striking
13 “Patent and Trademark Office” and inserting
14 “Trademark Office”.

15 (D) Section 1(b)(2) is amended by striking
16 “Patent and Trademark Office” and inserting
17 “Trademark Office”.

18 (E) Section 1(d)(1) is amended by striking
19 “Patent and Trademark Office” each place such
20 term appears and inserting “Trademark Office”.

21 (F) Section 1(e) is amended by striking “Pat-
22 ent and Trademark Office” and inserting “Trade-
23 mark Office”.

1 (G) Section 2(d) is amended by striking “Pat-
2 ent and Trademark Office” and inserting “Trade-
3 mark Office”.

4 (H) Section 7(a) is amended by striking “Pat-
5 ent and Trademark Office” each place such term ap-
6 pears and inserting “Trademark Office”.

7 (I) Section 7(d) is amended by striking “Patent
8 and Trademark Office” and inserting “Trademark
9 Office”.

10 (J) Section 7(e) is amended by striking “Patent
11 and Trademark Office” each place such term ap-
12 pears and inserting “Trademark Office”.

13 (K) Section 7(f) is amended by striking “Pat-
14 ent and Trademark Office” each place such term ap-
15 pears and inserting “Trademark Office”.

16 (L) Section 7(g) is amended by striking “Pat-
17 ent and Trademark Office” each place such term ap-
18 pears and inserting “Trademark Office”.

19 (M) Section 8(a) is amended by striking “Pat-
20 ent and Trademark Office” and inserting “Trade-
21 mark Office”.

22 (N) Section 8(b) is amended by striking “Pat-
23 ent and Trademark Office” and inserting “Trade-
24 mark Office”.

1 (O) Section 10 is amended by striking “Patent
2 and Trademark Office” each place such term ap-
3 pears and inserting “Trademark Office”.

4 (P) Section 12(a) is amended by striking “Pat-
5 ent and Trademark Office” and inserting “Trade-
6 mark Office”.

7 (Q) Section 13(a) is amended by striking “Pat-
8 ent and Trademark Office” and inserting “Trade-
9 mark Office”.

10 (R) Section 13(b)(1) is amended by striking
11 “Patent and Trademark Office” each place such
12 term appears and inserting “Trademark Office”.

13 (S) Section 15(2) is amended by striking “Pat-
14 ent and Trademark Office” and inserting “Trade-
15 mark Office”.

16 (T) Section 17 is amended by striking “Patent
17 and Trademark Office” and inserting “Trademark
18 Office”.

19 (U) Section 21(a)(2) is amended by striking
20 “Patent and Trademark Office” and inserting
21 “Trademark Office”.

22 (V) Section 21(a)(3) is amended by striking
23 “Patent and Trademark Office” each place such
24 term appears and inserting “Trademark Office”.

1 (W) Section 21(a)(4) is amended by striking
2 “Patent and Trademark Office” each place such
3 term appears and inserting “Trademark Office”.

4 (X) Section 21(b)(3) is amended by striking
5 “Patent and Trademark Office” each place such
6 term appears and inserting “Trademark Office”.

7 (Y) Section 21(b)(4) is amended by striking
8 “Patent and Trademark Office” and inserting
9 “Trademark Office”.

10 (Z) Section 24 is amended by striking “Patent
11 and Trademark Office” and inserting “Trademark
12 Office”.

13 (AA) Section 29 is amended by striking “Pat-
14 ent and Trademark Office” each place such term ap-
15 pears and inserting “Trademark Office”.

16 (BB) Section 30 is amended by striking “Pat-
17 ent and Trademark Office” and inserting “Trade-
18 mark Office”.

19 (CC) Section 31(a) is amended by striking
20 “Patent and Trademark Office” and inserting
21 “Trademark Office”.

22 (DD) Section 34(a) is amended by striking
23 “Patent and Trademark Office” and inserting
24 “Trademark Office”.

1 (EE) Section 34(d)(1)(B)(i) is amended by
2 striking “Patent and Trademark Office” and insert-
3 ing “Trademark Office”.

4 (FF) Section 35(a) is amended by striking
5 “Patent and Trademark Office” and inserting
6 “Trademark Office”.

7 (GG) Section 36 is amended by striking “Pat-
8 ent and Trademark Office” and inserting “Trade-
9 mark Office”.

10 (HH) Section 37 is amended by striking “Pat-
11 ent and Trademark Office” and inserting “Trade-
12 mark Office”.

13 (II) Section 38 is amended by striking “Patent
14 and Trademark Office” and inserting “Trademark
15 Office”.

16 (JJ) Section 39(b) is amended by striking
17 “Patent and Trademark Office” and inserting
18 “Trademark Office”.

19 (KK) Section 41 is amended by striking “Pat-
20 ent and Trademark Office” and inserting “Trade-
21 mark Office”.

22 (LL) Section 61 (as redesignated under section
23 115(a)(2) of this Act) is amended in the undesig-
24 nated paragraph relating to the definition of “reg-
25 istered mark”—

1 (i) by striking “Patent and Trade Mark
2 Office” and inserting “Trademark Office; and

3 (ii) by striking “Patent and Trade Office”
4 and inserting “Trademark Office”.

5 (MM) Section 72(a) (as redesignated under sec-
6 tion 115(a)(2) of this Act) is amended by striking
7 “Patent and Trademark Office” and inserting
8 “Trademark Office”.

9 (NN) Section 75 (as redesignated under section
10 115(a)(2) of this Act) is amended by striking “Pat-
11 ent and Trademark Office” and inserting “Trade-
12 mark Office”.

13 (c) AMENDMENTS TO TITLE 17.—

14 (1) REFERENCES.—All amendments in this
15 subsection refer to title 17, United States Code.

16 (2) DEFINITION OF COMMISSIONER.—Section
17 101 is amended by inserting after the undesignated
18 paragraph relating to the definition of a “collective
19 work” the following new undesignated paragraph:

20 “The term ‘Commissioner’ means the Commissioner
21 of Copyrights appointed under section 701(b)(1).”.

22 (3) TABLE OF SECTIONS.—The table of sections
23 for chapter 7 is amended by adding at the end the
24 following:

“711. Copyright Office Management Advisory Board.”.

1 (4) AMENDMENT RELATING TO D.C. CIRCUIT
2 COURT.—Section 1010(g) is amended by striking
3 “District of Columbia” and inserting “Federal”.

4 (5) AMENDMENTS TO REGISTER.—(A) Section
5 111(d)(1) is amended by striking “Register shall”
6 and inserting “Commissioner shall”.

7 (B) Section 113(d)(3) is amended by striking
8 “Register shall” and inserting “Commissioner
9 shall”.

10 (C) Section 115(c)(5) is amended by striking
11 “Register shall” and inserting “Commissioner
12 shall”.

13 (D) Section 119(a)(2)(C) is amended by strik-
14 ing “Register shall” and inserting “Commissioner
15 shall”.

16 (E) Section 119(b)(1) is amended by striking
17 “Register shall” and inserting “Commissioner
18 shall”.

19 (F) Section 302(d) is amended by striking
20 “Register shall” and inserting “Commissioner
21 shall”.

22 (G) Section 302(d) is amended by striking
23 “Register considers” and inserting “Commissioner
24 considers”.

1 (H) Section 408(b), in the matter following
2 paragraph (4), is amended by striking “Register”
3 each place it appears and inserting “Commissioner”.

4 (I) Section 408(d) is amended by striking
5 “Register” and inserting “Commissioner”.

6 (J) Section 410(a) is amended by striking
7 “Register shall” and inserting “Commissioner
8 shall”.

9 (K) Section 410(b) is amended by striking
10 “Register shall” and inserting “Commissioner
11 shall”.

12 (L) Section 411(a) is amended by striking
13 “Register may” and inserting “Commissioner may”.

14 (M) Section 508(a) is amended by striking
15 “Register within” and inserting “Commissioner
16 within”.

17 (N) Section 508(b) is amended by striking
18 “Register” and inserting “Commissioner”.

19 (O) Section 508(c) is amended by striking
20 “Register” and inserting “Commissioner”.

21 (P) Section 704(d) is amended by striking
22 “Register and” and inserting “Commissioner and”.

23 (Q) Section 707(a) is amended by striking
24 “Register has” and inserting “Commissioner has”.

1 (R) Section 707(b) is amended by striking
2 “Register” each place it appears and inserting
3 “Commissioner”.

4 (S) Section 709 is amended by striking “Reg-
5 ister may” and inserting “Commissioner may”.

6 (T) Section 709 is amended by striking “Reg-
7 ister determines” and inserting “Commissioner de-
8 termines”.

9 (U) Section 908(c) is amended by striking
10 “Register” and inserting “Commissioner”.

11 (V) Section 908(d) is amended by striking
12 “Register shall” and inserting “Commissioner
13 shall”.

14 (W) Section 908(e) is amended by striking
15 “Register shall” and inserting “Commissioner
16 shall”.

17 (X) Section 910(b)(2) is amended by striking
18 “Register may” and inserting “Commissioner may”.

19 (Y) Section 910(b)(2) is amended by striking
20 “Register to” and inserting “Commissioner to”.

21 (Z) Section 1003(b) is amended by striking
22 “Register” and inserting “Commissioner”.

23 (AA) Section 1003(e)(1) is amended by striking
24 “content as the Register” and inserting “content as
25 the Commissioner”.

1 (BB) Section 1003(c)(1) is amended by striking
2 “distribution as the Register” and inserting “dis-
3 tribution as the Commissioner”.

4 (CC) Section 1003(c)(2) is amended by striking
5 “Register” and inserting “Commissioner”.

6 (DD) Section 1005 is amended by striking
7 “Register may, in the Register’s discretion,” and in-
8 serting “Commissioner may, in the Commissioner’s
9 discretion,”.

10 (EE) Section 1009(e) is amended by striking
11 “Register” and inserting “Commissioner”.

12 (6) AMENDMENTS TO REGISTER OF COPY-
13 RIGHTS.—The provisions of title 17, United States
14 Code, are amended by striking “Register of Copy-
15 rights” each place such term appears and inserting
16 “Commissioner”.

17 (d) AMENDMENTS RELATING TO THE LIBRARIAN OF
18 CONGRESS.—

19 (1) REFERENCES.—All amendments in this
20 subsection refer to title 17, United States Code.

21 (2) AMENDMENTS.—(A) Section 111(d)(2) is
22 amended by striking “Librarian of Congress” and
23 inserting “Commissioner”.

1 (B) Section 111(d)(4)(A) is amended by strik-
2 ing “Librarian of Congress” each place it appears
3 and inserting “Commissioner”.

4 (C) Section 111(d)(4)(B) is amended by strik-
5 ing “Librarian of Congress shall, upon the rec-
6 ommendation of the Register of Copyrights” and in-
7 serting “Commissioner shall”.

8 (D) Section 111(d)(4)(B) is amended by strik-
9 ing “Librarian” each place it appears and inserting
10 “Commissioner”.

11 (E) Section 111(d)(4)(C) is amended by strik-
12 ing “Librarian of Congress” and inserting “Commis-
13 sioner”.

14 (F) Section 115(e)(3)(C) is amended by strik-
15 ing “Librarian of Congress” each place it appears
16 and inserting “Commissioner”.

17 (G) Section 115(e)(3)(D) is amended by strik-
18 ing “Librarian of Congress” each place it appears
19 and inserting “Commissioner”.

20 (H) Section 115(e)(3)(E) is amended by strik-
21 ing “Librarian of Congress” and inserting “Commis-
22 sioner”.

23 (I) Section 115(e)(3)(F) is amended by striking
24 “Librarian of Congress” and inserting “Commis-
25 sioner”.

1 (J) Section 1010(e) is amended by striking “Li-
2 brarian of Congress” and inserting “Commissioner”.

3 (K) Section 116(b)(2) is amended by striking
4 “Librarian of Congress” each place it appears and
5 inserting “Commissioner”.

6 (L) Section 118(b)(1) is amended by striking
7 “Librarian of Congress” each place it appears and
8 inserting “Commissioner”.

9 (M) Section 118(b)(2) is amended by striking
10 “Librarian of Congress” and inserting “Commis-
11 sioner”.

12 (N) Section 118(b)(3) is amended by striking
13 “Librarian of Congress” each place it appears and
14 inserting “Commissioner”.

15 (O) Section 118(c) is amended by striking “Li-
16 brarian of Congress” and inserting “Commissioner”.

17 (P) Section 119(b)(2) is amended by striking
18 “Librarian of Congress” and inserting “Commis-
19 sioner”.

20 (Q) Section 119(b)(3) is amended by striking
21 “Librarian of Congress” and inserting “Commis-
22 sioner”.

23 (R) Section 119(b)(4) is amended by striking
24 “Librarian of Congress” each place it appears and
25 inserting “Commissioner”.

1 (S) Section 119(c)(2) is amended by striking
2 “Librarian of Congress” each place it appears and
3 inserting “Commissioner”.

4 (T) Section 119(c)(3)(A) is amended by strik-
5 ing “Librarian of Congress” and inserting “Commis-
6 sioner”.

7 (U) Section 1004(a) is amended by striking
8 “Librarian of Congress” each place it appears and
9 inserting “Commissioner”.

10 (V) Section 1006(e) is amended by striking
11 “Librarian of Congress” and inserting “Commis-
12 sioner”.

13 (W) Section 1007(a) is amended by striking
14 “Librarian of Congress” each place it appears and
15 inserting “Commissioner”.

16 (X) Section 1007(b) is amended by striking
17 “Librarian of Congress” each place it appears and
18 inserting “Commissioner”.

19 (Y) Section 1007(c) is amended by striking
20 “Librarian of Congress” each place it appears and
21 inserting “Commissioner”.

22 (Z) Section 1007(e) is amended by striking
23 “Librarian shall” and inserting “Commissioner
24 shall”.

1 (AA) Section 1007(e) is amended by striking
2 “Librarian under” and inserting “Commissioner
3 under”.

4 (BB) Section 1010(b) is amended by striking
5 “Librarian of Congress” each place it appears and
6 inserting “Commissioner”.

7 (CC) Section 1010(e) is amended by striking
8 “Librarian of Congress” and inserting “Commis-
9 sioner”.

10 (DD) Section 1010(f) is amended by striking
11 “Librarian of Congress” and inserting “Commis-
12 sioner”.

13 (EE) Section 1010(g) is amended by striking
14 “Librarian of Congress” and inserting “Commis-
15 sioner”.

16 (e) AMENDMENTS RELATING TO SATELLITE HOME
17 VIEWER ACT AMENDMENTS.—Section 119(c) of title 17,
18 United States Code, is amended—

19 (1) in paragraph (3)—

20 (A) in subparagraph (A) by striking the
21 last sentence and inserting “Such notice shall
22 include the names and qualifications of poten-
23 tial arbitrators chosen by the Commissioner
24 from a list of available arbitrators obtained
25 from the American Arbitration Association or

1 such similar organization as the Commissioner
2 shall select.”;

3 (B) by amending subparagraph (B) to read
4 as follows:

5 “(B) SELECTION OF ARBITRATION
6 PANEL.—Not later than 10 days after publica-
7 tion of the notice initiating an arbitration pro-
8 ceeding, and in accordance with the procedures
9 to be specified by the Commissioner, one arbi-
10 trator shall be selected from the published list
11 by copyright owners who claim to be entitled to
12 royalty fees under subsection (b)(4) and who
13 are not party to a voluntary agreement filed
14 with the Copyright Office in accordance with
15 paragraph (2), and one arbitrator shall be se-
16 lected from the published list by satellite car-
17 riers and distributors who are not parties to
18 such a voluntary agreement. The two arbitra-
19 tors so selected shall, within 10 days after their
20 selection, choose a third arbitrator from the
21 same list, who shall serve as chairperson of the
22 arbitrators. If either group fail to agree upon
23 the selection of an arbitrator, or if the arbitra-
24 tors selected by such groups fail to agree upon
25 the selection of a chairperson, the Commis-

1 sioner shall promptly select the arbitrator or
2 chairperson, respectively. The arbitrators se-
3 lected under this subparagraph shall constitute
4 and Arbitration Panel.”;

5 (C) by amending subparagraph (C) to read
6 as follows:

7 “(C) ARBITRATION PROCEEDING.—The
8 Arbitration Panel shall conduct an arbitration
9 proceeding in accordance with such procedures
10 as it may adopt. The panel shall act on the
11 basis of a fully documented written record. Any
12 copyright owner who claims to be entitled to
13 royalty fees under subsection (b)(4), any sat-
14 ellite carrier, and any distributor, who is not
15 party to a voluntary agreement filed with the
16 Copyright Office in accordance with paragraph
17 (2), may submit relevant information and pro-
18 posals to the Panel. The parties to the proceed-
19 ing shall bear the entire cost thereof in such
20 manner and proportion as the Panel shall di-
21 rect.”;

22 (D) in subparagraph (D) by striking
23 “Copyright”; and

24 (E) by adding at the end the following new
25 subparagraphs:

1 “(E) REPORT TO THE COMMISSIONER.—
2 Not later than 60 days after publication of the
3 notice initiating an arbitration proceeding, the
4 Arbitration Panel shall report to the Commis-
5 sioner its determination concerning the royalty
6 fee. Such report shall be accompanied by the
7 written record, and shall set forth the facts that
8 the Panel found relevant to its determination
9 and the reasons why its determination is con-
10 sistent with the criteria set forth in subpara-
11 graph (D).

12 “(F) ACTION BY COMMISSIONER.—Within
13 60 days after receiving the report of the Arbi-
14 tration Panel under subparagraph (E), the
15 Commissioner shall adopt or reject the deter-
16 mination of the Panel. The Commissioner shall
17 adopt the determination of the Panel unless the
18 Commissioner finds that the determination is
19 clearly inconsistent with the criteria set forth in
20 subparagraph (D). If the Commissioner rejects
21 the determination of the Panel, the Commis-
22 sioner shall, before the end of that 60-day pe-
23 riod, and after full examination of the record
24 created in the arbitration proceeding, issue an
25 order, consistent with the criteria set forth in

1 subparagraph (D), setting the royalty fee under
2 this paragraph. The Commissioner shall cause
3 to be published in the Federal Register the de-
4 termination of the Panel, and the decision of
5 the Commissioner with respect to the deter-
6 mination (including any order issued under the
7 preceding sentence). The Commissioner shall
8 also publicize such determination and decision
9 in such other manner as the Commissioner con-
10 siders appropriate. The Commissioner shall also
11 make the report of the Arbitration Panel and
12 the accompanying record available for public in-
13 spection and copying.

14 “(G) PERIOD DURING WHICH DECISION OF
15 ARBITRATION PANEL OR ORDER OF COMMIS-
16 SIONER EFFECTIVE.—The obligation to pay the
17 royalty fee established under a determination of
18 the Arbitration Panel which is confirmed by the
19 Commissioner in accordance with this para-
20 graph, or established by any order issued under
21 subparagraph (F), shall become effective as
22 provided under paragraph (4) or July 1, 1997,
23 whichever is later.”; and

24 (2) by adding at the end the following new
25 paragraph:

1 “(4) JUDICIAL REVIEW.—

2 “(A) IN GENERAL.—Any decision of the
3 Commissioner under paragraph (3) with respect
4 to a determination of the Arbitration Panel may
5 be appealed, by any aggrieved party who would
6 be bound by the determination, to the United
7 States Court of Appeals for the Federal Circuit,
8 within 30 days after the publication of the deci-
9 sion in the Federal Register. If no appeal is
10 brought within such 30-day period, the decision
11 of the Commissioner is final, and the royalty
12 fee shall take effect as set forth in the decision.
13 The pendency of an appeal under this para-
14 graph shall not relieve satellite carriers of the
15 obligation under subsection (b)(1) to deposit
16 the statement of account and royalty fees speci-
17 fied in that subsection.

18 “(B) JUDICIAL ACTIONS.—The court shall
19 have jurisdiction to modify or vacate a decision
20 of the Commissioner only if it finds, on the
21 basis of the record before the Commissioner
22 and the statutory criteria set forth in para-
23 graph (3)(D), that the Arbitration Panel or the
24 Commissioner acted in an arbitrary manner. If
25 the court modifies the decision of the Commis-

1 sioner, the court shall have jurisdiction to enter
2 its own determination with respect to royalty
3 fees, to order the repayment of any excess fees
4 deposited under subsection (b)(1)(B), and to
5 order the payment of any underpaid fees, and
6 the interest pertaining respectively thereto, in
7 accordance with its final judgment. The court
8 may further vacate the decision of the Commis-
9 sioner and remand the case for arbitration pro-
10 ceedings in accordance with paragraph (3).”.

11 (f) AMENDMENTS TO TITLE 5.—Section 5316 of title
12 5, United States Code, is amended—

13 (1) by striking “Commissioner of Patents, De-
14 partment of Commerce.”; and

15 (2) by striking:

16 “Deputy Commissioner of Patents and Trade-
17 marks.

18 “Assistant Commissioner for Patents.

19 “Assistant Commissioner for Trademarks.”.

20 (g) AMENDMENT TO TITLE 31.—Section 9101(3) of
21 title 31, United States Code, is amended by adding at the
22 end the following:

23 “(O) the United States Intellectual Prop-
24 erty Organization.”.

1 **Subtitle C—Miscellaneous**
2 **Provisions**

3 **SEC. 141. REFERENCES.**

4 Any reference in any other Federal law, Executive
5 order, rule, regulation, or delegation of authority, or any
6 document of or pertaining to a department, agency, or of-
7 fice from which a function is transferred by this title—

8 (1) to the head of such department, agency, or
9 office is deemed to refer to the head of the depart-
10 ment, agency, or office to which such function is
11 transferred; or

12 (2) to such department, agency, or office is
13 deemed to refer to the department, agency, or office
14 to which such function is transferred.

15 **SEC. 142. EXERCISE OF AUTHORITIES.**

16 Except as otherwise provided by law, a Federal offi-
17 cial to whom a function is transferred by this title may,
18 for purposes of performing the function, exercise all au-
19 thorities under any other provision of law that were avail-
20 able with respect to the performance of that function to
21 the official responsible for the performance of the function
22 immediately before the effective date of the transfer of the
23 function under this title.

1 **SEC. 143. SAVINGS PROVISIONS.**

2 (a) **LEGAL DOCUMENTS.**—All orders, determinations,
3 rules, regulations, permits, grants, loans, contracts, agree-
4 ments, certificates, licenses, and privileges that—

5 (1) have been issued, made, granted, or allowed
6 to become effective by the President, the Secretary
7 of Commerce, any officer or employee of any office
8 transferred by this title, or any other Government
9 official, or by a court of competent jurisdiction, in
10 the performance of any function that is transferred
11 by this title, and

12 (2) are in effect on the effective date of such
13 transfer (or become effective after such date pursu-
14 ant to their terms as in effect on such effective
15 date), shall continue in effect according to their
16 terms until modified, terminated, superseded, set
17 aside, or revoked in accordance with law by the
18 President, any other authorized official, a court of
19 competent jurisdiction, or operation of law.

20 (b) **PROCEEDINGS.**—This title shall not affect any
21 proceedings or any application for any benefits, service,
22 license, permit, certificate, or financial assistance pending
23 on the effective date of this title before an office trans-
24 ferred by this title, but such proceedings and applications
25 shall be continued. Orders shall be issued in such proceed-
26 ings, appeals shall be taken therefrom, and payments shall

1 be made pursuant to such orders, as if this title had not
2 been enacted, and orders issued in any such proceeding
3 shall continue in effect until modified, terminated, super-
4 seded, or revoked by a duly authorized official, by a court
5 of competent jurisdiction, or by operation of law. Nothing
6 in this subsection shall be considered to prohibit the dis-
7 continuance or modification of any such proceeding under
8 the same terms and conditions and to the same extent that
9 such proceeding could have been discontinued or modified
10 if this title had not been enacted.

11 (c) SUITS.—This title shall not affect suits com-
12 menced before the effective date of this title, and in all
13 such suits, proceedings shall be had, appeals taken, and
14 judgments rendered in the same manner and with the
15 same effect as if this title had not been enacted.

16 (d) NONABATEMENT OF ACTIONS.—No suit, action,
17 or other proceeding commenced by or against the Depart-
18 ment of Commerce or the Secretary of Commerce, or by
19 or against any individual in the official capacity of such
20 individual as an officer or employee of an office trans-
21 ferred by this title, shall abate by reason of the enactment
22 of this title.

23 (e) CONTINUANCE OF SUITS.—If any Government of-
24 ficer in the official capacity of such officer is party to a
25 suit with respect to a function of the officer, and under

1 this title such function is transferred to any other officer
2 or office, then such suit shall be continued with the other
3 officer or the head of such other office, as applicable, sub-
4 stituted or added as a party.

5 (f) ADMINISTRATIVE PROCEDURE AND JUDICIAL RE-
6 VIEW.—Except as otherwise provided by this title, any
7 statutory requirements relating to notice, hearings, action
8 upon the record, or administrative or judicial review that
9 apply to any function transferred by this title shall apply
10 to the exercise of such function by the head of the Federal
11 agency, and other officers of the agency, to which such
12 function is transferred by this title.

13 **SEC. 144. TRANSFER OF ASSETS.**

14 Except as otherwise provided in this title, so much
15 of the personnel, property, records, and unexpended bal-
16 ances of appropriations, allocations, and other funds em-
17 ployed, used, held, available, or to be made available in
18 connection with a function transferred to an official or
19 agency by this title shall be available to the official or the
20 head of that agency, respectively, at such time or times
21 as the Director of the Office of Management and Budget
22 directs for use in connection with the functions trans-
23 ferred.

1 **SEC. 145. DELEGATION AND ASSIGNMENT.**

2 (a) IN GENERAL.—Except as otherwise expressly
3 prohibited by law or otherwise provided in this title, an
4 official to whom functions are transferred under this title
5 (including the head of any office to which functions are
6 transferred under this title) may—

7 (1) delegate any of the functions so transferred
8 to such officers and employees of the office of the
9 official as the official may designate; and

10 (2) authorize successive redelegations of such
11 functions as may be necessary or appropriate.

12 (b) RESPONSIBILITY FOR ADMINISTRATION.—No
13 delegation of functions under this section or under any
14 other provision of this title shall relieve the official to
15 whom a function is transferred under this title of respon-
16 sibility for the administration of the function.

17 **SEC. 146. AUTHORITY OF DIRECTOR OF THE OFFICE OF**
18 **MANAGEMENT AND BUDGET WITH RESPECT**
19 **TO FUNCTIONS TRANSFERRED.**

20 (a) DETERMINATIONS.—If necessary, the Director of
21 the Office of Management and Budget shall make any de-
22 termination of the functions that are transferred under
23 this title.

24 (b) INCIDENTAL TRANSFERS.—The Director of the
25 Office of Management and Budget, at such time or times
26 as the Director shall provide, may make such determina-

1 tions as may be necessary with regard to the functions
2 transferred by this title, and to make such additional inci-
3 dental dispositions of personnel, assets, liabilities, grants,
4 contracts, property, records, and unexpended balances of
5 appropriations, authorizations, allocations, and other
6 funds held, used, arising from, available to, or to be made
7 available in connection with such functions, as may be nec-
8 essary to carry out the provisions of this title.

9 (c) **TERMINATION OF AFFAIRS.**—The Director shall
10 provide for the termination of the affairs of all entities
11 terminated by this title and for such further measures and
12 dispositions as may be necessary to effectuate the pur-
13 poses of this title.

14 **SEC. 147. CERTAIN VESTING OF FUNCTIONS CONSIDERED**
15 **TRANSFERS.**

16 For purposes of this title, the vesting of a function
17 in a department, agency, or office pursuant to reestablish-
18 ment of an office shall be considered to be the transfer
19 of the function.

20 **SEC. 148. AVAILABILITY OF EXISTING FUNDS.**

21 Existing appropriations and funds available for the
22 performance of functions, programs, and activities termi-
23 nated pursuant to this title shall remain available, for the
24 duration of their period of availability, for necessary ex-

1 penses in connection with the termination and resolution
2 of such functions, programs, and activities.

3 **SEC. 149. DEFINITIONS.**

4 For purposes of this title—

5 (1) the term “function” includes any duty, obli-
6 gation, power, authority, responsibility, right, privi-
7 lege, activity, or program; and

8 (2) the term “office” includes any office, ad-
9 ministration, agency, bureau, institute, council, unit,
10 organizational entity, or component thereof.

11 **TITLE II—EARLY PUBLICATION**
12 **OF PATENT APPLICATIONS**

13 **SEC. 201. SHORT TITLE.**

14 This title may be cited as the “Patent Application
15 Publication Act of 1996”.

16 **SEC. 202. EARLY PUBLICATION.**

17 Section 122 of title 35, United States Code, is
18 amended to read as follows:

19 **“§ 122. Confidential status of applications; publica-**
20 **tion of patent applications**

21 “(a) CONFIDENTIALITY.—Except as provided in sub-
22 section (b), applications for patents shall be kept in con-
23 fidence by the Patent Office and no information concern-
24 ing the same given without authority of the applicant or
25 owner unless necessary to carry out the provisions of an

1 Act of Congress or in such special circumstances as may
2 be determined by the Commissioner.

3 “(b) PUBLICATION.—

4 “(1) IN GENERAL.—(A) Subject to paragraph
5 (2), each application for patent, except applications
6 for design patents filed under chapter 16 of this title
7 and provisional applications filed under section
8 111(b) of this title, shall be published, in accordance
9 with procedures determined by the Commissioner, as
10 soon as possible after the expiration of a period of
11 18 months from the earliest filing date for which a
12 benefit is sought under this title. At the request of
13 the applicant, an application may be published ear-
14 lier than the end of such 18-month period.

15 “(B) No information concerning published pat-
16 ent applications shall be made available to the public
17 except as the Commissioner determines.

18 “(C) Notwithstanding any other provision of
19 law, a determination by the Commissioner to release
20 or not to release information concerning a published
21 patent application shall be final and nonreviewable.

22 “(2) EXCEPTIONS.—(A) An application that is
23 no longer pending shall not be published.

1 “(B) An application that is subject to a secrecy
2 order pursuant to section 181 of this title shall not
3 be published.

4 “(C)(i) Upon the request of the applicant at the
5 time of application shall not be published in accord-
6 ance with paragraph (1) until 3 months after the
7 Commissioner makes a notification to the applicant
8 under section 132 of this title.

9 “(ii) Applications filed pursuant to section 363
10 of this title, applications asserting priority under
11 section 119 or 365(a) of this title, and applications
12 asserting the benefit of an earlier application under
13 section 120, 121, or 365(c) of this title shall not be
14 eligible for a request pursuant to this subparagraph.

15 “(iii) In a request under this subparagraph, the
16 applicant shall certify that the invention disclosed in
17 the application was not and will not be the subject
18 of an application filed in a foreign country.

19 “(iv) The Commissioner may establish appro-
20 priate procedures and fees for making a request
21 under this subparagraph.

22 “(c) PRE-ISSUANCE OPPOSITION.—The provisions of
23 this section shall not operate to create any new oppor-
24 tunity for pre-issuance opposition. The Commissioner may
25 establish appropriate procedures to ensure that this sec-

1 tion does not create any new opportunity for pre-issuance
2 opposition that did not exist prior to the adoption of this
3 section.”.

4 **SEC. 203. TIME FOR CLAIMING BENEFIT OF EARLIER FIL-**
5 **ING DATE.**

6 (a) IN A FOREIGN COUNTRY.—Section 119(b) of title
7 35, United States Code, is amended to read as follows:

8 “(b)(1) No application for patent shall be entitled to
9 this right of priority unless a claim, identifying the foreign
10 application by specifying its application number, country,
11 and the day, month, and year of its filing, is filed in the
12 Patent Office at such time during the pendency of the ap-
13 plication as required by the Commissioner.

14 “(2) The Commissioner may consider the failure of
15 the applicant to file a timely claim for priority as a waiver
16 of any such claim, and may require the payment of a sur-
17 charge as a condition of accepting an untimely claim dur-
18 ing the pendency of the application.

19 “(3) The Commissioner may require a certified copy
20 of the original foreign application, specification, and draw-
21 ings upon which it is based, a translation if not in the
22 English language, and such other information as the Com-
23 missioner considers necessary. Any such certification shall
24 be made by the foreign intellectual property authority in
25 which the foreign application was filed and show the date

1 of the application and of the filing of the specification and
 2 other papers.”.

3 (b) IN THE UNITED STATES.—Section 120 of title
 4 35, United States Code, is amended by adding at the end
 5 the following: “The Commissioner may determine the time
 6 period during the pendency of the application within which
 7 an amendment containing the specific reference to the ear-
 8 lier filed application is submitted. The Commissioner may
 9 consider the failure to submit such an amendment within
 10 that time period as a waiver of any benefit under this sec-
 11 tion. The Commissioner may establish procedures, includ-
 12 ing the payment of a surcharge, to accept unavoidably late
 13 submissions of amendments under this section.”.

14 **SEC. 204. PROVISIONAL RIGHTS.**

15 Section 154 of title 35, United States Code, is
 16 amended—

17 (1) in the section caption by inserting “; **pro-**
 18 **visional rights**” after “**patent**”; and

19 (2) by adding at the end the following new sub-
 20 section:

21 “(d) PROVISIONAL RIGHTS.—

22 “(1) IN GENERAL.—In addition to other rights
 23 provided by this section, a patent shall include the
 24 right to obtain a reasonable royalty from any person
 25 who, during the period beginning on the date of pub-

1 lication of the application for such patent pursuant
2 to section 122(b) of this title, or in the case of an
3 international application designating the United
4 States, the date of international publication of the
5 application, and ending on the date the patent is is-
6 sued—

7 “(A)(i) makes, uses, offers for sale, or sells
8 in the United States the invention as claimed in
9 the published patent application or imports
10 such an invention into the United States; or

11 “(ii) if the invention as claimed in the pub-
12 lished patent application is a process, uses, of-
13 fers for sale, or sells in the United States or
14 imports into the United States products made
15 by that process as claimed in the published pat-
16 ent application; and

17 “(B) had actual notice of the published
18 patent application and where the right arising
19 under this paragraph is based upon an inter-
20 national application designating the United
21 States that is published in a language other
22 than English, a translation of the international
23 application into the English language.

24 “(2) RIGHT BASED ON SUBSTANTIALLY IDEN-
25 TICAL INVENTIONS.—The right under paragraph (1)

1 to obtain a reasonable royalty shall not be available
2 under this subsection unless the invention as claimed
3 in the patent is substantially identical to the inven-
4 tion as claimed in the published patent application.

5 “(3) TIME LIMITATION ON OBTAINING A REA-
6 SONABLE ROYALTY.—The right under paragraph (1)
7 to obtain a reasonable royalty shall be available only
8 in an action brought not later than 6 years after the
9 patent is issued. The right under paragraph (1) to
10 obtain a reasonable royalty shall not be affected by
11 the duration of the period described in paragraph
12 (1).

13 “(4) REQUIREMENTS FOR INTERNATIONAL AP-
14 PPLICATIONS.—

15 “(A) EFFECTIVE DATE.—The right under
16 paragraph (1) to obtain a reasonable royalty
17 based upon the publication under the treaty of
18 an international application designating the
19 United States shall commence from the date
20 that the Patent Office receives a copy of the
21 publication under the treaty of the international
22 application, or, if the publication under the
23 treaty of the international application is in a
24 language other than English, from the date
25 that the Patent Office receives a translation of

1 the international application in the English lan-
2 guage.

3 “(B) COPIES.—The Commissioner may re-
4 quire the applicant to provide a copy of the
5 international application and a translation
6 thereof.”.

7 **SEC. 205. PRIOR ART EFFECT OF PUBLISHED APPLICA-**
8 **TIONS.**

9 Section 102(e) of title 35, United States Code, is
10 amended to read as follows:

11 “(e) the invention was described in—

12 “(1)(A) an application for patent, published
13 pursuant to section 122(b) of this title, by another
14 filed in the United States before the invention by the
15 applicant for patent, except that an international ap-
16 plication filed under the treaty defined in section
17 351(a) of this title shall have the effect under this
18 subsection of a national application published under
19 section 122(b) of this title only if the international
20 application designating the United States was pub-
21 lished under Article 21(2)(a) of such treaty in the
22 English language, or

23 “(B) a patent granted on an application for
24 patent by another filed in the United States before
25 the invention by the applicant for patent, except that

1 a patent granted on an international application
2 filed under the treaty defined in section 351(a) of
3 this title shall have the effect under this subsection
4 of a patent granted on a national application only
5 if the international application was published under
6 Article 21(2)(a) of such treaty in the English lan-
7 guage, or”.

8 **SEC. 206. COST RECOVERY FOR PUBLICATION.**

9 The Commissioner shall recover the cost of early pub-
10 lication required by the amendment made by section 202
11 by adjusting the filing, issue, and maintenance fees under
12 title 35, United States Code, by charging a separate publi-
13 cation fee, or by any combination of these methods.

14 **SEC. 207. CONFORMING CHANGES.**

15 The following provisions of title 35, United States
16 Code, are amended:

17 (1) Section 11 is amended in paragraph 1 of
18 subsection (a) by inserting “and published applica-
19 tions for patents” after “Patents”.

20 (2) Section 12 is amended—

21 (A) in the section caption by inserting
22 “**and applications**” after “**patents**”; and

23 (B) by inserting “and published applica-
24 tions for patents” after “patents”.

25 (3) Section 13 is amended—

1 (A) in the section caption by inserting
2 **“and applications”** after **“patents”**; and

3 (B) by inserting “and published applica-
4 tions for patents” after “patents”.

5 (4) The items relating to sections 12 and 13 in
6 the table of sections for chapter 1 are each amended
7 by inserting “and applications” after “patents”.

8 (5) The item relating to section 122 in the table
9 of sections for chapter 11 is amended by inserting
10 “; publication of patent applications” after “applica-
11 tions”.

12 (6) The item relating to section 154 in the table
13 of sections for chapter 14 is amended by inserting
14 “; provisional rights” after “patent”.

15 (7) Section 181 is amended—

16 (A) in the first undesignated paragraph—

17 (i) by inserting “by the publication of
18 an application or” after “disclosure”; and

19 (ii) “the publication of the application
20 or” after “withhold”;

21 (B) in the second undesignated paragraph
22 by inserting “by the publication of an applica-
23 tion or” after “disclosure of an invention”;

24 (C) in the third undesignated paragraph—

1 (i) by inserting “by the publication of
2 the application or” after “disclosure of the
3 invention”; and

4 (ii) “the publication of the application
5 or” after “withhold”; and

6 (D) in the fourth undesignated paragraph
7 by inserting “the publication of an application
8 or” after “and” in the first sentence.

9 (8) Section 252 is amended in the first undesignated
10 paragraph by inserting “substantially” before
11 “identical” each place it appears.

12 (9) Section 284 is amended by adding at the
13 end of the second undesignated paragraph the following:
14 “Increased damages under this paragraph
15 shall not apply to provisional rights under section
16 154(d) of this title.”.

17 (10) Section 374 is amended to read as follows:

18 **“§ 374. Publication of international application: Effect**
19 **effect**

20 “The publication under the treaty, defined in section
21 351(a) of this title, of an international application designating the United States shall confer the same rights
22 and shall have the same effect under this title as an application for patent published under section 122(b), except
23 as provided in sections 102(e) and 154(d) of this title.”.

1 **SEC. 208. LAST DAY OF PENDENCY OF PROVISIONAL APPLI-**
2 **CATION.**

3 Section 119(e) of title 35, United States Code, is
4 amended by adding at the end the following:

5 “(3) If the day that is 12 months after the filing date
6 of a provisional application falls on a Saturday, Sunday,
7 or legal holiday as defined in rule 6(a) of the Federal
8 Rules of Civil Procedure, the period of pendency of the
9 provisional application shall be extended to the next suc-
10 ceeding business day.”.

11 **SEC. 209. EFFECTIVE DATE.**

12 (a) SECTIONS 202 THROUGH 207.—Sections 202
13 through 207, and the amendments made by such sections,
14 shall take effect on April 1, 1997, and shall apply to all
15 applications filed under section 111 of title 35, United
16 States Code, on or after that date, and all applications
17 complying with section 371 of title 35, United States
18 Code, that resulted from international applications filed
19 on or after that date. The amendment made by section
20 204 shall also apply to international applications designat-
21 ing the United States that are filed on or after April 1,
22 1997.

23 (b) SECTION 208.—The amendments made by sec-
24 tion 208 shall take effect on the date of the enactment
25 of this Act and, except for a design patent application filed

1 under chapter 16 of title 35, United States Code, shall
2 apply to any application filed on or after June 8, 1995.

3 **TITLE III—PATENT TERM**
4 **RESTORATION**

5 **SEC. 301. PATENT TERM EXTENSION AUTHORITY.**

6 Section 154(b) of title 35, United States Code, is
7 amended to read as follows:

8 “(b) **TERM EXTENSION.**—

9 “(1) **BASIS FOR PATENT TERM EXTENSION.**—

10 “(A) **DELAY.**—Subject to the limitations
11 under paragraph (2), if the issue of an original
12 patent is delayed due to—

13 “(i) a proceeding under section 135(a)
14 of this title;

15 “(ii) the imposition of an order pursu-
16 ant to section 181 of this title;

17 “(iii) appellate review by the Board of
18 Patent Appeals and Interferences or by a
19 Federal court where the patent was issued
20 pursuant to a decision in the review revers-
21 ing an adverse determination of patentabil-
22 ity; or

23 “(iv) an unusual administrative delay
24 by the Patent Office in issuing the patent,

1 the term of the patent shall be extended for the
2 period of delay.

3 “(B) ADMINISTRATIVE DELAY.—For pur-
4 poses of subparagraph (A)(iv), an unusual ad-
5 ministrative delay by the Patent Office is the
6 failure to—

7 “(i) make a notification of the rejec-
8 tion of any claim for a patent or any objec-
9 tion or argument under section 132 of this
10 title or give or mail a written notice of al-
11 lowance under section 151 of this title not
12 later than 14 months after the date on
13 which the application was filed;

14 “(ii) respond to a reply under section
15 132 of this title or to an appeal taken
16 under section 134 of this title not later
17 than 4 months after the date on which the
18 reply was filed or the appeal was taken;

19 “(iii) act on an application not later
20 than 4 months after the date of a decision
21 by the Board of Patent Appeals and Inter-
22 ferences under section 134 or 135 of this
23 title or a decision by a Federal court under
24 section 141, 145, or 146 of this title where

1 allowable claims remain in an application;

2 or

3 “(iv) issue a patent not later than 4
4 months after the date on which the issue
5 fee was paid under section 151 of this title
6 and all outstanding requirements were sat-
7 isfied.

8 “(2) LIMITATIONS.—

9 “(A) IN GENERAL.—The total duration of
10 any extensions granted pursuant to either sub-
11 clause (iii) or (iv) of paragraph (1)(A) or both
12 such subclauses shall not exceed 10 years. To
13 the extent that periods of delay attributable to
14 grounds specified in paragraph (1) overlap, the
15 period of any extension granted under this sub-
16 section shall not exceed the actual number of
17 days the issuance of the patent was delayed.

18 “(B) REDUCTION OF EXTENSION.—The
19 period of extension of the term of a patent
20 under this subsection shall be reduced by a pe-
21 riod equal to the time in which the applicant
22 failed to engage in reasonable efforts to con-
23 clude prosecution of the application. The Com-
24 missioner shall prescribe regulations establish-
25 ing the circumstances that constitute a failure

1 of an applicant to engage in reasonable efforts
 2 to conclude processing or examination of an ap-
 3 plication.

4 “(C) DISCLAIMED TERM.—No patent the
 5 term of which has been disclaimed beyond a
 6 specified date may be extended under this sec-
 7 tion beyond the expiration date specified in the
 8 disclaimer.

9 “(3) PROCEDURES.—The Commissioner shall
 10 prescribe regulations establishing procedures for the
 11 notification of patent term extensions under this
 12 subsection and procedures for contesting patent
 13 term extensions under this subsection.”.

14 **SEC. 302. EFFECTIVE DATE.**

15 The amendments made by section 301 shall take ef-
 16 fect on the date of the enactment of this Act and, except
 17 for a design patent application filed under chapter 16 of
 18 title 35, United States Code, shall apply to any application
 19 filed on or after June 8, 1995.

20 **TITLE IV—PRIOR DOMESTIC**
 21 **COMMERCIAL USE**

22 **SEC. 401. SHORT TITLE.**

23 This title may be cited as the “Prior Domestic Com-
 24 mercial Use Act of 1996”.

1 **SEC. 402. DEFENSE TO PATENT INFRINGEMENT BASED ON**
2 **PRIOR DOMESTIC COMMERCIAL USE.**

3 (a) DEFENSE.—Chapter 28 of title 35, United States
4 Code, is amended by adding at the end the following new
5 section:

6 **“§ 273. Prior domestic commercial use; defense to in-**
7 **fringement**

8 “(a) DEFINITIONS.—For purposes of this section—

9 “(1) the terms ‘commercially used’, ‘commer-
10 cially use’, and ‘commercial use’ mean the use in the
11 United States in commerce or the use in the design,
12 testing, or production in the United States of a
13 product or service which is used in commerce,
14 whether or not the subject matter at issue is acces-
15 sible to or otherwise known to the public;

16 “(2) the terms ‘used in commerce’, and ‘use in
17 commerce’ mean that there has been an actual sale
18 or other commercial transfer of the subject matter
19 at issue or that there has been an actual sale or
20 other commercial transfer of a product or service re-
21 sulting from the use of the subject matter at issue;
22 and

23 “(3) the ‘effective filing date’ of a patent is the
24 earlier of the actual filing date of the application for
25 the patent or the filing date of any earlier United
26 States, foreign, or international application to which

1 the subject matter at issue is entitled under section
2 119, 120, or 365 of this title.

3 “(b) DEFENSE TO INFRINGEMENT.—

4 “(1) IN GENERAL.—A person shall not be liable
5 as an infringer under section 271 of this title with
6 respect to any subject matter that would otherwise
7 infringe one or more claims in the patent being as-
8 serted against such person, if such person had, act-
9 ing in good faith, commercially used the subject
10 matter before the effective filing date of such patent.

11 “(2) EXHAUSTION OF RIGHT.—The sale or
12 other disposition of the subject matter of a patent
13 by a person entitled to assert a defense under this
14 section with respect to that subject matter shall ex-
15 haust the patent owner’s rights under the patent to
16 the extent such rights would have been exhausted
17 had such sale or other disposition been made by the
18 patent owner.

19 “(c) LIMITATIONS AND QUALIFICATIONS OF DE-
20 FENSE.—The defense to infringement under this section
21 is subject to the following:

22 “(1) DERIVATION.—A person may not assert
23 the defense under this section if the subject matter
24 on which the defense is based was derived from the
25 patentee or persons in privity with the patentee.

1 “(2) NOT A GENERAL LICENSE.—The defense
2 asserted by a person under this section is not a gen-
3 eral license under all claims of the patent at issue,
4 but extends only to the subject matter claimed in the
5 patent with respect to which the person can assert
6 a defense under this chapter, except that the defense
7 shall also extend to variations in the quantity or vol-
8 ume of use of the claimed subject matter, and to im-
9 provements in the claimed subject matter that do
10 not infringe additional specifically claimed subject
11 matter of the patent.

12 “(3) EFFECTIVE AND SERIOUS PREPARA-
13 TION.—With respect to subject matter that cannot
14 be commercialized without a significant investment
15 of time, money, and effort, a person shall be deemed
16 to have commercially used the subject matter if—

17 “(A) before the effective filing date of the
18 patent, the person reduced the subject matter
19 to practice in the United States, completed a
20 significant portion of the total investment nec-
21 essary to commercially use the subject matter,
22 and made a commercial transaction in the Unit-
23 ed States in connection with the preparation to
24 use the subject matter; and

1 “(B) thereafter the person diligently com-
2 pleted the remainder of the activities and in-
3 vestments necessary to commercially use the
4 subject matter, and promptly began commercial
5 use of the subject matter, even if such activities
6 were conducted after the effective filing date of
7 the patent.

8 “(4) BURDEN OF PROOF.—A person asserting
9 the defense under this section shall have the burden
10 of establishing the defense.

11 “(5) ABANDONMENT OF USE.—A person who
12 has abandoned commercial use of subject matter
13 may not rely on activities performed before the date
14 of such abandonment in establishing a defense under
15 subsection (b) with respect to actions taken after the
16 date of such abandonment.

17 “(6) PERSONAL DEFENSE.—The defense under
18 this section may only be asserted by the person who
19 performed the acts necessary to establish the defense
20 and, except for any transfer to the patent owner, the
21 right to assert the defense shall not be licensed or
22 assigned or transferred to another person except in
23 connection with the good faith assignment or trans-
24 fer of the entire enterprise or line of business to
25 which the defense relates.

1 “(7) ONE-YEAR LIMITATION.—A person may
 2 not assert a defense under this section unless the
 3 subject matter on which the defense is based had
 4 been commercially used or reduced to practice more
 5 than one year prior to the effective filing date of the
 6 patent by the person asserting the defense or some-
 7 one in privity with that person.

8 “(d) UNSUCCESSFUL ASSERTION OF DEFENSE.—If
 9 the defense under this section is pleaded by a person who
 10 is found to infringe the patent and who subsequently fails
 11 to demonstrate a reasonable basis for asserting the de-
 12 fense, the court shall find the case exceptional for the pur-
 13 pose of awarding attorney’s fees under section 285 of this
 14 title.

15 “(e) INVALIDITY.—A patent shall not be deemed to
 16 be invalid under section 102 or 103 of this title solely be-
 17 cause a defense is established under this section.”.

18 (b) CONFORMING AMENDMENT.—The table of sec-
 19 tions at the beginning of chapter 28 of title 35, United
 20 States Code, is amended by adding at the end the follow-
 21 ing new item:

“Sec. 273. Prior domestic commercial use; defense to infringement.”.

22 **SEC. 403. EFFECTIVE DATE AND APPLICABILITY.**

23 This title and the amendments made by this title
 24 shall take effect on the date of the enactment of this Act,
 25 but shall not apply to any action for infringement that

1 is pending on such date of enactment or with respect to
2 any subject matter for which an adjudication of infringe-
3 ment, including a consent judgment, has been made before
4 such date of enactment.

5 **TITLE V—PATENT**
6 **REEXAMINATION REFORM**

7 **SEC. 501. SHORT TITLE.**

8 This title may be cited as the “Patent Reexamination
9 Reform Act of 1996”.

10 **SEC. 502. DEFINITIONS.**

11 Section 100 of title 35, United States Code, is
12 amended by adding at the end the following new sub-
13 section:

14 “(e) The term ‘third-party requester’ means a person
15 requesting reexamination under section 302 of this title
16 who is not the patent owner.”.

17 **SEC. 503. REEXAMINATION PROCEDURES.**

18 (a) **REQUEST FOR REEXAMINATION.**—Section 302 of
19 title 35, United States Code, is amended to read as fol-
20 lows:

21 **“§ 302. Request for reexamination**

22 “(a) **IN GENERAL.**—Any person at any time may file
23 a request for reexamination by the Office of a patent on
24 the basis of any prior art cited under the provisions of
25 section 301 of this title or on the basis of the requirements

1 of section 112 of this title except for the requirement to
2 set forth the best mode of carrying out the invention.

3 “(b) REQUIREMENTS.—The request shall—

4 “(1) be in writing, include the identity of the
5 real party in interest, and be accompanied by pay-
6 ment of a reexamination fee established by the Com-
7 missioner of Patents pursuant to the provisions of
8 section 41 of this title; and

9 “(2) set forth the pertinency and manner of ap-
10 plying cited prior art to every claim for which reex-
11 amination is requested or the manner in which the
12 patent specification or claims fail to comply with the
13 requirements of section 112 of this title.

14 “(c) COPY.—Unless the requesting person is the
15 owner of the patent, the Commissioner promptly shall
16 send a copy of the request to the owner of record of the
17 patent.”.

18 (b) DETERMINATION OF ISSUE BY COMMISSIONER.—
19 Section 303 of title 35, United States Code, is amended
20 to read as follows:

21 **“§ 303. Determination of issue by Commissioner**

22 “(a) REEXAMINATION.—Not later than 3 months
23 after the filing of a request for reexamination under the
24 provisions of section 302 of this title, the Commissioner
25 shall determine whether a substantial new question of pat-

1 entability affecting any claim of the patent concerned is
2 raised by the request, with or without consideration of
3 other patents or printed publications. On the Commis-
4 sioner's initiative, and any time, the Commissioner may
5 determine whether a substantial new question of patent-
6 ability is raised by patents and publications or by the fail-
7 ure of the patent specification or claims to comply with
8 the requirements of section 112 of this title except for the
9 best mode requirement described in section 302.

10 “(b) RECORD.—A record of the Commissioner's de-
11 termination under subsection (a) shall be placed in the of-
12 ficial file of the patent, and a copy shall be promptly given
13 or mailed to the owner of record of the patent and to the
14 third-party requester, if any.

15 “(c) FINAL DECISION.—A determination by the
16 Commissioner pursuant to subsection (a) shall be final
17 and nonappealable. Upon a determination that no sub-
18 stantial new question of patentability has been raised, the
19 Commissioner may refund a portion of the reexamination
20 fee required under section 302 of this title.”.

21 (c) REEXAMINATION ORDER BY COMMISSIONER.—
22 Section 304 of title 35, United States Code, is amended
23 to read as follows:

1 **“§ 304. Reexamination order by Commissioner**

2 “If, in a determination made under the provisions of
3 section 303(a) of this title, the Commissioner finds that
4 a substantial new question of patentability affecting a
5 claim of a patent is raised, the determination shall include
6 an order for reexamination of the patent for resolution of
7 the question. The order may be accompanied by the initial
8 action of the Patent Office on the merits of the reexamina-
9 tion conducted in accordance with section 305 of this
10 title.”.

11 (d) CONDUCT OF REEXAMINATION PROCEEDINGS.—
12 Section 305 of title 35, United States Code, is amended
13 to read as follows:

14 **“§ 305. Conduct of reexamination proceedings**

15 “(a) IN GENERAL.—Subject to subsection (b), reex-
16 amination shall be conducted according to the procedures
17 established for initial examination under the provisions of
18 sections 132 and 133 of this title. In any reexamination
19 proceeding under this chapter, the patent owner shall be
20 permitted to propose any amendment to the patent and
21 a new claim or claims, except that no proposed amended
22 or new claim enlarging the scope of the claims of the pat-
23 ent shall be permitted.

24 “(b) RESPONSE.—(1) This subsection shall apply to
25 any reexamination proceeding in which the order for reex-

1 amination is based upon a request by a third-party re-
2 quester.

3 “(2) With the exception of the reexamination request,
4 any document filed by either the patent owner or the
5 third-party requester shall be served on the other party.

6 “(3) If the patent owner files a response to any Pat-
7 ent Office action on the merits, the third-party requester
8 shall have 1 opportunity to file written comments within
9 a reasonable period not less than 1 month after the date
10 of service of the patent owner’s response. Written com-
11 ments provided under this paragraph shall be limited to
12 issues covered by the Patent Office action or the patent
13 owner’s response.

14 “(c) SPECIAL DISPATCH.—Unless otherwise provided
15 by the Commissioner for good cause, all reexamination
16 proceedings under this section, including any appeal to the
17 Board of Patent Appeals and Interferences, shall be con-
18 ducted with special dispatch within the Office.”.

19 (e) APPEAL.—Section 306 of title 35, United States
20 Code, is amended to read as follows:

21 **“§ 306. Appeal**

22 “(a) PATENT OWNER.—The patent owner involved in
23 a reexamination proceeding under this chapter—

24 “(1) may appeal under the provisions of section
25 134 of this title, and may appeal under the provi-

1 sions of sections 141 through 144 of this title, with
2 respect to any decision adverse to the patentability
3 of any original or proposed amended or new claim
4 of the patent, and

5 “(2) may be a party to any appeal taken by a
6 third-party requester pursuant to subsection (b) of
7 this section.

8 “(b) THIRD-PARTY REQUESTER.—A third-party re-
9 quester may—

10 “(1) appeal under the provisions of section 134
11 of this title, and may appeal under the provisions of
12 sections 141 through 144 of this title, with respect
13 to any final decision favorable to the patentability of
14 any original or proposed amended or new claim of
15 the patent; or

16 “(2) be a party to any appeal taken by the pat-
17 ent owner, subject to subsection (c) of this section.

18 “(c) PARTICIPATION AS PARTY.—

19 “(1) IN GENERAL.—A third-party requester
20 who, under the provisions of sections 141 through
21 144 of this title, files a notice of appeal or who par-
22 ticipates as a party to an appeal by the patent owner
23 is estopped from asserting at a later time, in any
24 forum, the invalidity of any claim determined to be
25 patentable on appeal on any ground which the third-

1 party requester raised or could have raised during
2 the reexamination proceedings.

3 “(2) ELECTION TO PARTICIPATE.—A third-
4 party requester is deemed not to have participated
5 as a party to an appeal by the patent owner unless,
6 not later than 20 days after the patent owner has
7 filed notice of appeal, the third-party requester files
8 notice with the Commissioner electing to partici-
9 pate.”.

10 (f) REEXAMINATION PROHIBITED.—

11 “(1) IN GENERAL.—Chapter 30 of title 35,
12 United States Code, is amended by adding at the
13 end the following new section:

14 **“§ 308. Reexamination prohibited**

15 “(a) ORDER FOR REEXAMINATION.—Notwithstand-
16 ing any provision of this chapter, once an order for reex-
17 amination of a patent has been issued under section 304
18 of this title, neither the patent owner nor the third-party
19 requester, if any, nor privies of either, may file a subse-
20 quent request for reexamination of the patent until a reex-
21 amination certificate is issued and published under section
22 307 of this title, unless authorized by the Commissioner.

23 “(b) FINAL DECISION.—Once a final decision has
24 been entered against a party in a civil action arising in
25 whole or in part under section 1338 of title 28 that the

1 party has not sustained its burden of proving the invalidity
2 of any patent claim in suit, then neither that party nor
3 its privies may thereafter request reexamination of any
4 such patent claim on the basis of issues which that party
5 or its privies raised or could have raised in such civil ac-
6 tion, and a reexamination requested by that party or its
7 privies on the basis of such issues may not thereafter be
8 maintained by the Office, notwithstanding any other provi-
9 sion of this chapter.”.

10 (2) TECHNICAL AND CONFORMING AMEND-
11 MENT.—The table of sections for chapter 30 of title
12 35, United States Code, is amended by adding at
13 the end the following:

“308. Reexamination prohibited.”.

14 **SEC. 504. CONFORMING AMENDMENTS.**

15 (a) PATENT FEES; PATENT SEARCH SYSTEMS.—Sec-
16 tion 41(a)(7) of title 35, United States Code, is amended
17 to read as follows:

18 “(7) On filing each petition for the revival of an
19 unintentionally abandoned application for a patent,
20 for the unintentionally delayed payment of the fee
21 for issuing each patent, or for an unintentionally de-
22 layed response by the patent owner in a reexamina-
23 tion proceeding, \$1,250, unless the petition is filed
24 under sections 133 or 151 of this title, in which case
25 the fee shall be \$110.”.

1 (b) APPEAL TO THE BOARD OF PATENT APPEALS
2 AND INTERFERENCES.—Section 134 of title 35, United
3 States Code, is amended to read as follows:

4 **“§ 134. Appeal to the Board of Patent Appeals and**
5 **Interferences**

6 “(a) PATENT APPLICANT.—An applicant for a pat-
7 ent, any of whose claims has been twice rejected, may ap-
8 peal from the decision of the primary examiner to the
9 Board of Patent Appeals and Interferences, having once
10 paid the fee for such appeal.

11 “(b) PATENT OWNER.—A patent owner in a reexam-
12 ination proceeding may appeal from the final rejection of
13 any claim by the primary examiner to the Board of Patent
14 Appeals and Interferences, having once paid the fee for
15 such appeal.

16 “(c) THIRD-PARTY.—A third-party requester may
17 appeal to the Board of Patent Appeals and Interferences
18 from the final decision of the primary examiner favorable
19 to the patentability of any original or proposed amended
20 or new claim of a patent, having once paid the fee for
21 such appeal.”.

22 (d) APPEAL TO COURT OF APPEALS FOR THE FED-
23 ERAL CIRCUIT.—Section 141 of title 35, United States
24 Code, is amended by amending the first sentence to read
25 as follows: “An applicant, a patent owner, or a third-party

1 requester, dissatisfied with the final decision in an appeal
2 to the Board of Patent Appeals and Interferences under
3 section 134 of this title, may appeal the decision to the
4 United States Court of Appeals for the Federal Circuit.”.

5 (e) PROCEEDINGS ON APPEAL.—Section 143 of title
6 35, United States Code, is amended by amending the third
7 sentence to read as follows: “In ex parte and reexamina-
8 tion cases, the Commissioner shall submit to the court in
9 writing the grounds for the decision of the Patent Office,
10 addressing all the issues involved in the appeal.”.

11 (f) CIVIL ACTION TO OBTAIN PATENT.—Section 145
12 of title 35, United States Code, is amended in the first
13 sentence by inserting “(a)” after “section 134”.

14 **SEC. 505. EFFECTIVE DATE.**

15 This title and the amendments made by this title
16 shall take effect on the date that is 6 months after the
17 date of the enactment of this Act and shall apply to all
18 reexamination requests filed on or after such date.

19 **TITLE VI—MISCELLANEOUS**
20 **PATENT PROVISIONS**

21 **SEC. 601. PROVISIONAL APPLICATIONS.**

22 (a) ABANDONMENT.—Section 111(b)(5) of title 35,
23 United States Code, is amended to read as follows:

24 “(5) ABANDONMENT.—Notwithstanding the ab-
25 sence of a claim, upon timely request and as pre-

1 scribed by the Commissioner, a provisional applica-
2 tion may be treated as an application filed under
3 subsection (a). If no such request is made, the provi-
4 sional application shall be regarded as abandoned 12
5 months after the filing date of such application and
6 shall not be subject to revival thereafter.”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 subsection (a) apply to a provisional application filed on
9 or after June 8, 1995.

10 **SEC. 602. INTERNATIONAL APPLICATIONS.**

11 Section 119 of title 35, United States Code, is
12 amended as follows:

13 (1) In subsection (a), insert “or in a WTO
14 member country” after “or to citizens of the United
15 States,”.

16 (2) At the end of section 119 add the following
17 new subsections:

18 “(f) Applications for plant breeder’s rights filed in
19 a WTO member country (or in a foreign UPOV Contract-
20 ing Party) shall have the same effect for the purpose of
21 the right of priority under subsections (a) through (e) of
22 this section as applications for patents, subject to the
23 same conditions and requirements of this section as apply
24 to applications for patents.

25 “(g) As used in this section—

1 “(1) the term ‘WTO member country’ has the
2 same meaning as the term is defined in section
3 104(b)(2) of this title; and

4 “(2) the term ‘UPOV Contracting Party’ means
5 a member of the International Convention for the
6 Protection of New Varieties of Plants.”.

7 **SEC. 603. PLANT PATENTS.**

8 (a) TUBER PROPAGATED PLANTS.—Section 161 of
9 title 35, United States Code, is amended by striking “a
10 tuber propagated plant or”.

11 (b) RIGHTS IN PLANT PATENTS.—The text of section
12 163 of title 35, United States Code, is amended to read
13 as follows: “In the case of a plant patent, the grant to
14 the patentee, such patentee’s heirs or assigns, shall have
15 the right to exclude others from asexually reproducing the
16 plant, and from using, offering for sale, or selling the
17 plant so reproduced, or any of its parts, throughout the
18 United States, or from importing the plant so reproduced,
19 or any parts thereof, into the United States.”.

20 (c) EFFECTIVE DATE.—The amendments by sub-
21 section (a) shall apply on the date of enactment of this
22 Act. The amendments made by subsection (b) shall apply
23 to any plant patent issued on or after the date of enact-
24 ment of this Act.

1 **SEC. 604. JUST COMPENSATION FOR UNITED STATES GOV-**
2 **ERNMENT USE OF PATENTS.**

3 (a) COMPENSATION.—Section 1498(a) of title 28,
4 United States Code, is amended by adding at the end of
5 the first paragraph the following: “Reasonable and entire
6 compensation shall include the owner’s reasonable costs,
7 including reasonable fees for expert witnesses and attor-
8 neys, in pursuing the action if the owner is an independent
9 inventor, a nonprofit organization, or an entity that had
10 no more than 500 employees at any time during the 5-
11 year period preceding the use or manufacture of the pat-
12 ented invention by or for the United States.”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 subsection (a) shall apply to actions under section 1498(a)
15 of title 28, United States Code, that are pending on, or
16 brought on or after, the date of the enactment of this Act.

17 **SEC. 605. ELECTRONIC FILING.**

18 Section 22 of title 35, United States Code, is amend-
19 ed by striking “printed or typewritten” and inserting
20 “printed, typewritten, or on an electronic medium”.