Calendar No. 62

105TH CONGRESS
1ST SESSION

S. 507

A BILL

To establish the United States Patent and Trademark Organization as a Government corporation, 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.

MAY 23, 1997

Reported with an amendment

AUTHENTICATED
U.S. GOVERNMENT
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To establish the United States Patent and Trademark Organization as a Government corporation, 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

MARCH 20, 1997

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

MAY 23, 1997

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To establish the United States Patent and Trademark Organization as a Government corporation, 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,*

~~SECTION 1. SHORT TITLE.~~

~~This Act may be cited as the "Omnibus Patent Act of 1997".~~

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~~TITLE I—UNITED STATES PATENT AND TRADEMARK ORGANIZATION~~

~~SEC. 101. SHORT TITLE.~~

~~This title may be cited as the "United States Patent and Trademark Organization Act of 1997".~~

~~Subtitle A—Establishment of the United States Patent and Trademark Organization~~

~~SEC. 111. ESTABLISHMENT OF THE UNITED STATES PATENT AND TRADEMARK ORGANIZATION AS A GOVERNMENT CORPORATION.~~

~~(a) ESTABLISHMENT.—The United States Patent and Trademark Organization is established as a wholly owned Government corporation subject to chapter 91 of title 31, separate from any department, and shall be an agency of the United States under the policy direction of the Secretary of Commerce.~~

~~(b) OFFICES.—The United States Patent and Trademark Organization shall maintain its principal office in the District of Columbia, or the metropolitan area thereof, for the service of process and papers and for the purpose of carrying out its powers, duties, and obligations under this title. The United States Patent and Trademark Organization shall be deemed, for purposes of venue in civil actions, to be a resident of the district in which its principal office is located except where jurisdiction is otherwise provided by law. The United States Patent and Trademark Organization may establish satellite offices in such places as it considers necessary and appropriate in the conduct of its business.~~

~~(c) REFERENCE.—For purposes of this title, a reference to the "Organization" shall be a reference to the United States Patent and Trademark Organization, unless the context provides otherwise.~~

~~SEC. 112. POWERS AND DUTIES.~~

~~(a) IN GENERAL.—The United States Patent and Trademark Organization, under the policy direction of the Secretary of Commerce, shall be responsible for—~~

~~(1) the granting and issuing of patents and the registration of trademarks;~~

~~(2) conducting studies, programs, or exchanges of items or services regarding domestic and international patent and trademark law, the administration of the Organization, or any other function vested in the Organization by law, including programs to recognize, identify, assess, and forecast the technology of patented inventions and their utility to industry;~~

~~(3)(A) authorizing or conducting studies and programs cooperatively with foreign patent and trademark offices and international organizations, in connection with the granting and issuing of patents and the registration of trademarks; and~~

~~(B) with the concurrence of the Secretary of State, authorizing the transfer of not to exceed~~

~~$100,000 in any year to the Department of State for the purpose of making special payments to international intergovernmental organizations for studies and programs for advancing international cooperation concerning patents, trademarks, and related matters; and~~

~~(4) disseminating to the public information with respect to patents and trademarks.~~

~~(b) SPECIAL PAYMENTS.—The special payments under subsection (a)(3)(B) may be in addition to any other payments or contributions to international organizations and shall not be subject to any limitations imposed by law on the amounts of such other payments or contributions by the United States Government.~~

~~(c) SPECIFIC POWERS.—The Organization—~~

~~(1) shall have perpetual succession;~~

~~(2) shall adopt and use a corporate seal, which shall be judicially noticed and with which letters patent, certificates of trademark registrations, and papers issued by the Organization shall be authenticated;~~

~~(3) may sue and be sued in its corporate name and be represented by its own attorneys in all judicial and administrative proceedings, subject to the provisions of section 116;~~

~~(4) may indemnify the Director of the United States Patent and Trademark Organization, the Commissioner of Patents, the Commissioner of Trademarks, and other officers, attorneys, agents, and employees (including members of the Management Advisory Boards of the Patent Office and the Trademark Office) of the Organization for liabilities and expenses incurred within the scope of their employment;~~

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

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

~~(B) shall be made after notice and opportunity for full participation by interested public and private parties;~~

~~(6) may acquire, construct, purchase, lease, hold, manage, operate, improve, alter, and renovate any real, personal, or mixed property, or any interest therein, as it considers necessary to carry out its functions;~~

~~(7)(A) may make such purchases, contracts for the construction, maintenance, or management and operation of facilities, and contracts for supplies or~~

services, without regard to the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.), the Public Buildings Act (40 U.S.C. 601 et seq.), and the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.); and

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

(8) may use, with their consent, services, equipment, personnel, and facilities of other departments, agencies, and instrumentalities of the Federal Government, on a reimbursable basis, and cooperate with such other departments, agencies, and instrumentalities in the establishment and use of services, equipment, and facilities of the Organization;

(9) may obtain from the Administrator of General Services such services as the Administrator is authorized to provide to other agencies of the United

~~States, on the same basis as those services are provided to other agencies of the United States;~~

~~(10) may use, with the consent of the United States and the agency, government, or international organization concerned, the services, records, facilities, or personnel of any State or local government agency or instrumentality or foreign government or international organization to perform functions on its behalf;~~

~~(11) may determine the character of, and the necessity for, its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, subject to the provisions of title 35, United States Code and the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946);~~

~~(12) may retain and use all of its revenues and receipts, including revenues from the sale, lease, or disposal of any real, personal, or mixed property, or any interest therein, of the Organization, including for research and development and capital investment, subject to the provisions of section 10101 of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. 41 note);~~

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

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

~~(15) may execute, in accordance with its by-laws, rules, and regulations, all instruments necessary and appropriate in the exercise of any of its powers; and~~

~~(16) may provide for liability insurance and insurance against any loss in connection with its property, other assets, or operations either by contract or by self-insurance.~~

~~(d) CONSTRUCTION.—Nothing in this section shall be construed to nullify, void, cancel, or interrupt any pending request-for-proposal let or contract issued by the General Services Administration for the specific purpose of relocating or leasing space to the United States Patent and Trademark Organization.~~

~~SEC. 113. ORGANIZATION AND MANAGEMENT.~~

~~(a) OFFICES.—The United States Patent and Trademark Organization shall consist of—~~

~~(1) the Office of the Director;~~

~~(2) the United States Patent Office; and~~

~~(3) the United States Trademark Office.~~

~~(b) DIRECTOR.—~~

~~(1) IN GENERAL.—The management of the United States Patent and Trademark Organization shall be vested in a Director of the United States Patent and Trademark Organization (hereafter in this title referred to as the "Director", unless the context provides otherwise), who shall be a citizen of the United States and who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be a person who, by reason of professional background and experience in patent or trademark law, is especially qualified to manage the Organization.~~

~~(2) DUTIES.—(A) The Director shall—~~

~~(i) be responsible for the Management and direction of the Organization and shall perform this duty in a fair, impartial, and equitable manner; and~~

~~(ii) strive to meet the goals set forth in the performance agreement described under paragraph (4).~~

~~(B) The Director shall advise the President, through and under the policy direction of the Secretary of Commerce, of all activities of the Organiza-~~

~~tion undertaken in response to obligations of the United States under treaties and executive agreements, or which relate to cooperative programs with those authorities of foreign governments that are responsible for granting patents or registering trademarks. The Director shall also recommend to the President, through and under the policy direction of the Secretary of Commerce, changes in law or policy which may improve the ability of United States citizens to secure and enforce patent and trademark rights in the United States or in foreign countries.~~

~~(C)(i) At the direction of the President, the Director may represent the United States in international negotiations on matters of patents or trademarks, or may designate an officer or officers of the Organization to participate in such negotiations.~~

~~(ii) Nothing in this subparagraph shall be construed to alter any statutory responsibility of the Secretary of State or the United States Trade Representative.~~

~~(D) The Director, in consultation with the Director of the Office of Personnel Management, shall maintain a program for identifying national security positions and providing for appropriate security clearances.~~

~~(E) The Director may perform such personnel, procurement, and other functions, with respect to the United States Patent Office and the United States Trademark Office, where a centralized administration of such functions would improve the efficiency of the Offices, as determined by agreement of the Director, the Commissioner of Patents, and the Commissioner of Trademarks.~~

~~(F) Except as otherwise provided in this title, the Director shall ensure that—~~

~~(i) the United States Patent Office and the United States Trademark Office, respectively, shall—~~

~~(I) prepare all appropriation requests under section 1108 of title 31, United States Code, for each office for submission by the Director;~~

~~(II) adjust fees to provide sufficient revenues to cover the expenses of such office; and~~

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

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

~~(3) OATH.—The Director shall, before taking office, take an oath to discharge faithfully the duties of the Organization.~~

~~(4) COMPENSATION.—The Director shall receive compensation at the rate of pay in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code and, in addition, may receive as a bonus, an amount which would raise total compensation to the equivalent of the level of the rate of pay in effect for level II of the Executive Schedule under section 5313 of title 5, based upon an evaluation by the Secretary of Commerce of the Director's performance as defined in an annual performance agreement between the Director and the Secretary. The annual performance agreement shall incorporate measurable goals as delineated in an annual performance plan agreed to by the Director and the Secretary.~~

~~(5) REMOVAL.—The Director shall serve at the pleasure of the President.~~

~~(6) DESIGNEE OF DIRECTOR.—The Director shall designate an officer of the Organization who shall be vested with the authority to act in the capacity of the Director in the event of the absence or incapacity of the Director.~~

~~(c) OFFICERS AND EMPLOYEES OF THE ORGANIZATION.—~~

~~(1) COMMISSIONERS OF PATENTS AND TRADEMARKS.—The Director shall appoint a Commissioner of Patents and a Commissioner of Trademarks under section 3 of title 35, United States Code and section 53 of the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946), respectively, as amended by this Act.~~

~~(2) OTHER OFFICERS AND EMPLOYEES.—The Director shall—~~

~~(A) appoint officers, employees (including attorneys), and agents of the Organization as the Director considers necessary to carry out its functions;~~

~~(B) fix the compensation of such officers and employees, except as provided in subsection (c); and~~

~~(C) define the authority and duties of such officers and employees and delegate to them such of the powers vested in the Organization as the Director may determine.~~

~~(3) PERSONNEL LIMITATIONS.—The Organization shall not be subject to any administratively or statutorily imposed limitation on positions or person-~~

~~nel, and no positions or personnel of the Organization shall be taken into account for purposes of applying any such limitation.~~

~~(d) LIMITS ON COMPENSATION.—Except as otherwise provided by law, the annual rate of basic pay of an officer or employee of the Organization may not be fixed at a rate that exceeds, and total compensation payable to any such officer or employee for any year may not exceed, the annual rate of basic pay in effect for level II of the Executive Schedule under section 5313 of title 5, United States Code. The Director shall prescribe such regulations as may be necessary to carry out this subsection.~~

~~(e) INAPPLICABILITY OF TITLE 5, UNITED STATES CODE, GENERALLY.—Except as otherwise provided in this section, officers and employees of the Organization shall not be subject to the provisions of title 5, United States Code, relating to Federal employees.~~

~~(f) CONTINUED APPLICABILITY OF CERTAIN PROVISION OF TITLE 5, UNITED STATES CODE.—~~

~~(1) IN GENERAL.—The following provisions of title 5, United States Code, shall apply to the Organization and its officers and employees:~~

~~(A) Section 3110 (relating to employment of relatives; restrictions).~~

~~(B) Subchapter II of chapter 55 (relating to withholding pay).~~

~~(C) Subchapters II and III of chapter 73 (relating to employment limitations and political activities, respectively).~~

~~(D) Chapter 71 (relating to labor-management relations), subject to paragraph (2) and subsection (g).~~

~~(E) Section 3303 (relating to political recommendations).~~

~~(F) Subchapter II of chapter 61 (relating to flexible and compressed work schedules).~~

~~(G) Section 21302(b)(8) (relating to whistleblower protection) and whistleblower related provisions of chapter 12 (covering the role of the Office of Special Counsel).~~

~~(2) COMPENSATION SUBJECT TO COLLECTIVE BARGAINING.—~~

~~(A) IN GENERAL.—Notwithstanding any other provision of law, for purposes of applying chapter 71 of title 5, United States Code, pursuant to paragraph (1)(D), basic pay and other forms of compensation shall be considered to be among the matters as to which the duty to bargain in good faith extends under such chapter.~~

~~(B) EXCEPTIONS.—The duty to bargain in good faith shall not, by reason of subparagraph (A), be considered to extend to any benefit under title 5, United States Code, which is afforded by paragraph (1), (2), (3), or (4) of subsection (g).~~

~~(C) LIMITATIONS APPLY.—Nothing in this subsection shall be considered to allow any limitation under subsection (d) to be exceeded.~~

~~(g) PROVISIONS OF TITLE 5, UNITED STATES CODE, THAT CONTINUE TO APPLY, SUBJECT TO CERTAIN REQUIREMENTS.—~~

~~(1) RETIREMENT.—(A) The provisions of subchapter III of chapter 83 and chapter 84 of title 5, United States Code, shall apply to the Organization and its officers and employees, subject to subparagraph (B).~~

~~(B)(i) The amount required of the Organization under the second sentence of section 8334(a)(1) of title 5, United States Code, with respect to any particular individual shall, instead of the amount which would otherwise apply, be equal to the normal-cost percentage (determined with respect to officers and employees of the Organization using dynamic assumptions, as defined by section 8401(9) of such~~

~~title) of the individual's basic pay, minus the amount required to be withheld from such pay under such section 8334(a)(1).~~

~~(ii) The amount required of the Organization under section 8334(k)(1)(B) of title 5, United States Code, with respect to any particular individual shall be equal to an amount computed in a manner similar to that specified in clause (i), as determined in accordance with clause (iii).~~

~~(iii) Any regulations necessary to carry out this subparagraph shall be prescribed by the Office of Personnel Management.~~

~~(C) The United States Patent and Trademark Organization may supplement the benefits provided under the preceding provisions of this paragraph.~~

~~(2) HEALTH BENEFITS.—(A) The provisions of chapter 89 of title 5, United States Code, shall apply to the Organization and its officers and employees, subject to subparagraph (B).~~

~~(B)(i) With respect to any individual who becomes an officer or employee of the Organization pursuant to subsection (i), the eligibility of such individual to participate in such program as an annuitant (or of any other person to participate in such program as an annuitant based on the death of such~~

~~individual) shall be determined disregarding the requirements of section 8905(b) of title 5, United States Code. The preceding sentence shall not apply if the individual ceases to be an officer or employee of the Organization for any period of time after becoming an officer or employee of the Organization pursuant to subsection (i) and before separation.~~

~~(ii) The Government contributions authorized by section 8906 of title 5, United States Code, for health benefits for anyone participating in the health benefits program pursuant to this subparagraph shall be made by the Organization in the same manner as provided under section 8906(g)(2) of such title with respect to the United States Postal Service for individuals associated therewith.~~

~~(iii) For purposes of this subparagraph, the term "annuitant" has the meaning given such term by section 8901(3) of title 5, United States Code.~~

~~(C) The Organization may supplement the benefits provided under the preceding provisions of this paragraph.~~

~~(3) LIFE INSURANCE.—(A) The provisions of chapter 87 of title 5, United States Code, shall apply to the Organization and its officers and employees, subject to subparagraph (B).~~

~~(B)(i) Eligibility for life insurance coverage after retirement or while in receipt of compensation under subchapter I of chapter 81 of title 5, United States Code, shall be determined, in the case of any individual who becomes an officer or employee of the Organization pursuant to subsection (i), without regard to the requirements of section 8706(b) (1) or (2) of such title, but subject to the condition specified in the last sentence of paragraph (2)(B)(i) of this subsection.~~

~~(ii) Government contributions under section 8708(d) of such title on behalf of any such individual shall be made by the Organization in the same manner as provided under paragraph (3) thereof with respect to the United States Postal Service for individuals associated therewith.~~

~~(C) The Organization may supplement the benefits provided under the preceding provisions of this paragraph.~~

~~(4) EMPLOYEES' COMPENSATION FUND.—(A) Officers and employees of the Organization shall not become ineligible to participate in the program under chapter 81 of title 5, United States Code, relating to compensation for work injuries, by reason of subsection (c).~~

~~(B) The Organization shall remain responsible for reimbursing the Employees' Compensation Fund, pursuant to section 8147 of title 5, United States Code, for compensation paid or payable after the effective date of this title in accordance with chapter 81 of title 5, United States Code, with regard to any injury, disability, or death due to events arising before such date, whether or not a claim has been filed or is final on such date.~~

~~(h) LABOR-MANAGEMENT RELATIONS.—~~

~~(1) LABOR RELATIONS AND EMPLOYEE RELATIONS PROGRAMS.—The Organization shall develop hiring practices, labor relations and employee relations programs with the objective of improving productivity and efficiency, incorporating the following principles:~~

~~(A) Such programs shall be consistent with the merit principles in section 2301(b) of title 5, United States Code.~~

~~(B) Such programs shall provide veterans preference protections equivalent to those established by sections 2108, 3308 through 3318, 3320, 3502, and 3504 of title 5, United States Code.~~

~~(C)(i) The right to work shall not be subject to undue restraint or coercion. The right to work shall not be infringed or restricted in any way based on membership in, affiliation with, or financial support of a labor organization.~~

~~(ii) No person shall be required, as a condition of employment or continuation of employment—~~

~~(I) to resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;~~

~~(II) to become or remain a member of a labor organization;~~

~~(III) to pay any dues, fees, assessments, or other charges of any kind or amount to a labor organization;~~

~~(IV) to pay to any charity or other third party, in lieu of such payments, any amount equivalent to or a pro rata portion of dues, fees, assessments, or other charges regularly required of members of a labor organization; or~~

~~(V) to be recommended, approved, referred, or cleared by or through a labor organization.~~

~~(iii) This subparagraph shall not apply to a person described in section 7103(a)(2)(v) of title 5, United States Code, or a "supervisor", "management official", or "confidential employee" as those terms are defined in 7103(a)(10), (11), and (13) of such title.~~

~~(iv) Any labor organization recognized by the Organization as the exclusive representative of a unit of employees of the Organization shall represent the interests of all employees in that unit without discrimination and without regard to labor organization membership.~~

~~(2) ADOPTION OF EXISTING LABOR AGREEMENTS.—The Organization shall adopt all labor agreements which are in effect, as of the day before the effective date of this title, with respect to such Organization (as then in effect).~~

~~(i) CARRYOVER OF PERSONNEL.—~~

~~(1) FROM PTO.—Effective as of the effective date of this title, all officers and employees of the Patent and Trademark Office on the day before~~

~~such effective date shall become officers and employees of the Organization, without a break in service.~~

~~(2) OTHER PERSONNEL.—(A) Any individual who, on the day before the effective date of this title, is an officer or employee of the Department of Commerce (other than an officer or employee under paragraph (1)) shall be transferred to the Organization if—~~

~~(i) such individual serves in a position for which a major function is the performance of work reimbursed by the Patent and Trademark Office, as determined by the Secretary of Commerce;~~

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

~~(iii) such transfer would be in the interest of the Organization, as determined by the Secretary of Commerce in consultation with the Director.~~

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

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

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

~~(4) TERMINATION RIGHTS.—Any employee referred to in paragraph (1) or (2) of this subsection whose employment with the Organization is terminated during the 1-year period beginning on the effective date of this title shall be entitled to rights and benefits, to be afforded by the Organization, similar to those such employee would have had under Federal law if termination had occurred immediately before such date. An employee who would have been entitled to appeal any such termination to the Merit Systems Protection Board, if such termination had occurred immediately before such effective date, may appeal any such termination occurring within such 1-year period to the Board under such procedures as it may prescribe.~~

~~(5) TRANSITION PROVISIONS.—(A)(i) On or after the effective date of this title, the President shall appoint a Director of the United States Patent and Trademark Organization who shall serve until the earlier of—~~

~~(I) the date on which a Director qualifies under subsection (a); or~~

~~(II) the date occurring 1 year after the effective date of this title.~~

~~(ii) The President shall not make more than 1 appointment under this subparagraph.~~

~~(B) The individual serving as the Assistant Commissioner of Patents on the day before the effective date of this title shall serve as the Commissioner of Patents until the date on which a Commissioner of Patents is appointed under section 3 of title 35, United States Code, as amended by this Act.~~

~~(C) The individual serving as the Assistant Commissioner of Trademarks on the day before the effective date of this title shall serve as the Commissioner of Trademarks until the date on which a Commissioner of Trademarks is appointed under section 53 of the Act of July 5, 1946 (commonly re-~~

~~ferred to as the Trademark Act of 1946), as amended by this Act.~~

~~(j) COMPETITIVE STATUS.—For purposes of appointment to a position in the competitive service for which an officer or employee of the Organization is qualified, such officer or employee shall not forfeit any competitive status, acquired by such officer or employee before the effective date of this title, by reason of becoming an officer or employee of the Organization under subsection (i).~~

~~(k) SAVINGS PROVISIONS.—Compensation, benefits, and other terms and conditions of employment in effect immediately before the effective date of this title, whether provided by statute or by rules and regulations of the former Patent and Trademark Office or the executive branch of the Government of the United States, shall continue to apply to officers and employees of the Organization, until changed in accordance with this section (whether by action of the Director or otherwise).~~

~~(l) REMOVAL OF QUASI-JUDICIAL EXAMINERS.—The Organization may remove a patent examiner or examiner-in-chief, or a trademark examiner or member of a Trademark Trial and Appeal Board only for such cause as will promote the efficiency of the Organization.~~

SEC. 114. UNITED STATES PATENT OFFICE.

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

"§ 1. Establishment

"(a) ESTABLISHMENT.—The United States Patent Office is established as a separate administrative unit of the United States Patent and Trademark Organization, where records, books, drawings, specifications, and other papers and things pertaining to patents shall be kept and preserved, except as otherwise provided by law.

"(b) REFERENCE.—For purposes of this title, the United States Patent Office shall also be referred to as the 'Office' and the 'Patent Office'.".

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

"§ 2. Powers and duties

"The United States Patent Office, under the policy direction of the Secretary of Commerce through the Director of the United States Patent and Trademark Organization, shall be responsible for—

"(1) granting and issuing patents;

"(2) conducting studies, programs, or exchanges of items or services regarding domestic and international patent law, the administration of the Organization, or any other function vested in the

~~Organization by law, including programs to recognize, identify, assess, and forecast the technology of patented inventions and their utility to industry;~~

~~"(3) authorizing or conducting studies and programs cooperatively with foreign patent offices and international organizations, in connection with the granting and issuing of patents; and~~

~~"(4) disseminating to the public information with respect to patents.~~

~~(c) ORGANIZATION AND MANAGEMENT.—Section 3 of title 35, United States Code, is amended to read as follows:~~

~~"§ 3. Officers and employees~~

~~"(a) COMMISSIONER.—~~

~~"(1) IN GENERAL.—The management of the United States Patent Office shall be vested in a Commissioner of Patents, who shall be a citizen of the United States and who shall be appointed by the Director of the United States Patent and Trademark Organization and shall serve at the pleasure of the Director of the United States Patent and Trademark Organization. The Commissioner of Patents shall be a person who, by reason of professional background and experience in patent law, is especially qualified to manage the Office.~~

~~"(2) DUTIES.—~~

~~"(A) IN GENERAL.—The Commissioner shall be responsible for all aspects of the management, administration, and operation of the Office, including the granting and issuing of patents, and shall perform these duties in a fair, impartial, and equitable manner.~~

~~"(B) ADVISING THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK ORGANIZATION.—The Commissioner of Patents shall advise the Director of the United States Patent and Trademark Organization of all activities of the Office undertaken in response to obligations of the United States under treaties and executive agreements, or which relate to cooperative programs with those authorities of foreign governments that are responsible for granting patents. The Commissioner of Patents shall advise the Director of the United States Patent and Trademark Organization on matters of patent law and shall recommend to the Director of the United States Patent and Trademark Organization changes in law or policy which may improve the ability of United States~~

~~citizens to secure and enforce patent rights in the United States or in foreign countries.~~

~~"(C) REGULATIONS.—The Commissioner may establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office. The Director of the United States Patent and Trademark Organization shall determine whether such regulations are consistent with the policy direction of the Secretary of Commerce.~~

~~"(D) CONSULTATION WITH THE MANAGEMENT ADVISORY BOARD.—(i) The Commissioner shall consult with the Management Advisory Board established in section 5—~~

~~"(I) on a regular basis on matters relating to the operation of the Office; and~~

~~"(II) before submitting budgetary proposals to the Director of the United States Patent and Trademark Organization for submission to the Office of Management and Budget or changing or proposing to change patent user fees or patent regulations.~~

~~"(ii) The Director of the United States Patent and Trademark Organization shall de-~~

~~termine whether such fees or regulations are consistent with the policy direction of the Secretary of Commerce.~~

~~"(3) OATH.—The Commissioner shall, before taking office, take an oath to discharge faithfully the duties of the Office.~~

~~"(4) COMPENSATION.—~~

~~"(A) IN GENERAL.—The Commissioner shall receive compensation at the rate of pay in effect for level IV of the Executive Schedule under section 5315 of title 5.~~

~~"(B) BONUS.—In addition to compensation under subparagraph (A), the Commissioner may, at the discretion of the Director of the United States Patent and Trademark Organization, receive as a bonus, an amount which would raise total compensation to the equivalent of the rate of pay in effect for level III of the Executive Schedule under section 5314 of title 5.~~

~~"(b) OFFICERS AND EMPLOYEES.—The Commissioner shall appoint a Deputy Commissioner of Patents who shall be vested with the authority to act in the capacity of the Commissioner in the event of the absence or incapacity of the Commissioner. In the event of a vacancy~~

~~in the office of Commissioner, the Deputy Commissioner shall fill the office of Commissioner until a new Commissioner is appointed and takes office. Other officers, attorneys, employees, and agents shall be selected and appointed by the Commissioner, and shall be vested with such powers and duties as the Commissioner may determine.''.~~

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

~~''§ 5. Patent Office Management Advisory Board~~

~~''(a) ESTABLISHMENT OF MANAGEMENT ADVISORY BOARD.—~~

~~''(1) APPOINTMENT.—The United States Patent Office shall have a Management Advisory Board (hereafter in this title referred to as the 'Advisory Board') of 5 members, who shall be appointed by the President and shall serve at the pleasure of the President. Not more than 3 of the 5 members shall be members of the same political party.~~

~~''(2) CHAIR.—The President shall designate a Chair of the Advisory Board, whose term as chair shall be for 3 years.~~

~~''(3) TIMING OF APPOINTMENTS.—Initial appointments to the Advisory Board shall be made~~

~~within 3 months after the effective date of the United States Patent and Trademark Organization Act of 1997. Vacancies shall be filled in the manner in which the original appointment was made under this subsection within 3 months after they occur.~~

~~"(b) BASIS FOR APPOINTMENTS.—Members of the Advisory Board shall be citizens of the United States who shall be chosen so as to represent the interests of diverse users of the United States Patent Office, and shall include individuals with substantial background and achievement in corporate finance and management.~~

~~"(c) MEETINGS.—The Advisory Board shall meet at the call of the Chair to consider an agenda set by the Chair.~~

~~"(d) DUTIES.—The Advisory Board shall—~~

~~"(1) review the policies, goals, performance, budget, and user fees of the United States Patent Office, and advise the Commissioner on these matters;~~

~~"(2) within 60 days after the end of each fiscal year—~~

~~"(A) prepare an annual report on the matters referred to in paragraph (1);~~

~~"(B) transmit the report to the Director of the United States Patent and Trademark Orga-~~

~~nization, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and~~

~~"(C) publish the report in the Patent Office Official Gazette.~~

~~"(f) COMPENSATION.—Each member of the Advisory Board shall be compensated for each day (including travel time) during which such member is attending meetings or conferences of the Advisory Board or otherwise engaged in the business of the Advisory Board, at the rate which is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5, and while away from such member's home or regular place of business such member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.~~

~~"(g) ACCESS TO INFORMATION.—Members of the Advisory Board shall be provided access to records and information in the United States Patent Office, except for personnel or other privileged information and information concerning patent applications required to be kept in confidence by section 122.".~~

~~(c) CONFORMING AMENDMENTS.—Section 6 of title 35, United States Code, and the item relating to such sec-~~

~~tion in the table of contents for chapter 1 of title 35, United States Code, are repealed.~~

~~(f) BOARD OF PATENT APPEALS AND INTERFERENCES.—Section 7 of title 35, United States Code, is amended to read as follows:~~

~~"§ 7. Board of Patent Appeals and Interferences~~

~~"(a) ESTABLISHMENT AND COMPOSITION.—There shall be in the United States Patent Office a Board of Patent Appeals and Interferences. The Commissioner, the Deputy Commissioner, and the examiners-in-chief shall constitute the Board. The examiners-in-chief shall be persons of competent legal knowledge and scientific ability.~~

~~"(b) DUTIES.—~~

~~"(1) IN GENERAL.—The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, a patent owner, or a third-party requester in a reexamination proceeding—~~

~~"(A) review adverse decisions of examiners—~~

~~"(i) upon applications for patents; and~~

~~"(ii) in reexamination proceedings; and~~

~~"(B) determine priority and patentability of invention in interferences declared under section 135(a).~~

~~"(2) HEARINGS.—Each appeal and interference shall be heard by at least 3 members of the Board, who shall be designated by the Deputy Commissioner. Only the Board of Patent Appeals and Interferences may grant rehearings.".~~

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

~~"§ 14. Annual report to Congress~~

~~"The Commissioner shall report to the Director of the United States Patent and Trademark Organization such information as the Director is required to submit to Congress annually under chapter 91 of title 31, including—~~

~~"(1) the total of the moneys received and expended by the Office;~~

~~"(2) the purposes for which the moneys were spent;~~

~~"(3) the quality and quantity of the work of the Office; and~~

~~"(4) other information relating to the Office.".~~

~~(h) PRACTICE BEFORE PATENT OFFICE.—~~

~~(1) IN GENERAL.—Section 31 of title 35, United States Code, is amended to read as follows:~~

~~"§ 31. Regulations for agents and attorneys~~

~~"The Commissioner may prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office. The regulations may require such persons, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office.".~~

~~(2) DESIGNATION OF ATTORNEY TO CONDUCT HEARING.—Section 32 of title 35, United States Code, is amended in the first sentence by striking "Patent and Trademark Office" and inserting "Patent Office" and by inserting before the last sentence the following: "The Commissioner shall have the discretion to designate any attorney who is an officer or employee of the United States Patent Office to conduct the hearing required by this section.".~~

~~(i) FUNDING.—~~

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

~~"(f) The Commissioner, after consulting with the Patent Office Management Advisory Board pursuant to section 3(a)(2)(C) of this title and after notice and opportunity for full participation by interested public and private parties, may, by regulation, adjust the fees established in this section. The Director of the United States Patent and Trademark Organization shall determine whether such fees are consistent with the policy direction of the Secretary of Commerce.".~~

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

~~"§ 42. Patent Office funding~~

~~"(a) FEES PAYABLE TO THE OFFICE.—All fees for services performed by or materials furnished by the United States Patent Office shall be payable to the Office.~~

~~"(b) USE OF MONEYS.—Moneys from fees shall be available to the United States Patent Office to carry out, to the extent provided in appropriations Acts, the functions of the Office. Moneys of the Office not otherwise used to carry out the functions of the Office shall be kept in cash on hand or on deposit, or invested in obligations of the United States or guaranteed by the United States, or in obligations or other instruments which are lawful investments for fiduciary, trust, or public funds. Fees avail-~~

able to the Commissioner under this title shall be used only for the processing of patent applications and for other services and materials relating to patents.

"(c) CONTRIBUTION TO THE OFFICE OF THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK ORGANIZATION.—The Patent Office shall contribute 50 percent of the annual budget of the Office of the Director of the United States Patent and Trademark Organization.".

SEC. 115. UNITED STATES TRADEMARK OFFICE.

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

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

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

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

~~"TITLE X—UNITED STATES TRADEMARK OFFICE~~

~~"SEC. 51. ESTABLISHMENT.~~

~~"(a) ESTABLISHMENT.—The United States Trademark Office is established as a separate administrative unit of the United States Patent and Trademark Organization.~~

~~"(b) REFERENCE.—For purposes of this chapter, the United States Trademark Office shall also be referred to as the 'Office' and the 'Trademark Office'.~~

~~"SEC. 52. POWERS AND DUTIES.~~

~~"The United States Trademark Office, under the policy direction of the Secretary of Commerce through the Director of the United States Patent and Trademark Organization, shall be responsible for—~~

~~"(1) the registration of trademarks;~~

~~"(2) conducting studies, programs, or exchanges of items or services regarding domestic and international trademark law or the administration of the Office;~~

~~"(3) authorizing or conducting studies and programs cooperatively with foreign trademark offices and international organizations, in connection with the registration of trademarks; and~~

~~"(4) disseminating to the public information with respect to trademarks.~~

~~"SEC. 53. OFFICERS AND EMPLOYEES.~~

~~"(a) COMMISSIONER.—~~

~~"(1) IN GENERAL.—The management of the United States Trademark Office shall be vested in a Commissioner of Trademarks, who shall be a citizen of the United States and who shall be appointed by the Director of the United States Patent and Trademark Organization and shall serve at the pleasure of the Director of the United States Patent and Trademark Organization. The Commissioner of Trademarks shall be a person who, by reason of professional background and experience in trademark law, is especially qualified to manage the Office.~~

~~"(2) DUTIES.—~~

~~"(A) IN GENERAL.—The Commissioner shall be responsible for all aspects of the management, administration, and operation of the Office, including the registration of trademarks, and shall perform these duties in a fair, impartial, and equitable manner.~~

~~"(B) ADVISING THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK ORGANIZATION.—The Commissioner of Trade-~~

~~marks shall advise the Director of the United States Patent and Trademark Organization of all activities of the Office undertaken in response to obligations of the United States under treaties and executive agreements, or which relate to cooperative programs with those authorities of foreign governments that are responsible for registering trademarks. The Commissioner of Trademarks shall advise the Director of the United States Patent and Trademark Organization on matters of trademark law and shall recommend to the Director of the United States Patent and Trademark Organization changes in law or policy which may improve the ability of United States citizens to secure and enforce trademark rights in the United States or in foreign countries.~~

~~"(C) REGULATIONS.—The Commissioner may establish regulations, not inconsistent with law, for the conduct of proceedings in the Trademark Office. The Director of the United States Patent and Trademark Organization shall determine whether such regulations are consistent with the policy direction of the Secretary of Commerce.~~

~~"(D) CONSULTATION WITH THE MANAGEMENT ADVISORY BOARD.—(i) The Commissioner shall consult with the Trademark Office Management Advisory Board established under section 54—~~

~~"(I) on a regular basis on matters relating to the operation of the Office; and~~

~~"(II) before submitting budgetary proposals to the Director of the United States Patent and Trademark Organization for submission to the Office of Management and Budget or changing or proposing to change trademark user fees or trademark regulations.~~

~~"(ii) The Director of the United States Patent and Trademark Organization shall determine whether such fees or regulations are consistent with the policy direction of the Secretary of Commerce.~~

~~"(E) PUBLICATIONS.—(i) The Commissioner may print, or cause to be printed, the following:~~

~~"(I) Certificates of trademark registrations, including statements and drawings, together with copies of the same.~~

~~"(II) The Official Gazette of the United States Trademark Office.~~

~~"(III) Annual indexes of trademarks and registrants.~~

~~"(IV) Annual volumes of decisions in trademark cases.~~

~~"(V) Pamphlet copies of laws and rules relating to trademarks and circulars or other publications relating to the business of the Office.~~

~~"(ii) The Commissioner may exchange any of the publications specified under clause (i) for publications desirable for the use of the Trademark Office.~~

~~"(3) OATH.—The Commissioner shall, before taking office, take an oath to discharge faithfully the duties of the Office.~~

~~"(4) COMPENSATION.—~~

~~"(A) IN GENERAL.—The Commissioner shall receive compensation at the rate of pay in effect for level IV of the Executive Schedule under section 5315 of title 5, United States Code.~~

~~"(B) BONUS.—In addition to compensation under subparagraph (A), the Commissioner~~

may, at the discretion of the Director of the United States Patent and Trademark Organization, receive as a bonus, an amount which would raise total compensation to the equivalent of the rate of pay in effect for level III of the Executive Schedule under section 5314 of title 5.

"(b) OFFICERS AND EMPLOYEES.—The Commissioner shall appoint a Deputy Commissioner of Trademarks who shall be vested with the authority to act in the capacity of the Commissioner in the event of the absence or incapacity of the Commissioner. In the event of a vacancy in the office of Commissioner, the Deputy Commissioner shall fill the office of Commissioner until a new Commissioner is appointed and takes office. Other officers, attorneys, employees, and agents shall be selected and appointed by the Commissioner, and shall be vested with such powers and duties as the Commissioner may determine.

"SEC. 54. TRADEMARK OFFICE MANAGEMENT ADVISORY BOARD.

"(a) ESTABLISHMENT OF MANAGEMENT ADVISORY BOARD.—

"(1) APPOINTMENT.—The United States Trademark Office shall have a Management Advi-

~~sory Board (hereafter in this title referred to as the 'Advisory Board') of 5 members, who shall be appointed by the President and shall serve at the pleasure of the President. Not more than 3 of the 5 members shall be members of the same political party.~~

~~"(2) CHAIR.—The President shall designate a Chair of the Advisory Board, whose term as chair shall be for 3 years.~~

~~"(3) TIMING OF APPOINTMENTS.—Initial appointments to the Advisory Board shall be made within 3 months after the effective date of the United States Patent and Trademark Organization Act of 1997. Vacancies shall be filled in the manner in which the original appointment was made under this section within 3 months after they occur.~~

~~"(b) BASIS FOR APPOINTMENTS.—Members of the Advisory Board shall be citizens of the United States who shall be chosen so as to represent the interests of diverse users of the United States Trademark Office, and shall include individuals with substantial background and achievement in corporate finance and management.~~

~~"(c) MEETINGS.—The Advisory Board shall meet at the call of the Chair to consider an agenda set by the Chair.~~

~~"(d) DUTIES.—The Advisory Board shall—~~

~~"(1) review the policies, goals, performance, budget, and user fees of the United States Trademark Office, and advise the Commissioner on these matters; and~~

~~"(2) within 60 days after the end of each fiscal year—~~

~~"(A) prepare an annual report on the matters referred to under paragraph (1);~~

~~"(B) transmit the report to the Director of the United States Patent and Trademark Organization, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and~~

~~"(C) publish the report in the Trademark Office Official Gazette.~~

~~"(f) COMPENSATION.—Each member of the Advisory Board shall be compensated for each day (including travel time) during which such member is attending meetings or conferences of the Advisory Board or otherwise engaged in the business of the Advisory Board, at the rate which is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code, and while away from such member's home or regular place of business such~~

~~member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.~~

~~"(g) ACCESS TO INFORMATION.—Members of the Advisory Board shall be provided access to records and information in the United States Trademark Office, except for personnel or other privileged information.~~

~~"SEC. 55. ANNUAL REPORT TO CONGRESS.~~

~~"The Commissioner shall report to the Director of the United States Patent and Trademark Organization such information as the Director is required to report to Congress annually under chapter 91 of title 5, including—~~

~~"(1) the moneys received and expended by the Office;~~

~~"(2) the purposes for which the moneys were spent;~~

~~"(3) the quality and quantity of the work of the Office; and~~

~~"(4) other information relating to the Office.~~

~~"SEC. 56. TRADEMARK OFFICE FUNDING.~~

~~"(a) FEES PAYABLE TO THE OFFICE.—All fees for services performed by or materials furnished by the United States Trademark Office shall be payable to the Office.~~

~~"(b) USE OF MONEYS.—Moneys from fees shall be available to the United States Trademark Office to carry~~

~~out, to the extent provided in appropriations Acts, the functions of the Office. Moneys of the Office not otherwise used to carry out the functions of the Office shall be kept in cash on hand or on deposit, or invested in obligations of the United States or guaranteed by the United States, or in obligations or other instruments which are lawful investments for fiduciary, trust, or public funds. Fees available to the Commissioner under this chapter shall be used only for the registration of trademarks and for other services and materials relating to trademarks.~~

~~"(c) CONTRIBUTION TO THE OFFICE OF THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK ORGANIZATION.—The Trademark Office shall contribute 50 percent of the annual budget of the Office of the Director of the United States Patent and Trademark Organization.".~~

~~(b) TRADEMARK TRIAL AND APPEAL BOARD.—Section 17 of the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946) (15 U.S.C. 1067) is amended to read as follows:~~

~~"SEC. 17. (a) In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Commissioner shall give notice to all parties and~~

~~shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration.~~

~~"(b) The Trademark Trial and Appeal Board shall include the Commissioner of Trademarks, the Deputy Commissioner of Trademarks, and members competent in trademark law who are appointed by the Commissioner.".~~

~~(c) DETERMINATION OF FEES.—Section 31(a) of the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946) (15 U.S.C. 1067(a)) is amended by striking the second and third sentences and inserting the following: "Fees established under this subsection may be adjusted by the Commissioner, after consulting with the Trademark Office Management Advisory Board in accordance with section 53(a)(2)(C) of this Act and after notice and opportunity for full participation by interested public and private parties. The Director of the United States Patent and Trademark Organization shall determine whether such fees are consistent with the policy direction of the Secretary of Commerce.".~~

~~SEC. 116. SUITS BY AND AGAINST THE ORGANIZATION.~~

~~(a) ACTIONS UNDER UNITED STATES LAW.—Any civil action or proceeding to which the United States Patent and Trademark Organization is a party is deemed to arise under the laws of the United States. The Federal~~

~~courts shall have exclusive jurisdiction over all civil actions by or against the Organization.~~

~~(b) REPRESENTATION BY THE DEPARTMENT OF JUSTICE.—The United States Patent and Trademark Organization shall be deemed an agency of the United States for purposes of section 516 of title 28, United States Code.~~

~~(c) PROHIBITION ON ATTACHMENT, LIENS, OR SIMILAR PROCESS.—No attachment, garnishment, lien, or similar process, intermediate or final, in law or equity, may be issued against property of the Organization.~~

~~SEC. 117. FUNDING.~~

~~(a) IN GENERAL.—The activities of the United States Patent and Trademark Organization and each office of the Organization shall be funded entirely through fees payable to the United States Patent Office (under section 42 of title 35, United States Code) and the United States Trademark Office (under section 56 of the Act of July 5, 1946 (commonly known as the Trademark Act of 1946)), and surcharges appropriated by Congress, to the extent provided in appropriations Acts and subject to the provisions of subsection (b).~~

~~(b) BORROWING AUTHORITY.—~~

~~(1) IN GENERAL.—The United States Patent and Trademark Organization is authorized to issue from time to time for purchase by the Secretary of~~

~~the Treasury its debentures, bonds, notes, and other evidences of indebtedness (hereafter in this subsection referred to as "obligations") to assist in financing the activities of the United States Patent Office and the United States Trademark Office. Borrowing under this section shall be subject to prior approval in appropriations Acts. Such borrowing shall not exceed amounts approved in appropriations Acts.~~

~~(2) BORROWING AUTHORITY.—Any borrowing under this subsection shall be repaid only from fees paid to the Office for which such obligations were issued and surcharges appropriated by Congress. Such obligations shall be redeemable at the option of the United States Patent and Trademark Organization before maturity in the manner stipulated in such obligations and shall have such maturity as is determined by the United States Patent and Trademark Organization with the approval of the Secretary of the Treasury. Each such obligation issued to the Treasury shall bear interest at a rate not less than the current yield on outstanding marketable obligations of the United States of comparable maturity during the month preceding the issuance of the obli-~~

~~gation as determined by the Secretary of the Treasury.~~

~~(3) PURCHASE OF OBLIGATIONS.—The Secretary of the Treasury shall purchase any obligations of the United States Patent and Trademark Organization issued under this subsection and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under that chapter are extended to include such purpose.~~

~~(4) TREATMENT.—Payment under this subsection of the purchase price of such obligations of the United States Patent and Trademark Organization shall be treated as public debt transactions of the United States.~~

~~SEC. 118. TRANSFERS.~~

~~(a) TRANSFER OF FUNCTIONS.—Except as relates to the direction of patent and trademark policy, there are transferred to, and vested in, the United States Patent and Trademark Organization all functions, powers, and duties vested by law in the Secretary of Commerce or the Department of Commerce or in the officers or components in the Department of Commerce with respect to the au-~~

~~thority to grant patents and register trademarks, and in the Patent and Trademark Office, as in effect on the day before the effective date of this title, and in the officers and components of such office.~~

~~(b) TRANSFER OF FUNDS AND PROPERTY.—The Secretary of Commerce shall transfer to the United States Patent and Trademark Organization, on the effective date of this title, so much of the assets, liabilities, contracts, property, records, and unexpended and unobligated balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Department of Commerce, including funds set aside for accounts receivable which are related to functions, powers, and duties which are vested in the United States Patent and Trademark Office by this title.~~

~~Subtitle B—Effective Date; Technical Amendments~~

~~SEC. 131. EFFECTIVE DATE.~~

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

~~SEC. 132. TECHNICAL AND CONFORMING AMENDMENTS.~~

~~(a) AMENDMENTS TO TITLE 35.—~~

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

~~"I. United States Patent Office ..... 1.".~~

~~(2) HEADING.—The heading for part I of title 35, United States Code, is amended to read as follows:~~

~~"PART I—UNITED STATES PATENT OFFICE".~~

~~(3) TABLE OF CHAPTERS.—The table of chapters for part I of title 35, United States Code, is amended by amending the item relating to chapter 1 to read as follows:~~

~~"1. Establishment, Officers and Employees, Functions ..... 1".~~

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

~~"CHAPTER 1—ESTABLISHMENT, OFFICERS 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.".~~

~~(5) COMMISSIONER OF PATENTS AND TRADEMARKS.—(A) Section 41(h)(1) of title 35, United States Code, is amended by striking "Commissioner of Patents and Trademarks" and inserting "Commissioner".~~

~~(B) Section 155 of title 35, United States Code, is amended by striking "Commissioner of Patents and Trademarks" and inserting "Commissioner".~~

~~(C) Section 155A(c) of title 35, United States Code, is amended by striking "Commissioner of Patents" and inserting "Commissioner".~~

~~(6) PATENT AND TRADEMARK OFFICE.—The provisions of title 35, United States Code, are amended by striking "Patent and Trademark Office" each place it appears and inserting "Patent Office".~~

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

~~(1) REFERENCES.—All amendments in this subsection refer to the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946).~~

~~(2) AMENDMENTS RELATING TO COMMISSIONER.—Section 61 (as redesignated by section 115(a)(2) of this Act) is amended by striking the undesignated paragraph relating to the definition of~~

~~the term "Commissioner" and inserting the following:~~

~~"The term 'Commissioner' means the Commissioner of Trademarks.".~~

~~(3) AMENDMENTS RELATING TO PATENT AND TRADEMARK OFFICE.—(A) Section 1(a)(1) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(B) Section 1(a)(2) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(C) Section 1(b)(1) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(D) Section 1(b)(2) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(E) Section 1(d)(1) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".~~

~~(F) Section 1(e) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(G) Section 2(d) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(H) Section 7(a) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".~~

~~(I) Section 7(d) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(J) Section 7(e) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".~~

~~(K) Section 7(f) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".~~

~~(L) Section 7(g) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".~~

~~(M) Section 8(a) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(N) Section 8(b) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(O) Section 10 is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".~~

~~(P) Section 12(a) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(Q) Section 13(a) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(R) Section 13(b)(1) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".~~

~~(S) Section 15(2) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(T) Section 17 is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(U) Section 21(a)(2) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(V) Section 21(a)(3) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".~~

~~(W) Section 21(a)(4) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".~~

~~(X) Section 21(b)(3) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".~~

~~(Y) Section 21(b)(4) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(Z) Section 24 is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(AA) Section 29 is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".~~

~~(BB) Section 30 is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(CC) Section 31(a) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(DD) Section 34(a) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(EE) Section 34(d)(1)(B)(i) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(FF) Section 35(a) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(GG) Section 36 is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(HH) Section 37 is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(II) Section 38 is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(JJ) Section 39(b) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(KK) Section 41 is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(LL) Section 61 (as redesignated under section 115(a)(2) of this Act) is amended in the undesignated paragraph relating to the definition of "registered mark"—~~

~~(i) by striking "Patent and Trade Mark Office" and inserting "Trademark Office; and~~

~~(ii) by striking "Patent and Trade Office" and inserting "Trademark Office".~~

~~(MM) Section 72(a) (as redesignated under section 115(a)(2) of this Act) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(NN) Section 75 (as redesignated under section 115(a)(2) of this Act) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".~~

~~(c) AMENDMENTS TO TITLE 5.—Section 5316 of title 5, United States Code, is amended—~~

~~(1) by striking "Commissioner of Patents, Department of Commerce."; and~~

~~(2) by striking:~~

~~"Deputy Commissioner of Patents and Trademarks.~~

~~"Assistant Commissioner for Patents.~~

~~"Assistant Commissioner for Trademarks.".~~

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

~~"(O) the United States Patent and Trademark Organization.".~~

~~(c) AMENDMENTS TO INSPECTOR GENERAL ACT OF 1978.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—~~

~~(1) in paragraph (1) by striking "or the Commissioner of Social Security, Social Security Administration;" and inserting "the Commissioner of Social Security, Social Security Administration; or the Director of the United States Patent and Trademark Organization, United States Patent and Trademark Organization;"; and~~

~~(2) in paragraph (2) by striking "or the Veterans' Administration, or the Social Security Administration;" and inserting "the Veterans' Administration, the Social Security Administration, or the United States Patent and Trademark Organization;".~~

~~Subtitle C—Miscellaneous Provisions~~

~~SEC. 141. REFERENCES.~~

~~Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a department, agency, or office from which a function is transferred by this title—~~

~~(1) to the head of such department, agency, or office is deemed to refer to the head of the department, agency, or office to which such function is transferred; or~~

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

~~SEC. 142. EXERCISE OF AUTHORITIES.~~

~~Except as otherwise provided by law, a Federal official to whom a function is transferred by this title may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this title.~~

~~SEC. 143. SAVINGS PROVISIONS.~~

~~(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, certificates, licenses, and privileges that—~~

~~(1) have been issued, made, granted, or allowed to become effective by the President, the Secretary of Commerce, any officer or employee of any office transferred by this title, or any other Government official, or by a court of competent jurisdiction, in~~

~~the performance of any function that is transferred by this title, and~~

~~(2) are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date), shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law.~~

~~(b) PROCEEDINGS.—This title shall not affect any proceedings or any application for any benefits, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office transferred by this title, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this title had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that~~

~~such proceeding could have been discontinued or modified if this title had not been enacted.~~

~~(c) SUITS.—This title shall not affect suits commenced before the effective date of this title, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title had not been enacted.~~

~~(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Commerce or the Secretary of Commerce, or by or against any individual in the official capacity of such individual as an officer or employee of an office transferred by this title, shall abate by reason of the enactment of this title.~~

~~(e) CONTINUANCE OF SUITS.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and under this title such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.~~

~~(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that~~

~~apply to any function transferred by this title shall apply to the exercise of such function by the head of the Federal agency, and other officers of the agency, to which such function is transferred by this title.~~

~~SEC. 144. TRANSFER OF ASSETS.~~

~~Except as otherwise provided in this title, so much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with a function transferred to an official or agency by this title shall be available to the official or the head of that agency, respectively, at such time or times as the Director of the Office of Management and Budget directs for use in connection with the functions transferred.~~

~~SEC. 145. DELEGATION AND ASSIGNMENT.~~

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

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

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

~~(b) RESPONSIBILITY FOR ADMINISTRATION.—No delegation of functions under this section or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the function.~~

~~SEC. 146. AUTHORITY OF DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET WITH RESPECT TO FUNCTIONS TRANSFERRED.~~

~~(a) DETERMINATIONS.—If necessary, the Director of the Office of Management and Budget shall make any determination of the functions that are transferred under this title.~~

~~(b) INCIDENTAL TRANSFERS.—The Director of the Office of Management and Budget, at such time or times as the Director shall provide, may make such determinations as may be necessary with regard to the functions transferred by this title, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this title.~~

~~(c) TERMINATION OF AFFAIRS.—The Director shall provide for the termination of the affairs of all entities terminated by this title and for such further measures and dispositions as may be necessary to effectuate the purposes of this title.~~

~~SEC. 147. CERTAIN VESTING OF FUNCTIONS CONSIDERED TRANSFERS.~~

~~For purposes of this title, the vesting of a function in a department, agency, or office pursuant to reestablishment of an office shall be considered to be the transfer of the function.~~

~~SEC. 148. AVAILABILITY OF EXISTING FUNDS.~~

~~Existing appropriations and funds available for the performance of functions, programs, and activities terminated pursuant to this title shall remain available, for the duration of their period of availability, for necessary expenses in connection with the termination and resolution of such functions, programs, and activities.~~

~~SEC. 149. DEFINITIONS.~~

~~For purposes of this title—~~

~~(1) the term "function" includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and~~

(2) the term ''office'' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

TITLE II—EARLY PUBLICATION OF PATENT APPLICATIONS

SEC. 201. SHORT TITLE.

This title may be cited as the ''Patent Application Publication Act of 1997''.

SEC. 202. EARLY PUBLICATION.

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

''§ 122. Confidential status of applications; publication of patent applications

''(a) CONFIDENTIALITY.—Except as provided in subsection (b), applications for patents shall be kept in confidence by the Patent Office and no information concerning the same given without authority of the applicant or owner unless necessary to carry out the provisions of an Act of Congress or in such special circumstances as may be determined by the Commissioner.

''(b) PUBLICATION.—

''(1) IN GENERAL.—(A) Subject to paragraph (2), each application for patent, except applications for design patents filed under chapter 16 of this title and provisional applications filed under section

~~111(b) of this title, shall be published, in accordance with procedures determined by the Commissioner, as soon as possible after the expiration of a period of 18 months from the earliest filing date for which a benefit is sought under this title. At the request of the applicant, an application may be published earlier than the end of such 18-month period.~~

~~"(B) No information concerning published patent applications shall be made available to the public except as the Commissioner determines.~~

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

~~"(2) EXCEPTIONS.—(A) An application that is no longer pending shall not be published.~~

~~"(B) An application that is subject to a secrecy order pursuant to section 181 of this title shall not be published.~~

~~"(C)(i) Upon the request of the applicant at the time of filing, the application shall not be published in accordance with paragraph (1) until 3 months after the Commissioner makes a notification to the applicant under section 132 of this title.~~

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

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

~~"(iv) The Commissioner may establish appropriate procedures and fees for making a request under this subparagraph.~~

~~"(c) PRE-ISSUANCE OPPOSITION.—The provisions of this section shall not operate to create any new opportunity for pre-issuance opposition. The Commissioner may establish appropriate procedures to ensure that this section does not create any new opportunity for pre-issuance opposition that did not exist prior to the adoption of this section.".~~

~~SEC. 203. TIME FOR CLAIMING BENEFIT OF EARLIER FILING DATE.~~

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

~~"(b)(1) No application for patent shall be entitled to this right of priority unless a claim, identifying the foreign application by specifying its application number, country, and the day, month, and year of its filing, is filed in the Patent Office at such time during the pendency of the application as required by the Commissioner.~~

~~"(2) The Commissioner may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim, and may require the payment of a surcharge as a condition of accepting an untimely claim during the pendency of the application.~~

~~"(3) The Commissioner may require a certified copy of the original foreign application, specification, and drawings upon which it is based, a translation if not in the English language, and such other information as the Commissioner considers necessary. Any such certification shall be made by the foreign intellectual property authority in which the foreign application was filed and show the date of the application and of the filing of the specification and other papers.".~~

~~(b) IN THE UNITED STATES.—Section 120 of title 35, United States Code, is amended by adding at the end the following: "The Commissioner may determine the time period during the pendency of the application within which an amendment containing the specific reference to the car-~~

lier filed application is submitted. The Commissioner may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Commissioner may establish procedures, including the payment of a surcharge, to accept unavoidably late submissions of amendments under this section.''.

SEC. 204. PROVISIONAL RIGHTS.

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

(1) in the section caption by inserting ''**; provisional rights**'' after ''**patent**''; and

(2) by adding at the end the following new subsection:

''(d) PROVISIONAL RIGHTS.—

''(1) IN GENERAL.—In addition to other rights provided by this section, a patent shall include the right to obtain a reasonable royalty from any person who, during the period beginning on the date of publication of the application for such patent pursuant to section 122(b) of this title, or in the case of an international application filed under the treaty defined in section 351(a) of this title designating the United States under Article 21(2)(a) of such treaty, the date of publication of the application, and ending on the date the patent is issued—

~~"(A)(i) makes, uses, offers for sale, or sells in the United States the invention as claimed in the published patent application or imports such an invention into the United States; or~~

~~"(ii) if the invention as claimed in the published patent application is a process, uses, offers for sale, or sells in the United States or imports into the United States products made by that process as claimed in the published patent application; and~~

~~"(B) had actual notice of the published patent application, and where the right arising under this paragraph is based upon an international application designating the United States that is published in a language other than English, a translation of the international application into the English language.~~

~~"(2) RIGHT BASED ON SUBSTANTIALLY IDENTICAL INVENTIONS.—The right under paragraph (1) to obtain a reasonable royalty shall not be available under this subsection unless the invention as claimed in the patent is substantially identical to the invention as claimed in the published patent application.~~

~~"(3) TIME LIMITATION ON OBTAINING A REASONABLE ROYALTY.—The right under paragraph (1)~~

~~to obtain a reasonable royalty shall be available only in an action brought not later than 6 years after the patent is issued. The right under paragraph (1) to obtain a reasonable royalty shall not be affected by the duration of the period described in paragraph (1).~~

~~"(4) REQUIREMENTS FOR INTERNATIONAL APPLICATIONS.—~~

~~"(A) EFFECTIVE DATE.—The right under paragraph (1) to obtain a reasonable royalty based upon the publication under the treaty of an international application designating the United States shall commence from the date that the Patent Office receives a copy of the publication under the treaty defined in section 351(a) of this title of the international application, or, if the publication under the treaty of the international application is in a language other than English, from the date that the Patent Office receives a translation of the international application in the English language.~~

~~"(B) COPIES.—The Commissioner may require the applicant to provide a copy of the international application and a translation thereof.".~~

~~SEC. 205. PRIOR ART EFFECT OF PUBLISHED APPLICATIONS.~~

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

~~"(e) the invention was described in—~~

~~"(1)(A) an application for patent, published pursuant to section 122(b) of this title, by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) of this title shall have the effect under this subsection of a national application published under section 122(b) of this title only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language, or~~

~~"(B) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, or".~~

~~SEC. 206. COST RECOVERY FOR PUBLICATION.~~

~~The Commissioner shall recover the cost of early publication required by the amendment made by section 202 by adjusting the filing, issue, and maintenance fees under title 35, United States Code, by charging a separate publication fee, or by any combination of these methods.~~

~~SEC. 207. CONFORMING CHANGES.~~

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

~~(1) Section 11 is amended in paragraph 1 of subsection (a) by inserting "and published applications for patents" after "Patents".~~

~~(2) Section 12 is amended—~~

~~(A) in the section caption by inserting "**and applications**" after "**patents**"; and~~

~~(B) by inserting "and published applications for patents" after "patents".~~

~~(3) Section 13 is amended—~~

~~(A) in the section caption by inserting "**and applications**" after "**patents**"; and~~

~~(B) by inserting "and published applications for patents" after "patents".~~

~~(4) The items relating to sections 12 and 13 in the table of sections for chapter 1 are each amended by inserting "and applications" after "patents".~~

~~(5) The item relating to section 122 in the table of sections for chapter 11 is amended by inserting "; publication of patent applications" after "applications".~~

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

~~(7) Section 181 is amended—~~

~~(A) in the first undesignated paragraph—~~

~~(i) by inserting "by the publication of an application or" after "disclosure"; and~~

~~(ii) "the publication of the application or" after "withhold";~~

~~(B) in the second undesignated paragraph by inserting "by the publication of an application or" after "disclosure of an invention";~~

~~(C) in the third undesignated paragraph—~~

~~(i) by inserting "by the publication of the application or" after "disclosure of the invention"; and~~

~~(ii) "the publication of the application or" after "withhold"; and~~

~~(D) in the fourth undesignated paragraph by inserting "the publication of an application or" after "and" in the first sentence.~~

~~(8) Section 252 is amended in the first undesignated paragraph by inserting "substantially" before "identical" each place it appears.~~

~~(9) Section 284 is amended by adding at the end of the second undesignated paragraph the following: "Increased damages under this paragraph~~

shall not apply to provisional rights under section 154(d) of this title.''.

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

''§ 374. Publication of international application: Effect

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

SEC. 208. LAST DAY OF PENDENCY OF PROVISIONAL APPLICATION.

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

''(3) If the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or legal holiday as defined in rule 6(a) of the Federal Rules of Civil Procedure, the period of pendency of the provisional application shall be extended to the next succeeding business day.''.

SEC. 209. EFFECTIVE DATE.

(a) SECTIONS 202 THROUGH 207.—Sections 202 through 207, and the amendments made by such sections, shall take effect on April 1, 1998, and shall apply to all

applications filed under section 111 of title 35, United States Code, on or after that date, and all applications complying with section 371 of title 35, United States Code, that resulted from international applications filed on or after that date. The amendment made by section 204 shall also apply to international applications designating the United States that are filed on or after April 1, 1998.

(b) SECTION 208.—The amendments made by section 208 shall take effect on the date of the enactment of this Act and, except for a design patent application filed under chapter 16 of title 35, United States Code, shall apply to any application filed on or after June 8, 1995.

TITLE III—PATENT TERM RESTORATION

SEC. 301. PATENT TERM EXTENSION AUTHORITY.

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

"(b) TERM EXTENSION.—

"(1) BASIS FOR PATENT TERM EXTENSION.—

"(A) DELAY.—Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to—

"(i) a proceeding under section 135(a) of this title;

~~"(ii) the imposition of an order pursuant to section 181 of this title;~~

~~"(iii) appellate review by the Board of Patent Appeals and Interferences or by a Federal court where the patent was issued pursuant to a decision in the review reversing an adverse determination of patentability; or~~

~~"(iv) an unusual administrative delay by the Patent Office in issuing the patent,~~ ~~the term of the patent shall be extended for the period of delay.~~

~~"(B) ADMINISTRATIVE DELAY.—For purposes of subparagraph (A)(iv), an unusual administrative delay by the Patent Office is the failure to—~~

~~"(i) make a notification of the rejection of any claim for a patent or any objection or argument under section 132 of this title or give or mail a written notice of allowance under section 151 of this title not later than 14 months after the date on which the application was filed;~~

~~"(ii) respond to a reply under section 132 of this title or to an appeal taken~~

~~under section 134 of this title not later than 4 months after the date on which the reply was filed or the appeal was taken;~~

~~"(iii) act on an application not later than 4 months after the date of a decision by the Board of Patent Appeals and Interferences under section 134 or 135 of this title or a decision by a Federal court under section 141, 145, or 146 of this title where allowable claims remain in an application; or~~

~~"(iv) issue a patent not later than 4 months after the date on which the issue fee was paid under section 151 of this title and all outstanding requirements were satisfied.~~

~~"(2) LIMITATIONS.—~~

~~"(A) IN GENERAL.—The total duration of any extensions granted pursuant to either subclause (iii) or (iv) of paragraph (1)(A) or both such subclauses shall not exceed 10 years. To the extent that periods of delay attributable to grounds specified in paragraph (1) overlap, the period of any extension granted under this sub-~~

~~section shall not exceed the actual number of days the issuance of the patent was delayed.~~

~~"(B) REDUCTION OF EXTENSION.—The period of extension of the term of a patent under this subsection shall be reduced by a period equal to the time in which the applicant failed to engage in reasonable efforts to conclude prosecution of the application. The Commissioner shall prescribe regulations establishing the circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application.~~

~~"(C) DISCLAIMED TERM.—No patent the term of which has been disclaimed beyond a specified date may be extended under this section beyond the expiration date specified in the disclaimer.~~

~~"(3) PROCEDURES.—The Commissioner shall prescribe regulations establishing procedures for the notification of patent term extensions under this subsection and procedures for contesting patent term extensions under this subsection.".~~

SEC. 302. EFFECTIVE DATE.

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

TITLE IV—PRIOR DOMESTIC COMMERCIAL USE

SEC. 401. SHORT TITLE.

This title may be cited as the ''Prior Domestic Commercial Use Act of 1997''.

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

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

''§ 273. Prior domestic commercial use; defense to infringement

''(a) DEFINITIONS.—For purposes of this section—

''(1) the terms 'commercially used', 'commercially use', and 'commercial use' mean the use in the United States in commerce or the use in the design, testing, or production in the United States of a product or service which is used in commerce, whether or not the subject matter at issue is accessible to or otherwise known to the public;

~~"(2) the terms 'used in commerce', and 'use in commerce' mean that there has been an actual sale or other commercial transfer of the subject matter at issue or that there has been an actual sale or other commercial transfer of a product or service resulting from the use of the subject matter at issue; and~~

~~"(3) the 'effective filing date' of a patent is the earlier of the actual filing date of the application for the patent or the filing date of any earlier United States, foreign, or international application to which the subject matter at issue is entitled under section 119, 120, or 365 of this title.~~

~~"(b) DEFENSE TO INFRINGEMENT.—~~

~~"(1) IN GENERAL.—A person shall not be liable as an infringer under section 271 of this title with respect to any subject matter that would otherwise infringe one or more claims in the patent being asserted against such person, if such person had, acting in good faith, commercially used the subject matter before the effective filing date of such patent.~~

~~"(2) EXHAUSTION OF RIGHT.—The sale or other disposition of the subject matter of a patent by a person entitled to assert a defense under this section with respect to that subject matter shall ex-~~

haust the patent owner's rights under the patent to the extent such rights would have been exhausted had such sale or other disposition been made by the patent owner.

"(c) LIMITATIONS AND QUALIFICATIONS OF DEFENSE.—The defense to infringement under this section is subject to the following:

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

"(2) NOT A GENERAL LICENSE.—The defense asserted by a person under this section is not a general license under all claims of the patent at issue, but extends only to the subject matter claimed in the patent with respect to which the person can assert a defense under this chapter, except that the defense shall also extend to variations in the quantity or volume of use of the claimed subject matter, and to improvements in the claimed subject matter that do not infringe additional specifically claimed subject matter of the patent.

"(3) EFFECTIVE AND SERIOUS PREPARATION.—With respect to subject matter that cannot be commercialized without a significant investment

~~of time, money, and effort, a person shall be deemed to have commercially used the subject matter if—~~

~~"(A) before the effective filing date of the patent, the person reduced the subject matter to practice in the United States, completed a significant portion of the total investment necessary to commercially use the subject matter, and made a commercial transaction in the United States in connection with the preparation to use the subject matter; and~~

~~"(B) thereafter the person diligently completed the remainder of the activities and investments necessary to commercially use the subject matter, and promptly began commercial use of the subject matter, even if such activities were conducted after the effective filing date of the patent.~~

~~"(4) BURDEN OF PROOF.—A person asserting the defense under this section shall have the burden of establishing the defense.~~

~~"(5) ABANDONMENT OF USE.—A person who has abandoned commercial use of subject matter may not rely on activities performed before the date of such abandonment in establishing a defense under~~

~~subsection (b) with respect to actions taken after the date of such abandonment.~~

~~"(6) PERSONAL DEFENSE.—The defense under this section may only be asserted by the person who performed the acts necessary to establish the defense and, except for any transfer to the patent owner, the right to assert the defense shall not be licensed or assigned or transferred to another person except in connection with the good faith assignment or transfer of the entire enterprise or line of business to which the defense relates.~~

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

~~"(d) UNSUCCESSFUL ASSERTION OF DEFENSE.—If the defense under this section is pleaded by a person who is found to infringe the patent and who subsequently fails to demonstrate a reasonable basis for asserting the defense, the court shall find the case exceptional for the purpose of awarding attorney's fees under section 285 of this title.~~

~~"(c) INVALIDITY.—A patent shall not be deemed to be invalid under section 102 or 103 of this title solely because a defense is established under this section.".~~

~~(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 28 of title 35, United States Code, is amended by adding at the end the following new item:~~

~~"Sec. 273. Prior domestic commercial use; defense to infringement.".~~

~~SEC. 403. EFFECTIVE DATE AND APPLICABILITY.~~

~~This title and the amendments made by this title shall take effect on the date of the enactment of this Act, but shall not apply to any action for infringement that is pending on such date of enactment or with respect to any subject matter for which an adjudication of infringement, including a consent judgment, has been made before such date of enactment.~~

~~TITLE V—PATENT REEXAMINATION REFORM~~

~~SEC. 501. SHORT TITLE.~~

~~This title may be cited as the "Patent Reexamination Reform Act of 1997".~~

~~SEC. 502. DEFINITIONS.~~

~~Section 100 of title 35, United States Code, is amended by adding at the end the following new subsection:~~

~~"(e) The term 'third-party requester' means a person requesting reexamination under section 302 of this title who is not the patent owner.".~~

~~SEC. 503. REEXAMINATION PROCEDURES.~~

~~(a) REQUEST FOR REEXAMINATION.—Section 302 of title 35, United States Code, is amended to read as follows:~~

~~"§ 302. Request for reexamination~~

~~"(a) IN GENERAL.—Any person at any time may file a request for reexamination by the Office of a patent on the basis of any prior art cited under the provisions of section 301 of this title or on the basis of the requirements of section 112 of this title except for the requirement to set forth the best mode of carrying out the invention.~~

~~"(b) REQUIREMENTS.—The request shall—~~

~~"(1) be in writing, include the identity of the real party in interest, and be accompanied by payment of a reexamination fee established by the Commissioner of Patents pursuant to the provisions of section 41 of this title; and~~

~~"(2) set forth the pertinency and manner of applying cited prior art to every claim for which reexamination is requested or the manner in which the patent specification or claims fail to comply with the requirements of section 112 of this title.~~

1 ~~"(c) COPY.—Unless the requesting person is the~~
2 ~~owner of the patent, the Commissioner promptly shall~~
3 ~~send a copy of the request to the owner of record of the~~
4 ~~patent.".~~

5 ~~(b) DETERMINATION OF ISSUE BY COMMISSIONER.—~~
6 ~~Section 303 of title 35, United States Code, is amended~~
7 ~~to read as follows:~~

8 ~~**"§ 303. Determination of issue by Commissioner**~~

9 ~~"(a) REEXAMINATION.—Not later than 3 months~~
10 ~~after the filing of a request for reexamination under the~~
11 ~~provisions of section 302 of this title, the Commissioner~~
12 ~~shall determine whether a substantial new question of pat-~~
13 ~~entability affecting any claim of the patent concerned is~~
14 ~~raised by the request, with or without consideration of~~
15 ~~other patents or printed publications. On the Commis-~~
16 ~~sioner's initiative, and any time, the Commissioner may~~
17 ~~determine whether a substantial new question of patent-~~
18 ~~ability is raised by patents and publications or by the fail-~~
19 ~~ure of the patent specification or claims to comply with~~
20 ~~the requirements of section 112 of this title except for the~~
21 ~~best mode requirement described in section 302.~~

22 ~~"(b) RECORD.—A record of the Commissioner's de-~~
23 ~~termination under subsection (a) shall be placed in the of-~~
24 ~~ficial file of the patent, and a copy shall be promptly given~~

or mailed to the owner of record of the patent and to the third-party requester, if any.

"(c) FINAL DECISION.—A determination by the Commissioner pursuant to subsection (a) shall be final and nonappealable. Upon a determination that no substantial new question of patentability has been raised, the Commissioner may refund a portion of the reexamination fee required under section 302 of this title.".

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

"§ 304. Reexamination order by Commissioner

"If, in a determination made under the provisions of section 303(a) of this title, the Commissioner finds that a substantial new question of patentability affecting a claim of a patent is raised, the determination shall include an order for reexamination of the patent for resolution of the question. The order may be accompanied by the initial action of the Patent Office on the merits of the reexamination conducted in accordance with section 305 of this title.".

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

“§ 305. Conduct of reexamination proceedings

“(a) IN GENERAL.—Subject to subsection (b), reexamination shall be conducted according to the procedures established for initial examination under the provisions of sections 132 and 133 of this title. In any reexamination proceeding under this chapter, the patent owner shall be permitted to propose any amendment to the patent and a new claim or claims, except that no proposed amended or new claim enlarging the scope of the claims of the patent shall be permitted.

“(b) RESPONSE.—(1) This subsection shall apply to any reexamination proceeding in which the order for reexamination is based upon a request by a third-party requester.

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

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

1 ~~"(c) SPECIAL DISPATCH.—Unless otherwise provided~~
2 ~~by the Commissioner for good cause, all reexamination~~
3 ~~proceedings under this section, including any appeal to the~~
4 ~~Board of Patent Appeals and Interferences, shall be con-~~
5 ~~ducted with special dispatch within the Office.".~~
6 ~~(e) APPEAL.—Section 306 of title 35, United States~~
7 ~~Code, is amended to read as follows:~~
8 **~~"§ 306. Appeal~~**
9 ~~"(a) PATENT OWNER.—The patent owner involved in~~
10 ~~a reexamination proceeding under this chapter—~~
11 ~~"(1) may appeal under the provisions of section~~
12 ~~134 of this title, and may appeal under the provi-~~
13 ~~sions of sections 141 through 144 of this title, with~~
14 ~~respect to any decision adverse to the patentability~~
15 ~~of any original or proposed amended or new claim~~
16 ~~of the patent, and~~
17 ~~"(2) may be a party to any appeal taken by a~~
18 ~~third-party requester pursuant to subsection (b) of~~
19 ~~this section.~~
20 ~~"(b) THIRD-PARTY REQUESTER.—A third-party re-~~
21 ~~quester may—~~
22 ~~"(1) appeal under the provisions of section 134~~
23 ~~of this title, and may appeal under the provisions of~~
24 ~~sections 141 through 144 of this title, with respect~~
25 ~~to any final decision favorable to the patentability of~~

~~any original or proposed amended or new claim of the patent; or~~

~~"(2) be a party to any appeal taken by the patent owner, subject to subsection (c) of this section.~~

~~"(c) PARTICIPATION AS PARTY.—~~

~~"(1) IN GENERAL.—A third-party requester who, under the provisions of sections 141 through 144 of this title, files a notice of appeal or who participates as a party to an appeal by the patent owner is estopped from asserting at a later time, in any forum, the invalidity of any claim determined to be patentable on appeal on any ground which the third-party requester raised or could have raised during the reexamination proceedings.~~

~~"(2) ELECTION TO PARTICIPATE.—A third-party requester is deemed not to have participated as a party to an appeal by the patent owner unless, not later than 20 days after the patent owner has filed notice of appeal, the third-party requester files notice with the Commissioner electing to participate.".~~

~~(f) REEXAMINATION PROHIBITED.—~~

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

~~"§ 308. Reexamination prohibited~~

~~"(a) ORDER FOR REEXAMINATION.—Notwithstanding any provision of this chapter, once an order for reexamination of a patent has been issued under section 304 of this title, neither the patent owner nor the third-party requester, if any, nor privies of either, may file a subsequent request for reexamination of the patent until a reexamination certificate is issued and published under section 307 of this title, unless authorized by the Commissioner.~~

~~"(b) FINAL DECISION.—Once a final decision has been entered against a party in a civil action arising in whole or in part under section 1338 of title 28 that the party has not sustained its burden of proving the invalidity of any patent claim in suit, then neither that party nor its privies may thereafter request reexamination of any such patent claim on the basis of issues which that party or its privies raised or could have raised in such civil action, and a reexamination requested by that party or its privies on the basis of such issues may not thereafter be maintained by the Office, notwithstanding any other provision of this chapter.".~~

~~(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 30 of title 35, United States Code, is amended by adding at the end the following:~~

~~"308. Reexamination prohibited.".~~

SEC. 504. CONFORMING AMENDMENTS.

(a) PATENT FEES; PATENT SEARCH SYSTEMS.—Section 41(a)(7) of title 35, United States Code, is amended to read as follows:

"(7) On filing each petition for the revival of an unintentionally abandoned application for a patent, for the unintentionally delayed payment of the fee for issuing each patent, or for an unintentionally delayed response by the patent owner in a reexamination proceeding, $1,250, unless the petition is filed under sections 133 or 151 of this title, in which case the fee shall be $110.".

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

"§ 134. Appeal to the Board of Patent Appeals and Interferences

"(a) PATENT APPLICANT.—An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.

"(b) PATENT OWNER.—A patent owner in a reexamination proceeding may appeal from the final rejection of any claim by the primary examiner to the Board of Patent

~~Appeals and Interferences, having once paid the fee for such appeal.~~

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

~~(d) APPEAL TO COURT OF APPEALS FOR THE FEDERAL CIRCUIT.—Section 141 of title 35, United States Code, is amended by amending the first sentence to read as follows: "An applicant, a patent owner, or a third-party requester, dissatisfied with the final decision in an appeal to the Board of Patent Appeals and Interferences under section 134 of this title, may appeal the decision to the United States Court of Appeals for the Federal Circuit.".~~

~~(e) PROCEEDINGS ON APPEAL.—Section 143 of title 35, United States Code, is amended by amending the third sentence to read as follows: "In ex parte and reexamination cases, the Commissioner shall submit to the court in writing the grounds for the decision of the Patent Office, addressing all the issues involved in the appeal.".~~

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

~~SEC. 505. EFFECTIVE DATE.~~

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

~~TITLE VI—MISCELLANEOUS PATENT PROVISIONS~~

~~SEC. 601. PROVISIONAL APPLICATIONS.~~

~~(a) ABANDONMENT.—Section 111(b)(5) of title 35, United States Code, is amended to read as follows:~~

~~"(5) ABANDONMENT.—Notwithstanding the absence of a claim, upon timely request and as prescribed by the Commissioner, a provisional application may be treated as an application filed under subsection (a). If no such request is made, the provisional application shall be regarded as abandoned 12 months after the filing date of such application and shall not be subject to revival thereafter.".~~

~~(b) EFFECTIVE DATE.—The amendments made by subsection (a) apply to a provisional application filed on or after June 8, 1995.~~

~~SEC. 602. INTERNATIONAL APPLICATIONS.~~

~~Section 119 of title 35, United States Code, is amended as follows:~~

~~(1) In subsection (a), insert "or in a WTO member country" after "or to citizens of the United States,".~~

~~(2) At the end of section 119 add the following new subsections:~~

~~"(f) Applications for plant breeder's rights filed in a WTO member country (or in a foreign UPOV Contracting Party) shall have the same effect for the purpose of the right of priority under subsections (a) through (e) of this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents.~~

~~"(g) As used in this section—~~

~~"(1) the term 'WTO member country' has the same meaning as the term is defined in section 104(b)(2) of this title; and~~

~~"(2) the term 'UPOV Contracting Party' means a member of the International Convention for the Protection of New Varieties of Plants.".~~

~~SEC. 603. PLANT PATENTS.~~

~~(a) TUBER PROPAGATED PLANTS.—Section 161 of title 35, United States Code, is amended by striking "a tuber propagated plant or".~~

~~(b) RIGHTS IN PLANT PATENTS.—The text of section 163 of title 35, United States Code, is amended to read~~

~~as follows: "In the case of a plant patent, the grant to the patentee, such patentee's heirs or assigns, shall have the right to exclude others from asexually reproducing the plant, and from using, offering for sale, or selling the plant so reproduced, or any of its parts, throughout the United States, or from importing the plant so reproduced, or any parts thereof, into the United States.".~~

~~(c) EFFECTIVE DATE.—The amendments by subsection (a) shall apply on the date of enactment of this Act. The amendments made by subsection (b) shall apply to any plant patent issued on or after the date of enactment of this Act.~~

~~SEC. 604. ELECTRONIC FILING.~~

~~Section 22 of title 35, United States Code, is amended by striking "printed or typewritten" and inserting "printed, typewritten, or on an electronic medium".~~

SECTION 1. SHORT TITLE.

This Act may be cited as the "Omnibus Patent Act of 1997".

SEC. 2. TABLE OF CONTENTS.

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—UNITED STATES PATENT AND TRADEMARK ORGANIZATION

Sec. 101. Short title.

Subtitle A—Establishment of the United States Patent and Trademark Organization

Sec. 111. Establishment of the United States Patent and Trademark Organization as a Government corporation.
Sec. 112. Powers and duties.
Sec. 113. Organization and management.
Sec. 114. United States Patent Office.
Sec. 115. United States Trademark Office.
Sec. 116. Suits by and against the Organization.
Sec. 117. Funding.
Sec. 118. Transfers.
Sec. 119. Use of Organization name.

Subtitle B—Effective Date; Technical Amendments

Sec. 131. Effective date.
Sec. 132. Technical and conforming amendments.

Subtitle C—Miscellaneous Provisions

Sec. 141. References.
Sec. 142. Exercise of authorities.
Sec. 143. Savings provisions.
Sec. 144. Transfer of assets.
Sec. 145. Delegation and assignment.
Sec. 146. Authority of Director of the Office of Management and Budget with respect to functions transferred.
Sec. 147. Certain vesting of functions considered transfers.
Sec. 148. Availability of existing funds.
Sec. 149. Definitions.

TITLE II—EARLY PUBLICATION OF PATENT APPLICATIONS

Sec. 201. Short title.
Sec. 202. Early publication.
Sec. 203. Time for claiming benefit of earlier filing date.
Sec. 204. Provisional rights.
Sec. 205. Prior art effect of published applications.
Sec. 206. Cost recovery for publication.
Sec. 207. Conforming changes.
Sec. 208. Last day of pendency of provisional application.
Sec. 209. Effective date.

TITLE III—PATENT TERM RESTORATION

Sec. 301. Patent term restoration authority.
Sec. 302. Further examination of patent applications.
Sec. 303. Technical clarification.
Sec. 304. Effective date.

TITLE IV—PRIOR DOMESTIC COMMERCIAL USE

Sec. 401. Short title.
Sec. 402. Defense to patent infringement based on prior domestic commercial use.
Sec. 403. Effective date and applicability.

TITLE V—PATENT REEXAMINATION REFORM

Sec. 501. Short title.
Sec. 502. Definitions.
Sec. 503. Reexamination procedures.
Sec. 504. Conforming amendments.
Sec. 505. Report to Congress.
Sec. 506. Effective date.

TITLE VI—MISCELLANEOUS PATENT PROVISIONS

Sec. 601. Provisional applications.
Sec. 602. International applications.
Sec. 603. Access to electronic patent information.
Sec. 604. Certain limitations on damages for patent infringement not applicable.
Sec. 605. Plant patents.
Sec. 606. Electronic filing.
Sec. 607. Study and report on biological deposits in support of biotechnology patents.

TITLE I—UNITED STATES PATENT AND TRADEMARK ORGANIZATION

SEC. 101. SHORT TITLE.

This title may be cited as the "United States Patent and Trademark Organization Act of 1997".

Subtitle A—Establishment of the United States Patent and Trademark Organization

SEC. 111. ESTABLISHMENT OF THE UNITED STATES PATENT AND TRADEMARK ORGANIZATION AS A GOVERNMENT CORPORATION.

(a) ESTABLISHMENT.—The United States Patent and Trademark Organization is established as a wholly owned Government corporation subject to chapter 91 of title 31, separate from any department, and shall be an agency of

the United States under the policy direction of the Secretary of Commerce.

(b) OFFICES.—The United States Patent and Trademark Organization shall maintain its principal office in the District of Columbia, or the metropolitan area thereof, for the service of process and papers and for the purpose of carrying out its powers, duties, and obligations under this title. The United States Patent and Trademark Organization shall be deemed, for purposes of venue in civil actions, to be a resident of the district in which its principal office is located except where jurisdiction is otherwise provided by law. The United States Patent and Trademark Organization may establish satellite offices in such places within the United States as it considers necessary and appropriate in the conduct of its business.

(c) REFERENCE.—For purposes of this title, a reference to the "Organization" shall be a reference to the United States Patent and Trademark Organization, unless the context provides otherwise.

SEC. 112. POWERS AND DUTIES.

(a) IN GENERAL.—The United States Patent and Trademark Organization, under the policy direction of the Secretary of Commerce, shall be responsible for—

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

(2) conducting studies, programs, or exchanges of items or services regarding domestic and international patent and trademark law, the administration of the Organization, or any other function vested in the Organization by law, including programs to recognize, identify, assess, and forecast the technology of patented inventions and their utility to industry;

(3)(A) authorizing or conducting studies and programs cooperatively with foreign patent and trademark offices and international organizations, in connection with the granting and issuing of patents and the registration of trademarks; and

(B) with the concurrence of the Secretary of State, authorizing the transfer of not to exceed $100,000 in any year to the Department of State for the purpose of making special payments to international intergovernmental organizations for studies and programs for advancing international cooperation concerning patents, trademarks, and related matters; and

(4) disseminating to the public information with respect to patents and trademarks.

(b) SPECIAL PAYMENTS.—The special payments under subsection (a)(3)(B) may be in addition to any other payments or contributions to international organizations and

shall not be subject to any limitations imposed by law on the amounts of such other payments or contributions by the United States Government.

(c) SPECIFIC POWERS.—The Organization—

(1) shall have perpetual succession;

(2) shall adopt and use a corporate seal, which shall be judicially noticed and with which letters patent, certificates of trademark registrations, and papers issued by the Organization shall be authenticated;

(3) may sue and be sued in its corporate name and be represented by its own attorneys in all judicial and administrative proceedings, subject to the provisions of section 116;

(4) may indemnify the Director of the United States Patent and Trademark Organization, the Commissioner of Patents, the Commissioner of Trademarks, and other officers, attorneys, agents, and employees (including members of the Management Advisory Boards of the Patent Office and the Trademark Office) of the Organization for liabilities and expenses incurred within the scope of their employment;

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

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

(B) shall be made after notice and opportunity for full participation by interested public and private parties;

(6)(A) may acquire, construct, purchase, lease, hold, manage, operate, improve, alter, and renovate any real, personal, or mixed property, or any interest therein, as it considers necessary to carry out its functions; and

(B) sell, lease, grant, and dispose of such property as it considers necessary to effectuate the purposes of this Act;

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

(B) may enter into and perform such purchases and contracts for printing services, including the

process of composition, platemaking, presswork, silk screen processes, binding, microform, and the products of such processes, as it considers necessary to carry out the functions of the Organization, without regard to sections 501 through 517 and 1101 through 1123 of title 44, United States Code;

(8) may use, with their consent, services, equipment, personnel, and facilities of other departments, agencies, and instrumentalities of the Federal Government, on a reimbursable basis, and cooperate with such other departments, agencies, and instrumentalities in the establishment and use of services, equipment, and facilities of the Organization;

(9) may obtain from the Administrator of General Services such services as the Administrator is authorized to provide to other agencies of the United States, on the same basis as those services are provided to other agencies of the United States;

(10) may use, with the consent of the United States and the agency, government, or international organization concerned, the services, records, facilities, or personnel of any State or local government agency or instrumentality or foreign government or international organization to perform functions on its behalf;

(11) may determine the character of, and the necessity for, its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, subject to the provisions of title 35, United States Code and the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946);

(12) may retain and use all of its revenues and receipts, including revenues from the sale, lease, or disposal of any real, personal, or mixed property, or any interest therein, of the Organization, including for research and development and capital investment, subject to the provisions of section 10101 of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. 41 note);

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

(14) may accept monetary gifts or donations of services, or of real, personal, intellectual, or mixed property, in order to enhance libraries and museums operated by the Organization, support the educational programs of the Organization, or otherwise carry out the functions of the Organization;

(15) may execute, in accordance with its bylaws, rules, and regulations, all instruments necessary and appropriate in the exercise of any of its powers; and

(16) may provide for liability insurance and insurance against any loss in connection with its property, other assets, or operations either by contract or by self-insurance.

(d) RESTRICTIONS ON GIFTS.—Any acceptance of a gift or donation under subsection (c)(14) shall be subject to section 201 of title 18, United States Code. The Director shall establish regulations for the acceptance of such gifts and donations including regulations prohibiting gifts or donations to the Organization by foreign countries.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to nullify, void, cancel, or interrupt any pending request-for-proposal let or contract issued by the General Services Administration for the specific purpose of relocating or leasing space to the United States Patent and Trademark Organization.

SEC. 113. ORGANIZATION AND MANAGEMENT.

(a) OFFICES.—The United States Patent and Trademark Organization shall consist of—

(1) the Office of the Director;

(2) the United States Patent Office; and

(3) the United States Trademark Office.

(b) DIRECTOR.—

(1) IN GENERAL.—The management of the United States Patent and Trademark Organization shall be vested in a Director of the United States Patent and Trademark Organization (hereafter in this title referred to as the "Director", unless the context provides otherwise), who shall be a citizen of the United States and who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be a person who, by reason of professional background and experience in patent or trademark law, is especially qualified to manage the Organization.

(2) DUTIES.—(A) The Director shall—

(i) be responsible for the Management and direction of the Organization and shall perform this duty in a fair, impartial, and equitable manner; and

(ii) strive to meet the goals set forth in the performance agreement described under paragraph (4).

(B) The Director shall advise the President, through and under the policy direction of the Secretary of Commerce, of all activities of the Organization undertaken in response to obligations of the

United States under treaties and executive agreements, or which relate to cooperative programs with those authorities of foreign governments that are responsible for granting patents or registering trademarks. The Director shall also recommend to the President, through and under the policy direction of the Secretary of Commerce, changes in law or policy which may improve the ability of United States citizens to secure and enforce patent and trademark rights in the United States or in foreign countries.

(C)(i) At the direction of the President, the Director may represent the United States in international negotiations on matters of patents or trademarks, or may designate an officer or officers of the Organization to participate in such negotiations.

(ii) Nothing in this subparagraph shall be construed to alter any statutory responsibility of the Secretary of State or the United States Trade Representative.

(D) The Director, in consultation with the Director of the Office of Personnel Management, shall maintain a program for identifying national security positions and providing for appropriate security clearances.

(E) The Director may perform such personnel, procurement, and other functions, with respect to the United States Patent Office and the United States Trademark Office, where a centralized administration of such functions would improve the efficiency of the Offices, by continuous unanimous agreement of the Director, the Commissioner of Patents, and the Commissioner of Trademarks. The agreement shall be in writing and shall indicate the allocation of costs among the Office of the Director, the United States Patent Office, and the United States Trademark Office.

(F) Except as otherwise provided in this title, the Director shall ensure that—

(i) the United States Patent Office and the United States Trademark Office, respectively, shall—

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

(II) adjust fees to provide sufficient revenues to cover the expenses of such office; and

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

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

(G) The Director shall submit to Congress annually such information as is required under chapter 91 of title 31, United States Code, including—

(i) the total monies received and expended by the Organization;

(ii) the purpose for which the monies were spent;

(iii) the amount of any surplus revenues retained by the Organization;

(iv) the quality and quantity of the work of the Organization; and

(v) other information relating to the Organization.

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

(4) COMPENSATION.—The Director shall receive compensation at the rate of pay in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code and, in addition, may receive as a bonus, an amount which would raise total com-

pensation to the equivalent of the level of the rate of pay in effect for level II of the Executive Schedule under section 5313 of title 5, based upon an evaluation by the Secretary of Commerce of the Director's performance as defined in an annual performance agreement between the Director and the Secretary. The annual performance agreement shall incorporate measurable goals as delineated in an annual performance plan agreed to by the Director and the Secretary.

(5) REMOVAL.—The Director shall serve at the pleasure of the President.

(6) DESIGNEE OF DIRECTOR.—The Director shall designate an officer of the Organization who shall be vested with the authority to act in the capacity of the Director in the event of the absence or incapacity of the Director.

(7) RELATIONSHIP WITH EXISTING AUTHORITIES.—Nothing in this section shall derogate from the duties or functions of the Register of Copyrights.

(c) OFFICERS AND EMPLOYEES OF THE ORGANIZATION.—

(1) COMMISSIONERS OF PATENTS AND TRADEMARKS.—The Director shall appoint a Commissioner of Patents and a Commissioner of Trademarks under

section 3 of title 35, United States Code and section 53 of the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946), respectively, as amended by this Act.

(2) OTHER OFFICERS AND EMPLOYEES.—The Director shall—

(A) appoint officers, employees (including attorneys), and agents of the Organization, who shall be citizens of the United States, as the Director considers necessary to carry out its functions;

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

(C) define the authority and duties of such officers and employees and delegate to them such of the powers vested in the Organization as the Director may determine.

(3) PERSONNEL LIMITATIONS.—The Organization shall not be subject to any administratively or statutorily imposed limitation on positions or personnel, and no positions or personnel of the Organization shall be taken into account for purposes of applying any such limitation.

(d) LIMITS ON COMPENSATION.—Except as otherwise provided by law, the annual rate of basic pay of an officer or employee of the Organization may not be fixed at a rate that exceeds, and total compensation payable to any such officer or employee for any year may not exceed, the annual rate of basic pay in effect for level II of the Executive Schedule under section 5313 of title 5, United States Code. The Director shall prescribe such regulations as may be necessary to carry out this subsection.

(e) INAPPLICABILITY OF TITLE 5, UNITED STATES CODE, GENERALLY.—Except as otherwise provided in this section, officers and employees of the Organization shall not be subject to the provisions of title 5, United States Code, relating to Federal employees.

(f) CONTINUED APPLICABILITY OF CERTAIN PROVISIONS OF TITLE 5, UNITED STATES CODE.—

(1) IN GENERAL.—The following provisions of title 5, United States Code, shall apply to the Organization and its officers and employees:

(A) Section 3110 (relating to employment of relatives; restrictions).

(B) Subchapter II of chapter 55 (relating to withholding pay).

(C) Subchapters II and III of chapter 73 (relating to employment limitations and political activities, respectively).

(D) Chapter 71 (relating to labor-management relations), subject to paragraph (2) and subsection (g).

(E) Section 3303 (relating to political recommendations).

(F) Subchapter II of chapter 61 (relating to flexible and compressed work schedules).

(G) Section 2302(b)(8) (relating to whistleblower protection) and whistleblower related provisions of chapter 12 (covering the role of the Office of Special Counsel).

(2) COMPENSATION SUBJECT TO COLLECTIVE BARGAINING.—

(A) IN GENERAL.—Notwithstanding any other provision of law, for purposes of applying chapter 71 of title 5, United States Code, pursuant to paragraph (1)(D), basic pay and other forms of compensation shall be considered to be among the matters as to which the duty to bargain in good faith extends under such chapter.

(B) EXCEPTIONS.—The duty to bargain in good faith shall not, by reason of subparagraph

(A), be considered to extend to any benefit under title 5, United States Code, which is afforded by paragraph (1), (2), (3), or (4) of subsection (g).

(C) LIMITATIONS APPLY.—Nothing in this subsection shall be considered to allow any limitation under subsection (d) to be exceeded.

(g) PROVISIONS OF TITLE 5, UNITED STATES CODE, THAT CONTINUE TO APPLY, SUBJECT TO CERTAIN REQUIREMENTS.—

(1) RETIREMENT.—(A) The provisions of subchapter III of chapter 83 and chapter 84 of title 5, United States Code, shall apply to the Organization and its officers and employees, subject to subparagraph (B).

(B)(i) The amount required of the Organization under the second sentence of section 8334(a)(1) of title 5, United States Code, with respect to any particular individual shall, instead of the amount which would otherwise apply, be equal to the normal-cost percentage (determined with respect to officers and employees of the Organization using dynamic assumptions, as defined by section 8401(9) of such title) of the individual's basic pay, minus the amount required to be withheld from such pay under such section 8334(a)(1).

(ii) The amount required of the Organization under section 8334(k)(1)(B) of title 5, United States Code, with respect to any particular individual shall be equal to an amount computed in a manner similar to that specified in clause (i), as determined in accordance with clause (iii).

(iii) Any regulations necessary to carry out this subparagraph shall be prescribed by the Office of Personnel Management.

(C) The United States Patent and Trademark Organization may supplement the benefits provided under the preceding provisions of this paragraph.

(2) HEALTH BENEFITS.—(A) The provisions of chapter 89 of title 5, United States Code, shall apply to the Organization and its officers and employees, subject to subparagraph (B).

(B)(i) With respect to any individual who becomes an officer or employee of the Organization pursuant to subsection (i), the eligibility of such individual to participate in such program as an annuitant (or of any other person to participate in such program as an annuitant based on the death of such individual) shall be determined disregarding the requirements of section 8905(b) of title 5, United States Code. The preceding sentence shall not apply if the

individual ceases to be an officer or employee of the Organization for any period of time after becoming an officer or employee of the Organization pursuant to subsection (i) and before separation.

(ii) The Government contributions authorized by section 8906 of title 5, United States Code, for health benefits for anyone participating in the health benefits program pursuant to this subparagraph shall be made by the Organization in the same manner as provided under section 8906(g)(2) of such title with respect to the United States Postal Service for individuals associated therewith.

(iii) For purposes of this subparagraph, the term "annuitant" has the meaning given such term by section 8901(3) of title 5, United States Code.

(C) The Organization may supplement the benefits provided under the preceding provisions of this paragraph.

(3) LIFE INSURANCE.—(A) The provisions of chapter 87 of title 5, United States Code, shall apply to the Organization and its officers and employees, subject to subparagraph (B).

(B)(i) Eligibility for life insurance coverage after retirement or while in receipt of compensation under subchapter I of chapter 81 of title 5, United States

Code, shall be determined, in the case of any individual who becomes an officer or employee of the Organization pursuant to subsection (i), without regard to the requirements of section 8706(b) (1) or (2) of such title, but subject to the condition specified in the last sentence of paragraph (2)(B)(i) of this subsection.

(ii) Government contributions under section 8708(d) of such title on behalf of any such individual shall be made by the Organization in the same manner as provided under paragraph (3) thereof with respect to the United States Postal Service for individuals associated therewith.

(C) The Organization may supplement the benefits provided under the preceding provisions of this paragraph.

(4) EMPLOYEES' COMPENSATION FUND.—(A) Officers and employees of the Organization shall not become ineligible to participate in the program under chapter 81 of title 5, United States Code, relating to compensation for work injuries, by reason of subsection (e).

(B) The Organization shall remain responsible for reimbursing the Employees' Compensation Fund, pursuant to section 8147 of title 5, United States Code, for compensation paid or payable after the ef-

fective date of this title in accordance with chapter 81 of title 5, United States Code, with regard to any injury, disability, or death due to events arising before such date, whether or not a claim has been filed or is final on such date.

(h) LABOR-MANAGEMENT RELATIONS.—

(1) LABOR RELATIONS AND EMPLOYEE RELATIONS PROGRAMS.—The Organization shall develop hiring practices, labor relations and employee relations programs with the objective of improving productivity and efficiency, incorporating the following principles:

(A) Such programs shall be consistent with the merit principles in section 2301(b) of title 5, United States Code.

(B) Such programs shall provide veterans preference protections equivalent to those established by sections 2108, 3308 through 3318, 3320, 3502, and 3504 of title 5, United States Code.

(C)(i) The right to work shall not be subject to undue restraint or coercion. The right to work shall not be infringed or restricted in any way based on membership in, affiliation with, or financial support of a labor organization.

(ii) No person shall be required, as a condition of employment or continuation of employment—

(I) to resign or refrain from voluntary membership in, voluntary affiliation with, or voluntary financial support of a labor organization;

(II) to become or remain a member of a labor organization;

(III) to pay any dues, fees, assessments, or other charges of any kind or amount to a labor organization;

(IV) to pay to any charity or other third party, in lieu of such payments, any amount equivalent to or a pro rata portion of dues, fees, assessments, or other charges regularly required of members of a labor organization; or

(V) to be recommended, approved, referred, or cleared by or through a labor organization.

(iii) This subparagraph shall not apply to a person described in section 7103(a)(2)(v) of title 5, United States Code, or a "supervisor", "management official", or "confidential em-

ployee" as those terms are defined in 7103(a)(10), (11), and (13) of such title.

(iv) Any labor organization recognized by the Organization as the exclusive representative of a unit of employees of the Organization shall represent the interests of all employees in that unit without discrimination and without regard to labor organization membership.

(2) ADOPTION OF EXISTING LABOR AGREEMENTS.—The Organization shall adopt all labor agreements which are in effect, as of the day before the effective date of this title, with respect to such Organization (as then in effect).

(i) CARRYOVER OF PERSONNEL.—

(1) FROM PTO.—Effective as of the effective date of this title, all officers and employees of the Patent and Trademark Office on the day before such effective date shall become officers and employees of the Organization, without a break in service.

(2) OTHER PERSONNEL.—(A) Any individual who, on the day before the effective date of this title, is an officer or employee of the Department of Commerce (other than an officer or employee under paragraph (1)) shall be transferred to the Organization if—

(i) such individual serves in a position for which a major function is the performance of work reimbursed by the Patent and Trademark Office, as determined by the Secretary of Commerce;

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

(iii) such transfer would be in the interest of the Organization, as determined by the Secretary of Commerce in consultation with the Director.

(B) Any transfer under this paragraph shall be effective as of the same effective date as referred to in paragraph (1), and shall be made without a break in service.

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

(4) TERMINATION RIGHTS.—Any employee referred to in paragraph (1) or (2) of this subsection whose employment with the Organization is terminated during the 1-year period beginning on the effective date of this title shall be entitled to rights and benefits, to be afforded by the Organization, similar to those such employee would have had under Federal law if termination had occurred immediately before such date. An employee who would have been entitled to appeal any such termination to the Merit Systems Protection Board, if such termination had occurred immediately before such effective date, may appeal any such termination occurring within such 1-year period to the Board under such procedures as it may prescribe.

(5) TRANSITION PROVISIONS.—(A)(i) On or after the effective date of this title, the President shall appoint a Director of the United States Patent and Trademark Organization who shall serve until the earlier of—

(I) the date on which a Director qualifies under subsection (b); or

(II) the date occurring 1 year after the effective date of this title.

(ii) The President shall not make more than 1 appointment under this subparagraph.

(B) The individual serving as the Assistant Commissioner of Patents on the day before the effective date of this title shall serve as the Commissioner of Patents until the date on which a Commissioner of Patents is appointed under section 3 of title 35, United States Code, as amended by this Act.

(C) The individual serving as the Assistant Commissioner of Trademarks on the day before the effective date of this title shall serve as the Commissioner of Trademarks until the date on which a Commissioner of Trademarks is appointed under section 53 of the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946), as amended by this Act.

(j) COMPETITIVE STATUS.—For purposes of appointment to a position in the competitive service for which an officer or employee of the Organization is qualified, such officer or employee shall not forfeit any competitive status, acquired by such officer or employee before the effective date of this title, by reason of becoming an officer or employee of the Organization under subsection (i).

(k) SAVINGS PROVISIONS.—Compensation, benefits, and other terms and conditions of employment in effect immediately before the effective date of this title, whether pro-

vided by statute or by rules and regulations of the former Patent and Trademark Office or the executive branch of the Government of the United States, shall continue to apply to officers and employees of the Organization, until changed in accordance with this section (whether by action of the Director or otherwise).

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

SEC. 114. UNITED STATES PATENT OFFICE.

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

"§ 1. Establishment

"(a) ESTABLISHMENT.—The United States Patent Office is established as a separate administrative unit of the United States Patent and Trademark Organization, where records, books, drawings, specifications, and other papers and things pertaining to patents shall be kept and preserved, except as otherwise provided by law.

"(b) REFERENCE.—For purposes of this title, the United States Patent Office shall also be referred to as the 'Office' and the 'Patent Office'.".

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

"§ 2. Powers and duties

"The United States Patent Office, under the policy direction of the Secretary of Commerce through the Director of the United States Patent and Trademark Organization, shall be responsible for—

"(1) granting and issuing patents;

"(2) conducting studies, programs, or exchanges of items or services regarding domestic and international patent law, the administration of the Organization, or any other function vested in the Organization by law, including programs to recognize, identify, assess, and forecast the technology of patented inventions and their utility to industry;

"(3) authorizing or conducting studies and programs cooperatively with foreign patent offices and international organizations, in connection with the granting and issuing of patents; and

"(4) disseminating to the public information with respect to patents.

(c) ORGANIZATION AND MANAGEMENT.—Section 3 of title 35, United States Code, is amended to read as follows:

"§ 3. Officers and employees

"(a) COMMISSIONER.—

"(1) IN GENERAL.—The management of the United States Patent Office shall be vested in a Commissioner of Patents, who shall be a citizen of the United States and who shall be appointed by the Director of the United States Patent and Trademark Organization and shall serve at the pleasure of the Director of the United States Patent and Trademark Organization. The Commissioner of Patents shall be a person who, by reason of professional background and experience in patent law, is especially qualified to manage the Office.

"(2) DUTIES.—

"(A) IN GENERAL.—The Commissioner shall be responsible for all aspects of the management, administration, and operation of the Office, including the granting and issuing of patents, and shall perform these duties in a fair, impartial, and equitable manner.

"(B) ADVISING THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK ORGANIZATION.—The Commissioner of Patents shall advise the Director of the United States Patent and Trademark Organization of all activities of the Office undertaken in response to obligations of the United States under treaties and executive

agreements, or which relate to cooperative programs with those authorities of foreign governments that are responsible for granting patents. The Commissioner of Patents shall advise the Director of the United States Patent and Trademark Organization on matters of patent law and shall recommend to the Director of the United States Patent and Trademark Organization changes in law or policy which may improve the ability of United States citizens to secure and enforce patent rights in the United States or in foreign countries.

"(C) REGULATIONS.—The Commissioner may establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office. The Director of the United States Patent and Trademark Organization shall determine whether such regulations are consistent with the policy direction of the Secretary of Commerce.

"(D) CONSULTATION WITH THE MANAGEMENT ADVISORY BOARD.—(i) The Commissioner shall consult with the Management Advisory Board established in section 5—

"(I) on a regular basis on matters relating to the operation of the Office; and

"(II) before submitting budgetary proposals to the Director of the United States Patent and Trademark Organization for submission to the Office of Management and Budget or changing or proposing to change patent user fees or patent regulations.

"(ii) The Director of the United States Patent and Trademark Organization shall determine whether such fees or regulations are consistent with the policy direction of the Secretary of Commerce.

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

"(4) COMPENSATION.—

"(A) IN GENERAL.—The Commissioner shall receive compensation at the rate of pay in effect for level IV of the Executive Schedule under section 5315 of title 5.

"(B) BONUS.—In addition to compensation under subparagraph (A), the Commissioner may, at the discretion of the Director of the United States Patent and Trademark Organization, receive as a bonus, an amount which would raise total compensation to the equivalent of the rate

of pay in effect for level III of the Executive Schedule under section 5314 of title 5.

"(b) OFFICERS AND EMPLOYEES.—

"(1) DEPUTY COMMISSIONER OF PATENTS.—The Commissioner shall appoint a Deputy Commissioner of Patents who shall be vested with the authority to act in the capacity of the Commissioner in the event of the absence or incapacity of the Commissioner. In the event of a vacancy in the office of Commissioner, the Deputy Commissioner shall fill the office of Commissioner until a new Commissioner is appointed and takes office.

"(2) OMBUDSMAN.—The Commissioner shall appoint an ombudsman to advise the Commissioner on the concerns of independent inventors, nonprofit organizations, and small business concerns.

"(3) OTHER OFFICERS AND EMPLOYEES.—Other officers, attorneys, employees, and agents shall be selected and appointed by the Commissioner, and shall be vested with such powers and duties as the Commissioner may determine.".

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

"§ 5. Patent Office Management Advisory Board

"(a) ESTABLISHMENT OF MANAGEMENT ADVISORY BOARD.—

"(1) APPOINTMENT.—The United States Patent Office shall have a Management Advisory Board (hereafter in this title referred to as the 'Advisory Board') of 5 members, who shall be appointed by the President and shall serve at the pleasure of the President. Not more than 3 of the 5 members shall be members of the same political party. At least 1 member shall be an independent inventor, as defined in regulations issued by the Commissioner.

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

"(3) TIMING OF APPOINTMENTS.—Initial appointments to the Advisory Board shall be made within 3 months after the effective date of the United States Patent and Trademark Organization Act of 1997. Vacancies shall be filled in the manner in which the original appointment was made under this subsection within 3 months after they occur.

"(b) BASIS FOR APPOINTMENTS.—Members of the Advisory Board shall be citizens of the United States who shall be chosen so as to represent the interests of diverse users of the United States Patent Office, and shall include indi-

viduals with substantial background and achievement in corporate finance and management.

"(c) MEETINGS.—The Advisory Board shall meet at the call of the Chair to consider an agenda set by the Chair.

"(d) DUTIES.—The Advisory Board shall—

"(1) review the policies, goals, performance, budget, and user fees of the United States Patent Office, and advise the Commissioner on these matters;

"(2) within 60 days after the end of each fiscal year—

"(A) prepare an annual report on the matters referred to in paragraph (1);

"(B) transmit the report to the Director of the United States Patent and Trademark Organization, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and

"(C) publish the report in the Patent Office Official Gazette.

"(f) COMPENSATION.—Each member of the Advisory Board shall be compensated for each day (including travel time) during which such member is attending meetings or conferences of the Advisory Board or otherwise engaged in the business of the Advisory Board, at the rate which is the daily equivalent of the annual rate of basic pay in effect

for level III of the Executive Schedule under section 5314 of title 5, and while away from such member's home or regular place of business such member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

"(g) ACCESS TO INFORMATION.—Members of the Advisory Board shall be provided access to records and information in the United States Patent Office, except for personnel or other privileged information and information concerning patent applications required to be kept in confidence by section 122.

"(h) APPLICABILITY OF CERTAIN ETHICS LAWS.—Members of the Advisory Board shall be special Government employees within the meaning of section 202 of title 18.".

(e) CONFORMING AMENDMENTS.—Section 6 of title 35, United States Code, and the item relating to such section in the table of contents for chapter 1 of title 35, United States Code, are repealed.

(f) BOARD OF PATENT APPEALS AND INTERFERENCES.—Section 7 of title 35, United States Code, is amended to read as follows:

"§ 7. Board of Patent Appeals and Interferences

"(a) ESTABLISHMENT AND COMPOSITION.—There shall be in the United States Patent Office a Board of Patent Appeals and Interferences. The Commissioner, the Deputy

Commissioner, and the administrative patent judges shall constitute the Board. The administrative patent judges shall be persons of competent legal knowledge and scientific ability.

"(b) DUTIES.—

"(1) IN GENERAL.—The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, a patent owner, or a third-party requester in a reexamination proceeding—

"(A) review adverse decisions of examiners—

"(i) upon applications for patents; and

"(ii) in reexamination proceedings; and

"(B) determine priority and patentability of invention in interferences declared under section 135(a).

"(2) HEARINGS.—Each appeal and interference shall be heard by at least 3 members of the Board, who shall be designated by the Deputy Commissioner. Only the Board of Patent Appeals and Interferences may grant rehearings.".

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

"§ 14. Annual report to Congress

"The Commissioner shall report to the Director of the United States Patent and Trademark Organization such information as the Director is required to submit to Congress annually under section 157(d) of this title, and under chapter 91 of title 31, including—

"(1) the total of the moneys received and expended by the Office;

"(2) the purposes for which the moneys were spent;

"(3) the quality and quantity of the work of the Office; and

"(4) other information relating to the Office.".

(h) PRACTICE BEFORE PATENT OFFICE.—

(1) IN GENERAL.—Section 31 of title 35, United States Code, is amended to read as follows:

"§ 31. Regulations for agents and attorneys

"The Commissioner may prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office. The regulations may require such persons, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service,

advice, and assistance in the presentation or prosecution of their applications or other business before the Office.".

(2) DESIGNATION OF ATTORNEY TO CONDUCT HEARING.—Section 32 of title 35, United States Code, is amended in the first sentence by striking "Patent and Trademark Office" and inserting "Patent Office" and by inserting before the last sentence the following: "The Commissioner shall have the discretion to designate any attorney who is an officer or employee of the United States Patent Office to conduct the hearing required by this section.".

(i) FUNDING.—

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

"(f) The Commissioner, after consulting with the Patent Office Management Advisory Board pursuant to section 3(a)(2)(C) of this title and after notice and opportunity for full participation by interested public and private parties, may, by regulation, adjust the fees established in this section. The Director of the United States Patent and Trademark Organization shall determine whether such fees are consistent with the policy direction of the Secretary of Commerce.".

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

"§ 42. Patent Office funding

"(a) FEES PAYABLE TO THE OFFICE.—All fees for services performed by or materials furnished by the United States Patent Office shall be payable to the Office.

"(b) USE OF MONEYS.—Moneys from fees shall be available to the United States Patent Office to carry out, to the extent provided in appropriations Acts, the functions of the Office. Moneys of the Office not otherwise used to carry out the functions of the Office shall be kept in cash on hand or on deposit, or invested in obligations of the United States or guaranteed by the United States, or in obligations or other instruments which are lawful investments for fiduciary, trust, or public funds. Fees available to the Commissioner under this title shall be used only for the processing of patent applications and for other services and materials relating to patents, including the agreed upon share of any centralized function, as set forth in section 113(b)(2)(E) of the United States Patent and Trademark Organization Act of 1997.

"(c) CONTRIBUTION TO THE OFFICE OF THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK ORGANIZATION.—The Patent Office shall contribute 50 per-

cent of the annual budget of the Office of the Director of the United States Patent and Trademark Organization.".

SEC. 115. UNITED STATES TRADEMARK OFFICE.

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

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

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

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

"TITLE X—UNITED STATES TRADEMARK OFFICE

"SEC. 51. ESTABLISHMENT.

"(a) ESTABLISHMENT.—The United States Trademark Office is established as a separate administrative unit of the United States Patent and Trademark Organization.

"(b) REFERENCE.—For purposes of this chapter, the United States Trademark Office shall also be referred to as the 'Office' and the 'Trademark Office'.

"SEC. 52. POWERS AND DUTIES.

"The United States Trademark Office, under the policy direction of the Secretary of Commerce through the Director of the United States Patent and Trademark Organization, shall be responsible for—

"(1) the registration of trademarks;

"(2) conducting studies, programs, or exchanges of items or services regarding domestic and international trademark law or the administration of the Office;

"(3) authorizing or conducting studies and programs cooperatively with foreign trademark offices and international organizations, in connection with the registration of trademarks; and

"(4) disseminating to the public information with respect to trademarks.

"SEC. 53. OFFICERS AND EMPLOYEES.

"(a) COMMISSIONER.—

"(1) IN GENERAL.—The management of the United States Trademark Office shall be vested in a Commissioner of Trademarks, who shall be a citizen of the United States and who shall be appointed by the Director of the United States Patent and Trademark Organization and shall serve at the pleasure of the Director of the United States Patent and Trademark Organization. The Commissioner of Trademarks

shall be a person who, by reason of professional background and experience in trademark law, is especially qualified to manage the Office.

"(2) DUTIES.—

"(A) IN GENERAL.—The Commissioner shall be responsible for all aspects of the management, administration, and operation of the Office, including the registration of trademarks, and shall perform these duties in a fair, impartial, and equitable manner.

"(B) ADVISING THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK ORGANIZATION.—The Commissioner of Trademarks shall advise the Director of the United States Patent and Trademark Organization of all activities of the Office undertaken in response to obligations of the United States under treaties and executive agreements, or which relate to cooperative programs with those authorities of foreign governments that are responsible for registering trademarks. The Commissioner of Trademarks shall advise the Director of the United States Patent and Trademark Organization on matters of trademark law and shall recommend to the Director of the United States Patent and

Trademark Organization changes in law or policy which may improve the ability of United States citizens to secure and enforce trademark rights in the United States or in foreign countries.

"(C) REGULATIONS.—The Commissioner may establish regulations, not inconsistent with law, for the conduct of proceedings in the Trademark Office. The Director of the United States Patent and Trademark Organization shall determine whether such regulations are consistent with the policy direction of the Secretary of Commerce.

"(D) CONSULTATION WITH THE MANAGEMENT ADVISORY BOARD.—(i) The Commissioner shall consult with the Trademark Office Management Advisory Board established under section 54—

"(I) on a regular basis on matters relating to the operation of the Office; and

"(II) before submitting budgetary proposals to the Director of the United States Patent and Trademark Organization for submission to the Office of Management and Budget or changing or proposing to change

trademark user fees or trademark regulations.

"(ii) The Director of the United States Patent and Trademark Organization shall determine whether such fees or regulations are consistent with the policy direction of the Secretary of Commerce.

"(E) PUBLICATIONS.—(i) The Commissioner may print, or cause to be printed, the following:

"(I) Certificates of trademark registrations, including statements and drawings, together with copies of the same.

"(II) The Official Gazette of the United States Trademark Office.

"(III) Annual indexes of trademarks and registrants.

"(IV) Annual volumes of decisions in trademark cases.

"(V) Pamphlet copies of laws and rules relating to trademarks and circulars or other publications relating to the business of the Office.

"(ii) The Commissioner may exchange any of the publications specified under clause (i) for

publications desirable for the use of the Trademark Office.

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

"(4) COMPENSATION.—

"(A) IN GENERAL.—The Commissioner shall receive compensation at the rate of pay in effect for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

"(B) BONUS.—In addition to compensation under subparagraph (A), the Commissioner may, at the discretion of the Director of the United States Patent and Trademark Organization, receive as a bonus, an amount which would raise total compensation to the equivalent of the rate of pay in effect for level III of the Executive Schedule under section 5314 of title 5.

"(b) OFFICERS AND EMPLOYEES.—The Commissioner shall appoint a Deputy Commissioner of Trademarks who shall be vested with the authority to act in the capacity of the Commissioner in the event of the absence or incapacity of the Commissioner. In the event of a vacancy in the office of Commissioner, the Deputy Commissioner shall fill the office of Commissioner until a new Commissioner is ap-

pointed and takes office. Other officers, attorneys, employees, and agents shall be selected and appointed by the Commissioner, and shall be vested with such powers and duties as the Commissioner may determine.

"SEC. 54. TRADEMARK OFFICE MANAGEMENT ADVISORY BOARD.

"(a) ESTABLISHMENT OF MANAGEMENT ADVISORY BOARD.—

"(1) APPOINTMENT.—The United States Trademark Office shall have a Management Advisory Board (hereafter in this title referred to as the 'Advisory Board') of 5 members, who shall be appointed by the President and shall serve at the pleasure of the President. Not more than 3 of the 5 members shall be members of the same political party.

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

"(3) TIMING OF APPOINTMENTS.—Initial appointments to the Advisory Board shall be made within 3 months after the effective date of the United States Patent and Trademark Organization Act of 1997. Vacancies shall be filled in the manner in which the original appointment was made under this section within 3 months after they occur.

"(b) BASIS FOR APPOINTMENTS.—Members of the Advisory Board shall be citizens of the United States who shall be chosen so as to represent the interests of diverse users of the United States Trademark Office, and shall include individuals with substantial background and achievement in corporate finance and management.

"(c) MEETINGS.—The Advisory Board shall meet at the call of the Chair to consider an agenda set by the Chair.

"(d) DUTIES.—The Advisory Board shall—

"(1) review the policies, goals, performance, budget, and user fees of the United States Trademark Office, and advise the Commissioner on these matters; and

"(2) within 60 days after the end of each fiscal year—

"(A) prepare an annual report on the matters referred to under paragraph (1);

"(B) transmit the report to the Director of the United States Patent and Trademark Organization, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and

"(C) publish the report in the Trademark Office Official Gazette.

"(f) COMPENSATION.—Each member of the Advisory Board shall be compensated for each day (including travel time) during which such member is attending meetings or conferences of the Advisory Board or otherwise engaged in the business of the Advisory Board, at the rate which is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code, and while away from such member's home or regular place of business such member may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

"(g) ACCESS TO INFORMATION.—Members of the Advisory Board shall be provided access to records and information in the United States Trademark Office, except for personnel or other privileged information.

"(h) APPLICABILITY OF CERTAIN ETHIC LAWS.—Members of the Advisory Board shall be special Government employees within the meaning of section 202 of title 18.

"SEC. 55. ANNUAL REPORT TO CONGRESS.

"The Commissioner shall report to the Director of the United States Patent and Trademark Organization such information as the Director is required to report to Congress annually under chapter 91 of title 5, including—

"(1) the moneys received and expended by the Office;

"(2) the purposes for which the moneys were spent;

"(3) the quality and quantity of the work of the Office; and

"(4) other information relating to the Office.

"SEC. 56. TRADEMARK OFFICE FUNDING.

"(a) FEES PAYABLE TO THE OFFICE.—All fees for services performed by or materials furnished by the United States Trademark Office shall be payable to the Office.

"(b) USE OF MONEYS.—Moneys from fees shall be available to the United States Trademark Office to carry out, to the extent provided in appropriations Acts, the functions of the Office. Moneys of the Office not otherwise used to carry out the functions of the Office shall be kept in cash on hand or on deposit, or invested in obligations of the United States or guaranteed by the United States, or in obligations or other instruments which are lawful investments for fiduciary, trust, or public funds. Fees available to the Commissioner under this chapter shall be used only for the registration of trademarks and for other services and materials relating to trademarks, including the agreed upon share of any centralized function, as set forth in section

113(b)(2)(E) of the United States Patent and Trademark Organization Act of 1997.

"(c) CONTRIBUTION TO THE OFFICE OF THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK ORGANIZATION.—The Trademark Office shall contribute 50 percent of the annual budget of the Office of the Director of the United States Patent and Trademark Organization.".

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

"SEC. 17. (a) In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Commissioner shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration.

"(b) The Trademark Trial and Appeal Board shall include the Commissioner of Trademarks, the Deputy Commissioner of Trademarks, and administrative trademark judges competent in trademark law who are appointed by the Commissioner.".

(c) DETERMINATION OF FEES.—Section 31(a) of the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946) (15 U.S.C. 1067(a)) is amended by striking

the second and third sentences and inserting the following: "Fees established under this subsection may be adjusted by the Commissioner, after consulting with the Trademark Office Management Advisory Board in accordance with section 53(a)(2)(C) of this Act and after notice and opportunity for full participation by interested public and private parties. The Director of the United States Patent and Trademark Organization shall determine whether such fees are consistent with the policy direction of the Secretary of Commerce.".

SEC. 116. SUITS BY AND AGAINST THE ORGANIZATION.

(a) ACTIONS UNDER UNITED STATES LAW.—Any civil action or proceeding to which the United States Patent and Trademark Organization is a party is deemed to arise under the laws of the United States. The Federal courts shall have exclusive jurisdiction over all civil actions by or against the Organization.

(b) REPRESENTATION BY THE DEPARTMENT OF JUSTICE.—The United States Patent and Trademark Organization shall be deemed an agency of the United States for purposes of section 516 of title 28, United States Code.

(c) PROHIBITION ON ATTACHMENT, LIENS, OR SIMILAR PROCESS.—No attachment, garnishment, lien, or similar process, intermediate or final, in law or equity, may be issued against property of the Organization.

SEC. 117. FUNDING.

(a) IN GENERAL.—The activities of the United States Patent and Trademark Organization and each office of the Organization shall be funded entirely through fees payable to the United States Patent Office (under section 42 of title 35, United States Code) and the United States Trademark Office (under section 56 of the Act of July 5, 1946 (commonly known as the Trademark Act of 1946)), and surcharges appropriated by Congress, to the extent provided in appropriations Acts and subject to the provisions of subsection (b).

(b) BORROWING AUTHORITY.—

(1) IN GENERAL.—The United States Patent and Trademark Organization is authorized to issue from time to time for purchase by the Secretary of the Treasury its debentures, bonds, notes, and other evidences of indebtedness (hereafter in this subsection referred to as "obligations") to assist in financing the activities of the United States Patent Office and the United States Trademark Office. Borrowing under this section shall be subject to prior approval in appropriations Acts. Such borrowing shall not exceed amounts approved in appropriations Acts.

(2) BORROWING AUTHORITY.—Any borrowing under this subsection shall be repaid only from fees paid to the Office for which such obligations were is-

sued and surcharges appropriated by Congress. Such obligations shall be redeemable at the option of the United States Patent and Trademark Organization before maturity in the manner stipulated in such obligations and shall have such maturity as is determined by the United States Patent and Trademark Organization with the approval of the Secretary of the Treasury. Each such obligation issued to the Treasury shall bear interest at a rate not less than the current yield on outstanding marketable obligations of the United States of comparable maturity during the month preceding the issuance of the obligation as determined by the Secretary of the Treasury.

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

(4) TREATMENT.—Payment under this subsection of the purchase price of such obligations of the

United States Patent and Trademark Organization shall be treated as public debt transactions of the United States.

SEC. 118. TRANSFERS.

(a) TRANSFER OF FUNCTIONS.—Except as relates to the direction of patent and trademark policy, there are transferred to, and vested in, the United States Patent and Trademark Organization all functions, powers, and duties vested by law in the Secretary of Commerce or the Department of Commerce or in the officers or components in the Department of Commerce with respect to the authority to grant patents and register trademarks, and in the Patent and Trademark Office, as in effect on the day before the effective date of this title, and in the officers and components of such office.

(b) TRANSFER OF FUNDS AND PROPERTY.—The Secretary of Commerce shall transfer to the United States Patent and Trademark Organization, on the effective date of this title, so much of the assets, liabilities, contracts, property, records, and unexpended and unobligated balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Department of Commerce, including funds set aside for accounts receivable which are related to

functions, powers, and duties which are vested in the United States Patent and Trademark Office by this title.

SEC. 119. USE OF ORGANIZATION NAME.

The use of the terms "United States Patent and Trademark Organization", "Patent and Trademark Office", "United States Patent Office", "Patent Office", "United States Trademark Office", "Trademark Office", or any combination of such terms, as the name or part thereof under which an individual or entity does business, is prohibited. A violation of this section may be enjoined by any Federal court at the suit of the Organization. In any such suit, the Organization shall be entitled to statutory damages of $1,000 for each day during which such violation continues or is repeated following notice by the Organization and, in addition, may recover actual damages flowing from such violations.

Subtitle B—Effective Date; Technical Amendments

SEC. 131. EFFECTIVE DATE.

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

SEC. 132. TECHNICAL AND CONFORMING AMENDMENTS.

(a) AMENDMENTS TO TITLE 35.—

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

"I. United States Patent Office ..... 1.".

(2) HEADING.—The heading for part I of title 35, United States Code, is amended to read as follows:

"PART I—UNITED STATES PATENT OFFICE".

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

"1. Establishment, Officers and Employees, Functions ..... 1".

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

"CHAPTER 1—ESTABLISHMENT, OFFICERS 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.".

(5) COMMISSIONER OF PATENTS AND TRADEMARKS.—(A) Section 41(h)(1) of title 35, United States Code, is amended by striking "Commissioner of Patents and Trademarks" and inserting "Commissioner".

(B) Section 155 of title 35, United States Code, is amended by striking "Commissioner of Patents and Trademarks" and inserting "Commissioner".

(C) Section 155A(c) of title 35, United States Code, is amended by striking "Commissioner of Patents" and inserting "Commissioner".

(6) PATENT AND TRADEMARK OFFICE.—The provisions of title 35, United States Code, are amended by striking "Patent and Trademark Office" each place it appears and inserting "Patent Office".

(7) SECRETARY OF COMMERCE.—Section 157(d) of title 35, United States Code, is amended by striking "Secretary of Commerce" and inserting "Director of the United States Patent and Trademark Organization".

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

(1) REFERENCES.—All amendments in this subsection refer to the Act of July 5, 1946 (commonly referred to as the Trademark Act of 1946).

(2) AMENDMENTS RELATING TO COMMISSIONER.—Section 61 (as redesignated by section 115(a)(2) of this Act) is amended by striking the undesignated paragraph relating to the definition of the term "Commissioner" and inserting the following:

"The term 'Commissioner' means the Commissioner of Trademarks.".

(3) AMENDMENTS RELATING TO PATENT AND TRADEMARK OFFICE.—(A) Section 1(a)(1) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(B) Section 1(a)(2) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(C) Section 1(b)(1) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(D) Section 1(b)(2) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(E) Section 1(d)(1) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(F) Section 1(e) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(G) Section 2(d) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(H) Section 7(a) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(I) Section 7(d) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(J) Section 7(e) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(K) Section 7(f) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(L) Section 7(g) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(M) Section 8(a) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(N) Section 8(b) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(O) Section 10 is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(P) Section 12(a) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(Q) Section 13(a) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(R) Section 13(b)(1) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(S) Section 15(2) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(T) Section 17 is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(U) Section 21(a)(2) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(V) Section 21(a)(3) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(W) Section 21(a)(4) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(X) Section 21(b)(3) is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(Y) Section 21(b)(4) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(Z) Section 24 is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(AA) Section 29 is amended by striking "Patent and Trademark Office" each place such term appears and inserting "Trademark Office".

(BB) Section 30 is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(CC) Section 31(a) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(DD) Section 34(a) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(EE) Section 34(d)(1)(B)(i) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(FF) Section 35(a) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(GG) Section 36 is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(HH) Section 37 is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(II) Section 38 is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(JJ) Section 39(b) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(KK) Section 41 is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(LL) Section 61 (as redesignated under section 115(a)(2) of this Act) is amended in the undesignated paragraph relating to the definition of "registered mark"—

(i) by striking "Patent and Trade Mark Office" and inserting "Trademark Office; and

(ii) by striking "Patent and Trade Office" and inserting "Trademark Office".

(MM) Section 72(a) (as redesignated under section 115(a)(2) of this Act) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(NN) Section 75 (as redesignated under section 115(a)(2) of this Act) is amended by striking "Patent and Trademark Office" and inserting "Trademark Office".

(c) AMENDMENTS TO TITLE 5.—Title 5, United States Code, is amended—

(1) in section 5102(c)(23)—

(A) by striking "examiners-in-chief" in each place it appears and inserting "administrative patent judges"; and

(B) by striking "Office, Department of Commerce" and inserting "Organization"; and

(2) in section 5316—

(A) by striking "Commissioner of Patents, Department of Commerce."; and

(B) by striking:

"Deputy Commissioner of Patents and Trademarks.

"Assistant Commissioner for Patents.

"Assistant Commissioner for Trademarks.".

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

"(O) the United States Patent and Trademark Organization.".

(e) AMENDMENTS TO INSPECTOR GENERAL ACT OF 1978.—Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in paragraph (1) by striking "or the Commissioner of Social Security, Social Security Administration;" and inserting "the Commissioner of Social Security, Social Security Administration; or the Director of the United States Patent and Trademark Organization, United States Patent and Trademark Organization;"; and

(2) in paragraph (2) by striking "or the Veterans' Administration, or the Social Security Administration;" and inserting "the Veterans' Administra-

tion, the Social Security Administration, or the United States Patent and Trademark Organization;".

Subtitle C—Miscellaneous Provisions

SEC. 141. REFERENCES.

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

(1) to the head of such department, agency, or office is deemed to refer to the head of the department, agency, or office to which such function is transferred; or

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

SEC. 142. EXERCISE OF AUTHORITIES.

Except as otherwise provided by law, a Federal official to whom a function is transferred by this title may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this title.

SEC. 143. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, certificates, licenses, and privileges that—

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

(2) are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date), shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law.

(b) PROCEEDINGS.—This title shall not affect any proceedings or any application for any benefits, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office transferred by this title, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pur-

suant to such orders, as if this title had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.

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

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Commerce or the Secretary of Commerce, or by or against any individual in the official capacity of such individual as an officer or employee of an office transferred by this title, shall abate by reason of the enactment of this title.

(e) CONTINUANCE OF SUITS.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and under this title such function is transferred to any other officer or office,

then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

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

SEC. 144. TRANSFER OF ASSETS.

Except as otherwise provided in this title, so much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with a function transferred to an official or agency by this title shall be available to the official or the head of that agency, respectively, at such time or times as the Director of the Office of Management and Budget directs for use in connection with the functions transferred.

SEC. 145. DELEGATION AND ASSIGNMENT.

(a) IN GENERAL.—Except as otherwise expressly prohibited by law or otherwise provided in this title, an official to whom functions are transferred under this title (includ-

ing the head of any office to which functions are transferred under this title) may—

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

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

(b) RESPONSIBILITY FOR ADMINISTRATION.—No delegation of functions under this section or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the function.

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

(a) DETERMINATIONS.—If necessary, the Director of the Office of Management and Budget shall make any determination of the functions that are transferred under this title.

(b) INCIDENTAL TRANSFERS.—The Director of the Office of Management and Budget, at such time or times as the Director shall provide, may make such determinations as may be necessary with regard to the functions transferred by this title, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts,

property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this title.

(c) TERMINATION OF AFFAIRS.—The Director shall provide for the termination of the affairs of all entities terminated by this title and for such further measures and dispositions as may be necessary to effectuate the purposes of this title.

SEC. 147. CERTAIN VESTING OF FUNCTIONS CONSIDERED TRANSFERS.

For purposes of this title, the vesting of a function in a department, agency, or office pursuant to reestablishment of an office shall be considered to be the transfer of the function.

SEC. 148. AVAILABILITY OF EXISTING FUNDS.

Existing appropriations and funds available for the performance of functions, programs, and activities terminated pursuant to this title shall remain available, for the duration of their period of availability, for necessary expenses in connection with the termination and resolution of such functions, programs, and activities.

SEC. 149. DEFINITIONS.

For purposes of this title—

(1) the term "function" includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and

(2) the term "office" includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

TITLE II—EARLY PUBLICATION OF PATENT APPLICATIONS

SEC. 201. SHORT TITLE.

This title may be cited as the "Patent Application Publication Act of 1997".

SEC. 202. EARLY PUBLICATION.

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

"§ 122. Confidential status of applications; publication of patent applications

"(a) CONFIDENTIALITY.—Except as provided in subsection (b), applications for patents shall be kept in confidence by the Patent Office and no information concerning the same given without authority of the applicant or owner unless necessary to carry out the provisions of an Act of Congress or in such special circumstances as may be determined by the Commissioner.

"(b) PUBLICATION.—

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

"(B) No information concerning published patent applications shall be made available to the public except as the Commissioner determines.

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

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

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

"(C)(i) Where an applicant makes a request upon filing, certifying that the invention disclosed in

the application has not and will not be the subject of an application filed in a foreign country, the application shall not be published as provided in paragraph (1).

"(ii) An applicant may rescind a request made under clause (i) at any time. An applicant has a duty to notify the Director within 1 month of filing an application in a foreign country.

"(iii) Where an applicant rescinds a request made under clause (i) or notifies the Director that an application was filed in a foreign country, the application shall be published in accordance with the provisions of paragraph (1).

"(c) PRE-ISSUANCE OPPOSITION.—The provisions of this section shall not operate to create any new opportunity for pre-issuance opposition. The Commissioner may establish appropriate procedures to ensure that this section does not create any new opportunity for pre-issuance opposition that did not exist prior to the adoption of this section.

"(d) STUDY.—

"(1) IN GENERAL.—The General Accounting Office shall conduct a 3-year study of the applicants who file only in the United States after the effective date of this title.

"(2) CONTENTS.—The study conducted under paragraph (1) shall—

"(A) consider the number of such applicants in relation to the number of applicants who file in the United States and outside the United States;

"(B) examine how many domestic-only filers request at the time of filing not to be published;

"(C) examine how many such filers rescind that request or later choose to file abroad; and

"(D) examine the manner of entity seeking an application and any correlation that may exist between such manner and publication of patent applications.".

SEC. 203. TIME FOR CLAIMING BENEFIT OF EARLIER FILING DATE.

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

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

"(2) The Commissioner may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim. The Commissioner may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed claim under this section.

"(3) The Commissioner may require a certified copy of the original foreign application, specification, and drawings upon which it is based, a translation if not in the English language, and such other information as the Commissioner considers necessary. Any such certification shall be made by the foreign intellectual property authority in which the foreign application was filed and show the date of the application and of the filing of the specification and other papers.".

(b) IN THE UNITED STATES.—Section 120 of title 35, United States Code, is amended by adding at the end the following: "The Commissioner may determine the time period during the pendency of the application within which an amendment containing the specific reference to the earlier filed application is submitted. The Commissioner may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Commissioner may establish procedures, including the payment of a surcharge, to accept unavoidably late submissions of amendments under this section.".

SEC. 204. PROVISIONAL RIGHTS.

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

*(1) in the section caption by inserting "**; provisional rights**" after "**patent**"; and*

(2) by adding at the end the following new subsection:

"(d) PROVISIONAL RIGHTS.—

"(1) IN GENERAL.—In addition to other rights provided by this section, a patent shall include the right to obtain a reasonable royalty from any person who, during the period beginning on the date of publication of the application for such patent pursuant to section 122(b) of this title, or in the case of an international application filed under the treaty defined in section 351(a) of this title designating the United States under Article 21(2)(a) of such treaty, the date of publication of the application, and ending on the date the patent is issued—

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

"(ii) if the invention as claimed in the published patent application is a process, uses, offers for sale, or sells in the United States or imports

into the United States products made by that process as claimed in the published patent application; and

"(B) had actual notice of the published patent application, and where the right arising under this paragraph is based upon an international application designating the United States that is published in a language other than English, a translation of the international application into the English language.

"(2) RIGHT BASED ON SUBSTANTIALLY IDENTICAL INVENTIONS.—The right under paragraph (1) to obtain a reasonable royalty shall not be available under this subsection unless the invention as claimed in the patent is substantially identical to the invention as claimed in the published patent application.

"(3) TIME LIMITATION ON OBTAINING A REASONABLE ROYALTY.—The right under paragraph (1) to obtain a reasonable royalty shall be available only in an action brought not later than 6 years after the patent is issued. The right under paragraph (1) to obtain a reasonable royalty shall not be affected by the duration of the period described in paragraph (1).

"(4) REQUIREMENTS FOR INTERNATIONAL APPLICATIONS.—

"(A) EFFECTIVE DATE.—The right under paragraph (1) to obtain a reasonable royalty based upon the publication under the treaty of an international application designating the United States shall commence from the date that the Patent Office receives a copy of the publication under the treaty defined in section 351(a) of this title of the international application, or, if the publication under the treaty of the international application is in a language other than English, from the date that the Patent Office receives a translation of the international application in the English language.

"(B) COPIES.—The Commissioner may require the applicant to provide a copy of the international application and a translation thereof.

"(5) ISSUANCE OF PATENTS ON INDIVIDUAL CLAIMS.—Where the Director in a notification to the applicant under section 132 of this title indicates that one or more claims of a published application are allowable, the applicant may request the issuance of a patent incorporating those claims. The applicant may continue prosecution of the remaining claims as provided in chapter 12 of this title. Any subsequently al-

lowed claims may be incorporated into the patent. The Director may establish appropriate fees to cover the costs of incorporating any additional claims into the patent.".

SEC. 205. PRIOR ART EFFECT OF PUBLISHED APPLICATIONS.

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

"(e) the invention was described in—

"(1)(A) an application for patent, published pursuant to section 122(b) of this title, by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) of this title shall have the effect under this subsection of a national application published under section 122(b) of this title only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language, or

"(B) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, or".

SEC. 206. COST RECOVERY FOR PUBLICATION.

The Commissioner shall recover the cost of early publication required by the amendment made by section 202 by adjusting the filing, issue, and maintenance fees under title 35, United States Code, by charging a separate publication fee, or by any combination of these methods.

SEC. 207. CONFORMING CHANGES.

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

(1) Section 11 is amended in paragraph 1 of subsection (a) by inserting "and published applications for patents" after "Patents".

(2) Section 12 is amended—

*(A) in the section caption by inserting "**and applications**" after "**patents**"; and*

(B) by inserting "and published applications for patents" after "patents".

(3) Section 13 is amended—

*(A) in the section caption by inserting "**and applications**" after "**patents**"; and*

(B) by inserting "and published applications for patents" after "patents".

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

(5) The item relating to section 122 in the table of sections for chapter 11 is amended by inserting "; publication of patent applications" after "applications".

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

(7) Section 181 is amended—

(A) in the first undesignated paragraph—

(i) by inserting "by the publication of an application or" after "disclosure"; and

(ii) "the publication of the application or" after "withhold";

(B) in the second undesignated paragraph by inserting "by the publication of an application or" after "disclosure of an invention";

(C) in the third undesignated paragraph—

(i) by inserting "by the publication of the application or" after "disclosure of the invention"; and

(ii) "the publication of the application or" after "withhold"; and

(D) in the fourth undesignated paragraph by inserting "the publication of an application or" after "and" in the first sentence.

(8) Section 252 is amended in the first undesignated paragraph by inserting "substantially" before "identical" each place it appears.

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

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

"§ 374. Publication of international application: Effect

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

SEC. 208. LAST DAY OF PENDENCY OF PROVISIONAL APPLICATION.

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

"(3) If the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or legal holiday as defined in rule 6(a) of the Federal Rules of Civil Procedure, the period of pendency of the provisional

application shall be extended to the next succeeding business day.''.

SEC. 209. EFFECTIVE DATE.

(a) SECTIONS 202 THROUGH 207.—Sections 202 through 207, and the amendments made by such sections, shall take effect on the date that is 1 year after the date of enactment of this Act and shall apply to all applications filed under section 111 of title 35, United States Code, on or after that date, and all applications complying with section 371 of title 35, United States Code, that resulted from international applications filed on or after that date. The amendment made by section 204 shall also apply to international applications designating the United States that are filed on or after the date that is 1 year after the date of enactment of this Act.

(b) SECTION 208.—The amendments made by section 208 shall take effect on the date of the enactment of this Act and, except for a design patent application filed under chapter 16 of title 35, United States Code, shall apply to any application filed on or after June 8, 1995.

TITLE III—PATENT TERM RESTORATION

SEC. 301. PATENT TERM RESTORATION AUTHORITY.

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

"(b) ADJUSTMENT OF PATENT TERM.—

"(1) BASIS FOR PATENT TERM RESTORATION.—

"(A) DELAY.—Subject to the limitations under paragraph (2), if the issue of an original patent is delayed due to—

"(i) a proceeding under section 135(a) of this title;

"(ii) the imposition of an order pursuant to section 181 of this title;

"(iii) appellate review by the Board of Patent Appeals and Interferences or by a Federal court where the patent was issued pursuant to a decision in the review reversing an adverse determination of patentability; or

"(iv) an unusual administrative delay by the Patent Office in issuing the patent, the term of the patent shall be adjusted for the period of delay.

"(B) ADMINISTRATIVE DELAY.—For purposes of subparagraph (A)(iv), an unusual administrative delay by the Patent Office is the failure to—

"(i) make a notification of the rejection of any claim for a patent or any objection

or argument under section 132 of this title or give or mail a written notice of allowance under section 151 of this title not later than 14 months after the date on which the application was filed;

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

"(iii) act on an application not later than 4 months after the date of a decision by the Board of Patent Appeals and Interferences under section 134 or 135 of this title or a decision by a Federal court under section 141, 145, or 146 of this title where allowable claims remain in an application;

"(iv) issue a patent not later than 4 months after the date on which the issue fee was paid under section 151 of this title and all outstanding requirements were satisfied; or

"(v) issue a patent within 3 years after the actual filing date of the application in the United States, if the applicant—

"(I) has not obtained further limited examination of the application under section 132(b) of this title;

"(II) has not benefited from an adjustment of patent term under clause (i), (ii), or (iii) or paragraph (1)(A);

"(III) has not sought or obtained appellate review by the Board of Patent Appeals and Interferences or by a Federal court other than in a case in which the patent was issued pursuant to a decision in the review reversing an adverse determination of patentability; and

"(IV) has not requested any delay in the processing of the application by the Patent Office.

"(2) LIMITATIONS.—

"(A) IN GENERAL.—The total duration of any adjustments granted pursuant to either subclause (iii) or (iv) of paragraph (1)(A) or both such subclauses shall not exceed 10 years. To the extent that periods of delay attributable to grounds specified in paragraph (1) overlap, the period of any adjustment granted under this sub-

section shall not exceed the actual number of days the issuance of the patent was delayed.

"(B) REDUCTION OF ADJUSTMENT.—The period of adjustment of the term of a patent under this subsection shall be reduced by a period equal to the time in which the applicant failed to engage in reasonable efforts to conclude prosecution of the application. The Commissioner shall prescribe regulations establishing the circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application.

"(C) DISCLAIMED TERM.—No patent the term of which has been disclaimed beyond a specified date may be adjusted under this section beyond the expiration date specified in the disclaimer.

"(D) APPLICANT DELAY.—The period of adjustment of the term of a patent under clause (iv) of paragraph (1)(A), which is based on the failure of the Patent Office to meet the criteria set forth in clause (v) of paragraph (1)(B), shall be reduced by the cumulative total of any periods of time that an applicant takes to respond in ex-

cess of 3 months after the date on which the Patent Office makes any rejection, objection, argument, or other request, except that the Commissioner, upon petition from the applicant in the case of a nonprofit research laboratory or nonprofit entity such as a university, research center, or hospital, shall reinstate all or part of such time upon a showing of good cause by the applicant, but in no case more than 3 additional months for each such response beyond 3 months.

"(3) PROCEDURES.—The Commissioner shall prescribe regulations establishing procedures for the notification of patent term extensions under this subsection and procedures for contesting patent term extensions under this subsection.

"(4) NOTICE TO COMMISSIONER.—In a case in which a patent term is adjusted under this subsection, the Commissioner shall determine the period of any patent term adjustment available under this section and shall include a copy of that determination with the final notice. The Commissioner shall prescribe regulations establishing procedures for the application for, and notification of, patent term adjustments granted by the Commissioner under this subsection.

"(5) JUDICIAL REVIEW.—Any applicant dissatisfied with a determination of the Commissioner under paragraph (3) may have remedy by civil action in the United States Court of Federal Claims if commenced within 180 days after the mailing of the notice of allowance as the Commissioner appoints. The initiation of a civil action under this section shall not delay the issuance of a patent.".

SEC. 302. FURTHER EXAMINATION OF PATENT APPLICATIONS.

Section 132 of title 35, United States Code, is amended—

(1) in the first sentence by striking "Whenever" and inserting "(a) Whenever"; and

(2) by adding at the end the following:

"(b) The Commissioner shall prescribe regulations to provide for the further limited reexamination of applications for patent at the request of the applicant. The Commissioner may establish appropriate fees for such further limited examination and shall be authorized to provide a 50 percent reduction on such fees for small entities that qualify for reduced fees under section 41(h)(1) of this title.".

SEC. 303. TECHNICAL CLARIFICATION.

Section 156(a) of title 35, United States Code, is amended—

(1) in the matter preceding paragraph (1) by inserting ", which shall include any patent term adjustment granted under section 154(b)," after "the original expiration date of the patent".

SEC. 304. EFFECTIVE DATE.

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

TITLE IV—PRIOR DOMESTIC COMMERCIAL USE

SEC. 401. SHORT TITLE.

This title may be cited as the "Prior Domestic Commercial Use Act of 1997".

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

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

"§ 273. Prior domestic commercial use; defense to infringement

"(a) DEFINITIONS.—For purposes of this section—

"(1) the terms 'commercially used', 'commercially use', and 'commercial use'—

"(A) mean the use in the United States in commerce, use by the United States, or the use in the design, testing, or production in the United States of a product or service which is used in commerce or used by the United States, whether or not the subject matter at issue is accessible to or otherwise known to the public; and

"(B) includes in the case of activities performed by a nonprofit research laboratory, or nonprofit entity such as a university, research center, or hospital, a use for which the public is the intended beneficiary shall be considered to be a use described in subparagraph (A) except that the use—

"(i) may be asserted as a defense under this section only for continued use by and in the laboratory or nonprofit entity; and

"(ii) may not be asserted as a defense with respect to any subsequent commercialization or use outside such laboratory or nonprofit entity;

"(2) the terms 'used in commerce', and 'use in commerce' mean that there has been an actual arms-length sale or other commercial transfer, or use by the United States, of the subject matter at issue or that

there has been an actual arms-length sale or other commercial transfer, or use by the United States, of a product or service resulting from the use of the subject matter at issue; and

"(3) the 'effective filing date' of a patent is the earlier of the actual filing date of the application for the patent or the filing date of any earlier United States, foreign, or international application to which the subject matter at issue is entitled under section 119, 120, or 365 of this title.

"(b) DEFENSE TO INFRINGEMENT.—

"(1) IN GENERAL.—A person shall not be liable as an infringer under section 271 of this title, nor shall the United States be held liable under section 1498(a) of title 28, with respect to any subject matter that would otherwise infringe one or more claims in the patent being asserted against such person, if such person had, acting in good faith, commercially used the subject matter before the effective filing date of such patent.

"(2) EXHAUSTION OF RIGHT.—The sale or other disposition of the subject matter of a patent by a person entitled to assert a defense under this section with respect to that subject matter shall exhaust the patent owner's rights under the patent to the extent such

rights would have been exhausted had such sale or other disposition been made by the patent owner.

"(c) LIMITATIONS AND QUALIFICATIONS OF DEFENSE.—The defense to infringement under this section is subject to the following:

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

"(2) NOT A GENERAL LICENSE.—The defense asserted by a person under this section is not a general license under all claims of the patent at issue, but extends only to the subject matter claimed in the patent with respect to which the person can assert a defense under this chapter, except that the defense shall also extend to variations in the quantity or volume of use of the claimed subject matter, and to improvements in the claimed subject matter that do not infringe additional specifically claimed subject matter of the patent.

"(3) EFFECTIVE AND SERIOUS PREPARATION.—With respect to subject matter that cannot be commercialized without a significant investment of time, money, and effort, a person shall be deemed to have commercially used the subject matter if—

"(A) before the effective filing date of the patent, the person reduced the subject matter to practice in the United States, completed a significant portion of the total investment necessary to commercially use the subject matter, and made an arms-length commercial transaction in the United States in connection with the preparation to use the subject matter; and

"(B) thereafter the person diligently completed the remainder of the activities and investments necessary to commercially use the subject matter, and promptly began commercial use of the subject matter, even if such activities were conducted after the effective filing date of the patent.

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

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

"(6) PERSONAL DEFENSE.—The defense under this section may only be asserted by the person who performed the acts necessary to establish the defense and, except for any transfer to the patent owner, the right to assert the defense shall not be licensed or assigned or transferred to another person except in connection with the good faith assignment or transfer of the entire enterprise or line of business to which the defense relates.

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

"(d) UNSUCCESSFUL ASSERTION OF DEFENSE.—If the defense under this section is pleaded by a person who is found to infringe the patent and who subsequently fails to demonstrate a reasonable basis for asserting the defense, the court shall find the case exceptional for the purpose of awarding attorney's fees under section 285 of this title.

"(e) INVALIDITY.—A patent shall not be deemed to be invalid under section 102 or 103 of this title solely because a defense is established under this section.".

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 28 of title 35, United States Code, is amended by adding at the end the following new item:

"Sec. 273. Prior domestic commercial use; defense to infringement.".

SEC. 403. EFFECTIVE DATE AND APPLICABILITY.

This title and the amendments made by this title shall take effect on the date of the enactment of this Act, but shall not apply to any action for infringement that is pending on such date of enactment or with respect to any subject matter for which an adjudication of infringement, including a consent judgment, has been made before such date of enactment.

TITLE V—PATENT REEXAMINATION REFORM

SEC. 501. SHORT TITLE.

This title may be cited as the "Patent Reexamination Reform Act of 1997".

SEC. 502. DEFINITIONS.

Section 100 of title 35, United States Code, is amended by adding at the end the following new subsection:

"(e) The term 'third-party requester' means a person requesting reexamination under section 302 of this title who is not the patent owner.".

SEC. 503. REEXAMINATION PROCEDURES.

(a) REQUEST FOR REEXAMINATION.—Section 302 of title 35, United States Code, is amended to read as follows:

"§ 302. Request for reexamination

"(a) IN GENERAL.—Any person at any time may file a request for reexamination by the Office of a patent on the basis of any prior art cited under the provisions of section 301 of this title.

"(b) REQUIREMENTS.—The request shall—

"(1) be in writing, include the identity of the real party in interest, and be accompanied by payment of a reexamination fee established by the Commissioner of Patents pursuant to the provisions of section 41 of this title; and

"(2) set forth the pertinency and manner of applying cited prior art to every claim for which reexamination is requested.

"(c) COPY.—Unless the requesting person is the owner of the patent, the Commissioner promptly shall send a copy of the request to the owner of record of the patent.".

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

"§ 303. Determination of issue by Commissioner

"(a) REEXAMINATION.—Not later than 3 months after the filing of a request for reexamination under the provi-

sions of section 302 of this title, the Commissioner shall determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request, with or without consideration of other patents or printed publications. On the Commissioner's initiative, and any time, the Commissioner may determine whether a substantial new question of patentability is raised by patents and publications.

"(b) RECORD.—A record of the Commissioner's determination under subsection (a) shall be placed in the official file of the patent, and a copy shall be promptly given or mailed to the owner of record of the patent and to the third-party requester, if any.

"(c) FINAL DECISION.—A determination by the Commissioner pursuant to subsection (a) shall be final and non-appealable. Upon a determination that no substantial new question of patentability has been raised, the Commissioner may refund a portion of the reexamination fee required under section 302 of this title.".

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

"§ 304. Reexamination order by Commissioner

"If, in a determination made under the provisions of section 303(a) of this title, the Commissioner finds that a

substantial new question of patentability affecting a claim of a patent is raised, the determination shall include an order for reexamination of the patent for resolution of the question. The order may be accompanied by the initial action of the Patent Office on the merits of the reexamination conducted in accordance with section 305 of this title.".

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

"§ 305. Conduct of reexamination proceedings

"(a) IN GENERAL.—Subject to subsection (b), reexamination shall be conducted according to the procedures established for initial examination under the provisions of sections 132 and 133 of this title. In any reexamination proceeding under this chapter, the patent owner shall be permitted to propose any amendment to the patent and a new claim or claims, except that no proposed amended or new claim enlarging the scope of the claims of the patent shall be permitted.

"(b) RESPONSE.—(1) This subsection shall apply to any reexamination proceeding in which the order for reexamination is based upon a request by a third-party requester.

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

"(3) If the patent owner files a response to any Patent Office action on the merits, the third-party requester shall have 1 opportunity to file written comments within a reasonable period not less than 1 month after the date of service of the patent owner's response. Written comments provided under this paragraph shall be limited to issues covered by the Patent Office action or the patent owner's response.

"(c) SPECIAL DISPATCH.—Unless otherwise provided by the Commissioner for good cause, all reexamination proceedings under this section, including any appeal to the Board of Patent Appeals and Interferences, shall be conducted with special dispatch within the Office.".

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

"§ 306. Appeal

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

"(1) may appeal under the provisions of section 134 of this title, and may appeal under the provisions of sections 141 through 144 of this title, with respect to any decision adverse to the patentability of any

original or proposed amended or new claim of the patent, and

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

"(b) THIRD-PARTY REQUESTER.—A third-party requester may—

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

"(2) be a party to any appeal taken by the patent owner, subject to subsection (c) of this section.

"(c) PARTICIPATION AS PARTY.—

"(1) IN GENERAL.—A third-party requester whose request for a reexamination results in an order under section 304 of this title is estopped from asserting at a later time, in any civil action arising in whole or in part under section 1338 of title 28, the invalidity of any claim determined to be patentable on appeal on any ground which the third-party requester raised or could have raised during the reexamination proceedings. This subsection does not pre-

vent the assertion of invalidity based on newly discovered prior art unavailable to the third-party requester and the Patent Office at the time of the reexamination proceedings.

"(2) ELECTION TO PARTICIPATE.—A third-party requester is deemed not to have participated as a party to an appeal by the patent owner unless, not later than 20 days after the patent owner has filed notice of appeal, the third-party requester files notice with the Commissioner electing to participate.".

(f) REEXAMINATION PROHIBITED.—

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

"§ 308. Reexamination prohibited

"(a) ORDER FOR REEXAMINATION.—Notwithstanding any provision of this chapter, once an order for reexamination of a patent has been issued under section 304 of this title, neither the patent owner nor the third-party requester, if any, nor privies of either, may file a subsequent request for reexamination of the patent until a reexamination certificate is issued and published under section 307 of this title, unless authorized by the Commissioner.

"(b) FINAL DECISION.—Once a final decision has been entered against a party in a civil action arising in whole

or in part under section 1338 of title 28 that the party has not sustained its burden of proving the invalidity of any patent claim in suit or if a final decision in a reexamination proceeding instituted by a third-party requester is favorable to a patentability of any original or proposed amended as new claim of the patent and such decision is not appealed by the third-party requester under section 306(b), then neither that party nor its privies may thereafter request reexamination of any such patent claim on the basis of issues which that party or its privies raised or could have raised in such civil action or reexamination proceeding, and a reexamination requested by that party or its privies on the basis of such issues may not thereafter be maintained by the Office, notwithstanding any other provision of this chapter. This subsection does not prevent the assertion of invalidity based on newly discovered prior art unavailable to the third-party requester and the Patent Office at the time of the reexamination proceedings.".

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 30 of title 35, United States Code, is amended by adding at the end the following:

"308. Reexamination prohibited.".

SEC. 504. CONFORMING AMENDMENTS.

(a) PATENT FEES; PATENT SEARCH SYSTEMS.—Section 41(a)(7) of title 35, United States Code, is amended to read as follows:

"(7) On filing each petition for the revival of an unintentionally abandoned application for a patent, for the unintentionally delayed payment of the fee for issuing each patent, or for an unintentionally delayed response by the patent owner in a reexamination proceeding, $1,250, unless the petition is filed under sections 133 or 151 of this title, in which case the fee shall be $110.".

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

"§ 134. Appeal to the Board of Patent Appeals and Interferences

"(a) PATENT APPLICANT.—An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.

"(b) PATENT OWNER.—A patent owner in a reexamination proceeding may appeal from the final rejection of any claim by the primary examiner to the Board of Patent

Appeals and Interferences, having once paid the fee for such appeal.

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

(d) APPEAL TO COURT OF APPEALS FOR THE FEDERAL CIRCUIT.—Section 141 of title 35, United States Code, is amended by amending the first sentence to read as follows: "An applicant, a patent owner, or a third-party requester, dissatisfied with the final decision in an appeal to the Board of Patent Appeals and Interferences under section 134 of this title, may appeal the decision to the United States Court of Appeals for the Federal Circuit.".

(e) PROCEEDINGS ON APPEAL.—Section 143 of title 35, United States Code, is amended by amending the third sentence to read as follows: "In ex parte and reexamination cases, the Commissioner shall submit to the court in writing the grounds for the decision of the Patent Office, addressing all the issues involved in the appeal.".

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

SEC. 505. REPORT TO CONGRESS.

Not later than 5 years after the effective date of this title, the Director shall submit to the Congress a report evaluating whether the reexamination proceedings established under the amendments made by this title are inequitable to any of the parties in interest and, if so, the report shall contain recommendations for changes to the amendments made by this title to remove such inequity.

SEC. 506. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date that is 1 year after the date of the enactment of this Act and shall apply to all reexamination requests filed on or after such date.

TITLE VI—MISCELLANEOUS PATENT PROVISIONS

SEC. 601. PROVISIONAL APPLICATIONS.

(a) ABANDONMENT.—Section 111(b)(5) of title 35, United States Code, is amended to read as follows:

"(5) ABANDONMENT.—Notwithstanding the absence of a claim, upon timely request and as prescribed by the Commissioner, a provisional application may be treated as an application filed under subsection (a). Subject to section 1993(c)(3) of this title, if no such request is made, the provisional application shall be regarded as abandoned 12 months

after the filing date of such application and shall not be subject to revival thereafter.".

(b) TECHNICAL AMENDMENT RELATING TO WEEKENDS AND HOLIDAYS.—Section 119(e) of title 35, United States Code, is amended by adding at the end the following:

"(3) If the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the period of pendency of the provisional application shall be extended to the next succeeding secular or business day.".

(c) EFFECTIVE DATE.—The amendments made by subsection (a) apply to a provisional application filed on or after June 8, 1995.

SEC. 602. INTERNATIONAL APPLICATIONS.

Section 119 of title 35, United States Code, is amended as follows:

(1) In subsection (a), insert "or in a WTO member country" after "or to citizens of the United States,".

(2) At the end of section 119 add the following new subsections:

"(f) Applications for plant breeder's rights filed in a WTO member country (or in a foreign UPOV Contracting Party) shall have the same effect for the purpose of the right

of priority under subsections (a) through (c) of this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents.

"(g) As used in this section—

"(1) the term 'WTO member country' has the same meaning as the term is defined in section 104(b)(2) of this title; and

"(2) the term 'UPOV Contracting Party' means a member of the International Convention for the Protection of New Varieties of Plants.".

SEC. 603. ACCESS TO ELECTRONIC PATENT INFORMATION.

(a) IN GENERAL.—The United States Patent and Trademark Organization shall develop and implement statewide computer networks with remote library sites in requesting rural States such that citizens in those States will have enhanced access to information in their State's patent and trademark depository library.

(b) DEFINITION.—In this section, the term "rural States" means the States that qualified on January 1, 1997, as rural States under section 1501(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 379bb(b)).

SEC. 604. CERTAIN LIMITATIONS ON DAMAGES FOR PATENT INFRINGEMENT NOT APPLICABLE.

Section 287(c) of title 35, United States Code, is amended in paragraph (4) by striking "before the date of enactment of this subsection" and inserting "based on an application the earliest effective filing date of which is prior to September 30, 1996".

SEC. 605. PLANT PATENTS.

(a) TUBER PROPAGATED PLANTS.—Section 161 of title 35, United States Code, is amended by striking "a tuber propagated plant or".

(b) RIGHTS IN PLANT PATENTS.—The text of section 163 of title 35, United States Code, is amended to read as follows: "In the case of a plant patent, the grant to the patentee, such patentee's heirs or assigns, shall have the right to exclude others from asexually reproducing the plant, and from using, offering for sale, or selling the plant so reproduced, or any of its parts, throughout the United States, or from importing the plant so reproduced, or any parts thereof, into the United States.".

(c) EFFECTIVE DATE.—The amendments by subsection (a) shall apply on the date of enactment of this Act. The amendments made by subsection (b) shall apply to any plant patent issued on or after the date of enactment of this Act.

SEC. 606. ELECTRONIC FILING.

Section 22 of title 35, United States Code, is amended by striking "printed or typewritten" and inserting "printed, typewritten, or on an electronic medium".

SEC. 607. STUDY AND REPORT ON BIOLOGICAL DEPOSITS IN SUPPORT OF BIOTECHNOLOGY PATENTS.

(a) IN GENERAL.—No later than 6 months after the date of enactment of this Act, the General Accounting Office, in consultation with the United States Patent Office, shall conduct a study and submit a report to Congress on the potential risks to the United States biotechnology industry relating to biological deposits in support of biotechnology patents.

(b) CONTENTS.—The study conducted under this section shall include—

(1) an examination of the risk of export and the risk of third-party transfer of biological deposits, and the risks posed by the change to 18-month publication requirements;

(2) an analysis of comparative legal and regulatory regimes; and

(3) any related recommendations.

(c) CONSIDERATION OF REPORT.—In drafting regulations affecting biological deposits (including any modification of 37 Code of Federal Regulations 1.801 et seq.), the

1 *United States Patent Office shall consider the recommenda-*
2 *tions of the study conducted under this section.*