

110TH CONGRESS
2^D SESSION

H. R. 6344

IN THE SENATE OF THE UNITED STATES

JUNE 24 (legislative day, JUNE 23), 2008

Received; read twice and referred to the Committee on the Judiciary

AN ACT

To provide emergency authority to delay or toll judicial proceedings in United States district and circuit courts, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Responsive Govern-
3 ment Act of 2008”.

4 **SEC. 2. EMERGENCY AUTHORITY TO DELAY OR TOLL JUDI-
5 CIAL PROCEEDINGS.**

6 (a) IN GENERAL.—Chapter 111 of title 28, United
7 States Code, is amended by adding at the end the fol-
8 lowing:

9 **“§ 1660. Emergency authority to delay or toll judicial
10 deadlines**

11 “(a) TOLLING IN DISTRICT COURTS.—

12 “(1) IN GENERAL.—In the event of a natural
13 disaster or other emergency situation requiring the
14 closure of courts or rendering it impracticable for
15 the United States Government or a class of litigants
16 to comply with deadlines imposed by any Federal or
17 State law or rule that applies in the courts of the
18 United States, the chief judge of a district court
19 that has been affected may exercise emergency au-
20 thority in accordance with this section.

21 “(2) SCOPE OF AUTHORITY.—(A) The chief
22 judge may enter such order or orders as may be ap-
23 propriate to delay, toll, or otherwise grant relief
24 from the time deadlines imposed by otherwise appli-
25 cable laws or rules for such period as may be appro-
26 priate for any class of cases pending or thereafter

1 filed in the district court or bankruptcy court of the
2 district.

3 “(B) Except as provided in subparagraph (C),
4 the authority conferred by this section extends to all
5 laws and rules affecting criminal and juvenile pro-
6 ceedings (including, prearrest, post-arrest, pretrial,
7 trial, and post-trial procedures), civil actions, bank-
8 ruptcy proceedings, and the time for filing and per-
9 fecting an appeal.

10 “(C) The authority conferred by this section
11 does not include the authority to extend—

12 “(i) any statute of limitation for a criminal
13 action; or

14 “(ii) any statute of limitation for a civil ac-
15 tion, if—

16 “(I) the claim arises under the laws of
17 a State; and

18 “(II) extending the limitations period
19 would be inconsistent with the governing
20 State law.

21 “(3) UNAVAILABILITY OF CHIEF JUDGE.—If
22 the chief judge of the district is unavailable, the au-
23 thority conferred by this section may be exercised by
24 the district judge in regular active service who is
25 senior in commission or, if no such judge is avail-

1 able, by the chief judge of the circuit that includes
2 the district.

3 “(4) HABEAS CORPUS UNAFFECTED.—Nothing
4 in this section shall be construed to authorize sus-
5 pension of the writ of habeas corpus.

6 “(b) CRIMINAL CASES.—In exercising the authority
7 under subsection (a) for criminal cases, the court shall
8 consider the ability of the United States Government to
9 investigate, litigate, and process defendants during and
10 after the emergency situation, as well as the ability of
11 criminal defendants as a class to prepare their defenses.

12 “(c) TOLLING IN COURTS OF APPEALS.—

13 “(1) IN GENERAL.—In the event of a natural
14 disaster or other emergency situation requiring the
15 closure of courts or rendering it impracticable for
16 the United States Government or a class of litigants
17 to comply with deadlines imposed by any Federal or
18 State law or rule that applies in the courts of the
19 United States, the chief judge of a court of appeals
20 that has been affected or that includes a district
21 court so affected may exercise emergency authority
22 in accordance with this section.

23 “(2) SCOPE OF AUTHORITY.—The chief judge
24 may enter such order or orders as may be appro-
25 priate to delay, toll, or otherwise grant relief from

1 the time deadlines imposed by otherwise applicable
2 laws or rules for such period as may be appropriate
3 for any class of cases pending in the court of ap-
4 peals.

5 “(3) UNAVAILABILITY OF CHIEF JUDGE.—If
6 the chief judge of the circuit is unavailable, the au-
7 thority conferred by this section may be exercised by
8 the circuit judge in regular active service who is sen-
9 ior in commission.

10 “(4) HABEAS CORPUS UNAFFECTED.—Nothing
11 in this section shall be construed to authorize sus-
12 pension of the writ of habeas corpus.

13 “(d) ISSUANCE OF ORDERS.—The Attorney General
14 or the Attorney General’s designee may request issuance
15 of an order under this section, or the chief judge of a dis-
16 trict or of a circuit may act on his or her own motion.

17 “(e) DURATION OF ORDERS.—An order entered
18 under this section may not toll or extend a time deadline
19 for a period of more than 14 days, except that, if the chief
20 judge (whether of a district or of a circuit) determines that
21 an emergency situation requires additional extensions of
22 the period during which deadlines are tolled or extended,
23 the chief judge may, with the consent of the judicial coun-
24 cil of the circuit, enter additional orders under this section
25 in order to further toll or extend such time deadline.

1 “(f) NOTICE.—A court issuing an order under this
2 section—

3 “(1) shall make all reasonable efforts to pub-
4 licize the order, including announcing the order on
5 the web sites of all affected courts and the web site
6 of the Federal judiciary; and

7 “(2) shall, through the Director of the Adminis-
8 trative Office of the United States Courts, send no-
9 tice of the order, including the reasons for the
10 issuance of the order, to the Committee on the Judi-
11 ciary of the Senate and the Committee on the Judi-
12 ciary of the House of Representatives.

13 “(g) REQUIRED REPORTS.—A court issuing one or
14 more orders under this section relating to an emergency
15 situation shall, not later than 180 days after the date on
16 which the last extension or tolling of a time period made
17 by the order or orders ends, submit a brief report to the
18 Committee on the Judiciary of the Senate, the Committee
19 on the Judiciary of the House of Representatives, and the
20 Judicial Conference of the United States describing the
21 orders, including—

22 “(1) the reasons for issuing the orders;

23 “(2) the duration of the orders;

24 “(3) the effects of the orders on litigants; and

1 “(4) the costs to the judiciary resulting from
2 the orders.

3 “(h) EXCEPTIONS.—The notice under subsection
4 (f)(2) and the report under subsection (g) are not required
5 in the case of an order that tolls or extends a time deadline
6 for a period of less than 14 days.”.

7 (b) CLERICAL AMENDMENT.—The table of sections
8 at the beginning of chapter 111 of title 28, United States
9 Code, is amended by adding at the end the following new
10 item:

 “1660. Emergency authority to delay or toll judicial deadlines.”.

11 **SEC. 3. WAIVER OF PATENT AND TRADEMARK REQUIRE-**
12 **MENTS IN CERTAIN EMERGENCIES.**

13 Section 2 of title 35, United States Code, is amended
14 by adding at the end the following new subsection:

15 “(e) WAIVER OF REQUIREMENTS IN CERTAIN EMER-
16 GENCIES.—The Director may waive statutory provisions
17 governing the filing, processing, renewal, and maintenance
18 of patents, trademark registrations, and applications
19 therefor to the extent the Director considers necessary in
20 order to protect the rights and privileges of applicants and
21 other persons affected by an emergency or a major dis-
22 aster, as those terms are defined in section 102 of the
23 Robert T. Stafford Disaster Relief and Emergency Assist-
24 ance Act (42 U.S.C. 5122). A decision not to exercise, or

1 a failure to exercise, the waiver authority provided by this
2 subsection shall not be subject to judicial review.”.

3 **SEC. 4. AUTHORITY OF DIRECTOR OF PTO TO ACCEPT LATE**
4 **FILINGS.**

5 (a) **AUTHORITY.**—Section 156 of title 35, United
6 States Code, is amended by adding at the end the fol-
7 lowing new subsection:

8 “(i) **DISCRETION TO ACCEPT LATE FILINGS IN CER-**
9 **TAIN CASES OF UNINTENTIONAL DELAY.**—

10 “(1) **IN GENERAL.**—The Director may accept
11 an application under this section that is filed not
12 later than three business days after the expiration of
13 the 60-day period provided in subsection (d)(1) if
14 the applicant files a petition, not later than five
15 business days after the expiration of that 60-day pe-
16 riod, showing, to the satisfaction of the Director,
17 that the delay in filing the application was uninten-
18 tional.

19 “(2) **TREATMENT OF DIRECTOR’S ACTIONS ON**
20 **PETITION.**—If the Director has not made a deter-
21 mination on a petition filed under paragraph (1)
22 within 60 days after the date on which the petition
23 is filed, the petition shall be deemed to be denied. A
24 decision by the Director to exercise or not to exer-
25 cise, or a failure to exercise, the discretion provided

1 by this subsection shall not be subject to judicial re-
2 view.”

3 (b) FEE FOR LATE FILINGS.—

4 (1) IN GENERAL.—In order to effect a patent
5 term extension under section 156(i) of title 35,
6 United States Code, the patent holder shall pay a
7 fee to the United States Treasury in the amount
8 prescribed under paragraph (2).

9 (2) FEE AMOUNT.—

10 (A) FEE AMOUNT.—The patent holder
11 shall pay a fee equal to—

12 (i) \$65,000,000 with respect to any
13 original application for a patent term ex-
14 tension, filed with the United States Pat-
15 ent and Trademark Office before the date
16 of the enactment of this Act, for a drug in-
17 tended for use in humans that is in the
18 anticoagulant class of drugs; or

19 (ii) the amount estimated under sub-
20 paragraph (B) with respect to any other
21 original application for a patent term ex-
22 tension.

23 (B) CALCULATION OF ALTERNATE
24 AMOUNT.—The Director shall estimate the

1 amount referred to in subparagraph (A)(ii) as
2 the amount equal to the sum of—

3 (i) any net increase in direct spending
4 arising from the extension of the patent
5 term (including direct spending of the
6 United States Patent and Trademark Of-
7 fice and any other department or agency of
8 the Federal Government);

9 (ii) any net decrease in revenues aris-
10 ing from such patent term extension; and

11 (iii) any indirect reduction in revenues
12 associated with payment of the fee under
13 this subsection.

14 The Director, in estimating the amount under
15 this subparagraph, shall consult with the Direc-
16 tor of the Office of Management and Budget,
17 the Secretary of the Treasury, and either the
18 Secretary of Health and Human Services or (in
19 the case of a drug product subject to the Act
20 commonly referred to as the “Virus-Serum-
21 Toxin Act”; 21 U.S.C. 151-158) the Secretary
22 of Agriculture.

23 (3) NOTICE OF FEE.—The Director shall in-
24 form the patent holder of the fee determined under
25 paragraph (2) at the time the Director provides no-

1 tice to the patent holder of the period of extension
2 of the patent term that the patent holder may effect
3 under this subsection.

4 (4) ACCEPTANCE REQUIRED.—Unless, within
5 15 days after the Director provides notice to the
6 patent holder under paragraph (3), the patent hold-
7 er accepts the patent term extension in writing to
8 the Director, the patent term extension is rescinded
9 and no fees shall be due under this subsection by
10 reason of the petition under section 156(i)(1) of title
11 35, United States Code, pursuant to which the Di-
12 rector provided the notice.

13 (5) PAYMENT OF FEE.—The extension of a pat-
14 ent term of which notice is provided under para-
15 graph (3) shall not become effective unless the pat-
16 ent holder pays the fee required under paragraph
17 (2) not later than 60 days after the date on which
18 the notice is provided.

19 (6) FEE PAYMENT NOT AVAILABLE FOR OBLI-
20 GATION.—Fees received under this subsection are
21 not available for obligation.

22 (7) DIRECTOR DEFINED.—Except as otherwise
23 provided, in this subsection, the term “Director”
24 means the Under Secretary of Commerce for Intel-

1 lectual Property and Director of the United States
2 Patent and Trademark Office.

3 (c) APPLICABILITY.—

4 (1) IN GENERAL.—This section and the amend-
5 ments made by this section shall apply to any appli-
6 cation—

7 (A) that is made on or after the date of
8 the enactment of this Act; or

9 (B) that, on such date of enactment, is
10 pending before the Director or as to which a de-
11 cision of the Director is eligible for judicial re-
12 view.

13 (2) TREATMENT OF CERTAIN APPLICATIONS.—

14 In the case of any application described in para-
15 graph (1)(B), the 5-day period prescribed in section
16 156(i)(1) of title 35, United States Code, as added
17 by subsection (a) of this section, shall be deemed to
18 begin on the date of the enactment of this Act.

Passed the House of Representatives June 23, 2008.

Attest:

LORRAINE C. MILLER,

Clerk.