

110TH CONGRESS
2D SESSION

S. 3295

To amend title 35, United States Code, and the Trademark Act of 1946 to provide that the Secretary of Commerce, in consultation with the Director of the United States Patent and Trademark Office, shall appoint administrative patent judges and administrative trademark judges, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 21 (legislative day, JULY 17), 2008

Mr. LEAHY (for himself and Mr. SPECTER) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 35, United States Code, and the Trademark Act of 1946 to provide that the Secretary of Commerce, in consultation with the Director of the United States Patent and Trademark Office, shall appoint administrative patent judges and administrative trademark judges, 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. APPOINTMENT OF ADMINISTRATIVE PATENT**
2 **JUDGES AND ADMINISTRATIVE TRADEMARK**
3 **JUDGES.**

4 (a) ADMINISTRATIVE PATENT JUDGES.—Section 6 of
5 title 35, United States Code, is amended—

6 (1) in subsection (a)—

7 (A) in the second sentence, by striking
8 “Deputy Commissioner” and inserting “Deputy
9 Director”; and

10 (B) in the last sentence, by striking “Di-
11 rector” and inserting “Secretary of Commerce,
12 in consultation with the Director”; and

13 (C) by adding at the end the following:

14 “(c) AUTHORITY OF THE SECRETARY.—The Sec-
15 retary of Commerce may, in his or her discretion, deem
16 the appointment of an administrative patent judge who,
17 before the date of the enactment of this subsection, held
18 office pursuant to an appointment by the Director to take
19 effect on the date on which the Director initially appointed
20 the administrative patent judge.

21 “(d) DEFENSE TO CHALLENGE OF APPOINTMENT.—
22 It shall be a defense to a challenge to the appointment
23 of an administrative patent judge on the basis of the
24 judge’s having been originally appointed by the Director
25 that the administrative patent judge so appointed was act-
26 ing as a de facto officer.”.

1 (b) ADMINISTRATIVE TRADEMARK JUDGES.—Section
2 17 of the Act entitled “An Act to provide for the registra-
3 tion and protection of trademarks used in commerce, to
4 carry out the provisions of certain international conven-
5 tions, and for other purposes”, approved July 5, 1946
6 (commonly referred to as the “Trademark Act of 1946”;
7 15 U.S.C. 1067), is amended—

8 (1) in subsection (b)—

9 (A) by inserting “Deputy Director of the
10 United States Patent and Trademark Office”,
11 after “Director,”; and

12 (B) by striking “appointed by the Direc-
13 tor” and inserting “appointed by the Secretary
14 of Commerce, in consultation with the Direc-
15 tor”; and

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

17 “(c) AUTHORITY OF THE SECRETARY.—The Sec-
18 retary of Commerce may, in his or her discretion, deem
19 the appointment of an administrative trademark judge
20 who, before the date of the enactment of this subsection,
21 held office pursuant to an appointment by the Director
22 to take effect on the date on which the Director initially
23 appointed the administrative trademark judge.

24 “(d) DEFENSE TO CHALLENGE OF APPOINTMENT.—
25 It shall be a defense to a challenge to the appointment

1 of an administrative trademark judge on the basis of the
2 judge's having been originally appointed by the Director
3 that the administrative trademark judge so appointed was
4 acting as a de facto officer.”.

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