

116TH CONGRESS
2D SESSION

S. 3449

To amend the Trademark Act of 1946 to provide for third-party submission of evidence relating to a trademark application, to establish expungement and ex parte proceedings relating to the validity of marks, to provide for a rebuttal presumption of irreparable harm in certain proceedings, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 11, 2020

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

A BILL

To amend the Trademark Act of 1946 to provide for third-party submission of evidence relating to a trademark application, to establish expungement and ex parte proceedings relating to the validity of marks, to provide for a rebuttal presumption of irreparable harm in certain proceedings, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Trademark Modernization Act of 2020” or the “TM Act
6 of 2020”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Providing for third-party submission of evidence during examination.
- Sec. 4. Providing for flexible response periods.
- Sec. 5. Expungement; ex parte reexamination.
- Sec. 6. Rebuttable presumption of irreparable harm.
- Sec. 7. Report on decluttering initiatives.

3 **SEC. 2. DEFINITIONS.**

4 In this Act:

5 (1) DIRECTOR.—The term “Director” means
 6 the Under Secretary of Commerce for Intellectual
 7 Property and Director of the United States Patent
 8 and Trademark Office.

9 (2) TRADEMARK ACT OF 1946.—The term
 10 “Trademark Act of 1946” means the Act entitled
 11 “An Act to provide for the registration and protec-
 12 tion of trademarks used in commerce, to carry out
 13 the provisions of certain international conventions,
 14 and for other purposes”, approved July 5, 1946
 15 (commonly known as the “Trademark Act of 1946”
 16 or the “Lanham Act”; 15 U.S.C. 1051 et seq.).

17 **SEC. 3. PROVIDING FOR THIRD-PARTY SUBMISSION OF EVI-**
 18 **DENCE DURING EXAMINATION.**

19 (a) AMENDMENT.—Section 1 of the Trademark Act
 20 of 1946 (15 U.S.C. 1051) is amended by adding at the
 21 end the following new subsection:

1 “(f) A third party may submit for consideration for
2 inclusion in the record of an application evidence relevant
3 to a ground for refusal of registration. The third-party
4 submission shall identify the ground for refusal and in-
5 clude a concise description of each piece of evidence sub-
6 mitted in support of each identified ground for refusal.
7 Within 2 months after the date on which the submission
8 is filed, the Director shall determine whether the evidence
9 should be included in the record of the application. The
10 Director shall establish by regulation appropriate proce-
11 dures for the consideration of evidence submitted by a
12 third party under this subsection and may prescribe a fee
13 to accompany the submission. If the Director determines
14 that the third-party evidence should be included in the
15 record of the application, only the evidence and the ground
16 for refusal to which the evidence relates may be so in-
17 cluded. Any determination by the Director whether or not
18 to include evidence in the record of an application shall
19 be final and non-reviewable, and shall not prejudice any
20 party’s right to raise any issue and rely on any evidence
21 in any other proceeding.”.

22 (b) DEADLINE FOR PROCEDURES.—Not later than 1
23 year after the date of enactment of this Act, the Director
24 shall establish the appropriate procedures described in sec-

1 tion 1(f) of the Trademark Act of 1946, as added by sub-
2 section (a).

3 (c) EFFECTIVE DATE.—The amendment made by
4 subsection (a) shall take effect on the date that is 1 year
5 after the date of enactment of this Act.

6 **SEC. 4. PROVIDING FOR FLEXIBLE RESPONSE PERIODS.**

7 Section 12(b) of the Trademark Act of 1946 (15
8 U.S.C. 1062(b)) is amended to read as follows:

9 “(b)(1) If the applicant is found not entitled to reg-
10 istration, the examiner shall notify the applicant thereof
11 and of the reasons therefor. The applicant may reply or
12 amend the application, which shall then be reexamined.
13 This procedure may be repeated until the examiner finally
14 refuses registration of the mark or the application is aban-
15 doned as described in paragraph (2).

16 “(2) After notification under paragraph (1), the ap-
17 plicant shall have a period of 6 months in which to reply
18 or amend the application, or such shorter time that is not
19 less than 60 days, as prescribed by the Director by regula-
20 tion. If the applicant fails to reply or amend or appeal
21 within the relevant time period, including any extension
22 under paragraph (3), the application shall be deemed to
23 have been abandoned, unless it can be shown to the satis-
24 faction of the Director that the delay in responding was
25 unintentional, in which case the application may be revived

1 and such time may be extended. The Director may pre-
2 scribe a fee to accompany any request to revive.

3 “(3) The Director shall provide, by regulation, for ex-
4 tensions of time to respond to the examiner for any time
5 period under paragraph (2) that is less than 6 months.
6 The Director must allow the applicant to obtain extensions
7 of time to reply or amend aggregating 6 months from the
8 date of notification under paragraph (1) when the appli-
9 cant so requests. However, the Director may set by regula-
10 tion the time for individual periods of extension, and pre-
11 scribe a fee, by regulation, for any extension request. Any
12 request for extension must be filed on or before the date
13 on which a reply or amendment is due under paragraph
14 (1).”.

15 **SEC. 5. EXPUNGEMENT; EX PARTE REEXAMINATION.**

16 (a) EX PARTE EXPUNGEMENT.—The Trademark Act
17 of 1946 is amended by inserting after section 16 (15
18 U.S.C. 1066) the following new section:

19 **“SEC. 16A. EX PARTE EXPUNGEMENT.**

20 “(a) PETITION.—Notwithstanding sections 7(b) and
21 22, and subsections (a) and (b) of section 33, any person
22 may file a petition to expunge a registration on the basis
23 that the mark has never been used in commerce on or
24 in connection with some or all of the goods or services
25 recited in the registration.

1 “(b) CONTENTS OF PETITION.—The petition, to-
2 gether with any supporting documents, shall—

3 “(1) identify each registration at issue;

4 “(2) identify each good or service recited in the
5 registration for which it is alleged that the mark has
6 never been used in commerce;

7 “(3) include a verified statement that sets forth
8 the elements of the reasonable investigation the peti-
9 tioner conducted to determine that the mark has
10 never been used in commerce on or in connection
11 with the goods and services identified in the petition,
12 and any additional facts that support the allegation
13 that the mark has never been used in commerce on
14 or in connection with the identified goods and serv-
15 ices;

16 “(4) include any supporting evidence on which
17 the petitioner relies; and

18 “(5) be accompanied by the fee prescribed by
19 the Director.

20 “(c) INITIAL DETERMINATION; INSTITUTION.—

21 “(1) PRIMA FACIE CASE, INSTITUTION, AND NO-
22 TIFICATION.—The Director shall determine whether
23 the petition sets forth a prima facie case of the mark
24 having never been used in commerce on or in con-
25 nection with each good or service identified in the

1 petition, institute the ex parte expungement pro-
2 ceeding for each good or service for which the Direc-
3 tor determines that the prima facie case has been
4 set forth, and notify the registrant and petitioner of
5 the determination of whether to institute the pro-
6 ceeding. If the Director determines that an expunge-
7 ment proceeding should be instituted based on a pe-
8 tition, the Director shall transmit or make available
9 that petition and any supporting evidence from the
10 petitioner to the registrant as part of the institution
11 notice.

12 “(2) REASONABLE INVESTIGATION GUID-
13 ANCE.—The Director shall promulgate regulations
14 regarding what constitutes a reasonable investigation
15 under subsection (b)(3) and the general types of evi-
16 dence that could constitute a sufficient showing of a
17 mark having never been used in commerce under
18 subsection (b)(4), but the Director shall retain dis-
19 cretion to determine whether a prima facie case is
20 set out in a particular case.

21 “(3) DETERMINATION BY DIRECTOR.—Any de-
22 termination by the Director whether or not to insti-
23 tute a proceeding under this section shall be final
24 and non-reviewable, and shall not prejudice any par-

1 ty’s right to raise any issue and rely on any evidence
2 in any other proceeding.

3 “(d) EX PARTE EXPUNGEMENT PROCEDURES.—The
4 procedures for ex parte expungement shall be the same
5 as those for examination under section 12(b), except that
6 the Director shall promulgate regulations establishing and
7 governing a proceeding under this section, which may in-
8 clude setting response and extension times particular to
9 this proceeding, which, notwithstanding section 12(b)(3)
10 need not be extendable to 6 months, setting limits gov-
11 erning the timing and number of petitions filed for a par-
12 ticular registration or by a particular petitioner or real
13 parties in interest, and defining the relation of a pro-
14 ceeding under this section to other proceedings concerning
15 the mark.

16 “(e) REGISTRANT’S EVIDENCE OF USE.—A reg-
17 istrant’s documentary evidence of use must be consistent
18 with when ‘a mark shall be deemed to be in use in com-
19 merce’ as defined in section 45, but shall not be limited
20 in form to that of specimens as provided in section 1(a).

21 “(f) EXCUSABLE NONUSE.—During an expungement
22 proceeding, for a mark registered under section 44(e) or
23 an extension of protection under section 66, the registrant
24 may offer evidence showing that any nonuse is due to spe-
25 cial circumstances that excuse such nonuse. In such a

1 case, the examiner shall determine whether the facts dem-
2 onstrate excusable nonuse and shall not find that the reg-
3 istration should be cancelled under subsection (g) for any
4 good or service for which excusable nonuse is dem-
5 onstrated.

6 “(g) EXAMINER’S DECISION; ORDER TO CANCEL.—
7 For each good or service for which it is determined that
8 a mark was never in use in commerce, and for which the
9 provisions of subsection (f) do not apply, the examiner
10 shall find that the registration should be cancelled for each
11 such good or service. A mark may not be found to never
12 have been in use in commerce if there is evidence of use
13 in commerce by the registrant that temporally would have
14 supported registration at the time the application was filed
15 or the relevant allegation of use was made, or after reg-
16 istration, but before the petition to expunge is filed or the
17 Director, on his own initiative, institutes an expungement
18 proceeding in accordance with subsection (h). Unless over-
19 turned on review of the examiner’s decision, the Director
20 shall issue an order cancelling the registration, in whole
21 or in part, after the time for appeal has expired or any
22 appeal proceeding has terminated.

23 “(h) EX PARTE EXPUNGEMENT BY THE DIREC-
24 TOR.—

1 “(1) IN GENERAL.—The Director may, on the
2 Director’s own initiative, institute an ex parte
3 expungement proceeding if the Director discovers in-
4 formation that sets forth a prima facie case of a
5 mark having never been used in commerce on or in
6 connection with any good or service covered by the
7 registration. The Director shall promptly notify the
8 registrant of such determination, at which time the
9 expungement proceeding shall proceed according to
10 the same procedures for expungement established
11 pursuant to subsection (d). If the Director deter-
12 mines, based on the Director’s own initiative, to in-
13 stitute an expungement proceeding, the Director
14 shall transmit or make available the information
15 that formed the basis for that determination as part
16 of the institution notice sent to the registrant.

17 “(2) RULE OF CONSTRUCTION.—Nothing in
18 this subsection may be construed to limit any other
19 authority of the Director.

20 “(i) TIME FOR INSTITUTION.—A petition for ex parte
21 expungement may be filed, or the Director may institute
22 on his own initiative an ex parte expungement proceeding,
23 at any time following the expiration of 3 years after the
24 date of registration.

1 “(j) LIMITATION ON LATER EX PARTE
2 EXPUNGEMENT PROCEEDINGS.—

3 “(1) NO CO-PENDING PROCEEDINGS.—With re-
4 spect to a particular registration, while an ex parte
5 expungement proceeding is pending, no later ex
6 parte expungement proceeding can be instituted with
7 respect to the same goods or services that are the
8 subject of a pending ex parte expungement pro-
9 ceeding.

10 “(2) ESTOPPEL.—With respect to a particular
11 registration, for goods or services previously subject
12 to an instituted expungement proceeding for which,
13 in that proceeding, it was determined that the reg-
14 istrant had used the mark for particular goods or
15 services, as relevant, and the registration was not
16 cancelled as to those goods or services, no further ex
17 parte expungement proceedings may be initiated as
18 to those goods or services, regardless of the identity
19 of the petitioner.

20 “(k) USE IN COMMERCE REQUIREMENT NOT AL-
21 TERED.—Nothing in this section shall affect the require-
22 ment for use in commerce of a mark registered under sec-
23 tion 1(a) or section 23.”.

1 (b) NEW GROUNDS FOR CANCELLATION.—Section 14
2 of the Trademark Act of 1946 (15 U.S.C. 1064) is amend-
3 ed—

4 (1) by striking the colon at the end of para-
5 graph (5) and inserting a period;

6 (2) by inserting after paragraph (5) the fol-
7 lowing:

8 “(6) At any time after the 3-year period fol-
9 lowing the date of registration, if the registered
10 mark has never been used in commerce on or in con-
11 nection with some or all of the goods or services re-
12 cited in the registration.”; and

13 (3) in the flush text following paragraph (6), as
14 added by paragraph (2) of this subsection, by adding
15 at the end the following: “Nothing in paragraph (6)
16 shall be construed to limit the timing applicable to
17 any other ground for cancellation. A registration
18 under sections 44(e) or 66 shall not be cancelled
19 pursuant to paragraph (6) if the registrant dem-
20 onstrates that any nonuse is due to special cir-
21 cumstances that excuse such nonuse.”.

22 (c) EX PARTE REEXAMINATION.—The Trademark
23 Act of 1946, as amended by subsection (a), is further
24 amended by inserting after section 16A the following new
25 section:

1 **“SEC. 16B. EX PARTE REEXAMINATION.**

2 “(a) PETITION FOR REEXAMINATION.—Any person
3 may file a petition to reexamine a registration on the basis
4 that the mark was not in use in commerce on or in connec-
5 tion with some or all of the goods or services recited in
6 the registration on or before the relevant date.

7 “(b) RELEVANT DATE.—In this section, the term
8 ‘relevant date’ means, with respect to an application for
9 the registration of a mark with an initial filing basis of—

10 “(1) section 1(a) and not amended at any point
11 to be filed pursuant to section 1(b), the date on
12 which the application was initially filed; or

13 “(2) section 1(b) or amended at any point to be
14 filed pursuant to section 1(b), the date on which—

15 “(A) an amendment to allege use under
16 section 1(c) was filed; or

17 “(B) the period for filing a statement of
18 use under section 1(d) expired, including all ap-
19 proved extensions thereof.

20 “(c) REQUIREMENTS FOR THE PETITION.—The peti-
21 tion, together with any supporting documents, shall—

22 “(1) identify each registration at issue;

23 “(2) identify each good and service recited in
24 the registration for which it is alleged that the mark
25 was not used in commerce on or in connection with
26 on or before the relevant date;

1 “(3) include a verified statement that sets forth
2 the elements of the reasonable investigation the peti-
3 tioner conducted to determine that the mark was not
4 used in commerce on or in connection with the goods
5 and services identified in the petition on or before
6 the relevant date, and any additional facts that sup-
7 port the allegation that the mark was not in use in
8 commerce on or before the relevant date on or in
9 connection with the identified goods and services;

10 “(4) include supporting evidence on which the
11 petitioner relies; and

12 “(5) be accompanied by the fee prescribed by
13 the Director.

14 “(d) INITIAL DETERMINATION; INSTITUTION.—

15 “(1) PRIMA FACIE CASE, INSTITUTION, AND NO-
16 TIFICATION.—The Director shall determine whether
17 the petition sets forth a prima facie case of the mark
18 having not been used in commerce on or in connec-
19 tion with each good or service identified in the peti-
20 tion on or before the relevant date, institute the re-
21 examination proceeding for each good or service for
22 which the Director determines the prima facie case
23 has been set forth, and notify the registrant and the
24 petitioner of the determination whether or not to in-
25 stitute the proceeding. If the Director determines

1 that an ex parte reexamination proceeding should be
2 instituted based on a petition, the Director shall
3 transmit or make available that petition and any
4 supporting evidence from the petitioner to the reg-
5 istrant as part of the institution notice.

6 “(2) REASONABLE INVESTIGATION GUID-
7 ANCE.—The Director shall promulgate regulations
8 regarding what constitutes a reasonable investigation
9 under subsection (c)(3) and the general types of evi-
10 dence that could constitute a sufficient showing that
11 the mark was not in use in commerce on or before
12 the relevant date, but the Director shall retain dis-
13 cretion to determine whether a prima facie case is
14 set out in a particular case.

15 “(3) DETERMINATION BY DIRECTOR.—Any de-
16 termination by the Director whether or not to insti-
17 tute a reexamination proceeding under this section
18 shall be final and non-reviewable, and shall not prej-
19 udice any party’s right to raise any issue and rely
20 on any evidence in any other proceeding.

21 “(e) REEXAMINATION PROCEDURES.—The proce-
22 dures for reexamination shall be the same as those estab-
23 lished under section 12(b) except that the Director shall
24 promulgate regulations establishing and governing a pro-
25 ceeding under this section, which may include setting re-

1 sponse and extension times particular to this proceeding,
2 which, notwithstanding section 12(b)(3) need not be ex-
3 tendable to 6 months, setting limits governing the timing
4 and number of petitions filed for a particular registration
5 or by a particular petitioner or real parties in interest,
6 and defining the relation of a reexamination proceeding
7 under this section to other proceedings concerning the
8 mark.

9 “(f) REGISTRANT’S EVIDENCE OF USE.—A reg-
10 istrant’s documentary evidence of use must be consistent
11 with when ‘a mark shall be deemed to be in use in com-
12 merce’ as defined in section 45, but shall not be limited
13 in form to that of specimens as provided in section 1(a).

14 “(g) EXAMINER’S DECISION; ORDER TO CANCEL.—
15 For each good or service for which it is determined that
16 the registration should not have issued because the mark
17 was not in use in commerce on or before the relevant date,
18 the examiner shall find that the registration should be
19 cancelled for each such good or service. Unless overturned
20 on review of the examiner’s decision, the Director shall
21 issue an order cancelling the registration, in whole or in
22 part, after the time for appeal has expired or any appeal
23 proceeding has terminated.

24 “(h) REEXAMINATION BY DIRECTOR.—

1 “(1) IN GENERAL.—The Director may, on the
2 Director’s own initiative, institute an ex parte reex-
3 amination proceeding if the Director discovers infor-
4 mation that sets forth a prima facie case of the
5 mark having not been used in commerce on or in
6 connection with some or all of the goods or services
7 covered by the registration on or before the relevant
8 date. The Director shall promptly notify the reg-
9 istrant of such determination, at which time reexam-
10 ination shall proceed according to the same proce-
11 dures established pursuant to subsection (e). If the
12 Director determines, based on the Director’s own
13 initiative, to institute an ex parte reexamination pro-
14 ceeding, the Director shall transmit or make avail-
15 able the information that formed the basis for that
16 determination as part of the institution notice.

17 “(2) RULE OF CONSTRUCTION.—Nothing in
18 this subsection may be construed to limit any other
19 authority of the Director.

20 “(i) TIME FOR INSTITUTION.—A petition for ex parte
21 reexamination may be filed, or the Director may institute
22 on his own initiative an ex parte reexamination pro-
23 ceeding, at any time not later than 5 years after the date
24 of registration of a mark registered based on use in com-
25 merce.

1 “(j) LIMITATION ON LATER EX PARTE REEXAMINA-
2 TION PROCEEDINGS.—

3 “(1) NO CO-PENDING PROCEEDINGS.—With re-
4 spect to a particular registration, while an ex parte
5 reexamination proceeding is pending, no later ex
6 parte reexamination proceeding can be instituted
7 with respect to the same goods or services that are
8 the subject of a pending ex parte reexamination pro-
9 ceeding.

10 “(2) ESTOPPEL.—With respect to a particular
11 registration, for any goods or services previously
12 subject to an instituted ex parte reexamination pro-
13 ceeding for which, in that proceeding, it was deter-
14 mined that the registrant had used the mark for
15 particular goods or services before the relevant date,
16 and the registration was not cancelled as to those
17 goods or services, no further ex parte reexamination
18 proceedings may be initiated as to those goods or
19 services, regardless of the identity of the petitioner.

20 “(k) SUPPLEMENTAL REGISTER.—The provisions of
21 subsection (b) apply, as appropriate, to registrations
22 under section 23. Nothing in this section shall be con-
23 strued to limit the timing of a cancellation action under
24 section 24 of the Act.”.

25 (d) APPEAL.—

1 (1) APPEAL TO TRADEMARK TRIAL AND APPEAL
2 BOARD.—Section 20 of the Trademark Act of 1946
3 (15 U.S.C. 1070) is amended by inserting “, or from
4 any order to cancel a registration, in whole or in
5 part, arising from an ex parte expungement pro-
6 ceeding or ex parte reexamination proceeding,” after
7 “registration of marks”.

8 (2) APPEAL TO COURTS.—

9 (A) EXPUNGEMENT OR EX PARTE REEX-
10 AMINATION.—Section 21(a)(1) of the Trade-
11 mark Act of 1946 (15 U.S.C. 1071(a)(1)) is
12 amended by striking “or an applicant for re-
13 newal” and inserting the following: “an appli-
14 cant for renewal, or a registrant subject to an
15 order to cancel arising from an expungement or
16 ex parte reexamination proceeding”.

17 (B) EXCEPTION.—Section 21(b)(1) of the
18 Trademark Act of 1946 (15 U.S.C. 1071(b)(1))
19 is amended by inserting “, other than a reg-
20 istrant subject to an expungement proceeding
21 or ex parte reexamination” after “authorized by
22 subsection (a) of this section”.

23 (e) TECHNICAL AND CONFORMING AMENDMENTS.—
24 The Trademark Act of 1946 is amended—

1 (1) in section 15 (15 U.S.C. 1065), in the mat-
2 ter preceding paragraph (1), by striking “para-
3 graphs (3) and (5)” and inserting “paragraphs (3),
4 (5), and (6)”; and

5 (2) in section 26 (15 U.S.C. 1094), by adding
6 at the end the following: “Registrations on the sup-
7 plemental register are subject to ex parte expunge-
8 ment and ex parte reexamination under sections 16A
9 and 16B, respectively.”.

10 (f) DEADLINE FOR PROCEDURES.—Not later than 1
11 year after the date of enactment of this Act, the Director
12 shall issue regulations to carry out sections 16A and 16B
13 of the Trademark Act of 1946, as added by subsections
14 (a) and (b), respectively.

15 (g) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect upon the expiration of the
17 1-year period beginning on the date of enactment of this
18 Act, and shall apply to any mark registered before, on,
19 or after that effective date.

20 **SEC. 6. REBUTTABLE PRESUMPTION OF IRREPARABLE**
21 **HARM.**

22 (a) AMENDMENT.—Section 34(a) of the Trademark
23 Act of 1946 (15 U.S.C. 1116(a)) is amended by inserting
24 after the first sentence the following new sentence: “A
25 plaintiff seeking any such injunction shall be entitled to

1 a rebuttable presumption of irreparable harm upon a find-
2 ing of a violation identified in this subsection in the case
3 of a motion for a permanent injunction or upon a finding
4 of likelihood of success on the merits for a violation identi-
5 fied in this subsection in the case of a motion for a pre-
6 liminary injunction or temporary restraining order.”.

7 (b) **RULE OF CONSTRUCTION.**—The amendment
8 made by subsection (a) shall not be construed to mean
9 that a plaintiff seeking an injunction was not entitled to
10 a presumption of irreparable harm before the date of the
11 enactment of this Act.

12 **SEC. 7. REPORT ON DECLUTTERING INITIATIVES.**

13 (a) **STUDY.**—The Comptroller General of the United
14 States shall consult with the Director to conduct a study
15 on the efforts of the Director to address inaccurate and
16 false claims of use in trademark applications and registra-
17 tions. Inaccurate and false claims of use include any dec-
18 laration of use by a trademark applicant or registrant that
19 cannot be supported by use in commerce, as defined in
20 section 45 of the Trademark Act of 1946 (15 U.S.C.
21 1127), or the regulations relevant to the definition of
22 specimens under section 1 of the Trademark Act of 1946
23 (15 U.S.C. 1051), as applicable. The study shall cover the
24 period from 18 months after the date of enactment of this
25 Act to 30 months after the date of enactment of this Act.

1 (b) CONTENTS OF STUDY.—In conducting the study
2 under subsection (a), the Comptroller General shall assess
3 the following:

4 (1) With respect to sections 16A and 16B of
5 the Trademark Act of 1946, as added by section 5—

6 (A) the number of petitions filed under
7 each such section that relate to proceedings
8 that were not instituted, or were instituted and
9 have reached their conclusion;

10 (B) the number of completed proceedings
11 instituted under each such section, including
12 any proceedings instituted by the Director's
13 own initiative;

14 (C) the average time taken to resolve pro-
15 ceedings instituted under each such section, in-
16 cluding the average time between—

17 (i) the filing of a petition under each
18 such section and an examiner's final deci-
19 sion under section 16A(g) and 16B(g), or
20 the last decision issued by the examiner if
21 the registrant failed to respond to the lat-
22 est-in-time decision by the examiner; and

23 (ii) the institution of a proceeding
24 under each such section, including any pro-
25 ceedings instituted by the Director's own

1 initiative, and an examiner's final decision
2 under section 16A(g) and 16B(g), or the
3 last decision issued by the examiner if the
4 registrant fails to respond to the latest-in-
5 time decision by the examiner;

6 (D) the number of appeals of decisions of
7 examiners for each such proceeding; and

8 (E) an accounting of the final outcome of
9 each such proceeding instituted by identifying
10 the number of goods or services for which such
11 proceedings were instituted, and the number of
12 goods or services for which registrations were
13 cancelled pursuant to such proceedings.

14 (2) With respect to section 1(f) of the Trade-
15 mark Act of 1946, as added by section 3—

16 (A) the number of third-party submissions
17 filed under such section for which the third-
18 party asserts in the submission that the mark
19 has not been used in commerce;

20 (B) of those applications identified in sub-
21 paragraph (A) above, the number of applica-
22 tions in which the third-party submission evi-
23 dence is included in the application; and

1 (C) of those applications identified in sub-
2 paragraph (B) above, the number of applica-
3 tions—

4 (i) refused registration based on an
5 assertion by the examiner that the mark
6 has not been used in commerce; and

7 (ii) for which the examiner requested
8 additional information from the applicant
9 related to claims of use.

10 (3) The benefit of—

11 (A) the proceedings under sections 16A
12 and 16B of the Trademark Act of 1946, as
13 added by section 5, in addressing inaccurate
14 and false claims use claims in trademark reg-
15 istrations; and

16 (B) any additional programs conducted by
17 the Director designed to address inaccurate and
18 false claims use claims in trademark applica-
19 tions and registrations, including the post-reg-
20 istration use audit, as implemented at the date
21 of enactment of this Act under sections
22 2.161(h) and 7.37(h) of title 37, Code of Fed-
23 eral Regulations.

24 (c) REPORT TO CONGRESS.—Not later than 3 years
25 after the date of enactment of this Act, the Comptroller

1 General of the United States shall submit to the Com-
2 mittee on the Judiciary of the House of Representatives
3 and the Committee on the Judiciary of the Senate a re-
4 port—

5 (1) on the results of the study conducted under
6 this section; and

7 (2) that includes any recommendations for any
8 changes to laws and regulations that will improve
9 the integrity of the trademark register to reduce in-
10 accurate and false claims of use based on the results
11 of such study.

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