

that a patent or printed publication was previously cited by or to the Office or considered by the Office.”.

(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to any determination of the Director of the United States Patent and Trademark Office that is made under section 303(a) or 312(a) of title 35, United States Code, on or after the date of the enactment of this Act.

SEC. 6. APPEALS IN INTER PARTES REEXAMINATION PROCEEDINGS.

(a) **APPEALS BY THIRD-PARTY REQUESTER IN PROCEEDINGS.**—Section 315(b) of title 35, United States Code, is amended to read as follows:

“(b) **THIRD-PARTY REQUESTER.**—A third-party requester—

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

“(2) may, subject to subsection (c), be a party to any appeal taken by the patent owner under the provisions of section 134 or sections 141 through 144.”.

(b) **APPEAL TO BOARD OF PATENT APPEALS AND INTERFERENCES.**—Section 134(c) of title 35, United States Code, is amended by striking the last sentence.

(c) **APPEAL TO COURT OF APPEALS FOR THE FEDERAL CIRCUIT.**—Section 141 of title 35, United States Code, is amended in the third sentence by inserting “, or a third-party requester in an inter partes reexamination proceeding, who is” after “patent owner”.

(d) **EFFECTIVE DATE.**—The amendments made by this section apply with respect to any reexamination proceeding commenced on or after the date of the enactment of this Act.

The amendment (No. 4115) was agreed to, as follows:

Amend the title so as to read: “A bill to authorize appropriations for the United States Patent and Trademark Office for fiscal years 2003 through 2008, and for other purposes.”.

The bill (H.R. 2047), as amended, was read the third time and passed.

AUTHORIZING APPROPRIATIONS FOR THE U.S. PATENT AND TRADEMARK OFFICE FOR FISCAL YEARS 2002 THROUGH 2007

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to Calendar No. 426, S. 1754.

The PRESIDING OFFICER. The clerk will state the bill by title.

The legislative clerk read as follows:

A bill (S. 1754) to authorize appropriations for the United States Patent and Trademark Office for fiscal years 2002 through 2007, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which was reported from the Committee on the Judiciary with an amendment in the nature of a substitute, and an amendment to the title.

[Strike the part in black brackets and insert in lieu thereof the part printed in italic.]

S. 1754

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE.

[This Act may be cited as the “Patent and Trademark Office Authorization Act of 2002”.

[SEC. 2. AUTHORIZATION OF AMOUNTS AVAILABLE TO THE PATENT AND TRADEMARK OFFICE.

[(a) **IN GENERAL.**—There are authorized to be appropriated to the United States Patent and Trademark Office for salaries and necessary expenses for each of the fiscal years 2002 through 2007 an amount equal to the fees estimated by the Secretary of Commerce to be collected in each such fiscal year, respectively, under—

[(1) title 35, United States Code; and

[(2) the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”, approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the Trademark Act of 1946).

[(b) **ESTIMATES.**—Not later than February 15, of each fiscal year, the Undersecretary of Commerce for Intellectual Property and the Director of the Patent and Trademark Office (in this Act referred to as the Director) shall submit an estimate of all fees referred to under subsection (a) to be collected in the next fiscal year to the chairman and ranking member of—

[(1) the Committees on Appropriations and Judiciary of the Senate; and

[(2) the Committees on Appropriations and Judiciary of the House of Representatives.

[SEC. 3. ELECTRONIC FILING AND PROCESSING OF PATENT AND TRADEMARK APPLICATIONS.

[(a) **ELECTRONIC FILING AND PROCESSING.**—The Director shall, during the 3-year period beginning December 1, 2001, develop an electronic system for the filing and processing of patent and trademark applications, that—

[(1) is user friendly; and

[(2) includes the necessary infrastructure—

[(A) to allow examiners and applicants to send all communications electronically; and

[(B) to allow the Office to process, maintain, and search electronically the contents and history of each application.

[(b) **AUTHORIZATION OF APPROPRIATIONS.**—Of amounts authorized under section 2, there is authorized to be appropriated to carry out subsection (a) of this section not more than \$50,000,000 for each of fiscal years 2002 and 2003. Amounts made available pursuant to this subsection shall remain available until expended.

[SEC. 4. STRATEGIC PLAN.

[(a) **DEVELOPMENT OF PLAN.**—The Director shall, in close consultation with the Patent Public Advisory Committee and the Trademark Public Advisory Committee, develop a strategic plan that sets forth the goals and methods by which the United States Patent and Trademark Office will, during the 5-year period beginning on October 1, 2002—

[(1) enhance patent and trademark quality;

[(2) reduce patent and trademark pendency; and

[(3) develop and implement an effective electronic system for use by the Patent and Trademark Office and the public for all aspects of the patent and trademark processes, including, in addition to the elements set forth in section 3, searching, examining, communicating, publishing, and making publicly available, patents and trademark registrations.

The strategic plan shall include milestones and objective and meaningful criteria for evaluating the progress and successful achievement of the plan. The Director shall consult with the Public Advisory Committees with respect to the development of each aspect of the strategic plan.

[(b) **REPORT TO CONGRESSIONAL COMMITTEES.**—The Director shall, not later than February 15, 2002, or 4 months after the date of the enactment of this Act, whichever is

later, submit the plan developed under subsection (a) to the Committees on the Judiciary of the Senate and the House of Representatives.

[SEC. 5. DETERMINATION OF SUBSTANTIAL NEW QUESTION OF PATENTABILITY IN REEXAMINATION PROCEEDINGS.

[(a) **IN GENERAL.**—Sections 303(a) and 312(a) of title 35, United States Code, are each amended by adding at the end the following: “The existence of a substantial new question of patentability is not precluded by the fact that a patent or printed publication was previously cited by or to the Office or considered by the Office.”.

[(b) **EFFECTIVE DATE.**—The amendments made by this section shall apply with respect to any determination of the Director of the United States Patent and Trademark Office that is made under section 303(a) or 312(a) of title 35, United States Code, on or after the date of the enactment of this Act.

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

“(2) may, subject to subsection (c), be a party to any appeal taken by the patent owner under the provisions of section 134 or sections 141 through 144.”.

(b) **APPEAL TO BOARD OF PATENT APPEALS AND INTERFERENCES.**—Section 134(c) of title 35, United States Code, is amended by striking the last sentence.

(c) **APPEAL TO COURT OF APPEALS FOR THE FEDERAL CIRCUIT.**—Section 141 of title 35, United States Code, is amended in the third sentence by inserting “, or a third-party requester in an inter partes reexamination proceeding, who is” after “patent owner”.

(d) **EFFECTIVE DATE.**—The amendments made by this section apply with respect to any reexamination proceeding commenced on or after the date of the enactment of this Act.

SECTION 1. SHORT TITLE.

This Act may be cited as the “Patent and Trademark Office Authorization Act of 2002”.

SEC. 2. AUTHORIZATION OF AMOUNTS AVAILABLE TO THE PATENT AND TRADEMARK OFFICE.

(a) **IN GENERAL.**—There are authorized to be appropriated to the United States Patent and Trademark Office for salaries and necessary expenses for each of the fiscal years 2003 through 2008 an amount equal to the fees estimated by the Secretary of Commerce to be collected in each such fiscal year, respectively, under—

(1) title 35, United States Code; and

(2) the Act entitled “An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes”, approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the Trademark Act of 1946).

(b) **ESTIMATES.**—Not later than February 15, of each fiscal year, the Undersecretary of Commerce for Intellectual Property and the Director of the Patent and Trademark Office (in this Act referred to as the Director) shall submit an estimate of all fees referred to under subsection (a) to be collected in the next fiscal year to the chairman and ranking member of—

(1) the Committees on Appropriations and Judiciary of the Senate; and

(2) the Committees on Appropriations and Judiciary of the House of Representatives.

SEC. 3. ELECTRONIC FILING AND PROCESSING OF PATENT AND TRADEMARK APPLICATIONS.

(a) *ELECTRONIC FILING AND PROCESSING.*—Not later than December 1, 2004, the Director shall complete the development of an electronic system for the filing and processing of patent and trademark applications, that—

- (1) is user friendly; and
- (2) includes the necessary infrastructure to—
 - (A) allow examiners and applicants to send all communications electronically; and
 - (B) allow the Office to process, maintain, and search electronically the contents and history of each application.

(b) *AUTHORIZATION OF APPROPRIATIONS.*—Of amounts authorized under section 2, there are authorized to be appropriated to carry out subsection (a) of this section not more than \$50,000,000 for each of fiscal years 2003 and 2004. Amounts made available under this subsection shall remain available until expended.

SEC. 4. ANNUAL REPORTS ON STRATEGIC PLAN.

In each of the 5 calendar years following the date of enactment of this Act, the Secretary of Commerce shall submit a report to the Committees on the Judiciary of the Senate and the House of Representatives on—

(1) the progress made in implementing the 21st Century Strategic Plan issued on June 3, 2002; and

(2) any amendments made to the plan.

SEC. 5. DETERMINATION OF SUBSTANTIAL NEW QUESTION OF PATENTABILITY IN REEXAMINATION PROCEEDINGS.

(a) *IN GENERAL.*—Sections 303(a) and 312(a) of title 35, United States Code, are each amended by adding at the end the following: “The existence of a substantial new question of patentability is not precluded by the fact that a patent or printed publication was previously cited by or to the Office or considered by the Office.”.

(b) *EFFECTIVE DATE.*—The amendments made by this section shall apply with respect to any

determination of the Director of the United States Patent and Trademark Office that is made under section 303(a) or 312(a) of title 35, United States Code, on or after the date of the enactment of this Act.

SEC. 6. APPEALS IN INTER PARTES REEXAMINATION PROCEEDINGS.

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

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(d) *EFFECTIVE DATE.*—The amendments made by this section apply with respect to any reexamination proceeding commenced on or after the date of the enactment of this Act.

Amend the title so as to read: “A bill to authorize appropriations for the United States Patent and Trademark Office for fiscal years 2003 through 2008, and for other purposes.”.

Mr. REID. Mr. President, I ask unanimous consent that the committee-reported substitute amendment be agreed to, the motion to reconsider be laid

upon the table; the bill, as amended, be read a third time and passed; the motion to reconsider be laid upon the table; that any title amendment be agreed to, and that any statements relating thereto be printed in the RECORD at the appropriate place as if given, without any intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee amendment in the nature of a substitute was agreed to.

The title amendment was agreed to.

The bill (S. 1754), as amended, was read the third time and passed.

MEASURE READ THE FIRST TIME—H.R. 3937

Mr. REID. Mr. President, it is my understanding that H.R. 3937 was received from the House. I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The legislative clerk read as follows:

A bill (H.R. 3937) to revoke a Public Land Order with respect to certain lands erroneously included in Cibola National Wildlife Refuge, California.

Mr. REID. Mr. President, I now ask for its second reading and object to that request on behalf of a number of my colleagues.

The PRESIDING OFFICER. The bill will remain at the desk.