

AMENDMENT NO. _____ Calendar No. _____

Purpose: To fully fund the United States Patent and Trademark Office to ensure that the PTO produces high quality patents which will reduce the prevalence of patent trolls and provide patent system reform.

IN THE SENATE OF THE UNITED STATES—111th Cong., 1st Sess.

S. 515

To amend title 35, United States Code, to provide for patent reform.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENTS intended to be proposed by Mr. COBURN

Viz:

1 On page 66, between lines 6 and 7, insert the fol-
2 lowing:

3 **SEC. 12. PATENT AND TRADEMARK OFFICE FUNDING.**

4 (a) DEFINITIONS.—In this section:

5 (1) DIRECTOR.—The term “Director” means
6 the Director of the United States Patent and Trade-
7 mark Office.

1 (2) FUND.—The term “Fund” means the pub-
2 lic enterprise revolving fund established under sub-
3 section (c).

4 (3) OFFICE.—The term “Office” means the
5 United States Patent and Trademark Office.

6 (4) TRADEMARK ACT OF 1946.—The term
7 “Trademark Act of 1946” means an Act entitled
8 “Act to provide for the registration and protection
9 of trademarks used in commerce, to carry out the
10 provisions of certain international conventions, and
11 for other purposes”, approved July 5, 1946 (15
12 U.S.C. 1051 et seq.) (commonly referred to as the
13 “Trademark Act of 1946” or the “Lanham Act”).

14 (5) UNDERSECRETARY.—The term “Undersec-
15 retary” means the Under Secretary of Commerce for
16 Intellectual Property.

17 (b) FUNDING.—

18 (1) IN GENERAL.—Section 42 of title 35,
19 United States Code, is amended—

20 (A) in subsection (b), by striking “Patent
21 and Trademark Office Appropriation Account”
22 and inserting “United States Patent and
23 Trademark Office Public Enterprise Fund”;
24 and

1 (B) in subsection (c), in the first sen-
2 tence—

3 (i) by striking “To the extent” and all
4 that follows through “fees” and inserting
5 “Fees”; and

6 (ii) by striking “shall be collected by
7 and shall be available to the Director” and
8 inserting “shall be collected by the Direc-
9 tor and shall be available until expended”.

10 (2) EFFECTIVE DATE; TERMINATION.—The
11 amendments made by paragraph (1) shall—

12 (A) take effect on the later of—

13 (i) October 1, 2009; or

14 (ii) the date of enactment of this Act;

15 and

16 (B) expire on September 30, 2014.

17 (c) USPTO REVOLVING FUND.—

18 (1) ESTABLISHMENT.—There is established in
19 the Treasury of the United States a revolving fund
20 to be known as the “United States Patent and
21 Trademark Office Public Enterprise Fund”. Any
22 amounts in the Fund shall be available for use by
23 the Director without fiscal year limitation.

24 (2) DERIVATION OF RESOURCES.—There shall
25 be deposited into the Fund—

1 (A) any fees collected under sections 41,
2 42, and 376 of title 35, United States Code,
3 provided that notwithstanding any other provi-
4 sion of law, if such fees are collected by, and
5 payable to, the Director, the Director shall
6 transfer such amounts to the Fund; and

7 (B) any fees collected under section 31 of
8 the Trademark Act of 1946 (15 U.S.C. 1113).

9 (3) EXPENSES.—Amounts deposited into the
10 Fund under paragraph (2) shall be available, with-
11 out fiscal year limitation, to cover—

12 (A) all expenses to the extent consistent
13 with the limitation on the use of fees set forth
14 in section 42(c) of title 35, United States Code,
15 including all administrative and operating ex-
16 penses, determined in the discretion of the
17 Under Secretary to be ordinary and reasonable,
18 incurred by the Under Secretary and the Direc-
19 tor for the continued operation of all services,
20 programs, activities, and duties of the Office, as
21 such services, programs, activities, and duties
22 are described under—

23 (i) title 35, United States Code; and

24 (ii) the Trademark Act of 1946; and

1 (B) all expenses incurred pursuant to any
2 obligation, representation, or other commitment
3 of the Office.

4 (4) CUSTODIANS OF MONEY.—Notwithstanding
5 section 3302 of title 31, United States Code, any
6 funds received by the Director and transferred to
7 Fund, or any amounts directly deposited into the
8 Fund, may be used—

9 (A) to cover the expenses described in
10 paragraph (3); and

11 (B) to purchase obligations of the United
12 States, or any obligations guaranteed by the
13 United States.

14 (d) ANNUAL REPORT.—Not later than 60 days after
15 the end of each fiscal year, the Under Secretary and the
16 Director shall submit a report to Congress which shall—

17 (1) summarize the operations of the Office for
18 the preceding fiscal year, including financial details
19 and staff levels broken down by each major activity
20 of the Office;

21 (2) detail the operating plan of the Office, in-
22 cluding specific expense and staff needs for the up-
23 coming fiscal year;

24 (3) describe the long term modernization plans
25 of the Office;

1 (4) set forth details of any progress towards
2 such modernization plans made in the previous fiscal
3 year; and

4 (5) include the results of the most recent audit
5 carried out under subsection (e).

6 (e) ANNUAL SPENDING PLAN.—

7 (1) IN GENERAL.—Not later than 30 days after
8 the beginning of each fiscal year, the Director shall
9 notify the Committees on Appropriations of both
10 Houses of Congress of the plan for the obligation
11 and expenditure of the total amount of the funds for
12 that fiscal year in accordance with section 605 of the
13 Science, State, Justice, Commerce, and Related
14 Agencies Appropriations Act, 2006 (Public Law
15 109–108; 119 Stat. 2334).

16 (2) CONTENTS.—Each plan under paragraph
17 (1) shall—

18 (A) summarize the operations of the Office
19 for the current fiscal year, including financial
20 details and staff levels with respect to major ac-
21 tivities; and

22 (B) detail the operating plan of the Office,
23 including specific expense and staff needs, for
24 the current fiscal year.

1 (f) AUDIT.—The Under Secretary shall, on an annual
2 basis, provide for an independent audit of the financial
3 statements of the Office. Such audit shall be conducted
4 in accordance with generally acceptable accounting proce-
5 dures.

6 (g) BUDGET.—In accordance with section 9301 of
7 title 31, United States Code, the Fund shall prepare and
8 submit each year to the President a business-type budget
9 in a way, and before a date, the President prescribes by
10 regulation for the budget program.

11 On page 66, line 7, strike “**SEC. 12.**” and insert
12 “**SEC. 13.**”.

13 On page 69, line 3, strike “**SEC. 13.**” and insert
14 “**SEC. 14.**”.

15 On page 69, line 23, strike “**SEC. 14.**” and insert
16 “**SEC. 15.**”.