

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1659

To amend title 35, United States Code, to establish the Patent and Trademark Office as a Government corporation, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

MAY 17, 1995

Mr. MOORHEAD (for himself and Mrs. SCHROEDER) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 35, United States Code, to establish the Patent and Trademark Office as a Government corporation, 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.**

4       This Act may be cited as the “Patent and Trademark  
5       Office Corporation Act of 1995”.

1                   **TITLE I—PATENT AND**  
2                   **TRADEMARK OFFICE**

3   **SEC. 101. ESTABLISHMENT OF PATENT AND TRADEMARK**  
4                   **OFFICE AS A CORPORATION.**

5           Section 1 of title 35, United States Code, is amended  
6 to read as follows:

7   **“§ 1. Establishment**

8           “(a) ESTABLISHMENT.—The Patent and Trademark  
9 Office is established as a wholly owned Government cor-  
10 poration subject to chapter 91 of title 31, except as other-  
11 wise provided in this title.

12           “(b) OFFICES.—The Patent and Trademark Office  
13 shall maintain an office in the District of Columbia, or  
14 the metropolitan area thereof, for the service of process  
15 and papers and shall be deemed, for purposes of venue  
16 in civil actions, to be a resident of the District of Colum-  
17 bia. The Patent and Trademark Office may establish of-  
18 fices in such other places as it considers necessary or ap-  
19 propriate in the conduct of its business.

20           “(c) REFERENCE.—For purposes of this title, the  
21 Patent and Trademark Office shall also be referred to as  
22 the ‘Office’.”.

23   **SEC. 102. POWERS AND DUTIES.**

24           Section 2 of title 35, United States Code, is amended  
25 to read as follows:

1 **“§ 2. Powers and Duties**

2 “(a) IN GENERAL.—The Patent and Trademark Of-  
3 fice shall be responsible for—

4 “(1) the granting and issuing of patents and  
5 the registration of trademarks;

6 “(2) conducting studies, programs, or ex-  
7 changes of items or services regarding domestic and  
8 international patent and trademark law or the ad-  
9 ministration of the Office, including programs to  
10 recognize, identify, assess, and forecast the tech-  
11 nology of patented inventions and their utility to in-  
12 dustry;

13 “(3) authorizing or conducting studies and pro-  
14 grams cooperatively with foreign patent and trade-  
15 mark offices and international organizations, in con-  
16 nection with the granting and issuing of patents and  
17 the registration of trademarks; and

18 “(4) disseminating to the public information  
19 with respect to patents and trademarks.

20 “(b) SPECIFIC POWERS.—The Office—

21 “(1) shall have perpetual succession;

22 “(2) shall adopt and use a corporate seal, which  
23 shall be judicially noticed and with which letters pat-  
24 ent, certificates of trademark registrations, and pa-  
25 pers issued by the Office shall be authenticated;

1           “(3) may sue and be sued in its corporate name  
2           and be represented by its own attorneys in all judi-  
3           cial and administrative proceedings;

4           “(4) may indemnify the Commissioner of Pat-  
5           ents and Trademarks, and other officers, attorneys,  
6           agents, and employees (including members of the  
7           Management Advisory Board established in section  
8           5), of the Office for liabilities and expenses incurred  
9           within the scope of their employment;

10          “(5) may adopt, amend, and repeal bylaws,  
11          rules, and regulations, governing the manner in  
12          which its business will be conducted and the powers  
13          granted to it by law will be exercised, without regard  
14          to chapter 35 of title 44;

15          “(6) may acquire, construct, purchase, lease,  
16          hold, manage, operate, improve, alter, and renovate  
17          any real, personal, or mixed property, or any interest  
18          therein, as it considers necessary to carry out its  
19          functions, without regard to the provisions of the  
20          Federal Property and Administrative Services Act of  
21          1949;

22          “(7)(A) may make such purchases, contracts  
23          for the construction, maintenance, or management  
24          and operation of facilities, and contracts for supplies  
25          or services, after advertising, in such manner and at

1 such times sufficiently in advance of opening bids, as  
2 the Office determines is adequate to ensure notice  
3 and an opportunity for competition, except that ad-  
4 vertising shall not be required when the Office deter-  
5 mines that the making of any such purchase or con-  
6 tract without advertising is necessary, or that adver-  
7 tising is not reasonably practicable;

8 “(B) may enter into and perform such pur-  
9 chases and contracts for printing services, including  
10 the process of composition, platemaking, presswork,  
11 silk screen processes, binding, microform, and the  
12 products of such processes, as it considers necessary  
13 to carry out the functions of the Office, without re-  
14 gard to sections 501 through 517 and 1101 through  
15 1123 of title 44; and

16 “(C) may enter into and perform such other  
17 contracts, leases, cooperative agreements, or other  
18 transactions with international, foreign, and domes-  
19 tic public agencies and private organizations, and  
20 persons as is necessary in the conduct of its business  
21 and on such terms as it considers appropriate;

22 “(8) may use, with their consent, services,  
23 equipment, personnel, and facilities of other depart-  
24 ments, agencies, and instrumentalities of the Fed-  
25 eral Government, on a reimbursable basis, and to co-

1 operate with such other departments, agencies, and  
2 instrumentalities in the establishment and use of  
3 services, equipment, and facilities of the Office;

4 “(9) may obtain from the Administrator of  
5 General Services such services as the Administrator  
6 is authorized to provide to other agencies of the  
7 United States, on the same basis as those services  
8 are provided to other agencies of the United States;

9 “(10) may use, with the consent of the agency,  
10 government, or international organization concerned,  
11 the services, records, facilities, or personnel of any  
12 State or local government agency or instrumentality  
13 or foreign government or international organization  
14 to perform functions on its behalf;

15 “(11) may determine the character of and the  
16 necessity for its obligations and expenditures and  
17 the manner in which they shall be incurred, allowed,  
18 and paid, subject to the provisions of this title and  
19 the Act of July 5, 1946 (commonly referred to as  
20 the ‘Trademark Act of 1946’);

21 “(12) may retain and use all of its revenues  
22 and receipts, including revenues from the sale, lease,  
23 or disposal of any real, personal, or mixed property,  
24 or any interest therein, of the Office, in carrying out  
25 the functions of the Office, including for research

1 and development and capital investment, without ap-  
2 portionment under the provisions of subchapter II of  
3 chapter 15 of title 31;

4 “(13) shall have the priority of the United  
5 States with respect to the payment of debts from  
6 bankrupt, insolvent, and decedents’ estates;

7 “(14) may accept monetary gifts or donations  
8 of services, or of real, personal, or mixed property,  
9 in order to carry out the functions of the Office;

10 “(15) may execute, in accordance with its by-  
11 laws, rules, and regulations, all instruments nec-  
12 essary and appropriate in the exercise of any of its  
13 powers;

14 “(16) may provide for liability insurance and  
15 insurance against any loss in connection with its  
16 property, other assets, or operations either by con-  
17 tract or by self-insurance; and

18 “(17) shall pay any settlement or judgment en-  
19 tered against it from the funds of the Office and not  
20 from amounts available under section 1304 of title  
21 31.”.

22 **SEC. 103. ORGANIZATION AND MANAGEMENT.**

23 Section 3 of title 35, United States Code, is amended  
24 to read as follows:

1 **“§ 3. Officers and employees**

2 “(a) COMMISSIONER.—

3 “(1) IN GENERAL.—The management of the  
4 Patent and Trademark Office shall be vested in  
5 Commissioner of Patents and Trademarks (hereafter  
6 in this title referred to as the ‘Commissioner’), who  
7 shall be a citizen of the United States and who shall  
8 be appointed by the President, by and with the ad-  
9 vice and consent of the Senate. The Commissioner  
10 shall be a person who, by reason of professional  
11 background and experience in patent and trademark  
12 law, is especially qualified to manage the Office.

13 “(2) DUTIES.—

14 “(A) IN GENERAL.—The Commissioner  
15 shall be responsible for the management and di-  
16 rection of the Office, including the issuance of  
17 patents and the registration of trademarks.

18 “(B) ADVISING THE PRESIDENT.—The  
19 Commissioner shall advise the President of all  
20 activities of the Patent and Trademark Office  
21 undertaken in response to obligations of the  
22 United States under treaties and executive  
23 agreements, or which relate to cooperative pro-  
24 grams with those authorities of foreign govern-  
25 ments that are responsible for granting patents  
26 or registering trademarks. The Commissioner

1 shall also recommend to the President changes  
2 in law or policy which may improve the ability  
3 of U.S. citizens to secure and enforce patent  
4 rights or trademark rights in the United States  
5 or in foreign countries.

6 “(C) CONSULTING WITH THE MANAGE-  
7 MENT ADVISORY BOARD.—The Commissioner  
8 shall consult with the Management Advisory  
9 Board established in section 5 on a regular  
10 basis on matters relating to the operation of the  
11 Patent and Trademark Office, and shall consult  
12 with the Board before submitting budgetary  
13 proposals to the Office of Management and  
14 Budget or changing or proposing to change pat-  
15 ent or trademark user fees or patent or trade-  
16 mark regulations.

17 “(3) TERM.—The Commissioner shall serve a  
18 term of six years, and may continue to serve until  
19 a successor is appointed and assumes office. The  
20 Commissioner may be reappointed to subsequent  
21 terms.

22 “(4) OATH.—The Commissioner shall, before  
23 taking office, take an oath to discharge faithfully the  
24 duties of the Office.

1           “(5) COMPENSATION.—The Commissioner shall  
2 receive compensation at the rate of pay in effect for  
3 Level II of the Executive Schedule under section  
4 5313 of title 5.

5           “(6) REMOVAL.—The Commissioner may be re-  
6 moved from office by the President only for cause.

7           “(7) DESIGNEE OF COMMISSIONER.—The Com-  
8 missioner shall designate an officer of the Office who  
9 shall be vested with the authority to act in the ca-  
10 pacity of the Commissioner in the event of the ab-  
11 sence or incapacity of the Commissioner.

12           “(b) OFFICERS AND EMPLOYEES OF THE OFFICE.—

13           “(1) DEPUTY COMMISSIONERS.—The Commis-  
14 sioner shall appoint a Deputy Commissioner for Pat-  
15 ents and a Deputy Commissioner for Trademarks  
16 for terms that shall expire on the date on which the  
17 Commissioner’s term expires. The Deputy Commis-  
18 sioner for Patents shall be a person with dem-  
19 onstrated experience in patent law and the Deputy  
20 Commissioner for Trademarks shall be a person with  
21 demonstrated experience in trademark law. The  
22 Deputy Commissioner for Patents and the Deputy  
23 Commissioner for Trademarks shall be the principal  
24 policy advisors to the Commissioner on all aspects of  
25 the activities of the Office that affect the adminis-

1       tration of patent and trademark operations, respec-  
2       tively.

3           “(2) OTHER OFFICERS AND EMPLOYEES.—The  
4       Commissioner shall—

5           “(A) appoint an Inspector General and  
6       such other officers, employees (including attor-  
7       neys), and agents of the Office as the Commis-  
8       sioner considers necessary to carry out its func-  
9       tions;

10          “(B) fix the compensation of such officers  
11       and employees in accordance with the policy set  
12       forth in section 5301 of title 5, including com-  
13       pensation based on performance; and

14          “(C) define the authority and duties of  
15       such officers and employees and delegate to  
16       them such of the powers vested in the Office as  
17       the Commissioner may determine.

18       The Office shall not be subject to any administratively or  
19       statutorily imposed limitation on positions or personnel,  
20       and no positions or personnel of the Office shall be taken  
21       into account for purposes of applying any such limitation,  
22       except to the extent otherwise specifically provided by stat-  
23       ute with respect to the Office.

24          “(c) LIMITS ON COMPENSATION.—Except as other-  
25       wise provided in this title or any other provision of law,

1 the basic pay of an officer or employee of the Office for  
2 any calendar year may not exceed the annual rate of basic  
3 pay in effect for level III of the Executive Schedule under  
4 section 5314 of title 5. The Commissioner shall by regula-  
5 tion establish a limitation on the total compensation pay-  
6 able to officers or employees of the Office, consistent with  
7 the limitation under section 5307 of title 5.

8 “(d) APPLICABILITY OF TITLE 5 GENERALLY.—Ex-  
9 cept as otherwise provided in this section, officers and em-  
10 ployees of the Office shall be subject to the provisions of  
11 title 5 relating to Federal employees.

12 “(e) TITLE 5 EXCLUSIONS.—The following provi-  
13 sions of title 5 shall not apply to the Office or its officers  
14 and employees:

15 “(1) Chapter 31 (relating to authority for em-  
16 ployment).

17 “(2) Chapter 33 (relating to examination, selec-  
18 tion, and placement), except that the provisions re-  
19 lating to a preference eligible shall apply to the Of-  
20 fice and its employees.

21 “(3) Chapter 35 (relating to retention pref-  
22 erence, restoration, and reemployment).

23 “(4) Chapter 43 (relating to performance ap-  
24 praisal).

25 “(5) Chapter 45 (relating to incentive awards).

1           “(6) Chapter 51 (relating to classification).

2           “(7) Subchapter III of chapter 53 (relating to  
3       General Schedule pay rates).

4           “(f) PROVISIONS OF TITLE 5 RELATING TO CERTAIN  
5       BENEFITS.—Officers and employees of the Office shall re-  
6       main subject to chapters 83 (relating to the Civil Service  
7       Retirement System), 84 (relating to the Federal Employ-  
8       ees’ Retirement System), 87 (relating to life insurance),  
9       and 89 (relating to health insurance) of title 5, except that  
10       the Office may, with respect to officers and employees of  
11       the Office, by regulation—

12           “(1) provide for benefits to supplement the ben-  
13       efits otherwise provided under such chapter 83 or  
14       84, as the case may be; or

15           “(2) change the benefits provided under such  
16       chapter 87 or 89, so long as the changes do not re-  
17       sult in benefits under either chapter becoming, on  
18       the whole, less favorable than the benefits which  
19       would then otherwise be available under such chap-  
20       ter had such changes not been made.

21           “(g) LABOR-MANAGEMENT RELATIONS.—Chapter 71  
22       of title 5 (relating to labor-management relations) shall  
23       apply with respect to the Office and its employees, except  
24       that—

1           “(1) the Office shall not bargain over the estab-  
2           lishment, implementation, amendment, or repeal  
3           of—

4                   “(A) any system of classification of em-  
5           ployees;

6                   “(B) any compensation system, including  
7           wages and compensation based on performance,  
8           and contributions of the Office to the retire-  
9           ment and benefits programs; or

10                   “(C) any system to determine qualifica-  
11           tions and procedures for employment; and

12           “(2) in any other matter, the Office may nego-  
13           tiate only with respect to—

14                   “(A) procedures which management offi-  
15           cials of the Office observe in exercising any au-  
16           thority under section 7106 of title 5; and

17                   “(B) appropriate arrangements for employ-  
18           ees adversely affected by the exercise of any au-  
19           thority under section 7106 of title 5.

20           “(h) CARRYOVER OF PERSONNEL.—

21                   “(1) TO THE OFFICE.—Effective as of the ef-  
22           fective date of the Patent and Trademark Office  
23           Corporation Act of 1995, all officers and employees  
24           of the Patent and Trademark Office on the day be-

1 fore such effective date shall become officers and  
2 employees of the Office, without a break in service.

3 “(2) 1-YEAR PROTECTIONS.—No individual who  
4 so becomes an officer or employee of the Office shall,  
5 for a period of 1 year after the effective date de-  
6 scribed in paragraph (1), be subject to separation or  
7 to any reduction in compensation as a consequence  
8 of the establishment of the Office as a Government  
9 corporation.

10 “(3) ACCUMULATED LEAVE.—The amount of  
11 sick and annual leave and compensatory time accu-  
12 mulated under title 5 before the effective date de-  
13 scribed in paragraph (1), by officers or employees of  
14 the Patent and Trademark Office who so become of-  
15 ficers or employees of the Office, are obligations of  
16 the Office.

17 “(4) CONTINUATION IN OFFICE OF CERTAIN  
18 OFFICERS.—(A) The individual serving as the Com-  
19 missioner of Patents and Trademarks on the day be-  
20 fore the effective date of the Patent and Trademark  
21 Office Corporation Act of 1995 may serve as the  
22 Commissioner for a period of 1 year beginning on  
23 such effective date or, if earlier, until a Commis-  
24 sioner has been appointed under subsection (a).

1           “(B) The individual serving as the Assistant  
2           Commissioner for Patents on the day before the ef-  
3           fective date of the Patent and Trademark Office  
4           Corporation Act of 1995 may serve as the Deputy  
5           Commissioner for Patents for a period of 1 year be-  
6           ginning on such effective date or, if earlier, until a  
7           Deputy Commissioner for Patents has been ap-  
8           pointed under subsection (b).

9           “(C) The individual serving as the Assistant  
10          Commissioner for Trademarks on the day before the  
11          effective date of the Patent and Trademark Office  
12          Corporation Act of 1995 may serve as the Deputy  
13          Commissioner for Trademarks for a period of 1 year  
14          beginning on such effective date or, if earlier, until  
15          a Deputy Commissioner for Trademarks has been  
16          appointed under subsection (b).

17          “(i) COMPETITIVE STATUS.—For purposes of ap-  
18          pointment to a position in the competitive service for  
19          which an officer or employee of the Office is qualified,  
20          such officer or employee shall—

21                 “(1) not forfeit any competitive status, acquired  
22                 by such officer or employee before the effective date  
23                 of the Patent and Trademark Office Corporation Act  
24                 of 1995, by reason of becoming an officer or em-  
25                 ployee of the Office pursuant to subsection (h)(1); or

1           “(2) if not covered by paragraph (1), acquire  
2 competitive status after completing at least 1 year of  
3 continuous service under a nontemporary appoint-  
4 ment to a position within the Office (taking into ac-  
5 count such service, performed before the effective  
6 date described in paragraph (1), as may be appro-  
7 priate).

8           “(j) SAVINGS PROVISIONS.—All orders, determina-  
9 tions, rules, and regulations regarding compensation and  
10 benefits and other terms and conditions of employment,  
11 in effect for the Office and its officers and employees im-  
12 mediately before the effective date of the Patent and  
13 Trademark Office Corporation Act of 1995, shall continue  
14 in effect with respect to the Office and its officers and  
15 employees until modified, superseded, or set aside by the  
16 Office or a court of appropriate jurisdiction or by oper-  
17 ation of law.”.

18 **SEC. 104. MANAGEMENT ADVISORY BOARD.**

19           Chapter 1 of part I of title 35, United States Code,  
20 is amended by inserting after section 4 the following:

21 **“§ 5. Patent and Trademark Office Management Advi-  
22 sory Board**

23           “(a) COMPENSATION.—

24           “(1) APPOINTMENT.—The Patent and Trade-  
25 mark Office shall have a Management Advisory

1 Board (hereafter in this title referred to as the  
2 ‘Board’) of 18 members, 6 of whom shall be ap-  
3 pointed by the President, 6 of whom shall be ap-  
4 pointed by the Speaker of the House of Representa-  
5 tives, and 6 of whom shall be appointed by the  
6 President pro tempore of the Senate. Not more than  
7 4 of the 6 members appointed by each appointing  
8 authority shall be members of the same political  
9 party.

10 “(2) TERMS.—Members of the Board shall be  
11 appointed for a term of 6 years each, except that of  
12 the members first appointed by each appointing au-  
13 thority, 1 shall be for a term of 1 year, 1 shall be  
14 for a term of 2 years, 1 shall be for a term of 3  
15 years, 1 shall be for a term of 4 years, and 1 shall  
16 be for a term of 5 years. No member may serve  
17 more than 1 term.

18 “(3) CHAIR.—The President shall designate the  
19 chair of the Board, whose term as chair shall be for  
20 3 years.

21 “(4) TIMING OF APPOINTMENTS.—Initial ap-  
22 pointments to the Board shall be made within 3  
23 months after the effective date of the Patent and  
24 Trademark Office Corporation Act of 1995, and va-

1       cancies shall be filled within 3 months after they  
2       occur.

3           “(5) VACANCIES.—Vacancies shall be filled in  
4       the manner in which the original appointment was  
5       made under this subsection. Members appointed to  
6       fill a vacancy occurring before the expiration of the  
7       term for which the member’s predecessor was ap-  
8       pointed shall be appointed only for the remainder of  
9       that term. A member may serve after the expiration  
10      of that member’s term until a successor is ap-  
11      pointed.

12       “(b) BASIS FOR APPOINTMENTS.—Members of the  
13      Board shall be citizens of the United States who shall be  
14      chosen so as to represent the interests of diverse users  
15      of the Patent and Trademark Office, and shall include in-  
16      dividuals with substantial background and achievement in  
17      corporate finance and management.

18       “(c) APPLICABILITY OF CERTAIN ETHICS LAWS.—  
19      Members of the Board shall be special Government em-  
20      ployees within the meaning of section 202 of title 18.

21       “(d) MEETINGS.—The Board shall meet at the call  
22      of the chair to consider an agenda set by the chair.

23       “(e) DUTIES.—The Board shall—

24           “(1) review the policies, goals, performance,  
25      budget, and user fees of the Patent and Trademark

1 Office, and advise the Commissioner on these mat-  
2 ters; and

3 “(2) within 60 days after the end of each fiscal  
4 year, prepare an annual report on the matters re-  
5 ferred to in paragraph (1), transmit the report to  
6 the President and the Committees on the Judiciary  
7 of the Senate and the House of Representatives, and  
8 publish the report in the Patent and Trademark Of-  
9 fice Official Gazette.

10 “(f) STAFF.—The Board shall employ a staff and  
11 procure support services for the staff adequate to enable  
12 the Board to carry out its functions, using funds available  
13 to the Commissioner under section 42 of this title. Persons  
14 employed by the Board shall receive compensation as de-  
15 termined by the Board, serve in accordance with terms  
16 and conditions of employment established by the Board,  
17 and be subject solely to the direction of the Board, not-  
18 withstanding any other provision of law.

19 “(g) COMPENSATION.—Members of the Board may  
20 accept reimbursement for expenses incurred in attending  
21 meetings of the Board and compensation not to exceed  
22 \$1000 per day for each day in attendance at meetings of  
23 the Board.

24 “(h) ACCESS TO INFORMATION.—Members of the  
25 Board shall be provided access to records and information

1 in the Patent and Trademark Office, except for personnel  
2 or other privileged information and information concern-  
3 ing patent applications required to be kept in confidence  
4 by section 122 of this title.

5 “(i) APPLICABILITY OF FEDERAL ADVISORY COM-  
6 MITTEE ACT.—The provisions of the Federal Advisory  
7 Committee Act (5 U.S.C. App.) shall not apply to meet-  
8 ings of the Board, but all meetings of the Board shall be  
9 announced in the Federal Register at least 30 days in ad-  
10 vance and all meetings shall be open to the public unless  
11 closed by the Board for good cause.”.

12 **SEC. 105. INDEPENDENCE FROM DEPARTMENT OF COM-**  
13 **MERCE.**

14 Section 6 of title 35, United States Code, is amend-  
15 ed—

16 (1) by striking “, under the direction of the  
17 Secretary of Commerce,” each place it appears; and

18 (2) by striking “, subject to the approval of the  
19 Secretary of Commerce,”.

20 **SEC. 106. TRADEMARK TRIAL AND APPEAL BOARD.**

21 Section 17 of the Act of July 5, 1946 (commonly re-  
22 ferred to as the “Trademark Act of 1946”) (15 U.S.C.  
23 1067) is amended to read as follows:

24 “SEC. 17. (a) In every case of interference, opposition  
25 to registration, application to register as a lawful concur-

1 rent user, or application to cancel the registration of a  
2 mark, the Commissioner shall give notice to all parties and  
3 shall direct a Trademark Trial and Appeal Board to deter-  
4 mine and decide the respective rights of registration.

5 “(b) The Trademark Trial and Appeal Board shall  
6 include the Commissioner, the Deputy Commissioner for  
7 Patents, the Deputy Commissioner for Trademarks, and  
8 members competent in trademark law who are appointed  
9 by the Commissioner.”.

10 **SEC. 107. BOARD OF PATENT APPEALS AND INTER-**  
11 **FERENCES.**

12 Section 7 of title 35, United States Code, is amended  
13 to read as follows:

14 **“§ 7. Board of Patent Appeals and Interferences**

15 “(a) ESTABLISHMENT AND COMPOSITION.—There  
16 shall be in the Patent and Trademark Corporation a  
17 Board of Patent Appeals and Interferences. The Commis-  
18 sioner, the Deputy Commissioner for Patents, the Deputy  
19 Commissioner for Trademarks, the officer principally re-  
20 sponsible for the examination of patents, the officer prin-  
21 cipally responsible for the examination of trademarks, and  
22 the examiners-in-chief shall constitute the Board. The ex-  
23 aminers-in-chief shall be persons of competent legal knowl-  
24 edge and scientific ability.

1       “(b) DUTIES.—The Board of Patent Appeals and  
2 Interferences shall, on written appeal of an applicant, re-  
3 view adverse decisions of examiners upon applications for  
4 patents and shall determine priority and patentability of  
5 invention in interferences declared under section 135(a)  
6 of this title. Each appeal and interference shall be heard  
7 by at least 3 members of the Board, who shall be des-  
8 ignated by the Commissioner. Only the Board of Patent  
9 Appeals and Interferences may grant rehearings.”.

10 **SEC. 108. SUITS BY AND AGAINST THE CORPORATION.**

11       Chapter 1 of part I of title 35, United States Code,  
12 is amended—

13             (1) by redesignating sections 8 through 14 as  
14             sections 9 through 15; and

15             (2) by inserting after section 7 the following  
16             new section:

17 **“§8. Suits by and against the Corporation**

18       “(a) IN GENERAL.—

19             “(1) ACTIONS UNDER UNITED STATES LAW.—

20       Any civil action, suit, or proceeding to which the  
21       Patent and Trademark Office is a party is deemed  
22       to arise under the laws of the United States. Exclu-  
23       sive jurisdiction over all civil actions by or against  
24       the Office is in the Federal courts as provided by  
25       law.

1           “(2) CONTRACT CLAIMS.—Any action, suit, or  
2 proceeding against the Office founded upon contract  
3 shall be subject to the limitations and exclusive rem-  
4 edy provided in section 1346(a)(2) and sections  
5 1491 through 1509 of title 28, whether or not such  
6 contract claims are cognizable under the sections  
7 507, 1346, 1402, 1491, 1496, 1497, 1501, 1503,  
8 2071, 2072, 2411, 2501, 2512 of title 28). For pur-  
9 poses of the Contract Disputes Act of 1978 (41  
10 U.S.C. 601 and following), the Commissioner shall  
11 be deemed to be the agency head with respect to  
12 contract claims arising with respect to the Office.

13           “(3) TORT CLAIMS.—Any action, suit, or pro-  
14 ceeding against the Office founded upon tort shall be  
15 subject to the limitations and exclusive remedies pro-  
16 vided in section 1346(b) and sections 2671 through  
17 2680 of title 28, whether or not such tort claims are  
18 cognizable under section 1346(b) of title 28.

19           “(4) PROHIBITION ON ATTACHMENT, LIENS,  
20 ETC.—No attachment, garnishment, lien, or similar  
21 process, intermediate or final, in law or equity, may  
22 be issued against property of the Office.

23           “(5) SUBSTITUTION OF OFFICE AS PARTY.—  
24 The Office shall be substituted as defendant in any  
25 civil action, suit, or proceeding against an officer or

1 employee of the Office, if the Office determines that  
2 the employee was acting within the scope of the offi-  
3 cer or employee's employment with the Office. If the  
4 Office refuses to certify scope of employment, the of-  
5 ficer or employee may at any time before trial peti-  
6 tion the court to find and certify that the officer or  
7 employee was acting within the scope of the officer  
8 or employee's employment. Upon certification by the  
9 court, the Office shall be substituted as the party  
10 defendant. A copy of the petition shall be served  
11 upon the Office.

12 “(b) RELATIONSHIP WITH JUSTICE DEPARTMENT.—

13 “(1) EXERCISE BY OFFICE OF ATTORNEY GEN-  
14 ERAL'S AUTHORITIES.—Except as provided in this  
15 section, in relation to all judicial proceedings in  
16 which the Office or an officer or employee thereof is  
17 a party or in which the officer or employee thereof  
18 is interested and which arise from or relate to offi-  
19 cers or employees thereof acting within the scope of  
20 their employment, torts, contracts, property, reg-  
21 istration of patent and trademark practitioners, pat-  
22 ents or trademarks, or fees, the officer or employee  
23 thereof may exercise, without prior authorization  
24 from the Attorney General, the authorities and du-  
25 ties that otherwise would be exercised by the Attor-

1       ney General on behalf of the officer or employee  
2       thereof under title 28, and other laws. In all other  
3       judicial or administrative proceedings in which the  
4       Office or an officer or employee of the Office is a  
5       party or is interested, the Office may exercise these  
6       authorities and duties only after obtaining author-  
7       ization from the Attorney General.

8               “(2) APPEARANCES BY ATTORNEY GENERAL.—  
9       The Attorney General may file an appearance on be-  
10      half of the Office or an employee of the Office, with-  
11      out the consent of the Office, in any suit in which  
12      the Office is a party and represent the Office with  
13      exclusive authority in the conduct, settlement, or  
14      compromise of that suit.

15              “(3) CONSULTATIONS WITH AND ASSISTANCE  
16      BY ATTORNEY GENERAL.—The Office may consult  
17      with the Attorney General concerning any legal mat-  
18      ter, and the Attorney General shall provide advice  
19      and assistance to the Office, including representing  
20      the Office in litigation, if requested by the Office.

21              “(4) REPRESENTATION BEFORE SUPREME  
22      COURT.—The Attorney General shall represent the  
23      Office in all cases before the United States Supreme  
24      Court.

1           “(5) QUALIFICATIONS OF ATTORNEYS.—An at-  
2           torney admitted to practice to the bar of the highest  
3           court of at least one State in the United States or  
4           the District of Columbia and appointed by the Office  
5           may represent the Office in any legal proceeding in  
6           which the Office or an officer or employee of the Of-  
7           fice is a party or interested, regardless of whether  
8           the attorney is a resident of the jurisdiction in which  
9           the proceeding is held and notwithstanding any  
10          other prerequisites of qualification or appearance re-  
11          quired by the court or administrative body.”.

12 **SEC. 109. ANNUAL REPORT OF COMMISSIONER.**

13          Section 15 of title 35, United States Code, as redesi-  
14          gnated by section 108 of this Act, is amended to read as  
15          follows:

16 **“§ 15. Annual report to Congress**

17          “The Commissioner shall report to the Congress, not  
18          later than 90 days after the end of each fiscal year, the  
19          moneys received and expended by the Office, the purposes  
20          for which the moneys were spent, the quality and quantity  
21          of the work of the Office, and other information relating  
22          to the Office.”.

23 **SEC. 110. SUSPENSION OR EXCLUSION FROM PRACTICE.**

24          Section 32 of title 35, United States Code, is amend-  
25          ed by inserting before the last sentence the following: “The

1 Commissioner shall have the discretion to designate any  
2 officer or employee of the Patent and Trademark Office  
3 to conduct the hearing required by this section.”.

4 **SEC. 111. FUNDING.**

5 Section 42 of title 35, United States Code, is amend-  
6 ed to read as follows:

7 **“§42. Patent and Trademark Office funding**

8 “(a) FEES PAYABLE TO THE OFFICE.—All fees for  
9 services performed by or materials furnished by the Patent  
10 and Trademark Office shall be payable to the Office.

11 “(b) USE OF MONEYS.—Moneys of the Patent and  
12 Trademark Office not otherwise used to carry out the  
13 functions of the Office shall be kept in cash on hand or  
14 on deposit, or invested in obligations of the United States  
15 or guaranteed by the United States, or in obligations or  
16 other instruments which are lawful investments for fidu-  
17 ciary, trust, or public funds. Fees available to the Commis-  
18 sioner under this title shall be used exclusively for the  
19 processing of patent applications and for other services  
20 and materials relating to patents. Fees available to the  
21 Commissioner under section 31 of the Act of July 5, 1946  
22 (commonly referred to as the ‘Trademark Act of 1946’)  
23 (15 U.S.C. 1113) shall be used exclusively for the process-  
24 ing of trademark registrations and for other services and  
25 materials relating to trademarks.

1       “(c) BORROWING AUTHORITY.—The Patent and  
2 Trademark Office is authorized to issue from time to time  
3 for purchase by the Secretary of the Treasury its debentures,  
4 bonds, notes, and other evidences of indebtedness  
5 (hereafter in this subsection referred to as ‘obligations’)  
6 in an amount not exceeding \$2,000,000 outstanding at  
7 any one time, to assist in financing its activities. Such obligations  
8 shall be redeemable at the option of the Office  
9 before maturity in the manner stipulated in such obligations  
10 and shall have such maturity as is determined by  
11 the Office with the approval of the Secretary of the Treasury.  
12 Each such obligation issued to the Treasury shall  
13 bear interest at a rate not less than the current yield on  
14 outstanding marketable obligations of the United States  
15 of comparable maturity during the month preceding the  
16 issuance of the obligation as determined by the Secretary  
17 of the Treasury. The Secretary of the Treasury shall purchase  
18 any obligations of the Office issued under this subsection  
19 and for such purpose the Secretary of the Treasury  
20 is authorized to use as a public-debt transaction the proceeds  
21 of any securities issued under chapter 31 of title  
22 31, and the purposes for which securities may be issued  
23 under that chapter are extended to include such purpose.  
24 Payment under this subsection of the purchase price of  
25 such obligations of the Patent and Trademark Office shall

1 be treated as public debt transactions of the United  
2 States.”.

3 **SEC. 112. AUDITS.**

4 Chapter 4 of part I title 35, United States Code, is  
5 amended by adding at the end the following new section:

6 **“§ 43. Audits**

7 “(a) IN GENERAL.—Financial statements of the Pat-  
8 ent and Trademark Office shall be prepared on an annual  
9 basis in accordance with generally accepted accounting  
10 principles. Such statements shall be audited by an inde-  
11 pendent certified public accountant chosen by the Sec-  
12 retary. The audit shall be conducted in accordance with  
13 standards that are consistent with generally accepted Gov-  
14 ernment auditing standards and other standards estab-  
15 lished by the Comptroller General, and with the generally  
16 accepted auditing standards of the private sector, to the  
17 extent feasible.

18 “(b) REVIEW BY COMPTROLLER GENERAL.—The  
19 Comptroller General may review any audit of the financial  
20 statement of the Patent and Trademark Office that is con-  
21 ducted under subsection (a). The Comptroller General  
22 shall report to the Congress and the Office the results of  
23 any such review and shall include in such report appro-  
24 priate recommendations.

1       “(c) AUDIT BY COMPTROLLER GENERAL.—The  
2 Comptroller General may audit the financial statements  
3 of the Office and such audit shall be in lieu of the audit  
4 required by subsection (a). The Office shall reimburse the  
5 Comptroller General for the cost of any audit conducted  
6 under this subsection.

7       “(d) ACCESS TO OFFICE RECORDS.—All books, fi-  
8 nancial records, report files, memoranda, and other prop-  
9 erty that the Comptroller General deems necessary for the  
10 performance of any audit shall be made available to the  
11 Comptroller General.

12       “(e) APPLICABILITY IN LIEU OF TITLE 31 PROVI-  
13 SIONS.—This section applies to the Office in lieu of the  
14 provisions of section 9105 of title 31.”.

15 **SEC. 113. TRANSFER.**

16       (a) TRANSFER OF FUNCTIONS.—Except as otherwise  
17 provided in this Act, there are transferred to, and vested  
18 in, the Patent and Trademark Office all functions, powers,  
19 and duties vested by law in the Secretary of Commerce  
20 or the Department of Commerce or in the officers or com-  
21 ponents in the Department of Commerce with respect to  
22 the authority to grant patents and register trademarks,  
23 and in the Patent and Trademark Office, as in effect on  
24 the day before the effective date of this Act, and in the  
25 officers and components of such Office.

1 (b) TRANSFER OF FUNDS AND PROPERTY.—The  
2 Secretary of Commerce shall transfer to the Patent and  
3 Trademark Office, on the effective date of this Act, so  
4 much of the assets, liabilities, contracts, property, records,  
5 and unexpended and unobligated balances of appropria-  
6 tions, authorizations, allocations, and other funds em-  
7 ployed, held, used, arising from, available to, or to be  
8 made available to the Department of Commerce, including  
9 funds set aside for accounts receivable which are related  
10 to functions, powers, and duties which are vested in the  
11 Patent and Trademark Office by this Act.

12 (c) TRANSFER OF SURCHARGE FUND.—On the effec-  
13 tive date of this Act, there are transferred to the Patent  
14 and Trademark Office those residual and unappropriated  
15 balances remaining as of the effective date within the Pat-  
16 ent and Trademark Office Surcharge Fund established by  
17 section 10101(b) of the Omnibus Budget Reconciliation  
18 Act of 1990 (35 U.S.C. 41 note).

19 **TITLE II—EFFECTIVE DATE;**  
20 **TECHNICAL AMENDMENTS**

21 **SEC. 201. EFFECTIVE DATE.**

22 This Act shall take effect 6 months after the date  
23 of the enactment of this Act.

24 **SEC. 202. TECHNICAL AND CONFORMING AMENDMENTS.**

25 (a) AMENDMENTS TO TITLE 35.—

1           (1) The table of contents for part I of title 35,  
2           United States Code, is amended by amending the  
3           item relating to chapter 1 to read as follows:

4           (2) The table of sections for chapter 1 of title  
5           35, United States Code, is amended to read as fol-  
6           lows:

“1. Establishment, Officers and Employees, Functions ..... 1.”

7           **“CHAPTER 1—ESTABLISHMENT, OFFICERS**  
8           **AND EMPLOYEES FUNCTIONS**

“Sec.

- “1. Establishment.
- “2. Powers and duties.
- “3. Officers and employees.
- “4. Restrictions on officers and employees as to interest in patents.
- “5. Patent and Trademark Office Management Advisory Board.
- “6. Duties of Commissioner.
- “7. Board of Patent Appeals and Interferences.
- “8. Suits by and against the Corporation.
- “9. Library.
- “10. Classification of patents.
- “11. Certified copies of records.
- “12. Publications.
- “13. Exchange of copies of patents with foreign countries.
- “14. Copies of patents for public libraries.
- “15. Annual report to Congress.”.

9           (3) The table of contents for chapter 4 of part I of  
10          title 35, United States Code, is amended by adding at the  
11          end the following new item:

“43. Audits.”.

12          (b) OTHER PROVISIONS OF LAW.—

13                 (1) Section 9101(3) of title 31, United States  
14          Code, is amended by adding at the end the follow-  
15          ing:

1           “(O) the Patent and Trademark Office.”.

2           (2) Section 602(d) of the Federal Property and  
3           Administrative Services Act of 1949 (40 U.S.C. 474)  
4           is amended—

5                   (A) in paragraph (20) by striking “or”  
6                   after the semicolon;

7                   (B) in paragraph (21) by striking the pe-  
8                   riod and inserting “; or”; and

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

10                   “(22) the Patent and Trademark Office.”.

11           (3) Section 500(e) of title 5, United States  
12           Code (5 U.S.C. 500(e)) is amended by striking  
13           “Patent Office” and inserting “Patent and Trade-  
14           mark Office”.

15           (4) Section 5102(c)(23) of title 5, United  
16           States Code, is amended by striking “Department of  
17           Commerce”.

18           (5) Section 5316 of title 5, United States Code  
19           (5 U.S.C. 5316) is amended by striking “Commis-  
20           sioner of Patents, Department of Commerce.”,  
21           “Deputy Commissioner of Patents and Trade-  
22           marks.”, “Assistant Commissioner for Patents.”,  
23           and “Assistant Commissioner for Trademarks.”.

24           (6) Section 4 of the Act of February 14, 1903  
25           (15 U.S.C. 1511) is amended by striking “(d) Pat-

1 ent and Trademark Office;” and redesignating sub-  
2 sections (a) through (g) as paragraphs (1) through  
3 (6), respectively.

4 (7) The Act of April 12, 1892 (27 Stat. 395;  
5 20 U.S.C. 91) is amended by striking “Patent Of-  
6 fice” and inserting “Patent and Trademark Office”.

7 (8) Sections 505(m) and 512(o) of the Federal  
8 Food, Drug, and Cosmetic Act (21 U.S.C. 355(m)  
9 and 360b(o)) are each amended by striking “of the  
10 Department of Commerce”.

11 (9) Section 105(e) of the Federal Alcohol Ad-  
12 ministration Act (27 U.S.C. 205(e)) is amended by  
13 striking “Patent Office” and inserting “Patent and  
14 Trademark Office”.

15 (10) Section 1744 of title 28, United States  
16 Code is amended—

17 (A) by striking “Patent Office” each place  
18 it appears and inserting “Patent and Trade-  
19 mark Office”; and

20 (B) by striking “Commissioner of Patents”  
21 and inserting “Commissioner of Patents and  
22 Trademarks”.

23 (11) Section 1745 of title 28, United States  
24 Code, is amended by striking “United States Patent

1 Office” and inserting “Patent and Trademark Of-  
2 fice”.

3 (12) Section 1928 of title 28, United States  
4 Code, is amended by striking “Patent Office” and  
5 inserting “Patent and Trademark Office”.

6 (13) Section 160 of the Atomic Energy Act of  
7 1954 (42 U.S.C. 2190) is amended—

8 (A) by striking “Patent Office” and insert-  
9 ing “Patent and Trademark Office”; and

10 (B) by striking “Commissioner of Patents”  
11 and inserting “Commissioner of Patents and  
12 Trademarks”.

13 (14) Section 305(c) of the National Aeronautics  
14 and Space Act of 1958 (42 U.S.C. 2457(c)) is  
15 amended by striking “Commissioner of Patents” and  
16 inserting “Commissioner of Patents and Trade-  
17 marks”.

18 (15) Section 12(a) of the Solar Heating and  
19 Cooling Demonstration Act of 1974 (42 U.S.C.  
20 5510(a)) is amended by striking “Commissioner of  
21 the Patent Office” and inserting “Commissioner of  
22 Patents and Trademarks”.

23 (16) Section 1111 of title 44, United States  
24 Code, is amended by striking “Commissioner of Pat-

1       ents” and inserting “Commissioner of Patents and  
2       Trademarks”.

3               (17) Sections 1114 and 1123 of title 44, United  
4       States Code, are each amended by striking “Com-  
5       missioner of Patents”.

6               (18) Sections 1337 and 1338 of title 44, United  
7       States Code, and the items relating to those sections  
8       in the table of contents for chapter 13 of such title,  
9       are repealed.

10              (19) Section 10(i) of the Trading With the  
11       Enemy Act (50 U.S.C. App. 10(i)) is amended by  
12       striking “Commissioner of Patents” and inserting  
13       “Commissioner of Patents and Trademarks”.

14              (20) Section 8G(a)(2) of the Inspector General  
15       Act of 1978 (5 U.S.C. App.) is amended by inserting  
16       “the Patent and Trademark Office,” after “the  
17       Panama Canal Commission,”.

18              (21) Section 255(g)(1)(A) of the Balanced  
19       Budget and Emergency Deficit Control Act of 1985  
20       (2 U.S.C. 905(g)(1)(A)) is amended by inserting  
21       after the item relating to the United States Enrich-  
22       ment Corporation the following new item:

23              “Patent and Trademark Office;”.

24              (22) Section 10101(b)(2)(B) of the Omnibus  
25       Budget Reconciliation Act of 1990 (35 U.S.C. 41

1       note) is amended by striking “, to the extent pro-  
2       vided in appropriation Acts,” and inserting “without  
3       appropriation”.

○

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