

**AMENDMENT TO H.R. 1561, AS REPORTED**  
**OFFERED BY MR. SENSENBRENNER OF**  
**WISCONSIN**

Strike section 5 and insert the following:

1 **SEC. 5. PATENT AND TRADEMARK FUNDING.**

2 Section 42(c) of title 35, United States Code, is  
3 amended—

4 (1) by striking “(c)” and inserting “(c)(1)”;  
5 and

6 (2) by adding at the end the following new  
7 paragraph:

8 “(2) There is established in the Treasury a Patent  
9 and Trademark Fee Reserve Fund. If fee collections by  
10 the Patent and Trademark Office for a fiscal year exceed  
11 the amount appropriated to the Office for that fiscal year,  
12 fees collected in excess of the appropriated amount shall  
13 be deposited in the Patent and Trademark Fee Reserve  
14 Fund. After the end of each fiscal year, the Director shall  
15 make a finding as to whether the fees collected for that  
16 fiscal year exceed the amount appropriated to the Patent  
17 and Trademark Office for that fiscal year. If the amount  
18 collected exceeds the amount appropriated, the Director  
19 shall, if the Director determines that there are sufficient  
20 funds in the Reserve Fund, make payments from the Re-



1 serve Fund to persons who paid patent or trademark fees  
2 during that fiscal year. The Director shall by regulation  
3 determine which persons receive such payments and the  
4 amount of such payments, except that such payments in  
5 the aggregate shall equal the amount of funds deposited  
6 in the Reserve Fund during that fiscal year, less the cost  
7 of administering the provisions of this paragraph.”.

In section 6(a), strike “Except as” and all that follows through the end of the sentence and insert “Except as otherwise provided in this Act and this section, this Act and the amendments made by this Act shall take effect on October 1, 2004, or on the date of the enactment of this Act, whichever occurs later.”.

Page 12, strike lines 17 through 20 and insert the following:

8 (d) ADJUSTMENTS.—

9 (1) IN GENERAL.—Section 41(f) of title 35,  
10 United States Code, shall apply to the fees estab-  
11 lished under the amendments made by this section,  
12 beginning in fiscal year 2005.

13 (2) CONFORMING AMENDMENT.—Effective Oc-  
14 tober 1, 2004, section 41(f) of title 35, United  
15 States Code, is amended by striking “(a) and (b)”  
16 and inserting “(a), (b), and (d)”.



Page 11, add the following after line 24:

1           “(F) The Director shall require that any search  
2           by a qualified search authority that is a commercial  
3           entity is conducted in the United States by persons  
4           that—

5                   “(i) if individuals, are United States citi-  
6                   zens; and

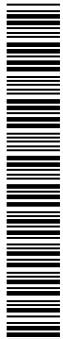
7                   “(ii) if business concerns, are organized  
8                   under the laws of the United States or any  
9                   State and employ United States citizens to per-  
10                  form the searches.

11           “(G) A search of an application that is the sub-  
12           ject of a secrecy order under section 181 or other-  
13           wise involves classified information may only be con-  
14           ducted by Office personnel.

15           “(H) A qualified search authority that is a  
16           commercial entity may not conduct a search of a  
17           patent application if the entity has any direct or in-  
18           direct financial interest in any pending or imminent  
19           application for patent filed or to be filed in the Pat-  
20           ent and Trademark Office.

Page 12, insert the following after line 20 and redese-  
ignate the succeeding subsection accordingly:

21           (e) FEES FOR SMALL ENTITIES.—Section 41(h) of  
22           title 35, United States Code, is amended—



1 (1) in paragraph (1), by striking “Fees charged  
2 under subsection (a) or (b)” and inserting “Subject  
3 to paragraph (3), fees charged under subsections  
4 (a), (b), and (d)(1)”; and

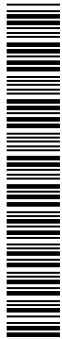
5 (2) by adding at the end the following new  
6 paragraph:

7 “(3) The fee charged under subsection (a)(1)(A) shall  
8 be reduced by 75 percent with respect to its application  
9 to any entity to which paragraph (1) applies, if the appli-  
10 cation is filed by electronic means as prescribed by the  
11 Director.”.

12 (f) SIZE STANDARDS FOR SMALL ENTITIES.—

13 (1) STUDY.—The Director, in conjunction with  
14 the Administrator of the Small Business Administra-  
15 tion and the Chief Counsel for Advocacy of the  
16 Small Business Administration, shall conduct a  
17 study on the effect of patent fees on the ability of  
18 small entity inventors to file patent applications.  
19 Such study shall examine whether a separate cat-  
20 egory of reduced patent fees is necessary to ensure  
21 adequate development of new technology by small  
22 entity inventors.

23 (2) REPORT.—The Director shall, not later  
24 than 6 months after the date of the enactment of  
25 this Act, submit a report on the results of the study



1 under paragraph (1) to the Committee on the Judi-  
2 ciary and the Committee on Small Business of the  
3 House of Representatives and the Committee on the  
4 Judiciary and the Committee on Small Business and  
5 Entrepreneurship of the Senate.

6 Page 8, line 3, add the following after the period:  
7 “For the 3-year period beginning on October 1, 2004, the  
8 fee for a search by a qualified search authority of a patent  
9 application described in clause (i), (iv), or (v) of subpara-  
10 graph (B) may not exceed \$500, of a patent application  
11 described in clause (ii) of subparagraph (B) may not ex-  
12 ceed \$100, and of a patent application described in clause  
13 (iii) of subparagraph (B) may not exceed \$300. The Direc-  
14 tor may not increase any such fee by more than 20 percent  
15 in each of the next 3 1-year periods, and the Director may  
16 not increase any such fee thereafter.”.

