

AMENDMENT NO. _____ Calendar No. _____

Purpose: To provide for permanent funding of the United States Patent and Trademark Office, and to establish a revolving fund.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 1145

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

AMENDMENT intended to be proposed by Mr. COBURN

Viz:

1 At the appropriate place, insert the following:

2 **SEC. ____ . PATENT AND TRADEMARK OFFICE FUNDING.**

3 (a) DEFINITIONS.—In this section:

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

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

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

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

11 (5) UNDERSECRETARY.—The term “Undersec-
12 retary” means the Under Secretary of Commerce for
13 Intellectual Property.

14 (b) FUNDING.—

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

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

22 (B) in subsection (c), in the first sen-
23 tence—

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

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

8 (2) EFFECTIVE DATE.—

9 (A) IN GENERAL.—The amendments made
10 by paragraph (1) shall take effect on October 1,
11 2008.

12 (B) TERMINATION OF APPROPRIATION.—
13 The provisions of any prior appropriation Act
14 that makes amounts available pursuant to sec-
15 tion 42(c) of title 35, United States Code, and
16 are in effect on the effective date set forth in
17 subparagraph (A) shall cease to be effective on
18 that effective date, and any unexpended
19 amounts made available pursuant to such sec-
20 tion shall be transferred in accordance with
21 subsection (c)(5).

22 (c) USPTO REVOLVING FUND.—

23 (1) ESTABLISHMENT.—There is established in
24 the Treasury of the United States a revolving fund
25 to be known as the “United States Patent and

1 Trademark Office Public Enterprise Fund”. Any
2 amounts in the Fund shall be available for use by
3 the Director without fiscal year limitation.

4 (2) DERIVATION OF RESOURCES.—There shall
5 be deposited into the Fund—

6 (A) any fees collected under sections 41,
7 42, and 376 of title 35, United States Code,
8 provided that notwithstanding any other provi-
9 sion of law, if such fees are collected by, and
10 payable to, the Director, the Director shall
11 transfer such amounts to the Fund; and

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

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

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

1 such services, programs, activities, and duties
2 are described under—

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

4 (ii) the Trademark Act of 1946; and

5 (B) all expenses incurred pursuant to any
6 obligation, representation, or other commitment
7 of the Office.

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

13 (A) to cover the expenses described in
14 paragraph (3); and

15 (B) to purchase obligations of the United
16 States, or any obligations guaranteed by the
17 United States.

18 (5) UNEXPENDED BALANCES.—Any unex-
19 pended balances in any accounts held on behalf of
20 the Director, or the Office, including in the Patent
21 and Trademark Office Appropriation Account in the
22 Treasury of the United States, shall be transferred
23 to the Fund and shall remain available until ex-
24 pended.

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

4 (1) summarize the operations of the Office for
5 the preceding fiscal year, including financial details
6 and staff levels broken down by each major activity
7 of the Office;

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

11 (3) describe the long term modernization plans
12 of the Office;

13 (4) set forth details of any progress towards
14 such modernization plans made in the previous fiscal
15 year; and

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

18 (e) ANNUAL SPENDING PLAN.—

19 (1) IN GENERAL.—Not later than 30 days after
20 the beginning of each fiscal year, the Director shall
21 notify the Committees on Appropriations of both
22 Houses of Congress of the plan for the obligation
23 and expenditure of the total amount of the funds for
24 that fiscal year in accordance with section 605 of the
25 Science, State, Justice, Commerce, and Related

1 Agencies Appropriations Act, 2006 (Public Law
2 109–108; 119 Stat. 2334).

3 (2) CONTENTS.—Each plan under paragraph
4 (1) shall—

5 (A) summarize the operations of the Office
6 for the current fiscal year, including financial
7 details and staff levels with respect to major ac-
8 tivities; and

9 (B) detail the operating plan of the Office,
10 including specific expense and staff needs, for
11 the current fiscal year.

12 (f) AUDIT.—The Under Secretary shall, on an annual
13 basis, provide for an independent audit of the financial
14 statements of the Office. Such audit shall be conducted
15 in accordance with generally acceptable accounting proce-
16 dures.

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