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(Original Signature of Member)

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R.** \_\_\_\_\_

To provide authority to the Director of the United States Patent and Trademark Office to set or adjust patent and trademark fees, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

Mr. CONYERS (for himself and Mr. SMITH of Texas) introduced the following bill; which was referred to the Committee on

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**A BILL**

To provide authority to the Director of the United States Patent and Trademark Office to set or adjust patent and trademark fees, 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 Funding Stabilization Act of 2010”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1           (1) DIRECTOR.—The term “Director” means  
2           the Under Secretary of Commerce for Intellectual  
3           Property and Director of the United States Patent  
4           and Trademark Office.

5           (2) FUND.—The term “Fund” means the  
6           United States Patent and Trademark Office Public  
7           Enterprise Fund established under section 4(b).

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

10          (4) PATENT PUBLIC ADVISORY COMMITTEE.—  
11          The term “Patent Public Advisory Committee”  
12          means the Patent Public Advisory Committee estab-  
13          lished under section 5(a)(1) of title 35, United  
14          States Code.

15          (5) TRADEMARK ACT OF 1946.—The term  
16          “Trademark Act of 1946” means the Act entitled  
17          “Act to provide for the registration and protection  
18          of trademarks used in commerce, to carry out the  
19          provisions of certain international conventions, and  
20          for other purposes”, approved July 5, 1946 (15  
21          U.S.C. 1051 et seq.) (commonly referred to as the  
22          “Trademark Act of 1946” or the “Lanham Act”).

23          (6) TRADEMARK PUBLIC ADVISORY COM-  
24          MITTEE.—The term “Trademark Public Advisory  
25          Committee” means the Trademark Public Advisory

1 Committee established under section 5(a)(1) of title  
2 35, United States Code.

3 **SEC. 3. FEE SETTING AUTHORITY.**

4 (a) IN GENERAL.—

5 (1) AUTHORITY.—The Director may set or ad-  
6 just by rule any fee established or charged by the  
7 Office under section 41 or 376 of title 35, United  
8 States Code, or under section 31 of the Trademark  
9 Act of 1946 (15 U.S.C. 1113), or any other fee es-  
10 tablished or charged by the Office under any other  
11 provision of law, for the filing or processing of any  
12 submission to the Office, or for any other service  
13 performed by or materials furnished by the Office,  
14 subject to paragraph (2).

15 (2) FEES TO RECOVER COSTS.—Fees may be  
16 set or adjusted under paragraph (1) only to recover  
17 the aggregate estimated costs to the Office for proc-  
18 essing, activities, services, and materials relating to  
19 patents (in the case of patent fees) and trademarks  
20 (in the case of trademark fees), including adminis-  
21 trative costs of the Office with respect to such pat-  
22 ent or trademark fees (as the case may be).

23 (b) SMALL AND MICRO ENTITIES.—The fees set or  
24 adjusted under subsection (a) for filing, processing,  
25 issuing, and maintaining patent applications and patents

1 shall be reduced by 50 percent with respect to the applica-  
2 tion of such fees to any small entity that qualifies for re-  
3 duced fees under section 41(h)(1) of title 35, United  
4 States Code, and shall be reduced by 75 percent with re-  
5 spect to the application of such fees to any micro entity  
6 as defined in section 123 of that title (as added by sub-  
7 section (f) of this section).

8 (c) REDUCTION OF FEES IN CERTAIN FISCAL  
9 YEARS.—In each fiscal year, the Director—

10 (1) shall consult with the Patent Public Advi-  
11 sory Committee and the Trademark Public Advisory  
12 Committee on the advisability of reducing any fees  
13 described in subsection (a); and

14 (2) after the consultation required under para-  
15 graph (1), may reduce such fees.

16 (d) ROLE OF THE PUBLIC ADVISORY COMMITTEE.—  
17 The Director shall—

18 (1) not less than 45 days before publishing any  
19 proposed fee under subsection (a) in the Federal  
20 Register, submit the proposed fee to the Patent Pub-  
21 lic Advisory Committee or the Trademark Public  
22 Advisory Committee, or both, as appropriate;

23 (2)(A) provide the relevant advisory committee  
24 described in paragraph (1) a 30-day period following

1 the submission of any proposed fee, on which to de-  
2 liberate, consider, and comment on such proposal;

3 (B) require that, during such 30-day period, the  
4 relevant advisory committee hold a public hearing  
5 relating to such proposal; and

6 (C) assist the relevant advisory committee in  
7 carrying out such public hearing, including by offer-  
8 ing the use of the resources of the Office to notify  
9 and promote the hearing to the public and interested  
10 stakeholders;

11 (3) require the relevant advisory committee to  
12 make available to the public a written report setting  
13 forth in detail the comments, advice, and rec-  
14 ommendations of the committee regarding the pro-  
15 posed fee; and

16 (4) consider and analyze any comments, advice,  
17 or recommendations received from the relevant advi-  
18 sory committee before setting or adjusting (as the  
19 case may be) the fee.

20 (e) PUBLICATION IN THE FEDERAL REGISTER.—

21 (1) PUBLICATION AND RATIONALE.—The Di-  
22 rector shall—

23 (A) publish any proposed fee change under  
24 this section in the Federal Register;

1 (B) include, in such publication, the spe-  
2 cific rationale and purpose for the proposal, in-  
3 cluding the possible expectations or benefits re-  
4 sulting from the proposed change; and

5 (C) notify, through the Chair and Ranking  
6 Member of the Committees on the Judiciary of  
7 the Senate and the House of Representatives,  
8 the Congress of the proposed change not later  
9 than the date on which the proposed change is  
10 published under subparagraph (A).

11 (2) PUBLIC COMMENT PERIOD.—The Director  
12 shall, in the publication under paragraph (1), pro-  
13 vide the public a period of not less than 45 days in  
14 which to submit comments on the proposed change  
15 in fees.

16 (3) PUBLICATION OF FINAL RULE.—The final  
17 rule setting or adjusting a fee under this section  
18 shall be published in the Federal Register and in the  
19 Official Gazette of the Patent and Trademark Of-  
20 fice.

21 (4) CONGRESSIONAL COMMENT PERIOD.—A fee  
22 set or adjusted under subsection (a) may not become  
23 effective before the end of the 45-day period begin-  
24 ning on the day after the date on which the Director

1 publishes the final rule adjusting or setting the fee  
2 under paragraph (3).

3 (5) RULE OF CONSTRUCTION.—Rules pre-  
4 scribed under this section shall not diminish—

5 (A) the rights of an applicant for a patent  
6 under title 35, United States Code, or for a  
7 trademark under the Trademark Act of 1946;  
8 or

9 (B) any rights under a ratified treaty.

10 (f) MICRO ENTITY DEFINED.—

11 (1) IN GENERAL.—Chapter 11 of title 35,  
12 United States Code, is amended by adding at the  
13 end the following new section:

14 **“§ 123. Micro entity defined.**

15 “(a) IN GENERAL.—For purposes of this title, the  
16 term ‘micro entity’ means an applicant who makes a cer-  
17 tification that the applicant—

18 “(1) qualifies as a small entity, as defined in  
19 regulations issued by the Director;

20 “(2) has not been named as an inventor on  
21 more than 4 previously filed patent applications,  
22 other than applications filed in another country, pro-  
23 visional applications under section 111(b), or inter-  
24 national applications filed under the treaty defined

1 in section 351(a) for which the basic national fee  
2 under section 41(a) was not paid;

3 “(3) did not, in the calendar year preceding the  
4 calendar year in which the examination fee for the  
5 application is being paid, have a gross income, as de-  
6 fined in section 61(a) of the Internal Revenue Code  
7 of 1986, exceeding 3 times the median household in-  
8 come for that preceding calendar year, as reported  
9 by the Bureau of the Census; and

10 “(4) has not assigned, granted, or conveyed,  
11 and is not under an obligation by contract or law to  
12 assign, grant, or convey, a license or other ownership  
13 interest in the application concerned to an entity  
14 that, in the calendar year preceding the calendar  
15 year in which the examination fee for the application  
16 is being paid, had a gross income, as defined in sec-  
17 tion 61(a) of the Internal Revenue Code of 1986, ex-  
18 ceeding 3 times the median household income for  
19 that preceding calendar year, as reported by the Bu-  
20 reau of the Census.

21 “(b) APPLICATIONS RESULTING FROM PRIOR EM-  
22 PLOYMENT.—An applicant is not considered to be named  
23 on a previously filed application for purposes of subsection  
24 (a)(2) if the applicant has assigned, or is under an obliga-  
25 tion by contract or law to assign, all ownership rights in



1 the application as the result of the applicant's previous  
2 employment.

3       “(c) FOREIGN CURRENCY EXCHANGE RATE.—If the  
4 gross income of an applicant or entity for a calendar year,  
5 for purposes of paragraph (3) or (4) of subsection (a),  
6 is reported in a currency other than United States dollars,  
7 the average exchange rate for that currency, as reported  
8 by the Internal Revenue Service, during that calendar year  
9 shall be used to determine whether the gross income ex-  
10 ceeds the threshold specified in paragraph (3) or (4) of  
11 subsection (a).”.

12       (2) CONFORMING AMENDMENT.—Chapter 11 of  
13 title 35, United States Code, is amended by adding  
14 at the end the following new item:

“123. Micro entity defined.”.

15       (g) EFFECTIVE DATE; SUNSET.—

16       (1) EFFECTIVE DATE.—This section and the  
17 amendments made by this section shall take effect  
18 on the date of the enactment of this Act.

19       (2) SUNSET.—

20       (A) IN GENERAL.—The authority to estab-  
21 lish and adjust fees under subsection (a) shall  
22 terminate upon the expiration of the 10-year  
23 period beginning on the date of the enactment  
24 of this Act.

1 (B) CLARIFICATION.—The termination of  
2 authority under subparagraph (A) does not  
3 apply to the requirement and authority under  
4 subsection (c).

5 **SEC. 4. PATENT AND TRADEMARK OFFICE FUNDING.**

6 (a) FUNDING.—

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

9 (A) in subsection (b), by striking “Patent  
10 and Trademark Office Appropriation Account”  
11 and inserting “United States Patent and  
12 Trademark Office Public Enterprise Fund”;  
13 and

14 (B) in subsection (c), in the first sen-  
15 tence—

16 (i) by striking “To the extent” and all  
17 that follows through “fees” and inserting  
18 “Fees”; and

19 (ii) by striking “shall be collected by  
20 and shall be available to the Director” and  
21 inserting “shall be collected by the Direc-  
22 tor and shall be available until expended”.

23 (2) EFFECTIVE DATE.—

1 (A) IN GENERAL.—The amendments made  
2 by paragraph (1) shall take effect on October 1,  
3 2011.

4 (B) TERMINATION OF APPROPRIATION.—  
5 The provisions of any appropriation Act that—

6 (i) are enacted before the effective  
7 date set forth in subparagraph (A),

8 (ii) make amounts available pursuant  
9 to section 42(c) of title 35, United States  
10 Code, and

11 (iii) are in effect on the effective date  
12 set forth in subparagraph (A),

13 shall cease to be effective on that effective date,  
14 and any unexpended amounts made available  
15 pursuant to such section shall be transferred in  
16 accordance with subsection (b)(5).

17 (b) 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 the following:

1           (A) Any fees collected under sections 41,  
2           42, and 376 of title 35, United States Code. If  
3           such fees are collected by, and payable to, the  
4           Director, the Director shall transfer such  
5           amounts to the Fund.

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

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

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

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

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

21 (c) ANNUAL REPORT.—Not later than 60 days after  
22 the end of each fiscal year, the Director shall submit a  
23 report to Congress that—

24 (1) summarizes the operations of the Office for  
25 the preceding fiscal year, including financial details

1 and staff levels broken down by each major activity  
2 of the Office;

3 (2) details the operating plan of the Office, in-  
4 cluding specific expense and staff needs for the up-  
5 coming fiscal year;

6 (3) describes the long term modernization plans  
7 of the Office;

8 (4) sets forth details of any progress towards  
9 such modernization plans made in the previous fiscal  
10 year; and

11 (5) includes the results of the most recent audit  
12 carried out under subsection (e).

13 (d) ANNUAL SPENDING PLAN.—

14 (1) IN GENERAL.—Not later than 30 days after  
15 the beginning of each fiscal year, the Director shall  
16 notify the Committees on Appropriations of both  
17 Houses of Congress of the plan for the obligation  
18 and expenditure of the total amount of the funds for  
19 that fiscal year in a manner consistent with section  
20 605 of the Science, State, Justice, Commerce, and  
21 Related Agencies Appropriations Act, 2006 (Public  
22 Law 109–108; 119 Stat. 2334).

23 (2) CONTENTS.—Each plan under paragraph  
24 (1) shall—

1 (A) summarize the operations of the Office  
2 for the current fiscal year, including financial  
3 details and staff levels with respect to major ac-  
4 tivities; and

5 (B) detail the operating plan of the Office,  
6 including specific expense and staff needs, for  
7 the current fiscal year.

8 (e) AUDIT.—The Director shall, on an annual basis,  
9 provide for an independent audit of the financial state-  
10 ments of the Office. Such audit shall be conducted in ac-  
11 cordance with generally acceptable accounting procedures.

12 (f) BUDGET.—In accordance with section 9301 of  
13 title 31, United States Code, the Fund shall prepare and  
14 submit each year to the President a business-type budget  
15 in such manner, and before such date, as the President  
16 prescribes by regulation for the budget program.

17 (g) EFFECTIVE DATE.—Subsections (b) through (f)  
18 and this subsection shall take effect on October 1, 2011.

19 **SEC. 5. FEES FOR PATENT SERVICES.**

20 (a) GENERAL PATENT SERVICES.—Subsections (a)  
21 and (b) of section 41 of title 35, United States Code, is  
22 amended to read as follows:

23 “(a) GENERAL FEES.—The Director shall charge the  
24 following fees:

25 “(1) FILING AND BASIC NATIONAL FEES.—

1           “(A) On filing each application for an  
2 original patent, except for design, plant, or pro-  
3 visional applications, \$330.

4           “(B) On filing each application for an  
5 original design patent, \$220.

6           “(c) On filing each application for an origi-  
7 nal plant patent, \$220.

8           “(D) On filing each provisional application  
9 for an original patent, \$220.

10          “(E) On filing each application for the re-  
11 issue of a patent, \$330.

12          “(F) The basic national fee for each inter-  
13 national application filed under the treaty de-  
14 fined in section 351(a) entering the national  
15 stage under section 371, \$330.

16          “(G) In addition, excluding any sequence  
17 listing or computer program listing filed in an  
18 electronic medium as prescribed by the Direc-  
19 tor, for any application the specification and  
20 drawings of which exceed 100 sheets of paper  
21 (or equivalent as prescribed by the Director if  
22 filed in an electronic medium), \$270 for each  
23 additional 50 sheets of paper (or equivalent as  
24 prescribed by the Director if filed in an elec-  
25 tronic medium) or fraction thereof.



1           “(2) EXCESS CLAIMS FEES.—

2                   “(A) IN GENERAL.—In addition to the fee  
3 specified in paragraph (1)—

4                           “(i) on filing or on presentation at  
5 any other time, \$220 for each claim in  
6 independent form in excess of 3;

7                           “(ii) on filing or on presentation at  
8 any other time, \$52 for each claim (wheth-  
9 er dependent or independent) in excess of  
10 20; and

11                           “(iii) for each application containing a  
12 multiple dependent claim, \$390.

13           “(B) MULTIPLE DEPENDENT CLAIMS.—  
14 For the purpose of computing fees under sub-  
15 paragraph (A), a multiple dependent claim re-  
16 ferred to in section 112 or any claim depending  
17 therefrom shall be considered as separate de-  
18 pendent claims in accordance with the number  
19 of claims to which reference is made.

20           “(C) REFUNDS; ERRORS IN PAYMENT.—  
21 The Director may by regulation provide for a  
22 refund of any part of the fee specified in sub-  
23 paragraph (A) for any claim that is canceled  
24 before an examination on the merits, as pre-  
25 scribed by the Director, has been made of the

1 application under section 131. Errors in pay-  
2 ment of the additional fees under this para-  
3 graph may be rectified in accordance with regu-  
4 lations prescribed by the Director

5 “(3) EXAMINATION FEES.—

6 “(A) IN GENERAL.—

7 “(i) For examination of each applica-  
8 tion for an original patent, except for de-  
9 sign, plant, provisional, or international  
10 applications, \$220.

11 “(ii) For examination of each applica-  
12 tion for an original design patent, \$140.

13 “(iii) For examination of each applica-  
14 tion for an original plant patent, \$170.

15 “(iv) For examination of the national  
16 stage of each international application,  
17 \$220.

18 “(v) For examination of each applica-  
19 tion for the reissue of a patent, \$650.

20 “(B) APPLICABILITY OF OTHER FEE PRO-  
21 VISIONS.—The provisions of paragraphs (3) and  
22 (4) of section 111(a) relating to the payment of  
23 the fee for filing the application shall apply to  
24 the payment of the fee specified in subpara-  
25 graph (A) with respect to an application filed

1 under section 111(a). The provisions of section  
2 371(d) relating to the payment of the national  
3 fee shall apply to the payment of the fee speci-  
4 fied in subparagraph (A) with respect to an  
5 international application.

6 “(4) ISSUE FEES.—

7 “(A) For issuing each original patent, ex-  
8 cept for design or plant patents, \$1,510.

9 “(B) For issuing each original design pat-  
10 ent, \$860.

11 “(C) For issuing each original plant pat-  
12 ent, \$1,190.

13 “(D) For issuing each reissue patent,  
14 \$1,510.

15 “(5) DISCLAIMER FEE.—On filing each dis-  
16 claimer, \$140.

17 “(6) APPEAL FEES.—

18 “(A) On filing an appeal from the exam-  
19 iner to the Board of Patent Appeals and Inter-  
20 ferences, \$540.

21 “(B) In addition, on filing a brief in sup-  
22 port of the appeal, \$540, and on requesting an  
23 oral hearing in the appeal before the Board of  
24 Patent Appeals and Interferences, \$1,080.

1           “(7) REVIVAL FEES.—On filing each petition  
2           for the revival of an unintentionally abandoned ap-  
3           plication for a patent, for the unintentionally delayed  
4           payment of the fee for issuing each patent, or for an  
5           unintentionally delayed response by the patent owner  
6           in any reexamination proceeding, \$1,620, unless the  
7           petition is filed under section 133 or 151, in which  
8           case the fee shall be \$540.

9           “(8) EXTENSION FEES.—For petitions for 1-  
10          month extensions of time to take actions required by  
11          the Director in an application—

12                 “(A) on filing a first petition, \$130;

13                 “(B) on filing a second petition, \$360; and

14                 “(C) on filing a third or subsequent peti-  
15          tion, \$620.

16          “(b) MAINTENANCE FEES.—

17                 “(1) IN GENERAL.—The Director shall charge  
18          the following fees for maintaining in force all pat-  
19          ents based on applications filed on or after Decem-  
20          ber 12, 1980:

21                 “(A) 3 years and 6 months after grant,  
22          \$980.

23                 “(B) 7 years and 6 months after grant,  
24          \$2,480.

1                   “(C) 11 years and 6 months after grant,  
2                   \$4,110.

3                   “(2) GRACE PERIOD; SURCHARGE.—Unless pay-  
4                   ment of the applicable maintenance fee under para-  
5                   graph (1) is received in the Office on or before the  
6                   date the fee is due or within a grace period of 6  
7                   months thereafter, the patent shall expire as of the  
8                   end of such grace period. The Director may require  
9                   the payment of a surcharge as a condition of accept-  
10                  ing within such 6-month grace period the payment  
11                  of an applicable maintenance fee.

12                  “(3) NO MAINTENANCE FEE FOR DESIGN OR  
13                  PLANT PATENT.—No fee may be established for  
14                  maintaining a design or plant patent in force.”.

15                  (b) DELAYS IN PAYMENT.—Subsection (c) of section  
16 41 of title 35, United States Code, is amended—

17                  (1) by striking “(c)(1) The Director” and in-  
18                  serting:

19                  “(c) DELAYS IN PAYMENT OF MAINTENANCE  
20 FEES.—

21                  “(1) ACCEPTANCE.—The Director”.

22                  (2) by striking “(2) A patent” and inserting  
23                  “(2) EFFECT ON RIGHTS OF OTHERS.—A patent”;  
24                  and

1           (3) by moving the remaining text of paragraphs  
2           (1) and (2) 2 ems to the right.

3           (c) PATENT SEARCH FEES.—Subsection (d) of sec-  
4 tion 41 of title 35, United States Code, is amended to  
5 read as follows:

6           “(d) PATENT SEARCH AND OTHER FEES.—

7           “(1) PATENT SEARCH FEES.—

8           “(A) IN GENERAL.—The Director shall  
9 charge a fee for the search of each application  
10 for a patent, except for provisional applications.  
11 The Director shall establish the fees charged  
12 under this paragraph to recover an amount not  
13 to exceed the estimated average cost to the Of-  
14 fice of searching applications for patent either  
15 by acquiring a search report from a qualified  
16 search authority, or by causing a search by Of-  
17 fice personnel to be made, of each application  
18 for patent.

19           “(B) SPECIFIC FEES.—For purposes of de-  
20 termining the fees to be established under this  
21 paragraph, the cost to the Office of causing a  
22 search of an application to be made by Office  
23 personnel shall be deemed to be—

1           “(i) \$540 for each application for an  
2           original patent, except for design, plant,  
3           provisional, or international applications;

4           “(ii) \$100 for each application for an  
5           original design patent;

6           “(iii) \$330 for each application for an  
7           original plant patent;

8           “(iv) \$540 for the national stage of  
9           each international application; and

10          “(v) \$540 for each application for the  
11          reissue of a patent.

12          “(C) APPLICABILITY OF OTHER PROVI-  
13          SIONS.—The provisions of paragraphs (3) and  
14          (4) of section 111(a) relating to the payment of  
15          the fee for filing the application shall apply to  
16          the payment of the fee specified in this para-  
17          graph with respect to an application filed under  
18          section 111(a). The provisions of section 371(d)  
19          relating to the payment of the national fee shall  
20          apply to the payment of the fee specified in this  
21          paragraph with respect to an international ap-  
22          plication.

23          “(D) REFUNDS.—The Director may by  
24          regulation provide for a refund of any part of  
25          the fee specified in this paragraph for any ap-

1           applicant who files a written declaration of ex-  
2           press abandonment as prescribed by the Direc-  
3           tor before an examination has been made of the  
4           application under section 131, and for any ap-  
5           plicant who provides a search report that meets  
6           the conditions prescribed by the Director.

7                   “(E) REQUIREMENTS FOR SEARCHES.—  
8           The Director shall require that any search by a  
9           qualified search authority that is a commercial  
10          entity is conducted in the United States by per-  
11          sons that—

12                   “(i) if individuals are United States  
13           citizens; and

14                   “(ii) if business concerns, are orga-  
15           nized under the laws of the United States  
16           or any State and employ United States  
17           citizens to perform the searches.

18                   “(F) APPLICATIONS SUBJECT TO SECRECY  
19          ORDER.—A search of an application that is the  
20          subject of a secrecy order under section 181 or  
21          otherwise involves classified information may  
22          only be conducted by Office personnel.

23                   “(G) CONFLICTS OF INTEREST.—A quali-  
24          fied search authority that is a commercial enti-  
25          ty may not conduct a search of a patent appli-



1 cation if the entity has any direct or indirect fi-  
2 nancial interest in any patent or in any pending  
3 or imminent application for patent filed or to be  
4 filed in the Office.

5 “(2) OTHER FEES.—

6 “(A) IN GENERAL.—The Director shall es-  
7 tablish fees for all other processing, services, or  
8 materials relating to patents not specified in  
9 this section to recover the estimated average  
10 cost to the Office of such processing, services,  
11 or materials, except that the Director shall  
12 charge the following fees for the following serv-  
13 ices:

14 “(i) For recording a document affect-  
15 ing title, \$40 per property.

16 “(ii) For each photocopy, \$.25 per  
17 page.

18 “(iii) For each black and white copy  
19 of a patent, \$3.

20 “(B) COPIES FOR LIBRARIES.—The yearly  
21 fee for providing a library specified in section  
22 12 with uncertified printed copies of the speci-  
23 fications and drawings for all patents in that  
24 year shall be \$50.”.

1 (d) FEES FOR SMALL ENTITIES.—Subsection (h) of  
2 section 41 of title 35, United States Code, is amended to  
3 read as follows:

4 “(h) FEES FOR SMALL ENTITIES.—

5 “(1) REDUCTIONS IN FEES.—Subject to para-  
6 graph (3), fees charged under subsections (a), (b),  
7 and (d)(1) shall be reduced by 50 percent with re-  
8 spect to their application to any small business con-  
9 cern as defined under section 3 of the Small Busi-  
10 ness Act, and to any independent inventor or non-  
11 profit organization as defined in regulations issued  
12 by the Director.

13 “(2) SURCHARGES AND OTHER FEES.—With re-  
14 spect to its application to any entity described in  
15 paragraph (1), any surcharge or fee charged under  
16 subsection (c) or (d) shall not be higher than the  
17 surcharge or fee required of any other entity under  
18 the same or substantially similar circumstances.

19 “(3) REDUCTION FOR ELECTRONIC FILING.—  
20 The fee charged under subsection (a)(1)(A) shall be  
21 reduced by 75 percent with respect to its application  
22 to any entity to which paragraph (1) applies, if the  
23 application is filed by electronic means as prescribed  
24 by the Director.”.

1 (e) TECHNICAL AMENDMENTS.—Section 41 of title  
2 35, United States Code, is amended—

3 (1) in subsection (e), in the first sentence, by  
4 striking “The Director” and inserting “WAIVER OF  
5 FEES; COPIES REGARDING NOTICE.— he Director”;

6 (2) in subsection (f), by striking “The fees”  
7 and inserting “ADJUSTMENT OF FEES.—The fees”;

8 (3) by repealing subsection (g); and

9 (4) in subsection (i)—

10 (A) by striking “(i)(1) The Director” and  
11 inserting the following:

12 “(i) ELECTRONIC PATENT AND TRADEMARK  
13 DATA.—

14 “(1) MAINTENANCE OF COLLECTIONS.—The  
15 Director”;

16 (B) by striking “(2) The Director” and in-  
17 serting the following:

18 “(2) AVAILABILITY OF AUTOMATED SEARCH  
19 SYSTEMS.—The Director”;

20 (C) by striking “(3) The Director” and in-  
21 serting the following:

22 “(3) ACCESS FEES.—The Director”; and

23 (D) by striking “(4) The Director” and in-  
24 serting the following:

1           “(4) ANNUAL REPORT TO CONGRESS.—The Di-  
2       rector”.

3       (f) ADJUSTMENT OF TRADEMARK FEES.—Section  
4 802(a) of division B of the Consolidated Appropriations  
5 Act, 2005 (Public Law 108–447) is amended—

6           (1) in the first sentence, by striking “During  
7       fiscal years 2005, 2006 and 2007”, and inserting  
8       “Until such time as the Director sets or adjusts the  
9       fees otherwise,”; and

10          (2) in the second sentence, by striking “During  
11       fiscal years 2005, 2006, and 2007, the” and insert-  
12       ing “The”.

13       (g) EFFECTIVE DATE.—The amendments made by  
14 this section shall take effect on the date of the enactment  
15 of this Act.

16 **SEC. 6. TEMPORARY SURCHARGE.**

17       (a) SURCHARGE.—There shall be a surcharge of 15  
18 percent, rounded by standard arithmetic rules, on fees  
19 charged or authorized by sections 41(a), (b), (d)(1), and  
20 132(b) of title 35, United States Code, subject to the fol-  
21 lowing:

22           (1) The surcharge shall be separate from, and  
23       in addition to, any other surcharge that may be re-  
24       quired pursuant to any provision of title 35, United  
25       States Code, or other provision of law.

1           (2) The surcharge under this subsection shall  
2           take effect on the 10th day after the date of the en-  
3           actment of this Act, and shall remain in effect  
4           through September 30, 2011.

5           (3) The receipts collected as a result of the sur-  
6           charge under this subsection shall be available to the  
7           Office without fiscal year limitation, for all author-  
8           ized activities and operations of the Office.

9           (b) ELECTRONIC FILING INCENTIVE.—

10           (1) IN GENERAL.—Notwithstanding any other  
11           provision of this section, the fee charged for each ap-  
12           plication for an original patent, except for a design,  
13           plant, or provisional application, shall be increased  
14           by \$400 for an application that is not filed by elec-  
15           tronic means as prescribed by the Director. The fee  
16           established by this subsection shall be reduced 50  
17           percent for small entities that qualify for reduced  
18           fees under section 41(h)(1) of title 35, United States  
19           Code.

20           (2) EFFECTIVE DATE.—This subsection shall  
21           take effect upon the expiration of the 60-day period  
22           beginning on the date of the enactment of this Act.