Small businesses are the economic engine of the American economy. According to the Small Business Administration, small businesses employ just over half of all private sector employees and create over 50 percent of our nonfarm GDP. Illinois alone is home to 258,000 small employers and more than 885,000 self-employers.

Small businesses are helping to lead the way on American innovation. These firms produce 13 times more patents per employee than large patenting firms, and their patents are twice as likely to be among the most cited among all patents. Small business breakthroughs led to the development of airplanes, FM radio, and the personal computer. Unfortunately, the share of small-entity patents is declining, according to a New York University researcher.

While S. 23 takes great strides in reforming our patent system, it can still be daunting for a small business owner or inventor to obtain a patent. In many instances, the value of a patent is what keeps that new small business afloat.

It is vital for America's future competitiveness, her economic growth, and her job creation that these innovators spend their time developing new products and processes that will build our future, not wading through government redtape. Our amendment would help small firms navigate the bureaucracy by establishing the U.S. Patent and Trademark Office Ombudsman Program to assist small businesses with their patent filing issues. The provision was first conceived as part of the Small Business Bill of Rights, which I introduced in the House, to expand employment and help small businesses grow. The Small Business Bill of Rights and this amendment are endorsed by the National Federation of Independent Business. I am proud to have this as part of a 10-point plan to be considered here in the Senate.

I wish to thank Senator MARK PRYOR of Arkansas, who is the lead Democratic cosponsor of this amendment. He is a strong and consistent supporter of small business, and I appreciate his partnership on this important program. I also thank Chairman LEAHY and Ranking Member GRASSLEY and their staffs for working with us on this amendment and for preserving this critical legislation.

Our Founding Fathers recognized the importance of a strong patent system that protects and incentivizes innovators. I look forward to supporting S. 23, which will provide strong intellectual property rights to further our technological advancement.

In sum, we should help foster innovation by protecting innovators, especially small business men and women, and I urge adoption of the amendment.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

AMENDMENT NO. 121

Mr. LEAHY. Mr. President, I thank the Senator from Illinois for his contribution to this effort.

I ask unanimous consent that we set aside the Kirk-Pryor amendment and go back to the pending business, which is the managers' amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I understand there will be another Senator who will come down and speak, and in the meantime I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I ask unanimous consent that the distinguished Senator from Michigan, Ms. STABENOW, be recognized as though in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Michigan.

(The remarks of Ms. STABENOW are printed in today's RECORD under ''Morning Business.'')

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:34 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. WEBB).

PATENT REFORM ACT OF 2011—Continued

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. TOOMEY. Mr. President, it is a great privilege and honor for me to be able to represent the big, wonderful, diverse Commonwealth of Pennsylvania in the Senate. Pennsylvania is a wonderful State. It has a terrific range of great attributes. It has big, bustling cities such as Philadelphia and Pittsburgh at opposite ends; has all throughout the Commonwealth beautiful, historical boroughs such as Emmaus and Gettysburg. We go from the banks of the Delaware all the way to the shores of Lake Erie.

In a State this big, of course, we have a wide range of very vital industries. We have old industries that we have had for a long time and are still very important employers: agriculture, coal, steel, and many others. We are a big manufacturing State, manufacturing goods of all kinds. We have a huge service sector, especially in the fields of education, medicine, finance, tourism, and many others. We have some relatively new and very exciting industries in our Commonwealth that I am very hopeful will lead to an acceleration of job growth soon. I am thinking in particular of the natural gas and the Marcellus shale. I am thinking of the life sciences, all across the Commonwealth, especially in greater Philadelphia and greater Pittsburgh as well as in points in between. The medical device sector and pharmaceutical industries are offering some of the most exciting opportunities for economic growth anywhere in the Commonwealth.

So when I think about the diversity and the strength of our Commonwealth, I am convinced that Pennsylvania's best days are ahead of us.

That said, despite all of the underlying strengths and advantages we have, we have an economy that is struggling. We have job creation that is far too slow. As I said repeatedly throughout my campaign for the Senate seat and as I have said since then, I think there are two vital priorities that we need to focus on first and foremost here in Washington. The first is economic growth and the job creation that comes with it, and the second is restoring fiscal discipline to a government that has lost all sense of fiscal discipline. These two, of course, are closely related. We will never have the kind of job growth we need and we deserve until we get our fiscal house in order.

But I look at them as separate issues. I think they should be at the top of our priority list. I am absolutely convinced we can have terrific economic growth, terrific job growth. We can have the prosperity we have been looking for.

In fact, it is actually inevitable if the Federal Government follows the right policies, remembering first and foremost that prosperity comes from the private sector, it does not come from government itself, but that government creates an environment in which the private sector can thrive and create the jobs we so badly need. I would argue that the government does that by doing four things and doing them well.

The first is to make sure we have a legal system that respects property rights, because the clear title and ownership and ability to use private property is the cornerstone of a free enterprise system.

It requires, second, that the government establish sensible regulations that are not excessive, because excessive regulation—and frankly we have seen a lot of excessive regulation recently—too much regulation always has unintended consequences that curb our ability to create the jobs we need.

A third thing a government always needs to do is provide a stable currency, sound money, because debasing one's currency is the way to ruin, not the way to prosperity.

Fourth, governments need to live within their means. They cannot be spending too much money and they cannot have taxes at too high a level.

It is so important that government spending remain limited and, frankly,

much less than we have today, for several reasons. One, of course, government spending is the political allocation of capital rather than the allocation of free people and a free economy. The political allocation is always less efficient than that of men and women engaging in free enterprise.

Secondly, the reason too much spending is problematic is because it ultimately always has to be paid for with higher taxes. Higher taxes clearly impede economic growth and prevent job creation. They do that in many ways, not the least of which is diminishing the incentives to make investments, to take risks, to launch new enterprises, to hire new workers.

I would argue that of these four priorities, the government is not doing such a great job. The failure is most egregious when it comes to the level of spending that has recently developed in this town. The recent surge in spending amounts to about a 25-percent increase in the size of the government virtually overnight.

The government is now spending—this Federal Government alone—fully 25 percent of our entire economic output. Frankly, this huge surge in spending has not worked. The unemployment rate has stayed near to 10 percent, our deficits are now over $1½ trillion in a single year. That is more than 10 percent of our entire economy.

Of course, when you run annual deficits where you are spending more than you bring in, that shortfall is made up for with new borrowings. So we have been adding to our debt at what I think is an alarming pace. I would argue that this mounting debt is already today costing us job growth. It is costing us jobs because it creates a tremendous uncertainty in our economic future when we are not on a sustainable fiscal path. That uncertainty itself discourages entrepreneurs and job creators from doing the kinds of things we need.

The risks are very real. History is replete with examples of countries that have accumulated too much debt. Frankly, it never ends well. Very often it leads to very high rates of inflation. It can lead to much higher interest rates, which can have a crippling effect on job growth. It can even lead to financial disruptions which can be very harmful, as we have recently seen.

With the recent acceleration in the size of our deficits and the increase in our debts, we are now rapidly closing in on the statutory limit to the amount of money that the Federal Government is permitted to borrow under law. That is an amount of over $14 trillion, but the truth is we are rapidly closing in on that limit. We will get there fairly soon.

The administration has suggested that we ought to, here in Congress, vote to raise that limit with no conditions attached. I have to tell you I think it is a very bad idea. This brings to mind the case of a family that is routinely living beyond their means. They routinely are spending more than their income and making up for the difference by running up to the limit on their credit cards. When this family reaches the limit on all of the credit cards they have, who thinks it is a good idea to give them another credit card?

I think most folks in Pennsylvania think it is probably time to reexamine the spending and look at the real problem that has gotten the family in this situation. I think that is where we are as a government. I think we need to fundamentally reexamine the spending we have been engaged in.

I will say clearly, I think failure to raise the debt limit promptly upon reaching it is not optimal and it would be very disruptive. I hope that does not come to pass. But I happen to think the most irresponsible thing we could do is simply raise this debt limit and run up even more debt without making changes to the problems that got us into this fix.

Specifically what I think we need to do is have real cuts in spending—now, not later, not at some distant hypothetical point in time in the future but now. That is one.

Second, I think we need real reform in the spending process, reform in the way Congress goes about its business, because the process is part of what has gotten us here.

I wish to see a balanced budget amendment, one with real teeth, one that requires our books to be balanced, one that limits the total spending to a reasonable percentage of our economy, and one that makes it harder to raise taxes. I think that would be a very good development. But that will take several years, at best, if we can get that implemented. Of course, all of the States have to agree.

In the meantime, I would hope we could have statutory spending caps, limits to how much the Federal Government can spend, and a mechanism that would redress the problem if for some reason we exceeded those limits.

As we have had this debate over whether we should attach these conditions to raising the debt limit, some have suggested this is a very dangerous discussion to have, because failure to immediately raise the debt limit, some have suggested, amounts to a default on our Treasury securities, on the borrowings we have already incurred.

That is not true. I think it is irresponsible to suggest that. The fact is the ongoing revenue from taxes that will be collected whether or not we immediately raise the debt limit—the ongoing revenue is more than 10 times all the money needed to stay current on our debt service. In fact, in the last 20 years, there have been four occasions when we have reached the debt limit without immediately raising it, and we never defaulted on our debt. This country never will. So I do not think we should have a discussion about something that is not going to happen. But since some in the administration have raised the specter of a default, I have introduced legislation that would clearly take that risk off the table entirely. My bill is called the Full Faith and Credit Act. It simply says, in the event we reach the debt limit without having raised it, it instructs the Treasury to make sure the debt service is the top priority. This guarantees that we would not default on our Treasuries, we would not create a financial crisis of any kind, and maybe, more importantly, it would be a great reassurance to the millions of Americans who have lent this government their money, the millions of Americans who hold Treasury bonds in their IRAs, their 401(k)s, their pension plans.

The retirees who live in Allentown, PA, who have lived modestly, saved money, and with their retirement savings have invested in the U.S. Treasury, I think those folks deserve the peace of mind of knowing that the first priority is going to make sure we honor the obligations and stay current on our debts.

I want to take a moment to thank Senator VITTER, because yesterday he came down to the floor and introduced my legislation as an amendment to the current patent reform bill. I hope we will be able to soon pass my amendment. I hope we will soon get to a vote here on the Senate floor. The real reason is, I want to remove this false specter of a default on our debt, so we can have an honest debate over how we are going to get spending under control—what kind of spending cuts we are going to have right now, and what kind of reforms we are going to make to the process going forward.

I do not think we can kick this can down the road anymore. We have been doing that for a long time. As I said earlier, it never ends well when governments continue taking on too much debt. Nobody here that I know wants to see a government shutdown. Nobody wants to see the disruption that would come from failing to raise the debt limit at some point. But nor can we proceed with business as usual.

All across Pennsylvania I hear every day when I am back home how important it is that this government learn to live within its means as Pennsylvania businesses and families have done.

Let me close by saying I still remain absolutely convinced we can have a terrific economic recovery. We can have a booming economic growth and the tremendous job creation that goes with it. It is overdue, but it can still arrive if we pass the kind of policies that create the right environment.

I am convinced the 21st century will be another great American century and Pennsylvania will be at the forefront.

I yield the floor.

The PRESIDING OFFICER. The Republican leader.

Mr. MCCONNELL. Mr. President, I want to extend my congratulations to the Senator from Pennsylvania for his initial speech, including his comments about his important amendment, which is actually pending to the patent bill

which hopefully we will have an opportunity to vote on in the very near future.

I yield the floor.

Mr. ALEXANDER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. LEAHY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. Mr. President, I am soon going to ask for a vote on the Leahy-Grassley-Kyl managers' amendment. It resolves a number of issues in the bill, including fee diversion and business method patents damages, venue issues. Senators COBURN, SCHUMER, BENNET, WHITEHOUSE, COONS, and others worked with us on those issues. I would like to vote on that and then go to the amendment offered yesterday by Senator BENNET on satellite patent offices, with a modification, as well as the modified amendment offered by Senator KIRK and Senator PRYOR on ombudsman. If we can do that, we can get much of this finished. But while I am waiting for the—just so everybody will know, I am going to ask for a vote on that very soon. But I am waiting for the ranking member to come back.

I see the distinguished senior Senator from Minnesota, and I yield to her.

Ms. KLOBUCHAR. Mr. President, first, I commend Chairman LEAHY and the entire Judiciary Committee for their work on this bill. The chairman has endured so many ups and downs and different versions, and we would not be here today if not for him.

I rise to speak in support of the America Invents Act, a bill to overhaul our patent system, which plays such a critical role in our economy. It is one of the main reasons America has been able to maintain its competitive edge.

The Commerce Department estimates that up to 75 percent of the economic growth in our Nation since World War II is due to technological innovation—innovation made possible by a patent system that protects the rights to that innovation.

I have seen the importance and success of the patent system firsthand in Minnesota, which has brought the world everything from the pacemaker to the Post-it note. In Minnesota, we know how important the patent system is to our economy. We rank sixth in the Nation in patents per capita and have the second highest number of medical device patents over the last 5 years. Companies such as 3M, Ecolab, and Medtronic are well-known leaders in innovation, but Minnesota also supports innovative small businesses such as NVE Corporation and Arizant Healthcare. We are now first per capita, in fact, for Fortune 500 companies in our State, and that is in large part because of innovation. So many of these companies started small, invented products, and got patents which were protected. People weren't copying their products, and they were able to grow and produce jobs in our country.

Having a patent system that works for small business is particularly critical to creating jobs in America. But our patent laws haven't had a major update since 1952. The system is outdated and has become a burden on our innovators and entrepreneurs. Because of these outdated laws, the Patent and Trademark Office faces a backlog of over 700,000 patent applications and too often issues low-quality patents. One of these 700,000 patents may be the next implantable pacemaker or new therapy for fighting cancer, but it just sits in that backlog.

Our current system also seems stacked against small entrepreneurs. I have spoken to small business owners and entrepreneurs across our State of Minnesota who are concerned with the high cost and uncertainty of protecting their inventions. For example, under the current system, when two patents are filed around the same time for the same invention, the applicants must go through an arduous and expensive process called an interference to determine which applicant will be awarded the patent. Small inventors rarely, if ever, win interference proceedings because the rules for interference are often stacked in favor of companies with deep pockets. This needs to change.

Our current patent system also ignores the realities of the information age in which we live.

In 1952, back when the patent bill came about, the world wasn't as interconnected as it is today. There was no Internet. People didn't share information the way they do in this modern age. They had party telephone lines then. In 1952, most publicly available information about technology could be found in either patents or scientific publications. So patent examiners only had to look to a few sources to determine if the technology described in a patent application was both novel and nonobvious.

Today, as we all know, there is a vast amount of information readily available everywhere you look.

It is unrealistic to believe a patent examiner would know all of the places to look for this information, and even if the examiner knew where to look, it is unlikely he or she would have the time to search all of these nooks and crannies. The people who know where to look are the other scientists and innovators who also work in the field. But current law doesn't allow participation by third parties in the patent application process despite the fact that third parties are often in the best position to challenge a patent application. Without the benefit of this outside expertise, an examiner might grant a patent for technology that simply isn't a true invention—it is simply not an actual invention—and these low-quality patents clog the system and hinder true innovation.

Our Nation can't afford to slow innovation anymore. While China is investing billions in its medical technology sector, we are still bickering about regulations. While India encourages invention and entrepreneurship, we are still giving our innovators the runaround, playing a game of red light/green light with the R&D tax credit.

America can no longer afford to be a country that churns money and shuffles paper, a country that consumes, imports, and spends its way through huge trade deficits. We need to be a nation that makes things again, that invents stuff, that exports to the world, a country where you can walk into any store on any street in any neighborhood, purchase the best goods, and be able to turn it over and see the words ''Made in the USA.''

In the words of New York Times columnist and Minnesota native Tom Friedman, we need to be focusing on ''nation building in our own Nation.'' Well, as innovators and entrepreneurs across Minnesota have told me, our country needs to spawn more of them. The America Invents Act would do just that.

First, the American Invents Act increases the speed and certainty of the patent application process by transitioning our patent system from a first-to-invent system to a first-inventor-to-file system. This change to a first-inventor-to-file system will increase predictability by creating brighter lines to guide patent applicants and Patent Office examiners. By simply using the filing date of an application to determine the true inventor, the bill increases the speed of the patent application process, while rewarding novel, cutting-edge innovations.

To help guide investors and inventors, this bill allows them to search the public record to discover with more certainty whether their idea is patentable, helping eliminate duplication and streamlining the system. At the same time, the bill still provides a safe harbor of a year for inventors to go out and market their inventions before having to file for their patents. This grace period is one of the reasons our Nation's top research universities, such as the University of Minnesota, support this bill. The grace period protects professors who discuss their inventions with colleagues or publish them in journals before filing their patent application. The grace period will encourage cross-pollination of ideas and eliminate concerns about discussing inventions with others before a patent application is actually filed.

Moreover, this legislation helps to ensure that only true inventions receive protection under our laws. By allowing third parties to provide information to the patent examiner, the America Invents Act helps bridge the information gap between the patent application and existing knowledge.

The legislation also provides a modernized, streamlined mechanism for third parties who want to challenge recently issued, low-quality patents that

should never have been issued in the first place. Eliminating these potentially trivial patents will help the entire patent system by improving certainty for both users and inventors.

The legislation will also improve the patent system by granting the U.S. Patent and Trademark Office the authority to set and adjust its own fees. Allowing the Office to set its own fees will give it the resources to reduce the current backlog and devote greater resources to each patent that is reviewed to ensure higher quality patents.

The fee-setting authority is why IBM, one of the most innovative companies around—by the way, the host of the ''Jeopardy''-winning Watson—well, the IBM facility there that actually developed Watson was in Rochester, MN. In fact, IBM, which has its facilities in Rochester and the Twin Cities, as well as many other places in this country, was granted a record 5,896 patents in 2010. IBM supports this bill. It allows the Patent Office to set its own fees and run itself like a business, and that is good for companies such as IBM, as well as for small entrepreneurs.

Mr. President, as chair of the Subcommittee on Competitiveness, Innovation, and Export Promotion, I have been focused on ways to promote innovation and growth in the 21st century. Stakeholders from across the spectrum agree that this bill is a necessary step to ensure that the United States remains a world leader in developing innovative products that bring prosperity and happiness to those in our country. Globalization and technological advancement have changed our economy. This legislation will ensure that our patent system truly rewards innovation in the 21st century. Our patent system has to be as sophisticated as those who are inventing these products and those who at times are trying to steal their ideas. That is what this is about.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

AMENDMENT NO. 121, AS MODIFIED

Mr. LEAHY. Mr. President, we have the Leahy-Grassley managers' amendment at the desk. I have a modification to it. I ask that the amendment be so modified.

The PRESIDING OFFICER. The amendment will be so modified.

The amendment, as modified, is as follows:

On page 1, strike line 5, and insert the following: '' 'America Invents Act' ''.

On page 9, line 8, strike ''1 year'' and insert ''18 months''.

On page 32, strike line 12 and all that follows through page 35, line 2, and insert the following:

SEC. 4. VIRTUAL MARKING AND ADVICE OF COUNSEL.

On page 37, line 1, strike ''(b)'' and insert ''(a)''.

On page 37, line 20, strike ''(c)'' and insert ''(b)''.

On page 38, line 3, strike ''(d)'' and insert ''(c)''.

On page 38, line 13, strike ''(e)'' and insert ''(d)''.

On page 57, strike lines 17 through 23, and insert the following:

''(b) PRELIMINARY INJUNCTIONS.—If a civil action alleging infringement of a patent is filed within 3 months of the grant of the patent, the court may not stay its consideration of the patent owner's motion for a preliminary injunction against infringement of the patent on the basis that a petition for post-grant review has been filed or that such a proceeding has been instituted.''.

On page 59, strike lines 13 through 19.

On page 59, line 20, strike ''(g)'' and insert ''(f)''.

On page 65, line 21, strike ''18 months'' and insert ''1 year''.

On page 66, line 3, strike ''18 months'' and insert ''1 year''.

On page 66, lines 4 and 5, strike ''and shall apply only to patents issued on or after that date.'' and insert ''and, except as provided in section 18 and in paragraph (3), shall apply only to patents that are described in section 2(o)(1).''.

On page 66, line 8, after the period insert the following: ''During the 4 year period following the effective date of subsections (a) and (d), the Director may, in his discretion, continue to apply the provisions of chapter 31 of title 35, United States Code, as amended by paragraph (3), as if subsection (a) had not been enacted to such proceedings instituted under section 314 (as amended by subsection (a)) or under section 324 as are instituted only on the basis of prior art consisting of patents and printed publications.''.

On page 69, line 2, strike ''18 months'' and insert ''1 year''.

On page 69, line 14, strike ''18 months'' and insert ''1 year''.

On page 74, line 22, strike ''18 months'' and insert ''1 year''.

On page 75, line 16, strike ''18 months'' and insert ''1 year''.

On page 75, line 22, strike ''18 months'' and insert ''1 year''.

On page 76, line 5, strike ''18 months'' and insert ''1 year''.

On page 77, strike line 23 and all that follows through page 78, line 6.

On page 78, line 7, strike ''(b)'' and insert ''(a)''.

On page 78, line 20, strike ''(c)'' and insert ''(b)''.

On page 79, strike lines 1 through 17, and insert the following:

(1) IN GENERAL.—The Director shall have authority to set or adjust by rule any fee established, authorized, or charged under title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 et seq.), notwithstanding the fee amounts established, authorized, or charged thereunder, for all services performed by or materials furnished by, the Office, provided that patent and trademark fee amounts are in the aggregate set to recover the estimated cost to the Office for processing, activities, services, and materials relating to patents and trademarks, respectively, including proportionate shares of the administrative costs of the Office.

On page 79, lines 19–21, strike ''filing, processing, issuing, and maintaining patent applications and patents'' and insert: ''filing, searching, examining, issuing, appealing, and maintaining patent applications and patents''.

On page 86, between lines 8 and 9, insert the following:

(i) REDUCTION IN FEES FOR SMALL ENTITY PATENTS.—The Director shall reduce fees for providing prioritized examination of utility and plant patent applications by 50 percent for small entities that qualify for reduced fees under section 41(h)(1) of title 35, United States Code, so long as the fees of the prioritized examination program are set to recover the estimated cost of the program.

On page 86, line 9, strike ''(i)'' and insert ''(j)''.

On page 91, between lines 14 and 15, insert the following:

(b) NO PROVISION OF FACILITIES AUTHORIZED.—The repeal made by the amendment in subsection (a)(1) shall not be construed to authorize the provision of any court facilities or administrative support services outside of the District of Columbia.

On page 91, line 15, strike ''(b)'' and insert ''(c)''.

On page 91, line 23, strike ''under either subsection'' and all that follows through ''shall certify'' on page 92, line 2.

On page 92, line 7, before the semicolon insert the following: '', not including applications filed in another country, provisional applications under section 111(b), or international applications filed under the treaty defined in section 351(a) for which the basic national fee under section 41(a) was not paid''.

On page 92, between lines 7 and 8, insert the following:

''(3) did not in the prior calendar year have a gross income, as defined in section 61(a) of the Internal Revenue Code (26 U.S.C. 61(a)), exceeding 3 times the most recently reported median household income, as reported by the Bureau of Census; and''.

On page 92, strike lines 8 through 25.

On page 93, line 1, strike ''(3) has not assigned, granted, conveyed, or is'' and insert ''(4) has not assigned, granted, conveyed, and is not''.

On page 93, lines 4 and 5, strike ''has 5 or fewer employees and that such entity has'' and insert ''had''.

On page 93, line 7, strike ''that does'' and all that follows through line 11, and insert the following: ''exceeding 3 times the most recently reported median household income, as reported by the Bureau of the Census, in the calendar year preceding the calendar year in which the fee is being paid, other than an entity of higher education where the applicant is not an employee, a relative of an employee, or have any affiliation with the entity of higher education.''.

On page 93, strike lines 12 through 17, and insert the following:

''(b) APPLICATIONS RESULTING FROM PRIOR EMPLOYMENT.—An applicant is not considered to be named on a previously filed application for purposes of subsection (a)(2) if the applicant has assigned, or is under an obligation by contract or law to assign, all ownership rights in the application as the result of the applicant's previous employment.

''(c) FOREIGN CURRENCY EXCHANGE RATE.—If an applicant's or entity's gross income in the preceding year is not in United States dollars, the average currency exchange rate, as reported by the Internal Revenue Service, during the preceding year shall be used to determine whether the applicant's or entity's gross income exceeds the threshold specified in paragraphs (3) or (4) of subsection (a).''.

On page 94, between lines 18 and 19, insert the following:

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to imply that other business methods are patentable or that other business-method patents are valid.

On page 94, line 19, strike ''(c)'' and insert ''(d)''.

On page 103, between lines 11 and 12, insert the following:

''(c) DERIVATIVE JURISDICTION NOT REQUIRED.—The court to which a civil action is removed under this section is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.''.

On page 103, line 12, strike ''(c)'' and insert ''(d)''.

On page 105, between lines 22 and 23, insert the following:

SEC. 18. TRANSITIONAL PROGRAM FOR COVERED BUSINESS-METHOD PATENTS.

(a) REFERENCES.—Except as otherwise expressly provided, wherever in this section language is expressed in terms of a section or chapter, the reference shall be considered to be made to that section or chapter in title 35, United States Code.

(b) TRANSITIONAL PROGRAM.—

(1) ESTABLISHMENT.—Not later than 1 year after the date of enactment of this Act, the Director shall issue regulations establishing and implementing a transitional post-grant review proceeding for review of the validity of covered business-method patents. The transitional proceeding implemented pursuant to this subsection shall be regarded as, and shall employ the standards and procedures of, a post-grant review under chapter 32, subject to the following exceptions and qualifications:

(A) Section 321(c) and subsections (e)(2), (f), and (g) of section 325 shall not apply to a transitional proceeding.

(B) A person may not file a petition for a transitional proceeding with respect to a covered business-method patent unless the person or his real party in interest has been sued for infringement of the patent or has been charged with infringement under that patent.

(C) A petitioner in a transitional proceeding who challenges the validity of 1 or more claims in a covered business-method patent on a ground raised under section 102 or 103 as in effect on the day prior to the date of enactment of this Act may support such ground only on the basis of—

(i) prior art that is described by section 102(a) (as in effect on the day prior to the date of enactment of this Act); or

(ii) prior art that—

(I) discloses the invention more than 1 year prior to the date of the application for patent in the United States; and

(II) would be described by section 102(a) (as in effect on the day prior to the date of enactment of this Act) if the disclosure had been made by another before the invention thereof by the applicant for patent.

(D) The petitioner in a transitional proceeding, or his real party in interest, may not assert either in a civil action arising in whole or in part under section 1338 of title 28, United States Code, or in a proceeding before the International Trade Commission that a claim in a patent is invalid on any ground that the petitioner raised during a transitional proceeding that resulted in a final written decision.

(E) The Director may institute a transitional proceeding only for a patent that is a covered business-method patent.

(2) EFFECTIVE DATE.—The regulations issued pursuant to paragraph (1) shall take effect on the date that is 1 year after the date of enactment of this Act and shall apply to all covered business-method patents issued before, on, or after such date of enactment, except that the regulations shall not apply to a patent described in the first sentence of section 5(f)(2) of this Act during the period that a petition for post-grant review of that patent would satisfy the requirements of section 321(c).

(3) SUNSET.—

(A) IN GENERAL.—This subsection, and the regulations issued pursuant to this subsection, are repealed effective on the date that is 4 years after the date that the regulations issued pursuant to paragraph (1) take effect.

(B) APPLICABILITY.—Notwithstanding subparagraph (A), this subsection and the regulations implemented pursuant to this subsection shall continue to apply to any petition for a transitional proceeding that is filed prior to the date that this subsection is repealed pursuant to subparagraph (A).

(c) REQUEST FOR STAY.—

(1) IN GENERAL.—If a party seeks a stay of a civil action alleging infringement of a patent under section 281 in relation to a transitional proceeding for that patent, the court shall decide whether to enter a stay based on—

(A) whether a stay, or the denial thereof, will simplify the issues in question and streamline the trial;

(B) whether discovery is complete and whether a trial date has been set;

(C) whether a stay, or the denial thereof, would unduly prejudice the nonmoving party or present a clear tactical advantage for the moving party; and

(D) whether a stay, or the denial thereof, will reduce the burden of litigation on the parties and on the court.

(2) REVIEW.—A party may take an immediate interlocutory appeal from a district court's decision under paragraph (1). The United States Court of Appeals for the Federal Circuit shall review the district court's decision to ensure consistent application of established precedent, and such review may be de novo.

(d) DEFINITION.—For purposes of this section, the term ''covered business method patent'' means a patent that claims a method or corresponding apparatus for performing data processing operations utilized in the practice, administration, or management of a financial product or service, except that the term shall not include patents for technological inventions. Solely for the purpose of implementing the transitional proceeding authorized by this subsection, the Director shall prescribe regulations for determining whether a patent is for a technological invention.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as amending or interpreting categories of patent-eligible subject matter set forth under section 101.

SEC. 19. TRAVEL EXPENSES AND PAYMENT OF ADMINISTRATIVE JUDGES.

(a) AUTHORITY TO COVER CERTAIN TRAVEL RELATED EXPENSES.—Section 2(b)(11) of title 35, United States Code, is amended by inserting '', and the Office is authorized to expend funds to cover the subsistence expenses and travel-related expenses, including per diem, lodging costs ,and transportation costs, of non-federal employees attending such programs'' after ''world''.

(b) PAYMENT OF ADMINISTRATIVE JUDGES.—Section 3(b) of title 35, United States Code, is amended by adding at the end the following:

''(6) ADMINISTRATIVE PATENT JUDGES AND ADMINISTRATIVE TRADEMARK JUDGES.—The Director has the authority to fix the rate of basic pay for the administrative patent judges appointed pursuant to section 6 of this title and the administrative trademark judges appointed pursuant to section 17 of the Trademark Act of 1946 (15 U.S.C. 1067) at not greater than the rate of basic pay payable for Level III of the Executive Schedule. The payment of a rate of basic pay under this paragraph shall not be subject to the pay limitation of section 5306(e) or 5373 of title 5.''.

SEC. 20. PATENT AND TRADEMARK OFFICE FUNDING.

(a) DEFINITIONS.—In this section, the following definitions shall apply:

(1) DIRECTOR.—The term ''Director'' means the Director of the United States Patent and Trademark Office.

(2) FUND.—The term ''Fund'' means the public enterprise revolving fund established under subsection (c).

(3) OFFICE.—The term ''Office'' means the United States Patent and Trademark Office.

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

(5) UNDER SECRETARY.—The term ''Under Secretary'' means the Under Secretary of Commerce for Intellectual Property.

(b) FUNDING.—

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

(A) in subsection (b), by striking ''Patent and Trademark Office Appropriation Account'' and inserting ''United States Patent and Trademark Office Public Enterprise Fund''; and

(B) in subsection (c), in the first sentence—

(i) by striking ''To the extent'' and all that follows through ''fees'' and inserting ''Fees''; and

(ii) by striking ''shall be collected by and shall be available to the Director'' and inserting ''shall be collected by the Director and shall be available until expended''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the later of—

(A) October 1, 2011; or

(B) the first day of the first fiscal year that begins after the date of the enactment of this Act.

(c) USPTO REVOLVING FUND.—

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

(2) DERIVATION OF RESOURCES.—There shall be deposited into the Fund on or after the effective date of subsection (b)(1)—

(A) any fees collected under sections 41, 42, and 376 of title 35, United States Code, provided that notwithstanding any other provision of law, if such fees are collected by, and payable to, the Director, the Director shall transfer such amounts to the Fund, provided, however, that no funds collected pursuant to section 9(h) of this Act or section 1(a)(2) of Public Law 111-45 shall be deposited in the Fund; and

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

(3) EXPENSES.—Amounts deposited into the Fund under paragraph (2) shall be available, without fiscal year limitation, to cover—

(A) all expenses to the extent consistent with the limitation on the use of fees set forth in section 42(c) of title 35, United States Code, including all administrative and operating expenses, determined in the discretion of the Under Secretary to be ordinary and reasonable, incurred by the Under Secretary and the Director for the continued operation of all services, programs, activities, and duties of the Office relating to patents and trademarks, as such services, programs, activities, and duties are described under—

(i) title 35, United States Code; and

(ii) the Trademark Act of 1946; and

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

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

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