

117TH CONGRESS
1ST SESSION

S. 2891

To amend title 35, United States Code, to address matters relating to the Patent Trial and Appeal Board of the United States Patent and Trademark Office, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2021

Mr. LEAHY (for himself and Mr. CORNYN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend title 35, United States Code, to address matters relating to the Patent Trial and Appeal Board of the United States Patent and Trademark Office, 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 “Restoring the America
5 Invents Act”.

6 **SEC. 2. PATENTS.**

7 Title 35, United States Code, is amended—

8 (1) in section 6—

1 (A) in subsection (c)—

2 (i) in the second sentence, by striking

3 “Only the” and inserting “The”; and

4 (ii) by adding at the end the fol-

5 lowing: “After the constitution of a panel

6 of the Patent Trial and Appeal Board

7 under this subsection has been made pub-

8 lic, any changes to the constitution of that

9 panel shall be noted in the record.”;

10 (B) by redesignating subsection (d) as sub-

11 section (e);

12 (C) by inserting after subsection (c) the

13 following:

14 “(d) REVIEW BY DIRECTOR.—

15 “(1) IN GENERAL.—With respect to a final de-

16 cision of the Patent Trial and Appeal Board—

17 “(A) the Director may, on the initiative of

18 the Director, review, and modify or set aside,

19 the decision; and

20 “(B) if the decision is issued under section

21 318 or 328, a party to the applicable inter

22 partes or post-grant review may request that

23 the Director review, and modify or set aside,

24 the decision.

1 “(2) REQUIREMENT.—Any review by the Direc-
2 tor under paragraph (1) shall be issued in a sepa-
3 rate written opinion that—

4 “(A) is made part of the public record; and

5 “(B) sets forth the reasons for the review,
6 modification, or setting aside of the final deci-
7 sion of the Patent Trial and Appeal Board.

8 “(3) TIMELINE AND BASES FOR REVIEW.—Not
9 later than 18 months after the date of enactment of
10 the Restoring the America Invents Act, the Director
11 shall promulgate rules addressing the following
12 issues:

13 “(A) With respect to review of a decision
14 on the initiative of the Director under para-
15 graph (1)(A)—

16 “(i) the timeline under which the Di-
17 rector may review the decision, which shall
18 be consistent with the requirements under
19 section 318(e) or 328(e), if applicable; and

20 “(ii) the bases on which the Director
21 may review the decision.

22 “(B) With respect to a request by a party
23 under paragraph (1)(B)—

24 “(i) the timeline for submitting such a
25 request;

1 “(ii) the content that the party is re-
2 quired to include in such a request;

3 “(iii) the bases on which the party
4 may submit such a request; and

5 “(iv) the timeline for any response or
6 reply to such a request such that the re-
7 quest can be decided within the deadline
8 imposed under section 318(e) or 328(e), as
9 applicable.

10 “(4) RULE OF CONSTRUCTION.—For the pur-
11 poses of an appeal permitted under section 141, any
12 decision on review issued by the Director under this
13 subsection shall be deemed a final decision of the
14 Patent Trial and Appeal Board.”; and

15 (D) in subsection (e), as so redesignated—

16 (i) in the first sentence—

17 (I) by striking “of this sub-
18 section” and inserting “of the Restor-
19 ing the America Invents Act”;

20 (II) by inserting “or the Sec-
21 retary” after “appointment by the Di-
22 rector”; and

23 (III) by inserting “or the Sec-
24 retary, as applicable,” after “on which
25 the Director”; and

1 (ii) in the second sentence—

2 (I) by inserting “, or, before the
3 date of enactment of the Restoring
4 the America Invents Act, having per-
5 formed duties no longer performed by
6 administrative patent judges,” after
7 “by the Director”; and

8 (II) by striking “that the admin-
9 istrative patent judge so appointed”
10 and inserting “that the applicable ad-
11 ministrative patent judge”;

12 (2) in section 302, in the first sentence, by in-
13 serting “, including a governmental entity,” after “A
14 person”;

15 (3) in chapter 31—

16 (A) in section 311—

17 (i) in subsection (a), in the first sen-
18 tence, by inserting “, including a govern-
19 mental entity,” after “a person”; and

20 (ii) in subsection (b), by striking
21 “under section 102” and all that follows
22 through the period at the end and insert-
23 ing the following: “under—

24 “(1) section 102 or 103 and only on the basis
25 of—

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