



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

May 18, 2004

H.R. 1561

United States Patent and Trademark Fee Modernization Act of 2004

As reported by the Senate Committee on the Judiciary on April 29, 2004

SUMMARY

H.R. 1561 would increase the fees that the Patent and Trademark Office (PTO) collects for activities related to the processing and filing of patent and trademark applications. In addition, it would require the Director of the PTO to refund fees paid by those seeking services from the PTO that are in excess (if any) of the amounts appropriated for the PTO each year.

Under the bill, CBO estimates that PTO fees would increase by 15 percent a year compared to fees collected under current law. Assuming appropriation of all fees collected by the PTO, CBO estimates that implementing H.R. 1561 would decrease spending subject to appropriation by about \$38 million in 2005 and \$60 million over the 2005-2009 period due to the lag in time between when PTO fees are collected and spent. The bill would have no effect on direct spending or revenues because collection and spending of PTO fees are subject to appropriation.

H.R. 1561 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

H.R. 1561 would impose private-sector mandates as defined in UMRA on patent and trademark applicants. Based on information provided by the Patent and Trademark Office, CBO expects that the direct costs of complying with those mandates would exceed the annual threshold established by UMRA (\$120 million in 2004, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 1561 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By Fiscal Year, in Millions of Dollars				
	2005	2006	2007	2008	2009
CHANGES IN SPENDING SUBJECT TO APPROPRIATION ^a					
Increases in PTO Fees under H.R. 1561					
Estimated Authorization Level	-209	-219	-229	-269	-317
Estimated Outlays	-209	-219	-229	-269	-317
Increases in PTO Spending under H.R. 1561					
Estimated Authorization Level	209	219	229	269	317
Estimated Outlays	171	215	227	262	308
Net Increase in Spending under H.R. 1561					
Estimated Authorization Level	0	0	0	0	0
Estimated Outlays	-38	-4	-2	-7	-9

a. For 2004, PTO received a gross appropriation of \$1.2 billion, and CBO estimates that amount will be offset by \$1.3 billion in fee collections.

BASIS OF ESTIMATE

Under current law, the PTO is authorized to collect fees from the public for specific activities related to processing applications for patents and trademarks. The agency assesses and collects fees for a number of different activities, and the rate for each is set in law. The collection and spending of those fees are subject to provisions in annual appropriations acts, and the fees are recorded in the budget as offsets to the discretionary spending of the PTO. CBO estimates that the agency will collect a total of about \$1.3 billion in fees in 2004.

H.R. 1561 would make changes to the fees that the PTO charges for activities relating to processing applications for patents and trademarks. The bill also would require that any fees collected by the PTO but not appropriated to that agency be refunded (on a proportional basis) to those who paid the fees. Under the bill, those changes would take effect at the beginning of 2005. CBO estimates that the bill would decrease spending subject to appropriation by \$38 million in 2005 and by \$60 million over the 2005-2009 period due to the lag in the time between when PTO fees are collected and spent. The bill would have no effect on direct spending or revenues.

Changes to PTO Fees

H.R. 1561 would restructure and, in many cases, increase the fee rates that the PTO charges for activities related to patent and trademark applications. For example, the bill would increase the fee the PTO charges for issuing an original patent (other than design or plant patents) from \$1,300 to \$1,400 and also would create a new fee for trademark applications that are filed electronically. There are rates set in law for several dozen categories of fees that support funding of the PTO.

Based on the historical demand for PTO services, CBO estimates that the amount collected under the current PTO fee structure will increase by about 5 percent a year. After accounting for the increased fee rates under the bill, CBO estimates that PTO fees would increase by about 15 percent in 2005 compared to the fee rates that will apply under current law. CBO estimates that implementing the bill would increase fees collected by the PTO by \$209 million in 2005 and about \$1.2 billion over the 2005-2009 period.

CBO estimates that the PTO's collections under current law, together with the additional collections resulting from the increased fee rates under the bill, would be \$1.6 billion in 2005 and would total \$8.8 billion over the 2005-2009 period. By comparison, the agency collected \$1.2 billion in 2003 and will collect an estimated \$1.3 billion in 2004.

Refund of PTO Fees

H.R. 1561 would direct the PTO to refund a proportionate share of the fees that are not appropriated for the PTO's operating expenses to those who paid the fees in each fiscal year. In general, patent and trademark fee collections cover the PTO's operating expenses. However, the 2004 appropriation act for the PTO placed a limit on the amount of fee collections that the agency could spend. Of the estimated \$1.3 billion in fees that will be collected in 2004, the act allowed the PTO to spend about \$1.2 billion, which resulted in an estimated net appropriation of -\$69 million for 2004.

Net discretionary spending for the PTO in 2005 and later years depends on future appropriation acts. Future appropriation acts could provide the PTO with more or less spending authority than the agency receives from fee collections. If H.R. 1561 is enacted, however, future appropriation acts that provide less funding for the PTO than the agency's actual fee collections would result in an expenditure to refund the fees not appropriated to PTO. This expenditure would occur in the subsequent fiscal year and would be considered an advance appropriation.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 1561 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 1561 would impose private-sector mandates as defined in UMRA on patent and trademark applicants. Patent and trademark fees are private-sector mandates because the federal government controls the trademark and patent systems, and no reasonable alternatives to the systems exist. The bill would increase fees and establish new fees for certain patent and trademark services. At the same time, the bill would reduce certain filing fees for patents and fees for electronic applications to register trademarks. Based on information from the Patent and Trademark Office, CBO estimates that the aggregate direct cost of those mandates would range from \$209 million in 2005 to \$317 million in 2009 and thus would exceed the annual threshold established by UMRA (\$120 million in 2004, adjusted annually for inflation) in each of the next five years.

PREVIOUS CBO ESTIMATE

On July 23, 2003, CBO transmitted a cost estimate for H.R. 1561 as ordered reported by the House Committee on the Judiciary on July 9, 2003. Both versions of the legislation would make similar changes to PTO fees. The House Committee version of the legislation would grant the PTO permanent authority to collect and spend fees, while the Senate version would continue to make all PTO fees and spending subject to appropriation. The mandates in the two versions are very similar with aggregate direct costs exceeding UMRA's annual threshold for private-sector mandates in both versions.

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