107TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 107–190

PATENT AND TRADEMARK OFFICE AUTHORIZATION ACT OF 2002

AUGUST 2, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 2047]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2047) to authorize appropriations for the United States Patent and Trademark Office for fiscal year 2002, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Patent and Trademark Office Authorization Act of 2002".

SEC. 2. AUTHORIZATION OF AMOUNTS AVAILABLE TO THE PATENT AND TRADEMARK OFFICE.

There are authorized to be appropriated to the United States Patent and Trademark Office for salaries and necessary expenses for fiscal year 2002 an amount equal to the fees collected in fiscal year 2002 under title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 et seq.).

SEC. 3. ELECTRONIC FILING AND PROCESSING OF PATENT AND TRADEMARK APPLICATIONS.

(a) ELECTRONIC FILING AND PROCESSING.—The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (in this Act referred to as the "Director") shall, during the 3-year period beginning October 1, 2001, develop an electronic system for the filing and processing of patent and trademark applications, that—

(1) is user friendly; and

(2) includes the necessary infrastructure—

(A) to allow examiners and applicants to send all communications electronically; and

(B) to allow the Office to process, maintain, and search electronically the contents and history of each application.

(b) AUTHORIZATION OF APPROPRIATIONS.—Of amounts authorized under section 2, there is authorized to be appropriated to carry out subsection (a) of this section not more than $50,000,000 for fiscal year 2002. Amounts made available pursuant to this subsection shall remain available until expended.

SEC. 4. STRATEGIC PLAN.

(a) DEVELOPMENT OF PLAN.—The Director shall, in close consultation with the Patent Public Advisory Committee and the Trademark Public Advisory Committee, develop a strategic plan that sets forth the goals and methods by which the United States Patent and Trademark Office will, during the 5-year period beginning on October 1, 2002—

(1) enhance patent and trademark quality;

(2) reduce patent and trademark pendency; and

(3) develop and implement an effective electronic system for use by the Patent and Trademark Office and the public for all aspects of the patent and trademark processes, including, in addition to the elements set forth in section 3, searching, examining, communicating, publishing, and making publicly available, patents and trademark registrations.

The strategic plan shall include milestones and objective and meaningful criteria for evaluating the progress and successful achievement of the plan. The Director shall consult with the Public Advisory Committees with respect to the development of each aspect of the strategic plan.

(b) REPORT TO CONGRESSIONAL COMMITTEES.—The Director shall, not later than January 15, 2002, or 4 months after the date of the enactment of this Act, whichever is later, submit the plan developed under subsection (a) to the Committees on the Judiciary of the House of Representatives and the Senate.

SEC. 5. EFFECTIVE DATE.

This Act shall take effect on October 1, 2001.

PURPOSE AND SUMMARY

The purpose of H.R. 2047 is to authorize the Patent and Trademark Office (PTO) to retain all of the user fee revenue it collects in fiscal year 2002 for agency operations. In addition, PTO is to earmark a portion of this revenue to address problems relating to its computer systems, and to develop a 5-year strategic plan to establish goals and methods by which the agency can enhance patent and trademark quality while reducing application pendency.

BACKGROUND AND NEED FOR THE LEGISLATION

PTO FUNDING DIVERSION: A HISTORY

Amid funding scarcity in 1982, Congress dramatically increased fees associated with obtaining and maintaining trademark registrations and patents to recover the costs of processing patent and trademark applications. By 1990, approximately 80% of PTO operations were funded through user fees. In an effort to reduce public

expenditures and the national debt, Congress enacted the Omnibus Budget Reconciliation Act (OBRA), which, among other things, transformed the PTO into a wholly fee-supported agency. To compensate for the remaining taxpayer revenue which would be withdrawn, OBRA imposed a massive statutory patent fee increase (referred to as a "surcharge") on American inventors for a 5-year period.

As part of this budget agreement, a scoring system was adopted to ensure that savings would be accurately tracked through the appropriations process. To this end, Congress mandated that the income from the surcharge be deposited into a specially-created surcharge fund in the Treasury. Unlike other fees collected by PTO, those in the surcharge fund counted against the expenditure cap of the appropriators. This meant that every dollar not spent from the surcharge fund would enable the appropriators to spend another taxpayer dollar to underwrite a different (non-PTO) initiative. Congress later extended the surcharge provisions for an additional 3 years; and when it expired at the end of fiscal year 1998, Congress increased the statutory fees to compensate for the lapse of the surcharge.

Denying PTO the ability to spend fee revenue in the same fiscal year in which it collects the revenue effectively allows Congress and the Administration to spend an equivalent amount on some other program without exceeding annual budget caps. Although the money is technically available to PTO the following year, one could argue that it has already been spent. The legislative response to this funding problem has been to increase the amount of fee collections unavailable to PTO in each succeeding fiscal year.

In sum, since 1992, more than $600 million in PTO fee revenue has been diverted, rescinded, or otherwise not made available to the agency as a result of these practices.

THE ADMINISTRATION BUDGET FOR FISCAL YEAR 2002

The budget which President Bush submitted to Congress in April estimates that the PTO will raise $1.346 billion in fee revenues in fiscal year 2002 and proposes to give the PTO $1.139 billion of that sum. This means that if the President's budget estimates are accurate, the PTO would have some $207 million in fee revenues withheld or diverted in the upcoming fiscal year.

Not surprisingly, the *Fiscal Year 2002 Corporate Plan of the Department of Commerce for the United States Patent and Trademark Office*, published in April, reveals that pendency rates are expected to increase, along with pending application backlogs. The *Corporate Plan* also contains a chart that projects patent pendency to escalate to 38.6 months by fiscal year 2006, assuming the agency is allowed to retain all the fee revenue it collects beginning in fiscal year 2003.

The outlook worsens when taking into account that the President's budget projects annual fee diversion to exceed $184 million (on average) in each of fiscal years 2003 through 2006. Again, even if the PTO receives all of its fee revenue, the agency forecasts a patent pendency of 3 years and 2½ months. As a practical matter, however, actual pendency will escalate more dramatically since the President's budget would divert an additional $700 million-plus in fiscal years 2003 through 2006.

OTHER AGENCY PROBLEMS ADDRESSED BY H.R. 2047

East-West Computer System. Patent agents have complained to the Subcommittee about the PTO automated retrieval system used by examiners and agents. The PTO has two computer systems in place: "EAST" (Examiner's Automated Search Tool) and "WEST" (Web-Based Examiner Search Tool). These computerized systems are similar with respect to their search functions and the databases that they access (e.g., prior U.S. patents, foreign patent abstracts, certain pending U.S. applications, and additional proprietary database libraries.). The PTO reports that as of February 2001, approximately 2,500 examiners used EAST/WEST.

Briefly, critics assert that these search engines are inferior to the old "APS" system, especially concerning computer screen image quality. Some users of EAST/WEST maintain that its alleged deficiencies, combined with the difficulty of trying to access non-automated or earlier automated tools, will ultimately result in a degradation of future patent searches. Further, the PTO is considering the removal and eventual destruction of the older "hard-copy" paper versions of patents in an effort to automate fully. The PTO claims that 63% of examiners indicate that they do not need the U.S. paper files any longer. Critics respond that the paper files are extremely valuable and that their disposal is premature.

Electronic Filing and Processing of Applications. As part of the PTO effort to improve and automate its operations, the agency is slowly moving toward the full electronic filing and processing of patent and trademark applications. While not yet implemented, this planned conversion has generated some concerns among filers and examiners.

The PTO has published a *Federal Register* notice explaining that it is pursuing the mandatory electronic filing of trademark applications. Some critics argue that this is a heavy-handed Federal mandate that hurts small businesses and independent entrepreneurs pursuing trademark registration. Instead, they argue that the PTO should provide incentives for electronic filing while providing users with the option of choosing the method of filing for themselves, based either on a reduced fee or some form of expedited processing. The PTO and other supporters argue that given the relative simplicity of the trademark application, a user should reasonably expect to file electronically as an accommodation to efficiency.

In addition, while the PTO currently permits the electronic filing of patent applications, their processing by the PTO is likened to an "empty shell." The PTO does not electronically process the applications during the examination, but instead prints out the applications and circulates the paper through the office. It is argued that examiners are more accustomed to reviewing patent applications in the paper format. Critics charge that this method of processing defeats the efficiency gains sought by electronic filing, increases the pendency rates, and hurts innovation and the dissemination of knowledge. The critics of business method patents are particularly concerned since there are thousands of these applications currently pending, as the application time lags.

HEARINGS

The Committee's Subcommittee on Courts, the Internet, and Intellectual Property held 1 hearing on the operations of the Patent and Trademark Office and H.R. 2047 on June 7, 2001. Testimony was received from four witnesses representing four organizations, with additional materials submitted by four individuals and organizations.

COMMITTEE CONSIDERATION

On June 14, 2001, the Subcommittee on Courts, the Internet, and Intellectual Property met in open session and ordered favorably reported the bill H.R. 2047, as amended, by voice vote, a quorum being present. On July 24, 2001, the Committee met in open session and ordered favorably reported the bill H.R. 2047 with an amendment by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

There were no recorded votes on H.R. 2047.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules on the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

In order to improve PTO performance cost-effectively, the agency must develop clearly defined goals and objectives relating to patent and trademark quality, patent and trademark pendency, and electronic application processing. Users of the PTO believe that the quality of patent examination must be improved. The agency's fundamental objective should be to produce quality patents and trademark registrations on a timely basis. Full electronic processing of applications should be designed and implemented to improve productivity and enhance quality.

Witnesses at the June 7, 2001, hearing testified that the PTO must have additional resources to conduct thorough and complete searches and examinations that produce the high quality patents and trademark registration that industry needs. Today, many U.S. patent applicants routinely file under the Patent Cooperation Treaty and request that the European Patent Office conduct the search of their applications, the perception being that the European system produces higher quality searches. The PTO should develop a plan, with identifiable milestones, for improving the quality of both its searches and examinations to enhance the ultimate quality of the resulting patents and trademark registrations. In addition, the PTO should develop objective, quantifiable criteria for measuring patent and trademark quality. While the Committee recognizes that no quality measures can completely eliminate subjectivity, the PTO should design criteria that will allow this Committee and the users to evaluate the progress of the agency toward greater quality.

The indicia demonstrating the progress of the PTO in achieving enhanced quality should be published on a regular basis. The Committee expects to see increasing confidence in the business, scientific, and financial sectors flowing from stronger and more reliable patents and trademark registrations.

Rising patent and trademark application pendency is unacceptable. While the recent slowdown in the economy has alleviated the rise in trademark application pendency, the rise in patent application pendency continues unabated. The PTO itself projects patent application pendency to 3 years by fiscal year 2006 even if it receives all of its fee revenues beginning in fiscal year 2003. The Committee expects the PTO to develop innovative and cost-effective procedures for reducing patent application pendency while enhancing the quality of the resulting product. For example, the PTO should eliminate any task currently imposed on examiners that can be handled by administrative staff. It should design its electronic processing systems to eliminate unnecessary clerical procedures that are currently conducted manually, freeing staff to assist examiners by performing more value-added tasks that will enhance the productivity of examiners. The PTO also should begin taking advantage of the possible efficiencies by relying on the earlier search and examination results from the European Patent Office performed under the Patent Cooperation Treaty. More imaginative use of contract personnel to assist examiners in administrative tasks should be evaluated.

The quest for increasing the reliability and enforceability of patents as well as delivering them in a timelier manner should take into account the enhancement and use of post-grant reexamination proceedings within the PTO. More effective patent reexamination can supplement the PTO's examination before patent grant and provide confidence to the public that patents are valid.

The Committee recognizes that the plans the PTO is being directed to develop will almost certainly demonstrate a need for resources that could easily exceed the revenue that the Office currently collects. Thus, in the short-term, the PTO may need to access previously withheld fee revenues to reverse the present decline and place the agency on a road toward recovery. The Committee does not rule out the possibility that increases in the statutory fees for filing, issuing, and maintaining patents and for registering and renewing trademarks may need to be examined. A *sine qua non* of any such consideration, however, would be a guarantee that any enhanced revenue would be fully dedicated to improving PTO operations.

The Committee has found that in response to past budget uncertainties, the PTO opted to forego planned investments in work-saving information technology and focused almost exclusively on staffing levels needed to process current workloads. Agency plans for more completely and efficiently utilizing information technology should be specific, include the cost of discrete deliverables, set forth meaningful milestones, and identify objective and meaningful criteria for evaluating the benefits achieved. Based on the testimony presented by the PTO, the Committee expects the agency, with adequate funding, to develop a seamless electronic process from filing through grant or registration in 3 years. The goal should be to create a system that enables the PTO and its patent and trade-

mark customers to send all communications to each other electronically. Experience with the electronic filing system for trademarks to date suggests that it provides convenience and lower costs for applicants as well for the PTO. While the Committee recognizes that some applicants will not be in a position to take advantage of the efficiencies of electronic filing and will continue to file in paper, it is expected that the agency will provide an appropriate interface with the electronic system so as to maximize the benefits of the system.

In developing the plans, milestones, goals, and measurement criteria with respect to quality, pendency, and the development of information technology programs, the Committee expects the Director to consult with the public advisory committees and to keep this Committee fully apprised of its progress as well as any needs for adjustments in direction and scope.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2047, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 31, 2001.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2047, the Patent and Trademark Office Authorization Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Ken Johnson, who can be reached at 226–2860.

Sincerely,

DAN L. CRIPPEN, *Director.*

Enclosure

cc: Honorable John Conyers Jr.
Ranking Member

H.R. 2047—Patent and Trademark Office Authorization Act of 2002.

SUMMARY

H.R. 2047 would authorize the appropriation of funds for the Patent and Trademark Office (PTO) in 2002 equal to the amount of fees collected by the agency during that year. The bill would authorize the appropriation of up to $50 million from that total for

the development of a new computer system for processing patent and trademark applications.

CBO estimates that implementing H.R. 2047 would increase the gross spending of the PTO by $1,198 million over the 2002–2004 period, subject to appropriation action consistent with this bill. Assuming that the 2002 appropriation act permits PTO to collect fees as authorized in current law, CBO estimates that implementing the bill would not have a significant net impact on the budget over the 2002–2005 period. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

H.R. 2047 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on State, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 2047 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

	2001	2002	2003	2004	2005	2006
SPENDING SUBJECT TO APPROPRIATION						
Net PTO Spending Under Current Law						
Estimated Budget Authority [1]	–59	0	0	0	0	0
Estimated Outlays	–272	304	89	0	0	0
Proposed Changes						
Gross PTO Spending						
Estimated Authorization Level	0	1,198	0	0	0	0
Estimated Outlays	0	761	307	107	23	0
Offsetting Collections						
Estimated Authorization Level [2]	0	–1,198	0	0	0	0
Estimated Outlays	0	–1,198	0	0	0	0
Net Changes						
Estimated Authorization Level	0	0	0	0	0	0
Estimated Outlays	0	–437	307	107	23	0
Net PTO Spending Under H.R. 2047						
Estimated Authorization Level [1]	–59	0	0	0	0	0
Estimated Outlays	–272	–133	396	107	23	0

1. The 2001 level is the estimated net amount appropriated for that year.
2. The 2002 level reflects CBO's estimate of fees to be collected by the PTO, subject to appropriation action.

BASIS OF ESTIMATE

Under current law, the PTO is authorized to collect fees for a variety of activities, including the filing and processing of patent and trademark applications. These fees are collected to the extent and in the amounts authorized in annual appropriations acts, and they 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 $1.1 billion in fees in 2001.

In general, these fee collections cover the PTO's operating expenses. However, the 2001 appropriation act for the PTO placed a limit on the amount of fee collections that the agency could spend. Of the estimated $1.1 billion in fees that will be collected in 2001, the act allowed the PTO to spend $784 million. (The act also allowed the agency to spend $255 million from fees collected in 1999

and 2000, giving the PTO a gross appropriation of $1,039 million and an estimated net appropriation of -$59 million for 2001.)

H.R. 2047 would authorize a gross appropriation for the PTO in 2002 equal to the full amount of fees collected by the agency in that year. CBO estimates that the agency will collect $1,198 million in 2002. From this amount, the bill also would authorize the appropriation of up to $50 million for a new computer system to process patent and trademark applications. Assuming that the 2002 appropriation act permits the PTO to collect fees and spend the amounts collected, CBO estimates that implementing the bill would cause the gross spending of the PTO to increase by a total of $1,198 million over the 2002–2005 period. However, CBO estimates that the agency's collections and spending would offset each other over the course of that period.

PAY-AS-YOU-GO CONSIDERATIONS

None.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

H.R. 2047 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on State, local, or tribal governments.

ESTIMATE PREPARED BY:

Federal Costs: Ken Johnson (226–2860)
Impact on State, Local, and Tribal Governments: Shelley Finlayson (225–3220)
Impact on the Private Sector: Paige Piper/Bach (226–2940)

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article 1, section 8, clause 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Sec. 1. Short Title. The short title of H.R. 2047 is the "Patent and Trademark Authorization Act of 2002."

Sec. 2. Authorization of Amounts Available to the Patent and Trademark Office. H.R. 2047 would authorize the PTO to receive appropriations for fiscal year 2002 in an amount equal to those fees collected by the agency in the same year. If enacted, however, this full-funding authorization would still be subject to appropriations.

Sec. 3. Electronic Filing and Processing of Patent and Trademark Applications. In light of criticism of agency operations by users, section 3(a) of the bill requires the Director to develop an electronic system for the filing and processing of patent and trademark applications that is user-friendly. This electronic system must also allow examiners and applicants to send all communications electronically, and should allow the PTO to process, maintain, and search

electronically the contents and history of each application. Pursuant to an amendment offered with another provision *en bloc* at the full Committee markup, section 3(a) specifies that the system will be developed over a 3-year period, consistent with the expectations of the PTO and the patent and trademark communities. This amendment creates legislative support for the 3-year program but will not conflict with the 1-year authorization set forth in section 2.

Of the funds available pursuant to section 2 of the bill, section 3(b) authorizes $50,000,000 in fiscal year 2002 for this purpose, and these funds shall remain available until expended.

Sec. 4. Strategic Plan. Similarly, section 4(a) of the bill requires the Director, with the assistance of both PTO public advisory committees, to develop a 5-year strategic plan setting forth the goals and methods by which the PTO will enhance patent and trademark quality, reduce patent and trademark pendency, and develop and implement an effective electronic system for use by the agency and the public for all aspects of the patent and trademark processes. In development of the plan and in the public interest of assuring a diversity of sources for patent and trademark information, the Director, and the advisory committees, shall make every effort not to harm the market of private sector patent and trademark information service providers who purchase bulk data from the PTO and provide services related to patent and trademark information for a fee.

The strategic plan shall include milestones and objective and meaningful criteria for evaluating the progress and successful achievement of the plan; and the 5-year period for its implementation will commence on October 1, 2002.

Finally, the amendment in the nature of a substitute as reported by the Subcommittee required the PTO to submit its report governing the development of the 5-year strategic plan no later than January 15, 2002, approximately 4 months after the date of enactment (October 1, 2001). It is possible, however, that Congress will enact H.R. 2047 *after* October 1, 2001—late November or December, for example—in which case the PTO would have insufficient time to produce a quality report. The second amendment adopted *en bloc* at full Committee therefore changes the submission date to January 15, 2002, or 4 months after the date of enactment, whichever is later. This ensures that the PTO will not submit a hastily-developed report.

Sec. 5. Effective Date. The effective date of H.R. 2047 is October 1, 2001.

MARKUP TRANSCRIPT

BUSINESS MEETING

TUESDAY, JULY 24, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:03 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

Chairman SENSENBRENNER. The Committee will be in order. A working quorum is present.

The last item on the agenda is H.R. 2047, the Patent and Trademark Office Authorization Act of 2002.

[The bill, H.R. 2047, follows:]

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107TH CONGRESS
1ST SESSION

H. R. 2047

To authorize appropriations for the United States Patent and Trademark Office for fiscal year 2002, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 5, 2001

Mr. COBLE (for himself, Mr. BERMAN, and Mr. CONYERS) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To authorize appropriations for the United States Patent and Trademark Office for fiscal year 2002, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Patent and Trademark Office Authorization Act of 2002".

SEC. 2. AUTHORIZATION OF AMOUNTS AVAILABLE TO THE PATENT AND TRADEMARK OFFICE.

There are authorized to be appropriated to the United States Patent and Trademark Office for salaries and necessary expenses for fiscal year 2002 an amount

equal to the fees collected in fiscal year 2002 under title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 et seq.).

SEC. 3. ELECTRONIC FILING AND PROCESSING OF PATENT AND TRADEMARK APPLICATIONS.

(a) ELECTRONIC FILING AND PROCESSING.—The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office (in this Act referred to as the "Director") shall develop an electronic system for the filing and processing of patent and trademark applications, that—

(1) is user friendly; and

(2) includes the necessary infrastructure—

(A) to allow examiners and applicants to send all communications electronically; and

(B) to allow the Office to process, maintain, and search electronically the contents and history of each application.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out subsection (a) $50,000,000 for each of fiscal years 2002 and 2003. Amounts made available pursuant to this subsection shall remain available until expended.

SEC. 4. STRATEGIC PLAN.

(a) DEVELOPMENT OF PLAN.—The Director shall, in close consultation with the Patent Public Advisory Committee and the Trademark Public Advisory Committee, develop a strategic plan that sets forth the goals and methods by which the United States Patent and Trademark Office will, during the 5-year period beginning on October 1, 2002—

(1) enhance patent and trademark quality;

(2) reduce patent and trademark pendency; and

(3) develop and implement an effective electronic system for use by the Patent and Trademark Office and the public for all aspects of the patent and trademark processes, including, in addition to the elements set forth in section 3, searching, examining, communicating, publishing, and making publicly available, patents and trademark registrations.

The strategic plan shall include milestones and objective and meaningful criteria for evaluating the progress and successful achievement of the plan. The Director shall consult with the Public Advisory Committees with respect to the development of each aspect of the strategic plan.

(b) REPORT TO CONGRESSIONAL COMMITTEES.—The Director shall, not later than January 15, 2002, submit the plan developed under subsection (a) to the Com-

mittees on the Judiciary of the House of Representatives and the Senate.

SEC. 5. EFFECTIVE DATE.

This Act shall take effect on October 1, 2001.

○

Chairman SENSENBRENNER. The Chair recognizes the gentleman from North Carolina, Mr. Coble, for purposes of making a motion.

Mr. COBLE. Mr. Chairman, the Subcommittee on Courts, the Internet, and Intellectual Property reports favorably the Bill H.R. 2047 with a single amendment in the nature of a substitute and moves its favorable recommendation to the full House.

[The statement of Mr. Coble follows:]

PREPARED STATEMENT OF THE HONORABLE HOWARD COBLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. Chairman, H.R. 2047 would help to correct the diversion problem at the PTO by authorizing the agency to keep all of the fee revenue it raises in fiscal year 2002. In addition, and consistent with this emphasis on oversight, the legislation sets forth two problem areas that PTO should address in the coming fiscal year, irrespective of its overall budget: First, the PTO Director is required to develop an electronic system for the filing and processing of all patent and trademark applications that is user friendly and that will allow the Office to process and maintain electronically the contents and history of all applications. Fifty-million dollars are earmarked for this project in fiscal year 2002. Second, the Director, in consultation with the Patent and Trademark Public Advisory Committees, must develop a strategic plan that prescribes the goals and methods by which PTO will enhance patent and trademark quality, reduce pendency, and develop a 21st Century electronic system for the benefit of filers, examiners, and the general public.

Mr. Chairman, H.R. 2047 will allow the patent and trademark communities to get more bang for their filing and maintenance buck, while enhancing the likelihood that the agency will receive greater appropriations in the upcoming fiscal year and in the future. It is a bill that benefits the PTO, its users, and the American economy. I urge my colleagues to support it.

[The amendment follows:]

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 2047 AS REPORTED BY THE SUBCOMMITTEE ON COURTS, THE INTERNET, AND INTELLECTUAL PROPERTY

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Patent and Trademark Office Authorization Act of 2002".

SEC. 2. AUTHORIZATION OF AMOUNTS AVAILABLE TO THE PATENT AND TRADEMARK OFFICE.

There are authorized to be appropriated to the United States Patent and Trademark Office for salaries and necessary expenses for fiscal year 2002 an amount equal to the fees collected in fiscal year 2002 under title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 et seq.).

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velop an electronic system for the filing and processing of patent and trademark applications, that—

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(b) AUTHORIZATION OF APPROPRIATIONS.—Of amounts authorized under section 2, there is authorized to be appropriated to carry out subsection (a) of this section not more than $50,000,000 for fiscal year 2002. Amounts made available pursuant to this subsection shall remain available until expended.

SEC. 4. STRATEGIC PLAN.

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(3) develop and implement an effective electronic system for use by the Patent and Trademark Office and the public for all aspects of the patent and trademark processes, including, in addition to the elements set forth in section 3, searching, examining, communicating, publishing, and making publicly available, patents and trademark registrations.

The strategic plan shall include milestones and objective and meaningful criteria for evaluating the progress and successful achievement of the plan. The Director shall consult with the Public Advisory Committees with respect to the development of each aspect of the strategic plan.

(b) REPORT TO CONGRESSIONAL COMMITTEES.—The Director shall, not later than January 15, 2002, submit the plan developed under subsection (a) to the Committees on the Judiciary of the House of Representatives and the Senate.

SEC. 5. EFFECTIVE DATE.

This Act shall take effect on October 1, 2001.

Chairman SENSENBRENNER. Okay. Without objection, the bill will be considered as read and open for amendment at any point.

And the Subcommittee amendment in the nature of a substitute, which the Members have before them, will be considered as read and considered as the original text for purposes of an amendment.

I understand the gentleman from North Carolina has an amendment to the Subcommittee amendment.

Mr. COBLE. I have two amendments at the desk which will be offered *en bloc*.

[The statement of Mr. Coble follows:]

PREPARED STATEMENT OF THE HONORABLE HOWARD COBLE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. Chairman, this is an *en bloc* amendment that contains two minor noncontroversial changes that have been drafted with the participation of the minority.

First, the amendment will specify that section 3(a) of the bill which governs the development of the electronic filing and processing system will be done over a three-year period. This three-year timetable is consistent with the expectations of the PTO and the patent and trademark user communities. This revision creates legislative support for the three-year program but will not conflict with the one-year authorization set forth in section 2.

Second, the substitute as reported by the Subcommittee requires the PTO to submit its report governing the development of the five-year strategic plan no later than January 15, 2002, approximately four months after the date of enactment (October 1, 2001). It is possible, however, that Congress will enact H.R. 2047 much later than October 1, 2001—late November or December, for example—in which case the PTO would have insufficient time to produce a quality report. The amendment therefore changes the submission date to January 15, 2002, or four months after the date of enactment, whichever is later. This ensures that the PTO will not submit a hastily-developed report.

Again, Mr. Chairman, these are noncontroversial changes that will improve the legislation, and I urge their adoption.

[The amendment follows:]

H.L.C.

EN BLOC AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 2047 OFFERED BY MR. COBLE

Page 1, line 17, insert ", during the 3-year period beginning October 1, 2001," after "shall".

Page 3, line 14, insert "or 4 months after the date of the enactment of this Act, whichever is later," after "January 15, 2002,"

[The statement of Mr. Berman follows:]

PREPARED STATEMENT OF THE HONORABLE HOWARD L. BERMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman,

Thank you for agreeing to markup H.R. 2047 today.

I ask that my colleagues support both H.R 2047 and the *en bloc* amendment to be offered by Mr. Coble. This bill, as amended, accomplishes several important goals related to the efficient functioning of the PTO.

While prior authorizations for the PTO have depended on the amounts appropriated, this bill authorizes the PTO to use all the fees it collects in fiscal year 2002. In doing so, H.R. 2047 brings us one step closer to the goal of legislating full PTO

funding. It also puts the burden on appropriators to justify an appropriation of less than the authorized amount.

The PTO's ability to use all its fees directly affects its ability to fulfill its critical mission of promoting innovation and creativity. PTO fees are determined based on the cost of providing services. Thus, the fees paid by patent and trademark applicants are supposed the reflect the cost of processing their applications. When fees are diverted to fund unrelated agencies, much less unrelated activities within the PTO, insufficient revenues remain to promptly examine and issue high quality patents and trademarks.

The PTO collects well over a billion dollars a year in user fees, and every year a substantial portion of that money is diverted—used as an interest-free loan to promote unrelated programs. These yearly diversions are cumulative and may total nearly $900 million by the end of FY 2002.

I believe Congress should repeal the Innovation Tax by ensuring that the PTO can use all the fees it receives, and we can start this process by passing H.R. 2047.

H.R. 2047 also requires the PTO to develop and send to Congress a five-year strategic plan. To date, the appropriators have excused their fee diversions on the basis that the PTO cannot explain the need for these fees. I agree that the PTO needs to do a better job of clearly and specifically outlining how it would use all fee revenues. H.R. 2047 would generate this information by requiring the PTO to provide a five-year strategic plan to Congress.

H.R.2047 also would accomplish an important substantive goal. The bill requires the PTO to establish a system for the electronic processing, maintenance, and searching of patent applications. Currently, the PTO has set up a sort of Potemkin village, where patent applications can be electronically filed, but then must be printed out and examined in hard copy. This system incurs unnecessary administrative costs, sometimes results in the loss of key information, and effectively prevents pending applications from becoming a useful source of prior art.

In sum, H.R. 2047 is a good bill that will increase the effectiveness and efficiency of the PTO.

Again, I ask the support of my colleagues in favorably reporting H.R. 2047.

I yield back the balance of my time.

Chairman SENSENBRENNER. The clerk will report the amendments. Without objection, they will be considered en bloc. Without objection, the amendments will be considered as read.

Those in favor of the amendments en bloc will signify by saying aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendments en bloc are agreed to.

The question is on the amendment in the nature of a substitute, as amended.

Those in favor will signify by saying aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the amendment in the nature of a substitute is agreed to.

The Chair notes the presence of a reporting quorum.

The question occurs on the motion to report the bill H.R. 2047 favorably, as amended by the amendment in the nature of a substitute.

All in favor will signify by say aye.

Opposed, no.

The ayes appear to have it. The ayes have it, and the motion to report favorably is adopted.

Without objection, the bill will be reported in the form of a single amendment in the nature of a substitute reflecting the amendments adopted today.

Without objection, the Chair is authorized to move to go to conference pursuant to House rules.

Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days, as pro-

vided by House rules, in which to submit additional dissenting supplemental or minority views.

And the Chair thanks the indulgence of everybody. We have accomplished a lot of work today, and the Committee stands adjourned.

[Whereupon, at 12:24 p.m., the Committee was adjourned.]