



9-7-11  
4:27 pm  
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AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: To amend the provision relating to funding the Patent and Trademark Office by establishing a United States Patent and Trademark Office Public Enterprise Fund, and for other purposes.

IN THE SENATE OF THE UNITED STATES—112th Cong., 1st Sess.

**H. R. 1249**

To a **AMENDMENT N<sup>o</sup> 599** Patent

By Coburn - others

Ref: **To:** \_\_\_\_\_ and

H. R. 1249

7

**Page(s)**

AMEN  
PROPOSED BY MR. COBURN (for himself, Mr. DEMINT, Mrs. FEINSTEIN, Mrs. BOXER, Mr. UDALL of Colorado, Mr. ENZI, and Mr. BURR)

Viz:

1 On page 137, line 1, strike all through page 138, line

2 9, and insert the following:

3 **SEC. 22. PATENT AND TRADEMARK OFFICE FUNDING.**

4 (a) DEFINITIONS.—In this section, the following defi-  
5 nitions shall apply:

6 (1) DIRECTOR.—The term “Director” means  
7 the Director of the United States Patent and Trade-  
8 mark Office.

1           (2) FUND.—The term “Fund” means the pub-  
2           lic enterprise revolving fund established under sub-  
3           section (c).

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

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

14          (5) UNDER SECRETARY.—The term “Under  
15          Secretary” means the Under Secretary of Commerce  
16          for Intellectual Property.

17          (b) FUNDING.—

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

20                       (A) in subsection (b), by striking “Patent  
21                       and Trademark Office Appropriation Account”  
22                       and inserting “United States Patent and  
23                       Trademark Office Public Enterprise Fund”;  
24                       and

1 (B) in subsection (c), in the first sen-  
2 tence—

3 (i) by striking “To the extent” and all  
4 that follows through “fees” and inserting  
5 “Fees”; and

6 (ii) by striking “shall be collected by  
7 and shall be available to the Director” and  
8 inserting “shall be collected by the Direc-  
9 tor and shall be available until expended”.

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

12 (A) October 1, 2011; or

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

16 (c) USPTO REVOLVING FUND.—

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

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

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

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

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

16           (A) all expenses to the extent consistent  
17           with the limitation on the use of fees set forth  
18           in section 42(c) of title 35, United States Code,  
19           including all administrative and operating ex-  
20           penses, determined in the discretion of the  
21           Under Secretary to be ordinary and reasonable,  
22           incurred by the Under Secretary and the Direc-  
23           tor for the continued operation of all services,  
24           programs, activities, and duties of the Office re-  
25           lating to patents and trademarks, as such serv-

1           ices, programs, activities, and duties are de-  
2           scribed under—

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

4                   (ii) the Trademark Act of 1946; and

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

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

11                   (1) summarize the operations of the Office for  
12          the preceding fiscal year, including financial details  
13          and staff levels broken down by each major activity  
14          of the Office;

15                   (2) detail the operating plan of the Office, in-  
16          cluding specific expense and staff needs for the up-  
17          coming fiscal year;

18                   (3) describe the long term modernization plans  
19          of the Office;

20                   (4) set forth details of any progress towards  
21          such modernization plans made in the previous fiscal  
22          year; and

23                   (5) include the results of the most recent audit  
24          carried out under subsection (f).

25          (e) ANNUAL SPENDING PLAN.—

1           (1) IN GENERAL.—Not later than 30 days after  
2           the beginning of each fiscal year, the Director shall  
3           notify the Committees on Appropriations of both  
4           Houses of Congress of the plan for the obligation  
5           and expenditure of the total amount of the funds for  
6           that fiscal year in accordance with section 605 of the  
7           Science, State, Justice, Commerce, and Related  
8           Agencies Appropriations Act, 2006 (Public Law  
9           109–108; 119 Stat. 2334).

10           (2) CONTENTS.—Each plan under paragraph  
11           (1) shall—

12                   (A) summarize the operations of the Office  
13                   for the current fiscal year, including financial  
14                   details and staff levels with respect to major ac-  
15                   tivities; and

16                   (B) detail the operating plan of the Office,  
17                   including specific expense and staff needs, for  
18                   the current fiscal year.

19           (f) AUDIT.—The Under Secretary shall, on an annual  
20           basis, provide for an independent audit of the financial  
21           statements of the Office. Such audit shall be conducted  
22           in accordance with generally acceptable accounting proce-  
23           dures.

24           (g) BUDGET.—The Fund shall prepare and submit  
25           each year to the President a business-type budget in a

1 manner, and before a date, as the President prescribes by  
2 regulation for the budget program.

3 (h) SURCHARGE.—Notwithstanding section  
4 11(i)(1)(B), amounts collected pursuant to the surcharge  
5 imposed under section 11(i)(1)(A) shall be credited to the  
6 United States Patent and Trademark Office Public Enter-  
7 prise Fund.