To provide for the permanent funding of the United States Patent and Trademark Office, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

APRIL 16, 2015

Mr. CONYERS (for himself, Mr. SENSENBRNNER, Mr. NADLER, Mr. FRANKS of Arizona, Ms. LOFGREN, Mr. COLLINS of Georgia, Mr. DEUTCH, Mr. ROHRABACHER, and Mr. JEFFRIES) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To provide for the permanent funding of the United States Patent and Trademark Office, and for other purposes.

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

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Innovation Protection Act”.

4 SEC. 2. PATENT AND TRADEMARK OFFICE FUNDING.

5 (a) DEFINITIONS.—In this section:

6 (1) DIRECTOR.—The term “Director” means

the Under Secretary of Commerce for Intellectual
Property and Director of the United States Patent and Trademark Office.

(2) **Fund.**—The term “Fund” means the United States Patent and Trademark Office 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 the Act entitled “An 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”).

(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 (e)—
(i) in paragraph (1)—

(I) in the first sentence, by striking “To the extent” and all that follows through “fees” and inserting “Fees”; and

(II) by striking “shall be collected by and shall, subject to paragraph (3), be available to the Director” and inserting “shall be collected by, and shall be available to, the Director until expended”; and

(ii) by striking paragraph (2) and redesignating paragraph (3) as paragraph (2).

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the first day of the first fiscal year that begins on or 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.—

(A) In general.—There shall be deposited into the Fund on and after the effective date set forth in subsection (b)(2)—

(i) any fees collected under title 35, United States Code; and

(ii) any fees collected under the Trademark Act of 1946 (15 U.S.C. 1051 et seq.).

(B) Remaining balances.—There shall be deposited in the Fund, on the effective date set forth in subsection (b)(2), any unobligated balances remaining in the Patent and Trademark Office Appropriation Account, and in the Patent and Trademark Fee Reserve Fund established under section 42(c)(2) of title 31, United States Code, as in effect on the day before such effective date. Upon the payment of all obligated amounts in the Patent and Trademark Fee Reserve Fund, the Patent and Trademark Fee Reserve Fund shall be terminated.

(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 Director to be ordinary and reasonable, incurred by 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 AND OPERATION PLAN.—Not later than 60 days after the end of each fiscal year, the Director shall submit to Congress a report that—

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

(2) describes the long term modernization plans of the Office;
(3) sets forth details of any progress towards such modernization plans made in the preceding fiscal year; and

(4) includes the results of the most recent audit carried out under subsection (f).

(e) ANNUAL SPENDING PLAN.—

(1) IN GENERAL.—Not later than 30 days after the beginning of each fiscal year, the Director shall notify the Committee on Appropriations of the House of Representatives and the Committee on Appropriations of the Senate of the plan for the obligation and expenditure by the Office of the total amount of the funds for that fiscal year in accordance with section 605 of the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006 (Public Law 109–108; 119 Stat. 2334).

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

(A) summarize the operations of the Office for the current fiscal year, including financial details and staff levels with respect to major activities; and

(B) detail the operating plan of the Office, including specific expense and staff needs, for the current fiscal year.
(f) Audit.—The Director shall, on an annual basis, provide for an independent audit of the financial statements of the Office. Such audit shall be conducted in accordance with generally accepted accounting principles.

(g) Budget.—The Fund shall prepare and submit each year to the President a business-type budget in such manner, and before such date, as the President prescribes by regulation.