

117TH CONGRESS
2D SESSION

S. 2773

AN ACT

To amend the Leahy-Smith America Invents Act to address satellite offices 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Unleashing American
3 Innovators Act of 2022”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) **DIRECTOR.**—The term “Director” means
7 the Under Secretary of Commerce for Intellectual
8 Property and Director of the Office.

9 (2) **OFFICE.**—The term “Office” means the
10 United States Patent and Trademark Office.

11 (3) **PATENT PRO BONO PROGRAMS.**—The term
12 “patent pro bono programs” means the programs
13 established pursuant to section 32 of the Leahy-
14 Smith America Invents Act (35 U.S.C. 2 note).

15 (4) **SOUTHEAST REGION OF THE UNITED**
16 **STATES.**—The term “southeast region of the United
17 States” means the area of the United States that is
18 comprised of the States of Virginia, North Carolina,
19 South Carolina, Georgia, Florida, Tennessee, Ala-
20 bama, Mississippi, Louisiana, and Arkansas.

21 **SEC. 3. SATELLITE OFFICES.**

22 (a) **AMENDMENTS TO PURPOSE AND REQUIRED CON-**
23 **SIDERATIONS.**—Section 23 of the Leahy-Smith America
24 Invents Act (35 U.S.C. 1 note) is amended—

25 (1) in subsection (b)—

26 (A) in paragraph (1)—

1 (i) by striking “increase outreach ac-
2 tivities to”; and

3 (ii) by inserting after “Office” the fol-
4 lowing: “, including by increasing outreach
5 activities, including to individual inventors,
6 small businesses, veterans, low-income pop-
7 ulations, students, rural populations, and
8 any geographic group of innovators that
9 the Director may determine to be under-
10 represented in patent filings”; and

11 (B) by striking paragraph (2) and insert-
12 ing the following:

13 “(2) enhance patent examiner and administra-
14 tive patent judge retention, including patent exam-
15 iners and administrative patent judges from eco-
16 nomically, geographically, and demographically di-
17 verse backgrounds;” and

18 (2) in subsection (c)(1)—

19 (A) in subparagraph (D), by striking
20 “and” at the end;

21 (B) in subparagraph (E), by striking the
22 period at the end and inserting “; and”; and

23 (C) by adding at the end the following:

24 “(F) with respect to each office established
25 after January 1, 2023, shall consider the prox-

1 imity of the office to anchor institutions (such
2 as hospitals primarily serving veterans and in-
3 stitutions of higher education), individual inven-
4 tors, small businesses, veterans, low-income
5 populations, students, rural populations, and
6 any geographic group of innovators that the Di-
7 rector may determine to be underrepresented in
8 patent filings.”.

9 (b) SOUTHEAST REGIONAL OFFICE.—

10 (1) IN GENERAL.—Not later than 3 years after
11 the date of enactment of this Act, the Director shall
12 establish a satellite office of the Office in the south-
13 east region of the United States.

14 (2) CONSIDERATIONS.—When selecting a site
15 for the office required under paragraph (1), the Di-
16 rector shall consider the following:

17 (A) The number of patent-intensive indus-
18 tries located near the site.

19 (B) How many research-intensive institu-
20 tions, including institutions of higher education,
21 are located near the site.

22 (C) The State and local government legal
23 and business frameworks that support intellec-
24 tual property-intensive industries located near
25 the site.

1 (c) STUDY ON ADDITIONAL SATELLITE OFFICES.—

2 Not later than 2 years after the date of enactment of this
3 Act, the Director shall complete a study to determine
4 whether additional satellite offices of the Office are nec-
5 essary to—

6 (1) achieve the purposes described in section
7 23(b) of the Leahy-Smith America Invents Act (35
8 U.S.C. 1 note), as amended by this section; and

9 (2) increase participation in the patent system
10 by individual inventors, small businesses, veterans,
11 low-income populations, students, rural populations,
12 and any geographic group of innovators that the Di-
13 rector may determine to be underrepresented in pat-
14 ent filings.

15 **SEC. 4. COMMUNITY OUTREACH OFFICES.**

16 (a) ESTABLISHMENT.—

17 (1) IN GENERAL.—Subject to paragraphs (2)
18 and (3), not later than 5 years after the date of en-
19 actment of this Act, the Director shall establish not
20 fewer than 4 community outreach offices throughout
21 the United States.

22 (2) RESTRICTION.—No community outreach of-
23 fice established under paragraph (1) may be located
24 in the same State as—

25 (A) the principal office of the Office; or

1 (B) any satellite office of the Office.

2 (3) REQUIREMENT FOR NORTHERN NEW ENG-
3 LAND REGION.—

4 (A) IN GENERAL.—The Director shall es-
5 tablish not less than 1 community outreach of-
6 fice under this subsection in the northern New
7 England region, which shall serve the States of
8 Vermont, New Hampshire, and Maine.

9 (B) CONSIDERATIONS.—In determining
10 the location for the office required to be estab-
11 lished under subparagraph (A), the Director
12 shall give preference to a location in which—

13 (i) as of the date of enactment of this
14 Act—

15 (I) there is located not less than
16 1 public institution of higher edu-
17 cation and not less than 1 private in-
18 stitution of higher education; and

19 (II) there are located not more
20 than 15 registered patent attorneys,
21 according to data from the Office of
22 Enrollment and Discipline of the Of-
23 fice; and

24 (ii) according to data from the 2012
25 Survey of Business Owners conducted by

1 the Bureau of the Census, less than 45
2 percent of the firms (as that term is de-
3 fined for the purposes of that Survey) are
4 owned by women, minorities, or veterans.

5 (b) PURPOSES.—The purposes of the community out-
6 reach offices established under subsection (a) are to—

7 (1) further achieve the purposes described in
8 section 23(b)(1) of the Leahy-Smith America In-
9 vents Act (35 U.S.C. 1 note), as amended by this
10 Act;

11 (2) partner with local community organizations,
12 institutions of higher education, research institu-
13 tions, and businesses to create community-based
14 programs that—

15 (A) provide education regarding the patent
16 system; and

17 (B) promote the career benefits of innova-
18 tion and entrepreneurship; and

19 (3) educate prospective inventors, including in-
20 dividual inventors, small businesses, veterans, low-in-
21 come populations, students, rural populations, and
22 any geographic group of innovators that the Director
23 may determine to be underrepresented in patent fil-
24 ings, about all public and private resources available

1 to potential patent applicants, including the patent
2 pro bono programs.

3 **SEC. 5. UPDATES TO THE PATENT PRO BONO PROGRAMS.**

4 (a) STUDY AND UPDATES.—

5 (1) IN GENERAL.—Not later than 1 year after
6 the date of enactment of this Act, the Director
7 shall—

8 (A) complete a study of the patent pro
9 bono programs; and

10 (B) submit the results of the study re-
11 quired under subparagraph (A) to the Com-
12 mittee on the Judiciary of the Senate and the
13 Committee on the Judiciary of the House of
14 Representatives.

15 (2) SCOPE OF THE STUDY.—The study required
16 under paragraph (1)(A) shall—

17 (A) assess—

18 (i) whether the patent pro bono pro-
19 grams, as in effect on the date on which
20 the study is commenced, are sufficiently
21 serving prospective and existing partici-
22 pants;

23 (ii) whether the patent pro bono pro-
24 grams are sufficiently funded to serve pro-
25 spective participants;

1 (iii) whether any participation require-
2 ment of the patent pro bono programs, in-
3 cluding any requirement to demonstrate
4 knowledge of the patent system, serves as
5 a deterrent for prospective participants;

6 (iv) the degree to which prospective
7 inventors are aware of the patent pro bono
8 programs;

9 (v) what factors, if any, deter attor-
10 neys from participating in the patent pro
11 bono programs;

12 (vi) whether the patent pro bono pro-
13 grams would be improved by expanding
14 those programs to include non-attorney ad-
15 vocates; and

16 (vii) any other issue the Director de-
17 termines appropriate; and

18 (B) make recommendations for such ad-
19 ministrative and legislative action as may be ap-
20 propriate.

21 (b) USE OF RESULTS.—Upon completion of the study
22 required under subsection (a), the Director shall work
23 with the Pro Bono Advisory Council, the operators of the
24 patent pro bono programs, and intellectual property law
25 associations across the United States to update the patent

1 pro bono programs in response to the findings of the
2 study.

3 (c) EXPANSION OF INCOME ELIGIBILITY.—

4 (1) IN GENERAL.—The Director shall work with
5 and support, including by providing financial sup-
6 port to, existing patent pro bono programs and intel-
7 lectual property law associations across the United
8 States to expand eligibility for the patent pro bono
9 programs to an individual living in a household, the
10 gross household income of which is not more than
11 400 percent of the Federal poverty line.

12 (2) RULE OF CONSTRUCTION.—Nothing in
13 paragraph (1) may be construed to prevent a patent
14 pro bono program from electing to establish a higher
15 eligibility level, as compared to the level described in
16 that paragraph.

17 **SEC. 6. PRE-PROSECUTION ASSESSMENT PILOT PROGRAM.**

18 (a) PILOT PROGRAM.—Not later than 1 year after
19 the date of enactment of this Act, the Director shall estab-
20 lish a pilot program to assist first-time prospective patent
21 applicants in assessing the strengths and weaknesses of
22 a potential patent application submitted by such a pro-
23 spective applicant.

1 (b) CONSIDERATIONS.—In developing the pilot pro-
2 gram required under subsection (a), the Director shall es-
3 tablish—

4 (1) a notification process to notify a prospective
5 patent applicant seeking an assessment described in
6 that subsection that any assessment so provided may
7 not be considered an official ruling of patentability
8 from the Office;

9 (2) conditions to determine eligibility for the
10 pilot program, taking into consideration available re-
11 sources;

12 (3) reasonable limitations on the amount of
13 time to be spent providing assistance to each indi-
14 vidual first-time prospective patent applicant;

15 (4) procedures for referring prospective patent
16 applicants to legal counsel, including through the
17 patent pro bono programs; and

18 (5) procedures to protect the confidentiality of
19 the information disclosed by prospective patent ap-
20 plicants.

21 **SEC. 7. FEE REDUCTION FOR SMALL AND MICRO ENTITIES.**

22 (a) TITLE 35.—Section 41(h) of title 35, United
23 States Code, is amended—

24 (1) in paragraph (1), by striking “50 percent”
25 and inserting “60 percent”; and

1 (2) in paragraph (3), by striking “75 percent”
2 and inserting “80 percent”.

3 (b) FALSE CERTIFICATIONS.—Title 35, United
4 States Code, is amended—

5 (1) in section 41, by adding at the end the fol-
6 lowing:

7 “(j) PENALTY FOR FALSE ASSERTIONS.—In addition
8 to any other penalty available under law, an entity that
9 is found to have falsely asserted entitlement to a fee reduc-
10 tion under this section shall be subject to a fine, to be
11 determined by the Director, the amount of which shall be
12 not less than 3 times the amount that the entity failed
13 to pay as a result of the false assertion, whether the Direc-
14 tor discovers the false assertion before or after the date
15 on which a patent has been issued.”; and

16 (2) in section 123, by adding at the end the fol-
17 lowing:

18 “(f) PENALTY FOR FALSE CERTIFICATIONS.—In ad-
19 dition to any other penalty available under law, an entity
20 that is found to have falsely made a certification under
21 this section shall be subject to a fine, to be determined
22 by the Director, the amount of which shall be not less than
23 3 times the amount that the entity failed to pay as a result
24 of the false certification, whether the Director discovers

1 the false certification before or after the date on which
2 a patent has been issued.”.

3 (c) LEAHY-SMITH AMERICA INVENTS ACT.—Section
4 10(b) of the Leahy Smith America Invents Act (35 U.S.C.
5 41 note) is amended—

6 (1) by striking “50 percent” and inserting “60
7 percent”; and

8 (2) by striking “75 percent” and inserting “80
9 percent”.

10 (d) STUDY ON FEES.—

11 (1) IN GENERAL.—Not later than 2 years after
12 the date of enactment of this Act, the Director
13 shall—

14 (A) complete a study of the fees charged
15 by the Office; and

16 (B) submit the results of the study re-
17 quired under subparagraph (A) to the Com-
18 mittee on the Judiciary of the Senate and the
19 Committee on the Judiciary of the House of
20 Representatives.

21 (2) SCOPE OF STUDY.—The study required
22 under paragraph (1)(A) shall—

23 (A) assess whether—

1 (i) fees for small and micro entities
2 are inhibiting the filing of patent applica-
3 tions by those entities;

4 (ii) fees for examination should ap-
5 proximately match the costs of examina-
6 tion and what incentives are created by
7 using maintenance fees to cover the costs
8 of examination; and

9 (iii) the results of the assessments
10 performed under clauses (i) and (ii) coun-
11 sel in favor of changes to the fee structure
12 of the Office, such as—

13 (I) raising standard application
14 and examination fees;

15 (II) reducing standard mainte-
16 nance fees; and

17 (III) reducing the fees for small
18 and micro entities as a percentage of
19 standard application fees; and

1 (B) make recommendations for such ad-
2 ministrative and legislative action as may be ap-
3 propriate.

Passed the Senate December 6, 2022.

Attest:

Secretary.

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