

**AMENDMENT TO H.R. 1249, AS REPORTED  
(AS AMENDED BY THE AMENDMENT OFFERED BY  
MR. SMITH OF TEXAS)  
OFFERED BY MR. CONYERS OF MICHIGAN, MR.  
SENSENBRENNER OF WISCONSIN, AND MR.  
MANZULLO OF ILLINOIS**

Strike all sections except for section 2 (Definitions), section 22 (Patent and Trademark Office Funding) and section 33 (Budgetary Effects).

Page 3, line 8, strike “**SEC. 2.**” and insert “**SECTION 1.**”.

Page 4, strike lines 7 through 10 and 19 through 23.

Page 4, line 11, strike “(4)” and insert “(3)”.

Redesignate section 22 of the bill, as amended, as section 2, and strike “(a) IN GENERAL” and all that follows through the end of subsection (b) and insert the following:

- 1       (a) DEFINITION.—In this section, the term “Fund”
- 2 means the United States Patent and Trademark Office
- 3 Public Enterprise Fund established under subsection (c).

1 (b) FUNDING.—

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

4 (A) in subsection (b), by striking “Patent  
5 and Trademark Office Appropriation Account”  
6 and inserting “United States Patent and  
7 Trademark Office Public Enterprise Fund”;  
8 and

9 (B) in subsection (c), in the first sen-  
10 tence—

11 (i) by striking “To the extent” and all  
12 that follows through “fees” and inserting  
13 “Fees”; and

14 (ii) by striking “shall be collected by  
15 and shall be available to the Director” and  
16 inserting “shall be collected by the Direc-  
17 tor and shall be available until expended”.

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

20 (A) October 1, 2011; or

21 (B) the first day of the first fiscal year  
22 that begins on or after the date of the enact-  
23 ment of this Act.

24 (c) USPTO REVOLVING FUND.—

1           (1) ESTABLISHMENT.—There is established in  
2           the Treasury of the United States a revolving fund  
3           to be known as the “United States Patent and  
4           Trademark Office Public Enterprise Fund”. Any  
5           amounts in the Fund shall be available for use by  
6           the Director without fiscal year limitation.

7           (2) DERIVATION OF RESOURCES.—There shall  
8           be deposited into the Fund and recorded as offset-  
9           ting receipts, on and after the effective date set  
10          forth in subsection (b)(2)—

11                   (A) any fees collected under sections 41,  
12                   42, and 376 of title 35, United States Code, ex-  
13                   cept that—

14                           (i) notwithstanding any other provi-  
15                           sion of law, if such fees are collected by,  
16                           and payable to, the Director, the Director  
17                           shall transfer such amounts to the Fund;  
18                           and

19                           (ii) no funds collected pursuant to sec-  
20                           tion 1(a)(2) of Public Law 111–45 shall be  
21                           deposited in the Fund; and

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

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

4           (A) all expenses to the extent consistent  
5 with the limitation on the use of fees set forth  
6 in section 42(c) of title 35, United States Code,  
7 including all administrative and operating ex-  
8 penses, determined in the discretion of the Di-  
9 rector to be ordinary and reasonable, incurred  
10 by the Director for the continued operation of  
11 all services, programs, activities, and duties of  
12 the Office relating to patents and trademarks,  
13 as such services, programs, activities, and du-  
14 ties are described under—

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

16                   (ii) the Trademark Act of 1946; and

17           (B) all expenses incurred pursuant to any  
18 obligation, representation, or other commitment  
19 of the Office.

20           (4) USE OF FEES.—

21           (A) PATENT FEES.—Any fees in the Fund  
22 that are collected under sections 41, 42, and  
23 376 of title 35, United States Code, and any  
24 surcharges on such fees, may only be used for  
25 expenses of the Office relating to the processing

1 of patent applications and for other activities,  
2 services, and materials relating to patents and  
3 to cover a share of the administrative costs of  
4 the Office relating to patents.

5 (B) TRADEMARK.—Any fees in the Fund  
6 that are collected under section 31 of the  
7 Trademark Act of 1946, and any surcharges on  
8 such fees, may only be used for expenses of the  
9 Office relating to the processing of trademark  
10 registrations and for other activities, services,  
11 and materials relating to trademarks and to  
12 cover a share of the administrative costs of the  
13 Office relating to trademarks.

14 (d) ANNUAL REPORT.—Not later than 60 days after  
15 the end of each fiscal year, the Director shall submit a  
16 report to Congress which shall—

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

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

24 (3) describe the long-term modernization plans  
25 of the Office;

1           (4) set forth details of any progress towards  
2 such modernization plans made in the previous fiscal  
3 year; and

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

6           (e) ANNUAL SPENDING PLAN.—

7           (1) IN GENERAL.—Not later than 30 days after  
8 the beginning of each fiscal year, the Director shall  
9 notify the Committees on Appropriations of both  
10 Houses of Congress of the plan for the obligation  
11 and expenditure of the total amount of the funds for  
12 that fiscal year in accordance with section 605 of the  
13 Science, State, Justice, Commerce, and Related  
14 Agencies Appropriations Act, 2006 (Public Law  
15 109–108; 119 Stat. 2334).

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

18                   (A) summarize the operations of the Office  
19 for the current fiscal year, including financial  
20 details and staff levels with respect to major ac-  
21 tivities; and

22                   (B) detail the operating plan of the Office,  
23 including specific expense and staff needs, for  
24 the current fiscal year.

1           (f) AUDIT.—The Director shall, on an annual basis,  
2 provide for an independent audit of the financial state-  
3 ments of the Office. Such audit shall be conducted in ac-  
4 cordance with generally acceptable accounting procedures.

5           (g) BUDGET.—The Director shall prepare and submit  
6 each year to the President a business-type budget for the  
7 Fund in a manner, and before a date, as the President  
8 prescribes by regulation for the Federal budget.

9           (h) EFFECTIVE DATE.—Subsections (c) through (g)  
10 shall take effect on the effective date set forth in sub-  
11 section (b)(2).

Redesignate section 33 (Budgetary Effects) as sec-  
tion 3.

