

111TH CONGRESS 1ST SESSION  
Report  
HOUSE OF REPRESENTATIVES

Excerpts from H.R. Rep. 111-366  
(<http://thomas.loc.gov/cgi-bin/cpquery/T?&report=hr366&dbname=111&> )

December 8, 2009- Ordered to be printed

Mr. OLVER, from the committee of conference, submitted the following

CONFERENCE REPORT  
[To accompany H.R. 3288]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3288), making appropriations for the Departments of Transportation and Housing and Urban Development, and related agencies for the fiscal year ending September 30, 2010, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

[LEGISLATIVE PROVISIONS]

SECTION 1. SHORT TITLE

This Act may be cited as the 'Consolidated Appropriations Act, 2010'.

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DIVISION B--COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES  
APPROPRIATIONS ACT, 2010

TITLE I

DEPARTMENT OF COMMERCE

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UNITED STATES PATENT AND TRADEMARK OFFICE

SALARIES AND EXPENSES

For necessary expenses of the United States Patent and Trademark Office (USPTO) provided for by law, including defense of suits instituted against the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, \$1,887,000,000, to remain available until expended: Provided, That the sum herein appropriated from the general fund shall be reduced as offsetting collections assessed and collected pursuant to 15 U.S.C. 1113 and 35 U.S.C. 41 and 376 are received during fiscal year 2010, so as to result in a fiscal year 2010 appropriation from the general fund estimated at \$0: Provided further, That during fiscal year 2010, should the total amount of offsetting fee collections be less than \$1,887,000,000, this amount shall be reduced accordingly: \*\*\*\* Provided further, That sections 801, 802, and 803 of division B, Public Law 108-447 shall remain in effect during fiscal year 2010: Provided further, That the Director may, this year, reduce by regulation fees payable for documents in patent and trademark matters, in connection with the filing of documents filed electronically in a form prescribed by the Director: \*\*\*\* .

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Sec. 518. None of the funds appropriated or otherwise made available under this Act may be used to issue patents on claims directed to or encompassing a human organism.

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## JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

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### UNITED STATES PATENT AND TRADEMARK OFFICE

#### SALARIES AND EXPENSES

The conference agreement provides \$1,887,000,000 for the United States Patent and Trade Office (USPTO) for fiscal year 2010, the same as the revised fee collection projection dated September 17, 2009.

Budget formulation process- A confluence of factors in fiscal year 2009, including depressed revenues, continuing declines in the patent allowance rate, recent court decisions, and the absence of inflation has highlighted major, unacceptable deficiencies in USPTO's budget formulation and execution processes. USPTO's financial situation in fiscal year 2009, while anomalous, may be repeated again. The decision to rely solely on fee income has removed USPTO from the safety net of the appropriations process and has placed it at the mercy of the economy; it has allowed USPTO to build a boom time infrastructure that it cannot support in an economic downturn. Complicating and contributing to this situation is the fact that USPTO's budget formulation process does not reflect the agency's resource requirements for the relevant fiscal year. Fiscal year 2010 will likely present a new and more daunting set of financial

challenges for the agency and achievement of key performance measures will likely continue to decline.

The conferees note that although USPTO is a fee-funded agency, USPTO's budget development process should not be markedly different from other Federal agencies, at least initially. Yet today, the USPTO is unable to produce a clear and concise statement of resources needed to operate independent of the agency's estimate of projected revenues. Whatever advantages the current funding arrangement confers to the agency and its constituencies, the current state of budget formulation, execution and management at the USPTO cannot continue.

USPTO must develop and present a requirements-based budget to ensure transparency to the Congress, the Administration and to USPTO's stakeholders. To convey more fully USPTO's spending requirements, the conferees direct that, in addition to the budget request, the annual USPTO budget submission, beginning with the fiscal year 2011 submission, shall contain the following items, separately identified, for the budget year: (1) an estimate of a current services baseline consistent with the Budget Enforcement Act (BEA) requirements; (2) any changes to that baseline from expected workload changes; (3) any changes from proposed initiatives to improve performance; and (4) any proposed user fee changes and their expected additional revenues needed to fund the budget request.

Provision of fee collection projections- The conferees direct the USPTO to provide quarterly reports on its fee collection projections and to notify the House and Senate Committees on Appropriations during any month when significant changes in such projections prompt serious concern or require drastic budgetary responses. In addition, the conferees direct the USPTO to provide official revised fee estimates for fiscal year 2011 to the House and Senate Committees on Appropriations no later than September 1, 2010.

Reprogramming and spend plan- The conferees understand that in several recent fiscal years, the USPTO has used excess fee collections in the current year to forward fund requirements in the budget year. The conferees note that the funding appropriated in any fiscal year is intended to fund costs in only that fiscal year. Therefore, funds appropriated in this Act for fiscal year 2010 are provided only for fiscal year 2010 operating costs. The USPTO is required to follow the reprogramming procedures outlined in section 505 of this Act before using excess fee collections to forward fund expenses beyond fiscal year 2010. Any deviations from the funding distribution provided for in this Act, including carryover balances, are subject to the standard reprogramming procedures set forth in section 505 of this Act. In addition, 60 days after enactment of this Act, the USPTO shall submit to the House and Senate Committees on Appropriations a spending plan for fiscal year 2010. This spending plan shall incorporate all carryover balances from previous fiscal years, and describe any changes to the patent or trademark fee structure. Any changes from the spending plan shall also be subject to section 505 of this Act.

Patent pendency and backlog- The conferees remain concerned by the lack of progress toward reducing patent pendency and the overall patent backlog. The increasing backlog is the result of a number of factors, including the significant decrease in number of patents approved; the practical effect of the increasing numbers of requests for continued examination (RCE); and the fact that applicants are filing in more than one jurisdiction.

The Government Accountability Office (GAO) has found that the hiring of additional patent examiners has not been sufficient to reverse the patent pendency and backlog trend and the recent and projected decrease in fee collections makes it clear that the USPTO will not be able to rely on additional hiring as a method to reduce the backlog. The conferees direct USPTO to enhance its efforts to reduce duplication of work already performed by another patent office in a manner that does not compromise the quality of the examination or compromise the sovereignty of the United States. The conferees also direct USPTO to develop and implement strategies to combat the unintended consequences of RCEs and the effect of the drop in patent application approvals. USPTO shall provide a report to the House and Senate Committees on Appropriations on its progress in these areas within 90 days of enactment of this Act.

Patent Examiners- The conferees are encouraged by the Administration's recent actions to evaluate out-dated and unreasonable productivity goals, but remain concerned about workforce turnover at the agency. The Director, working with management and employees, recently completed an evaluation of the work productivity goals, which have been cited by many former patent examiners as a major reason for their departure. USPTO is directed to continue a thorough and independent evaluation exploring all workforce management and turnover issues, and is directed to provide a preliminary, if not final, report within 120 days of enactment of this Act outlining substantial changes and milestones to improve employee retention.

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Section 518 prohibits the use of process patents of human organisms. The intent of this provision is as expressed in the colloquy between the provision's sponsor in the House and the Ranking Minority Member of the House Committee on Appropriations as occurred on July 22, 2003, with respect to any existing patents on stem cells.

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