

AMENDMENT NO. _____ Calendar No. _____

Purpose: To amend title 35, United States Code, to allow the Director of the United States Patent and Trademark Office to accept late filings in certain cases of unintentional delay.

IN THE SENATE OF THE UNITED STATES—110th Cong., 1st Sess.

S. 1145

To amend title 35, United States Code, to provide for patent reform.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. KENNEDY

Viz:

1 On page 59, between lines 2 and 3, insert the fol-
2 lowing:

3 **SEC. 12. AUTHORITY OF THE DIRECTOR OF THE PATENT**
4 **AND TRADEMARK OFFICE TO ACCEPT LATE**
5 **FILINGS.**

6 (a) AUTHORITY.—Section 2 of title 35, United States
7 Code, is amended by adding at the end the following:

8 “(e) DISCRETION TO ACCEPT LATE FILINGS IN CER-
9 TAIN CASES OF UNINTENTIONAL DELAY.—

1 “(1) IN GENERAL.—The Director may accept
2 any application or other filing made by—

3 “(A) an applicant for, or owner of, a pat-
4 ent after the applicable deadline set forth in
5 this title with respect to the application or pat-
6 ent; or

7 “(B) an applicant for, or owner of, a mark
8 after the applicable deadline under the Trade-
9 mark Act of 1946 with respect to the registra-
10 tion or other filing of the mark,

11 to the extent that the Director considers appro-
12 priate, if the applicant or owner files a petition with-
13 in 30 days after such deadline showing, to the satis-
14 faction of the Director, that the delay was uninten-
15 tional.

16 “(2) TREATMENT OF DIRECTOR’S ACTIONS ON
17 PETITION.—If the Director has not made a deter-
18 mination on a petition filed under paragraph (1)
19 within 60 days after the date on which the petition
20 is filed, the petition shall be deemed to be denied. A
21 decision by the Director not to exercise, or a failure
22 to exercise, the discretion provided by this subsection
23 shall not be subject to judicial review.

24 “(3) OTHER PROVISIONS NOT AFFECTED.—
25 This subsection shall not apply to any other provi-

1 sion of this title, or to any provision of the Trade-
2 mark Act of 1946, that authorizes the Director to
3 accept, under certain circumstances, applications or
4 other filings made after a statutory deadline or to
5 statutory deadlines that are required by reason of
6 the obligations of the United States under any trea-
7 ty.

8 “(4) DEFINITION.—In this subsection, the term
9 ‘Trademark Act of 1946’ means the Act entitled An
10 Act to provide for the registration and protection of
11 trademarks used in commerce, to carry out the pro-
12 visions of certain international conventions, and for
13 other purposes., approved July 5, 1946 (15 U.S.C.
14 1051 et seq.).”.

15 (b) APPLICABILITY.—

16 (1) IN GENERAL.—The amendment made by
17 subsection (a) shall apply to any application or other
18 filing that—

19 (A) is filed on or after the date of the en-
20 actment of this Act; or

21 (B) on such date of enactment, is pending
22 before the Director or is subject to judicial re-
23 view.

24 (2) TREATMENT OF PENDING APPLICATIONS
25 AND FILINGS.—In the case of any application or fil-

1 ing described in paragraph (1)(B), the 30-day period
2 prescribed in section 2(e)(1) of title 35, United
3 States Code, as added by subsection (a) of this sec-
4 tion, shall be deemed to be the 30-day period begin-
5 ning on the date of the enactment of this Act.