

USPTO LAW SCHOOL CLINIC CERTIFICATION PROGRAM

SEPTEMBER 15, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 5108]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5108) to establish the Law School Clinic Certification Program of the United States Patent and Trademark Office, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The Amendment

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. USPTO LAW SCHOOL CLINIC CERTIFICATION PROGRAM.

(a) **ESTABLISHMENT.**—The Law School Clinic Certification Program of the United States Patent and Trademark Office, as implemented by the Office, is established as a program entitled the “Law School Clinic Certification Program”. The Program shall allow students enrolled in a participating law school’s clinic to practice patent and trademark law before the Office by drafting, filing, and prosecuting patent or trademark applications, or both, on a pro-bono basis for clients that qualify for assistance from the law school’s clinic. The Director shall establish regulations and procedures for application to and participation in the Program. All law schools accredited by the American Bar Association are eligible for participation in the Program, and shall be examined for acceptance using identical criteria established by the Director. The Program shall be in effect for the 10-year period beginning on the date of the enactment of this Act.

(b) **REPORT ON THE PROGRAM.**—The Director shall, not later than the last day of the 2-year period beginning on the date of the enactment of this Act, submit to the Committees on the Judiciary of the House of Representatives and the Senate a report on the Program, describing the number of law schools and law students participating in the Program, the work done through the Program, the benefits of the Program, and any recommendations of the Director for modifications to the Program.

(c) **DEFINITIONS.**—In this section:

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

(2) **PROGRAM.**—The term “Program” means the Law School Clinic Certification Program established in subsection (a).

(3) **DIRECTOR.**—The term “Director” means the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

Purpose and Summary

The bill establishes the law school clinic certification program at the U.S. Patent and Trademark Office (“USPTO”). The program will be open to all law schools that qualify and meet the rigorous standards set by the U.S. Patent and Trademark Office. The USPTO will issue regulations specifying procedures for application and participation in the program. It is expected that the USPTO will set forth rigorous criteria to ensure that the intellectual property clinic programs selected meet the highest standards and that the students participating, under the supervision of a faculty supervisor, meet the standard educational and professional criteria for practice before the office.

Background and Need for the Legislation

Currently the USPTO has a pilot law school clinic certification program. This bill would remove the “pilot” status and make it available to all accredited law schools that provide a benefit to students, law schools, pro bono clients and the inventor community at large.

The bill authorizes the USPTO Director to issue regulations specifying procedures for application to and participation in the program. In addition, within 2 years, the USPTO Director would be required to submit a report on the program to the House and Senate Judiciary Committees detailing the number of law schools and students participating in the program, the work accomplished and recommendations for its modification.

The IP Law School Clinic Certification Program provides law students enrolled in a participating clinic the opportunity to practice patent and trademark law before the USPTO under the guidance of a faculty supervisor. In this way, these student practitioners gain valuable experience drafting and filing patent and trademark applications that would otherwise be unavailable. Patents and

trademarks are highly specialized areas of law. Expanding the pilot program will enable additional law schools across the nation to prepare a greater number of practitioners to enter this increasingly important field. The program also provides services to small and independent trademark and patent filers that lack the financial resources necessary for traditional legal representation.

Hearings

The Committee on the Judiciary held no hearings on H.R. 5108.

Committee Consideration

On September 10, 2014, the Committee on the Judiciary met in open session and ordered the bill H.R. 5108 favorably reported, with an amendment, by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 5108.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 5108, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 12, 2014.

Hon. BOB GOODLATTE, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5108, a bill to establish the Law School Clinic Certification Program of the United States Patent and Trademark Office, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie, who can be reached at 226–2860.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 5108—A bill to establish the Law School Clinic Certification Program of the United States Patent and Trademark Office, and for other purposes.

As ordered reported by the House Committee on the Judiciary
on September 10, 2014.

CBO estimates that implementing H.R. 5108 would have a negligible effect on net discretionary spending over the 2015–2019 period. Enacting H.R. 5108 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 5108 would authorize the Law School Clinic Certification Program at the Patent and Trademark Office (PTO) for 10 years after enactment of the bill. In 2008, PTO established the Law School Clinic Certification Pilot Program, which allows students at participating law schools to practice patent or trademark law before the agency under the guidance of a faculty supervisor in the school's law clinic. Currently, 45 schools participate in the program, which costs about \$200,000 each year to operate.

Based on information from PTO, CBO expects that any additional actions the agency would take to implement H.R. 5108 would not have a significant effect on the agency's workload, and thus, its spending. In addition, PTO is authorized to collect fees sufficient to offset its operating expenses; therefore, CBO estimates that the net budgetary effect of implementing H.R. 5108 would be negligible, assuming appropriations actions consistent with the agency's authorities.

H.R. 5108 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Susan Willie. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

Duplication of Federal Programs

No provision of H.R. 5108 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee estimates that H.R. 5108 specifically directs to be completed no specific rule makings within the meaning of 5 U.S.C. 551. The Director of the U.S. Patent and Trademark Office may, by regulation, develop additional procedures for implementing the program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5108, establishes the law school clinic certification program of the U.S. Patent and Trademark Office.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 5108 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

The following discussion describes the bill as reported by the Committee.

Sec. 1. USPTO Law School Clinic Certification Program. Section 1 establishes the “Law School Clinic Certification Program” at the U.S. Patent and Trademark Office. The Program allows students enrolled in a qualified law school clinic to practice patent and trademark law before the office for pro-bono clients that qualify for assistance from the law school’s clinic. The USPTO shall submit a report to Congress on the program within 2 years of the enactment of the Act.