112TH CONGRESS
2D SESSION

H. R. _____

To promote a level playing field for American innovators abroad and American job creation by improving the intellectual property attaché program, and coordinating and aligning intellectual property policy with compelling economic interests of the United States and freedom.

IN THE HOUSE OF REPRESENTATIVES

Mr. Smith of Texas (for himself, Mr. Conyers, Mr. Goodlatte, Mr. Watt, Mr. Issa, Mr. Berman, Mr. Coble, Mr. Chabot, Mr. Chaffetz, and Mr. Schiff) introduced the following bill; which was referred to the Committee on ______

A BILL

To promote a level playing field for American innovators abroad and American job creation by improving the intellectual property attaché program, and coordinating and aligning intellectual property policy with compelling economic interests of the United States and freedom.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Intellectual Property Attaché Act”. 

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SEC. 2. INTELLECTUAL PROPERTY ATTACHÉ PROGRAM.

(a) INTELLECTUAL PROPERTY ATTACHÉ PROGRAM.—The Secretary of Commerce, upon the recommendation of the Director of the Patent and Trademark Office, in consultation with the heads of other appropriate departments and agencies, shall establish an intellectual property attaché program by appointing and placing intellectual property attachés in United States embassies or diplomatic missions in countries where the activities of such an attaché are likely—

(1) to achieve potential benefit by reducing intellectual property infringement in the United States market and globally;

(2) to advance the intellectual property rights of United States persons and their licensees;

(3) to work with and advance the interests of United States persons who may otherwise be harmed by violations of intellectual property rights in those countries; and

(4) to promote the economic interests of the United States and market access by United States persons abroad.

(b) TRANSITION.—Persons serving as intellectual property attachés on the date of enactment of this Act may continue to serve in their positions on and after such date.
(c) CONSULTATION.—The Director shall consult with the heads of other appropriate departments and agencies to ensure the effectiveness of the intellectual property attaché program.

(d) RANK.—Intellectual property attachés shall be ranked according to their experience and the needs of United States embassies and diplomatic missions, which includes the diplomatic rank in-mission of First Secretary, Counselor, or Minister Counselor.

(e) TRAINING AND OVERSIGHT.—The Director shall maintain authority over training, rating, setting objectives for, and coordinating the activities of, intellectual property attachés.

(f) POLICY COORDINATION AND CAPACITY BUILDING.—In order to encourage the coordination of intellectual property policy for training, capacity building, and market access activities, the following shall apply:

(1) ASSISTANT SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY.—Using existing resources, the President shall appoint an Assistant Secretary of Commerce for Intellectual Property, who shall report directly to the Director. The Assistant Secretary shall be responsible for the management of the coordination, advocacy, training, and capacity building in other countries of the intellectual
property policy of the United States at the Department of Commerce. The Assistant Secretary shall work with all appropriate departments and agencies of the United States, including the Intellectual Property Enforcement Coordinator, to advance the intellectual property policy of the United States, consistent with the economic interests of the United States, both domestically and abroad.

(2) REDESIGNATION.—The Administrator for Policy and External Affairs of the PTO is redesignated as a Deputy Assistant Secretary of Commerce for Intellectual Property Policy and External Affairs.

(3) ADDITIONAL POSITIONS.—

(A) ESTABLISHMENT OF POSITIONS.—The Secretary of Commerce, upon the recommendation of the Director, may establish additional Deputy Assistant Secretary positions, the individuals appointed to which shall report directly to the Assistant Secretary of Commerce for Intellectual Property. Such positions shall be established based on need, using existing resources, and any individual appointed to any such position shall be a noncareer or limited term appointee.
(B) DEFINITION.—In this paragraph, the term "noncareer or limited term appointee" means an individual who is—

(i) a limited term appointee, limited emergency appointee, or noncareer appointee in the Senior Executive Service, as defined under paragraphs (5), (6), and (7), respectively, of section 3132(a) of title 5, United States Code; or

(ii) employed in a position which has been excepted from the competitive service by reason of its confidential or policy-determining, policy-making, or policy-advocating character.

(4) CONSISTENCY.—Using existing resources, all training and technical assistance provided by intellectual property attachés appointed under subsection (a), relating to the enforcement and protection of intellectual property interests abroad, shall be designed to be consistent with the policy and country-specific priorities set forth in the most recent report of the United States Trade Representative under section 182(a) of the Trade Act of 1974 (19 U.S.C. 2242(a)).
(5) COORDINATION.—The Director shall coordinate the training and technical assistance described in paragraph (4), and such training and technical assistance shall be carried out in consultation with the Intellectual Property Enforcement Coordinator and the relevant Federal departments and agencies.

(g) ACTIVITIES IN OTHER COUNTRIES.—In the case of countries that are not identified under section 182(a)(1) of the Trade Act of 1974, the activities of Federal departments and agencies with respect to intellectual property rights in those countries, intellectual property programs and outreach of the United States Government in those countries, and training and technical assistance programs of the United States Government relating to intellectual property in those countries may be conducted to the extent they are consistent with the commercial or foreign policy interests of the United States.

(h) REPORTS TO CONGRESS.—The Intellectual Property Enforcement Coordinator shall include in the annual report submitted under section 304 of the Prioritizing Resources and Organization for Intellectual Property Act of 2008 (15 U.S.C. 8114) on the activities of the advisory committee established under section 301 of that Act (15 U.S.C. 8111) information on the appointment, designation for assignment, and activities of all intellectual property
attachés of any Federal department or agency who are serving abroad.

(i) DEFINITIONS.—In this section:

(1) DIRECTOR.—The terms “Director of the Patent and Trademark Office” and “Director” mean the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

(2) INTELLECTUAL PROPERTY ENFORCEMENT.—The term “intellectual property enforcement” means matters relating to the enforcement of laws protecting patents, trademarks, copyrights, other forms of intellectual property, trade secrets, and related market access, both in the United States and abroad.


(4) INTELLECTUAL PROPERTY RIGHTS.—The term “intellectual property rights” means the rights
of holders of patents, trademarks, copyrights, other forms of intellectual property, and trade secrets.

(5) PTO.—The term “PTO” means the United States Patent and Trademark Office.

(6) United States person.—The term “United States person” means—

(A) any United States resident or national;

(B) any corporation, partnership, other business entity, or other organization, that is organized under the laws of the United States; and

(C) any foreign subsidiary or affiliate (including any permanent foreign establishment) of any corporation, partnership, business entity, or organization described in subparagraph (B), that is controlled in fact by such corporation, partnership, business entity, or organization.

(j) Authorization of Appropriations.—The Director shall, using existing resources at the PTO, provide for the training and support of the intellectual property attachés and otherwise carry out this section.