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(Original Signature of Member)

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 Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

1 **SEC. 2. INTELLECTUAL PROPERTY ATTACHÉ PROGRAM.**

2 (a) INTELLECTUAL PROPERTY ATTACHÉ PRO-
3 GRAM.—The Secretary of Commerce, upon the rec-
4 ommendation of the Director of the Patent and Trade-
5 mark Office, in consultation with the heads of other appro-
6 priate departments and agencies, shall establish an intel-
7 lectual property attaché program by appointing and plac-
8 ing intellectual property attachés in United States embas-
9 sies or diplomatic missions in countries where the activi-
10 ties of such an attaché are likely—

11 (1) to achieve potential benefit by reducing in-
12 tellectual property infringement in the United States
13 market and globally;

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

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

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

23 (b) TRANSITION.—Persons serving as intellectual
24 property attachés on the date of enactment of this Act
25 may continue to serve in their positions on and after such
26 date.

1 (c) CONSULTATION.—The Director shall consult with
2 the heads of other appropriate departments and agencies
3 to ensure the effectiveness of the intellectual property
4 attaché program.

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

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

14 (f) POLICY COORDINATION AND CAPACITY BUILD-
15 ING.—In order to encourage the coordination of intellec-
16 tual property policy for training, capacity building, and
17 market access activities, the following shall apply:

18 (1) ASSISTANT SECRETARY OF COMMERCE FOR
19 INTELLECTUAL PROPERTY.—Using existing re-
20 sources, the President shall appoint an Assistant
21 Secretary of Commerce for Intellectual Property,
22 who shall report directly to the Director. The Assist-
23 ant Secretary shall be responsible for the manage-
24 ment of the coordination, advocacy, training, and ca-
25 pacity building in other countries of the intellectual

1 property policy of the United States at the Depart-
2 ment of Commerce. The Assistant Secretary shall
3 work with all appropriate departments and agencies
4 of the United States, including the Intellectual Prop-
5 erty Enforcement Coordinator, to advance the intel-
6 lectual property policy of the United States, con-
7 sistent with the economic interests of the United
8 States, both domestically and abroad.

9 (2) REDESIGNATION.—The Administrator for
10 Policy and External Affairs of the PTO is redesi-
11 gnated as a Deputy Assistant Secretary of Commerce
12 for Intellectual Property Policy and External Af-
13 fairs.

14 (3) ADDITIONAL POSITIONS.—

15 (A) ESTABLISHMENT OF POSITIONS.—The
16 Secretary of Commerce, upon the recommenda-
17 tion of the Director, may establish additional
18 Deputy Assistant Secretary positions, the indi-
19 viduals appointed to which shall report directly
20 to the Assistant Secretary of Commerce for In-
21 tellectual Property. Such positions shall be es-
22 tablished based on need, using existing re-
23 sources, and any individual appointed to any
24 such position shall be a noncareer or limited
25 term appointee.

1 (B) DEFINITION.—In this paragraph, the
2 term “noncareer or limited term appointee”
3 means an individual who is—

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

10 (ii) employed in a position which has
11 been excepted from the competitive service
12 by reason of its confidential or policy-de-
13 termining, policy-making, or policy-advo-
14 cating character.

15 (4) CONSISTENCY.—Using existing resources,
16 all training and technical assistance provided by in-
17 tellectual property attachés appointed under sub-
18 section (a), relating to the enforcement and protec-
19 tion of intellectual property interests abroad, shall
20 be designed to be consistent with the policy and
21 country-specific priorities set forth in the most re-
22 cent report of the United States Trade Representa-
23 tive under section 182(a) of the Trade Act of 1974
24 (19 U.S.C. 2242(a)).

1 (5) COORDINATION.—The Director shall coordi-
2 nate the training and technical assistance described
3 in paragraph (4), and such training and technical
4 assistance shall be carried out in consultation with
5 the Intellectual Property Enforcement Coordinator
6 and the relevant Federal departments and agencies.

7 (g) ACTIVITIES IN OTHER COUNTRIES.—In the case
8 of countries that are not identified under section
9 182(a)(1) of the Trade Act of 1974, the activities of Fed-
10 eral departments and agencies with respect to intellectual
11 property rights in those countries, intellectual property
12 programs and outreach of the United States Government
13 in those countries, and training and technical assistance
14 programs of the United States Government relating to in-
15 tellectual property in those countries may be conducted
16 to the extent they are consistent with the commercial or
17 foreign policy interests of the United States.

18 (h) REPORTS TO CONGRESS.—The Intellectual Prop-
19 erty Enforcement Coordinator shall include in the annual
20 report submitted under section 304 of the Prioritizing Re-
21 sources and Organization for Intellectual Property Act of
22 2008 (15 U.S.C. 8114) on the activities of the advisory
23 committee established under section 301 of that Act (15
24 U.S.C. 8111) information on the appointment, designation
25 for assignment, and activities of all intellectual property

1 attachés of any Federal department or agency who are
2 serving abroad.

3 (i) DEFINITIONS.—In this section:

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

9 (2) INTELLECTUAL PROPERTY ENFORCE-
10 MENT.—The term “intellectual property enforce-
11 ment” means matters relating to the enforcement of
12 laws protecting patents, trademarks, copyrights,
13 other forms of intellectual property, trade secrets,
14 and related market access, both in the United States
15 and abroad.

16 (3) INTELLECTUAL PROPERTY ENFORCEMENT
17 COORDINATOR.—The term “Intellectual Property
18 Enforcement Coordinator” means the Intellectual
19 Property Enforcement Coordinator appointed under
20 section 301 of the Prioritizing Resources and Orga-
21 nization for Intellectual Property Act of 2008 (15
22 U.S.C. 8111).

23 (4) INTELLECTUAL PROPERTY RIGHTS.—The
24 term “intellectual property rights” means the rights

1 of holders of patents, trademarks, copyrights, other
2 forms of intellectual property, and trade secrets.

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

5 (6) UNITED STATES PERSON.—The term
6 “United States person” means—

7 (A) any United States resident or national;

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

12 (C) any foreign subsidiary or affiliate (in-
13 cluding any permanent foreign establishment)
14 of any corporation, partnership, business entity,
15 or organization described in subparagraph (B),
16 that is controlled in fact by such corporation,
17 partnership, business entity, or organization.

18 (j) AUTHORIZATION OF APPROPRIATIONS.—The Di-
19 rector shall, using existing resources at the PTO, provide
20 for the training and support of the intellectual property
21 attachés and otherwise carry out this section.