

1 binding alternative dispute resolution services to in-
2 terested parties.

3 (6) Such other matters as the Register of Copy-
4 rights believes may be pertinent concerning the
5 Copyright Claims Board.

6 (f) SEVERABILITY.—If any provision of this section,
7 an amendment made by this section, or the application
8 of such provision or amendment to any person or cir-
9 cumstance is held to be unconstitutional, the remainder
10 of this section and the amendments made by this section,
11 and the application of the provision or the amendment to
12 any other person or circumstance, shall not be affected.

13 **Subtitle B—Trademarks**

14 **SEC. 221. SHORT TITLE; TABLE OF CONTENTS.**

15 (a) SHORT TITLE.—This subtitle may be cited as the
16 “Trademark Modernization Act of 2020” or the “TM Act
17 of 2020”.

18 (b) TABLE OF CONTENTS.—The table of contents for
19 this subtitle is as follows:

Subtitle B—Trademarks

Sec. 221. Short title; table of contents.

Sec. 222. Definitions.

Sec. 223. Providing for third-party submission of evidence during examination.

Sec. 224. Providing for flexible response periods.

Sec. 225. Ex parte expungement; ex parte reexamination; new grounds for can-
cellation.

Sec. 226. Rebuttable presumption of irreparable harm.

Sec. 227. Report on decluttering initiatives.

Sec. 228. Amendments to confirm authority of the Director.

1 **SEC. 222. DEFINITIONS.**

2 In this subtitle:

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

7 (2) **TRADEMARK ACT OF 1946.**—The term
8 “Trademark Act of 1946” means the Act entitled
9 “An Act to provide for the registration and protec-
10 tion of trademarks used in commerce, to carry out
11 the provisions of certain international conventions,
12 and for other purposes”, approved July 5, 1946 (15
13 U.S.C. 1051 et. seq) (commonly referred to as the
14 “Trademark Act of 1946” or the “Lanham Act”).

15 **SEC. 223. PROVIDING FOR THIRD-PARTY SUBMISSION OF**
16 **EVIDENCE DURING EXAMINATION.**

17 (a) **AMENDMENT.**—Section 1 of the Trademark Act
18 of 1946 (15 U.S.C. 1051) is amended by adding at the
19 end the following:

20 “(f) A third party may submit for consideration for
21 inclusion in the record of an application evidence relevant
22 to a ground for refusal of registration. The third-party
23 submission shall identify the ground for refusal and in-
24 clude a concise description of each piece of evidence sub-
25 mitted in support of each identified ground for refusal.
26 Not later than 2 months after the date on which the sub-

1 mission is filed, the Director shall determine whether the
2 evidence should be included in the record of the applica-
3 tion. The Director shall establish by regulation appro-
4 priate procedures for the consideration of evidence sub-
5 mitted by a third party under this subsection and may
6 prescribe a fee to accompany the submission. If the Direc-
7 tor determines that the third-party evidence should be in-
8 cluded in the record of the application, only the evidence
9 and the ground for refusal to which the evidence relates
10 may be so included. Any determination by the Director
11 whether or not to include evidence in the record of an ap-
12 plication shall be final and non-reviewable, and a deter-
13 mination to include or to not include evidence in the record
14 shall not prejudice any party's right to raise any issue and
15 rely on any evidence in any other proceeding.”.

16 (b) DEADLINE FOR PROCEDURES.—Not later than 1
17 year after the date of enactment of this Act, the Director
18 shall establish the appropriate procedures described in sec-
19 tion 1(f) of the Trademark Act of 1946, as added by sub-
20 section (a).

21 (c) EFFECTIVE DATE.—The amendment made by
22 subsection (a) shall take effect 1 year after the date of
23 enactment of this Act.

1 **SEC. 224. PROVIDING FOR FLEXIBLE RESPONSE PERIODS.**

2 Section 12(b) of the Trademark Act of 1946 (15
3 U.S.C. 1062(b)) is amended to read as follows:

4 “(b)(1) If the applicant is found not entitled to reg-
5 istration, the examiner shall notify the applicant thereof
6 and of the reasons therefor. The applicant may reply or
7 amend the application, which shall then be reexamined.
8 This procedure may be repeated until the examiner finally
9 refuses registration of the mark or the application is aban-
10 doned as described in paragraph (2).

11 “(2) After notification under paragraph (1), the ap-
12 plicant shall have a period of 6 months in which to reply
13 or amend the application, or such shorter time that is not
14 less than 60 days, as prescribed by the Director by regula-
15 tion. If the applicant fails to reply or amend or appeal
16 within the relevant time period, including any extension
17 under paragraph (3), the application shall be deemed to
18 have been abandoned, unless it can be shown to the satis-
19 faction of the Director that the delay in responding was
20 unintentional, in which case the application may be revived
21 and such time may be extended. The Director may pre-
22 scribe a fee to accompany any request to revive.

23 “(3) The Director shall provide, by regulation, for ex-
24 tensions of time to respond to the examiner for any time
25 period under paragraph (2) that is less than 6 months.
26 The Director shall allow the applicant to obtain extensions

1 of time to reply or amend aggregating 6 months from the
2 date of notification under paragraph (1) when the appli-
3 cant so requests. However, the Director may set by regula-
4 tion the time for individual periods of extension, and pre-
5 scribe a fee, by regulation, for any extension request. Any
6 request for extension shall be filed on or before the date
7 on which a reply or amendment is due under paragraph
8 (1).”.

9 **SEC. 225. EX PARTE EXPUNGEMENT; EX PARTE REEXAM-**
10 **INATION; NEW GROUNDS FOR CANCELLA-**
11 **TION.**

12 (a) EX PARTE EXPUNGEMENT.—The Trademark Act
13 of 1946 is amended by inserting after section 16 (15
14 U.S.C. 1066) the following:

15 **“SEC. 16A. EX PARTE EXPUNGEMENT.**

16 “(a) PETITION.—Notwithstanding sections 7(b) and
17 22, and subsections (a) and (b) of section 33, any person
18 may file a petition to expunge a registration of a mark
19 on the basis that the mark has never been used in com-
20 merce on or in connection with some or all of the goods
21 or services recited in the registration.

22 “(b) CONTENTS OF PETITION.—A petition filed
23 under subsection (a), together with any supporting docu-
24 ments, shall—

1 “(1) identify the registration that is the subject
2 of the petition;

3 “(2) identify each good or service recited in the
4 registration for which it is alleged that the mark has
5 never been used in commerce;

6 “(3) include a verified statement that sets
7 forth—

8 “(A) the elements of the reasonable inves-
9 tigation the petitioner conducted to determine
10 that the mark has never been used in commerce
11 on or in connection with the goods and services
12 identified in the petition; and

13 “(B) any additional facts that support the
14 allegation that the mark has never been used in
15 commerce on or in connection with the identi-
16 fied goods and services;

17 “(4) include any supporting evidence on which
18 the petitioner relies; and

19 “(5) be accompanied by the fee prescribed by
20 the Director.

21 “(c) INITIAL DETERMINATION; INSTITUTION.—

22 “(1) PRIMA FACIE CASE DETERMINATION, IN-
23 STITUTION, AND NOTIFICATION.—The Director
24 shall, for each good or service identified under sub-
25 section (b)(2), determine whether the petition sets

1 forth a prima facie case of the mark having never
2 been used in commerce on or in connection with
3 each such good or service, institute an ex parte
4 expungement proceeding for each good or service for
5 which the Director determines that a prima facie
6 case has been set forth, and provide a notice to the
7 registrant and petitioner of the determination of
8 whether or not the proceeding was instituted. Such
9 notice shall include a copy of the petition and any
10 supporting documents and evidence that were in-
11 cluded with the petition.

12 “(2) REASONABLE INVESTIGATION GUID-
13 ANCE.—The Director shall promulgate regulations
14 regarding what constitutes a reasonable investigation
15 under subsection (b)(3) and the general types of evi-
16 dence that could support a prima facie case that a
17 mark has never been used in commerce, but the Di-
18 rector shall retain the discretion to determine wheth-
19 er a prima facie case is set out in a particular pro-
20 ceeding.

21 “(3) DETERMINATION BY DIRECTOR.—Any de-
22 termination by the Director whether or not to insti-
23 tute a proceeding under this section shall be final
24 and non-reviewable, and shall not prejudice any par-
25 ty’s right to raise any issue and rely on any evidence

1 in any other proceeding, except as provided in sub-
2 section (j).

3 “(d) EX PARTE EXPUNGEMENT PROCEDURES.—The
4 procedures for ex parte expungement shall be the same
5 as the procedures for examination under section 12(b), ex-
6 cept that the Director shall promulgate regulations estab-
7 lishing and governing a proceeding under this section,
8 which may include regulations that—

9 “(1) set response and extension times particular
10 to this type of proceeding, which, notwithstanding
11 section 12(b)(3), need not be extendable to 6
12 months;

13 “(2) set limits governing the timing and num-
14 ber of petitions filed for a particular registration or
15 by a particular petitioner or real parties in interest;
16 and

17 “(3) define the relation of a proceeding under
18 this section to other proceedings concerning the
19 mark.

20 “(e) REGISTRANT’S EVIDENCE OF USE.—A reg-
21 istrant’s documentary evidence of use shall be consistent
22 with when a mark shall be deemed to be in use in com-
23 merce under the definition of ‘use in commerce’ in section
24 45, but shall not be limited in form to that of specimens
25 as provided in section 1(a).

1 “(f) **EXCUSABLE NONUSE.**—During an ex parte
2 expungement proceeding, for a mark registered under sec-
3 tion 44(e) or an extension of protection under section 66,
4 the registrant may offer evidence showing that any nonuse
5 is due to special circumstances that excuse such nonuse.
6 In such a case, the examiner shall determine whether the
7 facts and evidence demonstrate excusable nonuse and shall
8 not find that the registration should be cancelled under
9 subsection (g) for any good or service for which excusable
10 nonuse is demonstrated.

11 “(g) **EXAMINER’S DECISION; ORDER TO CANCEL.**—
12 For each good or service for which it is determined that
13 a mark has never been used in commerce, and for which
14 the provisions of subsection (f) do not apply, the examiner
15 shall find that the registration should be cancelled for each
16 such good or service. A mark shall not be found to have
17 never been used in commerce if there is evidence of use
18 in commerce by the registrant that temporally would have
19 supported registration at the time the application was filed
20 or the relevant allegation of use was made, or after reg-
21 istration, but before the petition to expunge was filed
22 under subsection (a), or an ex parte expungement pro-
23 ceeding was instituted by the Director under subsection
24 (h). Unless overturned on review of the examiner’s deci-
25 sion, the Director shall issue an order cancelling the reg-

1 istration, in whole or in part, after the time for appeal
2 has expired or any appeal proceeding has terminated.

3 “(h) EX PARTE EXPUNGEMENT BY THE DIREC-
4 TOR.—

5 “(1) IN GENERAL.—The Director may, on the
6 Director’s own initiative, institute an ex parte
7 expungement proceeding if the Director discovers in-
8 formation that supports a prima facie case of a
9 mark having never been used in commerce on or in
10 connection with any good or service covered by a
11 registration. The Director shall promptly notify the
12 registrant of such determination, at which time the
13 ex parte expungement proceeding shall proceed ac-
14 cording to the same procedures for ex parte
15 expungement established pursuant to subsection (d).
16 If the Director determines, based on the Director’s
17 own initiative, to institute an expungement pro-
18 ceeding, the Director shall transmit or make avail-
19 able the information that formed the basis for that
20 determination as part of the institution notice sent
21 to the registrant.

22 “(2) RULE OF CONSTRUCTION.—Nothing in
23 this subsection shall be construed to limit any other
24 authority of the Director.

25 “(i) TIME FOR INSTITUTION.—

1 “(1) WHEN PETITION MAY BE FILED, EX
2 PARTE EXPUNGEMENT PROCEEDING INSTITUTED.—
3 A petition for ex parte expungement of a registra-
4 tion under subsection (a) may be filed, or the Direc-
5 tor may institute on the Director’s own initiative an
6 ex parte expungement proceeding of a registration
7 under subsection (h), at any time following the expi-
8 ration of 3 years after the date of registration and
9 before the expiration of 10 years following the date
10 of registration.

11 “(2) EXCEPTION.—Notwithstanding paragraph
12 (1), for a period of 3 years after the date of enact-
13 ment of this section, a petition for expungement of
14 a registration under subsection (a) may be filed, or
15 the Director may institute on the Director’s own ini-
16 tiative an ex parte expungement proceeding of a reg-
17 istration under subsection (h), at any time following
18 the expiration of 3 years after the date of registra-
19 tion.

20 “(j) LIMITATION ON LATER EX PARTE
21 EXPUNGEMENT PROCEEDINGS.—

22 “(1) NO CO-PENDING PROCEEDINGS.—With re-
23 spect to a particular registration, while an ex parte
24 expungement proceeding is pending, no later ex
25 parte expungement proceeding may be instituted

1 with respect to the same goods or services that are
2 the subject of a pending ex parte expungement pro-
3 ceeding.

4 “(2) ESTOPPEL.—With respect to a particular
5 registration, for goods or services previously subject
6 to an instituted expungement proceeding for which,
7 in that proceeding, it was determined that the reg-
8 istrant had used the mark for particular goods or
9 services, as relevant, and the registration was not
10 cancelled as to those goods or services, no further ex
11 parte expungement proceedings may be initiated as
12 to those goods or services, regardless of the identity
13 of the petitioner.

14 “(k) USE IN COMMERCE REQUIREMENT NOT AL-
15 TERED.—Nothing in this section shall affect the require-
16 ment for use in commerce of a mark registered under sec-
17 tion 1(a) or 23.”.

18 (b) NEW GROUNDS FOR CANCELLATION.—Section 14
19 of the Trademark Act of 1946 (15 U.S.C. 1064) is amend-
20 ed—

21 (1) by striking the colon at the end of para-
22 graph (5) and inserting a period;

23 (2) by inserting after paragraph (5) the fol-
24 lowing:

1 “(6) At any time after the 3-year period fol-
2 lowing the date of registration, if the registered
3 mark has never been used in commerce on or in con-
4 nection with some or all of the goods or services re-
5 cited in the registration.”; and

6 (3) in the flush text following paragraph (6), as
7 added by paragraph (2) of this subsection, by insert-
8 ing “Nothing in paragraph (6) shall be construed to
9 limit the timing applicable to any other ground for
10 cancellation. A registration under section 44(e) or
11 66 shall not be cancelled pursuant to paragraph (6)
12 if the registrant demonstrates that any nonuse is
13 due to special circumstances that excuse such non-
14 use.” after “identical certification mark is applied.”.

15 (c) **EX PARTE REEXAMINATION.**—The Trademark
16 Act of 1946 is amended by inserting after section 16A,
17 as added by subsection (a), the following:

18 **“SEC. 16B. EX PARTE REEXAMINATION.**

19 “(a) **PETITION FOR REEXAMINATION.**—Any person
20 may file a petition to reexamine a registration of a mark
21 on the basis that the mark was not in use in commerce
22 on or in connection with some or all of the goods or serv-
23 ices recited in the registration on or before the relevant
24 date.

1 “(b) RELEVANT DATE.—In this section, the term
2 ‘relevant date’ means, with respect to an application for
3 the registration of a mark with an initial filing basis of—

4 “(1) section 1(a) and not amended at any point
5 to be filed pursuant to section 1(b), the date on
6 which the application was initially filed; or

7 “(2) section 1(b) or amended at any point to be
8 filed pursuant to section 1(b), the date on which—

9 “(A) an amendment to allege use under
10 section 1(c) was filed; or

11 “(B) the period for filing a statement of
12 use under section 1(d) expired, including all ap-
13 proved extensions thereof.

14 “(c) REQUIREMENTS FOR THE PETITION.—A peti-
15 tion filed under subsection (a), together with any sup-
16 porting documents, shall—

17 “(1) identify the registration that is the subject
18 of the petition;

19 “(2) identify each good and service recited in
20 the registration for which it is alleged that the mark
21 was not in use in commerce on or in connection with
22 on or before the relevant date;

23 “(3) include a verified statement that sets
24 forth—

1 “(A) the elements of the reasonable inves-
2 tigation the petitioner conducted to determine
3 that the mark was not in use in commerce on
4 or in connection with the goods and services
5 identified in the petition on or before the rel-
6 evant date; and

7 “(B) any additional facts that support the
8 allegation that the mark was not in use in com-
9 merce on or before the relevant date on or in
10 connection with the identified goods and serv-
11 ices;

12 “(4) include supporting evidence on which the
13 petitioner relies; and

14 “(5) be accompanied by the fee prescribed by
15 the Director.

16 “(d) INITIAL DETERMINATION; INSTITUTION.—

17 “(1) PRIMA FACIE CASE DETERMINATION, IN-
18 STITUTION, AND NOTIFICATION.—The Director
19 shall, for each good or service identified under sub-
20 section (c)(2), determine whether the petition sets
21 forth a prima facie case of the mark having not been
22 in use in commerce on or in connection with each
23 such good or service, institute an ex parte reexam-
24 ination proceeding for each good or service for which
25 the Director determines that the prima facie case

1 has been set forth, and provide a notice to the reg-
2 istrant and petitioner of the determination of wheth-
3 er or not the proceeding was instituted. Such notice
4 shall include a copy of the petition and any sup-
5 porting documents and evidence that were included
6 with the petition.

7 “(2) REASONABLE INVESTIGATION GUID-
8 ANCE.—The Director shall promulgate regulations
9 regarding what constitutes a reasonable investigation
10 under subsection (c)(3) and the general types of evi-
11 dence that could support a prima facie case that the
12 mark was not in use in commerce on or in connec-
13 tion with a good or service on or before the relevant
14 date, but the Director shall retain discretion to de-
15 termine whether a prima facie case is set out in a
16 particular proceeding.

17 “(3) DETERMINATION BY DIRECTOR.—Any de-
18 termination by the Director whether or not to insti-
19 tute a reexamination proceeding under this section
20 shall be final and non-reviewable, and shall not prej-
21 udice any party’s right to raise any issue and rely
22 on any evidence in any other proceeding, except as
23 provided in subsection (j).

24 “(e) REEXAMINATION PROCEDURES.—The proce-
25 dures for reexamination shall be the same as the proce-

1 dures established under section 12(b) except that the Di-
2 rector shall promulgate regulations establishing and gov-
3 erning a proceeding under this section, which may include
4 regulations that—

5 “(1) set response and extension times particular
6 to this type of proceeding, which, notwithstanding
7 section 12(b)(3), need not be extendable to 6
8 months;

9 “(2) set limits governing the timing and num-
10 ber of petitions filed for a particular registration or
11 by a particular petitioner or real parties in interest;
12 and

13 “(3) define the relation of a reexamination pro-
14 ceeding under this section to other proceedings con-
15 cerning the mark.

16 “(f) REGISTRANT’S EVIDENCE OF USE.—A reg-
17 istrant’s documentary evidence of use shall be consistent
18 with when a mark shall be deemed to be in use in com-
19 merce under the definition of ‘use in commerce’ in section
20 45, but shall not be limited in form to that of specimens
21 as provided in section 1(a).

22 “(g) EXAMINER’S DECISION; ORDER TO CANCEL.—
23 For each good or service for which it is determined that
24 the registration should not have issued because the mark
25 was not in use in commerce on or before the relevant date,

1 the examiner shall find that the registration should be
2 cancelled for each such good or service. Unless overturned
3 on review of the examiner's decision, the Director shall
4 issue an order cancelling the registration, in whole or in
5 part, after the time for appeal has expired or any appeal
6 proceeding has terminated.

7 “(h) REEXAMINATION BY DIRECTOR.—

8 “(1) IN GENERAL.—The Director may, on the
9 Director's own initiative, institute an ex parte reex-
10 amination proceeding if the Director discovers infor-
11 mation that supports a prima facie case of the mark
12 having not been used in commerce on or in connec-
13 tion with some or all of the goods or services covered
14 by the registration on or before the relevant date.
15 The Director shall promptly notify the registrant of
16 such determination, at which time reexamination
17 shall proceed according to the same procedures es-
18 tablished pursuant to subsection (e). If the Director
19 determines, based on the Director's own initiative, to
20 institute an ex parte reexamination proceeding, the
21 Director shall transmit or make available the infor-
22 mation that formed the basis for that determination
23 as part of the institution notice.

1 “(2) RULE OF CONSTRUCTION.—Nothing in
2 this subsection shall be construed to limit any other
3 authority of the Director.

4 “(i) TIME FOR INSTITUTION.—A petition for ex parte
5 reexamination may be filed, or the Director may institute
6 on the Director’s own initiative an ex parte reexamination
7 proceeding, at any time not later than 5 years after the
8 date of registration of a mark registered based on use in
9 commerce.

10 “(j) LIMITATION ON LATER EX PARTE REEXAMINA-
11 TION PROCEEDINGS.—

12 “(1) NO CO-PENDING PROCEEDINGS.—With re-
13 spect to a particular registration, while an ex parte
14 reexamination proceeding is pending, no later ex
15 parte reexamination proceeding may be instituted
16 with respect to the same goods or services that are
17 the subject of a pending ex parte reexamination pro-
18 ceeding.

19 “(2) ESTOPPEL.—With respect to a particular
20 registration, for any goods or services previously
21 subject to an instituted ex parte reexamination pro-
22 ceeding for which, in that proceeding, it was deter-
23 mined that the registrant had used the mark for
24 particular goods or services before the relevant date,
25 and the registration was not cancelled as to those

1 goods or services, no further ex parte reexamination
2 proceedings may be initiated as to those goods or
3 services, regardless of the identity of the petitioner.

4 “(k) SUPPLEMENTAL REGISTER.—The provisions of
5 subsection (b) apply, as appropriate, to registrations
6 under section 23. Nothing in this section shall be con-
7 strued to limit the timing of a cancellation action under
8 section 24.”.

9 (d) APPEAL.—

10 (1) APPEAL TO TRADEMARK TRIAL AND APPEAL
11 BOARD.—Section 20 of the Trademark Act of 1946
12 (15 U.S.C. 1070) is amended by inserting “or a
13 final decision by an examiner in an ex parte
14 expungement proceeding or ex parte reexamination
15 proceeding” after “registration of marks”.

16 (2) APPEAL TO COURTS.—

17 (A) EXPUNGEMENT OR EX PARTE REEX-
18 AMINATION.—Section 21(a)(1) of the Trade-
19 mark Act of 1946 (15 U.S.C. 1071(a)(1)) is
20 amended by striking “or an applicant for re-
21 newal” and inserting the following: “an appli-
22 cant for renewal, or a registrant subject to an
23 ex parte expungement proceeding or an ex parte
24 reexamination proceeding”.

1 (B) EXCEPTION.—Section 21(b)(1) of the
2 Trademark Act of 1946 (15 U.S.C. 1071(b)(1))
3 is amended by inserting “, except for a reg-
4 istrant subject to an ex parte expungement pro-
5 ceeding or an ex parte reexamination pro-
6 ceeding,” before “is dissatisfied”.

7 (e) TECHNICAL AND CONFORMING AMENDMENTS.—
8 The Trademark Act of 1946 is amended—

9 (1) in section 15 (15 U.S.C. 1065), by striking
10 “paragraphs (3) and (5)” and inserting “paragraphs
11 (3), (5), and (6)”; and

12 (2) in section 26 (15 U.S.C. 1094), by adding
13 at the end the following: “Registrations on the sup-
14 plemental register shall be subject to ex parte
15 expungement and ex parte reexamination under sec-
16 tions 16A and 16B, respectively.”.

17 (f) DEADLINE FOR PROCEDURES.—Not later than 1
18 year after the date of enactment of this Act, the Director
19 shall issue regulations to carry out sections 16A and 16B
20 of the Trademark Act of 1946, as added by subsections
21 (a) and (c).

22 (g) EFFECTIVE DATE.—The amendments made by
23 this section shall take effect upon the expiration of the
24 1-year period beginning on the date of enactment of this

1 Act, and shall apply to any mark registered before, on,
2 or after that effective date.

3 **SEC. 226. REBUTTABLE PRESUMPTION OF IRREPARABLE**
4 **HARM.**

5 (a) AMENDMENT.—Section 34(a) of the Trademark
6 Act of 1946 (15 U.S.C. 1116(a)) is amended by inserting
7 after the first sentence the following: “A plaintiff seeking
8 any such injunction shall be entitled to a rebuttable pre-
9 sumption of irreparable harm upon a finding of a violation
10 identified in this subsection in the case of a motion for
11 a permanent injunction or upon a finding of likelihood of
12 success on the merits for a violation identified in this sub-
13 section in the case of a motion for a preliminary injunction
14 or temporary restraining order.”.

15 (b) RULE OF CONSTRUCTION.—The amendment
16 made by subsection (a) shall not be construed to mean
17 that a plaintiff seeking an injunction was not entitled to
18 a presumption of irreparable harm before the date of en-
19 actment of this Act.

20 **SEC. 227. REPORT ON DECLUTTERING INITIATIVES.**

21 (a) STUDY.—The Comptroller General of the United
22 States shall consult with the Director to conduct a study
23 on the efforts of the Director during the period beginning
24 12 months after the date of enactment of this Act and
25 ending 30 months after the date of enactment of this Act

1 to address inaccurate and false claims of use in trademark
2 applications and registrations. Inaccurate and false claims
3 of use include any declaration of use by a trademark appli-
4 cant or registrant that cannot be supported by use in com-
5 merce as defined in section 45 of the Trademark Act of
6 1946 (15 U.S.C. 1127) or the regulations relevant to the
7 definition of specimens under section 1 of the Trademark
8 Act of 1946 (15 U.S.C. 1051), as applicable.

9 (b) CONTENTS OF STUDY.—In conducting the study
10 under subsection (a), the Comptroller General shall assess
11 the following:

12 (1) With respect to sections 16A and 16B of
13 the Trademark Act of 1946, as added by section
14 225—

15 (A) the number of petitions filed under
16 each such section for which a decision not to in-
17 stitute was issued;

18 (B) the number of petitions filed under
19 each such section for which a decision to insti-
20 tute was issued;

21 (C) the number of in-process and com-
22 pleted proceedings instituted under each such
23 section, including any proceedings instituted by
24 the Director's own initiative;

1 (D) the average time taken to resolve pro-
2 ceedings instituted under each such section, in-
3 cluding the average time between—

4 (i) the filing of a petition under each
5 such section and an examiner's final deci-
6 sion under section 16A(g) and 16B(g), or
7 the last decision issued by the examiner if
8 the registrant failed to respond to the lat-
9 est-in-time decision by the examiner; and

10 (ii) the institution of a proceeding
11 under each such section, including any pro-
12 ceedings instituted by the Director's own
13 initiative, and an examiner's final decision
14 under section 16A(g) and 16B(g), or the
15 last decision issued by the examiner if the
16 registrant failed to respond to the latest-
17 in-time decision by the examiner;

18 (E) the number of appeals of decisions of
19 examiners to the Trademark Trial and Appeal
20 Board and to the courts for each such pro-
21 ceeding; and

22 (F) an accounting of the final outcome of
23 each such proceeding instituted by identifying
24 the number of goods or services for which such
25 proceedings were instituted, and the number of

1 goods or services for each involved registration
2 that were cancelled pursuant to such pro-
3 ceedings.

4 (2) With respect to section 1(f) of the Trade-
5 mark Act of 1946, as added by section 223—

6 (A) the number of third-party submissions
7 filed under such section for which the third-
8 party asserts in the submission that the mark
9 has not been used in commerce; and

10 (B) of the applications identified in sub-
11 paragraph (A), the number of applications in
12 which the third-party submission evidence is in-
13 cluded in the application; and

14 (C) of those applications identified in sub-
15 paragraph (B), the number of applications—

16 (i) refused registration based on an
17 assertion by the examiner that the mark
18 has not been used in commerce; and

19 (ii) for which the examiner requested
20 additional information from the applicant
21 related to claims of use.

22 (3) The effectiveness of—

23 (A) the proceedings under sections 16A
24 and 16B of the Trademark Act of 1946, as
25 added by section 225, in addressing inaccurate

1 and false claims of use in trademark registra-
2 tions; and

3 (B) any additional programs conducted by
4 the Director designed to address inaccurate and
5 false claims of use in trademark applications
6 and registrations, including the post-registra-
7 tion use audit, as implemented as of the date
8 of enactment of this Act under sections
9 2.161(h) and 7.37(h) of title 37, Code of Fed-
10 eral Regulations.

11 (c) REPORT TO CONGRESS.—Not later than 3 years
12 after the date of enactment of this Act, the Comptroller
13 General of the United States shall submit to the Com-
14 mittee on the Judiciary of the Senate and the Committee
15 on the Judiciary of the House of Representatives a re-
16 port—

17 (1) on the results of the study conducted under
18 this section; and

19 (2) that includes any recommendations, based
20 on the results of the study, for any changes to laws
21 or regulations that will improve the integrity of the
22 trademark register or reduce inaccurate or false
23 claims of use.

1 **SEC. 228. AMENDMENTS TO CONFIRM AUTHORITY OF THE**
2 **DIRECTOR.**

3 (a) AMENDMENTS.—

4 (1) Section 18 of the Trademark Act of 1946
5 (15 U.S.C. 1068) is amended by inserting after “es-
6 tablished in the proceedings” the following: “. The
7 authority of the Director under this section includes
8 the authority to reconsider, and modify or set aside,
9 a decision of the Trademark Trial and Appeal
10 Board”.

11 (2) Section 20 of the Trademark Act of 1946
12 (15 U.S.C. 1070) is amended by adding at the end
13 the following: “The Director may reconsider, and
14 modify or set aside, a decision of the Trademark
15 Trial and Appeal Board under this section.”.

16 (3) Section 24 of the Trademark Act of 1946
17 (15 U.S.C. 1092) is amended by inserting after
18 “shall be canceled by the Director” the following: “,
19 unless the Director reconsiders the decision of the
20 Board, and modifies or sets aside, such decision”.

21 (b) RULES OF CONSTRUCTION.—

22 (1) AUTHORITY BEFORE DATE OF ENACT-
23 MENT.—The amendments made by subsection (a)
24 shall not be construed to mean that the Director
25 lacked the authority to reconsider, and modify or set

1 aside, a decision of the Trademark Trial and Appeal
2 Board before the date of enactment of this Act.

3 (2) AUTHORITY WITH RESPECT TO PARTICULAR
4 DECISIONS.—The amendments made by subsection
5 (a) shall not be construed to require the Director to
6 reconsider, modify, or set aside any particular deci-
7 sion of the Trademark Trial and Appeal Board.