

116TH CONGRESS  
2D SESSION

# H. R. 6196

To amend the Trademark Act of 1946 to provide for third-party submission of evidence relating to a trademark application, to establish expungement and ex parte proceedings relating to the validity of marks, to provide for a rebuttal presumption of irreparable harm in certain proceedings, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 2020

Mr. JOHNSON of Georgia (for himself, Mr. COLLINS of Georgia, Mr. NADLER, and Mrs. ROBY) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the Trademark Act of 1946 to provide for third-party submission of evidence relating to a trademark application, to establish expungement and ex parte proceedings relating to the validity of marks, to provide for a rebuttal presumption of irreparable harm in certain proceedings, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the  
3 “Trademark Modernization Act of 2020” or the “TM Act  
4 of 2020”.

5 (b) **TABLE OF CONTENTS.**—The table of contents for  
6 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Providing for third-party submission of evidence during examination.
- Sec. 4. Providing for flexible response periods.
- Sec. 5. Expungement; Ex parte reexamination.
- Sec. 6. Rebuttable presumption of irreparable harm.
- Sec. 7. Report on decluttering initiatives.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

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

13 (2) **TRADEMARK ACT OF 1946.**—The term  
14 “Trademark Act of 1946” means the Act entitled  
15 “An Act to provide for the registration and protec-  
16 tion of trademarks used in commerce, to carry out  
17 the provisions of certain international conventions,  
18 and for other purposes”, approved July 5, 1946, as  
19 amended (15 U.S.C. 1051, et. seq) (commonly re-  
20 ferred to as the “Trademark Act of 1946” or the  
21 “Lanham Act”).

1 **SEC. 3. PROVIDING FOR THIRD-PARTY SUBMISSION OF EVI-**  
2 **DENCE DURING EXAMINATION.**

3 (a) AMENDMENT.—Section 1 of the Trademark Act  
4 of 1946 (15 U.S.C. 1051) is amended by inserting at the  
5 end the following new subsection:

6 “(f) A third party may submit for consideration for  
7 inclusion in the record of an application evidence relevant  
8 to a ground for refusal of registration. The third-party  
9 submission shall identify the ground for refusal and in-  
10 clude a concise description of each piece of evidence sub-  
11 mitted in support of each identified ground for refusal.  
12 Within two months after the date on which the submission  
13 is filed, the Director shall determine whether the evidence  
14 should be included in the record of the application. The  
15 Director shall establish by regulation appropriate proce-  
16 dures for the consideration of evidence submitted by a  
17 third party under this subsection and may prescribe a fee  
18 to accompany the submission. If the Director determines  
19 that the third-party evidence should be included in the  
20 record of the application, only the evidence and the ground  
21 for refusal to which the evidence relates may be so in-  
22 cluded. Any determination by the Director whether or not  
23 to include evidence in the record of an application shall  
24 be final and non-reviewable, and shall not prejudice any  
25 party’s right to raise any issue and rely on any evidence  
26 in any other proceeding.”.

1 (b) DEADLINE FOR PROCEDURES.—Not later than  
2 one year after the date of the enactment of this Act, the  
3 Director shall establish the appropriate procedures de-  
4 scribed in section 1(f) of the Trademark Act of 1946, as  
5 added by subsection (a).

6 (c) EFFECTIVE DATE.—The amendment made by  
7 subsection (a) shall take effect one year after the date of  
8 the enactment of this Act.

9 **SEC. 4. PROVIDING FOR FLEXIBLE RESPONSE PERIODS.**

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

12 “(b)(1) If the applicant is found not entitled to reg-  
13 istration, the examiner shall notify the applicant thereof  
14 and of the reasons therefor. The applicant may reply or  
15 amend the application, which shall then be reexamined.  
16 This procedure may be repeated until the examiner finally  
17 refuses registration of the mark or the application is aban-  
18 doned as described in paragraph (2).

19 “(2) After notification under paragraph (1), the ap-  
20 plicant shall have a period of six months in which to reply  
21 or amend the application, or such shorter time that is not  
22 less than sixty days, as prescribed by the Director by regu-  
23 lation. If the applicant fails to reply or amend or appeal  
24 within the relevant time period, including any extension  
25 under paragraph (3), the application shall be deemed to

1 have been abandoned, unless it can be shown to the satis-  
2 faction of the Director that the delay in responding was  
3 unintentional, in which case the application may be revived  
4 and such time may be extended. The Director may pre-  
5 scribe a fee to accompany any request to revive.

6 “(3) The Director shall provide, by regulation, for ex-  
7 tensions of time to respond to the examiner for any time  
8 period under paragraph (2) that is less than six months.  
9 The Director must allow the applicant to obtain extensions  
10 of time to reply or amend aggregating six months from  
11 the date of notification under paragraph (1) when the ap-  
12 plicant so requests. However, the Director may set by reg-  
13 ulation the time for individual periods of extension, and  
14 prescribe a fee, by regulation, for any extension request.  
15 Any request for extension must be filed on or before the  
16 date on which a reply or amendment is due under para-  
17 graph (1).”.

18 **SEC. 5. EXPUNGEMENT; EX PARTE REEXAMINATION.**

19 (a) EX PARTE EXPUNGEMENT.—The Trademark Act  
20 of 1946 (15 U.S.C. 1066) is amended by inserting after  
21 section 16, the following new section:

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

23 “(a) PETITION.—Notwithstanding sections 7(b) and  
24 22, and subsections (a) and (b) of section 33, any person  
25 may file a petition to expunge a registration on the basis

1 that the mark has never been used in commerce on or  
2 in connection with some or all of the goods or services  
3 recited in the registration.

4 “(b) CONTENTS OF PETITION.—The petition, to-  
5 gether with any supporting documents, shall—

6 “(1) identify each registration at issue;

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

10 “(3) include a verified statement that sets forth  
11 the elements of the reasonable investigation the peti-  
12 tioner conducted to determine that the mark has  
13 never been used in commerce on or in connection  
14 with the goods and services identified in the petition,  
15 and any additional facts that support the allegation  
16 that the mark has never been used in commerce on  
17 or in connection with the identified goods and serv-  
18 ices;

19 “(4) include any supporting evidence on which  
20 the petitioner relies; and

21 “(5) be accompanied by the fee prescribed by  
22 the Director.

23 “(c) INITIAL DETERMINATION; INSTITUTION.—

24 “(1) PRIMA FACIE CASE, INSTITUTION, AND NO-  
25 TIFICATION.—The Director shall determine whether

1 the petition sets forth a prima facie case of the mark  
2 having never been used in commerce on or in con-  
3 nection with each good or service identified in the  
4 petition, institute the ex parte expungement pro-  
5 ceeding for each good or service for which the Direc-  
6 tor determines that the prima facie case has been  
7 set forth, and notify the registrant and petitioner of  
8 the determination of whether to institute the pro-  
9 ceeding. If the Director determines that an expunge-  
10 ment proceeding should be instituted based on a pe-  
11 tition, the Director shall transmit or make available  
12 that petition and any supporting evidence from the  
13 petitioner to the registrant as part of the institution  
14 notice.

15 “(2) REASONABLE INVESTIGATION GUID-  
16 ANCE.—The Director shall promulgate regulations  
17 regarding what constitutes a reasonable investigation  
18 under subsection (b)(3) and the general types of evi-  
19 dence that could constitute a sufficient showing of a  
20 mark having never been used in commerce under  
21 subsection (b)(4), but the Director shall retain dis-  
22 cretion to determine whether a prima facie case is  
23 set out in a particular case.

24 “(3) DETERMINATION BY DIRECTOR.—Any de-  
25 termination by the Director whether or not to insti-

1       tute a proceeding under this section shall be final  
2       and non-reviewable, and shall not prejudice any par-  
3       ty’s right to raise any issue and rely on any evidence  
4       in any other proceeding.

5       “(d) EX PARTE EXPUNGEMENT PROCEDURES.—The  
6       procedures for ex parte expungement shall be the same  
7       as those for examination under section 12(b), except that  
8       the Director shall promulgate regulations establishing and  
9       governing a proceeding under this section, which may in-  
10      clude setting response and extension times particular to  
11      this proceeding, which, notwithstanding section 12(b)(3)  
12      need not be extendable to six months, setting limits gov-  
13      erning the timing and number of petitions filed for a par-  
14      ticular registration or by a particular petitioner or real  
15      parties in interest, and defining the relation of a pro-  
16      ceeding under this section to other proceedings concerning  
17      the mark.

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

23      “(f) EXCUSABLE NONUSE.—During an expungement  
24      proceeding, for a mark registered under section 44(e) or  
25      an extension of protection under section 66, the registrant



1 may offer evidence showing that any nonuse is due to spe-  
2 cial circumstances that excuse such nonuse. In such a  
3 case, the examiner shall determine whether the facts dem-  
4 onstrate excusable nonuse and shall not find that the reg-  
5 istration should be cancelled under subsection (g) for any  
6 good or service for which excusable nonuse is dem-  
7 onstrated.

8       “(g) EXAMINER’S DECISION; ORDER TO CANCEL.—  
9 For each good or service for which it is determined that  
10 a mark was never in use in commerce, and for which the  
11 provisions of subsection (f) do not apply, the examiner  
12 shall find that the registration should be cancelled for each  
13 such good or service. A mark may not be found to never  
14 have been in use in commerce if there is evidence of use  
15 in commerce by the registrant that temporally would have  
16 supported registration at the time the application was filed  
17 or the relevant allegation of use was made, or after reg-  
18 istration, but before the petition to expunge is filed or the  
19 Director, on his own initiative, institutes an expungement  
20 proceeding in accordance with subsection (h). Unless over-  
21 turned on review of the examiner’s decision, the Director  
22 shall issue an order cancelling the registration, in whole  
23 or in part, after the time for appeal has expired or any  
24 appeal proceeding has terminated.

1       “(h) EX PARTE EXPUNGEMENT BY THE DIREC-  
2 TOR.—

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

19               “(2) RULE OF CONSTRUCTION.—Nothing in  
20 this subsection may be construed to limit any other  
21 authority of the Director.

22               “(i) TIME FOR INSTITUTION.—A petition for ex parte  
23 expungement may be filed, or the Director may institute  
24 on his own initiative an ex parte expungement proceeding,

1 at any time following the expiration of three years after  
2 the date of registration.

3 “(j) LIMITATION ON LATER EX PARTE  
4 EXPUNGEMENT PROCEEDINGS.—

5 “(1) NO CO-PENDING PROCEEDINGS.—With re-  
6 spect to a particular registration, while an ex parte  
7 expungement proceeding is pending, no later ex  
8 parte expungement proceeding can be instituted with  
9 respect to the same goods or services that are the  
10 subject of a pending ex parte expungement pro-  
11 ceeding.

12 “(2) ESTOPPEL.—With respect to a particular  
13 registration, for goods or services previously subject  
14 to an instituted expungement proceeding for which,  
15 in that proceeding, it was determined that the reg-  
16 istrant had used the mark for particular goods or  
17 services, as relevant, and the registration was not  
18 cancelled as to those goods or services, no further ex  
19 parte expungement proceedings may be initiated as  
20 to those goods or services, regardless of the identity  
21 of the petitioner.

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

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

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

6 (2) by adding after paragraph (5) the following:

7 “(6) At any time after the three-year period fol-  
8 lowing the date of registration, if the registered  
9 mark has never been used in commerce on or in con-  
10 nection with some or all of the goods or services re-  
11 cited in the registration:”; and

12 (3) in the flush left text, by inserting “Nothing  
13 in paragraph (6) shall be construed to limit the tim-  
14 ing applicable to any other ground for cancellation.  
15 A registration under sections 44(e) or 66 shall not  
16 be cancelled pursuant to paragraph (6) if the reg-  
17 istrant demonstrates that any nonuse is due to spe-  
18 cial circumstances that excuse such nonuse.” after  
19 “identical certification mark is applied.”.

20 (c) EX PARTE REEXAMINATION.—The Trademark  
21 Act of 1946 (15 U.S.C. 1066), as amended by subsection  
22 (a), is further amended by inserting after section 16A, the  
23 following new section:

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

2 “(a) PETITION FOR REEXAMINATION.—Any person  
3 may file a petition to reexamine a registration on the basis  
4 that the mark was not in use in commerce on or in connec-  
5 tion with some or all of the goods or services recited in  
6 the registration on or before the relevant date.

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

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

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

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

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

20 “(c) REQUIREMENTS FOR THE PETITION.—The peti-  
21 tion, together with any supporting documents, shall—

22 “(1) identify each registration at issue;

23 “(2) identify each good and service recited in  
24 the registration for which it is alleged that the mark  
25 was not used in commerce on or in connection with  
26 on or before the relevant date;

1           “(3) include a verified statement that sets forth  
2 the elements of the reasonable investigation the peti-  
3 tioner conducted to determine that the mark was not  
4 used in commerce on or in connection with the goods  
5 and services identified in the petition on or before  
6 the relevant date, and any additional facts that sup-  
7 port the allegation that the mark was not in use in  
8 commerce on or before the relevant date on or in  
9 connection with the identified goods and services;

10           “(4) include supporting evidence on which the  
11 petitioner relies; and

12           “(5) be accompanied by the fee prescribed by  
13 the Director.

14           “(d) INITIAL DETERMINATION; INSTITUTION.—

15           “(1) PRIMA FACIE CASE, INSTITUTION, AND NO-  
16 TIFICATION.—The Director shall determine whether  
17 the petition sets forth a prima facie case of the mark  
18 having not been used in commerce on or in connec-  
19 tion with each good or service identified in the peti-  
20 tion on or before the relevant date, institute the re-  
21 examination proceeding for each good or service for  
22 which the Director determines the prima facie case  
23 has been set forth, and notify the registrant and the  
24 petitioner of the determination whether or not to in-  
25 stitute the proceeding. If the Director determines

1 that an ex parte reexamination proceeding should be  
2 instituted based on a petition, the Director shall  
3 transmit or make available that petition and any  
4 supporting evidence from the petitioner to the reg-  
5 istrant as part of the institution notice.

6 “(2) REASONABLE INVESTIGATION GUID-  
7 ANCE.—The Director shall promulgate regulations  
8 regarding what constitutes a reasonable investigation  
9 under subsection (c)(3) and the general types of evi-  
10 dence that could constitute a sufficient showing that  
11 the mark was not in use in commerce on or before  
12 the relevant date, but the Director shall retain dis-  
13 cretion to determine whether a prima facie case is  
14 set out in a particular case.

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

21 “(e) REEXAMINATION PROCEDURES.—The proce-  
22 dures for reexamination shall be the same as those estab-  
23 lished under section 12(b) except that the Director shall  
24 promulgate regulations establishing and governing a pro-  
25 ceeding under this section, which may include setting re-

1 sponse and extension times particular to this proceeding,  
2 which, notwithstanding section 12(b)(3) need not be ex-  
3 tendable to six months, setting limits governing the timing  
4 and number of petitions filed for a particular registration  
5 or by a particular petitioner or real parties in interest,  
6 and defining the relation of a reexamination proceeding  
7 under this section to other proceedings concerning the  
8 mark.

9       “(f) REGISTRANT’S EVIDENCE OF USE.—A reg-  
10 istrant’s documentary evidence of use must be consistent  
11 with when ‘a mark shall be deemed to be in use in com-  
12 merce’ as defined in section 45, but shall not be limited  
13 in form to that of specimens as provided in section 1(a).

14       “(g) EXAMINER’S DECISION; ORDER TO CANCEL.—  
15 For each good or service for which it is determined that  
16 the registration should not have issued because the mark  
17 was not in use in commerce on or before the relevant date,  
18 the examiner shall find that the registration should be  
19 cancelled for each such good or service. Unless overturned  
20 on review of the examiner’s decision, the Director shall  
21 issue an order cancelling the registration, in whole or in  
22 part, after the time for appeal has expired or any appeal  
23 proceeding has terminated.

24       “(h) REEXAMINATION BY DIRECTOR.—



1           “(1) IN GENERAL.—The Director may, on the  
2 Director’s own initiative, institute an ex parte reex-  
3 amination proceeding if the Director discovers infor-  
4 mation that sets forth a prima facie case of the  
5 mark having not been used in commerce on or in  
6 connection with some or all of the goods or services  
7 covered by the registration on or before the relevant  
8 date. The Director shall promptly notify the reg-  
9 istrant of such determination, at which time reexam-  
10 ination shall proceed according to the same proce-  
11 dures established pursuant to subsection (e). If the  
12 Director determines, based on the Director’s own  
13 initiative, to institute an ex parte reexamination pro-  
14 ceeding, the Director shall transmit or make avail-  
15 able the information that formed the basis for that  
16 determination as part of the institution notice.

17           “(2) RULE OF CONSTRUCTION.—Nothing in  
18 this subsection may be construed to limit any other  
19 authority of the Director.

20           “(i) TIME FOR INSTITUTION.—A petition for ex parte  
21 reexamination may be filed, or the Director may institute  
22 on his own initiative an ex parte reexamination pro-  
23 ceeding, at any time not later than five years after the  
24 date of registration of a mark registered based on use in  
25 commerce.

1       “(j) LIMITATION ON LATER EX PARTE REEXAMINA-  
2 TION PROCEEDINGS.—

3               “(1) NO CO-PENDING PROCEEDINGS.—With re-  
4 spect to a particular registration, while an ex parte  
5 reexamination proceeding is pending, no later ex  
6 parte reexamination proceeding can be instituted  
7 with respect to the same goods or services that are  
8 the subject of a pending ex parte reexamination pro-  
9 ceeding.

10              “(2) ESTOPPEL.—With respect to a particular  
11 registration, for any goods or services previously  
12 subject to an instituted ex parte reexamination pro-  
13 ceeding for which, in that proceeding, it was deter-  
14 mined that the registrant had used the mark for  
15 particular goods or services before the relevant date,  
16 and the registration was not cancelled as to those  
17 goods or services, no further ex parte reexamination  
18 proceedings may be initiated as to those goods or  
19 services, regardless of the identity of the petitioner.

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

25              (d) APPEAL.—

1           (1) APPEAL TO TRADEMARK TRIAL AND APPEAL  
2 BOARD.—Section 20 of the Trademark Act of 1946  
3 (15 U.S.C. 1070) is amended by inserting “or from  
4 any order to cancel a registration, in whole or in  
5 part, arising from an ex parte expungement pro-  
6 ceeding or ex parte reexamination proceeding” after  
7 “registration of marks”.

8           (2) APPEAL TO COURTS.—

9           (A) EXPUNGEMENT OR EX PARTE REEX-  
10 AMINATION.—Section 21(a)(1) of the Trade-  
11 mark Act of 1946 (15 U.S.C. 1071(a)(1)) is  
12 amended by striking “or an applicant for re-  
13 newal” and inserting the following: “an appli-  
14 cant for renewal, or a registrant subject to an  
15 order to cancel arising from an expungement or  
16 ex parte reexamination proceeding”.

17           (B) EXCEPTION.—Section 21(b)(1) of the  
18 Trademark Act of 1946 (15 U.S.C. 1071(b)(1))  
19 is amended by inserting after “authorized by  
20 subsection (a) of this section” the following: “,  
21 other than a registrant subject to an  
22 expungement proceeding or ex parte reexamina-  
23 tion”.

1 (e) TECHNICAL AND CONFORMING AMENDMENTS.—  
2 The Trademark Act of 1946 (15 U.S.C. 1051 et seq.) is  
3 amended—

4 (1) in section 15 by striking “paragraphs (3)  
5 and (5)” and inserting “paragraphs (3), (5) and  
6 (6)”; and

7 (2) in section 26 by adding at the end the fol-  
8 lowing: “Registrations on the supplemental register  
9 are subject to ex parte expungement and ex parte  
10 reexamination under sections 16A and 16B, respec-  
11 tively.”.

12 (f) DEADLINE FOR PROCEDURES.—Not later than  
13 one year after the date of the enactment of this Act, the  
14 Director shall issue regulations to carry out sections 16A  
15 and 16B of the Trademark Act of 1946, as added by sub-  
16 sections (a) and (b).

17 (g) EFFECTIVE DATE.—The amendments made by  
18 this section shall take effect upon the expiration of the  
19 one year period beginning on the date of enactment of this  
20 Act, and shall apply to any mark registered before, on,  
21 or after that effective date.

22 **SEC. 6. REBUTTABLE PRESUMPTION OF IRREPARABLE**  
23 **HARM.**

24 (a) AMENDMENT.—Section 34 of the Trademark Act  
25 of 1946 (15 U.S.C. 1116) is amended in subsection (a)

1 by inserting after the first sentence the following new sen-  
2 tence: “A plaintiff seeking any such injunction shall be  
3 entitled to a rebuttable presumption of irreparable harm  
4 upon a finding of a violation identified in this subsection  
5 in the case of a motion for a permanent injunction or upon  
6 a finding of likelihood of success on the merits for a viola-  
7 tion identified in this subsection in the case of a motion  
8 for a preliminary injunction or temporary restraining  
9 order.”.

10 (b) **RULE OF CONSTRUCTION.**—The amendment  
11 made by subsection (a) shall not be construed to mean  
12 that a plaintiff seeking an injunction was not entitled to  
13 a presumption of irreparable harm before the date of the  
14 enactment of this Act.

15 **SEC. 7. REPORT ON DECLUTTERING INITIATIVES.**

16 (a) **STUDY.**—The Comptroller General of the United  
17 States shall consult with the Director to conduct a study  
18 on the efforts of the Director to address inaccurate and  
19 false claims of use in trademark applications and registra-  
20 tions. Inaccurate and false claims of use include any dec-  
21 laration of use by a trademark applicant or registrant that  
22 cannot be supported by use in commerce as defined in sec-  
23 tion 45 of the Trademark Act of 1946 (15 U.S.C. 1127)  
24 or the regulations relevant to the definition of specimens  
25 under section 1 of the Trademark Act of 1946 (15 U.S.C.

1 1051), as applicable. The study shall cover the period from  
2 18 months after the date of enactment of this Act to 30  
3 months after the date of enactment of this Act.

4 (b) CONTENTS OF STUDY.—In conducting the study  
5 under subsection (a), the Comptroller General shall assess  
6 the following:

7 (1) With respect to sections 16A and 16B of  
8 the Trademark Act of 1946, as added by section 5—

9 (A) the number of petitions filed under  
10 each such section that relate to proceedings  
11 that were not instituted, or were instituted and  
12 have reached their conclusion;

13 (B) the number of completed proceedings  
14 instituted under each such section, including  
15 any proceedings instituted by the Director's  
16 own initiative;

17 (C) the average time taken to resolve pro-  
18 ceedings instituted under each such section, in-  
19 cluding the average time between—

20 (i) the filing of a petition under each  
21 such section and an examiner's final deci-  
22 sion under section 16A(g) and 16B(g), or  
23 the last decision issued by the examiner if  
24 the registrant failed to respond to the lat-  
25 est-in-time decision by the examiner; and

1 (ii) the institution of a proceeding  
2 under each such section, including any pro-  
3 ceedings instituted by the Director's own  
4 initiative, and an examiner's final decision  
5 under section 16A(g) and 16B(g), or the  
6 last decision issued by the examiner if the  
7 registrant fails to respond to the latest-in-  
8 time decision by the examiner;

9 (D) the number of appeals of decisions of  
10 examiners for each such proceeding; and

11 (E) an accounting of the final outcome of  
12 each such proceeding instituted by identifying  
13 the number of goods or services for which such  
14 proceedings were instituted, and the number of  
15 goods or services for which registrations were  
16 cancelled pursuant to such proceedings.

17 (2) With respect to section 1(f) of the Trade-  
18 mark Act of 1946, as added by section 3—

19 (A) the number of third-party submissions  
20 filed under such section for which the third-  
21 party asserts in the submission that the mark  
22 has not been used in commerce; and

23 (B) of those applications identified in para-  
24 graph (A) above, the number of applications in

1           which the third-party submission evidence is in-  
2           cluded in the application; and

3                   (C) of those applications identified in para-  
4           graph (B) above, the number of applications—

5                           (i) refused registration based on an  
6                           assertion by the examiner that the mark  
7                           has not been used in commerce; and

8                           (ii) for which the examiner requested  
9                           additional information from the applicant  
10                          related to claims of use.

11           (3) The benefit of—

12                   (A) the proceedings under sections 16A  
13                   and 16B of the Trademark Act of 1946, as  
14                   added by section 5, in addressing inaccurate  
15                   and false claims use claims in trademark reg-  
16                   istrations; and

17                   (B) any additional programs conducted by  
18                   the Director designed to address inaccurate and  
19                   false claims use claims in trademark applica-  
20                   tions and registrations, including the post-reg-  
21                   istration use audit, as implemented at the date  
22                   of enactment of this Act under sections  
23                   2.161(h) and 7.37(h) of title 37, Code of Fed-  
24                   eral Regulations.



1           (c) REPORT TO CONGRESS.—Not later than three  
2 years after the date of enactment of this Act, the Comp-  
3 troller General of the United States shall submit to the  
4 Committee on the Judiciary of the House of Representa-  
5 tives and the Committee on the Judiciary of the Senate  
6 a report—

7           (1) on the results of the study conducted under  
8 this section; and

9           (2) that includes any recommendations for any  
10 changes to laws and regulations that will improve  
11 the integrity of the trademark register to reduce in-  
12 accurate and false claims of use based on the results  
13 of such study.

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