

117TH CONGRESS  
2D SESSION

# H. R. 8697

To amend the Leahy-Smith America Invents Act to address satellite offices of the United States Patent and Trademark Office, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 9, 2022

Ms. ROSS (for herself and Ms. MACE) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend the Leahy-Smith America Invents Act to address satellite offices of the United States Patent and Trademark Office, 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,*

3        **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Unleashing American  
5        Innovators Act of 2022”.

6        **SEC. 2. DEFINITIONS.**

7        In this Act:

8            (1) DIRECTOR.—The term “Director” means  
9            the Under Secretary of Commerce for Intellectual  
10          Property and Director of the Office.

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

3           (3) PATENT PRO BONO PROGRAMS.—The term  
4 “patent pro bono programs” means the programs  
5 established pursuant to section 32 of the Leahy-  
6 Smith America Invents Act (35 U.S.C. 2 note).

7           (4) SOUTHEAST REGION OF THE UNITED  
8 STATES.—The term “southeast region of the United  
9 States” means the area of the United States that is  
10 comprised of the States of Virginia, North Carolina,  
11 South Carolina, Georgia, Florida, Tennessee, Ala-  
12 bama, Mississippi, Louisiana, and Arkansas.

13 **SEC. 3. SATELLITE OFFICES.**

14           (a) AMENDMENTS TO PURPOSE AND REQUIRED CON-  
15 siderations.—Section 23 of the Leahy-Smith America  
16 Invents Act (Public Law 112–29; 35 U.S.C. 1 note) is  
17 amended—

18           (1) in subsection (b)—

19           (A) in paragraph (1)—

20           (i) by striking “increase outreach ac-  
21 tivities to”; and

22           (ii) by inserting after “Office” the fol-  
23 lowing: “, including by increasing outreach  
24 activities, including to women, people of  
25 color, veterans, individual inventors, or

1 members of any other demographic, geo-  
2 graphic, rural population, or economic  
3 group that the Director may determine to  
4 be underrepresented in patent filings”; and  
5 (B) by striking paragraph (2) and insert-  
6 ing the following:

7 “(2) enhance patent examiner and administra-  
8 tive patent judge retention, including patent exam-  
9 iners and administrative patent judges from eco-  
10 nomically, geographically, and demographically di-  
11 verse backgrounds;”; and

12 (2) in subsection (c)(1)—

13 (A) in subparagraph (D), by striking  
14 “and” at the end;

15 (B) in subparagraph (E), by striking the  
16 period at the end and inserting “; and”; and

17 (C) by adding at the end the following:

18 “(F) with respect to each office established  
19 after July 1, 2022, shall consider the proximity  
20 of the office to anchor institutions (such as hos-  
21 pitals primarily serving veterans and institu-  
22 tions of higher education) and to women, people  
23 of color, veterans, individual inventors, or mem-  
24 bers of any other demographic, geographic,  
25 rural population, or economic group that the

1 Director may determine to be underrepresented  
2 in patent filings.”.

3 (b) SOUTHEAST REGIONAL OFFICE.—

4 (1) IN GENERAL.—In addition to the satellite  
5 offices required to be established under section 23 of  
6 the Leahy-Smith America Invents Act (35 U.S.C.  
7 note), not later than 3 years after the date of enact-  
8 ment of this Act, the Director shall establish a sat-  
9 ellite office of the Office in the southeast region of  
10 the United States.

11 (2) CONSIDERATIONS.—When selecting a site  
12 for the office required under paragraph (1), the Di-  
13 rector shall consider the following:

14 (A) The number of patent-intensive indus-  
15 tries located near the selection site.

16 (B) The number of research-intensive in-  
17 stitutions, including institutions of higher edu-  
18 cation, located near the selection site.

19 (C) Any legal or business frameworks of  
20 the relevant State or local government that sup-  
21 port intellectual property-intensive industries lo-  
22 cated near the selection site.

23 (c) STUDY ON ADDITIONAL SATELLITE OFFICES.—  
24 Not later than 2 years after the date of enactment of this  
25 Act, the Director shall complete a study to determine

1 whether additional satellite offices of the Office are nec-  
2 essary to—

3 (1) achieve the purposes described in section  
4 23(b) of the Leahy-Smith America Invents Act (35  
5 U.S.C. 1 note), as amended by this section; and

6 (2) increase participation in the patent system  
7 by women, people of color, veterans, individual in-  
8 ventors, or members of any other demographic, geo-  
9 graphic, rural population, or economic group that  
10 the Director may determine to be underrepresented  
11 in patent filings.

12 **SEC. 4. COMMUNITY OUTREACH OFFICES.**

13 (a) ESTABLISHMENT.—

14 (1) IN GENERAL.—Subject to paragraphs (2)  
15 and (3), not later than 5 years after the date of en-  
16 actment of this Act, the Director shall establish not  
17 fewer than 4 community outreach offices throughout  
18 the United States.

19 (2) RESTRICTION.—No community outreach of-  
20 fice established under paragraph (1) may be located  
21 in the same State as—

22 (A) the principal office of the Office; or

23 (B) any satellite office of the Office.

24 (3) REQUIREMENT FOR NORTHERN NEW ENG-  
25 LAND REGION.—

1 (A) IN GENERAL.—The Director shall es-  
2 tablish not less than 1 community outreach of-  
3 fice under this subsection in the northern New  
4 England region, which shall serve the States of  
5 Vermont, New Hampshire, and Maine.

6 (B) CONSIDERATIONS.—In determining  
7 the location for the office required to be estab-  
8 lished under subparagraph (A), the Director  
9 shall give preference to a location in which—

10 (i) as of the date of enactment of this  
11 Act—

12 (I) there is located not less than  
13 1 public institution of higher edu-  
14 cation and not less than 1 private in-  
15 stitution of higher education; and

16 (II) there are located not more  
17 than 15 registered patent attorneys,  
18 according to data from the Office of  
19 Enrollment and Discipline of the Of-  
20 fice; and

21 (ii) according to data from the 2012  
22 Survey of Business Owners conducted by  
23 the Bureau of the Census, less than 45  
24 percent of the firms (as that term is de-

1                    fined for the purposes of the Survey) are  
2                    owned by women, minorities, or veterans.

3           (b) PURPOSES.—The purposes of the community out-  
4 reach offices established under subsection (a) are to—

5                   (1) further achieve the purpose described in  
6                   section 23(b)(1) of the Leahy-Smith America In-  
7                   vents Act (35 U.S.C. 1 note), as amended by this  
8                   Act;

9                   (2) partner with local community organizations,  
10                  institutions of higher education, research institu-  
11                  tions, and businesses to create community-based  
12                  programs that—

13                         (A) provide education regarding the patent  
14                         system; and

15                         (B) promote the career benefits of innova-  
16                         tion and entrepreneurship; and

17                   (3) educate prospective inventors, including  
18                   women, people of color, veterans, individual inven-  
19                   tors, or members of any other demographic, geo-  
20                   graphic, rural population, or economic group that  
21                   the Director may determine to be underrepresented  
22                   in patent filings about all public and private re-  
23                   sources available to potential patent applicants, in-  
24                   cluding the patent pro bono programs.

1 **SEC. 5. UPDATES TO THE PATENT PRO BONO PROGRAM.**

2 (a) STUDY AND UPDATES.—

3 (1) IN GENERAL.—Not later than 1 year after  
4 the date of enactment of this Act, the Director  
5 shall—

6 (A) complete a study of the patent pro  
7 bono programs; and

8 (B) submit the results of the study re-  
9 quired under subparagraph (A) to the Com-  
10 mittee on the Judiciary of the Senate and the  
11 Committee on the Judiciary of the House of  
12 Representatives.

13 (2) SCOPE OF THE STUDY.—The study required  
14 under paragraph (1)(A) shall—

15 (A) assess—

16 (i) whether the patent pro bono pro-  
17 grams, as in effect on the date on which  
18 the study is commenced, are sufficiently  
19 serving women, people of color, veterans,  
20 individual inventors, or members of any  
21 other demographic, geographic, rural popu-  
22 lation, or economic group that the Director  
23 may determine to be underrepresented in  
24 patent filings;

1 (ii) whether the patent pro bono pro-  
2 grams are sufficiently funded to serve pro-  
3 spective participants;

4 (iii) whether any participation require-  
5 ments of the patent pro bono programs, in-  
6 cluding any requirement to demonstrate  
7 knowledge of the patent system, serve as a  
8 deterrent for prospective participants;

9 (iv) the degree to which prospective  
10 inventors are aware of the patent pro bono  
11 programs;

12 (v) what factors, if any, deter attor-  
13 neys from participating in the patent pro  
14 bono program;

15 (vi) whether the program would be  
16 improved by expanding the patent pro  
17 bono program to include non-attorney ad-  
18 vocates; and

19 (vii) any other issue the Director de-  
20 termines appropriate; and

21 (B) make recommendations for such ad-  
22 ministrative and legislative action as may be ap-  
23 propriate.

24 (b) USE OF RESULTS.—Upon completion of the study  
25 required under subsection (a), the Director shall work

1 with the Patent Pro Bono Advisory Council, operators of  
2 patent pro bono programs, and intellectual property law  
3 associations across the United States to update the patent  
4 pro bono programs in response to the findings of the  
5 study.

6 (c) EXPANSION OF INCOME ELIGIBILITY.—The Di-  
7 rector shall work with and support, including by providing  
8 financial support, to intellectual property law associations  
9 across the United States that have established patent pro  
10 bono programs to expand eligibility for such programs to  
11 individuals living in a household, the gross household in-  
12 come of which is not more than 400 percent of the Federal  
13 poverty line. Patent pro bono programs may elect to set  
14 a higher eligibility level.

15 **SEC. 6. PRE-PROSECUTION PATENTABILITY ASSESSMENT**  
16 **PILOT PROGRAM.**

17 (a) PILOT PROGRAM.—Not later than 1 year after  
18 the date of enactment of this Act, the Director shall estab-  
19 lish a pilot program to assist first-time prospective patent  
20 applicants in assessing the likelihood of issuance of a po-  
21 tential patent submitted by such a prospective applicant.

22 (b) CONSIDERATIONS.—In developing the pilot pro-  
23 gram required under subsection (a), the Director shall es-  
24 tablish—

1           (1) a notification process to notify a prospective  
2           patent applicant seeking an assessment described in  
3           that subsection that any assessment so provided may  
4           not be considered an official ruling of patentability  
5           from the Office;

6           (2) conditions to determine eligibility for the  
7           pilot program, taking into consideration available re-  
8           sources;

9           (3) reasonable limitations on the amount of  
10          time to be spent providing assistance to each indi-  
11          vidual first-time prospective patent applicant;

12          (4) procedures for referring prospective patent  
13          applicants to legal counsel, including through the  
14          patent pro bono programs; and

15          (5) procedures to protect the confidentiality of  
16          the information disclosed by prospective patent ap-  
17          plicants.

18 **SEC. 7. FEE REDUCTION FOR SMALL AND MICRO ENTITIES.**

19          (a) TITLE 35.—Section 41(h) of title 35, United  
20          States Code, is amended—

21                 (1) in paragraph (1), by striking “50 percent”  
22                 and inserting “60 percent or more, at the discretion  
23                 of the Director,”; and

1           (2) in paragraph (3), by striking “75 percent”  
2           and inserting “80 percent or more, at the discretion  
3           of the Director,”.

4           (b) TITLE 35.—Section 123 of title 35, United States  
5 Code, is amended by adding at the end the following:

6           “(f) PENALTIES FOR FRAUDULENT CERTIFI-  
7 CATIONS.—In addition to any other penalty available  
8 under law, an applicant that is found to have made a cer-  
9 tification described under this section on a fraudulent  
10 basis shall be subject to the following penalties:

11           “(1) Abandonment of the patent application  
12 concerned, if such application is pending.

13           “(2) Revocation of the patent concerned, if the  
14 patent has been issued.”.

15           (c) TITLE 35.—Section 41(h) of title 35, United  
16 States Code, is amended by adding at the end the fol-  
17 lowing:

18           “(4) PENALTIES FOR FRAUDULENT CERTIFI-  
19 CATIONS.—In addition to any other penalty available  
20 under law, an entity that is found to have made a  
21 certification on a fraudulent basis that a fee reduc-  
22 tion required by this subsection applies, such entity  
23 shall be subject to the following penalties:

24           “(A) Abandonment of the patent applica-  
25 tion concerned, if such application is pending.

1                   “(B) Revocation of the patent concerned, if  
2                   the patent has been issued.”.

3           (d) LEAHY-SMITH AMERICA INVENTS ACT.—Section  
4 10(b) of the Leahy-Smith America Invents Act (Public  
5 Law 112–29; 35 U.S.C. 41 note) is amended by striking  
6 “50 percent” and inserting “60 percent, or by a higher  
7 percentage at the discretion of the Director,” and by strik-  
8 ing “75 percent” and inserting “80 percent, or by a higher  
9 percentage at the discretion of the Director,”.

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