or products that will protect children from the harms of the Internet and permit users to block out offensive materials and services without compromising the beneficial aspects of the Internet; and

Whereas, The technology currently exists to more readily control these problems by the use of designated top-level domain site for web sites that contain pornographic and adult-oriented materials and services which if employed will expedite and facilitate the development of clean Internet materials and services by the lawful classification of web sites; and

Whereas, In October of this year, the United States Department of Commerce plans to set up a private not-for-profit corporation whose directors will create five new top-level domains that will register web sites by subject type; and

Whereas, A federal requirement that an adult-oriented domain site be created and that all adult-oriented web sites be registered to such domain would greatly aid Internet users, parents and teachers in shielding America's youth from the harms of pornography and adult-oriented materials and services that are available and proliferating on the Internet; and

Whereas, The states are somewhat limited in the regulation they can provide in this area because of the federal Commerce Clause; and

Whereas, Congress and the Executive Branch are the appropriate governmental branches to provide leadership in this area and may lawfully act to resolve quickly this issue in a responsible manner that comports with the ideals of the First Amendment; now, therefore, be it

Resolved by the Senate of the One-hundredth General Assembly of the State of Tennessee, the House of Representatives Concurring, That this Body hereby urges the United States Congress to establish and maintain a uniform resource locator system that contains a top-level domain for all Internet web sites providing pornographic or adult-oriented materials or services so as to facilitate and assist Internet users, services providers and software developers to manage the problem of uncontrolled access to obscenity, child pornography and other adult-oriented materials and services via Internet. Be it

Further Resolved, That this Body respectfully urges the President and Vice President of the United States and the Secretary of the Department of Commerce to use their offices and considerable influence to bring about the aims of this resolution by the means of executive order or department regulation, or the promotion of federal regulation, as they deem appropriate. Be it

Further Resolved, That the Clerk of the Senate deliver enrolled copies of this resolution to each member of the Tennessee delegation, to the United States Senate and the United States House of Representatives, to the Chairman of the United States Senate Commerce, Science and Transportation Committee and the United States House Commerce Committee, and to the President and Vice President of the United States and the Secretary of the United States Department of Commerce.

POM–486. A joint resolution adopted by the Legislature of the State of Tennessee; to the Committee on Finance.

HOUSE JOINT RESOLUTION NO. 525

Whereas, House Resolution No. 2912 of the 105th U.S. Congress was introduced in 1997 to reinstate payments under Medicare for home health services relating to venipuncture for the express purpose of obtaining blood samples; and

Whereas, the legislation also requires the Secretary of the Department of Health and Human Services to study potential fraud and abuse under the Medicare program with respect to such services; and

Whereas, the Department of Health and Human Services study calls for an examination of critical aspects of the Medicare program as it pertains to venipuncture services, along with the cost to beneficiaries if payment under the Medicare program is prohibited for such home health services; and

Whereas, the Department is also directed under the legislation to determine the costs to states through the potentially increased use of personal care services and nursing home placements as a result of Medicare not covering venipuncture procedures; and

Whereas, such services are vitally important in the diagnosis and treatment of many catastrophic illnesses, which if left undetected will result in increased future Medicare expenditures; and

Whereas, as citizens of this country continue to be unreasonably burdened by spiraling medical costs, the availability of adequate medical care is critical to their well-being; and it is incumbent upon the members of this Legislative Body to express our unflagging support for this significant legislation; now, therefore, be it

Resolved by the House of Representatives of the One-hundredth General Assembly of the State of Tennessee, the Senate Concurring, That this General Assembly hereby memorializes the U.S. Congress to act expeditiously to enact the Medicare Venipuncture Fairness Act. Be it

Further Resolved, That this General Assembly memorializes each member of the U.S. Congress from Tennessee to utilize the full measure of his or her influence to effect the enactment of the Medicare Venipuncture Fairness Act. Be it

Further Resolved, That the Chief Clerk of the House of Representatives is directed to transmit a certified copy of this resolution to the Honorable Bill Clinton, President of the United States; the President and the Secretary of the U.S. Senate; the Speaker and the Clerk of the U.S. House of Representatives; and to each member of the Tennessee delegation to the U.S. Congress.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. NICKLES:

S. 2187. A bill to amend the Federal Power Act to ensure that no State may establish, maintain, or enforce on behalf of any electric utility an exclusive right to sell electric energy or otherwise unduly discriminate against any consumer who seeks to purchase electric energy in interstate commerce from any supplier; to the Committee on Energy and Natural Resources.

By Mr. MURKOWSKI (for himself, Mr. INOUYE, Mr. AKAKA, and Mr. STEVENS):

S. 2188. A bill to amend section 203(b) of the National Housing Act relating to the calculation of downpayments; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. WYDEN (for himself and Mr. BURNS):

S. 2189. A bill to amend the Federal Water Pollution Control Act to authorize the use of State revolving loan funds for construction of water conservation and quality improvements; to the Committee on Environment and Public Works.

By Mr. KENNEDY (for himself, Mr. DOMENICI, Mr. KERRY, and Mr. BINGAMAN):

S. 2190. A bill to authorize qualified organizations to provide technical assistance and capacity building services to microenterprise development organizations and programs and to disadvantaged entrepreneurs using funds from the Community Development Financial Institutions Fund, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LEAHY:

S. 2191. A bill to amend the Trademark Act of 1946 to provide for the registration and protection of trademarks used in commerce, in order to carry out provisions of certain international conventions, and for other purposes; to the Committee on the Judiciary.

By Mr. HATCH:

S. 2192. A bill to make certain technical corrections to the Trademark Act of 1946; to the Committee on the Judiciary.

By Mr. HATCH (for himself and Mr. LEAHY):

S. 2193. A bill to implement the provisions of the Trademark Law Treaty; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LEVIN (for himself and Mr. ABRAHAM):

S. Res. 251. A resolution to congratulate the Detroit Red Wings on winning the 1998 National Hockey League Stanley Cup Championship and proving themselves to be one of the best teams in NHL history; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. NICKLES:

S. 2187. A bill to amend the Federal Power Act to ensure that no State may establish, maintain, or enforce on behalf of any electric utility an exclusive right to sell electric energy or otherwise unduly discriminate against any consumer who seeks to purchase electric energy in interstate commerce from any supplier; to the Committee on Energy and Natural Resources.

THE ELECTRIC CONSUMER CHOICE ACT

Mr. NICKLES. Mr. President, I rise today to introduce the Electric Consumer Choice Act. For the last two years hearings and workshops have been held in both the House and Senate examining the issue of restructuring the electric industry. Many bills have been introduced on this issue by both Congressmen and Senators, some comprehensive and some dealing with more discreet issues such as repeal of the Public Utility Holding Company (PUHCA) or repeal of the Public Utility Regulatory Policies Act of 1978 (PURPA). The bill that I am introducing today cuts to the heart of the issue: do we or don't we support allowing consumers to choose their electric supplier? Do we or don't we support a national competitive market in electricity? I believe the answer to these questions is a resounding ''yes''! This Congress believes competition is good, that free markets work and that every American will benefit from a competitive electric industry.

The Electric Consumer Choice Act is intended to begin the process of achieving a national, competitive electricity market. It will establish consumer choice of electric suppliers as a goal this Congress firmly supports. It achieves this in a simple, straight-forward method. First, it eliminates electric monopolies by prohibiting the granting of exclusive rights to sell to electric utilities. Second, it prohibits undue discrimination against consumers purchasing electricity in interstate commerce. Third, it provides for access to local distribution facilities and finally, it allows a state to impose reciprocity requirements on out-of-state utilities. The bill also makes it clear that nothing in this act expands the authority of the Federal Energy Regulatory Commission (FERC) or limits the authority of a state to continue to regulate retail sales and distribution of electric energy in a manner consistent with the Commerce Clause of the United States Constitution.

The premise of this bill is that all attributes of today's electric energy market—generation, transmission, distribution and both wholesale and retail sales—are either in or affect interstate commerce. Therefore, any State regulation of these attributes that unduly discriminates against the interstate market for electric power violates the Commerce Clause unless such State action is protected by an act of Congress.

The Supreme Court has interpreted Part II of the Federal Power Act (FPA) as protecting State regulation of generation, local distribution, intrastate transmission and retail sales that unduly discriminates against the interstate market for electric power. The Court has reasoned that Congress, in the FPA, determined that the federal government needed only to regulate wholesale sales and interstate transmission in order to adequately protect interstate commerce in electric energy. Thus, all other aspects of the electric energy market were reserved to the States and protected from challenges under the Commerce Clause. The Electric Consumer Choice Act amends the FPA to eliminate the protection provided for State regulation that establishes, maintains, or enforces an exclusive right to sell electric energy or that unduly discriminates against any consumer who seeks to purchase electric energy in interstate commerce.

This bill provides consumers and electric energy suppliers with the means to achieve retail choice in all States by January 1, 2002. It does not impose a federal statutory mandate on the States. It does not preempt the States' traditional jurisdiction to regulate the aspects of the electric power market in the reserved realm—generation, local distribution, intrastate transmission, or retail sales—it merely limits the scope of what the States can do in that realm. It does not expand or extend FERC jurisdiction into the aspects of traditional State authority.

As I stated earlier, this bill is intended to provide every consumer a choice when it comes to electricity suppliers. It is intended to establish that this Congress supports national competition when it comes to the generation of electricity. It is intended to be the beginning, not the end of the process. There are many other issues that need to be addressed at the federal level to facilitate a national market for electricity. Some of these issues include repeal of PURPA and PUHCA, taxation differences between various electric providers, clarification of jurisdiction over transmission, ensuring reliability, providing for inclusion of Power Marketing Administrations and the Tennessee Valley Authority in a national market, and other issues that can only be addressed at the Federal level. These issues need to be addressed and should be addressed. But while these issues are being debated we should ensure that progress towards customer choice proceeds.

I am proud to say that my state of Oklahoma has been in the forefront of opening up it's electricity markets to competition. Seventeen other states have also moved to open their markets. It is my hope that the Electric Consumer Choice Act will facilitate this process nationally. To that end, I am introducing this bill today.

Mr. President, I ask unanimous consent that the Electric Consumer Choice Act be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2187

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

SEC. 1. SHORT TITLE.

This Act may be cited as the "Electric Consumer Choice Act".

SEC. 2. FINDINGS.

The Congress finds that—

(a) the opportunity for all consumers to purchase electric energy in interstate commerce from any supplier is essential to a dynamic, fully integrated and competitive national market for electric energy.

(b) the establishment, maintenance or enforcement of exclusive rights to sell electric energy and other State action which unduly discriminates against any consumer who seeks to purchase electric energy in interstate commerce from any supplier constitute an unwarranted and unacceptable discrimination against and burden on interstate commerce;

(c) in today's technologically driven marketplace there is no justification for the discrimination against and burden imposed on interstate commerce by exclusive rights to sell electric energy or other State action which unduly discriminates against any consumer who seeks to purchase electric energy in interstate commerce from any supplier; and,

(d) the electric energy transmission and local distribution facilities of the nation's federally-owned, investor-owned and self-regulated utilities are essential facilities for the conduct of a competitive interstate retail market in electric energy in which all consumers have the opportunity to purchase electric energy in interstate commerce from any supplier.

SEC. 3. DECLARATION OF PURPOSE.

The purpose of this Act is to ensure that nothing in the Federal Power Act or any other federal law exempts or protects from Article I, Section 8, Clause 3 of the Constitution of the United States exclusive rights to sell electric energy or any other State actions which unduly discriminate against any consumer who seeks to purchase electric energy in interstate commerce from any supplier.

SEC. 4. SCOPE OF STATE AUTHORITY UNDER THE FEDERAL POWER ACT.

Section 201 of the Federal Power Act (16 U.S.C. §824) is amended by adding at the end the following:

"(h) Notwithstanding any other provision of this section, nothing in this Part or any other federal law shall be construed to authorize a State to—

"(1) establish, maintain, or enforce on behalf of any electric utility an exclusive right to sell electric energy; or,

"(2) otherwise unduly discriminate against any consumer who seeks to purchase electric energy in interstate commerce from any supplier.".

SEC. 5. ACCESS TO TRANSMISSION AND LOCAL DISTRIBUTION FACILITIES.

No supplier of electric energy, who would otherwise have a right of access to a transmission or local distribution facility because such facility is an essential facility for the conduct of interstate commerce in electric energy, shall be denied access to such facility or precluded from engaging in the retail sale of electric energy on the grounds that such denial or preclusion is authorized or required by State action establishing, maintaining, or enforcing an exclusive right to sell, transmit, or locally distribute electric energy.

SEC. 6. STATE AUTHORITY TO IMPOSE RECIPROCITY REQUIREMENTS.

Part II of the Federal Power Act (16 U.S.C. §824) is amended by adding at the end the following:

"SEC. 215. STATE AUTHORITY TO IMPOSE RECIPROCITY REQUIREMENTS.

"A State or state commission may prohibit an electric utility from selling electric energy to an ultimate consumer in such State if such electric utility or any of its affiliates owns or controls transmission or local distribution facilities and is not itself providing unbundled local distribution service in a State in which such electric utility owns or operates a facility used for the generation of electric energy.".

SEC. 7. SAVINGS CLAUSE.

Nothing in this Act shall be construed to—

(a) authorize the Federal Energy Regulatory Commission to regulate retail sales or local distribution of electric energy or otherwise expand the jurisdiction of the Commission, or,

(b) limit the authority of a State to regulate retail sales and local distribution of electric energy in a manner consistent with Article I, Section 8, Clause 3 of the Constitution of the United States.

SEC. 8. EFFECTIVE DATES.

Section 5 and the amendment made by section 4 of this Act take effect on January 1, 2002. The amendment made by section 6 of this Act takes effect on the date of enactment of this Act.

By Mr. MURKOWSKI (for himself, Mr. INOUYE, Mr. AKAKA, and Mr. STEVENS):

S. 2188. A bill to amend section 203(b) of the National Housing Act relating to the calculation of downpayments; to the Committee on Banking, Housing, and Urban Affairs.

FAMILY HOME OWNERS MORTGAGE EQUITY ACT

Mr. MURKOWSKI. Mr. President, today I, and my fellow Senator from the State of Alaska, Senator STEVENS, and my good friends and colleagues from the State of Hawaii, Senator INOUYE and Senator AKAKA, are introducing a very important measure—one that would unlock and open the door to many first-time home buyers.

As we are all aware, it is often the downpayment that is the largest impediment to home ownership for first-time home buyers. The Federal Housing Administration (FHA) began a pilot program two years ago to help families overcome that impediment by lowering the downpayment necessary for an FHA home mortgage.

Mr. President, I am pleased to say that the pilot program, which is located in Alaska and Hawaii, has reported great success.

This pilot program is effective because it accomplishes two feats: (1) it lowers the FHA downpayment, making it more affordable; and (2) it makes the FHA downpayment calculation easier and more understandable for all parties to the transaction. The pilot program, commonly called the ''97 percent Loan-to-Value Program,'' requires—on average—only a minimum cash investment of three percent for home buyers.

Our bill amends section 203(b) of the National Housing Act by changing the current multi-part formula to a single calculation formula. The simplified formula creates a lower, more affordable downpayment while simultaneously simplifying the current, cumbersome loan calculation formula. Our bill would extend this lower and simplified downpayment rate to perspective home buyers across the country.

Mr. President, the pilot program is a win-win situation: affordable homes are made available to responsible buyers without any increase in mortgage default rates. Here's what mortgage lenders have reported:

There is no indication of increase in risk. The loans we have made to date have been to borrowers with excellent credit records and stable employment, but not enough disposable income to accumulate the cash necessary for a high downpayment.—Richard E. Dolman, Manager, Seattle Mortgage, Anchorage Branch.

Is the 97% program working? The answer is a resounding YES! . . . In this current day, it takes two incomes to meet basic needs. To come up with a large downpayment is increasingly difficult, especially for those just starting out. The 3% program is a good start . . . I do no believe that lowering the downpayment increased our risk. . .— Nancy A. Karriowski, Alaska Home Mortgage, Inc., Anchorage, Alaska.

We have experienced nothing but positive benefits from the FHA Pilot Program Loan Calculation in Alaska and Hawaii.—Roger Aldrich, President, City Mortgage, Corporation, Anchorage, Alaska.

We support the new loan calculation, as this has provided a step toward the goal of homeownership for everyone . . . We do not feel that there is a greater risk with the borrower putting 3 percent down rather than using the calculation under the standard program . . .—Lorna Gleason, Vice President, National Bank of Alaska.

Home buyers under the pilot program agree. Vicki Case of Palmer, Alaska is a single parent and a mortgage lender who earned too much to qualify for any of the low-income mortgage programs. She would have been unable to purchase her home had it not been for an FHA loan with the reduced down payment.

In fact, but for the pilot program, approximately 70 percent of the FHA loan applications processed in Vicki Case's office would be rejected. simply because the buyer could not afford the downpayment. Mr. President, thanks to this pilot program, more and more deserving Alaskans are becoming home owners.

Mr. President, our legislation has the support of the Mortgage Bankers Association of America, the National Association of Realtors, the National Association of Home Builders and the U.S. Department of Housing and Urban Development. They believe, as I do, that borrowers in all states should benefit from the simplification of the FHA downpayment calculation.

I firmly believe that helping American families realize their dream of home ownership is vital to the Nation as a whole. Our bill, by creating a lower FHA downpayment, does much to assist families in owning their first home—thereby making the American dream of home ownership a reality.

Mr. President, for details on how the new calculation works in comparison to the current calculation, I ask unanimous consent to submit into the RECORD a downpayment calculation comparison sheet. And I ask that my colleagues join Senator STEVENS, Senator INOUYE, Senator AKAKA, and me in supporting this important legislation.

There being no objection, the item was ordered to be printed in the RECORD, as follows:

FHA DOWNPAYMENT COMPARISON SHEET—THE CURRENT MORTGAGE CALCULATION VERSUS THE ALASKA/HAWAII PILOT PROGRAM

A. The current FHA mortgage calculation requires numerous steps. They are as follows:

Step 1: Determine the acquisition cost by adding closing costs to sales price [many times the closing costs must be estimated; if they are and the estimate changes during processing, then the calculations must be redone.]

Step 2: Apply the loan formulation to acquisition cost: (a) 97% of the $25,000, (b) 95% of the amount between $25,001 and $125,000, and (c) 90% of the amount in excess of $125,000.

Step 3: Determine the maximum LTV by multiplying the appraised value [minus closing costs] by 97.75%. If the property is valued at $50,000 or less, then multiply by 98.75%.

Step 4: To determine the maximum FHA mortgage amount, take the lower amount from steps 2 and 3. The difference between the mortgage amount and the acquisition cost is the downpayment.

The simplified calculation currently utilized for FHA projects in Alaska and Hawaii is basic, common sense:

The downpayment is based on a percent of home's sale price. If a home is valued at $50,000 or less, the downpayment will equal 98.75 percent of the value of the home, subtracted from the total costs of the sale of the home (the value of the home plus closing costs). For homes that are valued at $50,000 to $125,000 the downpayment will equal 97.65 percent of the value of the home subtracted from the total cost of the sale of home. And for homes that are valued over $125,000, the downpayment will be 97.15 percent of the home subtracted from the total cost of the sale of the home.

For example: If a home sells for $98,000 and its closing costs are $2,000, the total acquisition cost of the home is 100,000. To calculate a downpayment, 97.65 percent of the cost of the 98,000 home (which equals $85.697) is subtracted from the total cost of the home—the sales price plus its closing costs. Therefore, the downpayment would be $4,303 ($100,000 − 95,697).

By Mr. WYDEN (for himself and Mr. BURNS):

S. 2189. A bill to amend the Federal Water Pollution Control Act to authorize the use of State revolving loan funds for construction of water conservation and quality improvements; to the Committee on Environment and Public Works.

WATER CONSERVATION AND QUALITY INCENTIVES ACT

• Mr. WYDEN. Mr. President, twenty-five years after enactment of the Clean Water Act, we still have not achieved the law's original goal that all our nation's lakes, rivers and streams would be safe for fishing and swimming.

After 25 years, it's time for the next generation of strategies to solve our remaining water quality problems. We need to give States new tools to overcome the new water quality challenges they are now facing.

The money that has been invested in controlling water pollution from factories and upgrading sewage treatment plants has gone a long way to controlling these urban pollution sources. In most cases, the remaining water quality problems are no longer caused by pollution spewing out of factory pipes. Instead, they are caused by runoff from a myriad of sources ranging from farm fields to city streets and parking lots.

In my home State of Oregon, more than half of our streams don't fully meet water quality standards. And the largest problems are contamination from runoff and meeting the standards for water temperature.

In many cases, conventional approaches will not solve these problems. But we can achieve water temperature standards and obtain other water quality benefits by enhancing stream flows and improving runoff controls.

A major problem for many streams in Oregon and in many other areas of the Western United States is that water supplies are fully appropriated or over-appropriated. There is currently no extra water to spare for increased stream flows.

We can't create a new water to fill the gap. But we can make more water available for this use through increased water conservation and more efficient use of existing water supplies.

The key to achieving this would be to create incentives to reduce wasteful water use.

In the Western United States, irrigated agriculture is the single largest user of water. Studies indicate that substantial quantities of water diverted for irrigation do not make it to the fields, with a significant portion lost to evaporation or leakage from irrigation canals.

In Oregon and other States that recognize rights to conserved water for those who conserve it, irrigators and other water users could gain rights to use conserved water while also increasing the amount of water available for other uses by implementing conservation and efficiency measures to reduce water loss.

The Federal government can play a role in helping meet our nation's changing water needs. In many Western States, water supply problems can be addressed by providing financial incentives to help water users implement cost effective water conservation and efficiency measures consistent with State water law.

And, we can improve water quality throughout the nation by giving greater flexibility to States to use Clean Water Act funds to control polluted runoff, if that's where the money is needed most.

Today, I am pleased to be joined by my colleague, Senator BURNS, in introducing legislation to authorize the Clean Water State Revolving Fund program to provide loans to water users to fund conservation measures or runoff controls. States would be authorized, but not required, to use their SRF funds for these purposes. Participation by water users, farmers, ranchers and other eligible loan recipients would also be entirely voluntary.

The conservation program would be structured to allow participating users to receive a share of the water saved through conservation or more efficient use, which they could use in accordance with State law. This type of approach would create a win/win situation with more water available for both the conservers and for instream flows. And, by using the SRF program, the Federal seed money would be repaid over time and gradually become available to fund conservation or other measures to solve water quality problems in other areas.

My proposal has the support of the Farm Bureau, Oregon water users, the Environmental Defense Fund and the Oregon Water Trust.

I urge my colleagues to support giving States greater flexibility to use their Clean Water funds for water conservation or runoff control when the State decides that is the best way to solve water quality problems and the water users voluntarily agree to participate.●

● Mr. BURNS. Mr. President, I am pleased today to join with my colleague from Oregon, Senator WYDEN, to introduce the Water Conservation and Quality Incentives Act, a bill to revise the state revolving fund in the Clean Water Act. This is language that Senator WYDEN and I have collaborated on to bring some sense of additional conservation of water resources to the many irrigation districts in the nation.

In the west, irrigators are by far the largest water users. These are folks who need the water because of the various crops that they have on the ground in the states out west. Unfortunately a large portion of the water that is used in irrigation is by nature displaced due to seepage within the canals and ditches in which the water flows. Although the water is not lost, since it seeps into the soil and assists in the overall soil moisture, it is not immediately available to the irrigator. However, it is water which could be more effectively used to provide additional water to the producer.

In most irrigation districts, irrigators pay for water that is released to them, and any displacement of this water does not help that producer on the bottom line. At a time when prices are low and markets are questionable, it is important that we give tools to the producer to make sure that they have every opportunity to stay in business.

A key underlying feature of the legislation, is that the water saved under the proposal in this bill will not only assist the producer in water and cost savings, but also will assist the future of water in the many rivers and streams in the west. At a time when the federal government seems to be taking steps to reduce state involvement in water rights this is extremely important.

The proposal put forth in this bill, will authorize the Clean Water State Revolving Fund to provide loans to irrigation districts to construct pipelines and develop additional conservation measures. The states would have an option in this measure, they would not have to involve their funds in this matter, but would allow them to do so if they so elected. In addition, those districts who did so elect to involve themselves would be able to add to their supply of water the difference between what they were using prior to the plan and what they were able to save.

This bill creates a win/win situation both for water users and for the multiple users of water in our states, particularly Oregon and Montana. We have an opportunity here to do something useful and worthwhile for the irrigators and the fishing, boating and those who use instream water. I would like to thank Senator WYDEN for his work on this measure and I am pleased to work with him today on this issue of great importance.●

By Mr. KENNEDY (for himself, Mr. DOMENICI, Mr. KERRY, and Mr. BINGAMAN):

S. 2190. A bill to authorize qualified organizations to provide technical assistance and capacity building services to microenterprise development organizations and programs and to disadvantaged entrepreneurs using funds from the Community Development Financial Institutions Fund, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

THE PROGRAM FOR INVESTMENT IN MICRO-ENTREPRENEURS (PRIME) ACT OF 1998

Mr. KENNEDY. Mr. President, it is a privilege to join Senator DOMENICI, Senator KERRY, and Senator BINGAMAN in introducing the ''The Program for Investment in Micro-Entrepreneurs'' Act—the PRIME Act. This legislation will encourage investment in micro-entrepreneurs by supporting the kinds of education and training needed to help build new small businesses.

Today, the nation's entrepreneurial spirit is thriving, fueled by the extraordinary economic growth and prosperity we currently enjoy. But new entrepreneurs still face challenges that limit their ability to turn innovative ideas into successful businesses and create new jobs. They deserve assistance in learning the basics to take their ideas to the next level—starting their own firms.

The ''PRIME'' Act is designed to help small entrepreneurs bridge the gap between worthwhile ideas and successful businesses. It will offer $105 million over the next five years to build business skills in key areas such as recordkeeping, planning, management, marketing and computer technology.

The Clinton Administration strongly supports these initiatives. The Treasury Department's Community Development Financial Institutions Fund has become a lead agency for micro-enterprise activities across the country, and First Lady Hillary Rodham Clinton is one of their strongest advocates.

The PRIME Act will enhance all of these efforts. It will provide grants for micro-enterprise organizations across the country to assist disadvantaged and low-income entrepreneurs and provide them with essential training and education.

It will encourage the development of new micro-enterprise organizations, and expand existing ones to reach more micro-entrepreneurs.

It will sponsor research on the most innovative and successful ways of encouraging these new businesses and enabling them to succeed.

Under the Act, grants will be available each year to organizations that work with entrepreneurs. Local groups will leverage these funds with private and local resources to increase the impact of the federal seed money.

Massachusetts and New Mexico are leaders in this effort. The business community and local banks have made a significant investment in creating loan capital for micro-entrepreneurs to start their businesses.

By investing in micro-entrepreneurs, we will be harnessing the spirit and ideas of large numbers of Americans and creating new opportunities for self-sufficiency. We will be encouraging new small businesses that will strengthen the local economy in communities across the country. And that result in turn will help to keep our national economy strong as well. I look forward to working closely with our colleagues in the Senate and the House to enact this important measure.

I ask unanimous consent that the text of the legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2190

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

SECTION 1. PROVISION OF TECHNICAL ASSISTANCE TO MICROENTERPRISES.

Title I of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.) is amended by adding at the end the following new subtitle:

''Subtitle C—Microenterprise Technical Assistance and Capacity Building Program

''SEC. 171. SHORT TITLE.

''This subtitle may be cited as the 'Program for Investment in Microentrepreneurs Act of 1998', also referred to as the 'PRIME Act'.

''SEC. 172. DEFINITIONS.

''For purposes of this subtitle—

''(1) the term 'Administrator' has the same meaning as in section 103;

''(2) the term 'capacity building services' means services provided to an organization that is, or is in the process of becoming a microenterprise development organization or program, for the purpose of enhancing its ability to provide training and services to disadvantaged entrepreneurs;

''(3) the term 'collaborative' means 2 or more nonprofit entities that agree to act jointly as a qualified organization under this subtitle;

''(4) the term 'disadvantaged entrepreneur' means a microentrepreneur that is—

''(A) a low-income person;

''(B) a very low-income person; or

''(C) an entrepreneur that lacks adequate access to capital or other resources essential for business success, or is economically disadvantaged, as determined by the Administrator;

''(5) the term 'Fund' has the same meaning as in section 103;

''(6) the term 'Indian tribe' has the same meaning as in section 103;

''(7) the term 'intermediary' means a private, nonprofit entity that seeks to serve microenterprise development organizations and programs as authorized under section 175;

''(8) the term 'low-income person' has the same meaning as in section 103;

''(9) the term 'microentrepreneur' means the owner or developer of a microenterprise;

''(10) the term 'microenterprise' means a sole proprietorship, partnership, or corporation that—

''(A) has fewer than 5 employees; and

''(B) generally lacks access to conventional loans, equity, or other banking services;

''(11) the term 'microenterprise development organization or program' means a nonprofit entity, or a program administered by such an entity, including community development corporations or other nonprofit development organizations and social service organizations, that provides services to disadvantaged entrepreneurs or prospective entrepreneurs;

''(12) the term 'training and technical assistance' means services and support provided to disadvantaged entrepreneurs or prospective entrepreneurs, such as assistance for the purpose of enhancing business planning, marketing, management, financial management skills, and assistance for the purpose of accessing financial services; and

''(13) the term 'very low-income person' means having an income, adjusted for family size, of not more than 150 percent of the poverty line (as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2), including any revision required by that section).

''SEC. 173. ESTABLISHMENT OF PROGRAM.

''The Administrator shall establish a microenterprise technical assistance and capacity building grant program to provide assistance from the Fund in the form of grants to qualified organizations in accordance with this subtitle.

''SEC. 174. USES OF ASSISTANCE.

''A qualified organization shall use grants made under this subtitle—

''(1) to provide training and technical assistance to disadvantaged entrepreneurs;

''(2) to provide training and capacity building services to microenterprise development organizations and programs and groups of such organizations to assist such organizations and programs in developing microenterprise training and services;

''(3) to aid in researching and developing the best practices in the field of microenterprise and technical assistance programs for disadvantaged entrepreneurs; and

''(4) for such other activities as the Administrator determines are consistent with the purposes of this subtitle.

''SEC. 175. QUALIFIED ORGANIZATIONS.

''For purposes of eligibility for assistance under this subtitle, a qualified organization shall be—

''(1) a nonprofit microenterprise development organization or program (or a group or collaborative thereof) that has a demonstrated record of delivering microenterprise services to disadvantaged entrepreneurs;

''(2) an intermediary;

''(3) a microenterprise development organization or program that is accountable to a local community, working in conjunction with a State or local government or Indian tribe; or

''(4) an Indian tribe acting on its own, if the Indian tribe can certify that no private organization or program referred to in this paragraph exists within its jurisdiction.

''SEC. 176. ALLOCATION OF ASSISTANCE; SUBGRANTS.

''(a) ALLOCATION OF ASSISTANCE.—

''(1) IN GENERAL.—The Administrator shall allocate assistance from the Fund under this subtitle to ensure that—

''(A) activities described in section 174(1) are funded using not less than 75 percent of amounts made available for such assistance; and

''(B) activities described in section 174(2) are funded using not less than 15 percent of amounts made available for such assistance.

''(2) LIMIT ON INDIVIDUAL ASSISTANCE.—No single organization or entity may receive more than 10 percent of the total funds appropriated under this subtitle in a single fiscal year.

''(b) TARGETED ASSISTANCE.—The Administrator shall ensure that not less than 50 percent of the grants made under this subtitle are used to benefit very low-income persons, including those residing on Indian reservations.

''(c) SUBGRANTS AUTHORIZED.—

''(1) IN GENERAL.—A qualified organization receiving assistance under this subtitle may provide grants using that assistance to qualified small and emerging microenterprise organizations and programs, subject to such rules and regulations as the Administrator determines to be appropriate.

''(2) LIMIT ON ADMINISTRATIVE EXPENSES.—Not more than 7.5 percent of assistance received by a qualified organization under this subtitle may be used for administrative expenses in connection with the making of subgrants under paragraph (1).

''(d) DIVERSITY.—In making grants under this subtitle, the Administrator shall ensure that grant recipients include both large and small microenterprise organizations, serving urban, rural, and Indian tribal communities and racially and ethnically diverse populations.

''SEC. 177. MATCHING REQUIREMENTS.

''(a) IN GENERAL.—Financial assistance under this subtitle shall be matched with funds from sources other than the Federal Government on the basis of not less than 50 percent of each dollar provided by the Fund.

''(b) SOURCES OF MATCHING FUNDS.—Fees, grants, gifts, funds from loan sources, and in-kind resources of a grant recipient from public or private sources may be used to comply with the matching requirement in subsection (a).

''(c) EXCEPTION.—

''(1) IN GENERAL.—In the case of an applicant for assistance under this subtitle with severe constraints on available sources of matching funds, the Administrator may reduce or eliminate the matching requirements of subsection (a).

''(2) LIMITATION.—Not more than 10 percent of the total funds made available from the Fund in any fiscal year to carry out this subtitle may be excepted from the matching requirements of subsection (a), as authorized by paragraph (1) of this subsection.

''SEC. 178. APPLICATIONS FOR ASSISTANCE.

''An application for assistance under this subtitle shall be submitted in such form and in accordance with such procedures as the Fund shall establish.

''SEC. 179. RECORDKEEPING.

''The requirements of section 115 shall apply to a qualified organization receiving assistance from the Fund under this subtitle as if it were a community development financial institution receiving assistance from the Fund under subtitle A.

''SEC. 180. AUTHORIZATION.

''In addition to funds otherwise authorized to be appropriated to the Fund to carry out this title, there are authorized to be appropriated to the Fund to carry out this subtitle—

''(1) $15,000,000 for fiscal year 1999;

''(2) $25,000,000 for fiscal year 2000;

''(3) $30,000,000 for fiscal year 2001; and

''(4) $35,000,000 for fiscal year 2002.

''SEC. 181. IMPLEMENTATION.

''The Administrator shall, by regulation, establish such requirements as may be necessary to carry out this subtitle.''.

SEC. 2. ADMINISTRATIVE EXPENSES.

Section 121(a)(2)(A) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4718(a)(2)(A)) is amended—

(1) by striking ''$5,550,000'' and inserting ''$6,100,000''; and

(2) in the first sentence, by inserting before the period '', including costs and expenses associated with carrying out subtitle C''.

SEC. 3. CONFORMING AMENDMENTS.

Section 104(d) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4703(d)) is amended—

(1) in paragraph (2)—

(A) by striking ''15'' and inserting ''17'';

(B) in subparagraph (G)—

(i) by striking ''9'' and inserting ''11'';

(ii) by redesignating clauses (iv) and (v) as clauses (v) and (vi), respectively; and

(iii) by inserting after clause (iii) the following:

"(iv) 2 individuals who have expertise in microenterprises and microenterprise development;"; and

(2) in paragraph (4), in the first sentence, by inserting before the period "and subtitle C".

Mr. DOMENICI. Mr. President, it is a pleasure to join with Senator KENNEDY in support of the PRIME Act, "Program for Investment in Micro-Entrepreneurs Act of 1998."

Starting one's own business is a part of the American dream. There are thousands of creative and hardworking men and women who believe they have a solid idea for building a new business. The realities of beginning a business are that it takes more than luck, hard labor, and dedication to make it work. There are often overwhelming obstacles for would-be small and micro entrepreneurs, due in part of the complexity of local, state and federal laws, the necessity of understanding the intricacies of marketing, feasibility studies, and bookkeeping practices, as well as finding a source for capital. Entrepreneurs usually need basic assistance to bring their idea to a viable business enterprise. They need training, technical assistance, and mentoring.

Under this bill grants will be available through the Community Development Financial Institutions Fund, matched at least 50 percent in non-federal funds, to help experienced nonprofit organizations provide the assistance these new businesses so urgently require. Fifty percent of these grants will be awarded to applicants serving low-income clients, and those serving equally both urban and rural areas. From so many case studies and histories of successful businesses, we know that enthusiastic entrepreneurs can sustain and build their businesses when these organizations are available to provide critical training and professional, technical assistance.

I have had the pleasure of visiting countless new micro-level businesses in my State of New Mexico, a great majority of whom received assistance from the very competent WEEST Corp organization, now located in five different sites throughout our State. This organization not only provides key technical assistance and training and access to low interest revolving loans, but it also provides mentoring and information about sound business practices to ensure their creative ideas become viable business entities.

Micro and small businesses are an absolutely critical component of our national economic growth. The Small Business Administration, for example, lends excellent support to entrepreneurs. At the small time, the PRIME Act will establish a complimentary program by enabling intermediary organizations to serve a more micro-level entrepreneurs who need specialized and hands-on assistance. This is a good investment for the future, and will be returned many fold by the creation of businesses that can contribute to the growth of the family, local, and national economies.

There are many success stories we can all point to about the business that began with an idea and eventually grew into a major global corporation. It all began with the basic tenacity of a businessman, woman, or family. We have no way of knowing how many more such success stories will be told in the future. It is guaranteed, however, that there are thousands of such extraordinary entrepreneurs willing to provide the ideas and hard labor to make it happen, and with a little help, they will be successful.

Again, I am pleased to join Senator KENNEDY in cosponsoring the PRIME Act. Whatever we can do to assist who want to be self-reliant, successful entrepreneurs, with a piece of the American dream, is an investment well worth taking.

Mr. BINGAMAN. Mr. President, I rise today to offer my very enthusiastic support for the micro-enterprise bill being introduced by Senator KENNEDY. Programs of this type provide technical support and funding to thousands of potentially productive Americans who are struggling to make ends meet and are looking for a way out of their current precarious economic situation.

I have visited microenterprise businesses in my state and know they work. These individuals possess energy, ingenuity, desire, and vision but currently lack access to three important ingredients that will allow them to be successful in their entrepreneurial efforts: business management training, knowledge of the market, and affordable capital. This bill will provide all three ingredients, and will do so in areas of the country that need economic assistance.

Microenterprise is not charity and it does not foster dependence. Instead, it encourages individuals to use their specific strengths and creativity to support themselves and their community. It is a market-based approach to economic empowerment and self-reliance that has proven to be successful both here and overseas, and it deserves to be expanded. It offers an alternative to poverty and provides the means by which individuals and communities can be saved from cycles of isolation, violence, and despair.

In New Mexico, I have seen the tangible results of microenterprise programs. One organization we have interacted with, ACCION, provided funds for Michael and Jamie Ford to begin a very successful business selling flies for fly-fishing in their community and over the Internet. They were recently named the Small Business Administration's Welfare-to-Work Entrepreneur of the Year in New Mexico. Another organization, the New Mexico Business Resource Center, recommended that funds be provided through New Mexico Community Development Loan Fund to Kevin Bellinger, who created a unique art and dance program for disadvantaged youths called Harambe. Here, low-income individuals are taught to interact in non-violent and constructive ways and give back to the community in which they live. Mr. Bellinger was recently selected by New Mexico Newspaper as one of the top ten people in Santa Fe making a real difference in their community.

In Taos, the Taos County Economic Development Corporation providing funding for the Taos Food Center, a commercial kitchen that acts as an incubator for small-scale food producers and farmers in the region.

Previously, these individuals could not afford to rent space, buy commercial and office equipment, or market their products. With the assistance of microenterprise funds, the Taos Food Center provides the space and the equipment and provides on-site technical and business assistance. This allows individuals to rent the facility by the hour, and convert their crops into marketable products.

Other microenterprise organizations in New Mexico—the Rio Grande Community Development Corporation, La Jicarita Enterprise Community, WESST Corp., and so on—have had similarly stellar results. They play essential roles in their communities, and they should be commended for their efforts.

In April, I organized a roundtable discussion of all the microenterprise organizations operating in New Mexico. This was the first time representatives from these organizations met in the same location to discuss their respective philosophies, objectives, and strategies concerning microenterprise, and it was very beneficial to all of us. The dialogue with the organizations that began that day has continued to the present, and has only reinforced by commitment to these programs. The simple fact is: the work, and they work well.

The bill we are introducing today would accomplish several important tasks:

First, it will provide training, technical assistance, and start-up funds to potential entrepreneurs who are currently disadvantaged but eager to change their economic condition;

Second, it will provide training and capacity building services to microenterprise development organizations, an activity that will lead directly to the expansion of microenterprise funding and an increased number of clients being served;

Third, it will identify best practices in microenterprise technical and lending services, an activity that will further enhance efforts to provide funds to individuals in an efficient and effective manner;

Finally, it will ensure that microenterprise lending occurs in all areas that require assistance—meaning both rural and urban communities.

Let me conclude by thanking my colleague from Massachusetts and his staff for their work on this bill. I have been pleased to work with Senator KENNEDY on the development of the components contained within the bill, in particular those related to rural communities and Indian reservations. I believe that this bill will have a profound effect on the ability of low-income individuals to establish businesses, develop new products and services, and create new jobs. All of these activities can only help individuals and communities in the United States in a positive way.

By Mr. LEAHY:

S. 2191. A bill to amend the Trademark Act of 1946 to provide for the registration and protection of trademarks used in commerce, in order to carry out provisions of certain international conventions, and for other purposes; to the Committee on the Judiciary.

MADRID PROTOCOL IMPLEMENTATION ACT

Mr. LEAHY. Mr. President, I am pleased to introduce legislation that will implement the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Protocol). This bill is part of my ongoing effort to refine American intellectual property law to ensure that it serves to advance and protect American interests and does not serve to encumber small companies seeking to expand into international markets. Specifically, this legislation will conform American trademark application procedures to the terms of the Protocol in anticipation of the U.S.'s eventual ratification of the treaty, thereby helping American businesses to create a ''one stop'' international trademark registration process. This bill is one of many measures I have introduced and supported over the past few years to ensure that American trademark holders receive strong protection in today's world of changing technology and complex international markets.

In addition to this legislation, I have introduced the Trademark Law Treaty Implementing and Registration Simplification Act, which will bring U.S. trademark law into conformance with the Trademark Law Treaty. The Trademark Law Treaty will simplify trademark registration requirements around the world by establishing a list of maximum requirements which Treaty member countries can impose on trademark applicants. All American businesses, and particularly small American businesses, will benefit as a result.

Earlier this year, I introduced legislation authorizing the National Research Council of the National Academy of Sciences to conduct a comprehensive study of the effects of adding new generic Top Level Domains on trademark and other intellectual property rights.

Moreover, I supported the Federal Trademark Dilution Act of 1995, which was passed last Congress, to provide intellectual property rights holders with the power to enjoin another person's commercial use of famous marks that would cause dilution of the mark's distinctive quality.

Together, these measures represent major steps in our efforts to refine American trademark law to ensure that it serves to promote American interests.

Currently, in order for American companies to protect their trademarks abroad, they must register their trademarks in each and every country in which protection is sought. Registering in multiple countries is a time-consuming, complicated and expensive process—a process which places a disproportionate burden on smaller American companies seeking international trademark protection. This legislation will ease the registration burden by enabling American businesses to obtain trademark protection in all signatory countries with a single trademark application filed with the Patent and Trademark Office.

Since 1891, the Madrid Agreement Concerning the International Registration of Marks (Agreement) has provided an international trademark registration system. However, prior to adoption of the Protocol, the U.S. declined to join the Agreement because it contained terms deemed inimical to American intellectual property interests. In 1989, the terms of the Agreement were modified by the Protocol, which corrected the objectionable terms of the Agreement and made American participation a possibility. For example, under the Protocol, applications for international trademark extension can be completed in English; formerly, applications were required to be completed in French. It should be noted that the Protocol will not require substantive changes to American trademark law, hence the implementing legislation I introduce today is identical to the legislation that passed the House on May 5, 1998 and only would make those technical changes to American law necessary to bring the U.S. into conformity with the Protocol.

To date, the Administration has resisted accession to the treaty because of voting rights disputes with the European Union, which has sought to retain an additional vote for itself as an intergovernmental entity, in addition to the votes of its member states. I support the Administration's efforts to negotiate a treaty based upon the equitable and democratic principle of one-state, one-vote. However, in anticipation of the eventual resolution of this dispute, the Senate has the opportunity to act now to make the technical changes to American trademark law so that once this voting dispute is satisfactorily resolved and the U.S. accedes to the Protocol, ''one-stop'' international trademark registration can become an immediate reality for all American trademark applicants.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2191

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Madrid Protocol Implementation Act''.

SEC. 2. PROVISIONS TO IMPLEMENT THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS.

The Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946, as amended (15 U.S.C. 1051 and following) (commonly referred to as the ''Trademark Act of 1946'') is amended by adding after section 51 the following new title:

''TITLE XII—THE MADRID PROTOCOL

''SEC. 60. DEFINITIONS.

''For purposes of this title:

''(1) MADRID PROTOCOL.—The term 'Madrid Protocol' means the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid, Spain, on June 27, 1989.

''(2) BASIC APPLICATION.—The term 'basic application' means the application for the registration of a mark that has been filed with an Office of a Contracting Party and that constitutes the basis for an application for the international registration of that mark.

''(3) BASIC REGISTRATION.—The term 'basic registration' means the registration of a mark that has been granted by an Office of a Contracting Party and that constitutes the basis for an application for the international registration of that mark.

''(4) CONTRACTING PARTY.—The term 'Contracting Party' means any country or intergovernmental organization that is a party to the Madrid Protocol.

''(5) DATE OF RECORDAL.—The term 'date of recordal' means the date on which a request for extension of protection that is filed after an international registration is granted is recorded on the International Register.

''(6) DECLARATION OF BONA FIDE INTENTION TO USE THE MARK IN COMMERCE.—The term 'declaration of bona fide intention to use the mark in commerce' means a declaration that is signed by the applicant for, or holder of, an international registration who is seeking extension of protection of a mark to the United States and that contains a statement that—

''(A) the applicant or holder has a bona fide intention to use the mark in commerce,

''(B) the person making the declaration believes himself or herself, or the firm, corporation, or association in whose behalf he or she makes the declaration, to be entitled to use the mark in commerce, and

''(C) no other person, firm, corporation, or association, to the best of his or her knowledge and belief, has the right to use such mark in commerce either in the identical form of the mark or in such near resemblance to the mark as to be likely, when used on or in connection with the goods of such other person, firm, corporation, or association, to cause confusion, or to cause mistake, or to deceive.

''(7) EXTENSION OF PROTECTION.—The term 'extension of protection' means the protection resulting from an international registration that extends to a Contracting Party at the request of the holder of the international registration, in accordance with the Madrid Protocol.

''(8) HOLDER OF AN INTERNATIONAL REGISTRATION.—A 'holder' of an international registration is the natural or juristic person in whose name the international registration is recorded on the International Register.

''(9) INTERNATIONAL APPLICATION.—The term 'international application' means an application for international registration that is filed under the Madrid Protocol.

''(10) INTERNATIONAL BUREAU.—The term 'International Bureau' means the International Bureau of the World Intellectual Property Organization.

''(11) INTERNATIONAL REGISTER.—The term 'International Register' means the official collection of such data concerning international registrations maintained by the International Bureau that the Madrid Protocol or its implementing regulations require or permit to be recorded, regardless of the medium which contains such data.

''(12) INTERNATIONAL REGISTRATION.—The term 'international registration' means the registration of a mark granted under the Madrid Protocol.

''(13) INTERNATIONAL REGISTRATION DATE.—The term 'international registration date' means the date assigned to the international registration by the International Bureau.

''(14) NOTIFICATION OF REFUSAL.—The term 'notification of refusal' means the notice sent by an Office of a Contracting Party to the International Bureau declaring that an extension of protection cannot be granted.

''(15) OFFICE OF A CONTRACTING PARTY.—The term 'Office of a Contracting Party' means—

''(A) the office, or governmental entity, of a Contracting Party that is responsible for the registration of marks, or

''(B) the common office, or governmental entity, of more than 1 Contracting Party that is responsible for the registration of marks and is so recognized by the International Bureau.

''(16) OFFICE OF ORIGIN.—The term 'office of origin' means the Office of a Contracting Party with which a basic application was filed or by which a basic registration was granted.

''(17) OPPOSITION PERIOD.—The term 'opposition period' means the time allowed for filing an opposition in the Patent and Trademark Office, including any extension of time granted under section 13.

''SEC. 61. INTERNATIONAL APPLICATIONS BASED ON UNITED STATES APPLICATIONS OR REGISTRATIONS.

''The owner of a basic application pending before the Patent and Trademark Office, or the owner of a basic registration granted by the Patent and Trademark Office, who—

''(1) is a national of the United States,

''(2) is domiciled in the United States, or

''(3) has a real and effective industrial or commercial establishment in the United States,

may file an international application by submitting to the Patent and Trademark Office a written application in such form, together with such fees, as may be prescribed by the Commissioner.

''SEC. 62. CERTIFICATION OF THE INTERNATIONAL APPLICATION.

''Upon the filing of an application for international registration and payment of the prescribed fees, the Commissioner shall examine the international application for the purpose of certifying that the information contained in the international application corresponds to the information contained in the basic application or basic registration at the time of the certification. Upon examination and certification of the international application, the Commissioner shall transmit the international application to the International Bureau.

''SEC. 63. RESTRICTION, ABANDONMENT, CANCELLATION, OR EXPIRATION OF A BASIC APPLICATION OR BASIC REGISTRATION.

''With respect to an international application transmitted to the International Bureau under section 62, the Commissioner shall notify the International Bureau whenever the basic application or basic registration which is the basis for the international application has been restricted, abandoned, or canceled, or has expired, with respect to some or all of the goods and services listed in the international registration—

''(1) within 5 years after the international registration date; or

''(2) more than 5 years after the international registration date if the restriction, abandonment, or cancellation of the basic application or basic registration resulted from an action that began before the end of that 5-year period.

''SEC. 64. REQUEST FOR EXTENSION OF PROTECTION SUBSEQUENT TO INTERNATIONAL REGISTRATION.

''The holder of an international registration that is based upon a basic application filed with the Patent and Trademark Office or a basic registration granted by the Patent and Trademark Office may request an extension of protection of its international registration by filing such a request—

''(1) directly with the International Bureau, or

''(2) with the Patent and Trademark Office for transmittal to the International Bureau, if the request is in such form, and contains such transmittal fee, as may be prescribed by the Commissioner.

''SEC. 65. EXTENSION OF PROTECTION OF AN INTERNATIONAL REGISTRATION TO THE UNITED STATES UNDER THE MADRID PROTOCOL.

''(a) IN GENERAL.—Subject to the provisions of section 68, the holder of an international registration shall be entitled to the benefits of extension of protection of that international registration to the United States to the extent necessary to give effect to any provision of the Madrid Protocol.

''(b) IF UNITED STATES IS OFFICE OF ORIGIN.—An extension of protection resulting from an international registration of a mark shall not apply to the United States if the Patent and Trademark Office is the office of origin with respect to that mark.

''SEC. 66. EFFECT OF FILING A REQUEST FOR EXTENSION OF PROTECTION OF AN INTERNATIONAL REGISTRATION TO THE UNITED STATES.

''(a) REQUIREMENT FOR REQUEST FOR EXTENSION OF PROTECTION.—A request for extension of protection of an international registration to the United States that the International Bureau transmits to the Patent and Trademark Office shall be deemed to be properly filed in the United States if such request, when received by the International Bureau, has attached to it a declaration of bona fide intention to use the mark in commerce that is verified by the applicant for, or holder of, the international registration.

''(b) EFFECT OF PROPER FILING.—Unless extension of protection is refused under section 68, the proper filing of the request for extension of protection under subsection (a) shall constitute constructive use of the mark, conferring the same rights as those specified in section 7(c), as of the earliest of the following:

''(1) The international registration date, if the request for extension of protection was filed in the international application.

''(2) The date of recordal of the request for extension of protection, if the request for extension of protection was made after the international registration date.

''(3) The date of priority claimed pursuant to section 67.

''SEC. 67. RIGHT OF PRIORITY FOR REQUEST FOR EXTENSION OF PROTECTION TO THE UNITED STATES.

''The holder of an international registration with an extension of protection to the United States shall be entitled to claim a date of priority based on the right of priority within the meaning of Article 4 of the Paris Convention for the Protection of Industrial Property if—

''(1) the international registration contained a claim of such priority; and

''(2)(A) the international application contained a request for extension of protection to the United States, or

''(B) the date of recordal of the request for extension of protection to the United States is not later than 6 months after the date of the first regular national filing (within the meaning of Article 4(A)(3) of the Paris Convention for the Protection of Industrial Property) or a subsequent application (within the meaning of Article 4(C)(4) of the Paris Convention).

''SEC. 68. EXAMINATION OF AND OPPOSITION TO REQUEST FOR EXTENSION OF PROTECTION; NOTIFICATION OF REFUSAL.

''(a) EXAMINATION AND OPPOSITION.—(1) A request for extension of protection described in section 66(a) shall be examined as an application for registration on the Principal Register under this Act, and if on such examination it appears that the applicant is entitled to extension of protection under this title, the Commissioner shall cause the mark to be published in the Official Gazette of the Patent and Trademark Office.

''(2) Subject to the provisions of subsection (c), a request for extension of protection under this title shall be subject to opposition under section 13. Unless successfully opposed, the request for extension of protection shall not be refused.

''(3) Extension of protection shall not be refused under this section on the ground that the mark has not been used in commerce.

''(4) Extension of protection shall be refused under this section to any mark not registrable on the Principal Register.

''(b) NOTIFICATION OF REFUSAL.—If, a request for extension of protection is refused under subsection (a), the Commissioner shall declare in a notification of refusal (as provided in subsection (c)) that the extension of protection cannot be granted, together with a statement of all grounds on which the refusal was based.

''(c) NOTICE TO INTERNATIONAL BUREAU.—(1) Within 18 months after the date on which the International Bureau transmits to the Patent and Trademark Office a notification of a request for extension of protection, the Commissioner shall transmit to the International Bureau any of the following that applies to such request:

''(A) A notification of refusal based on an examination of the request for extension of protection.

''(B) A notification of refusal based on the filing of an opposition to the request.

''(C) A notification of the possibility that an opposition to the request may be filed after the end of that 18-month period.

''(2) If the Commissioner has sent a notification of the possibility of opposition under paragraph (1)(C), the Commissioner shall, if applicable, transmit to the International Bureau a notification of refusal on the basis of the opposition, together with a statement of all the grounds for the opposition, within 7 months after the beginning of the opposition period or within 1 month after the end of the opposition period, whichever is earlier.

''(3) If a notification of refusal of a request for extension of protection is transmitted under paragraph (1) or (2), no grounds for refusal of such request other than those set forth in such notification may be transmitted to the International Bureau by the Commissioner after the expiration of the time periods set forth in paragraph (1) or (2), as the case may be.

''(4) If a notification specified in paragraph (1) or (2) is not sent to the International Bureau within the time period set forth in such paragraph, with respect to a request for extension of protection, the request for extension of protection shall not be refused and the Commissioner shall issue a certificate of extension of protection pursuant to the request.

''(d) DESIGNATION OF AGENT FOR SERVICE OF PROCESS.—In responding to a notification of refusal with respect to a mark, the holder of the international registration of the mark shall designate, by a written document filed in the Patent and Trademark Office, the name and address of a person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person, or mailing to that person, a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Commissioner.

''SEC. 69. EFFECT OF EXTENSION OF PROTECTION.

''(a) ISSUANCE OF EXTENSION OF PROTECTION.—Unless a request for extension of protection is refused under section 68, the Commissioner shall issue a certificate of extension of protection pursuant to the request and shall cause notice of such certificate of extension of protection to be published in the Official Gazette of the Patent and Trademark Office.

''(b) EFFECT OF EXTENSION OF PROTECTION.—From the date on which a certificate of extension of protection is issued under subsection (a)—

''(1) such extension of protection shall have the same effect and validity as a registration on the Principal Register, and

''(2) the holder of the international registration shall have the same rights and remedies as the owner of a registration on the Principal Register.

''SEC. 70. DEPENDENCE OF EXTENSION OF PROTECTION TO THE UNITED STATES ON THE UNDERLYING INTERNATIONAL REGISTRATION.

''(a) EFFECT OF CANCELLATION OF INTERNATIONAL REGISTRATION.—If the International Bureau notifies the Patent and Trademark Office of the cancellation of an international registration with respect to some or all of the goods and services listed in the international registration, the Commissioner shall cancel any extension of protection to the United States with respect to such goods and services as of the date on which the international registration was canceled.

''(b) EFFECT OF FAILURE TO RENEW INTERNATIONAL REGISTRATION.—If the International Bureau does not renew an international registration, the corresponding extension of protection to the United States shall cease to be valid as of the date of the expiration of the international registration.

''(c) TRANSFORMATION OF AN EXTENSION OF PROTECTION INTO A UNITED STATES APPLICATION.—The holder of an international registration canceled in whole or in part by the International Bureau at the request of the office of origin, under Article 6(4) of the Madrid Protocol, may file an application, under section 1 or 44 of this Act, for the registration of the same mark for any of the goods and services to which the cancellation applies that were covered by an extension of protection to the United States based on that international registration. Such an application shall be treated as if it had been filed on the international registration date or the date of recordal of the request for extension of protection with the International Bureau, whichever date applies, and, if the extension of protection enjoyed priority under section 67 of this title, shall enjoy the same priority. Such an application shall be entitled to the benefits conferred by this subsection only if the application is filed not later than 3 months after the date on which the international registration was canceled, in whole or in part, and only if the application complies with all the requirements of this Act which apply to any application filed pursuant to section 1 or 44.

''SEC. 71. AFFIDAVITS AND FEES.

''(a) REQUIRED AFFIDAVITS AND FEES.—An extension of protection for which a certificate of extension of protection has been issued under section 69 shall remain in force for the term of the international registration upon which it is based, except that the extension of protection of any mark shall be canceled by the Commissioner—

''(1) at the end of the 6-year period beginning on the date on which the certificate of extension of protection was issued by the Commissioner, unless within the 1-year period preceding the expiration of that 6-year period the holder of the international registration files in the Patent and Trademark Office an affidavit under subsection (b) together with a fee prescribed by the Commissioner; and

''(2) at the end of the 10-year period beginning on the date on which the certificate of extension of protection was issued by the Commissioner, and at the end of each 10-year period thereafter, unless—

''(A) within the 6-month period preceding the expiration of such 10-year period the holder of the international registration files in the Patent and Trademark Office an affidavit under subsection (b) together with a fee prescribed by the Commissioner; or

''(B) within 3 months after the expiration of such 10-year period, the holder of the international registration files in the Patent and Trademark Office an affidavit under subsection (b) together with the fee described in subparagraph (A) and an additional fee prescribed by the Commissioner.

''(b) CONTENTS OF AFFIDAVIT.—The affidavit referred to in subsection (a) shall set forth those goods or services recited in the extension of protection on or in connection with which the mark is in use in commerce and the holder of the international registration shall attach to the affidavit a specimen or facsimile showing the current use of the mark in commerce, or shall set forth that any nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark. Special notice of the requirement for such affidavit shall be attached to each certificate of extension of protection.

''SEC. 72. ASSIGNMENT OF AN EXTENSION OF PROTECTION.

''An extension of protection may be assigned, together with the goodwill associated with the mark, only to a person who is a national of, is domiciled in, or has a bona fide and effective industrial or commercial establishment either in a country that is a Contracting Party or in a country that is a member of an intergovernmental organization that is a Contracting Party.

''SEC. 73. INCONTESTABILITY.

''The period of continuous use prescribed under section 15 for a mark covered by an extension of protection issued under this title may begin no earlier than the date on which the Commissioner issues the certificate of the extension of protection under section 69, except as provided in section 74.

''SEC. 74. RIGHTS OF EXTENSION OF PROTECTION.

''An extension of protection shall convey the same rights as an existing registration for the same mark, if—

''(1) the extension of protection and the existing registration are owned by the same person;

''(2) the goods and services listed in the existing registration are also listed in the extension of protection; and

''(3) the certificate of extension of protection is issued after the date of the existing registration.''.

SEC. 3. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on the date on which the Madrid Protocol (as defined in section 60(1) of the Trademark Act of 1946) enters into force with respect to the United States.

By Mr. HATCH:

S. 2192. A bill to make certain technical corrections to the Trademark Act of 1946; to the Committee on the Judiciary.

TECHNICAL CORRECTIONS TO THE TRADEMARK ACT OF 1946

Mr. HATCH. Mr. President, I rise today to introduce some housekeeping amendments to the Trademark Act. This bill makes a number of technical corrections to the Trademark Act which will clean up the code and make explicit some of the current practices of the Patent and Trademark Office with respect to the trademark protection of matter that is wholly functional.

I take it as my duty as Chairman of the Committee on the Judiciary to try to ensure that the U.S. Code is clear, useful, and up-to-date. These housekeeping amendments will help clarify the law in useful ways, and I hope my colleagues will support this bill.

For the reference of my colleagues, I ask unanimous consent that a copy of the bill and a section-by-section analysis be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 2192

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

SECTION 1. TECHNICAL CORRECTIONS TO TRADEMARK ACT OF 1946.

(a) IN GENERAL.—The Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.) (commonly referred to as the Trademark Act of 1946), is amended as follows:

(1) Section 1 (15 U.S.C. 1051) is amended—

(A) in subsection (a)(1)(A), by striking ''goods in connection'' each place it appears and inserting ''goods on or in connection''; and

(B) in subsection (d)(1)—

(i) by inserting ''and,'' after ''specifying the date of the applicant's first use of the mark in commerce''; and

(ii) by striking ''and, the mode or manner in which the mark is used on or in connection with such goods or services''.

(2) Section 2 (15 U.S.C. 1052) is amended—

(A) in subsection (e)—

(i) in paragraph (3) by striking ''or'' after ''them,''; and

(ii) by inserting before the period at the end the following: '', or (5) comprises any matter that, as a whole, is functional''; and

(B) in subsection (f), by striking ''paragraphs (a), (b), (c), (d), and (e)(3)'' and inserting ''subsections (a), (b), (c), (d), (e)(3), and (e)(5)''.

(3) Section 7(a) (15 U.S.C. 1057(a)) is amended in the first sentence by striking the second period at the end.

(4) Section 10 (15 U.S.C. 1060) is amended—

(A) at the end of the first sentence, by striking the comma before the period; and

(B) in the third sentence, by striking the second period at the end.

(5) Section 14(3) (15 U.S.C. 1064(3)) is amended by inserting ''or is functional,'' before ''or has been abandoned''.

(6) Section 23(c) (15 U.S.C. 1091(c)) is amended by striking ''or device'' and inserting '', device, any matter that as a whole is not functional,''.

(7) Section 26 (15 U.S.C. 1094) is amended by striking ''7(c),,'' and inserting '', 7(c),''.

(8) Section 31 (15 U.S.C. 1113) is amended—

(A) by striking—

''§ 31. Fees'';

and

(B) by striking ''(a)'' and inserting ''SEC. 31. (a)''.

(9) Section 32(1) (15 U.S.C. 1114(1)) is amended by striking ''As used in this subsection'' and inserting ''As used in this paragraph''.

(10) Section 33(b) (15 U.S.C. 1115(b)) is amended—

(A) by redesignating paragraph (8) as paragraph (9); and

(B) by inserting after paragraph (7) the following:

''(8) That the mark is functional; or''.

(11) Section 39(a) (15 U.S.C. 1121(a)) is amended by striking ''circuit courts'' and inserting ''courts''.

(12) Section 42 (15 U.S.C. 1124) is amended by striking ''the any domestic'' and inserting ''any domestic''.

(13) The Act is amended by striking ''trade-mark'' each place it appears in the text and the title and inserting ''trademark''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act, and shall apply only to any civil action filed or proceeding before the United States Patent and Trademark Office commenced on or after such date relating to the registration of a mark.

SECTION-BY-SECTION ANALYSIS

SECTION 1. TECHNICAL CORRECTIONS TO THE TRADEMARK ACT OF 1946

Section 1(a) provides that the Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provision of certain international conventions, and for other purposes'', approved July 5, 1946, as amended (15 U.S.C. 1051 et seq.) shall be referred to as the ''Trademark Act of 1946'' and will be amended by the following provisions.

Subparagraph 1(a)(1)(A) amends subparagraph 1(a)(1)(A) of the Trademark Act to change the phrase ''goods in connection'' to ''goods on or in connection''. This amendment simply adds language to clarify that a trademark or service mark may be used on or in connection with goods or services rather than just directly on the goods. This language is fully consistent with case law and Patent and Trademark Office (''Office'') practice and is not a substantive change.

Subparagraph 1(a)(1)(B)(i) amends subsection 1(d)(1) of the Trademark Act by inserting ''and'' after the words ''specifying the date of the applicant's first use of the mark in commerce,''.

Subparagraph 1(a)(1)(B)(ii) amends subsection 1(d)(1) of the Trademark Act by deleting ''and the mode or manner in which the mark is used on or in connection with such goods or services''. Section 1(d)(1) sets out the requirements for a complete ''statement of use'', the document that must be filed to complete any published trademark application that was originally filed based on intent-to-use the mark. The statement of use is meant to bring the intent-to-use based application into conformity with the requirements for a trademark application based on use in commerce. The deletion of this language makes this section parallel to section 1(a)(1)(A), as amended by the Trademark Law Treaty Implementation Act. Section 1(a)(1)(A), as amended, sets out the requirements for filing a complete trademark application based on use in commerce. Thus the amendment conforms the requirements of these two sections, requirements that should logically be identical. In addition, the experience of the Office has been that requiring the applicant to state the mode or manner of using the mark adds no additional useful information to the application inasmuch as an applicant is already required to submit specimens, e.g., tags, labels, advertising etc., to demonstrate how it is using the mark. Therefore, an additional statement concerning the mode or manner of use of the mark is unnecessary.

Subparagraph 1(a)(2)(A) amends paragraph 2(e) of the Trademark Act by adding a new subparagraph 5, ''any matter that, as a whole, is functional'', to the list of statutory refusals set out in that paragraph. The language clarifies that matter which is wholly functional must be refused registration, a position that is completely consistent with the intent of the Trademark Act. This change codifies both the case law in this matter and the long-standing practice of the Office to refuse registration to matter that is wholly functional based on a combined reading of sections 1, 2 and 45 of the Trademark Act. This new section will provide examining attorneys with a simple reference for the functionality refusal.

Subparagraph 1(a)(2)(B) amends paragraph 2(f) of the Trademark Act to add a reference to the new statutory refusal set out in subparagraph 2(e)(5). This amendment to paragraph 2(f) of the Trademark Act provides that matter which is wholly functional may not be registered upon a showing that the matter has become distinctive. This change codifies existing case law and the current practice of the Office and is not a change in the substantive law.

Paragraph 1(a)(3) amends section 7(a) of the Trademark Act by deleting an extraneous period.

Paragraph 1(a)(4) amends section 10 of the Trademark Act by deleting extraneous punctuation.

Paragraph 1(a)(5) amends paragraph 14(3) of the Trademark Act by inserting the phrase ''or is functional,'' before ''or has been abandoned''. This amendment adds an additional ground for canceling a registration more than five years after the date of registration. This amendment changes existing case law in this matter but is fully consistent with the purpose of the Trademark Act. To exempt the registration of a wholly functional design from being subject to cancellation five years after the registration has issued permits the trademark owner with such a registration to obtain patent-like protection for its wholly functional design without the limited term that the patent law imposes. This change is therefore wholly consistent with both the purpose of the Trademark Act and the codifications of current practice regarding functionality made in this Act.

Paragraph 1(a)(6) amends section 23(c) of the Trademark Act by adding ''any matter that as a whole is not functional'' to the listing of the types of marks which can be registered on the Supplemental register. This change codifies existing case law and the current practice of the Office.

Paragraph 1(a)(7) amends section 26 of the Trademark Act by deleting an extraneous comma.

Paragraph 1(a)(8) amends section 31 of the Trademark Act by deleting ''§31 Fees'' from the title of the section and inserting ''Sec. 31. (a)''.

Paragraph 1(a)(9) amends section 32(1) of the Trademark Act to clarify that the definition of ''any person'' as set out in paragraph 1 of section 32 is limited to the matter within the paragraph.

Paragraph 1(a)(10) amends section 33(b) of the Trademark Act by inserting as a new paragraph 8, ''That the mark is functional; or''. This language adds a new defense against a claim of infringement made by the owner of a mark which has become ''incontestable'' under the provisions of section 32 of the Trademark Act. This language is fully consistent with the amendment made to paragraph 14(3) of the Trademark Act by paragraph 1(a)(5) of this Act.

Paragraph 1(a)(11) amends section 39(a) of the Trademark Act to strike a reference, that is no longer relevant, to ''circuit courts'' and insert the word ''courts''.

Paragraph 1(a)(12) amends Section 42 of the Trademark Act by sdeleting an extraneous ''the''.

Paragraph 1(a)(13) amends the Act to strike ''trade-mark'' in each place it occurs and replace it with ''trademark''. This is the more modern spelling.

Section 1(b) establishes an effective date that is prospective with respect to both civil actions and proceedings at the U.S. Patent and Trademark Office.

By Mr. HATCH (for himself and Mr. LEAHY):

S. 2193. A bill to implement the provisions of the Trademark Law Treaty; to the Committee on the Judiciary.

TRADEMARK LAW TREATY IMPLEMENTATION ACT

Mr. HATCH. Mr. President, I rise to introduce the Trademark Law Treaty Implementation Act of 1998. This legislation makes necessary changes in our domestic trademark law and procedures to ensure that we are in compliance when we ratify the treaty, which appears more likely this year than previously. The Trademark Law Treaty was done and signed at Geneva in October of 1994, and entered into force in 1996.

The obligations under the Trademark Law Treaty legislation will require some relatively minor changes to U.S. trademark practice, but will bring significant improvements in the trademark practices of a number of important countries around the world in which U.S. trademark owners seek protection. The required changes will eliminate complexities and simplify the process of obtaining, renewing, and managing trademark assets for American firms marketing their products and services around the world.

Countries around the world have a number of varying requirements for filing trademark applications, effecting changes of ownership of trademark registrations, and other procedures associated with managing trademark assets. These differences cause considerable aggravation and expense to trademark owners seeking to protect their marks around the world. Many of these procedures and requirements imposed by foreign countries are non-substantive and highly technical. In addition, many of these requirements in the various procedures of foreign trademark offices impose very significant cost burdens, both in official fees to be paid to local trademark offices, as well as agent's fees for fulfilling the various requirements. For example, many countries require that signatures on applications for powers of attorney be notarized, authenticated, and legalized. This very expensive and time consuming procedure is prohibited under the Treaty in all cases except where the registrant is surrendering a registration.

The Treaty eliminates these conflicting and expensive practices by setting forth a list of maximum requirements which a member State can impose for various actions. Specifically, the Treaty sets forth maximum requirements for: the contents of a trademark application; the content of a power of attorney; the elements necessary for an application to receive a filing date; a request to record a change in the name or address of a trademark owner; and, a request to renew a trademark registration. These requirements are implemented through the adoption of model forms for trademark applicants and owners to use which must be accepted by every member State. While a member need not impose all of the requirements or elements listed, it cannot demand the inclusion of any additional requirements or elements in respect of a particular action.

There are several other guarantees mandated by the Treaty that will benefit trademark applicants and owners. Under the Treaty, countries will have to register and protect service marks, as well as goods marks, an important consideration to the U.S. service economy, which has many valuable service marks, such as Marriott and American Airlines. Applicants will be able to file for protection under multiple classifications for goods and services, which will mature into multiple class registrations. No longer will trademark owners be forced to make a separate filing for each power of attorney; one general power will suffice. Member countries are precluded from considering goods or services as being similar to each other simply on the ground that they appear in the same class of the NICE classification. Moreover, a request to change the name or address of a trademark owner or a request to correct a mistake in a trademark registration may not be refused without giving the trademark owner an opportunity to comment.

As I indicated, the Trademark Law Treaty Implementation Act of 1998 makes only minor changes in our domestic trademark law. These changes include: the elimination of the requirement for a statement of the manner in which a mark is used or intended to be used in connection with the goods or services identified in the application; the elimination of the requirement that the applicant verify an application; the adoption of a grace period of at least six months for the filing of a renewal application; the elimination of a declaration or evidence concerning the use of a mark in connection with the filing of a renewal application; and, the elimination of a requirement to file a copy of the actual assignment document as a condition for recording the assignment of a trademark registration.

This bill will also harmonize and simplify the procedural requirements under the Trademark Act of 1946. Sections 8 and 9 will be amended to establish a similar period of one year prior to the end of the applicable time period, along with a grace period of six months after that period, for filing both affidavits of use and renewal applications. While it separates the ten-year affidavit of use from the renewal application, as required by the Treaty, the bill permits them both to be filed during the same time period which will benefit trademark applicants.

The Trademark Law Treaty Implementation Act of 1998 will help American companies protect their trademark assets in markets around the world thereby facilitating their ability to compete. At the same time, the changes it makes in U.S. trademark law are made in a manner that will assist American trademark owners protect their marks in this country.

Mr. President, I hope my colleagues will support this legislation which is so important to American trademark owners.

I ask unanimous consent that the text of the bill and an explanatory section by section analysis be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

S. 2193

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Trademark Law Treaty Implementation Act''.

SEC. 2. REFERENCE TO THE TRADEMARK ACT OF 1946.

For purposes of this Act, the Act entitled ''An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.), shall be referred to as the ''Trademark Act of 1946''.

SEC. 3. APPLICATION FOR REGISTRATION; VERIFICATION.

(a) APPLICATION FOR USE OF TRADEMARK.—Section 1(a) of the Trademark Act of 1946 (15 U.S.C. 1051(a)) is amended to read as follows:

''SECTION 1. (a)(1) The owner of a trademark used in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Commissioner, and such number of specimens or facsimiles of the mark as used as may be required by the Commissioner.

''(2) The application shall include specification of the applicant's domicile and citizenship, the date of the applicant's first use of the mark, the date of the applicant's first use of the mark in commerce, the goods in connection with which the mark is used, and a drawing of the mark.

''(3) The statement shall be verified by the applicant and specify that—

''(A) the person making the verification believes that he or she, or the juristic person in whose behalf he or she makes the verification, to be the owner of the mark sought to be registered;

''(B) to the best of the verifier's knowledge and belief, the facts recited in the application are accurate;

''(C) the mark is in use in commerce; and

''(D) to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive, except that, in the case of every application claiming concurrent use, the applicant shall—

''(i) state exceptions to the claim of exclusive use; and

''(ii) shall specify, to the extent of the verifier's knowledge—

''(I) any concurrent use by others;

''(II) the goods on or in connection with which and the areas in which each concurrent use exists;

''(III) the periods of each use; and

''(IV) the goods and area for which the applicant desires registration.

''(4) The applicant shall comply with such rules or regulations as may be prescribed by the Commissioner. The Commissioner shall promulgate rules prescribing the requirements for the application and for obtaining a filing date herein.''.

(b) APPLICATION FOR BONA FIDE INTENTION TO USE TRADEMARK.—Subsection (b) of section 1 of the Trademark Act of 1946 (15 U.S.C. 1051(b)) is amended to read as follows:

''(b)(1) A person who has a bona fide intention, under circumstances showing the good faith of such person, to use a trademark in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Commissioner.

''(2) The application shall include specification of the applicant's domicile and citizenship, the goods in connection with which the applicant has a bona fide intention to use the mark, and a drawing of the mark.

''(3) The statement shall be verified by the applicant and specify—

''(A) that the person making the verification believes that he or she, or the juristic person in whose behalf he or she makes the verification, to be entitled to use the mark in commerce;

''(B) the applicant's bona fide intention to use the mark in commerce;

''(C) that, to the best of the verifier's knowledge and belief, the facts recited in the application are accurate; and

''(D) that, to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive.

Except for applications filed pursuant to section 44, no mark shall be registered until the applicant has met the requirements of subsections (c) and (d) of this section.

''(4) The applicant shall comply with such rules or regulations as may be prescribed by the Commissioner. The Commissioner shall promulgate rules prescribing the requirements for the application and for obtaining a filing date herein.''.

(c) CONSEQUENCE OF DELAYS.—Paragraph (4) of section 1(d) of the Trademark Act of 1946 (15 U.S.C. 1051(d)(4)) is amended to read as follows:

''(4) The failure to timely file a verified statement of use under paragraph (1) or an extension request under paragraph (2) shall result in abandonment of the application, unless it can be shown to the satisfaction of the Commissioner that the delay in responding was unintentional, in which case the time for filing may be extended, but for a period not to exceed the period specified in paragraphs (1) and (2) for filing a statement of use.''.

SEC. 4. REVIVAL OF ABANDONED APPLICATION.

Section 12(b) of the Trademark Act of 1946 (15 U.S.C. 1062(b)) is amended in the last sentence by striking ''unavoidable'' and by inserting ''unintentional''.

SEC. 5. DURATION OF REGISTRATION; CANCELLATION; AFFIDAVIT OF CONTINUED USE; NOTICE OF COMMISSIONER'S ACTION.

Section 8 of the Trademark Act of 1946 (15 U.S.C. 1058) is amended to read as follows:

''DURATION

''SEC. 8. (a) Each registration shall remain in force for 10 years, except that the registration of any mark shall be canceled by the Commissioner for failure to comply with the provisions of subsection (b) of this section, upon the expiration of the following time periods, as applicable:

''(1) For registrations issued pursuant to the provisions of this Act, at the end of 6 years following the date of registration.

''(2) For registrations published under the provisions of section 12(c), at the end of 6 years following the date of publication under such section.

''(3) For all registrations, at the end of each successive 10-year period following the date of registration.

''(b) During the 1-year period immediately preceding the end of the applicable time period set forth in subsection (a), the owner of the registration shall pay the prescribed fee and file in the Patent and Trademark Office—

''(1) an affidavit setting forth those goods or services recited in the registration on or in connection with which the mark is in use in commerce and such number of specimens or facsimiles showing current use of the mark as may be required by the Commissioner; or

''(2) an affidavit setting forth those goods or services recited in the registration on or in connection with which the mark is not in use in commerce and showing that any such nonuse is due to special circumstances which excuse such nonuse and is not due to any intention to abandon the mark.

''(c)(1) The owner of the registration may make the submissions required under this section within a grace period of 6 months after the end of the applicable time period set forth in subsection (a). Such submission is required to be accompanied by a surcharge prescribed by the Commissioner.

''(2) If any submission filed under this section is deficient, the deficiency may be corrected after the statutory time period and within the time prescribed after notification of the deficiency. Such submission is required to be accompanied by a surcharge prescribed by the Commissioner.

''(d) Special notice of the requirement for affidavits under this section shall be attached to each certificate of registration and notice of publication under section 12(c).

''(e) The Commissioner shall notify any owner who files 1 of the affidavits required by this section of the Commissioner's acceptance or refusal thereof and, in the case of a refusal, the reasons therefor.

''(f) If the registrant is not domiciled in the United States, the registrant shall designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Commissioner.''.

SEC. 6. RENEWAL OF REGISTRATION.

Section 9 of the Trademark Act of 1946 (15 U.S.C. 1059) is amended to read as follows:

''RENEWAL OF REGISTRATION

''SEC. 9. (a) Subject to the provisions of section 8, each registration may be renewed for periods of 10 years at the end of each successive 10-year period following the date of registration upon payment of the prescribed fee and the filing of a written application, in such form as may be prescribed by the Commissioner. Such application may be made at any time within 1 year before the end of each successive 10-year period for which the registration was issued or renewed, or it may be made within a grace period of 6 months after the end of each successive 10-year period, upon payment of a fee and surcharge prescribed therefor. If any application filed under this section is deficient, the deficiency may be corrected within the time prescribed after notification of the deficiency, upon payment of a surcharge prescribed therefor.

''(b) If the Commissioner refuses to renew the registration, the Commissioner shall notify the registrant of the Commissioner's refusal and the reasons therefor.

''(c) If the registrant is not domiciled in the United States, the registrant shall designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Commissioner.''.

SEC. 7. RECORDING ASSIGNMENT OF MARK.

Section 10 of the Trademark Act of 1946 (15 U.S.C. 1060) is amended to read as follows:

''ASSIGNMENT

''SEC. 10. (a) A registered mark or a mark for which an application to register has been filed shall be assignable with the good will of the business in which the mark is used, or with that part of the good will of the business connected with the use of and symbolized by the mark. Notwithstanding the preceding sentence, no application to register a mark under section 1(b) shall be assignable prior to the filing of an amendment under section 1(c) to bring the application into conformity with section 1(a) or the filing of the verified statement of use under section 1(d), except for an assignment to a successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing. In any assignment authorized by this section, it shall not be necessary to include the good will of the business connected with the use of and symbolized by any other mark used in the business or by the name or style under which the business is conducted. Assignments shall be by instruments in writing duly executed. Acknowledgment shall be prima facie evidence of the execution of an assignment, and when the prescribed information reporting the assignment is recorded in the Patent and Trademark Office, the record shall be prima facie evidence of execution. An assignment shall be void against any subsequent purchaser for valuable consideration without notice, unless the prescribed information reporting the assignment is recorded in the Patent and Trademark Office within 3 months after the date of the subsequent purchase or prior to the subsequent purchase. The Patent and Trademark Office shall maintain a record of information on assignments, in such form as may be prescribed by the Commissioner.

''(b) An assignee not domiciled in the United States shall designate by a written document filed in the Patent and Trademark Office the name and address of some person resident in the United States on whom may be served notices or process in proceedings affecting the mark. Such notices or process may be served upon the person so designated by leaving with that person or mailing to that person a copy thereof at the address specified in the last designation so filed. If the person so designated cannot be found at the address given in the last designation, such notice or process may be served upon the Commissioner.''.

SEC. 8. INTERNATIONAL CONVENTIONS; COPY OF FOREIGN REGISTRATION.

Section 44 of the Trademark Act of 1946 (15 U.S.C. 1126) is amended—

(1) in subsection (d)—

(A) by striking ''23, or 44(e) of this Act'' and inserting ''or 23 of this Act or under subsection (e) of this section''; and

(B) in paragraphs (3) and (4) by striking ''this subsection (d)'' and inserting ''this subsection''; and

(2) in subsection (e), by striking the second sentence and inserting the following: ''Such applicant shall submit, within such time period as may be prescribed by the Commissioner, a certification or a certified copy of the registration in the country of origin of the applicant.''.

SEC. 9. TRANSITION PROVISIONS.

(a) REGISTRATIONS IN 20-YEAR TERM.—The provisions of section 8 of the Trademark Act of 1946, as amended by section 5 of this Act, shall apply to a registration for trademark issued or renewed for a 20-year term, if the expiration date of the registration is on or after the effective date of this Act.

(b) APPLICATIONS FOR REGISTRATION.—This Act and the amendments made by this Act shall apply to any application for registration of a trademark pending on, or filed on or after, the effective date of this Act.

(c) AFFIDAVITS.—The provisions of section 8 of the Trademark Act of 1946, as amended by section 5 of this Act, shall apply to the filing of an affidavit if the sixth or tenth anniversary of the registration, or the sixth anniversary of publication of the registration under section 12(c) of the Trademark Act of 1946, for which the affidavit is filed is on or after the effective date of this Act.

(d) RENEWAL APPLICATIONS.—The amendment made by section 6 shall apply to the filing of an application for renewal of a registration if the expiration date of the registration for which the renewal application is filed is on or after the effective date of this Act.

SEC. 10. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect—

(1) on the date that is 1 year after the date of the enactment of this Act, or

(2) upon the entry into force of the Trademark Law Treaty with respect to the United States,

whichever occurs first.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

This section provides a short title: "Trademark Law Treaty Implementation Act."

SECTION 2. REFERENCE TO THE TRADEMARK ACT OF 1946

This section provides that the Act entitle "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provision of certain international conventions, and for other purposes", approved July 5, 1946, as amended (15 U.S.C 1051 et. seq.) shall be referred to as the "Trademark Act of 1946".

SECTION 3. APPLICATION FOR REGISTRATION; VERIFICATION

Summary of Section 3

This section amends subsections 1(a) (Application for Use) and 1(b) (Application for Intent to Use) of the Trademark Act of 1946 (15 U.S.C. 1051(a) and 1051(b)) to create a clear distinction between the written application, the form of which may be prescribed by the Commissioner, and the declaration pertaining to applicant's use or intention to use the mark, the substance of which is detailed in the respective subsections; to require that the declaration pertaining to use or intention to use be verified by the applicant; to authorize the Commissioner to promulgate rules prescribing both the elements of the application, in addition to those specified in the proposed provision, and those elements necessary for a filing date; to omit the requirement in the written application for a statement of the "mode or manner" in which the mark is used or intended to be used in connection with the specified goods or services; and to clarify and modernize the language of the subsections, as appropriate. In addition, an amendment is made to subsection 1(d) (15 U.S.C. 1051(d)) to clarify that an application may be revived after a notice of allowance is issued.

Applications under the Trademark Law Treaty and Existing U.S. Law

With the goal of simplifying and harmonizing the registration process worldwide, Article 3(1) of the Trademark Law Treaty ("Treaty" or "TLT") establishes a comprehensive list of indications or elements that may be required in an application to register a trademark or service mark ("mark"). This list permits a Contracting Party to the Treaty ("Party") to require, inter alia, a signature and declarations of use and intention to use a mark. The list does not permit a Party to require, inter alia, a statement of the mode or manner in which the mark is used, or intended to be used, in connection with the goods or services specified in the application. Article 3(4) of the Treaty obligates a Party that requires a signature to permit either the applicant or his representative to sign the application, except that a Party may require declarations of use and intention to use a mark to be signed by the applicant.

The existing subsections 1(a) and 1(b) of the Trademark Act of 1946 (15 U.S.C. 1051(a)) and 1051(b)) require, respectively, declarations pertaining to use and intention to use a mark and require verification by the applicant of the written application, which includes the aforementioned declarations. Under the terms of the Treaty, the United States may continue to require the aforementioned declarations and may require verification by the applicant of such declarations, but may not require verification by the applicant of the written application. Thus, it becomes necessary to distinguish the declarations of use and intention to use from the other elements of the application.

Additionally, the existing subsections 1(a) and 1(b) of the Trademark Act of 1946 (15 U.S.C. 1051(a)) and 1051(b)) require, respectively, a statement of the mode or manner in which the mark is used or intended to be used, in connection with the goods specified in the application. Thus, it becomes necessary to delete the requirement for this statement from the list of required elements in the written application.

Distinction Between Written Application and Verified Declarations

Consistent with the Treaty obligations, the proposed revision will distinguish between the written application and the declarations of use and intention to use for purposes of the signature requirement. The proposed revision will continue to require a written application, in such form as may be prescribed by the Commissioner, and a declaration verified by the applicant, as set forth in the two subsections.

By separating the written application from the verified declarations, there will no longer be a requirement in the law for verification by the applicant of the written application. In the proposed revision, as in the existing subsections, the Commissioner will retain authority to prescribe the form of the application. Thus, the Commissioner will have discretion to permit the written application to be filed with no signature or with the signature of applicant's representative. Also, the Commissioner may permit the filing of a single document, which combines the elements of the written application and the declaration, and which is signed by the applicant, as under the existing subsections.

Elements of the Written Application

The proposed revision specifies a non-exclusive list of elements and grants authority to the Commissioner to prescribe, by regulation and consistent with law and international obligations, additional elements which the Commissioner considers to be necessary for an application and those elements necessary for receipt of a filing date. This proposal improves the ability of the law pertaining to application requirements to accommodate advancing technology and further international procedural harmonization. The proposed revision specifically requires the application to include applicant's domicile and citizenship, the dates of applicant's first use of the mark and first use of the mark in commerce in an application under subsection 1(a), the goods in connection with which the mark is used or intended to be used, and a drawing of the mark. Consistent with the Treaty, the proposed revision omits a requirement for specification of the mode or manner in which the mark is used, or intended to be used, in connection with the goods specified in the application.

Additionally, the proposed revision reorganizes subsections 1(a) and (b) 1946 (15 U.S.C. 1051(a)) and 1051(b)) to clarify the provisions and to modernize the language. To parallel the language of the Treaty, the phrase "may apply to register" is replaced by "may request registration". Reference to "firm, corporation or association" is replaced by a reference to "juristic person" or "person." Section 45 defines "person" as including "juristic persons." These terms are considered preferable in view of the numerous types of juristic persons in existence today.

The Verified Statement

Rather than requiring in the verified statement a repetition of statements in the written application identifying goods and, in a section 1(a) application, dates of use, the proposed revision requires a statement that, to the best of the applicant's knowledge and belief, the facts recited in the application are accurate. In addition, the proposed revision specifies the averments that the applicant must make in the verified statement concerning applicant's use, or bona fide intention to use, the mark in commerce, ownership of the mark and lack of knowledge of conflicting third party rights. These averments do not differ from those in the existing provisions.

The proposed revision requires verification of the statement by the applicant and omits the specification of the appropriate person to verify the declaration for a juristic applicant, i.e., the proposed revision omits the phrase requiring verification by "a member of the firm or an officer of the corporation or association applying." While this revision is not required by the Treaty, it will greatly simplify the filing of an application without compromising the integrity of the information contained therein. This proposed revision will give the Patent and Trademark Office ("PTO") the discretion to determine the appropriate person with authority to sign the declaration for a juristic applicant.

Under the existing provision, the PTO has been limited to accepting, for example, only the signature of an officer of a corporation on an application when another corporate manager's signature would be appropriate because the corporate manager has authority to bind the corporation legally or because the corporate manager has specific knowledge of the facts asserted in the application. The unnecessary rigidity of the existing provision has worked a hardship on applicants who have been denied filing dates because the person verifying their application has not met the strict requirement of being an officer of the corporate applicant. Additionally, the Patent and Trademark Office has had difficulty applying the officer requirement to foreign juristic entities whose managers are not clearly officers under the United States' corporate standards.

Revival of Applications After the Notice of Allowance Has Issued

Existing subsection 1(d) (15 U.S.C. 1051(d)) is amended to clarify that applications which are awaiting the filing of a statement of use or a request for extension of time to file a statement of use may be revived if it can be shown to the satisfaction of the Commissioner that the failure to file was unintentional. Although this change is not necessary for the implementation of the TLT, the change clarifies that the Commissioner has the authority to revive such an application so long as reviving the application does not extend the statutory period for filing the statement of use. The standard for revival is that the applicant's failure to file was unintentional. This is the same standard that is being proposed in subsection 12(b) of the Trademark Act of 1946 (15 U.S.C. 1062(b)) for reviving applications during the examination process.

SECTION 4. REVIVAL OF AN ABANDONED APPLICATION

Summary of Section 4

This section amends subsection 12(b) of the Trademark Act of 1946 (15 U.S.C. 1062(b)) by changing the present standard for reviving an abandoned application upon a showing of "unavoidable" delay to the standard of "unintentional" delay.

Revival of Applications Under the Historical ''Unavoidable Delay'' Standard

Section 12(b) of the Trademark Act of 1946 (15 U.S.C. 1062(b)) provides that an application is abandoned if the applicant does not timely respond to an Office Action, ''unless it can be shown to the satisfaction of the Commissioner that the delay in responding was unavoidable, whereupon such time may be extended.''

Prior to the implementation of the Trademark Act of 1946, there was no statutory provision for abandonment and revival of abandoned trademark applications. There was a regulatory provision that an abandoned application could be revived if it were ''shown to the satisfaction of the Commissioner that the delay in the prosecution of the same was unavoidable,'' However, the legislative history of the Lanham Act is silent as to the meaning or intention behind the ''unavoidable delay'' standard for revival of abandoned applications.

The language of section 12(b) of the Trademark Act of 1946 is virtually identical to the analogous provision of the patent law, 35 U.S.C. 133, which provides for abandonment of patent applications and revival upon a showing of unavoidable delay. The requirements for reviving an ''unavoidably'' abandoned patent applications, set forth in 37 C.F.R. §1.137(a), are identical to the requirements for reviving an abandoned trademark application under 37 C.F.R. §2.66.

Courts have held that the Commissioner has broad discretion in determining whether a delay is unavoidable. Under current law, the Commissioner's decision is subject to judicial review, but will be reversed only if it is arbitrary, capricious, or an abuse of discretion. *Morganroth* v. *Quigg*, 885 F.2d 843, 21 USPQ2d 1125 (Fed. Cir. 1989); *Smith* v. *Mossinghoff*, 671 F.2d 533, 213 USPQ 977 (D.C. Cir. 1982); *Douglas* v. *Manbeck*, 21 USPQ2d 1697 (E.D. Pa. 1991).

Revival of Applications Under the New ''Unintentional Delay'' Standard

Prior to 1982, patent applications, like trademark applications, could be revived only upon a showing of unavoidable delay. Under Public Law 97–247, §3, 96 Stat. 317 (1982) codified at 35 U.S.C. 41(a)(7), it became possible to revive an unintentionally abandoned patent application. Section 41(a)(7) establishes two different fees for filing petitions with two different standards to revive abandoned applications. There is one for a petition to revive an unavoidably abandoned application and another fee for a petition to revive an unintentionally abandoned application. The procedure for petitioning to revive an unintentionally abandoned application is set forth in 37 C.F.R. §1.137(b), effective October 1, 1982. 58 Fed. Reg. 44277 (Aug. 20, 1993); 48 Fed. Reg. 2696 (Jan. 20, 1983). The rule requires, among other things, that the applicant submit a verified statement that the delay was unintentional, and provides that the ''Commissioner may require additional information where there is a question that the delay was unintentional.''

The legislative history of Public Law 97–247 states: Section 41(a)7 establishes two different fees for filing petitions with different standards to revive abandoned applications. . . Since the section provides for two alternative fees with different standards, the section would permit the applicant seeking revival . . . to choose one or the other of the fees and standards under such regulations as the Commissioner may establish. . . *This section would permit the Commissioner to have more discretion than present law to revive abandoned applications . . . in appropriate circumstances* (emphasis added). H.R. Rep. No. 542, 97th Cong. 2d Sess. 6–7 (1982), quoted in *In re Rutan*, 231 USPQ 864, 865 (Comm'r Pats. 1986).

The legislative history of Public Law 97–247 pertains primarily to fees. However, the intent of Congress appears to be to give the Commissioner the power to revive abandoned applications using a much less strict standard than had been previously applied. *In re Rutan, supra.* Neither the legislative history of the Lanham Act nor the relevant case law limit the Commissioner's authority to establish procedures for revival of unintentionally abandoned trademark applications.

With the goal of the Trademark Law Treaty to simplify the registration process worldwide, this proposed amendment parallels the unintentional standard for revival available to patent applicants and relaxes the standard for reviving trademark applications. This will enable the majority of applicants, who file a timely petition to revive an application that was abandoned due to an unintentional delay, to proceed to registration from the point that the application became abandoned, rather than requiring these applicants to refile their applications.

SECTION 5. DURATION OF REGISTRATION; CANCELLATION; AFFIDAVIT OF CONTINUED USE; NOTICE OF COMMISSIONER'S ACTION

Note on Sections 5 and 6: Registration Maintenance under the Trademark Law Treaty and Existing U.S. Law

Sections 5 and 6 of this legislation amend existing sections 8 and 9 of the Trademark Act of 1946, which are the two provisions of the Act containing requirements for registration maintenance. These two sections are analogous in their requirements for the filing of a verified document attesting to the use of the mark in commerce and specimens or facsimiles, or a showing of excusable nonuse. Section 8 of the Trademark Act of 1946 requires the aforementioned filing during the year preceding the sixth year following registration to avoid cancellation of the registration. Section 9 of the Trademark Act of 1946 requires the aforementioned filing as part of the registration renewal application.

With the goal of simplifying and harmonizing the process for renewal of a trademark or service mark registration worldwide, Article 13(1) of the Treaty establishes a comprehensive list of indications that may be required in a request to renewal a trademark or service mark registration. This list does not include a declaration and/or evidence concerning use of the mark. Article 13(4)(iii) expressly prohibits a requirement for the furnishing of a declaration and/or evidence concerning use of the mark as part of a request for renewal. However, the Treaty contains no prohibition against a requirement for the periodic filing of a declaration and/or evidence of use in connection with a registration, as long as such requirement is not part of the requirements for renewal. In fact, Article 13(1)(b) of the Treaty, concerning renewal fees, recognizes that fees may be required in connection with the filing of a declaration and/or evidence of use of a registered mark.

Under the terms of the Treaty, the United States may continue to require the periodic filing of a verified document attesting to the use of the mark in commerce and specimens or facsimiles, or a showing of excusable nonuse. However, the United States may not make such a requirement in connection with registration renewal.

Harmonization of Trademark Act Sections 8 and 9 Requirements

The proposed revision harmonizes certain procedural requirements for the affidavits required under this section with the requirements for a registration renewal application contained in section 9 of the Trademark Act of 1946. While both sections contain requirements for registration maintenance, the specific requirements pertaining to the filing required by each existing section differ unnecessarily. These differing requirements have caused confusion to some registrants, particularly those proceeding *pro se*, resulting in the cancellation of registrations of marks still in use in commerce due to noncompliance with the technical requirements of one or the other of these maintenance sections. Furthermore, since the proposed revision to section 8 adds an affidavit requirement at ten-year internals, harmonizing the filing procedures with those for renewal enables the registrant to make both filings at the same time, thus, simplifying registration maintenance.

Summary of Section 5

This section amends section 8 of the Trademark Act of 1946 (15 U.S.C. 1058). The main purpose of the revision of this section is to set out, in one section, all of the requirements for filing any of the affidavits of use needed to maintain a registration and to ensure that the requirements of each use affidavit are identical. This section includes the affidavit of use filed between the fifth and the sixth year after registration, between the fifth and the sixth year after publication under subsection 12(c), and in the year preceding every ten year anniversary of the registration.

This purpose is accomplished by adding an obligation to file an affidavit of use or nonuse, consistent with the requirements set forth in the subsections, in the year preceding every tenth anniversary of the registration, to provide for correction of deficiencies in submissions under these subsections; to provide for a grace period for making submissions required by these subsections; to modernize the language and to simplify and clarify the existing procedural requirements for filing affidavits under these subsections; and to harmonize certain procedural requirements for such affidavits with the requirements for a registration renewal application contained in section 9 of the Trademark Act of 1946.

Subsection 8(a) states the duration of each registration and provides that the registration shall be canceled by the Commissioner if timely affidavits of use are not filed. Paragraph (1) of subsection 8(a) states that an affidavit of use must be filed by the end of six years following registration. Paragraph (2) of subsection 8(a) states that an affidavit of use must be filed by the end of six years following the date of publication under subsection 12(c) of the Trademark Act of 1946 (15 U.S.C. 1062(c)). Paragraph (3) of subsection 8(a) states that an affidavit of use must be filed by the end of each successive ten-year period following the date of registration.

Subsection 8(b) sets out the length of the time period during which the statutory filing can be made and the contents needed in each filing. In every case, there is a one year statutory period for filing the affidavit.

Subsection 8(c) permits the filing of the use affidavit, after the statutory period for filing has ended upon payment of an additional ''grace period'' surcharge. The section also provides that a correction of a deficiency, after the statutory period, may be made upon payment of an additional ''deficiency'' surcharge.

Subsection 8(c)(1) sets out the time period for filing the use affidavit where the statutory period has expired, the so-called ''grace'' period, and gives the Commissioner authority to prescribe a surcharge for affidavits filed during the grace period.

Subsection 8(c)(2) allows for correction of deficiencies in the filings submitted under this section upon payment of the deficiency surcharge.

Subsection 8(d) sets out the requirement that the Commissioner attach to each certificate of registration, and notice of publication under section 12(c), a special notice of the requirement for the affidavits required by this section. This section preserves an obligation of the Commissioner that is set out in the last sentence of existing section 8(a) and in section 12(c).

Subsection 8(e) preserves the obligation of the Commissioner, in existing subsection 8(c), to notify any owner who files an affidavit under section 8 of his acceptance or refusal of the affidavit. The subsection has been revised to reflect the revisions in subsections 8 (a) and (b) by stating that it applies to any of the above prescribed affidavits.

Subsection 8(f) has been added to require the appointment by owners, not domiciled in the United States, of a domestic representative for service of notices or process in proceedings affecting the mark.

Periodic Filing of the Affidavit

The PTO continues to believe in the value of requiring a periodic filing verifying the continued use of the mark as a way to maintain the integrity of the trademark register by periodically removing from the register marks no longer in use in commerce. Therefore, consistent with the Treaty obligations, the proposed revision adds to section 8 of the Trademark Act of 1946 an obligation to file an affidavit of use or excusable non-use, consistent with the requirements set forth in the subsection, in the year preceding the tenth anniversary of the registration and every ten years thereafter. This revision is proposed in view of the proposed deletion of the requirement in connection with registration renewal, in section 9 of the Trademark Act of 1946, for a verified statement attesting to the use of the mark in commerce, accompanied by specimens or facsimiles, or a showing of excusable non-use.

Grace Period and Correction of Deficiencies

Rules 8 of the Regulations under the Trademark Law Treaty provides that renewal request must be accepted for at least a six-month period, upon payment of a surcharge, after the date the renewal is due. The existing provisions of section 9 of the Trademark Act of 1946 permit the renewal application to be filed within a three-month period, upon payment of a surcharge, after the date the renewal is due. The existing provisions of section 8 of the Trademark Act of 1946 contain no grace period for the filing of the required affidavit after its due date. As described below, the proposed revision incorporates the six-month grace period required by the treaty for filing renewal requests and harmonizes the requirements for filings under sections 8 and 9 of the Trademark Act of 1946. Harmonization of the filing requirements of sections 8 and 9 will require the amendment of both sections to provide this six-month grace period for making the required filing. This amendment is a liberalization of sections 8 and 9 of the Trademark Act of 1946, which is desirable to avoid, to the extent possible, the removal from the register for mere technical reasons of marks that are still in use in commerce.

The proposed revision to section 8 of the Trademark Act of 1946 will amend the existing law by providing a six-month grace period for filing the required affidavit, conditioned upon payment of a ''grace period'' surcharge. Additionally, the proposed revision permits the correction of a deficiency after the sixth anniversary of registration. Such correction must be accompanied by a ''deficiency surcharge'' and be filed no later than the end of a prescribed period after notification of the deficiency. This proposed revision is consistent with the practice proposed in the revision to section 9(a) of the Trademark Act of 1946, concerning renewal.

Only an owner who did not make any filing prior to the end of the statutory period may make the required filing under the grace period provisions. The owner filing an affidavit prior to the end of the statutory period, but correcting a deficiency either during or after the grace period, will be subject to the ''deficiency surcharge'' only. On the other hand, the owner filing an affidavit during the six-month grace period, will be subject to the ''grace period surcharge'' (for the ability to file the affidavit during the grace period) and, if notified of deficiencies, the ''deficiency surcharge'' (for the ability to correct a deficiency after the end of the statutory period.) The proposed revision does not define deficiency or place any limits on the type of deficiency or omission that can be cured after expiration of the statutory filing period. The Commissioner has broad discretion to provide procedures and fees for curing deficiencies or omissions.

Simplification and Clarification of Section 8 of the Trademark Act

The proposed revision conforms the requirements of subsections 8(a) and (b) of the Trademark Act of 1946 to current practice. First, the language in the existing subsections ''attaching to the affidavit a specimen or facsimile showing current use of the mark'' is revised to clarify that the specimens or fascimiles are to be filed along with the affidavit but are not considered part of the affidavit for purposes of complying with the requirement to set forth in the affidavit the goods or services on or in connection with which the mark is in use in commerce. The sentence comprising subsection 8(a) of the Trademark Act of 1946 has been revised to clarify and distinguish the requirements for the fee, the affidavit, the specimens and a showing of non-use. The proposed revision further permits the Commissioner to specify the number of specimens or facsimiles required so that he may require a specimen or facsimile for each class of goods or services identified in the registration. The language ''setting forth those goods or services recited in the registration on or in connection with which the mark is not in use in commerce'' is proposed to be added to parallel the affidavit requirements pertaining to use of the mark and to clarify that the owner must specify the goods or services to which a showing of non-use pertains.

Existing Subsection 8(b)

The requirements set out in former subsection 8(b) of the Trademark Act of 1946, pertaining to marks published pursuant to section 12(c) of the Trademark Act of 1946, have been set out in subsections 8(a)(2), 8(b) and (8)(c) and conform to the proposed revisions as to the time of filing the affidavit, the grace period and the correction of deficiencies.

Existing Subsection 8(c)

Subsection 8(c) of the Trademark Act of 1946 is now set out in subsection 8(e) and has been amended to reflect the revisions in subsections 8 (a) and (b) to add requirements for the periodic filing of additional affidavits by changing reference from ''. . . any owner who files either of the above-prescribed affidavits . . .'' to ''. . . any owner who files one of the above-prescribed affidavits . . .''.

Subsection 8(f)—Appointment of Domestic Representative

Section 5 of this Act proposes to add a section 8(f) to the Trademark Act of 1946 to provide for the appointment of a domestic representative for service of notices or process in proceedings affecting the mark by owners not domiciled in the United States. This new subsection is consistent with similar requirements imposed on applicants by subsection 1(e) of the Trademark Act of 1946. This is necessary because the appointment required in subsection 1(e) of the Trademark Act of 1946 pertains only during the pendency of the application.

Registrant or Owner: Who must file?

Throughout the revised section 8, the term ''registrant'' has been replaced by the term ''owner.'' The practice at the Patent and Trademark Office has been to require that the current owner of the registration file all the post-registration affidavits needed to maintain a registration. The current owner of the registration must aver to actual knowledge of the use of the mark in the subject registration. However, the definition of ''registrant'' in section 45 of the Act states that the ''terms 'applicant' and 'registrant' embrace the legal representatives, predecessors, successors and assigns of each applicant and registrant.'' Therefore, use of the term ''registrant'' in section 8 of the Act would imply that any legal representative, predecessor, successor or assign of the registrant could successfully file the affidavits required by sections 8 and 9. To correct this situation, and to keep with the general principle, as set out in section 1, that the owner is the proper person to prosecute an application, section 8 has been amended to state that the owner must file the affidavits required by the section.

SECTION 6. RENEWAL OF REGISTRATION

Summary of Section 6

This section amends subsection 9(a) of the Trademark Act of 1946 to cross-reference the obligatory registration maintenance requirements of section 8 of the Trademark Act of 1946; to delete the obligation to submit as part of a renewal application verified statements regarding the use of the mark in commerce and attaching to the application a specimen or facsimile showing current use of the mark; to extend the time for filing a renewal application to up to one year before the expiration of the period for which the registration was issued or renewed and, for an additional fee, up to six months after the end of the expiring period of the registration; to grant authority to the Commissioner to prescribe the form of the written application for renewal of the registration; and, to permit the correction of deficiencies after the statutory filing period.

This section amends subsection 9(c) to specify the requirements for the appointment by registrants not domiciled in the United States of a domestic representative for service of notices or process in proceedings affecting the mark.

Use Requirement for Registration Renewal

Separate from the obligation to renew a trademark registration at ten-year intervals, the U.S. Patent and Trademark Office continues to believe in the value of requiring a periodic filing verifying the continued use of the mark as a way to maintain the integrity of the trademark register by periodically removing from the register marks no longer in use in commerce. Therefore, consistent with the Treaty obligations, the proposed revision deletes from subsection 9(a) of the Trademark Act of 1946 the requirement that the renewal application include a verified statement attesting to the use of the mark in commerce, accompanied by a specimen or facsimile evidencing current use of the mark, or a showing of excusable non-use. These requirements are proposed to be added to subsection 8(a) of the Trademark Act of 1946 in the form of an obligation to file an affidavit of use or excusable non-use, consistent with the requirements set forth in the subsection, on the tenth anniversary of the registration and every ten years thereafter.

Also, consistent with the treaty obligations, the requirement that the renewal application be verified is proposed to be deleted and the Commissioner is granted authority to prescribe the form of the written renewal application, consistent with law and international treaties or agreements to which the United States is a party.

Grace Period and Harmonization

Rule 8 of the Regulations under the Trademark Law Treaty provides that a renewal request must be accepted for at least a six-month period, upon payment of a surcharge, after the date the renewal is due. The existing provisions of section 9 of the Trademark Act of 1946 permit the renewal application to be filed within a three-month period, upon payment of a surcharge, after the date the renewal is due. The revision proposes to change the three-month grace period for requesting registration renewal to the six-month grace period required by the treaty and harmonizes the requirements for filings under sections 8 and 9 of the Trademark Act of 1946. Harmonization of the filing requirements of sections 8 and 9 will require the amendment of both sections to provide this six-month grace period for making the required filing. This amendment is a liberalization of sections 8 and 9 of the Trademark Act of 1946, which is desirable to avoid, to the extent possible, the removal from the register for mere technical reasons of marks that are still in use in commerce. In particular, consistent with the filing requirements in section 8 of the Trademark Act of 1946, the period for filing a renewal request is expressly defined as the period one year prior to expiration of the period for which the registration was issued or renewed, or within a grace period of six months after the end of the expiring period.

Subsection 9(c)—Appointment of Domestic Representatives

Subsection 6(b) of this Act amends subsection 9(c) to the Trademark Act of 1946 to provide for the appointment of a domestic representative for service of notices or process in proceedings affecting the mark by owners not domiciled in the United States, rather than referencing the requirements in subsection 1(e) of the Trademark Act of 1946. This is preferable because the appointment required in subsection 1(e) of the Trademark Act of 1946 pertains only during the pendency of the application.

SECTION 7. RECORDING ASSIGNMENT OF MARK

This section amends section 10 of the Trademark Act of 1946 (15 U.S.C. 1060) to clarify that the PTO will record a change in ownership without requiring a copy of the underlying document; and to remove the proscription against the assignment of a mark in an application filed under section 1(b) of the Trademark Act of 1946 (15 U.S.C. 1051(b)) (intent-to-use) upon the filing of an amendment to allege use pursuant to section 1(c) of the Trademark Act of 1946 (15 U.S.C. 1051(c)).

The PTO has interpreted the present reference to a ''record of assignments'' in section 10 to require the PTO to record a copy of the actual assignment document. Article 11(4) of Trademark Law Treaty prohibits the requirement of a statement or proof of such transfer in order to record an assignment of a trademark registration. The proposed amendment clarifies that, rather than maintaining a ''record of assignments,'' the PTO ''shall maintain a record of the prescribed information on assignments, in such form as may be prescribed by the Commissioner.'' The proposed amendment authorizes the PTO to determine what information regarding assignments it will record and maintain. The proposed amendment will ensure that a transfer of goodwill remains a necessary element of a valid assignment of a trademark; however, the PTO will not require a statement or proof of the transfer of goodwill in order to record an assignment of a trademark registration.

Additionally, pertaining to the proscription against the assignment of a mark in an application filed under section 1(b) of the Trademark Act of 1946 (intent-to-use), the proposed amendment adds reference to section 1(c) of the Trademark Act of 1946 so that the filing of an amendment to allege use pursuant to section 1(c) removes the restriction against assigning the mark except to the successor to the business of the applicant, or portion thereof, to which the mark pertains, if that business is ongoing and existing. Presently, prior to registration of an application filed pursuant to section 1(b) of the Trademark Act of 1946 (15 U.S.C. 1051(b)) based upon a bona fide intention to use a mark in commerce on the identified goods or services, an applicant must file either a verified statement of use under section 1(d) of the Trademark Act of 1946 (15 U.S.C. 1051(d)) or an amendment to allege use under section 1(c) of the Trademark Act of 1946 (15 U.S.C. 1051(c)). The substance of the two filings is essentially the same. The difference between the two filings is the point at which the filing is made. Presently, section 10 of the Trademark Act of 1946 (15 U.S.C. 1060) limits the assignability of an application to register a mark under section 1(b) of the Trademark Act of 1946 (15 U.S.C. 1051(b)) until such time as applicant files a verified statement of use under section 1(d) of the Trademark Act of 1946 (15 U.S.C. 1051(d)). Since the effect of the filing of an amendment to allege use under section 1(c) of the Trademark Act of 1946 (15 U.S.C. 1051(c)) is analogous, there is no reason in law or policy for omitting to include reference to section 1(c) in section 10.

SECTION 8. INTERNATIONAL CONVENTIONS; COPY OF FOREIGN REGISTRATION

This section amends section 44(e) of the Trademark Act of 1946 (15 U.S.C. 1126(e)) to change the requirement that an application ''be accompanied by a certificate or certified copy'' of the foreign registration, which has been interpreted to be a filing date requirement, so that such copy may be submitted to the PTO prior to registration, within such time limits as may be prescribed by the Commissioner. Such a requirement as a prerequisite to receiving a filing date is prohibited pursuant to Article 5 of the Trademark Law Treaty.

SECTION 9. TRANSITION PROVISIONS

This section clarifies when and how the new provisions set out for the maintenance of registrations will apply to existing and future applications and registrations.

Section 9(a) provides that registrations issued or renewed with a 20 year term, i.e. those registrations issued or renewed prior to the effective date of the Trademark Law Revision Act of 1988, will be subject to the post-registration provisions of this Act on or after a date that is 1 year before the date on which the twenty year term expires. This provision will allow those registrations to have the benefit of the one year statutory filing period and the six-month grace period provided by the Act.

Section 9(b) provides that the Act shall apply to any application for the registration of a trademark pending on, or filed after, the effective date of the Act.

Section 9(c) provides that the filing of an affidavit under Section 5 of the Act, which amends Section 8(b) of the Trademark Act of 1946, shall be required for any registration if the sixth or tenth anniversary of the registration, or the sixth anniversary of publication under section 12(c) of the Trademark Act of 1946, occurs on or after the effective date of this Act.

Section 9(d) provides that the amendment made by section 6 of this Act shall apply to the filing of an application for the renewal of a registration if the expiration date of the registration for which the renewal application is filed is on or after the effective date of this Act.

SECTION 10. EFFECTIVE DATE

This section provides that this Act shall take effect one year after enactment of the Act or upon entry into force of the Treaty in respect to the United States, whichever occurs first. Since the provisions of the Act will modernize and simplify procedures pertaining to trademark application filing and registration maintenance, this section provides that, if the U.S. has not acceded to the treaty and become subject to the obligations thereunder within a year after enactment, the Act will become effective so that its benefits can be realized by trademark owners.

Since the United States is not one of the first five States to deposit its instrument of ratification or accession, Article 20 of the Treaty provides that the Treaty shall enter into force three months after the date on which the instrument of ratification or accession is deposited.

Mr. LEAHY. Mr. President, I am pleased today to introduce the Trademark Law Treaty Implementation and Registration Simplification Act (TLT Act). The TLT Act, which will implement the Trademark Law Treaty of 1994, is an important step in our continuing endeavor to harmonize trademark law around the world so that American businesses—particularly small American businesses—seeking to expand internationally will face simplified and straightforward trademark registration procedures in foreign countries.

This bill is one of a series I have supported which protect American trademark holders in a world of rapidly changing technology and international competition. Earlier this year I introduced S. 1727, legislation authorizing the National Research Council of the National Academy of Sciences to conduct a comprehensive study of the effects of adding new generic Top Level Domains on trademark and other intellectual property rights owners. Moreover, I supported the Federal Trademark Dilution Act of 1995, which was enacted into law last Congress. This legislation provides intellectual property rights holders with the power to enjoin another person's commercial use of famous marks that would cause dilution of the mark's distinctive quality. Together, these measures represent efforts to refine American trademark law to ensure that it promotes American interests.

Today more than ever before, trademarks are among the most valuable assets of business. One of the major obstacles in securing international trademark protection is the difficulty and cost involved in obtaining and maintaining a registration in each and every country. Countries around the world have a number of varying requirements for filing trademark applications, many of which are non-substantive and very confusing. Because of these difficulties, many U.S. businesses, especially smaller businesses, are forced to concentrate their efforts on registering their trademarks only in certain major countries while pirates freely register their marks in other countries.

The Trademark Law Treaty will eliminate many of the arduous registration requirements of foreign countries by enacting a list of maximum requirements for trademark procedures. Eliminating needless formalities will be an enormous step in the direction of a rational trademark system which will benefit American business, especially smaller businesses, to expand into the international market more freely. Fortunately, the Trademark Law Treaty has already been signed by thirty-five countries, has already been ratified by ten countries including Japan and the United Kingdom, and has already been reported favorably to the full Senate by the Senate Foreign Affairs Committee.

As the United States is already in accordance with most of the Trademark Law Treaty requirements, the TLT Act would impose only minor changes to U.S. trademark law. The Patent and Trademark Office, the International Trademark Association and the American Intellectual Property Law Association have indicated their support for the TLT Act.

I hope the Senate will consider and pass this bill expeditiously.

ADDITIONAL COSPONSORS

S. 389

At the request of Mr. ABRAHAM, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 389, a bill to improve congressional deliberation on proposed Federal private sector mandates, and for other purposes.

S. 472

At the request of Mr. CRAIG, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 472, a bill to provide for referenda in which the residents of Puerto Rico may express democratically their preferences regarding the political status of the territory, and for other purposes.

S. 617

At the request of Mr. JOHNSON, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 617, a bill to amend the Federal Meat Inspection Act to require that imported meat, and meat food products containing imported meat, bear a label identifying the country of origin.

S. 778

At the request of Mr. LUGAR, the name of the Senator from New York (Mr. MOYNIHAN) was added as a cosponsor of S. 778, a bill to authorize a new trade and investment policy for sub-Saharan Africa.

S. 981

At the request of Mr. LEVIN, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 981, a bill to provide for analysis of major rules.

S. 1825

At the request of Mrs. MURRAY, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. 1825, a bill to amend title 10, United States Code, to provide sufficient funding to assure a minimum size for honor guard details at funerals of veterans of the Armed Forces, to establish the minimum size of such details, and for other purposes.

S. 1868

At the request of Mr. NICKLES, the name of the Senator from Wyoming (Mr. THOMAS) was added as a cosponsor of S. 1868, a bill to express United States foreign policy with respect to, and to strengthen United States advocacy on behalf of, individuals persecuted for their faith worldwide; to authorize United States actions in response to religious persecution worldwide; to establish an Ambassador at Large on International Religious Freedom within the Department of State, a Commission on International Religious Persecution, and a Special Adviser on International Religious Freedom within the National Security Council; and for other purposes.

S. 1924

At the request of Mr. MACK, the name of the Senator from Michigan (Mr. ABRAHAM) was added as a cosponsor of S. 1924, a bill to restore the standards used for determining whether technical workers are not employees as in effect before the Tax Reform Act of 1986.

S. 2092

At the request of Mrs. MURRAY, her name was added as a cosponsor of S. 2092, a bill to promote full equality at the United Nations for Israel.

S. 2110

At the request of Mr. BIDEN, the name of the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 2110, a bill to authorize the Federal programs to prevent violence against women, and for other purposes.

S. 2128

At the request of Mr. STEVENS, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 2128, a bill to clarify the authority of the Director of the Federal Bureau of Investigation regarding the collection of fees to process certain identification records and name checks, and for other purposes.

S. 2162

At the request of Mr. MACK, the name of the Senator from Arizona (Mr. KYL) was added as a cosponsor of S. 2162, a bill to amend the Internal Revenue Code of 1986 to more accurately codify the depreciable life of printed wiring board and printed wiring assembly equipment.

SENATE JOINT RESOLUTION 49

At the request of Mr. SMITH, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of Senate Joint Resolution 49, a joint resolution proposing a constitutional amendment to protect human life.

SENATE JOINT RESOLUTION 50

At the request of Mr. BOND, the names of the Senator from Indiana (Mr. LUGAR), and the Senator from North Carolina (Mr. HELMS) were added as cosponsors of Senate Joint Resolution 50, a joint resolution to disapprove the rule submitted by the Health Care Financing Administration, Department of Health and Human Services on June 1, 1998, relating to surety bond requirements for home health agencies under the medicare and medicaid programs.

SENATE RESOLUTION 251—CONGRATULATING THE DETROIT RED WINGS ON WINNING THE 1998 NATIONAL HOCKEY LEAGUE STANLEY CUP CHAMPIONSHIP

Mr. LEVIN (for himself and Mr. ABRAHAM) submitted the following resolution; which was considered and agreed to:

S. RES. 251

Whereas on June 16, 1998, the Detroit Red Wings defeated the Washington Capitals, 4–1, in Game 4 of the championship series;

Whereas this victory marks the second year in a row that the Red Wings won the Stanley Cup in a four game sweep;

Whereas the Stanley Cup took its first trip around the rink in the lap of Vladimir Konstantinov, the Red Wing defenseman who was seriously injured in an accident less than a week after Detroit won the Cup last year;

Whereas Vladi and his wife Irina, whose strength and courage are a source of pride and inspiration to our entire community are an exemplary Red Wings family and Vladi's battle is an inspiration to all Americans;

Whereas Marian and Mike Ilitch, the owners of the Red Wings and community leaders in Detroit and Michigan, have brought the Stanley Cup back to Detroit yet again;

Whereas the Red Wings, as one of the original six NHL teams, have always held a special place in the hearts of all Michiganders;

Whereas it was a profound source of pride for Detroit when the Wings brought the Cup back to Detroit in 1954 and 1955, the last time the Wings won consecutive NHL championships;

Whereas today, Detroit continues to provide Red Wings fans with hockey greatness and Detroit, otherwise known as ''Hockeytown, U.S.A.'' is home to the most loyal fans in the world;

Whereas the Red Wings are indebted to Head Coach Scotty Bowman, who has brought the Red Wings to the playoffs 3 times in the last 4 years, and with this year's victory, has earned his eighth Stanley Cup victory, tying him with his mentor Toe Blake for the most championships in league history;

Whereas the Wings are also lucky to have the phenomenal leadership of Team Captain Steve Yzerman, who in his fifteenth season in the NHL, received the Conn Smythe Trophy, given to the most valuable player in the NHL playoffs;

Whereas each one of the Red Wings will be remembered on the premier sports trophy, the Stanley Cup, including Slava Fetisov, Bob Rouse, Nick Lidstrom, Igor Larionov, Mathieu Dandenault, Slava Kozlov, Brendan Shanahan, Dmitri Mironov, Doug Brown, Kirk Maltby, Steve Yzerman, Martin