



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

December 5, 2005

### **H.R. 2791**

### **United States Patent and Trademark Fee Modernization Act of 2005**

*As reported by the House Committee on the Judiciary on November 9, 2005*

#### **SUMMARY**

H.R. 2791 would permanently increase the fees that the Patent and Trademark Office (PTO) collects for activities related to the processing and filing of patent and trademark applications. Under current law, a temporary fee increase expires at the end of fiscal year 2006. In addition, H.R. 2791 would require the Director of the PTO to refund fees paid by those seeking services from the PTO that are in excess (if any) of the amounts appropriated for the PTO each year. Those fees are recorded in the budget as offsetting collections credited against discretionary appropriations.

Under the bill, CBO estimates that PTO fees would increase by 15 percent a year starting in fiscal year 2007 compared to fees that will be collected under current law. The bill would not affect the fee rates assessed in fiscal year 2006. Assuming appropriation of all fees collected by the PTO, CBO estimates that implementing H.R. 2791 would decrease PTO's net spending subject to appropriation by about \$43 million in 2007 and \$54 million over the 2007-2010 period due to the lag in time between when PTO fees are collected and spent. CBO estimates that enacting the bill would increase direct spending by \$52 million in 2007 for refunding PTO fees to those who will pay fees in 2006 in excess of the amount appropriated. Enacting the bill would not affect revenues.

H.R. 2791 would impose both intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA), on patent and trademark applicants. CBO estimates that the costs of the intergovernmental mandates would not exceed the threshold (\$62 million in 2005, adjusted annually for inflation) established in that act. CBO cannot determine whether the costs of the mandate would exceed the annual threshold for private-sector entities established in UMRA (\$123 million in 2005, adjusted annually for inflation), because UMRA does not specify how CBO should measure the costs of extending an existing mandate. Depending on how they are measured, the costs to the private sector could exceed the threshold.

## ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 2791 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By Fiscal Year, in Millions of Dollars				
	2006	2007	2008	2009	2010
<b>CHANGES IN SPENDING SUBJECT TO APPROPRIATION <sup>a</sup></b>					
Increase in PTO Fees Under H.R. 2791					
Estimated Authorization Level	0	-240	-255	-270	-285
Estimated Outlays	0	-240	-255	-270	-285
Increase in PTO Spending Under H.R. 2791					
Estimated Authorization Level	0	240	255	270	285
Estimated Outlays	0	197	250	267	282
Net Change in PTO Spending Under H.R. 2791					
Estimated Authorization Level	0	0	0	0	0
Estimated Outlays	0	-43	-5	-3	-3
<b>CHANGES IN DIRECT SPENDING</b>					
Refunded PTO Fees					
Estimated Budget Authority	0	52	0	0	0
Estimated Outlays	0	52	0	0	0

a. For 2006, the PTO received a gross appropriation of \$1,683 million, and CBO estimates that amount will be offset by \$1,735 million in fee collections.

## BASIS OF ESTIMATE

Under current law, the PTO is authorized to collect fees from the public for specific activities related to processing applications for patents and trademarks. The agency assesses and collects fees for a number of different activities, and the rate for each is set in law. The collection and spending of those fees are subject to provisions in annual appropriation acts, and the fees are recorded in the budget as offsets to the discretionary spending of the PTO. CBO estimates that the agency will collect a total of about \$1,735 million in fees in 2006, which will offset \$1,683 million of appropriated funding for that year, resulting in an estimated net appropriation of -\$52 million.

H.R. 2791 would change the fees that the PTO charges for activities relating to processing applications for patents and trademarks. The bill also would require that any fees collected

by the PTO but not appropriated for PTO operating expenses be refunded (on a proportional basis) to those who paid the fees. Assuming that all amounts collected by the agency are appropriated for its use, CBO estimates that the bill would decrease spending subject to appropriation by \$43 million in 2007 and \$54 million over the 2007-2010 period due to the lag in the time between when PTO fees are collected and spent. CBO estimates that enacting H.R. 2791 would increase direct spending by \$52 million in 2007 for refunding PTO fees that will be collected during 2006. Enacting the bill would not affect revenues.

### **Spending Subject to Appropriation**

Beginning in 2005, the fee rates that the PTO charges for activities related to patent and trademark applications were temporarily increased. Under current law, those increased fee rates will expire at the end of 2006. H.R. 2791 would permanently extend the fee increase. For example, under current law, the fee the PTO charges for issuing an original patent (other than design or plant patents) is \$1,400 in 2006 but will decrease to \$1,300 starting in 2007. Under H.R. 2791, that rate would remain at \$1,400. Rates are set in law for several dozen categories of fees that support funding of the PTO, but the collection of fees is contingent on appropriation action.

Based on the historical demand for PTO services, CBO estimates that the amount collected under the current PTO fee structure will decrease from \$1,735 million in 2006 to \$1,600 million in 2007 because of the expiring fee rates. After accounting for the higher fee rates under H.R. 2791, CBO estimates that PTO fees would increase by about 15 percent starting in 2007 compared with the fee rates that will apply under current law. Relative to the collections that would occur under current law, CBO estimates that implementing the bill would increase fees collected by the PTO by \$240 million in 2007 and about \$1 billion over the 2007-2010 period.

CBO estimates that the PTO's collections under current law, together with the additional collections resulting from the increased fee rates under the bill, would be \$1,840 million in 2007 and would total \$7,925 million over the 2007-2010 period. By comparison, the agency collected \$1,504 million in 2005, and CBO estimates that it will collect \$1,735 million in 2006.

Net discretionary spending for the PTO in 2007 and later years depends on future appropriation acts. Future appropriation acts could provide the PTO with more or less spending authority than the agency receives from fee collections. If H.R. 2791 is enacted, however, future appropriation acts that provide less funding for the PTO than the agency's actual fee collections would result in an expenditure to refund the fees not appropriated to PTO. This expenditure would occur in the subsequent fiscal year and would be considered an advance appropriation.

## **Direct Spending**

H.R. 2791 would direct the PTO to refund a proportionate share of the fees that are not appropriated for the PTO's operating expenses to those who paid the fees in each fiscal year. In general, patent and trademark fee collections cover the PTO's operating expenses. The 2006 appropriation act for the PTO, however, places a limit on the amount of fee collections that the agency can spend. Of the \$1,735 million in PTO fees that CBO estimates will be collected in 2006, the act allows the PTO to spend about \$1,683 million, resulting in an estimated net appropriation of -\$52 million for that year.

Under the bill, the refund would apply to fee collections in excess of appropriated spending for each year starting with fiscal year 2005. For 2005, actual fee collections almost fully offset appropriated spending. (Actual collections were about \$1,504 million and the 2005 appropriation act provided \$1,509 million). For that reason, CBO estimates that enacting H.R. 2791 would not result in a refund for 2005.

For 2006, CBO estimates that PTO fee collections will exceed funding provided in the 2006 appropriation act by \$52 million. Under H.R. 2791, the PTO would be required to refund the excess fee collections to those who paid fees during 2006. CBO estimates that enacting H.R. 2791 would increase direct spending in 2007 by \$52 million for refunding the fees.

## **INTERGOVERNMENTAL AND PRIVATE SECTOR IMPACT**

H.R. 2791 would impose both intergovernmental and private-sector mandates, as defined in UMRA, on patent and trademark applicants. CBO estimates that the costs of the intergovernmental mandates would not exceed the threshold (\$62 million in 2005, adjusted annually for inflation) established in that act. CBO cannot determine whether the costs of the mandate would exceed the annual threshold for private-sector entities established in UMRA (\$123 million in 2005, adjusted annually for inflation) because UMRA does not specify how CBO should measure the costs of extending an existing mandate. Depending on how they are measured, the costs to the private sector could exceed the threshold.

The requirement to pay patent and trademark fees is a mandate because the federal government controls the trademark and patent systems, and no reasonable alternatives to the systems exist. Under current law, temporary fee increases will expire at the end of fiscal year 2006. The bill would permanently increase the fees that the Patent and Trademark Office would collect starting in fiscal year 2007.

In the case of a mandate that has not yet expired, UMRA does not specify whether CBO should measure the cost of the extension relative to the mandate's current costs or assume that

the mandate will expire and that it must measure the costs of the mandate's extension as if the requirement were new. Measured against the costs that would be incurred if current law remains in place and the PTO fees decline, the total costs of extending this mandate would be \$240 million in 2007 and rise to \$285 million in 2010, with 1 percent to 2 percent of those costs accruing to intergovernmental entities. Measured that way, the cost of the mandate would exceed the annual threshold for the private sector as defined in UMRA. By contrast, measured against the fees in place for fiscal year 2006, the mandate would impose no additional costs because the fees under the bill would not differ from those currently in effect. Measured either way, the costs to intergovernmental entities would be small.

In addition, if fee collections for a fiscal year exceed the amount appropriated to the PTO for that year, the bill would require the Director of the PTO to make payments to entities who paid PTO fees during that fiscal year. For fiscal year 2006, based on the appropriation of \$1,683 million for the PTO and the CBO estimate of \$1,735 million for fees collected, CBO estimates that the bill would provide for refund payments of \$52 million, with most of those payments going to the private sector. For other years, the total amount of payments refunded, if any, under this provision would depend on the level of future appropriations.

**ESTIMATE PREPARED BY:**

Federal Costs: Melissa Z. Petersen  
Impact on State, Local, and Tribal Governments: Sarah Puro  
Impact on the Private Sector: Paige Piper/Bach

**ESTIMATE APPROVED BY:**

Peter H. Fontaine  
Deputy Assistant Director for Budget Analysis