

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 3486

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## AN ACT

To implement the provisions of the Hague Agreement and  
the Patent Law Treaty.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Patent Law Treaties  
3 Implementation Act of 2012”.

4 **TITLE I—HAGUE AGREEMENT**  
5 **CONCERNING INTER-**  
6 **NATIONAL REGISTRATION OF**  
7 **INDUSTRIAL DESIGNS**

8 **SEC. 101. THE HAGUE AGREEMENT CONCERNING INTER-**  
9 **NATIONAL REGISTRATION OF INDUSTRIAL**  
10 **DESIGNS.**

11 (a) IN GENERAL.—Title 35, United States Code, is  
12 amended by adding at the end the following:

13 **“PART V—THE HAGUE AGREEMENT CONCERNING**  
14 **INTERNATIONAL REGISTRATION OF INDUS-**  
15 **TRIAL DESIGNS**

|  |      |
|--|------|
| “CHAPTER                                     | Sec. |
| “38. International design applications ..... | 381. |

16 **“CHAPTER 38—INTERNATIONAL DESIGN**  
17 **APPLICATIONS**

- “Sec.
- “381. Definitions.
- “382. Filing international design applications.
- “383. International design application.
- “384. Filing date.
- “385. Effect of international design application.
- “386. Right of priority.
- “387. Relief from prescribed time limits.
- “388. Withdrawn or abandoned international design application.
- “389. Examination of international design application.
- “390. Publication of international design application.

1 **“§ 381. Definitions**

2 “(a) IN GENERAL.—When used in this part, unless  
3 the context otherwise indicates—

4 “(1) the term ‘treaty’ means the Geneva Act of  
5 the Hague Agreement Concerning the International  
6 Registration of Industrial Designs adopted at Gene-  
7 va on July 2, 1999;

8 “(2) the term ‘regulations’—

9 “(A) when capitalized, means the Common  
10 Regulations under the treaty; and

11 “(B) when not capitalized, means the regu-  
12 lations established by the Director under this  
13 title;

14 “(3) the terms ‘designation’, ‘designating’, and  
15 ‘designate’ refer to a request that an international  
16 registration have effect in a Contracting Party to  
17 the treaty;

18 “(4) the term ‘International Bureau’ means the  
19 international intergovernmental organization that is  
20 recognized as the coordinating body under the treaty  
21 and the Regulations;

22 “(5) the term ‘effective registration date’ means  
23 the date of international registration determined by  
24 the International Bureau under the treaty;

1           “(6) the term ‘international design application’  
2 means an application for international registration;  
3 and

4           “(7) the term ‘international registration’ means  
5 the international registration of an industrial design  
6 filed under the treaty.

7           “(b) RULE OF CONSTRUCTION.—Terms and expres-  
8 sions not defined in this part are to be taken in the sense  
9 indicated by the treaty and the Regulations.

#### 10 **“§ 382. Filing international design applications**

11           “(a) IN GENERAL.—Any person who is a national of  
12 the United States, or has a domicile, a habitual residence,  
13 or a real and effective industrial or commercial establish-  
14 ment in the United States, may file an international de-  
15 sign application by submitting to the Patent and Trade-  
16 mark Office an application in such form, together with  
17 such fees, as may be prescribed by the Director.

18           “(b) REQUIRED ACTION.—The Patent and Trade-  
19 mark Office shall perform all acts connected with the dis-  
20 charge of its duties under the treaty, including the collec-  
21 tion of international fees and transmittal thereof to the  
22 International Bureau. Subject to chapter 17, international  
23 design applications shall be forwarded by the Patent and  
24 Trademark Office to the International Bureau, upon pay-  
25 ment of a transmittal fee.

1       “(c) APPLICABILITY OF CHAPTER 16.—Except as  
2 otherwise provided in this chapter, the provisions of chap-  
3 ter 16 shall apply.

4       “(d) APPLICATION FILED IN ANOTHER COUNTRY.—  
5 An international design application on an industrial design  
6 made in this country shall be considered to constitute the  
7 filing of an application in a foreign country within the  
8 meaning of chapter 17 if the international design applica-  
9 tion is filed—

10           “(1) in a country other than the United States;

11           “(2) at the International Bureau; or

12           “(3) with an intergovernmental organization.

13 **“§ 383. International design application**

14       “In addition to any requirements pursuant to chapter  
15 16, the international design application shall contain—

16           “(1) a request for international registration  
17 under the treaty;

18           “(2) an indication of the designated Con-  
19 tracting Parties;

20           “(3) data concerning the applicant as pre-  
21 scribed in the treaty and the Regulations;

22           “(4) copies of a reproduction or, at the choice  
23 of the applicant, of several different reproductions of  
24 the industrial design that is the subject of the inter-  
25 national design application, presented in the number

1 and manner prescribed in the treaty and the Regula-  
2 tions;

3 “(5) an indication of the product or products  
4 that constitute the industrial design or in relation to  
5 which the industrial design is to be used, as pre-  
6 scribed in the treaty and the Regulations;

7 “(6) the fees prescribed in the treaty and the  
8 Regulations; and

9 “(7) any other particulars prescribed in the  
10 Regulations.

11 **“§ 384. Filing date**

12 “(a) IN GENERAL.—Subject to subsection (b), the fil-  
13 ing date of an international design application in the  
14 United States shall be the effective registration date. Not-  
15 withstanding the provisions of this part, any international  
16 design application designating the United States that oth-  
17 erwise meets the requirements of chapter 16 may be treat-  
18 ed as a design application under chapter 16.

19 “(b) REVIEW.—An applicant may request review by  
20 the Director of the filing date of the international design  
21 application in the United States. The Director may deter-  
22 mine that the filing date of the international design appli-  
23 cation in the United States is a date other than the effec-  
24 tive registration date. The Director may establish proce-  
25 dures, including the payment of a surcharge, to review the

1 filing date under this section. Such review may result in  
2 a determination that the application has a filing date in  
3 the United States other than the effective registration  
4 date.

5 **“§ 385. Effect of international design application**

6 “An international design application designating the  
7 United States shall have the effect, for all purposes, from  
8 its filing date determined in accordance with section 384,  
9 of an application for patent filed in the Patent and Trade-  
10 mark Office pursuant to chapter 16.

11 **“§ 386. Right of priority**

12 “(a) NATIONAL APPLICATION.—In accordance with  
13 the conditions and requirements of subsections (a)  
14 through (d) of section 119 and section 172, a national  
15 application shall be entitled to the right of priority based  
16 on a prior international design application that designated  
17 at least 1 country other than the United States.

18 “(b) PRIOR FOREIGN APPLICATION.—In accordance  
19 with the conditions and requirements of subsections (a)  
20 through (d) of section 119 and section 172 and the treaty  
21 and the Regulations, an international design application  
22 designating the United States shall be entitled to the right  
23 of priority based on a prior foreign application, a prior  
24 international application as defined in section 351(c) des-  
25 ignating at least 1 country other than the United States,

1 or a prior international design application designating at  
2 least 1 country other than the United States.

3 “(c) PRIOR NATIONAL APPLICATION.—In accordance  
4 with the conditions and requirements of section 120, an  
5 international design application designating the United  
6 States shall be entitled to the benefit of the filing date  
7 of a prior national application, a prior international appli-  
8 cation as defined in section 351(c) designating the United  
9 States, or a prior international design application desig-  
10 nating the United States, and a national application shall  
11 be entitled to the benefit of the filing date of a prior inter-  
12 national design application designating the United States.  
13 If any claim for the benefit of an earlier filing date is  
14 based on a prior international application as defined in  
15 section 351(c) which designated but did not originate in  
16 the United States or a prior international design applica-  
17 tion which designated but did not originate in the United  
18 States, the Director may require the filing in the Patent  
19 and Trademark Office of a certified copy of such applica-  
20 tion together with a translation thereof into the English  
21 language, if it was filed in another language.

22 **“§ 387. Relief from prescribed time limits**

23 “An applicant’s failure to act within prescribed time  
24 limits in connection with requirements pertaining to an  
25 international design application may be excused as to the



1 United States upon a showing satisfactory to the Director  
2 of unintentional delay and under such conditions, includ-  
3 ing a requirement for payment of the fee specified in sec-  
4 tion 41(a)(7), as may be prescribed by the Director.

5 **“§ 388. Withdrawn or abandoned international design**  
6 **application**

7 “Subject to sections 384 and 387, if an international  
8 design application designating the United States is with-  
9 drawn, renounced or canceled or considered withdrawn or  
10 abandoned, either generally or as to the United States,  
11 under the conditions of the treaty and the Regulations,  
12 the designation of the United States shall have no effect  
13 after the date of withdrawal, renunciation, cancellation, or  
14 abandonment and shall be considered as not having been  
15 made, unless a claim for benefit of a prior filing date  
16 under section 386(c) was made in a national application,  
17 or an international design application designating the  
18 United States, or a claim for benefit under section 365(c)  
19 was made in an international application designating the  
20 United States, filed before the date of such withdrawal,  
21 renunciation, cancellation, or abandonment. However,  
22 such withdrawn, renounced, canceled, or abandoned inter-  
23 national design application may serve as the basis for a  
24 claim of priority under subsections (a) and (b) of section

1 386, or under subsection (a) or (b) of section 365, if it  
2 designated a country other than the United States.

3 **“§ 389. Examination of international design applica-**  
4 **tion**

5 “(a) IN GENERAL.—The Director shall cause an ex-  
6 amination to be made pursuant to this title of an inter-  
7 national design application designating the United States.

8 “(b) APPLICABILITY OF CHAPTER 16.—All questions  
9 of substance and, unless otherwise required by the treaty  
10 and Regulations, procedures regarding an international  
11 design application designating the United States shall be  
12 determined as in the case of applications filed under chap-  
13 ter 16.

14 “(c) FEES.—The Director may prescribe fees for fil-  
15 ing international design applications, for designating the  
16 United States, and for any other processing, services, or  
17 materials relating to international design applications, and  
18 may provide for later payment of such fees, including sur-  
19 charges for later submission of fees.

20 “(d) ISSUANCE OF PATENT.—The Director may issue  
21 a patent based on an international design application des-  
22 ignating the United States, in accordance with the provi-  
23 sions of this title. Such patent shall have the force and  
24 effect of a patent issued on an application filed under  
25 chapter 16.

1 **“§ 390. Publication of international design applica-**  
 2 **tion**

3 “The publication under the treaty of an international  
 4 design application designating the United States shall be  
 5 deemed a publication under section 122(b).”.

6 (b) CONFORMING AMENDMENT.—The table of parts  
 7 at the beginning of title 35, United States Code, is amend-  
 8 ed by adding at the end the following:

“V. The Hague Agreement concerning international registration of in-  
 dustrial designs ..... 401”.

9 **SEC. 102. CONFORMING AMENDMENTS.**

10 Title 35, United States Code, is amended—

11 (1) in section 100(i)(1)(B) (as amended by the  
 12 Leahy-Smith America Invents Act (Public Law 112–  
 13 29; 125 Stat. 284)), by striking “right of priority  
 14 under section 119, 365(a), or 365(b) or to the ben-  
 15 efit of an earlier filing date under section 120, 121,  
 16 or 365(c)” and inserting “right of priority under  
 17 section 119, 365(a), 365(b), 386(a), or 386(b) or to  
 18 the benefit of an earlier filing date under section  
 19 120, 121, 365(c), or 386(c)”;

20 (2) in section 102(d)(2) (as amended by the  
 21 Leahy-Smith America Invents Act (Public Law 112–  
 22 29; 125 Stat. 284)), by striking “to claim a right of  
 23 priority under section 119, 365(a), or 365(b), or to  
 24 claim the benefit of an earlier filing date under sec-

1       tion 120, 121, or 365(c)” and inserting “to claim a  
2       right of priority under section 119, 365(a), 365(b),  
3       386(a), or 386(b), or to claim the benefit of an ear-  
4       lier filing date under section 120, 121, 365(c), or  
5       386(c)”;

6           (3) in section 111(b)(7)—

7               (A) by striking “section 119 or 365(a)”  
8               and inserting “section 119, 365(a), or 386(a)”;  
9               and

10              (B) by striking “section 120, 121, or  
11              365(c)” and inserting “section 120, 121,  
12              365(c), or 386(c)”;

13           (4) in section 115(g)(1) (as amended by the  
14       Leahy-Smith America Invents Act (Public Law 112–  
15       29; 125 Stat. 284)), by striking “section 120, 121,  
16       or 365(c)” and inserting “section 120, 121, 365(c),  
17       or 386(c)”;

18           (5) in section 120, in the first sentence, by  
19       striking “section 363” and inserting “section 363 or  
20       385”;

21           (6) in section 154—

22               (A) in subsection (a)—

23                   (i) in paragraph (2), by striking “sec-  
24                   tion 120, 121, or 365(c)” and inserting  
25                   “section 120, 121, 365(c), or 386(c)”;

1 (ii) in paragraph (3), by striking “sec-  
2 tion 119, 365(a), or 365(b)” and inserting  
3 “section 119, 365(a), 365(b), 386(a), or  
4 386(b)”;

5 (B) in subsection (d)(1), by inserting “or  
6 an international design application filed under  
7 the treaty defined in section 381(a)(1) desig-  
8 nating the United States under Article 5 of  
9 such treaty” after “Article 21(2)(a) of such  
10 treaty”;

11 (7) in section 173, by striking “fourteen years”  
12 and inserting “15 years”;

13 (8) in section 365(c)—

14 (A) in the first sentence, by striking “or a  
15 prior international application designating the  
16 United States” and inserting “, a prior inter-  
17 national application designating the United  
18 States, or a prior international design applica-  
19 tion as defined in section 381(a)(6) designating  
20 the United States”;

21 (B) in the second sentence, by inserting  
22 “or a prior international design application as  
23 defined in section 381(a)(6) which designated  
24 but did not originate in the United States”

1 after “did not originate in the United States”;

2 and

3 (9) in section 366—

4 (A) in the first sentence, by striking “un-  
5 less a claim” and all that follows through  
6 “withdrawal.” and inserting “unless a claim for  
7 benefit of a prior filing date under section  
8 365(c) of this section was made in a national  
9 application, or an international application des-  
10 ignating the United States, or a claim for ben-  
11 efit under section 386(c) was made in an inter-  
12 national design application designating the  
13 United States, filed before the date of such  
14 withdrawal.”; and

15 (B) by striking the second sentence and in-  
16 serting the following: “However, such with-  
17 drawn international application may serve as  
18 the basis for a claim of priority under section  
19 365 (a) and (b), or under section 386 (a) or  
20 (b), if it designated a country other than the  
21 United States.”.

22 **SEC. 103. EFFECTIVE DATE.**

23 (a) IN GENERAL.—The amendments made by this  
24 title shall take effect on the later of—

1           (1) the date that is 1 year after the date of the  
2 enactment of this Act; or

3           (2) the date of entry into force of the treaty  
4 with respect to the United States.

5 (b) APPLICABILITY OF AMENDMENTS.—

6           (1) IN GENERAL.—Subject to paragraph (2),  
7 the amendments made by this title shall apply only  
8 to international design applications, international  
9 applications, and national applications filed on and  
10 after the effective date set forth in subsection (a),  
11 and patents issuing thereon.

12           (2) EXCEPTION.—Sections 100(i) and 102(d) of  
13 title 35, United States Code, as amended by this  
14 title, shall not apply to an application, or any patent  
15 issuing thereon, unless it is described in section  
16 3(n)(1) of the Leahy-Smith America Invents Act (35  
17 U.S.C. 100 note).

18 (c) DEFINITIONS.—For purposes of this section—

19           (1) the terms “treaty” and “international de-  
20 sign application” have the meanings given those  
21 terms in section 381 of title 35, United States Code,  
22 as added by this title;

23           (2) the term “international application” has the  
24 meaning given that term in section 351(c) of title  
25 35, United States Code; and

1           (3) the term “national application” means “na-  
2           tional application” within the meaning of chapter 38  
3           of title 35, United States Code, as added by this  
4           title.

5           **TITLE II—PATENT LAW TREATY**  
6           **IMPLEMENTATION**

7           **SEC. 201. PROVISIONS TO IMPLEMENT THE PATENT LAW**  
8           **TREATY.**

9           (a) APPLICATION FILING DATE.—Section 111 of title  
10          35, United States Code, is amended—

11           (1) in subsection (a), by striking paragraphs  
12          (3) and (4) and inserting the following:

13           “(3) FEE, OATH OR DECLARATION, AND  
14          CLAIMS.—The application shall be accompanied by  
15          the fee required by law. The fee, oath or declaration,  
16          and 1 or more claims may be submitted after the fil-  
17          ing date of the application, within such period and  
18          under such conditions, including the payment of a  
19          surcharge, as may be prescribed by the Director.  
20          Upon failure to submit the fee, oath or declaration,  
21          and 1 or more claims within such prescribed period,  
22          the application shall be regarded as abandoned.

23           “(4) FILING DATE.—The filing date of an ap-  
24          plication shall be the date on which a specification,



1 with or without claims, is received in the United  
2 States Patent and Trademark Office.”;

3 (2) in subsection (b), by striking paragraphs  
4 (3) and (4) and inserting the following:

5 “(3) FEE.—The application shall be accom-  
6 panied by the fee required by law. The fee may be  
7 submitted after the filing date of the application,  
8 within such period and under such conditions, in-  
9 cluding the payment of a surcharge, as may be pre-  
10 scribed by the Director. Upon failure to submit the  
11 fee within such prescribed period, the application  
12 shall be regarded as abandoned.

13 “(4) FILING DATE.—The filing date of a provi-  
14 sional application shall be the date on which a speci-  
15 fication, with or without claims, is received in the  
16 United States Patent and Trademark Office.”; and

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

18 “(c) PRIOR FILED APPLICATION.—Notwithstanding  
19 the provisions of subsection (a), the Director may pre-  
20 scribe the conditions, including the payment of a sur-  
21 charge, under which a reference made upon the filing of  
22 an application under subsection (a) to a previously filed  
23 application, specifying the previously filed application by  
24 application number and the intellectual property authority  
25 or country in which the application was filed, shall con-

1 stitute the specification and any drawings of the subse-  
 2 quent application for purposes of a filing date. A copy of  
 3 the specification and any drawings of the previously filed  
 4 application shall be submitted within such period and  
 5 under such conditions as may be prescribed by the Direc-  
 6 tor. A failure to submit the copy of the specification and  
 7 any drawings of the previously filed application within the  
 8 prescribed period shall result in the application being re-  
 9 garded as abandoned. Such application shall be treated as  
 10 having never been filed, unless—

11           “(1) the application is revived under section 27;

12           and

13           “(2) a copy of the specification and any draw-  
 14 ings of the previously filed application are submitted  
 15 to the Director.”.

16           (b) RELIEF IN RESPECT OF TIME LIMITS AND REIN-  
 17 STATEMENT OF RIGHTS.—

18           (1) IN GENERAL.—Chapter 2 of title 35, United  
 19 States Code, is amended by adding at the end the  
 20 following:

21 **“§ 27. Revival of applications; reinstatement of reex-  
 22 amination proceedings**

23           “The Director may establish procedures, including  
 24 the requirement for payment of the fee specified in section  
 25 41(a)(7), to revive an unintentionally abandoned applica-

1 tion for patent, accept an unintentionally delayed payment  
2 of the fee for issuing each patent, or accept an uninten-  
3 tionally delayed response by the patent owner in a reexam-  
4 ination proceeding, upon petition by the applicant for pat-  
5 ent or patent owner.”.

6 (2) CONFORMING AMENDMENT.—The table of  
7 sections for chapter 2 of title 35, United States  
8 Code, is amended by adding at the end the fol-  
9 lowing:

“27. Revival of applications; reinstatement of reexamination proceedings.”.

10 (c) RESTORATION OF PRIORITY RIGHT.—Title 35,  
11 United States Code, is amended—

12 (1) in section 119—

13 (A) in subsection (a)—

14 (i) by striking “twelve” and inserting  
15 “12”; and

16 (ii) by adding at the end the fol-  
17 lowing: “The Director may prescribe regu-  
18 lations, including the requirement for pay-  
19 ment of the fee specified in section  
20 41(a)(7), pursuant to which the 12-month  
21 period set forth in this subsection may be  
22 extended by an additional 2 months if the  
23 delay in filing the application in this coun-  
24 try within the 12-month period was unin-  
25 tentional.”; and

1 (B) in subsection (e)—

2 (i) in paragraph (1)—

3 (I) by inserting after the first  
4 sentence the following: “The Director  
5 may prescribe regulations, including  
6 the requirement for payment of the  
7 fee specified in section 41(a)(7), pur-  
8 suant to which the 12-month period  
9 set forth in this subsection may be ex-  
10 tended by an additional 2 months if  
11 the delay in filing the application  
12 under section 111(a) or section 363  
13 within the 12-month period was unin-  
14 tentional.”; and

15 (II) in the last sentence—

16 (aa) by striking “including  
17 the payment of a surcharge” and  
18 inserting “including the payment  
19 of the fee specified in section  
20 41(a)(7)”; and

21 (bb) by striking “during the  
22 pendency of the application”; and

23 (ii) in paragraph (3), by adding at the  
24 end the following: “For an application for  
25 patent filed under section 363 in a Receiv-

1           ing Office other than the Patent and  
2           Trademark Office, the 12-month and addi-  
3           tional 2-month period set forth in this sub-  
4           section shall be extended as provided under  
5           the treaty and Regulations as defined in  
6           section 351.”; and

7           (2) in section 365(b), by adding at the end the  
8           following: “The Director may establish procedures,  
9           including the requirement for payment of the fee  
10          specified in section 41(a)(7), to accept an uninten-  
11          tionally delayed claim for priority under the treaty  
12          and the Regulations, and to accept a priority claim  
13          that pertains to an application that was not filed  
14          within the priority period specified in the treaty and  
15          Regulations, but was filed within the additional 2-  
16          month period specified under section 119(a) or the  
17          treaty and Regulations.”.

18          (d) RECORDATION OF OWNERSHIP INTERESTS.—  
19          Section 261 of title 35, United States Code, is amended—

20               (1) in the first undesignated paragraph by add-  
21               ing at the end the following: “The Patent and  
22               Trademark Office shall maintain a register of inter-  
23               ests in patents and applications for patents and shall  
24               record any document related thereto upon request,  
25               and may require a fee therefor.”; and

1           (2) in the fourth undesignated paragraph by  
2           striking “An assignment” and inserting “An interest  
3           that constitutes an assignment”.

4 **SEC. 202. CONFORMING AMENDMENTS.**

5           (a) IN GENERAL.—Section 171 of title 35, United  
6 States Code, is amended—

7           (1) by striking “Whoever” and inserting “(a)  
8           IN GENERAL.—Whoever”;

9           (2) by striking “The provisions” and inserting  
10          “(b) APPLICABILITY OF THIS TITLE.—The provi-  
11          sions”; and

12          (3) by adding at the end the following:

13          “(c) FILING DATE.—The filing date of an application  
14 for patent for design shall be the date on which the speci-  
15 fication as prescribed by section 112 and any required  
16 drawings are filed.”.

17          (b) RELIEF IN RESPECT OF TIME LIMITS AND REIN-  
18 STATEMENT OF RIGHT.—Title 35, United States Code, is  
19 amended—

20          (1) in section 41—

21                  (A) in subsection (a), by striking para-  
22                  graph (7) and inserting the following:

23                  “(7) REVIVAL FEES.—On filing each petition  
24 for the revival of an abandoned application for a  
25 patent, for the delayed payment of the fee for

1 issuing each patent, for the delayed response by the  
2 patent owner in any reexamination proceeding, for  
3 the delayed payment of the fee for maintaining a  
4 patent in force, for the delayed submission of a pri-  
5 ority or benefit claim, or for the extension of the 12-  
6 month period for filing a subsequent application,  
7 \$1,700.00. The Director may refund any part of the  
8 fee specified in this paragraph, in exceptional cir-  
9 cumstances as determined by the Director”;

10 (B) in subsection (c), by striking para-  
11 graph (1) and inserting the following:

12 “(1) ACCEPTANCE.—The Director may accept  
13 the payment of any maintenance fee required by  
14 subsection (b) after the 6-month grace period if the  
15 delay is shown to the satisfaction of the Director to  
16 have been unintentional. The Director may require  
17 the payment of the fee specified in subsection (a)(7)  
18 as a condition of accepting payment of any mainte-  
19 nance fee after the 6-month grace period. If the Di-  
20 rector accepts payment of a maintenance fee after  
21 the 6-month grace period, the patent shall be consid-  
22 ered as not having expired at the end of the grace  
23 period.”;

24 (2) in section 119(b)(2), in the second sentence,  
25 by striking “including the payment of a surcharge”

1 and inserting “including the requirement for pay-  
2 ment of the fee specified in section 41(a)(7)”;

3 (3) in section 120, in the fourth sentence, by  
4 striking “including the payment of a surcharge” and  
5 inserting “including the requirement for payment of  
6 the fee specified in section 41(a)(7)”;

7 (4) in section 122(b)(2)(B)(iii), in the second  
8 sentence, by striking “, unless it is shown” and all  
9 that follows through “unintentional”;

10 (5) in section 133, by striking “, unless it be  
11 shown” and all that follows through “unavoidable”;

12 (6) by striking section 151 and inserting the  
13 following:

14 **“§ 151. Issue of patent**

15 “(a) IN GENERAL.—If it appears that an applicant  
16 is entitled to a patent under the law, a written notice of  
17 allowance of the application shall be given or mailed to  
18 the applicant. The notice shall specify a sum, constituting  
19 the issue fee and any required publication fee, which shall  
20 be paid within 3 months thereafter.

21 “(b) EFFECT OF PAYMENT.—Upon payment of this  
22 sum the patent may issue, but if payment is not timely  
23 made, the application shall be regarded as abandoned.”;

24 (7) in section 361, by striking subsection (c)  
25 and inserting the following:



1 “(c) International applications filed in the Patent and  
2 Trademark Office shall be filed in the English language,  
3 or an English translation shall be filed within such later  
4 time as may be fixed by the Director.”;

5 (8) in section 364, by striking subsection (b)  
6 and inserting the following:

7 “(b) An applicant’s failure to act within prescribed  
8 time limits in connection with requirements pertaining to  
9 an international application may be excused as provided  
10 in the treaty and the Regulations.”; and

11 (9) in section 371(d), in the third sentence, by  
12 striking “, unless it be shown to the satisfaction of  
13 the Director that such failure to comply was un-  
14 avoidable”.

15 **SEC. 203. EFFECTIVE DATE.**

16 (a) IN GENERAL.—The amendments made by this  
17 title—

18 (1) shall take effect on the date that is 1 year  
19 after the date of the enactment of this Act; and

20 (2) shall apply to—

21 (A) any patent issued before, on, or after  
22 the effective date set forth in paragraph (1);  
23 and

1           (B) any application for patent that is  
2           pending on or filed after the effective date set  
3           forth in paragraph (1).

4       (b) EXCEPTIONS.—

5           (1) SECTION 201(a).—The amendments made  
6           by section 201(a) shall apply only to applications  
7           that are filed on or after the effective date set forth  
8           in subsection (a)(1).

9           (2) PATENTS IN LITIGATION.—The amend-  
10          ments made by this title shall have no effect with re-  
11          spect to any patent that is the subject of litigation  
12          in an action commenced before the effective date set  
13          forth in subsection (a)(1).

        Passed the Senate September 22 (legislative day,  
September 21), 2012.

Attest:

*Secretary.*



112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 3486**

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**AN ACT**

To implement the provisions of the Hague Agreement and the Patent Law Treaty.