To amend the Leahy-Smith America Invents Act to extend the period during which the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office may set or adjust certain fees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. Coons (for himself and Mr. Hatch) introduced the following bill; which was read twice and referred to the Committee on

A BILL

To amend the Leahy-Smith America Invents Act to extend the period during which the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office may set or adjust certain fees, and for other purposes.

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

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Building Innovation
5 Growth through Data for Intellectual Property Act” or the
6 “BIG Data for IP Act”.

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

In this Act—

(1) the term “advanced data science analytics” means techniques, such as artificial intelligence, machine learning, and other methods of analyzing large data sets, that are used to make policy recommendations;

(2) the term “Director” means the Under Secretary of Commerce for Intellectual Property and Director of the Office;

(3) the term “Office” means the United States Patent and Trademark Office;

(4) the term “PPAC” means the Patent Public Advisory Committee of the Office; and

(5) the term “TPAC” means the Trademark Public Advisory Committee of the Office.

SEC. 3. FINDINGS.

Congress finds the following:

(1) Section 10(a) of the Leahy-Smith America Invents Act (35 U.S.C. 41 note) grants the Director the authority to “set or adjust by rule any fee established, authorized, or charged under title 35, United States Code, or the Trademark Act of 1946 . . . . to recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents (in the case of patent fees) and
trademarks (in the case of trademark fees), including administrative costs of the Office”.

(2) The Office has worked with PPAC, TPAC, and the public to engage in a fee-setting process that is transparent, as envisioned by the Leahy-Smith America Invents Act (Public Law 112–29; 125 Stat. 284).

(3) Since 2011, the Office has used this fee-setting authority to implement a sustainable funding model with an operating reserve, which allows the Office to invest in long-term projects, including crucial infrastructure upgrades that are necessary for a 21st century intellectual property office, regardless of whether there are temporary fluctuations in patent or trademark filings.

(4) The infrastructure upgrades described in paragraph (3) include the use of advanced data science analytics, which will help to—

(A) improve productivity and quality with respect to the issuance of patents and trademarks; and

(B) ensure—

(i) the consistent application of laws by nearly 9,000 patent examiners and trademark examining attorneys; and
(ii) the certainty and strength of Federally-granted rights that are foundational to the economy of the United States.

SEC. 4. EXTENSION OF SUNSET.

Section 10(i)(2) of the Leahy-Smith America Invents Act (35 U.S.C. 41 note) is amended by striking “the 7-year period beginning on the date of the enactment of this Act” and inserting “the 10-year period beginning on the date of enactment of the BIG Data for IP Act”.

SEC. 5. REPORT.

Not later than 2 years after the date of enactment of this Act, the Director shall submit to Congress a report that includes—

(1) the status of the capabilities of the information technology systems of the Office with respect to—

(A) the examination of patents and trademarks; and

(B) proceedings conducted before the—

(i) Patent Trial and Appeal Board of the Office; and

(ii) Trademark Trial and Appeal Board of the Office;
(2) a 5-year plan for further modernization of the information technology systems described in paragraph (1); and

(3) an accounting of the use by the Office of advanced data science analytics, including from commercially available sources, to improve the patent and trademark examination process where appropriate, including—

(A) a description of how the Office uses advanced data science analytics with respect to the examination of patents and trademarks to—

(i) improve consistency;

(ii) detect common sources of error;

and

(iii) improve productivity;

(B) a 5-year plan for further development of advanced data science analytics for the uses described in subparagraph (A); and

(C) a description of how the findings made as a result of the uses of advanced data science analytics under subparagraph (A) shall be made available to the public on a regular basis.