



S. 3295 – A BILL TO AMEND TITLE 35, UNITED STATES CODE, AND THE TRADEMARK ACT OF 1946 TO PROVIDE THAT THE SECRETARY OF COMMERCE, IN CONSULTATION WITH THE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE, SHALL APPOINT ADMINISTRATIVE PATENT JUDGES AND ADMINISTRATIVE TRADEMARK JUDGES, AND FOR OTHER PURPOSES

FLOOR SITUATION

S. 3295 is being considered on the floor under suspension of the rules and will require a two-thirds majority vote for passage. This legislation was introduced by Senator Patrick Leahy (D-VT) on July 21, 2008. The bill passed the Senate on July 22, 2008, by unanimous consent. The legislation was referred to the House Committee on the Judiciary, but was never considered.

S. 3295 is expected to be considered on the floor of the House on July 29, 2008.

**Note: H.R. 6362, the House companion bill to S. 3295, was previously scheduled in the House on July 22, 2008, but was removed from the schedule prior to consideration.*

SUMMARY

S. 3295 transfers the authority to appoint administrative patent judges and administrative trademark judges from the Director of the U.S. Patent and Trademark Office to the Secretary of Commerce. The bill requires that the Secretary consult with the Director when making such appointments.

BACKGROUND

In 1991, the U.S. Supreme Court ruled in *Freytag v. Commissioner of the Internal Revenue Service*, that the Director of the U.S. Patent Office is not the chief official of the U.S. Patent Office and that the Office is under the authority of the Department of Commerce.

Under current law, the Director of the U.S. Patent and Trademark Office has the authority to appoint administrative patent judges and administrative trademark judges. Debate has ensued as to whether the Director has the constitutional authority to make such appointments.

COST

The Congressional Budget Office did not have a cost estimate available for S. 3295 as of July 28, 2008.

STAFF CONTACT

For questions or further information contact Justin Hanson at (202) 226-2302.