To require the Comptroller General of the United States to submit a report regarding ways to improve the patent examination process at the United States Patent and Trademark Office, and for other purposes.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To require the Comptroller General of the United States to submit a report regarding ways to improve the patent examination process at the United States Patent and Trademark Office, and for other purposes.

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 “Patent Examination and Quality Improvement Act of 2022”.

SEC. 2. DEFINITIONS.

In this Act:
(1) Advanced Data Science Analytics.—

The term “advanced data science analytics” means techniques, such as artificial intelligence, machine learning, and other methods of analyzing large data sets, that may be used to make or implement policy recommendations.

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

(3) Office.—The term “Office” means the United States Patent and Trademark Office.

SEC. 3. FINDINGS; SENSE OF CONGRESS.

(a) Findings.—Congress finds the following:

(1) Patents and other forms of intellectual property are important engines of innovation, invention, and economic growth.

(2) All people of the United States depend on clear patent rights to—

(A) secure protection of their own innovations; and

(B) enable them to avoid appropriating innovations that others have patented.

(3) Recent studies—

(A) indicate that many patents that the Office has issued do not satisfy the patent-
ability requirements of title 35, United States Code; and

(B) have shown that—

(i) the Office has limited resources;

and

(ii) the resource limitation described in clause (i) negatively affects the ability of the Office to conduct thorough and complete patent examinations.

(b) Sense of Congress.—It is the sense of Congress that Congress must do more to enable the Office to improve—

(1) the quality of patents issued by the Office;

and

(2) the patent examination process at the Office.

SEC. 4. GAO REPORT ON PATENT EXAMINATION IMPROVEMENT.

Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report—
(1) regarding how to improve the patent examination process at, and the overall quality of patents issued by, the Office;

(2) that shall—

(A) place a particular emphasis on improving the process described in paragraph (1)—

(i) with respect to the application of the conditions and requirements of sections 101, 102, 103, and 112 of title 35, United States Code, including avoiding repetitive and unduly multiplied claims; and

(ii) by more clearly defining what constitutes a clear and thorough search by a patent examiner throughout the entire patent examination process at the Office;

(B) in part, rigorously evaluate previous and current (as of the date on which the report is submitted) initiatives and pilot programs of the Office relating to the quality of patents issued by the Office, which shall include analysis of—

(i) the reasons those pilot programs—

(I) were successful;

(II) would have been successful with modifications; or
(III) had irremediable flaws; and

(ii) ways to use those pilot programs
to beneficial effect in the future;

(C) evaluate whether the Office needs to—

(i) establish—

(I) clear standards regarding
what constitutes patent quality; and

(II) patent quality metrics that—

(aa) the Office can support;

and

(bb) patent applicants and
the public can verify;

(ii) provide additional time for patent
examiners to examine patents;

(iii) align non-compliance and clear
errors with respect to the review of the
work product of patent examiners;

(iv) record examiner interviews and
place those interviews in the record, either
through audio files or automated tran-
scriptions;

(v) assign patent applications to ex-
aminers who are most qualified to examine
those applications based on—
(I) the technical background of the examiners; and

(II) the number of applications that a particular examiner has already reviewed in a similar technical area; and

(vi) establish a group that—

(I) analyzes real-world circumstances, such as practices at other agencies and in the broader scientific community; and

(II) uses information collected under subclause (I) to perform targeted reviews of certain patent applications, such as patent applications from applicants who have had scientific papers retracted; and

(D) study evidence of fraud in the patent application process, which shall include suggestions to address any such fraud, such as a task force that is similar to the task force of the Office investigating suspicious activities with respect to trademark applications; and

(3) that contains recommendations regarding ways to improve the training of patent examiners at
the Office, with a particular emphasis on improving that training with respect to—

(A) the application of the conditions and requirements of sections 101, 102, 103, and 112 of title 35, United States Code, including avoiding repetitive and unduly multiplied claims;

(B) searches performed throughout the patent examination process to ensure that the Office issues fewer unclear and invalid patent claims; and

(C) examination fields affected by emerging and complex technologies, including advanced data science analytics, to ensure that examiners are fully equipped to understand the applications of those technologies.

SEC. 5. USPTO GUIDANCE ON PATENT EXAMINATION IMPROVEMENT.

Not later than 1 year after the date on which the Comptroller General of the United States submits the report required under section 4 (referred to in this section as the “covered report”), the Director shall develop guidance for patent examiners at the Office—
(1) regarding how to improve the patent examination process at, and the overall quality of patents issued by, the Office; and

(2) that shall—

(A) place a particular emphasis on improving the process described in paragraph (1)—

(i) with respect to the application of the conditions and requirements of sections 101, 102, 103, and 112 of title 35, United States Code, including avoiding repetitive and unduly multiplied claims; and

(ii) by more clearly defining what constitutes a clear and thorough search by a patent examiner throughout the entire patent examination process at the Office; and

(B) take into consideration the findings and recommendations in the covered report.

SEC. 6. REPORT.

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

(1) an explanation of how the Office will improve the technical training of patent examiners at the Office with respect to emerging areas of technology;
(2) the status of the capabilities of the information technology systems of the Office with respect to—

(A) the examination of patents and trademarks;

(B) proceedings conducted before—

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

(ii) the Trademark Trial and Appeal Board of the Office; and

(C) the recordation of patent assignments;

(3) a 5-year plan for further modernization of the information technology systems described in paragraph (2); and

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

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

(i) ensure that patent claims have adequate support in the specifications with respect to those claims;
(ii) improve clarity, quality, and consistency;

(iii) detect common sources of error;

(iv) improve productivity; and

(v) ensure assignment of patent applications to the examiner best qualified to examine that application;

(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.