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103D CONGRESS
2D SESSION

H. R. 4307

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21 (legislative day, SEPTEMBER 12), 1994

Received

AN ACT

To amend title 35, United States Code, with respect to applications for process patents, and for certain 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 **TITLE I—PROCESS PATENT**
4 **APPLICATIONS**

5 **SECTION 101. EXAMINATION OF PROCESS PATENT APPLI-**
6 **CATIONS FOR OBVIOUSNESS.**

7 Section 103 of title 35, United States Code, is
8 amended—

1 (1) by designating the first paragraph as sub-
2 section (a);

3 (2) by designating the second paragraph as
4 subsection (c); and

5 (3) by inserting after the first paragraph the
6 following:

7 “(b)(1) Notwithstanding subsection (a), and upon
8 timely election by the applicant for patent to proceed
9 under this subsection, a process using or resulting in a
10 composition of matter that is novel under section 102 and
11 nonobvious under subsection (a) of this section shall be
12 considered nonobvious if—

13 “(A) claims to the process and the composition
14 of matter are contained in either the same applica-
15 tion for patent or in separate applications having the
16 same effective filing date; and

17 “(B) the composition of matter, and the process
18 at the time it was invented, were owned by the same
19 person or subject to an obligation of assignment to
20 the same person.

21 “(2) A patent issued on a process under paragraph
22 (1)—

23 “(A) shall also contain the claims to the com-
24 position of matter used in or made by that process,
25 or

1 “(B) shall, if such composition of matter is
2 claimed in another patent, be set to expire on the
3 same date as such other patent, notwithstanding
4 section 154.”.

5 **SEC. 102. PRESUMPTION OF VALIDITY; DEFENSES.**

6 Section 282 of title 35, United States Code, is
7 amended by inserting after the second sentence of the first
8 paragraph the following: “Notwithstanding the preceding
9 sentence, if a claim to a composition of matter is held in-
10 valid and that claim was the basis of a determination of
11 nonobviousness under section 103(b)(1), the process shall
12 no longer be considered nonobvious solely on the basis of
13 section 103(b)(1).”.

14 **SEC. 103. EFFECTIVE DATE.**

15 The amendments made by section 101 shall apply to
16 any application for patent filed on or after the date of
17 the enactment of this Act and to any application for pat-
18 ent pending on such date of enactment, including (in ei-
19 ther case) an application for the reissue of a patent.

20 **TITLE II—COPYRIGHT REFORM**

21 **SEC. 201. SHORT TITLE.**

22 This Act may be cited as the “Copyright Reform Act
23 of 1993”.

1 **SEC. 202. DEPOSIT OF COPIES OR PHONORECORDS FOR**
2 **LIBRARY OF CONGRESS.**

3 Section 407 of title 17, United States Code, is
4 amended as follows:

5 (1) Subsection (a) is amended by striking “(a)”
6 and all that follows through “publication—” and in-
7 serting the following:

8 “(a) **REQUIRED DEPOSITS.**—Except as provided in
9 subsection (c), the owner of copyright in a work or of the
10 exclusive right of publication of a work in the United
11 States shall deposit, after the earliest date of such publica-
12 tion—”.

13 (2) Subsection (b) is amended—

14 (A) by inserting “**DEPOSIT IN COPYRIGHT**
15 **OFFICE.—**” after “(b)”;

16 (B) by adding at the end the following: “A
17 deposit made under this section may be used to
18 satisfy the deposit requirements of section
19 408.”.

20 (3) Subsection (c) is amended—

21 (A) by inserting “**REGULATIONS.—**” after
22 “(c)”;

23 (B) by striking “**Register of Copyrights**”
24 and inserting “**Librarian of Congress**”.

25 (4) Subsection (d) is amended—

1 (A) by redesignating paragraphs (1), (2),
2 and (3) as subparagraphs (A), (B), and (C), re-
3 spectively;

4 (B) by striking “(d) At any time after pub-
5 lication of a work as provided by subsection
6 (a)” and inserting the following:

7 “(d) PROCEDURES.—(1) During November of each
8 year, the Librarian of Congress shall publish in the Fed-
9 eral Register a statement of the categories of works of
10 which the Library of Congress wishes to acquire copies
11 or phonorecords under this section during the next cal-
12 endar year. The Librarian shall review such statement an-
13 nually in light of the changes in the Library’s policies and
14 procedures, changes in technology, and changes in pat-
15 terns of publication. The statement shall also describe—

16 “(A) the types of works of which only one copy
17 or phonorecord need be deposited;

18 “(B) the types of works for which the deposit
19 requirements may be fulfilled by placing the Library
20 of Congress on a subscription list; and

21 “(C) the categories of works which are exempt
22 under subsection (c) from the deposit requirements.

23 “(2) At any time after publication in the United
24 States of a work or body of works”;

1 (C) by striking “Register of Copyrights”
2 and inserting “Librarian of Congress”;

3 (D) by inserting after the first sentence
4 the following: “Such demand shall specify a
5 date for compliance with the demand.”;

6 (E) by inserting “in a civil action” after
7 “are liable”;

8 (F) in subparagraph (B) (as redesignated
9 by subparagraph (A) of this paragraph) by
10 striking “cost of” and inserting “cost to”;

11 (G) in subparagraph (C) (as redesignated
12 by subparagraph (A) of this paragraph) by
13 striking “clauses (1) and (2)” and inserting
14 “subparagraphs (A) and (B)”;

15 (H) by adding after subparagraph (C) (as
16 so redesignated) the following:

17 “In addition to the penalties set forth in subparagraphs
18 (A), (B), and (C), the person against whom an action is
19 brought under this paragraph shall be liable in such action
20 for all costs of the United States in pursuing the demand,
21 including an amount equivalent to a reasonable attorney’s
22 fee.”.

23 (5) Subsection (e) is amended—

24 (A) by inserting “TRANSMISSION PRO-
25 GRAMS.—” after “(e)”;

1 (B) by striking “Register of Copyrights
2 shall, after consulting with the Librarian of
3 Congress and other interested organizations
4 and officials,” and inserting “Librarian of Con-
5 gress shall, after consulting with interested or-
6 ganizations and officials,”; and

7 (C) in paragraph (2) by striking “Register
8 of Copyrights” and inserting “Librarian of
9 Congress”.

10 (6) Section 407 of title 17, United States Code,
11 is further amended by adding at the end the follow-
12 ing:

13 “(f) OBLIGATION TO MAKE DEPOSITS.—Imme-
14 diately upon the publication in the United States of any
15 work in which copyright subsists under this title, it shall
16 be the obligation of the persons identified in subsection
17 (a) with respect to that work, subject to the requirements
18 and exceptions specified in this section, to deposit, for the
19 use or disposition of the Library of Congress, the copies
20 or phonorecords specified in such subsection. The obliga-
21 tion to make such deposit arises without any prior notifi-
22 cation or demand for compliance with subsection (a).

23 “(g) RECORDS OF DEPOSITS.—The Librarian of
24 Congress shall establish and maintain public records of

1 the receipt of copies and phonorecords deposited under
2 this section.

3 “(h) DATABASE OF DEPOSIT RECORDS.—The Li-
4 brarian of Congress shall establish and maintain an elec-
5 tronic database containing its records of all deposits made
6 under this section on and after October 1, 1995, and shall
7 make such database available to the public through one
8 or more international information networks.

9 “(i) DELEGATION AUTHORITY.—The Librarian of
10 Congress may delegate to the Register of Copyrights or
11 other officer or employee of the Library of Congress any
12 of the Librarian’s responsibilities under this section.”.

13 **SEC. 203. COPYRIGHT REGISTRATION IN GENERAL.**

14 Section 408 of title 17, United States Code, is
15 amended—

16 (1) in subsection (c)—

17 (A) in paragraph (1) by adding at the end
18 the following: “The Register is also authorized
19 to specify by regulation classes of material in
20 which registration may be made without deposit
21 of any copy or phonorecord, in cases in which
22 the Register determines that the purposes of
23 examination, registration, and deposit can be
24 adequately served by deposit of descriptive ma-

1 terial only, or by a written obligation to deposit
2 copies or phonorecords at a later date.”; and

3 (B) in paragraph (2) by striking “periodi-
4 cals, including newspapers” and all that follows
5 through the end of subparagraph (B) and in-
6 serting “collective works, including periodicals,
7 published within a 5-year period, on the basis
8 of a single deposit and application and upon
9 payment of any special registration fee imposed
10 under section 708(a)(10), if the application
11 identifies each work separately, including the
12 collective work containing it and its date of first
13 publication.”; and

14 (2) by adding at the end the following:

15 “(f) COPYRIGHT OFFICE HEARINGS.—Not later than
16 1 year after the effective date of this subsection, and at
17 1-year intervals thereafter, the Register of Copyrights
18 shall hold public hearings to consider proposals to amend
19 the regulations and practices of the Copyright Office with
20 respect to deposit of works in order to eliminate deposits
21 that are unnecessary for copyright examination or the col-
22 lections of the Library of Congress, and in order to sim-
23 plify the registration procedures.”.

1 **SEC. 204. APPLICATION FOR COPYRIGHT REGISTRATION.**

2 (a) APPLICATIONS.—Section 409 of title 17, United
3 States Code, is amended—

4 (1) by striking “The application” and inserting
5 “(a) CONTENTS OF APPLICATION.—The applica-
6 tion”;

7 (2) in paragraph (5) by inserting before the
8 semicolon the following: “, and if the document by
9 which ownership was obtained has been recorded in
10 the Copyright Office, the volume and page number
11 of such recordation”;

12 (3) by striking paragraphs (9) and (10) and in-
13 sserting the following:

14 “(9) in the case of a compilation or derivative
15 work, an identification of any preexisting work or
16 works that it is substantially based on or substan-
17 tially incorporates, and a brief, general statement of
18 the additional material covered by the copyright
19 claim being registered;

20 “(10) at the option of the applicant, names, ad-
21 dresses, and telephone numbers of persons or orga-
22 nizations that potential users of the work should
23 contact concerning permissions or licenses to use the
24 work, and any information with respect to the terms
25 of such permissions or licenses; and”;

26 (4) by adding at the end the following:

1 “(b) SHORT-FORM APPLICATION.—

2 “(1) USE OF SHORT-FORM.—The Register of
3 Copyrights shall prescribe a short-form application
4 which may be used whenever—

5 “(A) the work is by a living author;

6 “(B) the claimant is the author;

7 “(C) the work is not anonymous, pseudon-
8 ymous, or made for hire; and

9 “(D) the work as a whole, or substantial
10 portions of it, have not been previously pub-
11 lished or registered.

12 “(2) CONTENTS OF SHORT-FORM.—The short-
13 form application shall include—

14 “(A) the name and address of the author;

15 “(B) the title of the work;

16 “(C) the nationality or domicile of the au-
17 thor;

18 “(D) the year in which creation of the
19 work was completed;

20 “(E) if the work has been published, the
21 date and nation of its first publication;

22 “(F) any other information regarded by
23 the Register of Copyrights as bearing upon the
24 preparation or identification of the work or the

1 existence, ownership, or duration of the copy-
2 right; and

3 “(G) at the option of the applicant, names,
4 addresses, and telephone numbers of persons or
5 organizations that potential users of the work
6 should contact concerning permissions or li-
7 censes to use the work, and any information
8 with respect to the terms of such permissions or
9 licenses.”.

10 (b) EFFECTIVE DATE.—The amendments made by
11 this section take effect 6 months after the date of the en-
12 actment of this Act.

13 **SEC. 205. REGISTRATION OF CLAIM AND ISSUANCE OF CER-**
14 **TIFICATE.**

15 (a) DETERMINATION OF REGISTRATION.—Section
16 410 of title 17, United States Code, is amended by strik-
17 ing subsections (a) and (b) and inserting the following:

18 “(a) DETERMINATION OF REGISTER.—If, after ex-
19 amination, the Register of Copyrights determines, in ac-
20 cordance with the provisions of this title, that there is no
21 reasonable possibility that a court would hold the work
22 for which a deposit is made pursuant to section 408(c)
23 to be copyrightable subject matter, or the Register deter-
24 mines that the claim is invalid for any other reason, the
25 Register shall refuse registration and notify the applicant

1 in writing of the reasons for such refusal. In all other
2 cases, the Register shall register the claim and issue to
3 the applicant a certificate of registration under the seal
4 of the Copyright Office. A certificate of registration issued
5 under this section extends only to those component parts
6 of the work that both are the subject matter of copyright
7 and the copyright owner has the right to claim. The cer-
8 tificate shall contain the information set forth in the appli-
9 cation, together with the number and effective date of the
10 registration.

11 “(b) APPEALS PROCEDURE.—The Register of Copy-
12 rights shall establish, and publish in the Federal Register,
13 a formal procedure by which appeals may be taken from
14 refusals under subsection (a) to register claims to copy-
15 right. Such procedure shall include a final appeal to the
16 Register.”.

17 (b) JUDICIAL PROCEEDINGS.—Subsection (c) of sec-
18 tion 410 of title 17, United States Code, is amended—

19 (1) by inserting “EVIDENTIARY WEIGHT OF
20 CERTIFICATE.—” after “(c)”; and

21 (2) by adding at the end the following: “Any
22 error or omission made in good faith or upon rea-
23 sonable reliance on counsel shall not affect the valid-
24 ity of the registration. In no case shall an incorrect

1 statement made in an application for copyright reg-
2 istration invalidate the copyright.”.

3 (c) TECHNICAL AMENDMENT.—Subsection (d) of sec-
4 tion 410 of title 17, United States Code, is amended by
5 inserting “EFFECTIVE DATE OF REGISTRATION.—” after
6 “(d)”.

7 **SEC. 206. COPYRIGHT REGISTRATION PROVISIONS.**

8 (a) REGISTRATION AND INFRINGEMENT ACTIONS.—

9 (1) Section 411 of title 17, United States Code, is amend-
10 ed—

11 (A) by amending the section caption to read as
12 follows:

13 **“§ 411. Registration and infringement actions for cer-
14 tain works”;**

15 (B) by striking subsection (a); and

16 (C) in subsection (b)—

17 (i) by striking “(b)”;

18 (ii) by striking paragraphs (1) and (2) and
19 inserting the following:

20 “(1) serves notice upon the infringer, not less
21 than 10 or more than 30 days before such fixation,
22 identifying the work and the specific time and source
23 of its first transmission; and

24 “(2) submits an application for registration of
25 the copyright claim in the work, in accordance with

1 this title, within 3 months after the first trans-
2 mission of the work.”.

3 (2) The item relating to section 411 in the table of
4 sections at the beginning of chapter 4 of title 17, United
5 States Code, is amended to read as follows:

“411. Registration and infringement actions for certain works.”.

6 (b) **REGISTRATION AS PREREQUISITE TO CERTAIN**
7 **REMEDIES FOR INFRINGEMENT.**—Section 412 of title 17,
8 United States Code, and the item relating to section 412
9 in the table of sections at the beginning of chapter 4 of
10 title 17, United States Code, are repealed.

11 **SEC. 207. REMEDIES FOR INFRINGEMENT.**

12 Section 504(c)(2) of title 17, United States Code, is
13 amended in the second sentence—

14 (1) by striking “court it” and inserting “court
15 in”;

16 (2) by inserting “or eliminate” after “reduce”;
17 and

18 (3) by striking “to a sum of not less than
19 \$200”.

20 **SEC. 208. NOTIFICATION OF FILING AND DETERMINATION**
21 **OF ACTIONS.**

22 Section 508 of title 17, United States Code, is
23 amended—

24 (1) in subsection (a)—

1 (A) in the first sentence by inserting “and
2 the party filing the action” after “United
3 States”; and

4 (B) in the second sentence by inserting
5 “and the party filing the action” after “clerk”;
6 and

7 (2) in subsection (b) by inserting “and the
8 party filing the action” after “clerk of the court”.

9 **SEC. 209. STUDY ON MANDATORY DEPOSIT.**

10 (a) SUBJECT MATTER OF STUDY.—Upon the enact-
11 ment of this Act, the Librarian of Congress shall conduct
12 a study of the mandatory deposit provisions of section 407
13 of title 17, United States Code. Such study shall place
14 particular emphasis on the implementation of section
15 407(e) of such title with respect to the deposit of trans-
16 mission programs, as well as possible alternative methods
17 of obtaining deposits if the mandatory deposit require-
18 ments of such section 407 are expanded to authorize the
19 collection, archival preservation, and use by the Library
20 of Congress of other publicly transmitted works, including
21 unpublished works such as computer programs and online
22 databases.

23 (b) CONDUCT OF STUDY.—The study under sub-
24 section (a) shall be conducted by the Register of Copy-
25 right, in consultation with any affected interests, and may

1 include the voluntary establishment, in collaboration with
2 representatives of such interests, of practical tests and
3 pilot projects.

4 (c) REPORT TO CONGRESS.—Not later than 18
5 months after the date of the enactment of this Act, the
6 Librarian shall submit to the Congress a report on the
7 results of the study conducted under this section, together
8 with recommendations the Librarian has on—

9 (1) safeguarding the interests of copyright own-
10 ers whose works are subject to the mandatory de-
11 posit provisions referred to in subsection (a);

12 (2) fulfilling the present and future needs of
13 the Library of Congress with respect to archival and
14 other collections development; and

15 (3) any legislation that may be necessary.

16 **SEC. 210. STUDIES OF EFFECTS OF REGISTRATION AND DE-**
17 **POSIT PROVISIONS.**

18 Upon the enactment of this Act, the Librarian of
19 Congress, after consultation with the Register of Copy-
20 rights and any affected interests, shall commence a study
21 of the extent to which changes in the registration and de-
22 posit provisions of title 17, United States Code, that are
23 made by this Act have affected the acquisitions of the Li-
24 brary of Congress and the operations of the copyright reg-
25 istration system, and any recommendations the Librarian

1 may have with respect to such effects. Not later than 3
2 years after the date of the enactment of this Act, the Li-
3 brarian shall submit to the Congress a report on such
4 study. The Librarian may conduct further studies de-
5 scribed in the first sentence, and report to the Congress
6 on such studies.

7 **SEC. 211. CONFORMING AMENDMENTS.**

8 (a) **DEFINITIONS.**—Section 101 of title 17, United
9 States Code, is amended by striking the definition of the
10 “country of origin” of a Berne Convention work.

11 (b) **INFRINGEMENT OF COPYRIGHT.**—Section 501(b)
12 of title 17, United States Code, is amended in the first
13 sentence by striking “, subject to the requirements of sec-
14 tion 411,”.

15 (c) **REMEDIES FOR INFRINGEMENT.**—Section 504(a)
16 of title 17, United States Code, is amended by striking
17 “Except as otherwise provided by this title, an” and in-
18 serting “An”.

19 **SEC. 212. ADDITIONAL TECHNICAL AMENDMENTS.**

20 (a) **AMENDMENTS TO TITLE 17, UNITED STATES**
21 **CODE.**—Title 17, United States Code, is amended as fol-
22 lows:

23 (1) The definition of “publicly” contained in
24 section 101 is amended—

1 (A) by striking “clause” and inserting
2 “paragraph”; and

3 (B) by striking “processs” and inserting
4 “process”.

5 (2) The definition of “registration” contained in
6 section 101 is amended by striking “412,”.

7 (3) Section 108(e) is amended in the matter
8 preceding paragraph (1) by striking “pair” and in-
9 serting “fair”.

10 (4) Section 109(b)(2)(B) is amended by strik-
11 ing “Copyright” and inserting “Copyrights”.

12 (5) Section 304(c) is amended in the matter
13 preceding paragraph (1) by striking “the subsection
14 (a)(1)(C) and inserting “subsection (a)(1)(C)”.

15 (6) Section 405(b) is amended by striking “con-
16 dition or” and inserting “condition for”.

17 (7) The item relating to section 504 in the table
18 of sections at the beginning of chapter 5 is amended
19 by striking “Damage” and inserting “Damages”.

20 (8) Section 501(a) is amended by striking “sec-
21 tions 106 through 118” and inserting “section 106”.

22 (9) Section 509(b) is amended by striking
23 “merchandise; and baggage” and inserting “mer-
24 chandise, and baggage”.

1 (10) Section 601 of title 17, United States
2 Code, is amended—

3 (A) in subsection (a) by striking
4 “nondramtic” and inserting “nondramatic”;
5 and

6 (B) in subsection (b)(1) by striking
7 “subsustantial” and inserting “substantial”.

8 (11) Section 801(b)(4) of title 17, United
9 States Code, is amended by adding a period after
10 “chapter 10”.

11 (12) The item relating to section 903 in the
12 table of sections at the beginning of chapter 9 is
13 amended to read as follows:

“903. Ownership, transfer, licensing, and recordation.”.

14 (13) Section 909(b)(1) is amended—

15 (A) by striking “force” and inserting
16 “work”; and

17 (B) by striking “sumbol” and inserting
18 “symbol”.

19 (14) Section 910(a) is amended in the second
20 sentence by striking “as used” and inserting “As
21 used”.

22 (15) Section 1006(b)(1) is amended by striking
23 “Federation Television” and inserting “Federation
24 of Television”.

25 (16) Section 1007 is amended—

1 (A) in subsection (a)(1) by striking “the
2 calendar year in which this chapter takes ef-
3 fect” and inserting “calendar year 1992”; and

4 (B) in subsection (b) by striking “the year
5 in which this section takes effect” and inserting
6 “1992”.

7 (17) The table of chapters at the beginning of
8 title 17, United States Code, is amended—

9 (A) by amending the item relating to chap-
10 ter 6 to read as follows:

“6. Manufacturing Requirements and Importation 601”;

11 (B) by amending the item relating to chap-
12 ter 9 to read as follows:

“9. Protection of Semiconductor Chip Products 901”;

13 and

14 (C) by adding at the end the following:

“10. Digital Audio Recording Devices and Media 1001”.

15 (b) OTHER PROVISIONS OF LAW.—(1) Section
16 2319(b)(1) of title 18, United States Code, is amended
17 by striking “at last” and inserting “at least”.

18 (2) Section 1(a)(1) of the Act entitled “An Act to
19 amend chapter 9 of title 17, United States Code, regard-
20 ing protection extended to semiconductor chip products of
21 foreign entities”, approved November 9, 1987 (17 U.S.C.
22 914 note), is amended by striking “originating” and insert-
23 ing “originating”.

1 (3) Section 3(a)(1)(C) of the Audio Home Recording
2 Act of 1992 is amended by striking “adding the following
3 new paragraph at the end” and inserting “inserting after
4 paragraph (3) the following new paragraph”.

5 **SEC. 213. EFFECTIVE DATE.**

6 (a) **IN GENERAL.**—Except as provided in section
7 204(b), and subject to subsection (b) of this section, this
8 Act and the amendments made by this Act take effect on
9 the date of the enactment of this Act.

10 (b) **PENDING ACTIONS.**—The amendments and re-
11 peals made by section 206 shall not affect any action
12 brought under title 17, United States Code, before the
13 date of the enactment of this Act.

Passed the House of Representatives September 20,
1994.

Attest: DONNALD K. ANDERSON,
Clerk.

19)

