

98TH CONGRESS
1ST SESSION

H. R. 4462

To amend the patent laws of the United States.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 17, 1983

Mr. KASTENMEIER (for himself and Mr. MOORHEAD) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the patent laws of the United States.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Patent and Trademark
4 Office Procedures Improvement Act of 1983".

5 SEC. 2. (a) Section 7 of title 35, United States Code, is
6 amended to read as follows:

7 "**§ 7. Board of Appeals and Interferences**

8 “(a) The examiners-in-chief shall be persons of compe-
9 tent legal knowledge and scientific ability, who shall be ap-
10 pointed under the competitive service. The Commissioner,
11 the Deputy Commissioner, the Assistant Commissioners, and

1 the examiners-in-chief shall constitute a Board of Appeals
2 and Interferences.

3 “(b) The Board of Appeals and Interferences shall, on
4 written appeal of an applicant, review adverse decisions of
5 examiners upon applications for patents and shall determine
6 priority and patentability of invention in interferences de-
7 clared pursuant to section 135(a) of this title. Each appeal
8 and interference shall be heard by at least three members of
9 the Board of Appeals and Interferences, the members to be
10 designated by the Commissioner. The Board of Appeals and
11 Interferences has sole power to grant rehearings.

12 “(c) Whenever the Commissioner considers it necessary
13 to maintain the work of the Board of Appeals and Interfer-
14 ences current, he may designate any patent examiner of the
15 primary examiner grade or higher, having the requisite
16 ability, to serve as examiner-in-chief for periods not exceed-
17 ing six months each. An examiner so designated shall be
18 qualified to act as a member of the Board of Appeals and
19 Interferences. Not more than one such primary examiner
20 shall be a member of the Board of Appeals and Interferences
21 hearing an appeal or determining an interference. The Secre-
22 tary of Commerce is authorized to fix the per annum rate of
23 basic compensation of each designated examiner-in-chief in
24 the Patent and Trademark Office at not in excess of the
25 maximum scheduled rate provided for grade GS-16 of the

1 General Schedule. The per annum rate of basic compensation
2 of each designated examiner-in-chief shall be adjusted, at the
3 close of the period for which he was designated to act as
4 examiner-in-chief, to the per annum rate of basic compensa-
5 tion which he would have been receiving at the close of such
6 period if such designation had not been made.”.

7 (b) The table of sections at the beginning of chapter 1 of
8 title 35, United States Code, is amended by inserting “and
9 Interferences” after “Board of Appeals”.

10 SEC. 3. Section 41(a)(6) of title 35, United States Code,
11 is amended by inserting “and Interferences” after each oc-
12 currence of “Board of Appeals”, and inserting “in the
13 appeal” after “oral hearing”.

14 SEC. 4. (a) Section 134 of title 35, United States Code,
15 is amended by inserting “and Interferences” after each oc-
16 currence of “Board of Appeals”.

17 (b) The table of sections at the beginning of chapter 12
18 of title 35, United States Code, is amended by inserting “and
19 Interferences” after “Board of Appeals”.

20 SEC. 5. (a) Section 135(a) of title 35, United States
21 Code, is amended to read as follows:

22 “(a) Whenever an application is made for a patent
23 which, in the opinion of the Commissioner, would interfere
24 with any pending application, or with any unexpired patent,
25 an interference may be declared and the Commissioner shall

1 give notice thereof to the applicants, or applicant and paten-
2 tee, as the case may be. The Board of Appeals and Interfer-
3 ences shall determine the priority and patentability of inven-
4 tion in interferences. Any final decision, if adverse to the
5 claim of an applicant, shall constitute the final refusal by the
6 Patent and Trademark Office of the claims involved, and the
7 Commissioner may issue a patent to the applicant who is
8 adjudged the prior inventor. A final judgment adverse to a
9 patentee from which no appeal or other review has been or
10 can be taken or had shall constitute cancellation of the claims
11 involved from the patent, and notice thereof shall be endorsed
12 on copies of the patent thereafter distributed by the Patent
13 and Trademark Office.”.

14 (b) Section 135(b) of title 35, United States Code, is
15 amended by striking out “may” and inserting in lieu thereof
16 “shall”.

17 SEC. 6. Section 141 of title 35, United States Code, is
18 amended to read as follows:

19 **“§ 141. Appeal to Court of Appeals for the Federal**
20 **Circuit**

21 “An applicant dissatisfied with the decision in an appeal
22 to the Board of Appeals and Interferences under section 134
23 of this title may appeal to the United States Court of Appeals
24 for the Federal Circuit, thereby waiving his right to proceed
25 under section 145 of this title. A party to an interference

1 dissatisfied with the decision of the Board of Appeals and
2 Interferences may appeal to the United States Court of Ap-
3 peals for the Federal Circuit, but such appeal shall be dis-
4 missed if any adverse party to such interference, within
5 twenty days after the appellant has filed notice of appeal ac-
6 cording to section 142 of this title, files notice with the Com-
7 missioner that he elects to have all further proceedings con-
8 ducted as provided in section 146 of this title. Thereupon the
9 appellant shall have thirty days thereafter within which to
10 file a civil action under section 146, in default of which the
11 decision appealed from shall govern the further proceedings
12 in the case.”.

13 SEC. 7. Section 145 of title 35, United States Code, is
14 amended—

15 (1) by inserting “and Interferences in an appeal
16 under section 134 of this title” after “Board of Ap-
17 peals” in the first sentence; and

18 (2) by inserting “and Interferences” after “Board
19 of Appeals” in the second sentence.

20 SEC. 8. Section 146 of title 35, United States Code, is
21 amended by striking out “board of patent interferences on the
22 question of priority” and inserting in lieu thereof “Board of
23 Appeals and Interferences”.

1 SEC. 9. Section 305 of title 35, United States Code, is
2 amended by inserting “and Interferences” after “Board of
3 Appeals”.

4 SEC. 10. Section 1295(a)(4)(A) of title 28, United States
5 Code, is amended by striking out “or the Board of Patent”
6 and inserting in lieu thereof “and”.

7 SEC. 11. Section 2182 of title 42, United States Code,
8 is amended by striking out “a Board of Patent Interferences”
9 and inserting in lieu thereof “the Board of Appeals and Inter-
10 ferences”, and by striking out “the Board of Patent Interfer-
11 ences” and inserting in lieu thereof “the Board of Appeals
12 and Interferences”.

13 SEC. 12. (a) Section 2457(d) of title 42, United States
14 Code, is amended by striking out “a Board of Patent Inter-
15 ferences” and inserting in lieu thereof “the Board of Appeals
16 and Interferences”, and by striking out “the Board of Patent
17 Interferences” and inserting in lieu thereof “the Board of
18 Appeals and Interferences”.

19 (b) Section 2457(e) of title 42, United States Code, is
20 amended by striking out “a Board of Patent Interferences”
21 and inserting in lieu thereof “the Board of Appeals and Inter-
22 ferences”.

23 SEC. 13. The examiners-in-chief of the Board of Ap-
24 peals and the examiners of interferences of the Board of
25 Patent Interferences on the effective date of this Act shall

1 continue in office as members of the Board of Appeals and
2 Interferences.

3 SEC. 14. This Act shall take effect on the ninetieth day
4 beginning after the date of its enactment.

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