

H. R. 5228

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 1973

Mr. GUDE introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 35, United States Code, "Patents", 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 That section 3, title 35, of the United States Code is amended
4 to read as follows:

5 **"§ 3. Officers and employees**

6 “(a) There shall be in the Patent Office a Commissioner
7 of Patents, a deputy commissioner, two assistant commis-
8 sioners, and not more than fifteen examiners-in-chief. The
9 Assistant Secretary of Commerce for Patents and Trade-
10 marks, shall, ex officio, be the Commissioner of Patents. The
11 deputy commissioner, or, in the event of a vacancy in that

1 office, the assistant commissioner senior in date of appoint-
2 ment shall fill the office of Commissioner during a vacancy
3 in that office until the Commissioner is appointed, and takes
4 office. The Commissioner of Patents, the deputy commis-
5 sioner, and the assistant commissioners shall be appointed by
6 the President, by and with the advice and consent of the
7 Senate. The Secretary of Commerce, upon the nomination
8 of the Commissioner, in accordance with law, shall appoint
9 all other officers and employees.

10 “(b) The Secretary of Commerce may vest in himself
11 the functions of the Patent Office and its officers and em-
12 ployees specified in this title and may from time to time
13 authorize their performance by any other officer or employee.

14 “(c) The Secretary of Commerce is authorized to fix
15 the per annum rate of basic compensation of each examiner-
16 in-chief in the Patent Office at not in excess of the maximum
17 scheduled rate provided for positions in grade 17 of the
18 General Schedule of the Classification Act of 1949, as
19 amended.”

20 SEC. 2. The first paragraph of section 7 of title 35 of
21 the United States Code is amended to read as follows:

22 “The examiners-in-chief shall be persons of competent
23 legal knowledge and scientific ability, who shall be appointed
24 under the classified civil service. The Commissioner, the dep-
25 uty commissioner, the assistant commissioners, and the ex-

1 examiners-in-chief shall constitute a Board of Appeals, which
2 on written appeal of the applicant, shall review adverse
3 decisions of examiners upon applications for patents. Each
4 appeal shall be heard by at least three members of the Board
5 of Appeals, the members hearing such appeal to be desig-
6 nated by the Commissioner. The Board of Appeals has sole
7 power to grant rehearings.”

8 SEC. 3. Section 151 of title 35 of the United States Code
9 is amended to read as follows:

10 **“§ 151. Issue of patent**

11 “(a) If it is determined that an applicant is entitled to
12 a patent under the law, a written notice of allowance of the
13 application shall be given or mailed to the applicant. The
14 notice shall specify a sum, constituting the issue fee or a
15 portion thereof, which shall be paid within three months
16 thereafter.

17 “(b) Upon payment of this sum the patent shall issue,
18 but if payment is not timely made, the application shall be
19 regarded as abandoned.

20 “(c) Any remaining balance of the issue fee shall be
21 paid within three months from the sending of a notice thereof
22 and, if not paid, the patent shall lapse at the termination
23 of the three-month period. In calculating the amount of
24 a remaining balance, charges for a page or less may be
25 disregarded.

1 “(d) If any payment required by this section is not
2 timely made, but is submitted with the fee for delayed pay-
3 ment and the delay in payment is shown to have been
4 unavoidable, it may be accepted by the Commissioner as
5 though no abandonment or lapse had ever occurred.”

6 SEC. 4. (a) There shall be in the Department of Com-
7 merce, in addition to the Assistant Secretaries now provided
8 by law, one additional Assistant Secretary of Commerce who
9 shall be known as the Assistant Secretary of Commerce for
10 Patents and Trademarks, shall be appointed by the President
11 by and with the advice and consent of the Senate, shall re-
12 ceive compensation at the rate prescribed by law for Assistant
13 Secretaries of Commerce, and shall perform such duties as
14 the Secretary of Commerce shall prescribe.

15 (b) Section 5315 of title 5, United States Code, is
16 amended by striking “(7)” at the end of item (12) and
17 substituting “(8)”.

18 (c) Section 5316 of title 5, United States Code, is
19 amended by striking item (48).

20 SEC. 5. (a) The Commissioner of Patents may, in
21 accordance with section 3 of this Act, accept late payment
22 of issue fees, the payment of which was governed by the
23 provisions of Public Law 89-83: *Provided*, That the term
24 of the patent for which late payment of such an issue fee
25 is accepted shall expire earlier than the time specified in

1 section 154 of title 35, United States Code, by a period equal
2 to the delay between the time the application became aban-
3 doned or a patent lapsed for failure to pay the issue fee
4 and the time the late payment is accepted after enactment
5 of this Act: *Further provided*, That no patent, with re-
6 spect to which the payment of the issue fee was governed
7 by the provisions of Public Law 89-83 and for which a
8 late payment of the issue fee is accepted under the author-
9 ity created by section 3 of this Act, shall abridge or affect
10 the right of any person or his successors in business who
11 made, purchased, or used after the date the application be-
12 came abandoned or patent lapsed for failure to pay the
13 issue fee, but prior to the grant of the patent, anything
14 covered by the patent, to continue the use of or to sell to
15 others to be used or sold, the specific thing so made, pur-
16 chased, or used. A court before which such matter is in
17 question may provide for the continued manufacture, use,
18 or sale of the thing made, purchased, or used as specified
19 or for the manufacture, use, or sale of which substantial
20 preparation was made after the date the application became
21 abandoned or a patent lapsed for failure to pay the issue fee
22 but prior to the grant of the patent, and it may also provide
23 for the continued practice of any process covered by the
24 patent, practiced, or for the practice for which substantial
25 preparation was made, prior to the grant of the patent, to

1 the extent and under such terms as the court deems equitable
2 for the protection of investments made or business com-
3 menced before the grant of a patent.

4 (b) This Act shall be effective upon enactment. Exam-
5 iners-in-chief in office on the date of enactment shall continue
6 in office under and in accordance with their then existing
7 appointments.

93^d CONGRESS
1ST SESSION

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