

97<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2326

To authorize appropriations to the Patent and Trademark Office in the Department of Commerce, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 31 (legislative day, FEBRUARY 22), 1982

Mr. WEICKER (for himself, Mr. THURMOND, Mr. DeCONCINI, Mr. HATCH, and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To authorize appropriations to the Patent and Trademark Office in the Department of Commerce, 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 there is authorized to be appropriated for the payment  
4 of salaries and necessary expenses of the Patent and Trade-  
5 mark Office to become available October 1, 1982,  
6 \$75,086,000 and such additional or supplemental amounts as  
7 may be necessary for increases in salary, pay, retirement, or  
8 other employee benefits authorized by law. Funds available  
9 under this section shall be used to reduce by 50 per centum  
10 the payment of fees under section 41(a) and (b) of title 35,

1 United States Code, by independent inventors and nonprofit  
2 organizations as defined in regulations established by the  
3 Commissioner of Patents and Trademarks, and by small busi-  
4 ness concerns as defined in section 3 of the Small Business  
5 Act and by regulations established by the Small Business Ad-  
6 ministration. Where so specified and to the extent provided in  
7 an appropriation Act, any amount appropriated pursuant to  
8 this section and, in addition, such fees as shall be collected  
9 pursuant to title 35, United States Code, and the Trademark  
10 Act of 1946, as amended (15 U.S.C. 1051 et seq.), may  
11 remain available without fiscal year limitation.

12 SEC. 2. Notwithstanding any other provision of law,  
13 there is authorized to be appropriated for the payment of sal-  
14 aries and expenses of the Patent and Trademark Office,  
15 \$121,461,000 for the fiscal year ending September 30, 1982,  
16 and such additional or supplemental amounts as may be nec-  
17 essary for increases in salary, pay, retirement, or other em-  
18 ployee benefits authorized by law.

19 SEC. 3. (a) Section 41(a) of title 35, United States  
20 Code, is amended to read as follows:

21 "(a) The Commissioner shall charge the following fees:

22 "1. On filing each application for an original patent,  
23 except in design or plant cases, \$300; in addition, on filing or  
24 on presentation at any other time, \$30 for each claim in inde-  
25 pendent form which is in excess of three, \$10 for each claim

1 (whether independent or dependent) which is in excess of  
2 twenty, and \$100 for each application containing a multiple  
3 dependent claim. For the purpose of computing fees, a multi-  
4 ple dependent claim as referred to in section 112 of this title  
5 or any claim depending therefrom shall be considered as sep-  
6 arate dependent claims in accordance with the number of  
7 claims to which reference is made. Errors in payment of the  
8 additional fees may be rectified in accordance with regula-  
9 tions of the Commissioner.

10 "2. For issuing each original or reissue patent, except in  
11 design or plant cases, \$500.

12 "3. In design and plant cases:

13 "a. On filing each design application, \$125.

14 "b. On filing each plant application, \$200.

15 "c. On issuing each design patent, \$175.

16 "d. On issuing each plant patent, \$250.

17 "4. On filing each application for the reissue of a patent,  
18 \$300; in addition, on filing or on presentation at any other  
19 time, \$30 for each claim in independent form which is in  
20 excess of the number of independent claims of the original  
21 patent, and \$10 for each claim (whether independent or de-  
22 pendent) which is in excess of twenty and also in excess of  
23 the number of claims of the original patent. Errors in pay-  
24 ment of the additional fees may be rectified in accordance  
25 with regulations of the Commissioner.

1           “5. On filing each disclaimer, \$50.

2           “6. On filing an appeal from the examiner to the Board  
3 of Appeals, \$115; in addition, on filing a brief in support of  
4 the appeal, \$115, and on requesting an oral hearing before  
5 the Board of Appeals, \$100.

6           “7. On filing each petition for the revival of an aban-  
7 doned application for a patent or for the delayed payment of  
8 the fee for issuing each patent, \$50.

9           “8. For petitions for extensions of time to take actions  
10 required by the Commissioner in an application:

11                 “a. On filing a first petition, \$50.

12                 “b. On filing a second petition, \$100.

13                 “c. On filing a third or subsequent petition,  
14                 \$200.”.

15           (b) Section 41(b) of title 35, United States Code, is  
16 amended to read as follows:

17           “(b) The Commissioner shall charge the following fees  
18 for maintaining a patent in force:

19                 “1. Three years and six months after grant, \$400.

20                 “2. Seven years and six months after grant,  
21                 \$800.

22                 “3. Eleven years and six months after grant,  
23                 \$1,200.

24 Unless payment of the applicable maintenance fee is received  
25 in the Patent and Trademark Office on or before the date the

1 fee is due or within a grace period of six months thereafter,  
2 the patent will expire as of the end of such grace period. The  
3 Commissioner may require the payment of a surcharge as a  
4 condition of accepting within such six-month grace period the  
5 late payment of an application maintenance fee. No fee will  
6 be established for maintaining a design or plant patent in  
7 force.”.

8 (c) Section 41(c) of title 35, United States Code, is  
9 amended to read as follows:

10 “(c)(1) The Commissioner may accept the payment of  
11 any maintenance fee required by subsection (b) of this section  
12 after the six-month grace period if the delay in is shown to  
13 the satisfaction of the Commissioner to have been unavoi-  
14 dable. The Commissioner may require the payment of a sur-  
15 charge as a condition of accepting payment of any mainte-  
16 nance fee after the six-month grace period. If the Commis-  
17 sioner accepts payment of a maintenance fee after the six-  
18 month grace period, the patent shall be considered as not  
19 having expired at the end of the grace period.

20 “(2) No patent, the term of which has been maintained  
21 as a result of the acceptance of a payment of a maintenance  
22 fee under this subsection, shall abridge or affect the right of  
23 any person or his successors in business who made, pur-  
24 chased or used after the six-month grace period but prior to  
25 the acceptance of a maintenance fee under this subsection

1 anything protected by the patent, to continue the use of, or to  
2 sell to others to be used or sold, the specific thing so made,  
3 purchased or used. The court before which such matter is in  
4 question may provide for the continued manufacture, use or  
5 sale of the thing made, purchased or used as specified, or for  
6 the manufacture, use or sale of which substantial preparation  
7 was made after the six-month grace period but before the  
8 acceptance of a maintenance fee under this subsection, and it  
9 may also provide for the continued practice of any process,  
10 practiced, or for the practice of which substantial preparation  
11 was made, after the six-month grace period but prior to the  
12 acceptance of a maintenance fee under this subsection, to the  
13 extent and under such terms as the court deems equitable for  
14 the protection of investments made or business commenced  
15 after the six-month grace period but before the acceptance of  
16 a maintenance fee under the subsection.”.

17 (d) Section 41(d) of title 35, United States Code, is  
18 amended to read as follows:

19 “(d) The Commissioner will establish fees for all other  
20 processing, services, or materials related to patents not speci-  
21 fied above to recover the estimated average cost to the Office  
22 of such processing, services, or materials. The yearly fee for  
23 providing a library specified in section 13 of this title with  
24 uncertified printed copies of the specifications and drawings  
25 for all patents issued in that year will be \$50.”.

1 (e) Section 41(f) of title 35, United States Code, is  
2 amended to read as follows:

3 “(f) The fees established in subsections (a) and (b) of this  
4 section may be adjusted by the Commissioner on October 1,  
5 1985 to reflect any fluctuations occurring in the Consumer  
6 Price Index, as determined by the Secretary of Labor, be-  
7 tween June 1, 1982 and June 1, 1985. Changes of less than  
8 one per centum may be ignored.”.

9 (f) Subsection (a) of section 31 of the Trademark Act of  
10 1946, as amended (15 U.S.C. 1113), is amended by deleting  
11 “50” and inserting in its place “100”.

12 (g) Section 42(c) of title 35, United States Code, is  
13 amended by adding the following sentence at the end thereof:

14 “Fees available to the Commissioner under section 31  
15 of the Trademark Act of 1946, as amended (15 U.S.C.  
16 1113), shall be used exclusively for the processing of trade-  
17 mark registrations and for other services and materials relat-  
18 ed to trademarks.”.

19 SEC. 4. Section 3. (a) of title 35, United States Code is  
20 amended (1) by deleting the phrase “not more than fifteen”;  
21 and (2) by inserting the phrase “appointed under section 7 of  
22 this title” immediately after the phrase “examiners-in-chief”.

23 SEC. 5. Section 111 of title 35, United States Code, is  
24 amended to read as follows:

1       “Application for patent shall be made, or authorized to  
2 be made, by the inventor, except as otherwise provided in  
3 this title, in writing to the Commissioner. Such application  
4 shall include: (1) a specification as prescribed by section 112  
5 of this title; (2) a drawing as prescribed by section 113 of this  
6 title; and (3) an oath by the applicant as prescribed by section  
7 115 of this title. The application must be accompanied by the  
8 fee required by law. The fee and oath may be submitted after  
9 the specification and any required drawing are submitted,  
10 within such period and under such conditions, including the  
11 payment of a surcharge, as may be prescribed by the Com-  
12 missioner. Upon failure to submit the fee and oath within  
13 such prescribed period, the application shall be regarded as  
14 abandoned, unless it is shown to the satisfaction of the Com-  
15 missioner that the delay in submitting the fee and oath was  
16 unavoidable. The filing date of an application shall be the  
17 date on which the specification and any required drawing are  
18 received in the Patent and Trademark Office.”

19       SEC. 6. (a) Section 116 of title 35, United States Code,  
20 is amended (1) by deleting the phrase “Joint inventors” from  
21 the title and inserting in its place “Inventors”; and (2) in the  
22 third paragraph, by deleting the phrase “a person is joined in  
23 an application for patent as joint inventor through error, or a  
24 joint inventor is not included in an application through error”  
25 and inserting in its place the phrase “through error a person



1 is named in an application for patent as the inventor, or  
2 through error an inventor is not named in an application”.

3 (b) Section 256 of title 35, United States Code, is  
4 amended to read as follows:

5 **“§ 256. Correction of named inventor**

6 “Whenever through error a person is named in an  
7 issued patent as the inventor, or through error an inventor is  
8 not named in an issued patent and such error arose without  
9 any deceptive intention on his part, the Commissioner may,  
10 on application of all the parties and assignees, with proof of  
11 the facts and such other requirements as may be imposed,  
12 issue a certificate correcting such error.

13 “The error of omitting inventors or naming persons who  
14 are not inventors shall not invalidate the patent in which  
15 such error occurred if it can be corrected as provided in this  
16 section. The court before which such matter is called in ques-  
17 tion may order correction of the patent on notice and hearing  
18 of all parties concerned and the Commissioner shall issue a  
19 certificate accordingly.”.

20 SEC. 7. Section 6 of title 35, United States Code, is  
21 amended by deleting paragraph (d) thereof.

22 SEC. 8. (a) Section 8(a) of the Trademark Act of 1946,  
23 as amended (15 U.S.C. 1058(a)), is amended (1) by deleting  
24 the word “still”; and (2) by inserting the phrase “in com-  
25 merce” immediately after the word “use”.

1 (b) Section 8(b) of the Trademark Act of 1946, as  
2 amended (15 U.S.C. 1058(b)), is amended (1) by deleting the  
3 word "still"; and (2) by inserting the phrase "in commerce"  
4 immediately after the word "use".

5 SEC. 9. (a) Section 13 of the Trademark Act of 1946, as  
6 amended (15 U.S.C. 1063), is amended (1) by deleting the  
7 phrase "a verified" and inserting in its place the word "an";  
8 (2) by adding the phrase "when requested prior to the expira-  
9 tion of an extension" immediately after the word "cause";  
10 and (3) by deleting the fourth sentence.

11 (b) Section 14 of the Trademark Act of 1946, as amend-  
12 ed (15 U.S.C. 1064), is amended by deleting the word "veri-  
13 fied".

14 SEC. 10. Section 15 of the Trademark Act of 1946, as  
15 amended (15 U.S.C. 1065), is amended by deleting the  
16 phrase "the publication" and inserting in its place the word  
17 "registration".

18 SEC. 11. The first sentence of section 16 of the Trade-  
19 mark Act of 1946, as amended (15 U.S.C. 1066), is amended  
20 to read as follows:

21 "Upon petition showing extraordinary circumstances,  
22 the Commissioner may declare that an interference exists  
23 when application is made for the registration of a mark which  
24 so resembles a mark previously registered by another, or for  
25 the registration of which another has previously made appli-

1 cation, as to be likely when applied to the goods or when  
2 used in connection with the services of the applicant to cause  
3 confusion or mistake or to deceive.”.

4 SEC. 12. Section 21 of title 35, United States Code, is  
5 amended—

6 (1) by deleting the phrase “Day for taking action  
7 falling on Saturday, Sunday, or holiday” from the title,  
8 and inserting in its place the phrase “Filing date and  
9 day for taking action”;

10 (2) by inserting the following as subsection (a):

11 “(a) The Commissioner may by rule prescribe that any  
12 paper or fee required to be filed in the Patent and Trademark  
13 Office will be considered filed in the Office on the date on  
14 which it was deposited with the United States Postal Service  
15 or would have been deposited with the United States Postal  
16 Service but for postal service interruptions or emergencies  
17 designated by the Commissioner.”;

18 (3) by designating the existing paragraph as sub-  
19 section (b); and

20 (4) by inserting the word “federal” in subsection  
21 (b), as designated above, immediately after the word  
22 “a”.

23 SEC. 13. Section 6(a) of title 35, United States Code, is  
24 amended (1) by deleting the word “and”, third occurrence,  
25 and inserting in its place a comma; (2) by inserting the phrase

1 “, or exchanges of items or services” immediately after the  
2 word “programs”; and (3) by inserting the phrase “or the  
3 administration of the Patent and Trademark Office” immedi-  
4 ately after the word “law”, second occurrence.

5 SEC. 14. (a) Section 115 of title 35, United States  
6 Code, is amended by (1) deleting the phrase “shall be” and  
7 inserting in its place the word “is”; and (2) inserting the  
8 following immediately after the phrase “United States”, third  
9 occurrence: “, or apostille of an official designated by a for-  
10 eign country which, by treaty or convention, accords like  
11 effect to apostilles of designated officials in the United  
12 States”.

13 (b) Section 261 of title 35, United States Code, is  
14 amended, in the third paragraph, by inserting the following  
15 immediately after the phrase “United States”, third occur-  
16 rence: “, or apostille of an official designated by a foreign  
17 country which, by treaty or convention, accords like effect to  
18 apostilles of designated officials in the United States”.

19 (c) Section 11 of the Trademark Act of 1946, as amend-  
20 ed (15 U.S.C. 1061), is amended by (1) deleting the phrase  
21 “shall be”, first occurrence, and inserting in its place the  
22 word “is”; and (2) inserting the following immediately after  
23 the phrase “United States”, third occurrence: “, or apostille  
24 of an official designated by a foreign country which, by treaty

1 or convention, accords like effect to apostilles of designated  
2 officials in the United States”.

3       SEC. 15. Section 13 of title 35, United States Code, is  
4 amended by deleting “(a)9” and inserting in its place “(d)”.

5       SEC. 16. Section 173 of title 35, United States Code, is  
6 amended to read as follows: “Patents for designs shall be  
7 granted for the term of fourteen years.”

8       SEC. 17. (a) Sections 1, 2, 4, 7, and 13 through 15 of  
9 this Act shall take effect on the date of enactment of this Act.  
10 Sections 3 and 16 of this Act shall take effect on October 1,  
11 1982. The maintenance fees provided for in section 3(b) of  
12 this Act shall not apply to patents applied for prior to the  
13 date of enactment of this Act. Sections 5, 6, and 8 through  
14 12 of this Act shall take effect six months after enactment.

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