

S. 730

IN THE SENATE OF THE UNITED STATES

JANUARY 26, 1965

Mr. McCLELLAN (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To fix the fees payable to the Patent Office, 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 the items numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10,
4 respectively, in subsection (a) of section 41, title 35, United
5 States Code, are amended to read as follows:

6 "1. On filing each application for an original patent,
7 except in design cases, \$50; in addition; on filing or on
8 presentation at any other time, \$10 for each claim in inde-
9 pendent form which is in excess of one, and \$2 for each claim
10 (whether independent or dependent) which is in excess of

1 ten. Errors in payment of the additional fees may be recti-
2 fied in accordance with regulations of the Commissioner.

3 "2. For issuing each original or reissue patent, except
4 in design cases, \$75; in addition, \$10 for each page (or
5 portion thereof) of specification as printed, and \$2 for
6 each sheet of drawings.

7 "3. In design cases:

8 "a. On filing each design application, \$20.

9 "b. On issuing each design patent: For three years
10 and six months, \$10; for seven years, \$20; and for four-
11 teen years, \$30.

12 "4. On filing each application for the reissue of a
13 patent, \$50; in addition, on filing or on presentation at any
14 other time, \$10 for each claim in independent form which
15 is in excess of the number of independent claims of the
16 original patent, and \$2 for each claim (whether independent
17 or dependent) which is in excess of ten and also in excess
18 of the number of claims of the original patent. Errors in
19 payment of the additional fees may be rectified in accordance
20 with regulations of the Commissioner.

21 "5. On filing each disclaimer, \$15.

22 "6. On appeal for the first time from the examiner to
23 the Board of Appeals, \$25; in addition, on filing a brief in
24 support of the appeal, \$50.

25 "7. On filing each petition for the revival of an aban-

1 doned application for a patent or for the delayed payment
2 of the fee for issuing each patent, \$15.

3 "8. For certificate under section 255 or under section
4 256 of this title, \$15.

5 "9. As available and if in print: For uncertified printed
6 copies of specifications and drawings of patents (except
7 design patents), 50 cents per copy; for design patents, 20
8 cents per copy; the Commissioner may establish a charge not
9 to exceed \$1 per copy for patents in excess of twenty-five
10 pages of drawings and specifications and for plant patents
11 printed in color; special rates for libraries specified in section
12 13 of this title, \$50 for patents issued in one year. The Com-
13 missioner may, without charge, provide applicants with
14 copies of specifications and drawings of patents when referred
15 to in a notice under section 132.

16 "10. For recording every assignment, agreement, or
17 other paper relating to the property in a patent or applica-
18 tion, \$20; where the document relates to more than one
19 patent or application, \$3 for each additional item."

20 SEC. 2. Section 41 of title 35, United States Code is
21 further amended by adding the following subsection:

22 "(c) The fees prescribed by or under this section shall
23 apply to any other Government department or agency, or
24 officer thereof, except that the Commissioner may waive the
25 payment of any fee for services or materials in cases of

1 occasional or incidental requests by a Government depart-
2 ment or agency, or officer thereof.”

3 SEC. 3. Section 31 of the Act approved July 5, 1946
4 (ch. 540, 60 Stat. 427; U.S.C. title 15, sec. 1113), as
5 amended, is amended to read as follows:

6 “(a) The following fees shall be paid to the Patent
7 Office under this Act:

8 “1. On filing each original application for registration
9 of a mark in each class, \$35.

10 “2. On filing each application for renewal in each class,
11 \$25; and on filing each application for renewal in each class
12 after expiration of the registration, an additional fee of \$5.

13 “3. On filing an affidavit under section 8 (a) or section
14 8 (b) for each class, \$10.

15 “4. On filing each petition for the revival of an aban-
16 doned application, \$15.

17 “5. On filing opposition or application for cancellation
18 for each class, \$25.

19 “6. On appeal from the examiner in charge of the regis-
20 tration of marks to the Trademark Trial and Appeal Board
21 for each class, \$25.

22 “7. For issuance of a new certificate of registration
23 following change of ownership of a mark or correction of
24 a registrant’s mistake, \$15.

1 “8. For certificate of correction of registrant’s mistake
2 or amendment after registration, \$15.

3 “9. For certifying in any case, \$1.

4 “10. For filing each disclaimer after registration, \$15.

5 “11. For printed copy of registered mark, 20 cents.

6 “12. For recording every assignment, agreement, or
7 other paper relating to the property in a registration or
8 application, \$20; where the document relates to more than
9 one application or registration, \$3 for each additional item.

10 “13. On filing notice of claim of benefits of this Act for
11 a mark to be published under section 12 (c) hereof, \$10.

12 “(b) The Commissioner may establish charges for
13 copies of records, publications, or services furnished by the
14 Patent Office, not specified above.

15 “(c) The Commissioner may refund any sum paid by
16 mistake or in excess.”

17 SEC. 4. Section 151 of title 35, United States Code, is
18 amended to read as follows:

19 “§ 151. Issue of patent

20 “‘If it appears that applicant is entitled to a patent under
21 the law, a written notice of allowance of the application shall
22 be given or mailed to the applicant. The notice shall specify

1 a sum, constituting the issue fee or a portion thereof, which
2 shall be paid within three months thereafter.

3 “Upon payment of this sum the patent shall issue, but
4 if payment is not timely made, the application shall be
5 regarded as abandoned.

6 “Any remaining balance of the issue fee shall be paid
7 within three months from the sending of a notice thereof
8 and, if not paid, the patent shall lapse at the termination of
9 this three-month period.

10 “If any payment required by this section is not timely
11 made, but is submitted with the fee for delayed payment
12 within three months after the due date and sufficient cause
13 is shown for the late payment, it may be accepted by the
14 Commissioner as though no abandonment or lapse had ever
15 occurred.”

16 SEC. 5. Section 154 of title 35, United States Code, is
17 amended by inserting the words “subject to the payment
18 of issue and maintenance fees as provided for in this title,”
19 after the words “seventeen years,”.

20 SEC. 6. Title 35, United States Code, is amended by
21 adding the following new section after section 154:

22 “§ 155. **Maintenance fees**

23 “(a) During the term of a patent, other than for a
24 design, the following fees shall be due:

1 “(1) a first maintenance fee on or before the fifth
2 anniversary of the issue date of the patent;

3 “(2) a second maintenance fee on or before the
4 ninth anniversary of the issue date of the patent; and

5 “(3) a third maintenance fee on or before the
6 thirteenth anniversary of the issue date of the patent.

7 In the case of a reissue patent the times specified herein shall
8 run from the date of the original patent.

9 “(b) A grace period of six months will be allowed in
10 which to pay any maintenance fee, provided it is accom-
11 panied by the fee prescribed for delayed payment. When a
12 response is not received to the notice provided by subsection
13 (e) of this section, a subsequent notice shall be sent approxi-
14 mately sixty days after the due date of any maintenance fee.

15 “(c) The first and second maintenance fees may be
16 deferred in accordance with subsection (f) of this section.

17 “(d) A patent will terminate on the due date for any
18 maintenance fee unless, as provided for in this section, the
19 fee due (including any fees previously deferred) is paid or
20 a statement in accordance with subsection (f) of this section
21 requesting deferment is filed. Such termination or lapsing
22 shall be without prejudice to rights existing under any other
23 patent.

24 “(e) Notice of the requirement for the payment of the

1 maintenance fees and the filing of statements in compliance
2 with this section shall be attached to or be embodied in the
3 patent. Approximately thirty days before a maintenance
4 fee is due, the Commissioner shall send an initial notice
5 thereof to the patentee and all other parties having an in-
6 terest of record at the addresses last furnished to the Patent
7 Office. Irrespective of any other provision of this section,
8 a maintenance fee may be paid within thirty days after the
9 date of such initial notice.

10 “(f) Any inventor to whom a patent issued (or his
11 heirs) and who owns the patent may within six months of
12 the fifth anniversary of the issue date of the patent by a
13 statement to the Commissioner request deferment of the first
14 maintenance fee if the gross benefit received by the inventor
15 or any other party having or having had any interest in the
16 subject matter of the patent, from, under, or by virtue of the
17 patent or from the manufacture, use, or sale of the invention,
18 was less in value than the amount of the fee, and the state-
19 ment so specifies. The fee shall thereupon be deferred until
20 the time the second maintenance fee is due and shall be paid
21 in addition to the second maintenance fee.

22 “Any inventor to whom a patent issued (or his heirs)
23 and who owns the patent may within six months of the
24 ninth anniversary of the issue date of the patent by a state-
25 ment to the Commissioner request deferment of the second

1 maintenance fee (and further deferment of the first mainte-
2 nance fee if such fee has been deferred) if the gross benefit
3 received by the inventor or any other party having or having
4 had any interest in the subject matter of the patent during
5 the preceding four years, from, under, or by virtue of the
6 patent or from the manufacture, use, or sale of the invention,
7 was less in value than the amount of the second fee, and the
8 statement so specifies. The second fee, or the first and
9 second fees, as the case may be, shall thereupon be deferred
10 until the time the third maintenance fee is due and shall be
11 paid in addition to the third maintenance fee and with the
12 same result if not paid. No deferment of any of the fees
13 beyond the thirteenth anniversary of the issue date of the
14 patent shall be permitted and the patent will terminate at
15 the end of the thirteenth anniversary of the issue date unless
16 all maintenance fees are paid in accordance with the pro-
17 visions of this section.

18 “(g) An applicant or his assignee may elect, on or
19 before the time of payment of the sum specified in the
20 notice of allowance provided in section 151 of this chapter,
21 to pay a fee of \$75 and such payment shall constitute a
22 complete satisfaction of the maintenance fees provided for
23 in this section.”

24 SEC. 7. The analysis of chapter 14 of title 35, United

1 States Code, immediately preceding section 151, is amended
2 to read as follows:

- Sec.
"151. Issue of patent.
"152. Issue of patent to assignee.
"153. How issued.
"154. Contents and term of patent.
"155. Maintenance fees."

3 SEC. 8. Subsection (a) of section 41 of title 35, United
4 States Code, is further amended by adding the following:

5 "12. For maintaining a patent (other than for a design)
6 in force:

7 "a. beyond the fifth anniversary of the issue date of
8 the patent, \$50;

9 "b. beyond the ninth anniversary of the issue date
10 of the patent, \$100; and

11 "c. beyond the thirteenth anniversary of the issue
12 date of the patent, \$150.

13 "13. For delayed payment of maintenance fee, \$25."

14 SEC. 9. (a) This Act shall take effect three months
15 after its enactment.

16 (b) Items 1, 3, and 4 of section 41.(a) of title 35,
17 United States Code, as amended by section 1 of this Act,
18 do not apply in further proceedings in applications filed
19 prior to the effective date of this Act.

20 (c) Item 2 of section 41 (a), as amended by section 1
21 of this Act, and sections 4, 6, and 8 of this Act do not apply

1 in cases in which the notice of allowance of the application
2 was sent, or in which a patent issued, prior to the effective
3 date; and, in such cases, the fee due is the fee specified in
4 this title prior to the effective date of this Act.

5 (d) Item 3 of section 31 of the Trademark Act, as
6 amended by section 3 of this Act, applies only in the case of
7 registrations issued and registrations published under the
8 provisions of section 12 (c) of the Trademark Act on or
9 after the effective date of this Act.

10 SEC. 10. Section 266 of title 35, United States Code, is
11 repealed.

12 The chapter analysis of chapter 27 of title 35, United
13 States Code, is amended by striking out the following item:

“266. Issue of patents without fees to Government employees.”

14 SEC. 11. Section 112 of title 35, United States Code, is
15 amended by adding to the second paragraph thereof the
16 following sentence: “A claim may be written in independent
17 or dependent form, and if in dependent form it shall be
18 construed to include all the limitations of the claim incorpo-
19 rated by reference into the dependent claim.”

20 SEC. 12. Section 282 of title 35, United States Code,
21 is amended by deletion of the first paragraph thereof and
22 substituting therefor the following paragraph:

23 “A patent shall be presumed valid. Each claim of a

1 patent (whether in independent or dependent form) shall be
2 presumed valid independently of the validity of other claims;
3 dependent claims shall be presumed valid even though de-
4 pendent upon an invalid claim. The burden of establishing
5 invalidity of a patent or any claim thereof shall rest on the
6 party asserting it.”

89TH CONGRESS
1ST SESSION

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