

HEINONLINE

Citation: 2 An Act to Amend Title 35 United States Code with
to Patents on Biotechnological Processes Pub. L.
109 Stat. 351 1 1995

Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Tue Mar 19 17:05:18 2013

-- Your use of this HeinOnline PDF indicates your acceptance
of HeinOnline's Terms and Conditions of the license
agreement available at <http://heinonline.org/HOL/License>

-- The search text of this PDF is generated from
uncorrected OCR text.

101ST CONGRESS
2D SESSION

H. R. 3957

To amend title 35, United States Code, with respect to patents on certain processes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 1990

Mr. BOUCHER (for himself, Mr. MOORHEAD, Mr. LEVINE of California, Mr. GLICKMAN, Mr. SENSENBRENNER, Mr. MATSUI, Mr. BATES, Mrs. BENTLEY, Mr. BILBRAY, Mrs. COLLINS, Mr. LIPINSKI, and Mr. KILDEE) introduced the following bill; which was referred jointly to the Committees on the Judiciary and Ways and Means

A BILL

To amend title 35, United States Code, with respect to patents on certain processes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION. 1. PATENTABILITY OF CERTAIN PROCESSES.**

4 Section 103 of title 35, United States Code, is amended
5 by adding at the end the following new paragraph:

6 “A process of making a product shall not be considered
7 obvious under this section if an essential material used in the
8 process is novel under section 102 and otherwise nonobvious
9 under section 103.”.

1 **SEC. 2. IMPORTATION PROHIBITION; INFRINGEMENT BY IM-**
2 **PORTATION, SALE, OR USE.**

3 (a) **AMENDMENT TO TARIFF ACT OF 1930.**—Section
4 337(a)(1)(B) of the Tariff Act of 1930 (19 U.S.C.
5 1337(a)(1)(B)) is amended—

6 (1) in clause (i) by striking “or” after the semi-
7 colon;

8 (2) in clause (ii) by striking out the period at the
9 end and inserting “; or”; and

10 (3) by adding at the end the following:

11 “(iii) are made, produced, or processed
12 under, or by means of, the use of a biotechnologi-
13 cal material (as defined under section 154(b) of
14 title 35, United States Code) covered by a valid
15 and enforceable United States patent.”.

16 (b) **AMENDMENTS TO TITLE 35, UNITED STATES**
17 **CODE.**—

18 (1) **INFRINGEMENT.**—Section 271 of title 35,
19 United States Code, is amended by adding at the end
20 the following new subsection:

21 “(h) Whoever without authority imports into the United
22 States or sells or uses within the United States a product
23 which is made by using a biotechnological material (as de-
24 fined under section 154(b)) which is patented in the United
25 States shall be liable as an infringer if the importation, sale,
26 or use of the product occurs during the term of such patent.”.

1 (2) CONTENTS AND TERM OF PATENT.—Section
2 154 of title 35, United States Code, is amended—

3 (A) by inserting “(a)” before “Every”;

4 (B) by inserting “(1)” after “in this title,”;

5 (C) by striking “and, if the invention” and
6 inserting “(2) if the invention”;

7 (D) by inserting after “products made by that
8 process,” the following: “and (3) if the invention
9 is a biotechnological material used in making a
10 product, of the right to exclude others from using
11 or selling throughout the United States, or im-
12 porting into the United States, that product,”;
13 and

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

15 “(b) For purposes of this section, the term ‘biotechnolo-
16 gical material’ means a biologically engineered organism that
17 is essential for the production of a product. Such term in-
18 cludes any host cell, DNA sequence, or vector.”.

19 **SEC. 3. EFFECTIVE DATE.**

20 (a) SECTION 1.—The amendment made by section 1
21 shall apply to all United States patents granted before, on, or
22 after the date of the enactment of this Act and to all applica-
23 tions for United States patents pending on or filed after such
24 date of enactment, including any application for the reis-
25 suance of a patent.

1 (b) SECTION 2.—(1) The amendment made by section
2 2(a) shall apply only to articles imported, or sold for importa-
3 tion, on or after the date of the enactment of this Act.

4 (2)(A) Subject to subparagraph (B), the amendments
5 made by section 2(b) shall take effect on the date of the en-
6 actment of this Act.

7 (B)(i) With respect to any article which is imported
8 before February 6, 1990, and which, but for the amendment
9 made by section 2(b), could be sold or used within the United
10 States, no person shall be liable for infringement under sec-
11 tion 271(h) of title 35, United States Code, for such sale or
12 use.

13 (ii) With respect to any article which is imported on or
14 after February 6, 1990, but before the date of the enactment
15 of this Act and which, but for the amendment made by sec-
16 tion 2(b), could be sold or used within the United States, no
17 person shall be liable for infringement under section 271(h) of
18 title 35, United States Code—

19 (I) for the first such sale if it is made within 90
20 days after the date of the enactment of this Act; or

21 (II) for any such subsequent sale or for any such
22 use.

○

25)

