

HEINONLINE

Citation: 2 An Act to Amend Title 35 United States Code with
to Patents on Biotechnological Processes Pub. L.
109 Stat. 351 H 10095 1995

Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Tue Mar 19 17:18:22 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.

In the early days it was an orphanage, but it was not the image that you have of the Charles Dickens orphanage. It was an orphanage where the kids that went there had many of the things that money could buy in terms of living a good life under the circumstances of not having a family. And he combined that with elderly people to create an intergenerational type of concept that has worked very well even to this day.

Especially pertinent to H.R. 1026, is that Mr. Stratton sold the property where the post office is located, and which we are asking to be named today, to the Federal Government for half its value on the condition that they would build a post office there.

Mr. Speaker, I did not know Mr. Stratton. He was before my time there. But I have been able to see his work in the Colorado Springs area over the years.

Finally, Mr. Speaker, I would like to thank Mr. John Zorack, a former resident of the Stratton Home, who has worked closely with me to see that this fitting tribute be enacted. I would add that H.R. 1026 has the support of the Colorado Delegation and the Colorado Springs City Council. Mr. Speaker, I thank the gentleman from New York [Mr. MCHUGH] for his support of this legislation.

Mr. MCHUGH. Mr. Speaker, I reserve the balance of my time.

Miss COLLINS of Michigan. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I join my colleague and chairman of the Subcommittee on the Postal Service in support of H.R. 1026, legislation designating the U.S. Post Office at 201 East Pikes Peak Avenue in Colorado Springs, CO, as the Winfield Scott Stratton Post Office.

The late Mr. Stratton was well known as a great philanthropist, and most deserving to have a Post Office named after him.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MCHUGH. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York [Mr. MCHUGH] that the House suspend the rules and pass the bill, H.R. 1026.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. MCHUGH. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 1026 the bill just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

BIOTECHNICAL PROCESS PATENTS

Mr. MOORHEAD. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 587) to amend title 35, United States Code, with respect to patents on biotechnological processes.

The Clerk read as follows:

H.R. 587

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

BIOTECHNOLOGICAL PROCESS PATENTS

SEC. 101. CONDITIONS FOR PATENTABILITY; NONOBVIOUS SUBJECT MATTER.

Section 103 of title 35, United States Code, is amended—

(1) by designating the first paragraph as subsection (a);

(2) by designating the second paragraph as subsection (c); and

(3) by inserting after the first paragraph the following:

“(b)(1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a ‘biotechnological process’ using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if—

“(A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and

“(B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.

“(2) A patent issued on a process under paragraph (1)—

“(A) shall also contain the claims to the composition of matter used in or made by that process; or

“(B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.

“(3) For purposes of paragraph (1), the term ‘biotechnological process’ means—

“(A) a process of genetically altering or otherwise inducing a single- or multi-celled organism to—

“(i) express an exogenous nucleotide sequence,

“(ii) inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or

“(iii) express a specific physiological characteristic not naturally associated with said organism;

“(B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and

“(C) a method of using a product produced by a process defined by (A) or (B), or a combination of (A) and (B).”

SEC. 102. PRESUMPTION OF VALIDITY; DEFENSES.

Section 282 of title 35, United States Code, is amended by inserting after the second sentence of the first paragraph the following: “Notwithstanding the preceding sentence, if a claim to a composition of matter is held invalid and that claim was the basis of a determination of nonobviousness under section 103(b)(1), the process shall no longer be considered nonobvious solely on the basis of section 103(b)(1).”

SEC. 103. EFFECTIVE DATE.

The amendments made by section 101 shall apply to any application for patent filed on

or after the date of enactment of this Act and to any application for patent pending on such date of enactment, including (in either case) an application for the reissuance of a patent.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes, and the gentleman from Colorado [Mrs. SCHROEDER] will be recognized for 20 minutes.

The Chair recognizes the gentleman from California [Mr. MOORHEAD].

(Mr. MOORHEAD asked and was given permission to revise and extend his remarks.)

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 587, the Biotech Process Patent Protection Act of 1995. I would like to commend the gentleman from Virginia [Mr. BOUCHER] and thank him for working so hard with us over the past 5 years to make this legislation possible. I also want to thank the gentlewoman from Colorado [Mrs. SCHROEDER] for her support and cooperation.

From an economic point of view, the U.S. biotech industry has gone from zero revenues and zero jobs 15 years ago to \$8 billion and 103,000 jobs today. The White House Council on Competitiveness projects a \$30 to \$50 billion market for biotech products by the year 2000, and many in the industry believe this estimate to be conservative.

Companies that depend heavily on research and development are especially vulnerable to foreign competitors who copy and sell their products without permission. The reason that high-technology companies are so vulnerable is that for them the cost of innovation, rather than the cost of production, is the key cost incurred in bringing a product to market. The award of patent protection ensures a greater degree of protection for businesses in the United States who make major investment in innovation.

The House Judiciary Committee took the first step in protecting innovation in 1988 when the Congress enacted two bills which I introduced relating to process patents and reform of the International Trade Commission. However, our work will not be complete until we enact this legislation. This bill modifies the test for obtaining a process patent, a problem that was created by *In Re Durden* (1985), a case frequently criticized and cited by the Patent Office as grounds for denial of biotech patents. The legislation impacts only one element of patentability of biotech processes and that is the element of nonobviousness. The process must still satisfy all other requirements of patentability.

Because so many of the biotech inventions are protected by patents, the future of that industry depends greatly on what Congress does to protect U.S. patents from unfair foreign competition. America's foreign competitors, most of whom have invested comparatively little in biotechnology research,

have targeted the biotech industry for major and concerted action.

In conclusion, Mr. Speaker, this is important legislation. The biotech industry is an immensely important industry started in the United States with many labs housed in California. In the decade ahead, biotechnology research will improve the lives and health of virtually every American family. It will put people to work and it will save people's lives. Identical legislation has already passed the other body, S. 1111.

I urge a favorable vote on H.R. 587.

□ 1500

Mr. Speaker, I reserve the balance of my time.

Mrs. SCHROEDER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 587.

One of the most important tasks faced by the Intellectual Property Subcommittee is to make sure that our patent law keeps pace with technological change. The importance of this task is nowhere more evident than in the area of biotechnology, where industry has encountered difficulty in obtaining timely and adequate process patent protection because of conflicting case law and inconsistency in PTO examination practices resulting from the conflicting holdings of relevant court cases.

It is critical to our economy and to our quality of life that biotechnology research and development can take place on a level playing vis-a-vis foreign competitors, and without excessive uncertainty or delay in patent protection.

This bill will achieve those goals: It will mitigate the uncertainty in the patent examination process, and it will bring about a more level playing field for U.S. biotechnology companies and their overseas competitors.

The bill before us today is supported by the administration, and it has bipartisan support from the Judiciary Committee. The roadblocks faced by predecessor bills have been removed by making the bill biotechnology industry-specific. I believe, through this bill, that we have fashioned a fair and effective means of addressing the uncertainties and inadequacies in patent law as it applies to biotechnology, and I urge my colleagues to support it.

I also want to acknowledge the hard work on both sides of the aisle over a number of years to resolve this problem. Our subcommittee chairman, the gentleman from California, the gentleman from Massachusetts [Mr. FRANK], and the gentleman from Virginia [Mr. BOUCHER], have all worked diligently to address this problem, and I congratulate them for their efforts.

Mr. Speaker, it looks like this is the year it will really happen. I congratulate them.

Mr. Speaker, I reserve the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I yield 5 minutes to the gentleman from California [Mr. ROHRABACHER].

Mr. ROHRABACHER. Mr. Speaker, I rise to support this bill, which will establish an objective standard to determine if biotechnology patent applications involve nonobvious material.

This standard is necessary to clarify patent law for one of our Nation's most important growth industries, the biotechnology industry, and I congratulate Chairman MOORHEAD for his leadership in bringing this bill to the floor.

We need, however, to deal with the fundamental problem, the lack of a minimum guaranteed patent term. For over 100 years, this country had a patent term of 17 years from grant. That term acted to encourage and reward innovation. Unfortunately, the GATT implementing legislation established an uncertain term of 20 years from filing. Many biotech patents take years to be issued, which under the new rules results in a vastly reduced patent term biotech companies and anyone else whose breakthrough technology takes longer than usual to get through the Patent Office are victimized. I have introduced legislation, H.R. 359, which will establish a term of 20 years from filing or 17 years from grant, whichever is longer. That's consistent with the GATT agreement and with our Nation's tradition of strong intellectual property rights. That tradition has fueled the growth of new, dynamic industries in America and will continue to do so as long as this Congress continues to respect the creativity and hard work of the Nation's independent inventors.

The subcommittee chairman and I continue to have honest differences on this and other issues, such as unconditional publication of all patent applications 18 months after filing. Such publication will allow unscrupulous people to copy and infringe on the inventions of biotech companies and other innovative industries. I am encouraged that we will have a hearing on November 1 to examine these problems, just as I am encouraged that the chairman has shown concern for the biotechnology industry with H.R. 587. I look forward to the day when the Congress will decide, on this floor, up or down, on whether to restore the fundamental patent rights of all of America's inventors.

Mrs. SCHROEDER. Mr. Speaker, I yield such time as he may consume to the gentleman from Michigan [Mr. CONYERS], the distinguished ranking member.

Mr. CONYERS. Mr. Speaker, first of all, congratulations to the gentleman from California [Mr. MOORHEAD], the subcommittee chairman, and the gentleman from Colorado [Mrs. SCHROEDER], who has worked with him across the years.

I am a cosponsor and strong supporter of H.R. 587 which resolves the confusion created by two conflicting appellate court decisions on the stand-

ards for granting process patents to biotechnology companies.

Though this is a matter that could have been resolved by the courts, the matter has been pending since November 1992 without any resolution. Further delays could be costly to American biotech companies.

The legislation prohibits the Patent and Trademark Office from rejecting applications for process patents using or resulting in a composition of matter that is novel and nonobvious.

This legislation serves the important purpose of protecting the rights of American companies to bring patent infringement claims against importers who are able to evade the law by processing cells outside the United States and importing the finished products into the United States on the technicality that there has been no use of patented host cells in the United States. Without a process patent, the importation of the final product cannot be challenged. I urge passage of this worthy bill.

Mrs. SCHROEDER. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts [Mr. FRANK] who has been working on this bill forever and ever, and I am sure is glad to see it on the floor.

Mr. FRANK of Massachusetts. Mr. Speaker, I thank the ranking minority member of the subcommittee for yielding.

The chairman has been congratulated and deservedly. This is an important issue that has more complexity than one might think, as we explain it, I think the reaction is, well, gee, this is just so straightforward. But people should understand that there were issues to be resolved, whether this was going to be a change in patent law in general or whether it was better to make it specific to an industry.

There were traditional practitioners of patent law who had objections to this. What we are doing today and, as I understand the parliamentary situation since we are taking up the Senate bill, we are sending this right to the President. One of the striking things about the current situation people should understand is that on those occasions, and I say this is clearly in order because it explains why we are doing what we are doing and why we are taking the Senate bill. On those occasions when the U.S. Senate can be persuaded to do anything at all, one then grabs it and takes it and does not take the chance of sending it back.

So this will now go right to the President for signature. It is a mark of the successful chairmanship of the gentleman from California that this important piece of legislation will within a few weeks be law. We are not simply passing a bill through the House today, but we are sending it to the President who we know is going to sign it. I can simply say I am not an expert on this as are few of my colleagues but, talking to the people in the biotechnology industry in Massachusetts, this was

very high on their list of things that will help. It is one of these things that does good in a multiplicity of ways.

In the first place, it will help produce the products, and this is of greatest importance, that cure people, that alleviate illnesses. We are here doing something that will facilitate better health care for people, and that is of course fundamental.

It will also promote jobs in the State that I represent and in other States because it will help the biotechnology industry improve its market. It will help exports. It will help the American economy.

So this is something which has all positive and no negative. But, despite that, given the world we live in, it was not an easy thing to bring it here. As I said, this may look to people like kind of a ho-hum thing. It is to the credit of the gentleman from California and his management of this issue that something that had a lot of pitfalls and a lot of potential controversies does come forward in this guise.

I also wanted to express my appreciation to the gentleman who spoke just before me, the other Member from California, he has his own very strong interests in patent issues, some of which I agree with him on, and his willingness to collaborate with us in getting this bill through is something I very much appreciate, thanks to the ranking member for her leadership, to the chairman. I think we have shown today that we are able to function in a very positive way to advance a number of goals.

Mrs. SCHROEDER. Mr. Speaker, I yield such time as he may consume to the gentleman from Virginia [Mr. BOUCHER]. He has worked so hard on this bill. I am sure for his sake he is very happy to have this happen.

(Mr. BOUCHER asked and was given permission to revise and extend his remarks.)

Mr. BOUCHER. Mr. Speaker, for the last several years, I have been involved in a very productive partnership with my friend and colleague, the gentleman from California [Mr. MOORHEAD], in an effort to extend better patent protection to the biotechnology industry. Today I am pleased to be here on the floor joining with him as we culminate that effort and as we send to the President legislation that will enact this much needed reform.

The biotechnology industry is a bright promise for our Nation's success in the international market of the future. The industry was originated and developed in the United States. This uniquely American enterprise is expected to confer an annual benefit of approximately \$50 billion on the American economy by the year 2000. And even today, it has created more than 100,000 new highly paid, highly skilled jobs in this economy.

But more important than its economic contributions are the benefits biotechnology is bringing to the fields of medicine and agriculture. Through

biotechnology, new strains of plants are being produced that are resistant to disease, that can thrive in hostile terrain, and can survive adverse climatic conditions.

Through biotechnology, new human drugs are on the market today that, when administered to heart attack victims, save lives by dissolving dangerous blood clots.

Other drugs treat anemia, reducing need for blood transfusions in patients who are suffering from chronic kidney failure. And human growth hormone is today enriching the lives of children throughout the world.

American companies are now developing treatments or even potential cures for a variety of hard to treat diseases, including AIDS, Alzheimer's disease, cystic fibrosis, and Lou Gehrig's disease.

And yet the promise of biotechnology is seriously challenged today by a simple and obvious inadequacy in America's patent law. That inadequacy opens the door for foreign firms to expropriate American inventions and compete in this country directly with the inventing firm. In essence, the patent law confers and advantage on foreign companies not enjoyed by the American inventing firm and actually encourages a pilfering of United States creativity. We have examples today of that very practice occurring.

It is that defect in the patent law that H.R. 587 is designed to address. In most cases, biotechnology products are genetically engineered forms of chemicals which naturally occur. The goal of biotechnology is to create the chemicals in larger and commercially viable quantities. To do that, the company engineers a host cell to produce the product. The firm then treats the host cell with a frequently straightforward and well-known process to create the naturally occurring chemical in commercially viable quantities.

The company cannot patent the end product because it occurs in nature. All the company is doing is creating that product in larger quantities. The company can patent the host cell but, under current law, the use of a patented host cell abroad to manufacture a product for importation into the United States is not an infringement of the American host cell patent.

Under a series of court decisions, most prominently *In Re Durden*, the inventor has great difficulty in obtaining a patent on the process that is used to produce the product. The legislation that the gentleman from California [Mr. MOORHEAD] has brought to the House today and which I have been pleased to work with him on over the last several years will open the door to a more certain award of process patents.

□ 1515

In turn the biotechnology firms that have the assurance of receiving those process patents will exhibit a greater willingness to make research invest-

ments totaling hundreds of millions of dollars on an annual basis, the very research investments that are essential to sustain and advance this highly important American industry.

Mr. Speaker, I am pleased to urge support for this measure and passage of it by the House, and I join with our colleague, the gentleman from Massachusetts [Mr. FRANK], in commending the gentleman from California for his legislative skill which has brought the measure to this point which, when added to the Senate bill already passed by that body, can then send this measure directly to the President for his signature and for enactment into law. It is a positive measure. It will advance a very important industry, and I join with the gentleman from California [Mr. MOORHEAD] in strongly urging its passage.

Mrs. SCHROEDER. Mr. Speaker, I have no further speakers, and I yield back the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I wish to congratulate each member of our subcommittee for the hard work they have done on this legislation over a long period of time. This is a fine moment today as we get this bill adopted, and every single Member of both sides of the aisle have worked hard, put their effort in. I know that the gentleman from Virginia [Mr. BOUCHER] has really put his heart and soul into it over a period of years, and we had Bill Hughes, who was the chairman of our subcommittee, who worked hard on it. We have the gentleman from Colorado [Mrs. SCHROEDER] and the ranking member of the full committee. Everyone in our committee has really worked on this: The gentleman from Virginia [Mr. BOUCHER], the gentleman from Massachusetts [Mr. FRANK], the gentleman from Oklahoma [Mr. COBURN], the gentleman from Wisconsin [Mr. SENSENBRENNER], and I want to thank each and every one of them for the product that we are presenting.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. (Mr. RIGGS). The question is on the motion offered by the gentleman from California [Mr. MOORHEAD] that the House suspend the rules and pass the bill, H.R. 587.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended, and the bill was passed.

A motion to reconsider was laid on the table.

Mr. MOORHEAD. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1111) to amend title 35, United States Code, with respect to patents on biotechnological processes, and ask for its immediate consideration in the House.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mrs. SCHROEDER. Mr. Speaker, reserving the right to object, I do so to yield to the gentleman from California [Mr. MOORHEAD] to explain the purpose of the request.

Mr. MOORHEAD. Mr. Speaker, will the gentlewoman yield?

Mrs. Schroeder. I yield to the gentleman from California.

Mr. MOORHEAD. Mr. Speaker, this is the companion Senate bill. This action will enable the bill to go immediately to the President. The Senate bill is identical to the recent House-passed legislation.

Mrs. SCHROEDER. Mr. Speaker, I salute the gentleman for this very adept explanation. That is exactly what we hope to do, get this right to the President. I thank the gentleman for being so expeditious.

Mr. Speaker, I withdraw my reservation of objection.

The Speaker pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1111

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. BIOTECHNOLOGICAL PROCESS PATENTS; CONDITIONS FOR PATENTABILITY; NONOBVIOUS SUBJECT MATTER.

Section 103 of title 35, United States code is amended—

(1) by designating the first paragraph as subsection (a);

(2) by designating the second paragraph as subsection (c); and

(3) by inserting after the first paragraph the following:

“(b)(1) Notwithstanding subsection (a), and upon timely election by the applicant for patent to proceed under this subsection, a biotechnological process using or resulting in a composition of matter that is novel under section 102 and nonobvious under subsection (a) of this section shall be considered nonobvious if—

“(A) claims to the process and the composition of matter are contained in either the same application for patent or in separate applications having the same effective filing date; and

“(B) the composition of matter, and the process at the time it was invented, were owned by the same person or subject to an obligation of assignment to the same person.

“(2) A patent issued on a process under paragraph (1)—

“(A) shall also contain the claims to the composition of matter used in or made by that process, or

“(B) shall, if such composition of matter is claimed in another patent, be set to expire on the same date as such other patent, notwithstanding section 154.

“(3) For purposes of paragraph (1), the term ‘biotechnological process’ means—

“(A) a process of genetically altering or otherwise inducing a single- or multi-celled organism to—

“(i) express an exogenous nucleotide sequence,

“(ii) inhibit, eliminate, augment, or alter expression of an endogenous nucleotide sequence, or

“(iii) express a specific physiological characteristic not naturally associated with said organism;

“(B) cell fusion procedures yielding a cell line that expresses a specific protein, such as a monoclonal antibody; and

“(C) a method of using a product produced by a process defined by (A) or (B), or a combination of (A) and (B).”

SEC. 2. PRESUMPTION OF VALIDITY; DEFENSES.

Section 282 of title 35, United States code, is amended by inserting after the second sentence of the first paragraph the following: “Notwithstanding the preceding sentence, if a claim to a composition of matter is held invalid and that claim was the basis of a determination of nonobviousness under section 103(b)(1), the process shall no longer be considered nonobvious solely on the basis of section 103(b)(1).”

SEC. 3. EFFECTIVE DATE.

The amendments made by section 1 shall apply to any application for patent filed on or after the date of enactment of this Act and to any application for patent pending on such date of enactment, including (in either case) an application for the reissuance of a patent.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES ON H.R. 1655, INTELLIGENCE AUTHORIZATION ACT FOR FISCAL YEAR 1996

Mr. COMBEST. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 1655) to authorize appropriations for fiscal year 1996 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, with a Senate amendment thereto, disagree to the Senate amendment, and agree to the conference asked by the Senate.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas? The Chair hears none and, without objection, appoints the following conferees:

From the Permanent Select Committee on Intelligence, for consideration of the House bill, and the Senate amendment, and modifications committed to conference:

Messrs. COMBEST, DORNAN, YOUNG of Florida, HANSEN, LEWIS of California, GOSS, SHUSTER, MCCOLLUM, CASTLE, DICKS, RICHARDSON, DIXON, TORRICELLI, COLEMAN, SKAGGS, and Ms. PELOSI.

From the Committee on National Security, for the consideration of defense tactical intelligence and related activities:

Messrs. SPENCE, STUMP, and DELUMS.

As additional conferees from the Committee on International Relations, for consideration of section 303 of the House bill, and section 303 of the Senate amendment, and modifications committed to conference:

Messrs. GILMAN, SMITH of New Jersey, and BERMAN.

There was no objection.

DIGITAL PERFORMANCE RIGHT IN SOUND RECORDINGS ACT OF 1995

Mr. MOORHEAD. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1506) to amend title 17, United States Code, to provide an exclusive right to perform sound recordings publicly by means of digital transmissions, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1506

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Digital Performance Right in Sound Recordings Act of 1995”.

SEC. 2. EXCLUSIVE RIGHTS IN COPYRIGHTED WORKS.

Section 106 of title 17, United States Code, is amended—

(1) in paragraph (4) by striking “and” after the semicolon;

(2) in paragraph (5) by striking the period and inserting “; and”; and

(3) by adding at the end the following:

“(6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.”

SEC. 3. SCOPE OF EXCLUSIVE RIGHTS IN SOUND RECORDINGS.

Section 114 of title 17, United States Code, is amended—

(1) in subsection (a) by striking “and (3)” and inserting “(3) and (6)”; and

(2) in subsection (b) in the first sentence by striking “phonorecords, or of copies of motion pictures and other audiovisual works,” and inserting “phonorecords or copies”;

(3) by striking subsection (d) and inserting: “(d) LIMITATIONS ON EXCLUSIVE RIGHT.—Notwithstanding the provisions of section 106(6)—

“(1) EXEMPT TRANSMISSIONS AND RETRANSMISSIONS.—The performance of a sound recording publicly by means of a digital audio transmission, other than as a part of an interactive service, is not an infringement of section 106(6) if the performance is part of—

“(A)(i) a nonsubscription transmission other than a retransmission;

“(ii) an initial nonsubscription retransmission made for direct reception by members of the public of a prior or simultaneous incidental transmission that is not made for direct reception by members of the public; or

“(iii) a nonsubscription broadcast transmission;

“(B) a retransmission of a nonsubscription broadcast transmission: Provided, That, in the case of a retransmission of a radio station's broadcast transmission—

“(i) the radio station's broadcast transmission is not willfully or repeatedly retransmitted more than a radius of 150 miles from the site of the radio broadcast transmitter, however—

“(I) the 150 mile limitation under this clause shall not apply when a nonsubscription broadcast transmission by a radio station licensed by the Federal Communications Commission is retransmitted on a nonsubscription basis by a terrestrial broadcast station, terrestrial translator, or terrestrial repeater licensed by the Federal Communications Commission; and

“(II) in the case of a subscription retransmission of a nonsubscription broadcast retransmission covered by subclause (I), the 150 mile radius shall be measured from the transmitter site of such broadcast retransmitter;

“(ii) the retransmission is of radio station broadcast transmissions that are—

“(I) obtained by the retransmitter over the air;

“(II) not electronically processed by the retransmitter to deliver separate and discrete signals; and

32)