

# H. R. 4185

[Report No. 113]

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1965

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

MARCH 1, 1965

Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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## 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,  
5       United 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 pres-  
8       entation at any other time, \$10 for each claim in inde-  
9       pendent form which is in excess of one, and \$2 for each  
10      claim (whether independent or dependent) which is in ex-  
11      cess of ten. Errors in payment of the additional fees may

1 be rectified in accordance with regulations of the Com-  
2 missioner.

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 each  
6 sheet of drawing.

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  
11 fourteen years, \$30.

12 "4. On filing each application for the reissue of a patent,  
13 \$50; in addition, on filing or on presentation at any other  
14 time, \$10 for each claim in independent form which is in  
15 excess of the number of independent claims of the original  
16 patent, and \$2 for each claim (whether independent or  
17 dependent) which is in excess of ten and also in excess of  
18 the number of claims of the original patent. Errors in pay-  
19 ment 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  
23 to the Board of Appeals, \$25; in addition, on filing a brief  
24 in 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  
9 not to exceed \$1 per copy for patents in excess of twenty-  
10 five pages of drawings and specifications and for plant  
11 patents printed in color; special rates for libraries specified  
12 in section 13 of this title, \$50 for patents issued in one year.  
13 The Commissioner may, without charge, provide applicants  
14 with copies of specifications and drawings of patents when  
15 referred 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 appli-  
18 cation, \$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  
25 the payment of any fee for services or materials in cases

1 of occasional or incidental requests by a Government de-  
2 partment 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 a  
24 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 ap-  
8 plication, \$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  
11 for 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,  
18 is 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  
22 shall be given or mailed to the applicant. The notice shall  
23 specify a sum, constituting the issue fee or a portion thereof,  
24 which shall be paid within three months thereafter.

1       “Upon payment of this sum the patent shall issue, but  
2 if payment is not timely made, the application shall be re-  
3 garded as abandoned.

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

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

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

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

20       “§ 155. Maintenance fees

21       “(a) During the term of a patent, other than for a de-  
22 sign, the following fees shall be due:

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

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

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

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

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

14           “(c) The first and second maintenance fees may be de-  
15 ferred in accordance with subsection (f) of this section.

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

23           “(e) Notice of the requirement for the payment of the  
24 maintenance fees and the filing of statements in compliance

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

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

21 “Any inventor to whom a patent issued (or his heirs)  
22 and who owns the patent may within six months of the  
23 ninth anniversary of the issue date of the patent by a state-  
24 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 hav-  
4 ing had any interest in the subject matter of the patent dur-  
5 ing the preceding four years, from, under, or by virtue of  
6 the patent or from the manufacture, use, or sale of the in-  
7 vention, was less in value than the amount of the second  
8 fee, and the statement so specifies. The second fee, or the  
9 first and second fees, as the case may be, shall thereupon be  
10 deferred until the time the third maintenance fee is due and  
11 shall be paid in addition to the third maintenance fee and  
12 with the same result if not paid. No deferment of any of  
13 the fees beyond the thirteenth anniversary of the issue date  
14 of the patent shall be permitted and the patent will terminate  
15 at the end of the thirteenth anniversary of the issue date  
16 unless all maintenance fees are paid in accordance with the  
17 provisions 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 notice  
20 of allowance provided in section 151 of this chapter, to  
21 pay a fee of \$75 and such payment shall constitute a com-  
22 plete satisfaction of the maintenance fees provided for in  
23 this section.”

1        SEC. 7. The analysis of chapter 14 of title 35, United  
2 States Code, immediately preceding section 151, is amended  
3 to read as follows:

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

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

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

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

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

12            “c. beyond the thirteenth anniversary of the issue  
13 date of the patent, \$150.

14        “13. For delayed payment of maintenance fee, \$25.”

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

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

21            (c) Item 2 of section 41 (a), as amended by section 1

1 of this Act, and sections 4, 6, and 8 of this Act do not apply  
2 in cases in which the notice of allowance of the application  
3 was sent, or in which a patent issued, prior to the effective  
4 date; and, in such cases, the fee due is the fee specified in  
5 this title prior to the effective date of this Act.

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

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

13 The chapter analysis of chapter 27 of title 35, United  
14 States Code, is amended by striking out the following item:  
"266. Issue of patents without fees to Government employees."

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

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

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

Union Calendar No. 43

89<sup>TH</sup> CONGRESS  
 1<sup>ST</sup> SESSION

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