

H. R. 4185

[Report No. 301]

IN THE SENATE OF THE UNITED STATES

MARCH 18, 1965

Read twice and referred to the Committee on the Judiciary

JUNE 8 (legislative day, JUNE 7), 1965

Reported by Mr. McCLELLAN, with amendments

[Omit the part struck through and insert the part printed in italic]

AN ACT

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~~ *\$65*; 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
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~~ \$100; in addition, \$10 for each page
5 (or portion thereof) of specification as printed, and \$2 for
6 each 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~~ \$65; 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 origi-
16 nal 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~~ \$50; in addition, on filing a
24 brief 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. *In calculating the amount of a re-*
8 *maining balance, charges for a page or less may be disre-*
9 *garded.*

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 of
18 issue and maintenance fees as provided for in this title,” after
19 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 de-
24 sign, 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
8 shall 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
12 a response is not received to the notice provided by subsec-
13 tion ~~(c)~~ of this section, a subsequent notice shall be sent
14 approximately sixty days after the due date of any mainte-
15 nance fee.

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

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

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

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

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

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

19 “(g) An applicant or his assignee may elect, on or
20 before the time of payment of the sum specified in the notice
21 of allowance provided in section 151 of this chapter, to
22 pay a fee of \$75 and such payment shall constitute a com-
23 plete satisfaction of the maintenance fees provided for in
24 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. 6. The analysis of chapter 14 of title 35, United
 16 States Code, immediately preceding section 151, is amended
 17 in the first item thereof by striking out the words "Time of
 18 issue of patent" and inserting in lieu thereof "Issue of
 19 patent".

20 SEC. 9 7. (a) This Act shall take effect three months
 21 after its enactment.

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

5 (c) Item 2 of section 41 (a), as amended by section 1
6 of this Act, and ~~sections 4, 6, and 8~~ *section 4* of this Act do
7 not apply in cases in which the notice of allowance of the
8 application was sent, or in which a patent issued, prior to
9 the effective date; and, in such cases, the fee due is the fee
10 specified in this title prior to the effective date of this Act.

11 (d) Item 3 of section 31 of the Trademark Act, as
12 amended by section 3 of this Act, applies only in the case
13 of registrations issued and registrations published under the
14 provisions of section 12 (c) of the Trademark Act on or
15 after the effective date of this Act.

16 ~~SEC. 10 8.~~ Section 266 of title 35, United States Code,
17 is repealed.

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

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

20 ~~SEC. 11 9.~~ Section 112 of title 35, United States Code,
21 is amended by adding to the second paragraph thereof the
22 following sentence: “A claim may be written in independent

1 or dependent form, and if in dependent form, it shall be
2 construed to include all the limitations of the claim incor-
3 porated by reference into the dependent claim.”

4 SEC. ~~12~~ 10. Section 282 of title 35, United States
5 Code, is amended by deletion of the first paragraph thereof
6 and substituting therefor the following paragraph:

7 “A patent shall be presumed valid. Each claim of a
8 patent (whether in independent or dependent form) shall
9 be presumed valid independently of the validity of other
10 claims; dependent claims shall be presumed valid even
11 though dependent upon an invalid claim. The burden of
12 establishing invalidity of a patent or any claim thereof
13 shall rest on the party asserting it.”

Passed the House of Representatives March 17, 1965.

Attest:

RALPH R. ROBERTS,
Clerk.

Calendar No. 289

89TH CONGRESS
1ST SESSION

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