

H. R. 8190

[Report No. 949]

IN THE HOUSE OF REPRESENTATIVES

AUGUST 21, 1963

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

DECEMBER 3, 1963

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

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

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
8 presentation at any other time, \$10 for each claim in in-
9 dependent form which is in excess of one, and \$2 for each
10 claim (whether independent or dependent) which is in
11 excess of ten. *Errors in payment of the additional fees may*

1 *be rectified in accordance with regulations of the Commis-*
2 *sioner.*

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 de-
17 pendent) which is in excess of ten and also in excess of the
18 number of claims of the original patent. *Errors in payment*
19 *of the additional fees may be rectified in accordance with*
20 *regulations of the Commissioner.*

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

22 “6. On an appeal for the first time from the examiner
23 to the Board of Appeals, \$100. If an oral hearing is not
24 requested prior to any consideration by the Board, \$50 of
25 the \$100 fee will be refunded; or, alternatively, if the appeal

1 is withdrawn prior to any consideration by the Board, all of
2 the fee over \$25 will be refunded.

3 "7. On filing each petition for the revival of an aban-
4 doned application for a patent or for the delayed payment
5 of the fee for issuing each patent, \$15.

6 "8. For certificate under section 255 or under section
7 256 of this title, \$15.

8 "9. As available and if in print: For uncertified printed
9 copies of specifications and drawings of patents (except de-
10 sign patents), 25 cents per copy; for design patents, 10 cents
11 per copy; the Commissioner may establish a charge not to
12 exceed \$1 per copy for patents in excess of twenty-five pages
13 of drawings and specifications and for plant patents printed
14 in color; special rates for libraries specified in section 13 of
15 this title, \$50 for patents issued in one year.

16 "10. For recording each assignment of an application
17 or a patent, \$20; for recording any other paper, \$20."

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

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

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

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

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

8 “2. On filing each application for renewal in each class,
9 \$25; and on filing each application for renewal in each class
10 after expiration of the registration, an additional fee of \$5.

11 “3. On filing an affidavit under section 8 (a) or section
12 8 (b), \$10.

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

15 “5. On filing notice of opposition or application for can-
16 cellation, \$25.

17 “6. On appeal from an examiner in charge of the regis-
18 tration of marks to the Trademark Trial and Appeal Board,
19 \$25.

20 “7. For issuance of a new certificate of registration fol-
21 lowing change of ownership of a mark or correction of a
22 registrant’s mistake, \$15.

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

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

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

2 “11. For printed copy of registered mark, 10 cents.

3 “12. For recording each assignment of a registration,
4 \$20; for recording any other paper, \$20.

5 “13. On filing notice of claim of benefits of this Act
6 for a mark to be published under section 12 (c) hereof,
7 \$10.

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

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

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

15 “§ 151. Issue of patent

16 “If it appears that applicant is entitled to a patent
17 under the law, a written notice of allowance of the applica-
18 tion shall be given or mailed to the applicant. The notice
19 shall specify a sum, constituting the issue fee or a portion
20 thereof, which shall be paid within three months thereafter.

21 “Upon payment of this sum the patent shall issue, but
22 if payment is not timely made, the application shall be
23 regarded as abandoned.

24 “~~Any remaining balance of the issue fee shall be paid~~

1 ~~within three months~~ after the date of the issue of the
2 patent; if not paid, the patent shall lapse at the termination
3 of this ~~three-month~~ period.

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*
7 *of 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,
15 is amended by inserting the words "subject to the payment
16 of issue and maintenance fees as provided for in this title,"
17 after 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
22 design, 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.

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

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

19 “(e) Notice of the requirement for the payment of the
20 maintenance fees and the filing of statements in compliance
21 with this section shall be attached to or be embodied in the
22 patent. Approximately thirty days before a maintenance
23 fee is due, the Commissioner shall send a separate notice
24 thereof to the patentee and all other parties having an in-

1 terest of record at the addresses last furnished to the Patent
2 Office. Irrespective of any other provision of this section,
3 a maintenance fee may be paid within thirty days after the
4 date of such separate notice.

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

17 “Any inventor to whom a patent issued (or his heirs)
18 and who owns the patent may within six months of the
19 ninth anniversary of the issue date of the patent (by a
20 statement under oath) request deferment of the second main-
21 tenance fee (and further deferment of the first maintenance
22 fee if such fee has been deferred) if the total benefit received
23 by the inventor or any other party having or having had
24 any interest in the subject matter of the patent during the
25 preceding four years, from, under, or by virtue of the patent

1 or from the manufacture, use, or sale of the invention, was
2 less in value than the amount of the second fee, and the
3 statement so specifies. The second fee, or the first and
4 second fees, as the case may be, shall thereupon be deferred
5 until the time the third maintenance fee is due and shall be
6 paid in addition to the third maintenance fee and with the
7 same result if not paid. No deferment of any of the fees
8 beyond the thirteenth anniversary of the issue date of the
9 patent shall be permitted and the patent will terminate at
10 the end of the thirteenth anniversary of the issue date unless
11 all maintenance fees are paid in accordance with the pro-
12 visions of this section.”

13 SEC. 7. The analysis of chapter 14 of title 35, United
14 States Code, immediately preceding section 151, is amended
15 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.”

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

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

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

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

3 “c. beyond the thirteenth anniversary of the issue
4 date of the patent; \$150.

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

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

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

12 (c) Item 2 of section 41 (a); as amended by section 1
13 of this Act, and sections 4, 6, and 8 of this Act do not
14 apply in cases in which the notice of allowance of the appli-
15 cation was sent, or in which a patent issued, prior to the
16 effective date; and, in such cases, the fee due is the fee
17 specified in this title prior to the effective date of this
18 Act.

19 (d) Item 3 of section 31, of the Trademark Act, as
20 amended by section 3 of this Act, applies only in the case
21 of registrations issued and registrations published under the
22 provisions of section 12 (c) of the Trademark Act on or
23 after the effective date of this Act.

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

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

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

3 SEC. 11. Section 112 of title 35, United States Code,
4 is amended by adding to the second paragraph thereof the
5 following sentence: “A claim may be written in independ-
6 ent or dependent form, and if in dependent form, it shall be
7 construed to include all the limitations of the claim incor-
8 porated by reference into the dependent claim.”

88TH CONGRESS
1ST SESSION

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