

Calendar No. 1324

93^D CONGRESS
2^D SESSION

H. R. 9199

[Report No. 93-1401]

IN THE SENATE OF THE UNITED STATES

MARCH 19, 1974

Read twice and referred to the Committee on the Judiciary

DECEMBER 17, 1974

Reported by Mr. McCLELLAN, without amendment

AN ACT

To amend title 35, United States Code, "Patents", 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 section 3, title 35, of the United States Code is amended
4 to read as follows:

5 **"§ 3. Officers and employees**

6 " (a) There shall be in the Patent Office a Commissioner
7 of Patents, a Deputy Commissioner, two Assistant Commis-
8 sioners, and not more than fifteen examiners-in-chief. The
9 Deputy Commissioner, or, in the event of a vacancy in that
10 office, the Assistant Commissioner senior in date of appoint-
11 ment shall fill the office of Commissioner during a vacancy

1 in that office until the Commissioner is appointed and takes
2 office. The Commissioner of Patents, the Deputy Commis-
3 sioner, and the Assistant Commissioners shall be appointed
4 by the President, by and with the advice and consent of the
5 Senate. The Secretary of Commerce, upon the nomination
6 of the Commissioner, in accordance with law, shall appoint
7 all other officers and employees.

8 “(b) The Secretary of Commerce may vest in himself
9 the functions of the Patent Office and its officers and em-
10 ployees specified in this title and may from time to time
11 authorize their performance by any other officer or employee.

12 “(c) The Secretary of Commerce is authorized to fix
-13 the per annum rate of basic compensation of each examiner-
14 in-chief in the Patent Office at not in excess of the maximum
15 scheduled rate provided for positions in grade 17 of the
16 General Schedule of the Classification Act of 1949, as
17 amended.”

18 SEC. 2. The first paragraph of section 7 of title 35 of
19 the United States Code is amended to read as follows:

20 “The examiners-in-chief shall be persons of competent
21 legal knowledge and scientific ability, who shall be appointed
22 under the classified civil service. The Commissioner, the dep-
23 uty commissioner, the assistant commissioners, and the ex-
24 aminers-in-chief shall constitute a Board of Appeals, which
25 on written appeal of the applicant, shall review adverse deci-

1 sions of examiners upon applications for patents. Each appeal
2 shall be heard by at least three members of the Board of
3 Appeals, the members hearing such appeal to be designated
4 by the Commissioner. The Board of Appeals has sole power
5 to grant rehearings.”

6 SEC. 3. The last sentence of section 151 of title 35 of
7 the United States Code is amended to read as follows: “If
8 any payment required by this section is not timely made, but
9 is submitted with the fee for delayed payment and the delay
10 in payment is shown to have been unavoidable, it may be
11 accepted by the Commissioner as though no abandonment or
12 lapse had ever occurred.”.

13 SEC. 4. (a) The Commissioner of Patents may, in
14 accordance with Section 3 of this Act, accept late payment
15 of issue fees, the payment of which was governed by the
16 provisions of Public Law 89-93; *Provided*: the term of the
17 patent for which late payment of such an issue fee is accepted
18 shall expire earlier than the time specified in Section 154
19 of Title 35, United States Code, by a period equal to the
20 delay between the time the application became abandoned
21 or the patent lapsed for failure to pay the issue fee and the
22 time the late payment is accepted after enactment of this
23 Act; *Further Provided*: no patent with respect to which the
24 payment of the issue fee was governed by the provisions of
25 PL 89-83 and for which a late payment of the issue fee

1 is accepted under the authority created by Section 3 of this
2 Act, shall abridge or affect the right of any person or his
3 successors in business who made, purchased or used any-
4 thing covered by the patent, after the date of the application
5 became abandoned or patent lapsed for failure to pay the
6 issue fee but prior to the grant or restoration of the patent,
7 to continue the use of or to sell to others to be used or sold,
8 the specific thing so made, purchased, or used. A court
9 before which such matter is in question may provide for the
10 continued manufacture, use or sale of the thing made, pur-
11 chased or used as specified, or for the manufacture, use or
12 sale of which substantial preparation was made after the
13 date the application became abandoned or patent lapsed for
14 failure to pay the fee but prior to the grant or restoration of
15 the patent, and it may also provide for the continued practice
16 of any process covered by the patent, practiced, or for the
17 practice of which substantial preparation was made, after the
18 date the application became abandoned or patent lapsed for
19 failure to pay the issue fee but prior to the grant or restora-
20 tion of the patent, to the extent and under such terms as the
21 court deems equitable for the protection of investments made
22 or business commenced before the grant or restoration of the
23 patent.

1 (b) This Act shall be effective upon enactment. Exam-
2 iners-in-chief in office on the date of enactment shall continue
3 in office under and in accordance with their then existing
4 appointments.

Passed the House of Representatives March 18, 1974.

Attest:

W. PAT JENNINGS,

Clerk.

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