

H. R. 9199

[Report No. 93-856]

IN THE HOUSE OF REPRESENTATIVES

JULY 11, 1973

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

FEBRUARY 28, 1974

Reported with an amendment, 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 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 by
4 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 ac-
14 cordance with section 3 of this Act, accept late payment of
15 issue fees, the payment of which was governed by the pro-
16 visions of Public Law 89-83: *Provided*, That the term of
17 the patent for which late payment of such an issue fee
18 is accepted shall expire earlier than the time specified in
19 section 154 of title 35, United States Code, by a period equal
20 to the delay between the time the application became aban-
21 doned or a patent lapsed for failure to pay the issue fee
22 and the time the late payment is accepted after enactment
23 of this Act: *Further provided*, That no patent, with re-
24 spect to which the payment of the issue fee was governed
25 by the provisions of Public Law 89-83 and for which a

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

22 *SEC. 4. (a) The Commissioner of Patents may, in ac-*
23 *cordance with Section 3 of this Act, accept late payment of*
24 *issue fees, the payment of which was governed by the provi-*
25 *sions of Public Law 89-93; Provided: the term of the patent*

1 for which late payment of such an issue fee is accepted shall
2 expire earlier than the time specified in Section 154 of Title
3 35, United States Code, by a period equal to the delay between
4 the time the application became abandoned or the patent
5 lapsed for failure to pay the issue fee and the time the late
6 payment is accepted after enactment of this Act; Further Pro-
7 vided: no patent with respect to which the payment of the issue
8 fee was governed by the provisions of PL 89-83 and for
9 which a late payment of the issue fee is accepted under the au-
10 thority created by Section 3 of this Act, shall abridge or affect
11 the right of any person or his successors in business who made,
12 purchased or used anything covered by the patent, after the
13 date of the application became abandoned or patent lapsed for
14 failure to pay the issue fee but prior to the grant or restora-
15 tion of the patent, to continue the use of or to sell to others to
16 be used or sold, the specific thing so made, purchased, or used.
17 A court before which such matter is in question may provide
18 for the continued manufacture, use or sale of the thing made,
19 purchased or used as specified, or for the manufacture, use
20 or sale of which substantial preparation was made after the
21 date the application became abandoned or patent lapsed for
22 failure to pay the fee but prior to the grant or restoration of
23 the patent, and it may also provide for the continued practice
24 of any process covered by the patent, practiced, or for the
25 practice of which substantial preparation was made, after the

1 date the application became abandoned or patent lapsed for
2 failure to pay the issue fee but prior to the grant or restoration
3 of the patent, to the extent and under such terms as the court
4 deems equitable for the protection of investments made or bus-
5 iness commenced before the grant or restoration of the patent.

6 (b) This Act shall be effective upon enactment. Exam-
7 iners-in-chief in office on the date of enactment shall continue
8 in office under and in accordance with their then existing
9 appointments.

Union Calendar No. 388

93^D CONGRESS
2^D SESSION

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