

97TH CONGRESS
2^D SESSION

S. 2211

To authorize appropriations for the Patent and Trademark Office in the Department of Commerce, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 16 (legislative day, FEBRUARY 22), 1982

Mr. THURMOND (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To authorize appropriations for the Patent and Trademark Office in the Department of Commerce, 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 there is authorized to be appropriated for the payment
4 of salaries and necessary expenses of the Patent and Trade-
5 mark Office to become available October 1, 1982,
6 \$68,086,000 and such additional or supplemental amounts as
7 may be necessary for increases in salary, pay, retirement, or
8 other employee benefits authorized by law. When so specified
9 and to the extent provided in an appropriation act, any
10 amount appropriated pursuant to this section and, in addition,

1 such fees as shall be collected pursuant to title 35, United
2 States Code, and the Trademark Act of 1946, as amended
3 (15 U.S.C. 1051 et seq.), may remain available without fiscal
4 year limitation.

5 SEC. 2. Notwithstanding any other provision of law,
6 there is authorized to be appropriated for the payment of sal-
7 aries and expenses of the Patent and Trademark Office,
8 \$121,461,000 for the fiscal year ending September 30, 1982,
9 and such additional or supplemental amounts as may be nec-
10 essary for increases in salary, pay, retirement, or other em-
11 ployee benefits authorized by law.

12 SEC. 3. (a) Section 41(b) of title 35, United States
13 Code, is amended (1) by deleting "25" and inserting in its
14 place "not more than 50"; and (2) by deleting "50" and
15 inserting in its place "100".

16 (b) Section 41(c) of title 35, United States Code, is
17 amended by deleting "25 per centum" and inserting in its
18 place the phrase " , together with fees collected under subsec-
19 tion (b) of this section, 100 per centum".

20 (c) Section 41 of title 35, United States Code, is amend-
21 ed (1) by redesignating subsection (d), (e), (f) and (g) as sub-
22 section (e), (f), (g) and (h), respectively; and (2) by inserting
23 the following new subsection (d):

24 “(d)(1) The Commissioner may accept the payment of
25 any maintenance fee required by subsection (c) of this section

1 after the six-month grace period if the delay in payment is
2 shown to the satisfaction of the Commissioner to have been
3 unavoidable. The Commissioner may require the payment of
4 a surcharge as a condition of accepting payment of any main-
5 tenance fee after the six-month grace period. If the Commis-
6 sioner accepts payment of a maintenance fee after the six-
7 month grace period, the patent shall be considered as not
8 having expired at the end of the grace period.

9 (2) No patent, the term of which has been maintained as
10 a result of the acceptance of a payment of a maintenance fee
11 under this subsection, shall abridge or affect the right of any
12 person or his successors in business who made, purchased or
13 used after the six-month grace period but prior to the accept-
14 ance of a maintenance fee under this subsection anything pro-
15 tected by the patent, to continue the use of, or to sell to
16 others to be used or sold, the specific thing so made, pur-
17 chased or used. The court before which such matter is in
18 question may provide for the continued manufacture, use or
19 sale of the thing made, purchased or used as specified, or for
20 the manufacture, use or sale of which substantial preparation
21 was made after the six-month grace period but before the
22 acceptance of a maintenance fee under this subsection, and it
23 may also provide for the continued practice of any process,
24 practiced, or for the practice of which substantial preparation
25 was made, after the six-month grace period but prior to the

1 acceptance of a maintenance fee under this subsection, to the
2 extent and under such terms as the court deems equitable for
3 the protection of investments made or business commenced
4 after the six-month grace period but before the acceptance of
5 a maintenance fee under the subsection.”

6 (d) Subsection (a) of section 31 of the Trademark Act of
7 1946, as amended (15 U.S.C. 1113), is amended by deleting
8 “50” and inserting in its place “100”.

9 (e) Section 42(c) of title 35, United States Code, is
10 amended by adding the following sentence at the end thereof:

11 “Fees available to the Commissioner under section 31
12 of the Trademark Act of 1946, as amended (15 U.S.C.
13 1113), shall be used exclusively for the processing of trade-
14 mark registrations and for other services and materials relat-
15 ed to trademarks.”.

16 SEC. 4. Section 3. (a) of title 35, United States Code is
17 amended (1) by deleting the phrase “not more than fifteen”;
18 and (2) by inserting the phrase “appointed under section 7 of
19 this title” immediately after the phrase “examiners-in-chief”.

20 SEC. 5. Section 111 of title 35, United States Code, is
21 amended to read as follows:

22 “Application for patent shall be made, or authorized to
23 be made, by the inventor, except as otherwise provided in
24 this title, in writing to the Commissioner. Such application
25 shall include: (1) a specification as prescribed by section 112

1 of this title; (2) a drawing as prescribed by section 113 of this
2 title; and (3) an oath by the applicant as prescribed by section
3 115 of this title. The application must be accompanied by the
4 fee required by law. The fee and oath may be submitted after
5 the specification and any required drawing are submitted,
6 within such period and under such conditions, including the
7 payment of a surcharge, as may be prescribed by the Com-
8 missioner. Upon failure to submit the fee and oath within
9 such prescribed period, the application shall be regarded as
10 abandoned, unless it is shown to the satisfaction of the Com-
11 missioner that the delay in submitting the fee and oath was
12 unavoidable. The filing date of an application shall be the
13 date on which the specification and any required drawing are
14 received in the Patent and Trademark Office.”.

15 SEC. 6. (a) Section 116 of title 35, United States Code,
16 is amended (1) by deleting the phrase “Joint inventors” from
17 the title and inserting in its place “Inventors”; and (2) in the
18 third paragraph, by deleting the phrase “a person is joined in
19 an application for patent as joint inventor through error, or a
20 joint inventor is not included in an application through error”
21 and inserting in its place the phrase “through error a person
22 is named in an application for patent as the inventor, or
23 through error an inventor is not named in an application”.

24 (b) Section 256 of title 35, United States Code, is
25 amended to read as follows:

1 **“§ 256. Correction of named inventor**

2 “Whenever through error a person is named in an
3 issued patent as the inventor, or through error an inventor is
4 not named in an issued patent and such error arose without
5 any deceptive intention on his part, the Commissioner may,
6 on application of all the parties and assignees, with proof of
7 the facts and such other requirements as may be imposed,
8 issue a certificate correcting such error.

9 “The error of omitting inventors or naming persons who
10 are not inventors shall not invalidate the patent in which
11 such error occurred if it can be corrected as provided in this
12 section. The court before which such matter is called in ques-
13 tion may order correction of the patent on notice and hearing
14 of all parties concerned and the Commissioner shall issue a
15 certificate accordingly.”

16 SEC. 7. Section 6 of title 35, United States Code, is
17 amended by deleting paragraph (d) thereof.

18 SEC. 8. (a) Section 8(a) of the Trademark Act of 1946,
19 as amended (15 U.S.C. 1058(a)), is amended (1) by deleting
20 the word “still”; and (2) by inserting the phrase “in com-
21 merce” immediately after the word “use”.

22 (b) Section 8(b) of the Trademark Act of 1946, as
23 amended (15 U.S.C. 1058(b)), is amended (1) by deleting the
24 word “still”; and (2) by inserting the phrase “in commerce”
25 immediately after the word “use”.

1 SEC. 9. (a) Section 13 of the Trademark Act of 1946, as
2 amended (15 U.S.C. 1063), is amended (1) by deleting the
3 phrase "a verified" and inserting in its place the word "an";
4 (2) by adding the phrase "when requested prior to the expira-
5 tion of an extension" immediately after the word "cause";
6 and (3) by deleting the fourth sentence.

7 (b) Section 14 of the Trademark Act of 1946, as amend-
8 ed (15 U.S.C. 1064), is amended by deleting the word "veri-
9 fied".

10 SEC. 10. Section 15 of the Trademark Act of 1946, as
11 amended (15 U.S.C. 1065), is amended by deleting the
12 phrase "the publication" and inserting in its place the word
13 "registration".

14 SEC. 11. The first sentence of section 16 of the Trade-
15 mark Act of 1946, as amended (15 U.S.C. 1066), is amended
16 to read as follows:

17 "Upon petition showing extraordinary circumstances,
18 the Commissioner may declare that an interference exists
19 when application is made for the registration of a mark which
20 so resembles a mark previously registered by another, or for
21 the registration of which another has previously made appli-
22 cation, as to be likely when applied to the goods or when
23 used in connection with the services of the applicant to cause
24 confusion or mistake or to deceive."

1 SEC. 12. Section 21 of title 35, United States Code, is
2 amended—

3 (1) by deleting the phrase “Day for taking action
4 falling on Saturday, Sunday, or holiday” from the title,
5 and inserting in its place the phrase “Filing date and
6 day for taking action”;

7 (2) by inserting the following as subsection (a):

8 “(a) The Commissioner may by rule prescribe that any
9 paper or fee required to be filed in the Patent and Trademark
10 Office will be considered filed in the Office on the date on
11 which it was deposited with the United States Postal Service
12 or would have been deposited with the United States Postal
13 Service but for postal service interruptions or emergencies
14 designated by the Commissioner.”;

15 (3) by designating the existing paragraph as sub-
16 section (b); and

17 (4) by inserting the word “federal” in subsection
18 (b), as designated above, immediately after the word
19 “a”.

20 SEC. 13. Section 6(a) of title 35, United States Code, is
21 amended (1) by deleting the word “and”, third occurrence,
22 and inserting in its place a comma; (2) by inserting the phrase
23 “, or exchanges of items or services” immediately after the
24 word “programs”; and (3) by inserting the phrase “or the

1 administration of the Patent and Trademark Office” immedi-
2 ately after the word “law”, second occurrence.

3 SEC. 14. (a) Section 115 of title 35, United States
4 Code, is amended by (1) deleting the phrase “shall be” and
5 inserting in its place the word “is”; and (2) inserting the
6 following immediately after the phrase “United States”, third
7 occurrence: “, or apostille of an official designated by a for-
8 eign country which, by treaty or convention, accords like
9 effect to apostilles of designated officials in the United
10 States”.

11 (b) Section 261 of title 35, United States Code, is
12 amended, in the third paragraph, by inserting the following
13 immediately after the phrase “United States”, third occur-
14 rence,: “, or apostille of an official designated by a foreign
15 country which, by treaty or convention, accords like effect to
16 apostilles of designated officials in the United States”.

17 (c) Section 11 of the Trademark Act of 1946, as amend-
18 ed (15 U.S.C. 1061), is amended by (1) deleting the phrase
19 “shall be”, first occurrence, and inserting in its place the
20 word “is”; and (2) inserting the following immediately after
21 the phrase “United States”, third occurrence,: “, or apostille
22 of an official designated by a foreign country which, by treaty
23 or convention, accords like effect to apostilles of designated
24 officials in the United States”.

1 SEC. 15. Section 13 of title 35, United States Code, is
2 amended by deleting “(a)9” and inserting in its place “(e)”.

3 SEC. 16. (a) Sections 1–4, 7, and 13–15 of this Act
4 shall take effect on the date of enactment of this Act. The
5 increased percentage recovery of Office costs from mainte-
6 nance fees in section 3(b) of this Act shall not apply to pat-
7 ents applied for prior to the date of enactment of this Act.
8 Until maintenance fees under section 41(c) of this title, as
9 amended by section 3(b) of this Act, are in full effect, fees
10 under section 41(b) of this title for the processing of an appli-
11 cation for a patent, other than for a design patent, from filing
12 through disposition by issuance or abandonment, shall recov-
13 er in aggregate 50 per centum of the estimated average cost
14 to the Office of such processing.

15 (b) Sections 5, 6, and 8–12 of this Act shall take effect
16 six months after enactment.

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