

Calendar No. 2131

87TH CONGRESS
2^D SESSION

S. 2225

[Report No. 2167]

IN THE SENATE OF THE UNITED STATES

JULY 11, 1961

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

SEPTEMBER 27, 1962

Reported by Mr. McCLELLAN, with an amendment

[Strike out all after the enacting clause 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 items numbered 1, 2, 3, 4, 6, 8, and 9, respectively,
4 in subsection (a) of section 41 of title 35, United States
5 Code, are amended to read as follows:

6 “1. On filing each application for an original patent, ex-
7 cept in design cases, \$40; and \$2 for each claim in excess
8 of ten:

1 “2. On issuing each original patent, except in design
2 cases, \$50, and \$2 for each claim in excess of ten.

3 “3. In design cases: For three years and six months,
4 \$20; for seven years, \$30; for fourteen years, \$40.

5 “4. On every application for the reissue of a patent,
6 \$40, and \$2 for each claim in excess of ten which is also
7 over and above the number of claims of the original patent.

8 “6. On an appeal for the first time from the examiner
9 to the Board of Appeals, \$50.

10 “8. For certificate of correction of applicant's mistake
11 under section 255 or certificate under section 256 of this
12 title, \$15.

13 “9. As available and if in print: For uncertified printed
14 copies of specifications and drawings of patents (except
15 design patents), 25 cents per copy; for design patents, 10
16 cents per copy; the Commissioner may establish a charge
17 not to exceed \$1 per copy for patents in excess of twenty-
18 five pages of drawings and specification and for plant patents
19 printed in color; special rate for libraries specified in section
20 13 of this title, \$50 for patents issued in one year.”

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

23 “(e) The fees prescribed by or under this section apply
24 to any other Government department or agency, or officer
25 thereof, except that the Commissioner may waive the pay-

1 ment of any fee for services or materials in cases of occasional
2 or incidental requests by a Government department or
3 agency, or officer thereof."

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

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

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

11 “2. On filing each application for renewal in each class,
12 \$25; and on filing each application for renewal in each class
13 after expiration of the registration, an additional fee of \$5.

14 “3. On filing an affidavit under section 8(a) or section
15 8(b), \$10.

16 “4. On filing each petition for the revival of an aban-
17 doned application, \$10.

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

20 “6. On appeal from an examiner in charge of the regis-
21 tration of marks to the Trademark Trial and Appeal Board,
22 \$25.

23 “7. For issuance of a new certificate of registration fol-
24 lowing change of ownership of a mark or correction of a
25 registrant's mistake, \$15.

1 “8. For certificate of correction of registrant's mistake or
2 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, 10 cents.

6 “12. For recording every assignment or other paper not
7 exceeding six pages, \$3; for each additional two pages or
8 less, \$1; for each additional registration or application in-
9 cluded, or involved in one writing where more than one is
10 so included or involved, additional, \$1.

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

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

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

18 SEC. 4. Section 154 of title 35, United States Code, is
19 amended by inserting the words “subject to the payment of
20 maintenance fees,” after the words “seventeen years,”.

21 SEC. 5. Title 35, United States Code, is amended by
22 adding the following new section after section 154:

23 “§ 155. Maintenance fees

24 “(a) During the term of a patent (other than a de-
25 sign patent) a first maintenance fee shall be due prior to

1 the end of the fifth year from the date of the patent, a
2 second maintenance fee prior to the end of the ninth year
3 from the date of the patent if the patent is then still in effect,
4 and a third maintenance fee prior to the end of the thirteenth
5 year from the date of the patent, if the patent is then still
6 in effect; said fees may be paid within six months after
7 the due date, namely the end of the fifth, ninth, or thirteenth
8 years, respectively, or as otherwise provided in subsection
9 ~~(b)~~ of this section, upon payment of the additional fee
10 prescribed for delayed payment. On failure to pay a maintenance fee before the expiration of the time provided there-
11 for the right conferred by the patent shall terminate at the
12 end of the fifth, ninth, or thirteenth year, as the case may
13 be, or as otherwise provided in subsection ~~(c)~~ of this section. Such termination or lapsing shall be without prejudice
14 to rights existing under any other patent.

17 ~~"In the case of a reissued patent, the times specified~~
18 herein shall run from the date of the original patent.

19 ~~"(b) Notice of the requirement for the payment of the~~
20 maintenance fees shall be attached to or embodied in the
21 patent. The Commissioner shall send a separate notice of
22 the requirement for the fee, without unreasonable delay, after
23 the due date has passed without the fee having been paid,
24 to the patentee and any other party having an interest in
25 the patent as shown by the records of the office on the due

1 date, at the address shown by the record of the patent, and
2 the fee, together with the additional fee prescribed for delayed
3 payment, may be paid within thirty days from the date of
4 such notice or within six months from the due date, which
5 ever period expires later.

6 “(c) Any inventor to whom a patent was issued (or his
7 heirs if the inventor is deceased) and who owns the patent
8 may, at a time not earlier than six months prior to the
9 due date and not later than the final date provided in sub-
10 section (b) of this section, request deferment of the first
11 maintenance fee if the total sum received by anyone, since
12 the date of the patent, from or under or by virtue of the
13 patent, or from the manufacture, use or sale under the patent
14 of the invention, was less than the amount of the fee due,
15 and a statement under oath to this effect accompanies the
16 request. The fee shall thereupon be deferred until the time
17 the second maintenance fee is due and shall be payable
18 within the same time as and in addition to such second
19 maintenance fee and with the same result if not paid.

20 “Any inventor to whom a patent was issued (or his
21 heirs if the inventor is deceased) and who owns the patent
22 may, at a time not earlier than six months prior to the due
23 date and not later than the final date provided in subsection
24 (b) of this section, request deferment of the second main-
25 tenance fee, and further deferment of the first maintenance

1 fee (if such fee has been deferred under the first paragraph
2 of this subsection), if the total sum received by anyone,
3 during the preceding four years, from or under or by virtue
4 of the patent, or from the manufacture, use or sale under
5 the patent of the invention, was less than the amount of the
6 fee or fees due, and a statement under oath to this effect
7 accompanies the request. The fee or fees due shall there-
8 upon be deferred until the time the third maintenance fee
9 is due and shall be payable within the same time as and in
10 addition to such third maintenance fee and with the same
11 result if not paid."

12 The analysis of chapter 14 of title 35, United States
13 Code, immediately preceding section 151, is amended by
14 adding thereto:

"155. Maintenance fees."

15 SEC. 6. Subsection (a) of section 41 of title 35, United
16 States Code, is amended by adding the following:

17 "12. a. First maintenance fee, due on the expiration of
18 the fifth year of the patent, other than a design patent, \$100.

19 "b. Second maintenance fee, due on the expiration of the
20 ninth year of the patent, other than a design patent, \$300.

21 "c. Third maintenance fee, due on the expiration of the
22 thirteenth year of the patent, other than a design patent,
23 \$500.

24 "d. On delayed payment of a maintenance fee, \$25."

1 ~~SEC. 7. (a) This Act shall take effect three months after~~
2 ~~its enactment.~~

3 ~~(b) Item 1 of section 41(a) of title 35, as amended by~~
4 ~~section 1 of this Act, does not apply in further proceedings~~
5 ~~in applications filed prior to the effective date.~~

6 ~~(c) The amendment of item 2 of section 41(a) of title~~
7 ~~35 by section 1 of this Act does not apply in cases in which~~
8 ~~the notice of allowance of the application was sent prior to~~
9 ~~the effective date and in such cases the fee due is the fee~~
10 ~~specified by item 2 prior to its amendment.~~

11 ~~(d) The amendment of item 3 of section 41(a) of title~~
12 ~~35 by section 1 of this Act applies in the case of applications~~
13 ~~for design patents filed prior to the effective date for one of~~
14 ~~the lower terms and which are amended after the effective~~
15 ~~date to one of the higher terms.~~

16 ~~(e) Item 4 of section 41(a) of title 35, as amended by~~
17 ~~section 1 of this Act, does not apply in further proceedings~~
18 ~~in applications for reissues filed prior to the effective date.~~

19 ~~(f) 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(e) of the Trademark Act on or after~~
23 ~~the effective date.~~

24 ~~(g) Section 155 and item 12 of section 41(a), enacted~~

1 by sections 5 and 6 of this Act, do not apply to patents issued
2 prior to the effective date.

3 SEC. 8. Section 266 of title 35, United States Code is re-
4 pealed.

5 The chapter analysis of chapter 27 of title 35, United
6 States Code, is amended by striking out the following item:
“266. Issue of patents without fees to Government employees.”

7 *That the items numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10,*
8 *respectively, in subsection (a) of section 41, title 35, United*
9 *States Code, are amended to read as follows:*

10 “1. *On filing each application for an original patent,*
11 *except in design cases, \$50; in addition, on filing or on*
12 *presentation at any other time, \$10 for each claim in inde-*
13 *pendent form which is in excess of one, and \$2 for each claim*
14 *(whether independent or dependent) which is in excess of ten.*

15 “2. *For issuing each original or reissue patent, except in*
16 *design cases, \$75; in addition, \$10 for each page (or portion*
17 *thereof) of specification as printed, and \$2 for each sheet of*
18 *drawing.*

19 “3. *In design cases:*

20 “a. *On filing each design application, \$20.*

21 “b. *On issuing each design patent: For three years*

1 *and six months, \$10; for seven years, \$20; and for four-*
2 *teen years, \$30.*

3 *“4. On filing each application for the reissue of a patent,*
4 *\$50; in addition, on filing or on presentation at any other*
5 *time, \$10 for each claim in independent form which is in*
6 *excess of the number of independent claims of the original*
7 *patent, and \$2 for each claim (whether independent or*
8 *dependent) which is in excess of ten and also in excess of the*
9 *number of claims of the original patent.*

10 *“5. On filing each disclaimer, \$15.*

11 *“6. On an appeal for the first time from the examiner*
12 *to the Board of Appeals, \$100. If an oral hearing is not*
13 *requested prior to any consideration by the Board, \$50 of the*
14 *\$100 fee will be refunded; or, alternatively, if the appeal is*
15 *withdrawn prior to any consideration by the Board, all of the*
16 *fee over \$25 will be refunded.*

17 *“7. On filing each petition for the revival of an abandoned*
18 *application for a patent or for the delayed payment of the*
19 *fee for issuing each patent, \$15.*

20 *“8. For certificate under section 255 or under section 256*
21 *of this title, \$15.*

22 *“9. As available and if in print: For uncertified printed*
23 *copies of specifications and drawings of patents (except de-*
24 *sign patents), 25 cents per copy; for design patents, 10 cents*

1 *per copy; the Commissioner may establish a charge not to*
2 *exceed \$1 per copy for patents in excess of twenty-five pages*
3 *of drawings and specifications and for plant patents printed*
4 *in color; special rates for libraries specified in section 13 of*
5 *this title, \$50 for patents issued in one year.*

6 *“10. For recording each assignment of an application or*
7 *a patent, \$20; for recording any other paper, \$20.”*

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

10 *“(c) The fees prescribed by or under this section shall*
11 *apply to any other Government department or agency, or*
12 *officer thereof, except that the Commissioner may waive the*
13 *payment of any fee for services or materials in cases of oc-*
14 *casional or incidental requests by a Government department*
15 *or agency, or officer thereof.”*

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

19 *“(a) The following fees shall be paid to the Patent Office*
20 *under this Act:*

21 *“1. On filing each original application for registration*
22 *of a mark in each class, \$35.*

23 *“2. On filing each application for renewal in each class,*

1 \$25; and on filing each application for renewal in each class
2 after expiration of the registration, an additional fee of \$5.

3 "3. On filing an affidavit under section 8(a) or section
4 8(b), \$10.

5 "4. On filing each petition for the revival of an abandoned
6 application, \$15.

7 "5. On filing notice of opposition or application for
8 cancellation, \$25.

9 "6. On appeal from an examiner in charge of the reg-
10 istration of marks to the Trademark Trial and Appeal
11 Board, \$25.

12 "7. For issuance of a new certificate of registration fol-
13 lowing change of ownership of a mark or correction of a
14 registrant's mistake, \$15.

15 "8. For certificate of correction of registrant's mistake
16 or amendment after registration, \$15.

17 "9. For certifying in any case, \$1.

18 "10. For filing each disclaimer after registration, \$15.

19 "11. For printed copy of registered mark, 10 cents.

20 "12. For recording each assignment of a registration,
21 \$20; for recording any other paper, \$20.

22 "13. On filing notice of claim of benefits of this Act for
23 a mark to be published under section 12(c) hereof, \$10.

24 "(b) The Commissioner may establish charges for copies

1 of records, publication, or services furnished by the Patent
2 Office, not specified above.

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

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

7 “§ 151. Issue of Patent

8 “If it appears that applicant is entitled to a patent
9 under the law, a written notice of allowance of the application
10 shall be given or mailed to the applicant, and the Commis-
11 sioner shall thereafter issue the patent.

12 “The issue fee, as specified in item 2 of section 41(a)
13 of this title, shall be paid within three months after the date
14 of the issue of the patent. However, at the time of giving
15 notice of allowance, the Commissioner may require a sum,
16 constituting a portion of the issue fee, to be paid within three
17 months after the date of the notice of allowance. If payment
18 of this sum is not timely made, the application shall be re-
19 garded as abandoned.

20 “If the issue fee is not fully paid within three months
21 after the date of the issue of the patent, the patent shall lapse
22 as of the date the issue fee was due.

23 “If any payment called for herein is not timely sub-
24 mitted, but is submitted with the fee for delayed payment

1 *within three months after the due date and sufficient cause is*
2 *shown for the late payment, it may be accepted by the Com-*
3 *missioner as though no abandonment or lapse had ever oc-*
4 *curred."*

5 *SEC. 5. Section 154 of title 35, United States Code, is*
6 *amended by inserting the words "subject to the payment of*
7 *issue and maintenance fees as provided for in this title,"*
8 *after the words "seventeen years,".*

9 *SEC. 6. Title 35, United States Code, is amended by*
10 *adding the following new section after section 154:*

11 *"§ 155. Maintenance fees*

12 *"(a) During the term of a patent, other than for a*
13 *design, the following fees shall be due:*

14 *"(1) a first maintenance fee on or before the fifth*
15 *anniversary of the issue date of the patent;*

16 *"(2) a second maintenance fee on or before the ninth*
17 *anniversary of the issue date of the patent; and*

18 *"(3) a third maintenance fee on or before the*
19 *thirteenth anniversary of the issue date of the patent.*

20 *In the case of a reissue patent the times specified herein shall*
21 *run from the date of the original patent.*

22 *"(b) A grace period of six months will be allowed in*
23 *which to pay any maintenance fee, provided it is accompanied*
24 *by the fee prescribed for delayed payment.*

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

3 “(d) *A patent will terminate on the due date for any*
4 *maintenance fee unless, as provided for in this section, the*
5 *fee due (including any fees previously deferred) is paid or*
6 *a statement in accordance with subsection (f) of this section*
7 *requesting deferment is filed. Such termination or lapsing*
8 *shall be without prejudice to rights existing under any other*
9 *patent.*

10 “(e) *Notice of the requirement for the payment of the*
11 *maintenance fees and the filing of statements in compliance*
12 *with this section shall be attached to or be embodied in the*
13 *patent. Approximately thirty days before a maintenance fee*
14 *is due, the Commissioner shall send a separate notice thereof*
15 *to the patentee and all other parties having an interest of*
16 *record at the addresses last furnished to the Patent Office.*
17 *Irrespective of any other provision of this section, a mainte-*
18 *nance fee may be paid within thirty days after the date of*
19 *such separate notice.*

20 “(f) *Any inventor to whom a patent issued (or his*
21 *heirs) and who owns the patent may within six months of the*
22 *fifth anniversary of the issue date of the patent (by a state-*
23 *ment under oath) request deferment of the first maintenance*
24 *fee if the total benefit received by the inventor or any other*

1 party having or having had any interest in the subject matter
2 of the patent, from, under, or by virtue of the patent or from
3 the manufacture, use, or sale of the invention, was less in
4 value than the amount of the fee, and the statement so speci-
5 fies. The fee shall thereupon be deferred until the time the
6 second maintenance fee is due and shall be paid in addition
7 to the second maintenance fee.

8 "Any inventor to whom a patent issued (or his heirs)
9 and who owns the patent may within six months of the ninth
10 anniversary of the issue date of the patent (by a statement
11 under oath) request deferment of the second maintenance fee
12 (and further deferment of the first maintenance fee if such
13 fee has been deferred) if the total benefit received by the
14 inventor or any other party having or having had any inter-
15 est in the subject matter of the patent during the preceding
16 four years, from, under, or by virtue of the patent or from
17 the manufacture, use, or sale of the invention, was less in
18 value than the amount of the second fee, and the statement so
19 specifies. The second fee, or the first and second fees, as the
20 case may be, shall thereupon be deferred until the time the
21 third maintenance fee is due and shall be paid in addition
22 to the third maintenance fee and with the same result if not
23 paid. No deferment of any of the fees beyond the thirteenth
24 anniversary of the issue date of the patent shall be permitted

1 *and the patent will terminate at the end of the thirteenth anni-*
2 *versary of the issue date unless all maintenance fees are paid*
3 *in accordance with the provisions of this section.”*

4 *SEC. 7. The analysis of chapter 14 of title 35, United*
5 *States Code, immediately preceding section 151, is amended*
6 *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 of fees.”

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

9 *“12. For maintaining a patent (other than for a design)*
10 *in force—*

11 *“(a) beyond the fifth anniversary of the issue date*
12 *of the patent, \$50;*

13 *“(b) beyond the ninth anniversary of the issue date*
14 *of the patent, \$100; and*

15 *“(c) beyond the thirteenth anniversary of the issue*
16 *date of the patent, \$150.*

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

18 *SEC. 9. (a) This Act shall take effect three months after*
19 *its enactment.*

20 *(b) Items 1, 3, and 4 of section 41(a) of title 35,*

1 *United States Code, as amended by section 1 of this Act, do*
2 *not apply in further proceedings in applications filed prior*
3 *to the effective date of this Act.*

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

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

15 *SEC. 10. Section 266 of title 35, United States Code, is*
16 *repealed.*

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

"266. Issue of patents without fees to Government employees."

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87TH CONGRESS
2D SESSION

S. 2225

[Report No. 2167]

A BILL

To fix the fees payable to the Patent Office, and
for other purposes.

By Mr. McCLELLAN

JULY 11, 1961

Read twice and referred to the Committee on the
Judiciary

SEPTEMBER 27, 1962

Reported with an amendment

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