

S. 2225

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

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, in
4 subsection (a) of section 41 of title 35, United States Code,
5 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.

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

1 “3. In design cases: For three years and six months,
2 \$20; for seven years, \$30; for fourteen years, \$40.

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

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

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

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

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

21 “(c) The fees prescribed by or under this section apply
22 to any other Government department or agency, or officer
23 thereof, except that the Commissioner may waive the pay-
24 ment of any fee for services or materials in cases of occasional

1 or incidental requests by a Government department or
2 agency, or officer thereof.”

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

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

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

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

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

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

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

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

22 “7. For issuance of a new certificate of registration follow-
23 ing change of ownership of a mark or correction of a regis-
24 trant’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 mainte-
11 nance fee before the expiration of the time provided there-
12 for the right conferred by the patent shall terminate at the
13 end of the fifth, ninth, or thirteenth year, as the case may
14 be, or as otherwise provided in subsection (c) of this sec-
15 tion. Such termination or lapsing shall be without prejudice
16 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

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

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

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

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

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

“155. Maintenance fees.”

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

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

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

22 “c. Third maintenance fee, due on the expiration of the
23 thirteenth year of the patent, other than a design patent,
24 \$500.

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

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

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

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

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

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

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

25 (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.”

87TH CONGRESS
1ST SESSION

S. 2225

A BILL

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for other purposes.

By Mr. McCLELLAN

JULY 11, 1961

Read twice and referred to the Committee on the
Judiciary