

84TH CONGRESS
2D SESSION

S. 3744

IN THE SENATE OF THE UNITED STATES

APRIL 26, 1956

Mr. O'MAHONEY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To establish a United States Court of Appeals for 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 this Act may be cited as the "Court of Appeals for
4 Patents Act".

5 ORGANIZATION

6 SEC. 2. Part I of title 28 of the United States Code is
7 amended by inserting, immediately after chapter 9 thereof,
8 the following new chapter:

I

FINAL ACTION

1 "CHAPTER 10.—COURT OF APPEALS FOR PATENTS

"Sec.

"221. Appointment and number of judges.

"222. Precedence of judges.

"223. Tenure and salaries of judges.

"224. Sessions.

"225. Quorum.

"226. Opinions.

2 "§ 221. Appointment and number of judges

3 "The President shall appoint, by and with the advice
4 and consent of the Senate, a chief judge and four associate
5 judges who shall constitute a court of record known as the
6 United States Court of Appeals for Patents.

7 "Within the jurisdiction conferred upon such court and
8 except as otherwise provided by law, it shall have all of the
9 powers of a court of appeals of the United States. Within
10 such jurisdiction and except as otherwise provided by law,
11 each judge of such court shall have all of the powers of a
12 circuit judge of the United States.

13 "§ 222. Precedence of judges

14 "The chief judge of the Court of Appeals for Patents
15 shall have precedence and preside at any session of the court
16 which he attends.

17 "The associate judges shall have precedence and preside
18 according to the seniority of their commissions. Judges
19 whose commissions bear the same date shall have precedence
20 according to seniority in age.

1 “§ 223. Tenure and salaries of judges

2 “Judges of the Court of Appeals for Patents shall hold
3 office during good behavior. Each shall receive a salary of
4 \$25,500 a year.

5 “§ 224. Sessions

6 “The Court of Appeals for Patents may hold court at
7 such times, and at such places within any judicial circuit, as
8 it may fix by rule.

9 “§ 225. Quorum

10 “Three judges of the Court of Appeals for Patents consti-
11 tute a quorum. The concurrence of a majority of the judges
12 sitting is necessary to any decision.

13 “§ 226. Opinions

14 “The Court of Appeals for Patents, on each appeal from
15 a Patent Office decision, shall file a written opinion as part of
16 the record and send a certified copy to the Commissioner of
17 Patents, who shall record it in the Patent Office.”

18 ASSIGNMENT OF JUDGES

19 SEC. 3. (a) Subsection 291 (b) of title 28 of the United
20 States Code is amended to read as follows:

21 “(b) The Chief Justice of the United States may desig-
22 nate and assign temporarily a judge of the Court of Customs
23 Appeals or a judge of the Court of Appeals for Patents
24 to serve as a judge of the Court of Appeals or the District

1 Court for the District of Columbia when requested by the
2 chief judge of the court in need of such assistance.”

3 (b) Section 291 of such title is amended by (1) re-
4 designating subsection (d) as subsection (e), and (2) in-
5 serting, immediately after subsection (c), the following new
6 subsection:

7 “(d) The Chief Justice of the United States may, upon
8 presentation to him by the chief judge of the Court of
9 Appeals for Patents of a certificate of necessity, designate
10 and assign temporarily any circuit judge to serve as a judge
11 of the Court of Appeals for Patents.”

12 (c) Section 292 of such title is amended by (1) redesignating
13 subsection (d) as subsection (e), and (2) inserting,
14 immediately after subsection (c), the following new subsec-
15 tion:

16 “(d) The Chief Justice of the United States may, upon
17 presentation to him by the chief judge of the Court of
18 Appeals for Patents of a certificate of necessity, designate
19 and assign temporarily any district judge to serve as a judge
20 of the Court of Appeals for Patents.”

21

OFFICERS AND EMPLOYEES

22

23 SEC. 4. Part III of title 28 of the United States Code
24 is amended by inserting, immediately after chapter 53 thereof,
the following new chapter:

1 "CHAPTER 54.—COURT OF APPEALS FOR PATENTS

"Sec.

"841. Clerk and employees.

"842. Marshal.

"843. Reporter.

"844. Bailiffs and messengers.

"845. Law clerks and secretaries.

2 "§ 841. Clerk and employees

3 "The Court of Appeals for Patents may appoint a clerk
4 and a librarian, and such assistant clerks, stenographic law
5 clerks, clerical assistants, library assistants, and other em-
6 ployees as may be necessary, all of whom shall be subject
7 to removal by the court.

8 "The clerk shall pay into the Treasury all fees, costs,
9 and other moneys collected by him. He shall maintain an
10 office at the seat of government.

11 "§ 842. Marshal

12 "The Court of Appeals for Patents may appoint a mar-
13 shall who shall serve within the District of Columbia and
14 shall be subject to removal by the court.

15 "He shall attend the court at its sessions, and shall serve
16 and execute all process and orders issuing from it. He shall
17 purchase books and supplies, and perform such other duties as
18 the court may direct. Under regulations prescribed by the
19 Director of the Administrative Office of the United States
20 Courts, he shall pay the salaries of judges, officers, and em-
21 ployees of the court and disburse funds appropriated for the
22 expenses of the court.

1 “United States marshals for other districts where ses-
2 sions of the court are held shall serve as marshals of the
3 court.

4 “§ 843. Reporter

5 “(a) The Court of Appeals for Patents may appoint a
6 reporter who shall be subject to removal by the court.

7 “(b) The reporter shall prepare and transmit weekly to
8 the Commissioner of Patents, for publication, copies of all
9 opinions relating to patent and trademark appeals rendered
10 by the court pursuant to section 1551 of this title.

11 “(c) The reporter also shall compile and publish, at
12 least once a year, in such manner as the court directs, all
13 opinions rendered by the court, together with necessary
14 digests and indexes as the court directs.

15 “§ 844. Bailiffs and messengers

16 “‘The Court of Appeals for Patents may appoint neces-
17 sary bailiffs and messengers who shall be subject to removal
18 by the court.

19 “Each bailiff shall attend the court, preserve order, and
20 perform such other necessary duties as the court directs.

21 “§ 845. Law clerks and secretaries

22 “Each judge of the Court of Appeals for Patents may
23 appoint necessary law clerks and secretaries.”

JURISDICTION

1

2 SEC. 5. Part IV of title 28 of the United States Code is
3 amended by inserting, immediately after chapter 93 thereof,
4 the following new chapter:

5 “CHAPTER 94.—COURT OF APPEALS FOR PATENTS

“Sec.

“1551. Patent Office decisions.

“1552. Final decisions of district courts on patent matters.

6 “§ 1551. Patent Office decisions

7 “The Court of Appeals for Patents shall have juris-
8 diction of appeals from decisions of—

9 “(1) the Board of Appeals and the Board of Inter-
10 ference Examiners of the Patent Office as to patent
11 applications and interferences, at the instance of an
12 applicant for a patent or any party to a patent inter-
13 ference, and such appeal by an applicant shall waive
14 his right to proceed under section 145 or 146 of title
15 35, United States Code; and

16 “(2) the Commissioner of Patents as to trade-
17 mark applications and proceedings as provided in section
18 21 of the Act entitled ‘An Act to provide for the
19 registration and protection of trade-marks used in com-
20 merce, to carry out the provisions of certain interna-
21 tional conventions, and for other purposes’, approved

1 July 5, 1946 (60 Stat. 435, as amended; 15 U. S. C.
2 1071).

3 “§ 1552. Final decisions of district courts on patent matters
4 “Except where a direct review may be had in the Su-
5 preme Court, the Court of Appeals for Patents shall have
6 jurisdiction of appeals from all final decisions of the district
7 courts of the United States in any case, controversy, or
8 matter—

9 “(1) arising under title 35, United States Code; or

10 “(2) in which jurisdiction of the district court was
11 invoked under section 1338 of this title.

12 “The Court of Appeals for Patents has no jurisdiction to
13 review any decision of the Court of Claims.”

14 PROCEDURE

15 SEC. 6. Part VI of title 28 of the United States Code is
16 amended by inserting, immediately after chapter 167 thereof,
17 the following new chapter:

18 “CHAPTER 168.—COURT OF APPEALS FOR PATENTS

19 PROCEDURE

“Sec.

“2611. Rules.

20 “§ 2611. Rules

21 “The rules of the Court of Appeals for Patents shall con-
22 form as near as may be to the rules of practice and procedure
23 of the courts of appeals of the United States.”

1 TECHNICAL AMENDMENTS

2 SEC. 7. (a) Title 28 of the United States Code is
 3 amended by striking out the words "Court of Customs and
 4 Patent Appeals" and the name "United States Court of
 5 Customs and Patent Appeals" wherever they appear therein,
 6 and inserting in lieu thereof the words "Court of Customs
 7 Appeals" and the name "United States Court of Customs
 8 Appeals", respectively.

9 (b) Title 35 of the United States Code, and section 21
 10 of the Act entitled "An Act to provide for the registration
 11 and protection of trademarks used in commerce, to carry
 12 out the provisions of certain international conventions, and
 13 for other purposes", approved July 5, 1946 (60 Stat. 435,
 14 as amended; 15 U. S. C. 1071), are amended by striking
 15 out the words "Court of Customs and Patent Appeals" and
 16 the name "United States Court of Customs and Patent
 17 Appeals" wherever they appear therein, and inserting in
 18 lieu thereof the words "Court of Appeals for Patents" and
 19 the name "United States Court of Appeals for Patents",
 20 respectively.

21 (c) The analysis of title 28 of the United States Code,
 22 and the analysis of part I thereof, are amended by insert-
 23 ing, immediately after the item relating to chapter 9 thereof,
 24 the following new item:

"10. Court of Appeals for Patents..... 221".

1 (d) The analysis of such title, and the analysis of part
 2 III thereof, are amended by inserting, immediately after the
 3 item relating to chapter 53 thereof, the following new item:
 "54. Court of Appeals for Patents..... 841".

4 (e) The analysis of such title, and the analysis of part
 5 IV thereof, are amended by inserting, immediately after the
 6 item relating to chapter 93 thereof, the following new item:
 "94. Court of Appeals for Patents..... 1151".

7 (f) The analysis of such title, and the analysis of part
 8 VI thereof, are amended by inserting, immediately after the
 9 item relating to chapter 167 thereof, the following new item:
 "168. Court of Appeals for Patents Procedure..... 2611".

10 (g) Sections 216 and 1542 of title 28 of the United
 11 States Code are repealed.

12 (h) Section 451 of such title, as amended by this Act,
 13 is amended by inserting, immediately after the words "the
 14 Court of Customs Appeals," wherever they appear therein,
 15 the words "the Court of Appeals for Patents,".

16 (i) Section 833 (b) of such title is amended to read
 17 as follows:

18 "(b) The reporter shall prepare and transmit weekly
 19 to the Secretary of the Treasury, for publication, copies of
 20 all opinions relating to customs rendered by the court."

21 (j) Section 1256 of title 28 of the United States Code
 22 is amended to read as follows:

1 "§ 1256. Court of Customs Appeals and Court of Appeals
2 for Patents

3 "Cases in the Court of Customs Appeals may be re-
4 viewed by the Supreme Court by writ of certiorari. Cases
5 in the Court of Appeals for Patents may be reviewed by the
6 Supreme Court by (1) writ of certiorari, or (2) by certifica-
7 tion of any question of law by the Court of Appeals for
8 Patents in any case as to which instructions are desired, and
9 upon such certification the Supreme Court may give binding
10 instructions on such question."

11 (k) The item contained in the analysis of chapter 81
12 of such title which relates to section 1256 thereof is amended
13 to read as follows:

"1256. Court of Customs Appeals and Court of Appeals for Patents;
certiorari."

14 (l) Section 1291 of title 28 of the United States Code
15 is amended by inserting, immediately after the words "Su-
16 preme Court", a comma and the words, "or where appellate
17 jurisdiction is conferred upon the Court of Appeals for
18 Patents by section 1552 of this title".

19 (m) Section 1926 of title 28 of the United States Code
20 is amended to read as follows:

21 "§ 1926. Court of Customs Appeals and Court of Appeals
22 for Patents

23 "Fees and costs in the Court of Customs Appeals and in

1 the Court of Appeals for Patents shall be fixed by a table
 2 of fees adopted by each such court and approved by the
 3 Supreme Court. The fees and costs so fixed shall not, with
 4 respect to any item, exceed the fees and costs charged in
 5 the Supreme Court, and shall be accounted for and paid over
 6 to the Treasury.”

7 (n) The item contained in the analysis of chapter 123
 8 of such title which relates to section 1926 thereof is amended
 9 to read as follows:

“1926. Court of Customs Appeals and Court of Appeals for Patents.”

10

EFFECTIVE DATES

11 SEC. 8. (a) The amendments made by sections 2, 4, and
 12 6 of this Act shall become effective on the date of enactment
 13 of this Act.

14 (b) All other amendments made by this Act shall be-
 15 come effective on the date on which a quorum of the judges
 16 of the Court of Appeals for Patents have been appointed and
 17 have qualified, and such court is organized and prepared to
 18 discharge its duties under amendments made by this Act, as
 19 determined by notice to be published in the Federal Register
 20 upon direction of the chief judge of such court.

21

SAVING PROVISION

22 SEC. 9. (a) No action or proceeding pending in any
 23 court of the United States on or before the date fixed pur-

1 suant to section 8 (b) of this Act shall abate because of
2 the enactment of this Act.

3 (b) Each such action pending in the Court of Customs
4 and Patent Appeals, in any court of appeals of the United
5 States, or in the Supreme Court of the United States may
6 be continued to its termination pursuant to law in effect on
7 the day preceding the date so fixed.

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