96TH CONGRESS
2D SESSION

H. R. 6933

Entitled: "To amend the patent and trademark laws".

IN THE HOUSE OF REPRESENTATIVES

MARCH 26, 1980

Mr. KASTENMEIER (for himself, Mr. RODINO, and Mr. RAILSBACK) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

Entitled: "To amend the patent and trademark laws".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 35 of the United States Code, entitled "Patents", is amended by adding after chapter 29 the following new chapter 30:

"CHAPTER 30—PRIOR ART CITATIONS TO OFFICE AND REEXAMINATION OF PATENTS

"Sec. 301. Citation of prior art.
"Sec. 302. Request for reexamination.
"Sec. 303. Determination of issue by Commissioner.
"Sec. 304. Reexamination order by Commissioner.
"Sec. 305. Conduct of reexamination proceedings.
"Sec. 306. Appeal.
"Sec. 307. Certificate of patentability, unpatentability, and claim cancellation.

"§ 301. Citation of prior art

"Any person at any time may cite to the Office in writing prior art consisting of patents or printed publications which that person believes to have a bearing on the patentability of any claim of a particular patent. If the person explains in writing the pertinency and manner of applying such prior art to at least one claim of the patent, the citation of such prior art and the explanation thereof will become a part of the official file of the patent. At the written request of the person citing the prior art, his or her identity will be excluded from the patent file and kept confidential.

"§ 302. Request for reexamination

"Any person at any time may file a request for reexamination by the Office of any claim of a patent on the basis of any prior art cited under the provisions of section 301 of this title. The request must be in writing and must be accompanied by payment of a reexamination fee established by the Secretary of Commerce pursuant to the provisions of section 41 of this title. The request must set forth the pertinency and manner of applying cited prior art to every claim for which reexamination is requested. Unless the requesting person is the owner of the patent, the Commissioner promptly will send a copy of the request to the owner of record of the patent.

"§ 303. Determination of issue by Commissioner

"(a) Within three months following the filing of a request for reexamination under the provisions of section 302 of this title, the Commissioner will determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request, with or without consideration of other patents or printed publications. On his own initiative, and at any time, the Commissioner may determine whether a substantial new question of patentability is raised by patents and publications discovered by him or cited under the provisions of section 301 of this title.

"(b) A record of the Commissioner's determination under subsection (a) of this section will be placed in the official file of the patent, and a copy promptly will be given or mailed to the owner of record of the patent and to the person requesting reexamination, if any.

"(c) A determination by the Commissioner pursuant to subsection (a) of this section that no substantial new question of patentability has been raised will be final and nonappealable. Upon such a determination, the Commissioner may refund a portion of the reexamination fee required under section 302 of this title.

"§ 304. Reexamination order by Commissioner

"If, in a determination made under the provisions of subsection 303(a) of this title, the Commissioner finds that a

substantial new question of patentability affecting any claim of a patent is raised, the determination will include an order for reexamination of the patent for resolution of the question. The patent owner will be given a reasonable period, not less than two months from the date a copy of the determination is given or mailed to him, within which he may file a statement on such question, including any amendment to his patent and new claim or claims he may wish to propose, for consideration in the reexamination. If the patent owner files such a statement, he promptly will serve a copy of it on the person who has requested reexamination under the provisions of section 302 of this title. Within a period of two months from the date of service, that person may file and have considered in the reexamination a reply to any statement filed by the patent owner. That person promptly will serve on the patent owner a copy of any reply filed.

"§ 305. Conduct of reexamination proceedings

"After the times for filing the statement and reply provided for by section 304 of this title have expired, reexamination will be conducted according to the procedures established for initial examination under the provisions of sections 132 and 133 of this title. In any reexamination proceeding under this chapter, the patent owner will be permitted to propose any amendment to his patent and a new claim or claims thereto, in order to distinguish the invention as

claimed from the prior art cited under the provisions of section 301 of this title, or in response to a decision adverse to the patentability of a claim of a patent. No proposed amended or new claim enlarging the scope of a claim of the patent will be permitted in a reexamination proceeding under this chapter. All reexamination proceedings under this section, including any appeal to the Board of Appeals, will be conducted with special dispatch within the Office.

"§ 306. Appeal

"The patent owner involved in a reexamination proceeding under this chapter may appeal under the provisions of section 134 of this title, and may seek court review under the provisions of sections 141 to 145 of this title, with respect to any decision adverse to the patentability of any original or proposed amended or new claim of the patent.

"§ 307. Certificate of patentability, unpatentability, and claim cancellation

"(a) In a reexamination proceeding under this chapter, when the time for appeal has expired or any appeal proceeding has terminated, the Commissioner will issue and publish a certificate canceling any claim of the patent finally determined to be unpatentable, confirming any claim of the patent determined to be patentable, and incorporating in the patent any proposed amended or new claim determined to be patentable.

"(b) Any proposed amended or new claim determined to be patentable and incorporated into a patent following a reexamination proceeding will have the same effect as that specified in section 252 of this title for reissued patents on the right of any person who made, purchased, or used anything patented by such proposed amended or new claim, or who made substantial preparation for the same, prior to issuance of a certificate under the provisions of subsection (a) of this section.".

SEC. 2. Section 41 of title 35, United States Code, entitled "Patents", is amended to read as follows:

"§ 41. Patent fees

"(a) The Secretary of Commerce will establish fees for the processing of an application for a patent, from filing through disposition by issuance or abandonment, for maintaining a patent in force, and for providing all other services and materials related to patents. No fee will be established for maintaining a design patent in force.

"(b) By the first day of the first fiscal year beginning on or after one calendar year after enactment of this Act, fees for the processing of an application for a patent, other than for a design patent, from filing through disposition by issuance or abandonment, will recover in aggregate 30 per centum of the estimated average cost to the Office of such processing. Any fee in connection with an application in a

particular technological field may be set higher or lower than the corresponding fee charged for an application in other technological fields, to the extent that costs for which the fee is charged differ. By the first day of the first fiscal year beginning on or after one calendar year after enactment, fees for the processing of an application for a design patent, from filing through disposition by issuance or abandonment, will recover in aggregate 60 per centum of the estimated average cost to the Office of such processing.

"(c) By the fifteenth fiscal year following the date of enactment of this Act, fees for maintaining patents in force will recover 30 per centum of the estimated cost to the Office, for the year in which such maintenance fees are received, of processing all applications for patents, other than for design patents, from filing through disposition by issuance or abandonment. Fees for maintaining a patent in force will be due three years and six months, seven years and six months, and eleven years and six months after the grant of the patent. Unless payment of the applicable maintenance fee is received in the Patent and Trademark Office on or before the date the fee is due or within a grace period of six months thereafter, the patent will expire as of the end of such grace period. The Secretary may require the payment of a surcharge as a condition of accepting within such six-month

grace period the late payment of an applicable maintenance fee.

"(d) By the first day of the first fiscal year beginning on or after one calendar year after enactment, fees for all other services or materials related to patents will recover the estimated average cost to the Office of performing the service or furnishing the material. Any fee for providing a service or material involving a particular technological field may be set higher or lower than the fee charged for the same service or material involving other technological fields, to the extent that costs for which the fee is charged differ. The yearly fee for providing a library specified in section 13 of this title with uncertified printed copies of the specifications and drawings for all patents issued in that year will be $50.

"(e) The Commissioner may waive the payment of any fee for any service or material related to patents in connection with an occasional or incidental request made by a department or agency of the Government, or any officer thereof. The Commissioner may provide any applicant issued a notice under section 132 of this title with a copy of the specifications and drawings for all patents referred to in that notice without charge.

"(f) Fees will be adjusted by the Secretary to achieve the levels of recovery specified in this section; however, no

patent application processing fee or fee for maintaining a patent in force will be adjusted more than once a year.

"(g) No fee established by the Secretary under this section will take effect prior to sixty days following notice in the Federal Register.".

SEC. 3. Section 42 of title 35, United States Code, entitled "Patents", is amended to read as follows:

"§ 42. Patent and Trademark Office funding

"(a) All fees for services performed by or materials furnished by the Patent and Trademark Office will be payable to the Commissioner.

"(b) All fees paid to the Commissioner and all appropriations for defraying the costs of the activities of the Patent and Trademark Office will be credited to the Patent and Trademark Office Appropriation Account in the Treasury of the United States, the provisions of section 725e of title 31, United States Code, notwithstanding.

"(c) Revenues from fees will be available to the Secretary of Commerce to carry out, to the extent provided for in appropriation Acts, the activities of the Patent and Trademark Office.

"(d) The Secretary may refund any fee paid by mistake or any amount paid in excess of that required.".

SEC. 4. Section 154 of title 35, United States Code, entitled "Patents", is amended by deleting the word "issue".

SEC. 5. Section 31 of the Trademark Act of 1946, as amended (15 U.S.C. 1113), is amended to read as follows:

"§31. Fees

"(a) The Secretary of Commerce will establish fees for the filing and processing of an application for the registration of a trademark or other mark and for all other services performed by and materials furnished by the Patent and Trademark Office related to trademarks and other marks. Fees will be set and adjusted by the Secretary to recover in aggregate the full costs of all services performed and all materials furnished by the Patent and Trademark Office; however, no fee for the filing or processing of an application for the registration of a trademark or other mark or for the renewal or assignment of a trademark or other mark will be adjusted more than once a year. No fee established under this section will take effect prior to sixty days following notice in the Federal Register.

"(b) The Commissioner may waive the payment of any fee for any service or material related to trademarks or other marks in connection with an occasional request made by a department or agency of the Government, or any officer thereof. The Indian Arts and Crafts Board will not be charged any fee to register Government trademarks of genuineness and quality for Indian products or for products of particular Indian tribes and groups.".

SEC. 6. Title 35 of the United States Code, entitled "Patents", is amended by adding after chapter 37 the following new chapter 38:

"CHAPTER 38—THE GOVERNMENT PATENT POLICY ACT OF 1980

"Sec. 381. Title.

"SUBCHAPTER I—CONTRACT INVENTIONS

"Sec. 382. Contract inventions; reporting.
"Sec. 383. Allocation of rights—small businesses and nonprofit organizations.
"Sec. 384. Allocation of rights—other contractors.
"Sec. 385. Contractor license.
"Sec. 386. Minimum Government rights.
"Sec. 387. March-in rights.
"Sec. 388. Deviation and waiver.
"Sec. 389. Transfer of rights to contractor employees.
"Sec. 390. Regulations and standard patent rights clause.

"SUBCHAPTER II—INVENTIONS OF FEDERAL EMPLOYEES

"Sec. 391. Employee inventions.
"Sec. 392. Reporting of inventions.
"Sec. 393. Criteria for the allocation of rights.
"Sec. 394. Presumptions.
"Sec. 395. Review of agency determinations.
"Sec. 396. Reassignment of rights.
"Sec. 397. Incentive awards program.
"Sec. 398. Income sharing from patent licenses.
"Sec. 399. Regulations.

"SUBCHAPTER III—LICENSING OF FEDERALLY-OWNED INVENTIONS

"Sec. 400. Covered inventions.
"Sec. 401. Exclusive or partially exclusive licenses.
"Sec. 402. Minimum Government rights.
"Sec. 403. March-in rights.
"Sec. 404. Regulations.

"SUBCHAPTER IV—MISCELLANEOUS

"Sec. 405. Patent enforcement suits and right of intervention.
"Sec. 406. Background rights.
"Sec. 407. Notice, hearing, and judicial review.
"Sec. 408. Relationship to other laws.
"Sec. 409. Authority of Federal agencies.
"Sec. 410. Responsibilities of the Secretary of Commerce.
"Sec. 411. Definitions.

"SEC. 381. This chapter will be known as the 'Government Patent Policy Act of 1980'.

"SUBCHAPTER I—CONTRACT INVENTIONS

"§ 382. Contract inventions; reporting

"(a) This title applies to 'contract inventions', which in this Act are inventions made in the course of or under Federal contracts.

"(b) Every contractor will provide the responsible agency with timely written reports on each contract invention containing:

"(1) complete technical information on the invention,

"(2) a list of each country, if any, in which the contractor elects to file a patent application on the invention, and

"(3) unless the contractor is a small business or nonprofit organization, a list of each field of use in which the contractor intends to commercialize the invention or otherwise achieve public use of the invention. Each field will be described with sufficient particularity to allow the Government to identify those fields of use not encompassed by the described field.

The Government neither will publish nor release these reports until the contractor or the Government has had a reasonable time to file patent applications or one year has

passed since receipt of all the information required by subsection (b)(1) of this section, whichever is earlier, and may so withhold such information in other reports or records.

"(c) If the responsible agency determines that the contractor has unreasonably failed to file reports as required by subsection (b) of this section, the contractor may be deprived of any or all the rights it otherwise would have under this subchapter.

"§ 383. Allocation of rights—small businesses and nonprofit organizations

"(a) A contractor that is a small business or a nonprofit organization will acquire title to its contract invention in each country it lists under section 382(b)(2) in which it files a patent application within a reasonable time. However, title will be subject to the Government's minimum rights under section 386 and march-in rights under section 387.

"(b) The Government will have the right to acquire title to any patent on a contract invention in each country in which the contractor elects not to file a patent application or fails to file within a reasonable time.

"§ 384. Allocation of rights—other contractors

"(a) The Government will acquire title to all patents on any contract invention whenever the contractor is not a small business or nonprofit organization.

"(b) If such a contractor files within a reasonable time a patent application on a reported contract invention in any country it lists under section 382(b)(2), it will receive an exclusive license under the patent in each described field of use, with the exclusive right to grant sublicenses. However, its license will be subject to the Government's minimum rights under section 386 and march-in rights under section 387.

"(c) The contractor automatically will acquire by operation of law the right to receive an exclusive license, pursuant to subsection (b) of this section, ninety days after it provides the responsible agency with all of the information required to be disclosed by section 382(b), except that it will not acquire the right to receive an exclusive license in any field of use as to which the agency notifies the contractor within the ninety-day period that it has made a determination under subsection (d) of this section.

"(d) The contractor will not acquire an exclusive license in any field of use if the responsible agency determines that the contractor's possession of such a license—

"(1) would be contrary to the requirements of the agency's mission;

"(2) would impair national security; or

"(3) would violate the antitrust laws if the receipt by the contractor of such a license were deemed an acquisition of assets of another corporation.

"(e) An agency determination under subsection (d) of this section will include written reasons for the determination. The contractor may appeal the determination to the United States Court of Claims within sixty days after the contractor has been notified of the determination. That court will have exclusive jurisdiction to determine the matter de novo and to affirm, reverse, or modify the agency determination, specifically including authority to require that the contractor receive any exclusive license provided for by this section.

"(f) If the responsible agency determines that the national interest would not be affected adversely, the agency may grant the contractor title to any contract invention in any foreign country in which the contractor agrees to file a patent application.

"§ 385. Contractor license

"Any contractor that complies with section 382(b) automatically will receive by operation of law nonexclusive, royalty-free licenses to practice the contract invention in all countries where it does not receive title under section 383 and in all fields of use and in all countries in which it does not receive an exclusive license under section 384. These nonexclusive licenses may be revoked only to the extent necessary to allow the Government to grant exclusive licenses under subchapter III.

"**§ 386. Minimum Government rights**

"(a) The Government will have the following minimum rights in any contract invention:

"(1) the right to require from the contractor written reports on the use of the invention,

"(2) a royalty-free worldwide right or license to practice the invention or have it practiced for the Government, and

"(3) the right to license or sublicense State, local, or foreign governments to practice the invention or have it practiced for them, if the agency determines at the time of contracting that acquisition of this right would serve the national interest.

"(b) Whenever the Government has rights in any invention under this title, each patent application and patent on the invention will include a statement that the invention was made with Government sponsorship or support and that the Government has rights in the patent.

"**§ 387. March-in rights**

"(a) In any field of use, the Government may wholly or partly terminate the contractor's title or exclusive rights in any patent on a contract invention; may require the contractor to grant appropriate licenses or sublicenses to responsible applicants; or, if necessary, may grant such licenses or sublicenses itself. The Government may take such actions only—

"(1) if the contractor has not taken and is not expected to take timely and effective action to achieve practical application of the invention in one or more of the selected fields of use;

"(2) if necessary to protect the national security;

"(3) if necessary to meet requirements for public use specified by Federal regulation;

"(4) if the contractor's rights in the invention violate the antitrust laws if the contractor's original receipt of those rights were deemed an acquisition of assets of another corporation; or

"(5) if the contractor has failed to comply with the reporting requirements of this Act.

"(b) These march-in rights may be exercised by the responsible agency on its own initiative or on a petition from an interested person justifying such action.

"(c) Whenever under this section an agency requires a contractor to grant a license or sublicense, it may specify reasonable terms, including the royalties to be charged, if any; the duration of the license or sublicense; the scope of exclusivity; and the fields of use to be covered.

"§ 388. Deviation and waiver

"(a) An agency may deviate from the allocation of patent rights in contract inventions provided for in any standard patent rights clause established under section 390 acquir-

ing more or fewer rights in the inventions, to further the agency's mission and the public interest. It may so deviate on a class basis only in accordance with regulations issued either under section 390 or, unless prohibited by those regulations, by the agency. Case-by-case deviations must be authorized by the head of the agency or his designee, and described in the Federal Register.

"(b) The national security and antitrust march-in rights reserved by sections 387(a)(2), 387(a)(4), and 387(c) may not be waived under any circumstances.

"(c) Rights reserved by sections 384 and 387(a)(1) may be waived only:

"(1) in contracts involving cosponsored, cost-sharing, or joint-venture research or development to which the contractor makes a substantial contribution of funds, facilities, technology, or equipment; or

"(2) in contracts with a contractor whose participation is necessary for the successful accomplishment of the agency's mission but cannot be obtained under the standard patent rights clause.

"§ 389. Transfer of rights to contractor employees

"The contractor's employee-inventor may receive some or all of the contractor's rights under this subchapter with the permission of the contractor and the approval of the responsible agency. The corresponding obligations of the con-

tractor under this subchapter then will become obligations of the employee-inventor.

"§ 390. Regulations and standard patent rights clause

"The Office of Federal Procurement Policy will direct the issuance of regulations to implement this title. The regulations will establish a standard patent right clause or clauses, to be included in each Federal contract except as provided in section 388.

"SUBCHAPTER II—INVENTIONS OF FEDERAL EMPLOYEES

"§ 391. Employee inventions

"This subchapter applies to 'employment inventions', which in this Act are inventions made by Federal employees.

"§ 392. Reporting of inventions

"(a) Federal employees will file timely written reports on any inventions they make. Such reports will be made to the employee's agency and will contain complete technical information concerning the invention. The Government neither will publish nor release a report until there has been a reasonable time to file patent applications or until one year has passed since the final disposition of rights under this subchapter, whichever is earlier.

"(b) If the responsible agency determines that the employee-inventor unreasonably has failed to file a report as required by subsection (a) of this section, the employee may

be deprived of any or all of the rights he otherwise would have under this subchapter.

"§ 393. Criteria for allocation of rights

"The responsible agency will determine the rights of the Government and of Federal employee-inventors in any inventions made by employee-inventors through the use of the following criteria:

"(1) If the invention bears a direct relation to the duties of the employee-inventor or was made in consequence of his employment, the Government will acquire all rights in the invention.

"(2) If the invention neither bears a direct relation to the duties of the employee-inventor nor was made in consequence of his employment, but was made with a contribution from Federal funds, facilities, equipment, materials, or information not generally available to the public, or from services of other Federal employees on official duty, the employee-inventor will receive all rights in the invention, except as provided in paragraph (4) of this section. However, these rights will be subject to a nonexclusive, royalty-free, worldwide license to the Government to practice the invention or have it practiced for the Government.

"(3) If the agency finds insufficient interest in an invention to justify exercising its rights under para-

graph (1) of this section, it may permit the employee-inventor to receive any or all of those rights, subject to the Government's rights as described in paragraph (2) of this section. However, nothing in this paragraph will prevent the agency from publishing the invention or otherwise dedicating it to the public.

"(4) If the agency determines that national security might be impaired if the employee-inventor were to receive rights in an invention under paragraphs (2) or (3) of this section, the Government will acquire all rights in the invention.

"(5) The Government will claim no rights under this Act in any employee-invention not covered by paragraphs (1) or (2) of this section.

"(6) Notwithstanding paragraph (1) of this section, an agency may enter into agreements providing for appropriate allocation of rights in inventions that result from research or development to which other parties have substantially contributed.

"§ 394. Presumptions

"(a) There will be a rebuttable presumption that an employee invention falls within the criteria of section 393(1) if it was made by a Federal employee who is employed or assigned to—

"(1) invent, improve, or perfect any art, machine, manufacture, or composition of matter;

"(2) conduct or perform research or development work;

"(3) supervise, direct, coordinate, or review federally sponsored or supported research or development work; or

"(4) act as liaison among agencies or individuals engaged in the work specified in paragraphs (1), (2), or (3) of this subsection.

"(b) There will be a rebuttable presumption that an invention falls within the criteria of section 393(2) if it was made by any other Federal employee.

"§ 395. Review of agency determinations

"Agency determinations under sections 392 and 393 will be reviewed whenever—

"(1) the agency determines not to acquire all rights in an invention, or

"(2) an aggrieved employee-inventor requests a review.

Standards and procedures for this review will be prescribed in the regulations issued under section 399.

"§ 396. Reassignment of rights

"If an agency finds on the basis of new evidence that it has acquired rights in an invention greater than those to

which the Government was entitled under the criteria of section 393, it will grant the employee-inventor such rights as may be necessary to correct the error.

"§ 397. Incentive awards program

"(a) Agencies may monetarily reward and otherwise recognize employee-inventors as an incentive to promote employee inventions and the production and disclosure of employee inventions. For this purpose agencies may make awards under the Federal incentive awards system (5 U.S.C. ch. 45, 10 U.S.C. ch. 57, and implementing regulations), as modified by this section.

"(b) The amount of an award for an invention will be based on—

"(1) the extent to which the invention advances the state of the art;

"(2) the scope of application of the invention;

"(3) the value of the invention to the Government or the public; and

"(4) the extent to which the invention has come into public use.

"(c) Awards for an invention of up to $10,000 may be made by the head of an agency.

"(d) Awards of over $10,000 but less than $35,000 may be made by the head of an agency to—

"(1) civilian employees, with the approval of the Office of Personnel Management;

"(2) members of the Armed Forces, with the approval of the Secretary of Defense;

"(3) members of the United States Coast Guard when not operating as a service in the Navy, with the approval of the Secretary of Transportation;

"(4) members of the Commissioned Corps of the United States Public Health Service, with the approval of the Secretary of Health and Human Services; and

"(5) members of the Commissioned Corps of the National Oceanic and Atmospheric Administration, with the approval of the Secretary of Commerce.

"(e) Awards of more than $35,000 may be made to employee-inventors by the President upon recommendation of the head of an agency.

"(f) Acceptance of a cash award under this section constitutes an agreement that any Government use of an invention for which the award is made forms no basis for further claims against the Government by the recipient, his heirs, or his assigns.

"(g) Any cash award or expense for honorary recognition of an employee-inventor will be paid from the fund or appropriation of the agency receiving the invention's primary benefit.

"§ 398. Income sharing from patent licenses

"In addition to awards as provided in section 397, an agency may share income received from any patent license with the employee-inventor.

"§ 399. Regulations

"(a) The Secretary of Commerce shall issue regulations to implement this title.

"(b) Any determination of an appointing official under subsection 208(b) of title 18, United States Code, that relates to promotion of an employee invention by the employee-inventor will be subject to regulations prescribed by the secretary of Commerce with concurrence of the Office of Government Ethics and the Attorney General.

"SUBCHAPTER III—LICENSING OF FEDERALLY OWNED INVENTIONS

"§ 400. Covered inventions

"This subchapter applies to the licensing of all federally owned patent rights, including licenses or sublicenses granted or required to be granted by the Government under section 387. However, it does not apply to licenses established by the other sections of subchapter I of this chapter.

"§ 401. Exclusive or partially exclusive licenses

"(a) An agency may grant exclusive or partially exclusive domestic licenses under federally owned patent rights not automatically licensed under section 384 only if, after

public notice and opportunity for filing written objections, it determines that—

"(1) the desired practical application is not likely to be achieved under a nonexclusive license; and

"(2) the scope of proposed exclusivity is not greater than reasonably necessary.

"(b) An agency may grant exclusive or partially exclusive foreign licenses under federally owned patent rights after public notice and opportunity for filing written objections and after determining whether the interests of the Government or of United States industry in foreign commerce will be enhanced.

"(c) An agency will not grant any license under this section if it determines that such a grant would violate the antitrust laws if the licensee's receipt of such a license were deemed an acquisition of assets of another corporation.

"(d) Agencies will maintain periodically updated records of determinations to grant exclusive or partially exclusive licenses. These records will be publicly available.

"§ 402. Minimum Government rights

"Each license granted under section 401 will contain such terms and conditions as the agency finds appropriate to protect the interests of the Government and the public, including provisions reserving to the Government:

"(1) The right to require from the licensee written reports on the use of the invention,

"(2) A royalty-free, worldwide right to practice the invention or have it practiced for the Government, and

"(3) The right to license State, local, or foreign governments to practice the invention or have it practiced for them if the agency determines that reservation of this right would serve the national interest.

"§ 403. March-in rights

"(a) The Government will have the right to terminate any license granted under section 401 in whole or in part, but only—

"(1) if the licensee has not taken and is not expected to take timely and effective action to achieve practical application of the invention in each of the fields of use affected;

"(2) if necessary to protect national security;

"(3) if necessary to meet requirements for public use specified by Federal regulation;

"(4) if the licensee's rights in the invention violate the antitrust laws if the licensee's original receipt of those rights were deemed an acquisition of assets of another corporation; or

"(5) if the licensee has failed to comply with the terms of the license.

"(b) These march-in rights may be exercised by the responsible agency on its own initiative or on a petition from an interested person justifying such action.

"§ 404. Regulations

"The Office of Federal Procurement Policy will direct the issuance of regulations specifying the terms and conditions upon which federally owned patent rights may be licensed. An agency may deviate from such regulations on a class basis unless prohibited by the Office of Federal Procurement Policy.

"SUBCHAPTER IV—MISCELLANEOUS

"§ 405. Patent enforcement suits and right of intervention

"Any exclusive licensee under this chapter may enforce rights under the license by bringing suit without joining the United States as a party. However, the licensee will give prompt notice of the suit to the Attorney General and to the agency that granted the license, and all parties will serve copies of papers on the Attorney General and the responsible agency as though they were parties to the suit.

"§ 406. Background rights

"Nothing contained in this chapter will be construed to deprive the owner of any background patent or of rights under such a patent.

"§ 407. Notice, hearing, and judicial review

"(a) Agency determinations under sections 382, 387(a), and 387(c), and 403 will be made after public notice and opportunity for a hearing in which the United States, any agency, or any interested person may participate, and will include written reasons for the determination.

"(b) The United States or any participant that may be adversely affected by an agency determination covered by subsection (a) of this section may appeal the determination to the United States Court of Claims within sixty days after the determination is issued. That court will have exclusive jurisdiction to determine the matter de novo and to affirm, reverse, or modify the agency determination.

"§ 408. Relationship to other laws

"Nothing in this chapter creates any immunities or defenses to actions under the antitrust laws.

"§ 409. Authority of Federal agencies

"(a) Agencies may apply for, obtain, maintain, and protect patent rights in the United States and in foreign countries on any invention in which the Government has an interest in order to promote the use of inventions having significant commercial potential or otherwise advance the national interest.

"(b) Agencies may license federally owned patent rights on terms and conditions consistent with subchapter III.

"(c) Agencies may transfer patent rights to other agencies and accept them from other agencies, in whole or in part, without regard to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471).

"(d) Agencies may withhold publication or release of information disclosing any invention long enough for patent applications to be filed.

"(e) Agencies may promote licensing of federally owned patent rights by making market surveys, acquiring technical information, or otherwise enhancing the marketability of the inventions.

"(f) Agencies may enter into contracts necessary and appropriate to accomplish the purposes of this section.

"§ 410. Responsibilities of the Secretary of Commerce

"(a) The Secretary of Commerce will—

"(1) consult with other agencies about areas of science and technology with potential for commercial development.

"(2) coordinate a program to help agencies in exercising the authority given by section 409.

"(3) evaluate inventions referred by agencies to identify those with the greatest commercial potential and to promote their public use;

"(4) help agencies seek and maintain patents in the United States and in foreign countries by paying fees and costs and by other means;

"(5) develop and manage a Government-wide program, with appropriate private sector participation, to stimulate transfer to the private sector of potentially valuable federally-owned technology through dissemination of information about the technology; and

"(6) publish notice of all federally-owned patent rights that are available for licensing;

"(b) There is authorized to be appropriated to the Secretary of Commerce such sums as may be necessary to enable the Secretary to carry out responsibilities under this section.

"§ 411. Definitions

"As used in this chapter—

"(1) 'Agency' means an 'executive agency' of the Federal Government, as defined by section 105 of title 5, United States Code, and the military departments defined by section 102 of title 5, United States Code. 'Responsible agency' means the agency which is party to a contract for the performance of research or development, has received patent rights from another agency, or has administrative jurisdiction over an employee-inventor.

"(2) 'Antitrust laws' means the laws included within the definition of the term 'Antitrust laws' in section 1 of the Clayton Act (15 U.S.C. 12), as amended, and the Federal Trade Commission Act (15 U.S.C. 41 et seq.), as amended.

"(3) 'Contract' means any Federal contract, cooperative agreement, or grant that provides for performance of research or development substantially funded by the Government. It covers any assignment, substitution of parties, or subcontract of the same type under such a contract. It does not cover Federal price or purchase supports, or Federal loans or loan guarantees.

"(4) 'Contractor' means any person other than an agency that is a party to a contract.

"(5) 'Federal employee' means any civil service employee as defined in section 2105 of title 5, United States Code, and any member of the uniformed services.

"(6) 'Invention' means any invention that is or may be patentable under the laws of the United States. 'Contract invention' is defined by section 382. 'Employee invention' is defined by section 391.

"(7) 'Made' when used in relation to any invention means conceived or first actually reduced to practice.

"(8) 'Nonprofit organization' means universities and other institutions of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)).

"(9) 'Patent rights' means patents and patent licenses and sublicenses.

"(10) 'Practical application' means manufacture of a machine, composition, or product, or practice of a process or system, under conditions which establish that the invention is being worked and its benefits are available to the public on reasonable terms.

"(11) 'Small business' means a small business concern, as defined in section 2 of Public Law 85–536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration.

"(13) 'State' means a State or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. 'Local' refers to any domestic county, municipality, or other governmental entity.

"(14) 'Will', except as the context otherwise requires, has the same meaning as 'shall'.".

SEC. 7. (a) Section 10(a) of the Act of June 29, 1935, as added by title 1 of the Act of August 14, 1946 (7 U.S.C. 427i(a); 60 Stat. 1085) is amended by striking out the following: "Any contracts made pursuant to this authority shall contain requirements making the results of research and investigations available to the public through dedication, assignment to the Government, or such other means as the Secretary shall determine.".

(b) Section 205(a) of the Act of August 14, 1946 (7 U.S.C. 1624(a); 60 Stat. 1090) is amended by striking out the following: "Any contract made pursuant to this section shall contain requirements making the result of such research and investigations available to the public by such means as the Secretary of Agriculture shall determine.".

(c) Section 501(c) of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 951(c); 83 Stat. 742) is amended by striking out the following: "No research, demonstrations, or experiments shall be carried out, contracted for, sponsored, cosponsored, or authorized under authority of this Act, unless all information, uses, products, processes, patents, and other developments resulting from such research, demonstration, or experiments will (with such exception and limitation, if any, as the Secretary or the Secretary of Health, Education, and Welfare may find to be necessary in the public interest) be available to the general public.".

(d) Section 106(c) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1395(c); 80 Stat. 721) is repealed.

(e) Section 12 of the National Science Foundation Act of 1950 (42 U.S.C. 1871; 64 Stat. 149, 154) is repealed.

(f) Section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182; 68 Stat. 943) is repealed.

(g) The National Aeronautics and Space Act of 1958 (72 Stat. 426) is amended—

(1) by repealing section 305 (42 U.S.C. 2457). However, subsections (c), (d), and (e) of section 305 shall continue to be effective with respect to any application for patents in which the written statement referred to in subsection (c) of such section has been filed or requested to be filed by the Commissioner of Patents and Trademarks before the effective date of this Act;

(2) by striking out, in section 306(a) (42 U.S.C. 2458(a), "(as defined by section 305)"; and by striking out "the Inventions and Contributions Board, established under section 305 of this Act" and inserting instead: "an Inventions and Contributions Board which shall be established by the Administrator within the Administration";

(3) by inserting at the end of section 203(c) (42 U.S.C. 2478(c)) the following new paragraph:

"(14) to provide effective contractual provisions for reporting the results of the activities of the Administration, including full and complete technical reporting of any innovation made in the course of or under any contract of the Administration.";

(4) by inserting at the end of section 203 (42 U.S.C. 2478) the following new subsection:

"(d) For the purposes of chapter 17 of title 35 of the United States Code the Administration shall be considered a defense agency of the United States."; and

(5) by striking out the following in such section: "(including patents and rights thereunder)".

(h) Section 6 of the Coal Research and Development Act of 1960 (30 U.S.C. 666; 74 Stat. 337) is repealed.

(i) Section 4 of the Helium Act Amendments of 1960 (50 U.S.C. 167b; 74 Stat. 920) is amended by striking out the following: "*Provided, however,* That all research contracted for, sponsored, cosponsored, or authorized under authority of this Act shall be provided for in such a manner that all information, uses, products, processes, patents, and other developments resulting from such research developed by Government expenditure will (with such exceptions and limitations, if any, as the Secretary may find to be necessary in

the interest of national defense) be available to the general public: *And provided further,* That nothing contained herein shall be construed as to deprive the owner of any background patent relating thereto to such rights as he may have thereunder." and by inserting instead a period.

(j) Section 32 of the Arms Control and Disarmament Act of 1961 (22 U.S.C. 2572; 75 Stat. 634) is repealed.

(k) Subsection (e) of section 302 of the Appalachian Regional Development Act of 1965 (40 U.S.C. App. 302(e); 79 Stat. 5) is repealed.

(l) Except for paragraph (1), section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5901; 88 Stat. 1878) is repealed.

(m) Section 5(i) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831d(i); 48 Stat. 61), is amended by striking both proviso clauses at the end.

(n) Section 5(d) of the Consumer Product Safety Act (15 U.S.C. 2054(d); 88 Stat. 1211), is repealed.

(o) Section 3 of the Act of April 5, 1944 (30 U.S.C. 323; 58 Stat. 191), is repealed.

(p) The Resources Conservation and Recovery Act of 1976 (90 Stat. 2795) is amended—

(1) by repealing section 8001(c)(3) (42 U.S.C. 6981(c)(3); 90 Stat. 2831); and

(2) by striking out, in section 8004(c)(2) (42 U.S.C. 6984(c)(2)) the second sentence, "notwithstanding section 6881(c)(3) of this title,".

(q) Section 12 of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 (15 U.S.C. 2511; Stat.) is repealed.

(r) Paragraph (r) of section 19 of the Federal Nonnuclear Energy Research and Development Act of 1974, Public Law 93–577, as amended, Public Law 95–238, is repealed; subparagraph (g)4 of said section 19 is amended by striking "under section 9 of this Act" in the first sentence.

(s) Section 112(d)(2) of Public Law 95–39 enacted on June 3, 1977, is amended by striking "shall be governed by the provisions of section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 and".

(t) Section 408 of the Water Research and Development Act of 1978 (42 U.S.C. 7879; 92 Stat. 1316) is repealed.

SEC. 8. (a) Sections 2, 4, and 5 of this Act will take effect upon enactment.

(b) Section 1 of this Act will take effect on the first day of the seventh month beginning after its enactment and will apply to patents in force as of that date or issued thereafter.

(c) Section 3 of this Act will take effect on the first day of the first fiscal year beginning on or after one calendar year after enactment. However, until section 3 takes effect, the

Secretary may credit the Patent and Trademark Office appropriation account in the Treasury of the United States with the revenues from collected reexamination fees, which will be available to pay the costs to the Office of reexamination proceedings.

(d) Any fee in effect as of the date of enactment of this Act will remain in effect until a corresponding fee established under section 41 of title 35, United States Code, or section 1113 of title 15, United States Code, takes effect.

(e) Fees for maintaining a patent in force will not be applicable to patents applied for prior to the date of enactment of this Act.

(f) Sections 6 and 7 of this Act will take effect on the first day of the seventh month beginning after its enactment. Implementing regulations may be issued earlier.

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Chapter 1 Introduction to Computer Networks 1
Chapter 2 Physical Layer 15
Chapter 3 Data Link Layer 42
Chapter 4 Network Layer 78
Chapter 5 Transport Layer 120
Chapter 6 Application Layer 165
Chapter 7 Network Security 210
Chapter 8 Wireless Networks 255
Chapter 9 Network Management 290
Chapter 10 Multimedia Networking 320
Chapter 11 Network Performance 350
Chapter 12 Future Trends 380
Appendix A Glossary 410
Appendix B Bibliography 425
Index 440