99TH CONGRESS
1ST SESSION

S. 1543

To protect patent owners from importation into the United States of goods made overseas by use of a United States patented process.

IN THE SENATE OF THE UNITED STATES

JULY 31 (legislative day, JULY 16), 1985

Mr. MATHIAS (for himself, Mr. LAUTENBERG, Mr. LAXALT, Mr. DECONCINI, Mr. SPECTER, Mr. DENTON, and Mr. DIXON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

To protect patent owners from importation into the United States of goods made overseas by use of a United States patented process.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Process Patent Amendment of 1985".

SEC. 2. (a) Section 154 of title 35, United States Code, is amended by inserting after "United States," the following: "and, if the invention is a process, of the right to exclude others from using or selling products produced thereby

throughout, or importing products produced thereby into, the United States,".

(b) Section 271 of title 35, United States Code, is amended by—

(1) inserting "(1)" after "(a)";

(2) adding at the end of subsection (a), the following:

"(2) If the patented invention is a process, whoever without authority uses or sells within, or imports into, the United States during the term of the patent therefor a product produced by such process infringes the patent.".

(c) Section 287 of title 35, United States Code, is amended by—

(1) inserting "(a)" before "Patentees,"; and

(2) adding at the end thereof the following new subsection:

"(b) No damages shall be recovered by the patentee for infringement under section 271(a)(2) of this title from an infringer who did not use the patented process except on proof that such infringer knew of or was notified of the infringement and continued to infringe thereafter, in which event damages may be recovered only for infringement occurring after such knowledge or notice. Filing of an action for infringement shall constitute such notice.".

SEC. 3. This Act shall apply only to products produced or imported after the date of enactment. This Act shall not abridge or affect the right of any persons or their successors in business to continue to use, sell or import any specific product already in substantial and continuous commercial production on July 31, 1985, or for which substantial preparation for production was made before that date, to the extent equitable for the protection of investments made or business commenced before that date. This Act shall not deprive a patent owner of any other remedies available under 15 U.S.C. 271, 19 U.S.C. 1337, or any other statutory provision.

SEC. 4. For five years after the date of enactment, the Department of Commerce shall report annually to Congress on the effect of this Act on the importation of ingredients to be used for manufacturing products in the United States in those domestic industries that submit formal complaints to the Department alleging that their legitimate sources of supply have been adversely affected.

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