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HOUSE

BILL: S. 1864
ACTION: PASSED

DATE: August 22, 1958
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PATENT OFFICE BOARD OF APPEALS

Mr. WILLIS. Mr. Speaker, I move to suspend the rules and pass the bill (S. 1864) to authorize an increase in the membership of the Board of Appeals of the Patent Office; to provide increased salaries for certain officers and employees of the Patent Office; and for other purposes.

The Clerk read the bill, as follows:

Be it enacted, etc., That (a) the first sentence of the first paragraph of section 3 of title 35 of the United States Code is amended by striking out the word "nine" and inserting in lieu thereof the words "not more than fifteen."

(b) Such section is amended by inserting therein, immediately after the first paragraph thereof, the following new paragraph:

"The annual rate of compensation of the Commissioner shall be $20,000."

SEC. 2. Section 7 of title 35 of the United States Code is amended by adding at the end thereof the following new sentence: "Such designated examiners-in-chief may be compensated at the established rate for the positions in which they are temporarily serving: *Provided,* That at the end of the period for which designated their rate of compensation shall be adjusted to what it would have been had such designation not been made."

The SPEAKER. Is a second demanded?

Mr. KEATING. Mr. Speaker, I demand a second.

The SPEAKER. Without objection a second will be considered as ordered.

There was no objection.

Mr. WILLIS. Mr. Speaker, this bill authorizes an increase from "nine" to "not more than fifteen" in the membership of the Board of Appeals of the Patent Office. It also provides a salary increase for the Commissioner of Patents.

The Patent Office, of course, is one of the real business offices of the Government. In that office there are some 1,000 examiners of patents who process as much as 7,000 patents per year.

This bill would increase the membership of the Board of Appeals to "not more than fifteen" in order that they may be enabled more expeditiously to examine and pass upon the patents channeled to them by these thousand examiners.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. WILLIS. I yield to the gentleman from Iowa.

Mr. GROSS. Do I understand this bill is not approved by the Department of Commerce?

Mr. WILLIS. Initially there was some frowning on it, but it has been cleared.

Mr. GROSS. Does it provide any supergrade jobs?

Mr. WILLIS. No. The bill as amended deletes that. I might say it satisfies the House Committee on Post Office and Civil Service.

Mr. GROSS. I thank the gentleman.

Mr. KEATING. Mr. Speaker, I yield myself 5 minutes.

(Mr. KEATING asked and was given permission to revise and extend his remarks.)

Mr. KEATING. Mr. Speaker, S. 1864 will give much-needed relief to the Board of Appeals of the Patent Office. At the present time this Board is laboring under a backlog of over 7,000 pending cases. The result is that in some instances it requires several years to process patent applications. This period of delay is inexcusable and must be alleviated.

There is no evidence that this delay is due to inefficiency on the part of the present members of the Board of Appeals or the Commissioner of Patents. On the contrary, the statistics show that they have labored hard to dispose of a steadily increasing number of appeals. In the last fiscal year, for example, they disposed of almost 1,000 more cases than were disposed of in fiscal 1950. Even so, the backlog continues to mount.

S. 1864 would increase the number of members on the Board of Appeals from 9 to not more than 15. It would also increase the compensation of the Commissioner to $20,000 per year.

This bill has the strong support of the Secretary of Commerce, the Commissioner of Patents and the entire patent bar. I know of no opposition to it from any responsible source.

I am satisfied with the bill in its present form and urge its favorable consideration by the House.

Mr. LIBONATI. Mr. Speaker, this legislation (S. 1864) provides for an increase in the membership of the Board of Appeals of the Patent Office and an increase in salaries for certain officers and employees.

The witnesses in support of this legislation gave pertinent testimony as to the necessity of these changes—Robert C. Watson, United States Commissioner of Patents; Leo P. McCann, Chairman, United States Board of Patent Appeals; and Sam W. Kinsley, Personnel Director, United States Patent Office. These expert witnesses averred that the legislation would be beneficial both to business and industry and would result in speeding the final determination of the matters on the appeal calendar. A substantial increase in the salary features will attract competent and experienced personnel—as well as interest candidates

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to the lesser classifications for the pursuit of a career. The loss of trained personnel on raids by industry and law firms have resulted from low salaries in the upper bracket positions.

The freedom of selection of top experts by the Director will be the direct result of these increases.

The increase of the Board from 9 to 15 members will facilitate the work to the point that the present backlog of cases, appeals pending, amount to 2,000 workload and at the current end 5,000 case workload—either awaiting hearing or decisions. There are 2,000 other cases which are not ready for hearing or decision. Thus nearly 8,000 cases presently represent workload. So we can realize the great importance of the Bureau of Patents as a functioning unit of government. There were 77,000 applications for patents this year. These applications are assigned to one of the 67 examining divisions, consisting of a principal examiner, an assistant and a considerable number of examiner assistants who study the nature of disclosure of the applications, making searches to ascertain whether or not the applicant's contribution to arts is sufficiently important to warrant the issue of a patent.

The issues resulting between the applicant and the examiner through a series of hearings and attempts by amendments to satisfy the objections or determinations of the examiner. Upon his final rejection of the application—an appellate procedure has been provided.

An appeal may be taken to the Board of Appeals. It is the only appellant tribunal of the entire Patent Office upon the question of patentability of inventions.

The examiners and assistant examiners are ex officio members of the Board but seldom function to decide cases—although in important cases they do.

The Commissioner appoints the members of the Board of Appeals when vacancies occur (he actually recommends the individual to the Secretary of Commerce). The Secretary of Commerce recommends to the President in the usual manner. The President issues a certificate to the permanent members of the Board of Appeals, (now number 9 members) as his appointees. As well as the Commissioner and Assistant Commissioner.

The designated members as referred to in this bill are those of primary grade or higher who are assigned to the Board for duty from time to time as needed. There are 10 such designated presently, who are sitting with the 9 regular members to handle the heavy influx of appeals.

The 8,000 appeals now pending are a real challenge.

Members, three in number, sit as a panel, hearing both oral and written argument. The panel studies the brief and arguments, rendering its decision. No more than one designated member can sit on a panel. One writes the decision—speaks with the second, then submits to the third person on the panel. This takes a great deal of time with much detail and extended delays. They have the last word—appeals are then taken to the Court of Customs and Patent Appeals and by suit de nova can be taken to the District Court of the United States for the District of Columbia.

This is a difficult work and the reputation of the Board must enjoy the highest reputation for personal integrity and judicial honesty in an office of first importance in the economy of the Nation. It enjoys the highest kind of confidences and secrets. The finest legal minds of international reputation practice before this tribunal.

Delay of final decision generally for 4 years, holds up plans for the building up of a new industry or the expansion of facilities for added production—meaning new employment not only to those in the parent industry but the related trades—including building industries, raw material and transportation expansion for added services.

The correspondence that I received from outstanding lawyers specializing in this field of law have been most revealing as to the need of this legislation. Listed strongly for this legislation were the law firm of Attorneys Merriam, Lorch & Smith, of Chicago, Ill.; the Patent Law Association of Chicago, John A. Marzall, president; also attorneys, firm of Olson, Meckenburger, von Holst, Pendleton & Newman, of the Chicago bar.

The present determination of appeals board decisions averages 3,000 cases per year. Some appeals are withdrawn or the appellant and the examiner arrive at a decision, not requiring a decision.

In 1957, 2,500 cases were dismissed and 2,800 were decided. In 1956, 3,400 were dismissed and 2,300 were decided.

If each group of 3 panels determine about 500 case appeals per year, an average 1,000 cases would be decided by the increase of 2 panels—increase from 9 to 15.

These men require a high degree of administrative, legal, scientific—that is, engineering—ability and skill. These attributes must be combined in the talents of one individual. The salaries are important, especially in a system where the individual has reached the high position as member of the Board. These salaries are fixed in accordance with the Position Classification Act of 1949, a salary bill which covers the normal career in civil service salary—not an executive employee's salary. This bill will give prestige and security to those in the system to seek a career in the Patent Office. It will alleviate the problems of employment caused by applicants who accept employment with the specific intention of leaving after a period of training.

This bill gives the opportunity in the Patent Office to men, well trained, to remain in the service of the Government, aspiring to a career of honor with justice, with opportunity for his family to live with dignity and a feeling of enjoying a position of security.

Now—after training them—we lose them, but these higher salaries under the Classification Act will now be under the Commissioner to fix the annual rates of basic compensation for examiners in chief, subject to the approval of the Department of Commerce and of the Civil Service Commission.

The SPEAKER. The question is on suspending the rules and passing the bill.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.