BILL S. 645 | DATE 6/21/71 | PAGE(S) H 5508-09

ACTION **Passed.**

RELIEF FROM EFFECTS OF THE EMERGENCY POSTAL SITUATION IN PATENT AND TRADEMARK CASES

The Clerk called the bill (S. 645) to provide relief in patent and trademark cases affected by the emergency situation in the U.S. Postal Service which began on March 18, 1970.

The SPEAKER. Is there objection to the present consideration of the bill?

Mr. HALL. Mr. Speaker, reserving the right to object, I would like to inquire as to whether there has been any specific patent involved herein, or any known short list of patents that were not received in the accustomed timely fashion, because of the "postal incident" in March of 1907? I presume that refers to the strike, is that correct?

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

Mr. HALL. I am glad to yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. It does come about as a result of the postal strike. There are no claims that have been described as about to have been filed, but the Secretary of Commerce did feel that, because there are approximately 4,000 patent applications and 1,200 trademark applications that could potentially be affected, this was desirable legislation. But the committee has not been informed of any particular application or any particular claim that might qualify under this bill.

Mr. HALL. I thank the gentleman.

Mr. Speaker, while my friend is on his feet, may I also ask if in his opinion there does lie in the Committee on the Judiciary the proper jurisdiction for handling this type of reference; namely, S. 645?

Mr. KASTENMEIER. Mr. Speaker, if my friend will further yield, I would say yes, indeed. Subcommittee No. 3 of the Judiciary Committee, has handled in the past matters affecting patents and trademarks, and copyrights. While it also does affect for that purpose the postal laws, the laws themselves that are amended are indeed patent laws. Accordingly, their jurisdiction is in the Judiciary Committee.

Mr. HALL. Mr. Speaker, I appreciate the gentleman's forthright answer. I am prone to agree with him. But the point I am trying to make is this, in the opinion of the distinguished gentleman, hereafter will all matters pertaining to the new U.S. Postal Service or the Postal Service as it will be after 1 July of this year, be referred to this and/or other committees rather than the House Committee on Post Office and Civil Service?

Mr. KASTENMEIER. Mr. Speaker, will the gentleman yield further?

Mr. HALL. I am glad to yield.

Mr. KASTENMEIER. I cannot answer that question. I would assume the Committee on Post Office and Civil Service has appropriate jurisdiction where the postal laws are directly involved, certainly in a general case.

Mr. HALL. Based on that bill we passed, I think that is a very dangerous assumption, I would say to my friend.

Mr. KASTENMEIER. That is, I must say to my friend, outside of my jurisdiction, and certainly the scope of this bill. It is beyond my competence to reply.

Mr. HALL. Mr. Speaker, the gentleman has adequately answered my question so

far as reference to this bill is concerned, and certainly so far as any specific patent involvement is concerned. I see no objection to the bill.

Mr. Speaker, I withdraw my reservation.

The SPEAKER. Is there objection to the present consideration of the bill?

There being no objection, the Clerk read the bill as follows:

S. 645

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. (a) A patent or trademark application shall be considered as having been filed in the United States Patent Office on the date that it would have been received by the Patent Office except for the delay caused by the emergency situation affecting the postal service which began on March 18, 1970, and ended on or about March 30, 1970, if a claim is made for the benefit of an earlier date in accordance with subsections (b) and (c) of this section. Patents issued with earlier filing dates afforded by this section shall not be effective as prior art under subsection 102(e) of title 35 of the United States Code as of such earlier filing dates.

(b) No patent or trademark application, patent, or trademark registration shall be entitled to an earlier filing date under this section unless a verified statement by the applicant or owner of record claiming the filing date to which the application is believed to be entitled is filed in the Patent Office within six months after enactment of this Act. Such statement shall be maintained in the file of the application in the Patent Office and shall be referred to in the patent or trademark registration when practicable.

(c) When a statement filed under subsection (b) of this section appears unreasonable or defective on its face, or when the filing date of the patent or trademark application, patent, or trademark registration is called into question or is material in any inter partes proceeding in the Patent Office or any proceeding in the courts, the applicant or owner of such application, patent, or trademark registration may be required to present evidence establishing the filing date to which the application is entitled. The filing date to which the application is entitled shall be determined on the basis of such evidence and any evidence introduced by an opposing party. The evidence shall be presented as directed by the Commissioner of Patents in proceedings in the Patent Office or as directed by the courts in proceedings in the courts.

SEC. 2. (a) Except for the filing of a patent or trademark application, if any action is taken or any fee is paid in the United States Patent Office later than the end of a time period specified in the statutes set forth in subsection (b) of this section for taking such action or paying such fee, and no provision exists in law for excusing such delay, the delay may be excused if it is determined that it was caused by the emergency situation affecting postal service which began on March 18, 1970 and ending on or about March 30, 1970. Relief under this section must be requested by a verified statement filed in the Patent Office by the patent or trademark applicant or owner within six months after enactment of this Act.

(b) This section is applicable to title 35, United States Code, "Patents"; the Trademark Act of 1946, ch. 540, 60 Stat. 427, as amended; the Atomic Energy Act of 1954, Public Law 83-703, 68 Stat. 919, as amended; and the National Aeronautics and Space Act, Public Law 85-568, 72 Stat. 426 (1958), as amended. In cases involving the Atomic Energy Act of 1954 or the National Aeronautics and Space Act, determinations of relief shall be made by a Board of Patent Interferences. In other cases determinations shall be made by the Commissioner of Patents.

SEC. 3. The Commissioner of Patents may establish regulations for administering this Act.

The bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.