BILL	DATE	PAGE(S)
S. 645	4/22/71	S 5341

ACTION: Passed.

PROVISION OF RELIEF IN PATENT AND TRADEMARK CASES

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, was considered, ordered to be engrossed for a third reading, read the third time, and passed, 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) 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 ended 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, Pub. L. 83–703, 68 Stat. 919, as amended; and the National Aeronautics and Space Act, Pub. L. 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.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92–70), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of the legislation is to afford patent and trademark applicants an opportunity to make a claim for a filing date earlier than the date on which the application was received by the Patent Office. The application would be entitled to the filing date which it would normally have received except for the emergency situation affecting Postal Service which began on March 18, 1970. The applicant would be required to submit within 6 months after enactment of the bill a vertified statement claiming the date to which the application is believed to be entitled.

VIEWS OF GOVERNMENT AGENCY

This legislation was introduced by Senator John L. McClellan at the request of the Department of Commerce.

STATEMENT

The patent and trademark laws contain numerous time periods during which specified actions must be taken by patent and trademark applicants and owners. Failure to take a required act on within the statutory time period generally results in a forfeiture of some or all of the patent or trademark rights involved. The statutes allow a failure to comply with the specified time periods to be excused in some situations upon a showing that the delay was unavoidable, however with respect to other time periods, the statutes permit no waiver.

The filing dates of patent and trademark applicantions may be critically important in determining patent and trademark rights. The committee has been advised that the disruption of the postal system resulting from the failure of certain employees to perform their duties may cause a number of patent and trademark owners to suffer loss of important rights. Other than for legislation, such as S. 645, the only remedy available to such owners would be to seek the passage of a private bill in individual cases.

If a claimed earlier filing were called into question or became material in an inter partes proceeding in the Patent Office or any proceeding in the courts, the applicant or owner could be required to present evidence establishing the filing date to which the application was entitled. Evidence would also be presented when the claim appeared unreasonable or defective on its face. Thus, the sufficiency of claims for earlier filing dates would be examined only in a small percentage of cases. This approach is believed best because a large number of applications may have been affected by the strike and the delay will prove to be material only in a few of the cases. During a 2-week period approximately 4,000 patent applications and 1,200 trademark applications are filed in the Patent Office.