BILL	DATE	PAGE(S)
S. 1254	4/22/71	S 5342-43

ACTION: Amended and Passed.

AMENDMENT OF TITLE 35, UNITED STATES CODE

The Senate proceeded to consider the bill (S. 1254) to amend title 35, United States Code, "Patents," and for other purposes which had been reported from the Committee on the Judiciary with amendments on page 1, line 9, strike the word "assistant", and insert the word "Assistant"; on page 2, line 7, following the words "of the Senate." insert "The Secretary of Commerce, upon the nomination of the Commissioner, in accordance with law, shall appoint all other officers and employees."; after line 19, insert:

SEC. 2. The first paragraph of section 7 of title 35 of the United States Code is amended to read as follows:

"The examiners-in-chief shall be persons of competent legal knowledge and scientific ability, who shall be appointed under the classified civil service. The Commissioner, the Deputy Commissioner, the assistant commissioners, and the examiners-in-chief shall constitute a Board of Appeals, which on written appeal of the applicant, shall review adverse decisions of examiners upon applications for patents. Each appeal shall be heard by at least three members of the Board of Appeals, the members hearing such appeal to be designated by the Commissioner. The Board of Appeals has sole power to grant rehearings."

On page 3, line 8, strike out 'Sec. 2.", and insert "Sec. 3."; on page 4, line 3, after the words "ment of the", to strike the word "late", and insert the words "delay in"; after line 5, strike out the following:

SEC. 3. (a) There shall be in the Department of Commerce, in addition to the Assistant Secretaries now provided by law, one additional Assistant Secretary of Commerce for Patents and Trademarks, shall be appointed by the President by and with the advice and consent of the Senate, shall receive compensation at the rate prescribed by law for Assistant Secretaries of Commerce, and shall perform such duties as the Secretary of Commerce shall prescribe.

And insert, in lieu thereof:

SEC. 4. (a) There shall be in the Department of Commerce, in addition to the Assistant Secretaries now provided by law, one additional Assistant Secretary of Commerce who shall be known as the Assistant Secretary of Commerce for Patents and Trademarks, shall be appointed by the President by and with the advice and consent of the Senate, shall receive compensation at the rate prescribed by law for Assistant Secretaries of Commerce, and shall perform such duties as the Secretary of Commerce shall prescribe.

And on page 5, after line 2, insert the following:

SEC. 5. This Act shall be effective upon enactment. Examiners-in-chief in office on the date of enactment shall continue in office under and in accordance with their then existing appointments.

So as to make the bill read:

S. 1254

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3, title 35 of the United States Code is amended to read as follows:

"§ 3. Officers and employees

"(a) There shall be in the Patent Office a Commissioner of Patents, a deputy commissioner, two assistant commissioners, and not more than fifteen examiners-in-chief. The Assistant Secretary of Commerce for Patents and Trademarks, shall, ex officio, be the Commissioner of Patents. The deputy commissioner, or in the event of a vacancy in that office, the assistant commissioner senior in date of appointment shall fill the office of Commissioner during a vacancy in that office until the Commissioner is appointed, and takes office. The Commissioner of Patents, the deputy commissioner, and the assistant commissioners shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary of Commerce, upon the nomination of the Commissioner, in accordance with law, shall appoint all other officers and employees.

"(b) The Secretary of Commerce may vest in himself the functions of the Patent Office and its officers and employees specified in this title and may from time to time authorize their performance by any other officer or employee.

"(c) The Secretary of Commerce is authorized to fix the per annum rate of basic compensation of each examiner-in-chief in the Patent Office at not in excess of the maximum scheduled rate provided for positions in grade 17 of the General Schedule of the Classification Act of 1949, as amended."

SEC. 2. The first paragraph of section 7 of title 35 of the United States Code is amended to read as follows:

"The examiners-in-chief shall be persons of competent legal knowledge and scientific ability, who shall be appointed under the classified civil service. The Commissioner, the Deputy Commissioner, the assistant commissioners, and the examiners-in-chief shall constitute a Board of Appeals, which on written appeal of the applicant, shall review adverse decisions of examiners upon applications for patents. Each appeal shall be heard by at least three members of the Board of Appeals, the members hearing such appeal to be designated by the Commissioner. The Board of Appeals has sole power to grant rehearings."

SEC. 3. Section 151 of title 35 of the United States Code is amended to read as follows:

"§ 151. Issue of patent

"(a) If it is determined that an applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant. The notice shall specify a sum, constituting the issue fee or a portion thereof, which shall be paid within three months thereafter.

"(b) Upon payment of this sum the patent shall issue, but if payment is not timely made, the application shall be regarded as abandoned.

"(c) Any remaining balance of the issue fee shall be paid within three months from the sending of a notice thereof and, if not paid, the patent shall lapse at the termination of the three-month period. In calculating the amount of a remaining balance, charges for a page or less may be disregarded.

"(d) If any payment required by this section is not timely made, but is submitted with the fee for delayed payment and the delay in payment is shown to have been unavoidable, it may be accepted by the Commissioner as though no abandonment or lapse had ever occurred."

SEC. 4. (a) There shall be in the Department of Commerce, in addition to the Assistant Secretaries now provided by law, one additional Assistant Secretary of Commerce who shall be known as the Assistant Secretary of Commerce for Patents and Trademarks, shall be appointed by the President by and with the advice and consent of the Senate, shall receive compensation at the rate prescribed by law for Assistant Secretaries of Commerce, and shall perform such duties as the Secretary of Commerce shall prescribe.

(b) Section 5315 of title 5, United States Code, is amended by striking "(7)" at the end of item (12) and substituting "(8)".

(c) Section 5316 of title 5, United States Code, is amended by striking item (48).

SEC. 5. This Act shall be effective upon enactment. Examiners-in-chief in office on the date of enactment shall continue in office under and in accordance with their then existing appointments.

The amendments were agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

Mr. BYRD of West Virginia. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-73), explaining the purposes of the measure.

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

PURPOSE OF AMENDMENTS

All of the amendments are of a perfecting or clarifying nature. Most of the amendments provide for necessary revisions in title 35 to conform that title to the provisions of this legislation.

PURPOSE

This bill, as amended, provides for several miscellaneous amendments of title 35, and for an adjustment of the organization of the Patent Office within the Department of Commerce.

STATEMENT

There has been an increase in the number of situations where a patent applicant has failed to make timely payment of the issue fee. Section 151 of title 35 authorizes the Commissioner of Patents to accept a late payment upon a showing of sufficient cause only if the late payment is made within 3 months of the due date. In some situations the failure to make the payment was unavoidable and private bills have been introduced to direct the Commissioner to accept the late payment. The amendment of section 151 contained in this legislation would eliminate the necessity for such bills by giving the Commissioner authority to accept a late payment upon a showing that the delay was unavoidable.

Under the existing section 3 of title 35 there are 19 positions in the Patent Office which require Senate confirmation. No useful public policy purpose is served by this procedure. This bill would eliminate the requirement for the Senate to give its advice and consent to the position of Examiner in Chief of the Patent Office and would require Senate confirmation only of the Commissioner, the Deputy Commissioner, and the two Assistant Commissioners.

The Patent Office currently is confronted with substantial administrative problems. While the Congress had not yet completed action on the legislation for the general revision of the patent law, it is apparent that no major change will be made in the current patent examining system. Because of the rise in the number of patent applications, the complexity of many inventions, and the long delay in the disposition of many applications, there is an urgent need for the most efficient administration of the Patent Office and clear policy responsibility in the Commissioner of Patents.

The bill provides that the number of assistant secretaries of Commerce shall be increased from seven to eight by the establishment of the position of Assistant Secretary of Commerce for Patents and Trademarks. The Assistant Secretary of Commerce for Patents and Trademarks shall, ex officio, be the Commissioner of Patents. The Patent Office, with 2,701 employees, is one of the largest functioning components of the Department of Commerce. The Congress has previously provided that such other components of the Department, as the Travel Service, with 73 employees, and the Maritime Administration, with 1,708 employees, should be headed by an assistant secretary.

The committee is aware that the President has recommended the abolition of the Department of Commerce and the incorporation of many of its functions, including the Patent Office, in a Department of Economic Affairs. It is currently uncertain what action may be taken by the Congress on this proposal. In any event, the committee believes that the urgent administrative problems confronting the patent system makes it advisable that favorable action be taken at this time on section 4 of S. 1254.