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ACTION Introduced by Mr. Railsback

AMENDING TITLE 35, UNITED STATES CODE, PATENTS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. RAILSBACK) is recognized for 10 minutes.

Mr. RAILSBACK. Mr. Speaker, today I am introducing legislation to amend title 35, United States Code, Patents. A number of situations have arisen where a patent applicant has failed to make timely payment of the issue fee. Under section 151 of title 35 the Commissioner of Patents can accept a late payment if the late payment is made within 3 months of the due date and if sufficient cause is shown for the late payment, but there is no discretion in the Commissioner to excuse late payments made more than 3 months after due date. Some late-payment situations may have involved circumstances beyond the applicant's control and private bills have been introduced to direct the Commissioner to accept the late payment, notwithstanding the expiration of the 3 months. The major thrust of the legislation which I have introduced today 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.

Also, Mr. Speaker, on the recommendation of the Department of Commerce, my bill provides limited retroactivity. However, the bill is not retroactive to a date prior to October 25, 1965, when present section 151 of title 35 became effective. Prior to that date, section 151 provided for payment of the issue fees within 6 months of the sending of a notice of allowance, but with a provision for late payment within an additional 12-month period in the discretion of the Commissioner. And to my knowledge, there were few, if any, difficulties under this section prior to 1965. Also, the term of any patent as to which a late payment of the issue fee is made and accepted, the retroactivity period would be shortened by an amount equal to the time elapsed between the due date of the issue fee and the date when the delayed payment is submitted. An additional limitation on retroactivity is provided in the bill for the case wherein another person may have learned of the abandonment of a patent application for failure to pay the issue fee and made an investment relying on the fact that the invention was in the public domain. Such a person's rights would be protected.

In addition, Mr. Speaker, section 1 of this legislation enumerates the officers of the Patent Office and makes a number of changes in section 3 of title 35 of the United States Code. The current position of First Assistant Commissioner would be known as Deputy Commissioner. It is provided in this bill that the Commissioner of Patents, the Deputy Commissioner, and the two Assistant Commissioners shall be appointed by the President with the advice and consent of the Senate. The current requirement for Senate confirmation of the Patent Office examiners-in-chief is eliminated, but the rate of their compensation is unchanged—not in excess of GS–17. Section 2 of this legislation amends section 7 of title 35 of the United States Code relating to the composition of the Board of Appeals of the Patent Office. The only change made in the existing section 7 is the inclusion of the Deputy Commissioner among the members constituting the Board of Appeals.

Mr. Speaker, the bill I am introducing has wide support and to my knowledge, no opposition. I urge its early consideration by the Committee on the Judiciary.