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ACTION
Introduced by Mr. Kastenmeier.

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## AUTHORIZE APPROPRIATIONS FOR THE PATENT AND TRADEMARK OFFICE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Wisconsin (Mr. KASTENMEIER) is recognized for 5 minutes.

● Mr. KASTENMEIER. Mr. Speaker, at the request of the Secretary of Commerce and the Commissioner of Patents and Trademarks, I am today introducing legislation to authorize appropriations for the Patent and Trademark office. If there is no objection, I would request that a section-by-section analysis and an explanatory letter from the Secretary be inserted into the RECORD.

On March 10, at 10 a.m., in room 2226, Rayburn Building, the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, will receive formal testimony from Hon. Gerald Mossinghoff, Commissioner of Patents, regarding the legislation. At this point, I include the following:

THE SECRETARY OF COMMERCE,
*Washington, D.C., February 8, 1982.*

Hon. THOMAS P. O'NEILL, Jr.,
*Speaker of the House of Representatives, Washington, D.C.*

DEAR MR. SPEAKER: Enclosed are six copies of a draft bill "To authorize appropriations to the Patent and Trademark Office in the Department of Commerce, and for other purposes", together with a section-by-section analysis of the bill.

This proposed bill will lay the groundwork for revitalizing the United States patent and trademark systems. It will establish the user fees necessary to achieve this Administration's goals of acceptable patent and trademark processing times in the 1980's and a fully automated Patent and Trademark Office in the 1990's.

Today, a patent applicant must wait an average of almost twenty-three months to receive a patent. During fiscal year 1981, 20,000 patent applications were added to an already unacceptable backlog, bringing the total of pending applications to over 200,000. An average of six to seven percent of the estimated 24 million documents in the patent search files are missing or misfiled, and the percentage is higher in rapidly developing fields.

The trademark operation is equally in need of improvement. It takes nearly two years to register a trademark, about twice as long as it should. Last year, 6,500 trademark applications were added to the backlog, which reached a record high.

This Administration has embarked on an ambitious but realistic course of action to reverse the situation and give the country a first-class Patent and Trademark Office. We plan to reach an average patent application pendency time of eighteeen months by fiscal year 1987. The first step in this plan is the recruitment and training of additional patent examiners needed to stem the totally unacceptable growth in backlog.

For trademarks, we plan by fiscal year 1985 to issue an examiner's first action for ruling on registrability in three months and dispose of the application within thirteen months.

Our other major goal for the Patent and Trademark Office is to move realistically toward a fully automated Office by the 1990's. Steps have already been taken to place available commercial data bases in the hands of examiners and in the Public Search Room. In addition, the first draft of an automation study mandated by section 9 of Public Law 96-517 has been prepared and distributed widely for review and comment.

In order to achieve these important goals under current fiscal constraints, we are recommending in the enclosed bill that user fees be increased substantially over those currently charged. Specifically, the enclosed bill would amend 35 U.S.C. 41 and 15 U.S.C. 1113 to achieve 100 percent cost recovery for patient and trademark application processing. In patents, 50 percent of the cost of processing would be recovered by filing and issue fees and 50 percent through maintenance fees paid at three intervals during the seventeen-year life of a patent.

The bill also contains a number of amendments to the patent and trademark laws to enhance the effectiveness of those systems in serving industry and inventors. These amendments are fully explained in the enclosed section-by-section analysis.

The Office of Management and Budget has advised that enactment of the enclosed bill is in accord with the program of the President.

Sincerely,

MALCOLM BALDRIGE,
*Secretary of Commerce.*

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SECTIONAL ANALYSIS

SECTION 1

This section authorizes appropriations for the Patent and Trademark Office for the payment of salaries and necessary expenses of the Office. For fiscal year 1983, this section authorizes appropriations of $68,086,000 plus such additional and supplemental amounts as may be necessary to cover any increases in salary, pay, retirement, or employee benefits which may be authorized by law. In addition, fees collected pursuant to title 35, United States Code, and the Trademark Act of 1946, as amended (15 U.S.C. 1051 et seq.), will augment the authorized appropriation to provide the resources needed to conduct the operations of the Office for fiscal year 1983. The total resources for the Office in fiscal year 1983, that is, the amount appropriated pursuant to this section plus fees collected pursuant to the patent and trademark laws, which will be available to the Office, is estimated to be $154,934,000. Any supplemental amounts to cover increases in salary, pay, retirement, or other employee benefits which may be authorized by law will be in addition to, and will therefore increase, that program level. Finally, any funds appropriated pursuant to this section and all fees collected under Public Law 96-517 will remain available without any fiscal year limitation.

SECTION 2

This section provides that, notwithstanding any other provision of law, there is authorized to be appropriated to the Patent and Trademark Office for fiscal year 1982, $121,461,000 and such additional or supplemental amounts as may be necessary for increases in salary, pay, retirement, or other employee benefits authorized by law. This section increases the amounts authorized for the Patent, and Trademark Office by $2.5 million over that authorized in Public Law 97-35. The President is recommending a supplemental appropriation of $2,500,000 for the Patent and Trademark Office for fiscal year 1982 in order to carry out the program recommendations included in his fiscal year 1983 budget.

SECTION 3

This section increases the percentage of PTO costs recovered from patent and trademark fees. The full costs of processing applications for patents, from filing through abandonment, will be recovered through a combination of "front-end" fees (filing and issuance) and maintenance fees. The front-end fees, other than for design patents, will be increased to recover not more than 50 percent of the processing costs. In 15 years, the remainder of the processing costs necessary to achieve full recovery of such costs will be recovered through maintenance fees. However, until maintenance fees are in full effect, front-end fees for other than design patent applications will recover in aggregate 50 percent of Office processing costs. After maintenance fees are in full effect, the Commissioner may adjust fees so that maintenance fees recover more than 50 percent of Office costs, while front-end fees, accordingly, recover less than 50 percent of Office costs. Fees for processing design patents, which would remain front-end fees, will be increased to recover 100 percent of Office costs. Trademark fees will be increased to recover 100 percent of Office costs, but these revenues may be used only to carry out activities of the trademark registration process.

In order to avoid an inequitable loss of patent rights, the Commissioner is given the authority to accept payment of any maintenance fee after the six-month grace period if it is established that the delay in payment was unavoidable. It is intended that the Commissioner will issue regulations establishing guidelines for acceptance of late payment. After the expiration of a reasonable period of time, the patentee would bear a heavy burden of proof that the delay was unavoidable. A surcharge may be imposed by the Commissioner as a precondition to acceptance of a late fee. This surcharge may be in addition to any surcharge imposed for payment during the grace period.

A provision is included to protect the rights of one who began using or who took steps to begin use of a patent which expired for failure to pay a maintenance fee and which was subsequently reestablished by acceptance of the late payment. The intervening rights provision in section 41(d)(1) is similar to the intervening rights provision in 35 U.S.C. 252 concerning reissued patents.

A provision is inserted in section 42(c) of title 35 in order to ensure that the trademark fees collected are used to fund programs for the processing of trademark registrations and not the processing of patent applications.

SECTION 4

Section 3 of title 35 is amended by deleting specific reference to the number of examiners-in-chief in the first sentence. Elimination of the upper limit on the number of permanent members of the Board of Appeals would provide greater flexibility in filling most of its personnel needs, thereby avoiding an excess of examiner details. The authority to appoint acting examiners-in-chief, however, is maintained in order that temporary fluctuations in the workload of the Board may be accommodated.

SECTION 5

Under revised section 111 of title 35, the filing date of an application would be that on which specification and drawings are received by the Patent and Trademark Office. The oath and filing fee could be submitted at such later time as established by the Commissioner, without any loss of the original filing date. Under the amendment, an applicant could either file the oath (including the applicant's signature) and fee together with an application or submit them at a later time as determined by the Commissioner. The Commissioner would normally set this time period to expire not later than the beginning of the examination process of the application in question, as it could be useful for the examiner to be able to rely on certain averments made in the oath declaration. The section would also authorize the imposition of a surcharge as a condition for accepting payment of the oath or filing fee after the filing date of the application. Since an application filed without the oath would not be signed or "made" by the applicant, the amendment permits an attorney or agent, authorized by the applicant, to submit an application for the purpose of obtaining a filing date.

Should the applicant, however, fail to file the oath or pay the filing fee within the time limits set by the Commissioner, the application would be regarded as having been abandoned. The requirements for reviving an abandoned application would be the same as those which have to be met in connection with abandoned applications under section 133 of title 35.

SECTION 6

The third paragraph of section 116 of title 35 is amended to enlarge the possibilities for correcting misnamed inventive entities. As a consequence, correction would be permitted also in cases where the person originally named as inventor was in fact not the inventor of the subject matter contained in the application. If such error occurred without any deceptive intention on the part of the true inventor, the Commissioner would have the authority to substitute the true inventor for the erroneously named person. Although probably rarer, instances such as changes from a mistakenly identified sole inventor to different, but actual, joint inventors, conversions from erroneously identified joint inventors to different but actual joint inventors, and conversions from erroneously identified joint inventors to a different, but actual, sole inventor would also be permitted. In each instance, however, the Commissioner must be assured of the presence of innocent error, without deceptive intention on the part of the true inventor or

inventors, before permitting a substitution of a true inventor's name.

Section 256 of title 35, which is a companion of section 116, would be amended to similarly enlarge the possibilities for correction of misnamed inventors in issued patents.

SECTION 7

Section 6(d) of title 35, which provides for the allocation of appropriated Patent and Trademark Office funds to the Department of State for payment of United States financial obligations under the Patent Cooperation Treaty, is deleted. The Department of State has traditionally assumed responsibility for financial obligations for international agreements to which the United States adheres.

SECTION 8

Section 8(a) of the Trademark Act is amended to clarify that the continued use required to be shown in the sixth year be use "in commerce". Although it is believed by some that omission of the words "in commerce" may have been inadvertent in the 1946 Act, this section has been interpreted so that use in a foreign country, or use in intrastate commerce, is sufficient. Such interpretation is fundamentally in conflict with other requirements of the Act.

Section 8(b) of the Act is also amended to clarify that the continued use required to be shown in the sixth year be use "in commerce" for registrations published under section 12(c) of the Act. (This pertains to registrations issued under the Act of March 3, 1881 and the Act of February 20, 1905).

The word "still" has been deleted from sections 8(a) and 8(b). Thus, the owner of a registration issued on the basis of a foreign registration under the provisions of section 44(e) of the Act will have to submit an affidavit to the effect that the mark is in use in commerce. Since the mark need not be used in commerce when it is registered, the registrant cannot be required to state that it is "still" in such use.

SECTION 9

Section 13 of the Trademark Act is amended to delete the requirement that an opposition be verified. The sentence which allowed an unverified application to be verified at a later date has been deleted. In addition, a phrase has been added to make it clear that any subsequent extension of time to file an opposition, beyond the first extension, must be requested before the end of the preceding extension.

Section 14 of the Trademark Act would also be amended to delete the requirement that a petition to cancel a registration be verified.

SECTION 10

Section 15 of the Trademark Act is amended to change the term "the publication" to "registration" in the first sentence. This change makes the date of registration rather than the date of publication the crucial date of purposes of incontestability. It will also make section 15 consistent with sections 22 and 33 of the Act.

SECTION 11

Section 16 of the Trademark Act is amended to limit the declaration of interferences to those situations where a petition to the Commissioner shows that extraordinary circumstances exist. Unless extraordinary circumstances exist, the rights of the parties can be determined adequately by the existing opposition and cancellation procedures. Additionally, if an interference is declared between an application and a registration and the applicant wins, a cancellation must still be initiated against the registration.

SECTION 12

A new subsection (a) has been added to section 21 of title 35 to authorize the Commissioner of Patents and Trademarks to give as the filing date of any paper or fee which is required to be filed in the Patent and Trademark Office the date on which the paper or fee was deposited with the United States Postal Service. The Commissioner may also give as the filing date of any paper or fee which was required to be filed in the Patent and Trademark Office the date it would have been deposited with the United States Postal Service but for postal service interruptions or emergencies which the Commissioner designates. The requirements governing whether any given paper or fee may be given the filing date of the day on which it was, or would have been, deposited with the United States Postal Service will be set forth in regulations established by the Commissioner.

Section 21(b) of title 35 is identical to existing section 21 with two minor amendments. The word "federal" has been inserted before the phrase "holiday within the District of Columbia" to clarify the nature of te holiday.

SECTION 13

This section clarifies the authority of the Commissioner in section 6(a) of title 35 to enter into a wide range of cooperative agreements concerning the patent and trademark laws or the administration of the Patent and Trademark Office. These agreements are in addition to the exchange of publications authorized in 35 U.S.C. 11(b) and 12. These cooperative agreements may take the form of studies, programs, exchanges, and other similar ventures. Thus, the PTO could, for example, exchange patent copies, non-patent literature, tapes, or services in return for goods or services of value to the PTO.

SECTION 14

The amendments of 35 U.S.C. 115 and Section 11 of the Trademark Act of 1946 recognize the Hague "Convention Abolishing the Requirement of Legalization for Foreign Public Documents" which entered into force in the United States on October 15, 1981. The Convention abolishes the requirement of diplomatic or consular legalization for foreign public documents among countries adhering to the Convention. For documents from all other countries, diplomatic or consular legalization will still be required.

The amendment of 35 U.S.C. 261 is intended to give affirmative effect to acknowledgments executed pursuant to the Hague Convention.

SECTION 15

This section corrects an incorrect citation. Public Law 96-517 amended section 41 of title 35, United States Code, in a way which eliminated 35 U.S.C. § 41(a)(9). Unfortunately, section 13 of title 35, United States Code, was not amended accordingly by P.L. 96-517. This section corrects that oversight.

SECTION 16

Section 16 specified the effective dates of the Act. Increased filing fees resulting from the increased percentage recovery of Office costs will apply to all applications applied for on or after the date of enactment of this Act. Increased issue fees will apply to applications on file in the Office on such date. Increased maintenance fees shall only apply to applications filed on or after the date of enactment. Until the maintenance fees prescribed by section 3 of this Act are in full effect, front-end fees for other than design patent applications must recover in aggregate 50% of Office processing costs. After maintenance fees are in full effect, the Commissioner may adjust fees so that maintenance fees recover more than 50% of Office costs, while front-end fees, accordingly, recover less than 50% of Office costs.●

AGRICUL[redacted]KETING

The SPEAK[redacted]ore. Under a previous ord[redacted]e, the gentleman from [redacted]MANSKY) is recognized fo[redacted]

●Mr. SHAM[redacted] Speaker, I have introdu[redacted] to eliminate Federal[redacted]orders for fruits, nuts, a[redacted] The marketing order s[redacted]ven to be a burden to cor[redacted]rowers and has led to th[redacted]destruction of food. Mar[redacted] keep food prices artifici[redacted]are an unnecessary Go[redacted]rference in the free mark[redacted]

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Marketing [redacted]ees also restrict volum[redacted]ard control under which[redacted]not limited. Any produce[redacted]rop as long as he does n[redacted]kly or seasonal limits s[redacted]nittee.

Committee[redacted] the quality of a crop. I[redacted] the system argue that t[redacted]eps inferior produce off[redacted] regulating size, weight,[redacted]ce. In practice, howeve[redacted]on becomes