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S. 2326	March 31, 1982	S 3198-3200

Introduced by Mr. Weicker.

By Mr. WEICKER (for himself, Mr. DECONCINI, and Mr. KENNEDY):

S. 2326. A bill to authorize appropriations to the Patent and Trademark Office in the Department of Commerce, and for other purposes; to the Committee on the Judiciary.

AUTHORIZATION OF APPROPRIATIONS TO THE PATENT AND TRADEMARK OFFICE

● Mr. WEICKER. Mr. President, I am today introducing along with Senators DECONCINI and KENNEDY, a bill to amend Public Law 96-517, the University and Small Business Patent Procedure Act. I am offering this bill as a substitute to S. 2211, the administration's proposed amendment to Public Law 96-517.

My bill differs from S. 2211 in several key respects. First, and most importantly, it guarantees that the Patent and Trademark Office (PTO) will give special consideration to our Nation's greatest source of innovation—American small businesses.

In this time of rapidly declining productivity, it is essential that we do everything we can to encourage invention and innovation. The University and Small Business Patent Procedure Act was passed by the last Congress for just this purpose. For the first time in history, Congress granted automatic patent rights to small businesses and universities on inventions resulting from federally funded research. At the same time, Congress authorized the PTO to collect from all patent recipients 50 percent of the cost of filing, issuing and maintaining patents, to be used to operate the patent office. Prior to October 1982, the effective date of Public Law 96-517, patent fees reverted to the General Treasury.

The administration is now proposing to increase patent user fees from 50 percent to 100 percent. While user fees can be generally justified in this time of severe budgetary restraint, I believe the administration's approach fails to recognize the particular needs and circumstances of innovative small businesses, as well as those of universities and independent inventors.

For example, the minimum $800 filing and issuance fee and the minimum $2,400 in maintenance fees anticipated by the administration's proposed change are not likely to pose any financial burden to large firms. For small firms, however, the prospect of a $3,200 minimum could have a severely chilling effect on plans to go

ahead with a patent. While it is true that maintenance fees are not required until 3½, 7½, and 11½ years into the life of a patent, it is equally true that it often takes that many years before the marketability of a good idea is recognized.

In my opinion, small inventors should not be forced to give up their claim on ideas simply because of prohibitively high patent fees.

Currently, small businesses account for more than half of all inventions and innovations in this country. But we cannot reasonably expect this track record to continue under the administration's plan.

The legislation I am introducing today recognizes the financial hardships placed upon the small or independent inventor, particularly in these times of dwindling capital and rising interest rates.

Under this bill, the user fees for small businesses, universities, and independent inventors would remain at 50 percent. (Definition of small business will be made by the SBA, in conformity with section 3 of the Small Business Act). In addition, while the administration's bill specifies that patent recipients pay 100 percent user fees to be determined by the patent office, my proposal sets these fees in statute and requires that, with the exception of one consumer price index adjustment, any future increases are to be determined by the Congress. In this way, we can insure that fees do not increase at an unforseen and unpredictable rate.

My bill also contains a number of technical amendments to the patent law, which are administrative in nature, and are similar to those included in S. 2211. these amendments are intended to help the PTO better administer the patent and trademark laws.

Mr. President, this legislation represents a significant shift in the way the PTO finances its operations. Under my proposal, over 50 percent of the PTO's budget will be paid by users of the system. However, the bill achieves this objective without sacrificing the ability of small inventors to protect their patent rights.

Under fee proposed set forth in this legislation, it is anticipated that $75 million will be required to operate the PTO in fiscal year 1983. This figure represents a $7 million increase over the level proposed by the administration.

I was very impressed with Commissioner Mossinghoff when he appeared before my Appropriations Subcommittee last week to discuss his plans for modernizing the PTO, and I am confident that he will help produce a first-rate patent office, which everyone agrees is long overdue.

I would like to take this opportunity to thank Intellectual Property Owners, Inc., the American Patent Law Association, and others for the assistance they have rendered in this effort. I would also like to express my appreciation to the National Small Business Association, Small Business United and the Smaller Business Association of New England, for their endorsement of this legislation.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2326

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is authorized to be appropriated for the payment of salaries and necessary expenses of the Patent and Trademark Office to become available October 1, 1982, $75,086,000 and such additional or supplemental amounts as may be necessary for increases in salary, pay, retirement, or other employee benefits authorized by law. Funds available under this section shall be used to reduce by 50 percent the payment of fees under section 41(a) and (b) of title 35, United States Code, by independent inventors and nonprofit organizations as defined in regulations established by the Commissioner of Patents and Trademarks, and by small business concerns as defined in Section 3 of the Small Business Act and by regulations established by the Small Business Administration. Where so specified and to the extent provided in an appropriation Act, any amount appropriated pursuant to this section and, in addition, such fees as shall be collected pursuant to title 35, United States Code, and the Trademark Act of 1946, as amended (15 U.S.C. 1051 et seq.), may remain available without fiscal year limitation.

SEC. 2. Notwithstanding any other provision of law, there is authorized to be appropriated for the payment of salaries and expenses of the Patent and Trademark Office, $121,461,000 for the fiscal year ending September 30, 1982, and such additional or supplemental amounts as may be necessary for increases in salary, pay, retirement, or other employee benefits authorized by law.

SEC. 3. (a) Section 41(a) of title 35, United States Code, is amended to read as follows:

(a) The Commissioner shall charge the following fees:

1. On filing each application for an original patent, except in design or plant cases, $300; in addition, on filing or on presentation at any other time, $30 for each claim in independent form which is in excess of three, $10 for each claim (whether independent or dependent) which is in excess of twenty, and $100 for each application containing a multiple dependent claim. For the purpose of computing fees, a multiple dependent claim as referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

2. For issuing each original or reissue patent, except in design or plant cases, $500.

3. In design and plant cases:

a. On filing each design application, $125.

b. On filing each plant application, $200.

c. On issuing each design patent, $175.

d. On issuing each plant patent, $250.

4. On filing each application for the reissue of a patent, $300; in addition, on filing or on presentation at any other time, $30 for each claim in independent form which is in excess of the number of independent claims of the original patent, and $10 for each claim (whether independent or dependent) which is in excess of twenty and also in excess of the number of claims of the original patent. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

5. On filing each disclaimer, $50.

6. On filing an appeal from the examiner to the Board of Appeals, $115; in addition, on filing a brief in support of the appeal, $115, and on requesting an oral hearing before the Board of Appeals, $100.

7. On filing each petition for the revival of an abandoned application for a patent or for the delayed payment of the fee for issuing each patent, $50.

8. For petitions for extensions of time to take actions required by the Commissioner in an application:

a. On filing a first petition, $50.

b. On filing a second petition, $100.

c. On filing a third or subsequent petition, $200.

(b) Section 41(b) of title 35, United States Code, is amended to read as follows:

(b) The Commissioner shall charge the following fees for maintaining a patent in force:

1. Three years and six months after grant, $400.

2. Seven years and six months after grant, $800.

3. Eleven years and six months after grant, $1200. Unless payment of the applicable maintenance fee is received in the Patent and Trademark Office on or before the date the fee is due or within a grace period of six months thereafter, the patent will expire as of the end of such grace period. The Commissioner may require the payment of a surcharge as a condition of accepting within such six-month grace period the late payment of an application maintenance fee. No fee will be established for maintaining a design or plant patent in force."

(c) Section 41(c) of title 35, United States Code, is amended to read as follows:

"(c)(1) The Commissioner may accept the payment of any maintenance fee required by subsection (b) of this section after the six-month grace period if the delay is shown to the satisfaction of the Commissioner to have been unavoidable. The Commissioner may require the payment of a surcharge as a condition of accepting payment of any maintenance fee after the six-month grace period. If the Commissioner accepts payment of a maintenance fee after the six-month grace period, the patent shall be considered as not having expired at the end of the grace period.

(2) No patent, the term of which has been maintained as a result of the acceptance of a payment of a maintenance fee under this subsection, shall abridge or affect the right of any person or his successors in business who made, purchased or used after the six-month grace period but prior to the acceptance of a maintenance fee under this subsection anything protected by the patent, to continue the use of, or to sell to others to be used or sold, the specific thing so made, purchased or used. The court before which such matter is in question may provide for the continued manufacture, use or sale of the thing made, purchased or used as specified, or for the manufacture, use or sale of which substantial preparation was made after the six-month grace period but before the acceptance of a maintenance fee under this subsection, and it may also provide for the continued practice of any process, practiced, or for the practice of which substantial preparation was made, after the six-month grace period but prior to the acceptance of a maintenance fee under this sub-

section, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced after the six-month grace period but before the acceptance of a maintenance fee under the subsection."

(d) Section 41(d) of title 35, United States Code, is amended to read as follows:

"(d) The Commissioner will establish fees for all other processing, services, or materials related to patents not specified above to recover the estimated average cost to the Office of such processing, services, or materials. The yearly fee for providing a library specified in section 13 of this title with uncertified printed copies of the specifications and drawings for all patents issued in that year will be $50."

(e) Section 41(f) of title 35, United States Code, is amended to read as follows:

"(f) The fees established in subsections (a) and (b) of this section may be adjusted by the Commissioner on October 1, 1985 to reflect any fluctuations occurring in the Consumer Price Index, as determined by the Secretary of Labor, between June 1, 1982 and June 1, 1985. Changes of less than one percent may be ignored."

(f) Subsection (a) of section 31 of the Trademark Act of 1946, as amended (15 U.S.C. 1113), is amended by deleting "50" and inserting in its place "100".

(g) Section 42(c) of title 35, United States Code, is amended by adding the following sentence at the end thereof:

"Fees available to the Commissioner under section 31 of the Trademark Act of 1946, as amended (15 U.S.C. 1113), shall be used exclusively for the processing of trademark registrations and for other services and materials related to trademarks.".

SEC. 4. Section 3. (a) of title 35, United States Code is amended (1) by deleting the phrase "not more than fifteen"; and (2) by inserting the phrase "appointed under section 7 of this title" immediately after the phrase "examiners-in-chief".

SEC. 5. Section 111 of title 35, United States Code, is amended to read as follows:

"Application for patent shall be made, or authorized to be made, by the inventor, except as otherwise provided in this title, in writing to the Commissioner. Such application shall include: (1) a specification as prescribed by section 112 of this title; (2) a drawing as prescribed by section 113 of this title; and (3) an oath by the applicant as prescribed by section 115 of this title. The application must be accompanied by the fee required by law. The fee and oath may be submitted after the specification and any required drawing are submitted, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Commissioner. Upon failure to submit the fee and oath within such prescribed period, the application shall be regarded as abandoned, unless it is shown to the satisfaction of the Commissioner that the delay in submitting the fee and oath was unavoidable. The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.".

SEC. 6. (a) Section 116 of title 35, United States Code, is amended (1) by deleting the phrase "Joint inventors" from the title and inserting in its place "Inventors"; and (2) in the third paragraph, by deleting the phrase "a person is joined in an application for patent as joint inventor through error, or a joint inventor is not included in an application through error" and inserting in its place the phrase "through error a person is named in an application for patent as the inventor, or through error an inventor is not named in an application".

(b) Section 256 of title 35, United States Code, is amended to read as follows:

"§ 256. Correction of named inventor

"Whenever through error a person is named in an issued patent as the inventor, or through error an inventor is not named in an issued patent and such error arose without any deceptive intention on his part, the Commissioner may, on application of all the parties and assignees, with proof of the facts and such other requirements as may be imposed, issue a certificate correcting such error.

"The error of omitting inventors or naming persons who are not inventors shall not invalidate the patent in which such error occurred if it can be corrected as provided in this section. The court before which such matter is called in question may order correction of the patent on notice and hearing of all parties concerned and the Commissioner shall issue a certificate accordingly.".

SEC. 7. Section 6 of title 35, United States Code, is amended by deleting paragraph (d) thereof.

SEC. 8. (a) Section 8(a) of the Trademark Act of 1946, as amended (15 U.S.C. 1058(a)), is amended (1) by deleting the word "still"; and (2) by inserting the phrase "in commerce" immediately after the word "use".

(b) Section 8(b) of the Trademark Act of 1946, as amended (15 U.S.C. 1058(b)), is amended (1) by deleting the word "still"; and (2) by inserting the phrase "in commerce" immediately after the word "use".

SEC. 9. (a) Section 13 of the Trademark Act of 1946; as amended (15 U.S.C. 1063), is amended (1) by deleting the phrase "a verified" and inserting in its place the word "an"; (2) by adding the phrase "when requested prior to the expiration of an extension" immediately after the word "cause"; and (3) by deleting the fourth sentence.

(b) Section 14 of the Trademark Act of 1946, as amended (15 U.S.C. 1064), is amended by deleting the word "verified".

SEC. 10. Section 15 of the Trademark Act of 1946, as amended (15 U.S.C. 1065), is amended by deleting the phrase "the publication" and inserting in its place the word "registration".

SEC. 11. The first sentence of section 16 of the Trademark Act of 1946, as amended (15 U.S.C. 1066), is amended to read as follows:

"Upon petition showing extraordinary circumstances, the Commissioner may declare that an interference exists when application is made for the registration of a mark which so resembles a mark previously registered by another, or for the registration of which another has previously made application, as to be likely when applied to the goods or when used in connection with the services of the applicant to cause confusion or mistake or to deceive.".

SEC. 12. Section 21 of title 35, United States Code, is amended—

(1) by deleting the phrase "Day for taking action falling on Saturday, Sunday, or holiday" from the title, and inserting in its place the phrase "filing date and day for taking action";

(2) by inserting the following as subsection (a):

"(a) The Commissioner may by rule prescribe that any paper or fee required to be filed in the Patent and Trademark Office will be considered filed in the Office on the date on which it was deposited with the United States Postal Service or would have been deposited with the United States Postal Service but for postal service interruptions or emergencies designated by the Commissioner.";

(3) by designating the existing paragraph as subsection (b); and

(4) by inserting the word "federal" in subsection (b), as designated above, immediately after the word "a".

SEC. 13. Section 6(a) of title 35, United States Code, is amended (1) by deleting the word "and", third occurrence, and inserting in its place a comma; (2) by inserting the phrase ", or exchanges of items or services" immediately after the word "programs"; and (3) by inserting the phrase "or the administration of the Patent and Trademark Office" immediately after the word "law", second occurrence.

SEC. 14. (a) Section 115 of title 35, United States Code, is amended by (1) deleting the phrase "shall be" and inserting in its place the word "is"; and (2) inserting the following immediately after the phrase "United States", third occurrence: ", or apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States".

(b) Section 261 of title 35, United States Code, is amended, in the third paragraph, by inserting the following immediately after the phrase "United States", third occurrence: ", or apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States".

(c) Section 11 of the Trademark Act of 1946, as amended (15 U.S.C. 1061), is amended by (1) deleting the phrase "shall be", first occurrence, and inserting in its place the word "is"; and (2) inserting the following immediately after the phrase "United States", third occurrence: ", or apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States".

SEC. 15. Section 13 of title 35, United States Code, is amended by deleting "(a)9" and inserting in its place "(d)".

SEC. 16. Section 173 of title 35, United States Code, is amended to read as follows: "Patents for designs shall be granted for the term of fourteen years."

SEC. 17. (a) Sections 1, 2, 4, 7, and 13 through 15 of this Act shall take effect on the date of enactment of this Act. Sections 3 and 16 of this Act shall take effect on October 1, 1982. The maintenance fees provided for in section 3(b) of this Act shall not apply to patents applied for prior to the date of enactment of this Act. Sections 5, 6, and 8 through 12 of this Act shall take effect six months after enactment.●

By Mr[illegible] for himself, Mr. [illegible] CRANSTON, Mr. [illegible] DIXON, Mr. STENI[illegible] BANES, Mr. BENT[illegible] LCHER, Mr. RAND[illegible] AUCUS, Mr. TSON[illegible] N, and Mr. FORD[illegible]

S. 2327. A [illegible] he National Housing Act [illegible] r an emergency homec[illegible] gram, to authorize assis[illegible] d mortgage defaults cau[illegible] e economic conditions, a[illegible] purposes; to the Committ[illegible] g, Housing, and Urban A[illegible]

EMERGENCY H[illegible] ACT OF 1982

● Mr. RIEG[illegible] ent, today I am pleased [illegible] istinguished colleagues ir[illegible] this bill to carry out th[illegible] ents of the emergency h[illegible] n developed by the Demc[illegible] g task force which was c[illegible] good friend