OISS FORM 51 (Rev. 11-82)

CONGRESSIONAL RECORD
PROCEEDINGS AND DEBATES OF THE 98TH CONGRESS

SENATE

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S. 1538	June 23, 1983	S9009-10

Action:

Introduced by Mr. Mathias and Mr. Dole

By Mr. MATHIAS (for himself and Mr. DOLE):

S. 1538. A bill to amend the patent laws of the United States; to the Committee on the Judiciary.

PATENT LAW AMENDMENTS OF 1983

● Mr. MATHIAS. Mr. President, earlier this year Secretary Baldrige sent the President of the Senate a proposed patent reform bill to make several technical improvements in the patent law. In addition, one provision in the bill would institute a new type of patent called a defensive patent. The defensive patent would be a valuable resource for inventors who wish to retain their right to market their invention, but are not concerned about excluding anyone else from doing so.

Ordinarily patents give the inventor exclusive rights for a fixed period of time; the defensive patent would not confer this offensive right to exclude others from working an invention, but would also prevent others from obtaining exclusive rights. In other words, the inventor preserves the ability to practice the invention but forfeits the right to sue others for infringement. The defensive patent would be considerably easier, cheaper, and quicker for the Patent Office to process.

The new option that this weaker type of patent offers would be particularly well suited for Government agencies that deal extensively with patents, such as the Defense Department. The Government sought the patents, not to prevent other people from making or marketing the invention, but to protect itself against suits for infringement. The Patent Office thinks that the Government agencies as well as the Patent Office itself would save money and staff time if defensive patents were available as an alternative to the traditional exclusive rights patent.

I think this idea deserves our close attention and I hope to schedule a hearing at the first opportunity in the Subcommittee on Patents, Copyrights and Trademarks. 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. 1538

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Patent Law Amendments of 1983".

SEC. 2. (a) Chapter 14 of title 35, United States Code, is amended by adding at the end thereof the following new section:

"§ 156. Issuance of patents without examination.

"(a) Notwithstanding any other provisions of this title, the Commissioner is authorized to issue a patent on an invention without the examination required by sections 131 and 132 of this title, except as may be required to conduct an interference proceeding, to determine compliance with section 112 of this title, or to review for formalities required for printing, if the applicant—

"(1) waives all remedies with respect to the patent and any reissue thereof, arising under sections 183 and 271 through 289 of this title and under any other provision of Federal law, within such time as the Commissioner specifies, and

"(2) pays fees, which may be less than those specified in section 41 of this title, established by the Commissioner for the filing and issuance of such a patent.

"(b) The waiver under this section shall take effect upon issuance of the patent. No maintenance fees shall be required with respect to patents issued under this section.".

(b) The analysis for chapter 14 of title 35, United States Code, is amended by adding at the end the following:

"156. Issuance of patents without examination.".

SEC. 3. Section 134 of title 35, United States Code, is amended by striking out "primary".

SEC. 4. Section 151 of title 35, United States Code, is amended—

(1) by amending the second sentence in the first paragraph to read as follows: "The notice shall specify the issue fee which shall be paid within three months thereafter, or within such shorter time, not less than one month, as fixed by the Commissioner in such notice."; and

(2) by striking out the third paragraph.

SEC. 5. Section 361(d) of title 35, United States Code, is amended by inserting "or within one month thereafter" after "application" in the first sentence.

SEC. 6. Section 366 of title 35, United States Code, is amended—

(1) by inserting "after the date of withdrawal," after "effect";

(2) by inserting ", unless a claim for the benefit of a prior filing date under section 365(c) of this part was made in a national application, or an international application designating the United States, filed before the date of such withdrawal" before the period at the end of the first sentence; and

(3) by inserting "withdrawn" after "such" in the second sentence.

SEC. 7. (a) Section 371(a) of title 35, United States Code, is amended by—

(1) striking out "is" and inserting in lieu thereof "may be"; and

(2) striking out ", except those filed in the Patent Office".

(b) Section 371(b) of title 35, United States Code, is amended to read as follows:

"(b) Subject to subsection (f) of this section, the national stage shall commence with the expiration of the applicable time limit under article 22 (1) or (2) of the treaty.".

(c) Section 371(c)(2) of title 35, United States Code, is amended by—

(1) striking out "received from" and inserting in lieu thereof "communicated by"; and

(2) striking out "verified" before "translation".

(d) Section 371(d) of title 35, United States Code, is amended to read as follows:

"(d) The requirements with respect to the national fee referred to in subsection (c)(1), the translation referred to in subsection (c)(2), and the oath or declaration referred to in subsection (c)(4) of this section shall be complied with by the commencement of the national stage or by such later time as may be fixed by the Commissioner. The copy of the international application referred to in subsection (c)(2) shall be submitted by the commencement of the national stage. Failure to comply with these requirements shall be regarded as abandonment of the application by the parties thereof, unless it be shown to the satisfaction of the Commissioner that such failure to comply was unavoidable. The payment of a surcharge may be required as a condition for accepting the national fee referred to in subsection (c)(1) or the oath or declaration referred to in subsection (c)(4) of this section if these requirements are not met by the commencement of the national stage. The requirements of subsection (c)(3) of this section shall be complied with by the commencement of the national stage, and failure to do so shall be regarded as a cancellation of the amendments to the claims in the international application made under article 19 of the treaty.".

SEC. 8. (a) Section 372(b) of title 35, United States Code, is amended by—

(1) striking out the period at the end of paragraph (2) and inserting in lieu thereof a semicolon; and

(2) inserting at the end thereof the following:

"(3) the Commissioner may require a verification of the translation of the international application or any other document pertaining thereto if the application or other document was filed in a language other than English.".

(b) Section 372 of title 35, United States Code, is amended by deleting subsection (c).

SEC. 9. Section 376(a) of title 35, United States Code, is amended by striking out paragraph (5) and redesignating paragraph (6) as paragraph (5).

SEC. 10. Title 35, United States Code, is amended by striking out "Patent Office" each place it appears and inserting in its place "Patent and Trademark Office".

SEC. 11. Notwithstanding section 2 of Public Law 96-517, no fee shall be collected for maintaining a plant patent in force.

SEC. 12. (a) Sections 10 and 11 of this Act shall take effect upon the date of enactment.

(b) Sections 1 through 9 of this Act shall take effect six months after the date of enactment.●