OISS FORM 51 (Rev. 11-82)

CONGRESSIONAL RECORD
PROCEEDINGS AND DEBATES OF THE 99TH CONGRESS

HOUSE

BILL	DATE	PAGE(S)
H.R.2434	JUN 24 '85 (85)	H4767-68

ACTION: AMENDED AND PASSED UNDER SUSPENSION OF THE RULES

revise a … arks on the bill just …

The … mpore. Is there o… uest of the gentlem…

There…

PATENT AND TRADEMARK OFFICE AUTHORIZATIONS

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2434) to authorize appropriations for the Patent and Trademark Office in the Department of Commerce, and for other purposes, as amended.

The Clerk read as follows:

H.R. 2434

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZATION OF APPROPRIATIONS.

(a) PURPOSES AND AMOUNTS.—There are authorized to be appropriated to the Patent and Trademark Office—

(1) for salaries and necessary expenses, $101,631,000 for fiscal year 1986, $110,400,000 for fiscal year 1987, and $111,900,000 for fiscal year 1988; and

(2) such additional amounts as may be necessary for each such fiscal year for increases in salary, pay, retirement, and other employee benefits authorized by law.

(b) REDUCTION OF PATENT FEES.—Amounts appropriated under subsection (a)(1) shall be used to reduce by 50 per centum each fee paid under section 41(a) or 41(b) of title 35, United States Code, by—

(1) an independent inventor or nonprofit organization as defined in regulations prescribed by the Commissioner of Patents and Trademarks, or

(2) a small business concern as defined under section 3 of the Small Business Act (15 U.S.C. 632).

SEC. 2. APPROPRIATIONS AUTHORIZED TO BE CARRIED OVER.

Amounts appropriated under this Act and such fees as may be collected under title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 and following) may remain available until expended.

SEC. 3. INCREASES OF TRADEMARK AND CERTAIN PATENT FEES PROHIBITED.

(a) TRADEMARK FEES.—The Commissioner of Patents and Trademarks may not, during fiscal years 1986, 1987, and 1988, increase fees established under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113) except for purposes of making adjustments which in the aggregate do not exceed fluctuations during the previous three years in the Consumer Price Index, as determined by the Secretary of Labor. The Commissioner also may not establish additional fees under such section during such fiscal years.

(b) PATENT FEES.—The Commissioner of Patents and Trademarks may not, during fiscal years 1986, 1987, and 1988, increase fees established under section 41(d) of title 35, United States Code, except for purposes of making adjustments as described in section 41(f) of such title. The Commissioner also may not establish additional fees under such section during such fiscal years.

SEC. 4. FEES FOR USE OF SEARCH ROOMS AND LIBRARIES PROHIBITED.

The Commissioner of Patents and Trademarks may not impose a fee for use of public patent or trademark search rooms and libraries. The costs of such rooms and libraries shall come from amounts appropriated by Congress.

SEC. 5. USE OF PATENT AND TRADEMARK FEES PROHIBITED FOR PROCUREMENT OF AUTOMATIC DATA PROCESSING RESOURCES.

Fees collected under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113) and section 41 of title 35, United States Code, may not be used during fiscal years 1986, 1987, and 1988 to procure by purchase, lease, transfer, or otherwise automatic data processing resources (including hardware, software and related services, and machine readable data) for the Patent and Trademark Office.

SEC. 6. USE OF EXCHANGE AGREEMENTS RELATING TO AUTOMATIC DATA PROCESSING RESOURCES PROHIBITED.

The Commissioner of Patents and Trademarks may not exchange items or services (as authorized under section 6(a) of title 35, United States Code) relating to automatic data processing resources (including hardware, software and related services, and machine readable data) during fiscal years 1986, 1987, and 1988. This section shall not apply to any agreement relating to data for automation programs entered into with a foreign government or with a bilateral or international intergovernmental organization.

The SPEAKER pro tempore. Pursuant to the rule, a second is not required on this motion.

The gentleman from Wisconsin [Mr. KASTENMEIER] will be recognized for 20 minutes and the gentleman from California [Mr. MOORHEAD] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. KASTENMEIER].

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the bill just undertaken, and that I may revise and extend my own remarks.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. KASTENMEIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I bring before the full House the bill, H.R. 2434, to authorize appropriations for the Patent and Trademark Office in the Department of Commerce for the next 3 fiscal years. The bill authorizes appropriations for salaries and necessary expenses up to the following amounts: $101,631,000 in fiscal year 1986; $110,400,000 in fiscal year 1987; and $111,900,000 in fiscal year 1988.

As the Members of the House well know, reliable patent and trademark protection for inventors and businesses can provide incentives for technological progress and investment. When President Reagan signed Public Law 98-622—which was passed unanimously by this House just last year—he said: "The stimulation of American inventive genius requires a patent system that offers our inventors prompt and effective protection for their inventions." The recent report of the President's Commission on Industrial Competitiveness noted, "Since technological innovation requires large investments of both time and money, the protection of our intellectual property is another task we should place on our competitive agenda." The Carter administration made similar statements, as did proceeding administrations.

An effective Patent and Trademark Office is the cornerstone for reliable patent and trademark protection. Changes in the manner of operating the Office can have as great an impact on the Nation's economy as changes in the substantive rules of patent and trademark law. Since this Nation's intellectual property laws are largely self-enforcing, the effectiveness of an entity that administers the law—as compared to an agency that regulates the law—is critical.

This authorization bill equips the Patent and Trademark Office to administer efficiently and expeditiously this Nation's patent and trademark laws, and in so doing, will benefit the public by improving the quality of our industrial property system.

H.R. 2434 is fiscally responsible. The bill generally respects the administration's authorization request, with two exceptions; both offered by the ranking minority member of the subcommittee, Mr. MOORHEAD, and approved by the full committee. The first froze the authorization level in fiscal year 1986 at what was in fiscal year 1985. The net effect of this change is to add to the administration's request approximately $17 million to the authorization. The administration had intended to use approximately $17 million in excess user fees to cover this shortfall. I have always felt that user fees should be expended to improve the quality of service. Therefore, reliance on user fees as a form of taxation is highly questionable both in terms of integrity and legality. The users of this Nation's patent and trademark system do not like it, and I agree with them.

The second change eliminated an open ended appropriation for fiscal years 1987 and 1988. The figures inserted were provided by the Department of Commerce. The Judiciary Committee generally avoids open ended authorizations; this change accomplishes that end. I shortly will defer to the ranking minority member to explain the numbers in more depth.

Before terminating my brief remarks, I should state several thoughts about automation. Several years ago, this committee—and the Congress—asked PTO to automate. We were extremely concerned about the integrity of the search files—approximately 7 percent of the patent files are missing at any given time. If the quality of the search is poor, the resultant quality of the patent will also be poor.

Automation could solve this problem.

PTO, however, has not been very competent in creating and implementing its automation plans. This state-

ment is not mine; rather, I could attribute it to the Government Accounting Office, the chairman of the Government Operations Committee, Mr. BROOKS, and groups that rely on Patent and Trademark Office operations.

The committee therefore decided to put the brakes on automation, at least temporarily, until PTO, and the Department of Commerce, comply with Government procurement laws, and produce a plan that clearly sets forth the Office's position on costs of financing—user of appropriated funds—public access to the data bases of Government records, and the status of the public search rooms. I understand that positive movement is now occurring in this area.

The $17 million carryover of user fees should give PTO and Commerce the necessary cushion to formulate such a plan. At some point in time, perhaps in negotiations with the Senate, the bill will have to be modified to create a little bit more flexibility in PTO if, indeed, we want the Office to automate.

I pledge to work with the administration, the minority, and the Committee on Government Operations to create in the future a workable and lawful automation plan that meets both user and public interests.

H.R. 2434 is supported by Intellectual Property Owners, Inc., the American Intellectual Property Law Association, and the United States Trademark Association.

In closing, I thank the members of my subcommittee, especially the gentleman from Texas [Mr. BROOKS] and the gentleman from California [Mr. MOORHEAD] for their assistance and their contribution on this important measure.

I urge your support for a H.R. 2434.

Mr. Speaker, I reserve the balance of my time.

Mr. MOORHEAD. Mr. Speaker, I yield myself such time as I may consume.

(Mr. MOORHEAD asked and was given permission to revise and extend his remarks.)

Mr. MOORHEAD. Mr. Speaker, I rise in support of H.R. 2434, the Patent and Trademark Office reauthorization. This legislation has the unanimous support of the Judiciary Committee. It also has the unanimous support of those people who use the Patent Office as represented by the American Intellectual Property Law Association, the Intellectual Property Owners, Inc., and the United States Trademark Association.

The Patent and Trademark Office is one of the great user fees success stories of this administration. In 1985 the users of the Patent and Trademark Office paid nearly $100 million, roughly one-half of their operating budget. In 1982 the users paid approximately $29 million, which was less than one third of their operating budget. When the Judiciary Committee and this body supported the administration's legislation in 1982, we made a promise to the American inventor, that if he or she would go along with the increase in user fees, we would try and provide a first class Patent and Trademark Office. Well, 3 years later, unknown to us, the OMB decided to cut next year's appropriation for the Patent and Trademark Office by approximately $16 million, and the reason given for this was that there had been an excess in fees collected from the users during the preceding 3 years and that so-called excess was going to be used to reduce by that amount the U.S. Government's commitment to improve the Patent and Trademark Office. This reduction in authorization levels also resulted in an announcement by the Patent and Trademark Office in a reduction in services provided by that Office.

We made a promise to the American inventor 3 years ago, and if we make these cuts we would be going back on our promise after the American investor had kept his end of the deal. This is not what we are going to do—and this is not what this legislation does. We are going to retain the same level of funding as in fiscal year 1985. In other words H.R. 2434 freezes the authorized level of appropriations for the Patent and Trademark Office for 1986 at $101.6 million. It would be unfair to take those user fees and use them to reduce our commitment to U.S. innovation. It's clear to even the most casual observer, that the Patent and Trademark Office plays a critical role in this country's innovation process. It is this process that creates new products—it is this process that creates new technologies and it is this process that's creating badly needed new jobs.

The stimulation of the American inventive genious requires a patent system that offers our inventors prompt, secure, and effective protection for their inventions and that is the direction we are heading and that is the direction this legislation takes. I urge you to vote in favor of H.R. 2434.

□ 1350

Mr. MOORHEAD. Mr. Speaker, I have no further requests for time.

I yield back the balance of my time.

Mr. KASTENMEIER. Mr Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin [Mr. KASTENMEIER] that the House suspend the rules and pass the bill, H.R. 2434, as amended.

The question was taken; and (two-thirds have voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.