OISS FORM 51 (Rev. 11-82)

CONGRESSIONAL RECORD
PROCEEDINGS AND DEBATES OF THE 99TH CONGRESS

HOUSE

BILL	DATE	PAGE(S)
H.R.2434	OCT 2 '86 (134)	H8967-68

ACTION:

Patent and Trademark Office Authorization: House agreed to Senate amendments numbered 1, 4, 5, 8, 9, 10, and 11; and agreed, with amendments, to Senate amendments numbered 2, 3, 6, and 7 to H.R. 2434, to authorize appropriations for the Patent and Trademark Office in the Department of Commerce—returning the measure to the Senate.

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PATENT AND TRADEMARK OFFICE AUTHORIZATION

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 2434), to authorize appropriations for the Patent and Trademark Office in the Department of Commerce, and for other purposes, with Senate amendments thereto, concur in the Senate amendments numbered 1, 4, 5, 8, 9, 10, and 11, and concur in the Senate amendments numbered 2, 3, 6, and 7 with amendments which are at the desk.

The Clerk read the title of the bill.

The Clerk read the Senate amendments and the House amendments to Senate amendments numbered 2, 3, 6, and 7, as follows:

Senate amendments:

Page 2, line 6, strike out "(1)".

Page 2, line 7, after "paid" insert "on or after October 1, 1985,".

Page 2, line 19, after "SEC. 3." insert "OVERSIGHT AND".

Page 2, line 20, strike out "PROHIBITED".

Page 3, line 9, strike out "as described in section 41(f) of such title" and insert "which in the aggregate do not exceed fluctuations during the previous 3 years in the Consumer Price Index, as determined by the Secretary of Labor".

Page 3, after line 11, insert:

(c) REPORT TO CONGRESS.—The Commissioner of Patents and Trademarks shall, at the time of the President's annual submission to the Congress, provide the Committees on the Judiciary of the Senate and the House of Representatives a list of patent trademarks fee collections; a list of activities supported by patent fee collections, trademark fee collections, and appropriations; signficant planning assumptions including out-year funding estimates, and any proposed disposition of surplus fees as well as any other information the Committee deem necessary.

Page 3, strike out all after line 17, over to and including line 2 on page 4, and insert:

SEC. 5. CONGRESSIONAL REVIEW OF PROPOSED PURCHASE OF AUTOMATED DATA PROCESSING SYSTEMS.

(a)(1) SUBMISSION OF AUTOMATION PLAN.—The Commissioner of Patents and Trademarks shall submit to the Committees on the Judiciary of the Senate and the House of Representatives the revised master automation plan (including a detailed cost benefit analysis), approved by the Secretary of Commerce and the Director of the Office of Management and Budget, by February 28, 1986. Such revised plan shall specify the key deployment decisions to be made in implementing the plan, as well as such other information as the appropriate Committees may deem necessary.

(2) REPORT BY COMMISSIONER.—The Commissioner shall report to the Committees on the Judiciary of the Senate and the House of Representatives, at least 90 calendar days in advance of the date of implementation of each key deployment decision provided for in the revised master automation plan. Each key deployment decision shall be approved by the Department of Commerce's designated Senior Official for Information Resources Management prior to submission. Reports of such decisions shall include the cost and method of financing the deployment decision proposed to be implemented including, where appropriate, a comparison with the cost benefit analysis contained in the revised automation master plan, as well as such other information as the committees may consider necessary to carry out such oversight authority.

(b) PROHIBITIONS ON NEW OBLIGATIONS.—The Patent and Trademark Office may not enter into any new contract nor obligate any funds to implement a key deployment decision involving automated data processing systems as specified in subsection (a) prior to the expiration of 90 calendar days following the submission of each of the applicable reports required in such subsection.

Page 4, line 6, after "not" insert "enter into new agreements for the".

Page 4, line 7, after "exchange" insert "of".

Page 4, line 11, after "1988" insert: , nor continue existing agreements for the exchange of such items or services after April 1, 1987

Page 4, line 13, strike out "a bilateral or" and insert "an".

House amendments to Senate amendments numbered 2, 3, 6, and 7:

In lieu of Senate amendment numbered 2 insert the following:

Page 2, line 5, insert "(1)" before "Amounts".

Page 2, line 7, after "paid" insert "on or after October 1, 1985,".

Page 2, line 9, strike "(1)" and insert "(A)".

Page 2, line 12, strike "(2)" and insert "(B)".

Page 2, insert the following after line 13:

(2) Section 41 of title 35, United States Code, is amended by adding at the end the following new subsection:

"(h)(1) Fees charged under subsection (a) or (b) shall be reduced by 50 percent with respect to their application to any small business concern as defined under section 3 of the Small Business Act, and to any independent inventor or nonprofit organization as defined in regulations issued by the Commissioner of Patents and Trademarks.

"(2) With respect to its application to any entity described in paragraph (1), any surcharge or fee charged under subsection (c) or (d) shall not be higher than the surcharge or fee required of any other entity under the same or substantially similar circumstances.".

In lieu of Senate amendment numbered 3 insert the following:

Page 2, line 19, strike out "INCREASES OF" and insert "OVERSIGHT OF AND LIMITATIONS ON".

In lieu of the matter proposed to be inserted by the Senate amendment numbered 6 insert the following:

(c) REPORT TO CONGRESS.—The Secretary of Commerce shall, on the day on which the President submits the annual budget to the Congress, provide to the Committees on the Judiciary of the Senate and the House of Representatives—

(1) a list of patent and trademark fee collections by the Patent and Trademark Office during the preceding fiscal year;

(2) a list of activities of the Patent and Trademark Office during the preceding fiscal year which were supported by patent fee expenditures, trademark fee expenditures, and appropriations;

(3) budget plans for significant programs, projects, and activities of the Office, including out-year funding estimates;

(4) any proposed disposition of surplus fees by the Office; and

(5) such other information as the committees consider necessary.

Strike out the matter proposed to be inserted by Senate amendment numbered 7 and insert the following:

SEC. 5. CONGRESSIONAL OVERSIGHT AND LIMITATIONS ON THE USE OF FEE REVENUES FOR PROPOSED PURCHASE OF AUTOMATED DATA PROCESSING SYSTEMS.

(a) FUNDING OF AUTOMATED DATE PROCESSING RESOURCES.—

(1) ALLOCATIONS.—Of amounts available to the Patent and Trademark Office for automatic data processing resources for fiscal years 1987 and 1988, not more than 30 percent of such amounts in each such fiscal year may be from 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. The Commissioner of Patents and Trademarks shall notify the Committees on the Judiciary of the Senate and the House of Representatives of any proposed reprogrammings which would increase or decrease the amount of appropriations expended for automatic data processing resources.

(2) USE OF REVENUES BY PATENT AND TRADEMARK OFFICE.—Except as otherwise specifically provided in this Act and section 42(c) of title 35, United States Code, the Patent and Trademark Office is authorized to use appropriated or apportioned fee revenues for any of its operations or activities.

(b) REPORT BY COMMISSIONER ON IMPLEMENTING AUTOMATION PLAN.—At least 90 calendar days before the date of implementation of each key deployment decision provided for in the revised master automation plan that was approved by the Secretary of Commerce and the Director of the Office of Management and Budget and that was submitted, in February 1986, to the Committees on the Judiciary of the Senate and the House of Representatives, the Commissioner of Patents and Trademarks shall report the proposed implementation to those committees. Each key deployment decision shall be approved by the designated Senior Official for Information Resources Management of the Department of Commerce before the report on the decision is made under the preceding sentence. Each such report on a

key deployment decision shall include the cost and method of financing the deployment decision, including, where appropriate, a comparison with the cost benefit analysis contained in the revised automation master plan, as well as such other information as the committees consider necessary.

(c) PROHIBITION ON NEW OBLIGATIONS.—The Patent and Trademark Office may not enter into any new contract, or obligate any funds, to implement a key deployment decision described in subsection (b) until the expiration of 90 calendar days after the report with respect to such deployment decision is submitted under such subsection.

(d) EFFECTIVE DATE.—Subsections (b) and (c) take effect on January 1, 1987.

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Mr. KASTENMEIER (during the reading). Mr. Speaker, I ask unanimous consent that the Senate amendments and the House amendments to Senate amendments numbered 2, 3, 6, and 7 be considered as read and printed in the RECORD.

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

There was no objection.

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

Mr. MOORHEAD. Mr. Speaker, reserving the right to object, could the gentleman from Wisconsin [Mr. KASTENMEIER] explain areas where the House concurs to the Senate amendments and where the House concurs with amendments of its own?

Mr. KASTENMEIER. Mr. Speaker, will the gentleman yield?

Mr. MOORHEAD. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. Yes; I would be glad to do so. At the outset, I should note that this bill reauthorizes the Patent and Trademark Office for fiscal years 1986 through 1988. I would like to thank the gentleman from California, Mr. MOORHEAD, for his assistance in reaching a compromise. I also would like to thank the chairman of the House Committee on Government Operations, Mr. BROOKS, also a member of my subcommittee, for his cooperation and input. In addition, I should express gratitude to my counterpart chairman on the Senate side, Senator MATHIAS, the ranking minority member, Senator LEAHY, and the hard-working staff of the Senate Judicary Subcommittee on Patents, Copyrights and Trademarks for putting together a House-Senate compromise.

The House concurs in the Senate amendments 1, 4, 5, 8, 9, 10, and 11. The Senate amendments were all of a clarifying and technical nature and represent improvements to the House bill, as passed on June 24, 1985. The House concurred in Senate amendment 3, but added a technical correction.

We have amended the bill, as amended by the Senate, in three substantive areas. Our compromise reflects an agreement on three points. I will defer to the gentleman from California to explain the substance of the compromise.

Mr. MOORHEAD. Further reserving my right to object, I am happy to do so. First, the House-Senate compromise ensures that the small business, independent inventor, and nonprofit organization fee structure found in the preexisting authorization be continued as a part of current patent law.

Second, the House agrees with the Senate that there should be greater oversight of the Patent and Trademark Office's policies relating to user fees and actual use of those fees. Both Houses agree that activities funded by user fees should not diminish congressional oversight or authority. While fees may give the Office greater flexibility in spending, concerns have been raised that (1) user fees do result in diminished accountability to the public; and (2) the Office does not have a clear user fee policy.

Congress needs a better understanding of the Office's policies in this regard. Therefore, both Houses agree that the Secretary of Commerce, at the time of the President's annual budget submission to the Congress, should provide to the House and Senate Judiciary Committees the following: a list of collections; a list of activities which were supported by fees; budget plans for significant programs, projects and activities; and any proposed distribution of surplus fees. In addition, any other information the committees consider necessary should be provided, such as how fees are set and for what activities, and the relationship to the executive branch's overall fee policy.

Third, and in addition to the oversight contemplated by the "report" provisions, the House and Senate agree that greater oversight of the Office's automation plans is necessary. All questions have not been resolved regarding authorization limitations that might be placed on the Office.

In an effort to increase congressional oversight, the House required that funding for automation—both patents and trademarks—come solely from appropriations, totally to the exclusion of user fee revenue.

The Senate provided enhanced oversight of automation through a report-and-wait period of each key development decision in the automation plan. The Senate did not specify what type of funds—appropriations or user fees—could be used to pay for automation. The Senate's position was based on two factors. First, the type of funding used to underwrite automation should not diminish congressional oversight. Second, given the Office's reliance on fees, the Senate did not want excess fees to accumulate that could not be reprogrammed.

The agreement is a hybrid. The House and Senate agree on the following. In fiscal years 1987 and 1988, automated data processing resources should not be funded with more than 30 percent user fee moneys. Moreover, excess user fees can be reprogrammed in accordance with provisions in this bill and existing law. In addition, the report-and-wait periods, originally specified in the Senate bill about key development decisions relating to automation, are necessary.

Mr. Speaker, I withdraw my reservation of objection.

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

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

There was no objection.

A motion to reconsider was laid on the table.