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CONGRESSIONAL RECORD
PROCEEDINGS AND DEBATES OF THE 99TH CONGRESS

SENATE

BILL	DATE	PAGE(S)
S.1230	October 16, 1986	S16841-842

Action:

PASSED

"(d) DEFINITION OF SECONDARY ADJUSTED FEDERAL MEDICAL ASSISTANCE PERCENTAGE.—For purposes of this section:

"(1) The term 'secondary adjusted Federal medical assistance percentage' means a percentage equal to the difference between the Federal medical assistance percentage and the secondary adjustment percentage for the fiscal year.

"(2) The term secondary adjustment percentage' means—

"(A) for the fiscal year in which section 1921 takes effect, 2.5 percent; and

"(B) for each subsequent fiscal year, a percentage equal to the sum of 1.5 percent and the secondary adjustment percentage for the immediately preceding fiscal year.

"(e) DEFINITION OF COMPENSATORY AMOUNT.—

"(1) For purposes of this section, the term 'compensatory amount' means the difference between—

"(A) the aggregate total of amounts expended in the base year by the State involved for the 5 health service categories; and

"(B) the qualifying amount for such State.

"(2) The compensatory amount may be a negative number.

"(f) LIMITATION ON AMOUNT OF GRANT.—

"(1) The amount referred to in subsection (a)(1) is the sum of—

"(A) an amount equal to the product of 90 percent and the qualifying amount; and

"(B) an amount equal to the product of—

"(i) the percentage described in paragraph (2); and

"(ii) the greater of 0 and the compensatory amount.

"(2) The percentage referred to in paragraph (1)(B)(i) is a percentage equal to the difference between—

"(A) the Federal medical assistance percentage; and

"(B) the product of—

"(i) 50 percent; and

"(ii) the difference between 90 percent and the Federal medical assistance percentage.

"(g) ADJUSTMENT BY SECRETARY OF QUALIFYING AMOUNT.—

"(1) If the Secretary makes the determination described in paragraph (2), the Secretary shall increase the qualifying amount of the State involved to the extent determined by the Secretary to be appropriate.

"(2) The determination referred to in paragraph (1) is a determination that—

"(A) with respect to the State involved, the number of poor elderly individuals residing in the State has increased, or

"(B) the cost of providing long-term health care has increased, since the base year due to inflation and other factors.

"STATE ADMINISTRATION

"SEC. 1923. Prior to expenditure by a State of payments made to it under section 1921 for any fiscal year, the State shall report on the intended use of the payments the State is to receive under such section, including information on the types of activities to be supported and the categories or characteristics of individuals to be served. The report shall be transmitted to the Secretary and made public within the State in such manner as to facilitate comment by any person (including any Federal or other public agency) during development of the report and after its completion. The report shall be revised throughout the year as may be necessary to reflect substantial changes in the activities assisted under this title, and any revision shall be subject to the requirements of the previous sentence.".

SEC. 502. REPORT BY SECRETARY WITH RESPECT TO TECHNICAL AND CONFORMING CHANGES.

With respect to the amendments to title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) made by this Act, the Secretary of Health and Human Services shall, before the expiration of the 180-day period beginning on the date of the enactment of this Act, submit to the Congress a report describing such technical and conforming changes in such title XIX as the Secretary determines to be appropriate.

IMMIGRATION REFORM—CONFERENCE REPORT

Mr. SIMPSON. Mr. President, I ask unanimous consent that the mandatory quorum under rule XXII be waived with regard to the cloture vote today at 1 o'clock.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

THE CALENDAR

Mr. SIMPSON. Mr. President, after conferring with the acting Democratic leader, my friend Senator MATSUNAGA, we have business to do that must be performed tonight or this morning in order that the House and Senate can complete their coordinated efforts on the passage of this legislation of various types and sorts.

With that, after conferring, as I say, with the acting Democratic leader, I would like to inquire if he is in a position to pass or definitely postpone any or all of the following Calendar items: Calendar Nos. 456, 498, 862, 865, 867, 868, 1052, and 1095.

Mr. MATSUNAGA. Not 1052, no. The others we have no objection to.

Mr. SIMPSON. You do have an objection to 1052?

Mr. MATSUNAGA. Yes; we have an objection to that.

Mr. SIMPSON. Mr. President, with the deletion of Calendar item No. 1052, is the acting minority leader in a position to pass or indefinitely postpone any of those other items?

Mr. MATSUNAGA. We have no objection on this side.

Mr. SIMPSON. Then, I ask unanimous consent that we pass en bloc or indefinitely postpone en bloc these items and that all committee-reported amendments, preambles, and title amendments be considered and agreed to en bloc.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

AMENDMENT OF PATENT COOPERATION TREATY IMPLEMENTATION LAWS

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1230) to amend the patent laws implementing the Patent Cooperation Treaty.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. MATHIAS. The Patent Cooperation Treaty is an international patent agreement aimed at harmonizing the patent application procedures in member countries around the world. The treaty was ratified by the President with the advice and consent of the Senate in 1973, and eventually went into effect for our country in 1978.

At time of the Senate's consideration of the treaty in 1973, we placed a reservation on chapter 2, due to the belief that the procedures in that chapter would place an undue burden on our Patent and Trademark Office at that time because of differences between the patent systems of the various countries that would participate in the treaty. Since that time, however, there has been tremendous progress, partly as a result of the treaty, in making those systems more compatible, and consequently we are now in a position to take advantage of the benefits of chapter 2.

Accordingly in the 98th Congress the President asked for the advice and consent of the Senate to withdraw the reservation on chapter 2. That request—Treaty Document 98-29—was favorably reported this year from the Foreign Relations Committee after a hearing, and passed the Senate by unanimous consent last Thursday. The bill before us today, S. 1230, is the implementing legislation, making the changes necessary in our domestic patent statutes for conforming to chapter 2 of the Patent Cooperation Treaty, if the Senate acts on the President's request as expected.

The substantive portions of the treaty, chapters 1 and 2, allow inventors to file preliminary international patent applications prior to committing the money and technical resources necessary to formulate a formal patent application. Under these chapters, inventors are given more lead time and informal assessments of the prospect of obtaining a patent on their inventions in other countries.

Under chapter 1, an inventor receives an international search report citing all prior art that might have a bearing on the patentability of the invention, and also is allowed 20 months before having to decide whether to submit a formal, full-scale patent application. After that, he would forfeit the priority date established when he filed the international application.

If the inventor enters chapter 2 procedures, the lead period is extended by 10 months, and the applicant is provided with an international preliminary examination report. Such reports are prepared by the patent office in one of the member countries, assessing whether the invention is novel, non-

obvious, and useful—the three standard criteria around the world for patentability. The preliminary examination report is also circulated to the patent offices in all the member countries, for their possible use if the inventor decides to proceed with a patent application in those countries.

There is a solid consensus that withdrawing our reservation and submitting to chapter 2 of the Treaty is in the interest of promoting innovation in our country. As it stands, U.S. inventors have been the largest users by far of chapter 1 of the Treaty. Furthermore, it is now universally agreed that entering chapter 2 would not place undue burdens on the U.S. Patent and Trademark Office. The European Patent Office has agreed to assist the U.S. Patent and Trademark Office during the transition period after we withdraw our reservation. This assistance will be particularly valuable during the interim next year when our Patent and Trademark Office is completing its drive to reduce patent pendency time to 18 months.

The Judiciary Committee ordered S. 1230 favorably reported by unanimous consent on December 5, 1985. We are aware of no opposition to the bill and I urge its adoption.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1230

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 "Act to authorize the United States to participate in chapter II of the Patent Cooperation Treaty".

SEC. 2. (a) Section 351(a) of title 35, United States Code, is amended by striking out ", excluding chapter II thereof".

(b) Section 351(b) of title 35, United States Code, is amended by striking out "excluding part C thereof".

(c) Section 351(g) of title 35, United States Code, is amended by—

(1) striking out "term" and inserting in lieu thereof "terms";

(2) inserting "and 'International Preliminary Examining Authority'" after "Authority"; and

(3) striking out "means" and inserting in lieu thereof "mean".

(d) Section 361(d) of title 35, United States Code, is amended to read as follows:

"(d) The international fee, and the transmittal and search fees prescribed under section 376(a) of this part, shall either be paid on filing of an international application or within such later time as may be fixed by the Commissioner.".

SEC. 3. The item relating to section 362 in the analysis for chapter 36 of title 35, United States Code, is amended to read as follows:

"362. International Searching Authority and International Preliminary Examining Authority.".

SEC. 4. Section 362 of title 35, United States Code, is amended to read as follows:

"§ 362. International Searching Authority and International Preliminary Examining Authority

"(a) The Patent and Trademark Office may act as an International Searching Authority and International Preliminary Examining Authority with respect to international applications in accordance with the terms and conditions of an agreement which may be concluded with the International Bureau, and may discharge all duties required of such Authorities, including the collection of handling fees and their transmittal to the International Bureau.

"(b) The handling fee, preliminary examination fee, and any additional fees due for international preliminary examination shall be paid within such time as may be fixed by the Commissioner.".

SEC. 5. Section 364(a) of title 35, United States Code, is amended by—

(a) striking out "or", first occurrence and inserting in lieu thereof ",";

(b) inserting "International Preliminary Examining Authority" after "Authority," or", and

(c) striking out "both".

SEC. 6. Section 368(c) of title 35, United States Code, is amended by—

(a) striking out the second occurrence of "or" and inserting in lieu thereof ","; and

(b) striking out "both" and inserting in lieu thereof "International Preliminary Examining Authority".

SEC. 7. (a) Section 371(a) of title 35, United States Code, is amended to read as follows:

"(a) Receipt from the International Bureau of copies of international applications with any amendments to the claims, international search reports, and international preliminary examination reports including any annexes thereto may be required in the case of international applications designating or electing the United States.",

(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), or under article 39(1)(a) of the treaty.".

(c) Section 371(c)(4) of title 35, United States Code, is amended by striking the "." and inserting in lieu thereof ";".

(d) Section 371(c) of title 35, United States Code, is amended by adding at the end thereof the following new paragraph (5):

"(5) a translation into the English language of any annexes to the international preliminary examination report, if such annexes were made in another language.".

(e) Section 371(d) of title 35, United States Code, is amended by adding at the end thereof the following sentence: "The requirement of subsection (c)(5) shall be complied with at such time as may be fixed by the Commissioner and failure to do so shall be regarded as cancellation of the amendments made under article 34(2)(b) of the treaty.".

(f) Section 371(e) of title 35, United States Code, is amended by inserting "or article 41" after "28".

SEC. 8. (a) Section 376(a) of title 35, United States Code, is amended by—

(1) inserting "and the handling fee" after the first occurrence of "fee";

(2) striking "amount is" and inserting in lieu thereof "amounts are";

(3) redesignating paragraph (5) as paragraph (6); and

(4) inserting the following new paragraph (5):

"(5) A preliminary examination fee and any additional fees (see section 362(b)).".

(b) Section 376(b) of title 35, United States Code, is amended by—

(1) inserting "and the handling fee" after the first occurrence of "fee" in the first sentence; and

(2) inserting "the preliminary examination fee and any additional fees," after "fee," in the third sentence.

SEC. 9. Sections 2 through 8 of this Act shall come into force on the same day as the effective date of entry into force of chapter II of the Patent Cooperation Treaty with respect to the United States, by virtue of the withdrawal of the declaration under article 64(1)(a) of the Patent Cooperation Treaty. It shall apply to all international applications pending before or after its effective date.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MATSUNAGA. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

WILDLIFE SANCTUARY FOR HUMPBACK WHALES IN THE WEST INDIES

The joint resolution (H.J. Res. 67) calling for a wildlife sanctuary for humpback whales in the West Indies, was considered, ordered to a third reading, read the third time, and passed.

Mr. SIMPSON. Mr. President, I move to reconsider the vote by which the joint resolution was passed.

Mr. MATSUNAGA. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

ORDER TO INDEFINITELY POSTPONE CERTAIN MEASURES

Mr. SIMPSON. Mr. President, I ask unanimous consent that the following calendar items be indefinitely postponed: Calendar Order No. 498, S. 595; Calendar Order No. 862, S. 2635; Calendar Order No. 865, S. 2287; Calendar Order No. 867, S. 2466; and Calendar Order No. 868, S. 2532.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEMORIAL TO HONOR WOMEN WHO HAVE SERVED IN THE ARMED FORCES

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar Order No. 945, House Joint Resolution 36, the memorial to honor women who have served in the Armed Forces.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A joint resolution (H.J. Res. 36) authorizing establishment of a memorial to honor women who have served in or with the Armed Forces of the United States.