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SENATE

BILL	DATE	PAGE(S)
H.R.2434	JUN 6 '86 (75)	S7040-42

ACTION:

Patent and Trademark Office Authorizations: Senate passed H.R. 2434, to authorize funds for the Patent and Trademark Office in the Department of Commerce, after agreeing to committee amendments and Simpson (for Mathias) Amendment No. 2056, of a technical and conforming nature.

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AUTHORIZATION OF APPROPRIATIONS FOR PATENT AND TRADEMARK OFFICE

Mr. SIMPSON. Mr. President, I ask unanimous consent that the Senate turn to Calendar Item No. 656, H.R. 2434, the Patent and Trademark Office Authorization.

Mr. BYRD. Mr. President, there is no objection on this side.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 2434) to authorize appropriations for the Patent and Trademark Office in the Department of Commerce, and for other purposes.

There being no objection, the Senate proceeded to consider the bill (H.R. 2434) which had been reported from the Committee on the Judiciary, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets, and the parts of the bill intended to be inserted are shown in italics.)

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 *on or after October 1, 1985,* 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. OVERSIGHT AND INCREASES OF TRADEMARK AND CERTAIN PATENT FEES [PROHIBITED.]

(a) TRADMARK 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.] *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.* The Commissioner also may not establish additional fees under such section during such fiscal years.

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

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 cost 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. 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 decision 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 the revised master automation plan. Each pre-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 comparision 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 the 90 calendar days following the submission of each of the applicable reports required in such subsection.

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

The Commissioner of Patents and Trademarks may not *enter into new agreements for the* exchange *of* 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, *nor continue existing agreements for the exchange of such items or services after April 1, 1987.* 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]*an* international intergovernmental organization.

Mr. SIMPSON. Mr. President, I move adoption of the committee amendments.

The PRESIDING OFFICER. The question is on agreeing to the committee amendments.

The committee amendments were agreed to.

The PRESIDING OFFICER. The bill is open to further amendment.

AMENDMENT NO. 205

(Purpose: To make technical and conforming amendments)

Mr. SIMPSON. Mr. President, I send an amendment to the desk on behalf of Senator MATHIAS and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Wyoming [Mr. SIMPSON] for Mr. MATHIAS, proposes an amendment numbered 2056.

Mr. SIMPSON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

In section 3(c), strike out "the Patent and Trademark Office" and insert in lieu thereof "Patents and Trademarks".

In section 3(c), before "fee collections;" insert "trademark".

In section 3(c), strike out "patent fee expenditures" and insert in lieu thereof "patent fee collections".

In section 3(c), strike out "trademark fee expenditures" and insert in lieu thereof "trademark fee collections".

In section 5(a)(1), strike out "decision" and insert in lieu thereof "decisions".

In section 5(a)(2), after "decision provided for" insert "in".

In section 5(a)(2), strike out "Each pre" and insert in lieu thereof "Each key".

In section 5(b), before "90" strike out "the".

Mr. MATHIAS. Mr. President, in "A Connecticut Yankee in King Arthur's Court," Mark Twain noted the importance of a patent system, "* * * country without a patent office and good patent laws was just a crab, and couldn't travel any way but sideways or backways."

Mr. President, the passage of H.R. 2434 as unanimously passed by the Senate Judicially Committee will help the Patent and Trademark Office move forward. H.R. 2434 authorizes the appropriations for the Patent and Trademark Office for the next 3 years and reduces patent fees for small business, independent inventors, and nonprofit organizations. In addition, H.R. 2434 as passed by the Senate Judiciary Committee, provides the needed congressional oversight for agency funding and expenditures.

The vitality of the U.S economy is increasingly dependent on protecting the tangible expressions of new and innovative ideas. Undeniably, an effective and efficient Patent and Trademark Office is a necessary prerequisite.

A few years ago when the Congress examined the PTO, we found that Office using a document filing system that was over 160 years old. Twenty-six million documents were stored in shoe boxes. These were hardly acceptable recordkeeping practices for the Agency in charge of promoting technological change and innovative through the administration of patent and trademark law.

Congress responded by authorizing the PTO to automate its records and the Agency got the increased funding it needed through a greater reliance on user fees. However, despite efforts to improve office operations, problems have developed that threaten to undermine these congressional objectives.

During hearings before the House and the Senate, testimony from the General Accounting Office and outside private parties, as well as a report from the Department of Commerce, found significant problems with the Office's trademark automation efforts.

We were told that the PTO did not: First, thoroughly analyze the needed requirements for its trademark systems; second, adequately assess the costs and benefits of trademark automation; third, fully test its largest system before accepting it from a private contractor; and finally fourth, properly manage its exchange agreements in acquiring some of the automation services.

While the trademark automation is very nearly complete the much more expensive patent automation project is still in progress. The preliminary results of a GAO inquiry into patent automation indicte problems similar to those encountered in trademarks. Both the House and the Senate Judiciary Committee are quite concerned that the old problems be corrected and potential problems be identified. Both bills are similar in their restrictions on user fees and their termination of exchange agreements. However, while both bills recommend increased oversight for automation, H.R. 2434 as passed by the House takes a different route than the Senate Judiciary Committee recommends.

In an effort to increase automation oversight the House bill would require that funding for automation—both for patents and trademarks—come solely from appropriations, totally to the exclusion of fee revenues. This rigid restriction is not only unnecessary to strengthen oversight, but may have undesirable side effects.

Currently, the PTO receives the majority of its funding through user fees from patent and trademark processing. Automation is funded through a mix of both fees and appropriations. To require that all automation be funded through the appropriations process, would mean substantial and arbitrary reprogramming of funds. Some activities that are currently supported by appropriations would have to be funded by fees. The Senate Judiciary Committee is not convinced that other Agency activities now funded with appropriations are necessarily more appropriately funded by fees. Nor should other PTO activities re-

ceive less congressional oversight, which is implied by the House bill.

There should be no distinction in the level of oversight between activities that are funded by user fees and activities funded by appropriations. No matter how the automation project is funded, the goal is more effective oversight, a more direct approach is necessary. This is what the Senate Judiciary Committee adopted. Instead of restricting the type of funding, the committee establishes a procedure to examine the automation effort at each of its key stages. The Judiciary Committee believes that allowing the PTO to use user fees to pay for automation increases both the amount and flexibility of funding for this essential project, and enhances the Office's capacity to achieve its automation goals.

H.R. 2434 is absolutely necessary if Congress is to maintain its traditional oversight responsibilities and respond to the serious concerns raised during this authorization cycle. I urge its adoption.

Mr. SIMPSON. Mr. President, I move the adoption of the Mathias amendment.

The PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 2056) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there is no further amendment to be offered, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill (H.R. 2434) was read the third time, and passed.

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

Mr. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.