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HOUSE

BILL	DATE	PAGE(S)
H.R.4972	Oct 5, 1988 140-II	H9674-77

ACTION: AMENDED AND PASSED UNDER SUSPENSION OF THE RULES

PATENT AND TRADEMARK OFFICE AUTHORIZATION

Mr KASTENMEIER Mr Speaker, I move to suspend the rules and pass the bill (H R 4972) 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 4972

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

SECTION 1 AUTHORIZATION OF APPROPRIATIONS

There are authorized to be appropriated to the Patent and Trademark Office—

(1) for salaries and necessary expenses, $117,504,000 for fiscal year 1989, $125,210,000 for fiscal year 1990, and $111,984,000 for fiscal year 1991 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

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 OF AND ADJUSTMENTS TO TRADEMARK AND PATENT FEES.

(a) TRADEMARK FEES —The Commissioner of Patents and Trademarks may not, during fiscal years 1989, 1990, and 1991, 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 1989, 1990, and 1991, increase fees established under section 41(d) of title 35, United States Code, 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

(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

SEC 4 PUBLIC ACCESS TO PATENT AND TRADEMARK OFFICE INFORMATION

(a) REPEAL.—Section 4 of Public Law 99-607 (35 U S C 41 note) is repealed

(b) MAINTENANCE OF COLLECTIONS —The Commissioners of Patents and Trademarks shall maintain, for use by the public, paper or microform collections of United States patents, foreign patent documents, and United States trademark registrations arranged to permit search for and retrieval of information. The Commissioner may not impose fees for use of such collections, or for use of public patent or trademark search rooms or libraries Funds appropriated to the Patent and Trademark Office shall be used to maintain such collections, search rooms, and libraries

(c) FEES FOR ACCESS TO SEARCH SYSTEMS — Subject to section 5(a), the Commissioner of Patents and Trademarks may establish reasonable fees for access by the public to automated search systems of the Patent and Trademark Office in accordance with section 41 of title 35 United States Code, and section 31 of the Trademark Act of 1946 (15 U S C 1113) If such fees are established, a limited amount of free access shall be make available to all users of the systems for purposes of education and training The Commissioner may waive the payment by an individual of fees authorized by this subsection upon a showing of need or hardship, and if such waiver is in the public interest

SEC. 5. FUNDING OF AUTOMATED DATA PROCESSING RESOURCES.

(a) ALLOCATIONS —Of amounts available to the Patent and Trademark Office for automatic data processing resources for fiscal years 1989, 1990, and 1991, 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

(b) USE OF REVENUES BY PATENT AND TRADEMARK.—Except as otherwise specifically provided in this Act, Public Law 99-607, 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 and activities

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

The Commissioner of Patents and Trademarks may not, during fiscal years 1989, 1990, and 1991, enter into any agreement 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), and the Commissioner may not, on or after the date of the enactment of this Act, continue existing agreements for the exchange of such items or services. The preceding sentence shall not apply to an agreement relating to data for automation programs which is entered into with a foreign government or with an international intergovernmental organization.

The SPEAKER pro tempore Is a second demanded?

Mr MOORHEAD Mr Speaker, I demand a second

The SPEAKER pro tempore Without objection, a second will be considered as ordered.

There was no objection

The SPEAKER pro tempore The gentleman from Wisconsin [Mr KASTENMEIER] will be recognized for 20 minutes, and the gentleman form California [Mr MOORHEAD] will be recognized for 20 minutes.

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

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

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

Mr KASTENMEIER Mr Speaker, I bring before the House the bill, H R 4972, to authorize appropriations for the Patent and Trademark Office in the Department of Commerce for the next 3 fiscal years Specifically, the bill authorizes appropriations for salaries and necessary expenses up to the following amounts $117,504,000 for fiscal year 1989, $125,210,000 for fiscal year 1990, and finally $111,984,000 for fiscal year 1991 These sums are consistent with the existing appropriations measures and comport with the administration's proposed authorization levels I should note that in addition to appropriations the PTO receives substantial income from the collection of user fees

An effective Patent and Trademark Office is the cornerstone for a reliable and effective intellectual property system in this country By improving its manner of operation, the Office can have as great an impact on this Nation's inventiveness and technological change as any substantive changes to our patent and trademark laws

Increasingly, the vitality of both the U S economy and the balance of trade depends on protecting the tangible expressions of new and innovative ideas A well functioning Patent and Trademark Office can contribute positively to a healthy American economy in an international marketplace Speaking of the need for a strong patent system, Mark Twain once observed that "* * * a country without a patent office and good patent laws was just a crab, and couldn't travel any way but sideways or backways " The goal of our patent laws and institutions is to move us forward.

This bill promotes the goal of forward movement in this Nation's patent and trademark system

H R 4972 is the work product of my subcommittee—the Subcommittee on Courts, Civil Liberties and the Administration We held a hearing on July 27, 1988, and H R 5972 was reported favorably by voice vote by the full committee on September 30, 1988 I would like to signal the efforts of the ranking minority member of the subcommittee, Mr MOORHEAD, and the chairman of the House Committee on Government Operations, Mr BROOKS, who also is a member of the Committee on the Judiciary H R 5972 represents a joint effort, and without the input of these two respected Members, a bill would not be before us today

Let me now present a brief explanation of the proposed legislation

First, it authorizes adequate amounts of money for the next 3 fiscal years

Second, it opens the door to allowing the Commissioner of Patents and Trademarks to establish reasonable fees for access by the public to automated search systems in the Office in accordance with current law If such fees are established, a limited amount of free access shall be made available to all users of the systems for the purposes of education and training The Commissioner has the authority to waive the payment by an individual of fees upon a showing of need or hardship, and if such waiver is in the public interest The Commission

therefore is conferred discretion to waive fees, or reduce them, for individuals who engage in small business endeavors or are university professors He might exercise this rulemaking discretion in this regard

According to testimony received by the committee from the Information Industry Association the PTO is currently considering including privately published, copyrighted works in its data bases The PTO, as the executive branch agency whose primary function is the promotion of a strong intellectual property law, should honor the letter and spirit of the copyright owner before including such copyrighted works In this regard, the PTO should follow the lead of the Copyright Office when it developed guidelines for its optical disk project The Copyright Office has made a commitment that it will not enter copyrighted materials into its data bases without permission The PTO should adopt the same policy In permitting the PTO to charge for access to automated data bases This authority should be accompanied by a firm commitment by the PTO to comply with the requirements of OMB circular A-130 This compliance will avoid costly and unfair competition with the private sector

Third, the bill also safeguards against some management problems that have occurred in the PTO in recent years in connection with the automation of the patent and trademark files Let's be candid, the automation program has not been the model of Government efficiency or effectiveness In 1986 the Committees on the Judiciary of the House and Senate, working cooperatively with the House Committee on Government Operations and the Government Accounting Office, identified significant problems in the PTO automation project The last authorization bill—Public Law 99-607—contained several restrictions on the spending of money for automation

As regards automation, these restrictions have worked and they should be continued for another 3 years H R 4972 opens the door to the charging of reasonable user fees for use of computer terminals to conduct trademark and patent searches, and that should give the Office adequate flexibility to continue making forward progress

The following five restrictions found in the last authorization are to be continued

First, the Commissioner may not increase current patent and trademark fees except for purposes of making adjustments which in the aggregate do not exceed fluctuations during the previous 3 years in the Consumer Price Index The underlying purpose of the patent system is to encourage use and this limitation ensures that use will not be thwarted by escalating fees

Second, the Secretary of Commerce, at the time of the President's annual budget submission to the Congress, is required to provide information to the Committees on the Judiciary of both the House and the Senate, about patent and trademark fee collections, budget plans for the Office, and proposed distribution of surplus fees This reporting restriction will promote congressional understanding and oversight of the Patent and Trademark Office I am particulary perturbed that the Secretary's report for this fiscal year—1988—arrived 4 months late Tardiness by the Secretary in respecting his reporting responsibilities, standing alone, is enough reason to continue this restriction

Third, the bill prohibits the use of fee revenues to defray more than 30 percent of automation costs The Commissioner of Patents and Trademarks shall notify the House and Senate Judiciary Committees of any proposed reprogramings which would increase of decrease the amount of appropriations expended for automatic data processing resources Automation of the Office is an important policy goal, one that has already been made by the Congress, and a substantial part of this goal should be fulfilled by the expenditure of appropriated funds

Fourth, the Commissioner is required to maintain, for use by the public, the current paper records for patents and trademarks The Commissioner may not impose fees for use of such collections, or for the use of public patent or trademark search rooms or libraries Public buildings are for the use of the public, and should be free of charge Appropriated funds shall be used to maintain patent and trademark collections, search rooms and libraries

Fifth, as for the past 3 fiscal years, during the next 3 fiscal years the Commissioner may not enter into any agreement for the exchange of items or services relating to automated data processing resources—including hardware, software, and related services, and machine readable data Further, the Commissioner may not continue any existing exchange agreements This latter restriction does not apply to an agreement relating to data for automation programs which is entered into with a foreign government or with an international intergovernmental organization

In sum, the bill before us is largely a carry over of the current law, with the exception I noted earlier I hope that my colleagues can support this bill and promote the forward movement of this Nation's patent system

I urge an "aye" vote

Mr Speaker, I reserve the balance of my time

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

Mr Speaker, I rise in support of the 3-year authorization proposed in H R 4972 In the late 1970's and early 1980's we found the Patent and Trademark Office in real trouble It had been going downhill for years and at this critical time in our history, when we are experiencing technological revolution in almost every sector of private industry, we had a Patent Office that had not yet been brought into the 20th century

We had made substantial progress since 1982 At that time, it took approximately 25 months to obtain a patent If nothing was done we estimated by 1989 the pendency period would be between 42 and 44 months The pendency period by the end of next year will be 18 months, not 44 months and at the same time they continue to improve the quality of issued patents

In 1986 the PTO programs came under severe criticism by the private bar and we reviewed the programs and decided to increase oversight of the PTO through additional reporting requirements and funding restrictions Also we prohibited the charging of fees to the public for use of the search room All of these restrictions remain, although we do permit the development of an automated search room along side the existing paper search system For use of the automated search system the PTO will be permitted to charge a reasonable fee Also under this proposal those individuals who demonstrate need will be allowed free access to the automated systems This imposed fee to the public will only reflect the marginal cost for using the new service and will not include the costs of the equipment or the development of the new systems It's important to note that the new system will not be in lieu of the existing paper search system but will be in addition to it The public will always have the option to use the free, paper search system which is now in place

I want to thank the chairman of the subcommittee [Mr KASTENMEIER] and the gentleman from Texas [Mr BROOKS] for their continued support and concern over the operation of the Patent and Trademark Office

The administration is not happy with all the restrictions we continue to impose on the PTO I hope next year, we will take the time to determine whether these restrictions are still needed

I urge support for H R 4972

Mr Speaker, I yield such time as he may consume to the gentleman from New York [Mr FISH], the ranking member of the full Committee on the Judiciary

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

Mr FISH Mr Speaker, I rise in support of H R 4972, the Patent and Trademark Office authorization legislation

The Patent and Trademark Office is in the forefront of technological change and discovery It's an important Office and it gets a lot of attention from the Judiciary Committee, as it should We have gone from a com-

mittee that a decade ago merely rubber stamped the Department of Commerce's request for PTO authorization, to a committee that closely scrutinizes every aspect of that Office, and that too, is as it should be

I believe we have come a long way since 1980 when our committee out of disappointment with the Department of Commerce voted to separate that Office from the Department of Commerce and make it an independent agency That did not happen, but we made it clear how important the PTO is to this country and that we expected that Office to be the best in the world at what it does Since that time under Secretary Baldrige and Secretary Verity, the Office has been elevated and received their encouragement and support

Today, we are heading in the right direction. Two years ago, we had to impose some restrictions on the use of PTO funding I supported that and I understand that those restrictions have been retained in this legislation before us but I hope the committee will, early next year, review these restrictions and if at all possibe remove them

I want to commend the gentleman from Wisconsin [Mr KASTENMEIER] and the gentleman from California [Mr MOORHEAD] for their quick action on this proposal and I hope we can persuade the other body to act expeditiously on the bill

Mr MOORHEAD Mr Speaker, I yield myself such time as I may consume I have a question for the gentleman from Wisconsin and I would be glad to yield to him for an answer Section 3, of H R 4972 precludes the Commissioner of Patents and Trademarks from increassing fees established under section 31 of the Trademark Act of 1946 and also from increasing fees established under section 41(d) of the Patent Act, except for the purpose of making inflationary adjustments What about new fees for new services or new fees for improved services?

Mr KASTENMEIER Mr Speaker, if the gentleman will yield, under the provisions of the bill, the Commissioner is not precluded from charging a new fee for a new service or material or from charging a different fee where a significant and material improvement in a service or material, such as in promptness or quality, is offered Under any circumstances, augmented fees ought to be clearly justified and reported to the Congress

Mr MOORHEAD Mr Speaker, I have no further requests for time, and I yield back the balance of my time

Mr KASTENMEIER Mr Speaker, I have no further requests for time, and 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 4972, as amended.

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

A motion to reconsider was laid on the table