CONGRESSIONAL RECORD

103RD CONGRESS

HOUSE

Bill	Date	Page(s)
H.R. 2632	Nov. 19, 1993	H10256-57

Action:

Patent and Trademark Office Authorization: House agreed to the Senate amendment, with amendments, to H.R. 2632, to authorize appropriations for the Patent and Trademark Office in the Department of Commerce for fiscal year 1994—returning the measure to the Senate.

Pages H10256-57

PATENT AND TRADEMARK OFFICE AUTHORIZATION ACT OF 1993

Mr. BROOKS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H. R. 2632) to authorize appropriations for the Patent and Trademark Office in the Department of Commerce for fiscal year 1994, with a Senate amendment thereto, and concur in the Senate amendment with amendments.

The Clerk read the title of the bill.

The Clerk read the House amendments to the Senate amendment as follows:

House amendments to Senate amendment: In lieu of the text proposed to be inserted by the Senate amendment, insert the following:

SEC. 5. INTERIM PATENT EXTENSIONS.

Section 156 of title 35, United States Code, is amended—

(1) in subsection (c)(4) by striking out "extended" and inserting "extended under subsection (e)(1)";

(2) in the second sentence of subsection (d)(1) by striking "Such" and inserting "Except as provided in paragraph (5), such"; and

(3) by adding at the end of subsection (d) the following new paragraph:

"(5)(A) If the owner of record of the patent or its agent reasonably expects that the applicable regulatory review period described in paragraph (1)(B)(ii), (2)(B)(ii), (3)(B)(ii), (4)(B)(ii), or (5)(B)(ii) of subsection (g) that began for a product that is the subject of such patent may extend beyond the expiration of the patent term in effect, the owner or its agent may submit an application to the Commissioner for an interim extension during the period beginning 6 months, and ending 15 days, before such term is due to expire. The application shall contain—

"(ii) the identity of the product subject to regulatory review and the Federal statute under which such review is occurring;

"(2) the identity of the patent for which interim extension is being sought and the identity of each claim of such patent which claims the product under regulatory review or a method of using or manufacturing the product;

"(iii) information to enable the Commissioner to determine under subsection (a)(1), (2), and (3) the eligibility of a patent for extension;

"(iv) a brief description of the activities undertaken by the applicant during the applicable regulatory review period to date with respect to the product under review and the significant dates applicable to such activities; and

"(v) such patent or other information as the Commissioner may require.

"(B) If the Commissioner determines that, except for permission to market or use the product commercially, the patent would be eligible for an extension of the patent term under this section, the Commissioner shall publish in the Federal Register a notice of such determination, including the identity of the product under regulatory review, and shall issue to the applicant a certificate of interim extension for a period of not more than 1 year.

"(C) The owner of record of a patent, or its agent, for which an interim extension has been granted under subparagraph (B), may apply for not more than 4 subsequent interim extensions under this paragraph, except that, in the case of a patent subject to subsection (g)(6)(C), the owner of record of the patent, or its agent, may apply for only 1 subsequent interim extension under this paragraph. Each such subsequent application shall be made during the period beginning 60 days before, and ending 30 days before, the expiration of the preceding interim extension.

"(D) Each certificate of interim extension under this paragraph shall be recorded in the official file of the patent and shall be considered part of the original patent.

"(E) Any interim extension granted under this paragraph shall terminate at the end of the 60-day period beginning on the date on which the product involved receives permission for commercial marketing or use, except that, if within that 60-day period the applicant notifies the Commissioner of such permission and submits any additional information under paragraph (1) of this subsection not previously contained in the application for interim extension, the patent shall be further extended, in accordance with the provisions of this section—

"(i) for not to exceed 5 years from the date of expiration of the original patent term; or

"(ii) if the patent is subject to subsection (g)(6)(C), from the date on which the product involved receives approval for commercial marketing or use.

"(F) The rights derived from any patent the term of which is extended under this paragraph shall, during the period of interim extension—

"(i) in the case of a patent which claims a product, be limited to any use than under regulatory review;

"(ii) in the case of a patent which claims a method of using a product, be limited to any use claimed by the patent then under regulatory review; and

"(iii) in the case of a patent which claims a method of manufacturing a product, be limited to the method of manufacturing as used to make the product then under regulatory review.".

SEC. 4. CONFORMING AMENDMENTS.

Section 156 of title 35, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (1) by striking "(d)" and inserting "(d)(1)"; and

(B) in paragraph (3) by striking "subsection (d)" and inserting "paragraphs (1) through (4) of subsection (d)";

(2) in subsection (b) by striking "The rights" and inserting "Except as provided in subsection (d)(5)(F), the rights"; and

(3) in subsection (c)—

(A) in paragraph (1) by striking "subsection (d)" and inserting "paragraphs (1) through (4) of subsection (d)"; and

(B) in paragraph (2) by striking "(d)" and inserting "(d)(1)".

SEC. 7. PATENT TERM EXTENSIONS FOR AMERICAN LEGION.

(a) BADGE OF AMERICAN LEGION.—The term of a certain design patent numbered 54,296 (for the badge of the American Legion) is renewed and extended for a period of 14 years beginning on the date of enactment of this Act, with all the rights and privileges pertaining to such patent.

(b) BADGE OF AMERICAN LEGION WOMEN'S AUXILIARY.—The term of a certain design patent numbered 55,398 (for the badge of the American Legion Women's Auxiliary) is renewed and extended for a period of 14 years beginning on the date of enactment of this Act, with all the rights and privileges pertaining to such patent.

(c) BADGE OF SONS OF THE AMERICAN LEGION.—The term of a certain design patent numbered 92,187 (for the badge of the Sons of the American Legion) is renewed and extended for a period of 14 years beginning on the date of enactment of this Act, with all the rights and privileges pertaining to such patent.

SEC. 8. INTERVENING RIGHTS.

The renewals and extensions of the patents under section 6 shall not result in infringement of any such patent on account of any use of the subject matter of the patent, or substantial preparation for such use, which began after the patent expired, but before the date of the enactment of this Act.

Amend the title so as to read: "A bill to authorize appropriations for the Patent and Trademark Office in the Department of Commerce for fiscal year 1994, and for other purposes.".

Mr. BROOKS. Mr. Speaker, I ask unanimous consent that the House amendments to the Senate amendment be considered as read and printed in the RECORD.

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

There was no objection.

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

Mr. MOORHEAD. Mr. Speaker, reserving the right to object, and I shall not object, I ask the chairman of our Committee on the Judiciary for an explanation.

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

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

Mr. BROOKS. Mr. Speaker, H.R. 2632 authorizes $103 million for the activities of the Patent and Trademark Office for fiscal year 1994. It was adopted by the House under suspension of the rules on October 12, 1993.

The Senate, on November 11, added a private patent extension to the legislation. The House amendment which we are now considering deletes this private extension and replaces it with an amendment to the Patent Term Restoration Act of 1984. Under that act, products in the regulatory approval process in 1984 were made eligible for a 2 year patent extension if the patent had not expired at the time of regulatory approval. No provision was made for products for which the regulatory review is so long that the 17 year patent expires before approval.

The House amendment allows patent holders who are eligible for a patent extension under the 1984 legislation to receive—prior to the expiration of the patent—an interim patent extension while awaiting regulatory approval. When such approval is received, the patent could then be extended pursuant to the Patent Term Restoration Act.

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

Mr. MOORHEAD. Further reserving the right to object, Mr. Speaker, I yield to the gentleman from New Jersey.

Mr. HUGHES. Mr. Speaker, I want to take the opportunity to thank the gentleman from California [Mr. MOORHEAD] for his work on this and so many other issues before the Subcommittee on Intellectual Property and Judicial Administration. I thank the gentleman.

Mr. MOORHEAD. Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

A motion to reconsider was laid on the table.