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REPORT
102-382

PATENT AND TRADEMARK OFFICE AUTHORIZATION ACT OF 1991

NOVEMBER 25, 1991.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BROOKS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 3531]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3531) to authorize appropriations for the Patent and Trademark Office in the Department of Commerce for fiscal year 1992, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Patent and Trademark Office Authorization Act of 1991".

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—There are authorized to be appropriated to the Patent and Trademark Office—

(1) for fiscal year 1992—

(A) $95,000,000 for salaries and necessary expenses, which shall be derived from deposits in the Patent and Trademark Office Fee Surcharge Fund established under section 10101 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508);

(B) such sums as are equal to the amount collected during that year from fees under title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 and following); and

(C) $24,000,000 for administrative, capital, or other expenditures not provided for under subparagraphs (A) and (B).

(b) AMENDMENTS TO BUDGET RECONCILIATION ACT.—Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508) is amended as follows:

(1) Subsection (a) is amended—

(A) by striking "of 69 percent, rounded by standard arithmetic rules,"; and

(B) by inserting before the period ", in order to ensure that the amounts specified in subsection (c) are collected".

(2) Subsection (b)(1)(B) is amended by inserting "of these surcharges," after "(B)".

(3) Subsection (c) is amended—

(A) by striking "REVISIONS" and inserting "ESTABLISHMENT OF SURCHARGES"; and

(B) by striking "surcharges" and all that follows through "Trademarks" and inserting "the Commissioner of Patents and Trademarks shall establish surcharges under subsection (a)".

(c) WAIVER OF CERTAIN RESTRICTIONS.—Surcharges established for fiscal year 1992 under section 10101(c) of the Omnibus Budget Reconciliation Act of 1990 may take effect on or after 1 day after such surcharges are published in the Federal Register. Section 553 of title 5, United States Code, shall not apply to the establishment of such surcharges for fiscal year 1992.

SEC. 3. APPROPRIATIONS AUTHORIZED TO BE CARRIED OVER.

Amounts appropriated under this Act may remain available until expended.

SEC. 4. OVERSIGHT OF PATENT AND TRADEMARK FEES.

Section 42 of title 35, United States Code, is amended by adding at the end the following:

"(e) The Secretary of Commerce shall, on the day each year 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. 5. PATENT AND TRADEMARK FEES.

(a) FEE SCHEDULES.—(1) Section 41(a) of title 35, United States Code, is amended to read as follows:

"(a) The Commissioner shall charge the following fees:

"(1)(A) On filing each application for an original patent, except in design or plant cases, $500.

"(B) In addition, on filing or on presentation at any other time, $52 for each claim in independent form which is in excess of 3, $14 for each claim (whether independent or dependent) which is in excess of 20, and $160 for each application containing a multiple dependent claim.

"(2) For issuing each original or reissue patent, except in design or plant cases, $820.

"(3) In design and plant cases—

"(A) on filing each design application, $200;

"(B) on filing each plant application, $330;

"(C) on issuing each design patent, $290; and

"(D) on issuing each plant patent, $410.

"(4)(A) On filing each application for the reissue of a patent, $500

"(B) In addition, on filing or on presentation at any other time, $52 for each claim in independent form which is in excess of the number of independent claims of the original patent, and $14 for each claim (whether independent or dependent) which is in excess of 20 and also in excess of the number of claims of the original patent.

"(5) On filing each disclaimer, $78.

"(6)(A) On filing an appeal from the examiner to the Board of Patent Appeals and Interferences, $190.

"(B) In addition, on filing a brief in support of the appeal, $190, and on requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences, $160.

"(7) On filing each petition for the revival of an unintentionally abandoned application for a patent or for the unintentionally delayed payment of the fee

for issuing each patent, $820, unless the petition is filed under section 133 or 151 of this title, in which case the fee shall be $78.

"(8) For petitions for 1-month extensions of time to take actions required by the Commissioner in an application—

"(A) on filing a first petition, $78;

"(B) on filing a second petition, $172; and

"(C) on filing a third petition or subsequent petition, $340.

"(9) Basic national fee for an international application where the Patent and Trademark Office was the International Preliminary Examining Authority and the International Searching Authority, $450.

"(10) Basic national fee for an international application where the Patent and Trademark Office was the International Searching Authority but not the International Preliminary Examining Authority, $500.

"(11) Basic national fee for an international application where the Patent and Trademark Office was neither the International Searching Authority nor the International Preliminary Examining Authority, $670.

"(12) Basic national fee for an international application where the international preliminary examination has been paid to the Patent and Trademark Office, and the international preliminary examination report states that the provisions of Article 33 (2), (3), and (4) of the Patent Cooperation Treaty have been satisfied for all claims in the application entering the national stage, $66.

"(13) For filing or later presentation of each independent claim in the national stage of an international application in excess of 3, $52.

"(14) For filing or later presentation of each claim (whether independent or dependent) in a national stage of an international application in excess of 20, $14.

"(15) For each national stage of an international application containing a multiple dependent claim, $160.

For the purpose of computing fees, a multiple dependent claim as referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.".

(2) Subsection (b) of section 41 of title 35, United States Code, is amended by striking "a patent in force" and all that follows through the end of paragraph 3. and inserting the following: "in force all patents based on applications filed on or after December 12, 1980:

"(1) 3 years and 6 months after grant, $650.

"(2) 7 years and 6 months after grant, $1,310.

"(3) 11 years and 6 months after grant, $1,980.".

(3) Subsection (d) of section 41 of title 35, United States Code, is amended to read as follows:

"(d) The Commissioner shall establish fees for all other processing, services, or materials relating to patents not specified in this section to recover the estimated average cost to the Office of such processing, services, or materials, except that the Commissioner shall charge the following fees for the following services:

"(1) For recording a document affecting title, $40 per property.

"(2) For each photocopy, $.25 per page.

"(3) For each black and white copy of a patent, $3.

The yearly fee for providing a library specified in section 13 of this title with uncertified printed copies of the specifications and drawings for all patents in that year shall be $50.".

(b) AUTHORITY TO INCREASE FEES.—Section 41(f) of title 35, United States Code, is amended by striking "on October 1, 1985, and every third year thereafter, to reflect any fluctuations occurring during the previous three years" and inserting "on October 1, 1992, and every year thereafter, to reflect any fluctuations occurring during the previous 12 months".

(c) NOTICE OF FEES.—(1) Section 41(g) of title 35, United States Code, is amended to read as follows:

"(g) No fee established by the Commissioner under this section shall take effect until at least 30 days after notice of the fee has been published in the Federal Register and in the Official Gazette of the Patent and Trademark Office.".

(2) Fees established by the Commissioner of Patents and Trademarks under section 41(d) of title 35, United States Code, during fiscal year 1992 may take effect on or after 1 day after such fees are published in the Federal Register. Section 41(g) of title 35, United States Code, and section 553 of title 5, United States Code, shall not apply to the establishment of such fees during fiscal year 1992.

(d) PATENT AND TRADEMARK COLLECTIONS; PUBLIC ACCESS.—(1) Section 41 of title 35, United States Code, is amended by adding at the end the following new subsection:

"(i)(1) The Commissioner 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 directly for the use of such collections, or for the use of the public patent or trademark search rooms or libraries.

"(2) The Commissioner shall provide for the full deployment of the automated search systems of the Patent and Trademark Office so that such systems are available for use by the public, and shall assure full access by the public to, and dissemination of, patent and trademark information, using a variety of automated methods, including electronic bulletin boards and remote access by users to mass storage and retrieval systems.

"(3) The Commissioner may establish reasonable fees for access by the public to the automated search systems of the Patent and Trademark Office. If such fees are established, a limited amount of free access shall be made available to 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 a waiver is in the public interest.

"(4) The Commissioner shall submit to the Congress an annual report on the automated search systems of the Patent and Trademark Office and the access by the public to such systems. The Commissioner shall also publish such report in the Federal Register. The Commissioner shall provide an opportunity for the submission of comments by interested persons on each such report.".

(2)(A) The section heading for section 41 of title 35, United States Code, is amended to read as follows:

"§ 41. Patent fees; patent and trademark search systems".

(B) The items in the table of sections at the beginning of chapter 4 of title 35 United States Code, are amended to read as follows:

"41. Patent fees; patent and trademark search systems.
"42. Patent and Trademark Office funding.".

(C) The chapter heading for chapter 4 of title 35, United States Code, is amended to read as follows:

"CHAPTER 4—PATENT FEES; FUNDING; SEARCH SYSTEMS".

(D) The items relating to chapters 3 and 4 in the table of chapters for part I of title 35, United States Code, are amended to read as follows:

"3. Practice before Patent and Trademark Office 31
"4. Patent Fees; Funding; Search Systems ..... 41".

(e) USE OF FEES.—Subsection 42(c) of title 35, United States Code is amended to read as follows:

"(c) Revenues from fees shall be available to the Commissioner to carry out, to the extent provided in appropriation Acts, the activities of the Patent and Trade Office. Fees available to the Commissioner under section 31 of the Trademark Act of 1946 may be used only for the processing of trademark registrations and for other activities, services, and materials relating to trademarks and to cover a proportionate share of the administrative costs of the Patent and Trademark Office.".

(f) TRADEMARK FEES.—(1) Section 31(a) of the Trademark Act of 1946 (15 U.S.C. 1113(a)) is amended to read as follows:

"(a) The Commissioner shall establish fees for the filing and processing of an application for the registration of a trademark or other mark and for all other services performed by and materials furnished by the Patent and Trademark Office related to trademarks and other marks. Fees established under this subsection may be adjusted by the Commissioner once each year to reflect, in the aggregate, any fluctuations during the preceding 12 months in the Consumer Price Index, as determined by the Secretary of Labor. Changes of less than 1 percent may be ignored. No fee established under this section shall take effect until at least 30 days after notice of the fee has been published in the Federal Register and in the Official Gazette of the Patent and Trademark Office."

(2) Fees established by the Commissioner of Patents and Trademarks under section 31(a) of the Trademark Act of 1946 (15 U.S.C. 1113(a)) during fiscal year 1992—

(A) may, notwithstanding the second sentence of such section 31(a), reflect fluctuations during the preceding 3 years in the Consumer Price Index; and

(B) may take effect on or after 1 day after such fees are published in the Federal Register.

The last sentence of section 31(a) of the Trademark Act of 1946 and section 553 of title 5, United States Code, shall not apply to the establishment of such fees during fiscal year 1992.

(g) INTERNATIONAL APPLICATION FEES.—(1) Section 376 of title 35, United States Code, is amended—

(A) in subsection (a)—

(i) in the second sentence by inserting after "Office" the following: "shall charge a national fee as provided in section 41(a), and"; and

(ii) by striking paragraph (4) and redesignating paragraphs (5) and (6) as paragraphs (4) and (5), respectively; and

(B) in subsection (b) in the last sentence by striking "the preliminary examination fee" and inserting "the national fee, their preliminary examination fee,".

(2) Section 371(c)(1) of title 35, United States Code, is amended by striking "prescribed under section 376(a)(4) of this part" and inserting "provided in section 41(a) of this title".

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

The Commissioner of Patents and Trademarks may not, during fiscal year 1992, 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). 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.

SEC. 7. INDEMNIFICATION OF EMPLOYEES.

The Commissioner of Patents and Trademarks is authorized to indemnify any officer or employee of the Patent and Trademark Office who participated in the Law School Tuition Assistance Program of the Patent and Trademark Office, against tax liability incurred as a result of payments made to law schools under that program in tax years 1988, 1989, and 1990.

SEC. 8. REPEAL OF PRIOR AUTHORIZATION ACTS.

Subsections (b) and (c) of section 104 of Public Law 100–703 are repealed.

SEC. 9. GAO REPORTING REQUIREMENT.

Section 202(b)(3) of title 35, United States Code, is amended by striking "each year" and inserting "every 5 years".

SEC. 10. DEFINITION.

For the purposes of this Act, the "Trademark Act of 1946" refers to the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provision of certain international conventions, and for other purposes", approved July 5, 1946 (15 U.S.C. 1051 and following).

SEC. 11. EFFECTIVE DATE.

This Act takes effect on the date of the enactment of this Act, except that the fees established by the amendment made by section 5(a) shall take effect on or after 1 day after such fees are published in the Federal Register.

EXPLANATION OF AMENDMENT

Inasmuch as H.R. 3531 was ordered reported with a single amendment in the nature of a substitute, the contents of this report constitute an explanation of that amendment.

PURPOSE

The purpose of H.R. 3531—the "Patent and Trademark Office Authorization Act of 1991"—is to authorize appropriations for the Patent and Trademark Office for fiscal year 1992, and to make necessary changes in the Commissioner's authority to raise fees in

order to assure the continued operations of the office in fiscal year 1992.

HEARINGS

The Subcommittee on Intellectual Property and Judicial Administration held two days of hearings on May 8, and May 9, 1991, to consider the authorization proposal and to conduct general oversight of the Patent and Trademark Office.[1]

Ten witnesses appeared before the Subcommittee on Intellectual Property and Judicial Administration to offer testimony on H.R. 1613 and on the programs and operations of PTO generally. These witnesses included Representative Ron Wyden, Chairman of the Small Business Subcommittee on Regulation and Business Opportunities; Harry F. Manbeck, Jr., the Commissioner of the Patent and Trademark Office, accompanied by Brad Huther, the Assistant Commissioner for Finance; the Honorable Pauline Newman, a Judge on the United States Court of Appeals for the Federal Circuit; Jacob Rainbow, and inventor and author; James Love, the director of the Center for Study of Responsive Law's Taxpayer Assets Project; Howard W. Bremer, who testified on behalf of the Association of University Technology Managers and the American Council on Education; Professor Harold C. Wegner, of George Washington University Law School; Thomas F. Smegal, Jr., the Chairman of the American Bar Association Section on Patent, Trademark, and Copyright Law; and Donald Banner, the President of Intellectual Property Owners, Inc.

COMMITTEE VOTE

On November 19, 1991, a reporting quorum being present, the Committee on the Judiciary ordered H.R. 3531 reported to the full House by voice vote, as amended.

SUMMARY AND BACKGROUND

The Patent and Trademark Office (PTO) is an agency within the United States Department of Commerce that administers the laws relating to patents and trademarks. Its principal responsibilities are (1) to examine patent and trademark applications, issue patents and register trademarks; (2) to disseminate patent and trademark information to the public; and (3) to foster a domestic and international environment that protects and respects intellectual property.

The Patent and Trademark Office operates within an authorization. The Committee has regularly reviewed the activities of the agency and reauthorized its activities since 1982.[2] The Patent and Trademark Office was last authorized by Congress in 1988, and the three-year authorization expired September 30, 1991.[3] In March,

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[1] Oversight and Reauthorization of the Patent and Trademark Office of the U.S. Department of Commerce: Hearing before the Subcommittee on Intellectual Property and Judicial Administration of the House Committee on the Judiciary, 102d Cong., 1st Sess. (1991), [hereinafter referred to as House Hearings on Patent and Trademark Office Reauthorization, 102d Cong.].

[2] The first Patent and Trademark Authorization legislation was enacted in the 97th Congress. See Public Law 97-247. Subsequently, Congress enacted authorization legislation every three years—in 1985 and 1988. See Public Law 99-607 and 100-703.

[3] Public Law 100-703.

1991, the Department of Commerce forwarded draft legislation to the Congress to authorize appropriations for the Patent and Trademark Office for fiscal years 1992 and 1993. The Chairman of the Subcommittee on Intellectual Property and Judicial Administration, William J. Hughes, and Ranking Minority Member Carlos Moorhead, introduced this bill, H.R. 1613, by request of the Administration on March 22, 1991. The Subcommittee held two days of hearings on the proposal and Chairman Hughes and Representative Moorhead developed an alternative proposal, authorizing appropriations for the Patent and Trademark Office for fiscal year 1992 alone. This bill, H.R. 3531, was approved by the Subcommittee and subsequently introduced on October 9, 1991.

The authorization process this year was complicated by the fact that the Budget Reconciliation Act of 1990 (Budget Act), Public Law 101-508, converted the Patent and Trademark Office from a partially user fee funded agency to one almost entirely funded by user fees. This was done to generate savings in the Federal budget deficit. To generate the necessary savings in the deficit, the Omnibus Budget Reconciliation Act imposed a 69 percent surcharge on patent application, issuance, and maintenance fees in fiscal year 1991. The Subcommittee considered very carefully the need to increase fees in fiscal year 1992 because of the significant, and unanticipated, user-fee increases in fiscal year 1991.

I. THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990

In accordance with the Budget Resolution for Fiscal Year 1991, the Committee on the Judiciary was instructed to reduce spending for programs within the Committee's jurisdiction. Specifically, the budget agreement instructed the Committee to increase fees charged by the U.S. Patent and Trademark Office to raise a cumulative total of $495 million over the course of Fiscal Years 1991 through 1995.[4] To raise the requisite funds in fiscal year 1991, the Omnibus Budget Reconciliation Act imposed a 69 percent surcharge on patent fees under 35 U.S.C. § 41 (a) and (b). Prior to this 69 percent increase, the trademark functions of PTO were 100 percent financed through user fees, and the patent functions were approximately two-thirds funded by user fees.

The intellectual property community strongly opposed the dramatic and sudden increase in patent user fees. The Judiciary Committee also expressed serious concern about increasing the fees, not only because the fee increase constituted, in essence, a burden on patent filers, but also because there was a danger that the Patent and Trademark Office could take on characteristics of a private entity and thereby avoid Congressional oversight.

Congress considered the Omnibus Budget Reconciliation Act under severe time restraints. The Committee determined that it

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[4] Section 10101(c) sets the total surcharges to be collected in each of fiscal years 1991 through 1995 as the following:

(1) $109,807,000 in fiscal year 1991; (this includes $18.8 million above that required to comply with the Budget Act);
(2) $95,000,000 in fiscal year 1992;
(3) $99,000,000 in fiscal year 1993;
(4) $103,000,000 in fiscal year 1994;
(5) $107,000,000 in fiscal year 1995.

would be necessary to fully address issues regarding the Patent and Trademark Office's need to raise its entire budget through user fees and would reassess the patent fee increases in the context of the reauthorization of the Patent and Trademark Office in the 102d Congress. Accordingly, the Committee included a provision in the Omnibus Budget Reconciliation Act instructing PTO to suggest a fee schedule that would equitably distribute the surcharge among patent fees.

II. ADMINISTRATION'S AUTHORIZATION PROPOSAL

The Department of Commerce proposed legislation to authorize the Patent and Trademark Office for Fiscal Years 1991 and 1992. Chairman Hughes and Representative Moorhead introduced the bill, H.R. 1613, by request on March 22, 1991.[5] The proposal contained numerous provisions that the Committee had previously rejected and continues to find objectionable.[6] In addition, H.R. 1613 contained provisions to expand the authority of the Commissioner and to limit the oversight and funding role of Congress. In particular, the proposal contained the following key features:

First, it would have authorized appropriations and approved a fee structure to fund a budget of $462 million in fiscal year 1992 and $555 million in fiscal year 1993. This would represent an increase of approximately $110 million in fiscal year 1992 over the FY 1991 budget. Second, H.R. 1613, if enacted, would have eliminated the small entity fee structure (under which universities, independent inventors, and small businesses pay 50 percent of what large entities pay), contained in 35 U.S.C. § 41(h)(1), for all fees other than the initial filing fees. Third, the bill would have expanded the authority of the Commissioner of the Patent and Trademark Office to set and increase certain patent and trademark fees. Fourth, it would have granted the Commissioner the authority to use trademark fees for activities other than the processing of trademark operations. Current law prevents the use of trademark fees for any nontrademark activities in PTO.

Finally, the bill would have retained the 69 percent surcharge on 41 (a) and (b) fees and proposed an additional 91 percent increase on fees charged to small entities. However, despite a specific requirement in the Budget Act of 1990,[7] the Department of Commerce failed to provide the Committee with a fee schedule that would equitably distribute the surcharge imposed in fiscal year 1991.

In hearings, the Subcommittee considered whether to revise the existing small entity fee structure; what, if any, independent authority the Commissioner of Patents and Trademarks should have to raise fees; what fee structure would be most equitable and most likely to foster inventive and creative activities in this country; whether public funding for the Patent and Trademark Office should be restored; and whether the funding levels proposed by the

[5] Senator Dennis DeConcini introduced the same measure in the Senate and held one day of hearings on the bill, S. 793, on April 11, 1991.

[6] For example, the Judiciary Committee rejected an attempt to eliminate the small entity fee structure when the Administration put forth this proposal in the context of the Budget Reconciliation Act of 1990.

[7] Public Law 101-508 Section 10101(e).

Administration for PTO in fiscal years 1992 and 1993 were justified.[8]

The Commissioner of the Patent and Trademark Office, Mr. Harry F. Manbeck, Jr., testified in support of the Administration's proposed authorization bill. He defended the suggested program levels; the expanded authority for the Commissioner to set patent fees; the revision in the small entity fee structure; and the further implementation of the automated patent system contemplated in H.R. 1613.[9]

However, other witnesses appearing before the Subcommittee raised serious criticisms regarding H.R. 1613 and with certain aspects of the operation of the Patent and Trademark Office. In particular, witnesses expressed concern about full user-fee funding for the Patent and Trademark Office.[10] They also suggested that the patent fee surcharge imposed in the Budget Act, coupled with new proposed fee increases, and the proposed virtual elimination of the small entity fee structure, would pose a serious threat to America's independent inventors, universities and small businesses;[11] that to date, the patent automation system has not proven to be an effective tool for examiners or for disseminating information to the public;[12] and finally, that the proposed funding level for the Patent and Trademark Office would be used to cover new expenses that cannot be justified in a time of tight budget constraints.[13]

In addition to this testimony in opposition to H.R. 1613, the Subcommittee received hundreds of letters objecting to the proposed fee increases, particularly those increases that would affect the small and independent inventors. Inventors around the country wrote to urge Congress to reinstate taxpayer support for the operations of the Patent and Trademark Office. A number of these letters were made part of the record of the Subcommittee hearing.[14]

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[8] The Subcommittee also considered such other questions as whether the United States should convert to a first to file patent system; whether the current 18 month patent pendency should be sustained; whether the U.S. should work to achieve a uniform international patent system; what steps PTO has taken to reduce the backlog in biotechnology patent applications; and how to reduce the high costs of patent litigation. These issues will be the subject of the Subcommittee's future, and continued deliberations.

[9] See Statement of Assistant Secretary and Commissioner of Patents and Trademarks, Harry F. Manbeck, House Hearings on Patent and Trademark Office Reauthorization, 102nd Cong.

[10] See e.g., Statement of Donald W. Banner, President Intellectual Property Owners, Inc. at 5; Statement of Thomas F. Smegal, Jr, Chair, Section of Patent, Trademark & Copyright Law, American Bar Association, at 2; Statement James P. Love, Director, Taxpayer Assets Project at 2–4; and Statement of Howard W. Bremer on behalf of the Association of University Technology Managers and American Council on Education, at 8–9, House Hearings on Patent and Trademark Office Reauthorization, 102d Cong.

[11] See e.g., Statement of Dr. Jacob Rabinow, Independent Inventor; and Statement of Howard Bremer, House Hearings on Patent and Trademark Office Reauthorization, 102nd Cong.

[12] See Statement of James Love; House Hearings on Patent and Trademark Office Reauthorization, 102d Cong.

[13] For example, the Patent and Trademark Office planned to spend $87.4 million on automation in fiscal year 1992, and planned to increase the number of authorized employees from 4,765 in 1991 to 5,852 in fiscal year 1992. See e.g., Statement of Donald Banner, House Hearings on Patent and Trademark Office Reauthorization, 102nd Cong.

[14] The Committee received letters from numerous independent inventors, inventer organizations and their legal representatives. Those writing in opposition to the elimination of the small entity fee structure included from Nathan Edelson, an inventor in Montana; the law firm of Lilling & Lilling, of White Plains, NY; the American Chemical Society; the law firm of Hoffman, Wasson & Gitler; the Kansas Association of Inventors; the Institute of Electrical and Electronics Engineers, Inc.; Washburn University of Topeka, Kansas; the Chicago Bar Association; Cotton Unlimited Inc. See also Richard McCormack, "Massive Protest Erupts in Patent Community," New Technology Week, Monday, June 3, 1991.

III. THE PATENT AND TRADEMARK OFFICE AUTHORIZATION ACT OF 1991

After careful consideration of hearing testimony and a review of the Patent and Trademark Office operational needs, Chairman Hughes and Representative Moorhead developed H.R. 3531 as an alternative authorization proposal for the Patent and Trademark Office. The Subcommittee worked very closely with the intellectual property community and with the Patent and Trademark Office to craft this proposal. H.R. 3531 will assure that PTO has adequate funding for fiscal year 1992. At the same time, the Committee has sought to keep patent and trademark fees as low as possible. In addition, while it does not appear likely that substantial public funds will be appropriated to PTO in Fiscal Year 1992, the bill authorizes the appropriation of public funds, and the Committee intends to continue to seek restoration of such funds for PTO in the future.

H.R. 3531 contains the following key features:

Authorization of Appropriations

H.R. 3531 authorizes appropriations for the Patent and Trademark Office for a period of one year. While the Administration proposed a two year authorization, the Committee determined that, because of the new funding regime for PTO, as well as questions that have been raised about the PTO budget and its automation systems, it would be advantageous to closely monitor the agency for a period of one year.[15] The present one year authorization will allow the Subcommittee to oversee PTO's progress in automation and in other areas of its operations.

The Committee carefully reviewed PTO's proposed budget and funding level for fiscal year 1992, and agreed to an expected program level of $426 million.[16] The Patent and Trademark Office program level in 1991 was $351,427,000 and the Administration proposed a program level for Fiscal Year 1992 of $461,990,000, representing an increase of $110,563,000.[17] The Committee determined that the Administration's proposed funding level was excessive.

Commissioner Manbeck asserted that the program level of $462 million would be necessary for the Patent and Trademark Office to continue to meet its goals in fiscal year 1992. In particular, in order to maintain the 18 month patent pendency, and the 13 month trademark pendency, to continue the planned implementation of the automation systems, and to further international intellectual property protection goals in fiscal year 1992, the Administration maintained that Congress should approve the proposed budget.[18] According to the Patent and Trademark Office, roughly

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[15] In addition, Chairman Hughes and Senator DeConcini, the Chairman of the Senate Judiciary Subcommittee on Patents, Copyrights and Trademarks, jointly requested that the General Accounting Office study the Patent Automation System. The GAO will issue a Report for Congress in early 1991. Accordingly, the Subcommittee will better be able to assess PTO's future programmatic and budget requests as they relate to the automation systems.

[16] Because PTO's funding comes primarily from patent and trademark fees, the budget level is an estimate based on the number of applications that are anticipated.

[17] The number of patent and trademark applications filed in fiscal year 1991 was less than expected, and less than the level upon which the budget figures were based. As a result, the actual budget for PTO in fiscal year 1991 was approximately $341 million.

[18] See Statement of Commissioner Manbeck, House Hearings on Patent and Trademark Office Reauthorization, 102nd Cong.

26 percent of the increase in the proposed budget level would cover inflation, including, for example, increases in rent charged by the General Services Administration. The remaining increase could cover expanded workload, quality improvements, and the further implementation of the automation programs for patents and trademarkes.[19]

However, every increase PTO's program level will require an increase in the fees. The Committee determined that certain proposed expenditures would not be necessary and thus could not be justified, particularly given the fact that public funding is not now available. For example, PTO received fewer patent and trademark applications than expected in fiscal year 1991. As a result, workload-related cost increases will be less than originally expected, and consequently, costs for new work space, training and staff payroll will not be incurred to the extent reflected in the President's budget submission.[20] In addition, the General Accounting Office reported to the Subcommittee that $4.7 million that was designated in the proposed budget to be used for trademark automation could not be specifically accounted for and was determined to be unnecessary.[21] The Committee arrived at an approved budget level of $426 million by beginning with the $351 million program level for fiscal year 1991, and determining that an additional $30 million will be necessary to cover inflationary increases in fiscal year 1992; $25 million for increases in the expected workload;[22] $10 million for continued implementation and operation of the patent and trademark automation systems—including the dissemination of information to the public; and $10 million to fund improvements in the operation of the Office, including the reduction in the biotechnology patent pendency and the improved quality of the examination process.[23]

H.R. 3531 authorizes appropriations for the Patent and Trademark Office from three sources: (1) the Patent and Trademark Office Surcharge Fund in the United States Treasury (Surcharge

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[19] The Patent and Trademark Office is in the process of implementing the automated patent system. It was developed a fulltext capability, allowing patent examiners and the public to search U.S. patent documents from 1971 to the present using "word" searches. The "Image" data search system is in the early stages of implementation. To date, the cost of implementation of this patent automation system has been $386 million. PTO has spent $38 million on the trademark automation system since 1983. The Commissioner estimates that $953 million additional funds will be necessary to complete implementation of the automation systems, and plans to allocate $77 million for patent automation and $5 million for trademark automation in fiscal year 1992 on this program.

[20] The proposed budget, contained in the President's fiscal year 1992 budget submission, was based on the higher level of anticipated applications.

[21] The General Accounting Office review the Patent and Trademark Office's actions and plans to improve and replace T-Search, an automated system used by the agency's attorneys and the public to determine if an applicant's trademark is confusingly similar to pending or registered trademarks. In particular, the GAO examined whether $4.7 million requested in the proposed budget for fiscal year 1992 to improve T-Search and acquire a replacement system was justified. The GAO issued a Report on September 11, 1991, concluding that PTO itself was not prepared to use these funds and that the T-Search system would not be adversely affected if these funds were not made available to PTO in fiscal year 1992. See "Trademark Automation: Search System Improved but Funding for Replacement Should be Deferred," Report to the Chairman, Subcommittee on Intellectual Property and Judicial Administration, Committee on the Judiciary, House of Representatives, September 1991.

[22] The Patent and Trademark Budget proposal contained $45 million for increases in workload. The $45 million would be used to hire new examiners, obtain new space nad process additional applications.

[23] These figures are not, however, caps on PTO spending in each of these program areas in fiscal year 1992.

Fund), established under section 10101 of the Omnibus Budget Reconciliation Act of 1990; (2) fees collected by the Patent and Trademark Office; and (3) public funds in the U.S. Treasury.

The Omnibus Budget Reconciliation Act directs PTO to derive $95 million from the special surcharge fund in fiscal year 1992. The fee structure and application figures required a 69 percent surcharge on patent application, issuance and maintenance fees in fiscal year 1991 to raise the necessary $91 million required in that fiscal year.[24] However, because the volume of applications continues to rise, and H.R. 3531 increases the underlying fees charged for patent processing in fiscal year 1992, the fee surcharge, as a percentage of patent fees, will decrease to approximately 38 percent. As in fiscal year 1991, and consistent with the Omnibus Budget Reconciliation Act, the Patent and Trademark Office is directed to charge a surcharge in fiscal year 1992 that will raise $95 million and not more than that amount.[25]

Fees collected by the Patent and Trademark Office, with the exception of the surcharge, are available to the Office as collected, consistent with appropriation acts of Congress. By contrast, H.R. 3531 authorizes $26 million from public funds that must be specifically appropriated from the United States Treasury. Unfortunately, few if any public funds are likely to be made available to PTO in Fiscal Year 1992. Severe budgetary shortfalls have required cutbacks at many Federal agencies. Accordingly, while the Committee authorizes the appropriation of these funds, it does not assume that these funds will be available. H.R. 3531 accordingly assures that authorized fees together with the fee surcharge will generate sufficient revenues to assure PTO an adequate operating budget in fiscal year 1992.

Patent and Trademark Fees

H.R. 3531 revises the fees charged for patent and trademark services. Because certain patent fees increased substantially in fiscal year 1991, due to the 69 percent surcharge imposed under the Omnibus Budget Reconciliation Act of 1990, the Committee sought to limit fee increases in fiscal year 1992.

The authorization bill increases all fees charged for patent services pusuant to 35 U.S.C. § 41 (a) and (b).[26] These services include application fees, issuance fees, maintenance fees, appeals, and fees for international applications filed pursuant to the Patent Corporation Treaty. Overall fees are increased by close to 15% above current levels. For example, the patent application fee is currently $340 ($630 with the 69 percent surcharge), and it will increase to

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[24] In addition to the $91 million, the 69 percent surcharge raised an additional $18.8 million in fiscal year 1991 that was made directly available to the Patent and Trademark Office.

[25] For this reason, H.R. 3531 amends the Omnibus Budget Reconciliation Act to delete any reference to 69 percent. The Commerce, State, Justice Appropriations Act for Fiscal Year 1992 does not appropriate the full $95 million from the surcharge fund to the Patent and Trademark Office. However, in order to comply with the Omnibus Budget Reconciliation Act, PTO must, nonetheless, charge the surcharge and raise the full amount designated.

[26] H.R. 1613 would have granted the Commissioner of the Patent and Trademark Office the authority to adjust fees other than those fees established under 35 U.S.C. §§ 41 (a) and (b), so that fees charged would, in the aggregate, generate sufficient revenues to cover the operating costs of the Office. The Committee does not support an approach that would grant the Commissioner this degree of authority and instead opted to raise the statutory fees by such amount as is necessary to assure the continued efficient operation of the Patent and Trademark Office.

$500 ($690 when the 38 percent surcharge is added). The Commissioner of the Patent and Trademark Office is further authorized to increase fees charged pursuant to 35 U.S.C. § 41(d) once every fiscal year, following the enactment of H.R. 3531.[27]

Small Entity Fee Structure

H.R. 3531 retains intact the small entity fee structure as it is set forth in 35 U.S.C. § 41(h)(1).[28] The Committee rejected the Administration's proposal to limit the small entity fee structure to the initial patent application filing fee under 35 U.S.C. § 41(a).

In testimony before the Subcommittee on Intellectual Property and Judicial Administration, the Commissioner of the Patent and Trademark Office defended the proposed revisions of the small entity fee structure as necessary to "strike a more appropriate balance between the fees paid by large entities and the fees paid by small entities." He indicated that the small entities benefited from a subsidy of approximately $50 million in fiscal year 1991, and this subsidy will increase in future years. He further expressed the Administration's belief that this subsidy should not be supported by other users of the patent system. The continuation of the small entity fee structure, in the opinion of the Administration, would not be fair to the large entities.[29]

However, the Committee finds that there are compelling reasons to protect the small entity fee structure.[30] First, the small entity fee structure is important to encourage innovation in the United States. Small entities file approximately 34 percent of all patent applications in the United States. Independent inventors account for 72 percent of these small entities, and if fees increased dramatically, they would be disinclined to protect their inventions because of a lack of resources. Yet, the independent inventor has fueled America's technological innovation—benefiting all the American people, including the larger industries that rely on their innovation.[31]

Second, even absent public funding, the small entity "subsidy" does not impose a significant burden on American industry. In fact, whereas foreign applicants accounted for 54 percent of the large

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[27] The Commissioner is authorized to raise fees charged pursuant to 35 U.S.C. § 41(d) immediately upon enactment of this Act even though enactment will occur after October 1, 1991. In addition, because of the late date of enactment, the Committee has eliminated notice requirements, pursuant to the Administrative Procedure Act, which ordinarily must be satisfied before non-statutory fee increases can take effect.

[28] § Small entities are defined as independent inventors, nonprofit organizations, and small business (those with fewer than 500 employees). Large entities include businesses with at least 500 employees and government agencies. The small entity fee structure was enacted into law in the 99th Congress. See Pub. L. No. 99-607, Section 1(b).

[29] See Statement of Commissioner Manbeck, House Hearings on Patent and Trademark Office Reauthorization, 102d. Cong.

[30] Chairman Hughes requested that the General Accounting Office examine the Patent and Trademark Office proposal to restrict the 50 percent reduction in the patent fees paid by small-entity users. The GAO prepared a Briefing Report to the Chairman, Subcommittee on Intellectual Property and Judicial Administration, "Patent and Trademark Office: Impact of Higher Patent Fees on Small-Entity and Federal Agency Users," October 1991.

[31] In testimony before the House Judiciary Subcommittee on Intellectual Property and Judicial Administration, Dr. Jacob Rabinow, an inventor and owner of 226 patents, cited numerous inventions for which independent inventors were responsible. These include the invention of atomic energy, penicillin, microwave technology, the FM radio, magnetic recording, holography, fiber optics, and insulin. See Statement of Dr. Rabinow, House Hearings on Patent and Trademark Office Reauthorization, 102d Cong.

entity filers, only 24 percent of the small entity applicants were foreign filers.

Third, the 69 percent surcharge on all patent fees in FY 1991 has contributed to a reduction in the projected filings. Prior to the Omnibus Budget Reconciliation Act, small entities paid $1,975 to seek and maintain patent protection for the 17 year life of the patent. The 69 percent surcharge brought this total to $3,340. The Administration's proposal would increase these application, issuance and maintenance fees by an additional 91 percent to a total of $6,365. The Committee does not believe that this fee increase for small entity filers would improve the patent system or benefit the American people. The fees set forth in H.R. 3531 will require a small entity to pay $3,650 to seek and maintain patent protection for the duration of the patent.

Trademark Fees and Trademark Fence

H.R. 3531 authorizes the Commissioner of the Patent and Trademark Office to increase trademark fees to reflect increases in the consumer price index over the last three years. The legislation further authorizes the Commissioner to use trademark fees to pay a proportion of overall administrative costs for the agency. Trademark activities constitute approximately 10 to 12 percent of the Patent and Trademark Office operations. In the past, because PTO received public funds, there was no reason to use trademark fees to support administrative functions of PTO. Accordingly, Congress created a legal "fence" to assure that trademark fees, used to support 100 percent of trademark operations of PTO, would not be used to subsidize patent activities.[32] H.R. 3531 modifies the "fence" between trademark fees and other agency funds, but does not eliminate it entirely, as the Administration had proposed.

Patent and Trademark Automation System

Judge Newman, of the United States Court of Appeals for the Federal Circuit, testified in hearings before the Subcommittee on Intellectual Property and Judicial Administration, that "The Patent and Trademark Office serves a vital function in disseminating [information contained in patents]. This is the core of an effective patent system." [33]

The patent and trademark automation systems have been considered instrumental tools for dissemination of information to the public. However, in the years since the systems have been deployed, public access has been relatively limited. Accordingly, H.R. 3531 includes several provisions to assure that the systems are designed and implemented in such a way as to assure that the American public can tap these enormous technological and scientific resources.

The Patent and Trademark Office automation system has had a precarious history. In testimony before the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice in the 100th Congress, the Assistant Secretary and Commis-

[32] Public Law 97-247.

[33] House Hearings on Patent and Trademark Office Reauthorization, 102d. Cong. (Statement of Judge Newman).

sioner of Patent and Trademarks, Donald J. Quigg, summarized the history of the automation system.

> In response to a requirement in Public Law 96-517, the Office prepared a study on automating all of its operations to increase efficiency and quality. In 1982, the Office committed itself to implementing the automation plan that resulted from the study. This implementation of our automation plan is probably the most publicized and criticized program of the U.S. Patent and Trademark Office.[34]

While substantial improvements in the automation system have been make in recent years, and PTO has begun to enter the modern era of automation, a number of serious concerns remain. These concerns include whether the Patent automation system is designed as a useful tool for examiners, and whether PTO is properly exploring the potential to implement new technologies, such as the CD-ROM technology, as a tool for retrieval of information by examiners and by the public. Questions have also been raised as to why the Japanese Patent Automation System has advanced faster than the U.S. system in the use of image data search capabilities.

The Committee is concerned that the Patent and Trademark Office may not have an adequate blueprint for the future implementation of the automation system, and will review the findings of a report by the General Accounting Office that will be forwarded to the Committee in early 1992.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

This section provides that this may be cited as the "Patent and Trademark Office Authorization Act of 1991."

SECTION 2. AUTHORIZATION OF APPROPRIATIONS

Section 2(a) authorizes appropriation for the U.S. Patent and Trademark Office for fiscal year 1992. Funds from three sources are authorized to be appropriated. First, $95,000,000 is authorized to be appropriated from the Patent and Trademark Office Fee Surcharge Fund that was established under section 10101 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, as amended by subsection 2(b) of this Act. Second, all fees collected by the Patent and Trademark Office, but not mandated for deposit in the Surcharge Fund, are authorized to be appropriated. These funds, however are considered to the offsetting collections, and as such, directly available to the Patent and Trademark Office. Third, $24,000,000 is authorized to be appropriated out of general revenues from the U.S. Treasury.

Subsection 2(b) amends section 10101 of the Omnibus Budget Reconciliation Act. As enacted, the Budget Act mandates a 69 percent surcharge in fiscal years 1991 through 1995 on all fees authorized by subsections 41 (a) and (b) of title 35 of the United States

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[34] Patent and Trademark Office Authorization: Hearing before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the House Committee on the Judiciary, 100th Cong., 2d Sess. (1988), at 26.

Code. (Fees authorized by these subsections include the major fees associated with the patent process, e.g., the fees for filing, issuing, and maintaining a patent.) The income from this surcharge must be credited to the Surcharge Fund, which is a separate Patent and Trademark Office account established in the United States Treasury. Amounts credited to this Surcharge Fund in fiscal years 1992 through 1995 are available to Patent Trademark Office only to the extent provided in appropriations acts.

The purpose of section 10101 of the Budget Act is to increase fees collected by the Office and to use these additional revenues to reduce appropriations from taxpayer revenues by at least the deficit reduction targets specified by the Committee on the Budget for each of the five years covered by the Act. While the surcharge was orginally set at 69 percent to recover funds sufficient to operate the Office in fiscal years 1991, a provision to adjust the surcharge to meet only the specified deficit reduction targets was included in section 10101 of the Budget Act. Accordingly the Committee has amended the Budget Act to strike any reference to 69 percent, as the surcharge necessary to meet the instructions of the Budget Act will vary. In fact, it is estimated that a surcharge of 38 percent will be applied to fees in fiscal year 1992 in order to raise $95 million for the Surcharge Fund in this fiscal year. Thus, the Committee ensures that the deficit reduction targets are met.

SECTION 3. APPROPRIATIONS AUTHORIZED TO BE CARRIED OVER

This section continues existing provisions that permit fees collected pursuant to title 35, United States Code, and the Trademark Act of 1946, and any amounts appropriated under the authority of section 2 of this Act, to be carried over beyond the end of fiscal year 1992 and to remain available until expended.

SECTION 4. OVERSIGHT OF THE PATENT AND TRADEMARK FEES

Section 4 requires the Secretary of Commerce to submit to the Congress a report relating to the U.S. Patent and Trademark Office finances when the President submits the annual budget. This report must include information on fee collections, disposition, and carryover. Also budget plans for significant programs must be submitted. This requirement was also contained in prior authorization acts, Public Law 99-607 and Public Law 100-703. Instead of repeating this in successive authorization acts, the Committee has codified this reporting requirement as a new subsection 42(e) of title 35 of the United States Code.

SECTION 5. PATENT AND TRADEMARK FEES

This section amends title 35 and the Trademark Act of 1946 to increase fees that are charged by the Office and to change the conditions under which the fees may be established, adjusted, and used.

Subsection 5(a) amends the current provisions that establish patent fees. More specifically, subsection 5(a)(1) amends the current subsection 41(a) of title 35 of the United States Code to set new fees related to patent filing, issuance, and appeals, among others. This new subsection sets new fees but follows the existing subsection

except that certain national fees in international applications filed under the Patent Cooperation Treaty, formerly set by the Commissioner, are now enumerated in the new subsection 41(a).

Subsection 5(a)(2) amends the current subsection 41(b) that sets the fees for maintaining patents in force. This amendment increases the fees charged and makes all patents issued on applications filed on or after December 12, 1980, subject to the same level of maintenance fees.

Subsection 5(a)(3) amends subsection 41(d) of title 35 to change the conditions for establishing fees for other processing, services, or materials that are not specified elsewhere in the law. At present, subsection 41(d) requires the Commissioner to set fees to recover the estimated average cost of the Office of such processing, service, or materials. The unit cost for a service provided by the Office can be rounded upwards or downwards, consistent with the Office's accounting practices.

Subsection 5(b) amends subsection 41(f) of title 35, which authorizes the Commissioner to adjust certain patent-related fees every three years to reflect fluctuations in the Consumer Price Index (CIP). In light of the amendments to subsections 41 (a) and (b) made by this Act, no CPI adjustment should be made to the fees established under these subsections during fiscal year 1992, which is currently permitted. Rather, such adjustments should begin at a later time. In addition, the Committee has revised section 41(f) of title 35, United States Code, to allow the Commissioner to adjust the fees on an annual basis, instead of once every three years, as is currently the case. Therefore, the Committee has reset the time for the Commissioner to adjust the fees to October 1, 1992.

Subsection 5(c) amends subsection 41(g) of title 35 by reducing the minimum notice period for changing fees established by section 41 of title 35 from 60 days to 30 days. Notice, however, will now have to be published in both the Federal Register and the Official Gazette of the U.S. Patent and Trademark Office.

Subsection 5(d) codifies, with several differences, subsections 104 (b) and (c) of the last authorization act, Public Law 100-703, as subsections 41(i) (1) and (3), of title 35, respectively. Subsection 104(b) expressly prohibits the Commissioner from imposing fees for the use of certain paper or microform collections of materials or for the use of the public search room or libraries. Also there was an express requirement to fund these activities from appropriations and presumably taxpayers revenues, rather than funds appropriated from an account containing fees. This requirement was effectively overruled by the Budget Act and Public Law 101-515, making appropriations to the Department of Commerce and other agencies. Keeping the thrust of the previous authorization act intact, the new subsection 41(i)(1) precludes the Commissioner from imposing fees directly for the use of these collections and search rooms (such as an entrance fee) but allows the cost of these activities to be subsidized from income received from other fees.

Subsection 104(c) of Public Law 100-703 is codified in new subsection 41(i)(3) of title 35, permitting the Commissioner to set fees for public access to the automated search systems made available by the Patent and Trademark Office including in its search rooms and libraries and the Patent and Trademark Depository Libraries. Sub-

section 104(c), however, was subject to subsection 105(a) of Public Law 100-703, which limited the extent to which fee income could be used for automated data processing resources. This limitation expired on September 30, 1991, and is no longer applicable as fee revenues will be used to fund essentially all aspects of the operations of the U.S. Patent and Trademark Office in fiscal year 1992. Thus, while the Committee supports the restoration of public funding for the Patent and Trademark Office, this limitation has been eliminated in recognition of the fact that few public funds are currently available.

Subsection 5(d)(2) add a new subsection 41(i)(2) to title 35, directing the Commissioner of PTO to fully deploy the automated search systems so that such systems are available for use by the public. The Commissioner shall further assure full access by, and disseminate to the public, patent and trademark information. The Commissioner is directed to employ a variety of automated methods, including electronic bulletin boards and remote access by users to mass storage and retrieval systems.

A new subsection 41(i)(4) is added to title 35, requiring the Commissioner to submit a report annually to Congress on the Patent and Trademark Office Automated Search Systems and the access by the public to such systems.

Subsection 5(e) amends subsection 42(c) of title 35 by amending the last sentence that precludes the use trademark fees for any activity except the processing of trademark registrations and for other services and materials relating to trademarks. When this provision was enacted, other operations of the Office were to be funded out of a mixture of taxpayer support and fee revenues. Particularly, Congress recommended that certain other activities including, but not limited to particular administrative, legislative, international and outreach programs were to be funded from taxpayer revenues. Presently, all operations must be funded essentially out of fee revenues. Thus, there is no reason to preclude the use of trademark fees from supporting a portion of these other valuable Patent and Trademark Office activities. As a result, this subsection amends subsection 42(c) of title 35 and thereby confirms the authority of the Office to use trademark fees to cover a proportionate share of the costs of these types of activities.

Subsection 5(f) amends section 31(a) of the Trademark Act of 1946 (15 U.S.C. § 1113(a)) to authorize the Commissioner to establish fees for services related to trademarks and other marks.

The Commissioner is authorized to make annual adjustments to these fees. Adjustments, in the aggregate, should not exceed fluctuations in the CPI during the previous year.

Subsection 5(g) makes conforming amendments to section 376 of title 35. Section 376 authorizes the establishment of fees related to applications filed under the provisions of the Patent Cooperation Treaty (PCT). Under current law, section 376 permits the Commissioner to set certain fees related to these applications. Amendments made in subsection 5(a)(1) of this Act, however, set some PCT-related fees in the new subsection 41(a). Therefore, section 376 is amended to reflect this change.

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

This section prohibits the Commissioner from entering into any exchange agreement for the exchange of items or services relating to automatic data processing resources, except those agreements made in full compliance with all Federal procurement regulations. This prohibition does not apply to agreements with foreign governments or with international intergovernmental organizations. This prohibition was contained in the last two authorization acts. However, the additional provision relating to the termination of such agreements at the time of enactment is not included in the present provision because the Office does not have any such agreements at this time.

SECTION 7. INDEMNIFICATION OF EMPLOYEES

During consideration of this Act, the Committee heard concerns from the public and private sectors about the Office's inability to retain highly qualified examiners, especially those in rapidly advancing areas of technology such as biotechnology. The Committee believes that retention of such individuals will improve the quality of issued patents, and will reduce costs of operation over the longer term. One method used by the Office to increase skill and productivity and to retain these employees is to subsidize law school tuition payments. Amendments to the tax code, however, have been interpreted by the Internal Revenue Service to require the money paid to the law schools as part of the Office's program to be considered as taxable gross income of these employees. As a result, the value of this program to the Office has been severely diminished and highly productive examiners are even more attracted to higher paying private sector jobs that can help pay for the accumulated, and unanticipated, tax liability.

To remedy this situation, the Committee authorizes the Commissioner to indemnify these employees for tax liability incurred as part of this program for tax years 1988 through 1990. In tax year 1991, it is the Committee's understanding that these payments are again excludable or deductible.

SECTION 8. REPEAL OF PRIOR AUTHORIZATION ACTS

This section repeals subsections (b) and (c) of title I of Public Law 100-703. These subsections are codified by subsection 5(d) of this Act.

SECTION 9. GAO REPORTING REQUIREMENT

Currently, subsection 202(b)(3) of title 35 contains a requirement that the Comptroller General report at least annually to the Committees on the Judiciary on the manner in which agencies implement sections 201 through 212 of title 35 regarding patent rights in inventions made with Federal assistance. This section would amend this subsection to require the Comptroller General file this report at least once every five years.

SECTION 10. DEFINITION

This section defines the "Trademark Act of 1946" for the purposes of this Act.

SECTION 11. EFFECTIVE DATE

In general, the provisions of this Act and the amendments made by this Act shall be effective on the date of enactment of this Act. However, fees established by the amendment made by this section 5(a) (1) and (2) shall take effect on or after 1 day after such fees are published in the Federal Register. Fees established by the Commissioner under subsection 41(d) and section 376 to title 35, and section 31 of the Trademark Act of 1946, shall also take effect on or after the date of their publication in the Federal Register. It is the Committee's intent to waive all other requirements of law pertaining to publication, notice, and comment including the provisions of subsection 41(g) of title 35, and subsection 31(a) of the Trademark Act of 1946, as well as the Administrative Procedure Act, with respect to the implementation of fees and fee increases authorized by this Act.

For trademark applications and assignments filed within thirty days after the new trademark fees are published in the Federal Register, the increase in the fee may be paid within a period set the Commissioner.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of the report.

STATEMENT OF THE COMMITTEE ON GOVERNMENT OPERATIONS

No findings or recommendations of the Committee on Government Operations were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because the proposed legislation does not provide new budget authority on increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill H.R. 3531, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 25, 1991.

Hon. JACK BROOKS,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 3531, the Patent and Trademark Office Authorization Act of 1991, as ordered reported by the House Committee on the Judiciary on November 19, 1991.

Enactment of H.R. 3531 would affect direct spending and thus would be subject to pay-as-you-go procedures under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985. As a result, the estimate required under clause 8 of House Rule XXI also is attached.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 3531.

2. Bill title: The Patent and Trademark Office Authorization Act of 1991.

3. Bill status: As ordered reported by the House Committee on the Judiciary on November 19, 1991.

4. Bill purpose: H.R. 3531 would authorize appropriations for the Patent and Trademark Office (PTO) for fiscal year 1992. The bill would amend the patent and trademark fee schedules to raise certain fees and specify other fees. H.R. 3531 would permit the PTO to raise all fees not specified by statute and change a fee surcharge to produce target income amounts as specified in the Omnibus Budget Reconciliation Act of 1990. It would allow the PTO to use trademark fees to cover a proportionate share of administrative costs. H.R. 3531 also would permit the PTO to adjust fees annually.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1992	1993	1994	1995	1996
Direct spending:[1]					
Estimated budget authority	0	0	0	0	0
Estimated outlays	0	0	0	0	0
Authorizations:[2]					
Authorization level	119.0				
Less: Appropriations to date	88.4				
Net additional authorizations	30.6				
Estimated outlays	16.8	13.8			

[1] CBO estimates that enactment of H.R. 3531 would result in increased fee collections of $28 million in 1992, $22 million in 1993, $39 million in 1994, $29 million in 1995, and $25 million in 1996. These amounts would be available for spending, so there would be no net effect on the budget.

[2] In addition to the amount specifically authorized, estimated fee collections of $302 million will also be available for spending under current law.

The costs of this bill fall within budget function 370.

Basis of estimate: CBO assumes that the full amounts authorized will be appropriated. Estimated outlays are based on historical spending patterns.

In addition to the authorizations provided in the bill, H.R. 3531 would increase PTO's fee income by raising certain fees and allowing the PTO to raise others. The additional income would be available to finance PTO's operations, so there would be no net budgetary impact from raising the fees. Assuming PTO workload remains roughly the same as in 1991, additional fees would amount to $28 million in fiscal year 1992, $22 million in 1993, $39 million in 1994, $29 million in 1995, and $25 million in 1996.

6. Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA) sets up pay-as-you-go procedures for legislation affecting direct spending and receipts through 1995. CBO estimates that enactment of H.R. 3531 would affect direct spending and thus would be subject to pay-as-you-go procedures under section 252 of the BBEDCA.

The direct spending effect stems from the increased fee collections that would occur in fiscal years 1992 through 1996. Because spending authority already exists for any additional income generated in 1992 by fees increased by the bill, there would be no net effect on spending in 1992. (The appropriations bill that permits the spending was enacted prior to H.R. 3531.)

Enactment of H.R. 3531 would allow the PTO to raise Patent and Trademark fees annually, rather than in 1993 and 1996, as under current law. This would result in increased fee collections of $22 million in 1993, $39 million in 1994, $29 million in 1995, and $25 million in 1996. There would be no net impact on federal spending from this change because the Patent Trademark Office would have authority to spend additional income generated by the increased fees.

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: On November 25, 1991, CBO prepared a cost estimate for S. 793, the Patent and Trademark Authorization Act of 1991, as ordered reported by the Senate Committee on the Judiciary. The difference in the estimated cost of the two bills reflects differences in the authorized funding levels, and the frequency with which the PTO would be permitted to adjust patent and trademark fees to reflect increased costs.

10. Estimate prepared by: John Webb and James Hearn.

11. Estimate approved by: C.G. Nuckols, for James L. Blum, Assistant Director for Budget Analysis.

CONGRESSIONAL BUDGET OFFICE ESTIMATE [1]

The applicable cost estimate of this act for all purposes of sections 252 and 253 of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be as follows:

[1] An estimate of H.R. 3531 as ordered reported by the House Committee on the Judiciary on November 19, 1991. This estimate was transmitted by the Congressional Budget Office on November 25, 1991.

[By fiscal year, in millions of dollars]

	1992	1993	1994	1995
Change in outlays	0	0	0	0
Change in receipts	(1)	(1)	(1)	(1)

[1] Not applicable.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.R. 3531 will have no significant inflationary impact on prices and costs in the national economy.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 10101 OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1990

SEC. 10101. PATENT AND TRADEMARK OFFICE USER FEES.

(a) SURCHARGES.—There shall be a surcharge, during fiscal years 1991 through 1995, [of 69 percent, rounded by standard arithmetic rules,] on all fees authorized by subsections (a) and (b) of section 41 of title 35, United States Code, *in order to ensure that the amounts specified in subsection (c) are collected.*

(b) USE OF SURCHARGES.—Notwithstanding section 3302 of title 31, United States Code, beginning in fiscal year 1991, all surcharges collected by the Patent and Trademark Office—

(1) in fiscal year 1991—

(A) shall be credited to a separate account established in the Treasury and ascribed to the Patent and Trademark Office activities in the Department of Commerce as offsetting receipts, and

(B) *of these surcharges* $91,000,000 shall be available only to the Patent and Trademark Office, to the extent provided in appropriation Acts, and the additional surcharge receipts, totaling $18,807,000, shall be available only to the Patent and Trademark Office without appropriation, for all authorized activities and operations of the office, including all direct and indirect costs of services provided by the office,

* * * * * * *

(c) [REVISIONS] *ESTABLISHMENT OF SURCHARGES.*—In fiscal years 1991 through 1995, [surcharges established under subsection (a) may be revised periodically by the Commissioner of Patents and Trademarks] *the Commissioner of Patents and Trademarks shall establish surcharges under subsection (a),* subject to the provisions

of section 553 of title 5, United States Code, in order to ensure that the following amounts, but not more than the following amounts, of patent and trademark user fees are collected:

(1) $109,807,000 in fiscal year 1991.
(2) $95,000,000 in fiscal year 1992.
(3) $99,000,000 in fiscal year 1993.
(4) $103,000,000 in fiscal year 1994.
(5) $107,000,000 in fiscal year 1995.

* * * * * * *

TITLE 35, UNITED STATES CODE

PART I—PATENT AND TRADEMARK OFFICE

Chap.		Sec.
1.	Establishment, Officers, Functions	1
2.	Proceedings in the Patent and Trademark Office	21
[3.	Practice Before the Patent and Trademark Office	31
[4.	Patent Fees	41]
3.	*Practice Before Patent and Trademark Office*	*31*
4.	*Patent Fees; Funding; Search Systems*	*41*

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CHAPTER 4—PATENT FEES

Sec.
[41. Patent fees.
[42. Payment of patent fees; return of excess amounts.]
41. Patent fees; patent and trademark search systems.
42. Patent and Trademark Office funding.

[§ 41. Patent fees

[(a) The Commissioner shall charge the following fees:

[1. On filing each application for an original patent, except in design or plant cases, $300; in addition, on filing or on presentation at any other time, $30 for each claim in independent form which is in excess of three, $10 for each claim (whether independent or dependent) which is in excess of twenty, and $100 for each application containing a multiple dependent claim. For the purpose of computing fees, a multiple dependent claim as referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

[2. For issuing each original or reissue patent, except in design or plant cases, $500.

[3. In design and plant cases;

[a. On filing each design application, $125.

[b. On filing each plant application, $200.

[c. On issuing each design patent, $175.

[d. On issuing each plant patent, $250.

[4. On filing each application for the reissue of a patent, $300; in addition, on filing or on presentation at any other time, $30 for each claim in independent form which is in excess of the number of independent claims of the original patent, and $10 for each claim (whether independent or dependent) which is in excess of twenty and also in excess of the number of claims of the original patent. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

[5. On filing each disclaimer, $50.

[6. On filing an appeal from the examiner to the Board of Patent Appeals and Interferences, $115; in addition, on filing a brief in support of the appeal, $115, and on requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences, $100.

[7. On filing each petition for the revival of an unintentionally abandoned application for a patent or for the unintentionally delayed payment of the fee for issuing each patent, $500, unless the petition is filed under sections 133 or 151 of this title, in which case the fee shall be $50.

[8. For petitions for one-month extensions of time and to take actions required by the Commissioner in an application:

[a. On filing a first petition, $50.

[b. On filing a second petition, $100.

[c. On filing a third or subsequent petition, $200.]

§ 41. Patent fees; patent and trademark search systems

(a) The Commissioner shall charge the following fees:

(1)(A) On filing each application for an original patent, except in design or plant cases, $500.

(B) In addition, on filing or on presentation at any other time, $52 for each claim in independent form which is in excess of 3, $14 for each claim (whether independent or dependent) which is in excess of 20, and $160 for each application containing a multiple dependent claim.

(2) For issuing each original or reissue patent, except in design or plant cases, $820.

(3) In design and plant cases—

(A) on filing each design application, $200;

(B) On filing each plant application, $330;

(C) On issuing each design patent, $290; and

(D) On issuing each design patent, $410.

(4)(A) On filing each application for the reissue of a patent, $500.

(B) In addition, on filing or on presentation at any other time, $52 for each claim in independent form which is in excess of the number of independent claims of the original patent, and $14 for each claim (whether independent or dependent) which is in excess of 20 and also in excess of the number of claims of the original patent.

(5) On filing each disclaimer, $78.

(6)(A) On filing an appeal from the examiner to the Board of Patent Appeals and Interferences, $190.

(B) In addition, on filing a brief in support of the appeal, $190, and on requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences, $160.

(7) On filing each petition for the revival of an unintentionally abandoned application for a patent or for the unintentionally delayed payment of the fee for issuing each patent, $820, unless the petition is filed under section 133 or 151 of this title, in which case the fee shall be $78.

(8) For petitions for 1-month extensions of time to take actions required by the Commissioner in an application—

(A) On filing a first petition, $78;

(B) On filing a second petition, $172; and

(C) On filing a third petition or subsequent petition, $340.

(9) Basic national fee for an international application where the Patent and Trademark Office was the International Preliminary Examining Authority and the International Searching Authority, $450.

(10) Basic national fee for an international application where the Patent and Trademark Office was the International Searching Authority but not the International Preliminary Examining Authority, $500.

(11) Basic national fee for an international application where the Patent and Trademark Office was neither the International Searching Authority nor the International Preliminary Examining Authority, $670.

(12) Basic national fee for an international application where the international preliminary examination has been paid to the Patent and Trademark Office, and the international preliminary examination report states that the provisions of Article 33 (2), (3), and (4) of the Patent Cooperation Treaty have been satisfied for all claims in the application entering the national stage, $66.

(13) For filing or later presentation of each independent claim in the national stage of an international application in excess of 3, $52.

(14) For filing or later presentation of each claim (whether independent or dependent) in a national stage of an international application in excess of 20, $14.

(15) For each national stage of an international application containing a multiple dependent claim, $160.

For the purpose of computing fees, a multiple dependent claim as referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

(b) The Commissioner shall charge the following fees for maintaining [a patent in force:] *in force all patents based on applications filed on or after December 12, 1980:*

[1. Three years and six months after grant, $400.

[2. Seven years and six months after grant, $800.

[3. Eleven years and six months after grant, $1,200.]

(1) 3 years and 6 months after grant, $650.

(2) 7 years and 6 months after grant, $1,310.

(3) 11 years and 6 months after grant, $1,980.

Unless payment of the applicable maintenance fee is received in the Patent and Trademark Office on or before the date the fee is due or within a grace period of six months thereafter, the patent will expire as of the end of such grace period. The Commissioner may require the payment of a surcharge as a condition of accepting within such six-month grace period the late payment of an applicable maintenance fee. No fee will be established for maintaining a design or plant patent in force.

* * * * * * *

[(d) The Commissioner will establish fees for all other processing, services, or materials related to patents not specified above to recover the estimated average cost to the Office of such processing, services, or materials. The yearly fee for providing a library specified in section 13 of this title with uncertified printed copies of the specifications and drawings for all patents issued in that year will be $50.]

(d) The Commissioner shall establish fees for all other processing, services, or materials relating to patents not specified in this section to recover the estimated average cost to the Office of such processing, services, or materials, except that the Commissioner shall charge the following fees for the following services:

(1) For recording a document affecting title, $40 per property.

(2) For each photocopy, $.25 per page.

(3) For each black and white copy of a patent, $3.

The yearly fee for providing a library specified in section 13 of this title with uncertified printed copies of the specifications and drawings for all patents in that year shall be $50.

* * * * * * *

(f) The fees established in subsections (a) and (b) of this section may be adjusted by the Commissioner [on October 1, 1985, and every third year thereafter, to reflect any fluctuations occurring during the previous three years] *on October 1, 1992, and every year thereafter, to reflect any fluctuations occurring during the previous 12 months* in the Consumer Price Index, as determined by the Secretary of Labor. Changes of less than 1 per centum may be ignored.

[(g) No fee established by the Commissioner under this section will take effect prior to sixty days following notice in the Federal Register.]

(g) No fee established by the Commissioner under this section shall take effect until at least 30 days after notice of the fee has been published in the Federal Register and in the Official Gazette of the Patent and Trademark Office.

* * * * * * *

(i)(1) The Commission 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 directly for the use of such collections, or for the use of the public patent or trademark search rooms of libraries.

(2) The Commissioner shall provide for the full deployment of the automated search systems of the Patent and Trademark Office so

that such systems are available for use by the public, and shall assure full access by the public to, and dissemination of, patent and trademark information, using a variety of automated methods, including electronic bulletin boards and remote access by users to mass storage and retrieval system.

(3) The Commissioner may establish reasonable fees for access by the public to the automated search systems of the Patent and Trademark Office. If such fees are established, a limited amount of fee access shall be made available to 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 a waiver is in the public interest.

(4) The Commissioner shall submit to the Congress an annual report on the automated search systems of the Patent and Trademark Office and the access by the public to such systems. The Commissioner shall also publish such report in the Federal Register. The Commissioner shall provide an opportunity for the submission of comments by interested persons on each such report.

§ 42. Patent and Trademark Office funding

(a) * * *

* * * * * * *

[(c) Revenues from fees will be available to the Commissioner of Patents to carry out, to the extent provided for in appropriation Acts, the activities of the Patent and Trademark Office. Fees available to the Commissioner under section 31 of the Trademark Act of 1946, as amended (15 U.S.C. 1113), shall be used exclusively for the processing of trademark registrations and for other services and materials related to trademarks.]

(c) Revenues from fees shall be available to the Commissioner to carry out, to the extent provided in appropriation Acts, the activities of the Patent and Trademark Office. Fees available to the Commissioner under section 31 of the Trademark Act of 1946 may be used only for the processing of trademark registrations and for other activities, services, and materials relating to trademarks and to cover a proportionate share of the administrative costs of the Patent and Trademark Office.

* * * * * * *

(e) The Secretary of Commerce shall, on the day each year 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.

* * * * * * *

PART II—PATENTABILITY OF INVENTIONS AND GRANT OF PATENTS

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CHAPTER 18—PATENT RIGHTS IN INVENTIONS MADE WITH FEDERAL ASSISTANCE

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§ 202. Disposition of rights

(a) * * *
(b)(1) * * *

* * * * * * *

(3) At least once [each year] *every 5 years*, the Comptroller General shall transmit a report to the Committees on the Judiciary of the Senate and House of Representatives on the manner in which this chapter is being implemented by the agencies and on such other aspects of Government patent policies and practices and respect to federally funded inventions as the Comptroller General believes appropriate.

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PART IV—PATENT COOPERATION TREATY

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CHAPTER 37—NATIONAL STAGE

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§ 371. National stage: Commencement

(a) * * *

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(c) The applicant shall file in the Patent and Trademark Office—
(1) the national fee [prescribed under section 376(a)(4) of this part] *provided in section 41(a) of this title*;

* * * * * * *

§ 376. Fees

(a) The required payment of the international fee and the handling fee, which amounts are specified in the Regulations, shall be paid in United States currency. The Patent and Trademark Office *shall charge a national fee as provided in section 41(a), and* may also charge the following fees:
(1) A transmittal fee (see section 361(d));
(2) A search fee (see section 361(d));

(3) A supplemental search fee (to be paid when required);

[(4) A national fee (see section 371(c));

[(5)] *(4)* A preliminary examination fee and any additional fees (see section 362(b)).

[(6)] *(5)* Such other fees as established by the Commissioner.

(b) The amounts of fees specified in subsection (a) of this section, except the international fee and the handling fee, shall be prescribed by the Commissioner. He may refund any sum paid by mistake or in excess of the fees so specified, or if required under the treaty and the Regulations. The Commissioner may also refund any part of the search fee, [the preliminary examination fee] *the national fee, the preliminary examination fee,* and any additional fees, where he determines such refund to be warranted.

SECTION 31 OF THE TRADEMARK ACT OF 1946

§ 31. Fees

[(a) The Commissioner will establish fees for the filing and processing of an application for the registration of a trademark or other mark and for all other services performed by and materials furnished by the Patent and Trademark Office related to trademarks and other marks. However, no fee for the filing or processing of an application for the registration of a trademark or other mark or for the renewal or assignment of a trademark or other mark will be adjusted more than once every three years. No fee established under this section will take effect prior to sixty days following notice in the Federal Register.]

(a) The Commissioner shall establish fees for the filing and processing of an application for the registration of a trademark or other mark and for all other services performed by and materials furnished by the Patent and Trademark Office related to trademarks and other marks. Fees established under this subsection may be adjusted by the Commissioner once each year to reflect, in the aggregate, any fluctuations during the preceding 12 months in the Consumer Price Index, as determined by the Secretary of Labor. Changes of less than 1 percent may be ignored. No fee established under this section shall take effect until at least 30 days after notice of the fee has been published in the Federal Register and in the Official Gazette of the Patent and Trademark Office.

* * * * * * *

SECTION 104 OF THE ACT OF NOVEMBER 19, 1988

AN ACT To authorize appropriations for the Patent and Trademark Office in the Department of Commerce, and for other purposes

SEC. 104. PUBLIC ACCESS TO PATENT AND TRADEMARK OFFICE INFORMATION.

(a) * * *

[(b) MAINTENANCE OF COLLECTIONS.—The Commissioner of Patents and Trademarks shall maintain, for use by the public, paper or microform collections of 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 105(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, 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 made 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.]

○