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99TH CONGRESS 1st Session | HOUSE OF REPRESENTATIVES | REPORT 99-104

PATENT AND TRADEMARK AUTHORIZATIONS

MAY 15, 1985.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

REPORT

[To accompany H.R. 2434]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2434) to authorize appropriations for the Patent and Trademark Office in the Department of Commerce, 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. AUTHORIZATION OF APPROPRIATIONS.

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

(1) for salaries and necessary expenses, $101,631,000 for fiscal year 1986, $110,400,000 for fiscal year 1987, and $111,900,000 for fiscal year 1988; and

(2) such additional amounts as may be necessary for each such fiscal year for increases in salary, pay, retirement, and other employee benefits authorized by law.

(b) REDUCTION OF PATENT FEES.—Amounts appropriated under subsection (a)(1) shall be used to reduce by 50 percent each fee paid under section 41(a) or 41(b) of title 35, United States Code, by—

(1) an independent inventor or nonprofit organization as defined in regulations prescribed by the Commissioner of Patents and Trademarks, or

(2) a small business concern as defined under section 3 of the Small Business Act (15 U.S.C. 632).

SEC. 2. APPROPRIATIONS AUTHORIZED TO BE CARRIED OVER.

Amounts appropriated under this Act and such fees as may be collected under title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 and following) may remain available until expended.

SEC. 3. INCREASES OF TRADEMARK AND CERTAIN PATENT FEES PROHIBITED.

(a) TRADEMARK FEES.—The Commissioner of Patents and Trademarks may not, during fiscal years 1986, 1987, and 1988, increase fees established under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113) except for purposes of making adjust-

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ments which in the aggregate do not exceed fluctuations during the previous 3 years in the Consumer Price Index, as determined by the Secretary of Labor. The Commissioner also may not establish additional fees under such section during such fiscal years.

(b) PATENT FEES.—The Commissioner of Patents and Trademarks may not, during fiscal years 1986, 1987, and 1988, increase fees established under section 41(d) of title 35, United States Code, except for purposes of making adjustments as described in section 41(f) of such title. The Commissioner also may not establish additional fees under such section during such fiscal years.

SEC. 4. FEES FOR USE OF SEARCH ROOMS AND LIBRARIES PROHIBITED.

The Commissioner of Patents and Trademarks may not impose a fee for use of public patent or trademark search rooms and libraries. The costs of such rooms and libraries shall come from amounts appropriated by Congress.

SEC. 5. USE OF PATENT AND TRADEMARK FEES PROHIBITED FOR PROCUREMENT OF AUTOMATIC DATA PROCESSING RESOURCES.

Fees collected under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113) and section 41 of title 35, United States Code, may not be used during fiscal years 1986, 1987, and 1988 to procure by purchase, lease, transfer, or otherwise automatic data processing resources (including hardware, software and related services, and machine readable data) for the Patent and Trademark Office.

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

The Commissioner of Patents and Trademarks may not exchange items or services (as authorized under section 6(a) of title 35, United States Code) relating to automatic data processing resources (including hardware, software and related services, and machine readable data) during fiscal years 1986, 1987, and 1988. This section shall not apply to any agreement relating to data for automation programs entered into with a foreign government or with a bilateral or international intergovernmental organization.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 2434 is to authorize appropriations for the Patent and Trademark Office in the Department of Commerce for fiscal years 1986 through 1988.

BACKGROUND

Reliable patent and trademark protection for inventors and businesses can provide important incentives for technological progress and investment. When President Reagan signed Public Law 98-622, he said "the stimulation of American inventive genius requires a patent system that offers our inventors prompt and effective protection for their inventions." The recent report of the President's Commission on Industrial Competitiveness noted, "Since technological innovation requires large investments of both time and money, the protection of our intellectual property is another task we should place on our competitive agenda."

The 1979 report by the Advisory Committee on Industrial Innovation of the Carter Administration's domestic policy review stated:

> In general, the patent system has served the country well. Major overhaul of the patent system is not recommended. Nevertheless, some modification to the system could have a beneficial effect on innovation. . . . When proper consideration is given to these problems as they relate to those independent inventors and small businesses whose success—and indeed very existence—depends upon

the innovation process, it becomes clear that some changes must occur.

The Committee on the Judiciary for several Congresses has been engaged in an effort to improve the effectiveness of the U.S. patent and trademark systems. Laws on this topic which have been enacted include: Public Law 96-517, which established a new system for reexamining patents in the Patent and Trademark Office and authorized the Office to establish user fees administratively; Public Law 97-164, which established the Court of Appeals for the Federal Circuit and gave that court exclusive appellate jurisdiction in patent cases; Public Law 97-247, which authorized appropriations for the Patent and Trademark Office for fiscal year 1983 through 1985 and increased user fee income substantially; and Public Law 98-622, which made several changes to clarify and improve patent law and procedure.

An effective Patent and Trademark Office is the cornerstone for reliable patent and trademark protection. Changes in the manner of operating the Office can have as great an impact on the nation's economy as changes in the substantive rules of patent and trademark law. Public Laws 96-517 and 97-247 have resulted in major changes in the Office. User fee income has risen from $28.8 million in 1982 to an estimated $98.6 million 1985. Pursuant to Section 9 of Public Law 96-517, the Commissioner submitted an "Automation Master Plan" in 1982, and began major programs to automate both the patent and the trademark operations. The Office estimated in 1982 that its automation programs will cost at least $719.9 million through 2002.

The Committee is concerned about three separate issues raised by the Patent and Trademark Office authorization: first, the adequacy of the funding for the Patent and Trademark Office; second, the policies being followed by the Office with respect to user fees; and third, the development of an automation plan for the Office.

1. Level of appropriations

H.R. 1628, as introduced, authorized $84,739,000 to be appropriated for the expenses of the Patent and Trademark Office for fiscal year 1986. For fiscal years 1987 and 1988, the bill proposed open-ended authorizations. The $84,739,000 amount was a decrease of $16.9 million from the Office's 1985 appropriations of $101,631,000. The Office's 1986 budget submission explained that the Administration proposes to make up for the reduction in appropriations in 1986 by spending about $16,000,000 in "excess" user fees which have accumulated over the 1983 through 1985 period.

The 1986 budget submission and information provided to the Committee by the Office about cutbacks being made in the Office's 1985 programs have led the Committee to conclude that appropriations should not be reduced from the 1985 level.

The increase in user fees imposed by Public Laws 96-517 and 97-247 was substantial. The Committee envisioned that the revenue raised by the higher fees would be used to make major improvements in the operations of the Patent and Trademark Offices. When the Commissioner of Patents and Trademarks testified before the Subcommittee on Courts, Civil Liberties and the Admin-

istration of Justice in March 1982, he clearly stated that ". . . fees received by the Patent and Trademark Office would be available to use directly in improving service to inventors and industry." [1] The Administration's 1986 proposed budget, however, goes in the direction of using fee income to reduce the level of public support for the Office, not to improve the functioning of the Office.

The Committee was provided with information indicating that the Office is planning to reduce various programs by about $5.7 million dollars during 1985 in order to cover the cost of the pay raise received by government employees and other unbudgeted cost increases. The cuts being made by the Office in its 1985 programs include significantly reducing for the rest of 1985 the use of commercially available data bases by patent examiners for searching purposes; eliminating training for examiners; reducing programs for reclassifying the patent file by subject matter and checking file integrity; leaving unfilled the vacant positions at the Board of Patent Appeals; and terminating summer employment programs for students.

Testimony was presented that the Office is not doing enough to improve the quality of patent examining, and indeed may be reducing the level of quality of examining.[2] A survey of patent owners showed that 68 percent of the owners surveyed reported only "moderate" confidence in the validity of patents issued to them by the Patent and Trademark Office. The respondents felt highest priority should be given to improving the quality of patent examining.[3] Former Commissioner Gerald J. Mossinghoff, in a recently published interview, emphasized the need for improvement of the patent search files. He said, "One of the real scandals of the Patent and Trademark Office . . . is that 7 percent of our references that the examiners must look through are either missing or misfiled." [4]

The Committee believes that the paper patent search file cannot be allowed to deteriorate. The paper search file cannot be scrapped instantly when an automated system is completed. Even if the search file is automated by 1990, as planned, improvements are needed to be made in the paper search files in the meantime. If the subject matter classification system for the search file is not continually updated to keep pace with changing technology, the search file will become less effective for finding relevant documents. The patent subject matter clasification system will still be needed when the automated system becomes available.

The Office plans to cut back on legal and scientific periodicals and pamphlets used by patent examiners, even though the budget submission says "periodicals and pamphlets are essential in the patent and trademark examination process." The Office has reduced periodicals and pamphlets by over one-third for 1985 and proposes a similar level of expenditures for 1986.

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[1] See Hearings on Patent and Trademark Office Authorization before the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice, 97th Congress, 2d Sess. (1982) at 12,20.

[2] See Hearings on Patent and Trademark Office Authorization (1985) Before the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice, 99th Cong. 1st Sess. (1985) (statement of Donald W. Banner).

[3] Id.

[4] See 29 BNA's Patent, Trademark and Copyright Journal 490 (March 14, 1985).

The 1986 budget submission also is inadequate to insure timeliness of the services provided by the Office. The estimate in the budget that 107,000 patent applications will be filed in 1986 appears low, considering that over 109,500 were filed in 1984 and the recent trend in filing seems to be upward. The Office reports that the average time required to decide patent appeals is 24 months and will be up to 28 months in 1986. Backlogs of undecided trademark appeals also are at unacceptable levels and rising.

In addition, the Office's proposed 1986 budget makes cuts in administrative services. Administrative services include maintaining official records for inspection by the public, performing the initial clerical screening of the patent and trademark applications, and operating the internal mail and messenger systems. These administrative services have been the subject of public complaints in the past, and no justification is given for reducing the funding for them now.

The Committee accordingly concluded that the level of public support for the Patent and Trademark Office should not be reduced from the current level of $101,631,000. The Committee's conclusions is rooted in the proposition that patents issued by the Patent and Trademark Office must be reliable and the public must have confidence in the validity of patents if the patent system is to meet its objectives.

The Office has been vigorously pursuing the goal of "18 months by '87" in patent examining for the past three years. The Committee fully supports the efforts of the Office to examine patent applicants promptly. However, resources also must be allocated to improving the quality of issued patents. If appropriated, a portion of the $16.9 million support which the Committee has added to the authorization for 1986 should go toward improving the quality of patent examining. Improving the integrity of the search library is very important. The backlog of patent appeals is unacceptable large and growing larger. Immediate action should be taken to improve this situation.

In addition to holding the authorized level of public support for the Patent and Trademark Office for 1986 at the 1985 level of $101,631,000, the Committee is authorizing appropriations for the Office of $110,400,000 for fiscal year 1987 and $111,900,000 for fiscal year 1988. These amounts represent the appropriation levels which, together with fee income for those years, are needed to achieve program levels planned for the Office.[5] These figures reflect a calculation of the estimated program level provided to the Committee by the Department of Commerce minus estimated user fees for the fiscal year in question.

2. User fee policies

It is appropriate for the Committee to confirm and clarify the limitations on charging of user fees that were envisioned at the time of enactment of Public laws 96-517 and 97-247. In the House Report on Public law 96-517 [6] the Committee endorsed the premise

[5] See "Commerce Budget in Brief" for fiscal year 1986 at 53.

[6] See H.REP. No. 96-1307, Part 1, 96th Cong., 2d Sess. (1980), reprinted in [1980] U.S. CODE CONG. & ADM. NEWS 6460.

that patent applicants and those seeking to register trademarks should bear a significant share of the cost of operating the Patent and Trademark Office by payment of fees. However, the Report envisioned certain limitations on the authority of the Commissioner to charge fees and use those fees for funding Office programs. The Committee recognized that it is not in the public interest to discourage the use of the patent and trademark laws by allowing the fees to rise to too high a level.

The Report identified three categories of Patent and Trademark Office costs: (1) costs which should be paid for entirely from appropriated funds; (2) costs which should be paid partly from appropriated funds and partly by user fees; and (3) costs which should be paid for 100 percent by user fees.

The Report noted that certain costs of operating the Office confer no direct benefit on applicants, but rather go to meet the responsibility of the Federal Government to have a Patent and Trademark Office in order to execute the law. The report gave the following examples of costs which should be paid for by appropriated funds:

> For example, the cost of executive direction and administration of the Office, including the Office of the Commissioner and certain agency offices involved with public information, legislation, international affairs and technology assessment. Maintaining the public search room confers a general public benefit, as does the maintenance of the patent files in depository libraries. The contribution to the World Intellectual Property Organization relative to the Patent Cooperation Treaty is a treaty obligation. These costs should be paid for entirely from appropriated funds.[7]

Public law 96-517 required that the costs of "actual processing" of patent and trademark applications were to be paid 50 percent from appropriated funds and 50 percent from user fees. Subsequently, in Public law 97-247, the committee enacted higher fees for application processing. The purpose of the higher fees was said to be "to double current fees as the means of making up for the difference between a lower level of taxpayer support and an increased total budget." [8] The rate of recovery of patent application processing costs from fees, however, was not to reach 100 percent until the mid 1990's, when patent maintenance fees will be fully in effect.[9]

Questions have arisen about using fee income to support the patent and trademark search rooms and libraries. These are the public search facilities located at the Patent and Trademark Office in Arlington, Virginia.

The public patent and trademark search rooms and libraries are to be wholly supported by appropriated funds. The Committee never has explicitly authorized user fees to be charged for access to or use of these rooms and libraries. The Committee intends that policy—which is in effect at this time—to continue.

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[7] Id at 6467.

[8] See H.REP. No. 97-542, 97th Cong., 2d Sess. (1982) at 2.

[9] In Public laws 96-517 and 97-247, Congress for the first time established a system of patent maintenance fees. These fees, charged for maintaining a patent in force, apply only to patents issued after the effective date of the new laws.

The search libraries are used by many other members of the public besides patent and trademark applicants. Making official government records available for inspection by the public is one of the most basic functions of government. Having patent and trademark records freely available to the public and widely disseminated gives a valuable benefit to the public at large. As regards patents, such access also stimulates scientific inquiry and research by providing access to inventive materials. In the context of trademark, access makes it possible for constructive notice of proprietary rights to occur.

If the Office provides access through terminals in the search rooms to data bases not owned by the Office, the Office is authorized to collect a fee and pass it on to the owner. This section does not prohibit charging the public for copies of records of charging for an entirely new service not now provided.

Automation programs

The Committee is deeply concerned by the findings of the Comptoller General's report on the automation of trademark operations.[10]

The Comptroller General's report states that, in attempting to automate its trademark operations, the Office did not (1) thoroughly analyze user needs; (2) adequately assess the cost effectiveness of its systems; (3) properly manage three exchange agreement contracts; and (4) fully test one of its systems before accepting it from the contractor. The Comptroller General found that although the Office addressed these problems it still needs to do more. To address these concerns the Committee, through the Subcommittee on Courts, Civil Liberties and the Administration of Justice, agreed to two amendments.

The first amendment would preclude the Patent and Trademark Office from expending fees obtained from users of the patent and trademark system to acquire any automatic data processing resources during fiscal years 1986, 1987, and 1988. This amendment proceeds under the theory that unless the Patent and Trademark Office has to justify fully the obtaining of appropriated monies for development of an automation plan, the automation activities will not receive adequate Congressional review. Concern was expressed that the user fee money expended by the Patent and Trademark Office for automation-related activities was not considered by the Patent and Trademark Office to be subject to the Brooks Act.[11] The amendment, by precluding reliance on user fees for procuring automatic data processing resources, will insure that the Brooks Act is honored in the future.

The second amendment adopted by the Subcommittee precludes the Commissioner of Patents and Trademarks from using his exchange agreement authority under section 6(a) of title 35, United States Code, for exchange of items or services relating to automatic data processing resources during fiscal years 1986, 1987, and 1988. The Committee offers this amendment to insure that any agree-

[10] *See* letter from Acting Comptroller General to the Honorable Jack Brooks (dated April 19, 1985) and attachments.

[11] *See* Section 111 of the Federal Property and Administrative Services Act of 1949.

ments entered into by the Patent and Trademark Office involving automatic data processing resources are subject to the Brooks Act. By this amendment the Committee intends that it does not want the exchange agreement vehicle used to avoid in any way the congressional oversight contemplated by government procurement law.

Considered together, the two amendments accepted by the Committee will insure that the appropriation mechanism, rather than either user fees or exchange agreements, will be relied upon for the procuring of any automatic data processing resources by the Patent and Trademark Office during fiscal years 1986, 1987, and 1988.

The Committee continues to strongly support the concept of automating the patent and trademark search files. By adopting modern computer technology, the Office should be able to greatly improve the usefulness and reliability of the search files. The Committee urges the Office to take immediate action to insure that the management errors identified in the Comptroller General's report will not be allowed to occur again.

STATEMENT

The Committee—acting through the Subcommittee on Courts, Civil Liberties and the Administration of Justice—held one day of hearings on legislation (H.R. 1628) to reauthorize the Patent and Trademark Office. On March 21, 1985, the subcommittee received testimony from the Administration (Donald J. Quigg, Acting Assistant Secretary and Commissioner of Patents and Trademarks); Intellectual Property Owners, Inc. (Donald W. Banner, President); and the United States Trademark Association (William A. Finkelstein, Executive Vice-President).

In order to elicit a response to questions not asked and therefore not answered at the hearing, on April 9, 1985, the Chairman of the Subcommittee—Congressman Robert W. Kastenmeier—requested further information from the Patent and Trademark Office concerning a number of subjects. Congressman Mike DeWine had, in the interim, sent a similar letter. PTO submitted timely responses to both inquiries.

On April 19, 1985, the Comptroller General of the United States filed a report with the Honorable Jack Brooks, Chairman of the Committee on Government Operations. The GAO report concluded that PTO had been deficient in developing and implementing an automation plan for trademark records. GAO made several concrete recommendations. If these recommendations are not implemented, GAO further advised that PTO's authority to engage in exchange agreements be circumscribed.

On May 2, 1985, the Subcommittee on Courts, Civil Liberties and the Administration of Justice marked-up H.R. 1628.[12] After enact-

[12] The first amendment (offered by Mr. Moorhead) froze the authorization for fiscal year 1986 to what it was in fiscal year 1985. The amendment further added the Administration's proposed budget levels for fiscal years 1987 and 1988; froze trademark fees except for adjustments to reflect fluctations during the previous three years on the Consumer Price Index; and preclude the PTO from imposing fees for the use of the patent and trademark search rooms. The second amendment (offered by Mr. Brooks) prohibited the use of patent and trademark fees for procurement of automatic data processing resources, and also circumscribes use of exchange agreements that relate to automatic data processing resources.

ment of two amendments, the bill was ordered reported favorably by voice vote as a clean bill.

On May 8, 1985, the clean bill (H.R. 2434) was introduced by eleven members of the subcommittee: Kastenmeier, Moorhead, Brooks, Mazzoli, Synar, Schroeder, Berman, Boucher, Hyde, Kindness and DeWine.

On May 15, 1985, the full Committee considered H.R. 2434 and, a quorum of Members being present, ordered the bill favorably reported by voice vote. No objections were heard.[13]

SECTION-BY-SECTION ANALYSIS

Section 1—Authorization of appropriations

Subsection (a) authorizes appropriations for the Patent and Trademark Office for the payment of salaries and necessary expenses of the office. For fiscal year 1986, this section authorizes appropriations of $101,631,000; for fiscal year 1987, $110,400,000; and for fiscal year 1988, $111,900,000.

Subsection (a) also authorizes to be appropriated to the Patent and Trademark Office such additional amounts as may be necessary for each fiscal year for increases in salary, pay, retirement, and other employee benefits authorized by law.

Subsection (b) provides that funds made available by these appropriations are to be used to reduce by 50 percent the amount of the fees to be paid under title 35, United States Code, section 41(a) or 41(b), by independent inventors and nonprofit organizations as defined in regulations established by the Commissioner of Patents and Trademarks, and by small business concerns so defined under section 3 of the Small Business Act (15 U.S.C. § 632).

Section 2—Appropriations authorized to be carried over

This section provides that fees collected pursuant to title 35, United States Code, and the Trademark Act of 1946, as amended (15 U.S.C. § 1051 *et seq.*), and amounts appropriated under the authority of section 1 of the bill, may be carried over beyond the end of a fiscal year and remain available until expended. This section is not intended, however, to encourage accumulating and carrying over large amounts of excess fees.

The total resources for the Office in fiscal year 1986 (that is, the amount appropriated pursuant to this section plus fees collected pursuant to the patent and trademark laws, which will be available to the Office) are estimated to be $219.2 million; the total resources for fiscal year 1987 are estimated to be $234.9 million; and the total resources for fiscal year 1988 are estimated to be $237.3 million.

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[13] No amendments were offered. By unanimous consent, staff was authorized to make necessary technical and clarifying changes to the bill. Two technical and clarifying changes were made. First, section 4 of the bill was modified to use consistent terminology in achieving its goal: to prevent the Commissioner of Patents and Trademarks from imposing user fees for the use of public patent and trademark search rooms and libraries. Second, section 6 of the bill was clarified to allow the Commissioner to continue to use exchange agreements with bilateral and international intergovernmental organizations, such as the Japanese and European Patent Offices.

Section 3—Increases of trademark and certain patent fees prohibited

Section 3(a) prevents the Commissioner from increasing fees established under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113) except for purposes of making adjustments which in the aggregate do not exceed fluctuations during the previous 3 years in the Consumer Price Index, as determined by the Secretary of Labor. The Commissioner also may not establish additional fees under such section during such fiscal years, except fees for new types of processing, materials or services.

Under current law (section 31 of the Trademark Act of 1946), fees 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 no more than once every three years. Since the last adjustment occured on October 1, 1982, a fee adjustment is authorized to occur on or after October 1, 1985. A fee adjustment is not required every three years. A new three year period begins when the fees are adjusted.

Section 3(b) further prohibits the Commissioner from increasing patent fees established under section 41(d) of title 35, United States Code, except for purposes of making adjustments as described in section 41(f) of such title. The Commissioner also may not establish additional fees under such section during fiscal years 1986 through 1988, except fees for new types of processing, materials or services.

Current law (35 U.S.C. § 41(d)) provides that the Commissioner may establish fees for miscellaneous processing, services, or materials relating to patents not specifically set by Congress (*see* U.S.C. § § 41 (a) and (b)). The Commissioner's patent fees, already set under existing regulations to recover the estimated cost to the office of such processing, services, or materials are therefore "frozen" by section 3(b). The only exception is that the Commissioner may adjust fees on October 1, 1985, and no more often than every third year thereafter, to reflect any fluctuations occurring during the previous three years in the Consumer Price Index, as determined by the Secretary of Labor.

Section 4—Fees for use of search libraries prohibited

Under section 4 of the bill, the Commissioner of Patents and Trademarks may not impose a fee for use of public patent or trademark search rooms or libraries. The costs of such rooms and libraries shall come from amounts appropriated by Congress. This section is in conformity with past pronouncements of this Committee. For example, in the Report on Public Law 96-517, the Committee stated: "Maintaining the public search room confers a general public benefit. . . . [C]osts should be paid for entirely from appropriated funds."[14] This section does permit charging for copies of records.

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[14] *See* H. Rep. No. 96-1307, Part 1, 96th Cong., 2d sess. (1980), *reprinted in* [1980] U.S. Code Cong. & Adm. News 6460, 6467.

Section 5—Use of patent and trademark fees prohibited for procurement of automatic data processing resources

Section 5 provides that fees collected under section 31 of the Trademark Act of 1946 (15 U.S.C. 1113) and section 41 of title 35, United States Code, may not be used during fiscal years 1986 through 1988 to procure by purchase, lease, transfer, or otherwise automatic data processing resources (including hardware, software and related services, and machine readable data) for the Patent and Trademark Office. The net result of this section will be to bring the trademark automation system under Congressional oversight attendant to the appropriations process. The Committee expects the Patent and Trademark Office to prepare a plan for presentation to the Congress; said plan will delineate costs, explain method of financing and confront the issue of public access to government records.

Section 6—Use of exchange agreements relating to automatic data processing resources prohibited

Section 6 limits the authority of the Commissioner of Patents and Trademarks to use exchange agreements. The Commissioner may not exchange items or services (as authorized under section 6(a) of title 35, United States Code) relating to automatic data processing resources (including hardware, software and related services, and machine readable data) during fiscal years 1986 through 1988. This section shall not apply to any agreement with a foreign government or bilateral or international intergovernmental organization relating to data for automation programs.

This section is derived from GAO's conclusion that the Patent and Trademark Office has attempted to avoid procurement laws through the use of exchange agreements to develop an automation system for trademark records. In scope, however, section 6 is broadly written so as to apply to patent records.

OVERSIGHT FINDINGS

The Committee finds that the stimulation of American inventive genius requires a patent system that offers our inventors prompt, consistent and effective protection for their inventions. The Committee further finds that not only the interests of trade and commerce of this country, but also consumer confidence in goods, are furthered by effective administration of this Nation's trademark laws. An effective Patent and Trademark Office is the cornerstone for reliable patent and trademark protection.

The Committee on the Judiciary has oversight responsibility over the Patent and Trademark Office in the Department of Commerce. In addition to its ongoing oversight, the Committee's Subcommittee on Courts, Civil Liberties and the Administration of Justice held an oversight hearing with respect to the Patent and Trademark Office on March 21, 1985. The Committee expects to confirm its oversight activities in the future.

NEW BUDGET AUTHORITY

In regard to clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, H.R. 2434 creates no new budget authority or increased tax expenditures for the Federal Government.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the bill will have no foreseeable inflationary impact on prices or costs in the operation of the national economy.

FEDERAL ADVISORY COMMITTEE ACT OF 1972

The Committee finds that this legislation does not create any new advisory committees within the meaning of the Federal Advisory Committee Act of 1972.

STATEMENT OF THE COMMITTEE ON GOVERNMENT OPERATIONS

In regard to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Operations.

COST ESTIMATE

In regard to clause 7 of rule XIII of the Rules of the House of Representatives, the Committee has not received a cost-estimate from the Congressional Budget Office.

COMMITTEE VOTE

On May 15, 1985, H.R. 2434 was reported favorably by voice vote, no objection being heard and a quorum of Members having been present.

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