102D CONGRESS
1ST SESSION

H. R. 3531

IN THE SENATE OF THE UNITED STATES

NOVEMBER 26 (legislative day, NOVEMBER 23), 1991
Received

AN ACT

To authorize appropriations for the Patent and Trademark Office in the Department of Commerce for fiscal year 1992, and for other purposes.

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

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 for fiscal year 1992—

(1) $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);

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

(3) $24,000,000 for administrative, capital, or other expenditures not provided for under paragraphs (1) and (2).

(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 mate-

rials, 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 in-

formation, 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 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.".

(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. 113(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 Commission of Patents and Trademarks is authorized to indemnify any officer or employee of the Patent and Trademark Office who participate 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. DUTIES OF COMMISSIONER.

Section 6(a) of title 35, United States Code, is amended by striking "and shall have" and inserting ", including programs to recognize, identify, assess and fore-

cast the technology of patented inventions and their utility to industry; and shall have".

SEC. 9. REPEAL OF PRIOR AUTHORIZATION ACTS.

Subsections (b) and (c) of section 104 of Public Law 100–703 are repealed.

SEC. 10. 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. 11. PATENT INFORMATION DISSEMINATION.

(a) DEFINITIONS.—For purposes of this section—

(1) the term "CD–ROMs" means compact discs formatted with read-only memory, including such discs that make use of advanced optical storage technology;

(2) the term "classified patent information" means patent information organized by the subject matter of the claimed invention according to the United States Patent Classification System or the classification system used by the country or authority that issues a patent;

(3) the term "Commissioner" means the Assistant Secretary of Commerce and Commissioner of Patents and Trademarks; and

(4) the term "patent information" means a complete and exact facsimile of a patent or patent application, including the text and all images contained therein (such as drawings, diagrams, formulas, and tables).

(b) INFORMATION DISSEMINATION PROGRAM.—No later than January 1, 1992, the Commissioner shall establish a demonstration program which shall make patent information available in accordance with the provisions of this section, through October 1, 1992. The Commissioner shall produce master CD–ROMs containing classified patent information and provide copies of them to the public for purchase.

(c) INFORMATION TO BE DISSEMINATED.—The patent information that shall be disseminated pursuant to this section shall be patent information in the possession of the Commissioner in computer readable form, including information on selected subclasses of United States patents, as determined by the Commissioner.

(d) FEES.—The Commissioner shall establish fees for the purchase of CD–ROMs, at a rate sufficient to recover the estimated average marginal cost of producing and processing purchase orders for copies of master CD–ROMs.

(e) REPORT.—On the date that is 1 year after the date of the enactment of this Act the Commissioner shall submit to Congress a report on the implementation of this section.

SEC. 12. 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. 13. 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.

Passed the House of Representatives November 25, 1991.

Attest: DONNALD K. ANDERSON,

Clerk.