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98TH CONGRESS
1ST SESSION

H. R. 4462

To amend the patent laws of the United States.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 17, 1983

Mr. KASTENMEIER (for himself and Mr. MOORHEAD) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend the patent laws of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Patent and Trademark Office Procedures Improvement Act of 1983".

SEC. 2. (a) Section 7 of title 35, United States Code, is amended to read as follows:

"**§ 7. Board of Appeals and Interferences**

"(a) The examiners-in-chief shall be persons of competent legal knowledge and scientific ability, who shall be appointed under the competitive service. The Commissioner, the Deputy Commissioner, the Assistant Commissioners, and

the examiners-in-chief shall constitute a Board of Appeals and Interferences.

"(b) The Board of Appeals and Interferences shall, on written appeal of an applicant, review adverse decisions of examiners upon applications for patents and shall determine priority and patentability of invention in interferences declared pursuant to section 135(a) of this title. Each appeal and interference shall be heard by at least three members of the Board of Appeals and Interferences, the members to be designated by the Commissioner. The Board of Appeals and Interferences has sole power to grant rehearings.

"(c) Whenever the Commissioner considers it necessary to maintain the work of the Board of Appeals and Interferences current, he may designate any patent examiner of the primary examiner grade or higher, having the requisite ability, to serve as examiner-in-chief for periods not exceeding six months each. An examiner so designated shall be qualified to act as a member of the Board of Appeals and Interferences. Not more than one such primary examiner shall be a member of the Board of Appeals and Interferences hearing an appeal or determining an interference. The Secretary of Commerce is authorized to fix the per annum rate of basic compensation of each designated examiner-in-chief in the Patent and Trademark Office at not in excess of the maximum scheduled rate provided for grade GS–16 of the

General Schedule. The per annum rate of basic compensation of each designated examiner-in-chief shall be adjusted, at the close of the period for which he was designated to act as examiner-in-chief, to the per annum rate of basic compensation which he would have been receiving at the close of such period if such designation had not been made.".

(b) The table of sections at the beginning of chapter 1 of title 35, United States Code, is amended by inserting "and Interferences" after "Board of Appeals".

SEC. 3. Section 41(a)(6) of title 35, United States Code, is amended by inserting "and Interferences" after each occurrence of "Board of Appeals", and inserting "in the appeal" after "oral hearing".

SEC. 4. (a) Section 134 of title 35, United States Code, is amended by inserting "and Interferences" after each occurrence of "Board of Appeals".

(b) The table of sections at the beginning of chapter 12 of title 35, United States Code, is amended by inserting "and Interferences" after "Board of Appeals".

SEC. 5. (a) Section 135(a) of title 35, United States Code, is amended to read as follows:

"(a) Whenever an application is made for a patent which, in the opinion of the Commissioner, would interfere with any pending application, or with any unexpired patent, an interference may be declared and the Commissioner shall

give notice thereof to the applicants, or applicant and patentee, as the case may be. The Board of Appeals and Interferences shall determine the priority and patentability of invention in interferences. Any final decision, if adverse to the claim of an applicant, shall constitute the final refusal by the Patent and Trademark Office of the claims involved, and the Commissioner may issue a patent to the applicant who is adjudged the prior inventor. A final judgment adverse to a patentee from which no appeal or other review has been or can be taken or had shall constitute cancellation of the claims involved from the patent, and notice thereof shall be endorsed on copies of the patent thereafter distributed by the Patent and Trademark Office.".

(b) Section 135(b) of title 35, United States Code, is amended by striking out "may" and inserting in lieu thereof "shall".

SEC. 6. Section 141 of title 35, United States Code, is amended to read as follows:

"§ 141. Appeal to Court of Appeals for the Federal Circuit

"An applicant dissatisfied with the decision in an appeal to the Board of Appeals and Interferences under section 134 of this title may appeal to the United States Court of Appeals for the Federal Circuit, thereby waiving his right to proceed under section 145 of this title. A party to an interference

dissatisfied with the decision of the Board of Appeals and Interferences may appeal to the United States Court of Appeals for the Federal Circuit, but such appeal shall be dismissed if any adverse party to such interference, within twenty days after the appellant has filed notice of appeal according to section 142 of this title, files notice with the Commissioner that he elects to have all further proceedings conducted as provided in section 146 of this title. Thereupon the appellant shall have thirty days thereafter within which to file a civil action under section 146, in default of which the decision appealed from shall govern the further proceedings in the case.".

SEC. 7. Section 145 of title 35, United States Code, is amended—

(1) by inserting "and Interferences in an appeal under section 134 of this title" after "Board of Appeals" in the first sentence; and

(2) by inserting "and Interferences" after "Board of Appeals" in the second sentence.

SEC. 8. Section 146 of title 35, United States Code, is amended by striking out "board of patent interferences on the question of priority" and inserting in lieu thereof "Board of Appeals and Interferences".

SEC. 9. Section 305 of title 35, United States Code, is amended by inserting "and Interferences" after "Board of Appeals".

SEC. 10. Section 1295(a)(4)(A) of title 28, United States Code, is amended by striking out "or the Board of Patent" and inserting in lieu thereof "and".

SEC. 11. Section 2182 of title 42, United States Code, is amended by striking out "a Board of Patent Interferences" and inserting in lieu thereof "the Board of Appeals and Interferences", and by striking out "the Board of Patent Interferences" and inserting in lieu thereof "the Board of Appeals and Interferences".

SEC. 12. (a) Section 2457(d) of title 42, United States Code, is amended by striking out "a Board of Patent Interferences" and inserting in lieu thereof "the Board of Appeals and Interferences", and by striking out "the Board of Patent Interferences" and inserting in lieu thereof "the Board of Appeals and Interferences".

(b) Section 2457(e) of title 42, United States Code, is amended by striking out "a Board of Patent Interferences" and inserting in lieu thereof "the Board of Appeals and Interferences".

SEC. 13. The examiners-in-chief of the Board of Appeals and the examiners of interferences of the Board of Patent Interferences on the effective date of this Act shall

continue in office as members of the Board of Appeals and Interferences.

SEC. 14. This Act shall take effect on the ninetieth day beginning after the date of its enactment.

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