93D CONGRESS
1ST SESSION

H. R. 5228

IN THE HOUSE OF REPRESENTATIVES

MARCH 6, 1973

Mr. GUDE introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 35, United States Code, "Patents", and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3, title 35, of the United States Code is amended to read as follows:

"§ 3. Officers and employees

"(a) There shall be in the Patent Office a Commissioner of Patents, a deputy commissioner, two assistant commissioners, and not more than fifteen examiners-in-chief. The Assistant Secretary of Commerce for Patents and Trademarks, shall, ex officio, be the Commissioner of Patents. The deputy commissioner, or, in the event of a vacancy in that

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office, the assistant commissioner senior in date of appointment shall fill the office of Commissioner during a vacancy in that office until the Commissioner is appointed, and takes office. The Commissioner of Patents, the deputy commissioner, and the assistant commissioners shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary of Commerce, upon the nomination of the Commissioner, in accordance with law, shall appoint all other officers and employees.

"(b) The Secretary of Commerce may vest in himself the functions of the Patent Office and its officers and employees specified in this title and may from time to time authorize their performance by any other officer or employee.

"(c) The Secretary of Commerce is authorized to fix the per annum rate of basic compensation of each examiner-in-chief in the Patent Office at not in excess of the maximum scheduled rate provided for positions in grade 17 of the General Schedule of the Classification Act of 1949, as amended."

SEC. 2. The first paragraph of section 7 of title 35 of the United States Code is amended to read as follows:

"The examiners-in-chief shall be persons of competent legal knowledge and scientific ability, who shall be appointed under the classified civil service. The Commissioner, the deputy commissioner, the assistant commissioners, and the ex-

aminers-in-chief shall constitute a Board of Appeals, which on written appeal of the applicant, shall review adverse decisions of examiners upon applications for patents. Each appeal shall be heard by at least three members of the Board of Appeals, the members hearing such appeal to be designated by the Commissioner. The Board of Appeals has sole power to grant rehearings."

SEC. 3. Section 151 of title 35 of the United States Code is amended to read as follows:

"§ 151. Issue of patent

"(a) If it is determined that an applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant. The notice shall specify a sum, constituting the issue fee or a portion thereof, which shall be paid within three months thereafter.

"(b) Upon payment of this sum the patent shall issue, but if payment is not timely made, the application shall be regarded as abandoned.

"(c) Any remaining balance of the issue fee shall be paid within three months from the sending of a notice thereof and, if not paid, the patent shall lapse at the termination of the three-month period. In calculating the amount of a remaining balance, charges for a page or less may be disregarded.

"(d) If any payment required by this section is not timely made, but is submitted with the fee for delayed payment and the delay in payment is shown to have been unavoidable, it may be accepted by the Commissioner as though no abandonment or lapse had ever occurred."

SEC. 4. (a) There shall be in the Department of Commerce, in addition to the Assistant Secretaries now provided by law, one additional Assistant Secretary of Commerce who shall be known as the Assistant Secretary of Commerce for Patents and Trademarks, shall be appointed by the President by and with the advice and consent of the Senate, shall receive compensation at the rate prescribed by law for Assistant Secretaries of Commerce, and shall perform such duties as the Secretary of Commerce shall prescribe.

(b) Section 5315 of title 5, United States Code, is amended by striking "(7)" at the end of item (12) and substituting "(8)".

(c) Section 5316 of title 5, United States Code, is amended by striking item (48).

SEC. 5. (a) The Commissioner of Patents may, in accordance with section 3 of this Act, accept late payment of issue fees, the payment of which was governed by the provisions of Public Law 89-83: *Provided*, That the term of the patent for which late payment of such an issue fee is accepted shall expire earlier than the time specified in

section 154 of title 35, United States Code, by a period equal to the delay between the time the application became abandoned or a patent lapsed for failure to pay the issue fee and the time the late payment is accepted after enactment of this Act: *Further provided*, That no patent, with respect to which the payment of the issue fee was governed by the provisions of Public Law 89-83 and for which a late payment of the issue fee is accepted under the authority created by section 3 of this Act, shall abridge or affect the right of any person or his successors in business who made, purchased, or used after the date the application became abandoned or patent lapsed for failure to pay the issue fee, but prior to the grant of the patent, anything covered by the patent, to continue the use of or to sell to others to be used or sold, the specific thing so made, purchased, or used. A court before which such matter is in question may provide for the continued manufacture, use, or sale of the thing made, purchased, or used as specified or for the manufacture, use, or sale of which substantial preparation was made after the date the application became abandoned or a patent lapsed for failure to pay the issue fee but prior to the grant of the patent, and it may also provide for the continued practice of any process covered by the patent, practiced, or for the practice for which substantial preparation was made, prior to the grant of the patent, to

the extent and under such terms as the court deems equitable for the protection of investments made or business commenced before the grant of a patent.

(b) This Act shall be effective upon enactment. Examiners-in-chief in office on the date of enactment shall continue in office under and in accordance with their then existing appointments.

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