97TH CONGRESS
2D SESSION

S. 2211

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

IN THE SENATE OF THE UNITED STATES

MARCH 16 (legislative day, FEBRUARY 22), 1982

Mr. THURMOND (by request) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is authorized to be appropriated for the payment of salaries and necessary expenses of the Patent and Trademark Office to become available October 1, 1982, $68,086,000 and such additional or supplemental amounts as may be necessary for increases in salary, pay, retirement, or other employee benefits authorized by law. When so specified and to the extent provided in an appropriation act, any amount appropriated pursuant to this section and, in addition,

such fees as shall be collected pursuant to title 35, United States Code, and the Trademark Act of 1946, as amended (15 U.S.C. 1051 et seq.), may remain available without fiscal year limitation.

SEC. 2. Notwithstanding any other provision of law, there is authorized to be appropriated for the payment of salaries and expenses of the Patent and Trademark Office, $121,461,000 for the fiscal year ending September 30, 1982, and such additional or supplemental amounts as may be necessary for increases in salary, pay, retirement, or other employee benefits authorized by law.

SEC. 3. (a) Section 41(b) of title 35, United States Code, is amended (1) by deleting "25" and inserting in its place "not more than 50"; and (2) by deleting "50" and inserting in its place "100".

(b) Section 41(c) of title 35, United States Code, is amended by deleting "25 per centum" and inserting in its place the phrase ", together with fees collected under subsection (b) of this section, 100 per centum".

(c) Section 41 of title 35, United States Code, is amended (1) by redesignating subsection (d), (e), (f) and (g) as subsection (e), (f), (g) and (h), respectively; and (2) by inserting the following new subsection (d):

"(d)(1) The Commissioner may accept the payment of any maintenance fee required by subsection (c) of this section

after the six-month grace period if the delay in payment is shown to the satisfaction of the Commissioner to have been unavoidable. The Commissioner may require the payment of a surcharge as a condition of accepting payment of any maintenance fee after the six-month grace period. If the Commissioner accepts payment of a maintenance fee after the six-month grace period, the patent shall be considered as not having expired at the end of the grace period.

(2) No patent, the term of which has been maintained as a result of the acceptance of a payment of a maintenance fee under this subsection, shall abridge or affect the right of any person or his successors in business who made, purchased or used after the six-month grace period but prior to the acceptance of a maintenance fee under this subsection anything protected 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. The 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 six-month grace period but before the acceptance of a maintenance fee under this subsection, and it may also provide for the continued practice of any process, practiced, or for the practice of which substantial preparation was made, after the six-month grace period but prior to the

acceptance of a maintenance fee under this subsection, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced after the six-month grace period but before the acceptance of a maintenance fee under the subsection."

(d) Subsection (a) of section 31 of the Trademark Act of 1946, as amended (15 U.S.C. 1113), is amended by deleting "50" and inserting in its place "100".

(e) Section 42(c) of title 35, United States Code, is amended by adding the following sentence at the end thereof:

"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.".

SEC. 4. Section 3. (a) of title 35, United States Code is amended (1) by deleting the phrase "not more than fifteen"; and (2) by inserting the phrase "appointed under section 7 of this title" immediately after the phrase "examiners-in-chief".

SEC. 5. Section 111 of title 35, United States Code, is amended to read as follows:

"Application for patent shall be made, or authorized to be made, by the inventor, except as otherwise provided in this title, in writing to the Commissioner. Such application shall include: (1) a specification as prescribed by section 112

of this title; (2) a drawing as prescribed by section 113 of this title; and (3) an oath by the applicant as prescribed by section 115 of this title. The application must be accompanied by the fee required by law. The fee and oath may be submitted after the specification and any required drawing are submitted, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Commissioner. Upon failure to submit the fee and oath within such prescribed period, the application shall be regarded as abandoned, unless it is shown to the satisfaction of the Commissioner that the delay in submitting the fee and oath was unavoidable. The filing date of an application shall be the date on which the specification and any required drawing are received in the Patent and Trademark Office.".

SEC. 6. (a) Section 116 of title 35, United States Code, is amended (1) by deleting the phrase "Joint inventors" from the title and inserting in its place "Inventors"; and (2) in the third paragraph, by deleting the phrase "a person is joined in an application for patent as joint inventor through error, or a joint inventor is not included in an application through error" and inserting in its place the phrase "through error a person is named in an application for patent as the inventor, or through error an inventor is not named in an application".

(b) Section 256 of title 35, United States Code, is amended to read as follows:

"§ 256. Correction of named inventor

"Whenever through error a person is named in an issued patent as the inventor, or through error an inventor is not named in an issued patent and such error arose without any deceptive intention on his part, the Commissioner may, on application of all the parties and assignees, with proof of the facts and such other requirements as may be imposed, issue a certificate correcting such error.

"The error of omitting inventors or naming persons who are not inventors shall not invalidate the patent in which such error occurred if it can be corrected as provided in this section. The court before which such matter is called in question may order correction of the patent on notice and hearing of all parties concerned and the Commissioner shall issue a certificate accordingly.".

SEC. 7. Section 6 of title 35, United States Code, is amended by deleting paragraph (d) thereof.

SEC. 8. (a) Section 8(a) of the Trademark Act of 1946, as amended (15 U.S.C. 1058(a)), is amended (1) by deleting the word "still"; and (2) by inserting the phrase "in commerce" immediately after the word "use".

(b) Section 8(b) of the Trademark Act of 1946, as amended (15 U.S.C. 1058(b)), is amended (1) by deleting the word "still"; and (2) by inserting the phrase "in commerce" immediately after the word "use".

SEC. 9. (a) Section 13 of the Trademark Act of 1946, as amended (15 U.S.C. 1063), is amended (1) by deleting the phrase "a verified" and inserting in its place the word "an"; (2) by adding the phrase "when requested prior to the expiration of an extension" immediately after the word "cause"; and (3) by deleting the fourth sentence.

(b) Section 14 of the Trademark Act of 1946, as amended (15 U.S.C. 1064), is amended by deleting the word "verified".

SEC. 10. Section 15 of the Trademark Act of 1946, as amended (15 U.S.C. 1065), is amended by deleting the phrase "the publication" and inserting in its place the word "registration".

SEC. 11. The first sentence of section 16 of the Trademark Act of 1946, as amended (15 U.S.C. 1066), is amended to read as follows:

"Upon petition showing extraordinary circumstances, the Commissioner may declare that an interference exists when application is made for the registration of a mark which so resembles a mark previously registered by another, or for the registration of which another has previously made application, as to be likely when applied to the goods or when used in connection with the services of the applicant to cause confusion or mistake or to deceive.".

SEC. 12. Section 21 of title 35, United States Code, is amended—

(1) by deleting the phrase "Day for taking action falling on Saturday, Sunday, or holiday" from the title, and inserting in its place the phrase "Filing date and day for taking action";

(2) by inserting the following as subsection (a):

"(a) The Commissioner may by rule prescribe that any paper or fee required to be filed in the Patent and Trademark Office will be considered filed in the Office on the date on which it was deposited with the United States Postal Service or would have been deposited with the United States Postal Service but for postal service interruptions or emergencies designated by the Commissioner.";

(3) by designating the existing paragraph as subsection (b); and

(4) by inserting the word "federal" in subsection (b), as designated above, immediately after the word "a".

SEC. 13. Section 6(a) of title 35, United States Code, is amended (1) by deleting the word "and", third occurrence, and inserting in its place a comma; (2) by inserting the phrase ", or exchanges of items or services" immediately after the word "programs"; and (3) by inserting the phrase "or the

administration of the Patent and Trademark Office" immediately after the word "law", second occurrence.

SEC. 14. (a) Section 115 of title 35, United States Code, is amended by (1) deleting the phrase "shall be" and inserting in its place the word "is"; and (2) inserting the following immediately after the phrase "United States", third occurrence: ", or apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States".

(b) Section 261 of title 35, United States Code, is amended, in the third paragraph, by inserting the following immediately after the phrase "United States", third occurrence,: ", or apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States".

(c) Section 11 of the Trademark Act of 1946, as amended (15 U.S.C. 1061), is amended by (1) deleting the phrase "shall be", first occurrence, and inserting in its place the word "is"; and (2) inserting the following immediately after the phrase "United States", third occurrence,: ", or apostille of an official designated by a foreign country which, by treaty or convention, accords like effect to apostilles of designated officials in the United States".

SEC. 15. Section 13 of title 35, United States Code, is amended by deleting "(a)9" and inserting in its place "(e)".

SEC. 16. (a) Sections 1–4, 7, and 13–15 of this Act shall take effect on the date of enactment of this Act. The increased percentage recovery of Office costs from maintenance fees in section 3(b) of this Act shall not apply to patents applied for prior to the date of enactment of this Act. Until maintenance fees under section 41(c) of this title, as amended by section 3(b) of this Act, are in full effect, fees under section 41(b) of this title for the processing of an application for a patent, other than for a design patent, from filing through disposition by issuance or abandonment, shall recover in aggregate 50 per centum of the estimated average cost to the Office of such processing.

(b) Sections 5, 6, and 8–12 of this Act shall take effect six months after enactment.

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