87TH CONGRESS
1ST SESSION

S. 2225

IN THE SENATE OF THE UNITED STATES

JULY 11, 1961

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

A BILL

To fix the fees payable to the Patent Office, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That items numbered 1, 2, 3, 4, 6, 8, and 9, respectively, in subsection (a) of section 41 of title 35, United States Code, are amended to read as follows:

"1. On filing each application for an original patent, except in design cases, $40; and $2 for each claim in excess of ten.

"2. On issuing each original patent, except in design cases, $50, and $2 for each claim in excess of ten.

"3. In design cases: For three years and six months, $20; for seven years, $30; for fourteen years, $40.

"4. On every application for the reissue of a patent, $40, and $2 for each claim in excess of ten which is also over and above the number of claims of the original patent.

"6. On an appeal for the first time from the examiner to the Board of Appeals, $50.

"8. For certificate of correction of applicant's mistake under section 255 or certificate under section 256 of this title, $15.

"9. As available and if in print: For uncertified printed copies of specifications and drawings of patents (except design patents), 25 cents per copy; for design patents, 10 cents per copy; the Commissioner may establish a charge not to exceed $1 per copy for patents in excess of twenty-five pages of drawings and specification and for plant patents printed in color; special rate for libraries specified in section 13 of this title, $50 for patents issued in one year."

SEC. 2. Section 41 of title 35, United States Code, is amended by adding the following subsection:

"(c) The fees prescribed by or under this section apply to any other Government department or agency, or officer thereof, except that the Commissioner may waive the payment of any fee for services or materials in cases of occasional

or incidental requests by a Government department or agency, or officer thereof."

SEC. 3. Section 31 of the Act approved July 5, 1946 (ch. 540, 60 Stat. 427, U.S.C., title 15, sec. 1113), as amended, is amended to read as follows:

"(a) The following fees shall be paid to the Patent Office under this Act:

"1. On filing each original application for registration of a mark in each class, $35.

"2. On filing each application for renewal in each class, $25; and on filing each application for renewal in each class after expiration of the registration, an additional fee of $5.

"3. On filing an affidavit under section 8 (a) or section 8 (b), $10.

"4. On filing each petition for the revival of an abandoned application, $10.

"5. On filing notice of opposition or application for cancellation, $25.

"6. On appeal from an examiner in charge of the registration of marks to the Trademark Trial and Appeal Board, $25.

"7. For issuance of a new certificate of registration following change of ownership of a mark or correction of a registrant's mistake, $15.

"8. For certificate of correction of registrant's mistake or amendment after registration, $15.

"9. For certifying in any case, $1.

"10. For filing each disclaimer after registration, $15.

"11. For printed copy of registered mark, 10 cents.

"12. For recording every assignment or other paper not exceeding six pages, $3; for each additional two pages or less, $1; for each additional registration or application included, or involved in one writing where more than one is so included or involved, additional, $1.

"13. On filing notice of claim of benefits of this Act for a mark to be published under section 12 (c) hereof, $10.

"(b) The Commissioner may establish charges for copies of records, publications, or services furnished by the Patent Office, not specified above.

"(c) The Commissioner may refund any sum paid by mistake or in excess."

SEC. 4. Section 154 of title 35, United States Code, is amended by inserting the words "subject to the payment of maintenance fees," after the words "seventeen years,".

SEC. 5. Title 35, United States Code, is amended by adding the following new section after section 154:

"§ 155. Maintenance fees

"(a) During the term of a patent (other than a design patent) a first maintenance fee shall be due prior to

the end of the fifth year from the date of the patent, a second maintenance fee prior to the end of the ninth year from the date of the patent if the patent is then still in effect, and a third maintenance fee prior to the end of the thirteenth year from the date of the patent, if the patent is then still in effect; said fees may be paid within six months after the due date, namely the end of the fifth, ninth, or thirteenth years, respectively, or as otherwise provided in subsection (b) of this section, upon payment of the additional fee prescribed for delayed payment. On failure to pay a maintenance fee before the expiration of the time provided therefor the right conferred by the patent shall terminate at the end of the fifth, ninth, or thirteenth year, as the case may be, or as otherwise provided in subsection (c) of this section. Such termination or lapsing shall be without prejudice to rights existing under any other patent.

"In the case of a reissued patent, the times specified herein shall run from the date of the original patent.

"(b) Notice of the requirement for the payment of the maintenance fees shall be attached to or embodied in the patent. The Commissioner shall send a separate notice of the requirement for the fee, without unreasonable delay, after the due date has passed without the fee having been paid, to the patentee and any other party having an interest in

the patent as shown by the records of the office on the due date, at the address shown by the record of the patent, and the fee, together with the additional fee prescribed for delayed payment, may be paid within thirty days from the date of such notice or within six months from the due date, whichever period expires later.

"(c) Any inventor to whom a patent was issued (or his heirs if the inventor is deceased) and who owns the patent may, at a time not earlier than six months prior to the due date and not later than the final date provided in subsection (b) of this section, request deferment of the first maintenance fee if the total sum received by anyone, since the date of the patent, from or under or by virtue of the patent, or from the manufacture, use or sale under the patent of the invention, was less than the amount of the fee due, and a statement under oath to this effect accompanies the request. The fee shall thereupon be deferred until the time the second maintenance fee is due and shall be payable within the same time as and in addition to such second maintenance fee and with the same result if not paid.

"Any inventor to whom a patent was issued (or his heirs if the inventor is deceased) and who owns the patent may, at a time not earlier than six months prior to the due date and not later than the final date provided in subsection (b) of this section, request deferment of the second main-

tenance fee, and further deferment of the first maintenance fee (if such fee has been deferred under the first paragraph of this subsection), if the total sum received by anyone, during the preceding four years, from or under or by virtue of the patent, or from the manufacture, use or sale under the patent of the invention, was less than the amount of the fee or fees due, and a statement under oath to this effect accompanies the request. The fee or fees due shall thereupon be deferred until the time the third maintenance fee is due and shall be payable within the same time as and in addition to such third maintenance fee and with the same result if not paid."

The analysis of chapter 14 of title 35, United States Code, immediately preceding section 151, is amended by adding thereto:

"155. Maintenance fees."

SEC. 6. Subsection (a) of section 41 of title 35, United States Code, is amended by adding the following:

"12. a. First maintenance fee, due on the expiration of the fifth year of the patent, other than a design patent, $100.

"b. Second maintenance fee, due on the expiration of the ninth year of the patent, other than a design patent, $300.

"c. Third maintenance fee, due on the expiration of the thirteenth year of the patent, other than a design patent, $500.

"d. On delayed payment of a maintenance fee, $25."

SEC. 7. (a) This Act shall take effect three months after its enactment.

(b) Item 1 of section 41 (a) of title 35, as amended by section 1 of this Act, does not apply in further proceedings in applications filed prior to the effective date.

(c) The amendment of item 2 of section 41 (a) of title 35 by section 1 of this Act does not apply in cases in which the notice of allowance of the aplication was sent prior to the effective date and in such cases the fee due is the fee specified by item 2 prior to its amendment.

(d) The amendment of item 3 of section 41 (a) of title 35 by section 1 of this Act applies in the case of applications for design patents filed prior to the effective date for one of the lower terms and which are amended after the effective date to one of the higher terms.

(e) Item 4 of section 41 (a) of title 35, as amended by section 1 of this Act, does not apply in further proceedings in applications for reissues filed prior to the effective date.

(f) Item 3, of section 31 of the Trademark Act as amended by section 3 of this Act, applies only in the case of registrations issued and registrations published under the provisions of section 12 (c) of the Trademark Act on or after the effective date.

(g) Section 155 and item 12 of section 41 (a), enacted

by sections 5 and 6 of this Act, do not apply to patents issued prior to the effective date.

SEC. 8. Section 266 of title 35, United States Code is repealed.

The chapter analysis of chapter 27 of title 35, United States Code, is amended by striking out the following item:

"266. Issue of patents without fees to Government employees."

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