84TH CONGRESS
2D SESSION

S. 3744

IN THE SENATE OF THE UNITED STATES

APRIL 26, 1956

Mr. O'MAHONEY introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To establish a United States Court of Appeals for 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 this Act may be cited as the "Court of Appeals for Patents Act".

ORGANIZATION

SEC. 2. Part I of title 28 of the United States Code is amended by inserting, immediately after chapter 9 thereof, the following new chapter:

I

FINAL ACTION

"CHAPTER 10.—COURT OF APPEALS FOR PATENTS

"Sec.
"221. Appointment and number of judges.
"222. Precedence of judges.
"223. Tenure and salaries of judges.
"224. Sessions.
"225. Quorum.
"226. Opinions.

"§ 221. Appointment and number of judges

"The President shall appoint, by and with the advice and consent of the Senate, a chief judge and four associate judges who shall constitute a court of record known as the United States Court of Appeals for Patents.

"Within the jurisdiction conferred upon such court and except as otherwise provided by law, it shall have all of the powers of a court of appeals of the United States. Within such jurisdiction and except as otherwise provided by law, each judge of such court shall have all of the powers of a circuit judge of the United States.

"§ 222. Precedence of judges

"The chief judge of the Court of Appeals for Patents shall have precedence and preside at any session of the court which he attends.

"The associate judges shall have precedence and preside according to the seniority of their commissions. Judges whose commissions bear the same date shall have precedence according to seniority in age.

"§ 223. Tenure and salaries of judges

"Judges of the Court of Appeals for Patents shall hold office during good behavior. Each shall receive a salary of $25,500 a year.

"§ 224. Sessions

"The Court of Appeals for Patents may hold court at such times, and at such places within any judicial circuit, as it may fix by rule.

"§ 225. Quorum

"Three judges of the Court of Appeals for Patents constitute a quorum. The concurrence of a majority of the judges sitting is necessary to any decision.

"§ 226. Opinions

"The Court of Appeals for Patents, on each appeal from a Patent Office decision, shall file a written opinion as part of the record and send a certified copy to the Commissioner of Patents, who shall record it in the Patent Office."

ASSIGNMENT OF JUDGES

SEC. 3. (a) Subsection 291 (b) of title 28 of the United States Code is amended to read as follows:

"(b) The Chief Justice of the United States may designate and assign temporarily a judge of the Court of Customs Appeals or a judge of the Court of Appeals for Patents to serve as a judge of the Court of Appeals or the District

Court for the District of Columbia when requested by the chief judge of the court in need of such assistance."

(b) Section 291 of such title is amended by (1) redesignating subsection (d) as subsection (e), and (2) inserting, immediately after subsection (c), the following new subsection:

"(d) The Chief Justice of the United States may, upon presentation to him by the chief judge of the Court of Appeals for Patents of a certificate of necessity, designate and assign temporarily any circuit judge to serve as a judge of the Court of Appeals for Patents."

(c) Section 292 of such title is amended by (1) redesignating subsection (d) as subsection (e), and (2) inserting, immediately after subsection (c), the following new subsection:

"(d) The Chief Justice of the United States may, upon presentation to him by the chief judge of the Court of Appeals for Patents of a certificate of necessity, designate and assign temporarily any district judge to serve as a judge of the Court of Appeals for Patents."

OFFICERS AND EMPLOYEES

SEC. 4. Part III of title 28 of the United States Code is amended by inserting, immediately after chapter 53 thereof, the following new chapter:

"CHAPTER 54.—COURT OF APPEALS FOR PATENTS

"Sec.
"841. Clerk and employees.
"842. Marshal.
"843. Reporter.
"844. Bailiffs and messengers.
"845. Law clerks and secretaries.

"§ 841. Clerk and employees

"The Court of Appeals for Patents may appoint a clerk and a librarian, and such assistant clerks, stenographic law clerks, clerical assistants, library assistants, and other employees as may be necessary, all of whom shall be subject to removal by the court.

"The clerk shall pay into the Treasury all fees, costs, and other moneys collected by him. He shall maintain an office at the seat of government.

"§ 842. Marshal

"The Court of Appeals for Patents may appoint a marshall who shall serve within the District of Columbia and shall be subject to removal by the court.

"He shall attend the court at its sessions, and shall serve and execute all process and orders issuing from it. He shall purchase books and supplies, and perform such other duties as the court may direct. Under regulations prescribed by the Director of the Administrative Office of the United States Courts, he shall pay the salaries of judges, officers, and employees of the court and disburse funds appropriated for the expenses of the court.

"United States marshals for other districts where sessions of the court are held shall serve as marshals of the court.

"§ 843. Reporter

"(a) The Court of Appeals for Patents may appoint a reporter who shall be subject to removal by the court.

"(b) The reporter shall prepare and transmit weekly to the Commissioner of Patents, for publication, copies of all opinions relating to patent and trademark appeals rendered by the court pursuant to section 1551 of this title.

"(c) The reporter also shall compile and publish, at least once a year, in such manner as the court directs, all opinions rendered by the court, together with necessary digests and indexes as the court directs.

"§ 844. Bailiffs and messengers

"The Court of Appeals for Patents may appoint necessary bailiffs and messengers who shall be subject to removal by the court.

"Each bailiff shall attend the court, preserve order, and perform such other necessary duties as the court directs.

"§ 845. Law clerks and secretaries

"Each judge of the Court of Appeals for Patents may appoint necessary law clerks and secretaries."

JURISDICTION

SEC. 5. Part IV of title 28 of the United States Code is amended by inserting, immediately after chapter 93 thereof, the following new chapter:

"CHAPTER 94.—COURT OF APPEALS FOR PATENTS

"Sec.
"1551. Patent Office decisions.
"1552. Final decisions of district courts on patent matters.

"§ 1551. Patent Office decisions

"The Court of Appeals for Patents shall have jurisdiction of appeals from decisions of—

"(1) the Board of Appeals and the Board of Interference Examiners of the Patent Office as to patent applications and interferences, at the instance of an applicant for a patent or any party to a patent interference, and such appeal by an applicant shall waive his right to proceed under section 145 or 146 of title 35, United States Code; and

"(2) the Commissioner of Patents as to trademark applications and proceedings as provided in section 21 of the Act entitled 'An Act to provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes', approved

July 5, 1946 (60 Stat. 435, as amended; 15 U. S. C. 1071).

"§ 1552. Final decisions of district courts on patent matters

"Except where a direct review may be had in the Supreme Court, the Court of Appeals for Patents shall have jurisdiction of appeals from all final decisions of the district courts of the United States in any case, controversy, or matter—

"(1) arising under title 35, United States Code; or

"(2) in which jurisdiction of the district court was invoked under section 1338 of this title.

"The Court of Appeals for Patents has no jurisdiction to review any decision of the Court of Claims."

PROCEDURE

SEC. 6. Part VI of title 28 of the United States Code is amended by inserting, immediately after chapter 167 thereof, the following new chapter:

"CHAPTER 168.—COURT OF APPEALS FOR PATENTS PROCEDURE

"Sec.
"2611. Rules.

"§ 2611. Rules

"The rules of the Court of Appeals for Patents shall conform as near as may be to the rules of practice and procedure of the courts of appeals of the United States."

TECHNICAL AMENDMENTS

SEC. 7. (a) Title 28 of the United States Code is amended by striking out the words "Court of Customs and Patent Appeals" and the name "United States Court of Customs and Patent Appeals" wherever they appear therein, and inserting in lieu thereof the words "Court of Customs Appeals" and the name "United States Court of Customs Appeals", respectively.

(b) Title 35 of the United States Code, and section 21 of the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946 (60 Stat. 435, as amended; 15 U. S. C. 1071), are amended by striking out the words "Court of Customs and Patent Appeals" and the name "United States Court of Customs and Patent Appeals" wherever they appear therein, and inserting in lieu thereof the words "Court of Appeals for Patents" and the name "United States Court of Appeals for Patents", respectively.

(c) The analysis of title 28 of the United States Code, and the analysis of part I thereof, are amended by inserting, immediately after the item relating to chapter 9 thereof, the following new item:

"10. Court of Appeals for Patents..... 221".

(d) The analysis of such title, and the analysis of part III thereof, are amended by inserting, immediately after the item relating to chapter 53 thereof, the following new item:

"54. Court of Appeals for Patents---------- 841".

(e) The analysis of such title, and the analysis of part IV thereof, are amended by inserting, immediately after the item relating to chapter 93 thereof, the following new item:

"94. Court of Appeals for Patents---------- 1151".

(f) The analysis of such title, and the analysis of part VI thereof, are amended by inserting, immediately after the item relating to chapter 167 thereof, the following new item:

"168. Court of Appeals for Patents Procedure---------- 2611".

(g) Sections 216 and 1542 of title 28 of the United States Code are repealed.

(h) Section 451 of such title, as amended by this Act, is amended by inserting, immediately after the words "the Court of Customs Appeals,", wherever they appear therein, the words "the Court of Appeals for Patents,".

(i) Section 833 (b) of such title is amended to read as follows:

"(b) The reporter shall prepare and transmit weekly to the Secretary of the Treasury, for publication, copies of all opinions relating to customs rendered by the court."

(j) Section 1256 of title 28 of the United States Code is amended to read as follows:

"§ 1256. Court of Customs Appeals and Court of Appeals for Patents

"Cases in the Court of Customs Appeals may be reviewed by the Supreme Court by writ of certiorari. Cases in the Court of Appeals for Patents may be reviewed by the Supreme Court by (1) writ of certiorari, or (2) by certification of any question of law by the Court of Appeals for Patents in any case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions on such question."

(k) The item contained in the analysis of chapter 81 of such title which relates to section 1256 thereof is amended to read as follows:

"1256. Court of Customs Appeals and Court of Appeals for Patents; certiorari.".

(l) Section 1291 of title 28 of the United States Code is amended by inserting, immediately after the words "Supreme Court", a comma and the words, "or where appellate jurisdiction is conferred upon the Court of Appeals for Patents by section 1552 of this title".

(m) Section 1926 of title 28 of the United States Code is amended to read as follows:

"§ 1926. Court of Customs Appeals and Court of Appeals for Patents

"Fees and costs in the Court of Customs Appeals and in

the Court of Appeals for Patents shall be fixed by a table of fees adopted by each such court and approved by the Supreme Court. The fees and costs so fixed shall not, with respect to any item, exceed the fees and costs charged in the Supreme Court, and shall be accounted for and paid over to the Treasury."

(n) The item contained in the analysis of chapter 123 of such title which relates to section 1926 thereof is amended to read as follows:

"1926. Court of Customs Appeals and Court of Appeals for Patents."

EFFECTIVE DATES

SEC. 8. (a) The amendments made by sections 2, 4, and 6 of this Act shall become effective on the date of enactment of this Act.

(b) All other amendments made by this Act shall become effective on the date on which a quorum of the judges of the Court of Appeals for Patents have been appointed and have qualified, and such court is organized and prepared to discharge its duties under amendments made by this Act, as determined by notice to be published in the Federal Register upon direction of the chief judge of such court.

SAVING PROVISION

SEC. 9. (a) No action or proceeding pending in any court of the United States on or before the date fixed pur-

suant to section 8 (b) of this Act shall abate because of the enactment of this Act.

(b) Each such action pending in the Court of Customs and Patent Appeals, in any court of appeals of the United States, or in the Supreme Court of the United States may be continued to its termination pursuant to law in effect on the day preceding the date so fixed.

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