89TH CONGRESS
1ST SESSION

S. 730

IN THE SENATE OF THE UNITED STATES

JANUARY 26, 1965

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 the items numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, respectively, in subsection (a) of section 41, title 35, United States Code, are amended to read as follows:

"1. On filing each application for an original patent, except in design cases, $50; in addition; on filing or on presentation at any other time, $10 for each claim in independent form which is in excess of one, and $2 for each claim (whether independent or dependent) which is in excess of

II

FINAL ACTION

ten. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

"2. For issuing each original or reissue patent, except in design cases, $75; in addition, $10 for each page (or portion thereof) of specification as printed, and $2 for each sheet of drawings.

"3. In design cases:

"a. On filing each design application, $20.

"b. On issuing each design patent: For three years and six months, $10; for seven years, $20; and for fourteen years, $30.

"4. On filing each application for the reissue of a patent, $50; in addition, on filing or on presentation at any other time, $10 for each claim in independent form which is in excess of the number of independent claims of the original patent, and $2 for each claim (whether independent or dependent) which is in excess of ten and also in excess of the number of claims of the original patent. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

"5. On filing each disclaimer, $15.

"6. On appeal for the first time from the examiner to the Board of Appeals, $25; in addition, on filing a brief in support of the appeal, $50.

"7. On filing each petition for the revival of an aban-

doned application for a patent or for the delayed payment of the fee for issuing each patent, $15.

"8. For certificate under section 255 or 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), 50 cents per copy; for design patents, 20 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 specifications and for plant patents printed in color; special rates for libraries specified in section 13 of this title, $50 for patents issued in one year. The Commissioner may, without charge, provide applicants with copies of specifications and drawings of patents when referred to in a notice under section 132.

"10. For recording every assignment, agreement, or other paper relating to the property in a patent or application, $20; where the document relates to more than one patent or application, $3 for each additional item."

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

"(c) The fees prescribed by or under this section shall 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) for each class, $10.

"4. On filing each petition for the revival of an abandoned application, $15.

"5. On filing opposition or application for cancellation for each class, $25.

"6. On appeal from the examiner in charge of the registration of marks to the Trademark Trial and Appeal Board for each class, $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, 20 cents.

"12. For recording every assignment, agreement, or other paper relating to the property in a registration or application, $20; where the document relates to more than one application or registration, $3 for each additional item.

"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 151 of title 35, United States Code, is amended to read as follows:

"§ 151. Issue of patent

"If it appears that 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.

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

"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 this three-month period.

"If any payment required by this section is not timely made, but is submitted with the fee for delayed payment within three months after the due date and sufficient cause is shown for the late payment, it may be accepted by the Commissioner as though no abandonment or lapse had ever occurred."

SEC. 5. Section 154 of title 35, United States Code, is amended by inserting the words "subject to the payment of issue and maintenance fees as provided for in this title," after the words "seventeen years,".

SEC. 6. 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 for a design, the following fees shall be due:

"(1) a first maintenance fee on or before the fifth anniversary of the issue date of the patent;

"(2) a second maintenance fee on or before the ninth anniversary of the issue date of the patent; and

"(3) a third maintenance fee on or before the thirteenth anniversary of the issue date of the patent.

In the case of a reissue patent the times specified herein shall run from the date of the original patent.

"(b) A grace period of six months will be allowed in which to pay any maintenance fee, provided it is accompanied by the fee prescribed for delayed payment. When a response is not received to the notice provided by subsection (e) of this section, a subsequent notice shall be sent approximately sixty days after the due date of any maintenance fee.

"(c) The first and second maintenance fees may be deferred in accordance with subsection (f) of this section.

"(d) A patent will terminate on the due date for any maintenance fee unless, as provided for in this section, the fee due (including any fees previously deferred) is paid or a statement in accordance with subsection (f) of this section requesting deferment is filed. Such termination or lapsing shall be without prejudice to rights existing under any other patent.

"(e) Notice of the requirement for the payment of the

maintenance fees and the filing of statements in compliance with this section shall be attached to or be embodied in the patent. Approximately thirty days before a maintenance fee is due, the Commissioner shall send an initial notice thereof to the patentee and all other parties having an interest of record at the addresses last furnished to the Patent Office. Irrespective of any other provision of this section, a maintenance fee may be paid within thirty days after the date of such initial notice.

"(f) Any inventor to whom a patent issued (or his heirs) and who owns the patent may within six months of the fifth anniversary of the issue date of the patent by a statement to the Commissioner request deferment of the first maintenance fee if the gross benefit received by the inventor or any other party having or having had any interest in the subject matter of the patent, from, under, or by virtue of the patent or from the manufacture, use, or sale of the invention, was less in value than the amount of the fee, and the statement so specifies. The fee shall thereupon be deferred until the time the second maintenance fee is due and shall be paid in addition to the second maintenance fee.

"Any inventor to whom a patent issued (or his heirs) and who owns the patent may within six months of the ninth anniversary of the issue date of the patent by a statement to the Commissioner request deferment of the second

maintenance fee (and further deferment of the first maintenance fee if such fee has been deferred) if the gross benefit received by the inventor or any other party having or having had any interest in the subject matter of the patent during the preceding four years, from, under, or by virtue of the patent or from the manufacture, use, or sale of the invention, was less in value than the amount of the second fee, and the statement so specifies. The second fee, or the first and second fees, as the case may be, shall thereupon be deferred until the time the third maintenance fee is due and shall be paid in addition to the third maintenance fee and with the same result if not paid. No deferment of any of the fees beyond the thirteenth anniversary of the issue date of the patent shall be permitted and the patent will terminate at the end of the thirteenth anniversary of the issue date unless all maintenance fees are paid in accordance with the provisions of this section.

"(g) An applicant or his assignee may elect, on or before the time of payment of the sum specified in the notice of allowance provided in section 151 of this chapter, to pay a fee of $75 and such payment shall constitute a complete satisfaction of the maintenance fees provided for in this section."

SEC. 7. The analysis of chapter 14 of title 35, United

States Code, immediately preceding section 151, is amended to read as follows:

Sec.
"151. Issue of patent.
"152. Issue of patent to assignee.
"153. How issued.
"154. Contents and term of patent.
"155. Maintenance fees."

SEC. 8. Subsection (a) of section 41 of title 35, United States Code, is further amended by adding the following:

"12. For maintaining a patent (other than for a design) in force:

"a. beyond the fifth anniversary of the issue date of the patent, $50;

"b. beyond the ninth anniversary of the issue date of the patent, $100; and

"c. beyond the thirteenth anniversary of the issue date of the patent, $150.

"13. For delayed payment of maintenance fee, $25."

SEC. 9. (a) This Act shall take effect three months after its enactment.

(b) Items 1, 3, and 4 of section 41(a) of title 35, United States Code, as amended by section 1 of this Act, do not apply in further proceedings in applications filed prior to the effective date of this Act.

(c) Item 2 of section 41(a), as amended by section 1 of this Act, and sections 4, 6, and 8 of this Act do not apply

in cases in which the notice of allowance of the application was sent, or in which a patent issued, prior to the effective date; and, in such cases, the fee due is the fee specified in this title prior to the effective date of this Act.

(d) 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 of this Act.

SEC. 10. 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."

SEC. 11. Section 112 of title 35, United States Code, is amended by adding to the second paragraph thereof the following sentence: "A claim may be written in independent or dependent form, and if in dependent form it shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim."

SEC. 12. Section 282 of title 35, United States Code, is amended by deletion of the first paragraph thereof and substituting therefor the following paragraph:

"A patent shall be presumed valid. Each claim of a

patent (whether in independent or dependent form) shall be presumed valid independently of the validity of other claims; dependent claims shall be presumed valid even though dependent upon an invalid claim. The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting it."

89TH CONGRESS
1ST SESSION

S. 730

A BILL

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

By Mr. McCLELLAN

JANUARY 26, 1965

Read twice and referred to the Committee on the Judiciary