102D CONGRESS
1ST SESSION

S. 793

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

APRIL 9, 1991

Mr. DECONCINI (for himself and Mr. HATCH) (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,

SECTION 1. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the Patent and Trademark Office for salaries and necessary expenses, $98,300,000 for fiscal year 1992, and $102,300,000 for fiscal year 1993. Of such amounts, $95,000,000 for fiscal year 1992 and $99,000,000 for fiscal year 1993 shall be derived from deposits in the Patent

and Trademark Office Fee Surcharge Fund as established under section 10101 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508).

(b) CREDIT OF CERTAIN REVENUES.—Notwithstanding the provisions of section 10101 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), revenues from Patent and Trademark Office surcharges in excess of $88,000,000 in fiscal year 1991, $95,000,000 in fiscal year 1992, and $99,000,000 in fiscal year 1993, shall be credited to Salaries and Expenses, Patent and Trademark Office, without further appropriations actions in the same manner as fees authorized under subsections (a) and (b) of section 41 of title 35, United States Code.

(c) NO REVISION OF SURCHARGE.—Notwithstanding section 10101(c) of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), the Commissioner of Patents and Trademarks shall not revise the surcharge set under section 10101(a) of such Act in fiscal years 1992 and 1993.

(d) APPROPRIATIONS TO REMAIN AVAILABLE UNTIL EXPENDED.—Amounts appropriated pursuant to this Act and such fees as may be collected under chapter 4 of title 35, United States Code, and the Trademark Act of 1946

(15 U.S.C. 1051 et seq.) shall remain available until expended.

SEC. 2. OVERSIGHT OF PATENT AND TRADEMARK FEES.

On the date each year that the President submits the budget to the Congress under section 1105 of title 31, United States Code, the Secretary of Commerce shall submit to the Committees on the Judiciary of the Senate and the House of Representatives—

(1) a list of patent and trademark fee collections by the Patent and Trademark Office during the preceding fiscal year;

(2) a list of activities of the Patent and Trademark Office during the preceding fiscal year which were supported by patent fee expenditures, trademark fee expenditures, and appropriations;

(3) budget plans for significant programs, projects, and activities of the Patent and Trademark Office, including out-year funding estimates;

(4) any proposed disposition of surplus fees by the Patent and Trademark Office; and

(5) such other information as the Committees consider necessary.

SEC. 3. PATENT AND TRADEMARK FEES.

(a) PATENT FEES.—Section 41 of title 35, United States Code, is amended—

(1) by amending subsection (d) to read as follows:

"(d) The Commissioner will establish fees for all other processing, services, or materials related to patents not specified above or authorized elsewhere to recover, in the aggregate with other revenues, the estimated cost of the operations of the Patent and Trademark Office. The yearly fee for providing a library specified in section 13 of this title with uncertified printed copies of the specifications and drawings for all patents issued in that year will be $50.";

(2) by amending subsections (f) and (g) to read as follows:

"(f) The fees established in subsections (a) and (b) of this section may be adjusted by the Commissioner on October 1, 1993, and every second year thereafter, to reflect any fluctuations occurring during the previous 2 years in the Consumer Price Index, as determined by the Secretary of Labor. Changes of less than 1 percent may be ignored.

"(g) No fee established by the Commissioner under this section will take effect prior to 30 days following notice in the Federal Register.";

(3) in subsection (h) by amending paragraph (1) to read as follows:

"(h)(1) Fees charged under subsection (a) on filing any application for a patent shall be reduced by 50 percent with respect to their application to any small business concern as defined under section 3 of the Small Business Act, and to any independent inventor or nonprofit organization as defined in regulations issued by the Commissioner of Patents and Trademarks."; and

(4) by adding at the end thereof the following new subsection:

"(i)(1) The Commissioner of Patents and Trademarks shall maintain, for use by the public, paper or microform collections of United States patents, foreign patent documents, and United States trademark registrations arranged to permit search for and retrieval of information. The Commissioner may not impose fees directly for use of such collections, or for use of the public patent or trademark search rooms or libraries.

"(2) The Commissioner of Patents and Trademarks may establish reasonable fees for access by the public to automated search systems of the Patent and Trademark Office. If such fees are established, a limited amount of free access shall be made available to all users of the systems for purposes of education and training. The Commissioner may waive the payment by an individual of fees au-

thorized by this subsection upon a showing of need or hardship, and if such a waiver is in the public interest.".

(b) PATENT AND TRADEMARK OFFICE FUNDING.—Section 42(c) of title 35, United States Code, is amended to read as follows:

"(c) Revenues from fees will be available to the Commissioner of Patents and Trademarks to carry out, to the extent provided for in appropriations Acts, the activities of the Patent and Trademark Office. Fees available to the Commissioner under section 31 of the Trademark Act of 1946, as amended, shall be used for the processing of trademark registrations and for other activities, services and materials relating to trademarks. Trademark fees collected may only be reprogrammed for other purposes subject to the procedures for reprogramming set forth in the Department of Commerce's annual appropriations Act.".

(c) TRADEMARK FEES.—Section 31(a) of the Trademark Act of 1946 (15 U.S.C. 1113), is amended to read as follows:

"(a) The Commissioner will establish fees for the filing and processing of an application for the registration of a trademark or other mark and for all other services performed by and materials furnished by the Patent and Trademark Office related to trademarks and other marks. However, no fee for the filing or processing of an applica-

tion for the registration of a trademark or other mark or for the renewal or assignment of a trademark or other mark will be adjusted more than once every 2 years. No fee established under this section will take effect prior to 30 days following notice in the Federal Register.".

SEC. 4. USE OF EXCHANGE AGREEMENTS RELATING TO AUTOMATIC DATA PROCESSING RESOURCES PROHIBITED.

During fiscal years 1992 and 1993, the Commissioner of Patents and Trademarks may not enter into any agreement for the exchange of items or services (as authorized under section 6(a) of title 35, United States Code) relating to automatic data processing resources (including hardware, software and related services, and machine readable data). The preceding sentence shall not apply to an agreement relating to data for automation programs which is entered into with a foreign government or with an international intergovernmental organization.

SEC. 5. REPEAL OF MISCELLANEOUS FEE PROVISIONS.

Subsections (b) and (c) of section 104 of the Act entitled "An Act to authorize appropriations for the Patent and Trademark Office in the Department of Commerce, and for other purposes", approved November 19, 1988 (35 U.S.C. 41 note; Public Law 100–703; 102 Stat. 4675) are repealed.

SEC. 6. EFFECTIVE DATE.

The provisions of this Act and the amendments made by this Act shall be effective on and after October 1, 1991, and shall apply to all payments of fees made on or after such date.

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