Calendar No. 1324

93D CONGRESS
2d Session

SENATE

REPORT
No. 93-1401

AMENDING TITLE 35, UNITED STATES CODE, "PATENTS"

DECEMBER 17, 1974.—Ordered to be printed

Mr. MCCLELLAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 9199]

The Committee on the Judiciary, to which was referred the bill (H.R. 9199) to amend title 35, United States Code, "Patents", and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

STATEMENT

H.R. 9199 changes the title of the First Assistant Commissioner of Patents to Deputy Commissioner of Patents (section 1); it provides that the fifteen examiners-in-chief in the Patent Office shall be appointed under Civil Service instead of being appointed by the President and confirmed by the Senate (sections 1 and 2); it would empower the Commissioner of Patents to accept late payment of the patent issue fee if delay in payment is shown to have been unavoidable (section 3), and it provides limited retroactivity with respect to the Commissioner's authority under section 3 (section 4(a)). Examiners-in-chief who are in office on the date of enactment of H.R. 9199 are continued in office (section 4(b)).

SECTION-BY-SECTION ANALYSIS

Section 1 of H.R. 9199 changes the title of the present First Assistant Commissioner of Patents to Deputy Commissioner of Patents. The Department of Commerce approves the proposed changes as pro-

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viding a better description of the duties of the position involved.

Sections 1 and 2 of H.R. 9199 provides for the appointment of fifteen examiners-in-chief under the Classified Civil Service instead of by Presidential appointment and Senate confirmation. The Department of Commerce supports this change, asserting that the examiners-in-chief who perform duties requiring legal and technical qualifications and experience should be appointed without the burden of the present procedures.

Section 3 of H.R. 9199 broadens the authority of the Commissioner to accept a late payment of the patent issue fee. Under present law the Commissioner has no authority to excuse the lateness of payment of an issue fee when it is submitted to the Patent Office more than three months after the due date. The amendment proposed by section 3 would permit acceptance of a more than three month late payment of an issue fee, upon a showing that the delay in payment was unavoidable. Enactment of this amendment would eliminate need for private bills seeking relief from the rigorous application of existing law.

Section 4(a) of H.R. 9199 contains provision for and limitations on retroactivity of the Commissioner's new authority to excuse late payment of the issue fee. The limitations are as follows:

1. The authority of the Commissioner shall not be retroactive to a time prior to October 25, 1965, when the present law concerning issue fee payments became effective. Prior to that date, the Department of Commerce advises, no difficulties were encountered;
2. The term of the patent (normally 17 years) shall expire earlier than the term specified in existing law by an amount equal to the time elapsed between the due date of the issue fee and the date when the late payment is accepted after enactment of H.R. 9199; and
3. Parties who make an investment in reliance on supposed lapse or abandonment of a patent due to failure to make prompt payment of the issue fee are protected.

Section 4(b) provides that examiners-in-chief who are in office on the date of enactment of the legislation shall continue in office.

Changes in Existing Law

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows; (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES CODE, TITLE 35.—PATENTS

PART I.—PATENT OFFICE

Chapter I.—PATENT OFFICE

§ 3. Officers and employees.

[A Commissioner of Patents, one first assistant commissioner, two assistant commissioners, and not more than fifteen examiners-in-chief, shall be appointed by the President, by and with the advice and

consent of the Senate. The assistant commissioners shall perform the duties pertaining to the office of commissioner assigned to them by the Commissioner. The first assistant commissioner, or, in the event of a vacancy in that office, the assistant commissioner senior in date of appointment, shall fill the office of Commissioner during a vacancy in that office until a Commissioner is appointed and takes office. The Secretary of Commerce, upon the nomination of the Commissioner in accordance with law, shall appoint all other officers and employees.]

[The Secretary of Commerce may vest in himself the functions of the Patent Office and its officers and employees specified in this title and may from time to time authorize their performance by any other officer or employee. The Secretary of Commerce is authorized to fix the per annum rate of basic compensation of each examiner-in-chief in the Patent Office at not in excess of the maximum scheduled rate provided for positions in grade 17 of the General Schedule of the Classification Act of 1949, as amended.]

"(a) *There shall be in the Patent Office a Commissioner of Patents, a Deputy Commissioner, two Assistant Commissioners, and not more than fifteen examiners-in-chief. The Deputy Commissioner, or, in the event of a vacancy in that office, the Assistant Commissioner senior in date of appointment shall fill the office of Commissioner during a vacancy in that office until the Commissioner is appointed and takes office. The Commissioner of Patents, the Deputy Commissioner, and the Assistant Commissioners shall be appointed by the President, by and with the advice and consent of the Senate. The Secretary of Commerce, upon the nomination of the Commissioner, in accordance with law, shall appoint all other officers and employees.*

"(b) *The Secretary of Commerce may vest in himself the functions of the Patent Office and its officers and employees specified in this title and may from time to time authorize their performance by any other officer or employee.*

"(c) *The Secretary of Commerce is authorized to fix the per annum rate of basic compensation of each examiner-in-chief in the Patent Office at not in excess of the maximum scheduled rate provided for positions in grade 17 of the General Schedule of the Classification Act of 1949, as amended.*"

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§ 7. Board of Appeals.

[The examiners-in-chief shall be persons of competent legal knowledge and scientific ability. The Commissioner, the assistant commissioners, and the examiners-in-chief shall constitute a Board of Appeals, which, on written appeal of the applicant, shall review adverse decisions of examiners upon applications for patents. Each appeal shall be heard by at least three members of the Board of Appeals, the members hearing such appeal to be designated by the Commissioner. The Board of Appeals has sole power to grant rehearings.]

"*The examiners-in-chief shall be persons of competent legal knowledge and scientific ability, who shall be appointed under the classified civil service. The Commissioner, the deputy commissioner, the assistant commissioners, and the examiners-in-chief shall constitute a Board of*

Appeals, which on written appeal of the applicant, shall review decisions of examiners upon applications for patents. Each appeal shall be heard by at least three members of the Board of Appeals, the members hearing such appeal to be designated by the Commissioner. The Board of Appeals has sole power to grant rehearings."

PART II.—PATENTABILITY OF INVENTIONS AND GRANTS OF PATENTS

Chapter 14.—ISSUE OF PATENT

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§ 151. Issue of patent.

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] *the delay in payment is shown to have been unavoidable*, it may be accepted by the Commissioner as though no abandonment or lapse had ever occurred.

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