

99TH CONGRESS
1ST SESSION

S. 1543

To protect patent owners from importation into the United States of goods made overseas by use of a United States patented process.

IN THE SENATE OF THE UNITED STATES

JULY 31 (legislative day, JULY 16), 1985

Mr. MATHIAS (for himself, Mr. LAUTENBERG, Mr. LAXALT, Mr. DECONCINI, Mr. SPECTER, Mr. DENTON, and Mr. DIXON) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To protect patent owners from importation into the United States of goods made overseas by use of a United States patented process.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Process Patent Amend-
4 ment of 1985".

5 SEC. 2. (a) Section 154 of title 35, United States Code,
6 is amended by inserting after "United States," the following:
7 "and, if the invention is a process, of the right to exclude
8 others from using or selling products produced thereby

1 throughout, or importing products produced thereby into, the
2 United States.”.

3 (b) Section 271 of title 35, United States Code, is
4 amended by—

5 (1) inserting “(1)” after “(a)”;

6 (2) adding at the end of subsection (a), the follow-
7 ing:

8 “(2) If the patented invention is a process, whoever
9 without authority uses or sells within, or imports into, the
10 United States during the term of the patent therefor a prod-
11 uct produced by such process infringes the patent.”.

12 (c) Section 287 of title 35, United States Code, is
13 amended by—

14 (1) inserting “(a)” before “Patentees,”; and

15 (2) adding at the end thereof the following new
16 subsection:

17 “(b) No damages shall be recovered by the patentee for
18 infringement under section 271(a)(2) of this title from an in-
19 fringer who did not use the patented process except on proof
20 that such infringer knew of or was notified of the infringe-
21 ment and continued to infringe thereafter, in which event
22 damages may be recovered only for infringement occurring
23 after such knowledge or notice. Filing of an action for in-
24 fringement shall constitute such notice.”.

1 SEC. 3. This Act shall apply only to products produced
2 or imported after the date of enactment. This Act shall not
3 abridge or affect the right of any persons or their successors
4 in business to continue to use, sell, or import any specific
5 product already in substantial and continuous commercial
6 production on July 31, 1985, or for which substantial prepa-
7 ration for production was made before that date, to the extent
8 equitable for the protection of investments made or business
9 commenced before that date. This Act shall not deprive a
10 patent owner of any other remedies available under 15
11 U.S.C. 271, 19 U.S.C. 1337, or any other statutory provi-
12 sion.

13 SEC. 4. For five years after the date of enactment, the
14 Department of Commerce shall report annually to Congress
15 on the effect of this Act on the importation of ingredients to
16 be used for manufacturing products in the United States in
17 those domestic industries that submit formal complaints to
18 the Department alleging that their legitimate sources of
19 supply have been adversely affected.

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