

102D CONGRESS
1ST SESSION

H. R. 3531

IN THE SENATE OF THE UNITED STATES

NOVEMBER 26 (legislative day, NOVEMBER 23), 1991

Received

AN ACT

To authorize appropriations for the Patent and Trademark Office in the Department of Commerce for fiscal year 1992, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Patent and Trademark
5 Office Authorization Act of 1991”.

6 **SEC. 2. AUTHORIZATION OF APPROPRIATIONS.**

7 (a) **AUTHORIZATION.**—There are authorized to be ap-
8 propriated to the Patent and Trademark Office for fiscal
9 year 1992—

1 (1) \$95,000,000 for salaries and necessary ex-
2 penses, which shall be derived from deposits in the
3 Patent and Trademark Office Fee Surcharge Fund
4 established under section 10101 of the Omnibus
5 Budget Reconciliation Act of 1990 (Public Law
6 101-508);

7 (2) such sums as are equal to the amount col-
8 lected during that year from fees under title 15,
9 United States Code, and the Trademark Act of 1946
10 (15 U.S.C. 1051 and following); and

11 (3) \$24,000,000 for administrative, capital, or
12 other expenditures not provided for under para-
13 graphs (1) and (2).

14 (b) AMENDMENTS TO BUDGET RECONCILIATION
15 ACT.—Section 10101 of the Omnibus Budget Rec-
16 onciliation Act of 1990 (Public Law 101-508) is amended
17 as follows:

18 (1) Subsection (a) is amended—

19 (A) by striking “of 69 percent, rounded by
20 standard arithmetic rules,”; and

21 (B) by inserting before the period “, in
22 order to ensure that the amounts specified in
23 subsection (c) are collected”.

24 (2) Subsection (b)(1)(B) is amended by insert-
25 ing “of these surcharges,” after “(B)”.

1 (3) Subsection (c) is amended—

2 (A) by striking “REVISIONS” and inserting
3 “ESTABLISHMENT OF SURCHARGES”; and

4 (B) by striking “surcharges” and all that
5 follows through “Trademarks” and inserting
6 “the Commissioner of Patents and Trademarks
7 shall establish surcharges under subsection
8 (a)”.

9 (c) **WAIVER OF CERTAIN RESTRICTIONS.**—Sur-
10 charges established for fiscal year 1992 under section
11 10101(c) of the Omnibus Budget Reconciliation Act of
12 1990 may take effect on or after 1 day after such sur-
13 charges are published in the Federal Register. Section 553
14 of title 5, United States Code, shall not apply to the estab-
15 lishment of such surcharges for fiscal year 1992.

16 **SEC. 3. APPROPRIATIONS AUTHORIZED TO BE CARRIED**
17 **OVER.**

18 Amounts appropriated under this Act may remain
19 available until expended.

20 **SEC. 4. OVERSIGHT OF PATENT AND TRADEMARK FEES.**

21 Section 42 of title 35, United States Code, is amend-
22 ed by adding at the end the following:

23 “(e) The Secretary of Commerce shall, on the day
24 each year on which the President submits the annual
25 budget to the Congress, provide to the Committees on the

1 Judiciary of the Senate and the House of
2 Representatives—

3 “(1) a list of patent and trademark fee collec-
4 tions by the Patent and Trademark Office during
5 the preceding fiscal year;

6 “(2) a list of activities of the Patent and Trade-
7 mark Office during the preceding fiscal year which
8 were supported by patent fee expenditures, trade-
9 mark fee expenditures, and appropriations;

10 “(3) budget plans for significant programs
11 projects, and activities of the Office, including out-
12 year funding estimates;

13 “(4) any proposed disposition of surplus fees by
14 the Office; and

15 “(5) such other information as the committees
16 consider necessary.”.

17 **SEC. 5. PATENT AND TRADEMARK FEES.**

18 “(a) **FEE SCHEDULES.**—(1) Section 41(a) of title 35,
19 United States Code, is amended to read as follows:

20 “(a) The Commissioner shall charge the following
21 fees:

22 “(1)(A) On filing each application for an origi-
23 nal patent, except in design or plant cases, \$500.

24 “(B) In addition, on filing or on presentation at
25 any other time, \$52 for each claim in independent

1 form which is in excess of 3, \$14 for each claim
2 (whether independent or dependent) which is in ex-
3 cess of 20, and \$160 for each application containing
4 a multiple dependent claim.

5 “(2) For issuing each original or reissue patent,
6 except in design or plant cases, \$820.

7 “(3) In design and plant cases—

8 “(A) on filing each design application,
9 \$200;

10 “(B) on filing each plant application,
11 \$330;

12 “(C) on issuing each design patent, \$290;
13 and

14 “(D) on issuing each plant patent, \$410.

15 “(4)(A) On filing each application for the re-
16 issue of a patent, \$500

17 “(B) In addition, on filing or on presentation at
18 any other time, \$52 for each claim in independent
19 form which is in excess of the number of independ-
20 ent claims of the original patent, and \$14 for each
21 claim (whether independent or dependent) which is
22 in excess of 20 and also in excess of the number of
23 claims of the original patent.

24 “(5) On filing each disclaimer, \$78.

1 “(6)(A) On filing an appeal from the examiner
2 to the Board of Patent Appeals and Interferences,
3 \$190.

4 “(B) In addition, on filing a brief in support of
5 the appeal, \$190, and on requesting an oral hearing
6 in the appeal before the Board of Patent Appeals
7 and Interferences, \$160.

8 “(7) On filing each petition for the revival of an
9 unintentionally abandoned application for a patent
10 or for the unintentionally delayed payment of the fee
11 for issuing each patent, \$820, unless the petition is
12 filed under section 133 or 151 of this title, in which
13 case the fee shall be \$78.

14 “(8) For petitions for 1-month extensions of
15 time to take actions required by the Commissioner
16 in an application—

17 “(A) On filing a first petition, \$78;

18 “(B) on filing a second petition, \$172; and

19 “(C) on filing a third petition or sub-
20 sequent petition, \$340.

21 “(9) Basic national fee for an international ap-
22 plication where the Patent and Trademark Office
23 was the International Preliminary Examining Au-
24 thority and the International Searching Authority,
25 \$450.

1 “(10) Basic national fee for an international
2 application where the Patent and Trademark Office
3 was the International Searching Authority but not
4 the International Preliminary Examining Authority,
5 \$500.

6 “(11) Basic national fee for an international
7 application where the Patent and Trademark Office
8 was neither the International Searching Authority
9 nor the International Preliminary Examining Au-
10 thority, \$670.

11 “(12) Basic national fee for an international
12 application where the international preliminary ex-
13 amination has been paid to the Patent and Trade-
14 mark Office, and the international preliminary ex-
15 amination report states that the provisions of Article
16 33(2), (3), and (4) of the Patent Cooperation Treaty
17 have been satisfied for all claims in the application
18 entering the national stage, \$66.

19 “(13) For filing or later presentation of each
20 independent claim in the national stage of an inter-
21 national application in excess of 3, \$52.

22 “(14) For filing or later presentation of each
23 claim (whether independent or dependent) in a na-
24 tional stage of an international application in excess
25 of 20, \$14.

1 “(15) For each national stage of an inter-
2 national application containing a multiple dependent
3 claim, \$160.

4 For the purpose of computing fees, a multiple dependent
5 claim as referred to in section 112 of this title or any claim
6 depending therefrom shall be considered as separate de-
7 pendent claims in accordance with the number of claims
8 to which reference is made. Errors in payment of the addi-
9 tional fees may be rectified in accordance with regulations
10 of the Commissioner.”.

11 (2) Subsection (b) of section 41 of title 35, United
12 States Code, is amended by striking “a patent in force”
13 and all that follows through the end of paragraph 3. and
14 inserting the following: “in force all patents based on ap-
15 plications filed on or after December 12, 1980:

16 “(1) 3 years and 6 months after grant, \$650.

17 “(2) 7 years and 6 months after grant, \$1,310.

18 “(3) 11 years and 6 months after grant,
19 \$1,980.”.

20 (3) Subsection (d) of section 41 of title 35, United
21 States Code, is amended to read as follows:

22 “(d) The Commissioner shall establish fees for all
23 other processing, services, or materials relating to patents
24 not specified in this section to recover the estimated aver-
25 age cost to the Office of such processing, services, or mate-

1 rials, except that the Commissioner shall charge the fol-
2 lowing fees for the following services:

3 “(1) For recording a document affecting title,
4 \$40 per property.

5 “(2) For each photocopy, \$.25 per page.

6 “(3) For each black and white copy of a patent,
7 \$3.

8 The yearly fee for providing a library specified in section
9 13 of this title with uncertified printed copies of the speci-
10 fications and drawings for all patents in that year shall
11 be \$50.”.

12 (b) AUTHORITY TO INCREASE FEES.—Section 41(f)
13 of title 35, United States Code, is amended by striking
14 “on October 1, 1985, and every third year thereafter, to
15 reflect any fluctuations occurring during the previous
16 three years” and inserting “on October 1, 1992, and every
17 year thereafter, to reflect any fluctuations occurring dur-
18 ing the previous 12 months”.

19 (c) NOTICE OF FEES.—(1) Section 41(g) of title 35,
20 United States Code, is amended to read as follows:

21 “(g) No fee established by the Commissioner under
22 this section shall take effect until at least 30 days after
23 notice of the fee has been published in the Federal Reg-
24 ister and in the Official Gazette of the Patent and Trade-
25 mark Office.”.

1 (2) Fees established by the Commissioner of Patents
2 and Trademarks under section 41(d) of title 35, United
3 States Code, during fiscal year 1992 may take effect on
4 or after 1 day after such fees are published in the Federal
5 Register. Section 41(g) of title 35, United States Code,
6 and section 553 of title 5, United States Code, shall not
7 apply to the establishment of such fees during fiscal year
8 1992.

9 (d) PATENT AND TRADEMARK COLLECTIONS; PUB-
10 LIC ACCESS.—(1) Section 41 of title 35, United States
11 Code, is amended by adding at the end the following new
12 subsection:

13 “(i)(1) The Commissioner shall maintain, for use by
14 the public, paper or microform collections of United States
15 patents, foreign patent documents, and United States
16 trademark registrations arranged to permit search for and
17 retrieval of information. The Commissioner may not im-
18 pose fees directly for the use of such collections, or for
19 the use of the public patent or trademark search rooms
20 or libraries.

21 “(2) The Commissioner shall provide for the full de-
22 ployment of the automated search systems of the Patent
23 and Trademark Office so that such systems are available
24 for use by the public, and shall assure full access by the
25 public to, and dissemination of, patent and trademark in-

1 formation, using a variety of automated methods, includ-
2 ing electronic bulletin boards and remote access by users
3 to mass storage and retrieval systems.

4 “(3) The Commissioner may establish reasonable fees
5 for access by the public to the automated search systems
6 of the Patent and Trademark Office. If such fees are es-
7 tablished, a limited amount of free access shall be made
8 available to users of the systems for purposes of education
9 and training. The Commissioner may waive the payment
10 by an individual of fees authorized by this subsection upon
11 a showing of need or hardship, and if such a waiver is
12 in the public interest.

13 “(4) The Commissioner shall submit to the Congress
14 an annual report on the automated search systems of the
15 Patent and Trademark Office and the access by the public
16 to such systems. The Commissioner shall also publish such
17 report in the Federal Register. The Commissioner shall
18 provide an opportunity for the submission of comments
19 by interested persons on each such report.”

20 (2)(A) the section heading for section 41 of title 35,
21 United States Code, is amended to read as follows:

1 **“§41. Patent fees; patent and trademark search sys-**
 2 **tems”.**

3 (B) The items in the table of sections at the begin-
 4 ning of chapter 4 of title 35 United States Code, are
 5 amended to read as follows:

“41. Patent fees; patent and trademark search systems.

“42. Patent and Trademark Office funding.”.

6 (C) The chapter heading for chapter 4 of title 35,
 7 United States Code, is amended to read as follows:

8 **“CHAPTER 4—PATENT FEES; FUNDING; SEARCH**
 9 **SYSTEMS”.**

10 (D) The items relating to chapters 3 and 4 in the
 11 table of chapters for part I of title 35, United States Code,
 12 are amended to read as follows:

“3. Practice before Patent and Trademark Office 31

“4. Patent Fees; Funding; Search Systems 41”.

13 (e) **USE OF FEES.**—Subsection 42(c) of title 35,
 14 United States Code is amended to read as follows:

15 “(c) Revenues from fees shall be available to the
 16 Commissioner to carry out, to the extent provided in ap-
 17 propriation Acts, the activities of the Patent and Trade-
 18 mark Office. Fees available to the Commissioner under
 19 section 31 of the Trademark Act of 1946 may be used
 20 only for the processing of trademark registrations and for
 21 other activities, services, and materials relating to trade-
 22 marks and to cover a proportionate share of the adminis-
 23 trative costs of the Patent and Trademark Office.”.

1 (f) TRADEMARK FEES.—(1) Section 31(a) of the
2 Trademark Act of 1946 (15 U.S.C. 1113(a)) is amended
3 to read as follows:

4 “(a) The Commissioner shall establish fees for the fil-
5 ing and processing of an application for the registration
6 of a trademark or other mark and for all other services
7 performed by and materials furnished by the Patent and
8 Trademark Office related to trademarks and other marks.
9 Fees established under this subsection may be adjusted
10 by the Commissioner once each year to reflect, in the ag-
11 gregate, any fluctuations during the preceding 12 months
12 in the Consumer Price Index, as determined by the Sec-
13 retary of Labor. Changes of less than 1 percent may be
14 ignored. No fee established under this section shall take
15 effect until at least 30 days after notice of the fee has
16 been published in the Federal Register and in the Official
17 Gazette of the Patent and Trademark Office.”

18 (2) Fees established by the Commissioner of Patents
19 and Trademarks under section 31(a) of the Trademark
20 Act of 1946 (15 U.S.C. 113(a)) during fiscal year 1992—

21 (A) may, notwithstanding the second sentence
22 of such section 31(a), reflect fluctuations during the
23 preceding 3 years in the Consumer Price Index; and

24 (B) may take effect on or after 1 day after such
25 fees are published in the Federal Register.

1 The last sentence of section 31(a) of the Trademark Act
2 of 1946 and section 553 of title 5, United States Code,
3 shall not apply to the establishment of such fees during
4 fiscal year 1992.

5 (g) INTERNATIONAL APPLICATION FEES.—(1) Sec-
6 tion 376 of title 35, United States Code, is amended—

7 (A) in subsection (a)—

8 (i) in the second sentence by inserting
9 after “Office” the following: “shall charge a na-
10 tional fee as provided in section 41(a), and”;
11 and

12 (ii) by striking paragraph (4) and redesignig-
13 nating paragraphs (5) and (6) as paragraphs
14 (4) and (5), respectively; and

15 (B) in subsection (b) in the last sentence by
16 striking “the preliminary examination fee” and in-
17 serting “the national fee, their preliminary examina-
18 tion fee,”.

19 (2) Section 371(c)(1) of title 35, United States Code,
20 is amended by striking “prescribed under section
21 376(a)(4) of this part” and inserting “provided in section
22 41(a) of this title”.

1 **SEC. 6. USE OF EXCHANGE AGREEMENTS RELATING TO**
2 **AUTOMATIC DATA PROCESSING RESOURCES**
3 **PROHIBITED.**

4 The Commissioner of Patents and Trademarks may
5 not, during fiscal year 1992, enter into any agreement for
6 the exchange of items or services (as authorized under sec-
7 tion 6(a) of title 35, United States Code) relating to auto-
8 matic data processing resources (including hardware, soft-
9 ware and related services, and machine readable data).
10 The preceding sentence shall not apply to an agreement
11 relating to data for automation programs which is entered
12 into with a foreign government or with an international
13 intergovernmental organization.

14 **SEC. 7. INDEMNIFICATION OF EMPLOYEES.**

15 The Commission of Patents and Trademarks is au-
16 thorized to indemnify any officer or employee of the Pat-
17 ent and Trademark Office who participate in the Law
18 School Tuition Assistance Program of the Patent and
19 Trademark Office, against tax liability incurred as a result
20 of payments made to law schools under that program in
21 tax years 1988, 1989, and 1990.

22 **SEC. 8. DUTIES OF COMMISSIONER.**

23 Section 6(a) of title 35, United States Code, is
24 amended by striking "and shall have" and inserting ", in-
25 cluding programs to recognize, identify, assess and fore-

1 cast the technology of patented inventions and their utility
2 to industry; and shall have”.

3 **SEC. 9. REPEAL OF PRIOR AUTHORIZATION ACTS.**

4 Subsections (b) and (c) of section 104 of Public Law
5 100–703 are repealed.

6 **SEC. 10. GAO REPORTING REQUIREMENT.**

7 Section 202(b)(3) of title 35, United States Code, is
8 amended by striking “each year” and inserting “every 5
9 years”.

10 **SEC. 11. PATENT INFORMATION DISSEMINATION.**

11 (a) **DEFINITIONS.**—For purposes of this section—

12 (1) the term “CD-ROMs” means compact discs
13 formatted with read-only memory, including such
14 discs that make use of advanced optical storage
15 technology;

16 (2) the term “classified patent information”
17 means patent information organized by the subject
18 matter of the claimed invention according to the
19 United States Patent Classification System or the
20 classification system used by the country or author-
21 ity that issues a patent;

22 (3) the term “Commissioner” means the Assist-
23 ant Secretary of Commerce and Commissioner of
24 Patents and Trademarks; and

1 (4) the term “patent information” means a
2 complete and exact facsimile of a patent or patent
3 application, including the text and all images con-
4 tained therein (such as drawings, diagrams, for-
5 mulas, and tables).

6 (b) INFORMATION DISSEMINATION PROGRAM.—No
7 later than January 1, 1992, the Commissioner shall estab-
8 lish a demonstration program which shall make patent in-
9 formation available in accordance with the provisions of
10 this section, through October 1, 1992. The Commissioner
11 shall produce master CD-ROMs containing classified pat-
12 ent information and provide copies of them to the public
13 for purchase.

14 (c) INFORMATION TO BE DISSEMINATED.—The pat-
15 ent information that shall be disseminated pursuant to
16 this section shall be patent information in the possession
17 of the Commissioner in computer readable form, including
18 information on selected subclasses of United States pat-
19 ents, as determined by the Commissioner.

20 (d) FEES.—The Commissioner shall establish fees for
21 the purchase of CD-ROMs, at a rate sufficient to recover
22 the estimated average marginal cost of producing and
23 processing purchase orders for copies of master CD-
24 ROMs.

1 (e) REPORT.—On the date that is 1 year after the
2 date of the enactment of this Act the Commissioner shall
3 submit to Congress a report on the implementation of this
4 section.

5 **SEC. 12. DEFINITION.**

6 For the purposes of this Act, the “Trademark Act
7 of 1946” refers to the Act entitled “An Act to provide
8 for the registration and protection of trademarks used in
9 commerce, to carry out the provision of certain inter-
10 national conventions, and for other purposes”, approved
11 July 5, 1946 (15 U.S.C. 1051 and following).

12 **SEC. 13. EFFECTIVE DATE.**

13 This Act takes effect on the date of the enactment
14 of this Act, except that the fees established by the amend-
15 ment made by section 5(a) shall take effect on or after
16 1 day after such fees are published in the Federal Reg-
17 ister.

Passed the House of Representatives November 25,
1991.

Attest: DONNALD K. ANDERSON,
Clerk.