

102D CONGRESS
1ST SESSION

H. R. 3531

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

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 9, 1991

Mr. HUGHES (for himself and Mr. MOORHEAD) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

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—

9 (1) for fiscal year 1992—

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

7 (B) such sums as are equal to the amount
8 collected during that year from fees under title
9 35, United States Code, and the Trademark
10 Act of 1946 (15 U.S.C. 1051 and following);
11 and

12 (C) \$24,000,000 for administrative, cap-
13 ital, or other expenditures not provided for
14 under subparagraphs (A) and (B).

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

19 (1) Subsection (a) is amended—

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

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

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

3 (3) Subsection (c) is amended—

4 (A) by striking “REVISIONS” and inserting
5 “ESTABLISHMENT OF SURCHARGES”; and

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

11 (c) **WAIVER OF CERTAIN RESTRICTIONS.**—Sur-
12 charges established for fiscal year 1992 under section
13 10101(c) of the Omnibus Budget Reconciliation Act of
14 1990 may be established notwithstanding section 553 of
15 title 5, United States Code, and may take effect on or
16 after 1 day after such surcharges are published in the
17 Federal Register.

18 **SEC. 3. APPROPRIATIONS AUTHORIZED TO BE CARRIED**
19 **OVER.**

20 Amounts appropriated under this Act may remain
21 available until expended.

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

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

1 “(e) The Secretary of Commerce shall, on the day
2 each year on which the President submits the annual
3 budget to the Congress, provide to the Committees on the
4 Judiciary of the Senate and the House of
5 Representatives—

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

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

13 “(3) budget plans for significant programs,
14 projects, and activities of the Office, including out-
15 year funding estimates;

16 “(4) any proposed disposition of surplus fees by
17 the Office; and

18 “(5) such other information as the committees
19 consider necessary.”.

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

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

23 “(a) The Commissioner shall charge the following
24 fees:

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

3 “(B) In addition, on filing or on presentation at
4 any other time, \$52 for each claim in independent
5 form which is in excess of 3, \$14 for each claim
6 (whether independent or dependent) which is in ex-
7 cess of 20, and \$160 for each application containing
8 a multiple dependent claim.

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

11 “(3) In design and plant cases—

12 “(A) on filing each design application,
13 \$200;

14 “(B) on filing each plant application,
15 \$330;

16 “(C) on issuing each design patent, \$290;
17 and

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

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

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

1 in excess of 20 and also in excess of the number of
2 claims of the original patent.

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

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

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

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

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

20 “(A) on filing a first petition, \$78;

21 “(B) on filing a second petition, \$240;

22 “(C) on filing a third petition, \$580; and

23 “(D) on filing a fourth or subsequent peti-
24 tion, \$900.

1 “(9) Basic national fee for an international ap-
2 plication where the Patent and Trademark Office
3 was the International Preliminary Examining Au-
4 thority and the International Searching Authority,
5 \$450.

6 “(10) Basic national fee for an international
7 application where the Patent and Trademark Office
8 was the International Searching Authority but not
9 the International Preliminary Examining Authority,
10 \$500.

11 “(11) Basic national fee for an international
12 application where the Patent and Trademark Office
13 was neither the International Searching Authority
14 nor the International Preliminary Examining Au-
15 thority, \$670.

16 “(12) Basic national fee for an international
17 application where the international preliminary ex-
18 amination has been paid to the Patent and Trade-
19 mark Office, and the international preliminary ex-
20 amination report states that all of the claims meet
21 provisions of the Patent Cooperation Treaty Article
22 33 (2), (3), and (4), \$66.

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

1 “(14) For filing or later presentation of each
2 claim (whether independent or dependent) in a na-
3 tional stage of an international application in excess
4 of 20, \$14.

5 “(15) Multiple dependent claims per national
6 stage of an international application, \$160.

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

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

19 “(1) 3 years and 6 months after grant, \$650.

20 “(2) 7 years and 6 months after grant, \$1,310.

21 “(3) 11 years and 6 months after grant,
22 \$1,980.”.

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

1 “(d) The Commissioner shall establish fees for all
2 other processing, services, or materials relating to patents
3 not specified in this section to recover the estimated aver-
4 age cost to the Office of such processing, services, or mate-
5 rials, except that the Commissioner shall charge the fol-
6 lowing fees for the following services:

7 “(1) For each assignment of a patent, \$40.

8 “(2) For each photocopy, \$.25.

9 “(3) For each printed patent copy, \$3.

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

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

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

23 “(g) No fee established by the Commissioner under
24 this section shall take effect until at least 30 days after
25 notice of the fee has been published in the Federal Reg-

1 ister and in the Official Gazette of the Patent and Trade-
2 mark Office.”.

3 (2) Fees established by the Commissioner of Patents
4 and Trademarks under section 41(d) of title 35, United
5 States Code, during fiscal year 1992 may, notwithstanding
6 subsection (g) of such section and section 553 of title 5,
7 United States Code, take effect on or after 1 day after
8 such fees are published in the Federal Register.

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 may establish reasonable fees
22 for access by the public to the automated search systems
23 of the Patent and Trademark Office. If such fees are es-
24 tablished, a limited amount of free access shall be made
25 available to users of the systems for purposes of education

1 and training. The Commissioner may waive the payment
2 by an individual of fees authorized by this subsection upon
3 a showing of need or hardship, and if such a waiver is
4 in the public interest.

5 “(3) The Commissioner shall submit to the Congress
6 an annual report on the automated search systems of the
7 Patent and Trademark Office and the access by the public
8 to such systems. The Commissioner shall also publish such
9 report in the Federal Register. The Commissioner shall
10 provide an opportunity for the submission of comments
11 by interested persons on each such report.”.

12 (2)(A) The section heading for section 41 of title 35,
13 United States Code, is amended to read as follows:

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

16 (B) The table of sections at the beginning of chapter
17 4 of title 35, United States Code, is amended to read as
18 follows:

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

“42. Patent and Trademark Office funding.”.

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

1 **CHAPTER 4—PATENT FEES; FUNDING; SEARCH**
 2 **SYSTEMS”.**

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

“3. Practice Before Patent and Trademark Office	31
“4. Patent Fees; Funding; Search Systems	41”.

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

8 “(e) Revenues from fees shall be available to the
 9 Commissioner to carry out, to the extent provided in ap-
 10 propriation Acts, the activities of the Patent and Trade-
 11 mark Office. Fees available to the Commissioner under
 12 section 31 of the Trademark Act of 1946 may be used
 13 only for the processing of trademark registrations and for
 14 other activities, services, and materials relating to trade-
 15 marks and to cover a proportionate share of the adminis-
 16 trative costs of the Patent and Trademark Office.”.

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

20 “(a) The Commissioner shall establish fees for the fil-
 21 ing and processing of an application for the registration
 22 of a trademark or other mark and for all other services
 23 performed by and materials furnished by the Patent and
 24 Trademark Office related to trademarks and other marks.
 25 Fees established under this subsection may be adjusted

1 by the Commissioner once each year to reflect any fluctua-
2 tions during the preceding 12 months in the Consumer
3 Price Index, as determined by the Secretary of Labor.
4 Changes of less than 1 percent may be ignored. No fee
5 established under this section shall take effect until at
6 least 30 days after notice of the fee has been published
7 in the Federal Register and in the Official Gazette of the
8 Patent and Trademark Office.”

9 (2) Fees established by the Commissioner of Patents
10 and Trademarks under section 31(a) of the Trademark
11 Act of 1946 (15 U.S.C. 1113(a)) during fiscal year
12 1992—

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

16 (B) may, notwithstanding the last sentence of
17 such section 31(a) and section 553 of title 5, United
18 States Code, take effect on or after 1 day after such
19 fees are published in the Federal Register.

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

22 (A) in subsection (a)—

23 (i) in the second sentence by inserting
24 after “Office” the following: “shall charge a na-

1 tional fee as provided in section 41(a), and”;
2 and

3 (ii) by striking paragraph (4) and redesignating paragraphs (5) and (6) as paragraphs
4 (4) and (5), respectively; and

5 (B) in subsection (b) in the last sentence by
6 striking “the preliminary examination fee” and inserting “the national fee, the preliminary examination
7 fee,”.

8 (2) Section 371(c)(1) of title 35, United States Code,
9 is amended by striking “prescribed under section
10 376(a)(4) of this part” and inserting “provided in section
11 41(a) of this title”.

12 **SEC. 6. USE OF EXCHANGE AGREEMENTS RELATING TO**
13 **AUTOMATIC DATA PROCESSING RESOURCES**
14 **PROHIBITED.**

15 The Commissioner of Patents and Trademarks may
16 not, during fiscal year 1992, enter into any agreement for
17 the exchange of items or services (as authorized under section
18 6(a) of title 35, United States Code) relating to auto-
19 matic data processing resources (including hardware, soft-
20 ware and related services, and machine readable data).
21 The preceding sentence shall not apply to an agreement
22 relating to data for automation programs which is entered

1 into with a foreign government or with an international
2 intergovernmental organization.

3 **SEC. 7. INDEMNIFICATION OF EMPLOYEES.**

4 The Commissioner of Patents and Trademarks is au-
5 thorized to indemnify any officer or employee of the Pat-
6 ent and Trademark Office who participated in the Law
7 School Tuition Assistance Program of the Patent and
8 Trademark Office, against tax liability incurred as a result
9 of payments made to law schools under that program in
10 tax years 1988, 1989, and 1990.

11 **SEC. 8. REPEAL OF PRIOR AUTHORIZATION ACTS.**

12 Subsections (b) and (c) of section 104 of Public Law
13 100-703 are repealed.

14 **SEC. 9. GAO REPORTING REQUIREMENT.**

15 Section 202(b)(3) of title 35, United States Code, is
16 amended by striking "each year" and inserting "every 5
17 years".

18 **SEC. 10. DEFINITION.**

19 For purposes of this Act, the "Trademark Act of
20 1946" refers to the Act entitled "An Act to provide for
21 the registration and protection of trademarks used in com-
22 merce, to carry out the provision of certain international
23 conventions, and for other purposes", approved July 5,
24 1946 (15 U.S.C. 1051 and following).

1 **SEC. 11. EFFECTIVE DATE.**

2 This Act takes effect on the date of the enactment
3 of this Act, except that fees established by the amendment
4 made by section 5(a) shall take effect on or after 1 day
5 after such fees are published in the Federal Register.

○