

Union Calendar No. 234

102^D CONGRESS
1ST SESSION**H. R. 3531****[Report No. 102-382]**

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

NOVEMBER 25, 1991

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on October 9, 1991]

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,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the "Patent and Trademark*
3 *Office Authorization Act of 1991".*

4 **SEC. 2. AUTHORIZATION OF APPROPRIATIONS.**

5 (a) *AUTHORIZATION.—There are authorized to be ap-*
6 *propriated to the Patent and Trademark Office—*

7 (1) *for fiscal year 1992—*

8 (A) *\$95,000,000 for salaries and necessary*
9 *expenses, which shall be derived from deposits in*
10 *the Patent and Trademark Office Fee Surcharge*
11 *Fund established under section 10101 of the Om-*
12 *nibus Budget Reconciliation Act of 1990 (Public*
13 *Law 101-508);*

14 (B) *such sums as are equal to the amount*
15 *collected during that year from fees under title*
16 *15, United States Code, and the Trademark Act*
17 *of 1946 (15 U.S.C. 1051 and following); and*

18 (C) *\$24,000,000 for administrative, capital,*
19 *or other expenditures not provided for under sub-*
20 *paragraphs (A) and (B).*

21 (b) **AMENDMENTS TO BUDGET RECONCILIATION**
22 **ACT.—Section 10101 of the Omnibus Budget Reconciliation**
23 **Act of 1990 (Public Law 101-508) is amended as follows:**

24 (1) *Subsection (a) is amended—*

25 (A) *by striking "of 69 percent, rounded by*
26 *standard arithmetic rules,"; and*

1 (B) by inserting before the period “, in
2 order to ensure that the amounts specified in
3 subsection (c) are collected”.

4 (2) Subsection (b)(1)(B) is amended by inserting
5 “of these surcharges,” after “(B)”.

6 (3) Subsection (c) is amended—

7 (A) by striking “REVISIONS” and inserting
8 “ESTABLISHMENT OF SURCHARGES”; and

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

13 (c) **WAIVER OF CERTAIN RESTRICTIONS.**—Surcharges
14 established for fiscal year 1992 under section 10101(c) of
15 the Omnibus Budget Reconciliation Act of 1990 may take
16 effect on or after 1 day after such surcharges are published
17 in the Federal Register. Section 553 of title 5, United States
18 Code, shall not apply to the establishment of such surcharges
19 for fiscal year 1992.

20 **SECTION 3. APPROPRIATIONS AUTHORIZED TO BE CAR-**
21 **RIED OVER.**

22 Amounts appropriated under this Act may remain
23 available until expended.

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

2 Section 42 of title 35, United States Code, is amended
3 by adding at the end the following:

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

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

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

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

18 “(4) any proposed disposition of surplus fees by
19 the Office; and

20 “(5) such other information as the committees
21 consider necessary.”

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

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

25 “(a) The Commissioner shall charge the following 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 excess
7 of 20, and \$160 for each application containing a
8 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, \$330;

15 “(C) on issuing each design patent, \$290;

16 and

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

18 “(4)(A) On filing each application for the reissue
19 of a patent, \$500.

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

1 of 20 and also in excess of the number of claims of
2 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 and
10 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 time
18 to take actions required by the Commissioner in an
19 application—

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

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

22 “(C) on filing a third petition or subsequent
23 petition, \$340.

24 “(9) Basic national fee for an international ap-
25 plication where the Patent and Trademark Office was

1 *the International Preliminary Examining Authority*
2 *and the International Searching Authority, \$450.*

3 “(10) *Basic national fee for an international ap-*
4 *plication where the Patent and Trademark Office was*
5 *the International Searching Authority but not the*
6 *International Preliminary Examining Authority,*
7 *\$500.*

8 “(11) *Basic national fee for an international ap-*
9 *plication where the Patent and Trademark Office was*
10 *neither the International Searching Authority nor the*
11 *International Preliminary Examining Authority,*
12 *\$670.*

13 “(12) *Basic national fee for an international ap-*
14 *plication where the international preliminary exam-*
15 *ination has been paid to the Patent and Trademark*
16 *Office, and the international preliminary examina-*
17 *tion report states that the provisions of Article 33(2),*
18 *(3), and (4) of the Patent Cooperation Treaty have*
19 *been satisfied for all claims in the application enter-*
20 *ing the national stage, \$66.*

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

24 “(14) *For filing or later presentation of each*
25 *claim (whether independent or dependent) in a na-*

1 *tional stage of an international application in excess*
2 *of 20, \$14.*

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

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

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

18 *“(1) 3 years and 6 months after grant, \$650.*

19 *“(2) 7 years and 6 months after grant, \$1,310.*

20 *“(3) 11 years and 6 months after grant,*
21 *\$1,980.”.*

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

24 *“(d) The Commissioner shall establish fees for all other*
25 *processing, services, or materials relating to patents not*

1 *specified in this section to recover the estimated average cost*
2 *to the Office of such processing, services, or materials, except*
3 *that the Commissioner shall charge the following fees for*
4 *the following services:*

5 “(1) *For recording a document affecting title,*
6 *\$40 per property.*

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

8 “(3) *For each black and white copy of a patent,*
9 *\$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) of*
15 *title 35, United States Code, is amended by striking “on*
16 *October 1, 1985, and every third year thereafter, to reflect*
17 *any fluctuations occurring during the previous three years”*
18 *and inserting “on October 1, 1992, and every year there-*
19 *after, to reflect any fluctuations occurring during the pre-*
20 *vious 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 this*
24 *section shall take effect until at least 30 days after notice*
25 *of the fee has been published in the Federal Register and*

1 *in the Official Gazette of the Patent and Trademark Of-*
2 *fice.”*

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 take effect on or*
6 *after 1 day after such fees are published in the Federal Reg-*
7 *ister. Section 41(g) of title 35, United States Code, and sec-*
8 *tion 553 of title 5, United States Code, shall not apply to*
9 *the establishment of such fees during fiscal year 1992.*

10 (d) *PATENT AND TRADEMARK COLLECTIONS; PUBLIC*
11 *ACCESS.—(1) Section 41 of title 35, United States Code,*
12 *is amended by adding at the end the following new sub-*
13 *section:*

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

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

1 *using a variety of automated methods, including electronic*
2 *bulletin boards and remote access by users to mass storage*
3 *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 estab-*
7 *lished, a limited amount of free access shall be made avail-*
8 *able to users of the systems for purposes of education and*
9 *training. The Commissioner may waive the payment by an*
10 *individual of fees authorized by this subsection upon a*
11 *showing of need or hardship, and if such a waiver is in*
12 *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 pro-*
18 *vide an opportunity for the submission of comments by in-*
19 *terested 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 beginning*
 4 *of chapter 4 of title 35, United States Code, are amended*
 5 *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, Unit-*
 7 *ed 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 table*
 11 *of chapters for part I of title 35, United States Code, are*
 12 *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, United*
 14 *States Code is amended to read as follows:*

15 “(c) *Revenues from fees shall be available to the Com-*
 16 *missioner to carry out, to the extent provided in appropria-*
 17 *tion Acts, the activities of the Patent and Trademark Office.*
 18 *Fees available to the Commissioner under section 31 of the*
 19 *Trademark Act of 1946 may be used only for the processing*
 20 *of trademark registrations and for other activities, services,*
 21 *and materials relating to trademarks and to cover a propor-*
 22 *tionate share of the administrative costs of the Patent and*
 23 *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 to*
3 *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 per-*
7 *formed 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 by*
10 *the Commissioner once each year to reflect, in the aggregate,*
11 *any fluctuations during the preceding 12 months in the*
12 *Consumer Price Index, as determined by the Secretary of*
13 *Labor. Changes of less than 1 percent may be ignored. No*
14 *fee established under this section shall take effect until at*
15 *least 30 days after notice of the fee has been published in*
16 *the Federal Register and in the Official Gazette of the Pat-*
17 *ent and Trademark Office.”.*

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

21 (A) *may, notwithstanding the second sentence of*
22 *such section 31(a), reflect fluctuations during the pre-*
23 *ceding 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 of*
2 *1946 and section 553 of title 5, United States Code, shall*
3 *not apply to the establishment of such fees during fiscal*
4 *year 1992.*

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

7 *(A) in subsection (a)—*

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

11 *(ii) by striking paragraph (4) and redesign-*
12 *ating paragraphs (5) and (6) as paragraphs*
13 *(4) and (5), respectively; and*

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

18 *(2) Section 371(c)(1) of title 35, United States Code,*
19 *is amended by striking “prescribed under section 376(a)(4)*
20 *of this part” and inserting “provided in section 41(a) of*
21 *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). The*
10 *preceding sentence shall not apply to an agreement relating*
11 *to data for automation programs which is entered into with*
12 *a foreign government or with an international intergovern-*
13 *mental organization.*

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

15 *The Commission of Patents and Trademarks is author-*
16 *ized to indemnify any officer or employee of the Patent and*
17 *Trademark Office who participated in the Law School Tui-*
18 *tion Assistance Program of the Patent and Trademark Of-*
19 *fice, against tax liability incurred as a result of payments*
20 *made to law schools under that program in tax years 1988,*
21 *1989, and 1990.*

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

23 *Subsections (b) and (c) of section 104 of Public Law*
24 *100-703 are repealed.*

1 **SEC. 9. GAO REPORTING REQUIREMENT.**

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

5 **SEC. 10. DEFINITION.**

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

12 **SEC. 11. EFFECTIVE DATE.**

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

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