

93<sup>d</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 9199

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IN THE HOUSE OF REPRESENTATIVES

JULY 11, 1973

Mr. RAILSBACK introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 35, United States Code, "Patents", 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       That section 3, title 35, of the United States Code is amended  
4       to read as follows:

5       "**§ 3. Officers and employees**

6       "(a) There shall be in the Patent Office a Commissioner  
7       of Patents, a Deputy Commissioner, two Assistant Commis-  
8       sioners, and not more than fifteen examiners-in-chief. The  
9       Deputy Commissioner, or, in the event of a vacancy in that  
10      office, the Assistant Commissioner senior in date of appoint-  
11      ment shall fill the office of Commissioner during a vacancy

1 in that office until the Commissioner is appointed and takes  
2 office. The Commissioner of Patents, the Deputy Commis-  
3 sioner, and the Assistant Commissioners shall be appointed by  
4 the President, by and with the advice and consent of the  
5 Senate. The Secretary of Commerce, upon the nomination  
6 of the Commissioner, in accordance with law, shall appoint  
7 all other officers and employees.

8 “(b) The Secretary of Commerce may vest in himself  
9 the functions of the Patent Office and its officers and em-  
10 ployees specified in this title and may from time to time  
11 authorize their performance by any other officer or employee.

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

18 SEC. 2. The first paragraph of section 7 of title 35 of  
19 the United States Code is amended to read as follows:

20 “The examiners-in-chief shall be persons of competent  
21 legal knowledge and scientific ability, who shall be appointed  
22 under the classified civil service. The Commissioner, the dep-  
23 uty commissioner, the assistant commissioners, and the ex-  
24 aminers-in-chief shall constitute a Board of Appeals, which  
25 on written appeal of the applicant, shall review adverse deci-

1 sions of examiners upon applications for patents. Each appeal  
2 shall be heard by at least three members of the Board of  
3 Appeals, the members hearing such appeal to be designated  
4 by the Commissioner. The Board of Appeals has sole power  
5 to grant rehearings."

6 SEC. 3. The last sentence of section 151 of title 35 of  
7 the United States Code is amended to read as follows: "If  
8 any payment required by this section is not timely made, but  
9 is submitted with the fee for delayed payment and the delay  
10 in payment is shown to have been unavoidable, it may be  
11 accepted by the Commissioner as though no abandonment or  
12 lapse had ever occurred."

13 SEC. 4. (a) The Commissioner of Patents, may, in ac-  
14 cordance with section 3 of this Act, accept late payment of  
15 issue fees, the payment of which was governed by the pro-  
16 visions of Public Law 89-83: *Provided*, That the term of  
17 the patent for which late payment of such an issue fee  
18 is accepted shall expire earlier than the time specified in  
19 section 154 of title 35, United States Code, by a period equal  
20 to the delay between the time the application became aban-  
21 doned or a patent lapsed for failure to pay the issue fee  
22 and the time the late payment is accepted after enactment  
23 of this Act: *Further provided*, That no patent, with re-  
24 spect to which the payment of the issue fee was governed  
25 by the provisions of Public Law 89-83 and for which a

1 late payment of the issue fee is accepted under the author-  
2 ity created by section 3 of this Act, shall abridge or affect  
3 the right of any person or his successors in business who  
4 made, purchased, or used after the date the application be-  
5 came abandoned or patent lapsed for failure to pay the  
6 issue fee, but prior to the grant of the patent, anything  
7 covered by the patent, to continue the use of or to sell to  
8 others to be used or sold, the specific thing so made, pur-  
9 chased, or used. A court before which such matter is in  
10 question may provide for the continued manufacture, use,  
11 or sale of the thing made, purchased, or used as specified  
12 or for the manufacture, use, or sale of which substantial  
13 preparation was made after the date the application became  
14 abandoned or a patent lapsed for failure to pay the issue fee  
15 but prior to the grant of the patent, and it may also provide  
16 for the continued practice of any process covered by the  
17 patent, practiced, or for the practice for which substantial  
18 preparation was made, prior to the grant of the patent, to  
19 the extent and under such terms as the court deems equitable  
20 for the protection of investments made or business com-  
21 menced before the grant of a patent.

22 (b) This Act shall be effective upon enactment. Exam-  
23 iners-in-chief in office on the date of enactment shall continue  
24 in office under and in accordance with their then existing  
25 appointments.

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