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INTRODUCED BY MR. HUGHES

REAUTHORIZATION OF THE PATENT AND TRADEMARK OFFICE

HON. WILLIAM J. HUGHES

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 9, 1991

Mr. HUGHES. Mr. Speaker, today Representative CARLOS MOORHEAD, the ranking Republican on the Judiciary Subcommittee on Intellectual Property and Judicial Administration, and I are introducing legislation to reauthorize the Patent and Trademark Office [PTO] for a period of 1 year.

Legal protection for intellectual property is the fuel for inventiveness and is provided for in the U.S. Constitution. Congress has delegated authority for the administration of our patent and trademark laws to the Patent and Trademark Office in the U.S. Department of Commerce. The bill Mr. MOORHEAD and I introduce today would authorize appropriations for PTO for fiscal year 1992. It would also extend authority to PTO to raise funds through user fees.

The Patent and Trademake Office was last authorized in 1988, and the 3-year authorization expired September 30, 1991. The reauthorization is complicated this year because the Budget Reconciliation Act of 1990, Public Law 101-508, converted the Patent and Trademark Office from a partially user fee funded agency to one almost entirely funded by user fees. This was done to generate savings in the Federal Budget deficit.

The Omnibus Budget Reconciliation Act imposed a 69-percent surcharge on patent application, issuance and maintenance fees in fiscal year 1991 in order to generate the necessary savings in the Federal deficit. Prior to this fee increase, the trademark functions of PTO were 100-percent financed through user fees, and the patent functions were approximately two-thirds funded by fees. The intellectual property community strongly opposed the dramatic and sudden increase in patent user fees. The Judiciary Committee also expressed serious concern about increasing the fees, not only because the fee increase constituted, in essence, a tax on patent filers, but also because there was a danger that the Patent and Trademark Office could take on characteristics of a private entity and thereby avoid congressional oversight.

Earlier this year, Representative CARLOS MOORHEAD and I introduced H.R. 1613, the administration's proposal for reauthorizing PTO. The administration's proposal reflected a total PTO operating budget of $461,990,000 in fiscal year 1992 and $555,000,000 in fiscal year 1993. The proposal sought to generate revenues for PTO by eliminating the small entity fee structure—under which universities, independent inventors, and small businesses pay 50 percent of what large entities pay—for all patent fees other than the initial filing fees. It further proposed authority for the Commissioner to raise patent and trademark fees at his discretion and to use trademark fees for activities other than the processing of trademark applications. Current law prevents the use of trademark fees for any nontrademark activities in PTO.

The subcommittee held two hearings to consider the administration's proposal in May 1991. Apart from administration officials, witnesses expressed uniform opposition to the proposed fee increases, to the operating budget upon which the proposal was based, and to the virtual elimination of the small entity fee structure.

Mr. MOORHEAD and I subsequently developed an alternative approach for reauthorizing the Patent and Trademark Office and this approach is reflected in the bill we introduce today. This bill, approved by the Subcommittee on Intellectual Property and Judicial Administration on October 1, 1991, contains the following key features:

First, retains the small entity fee structure;

Second, sets new patent processing fees in section 41 (a) and (b) of title 35, United States Code to reflect a Patent and Trademark Office operating budget of $426 million in 1991;

Third, limits authorization to 1-year period so that the subcommittee can closely monitor PTO's progress in automation system and other aspects of PTO operations;

Fourth, retains the "fence" between trademark fees and other agency funds but authorizes use of trademark fees to pay a proportion of PTO administrative costs;

Fifth, increases patent and trademark fees across the board, and follows the mandate of the Omnibus Budget Reconciliation Act by lowering the surcharge so that only targeted $95 million will be raised; and

Sixth, authorizes $26 million in public funds in an effort to restore partial public funding for PTO operations.

Representative MOORHEAD and I have worked very closely with the intellectual property community and with the Patent and Trademark Office to craft this proposal. Our bill will assure that PTO has adequate funding for fiscal year 1992. At the same time, we have tried to keep patent and trademark fees as low as possible. In addition, while we do not anticipate that substantial public funds will be appropriated to PTO in fiscal year 1992, the bill authorizes the appropriation of public funds, and we intend to continue to seek restoration of such funds for PTO in the future.

I am very grateful to Mr. MOORHEAD for collaborating with me on this important legislation. We will seek expedited approval from the Judiciary Committee and from the full House of Representatives for this measure. The Senate, under the leadership of Senator DECONCINI, is processing very similar legislation, and I expect that we will have reauthorization legislation enacted into law in the near future.