86TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 623

INCREASING CERTAIN PATENT AND TRADEMARK FEES

JULY 1, 1959.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WILLIS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 2739]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2739) to fix the fees payable to the Patent Office, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND LEGISLATIVE HISTORY

The purpose of the bill is to increase some of the fees payable to the Patent Office by applicants for patents and for the registration of trademarks and by others having business with that Office. The bill also rewrites section 31 of the Trademark Act of 1946, and arranges the different fees in separately numbered paragraphs paralleling the corresponding section of the patent statute.

Similar bills were considered and reported by the Committee on the Judiciary in both the 84th Congress and the 85th Congress. H.R. 7416, a substitute for H.R. 4983 on which hearings were held June 3 and 17, 1955, was reported on July 18, 1955 (H. Rept. 1201, 84th Cong.); H.R. 7151, after hearings on June 20, 1957, was reported on August 1, 1957 (H. Rept. 963, 85th Cong.). Hearings were held on the present bill on May 4, 1959. It differs from H.R. 7151 of the 85th Congress in two particulars; first, in section 3 an appeal fee item has been omitted as Public Law 85–609, approved August 8, 1958 (72 Stat. 540) abolished the particular appeal and the corresponding fee item; second, in section 1, items 1, 2, and 4, there is a charge for each claim in excess of 5, this figure was 10 in H.R. 7151, as reported, although it was 5 in H.R. 7416, as reported.

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STATEMENT

The proposed increase in the fees is believed by the committee to be appropriate in view of the fact that there has been no upward adjustment of major patent fees of the Patent Office since 1932, despite steadily rising costs. During the last 3 completed fiscal years, 1956, 1957, and 1958, the annual expenses of the Patent Office averaged $16,837,000 per year. During this same period, 1956–58, the average annual income of the Patent Office from fees and charges was $6,772,000. This amount was equal to 40 percent of its expenses.

The budget for the current fiscal year, 1959, is $20.8 million which includes about $1.5 million for Pay Act costs resulting from the last general salary legislation in June 1958. It provides for only a limited approach to bringing the work of the Patent Office up to date. The receipts for this year will be about $7.2 million, or 35 percent of the expenses.

In contrast, there may be mentioned the expenses and income of the Patent Office during the prewar period. During the 1930's the expenses of the Patent Office averaged $4,535,000 per year and the income averaged $4,269,000 per year. In other words, the income was 94 percent of the expenses.

While major patent fees have not changed since 1932, the expenses of the Patent Office nonetheless have increased considerably, particularly during the last 10 years. During the 1930's the expenses, as noted above, averaged approximately $4½ million per year. Since that time, however, expenses have risen to nearly $17 million per year, for 1956–58, which was nearly four times the average during the 1930's and are now substantially greater in view of the current program to eliminate the backlog of work. This increase has been due to several factors, the primary ones being the successive increases in salary costs and the increases in printing costs. About 80 percent of the Patent Office expenditures goes toward the salaries of its employees and related payments for employee life insurance and retirement. The average salary of about $6,900 paid by the Patent Office today is about 165 percent higher than the $2,600 average during the 1930's. This increase, in major part, has come about as the result of statutory enactments increasing the salary scales of Government employees which have taken place in 1945, 1946, 1948, 1949, 1951, 1955, and most recently by the Pay Act of June 1958. The increase was also due, in part, to changes in employee-position structure, consistent with civil service regulation, and reflects the effect of improved promotional opportunities for professional members of the Patent Office staff.

The next major item of expense in the Patent Office is printing, mainly of copies of patents, which accounts for about 16 percent of the total expenses. This cost has also increased over the past 20 years. The $53 cost for printing and publishing the average patent today is almost three time as great as the $18 cost of 20 years ago. The other items of cost in the Patent Office have also increased proportionately. A good part of the increase in cost of operation is also attributable to the fact that present-day applications are, on the average, larger in size and disclose more complex inventions than those of past years and these require more time and effort to dispose of.

These rises in costs are in general parallel to the rise in the cost of living generally. Using the Bureau of Labor Statistics data of price indexes and the purchasing power of the dollar, the patent fees which patent applicants paid 20 years ago has decreased to less than half their value. To put it another way, if the applicant were paying fees in the same proportion as he pays for other items of expense, the fees would be over twice what they were 20 years ago.

These factors indicate to the committee that some increase in Patent Office fees is in order.

The Patent Office administers both the patent and trademark law. Patent fees are charged by the Patent Office under authority of section 41 of title 35, United States Code. Section 41 specifies fees for 11 different items and also contains authorization for the Patent Office to establish charges for other services which are not specifically enumerated in the statutory schedule. Under this latter authority, a number of fees have been established administratively by the Patent Office. The fees, both those fixed by the statute and the administrative fees, comprise a large number of different items, but only a few are of substantial consequency.

There follows a discussion of the major patent fees.

PATENT FILING AND FINAL FEES

The most important fees in patent cases are the fee payable by an applicant for a patent when he files the application and the fee paid by him when he is to receive the patent. These two fees account for 54 percent of the total revenue of the Patent Office. The fee on filing the patent application is presently $30 and the fee payable when the patent is obtained, called the final fee, is also $30. In addition, there is a charge of $1 for each claim in excess of 20, but this plays only a small part in the total revenue received from these two fees.

Since the fees just mentioned are the major fees of the Patent Office, both in importance and in volume, it is apparent that any increase in Patent Office fees must primarily be directed to them if any substantial increase in revenue is to be obtained. The bill proposes to raise the basic filing fee from $30 to $40 and proposes to raise the basic final fee from $30 to $50. In addition, a further charge of $2 for each claim in excess of five is also proposed.

During the 3 years 1956–58, the Patent Office received an average of $2,254,000 per year from patent filing fees. Had the proposed rate been in effect and, assuming the same volume of work, the receipts from filing fees would have been over $3.6 million, part of the increase coming from the $10 raise in the basic filing fee and part coming from the increased charge on claims.

During the same period the receipts from patent final fees averaged $1,314,000. Under the proposed rate of a basic final fee of $50 plus an additional charge of $2 for each claim over five, the receipts would have been $2,417,000.

From both filing and final fees, the actual receipts were $3,568,000. Estimated receipts under the proposed schedule would have been $6,035,000. In other words, they would be two-thirds greater than the actual receipts. Hence, the effect of the proposed bill is to raise the main patent fees by about two-thirds.

FEE ON NUMBER OF CLAIMS

Applications for patent which are filed in the Patent Office vary considerably in their nature and in the amount of work that is required to examine them. One application may be short and simple and require only a few hours of an examiner's time, while another application may be considerably involved and lengthy and require days and even weeks of an examiner's time. The suggestion has often been advanced that the charge be made proportionately to the size of the application or to the amount of work involved in connection with the application. A Patent Office study of the size of applications and of the amount of time involved in examining them shows that there is an average progressive increase in the time required in accordance with the number of claims presented in the application, and also the average number of claims in an application increases with the size of an application as measured by the number of pages of description and sheets of drawings. Accordingly, a part of the fee to be paid on applying for and on obtaining a patent is calculated according to the number of claims in the case. For each claim over five, a fee of $2 is proposed.

Many applications, the committee was advised, contain more claims than are necessary and the charge for claims over five may have the salutary effect of decreasing the number of unnecessary claims in some cases and thus saving work on the part of the Patent Office. Taking into account the anticipated decrease in the number of claims, the charge of $2 for each claim presented over five is estimated as being equivalent to about $8 per application filed, in revenue received on filing, and about $4 per patent issued in revenue received on issuing the patent. Fifty-four percent of the patents issued have five or fewer claims.

The charge for claims over five is worded to read "$2 for each claim presented at any time which is in excess of five claims in the case," in order to prevent the increasing, without further charge, of the number of claims in a case by an amendment filed after the application has been filed. If an amendment is presented after an application is filed, which increases the claims in the application beyond the number included in the fee originally paid, a further charge for the excess claims would be due. There would be no further charge if claims were revised by amendment, or replaced by other claims, but the charge would be due only when the claims added increased the number then in the case beyond the number of claims previously presented and paid for, and this further charge would be only for the excess number of claims presented.

PRINTED COPIES OF PATENTS

The source of revenue which produces the next highest percentage of the total receipts of the Patent Office, after the patent filing and final fees, is the charge for printed copies of patents. The bill does not propose to change the present charge of 25 cents per copy except in one minor respect.

The bill contains a clause authorizing the Commissioner to establish a charge not to exceed $1 per copy for patents in excess of 25 pages of drawings and specifications, and for copies of plant patents printed

in color. These patents are not very numerous in proportion to the total number of patents printed and the purpose of the clause is, primarily, to enable a higher price to be charged for the patents which are most expensive to print, in order to discourage their purchase, except when necessary.

Printing copies of the specifications and drawings of patents must be regarded as an essential feature of an examination system of granting patents. Aside from the printed copy which is attached to the grant, many printed copies are needed for the examiners' search files which are used when searching the prior art in the examination of new applications, and for the library (including the public search room), to be used for library purposes.

Of the printed copies which are used, part are used by the Patent Office itself, for the search files and for other purposes. Part of the copies are supplied to foreign governments in exchange for printed copies of the patents issued by those governments. These foreign patents are placed in the examiners' search files to be utilized as part of the prior art to be searched, and are also placed in the library to be utilized for library purposes. This is a way of obtaining material essential to the operation of the Patent Office which would otherwise have to be paid for in cash by the Patent Office. Another part of the printed copies is supplied to public libraries in the United States at a nominal charge, to be used by the public. About half of the copies are used for Patent Office and public service purposes, and the remainder are sold.

It is thus seen that the printing of patents is an essential part of having an examination system. The copies which are sold to the public may be looked upon as a byproduct or a surplus, from which some revenue is obtained. With this view the purchasers of the printed copies should not be required to pay the entire expense of producing all the copies utilized. The present charge of 25 cents is believed to be a reasonable charge under the circumstances.

RECORDING ASSIGNMENTS

The next significant item is the charge for recording assignments, which produces about 2½ percent of the receipts of the Patent Office. The present charge for recording assignments is a basic charge of $3 for each paper, with an additional charge depending upon the size of the paper. The present bill proposes to raise the basic charge to $10, both for patents and trademarks.

DESIGN PATENTS

The next item in importance from the standpoint of the amount of receipts is the fee charged for design patent applications, which accounts for about 1½ percent of the total Patent Office receipts. Design patents are issued for a term of 3½, 7, or 14 years, as the applicant may request, and the present fees fixed by statute are $10, $15, and $30, respectively. These fees were established in 1861 and there has been no change since then. The present bill proposes to change these fees to $20, $30, and $40, respectively.

REMAINING PATENT FEES

The remaining patent fees covered by the present bill are of minor significance from the standpoint of revenue produced.

The fee for applying for a reissue patent is raised from $30 to $40, with $2 for each claim in excess of five, to parallel the other changes. The fee for a certificate of correction of an applicant's mistake (35 U.S.C. 255) is changed from $10 to $15, and the same fee is imposed for a certificate of correction under title 35, United States Code, section 256. The revenue from these fees would be quite small in proportion to the total receipts of the Patent Office and they are adjusted in keeping with changes made in the other fees.

CHARGES TO OTHER GOVERNMENT AGENCIES

Section 2 of the bill will require other Government departments and agencies to pay the same fees that are paid by private individuals when they have business before the Patent Office. Various Government departments file large numbers of patent applications in the Patent Office and order large numbers of patent copies and other copies of records. Considerable concern has been expressed over the fact that the Government may obtain these materials and services free of charge when private individuals must pay. Altogether, about 2 percent of the work of the Patent Office is done free for other Government departments or agencies.

Applications for patents filed by Government departments and agencies fall into two classes: Those resulting from inventions made by Government employees (about 900 applications per year) and those resulting from inventions obtained from other sources (about 600 applications per year). Section 266 of title 35 specifically exempts the Government departments from payment of patent fees in the first class of these cases. Despite the fact that the statute presently exempts only the one class of cases and that fees had always been paid in the other class of cases (in fact, at least one of the departments had even requested legislation to exempt them from paying fees in the second class of cases), the Comptroller General ruled in 1953 that the departments cannot be required to pay fees in connection with any patent application they may own, and also that they could not be required to pay other fees in the Patent Office. The instant bill will place Government departments on the same footing as private individuals. This action is in line with present policy of making Government departments account to each other for services rendered, as for example the recent action requiring Government departments to account to the Post Office Department for postage.

The exception in section 2 of the bill would permit the Commissioner of Patents to waive the payment of fees for materials or services in cases of occasional or incidental requests by a Government department or agency. A department may occasionally require a copy of a patent, or a photocopy of a record and the Patent Office will be authorized to supply them without charge in such cases.

TRADEMARK FEES

The trademark work of the Patent Office accounts for about 5 percent of the expenses of the Patent Office. The situation in connection with trademarks is, of course, different from that in connection

with patents, since trademarks are registered only when there is a going business in connection with the goods on which the trademark is used, and the expense of registering a trademark could and should be considered as an ordinary minor business expense.

The bill proposes a number of changes in the schedule of fees charged in trademark cases which are such that the total receipts will be approximately equal to the expenses involved in the trademark portion of the Patent Office. (Present fees account for approximately 75 percent of current trademark expenses.)

Trademark fees are specified in section 31 of the Trademark Act of 1946 (15 U.S.C. 1113). Section 3 of the present bill rewrites section 31 of the act; it arranges the different fees in separately numbered paragraphs, and omits a number of minor fees specified in the present statute so that they can be fixed administratively, paralleling the corresponding section of the patent statute. The 13 fee items listed in section 3 of the bill are not all new or changed; only items 1, 3, 4, 5, 7, 8, 10, and 12 include changes over the present law.

The basic trademark fee is a fee of $25 payable when an application for registration of a trademark is filed. This fee is proposed to be changed to $35 by the bill (item 1).

Item 3 is a new fee. The Trademark Act provides in section 8 that a registrant must file an affidavit of use during the sixth year of the life of the registration in order to maintain the registration in force. If this affidavit is not filed the registration is canceled. The filing of the affidavit is not a mere formality from the standpoint of the work involved in the Patent Office, since certain requirements must be met and the affidavits must be examined and either accepted or refused, and, if refused, further proceedings take place. In view of this fact, and the fact that the affidavit is necessary to preserve the life of the registration, it is proposed to charge a fee of $10 on the filing of these affidavits. The estimated revenue would be over $123,000 per year but, as this new fee is not applied to existing registrations, this amount will not be realized until after 5 years have passed.

Items 4, 5, 7, 8, and 10 make some minor changes or adjustments in the fees involved.

Item 12 is the fee for recording assignments. It has been changed in the same manner as for patent assignments.

EFFECT OF PROPOSED CHANGES

The tables included at the end of this report present estimates of the results of the various changes in fees proposed by the bill. The present fees and the actual average receipts for the 3 years 1956–58 are given in the first table, as well as the proposed fees, the estimated receipts if the proposed fees were in effect based upon the 1956–58 volume of business, and the estimated increase in revenue. The second table presents the same data for fiscal year 1958 only.

The receipts of the Patent Office for the 3 years 1956–58 averaged $6,772,000, which was 40 percent of the expenses of $16,837,000. If the proposed schedule had been in operation, and assuming the same volume of business, the receipts would have been $10,116,000, which would be 60 percent of the expenses. This is based on a cost of operation averaging about $17 million.

For the most recently completed fiscal year 1958, the receipts, though higher than in prior years, amounted to only 36 percent of costs.

If the proposed fee schedule had been in effect with the same volume of business, recovery would have been about 53 percent of costs. For the current and next few years, it is estimated that the fees proposed by the bill, if in effect, would recover about 50 percent of increased Patent Office expenses, instead of about one-third under existing fees.

The total increase in revenue obtained by the bill would be about $3.5 million a year, based upon current volume of business.

During the past few years the appropriations of the Patent Office have been increased by Congress in order to enable the Patent Office to catch up with its enormous volume of cases in arrears and to begin to shorten the time it takes to obtain a patent. While the increased fees which will be received as a result of this legislation will not be utilized directly by the Patent Office, since they will be covered into the Treasury of the United States, it is, nonetheless, the express hope of this committee that the Patent Office will continue to receive a sufficient appropriation to meet the expenses of that Office and that such increase will eventuate in benefits to inventors and others in the form of better and more expeditious service in the handling of applications.

SECTION-BY-SECTION ANALYSIS AND EXPLANATION OF LEGISLATION

Section 1 of this bill makes various changes in the fees payable to the Patent Office in patent cases.

The major change is to raise the fee payable in applying for a patent from $30 to $40, with the further payment of a charge of $2 for each claim presented in excess of 5 claims (item 1 of sec. 1). This application filing fee is the most important fee payable in the Patent Office and accounts for 34 percent of the receipts of the Patent Office.

The charge for claims presented over 5 is a method devised to make the application fee somewhat larger for the larger and more difficult cases which ordinarily are presented with a larger number of claims than smaller cases. Such a charge would also have some effect in reducing excess claims presented in some cases.

The next important change in fees is the raising of the fee payable on issue of a patent from $30 to $50, also with a charge for each claim in excess of 5 (item 2 of sec. 1). The issue fee is the second most important of the Patent Office fees and accounts for 20 percent of the receipts of the Patent Office.

The next major change in the fees in section 1 is to change the fee for recording assignments from $3 to $10 (item 10).

The fees payable for obtaining a design patent are changed from $10, $15, and $30, for design patents of terms of 3½, 7, and 14 years, to $20, $30, and $40, respectively (item 3). The design patent fees account for less than 2 percent of Patent Office receipts, and the increases here are of about the same order proportionately as the increases in the other patent application fees.

A few adjustments in minor fees are also made by this section.

Section 2 of the bill provides that Government departments and agencies shall pay the same fees as are paid in the Patent Office by others, except as otherwise provided.

Section 3 of the bill makes various changes in fees payable in the Patent Office in trademark cases. This section is in the form of a complete rewriting of section 31 of the Trademark Act providing for fees. The items have been tabulated and numbered for convenience

of reference and a few minor fees have been omitted from the act to be included in the group of fees fixed administratively by the Commissioner.

Two major changes in trademark fees are made. First, the fee on filing an application to register a trademark is raised from $25 to $35 (item 1 of sec. 3). Second, a fee of $10 is to be paid at the time that an affidavit to maintain the trademark registration in force must be filed (item 3 of sec. 3). In addition, the fee for recording an assignment has been raised from $3 to $10 (item 12) in the same manner as the same fee in patent cases. A few adjustments in minor fees have also been made. The additional revenue which would be received in trademark cases under this revised schedule of fees would make the function of examining and issuing trademark registrations and related activities of the Patent Office, considered separately, substantially self-supporting.

Section 4 of the bill relates to the time of taking effect.

Section 5 repeals section 266 of title 35, United States Code, relating to fees in certain Government cases.

Estimated effect of changes in fees, as proposed by H.R. 2739, 86th Cong. (based on average volume of business during fiscal years 1956–58)

Item	Present fee	Actual income, 1956–58 average	Proposed fee	Estimated income,[1] 1956–58 basis	Increase
Patent filing fee (sec. 1, item 1).	$30	$2,217,653	$40	$3,015,484	$797,831
	$1 each claim over 20.	36,422	$2 each claim over 5.	603,096	566,674
Patent final fee (sec. 1, item 2).	$30	1,305,611	$50	2,237,969	932,358
	$1 each claim over 20.	8,345	$2 each claim over 5.	179,038	170,693
Design fee (sec. 1, item 3)	$10 for 3½ years	23,696	$20 for 3½ years	47,392	23,696
	$15 for 7 years	9,820	$30 for 7 years	19,640	9,820
	$30 for 14 years	57,900	$40 for 14 years	77,534	19,634
Reissue fee (sec. 1, item 4)	$30	6,115	$40	8,206	2,091
	$1 each claim over 20.	157	$2 each claim over 5.	820	663
Certificate of correction (sec. 1, item 8).	$10	2,292	$15	3,438	1,146
Patent copies (sec. 1, item 9)	$0.25	1,253,606	$0.25	1,272,686	19,080
			$1 for large ones and plant patents in color.	15,000	15,000
Recording assignments (sec. 1, item 10; sec. 3, item 12).	$3 for 6 pages	159,353	$10 for 6 pages	573,214	413,861
	$1 each 2 pages over 6.	878	$1 each 2 pages over 6.	947	69
	$0.50 each extra item.	14,917	$1 each extra item	32,186	17,269
Trademark filing fee (sec. 3, item 1).	$25	540,573	$35	756,803	216,230
Affidavit fee (sec. 3, item 3)	None		$10	123,463	123,463
Petition to revive (sec. 3, item 4).	do		$10	713	713
Interference fee (sec. 3, item 5).	do		$25	3,008	3,008
New certificate (sec. 3, item 7).	$10	1,168	$15	1,753	585
Certificate of correction (sec. 3, item 8, part).	$10	1,029	$15	1,544	515
Disclaimer and amendment (sec. 3, item 10; sec. 3, item 8, part).	$10	2,422	$15	3,633	1,211
Fees not changed		1,129,991		1,138,535	8,544
Total		6,771,948		[1]10,116,102	3,344,154

[1] Estimated income includes amounts which would be applicable to other Government agencies under sec. 2 of the bill, aggregating $209,715.

NOTE.—Actual expenses, 1956–58 average, amounted to $16,836,784. Actual income was equivalent to 40 percent of expenses; estimated income would amount to 60 percent of expenses.

Estimated effect of changes in fees, as proposed by H.R. 2739, 86th Cong. (based on volume of business during fiscal year 1958)

Item	Present fee	Actual income, fiscal year 1958	Proposed fee	Estimated income,[1] 1958 basis	Increase
Patent filing fee (sec. 1, item 1).	$30	$2,261,125	$40	$3,068,513	$807,388
	$1 each claim over 20.	38,351	$2 each claim over 5.	613,702	575,351
Patent final fee (sec. 1, item 2).	$30	1,363,889	$50	2,344,300	980,411
	$1 each claim over 20.	7,777	$2 each claim over 5.	187,544	179,767
Design fee (sec. 1, item 3)	$10 for 3½ years	24,318	$20 for 3½ years	48,636	24,318
	$15 for 7 years	6,291	$30 for 7 years	12,582	6,291
	$30 for 14 years	58,872	$40 for 14 years	78,896	20,024
Reissue fee (sec. 1, item 4)	$30	7,236	$40	9,648	2,412
	$1 each claim over 20.	170	$2 each claim over 5.	964	794
Certificate of correction (sec. 1, item 8).	$10	2,630	$15	3,945	1,315
Patent copies (sec. 1, item 9)	$0.25	1,324,841	$0.25	1,343,197	18,356
			$1 for large ones and plant patents in color.	15,000	15,000
Recording assignments (sec. 1, item 10; sec. 3, item 12).	$3 for 6 pages	160,933	$10 for 6 pages	580,285	419,352
	$1 each 2 pages over 6.	789	$1 each 2 pages over 6.	853	64
	$0.50 each extra item.	13,807	$1 each extra item	29,870	16,063
Trademark filing fee (sec. 3, item 1).	$25	541,989	$35	758,785	216,796
Affidavit fee (sec. 3, item 3)	None		$10	121,260	121,260
Petition to revive (sec. 3, item 4).	do		$10	680	680
Interference fee (sec. 3, item 5).	do		$25	2,125	2,125
New certificate (sec. 3, item 7).	$10	1,635	$15	2,453	818
Certificate of correction (sec. 3, item 8, part).	$10	1,088	$15	1,632	544
Disclaimer and amendment (sec. 3, item 10; sec. 3, item 8, part).	$10	2,450	$15	3,675	1,225
Fees not changed		1,120,330		1,128,898	8,568
Totals		6,938,521		[1]10,357,443	3,418,922

[1] Estimated income includes amounts which would be applicable to other Government agencies under sec. 2 of the bill, aggregating $214,742.

NOTE.—Actual expenses for 1958 amounted to $19,525,854. Actual income was equivalent to 36 percent of expenses; estimated income would amount to 53 percent of expenses.

REPORTS FROM EXECUTIVE AGENCIES

Attached hereto and made a part of this report is the letter of the Department of Commerce which accompanied the bill when it was transmitted to Congress. In addition, there is also made a part of this report letters, on predecessor bills which were acted upon favorably by this committee in the 84th and 85th Congresses from the Small Business Administration, the Department of State, Department of the Navy, the Treasury Department, General Services Administration, the Library of Congress, Veterans' Administration, and the Federal Trade Commission.

SMALL BUSINESS ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., June 11, 1957.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CELLER: Further reference is made to your letters of May 16 and May 27, 1957, requesting the views of this agency with respect to H.R. 7151, a bill to fix the fees payable to the Patent Office and for other purposes.

By letter of June 10, 1955, you were advised that the Small Business Administration favored the enactment of a similar bill (H.R. 4983), introduced in the 84th Congress to increase charges made by the Patent Office for servicing patents and trademarks. Since H.R. 7151 contains no objectionable variation from H.R. 4983, we favor its enactment.

The Bureau of the Budget informs us that the enactment of legislation to increase patent and trademark fees would be in accord with the program of the President.

Sincerely yours,

WENDELL B. BARNES, *Administrator.*

DEPARTMENT OF STATE,
Washington, May 6, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CELLER: Reference is made to your letter of March 22, 1955, requesting a report on H.R. 4983, to fix the fees payable to the Patent Office and for other purposes, and to your further letter of April 20, 1955, asking whether the Department would consider it desirable to have a representative attend the hearings.

This bill involves the question as to the degree to which the Patent Office should be made self-supporting through the collection of fees. It is, therefore, essentially a matter of domestic concern.

In considering the bill from the foreign relations standpoint, the Department does not find any features which would react inequitably on foreign nationals. The Department, therefore, perceives no objection to the bill.

The Department appreciates the opportunity to have a representative attend the hearing on this bill but does not have any further views to express.

The Department has been informed by the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

THRUSTON B. MORTON,
Assistant Secretary
(For the Secretary of State).

DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington, D.C., May 31, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

MY DEAR MR. CHAIRMAN: Your request for comment on the bill H.R. 4983 to fix the fees payable to the Patent Office and for other purposes has been assigned to this Department by the Secretary of Defense for the preparation of a report thereon expressing the views of the Department of Defense.

The purpose of this measure is to increase certain patent and trademark fees and to require the payment of prescribed patent fees by other Government departments or agencies. Sections 1 and 3 of the bill would increase certain patent and trademark fees. In addition, section 2 of the bill would amend section 41 of title 35 of the United States Code to require the payment of patent fees prescribed by or under that section by any other Government department or agency, or officer thereof, except in the case of application fees and fees for issuing a patent in cases coming under section 266 of title 35 and except as otherwise provided by law. The Commissioner of Patents would be authorized to waive the payment of any fee for services or materials in cases of occasional or incidental requests by a Government department or agency, or officer thereof.

In the annual Patent Office report for fiscal year 1954 submitted by the Commissioner of Patents to the Congress, it is noted that the purpose of this legislation is to place the services furnished by the Patent Office on a self-sustaining basis to the fullest extent possible by increasing various Patent Office fees and by making most patent fees applicable to other Government agencies. The above-mentioned report states that the value of services furnished by the Patent Office to other agencies averages about $125,000 per year.

The desirability of increasing Patent Office fees is a matter of policy for the determination of the Congress. Accordingly, the Department of Defense makes no recommendation with respect to that feature of H.R. 4983.

With respect to that portion of section 2 of H.R. 4983 which would require the payment of prescribed patent fees by other Government departments or agencies, attention is invited to the decision of the Comptroller General dated July 13, 1953, B–111648, 33 Comp. Gen. 27. In that decision the Comptroller General very aptly stated:

"The basic purpose of prescribing fees for services rendered by the Patent Office must be to reimburse the United States, at least in part, for the cost of such services. Obviously, such costs can be recovered, in reality, only by the collection of charges or fees from private individuals or interests, since payments by other Federal agencies constitute, in effect, merely a transfer of funds from one pocket to another, and do not result in the net recovery of any costs by the Government. In fact, payment and collection procedures would entail bookkeeping and other expenses which in the final analysis would involve an economic waste of Federal funds."

In view of the foregoing, the Department of the Navy on behalf of the Department of Defense is opposed to the enactment of that portion of section 2 of H.R. 4983 which would require the payment

of prescribed patent fees by other Government departments or agencies.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Department of the Navy has not been advised by the Bureau of the Budget as to the relationship of this report on H.R. 4983 to the program of the President.

Sincerely yours,

IRA H. NUNN,
Rear Admiral, U.S. Navy,
Judge Advocate General of the Navy
(For the Secretary of the Navy).

TREASURY DEPARTMENT,
Washington, June 17, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

MY DEAR MR. CHAIRMAN: Reference is made to your requests for the views of this Department on H.R. 4983, to fix the fees payable to the Patent Office and for other purposes, and on H.R. 6175, to amend section 31 of the act of Congress approved July 5, 1946 (ch. 540, 60 Stat. 427; 15 U.S.C. 1113).

H.R. 4983 would specify a new schedule of patent fees generally presenting increases, and would make certain of the fees applicable to Government departments and agencies other than the Patent Office. This bill would also prescribe a new schedule of trademark fees presenting certain new or increased charges.

H.R. 6175 would also prescribe a new schedule of trademark fees also presenting increases but differing in particulars from the schedule that would be prescribed by H.R. 4983.

The subject matter of these bills does not relate to a matter within the primary jurisdiction of this Department and it has no comments to make on the general merits of the proposed legislation.

Very truly yours,

DAVID W. KENDALL, *General Counsel.*

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., May 19, 1955.

Re H.R. 4983.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CELLER: Further reference is made to your letter of March 22 requesting the views of GSA on H.R. 4983, a bill to fix the fees payable to the Patent Office and for other purposes.

This proposed legislation is substantially similar to bills introduced in the 83d Congress (H.R. 9794 and S. 3738). The Department of Commerce favors this measure in carrying out its responsibilities.

Determination of patent and trademark fees has been made by the Patent Office, Department of Commerce, in accordance with the

policy set forth in paragraph 3 of the Bureau of the Budget Circular No. A–25, dated November 5, 1953, a copy of which is attached.

The fees with respect to trademarks (sec. 3 of the proposed bill) do not affect GSA since it does not register any trademarks.

The fees with respect to patents (sec. 2c of the proposed bill) provide that the Commissioner of Patents "may waive the payment of any fee for services or materials in cases of occasional or incidental requests by a Government department or agency, or officer thereof." Any foreseeable fee for services or materials by GSA will be merely of an occasional or incidental nature. It is to be expected that the Commissioner would waive payment.

Since the fees sought to be fixed by this bill do not affect the budgetary requirements of GSA and are of general interest only to this agency, we express no further views on the proposed legislation.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Cordially yours,

EDMUND F. MANSURE, *Administrator.*

THE LIBRARY OF CONGRESS,
Washington, D.C., March 30, 1955.

The Honorable EMANUEL CELLER,
Chairman, House Judiciary Committee,
Old House Office Building, Washington, D.C.

DEAR MR. CELLER: I have your letter of March 22 requesting an expression of my views on H.R. 4983, a bill to fix the fees payable to the Patent Office.

The proposed schedule of fees for the Patent Office has no direct bearing on the work of the Library of Congress, and I have no special competence on the subject. Accordingly, I have no comments to offer on this bill.

Sincerely yours,

L. QUINCY MUMFORD,
Librarian of Congress.

VETERANS' ADMINISTRATION,
Washington, D.C., April 27, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CELLER: This is in further reply to your request for a report on H.R. 4983, 84th Congress, a bill to fix the fees payable to the Patent Office and for other purposes.

The purpose of the bill is to amend section 41 of title 35 of the United States Code and section 1113 of title 15 of the United States Code to fix the fees payable to the Patent Office for application, issue, and other transactions pertaining to patents and copyrights.

It is noted that the bill would slightly increase some of the fees fixed under existing law. The provisions of the bill would not affect the activities of the Veterans' Administration to any considerable extent, and the Veterans' Administration has no objection to the proposed changes.

Advise has been received from the Bureau of the Budget that there would be no objection to the submission of this report to the committee.

Sincerely yours,

JOHN S. PATTERSON,
Deputy Administrator
(For and in the absence of the Administrator).

FEDERAL TRADE COMMISSION,
OFFICE OF THE CHAIRMAN,
May 5, 1955.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

MY DEAR MR. CHAIRMAN: Reference is made to your letter of March 22, 1955, inviting an expression of the views of this agency upon H.R. 4983, 84th Congress, 1st session, a bill to fix the fees payable to the Patent Office, and for other purposes, and your further letter of April 20, 1955, in which you advise that hearings will be had on this bill on June 1.

The provisions of the bill appear limited to the fees and the amounts thereof to be charged by the Patent Office in connection with various procedures in patent and trademark matters, for copies of records with respect to such matters, and for related services furnished by the Patent Office.

No reason appears why the bill would affect the present provision of the rules of practice of the Patent Office (Rule 21.2: Petition for Cancellation) which permit the Commission to file and prosecute a proceeding for cancellation of a trademark without the payment of fees. Apparently H.R. 4983 would not change the law with respect to the Commission. Therefore, we have no comment to offer on the proposed legislation.

Your submission of the matter for our consideration is deeply appreciated.

By direction of the Commission.

Sincerely yours,

EDWARD F. HOWREY, *Chairman.*

JANUARY 9. 1959.

Hon. SAM RAYBURN,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: There are enclosed four copies of draft legislation for the general purpose of increasing fees collected by the U.S. Patent Office of the Department of Commerce in the consideration and issuance of patents and registrations of trademarks and the performance of related activities. There are also enclosed copies of a section-by-section analysis and explanation of the legislation. The fees which would be modified by the proposal are presently established by statute and, therefore, congressional action is necessary to effect changes.

The last major change in patent fees was in 1932 when the application and issuance fees were raised to $30 each. Immediately after the 1932 revision of fees the Patent Office was collecting in fees a sum exceeding 90 percent of the cost of operating the Patent Office. Although since that time the costs of operation of the Patent Office have risen sharply, no major adjustment in fees has been made to effect the same recovery of costs. In the 3 years, 1956–58, the Patent Office recovered in fees 40 percent of its costs of operation. For the past fiscal year (1958), the receipts, though higher than in prior years, amounted to only 36 percent of costs. If the proposed fee schedule had been in effect during fiscal 1958, recovery would have been approximately 53 percent of costs. However, because of increased expenditures estimated for the Patent Office, this percentage would be less in 1959. During the next few years it is estimated that the fees under the proposed bill would cover only about 50 percent of expenditures.

The Department urges early congressional action to enable the Government to effect greater recovery of costs from special beneficiaries of this Government program. Such action would be in furtherance of the administration's policy of charging special beneficiaries of Government programs for the costs of operation attributable to special beneficiaries.

The Bureau of the Budget has advised that there would be no objection to the submission of this draft bill to the Congress, and that enactment of legislation to increase patent and trademark fees would be in accord with the program of the President.

Sincerely yours,

LOUIS L. STRAUSS,
Secretary of Commerce.

CHANGES IN EXISTING LAW

In compliance with clause 3 of title XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown below.

Section 1 of the bill proposes to amend items numbered 1, 2, 3, 4, 8, 9, and 10, respectively, of subsection (a) of section 41 of title 35, United States Code; the existing law is shown in the left column and the legislation proposed in the bill in the right column:

(Title 35. United States Code)

§ 41. Patent fees (a) The Commissioner shall charge the following fees: 1. On filing each application for an original patent, except in design cases, $30, and $1 for each claim in excess of twenty.	§ 41. Patent fees (a) The Commissioner shall charge the following fees: 1. On filing each application for an original patent, except in design cases, $40; in addition, $2 for each claim presented at any time which is in excess of five claims in the case.
2. On issuing each original patent, except in design cases, $30, and $1 for each claim in excess of twenty.	2. On issuing each original patent, except in design cases, $50, and $2 for each claim in excess of five.

3. In design cases: For three years and six months, $10; for seven years, $15; for fourteen years, $30.	3. In design cases: For three years and six months, $20; for seven years, $30; for fourteen years, $40.
4. On every application for the reissue of a patent, $30 and $1 for each claim in excess of twenty over and above the number of claims of the original patent.	4. On every application for the reissue of a patent, $40 and $2 for each claim in excess of five which is also over and above the number of claims of the original patent.
8. For certificate of correction of applicant's mistake under section 255 of this title, $10.	8. For certificate of correction of applicant's mistake under section 255 or certificate under section 256 of this title, $15.
9. For uncertified printed copies of specifications and drawings of patents (except design patents), 25 cents per copy; for design patents, 10 cents per copy; special rate for libraries specified in section 13 of this title, $50 for patents issued in one year.	9. For uncertified printed copies of specifications and drawings of patents (except design patents), 25 cents per copy; for design patents, 10 cents per copy; the Commissioner may establish a charge not to exceed $1 per copy for patents in excess of 25 pages of drawings and specifications and for plant patents printed in color; special rate for libraries specified in section 13 of this title, $50 for patents issued in one year.
10. For recording every assignment, agreement, or other paper not exceeding six pages, $3; for each additional two pages or less, $1; for each additional patent or application included in one writing, where more than one is so included, 50 cents additional.	10. For recording every assignment, agreement, or other paper not exceeding six pages, $10; for each additional two pages or less, $1; for each additional patent or application included in one writing, where more than one is so included, $1 additional.

Section 2 of the bill proposes to amend section 41 of title 35, United States Code, by adding a new subsection, shown in the right column:

(Title 35, United States Code)

[No subsection.]	(c) The fees prescribed by or under this section apply to any other Government department or agency, or officer thereof, except that the Commissioner may waive the payment of any fee for services or materials in cases of occasional or incidental requests by a Government department or agency or officer thereof.

Section 3 of the bill proposes to amend section 31 of the act of July 5, 1946 (ch. 540, 60 Stat. 427, U.S.C., title 15, sec. 1113), as amended by Public Law 85–609, approved August 8, 1958 (72 Stat. 540) which is shown in the left column, and the legislation proposed in the bill is shown in the right column:

(Trademark Act of 1946—Title 15, United States Code)

§ 31. The following fees shall be paid to the Patent Office under this Act:	§ 31. (a) The following fees shall be paid to the Patent Office under this Act:
On filing each original application for registration of a mark in each class on either the principal or the supplemental register, $25; and on filing each application for renewal in each class, $25; and on filing each application for renewal in each class after expiration of the registration, an additional fee of $5; on filing notice of claim of benefits of this Act for a mark to be published under section 12 (c) hereof, $10; on filing notice of opposition or application for cancellation, $25; on appeal from an examiner in charge of the registration of marks, $25; for issuance of a new certificate of registration following change of ownership of a mark or correction of a registrant's mistake, $10; for certificate of correction of registrant's mistake, $10; for manuscript copies, for every one hundred words or fraction thereof, 10 cents; for comparing other copies, 5 cents for every one hundred words or fraction thereof; for certifying in any case, additional, $1 for each additional registration or application which may be included under a single certificate, 50 cents additional; for filing disclaimer, amendment, surrender, or cancellation after registration, $10.	1. On filing each original application for registration of a mark in each class, $35. 2. On filing each application for renewal in each class, $25; and on filing each application for renewal in each class after expiration of the registration, an additional fee of $5. 3. On filing an affidavit under section 8(a) or section 8(b), $10. 4. On filing each petition for the revival of an abandoned application, $10. 5. On filing notice of opposition or application for cancellation, or for declaring an interference between an application and a prior issue registration, $25. 6. On appeal from an examiner in charge of the registration of marks to the Trademark Trial and Appeal Board, $25. 7. For issuance of a new certificate of registration following change of ownership of a mark or correction of a registrant's mistake, $15. 8. For certificate of correction of registrant's mistake or amendment after registration, $15. 9. For certifying in any case, $1. 10. For filing each disclaimer after registration, $15. 11. For printed copy of registered mark, 10 cents.
For abstracts of title: For the search, one hour or less, and certificate, $3; each additional hour or fraction thereof, $1.50; for each brief from the digest of assignments of two hundred words or less, $1.	12. For recording every assignment or other paper not exceeding six pages, $10; for each additional two pages or less, $1; for each additional registration or application included, or involved in one writing where more than one is so

For certificate that trademark has not been registered—search and certificate (for deposit in foreign countries only), $3.

For title reports required for office use, $1.

For a single printed copy of statement and drawing, 10 cents; if certified, for the grant, additional, $1; for the certificate, $1; if renewed, for copy of certificate and renewal, additional, $1.

For photographic copies of records and drawings, the reasonable cost of making them.

For recording every assignment or other paper not exceeding six pages, $3; for each additional two pages or less, $1; for each additional registration or application included, or involved in one writing where more than one is so included or involved, additional, 50 cents.

The Commissioner shall refund fees paid by mistake or in excess.

included or involved, additional $1.

13. On filing notice of claim of benefits of this Act for a mark to be published under section 12(c) hereof, $10.

(b) The Commissioner may establish charges for copies of records, publications, or services furnished by the Patent Office, not specified above.

(c) The Commissioner may refund any sum paid by mistake or in excess.

Section 4 of the bill relates to the effective date of the act, and the manner of applying the fees to certain conditions.

Section 5 of the bill repeals section 266 of title 35, United States Code, shown in the left column, and amends the chapter analysis of chapter 27 of title 35, United States Code, by striking out the item enclosed in black brackets in the left column:

§ 266. Issue of patents without fees to Government employees [Repealed.]

The Commissioner may grant, subject to the provisions of this title, to any officer, enlisted man, or employee of the Government, except officers and employees of the Patent Office, a patent without the payment of fees, when the head of a department or agency certifies the invention is used or likely to be used in the public interest and the applicant in his application states that the invention described therein, if patented, may be manufactured and used by or for the Government for governmental purposes without the payment to him of any royalty there-

on, which stipulation shall be included in the patent.

[266. Issue of patents without fees to Government employees.]

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