Calendar No. 75

92D CONGRESS
1ST SESSION

S. 1254

[Report No. 92–73]

IN THE SENATE OF THE UNITED STATES

MARCH 16, 1971

Mr. MCCLELLAN introduced the following bill; which was read twice and referred to the Committee on the Judiciary

APRIL 20, 1971

Reported by Mr. MCCLELLAN, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To amend title 35, United States Code, "Patents", and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 3, title 35 of the United States Code is amended to read as follows:

"§ 3. Officers and employees

"(a) There shall be in the Patent Office a Commissioner of Patents, a deputy commissioner, two assistant commissioners, and not more than fifteen examiners-in-chief. The ~~assistant~~ *Assistant* Secretary of Commerce for Patents and Trademarks, shall, ex officio, be the Commissioner of Patents. The deputy commissioner, or, in the event of a vacancy

II

in that office, the assistant commissioner senior in date of appointment shall fill the office of Commissioner during a vacancy in that office until the Commissioner is appointed, and takes office. The Commissioner of Patents, the deputy commissioner, and the assistant commissioners shall be appointed by the President, by and with the advice and consent of the Senate. *The Secretary of Commerce, upon the nomination of the Commissioner, in accordance with law, shall appoint all other officers and employees.*

"(b) The Secretary of Commerce may vest in himself the functions of the Patent Office and its officers and employees specified in this title and may from time to time authorize their performance by any other officer or employee.

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

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

"The examiners-in-chief shall be persons of competent legal knowledge and scientific ability, who shall be appointed under the classified civil service. The Commissioner, the Deputy Commissioner, the assistant commissioners, and the ex-

aminers-in-chief shall constitute a Board of Appeals, which on written appeal of the applicant, shall review adverse decisions of examiners upon applications for patents. Each appeal shall be heard by at least three members of the Board of Appeals, the members hearing such appeal to be designated by the Commissioner. The Board of Appeals has sole power to grant rehearings.''

~~SEC. 2.~~ *SEC. 3.* Section 151 of title 35 of the United States Code is amended to read as follows:

''§ 151. Issue of patent

''(a) If it is determined that an applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant. The notice shall specify a sum, constituting the issue fee or a portion thereof, which shall be paid within three months thereafter.

''(b) Upon payment of this sum the patent shall issue, but if payment is not timely made, the application shall be regarded as abandoned.

''(c) Any remaining balance of the issue fee shall be paid within three months from the sending of a notice thereof and, if not paid, the patent shall lapse at the termination of the three-month period. In calculating the amount of a remaining balance, charges for a page or less may be disregarded.

"(d) If any payment required by this section is not timely made, but is submitted with the fee for delayed payment and the ~~late~~ *delay in* payment is shown to have been unavoidable, it may be accepted by the Commissioner as though no abandonment or lapse had ever occurred."

~~SEC. 3. (a) There shall be in the Department of Commerce, in addition to the Assistant Secretaries now provided by law, one additional Assistant Secretary of Commerce for Patents and Trademarks, shall be appointed by the President by and with the advice and consent of the Senate, shall receive compensation at the rate prescribed by law for Assistant Secretaries of Commerce, and shall perform such duties as the Secretary of Commerce shall prescribe.~~

SEC. 4. (a) There shall be in the Department of Commerce, in addition to the Assistant Secretaries now provided by law, one additional Assistant Secretary of Commerce who shall be known as the Assistant Secretary of Commerce for Patents and Trademarks, shall be appointed by the President by and with the advice and consent of the Senate, shall receive compensation at the rate prescribed by law for Assistant Secretaries of Commerce, and shall perform such duties as the Secretary of Commerce shall prescribe.

(b) Section 5315 of title 5, United States Code, is amended by striking "(7)" at the end of item (12) and substituting "(8)".

(c) Section 5316 of title 5, United States Code, is amended by striking item (48).

SEC. 5. This Act shall be effective upon enactment. Examiners-in-chief in office on the date of enactment shall continue in office under and in accordance with their then existing appointments.

Calendar No. 75

92D CONGRESS
1ST SESSION

S. 1254

[Report No. 92–73]

A BILL

To amend title 35, United States Code, "Patents", and for other purposes.

By Mr. McCLELLAN

MARCH 16, 1971
Read twice and referred to the Committee on the Judiciary

APRIL 20, 1971
Reported with amendments

90