Calendar No. 2131

87TH CONGRESS
2D SESSION

S. 2225

[Report No. 2167]

IN THE SENATE OF THE UNITED STATES

JULY 11, 1961

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

SEPTEMBER 27, 1962

Reported by Mr. MCCLELLAN, with an amendment

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

A BILL

To fix the fees payable to the Patent Office, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That items numbered 1, 2, 3, 4, 6, 8, and 9, respectively, in subsection (a) of section 41 of title 35, United States Code, are amended to read as follows:~~

~~"1. On filing each application for an original patent, except in design cases, $40; and $2 for each claim in excess of ten.~~

FINAL PRINTING

"2. On issuing each original patent, except in design cases, $50, and $2 for each claim in excess of ten.

"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, $40, and $2 for each claim in excess of ten which is also over and above the number of claims of the original patent.

"6. On an appeal for the first time from the examiner to the Board of Appeals, $50.

"8. For certificate of correction of applicant's mistake under section 255 or certificate under section 256 of this title, $15.

"9. As available and if in print: 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 twenty-five pages of drawings and specification 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."

SEC. 2. Section 41 of title 35, United States Code, is amended by adding the following 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 pay-

ment of any fee for services or materials in cases of occasional or incidental requests by a Government department or agency, or officer thereof."

SEC. 3. Section 31 of the Act approved July 5, 1946 (ch. 540, 60 Stat. 427, U.S.C., title 15, sec. 1113), as amended, is amended to read as follows:

"(a) The following fees shall be paid to the Patent Office under this Act:

"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, $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.

"12. 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, $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."

SEC. 4. Section 154 of title 35, United States Code, is amended by inserting the words "subject to the payment of maintenance fees," after the words "seventeen years,".

SEC. 5. Title 35, United States Code, is amended by adding the following new section after section 154:

"§ 155. Maintenance fees

"(a) During the term of a patent (other than a design patent) a first maintenance fee shall be due prior to

the end of the fifth year from the date of the patent, a second maintenance fee prior to the end of the ninth year from the date of the patent if the patent is then still in effect, and a third maintenance fee prior to the end of the thirteenth year from the date of the patent, if the patent is then still in effect; said fees may be paid within six months after the due date, namely the end of the fifth, ninth, or thirteenth years, respectively, or as otherwise provided in subsection (b) of this section, upon payment of the additional fee prescribed for delayed payment. On failure to pay a maintenance fee before the expiration of the time provided therefor the right conferred by the patent shall terminate at the end of the fifth, ninth, or thirteenth year, as the case may be, or as otherwise provided in subsection (c) of this section. Such termination or lapsing shall be without prejudice to rights existing under any other patent.

"In the case of a reissued patent, the times specified herein shall run from the date of the original patent.

"(b) Notice of the requirement for the payment of the maintenance fees shall be attached to or embodied in the patent. The Commissioner shall send a separate notice of the requirement for the fee, without unreasonable delay, after the due date has passed without the fee having been paid, to the patentee and any other party having an interest in the patent as shown by the records of the office on the due

date, at the address shown by the record of the patent, and the fee, together with the additional fee prescribed for delayed payment, may be paid within thirty days from the date of such notice or within six months from the due date, whichever period expires later.

"(c) Any inventor to whom a patent was issued (or his heirs if the inventor is deceased) and who owns the patent may, at a time not earlier than six months prior to the due date and not later than the final date provided in subsection (b) of this section, request deferment of the first maintenance fee if the total sum received by anyone, since the date of the patent, from or under or by virtue of the patent, or from the manufacture, use or sale under the patent of the invention, was less than the amount of the fee due, and a statement under oath to this effect accompanies the request. The fee shall thereupon be deferred until the time the second maintenance fee is due and shall be payable within the same time as and in addition to such second maintenance fee and with the same result if not paid.

"Any inventor to whom a patent was issued (or his heirs if the inventor is deceased) and who owns the patent may, at a time not earlier than six months prior to the due date and not later than the final date provided in subsection (b) of this section, request deferment of the second maintenance fee, and further deferment of the first maintenance

fee (if such fee has been deferred under the first paragraph of this subsection), if the total sum received by anyone, during the preceding four years, from or under or by virtue of the patent, or from the manufacture, use or sale under the patent of the invention, was less than the amount of the fee or fees due, and a statement under oath to this effect accompanies the request. The fee or fees due shall thereupon be deferred until the time the third maintenance fee is due and shall be payable within the same time as and in addition to such third maintenance fee and with the same result if not paid."

The analysis of chapter 14 of title 35, United States Code, immediately preceding section 151, is amended by adding thereto:

"155. Maintenance fees."

SEC. 6. Subsection (a) of section 41 of title 35, United States Code, is amended by adding the following:

"12. a. First maintenance fee, due on the expiration of the fifth year of the patent, other than a design patent, $100.

"b. Second maintenance fee, due on the expiration of the ninth year of the patent, other than a design patent, $300.

"c. Third maintenance fee, due on the expiration of the thirteenth year of the patent, other than a design patent, $500.

"d. On delayed payment of a maintenance fee, $25."

SEC. 7. (a) This Act shall take effect three months after its enactment.

(b) Item I of section 41(a) of title 35, as amended by section 1 of this Act, does not apply in further proceedings in applications filed prior to the effective date.

(c) The amendment of item 2 of section 41(a) of title 35 by section 1 of this Act does not apply in cases in which the notice of allowance of the application was sent prior to the effective date and in such cases the fee due is the fee specified by item 2 prior to its amendment.

(d) The amendment of item 3 of section 41(a) of title 35 by section 1 of this Act applies in the case of applications for design patents filed prior to the effective date for one of the lower terms and which are amended after the effective date to one of the higher terms.

(e) Item 4 of section 41(a) of title 35, as amended by section 1 of this Act, does not apply in further proceedings in applications for reissues filed prior to the effective date.

(f) Item 3, of section 31 of the Trademark Act as amended by section 3 of this Act, applies only in the case of registrations issued and registrations published under the provisions of section 12(c) of the Trademark Act on or after the effective date.

(g) Section 155 and item 12 of section 41(a), enacted

~~by sections 5 and 6 of this Act, do not apply to patents issued prior to the effective date.~~

~~SEC. 8. Section 266 of title 35, United States Code is repealed.~~

~~The chapter analysis of chapter 27 of title 35, United States Code, is amended by striking out the following item:~~

~~"266. Issue of patents without fees to Government employees."~~

That the items numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, respectively, in subsection (a) of section 41, title 35, United States Code, are amended to read as follows:

"1. On filing each application for an original patent, except in design cases, $50; in addition, on filing or on presentation at any other time, $10 for each claim in independent form which is in excess of one, and $2 for each claim (whether independent or dependent) which is in excess of ten.

"2. For issuing each original or reissue patent, except in design cases, $75; in addition, $10 for each page (or portion thereof) of specification as printed, and $2 for each sheet of drawing.

"3. In design cases:

"a. On filing each design application, $20.

"b. On issuing each design patent: For three years

and six months, $10; for seven years, $20; and for fourteen years, $30.

"4. On filing each application for the reissue of a patent, $50; in addition, on filing or on presentation at any other time, $10 for each claim in independent form which is in excess of the number of independent claims of the original patent, and $2 for each claim (whether independent or dependent) which is in excess of ten and also in excess of the number of claims of the original patent.

"5. On filing each disclaimer, $15.

"6. On an appeal for the first time from the examiner to the Board of Appeals, $100. If an oral hearing is not requested prior to any consideration by the Board, $50 of the $100 fee will be refunded; or, alternatively, if the appeal is withdrawn prior to any consideration by the Board, all of the fee over $25 will be refunded.

"7. On filing each petition for the revival of an abandoned application for a patent or for the delayed payment of the fee for issuing each patent, $15.

"8. For certificate under section 255 or under section 256 of this title, $15.

"9. As available and if in print: 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 twenty-five pages of drawings and specifications and for plant patents printed in color; special rates for libraries specified in section 13 of this title, $50 for patents issued in one year.

"10. For recording each assignment of an application or a patent, $20; for recording any other paper, $20."

SEC. 2. Section 41 of title 35, United States Code, is further amended by adding the following subsection:

"(c) The fees prescribed by or under this section shall 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."

SEC. 3. Section 31 of the Act approved July 5, 1946 (ch. 540, 60 Stat. 427; U.S.C., title 15, sec. 1113), as amended, is amended to read as follows:

"(a) The following fees shall be paid to the Patent Office under this Act:

"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, $15.

"5. On filing notice of opposition or application for cancellation, $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.

"12. For recording each assignment of a registration, $20; for recording any other paper, $20.

"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, publication, or services furnished by the Patent Office, not specified above.

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

SEC. 4. Section 151 of title 35, United States Code, is amended to read as follows:

"§ 151. Issue of Patent

"If it appears that 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, and the Commissioner shall thereafter issue the patent.

"The issue fee, as specified in item 2 of section 41(a) of this title, shall be paid within three months after the date of the issue of the patent. However, at the time of giving notice of allowance, the Commissioner may require a sum, constituting a portion of the issue fee, to be paid within three months after the date of the notice of allowance. If payment of this sum is not timely made, the application shall be regarded as abandoned.

"If the issue fee is not fully paid within three months after the date of the issue of the patent, the patent shall lapse as of the date the issue fee was due.

"If any payment called for herein is not timely submitted, but is submitted with the fee for delayed payment

within three months after the due date and sufficient cause is shown for the late payment, it may be accepted by the Commissioner as though no abandonment or lapse had ever occurred."

SEC. 5. Section 154 of title 35, United States Code, is amended by inserting the words "subject to the payment of issue and maintenance fees as provided for in this title," after the words "seventeen years,".

SEC. 6. Title 35, United States Code, is amended by adding the following new section after section 154:

*"§ 155. **Maintenance fees***

"(a) During the term of a patent, other than for a design, the following fees shall be due:

"(1) a first maintenance fee on or before the fifth anniversary of the issue date of the patent;

"(2) a second maintenance fee on or before the ninth anniversary of the issue date of the patent; and

"(3) a third maintenance fee on or before the thirteenth anniversary of the issue date of the patent. In the case of a reissue patent the times specified herein shall run from the date of the original patent.

"(b) A grace period of six months will be allowed in which to pay any maintenance fee, provided it is accompanied by the fee prescribed for delayed payment.

"(c) The first and second maintenance fees may be deferred in accordance with subsection (f) of this section.

"(d) A patent will terminate on the due date for any maintenance fee unless, as provided for in this section, the fee due (including any fees previously deferred) is paid or a statement in accordance with subsection (f) of this section requesting deferment is filed. Such termination or lapsing shall be without prejudice to rights existing under any other patent.

"(e) Notice of the requirement for the payment of the maintenance fees and the filing of statements in compliance with this section shall be attached to or be embodied in the patent. Approximately thirty days before a maintenance fee is due, the Commissioner shall send a separate notice thereof to the patentee and all other parties having an interest of record at the addresses last furnished to the Patent Office. Irrespective of any other provision of this section, a maintenance fee may be paid within thirty days after the date of such separate notice.

"(f) Any inventor to whom a patent issued (or his heirs) and who owns the patent may within six months of the fifth anniversary of the issue date of the patent (by a statement under oath) request deferment of the first maintenance fee if the total benefit received by the inventor or any other

party having or having had any interest in the subject matter of the patent, from, under, or by virtue of the patent or from the manufacture, use, or sale of the invention, was less in value than the amount of the fee, and the statement so specifies. The fee shall thereupon be deferred until the time the second maintenance fee is due and shall be paid in addition to the second maintenance fee.

"Any inventor to whom a patent issued (or his heirs) and who owns the patent may within six months of the ninth anniversary of the issue date of the patent (by a statement under oath) request deferment of the second maintenance fee (and further deferment of the first maintenance fee if such fee has been deferred) if the total benefit received by the inventor or any other party having or having had any interest in the subject matter of the patent during the preceding four years, from, under, or by virtue of the patent or from the manufacture, use, or sale of the invention, was less in value than the amount of the second fee, and the statement so specifies. The second fee, or the first and second fees, as the case may be, shall thereupon be deferred until the time the third maintenance fee is due and shall be paid in addition to the third maintenance fee and with the same result if not paid. No deferment of any of the fees beyond the thirteenth anniversary of the issue date of the patent shall be permitted

and the patent will terminate at the end of the thirteenth anniversary of the issue date unless all maintenance fees are paid in accordance with the provisions of this section."

SEC. 7. The analysis of chapter 14 of title 35, United States Code, immediately preceding section 151, is amended to read as follows:

"Sec.
"151. Issue of patent.
"152. Issue of patent to assignee.
"153. How issued.
"154. Contents and term of patent.
"155. Maintenance of fees."

SEC. 8. Subsection (a) of section 41 of title 35, United States Code, is further amended by adding the following:

"12. For maintaining a patent (other than for a design) in force—

"(a) beyond the fifth anniversary of the issue date of the patent, $50;

"(b) beyond the ninth anniversary of the issue date of the patent, $100; and

"(c) beyond the thirteenth anniversary of the issue date of the patent, $150.

"13. For delayed payment of maintenance fee, $25."

SEC. 9. (a) This Act shall take effect three months after its enactment.

(b) Items 1, 3, and 4 of section 41(a) of title 35,

United States Code, as amended by section 1 of this Act, do not apply in further proceedings in applications filed prior to the effective date of this Act.

(c) Item 2 of section 41(a), as amended by section 1 of this Act, and sections 4, 6, and 8 of this Act do not apply in cases in which the notice of allowance of the application was set, or in which a patent issued, prior to the effective date; and, in such cases, the fee due is the fee specified in this title prior to the effective date of this Act.

(d) Item 3 of section 31 of the Trademark Act, as amended by section 3 of this Act, applies only in the case of registrations issued and registrations published under the provisions of section 12(c) of the Trademark Act on or after the effective date of this Act.

SEC. 10. Section 266 of title 35, United States Code, is repealed.

The chapter analysis of chapter 27 of title 35, United States Code, is amended by striking out the following item:

"266. Issue of patents without fees to Government employees."

Calendar No. 1131

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[Report No. 2167]

A BILL

To fix the fees payable to the Patent Office, and for other purposes.

By Mr. McCLELLAN

JULY 11, 1961
Read twice and referred to the Committee on the Judiciary

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