Calendar No. 72

92D CONGRESS
1ST SESSION

S. 645

[Report No. 92–70]

IN THE SENATE OF THE UNITED STATES

FEBRUARY 8 (legislative day, JANUARY 26), 1971

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

APRIL 20, 1971

Reported by Mr. MCCLELLAN, without amendment

A BILL

To provide relief in patent and trademark cases affected by the emergency situation in the United States Postal Service which began on March 18, 1970.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. (a) A patent or trademark application shall be considered as having been filed in the United States Patent Office on the date that it would have been received by the Patent Office except for the delay caused by the emergency situation affecting the postal service which began on March 18, 1970, and ended on or about March 30, 1970, if a claim is made for the benefit of an earlier date in accordance with subsections (b) and (c) of this section. Patents

issued with earlier filing dates afforded by this section shall not be effective as prior art under subsection 102 (e) of title 35 of the United States Code as of such earlier filing dates.

(b) No patent or trademark application, patent, or trademark registration shall be entitled to an earlier filing date under this section unless a verified statement by the applicant or owner of record claiming the filing date to which the application is believed to be entitled is filed in the Patent Office within six months after enactment of this Act. Such statement shall be maintained in the file of the application in the Patent Office and shall be referred to in the patent or trademark registration when practicable.

(c) When a statement filed under subsection (b) of this section appears unreasonable or defective on its face, or when the filing date of the patent or trademark application, patent, or trademark registration is called into question or is material in any inter partes proceeding in the Patent Office or any proceeding in the courts, the applicant or owner of such application, patent, or trademark registration may be required to present evidence establishing the filing date to which the application is entitled. The filing date to which the application is entitled shall be determined on the basis of such evidence and any evidence introduced by an opposing party. The evidence shall be presented as directed by the

Commissioner of Patents in proceedings in the Patent Office or as directed by the courts in proceedings in the courts.

SEC. (2) Except for the filing of a patent or trademark application, if any action is taken or any fee is paid in the United States Patent Office later than the end of a time period specified in the statutes set forth in subsection (b) of this section for taking such action or paying such fee, and no provision exists in law for excusing such delay, the delay may be excused if it is determined that it was caused by the emergency situation affecting postal service which began on March 18, 1970 and ended on or about March 30, 1970. Relief under this section must be requested by a verified statement filed in the Patent Office by the patent or trademark applicant or owner within six months after enactment of this Act.

(b) This section is applicable to title 35, United States Code, "Patents"; the Trademark Act of 1946, ch. 540, 60 Stat. 427, as amended; the Atomic Energy Act of 1954, Pub. L. 83–703, 68 Stat. 919, as amended; and the National Aeronautics and Space Act, Pub. L. 85–568, 72 Stat. 426 (1958), as amended. In cases involving the Atomic Energy Act of 1954 or the National Aeronautics and Space Act, determinations of relief shall be made by a Board of

Patent Interferences. In other cases determinations shall be made by the Commissioner of Patents.

SEC. 3. The Commissioner of Patents may establish regulations for administering this Act.

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