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RELIEF FROM EFFECTS OF THE EMERGENCY POSTAL SITUATION IN PATENT AND TRADEMARK CASES

APRIL 20, 1971.—Ordered to be printed

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

REPORT

[To accompany S. 645]

The Committee on the Judiciary, to which was referred the bill (S. 645) to provide for relief in patent and trademark cases affected by the emergency situation in the U.S. Postal Service which began on March 18, 1970, having considered the same, reports favorably thereon, without amendments, and recommends that the bill do pass.

PURPOSE

The purpose of the legislation is to afford patent and trademark applicants an opportunity to make a claim for a filing date earlier than the date on which the application was received by the Patent Office. The application would be entitled to the filing date which it would normally have received except for the emergency situation affecting Postal Service which began on March 18, 1970. The applicant would be required to submit within 6 months after enactment of the bill a verified statement claiming the date to which the application is believed to be entitled.

VIEWS OF GOVERNMENT AGENCY

This legislation was introduced by Senator John L. McClellan at the request of the Department of Commerce.

STATEMENT

The patent and trademark laws contain numerous time periods during which specified actions must be taken by patent and trademark applicants and owners. Failure to take a required action within the statutory time period generally results in a forfeiture of some or all of the patent or trademark rights involved. The statutes allow a failure to comply with the specified time periods to be excused in some situations upon a showing that the delay was unavoidable, however with respect to other time periods, the statutes permit no waiver.

The filing dates of patent and trademark applications may be critically important in determining patent and trademark rights. The committee has been advised that the disruption of the postal system resulting from the failure of certain employees to perform their duties may cause a number of patent and trademark owners to suffer loss of important rights. Other than for legislation, such as S. 645, the only remedy available to such owners would be to seek the passage of a private bill in individual cases.

If a claimed earlier filing were called into question or became material in an inter partes proceeding in the Patent Office or any proceeding in the courts, the applicant or owner could be required to present evidence establishing the filing date to which the application was entitled. Evidence would also be presented when the claim appeared unreasonable or defective on its face. Thus, the sufficiency of claims for earlier filing dates would be examined only in a small percentage of cases. This approach is believed best because a large number of applications may have been affected by the strike and the delay will prove to be material only in a few of the cases. During a 2-week period approximately 4,000 patent applications and 1,200 trademark applications are filed in the Patent Office.

SECTIONAL ANALYSIS

Section 1(a) provides an earlier filing date for patent and trademark applications in which a claim is made according to the requirements of the bill. The earlier filing date afforded would be effective only for the purposes of obtaining and maintaining patent or trademark rights, and would not be used in applying an issued patent as "prior art" under 35 United States Code 102(e). Relief would be available for any application delayed by the emergency which began on March 18, 1970, and ended on or about March 30, 1970. The language of the bill would permit relief for delays encountered a reasonable time after March 30. Relief would not be limited to situations where mail actually was deposited in the Postal Service; relief would be afforded to applicants who were forced to use other means of delivery during the emergency.

Section 1(b) requires any patent or trademark applicant or owner desiring the benefits of an earlier filing date to file a verified statement claiming such earlier date within 6 months after enactment of the bill.

Section 1(c) would allow the Patent Office or the courts to require an applicant or owner to present evidence establishing the filing date which his application should receive whenever the date became mate-

rial in any inter partes proceeding in the Patent Office or in any proceeding in the courts. Patent Office inter partes proceedings consist of patent and trademark interferences, and trademark concurrent use, opposition and cancellation proceedings. The Commissioner could also require evidence in support of a claim appearing unreasonable or defective on its face.

Section 2(a) pertains to actions in the Patent Office, other than the filing of patent or trademark applications, which are required by statute to be taken within a specified time. The subsection would permit delay in taking any such action, including payment of a fee, to be excused upon a determination that the delay was caused by the emergency postal situation. The section would apply only where no procedure already exists for excusing delays. A request to have the delay excused would have to be filed within 6 months after enactment of the bill.

Section 2(b) makes clear that the bill applies to the Atomic Energy Act of 1954 and the National Aeronautics and Space Act in addition to the patent and trademark laws. In cases involving the Atomic Energy or Space Acts, determinations would be made by a board of patent interferences, which conducts other proceedings under these acts. Cases arising under the patent and trademark laws would be decided by the Commissioner of Patents.

Section 3 would authorize the Commissioner of Patents to establish regulations for administering sections 1 and 2.

