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AMENDMENT OF TITLE 35, UNITED STATES CODE

APRIL 20, 1971.—Ordered to be printed

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

REPORT

[To accompany S. 1254]

The Committee on the Judiciary, to which was referred the bill (S. 1254) to amend title 35, United States Code, "Patents", and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

AMENDMENTS

(1) On page 1, line 9, strike out "assistant" and insert "Assistant".
(2) On page 2, line 1, insert a "," after the word "appointment".
(3) On page 2, line 6, after "Senate.", add the following:

> The Secretary of Commerce, upon the nomination of the Commissioner in accordance with law, shall appoint all other officers and employees.

(4) On page 2, after line 16, insert the following:

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 examiners-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.

(5) On page 2, line 17, strike out "SEC. 2", and insert in lieu thereof "SEC. 3.".

(6) On page 3, line 11, strike out the word "late" and insert in lieu thereof "delay in".

(7) On page 3, strike out lines 14 through 21, and insert in lieu thereof the following:

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.

(8) On page 3, after line 26, insert the following new section:

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.

PURPOSE OF AMENDMENTS

All of the amendments are of a perfecting or clarifying nature. Most of the amendments provide for necessary revisions in title 35 to conform that title to the provisions of this legislation.

PURPOSE

This bill, as amended, provides for several miscellaneous amendments of title 35, and for an adjustment of the organization of the Patent Office within the Department of Commerce.

STATEMENT

There has been an increase in the number of situations where a patent applicant has failed to make timely payment of the issue fee. Section 151 of title 35 authorizes the Commissioner of Patents to accept a late payment upon a showing of sufficient cause only if the late payment is made within 3 months of the due date. In some situations the failure to make the payment was unavoidable and private bills have been introduced to direct the Commissioner to accept the late payment. The amendment of section 151 contained in this legislation would eliminate the necessity for such bills by giving the Commissioner authority to accept a late payment upon a showing that the delay was unavoidable.

Under the existing section 3 of title 35 there are 19 positions in the Patent Office which require Senate confirmation. No useful public

policy purpose is served by this procedure. The bill would eliminate the requirement for the Senate to give its advice and consent to the position of Examiner in Chief of the Patent Office and would require Senate confirmation only of the Commissioner, the Deputy Commissioner, and the two Assistant Commissioners.

The Patent Office currently is confronted with substantial administrative problems. While the Congress had not yet completed action on the legislation for the general revision of the patent law, it is apparent that no major change will be made in the current patent examining system. Because of the rise in the number of patent applications, the complexity of many inventions, and the long delay in the disposition of many applications, there is an urgent need for the most efficient administration of the Patent Office and clear policy responsibility in the Commissioner of Patents.

The bill provides that the number of assistant secretaries of Commerce shall be increased from seven to eight by the establishment of the position of Assistant Secretary of Commerce for Patents and Trademarks. The Assistant Secretary of Commerce for Patents and Trademarks shall, ex officio, be the Commissioner of Patents. The Patent Office, with 2,701 employees, is one of the largest functioning components of the Department of Commerce. The Congress has previously provided that such other components of the Department, as the Travel Service, with 73 employees, and the Maritime Administration, with 1,708 employees, should be headed by an assistant secretary.

The committee is aware that the President has recommended the abolition of the Department of Commerce and the incorporation of many of its functions, including the Patent Office, in a Department of Economic Affairs. It is currently uncertain what action may be taken by the Congress on this proposal. In any event, the committee believes that the urgent administrative problems confronting the patent system make it advisable that favorable action be taken at this time on section 4 of S. 1254.

Sectional Analysis

Section 1(a) of the bill, as amended, enumerates the officers of the Patent Office and makes a number of changes in section 3 of title 35. The current position of "first assistant commissioner" would be known as "deputy commissioner." It is provided that the Commissioner of Patents, the deputy commissioner, and the two assistant commissioners shall be oppointed by the President with the advice and consent of the Senate. The current requirement for Senate confirmation of the Patent Office examiners in chief is eliminated. The Assistant Secretary of Commerce for Patents and Trademarks shall, ex officio, be the Commissioner of Patents. Subsections (b) and (c) of section 1 of the bill retain existing language in section 3 of title 35 relating to the authority of the Secretary of Commerce over the functioning of the Patent Office and the authority of the Secretary to fix the compensation of the examiners in chief.

Section 2 of the bill, as amended, amends section 7 of title 35 relating to the composition of the Board of Appeals of the Patent Office. The only change made in the existing section 7 is the inclusion of the "Deputy Commissioner" among the members constituting the Board of Appeals.

Section 3 of the bill, as amended, amends section 151 of title 35 so as to provide in subsection (d) thereof authority for the Commissioner of Patents to accept late payment of the issue fee when the "delay in payment is shown to have been unavoidable." The existing section 151 authorizes the Commissioner of Patents to accept late payment upon a showing of sufficient cause if the payment is submitted within 3 months after the due date.

Section 4(a) of the bill, as amended, provides for the creation of an additional Assistant Secretary of Commerce who shall be known as the Assistant Secretary of Commerce for Patents and Trademarks. Subsection (b) of section 4 amends section 5315 of title 5 to increase from seven to eight the number of Assistant Secretaries of Commerce. Subsection (c) of section 4 amends section 5316 of title 5 to eliminate a reference to the post of Commissioner of Patents.

Section 5 of the bill, as amended, provides that the bill shall become effective upon its enactment, and that examiners in chief in office on such date shall continue in office in accordance with their existing appointments.

Changes in Existing Law

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman) :

I. Title 35, United States Code

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§ 3. Officers and employees.

[A Commissioner of Patents, one first assistant commissioner, two assistant commissioners, and not more than fifteen examiners-in-chief, shall be appointed by the President, by and with the advice and consent of the Senate. The assistant commissioners shall perform the duties pertaining to the office of commissioner assigned to them by the Commissioner.]

(*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 Secretary of Commerce for Patents and Trademarks, shall be, ex officio, the Commissioner of Patents.* The [first assistant] *deputy*, or, in the event of a vacancy 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 take 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.

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§ 7. Board of Appeals.

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 examiners-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 hearings.

Whenever the Commissioner considers it necessary to maintain the work of the Board of Appeals current, * * *

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§ 151. [Time of] Issue of patent.

[The patent shall issue within three months from the date of the payment of the final fee, which shall be paid not later than six months after written notice to the applicant of allowance of the application, but the Commissioner may accept the final fee if paid within one year after the six month period for payment, and the patent shall issue.]

(*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 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.*

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II. Title 5, United States Code

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§ 5315. Positions of level IV.

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay is $38,000.

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(12). Assistant Secretaries of Commerce ([7]*8*).

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§ 5316. Positions of level V.

Level V of the Executive Schedule applies to the following positions for which the annual rate of basic pay is $36,000.

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[(48) Commissioner of Patents, Department of Commerce.]

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