OISS FORM 51 (Rev. 11-82)

CONGRESSIONAL RECORD
PROCEEDINGS AND DEBATES OF THE 98TH CONGRESS

HOUSE

BILL	DATE	PAGE(S)
H.R.4222	AUG 6 '84 (103)	H8414-15

ACTION:

Passed and sent to the Senate, amended:

Federal court improvement: H.R. 4222, to make certain technical amendments with respect to the court of appeals for the Federal circuit.

TECHNICAL AMENDMENTS TO THE FEDERAL COURTS IMPROVEMENT ACT OF 1982

The Clerk called the bill (H.R. 4222) to make certain technical amendments with respect to the court of appeals for the Federal circuit, and for other purposes.

There being no objection, the Clerk read the bill, as follows:

H.R. 4222

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Technical Amendments to the Federal Court Improvements Act".

SEC. 2. Section 1292(b) of title 28, United States Code, is amended by inserting "which would have jurisdiction of an appeal of such action" after "The Court of Appeals".

SEC. 3. Section 337(c) of the Tariff Act of 1930 (19 U.S.C. 1337(c)) is amended in the fourth sentence by inserting ", within 60 days after the determination becomes final," after "appeal such determination".

SEC. 4. (a) Sections 142, 143, and 144 of title 35, United States Code, are amended to read as follows:

"§ 142. Notice of appeal

"When an appeal is taken to the United States Court of Appeals for the Federal Circuit, the appellant shall file in the Patent and Trademark Office a written notice of appeal directed to the Commissioner, within such time after the date of the decision from which the appeal is taken as the Commissioner prescribes, but in no case less than 60 days after that date.

"§ 143. Proceedings on appeal

"With respect to an appeal described in section 142 of this title, the Commissioner shall transmit to the United States Court of Appeals for the Federal Circuit a certified list of the documents comprising the record in the Patent and Trademark Office. The court may request that the Commissioner forward the original or certified copies of such documents during pendency of the appeal. In an ex parte case, the Commissioner shall submit to the court in writing the grounds for the decision of the Patent and Trademark Office, addressing all the issues involved in the appeal. The court shall, before hearing an appeal, give notice of the time and place of the hearing to the Commissioner and the parties in the appeal.

"§ 144. Decision on appeal

"The United States Court of Appeals for the Federal Circuit shall review the decision from which an appeal is taken on the record before the Patent and Trademark Office. Upon its determination the court shall issue to the Commissioner its mandate and opinion, which shall be entered of record in the Patent and Trademark Office and shall govern the further proceedings in the case.".

(b) Paragraphs (2), (3), and (4) of subsection (a) of section 21 of the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946 (15 U.S.C. 1071(a) (2), (3), and (4)), are amended to read as follows:

"(2) When an appeal is taken to the United States Court of Appeals for the Federal Circuit, the appellant shall file in the Patent and Trademark Office a written notice of appeal direct to the Commissioner, within such time after the date of the decision from which the appeal is taken as the Commissioner prescribes, but in no case less than 60 days after that date.

"(3) The Commissioner shall transmit to the United States Court of Appeals for the Federal Circuit a certified list of the documents comprising the record in the Patent and Trademark Office. The court may request that the Commissioner forward the original or certified copies of such documents during pendency of the appeal. In an ex parte case, the Commissioner shall submit to that court a brief explaining the grounds for the decision of the Patent and Trademark Office, addressing all the issues involved in the appeal. The court shall, before hearing an appeal, give notice of the time and place of the hearing to the Commissioner and the parties in the appeal.

"(4) The United States Court of Appeals for the Federal Circuit shall review the decision from which the appeal is taken on the record before the Patent and Trademark Office. Upon its determination the court shall issue its mandate and opinion to the Commissioner, which shall be entered of record in the Patent and Trademark Office and shall govern the further proceedings in the case.".

(c) The amendments made by this section shall apply to proceedings pending in the Patent and Trademark Office on the date of the enactment of this Act and to appeals pending in the United States Court of Appeals for the Federal Circuit on such date.

SEC. 5. Any individual who, on the date of the enactment of the Federal Courts Improvement Act of 1982, was serving as marshal for the Court of Appeals for the District of Columbia under section 713(c) of title 28, United States Code, may, after the date of the enactment of this Act, so serve under that section as in effect on the date of the enactment of the Federal Courts Improvement Act of 1982. While such individual so serves, the provisions of section 714(a) of title 28, United States Code, shall not apply to the Court of Appeals for the District of Columbia.

With the following committee amendment:

Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Technical Amendments to the Federal Courts Improvement Act of 1982".

SEC. 2. (a) Section 1292(b) of title 28, United States Code, is amended by inserting "which would have jurisdiction of an appeal of such action" after "The Court of Appeals".

(b) Section 1292(c)(1) of title 28, United States Code, is amended by inserting "or (b)" after "(a)".

SEC. 3. Section 337(c) of the Tariff Act of 1930 (19 U.S.C. 1337(c)) is amended in the fourth sentence by inserting ", within 60 days after the determination becomes final," after "appeal such determination".

SEC. 4. (a) Sections 142, 143, and 144 of title 35, United States Code, are amended to read as follows:

"§ 142. Notice of appeal

"When an appeal is taken to the United States Court of Appeals for the Federal Circuit, the appellant shall file in the Patent and Trademark Office a written notice of appeal directed to the Commissioner, within such time after the date of the decision from which the appeal is taken as the Commissioner prescribes, but in no case less than 60 days after that date.

"§ 143. Proceedings on appeal

"With respect to an appeal described in section 142 of this title, the Commissioner shall transmit to the United States Court of Appeals for the Federal Circuit a certified list of the documents comprising the record in the Patent and Trademark Office. The court may request that the Commissioner forward the original or certified copies of such documents during pendency of the appeal. In an ex parte case, the Commissioner shall submit to the court in writing the grounds for the decision of the Patent and Trademark Office, addressing all the issues involved in the appeal. The court shall, before hearing an appeal, give notice of the time and place of the hearing to the Commissioner and the parties in the appeal.

"§ 144. Decision on appeal

"The United States Court of Appeals for the Federal Circuit shall review the decision from which an appeal is taken on the record before the Patent and Trademark Office. Upon its determination the court shall issue to the Commissioner its mandate and opinion, which shall be entered of record in the Patent and Trademark Office and shall govern the further proceedings in the case.".

(b) Paragraphs (2), (3), and (4) of subsection (a) of section 21 of the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946 (15 U.S.C. 1071(a) (2), (3), and (4)), are amended to read as follows:

"(2) When an appeal is taken to the United States Court of Appeals for the Federal Circuit, the appellant shall file in the Patent and Trademark Office a written notice of appeal directed to the Commissioner, within such time after the date of the decision from which the appeal is taken as the Commissioner prescribes, but in no case less than 60 days after that date.

"(3) The Commissioner shall transmit to the United States Court of Appeals for the Federal Circuit a certified list of the documents comprising the record in the Patent and Trademark Office. The court may request that the Commissioner forward the original or certified copies of such documents during pendency of the appeal. In an ex parte case, the Commissioner shall submit to that court a brief explaining the grounds for the decision of the Patent and Trademark Office, addressing all the issues involved in the appeal. The court shall, before hearing an appeal, give notice of the time and place of the hearing to the Commissioner and the parties in the appeal.

"(4) The United States Court of Appeals for the Federal Circuit shall review the decision from which the appeal is taken on the record before the Patent and Trademark Office. Upon its determination the court shall issue its mandate and opinion to the Commissioner, which shall be entered of record in the Patent and Trademark Office and shall govern the further proceedings in the case.".

(c) The amendments made by this section shall apply to proceedings pending in the Patent and Trademark Office on the date of the enactment of this Act and to appeals

pending in the United States Court of Appeals for the Federal Circuit on such date.

SEC. 5. Any individual who, on the date of the enactment of the Federal Courts Improvement Act of 1982, was serving as marshal for the Court of Appeals for the District of Columbia under section 713(c) of title 28, United States Code, may, after the date of the enactment of this Act, so serve under that section as in effect on the date of the enactment of the Federal Courts Improvement Act of 1982. While such individual so serves, the provisions of section 714(a) of title 28, United States Code, shall not apply to the Court of Appeals for the District of Columbia.

● Mr. KASTENMEIER. Mr. Speaker, I bring before the full House the bill H.R. 4222. The general purpose of the legislation is to correct several drafting flaws in the Federal Courts Improvement Act (Public Law 97-164), signed into law by President Reagan on April 2, 1982, and effective on October 1, 1982.

As you may recall, the Federal Courts Improvement Act created the U.S. Court of Appeals for the Federal Circuit [CAFC] by merging the preexisting U.S. Court of Claims with the former U.S. Court of Customs and Patent Appeals. The act further created the U.S. Claims Court, pursuant to article I of the Constitution, from the former trial division of the Court of Claims. Finally, the act contained several significant improvements to Federal judicial machinery.

Before discussing H.R. 4222, I would be remiss if I did not notify my colleagues that the changes made to the Federal judicial branch by Public Law 97-164 are all working quite well. This observation is not only my own, but has also been made by representatives of the executive and judicial branches of Government. My subcommittee is monitoring quite closely whether the CAFC, a somewhat specialized court, is tilting one way or the other in the patent law area.

Let me now turn to an explanation of the legislation before us. For Members who want a more indepth explanation, I cite the House report (No. 98-619) that has been filed on this bill. In brief, H.R. 4222 cures four drafting defects.

First, the bill clarifies that a circuit court—including the Court of Appeals for the Federal Circuit—which has jurisdiction of an appeal has jurisdiction of the certification of a controlling question of law.

Second, the bill amends the Tariff Act to provide that an appeal from a final determination of the International Trade Commission must be taken within 60 days. The genesis of this section was H.R. 1291, introduced by the gentleman from Massachusetts [Mr. FRANK].

Third, the bill simplifies the procedures on appeals from the Patent and Trademark Office, U.S. Department of Commerce, to the CAFC mainly by eliminating the outmoded requirements of titles 15 and 35, United States Code, that the appellant set forth "reasons of appeal" when the appeal is filed. Chief Judge Howard Markey and Judge Giles Rich, two highly respected circuit judges on the CAFC, both with extensive experience in patent law, deserve commendation for bringing these administrative improvements to our attention.

Fourth, and finally, the bill provides that the individual who was serving as the marshal of the Court of Appeals for the District of Columbia—under 28 U.S.C. 713(c)—after October 1, 1982—the date of enactment of the Federal Courts Improvement Act—may continue to so serve.

H.R. 4222 is supported by the Judicial Conference of the United States, the U.S. Department of Commerce, and the U.S. Department of Justice. There is no opposition.

Before concluding, I should mention that the proposal will save the Federal Government approximately $100,000 annually.

I urge unanimous support and I yield back the balance of my time.●

● Mr. MOORHEAD. Mr. Speaker, I am not aware of any opposition to this legislation—hearings have been held, it was marked up at subcommittee and full committee and no opposition was expressed at any level.

H.R. 4222 does three things which are primarily technical in nature:

First, the 1982 act which established the new Court of Appeals for the Federal Circuit created an unintended situation of having interlocutory appeals in patent cases go to the geographic circuits and final appeals directed to the Court of Appeals for the Federal Circuit. H.R. 4222 would have both types of appeals go to the Court of Appeals for the Federal Circuit;

Second, the time limit for an appeal from the International Trade Commission [ITC] used to be 60 days, this was inadvertently removed and H.R. 4222 puts back into the law the 60-day time limit within which appeals for the ITC must be taken; and

Third, it simplifies procedures for appeals from the Patent and Trademark Office and also provides that the Commissioner of Patents does not have to transmit certified copies of documents to the courts but that a certified list of these documents will suffice unless the court specifically requests certified copies. This new procedure will save time and money.

I urge support for this legislation.●

The committee amendment was agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.