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CONGRESSIONAL RECORD
PROCEEDINGS AND DEBATES OF THE 100TH CONGRESS

HOUSE

BILL	DATE	PAGE(S)
S.1626	Oct 4, 1988 139	H9461-62

ACTION: SUSPENSION OF THE RULES

Intellectual property licenses in bankruptcy: Passed H.R. 5348, to amend title 11 of the United States Code with respect to the rejection of executory contracts licensing rights to intellectual property (passed by a yea-and-nay vote of 415 yeas to 1 nay, Roll No. 393). Subsequently, this passage was vacated and S. 1626, a similar Senate-passed bill, was passed in lieu—clearing the measure for the President;

Pages H9461, H9484

AMENDING THE BANKRUPTCY LAWS WITH RESPECT TO THE REJECTION OF INTELLECTUAL PROPERTY LICENSES

The SPEAKER pro tempore. The unfinished business is the question of suspending the rules and passing the bill, H.R. 5348.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California [Mr. EDWARDS] that the House suspend the rules and pass the bill, H.R. 5348, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 415, nays 1, not voting 15, as follows:

[Roll No. 393]

YEAS—415

Ackerman	Bereuter	Bunning
Akaka	Berman	Burton
Alexander	Bevill	Bustamante
Anderson	Bilbray	Byron
Andrews	Bilirakis	Callahan
Annunzio	Billey	Campbell
Anthony	Boehlert	Cardin
Applegate	Boggs	Carper
Archer	Boland	Carr
Armey	Bonior	Chandler
Aspin	Bonker	Chapman
Atkins	Borski	Chappell
AuCoin	Bosco	Cheney
Badham	Boucher	Clarke
Baker	Boxer	Clay
Ballenger	Brennan	Clement
Barnard	Brooks	Clinger
Bartlett	Broomfield	Coats
Barton	Brown (CA)	Coble
Bateman	Brown (CO)	Coelho
Bates	Bruce	Coleman (MO)
Bellenson	Bryant	Coleman (TX)
Bennett	Buechner	Collins
Combest	Holloway	Nagle
Conte	Hopkins	Natcher
Conyers	Horton	Neal
Cooper	Houghton	Nelson
Costello	Hoyer	Nichols
Coughlin	Hubbard	Nielson
Courter	Huckaby	Nowak
Coyne	Hughes	Oakar
Craig	Hunter	Oberstar
Crane	Hutto	Obey
Crockett	Hyde	Olin
Dannemeyer	Inhofe	Ortiz
Darden	Ireland	Owens (NY)
Daub	Jacobs	Owens (UT)
Davis (IL)	Jeffords	Oxley
Davis (MI)	Jenkins	Packard
de la Garza	Johnson (CT)	Panetta
DeFazio	Johnson (SD)	Parris
DeLay	Jones (NC)	Pashayan
Dellums	Jones (TN)	Patterson
Derrick	Jontz	Payne
DeWine	Kanjorski	Pease
Dickinson	Kasich	Pelosi
Dicks	Kastenmeier	Penny
Dingell	Kennedy	Pepper
DioGuardi	Kennelly	Perkins
Dixon	Kildee	Petri
Dorgan (ND)	Kleczka	Pickett
Dornan (CA)	Kolbe	Porter
Dowdy	Kolter	Price
Downey	Konnyu	Pursell
Dreier	Kostmayer	Quillen
Durbin	Kyl	Rahall
Dwyer	LaFalce	Rangel
Dymally	Lagomarsino	Ravenel
Dyson	Lancaster	Ray
Early	Lantos	Regula
Eckart	Latta	Rhodes
Edwards (CA)	Leach (IA)	Richardson
Edwards (OK)	Leath (TX)	Ridge
Emerson	Lehman (CA)	Rinaldo
English	Lehman (FL)	Ritter
Erdreich	Leland	Roberts
Espy	Levin (MI)	Robinson
Evans	Levine (CA)	Rodino
Fascell	Lewis (FL)	Roe
Fawell	Lewis (GA)	Rogers
Fazio	Lightfoot	Rose
Feighan	Lipinski	Rostenkowski
Fields	Livingston	Roth
Fish	Lloyd	Roukema
Flake	Lott	Rowland (GA)
Flippo	Lowery (CA)	Roybal
Florio	Lujan	Russo
Foglietta	Luken, Thomas	Sabo
Foley	Lukens, Donald	Saiki
Ford (TN)	Lungren	Savage
Frank	Madigan	Sawyer
Frenzel	Manton	Saxton
Frost	Markey	Schaefer
Gallegly	Marlenee	Scheuer
Gallo	Martin (IL)	Schneider
Garcia	Martin (NY)	Schroeder
Gaydos	Martinez	Schuette
Gejdenson	Matsui	Schulze
Gekas	Mavroules	Schumer
Gephardt	Mazzoli	Sensenbrenner
Gilman	McCandless	Sharp
Gingrich	McCloskey	Shaw
Glickman	McCollum	Shays
Gonzalez	McCrery	Shumway
Goodling	McCurdy	Shuster
Gordon	McDade	Sikorski
Gradison	McEwen	Sisisky
Grant	McGrath	Skaggs
Gray (IL)	McHugh	Skeen
Gray (PA)	McMillan (NC)	Skelton
Green	McMillen (MD)	Slattery
Gregg	Meyers	Slaughter (NY)
Guarini	Mfume	Slaughter (VA)
Gunderson	Mica	Smith (FL)
Hall (OH)	Michel	Smith (IA)
Hall (TX)	Miller (CA)	Smith (NE)
Hamilton	Miller (OH)	Smith (NJ)
Hammerschmidt	Miller (WA)	Smith (TX)
Hansen	Mineta	Smith, Denny (OR)
Harris	Moakley	Smith, Robert (NH)
Hastert	Molinari	Smith, Robert (OR)
Hatcher	Mollohan	Snowe
Hawkins	Montgomery	Solarz
Hayes (IL)	Moody	Solomon
Hayes (LA)	Moorhead	Spence
Hefley	Morella	Spratt
Hefner	Morrison (CT)	St Germain
Henry	Morrison (WA)	Staggers
Herger	Mrazek	Stallings
Hertel	Murphy	
Hiler	Murtha	
Hochbrueckner	Myers	

Stangeland	Torricelli	Weldon
Stark	Towns	Wheat
Stenholm	Traficant	Whittaker
Stokes	Traxler	Whitten
Stratton	Udall	Williams
Studds	Upton	Wilson
Stump	Valentine	Wise
Sundquist	Vander Jagt	Wolf
Swift	Vento	Wolpe
Swindall	Visclosky	Wortley
Synar	Volkmer	Wyden
Tallon	Vucanovich	Wylie
Tauke	Walgren	Yates
Tauzin	Walker	Yatron
Taylor	Watkins	Young (AK)
Thomas (CA)	Waxman	Young (FL)
Thomas (GA)	Weber	
Torres	Weiss	

NAYS—1

Gibbons

NOT VOTING—15

Bentley	Kaptur	Mack
Boulter	Kemp	MacKay
Donnelly	Lent	Pickle
Ford (MI)	Lewis (CA)	Rowland (CT)
Grandy	Lowry (WA)	Sweeney

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So (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair will announce that the next vote will be a 2-minute vote.

INTELLECTUAL PROPERTY BANKRUPTCY PROTECTION ACT OF 1987

Mr. EDWARDS of California. Mr. Speaker, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of the Senate bill (S. 1626) to keep secure the rights of intellectual property licensors and licensees which come under the protection of title 11 of the United States Code, the Bankruptcy code, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. FISH. Mr. Speaker, reserving the right to object, I do so for the purpose of asking the gentleman from California to explain whether there are any substantive differences between S. 1626 and H.R. 5348, a bill that we passed earlier this afternoon.

Mr. EDWARDS of California. Mr. Speaker, will the gentleman yield?

Mr. FISH. Mr. Speaker, I am happy to yield to the gentleman from California.

Mr. EDWARDS of California. Mr. Speaker, S. 1626 is—except for some minor technical numbering differences—identical to H.R. 5348, legislation passed by the House earlier today. The legislation relates to the treatment of intellectual property licenses by the bankruptcy laws. The Judiciary Committee report on H.R. 5348 is equally and totally applicable to S. 1626. I would urge my colleagues to pass S. 1626.

Mr. FISH. Mr. Speaker, I thank the gentleman, and I withdraw my reservation of objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1626

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

SECTION 1. AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended—

(1) in paragraph (50) by striking "and" at the end, and

(2) in paragraph (51) by striking the period at the end and inserting in lieu thereof a semicolon, and

(3) by adding at the end the following:

"(52) 'intellectual property' means—

"(A) trade secret;

"(B) invention, process, design, or plant protected under title 35;

"(C) patent application;

"(D) plant variety;

"(E) work of authorship protected under title 17; or

"(F) mask work protected under chapter 9 of title 17;

to the extent protected by applicable nonbankruptcy law; and

"(53) 'mask work' has the meaning given it in section 901(a)(2) of title 17.".

(b) EXECUTORY CONTRACTS LICENSING RIGHTS TO INTELLECTUAL PROPERTY.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

"(n)(1) If the trustee rejects an executory contract under which the debtor is a licensor of a right to intellectual property, the licensee under such contract may elect—

"(A) to treat such contract as terminated by such rejection if such rejection by the trustee amounts to such a breach as would entitle the licensee to treat such contract as terminated by virtue of its own terms, applicable nonbankruptcy law, or an agreement made by the licensee with another entity; or

"(B) to retain its rights (including a right to enforce any exclusivity provision of such contract, but excluding any other right under applicable nonbankruptcy law to specific performance of such contract) under such contract and under any agreement supplementary to such contract, to such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law), as such rights existed immediately before the case commenced, for—

"(i) the duration of such contract; and

"(ii) any period for which such contract may be extended by the licensee as of right under applicable nonbankruptcy law.

"(2) If the licensee elects to retain its rights, as described in paragraph (1)(B) of this subsection, under such contract—

"(A) the trustee shall allow the licensee to exercise such rights;

"(B) the licensee shall make all royalty payments due under such contract for the duration of such contract and for any period described in paragraph (1)(B) of this subsection for which the licensee extends such contract; and

"(C) the licensee shall be deemed to waive—

"(i) any right of setoff it may have with respect to such contract under this title or applicable nonbankruptcy law; and

"(ii) any claim allowable under section 503(b) of this title arising from the performance of such contract.

"(3) If the licensee elects to retain its rights, as described in paragraph (1)(B) of this subsection, then on the written request of the licensee the trustee shall—

"(A) to the extent provided in such contract, or any agreement supplementary to such contract, provide to the licensee any intellectual property (including such embodiment) held by the trustee; and

"(B) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment) including any right to obtain such intellectual property (or such embodiment from another entity.

"(4) Unless and until the trustee rejects such contract, on the written request of the licensee the trustee shall—

"(A) to the extent provided in such contract or any agreement supplementary to such contract—

"(i) perform such contact; or

"(ii) provide to the licensee such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law) held by the trustee; and

"(B) not interfere with the rights of the licensee as provided in such contract, or any agreement supplementary to such contract, to such intellectual property (including such embodiment), including any right to obtain such intellectual property (or such embodiment) from another entity.".

SEC. 2. EFFECTIVE DATES; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this Act shall not apply with respect to any case commenced under title 11 of the United States Code before the date of the enactment of this Act.

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