II

100TH CONGRESS
1ST SESSION

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.

IN THE SENATE OF THE UNITED STATES

AUGUST 7 (legislative day, AUGUST 5), 1987

Mr. DECONCINI (for himself and Mr. HEFLIN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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A BILL

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.

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 "Intellectual Property Bankruptcy Protection Act of 1987".

SEC. 2. Section 365 of title 11 of the United States Code is amended by inserting at the end the following new subsection:

"(n)(1) For the purpose of this title—

"(A) the term 'protected information' means trade secrets and other confidential technical information to the extent the confidentiality thereof is protected by applicable nonbankruptcy law; and

"(B) the term 'intellectual property' includes inventions, designs, works of authorship, mask works, protected information, trademarks, trade names, service marks, and other products of intellectual or creative effort now or hereafter protected by applicable nonbankruptcy law.

"(2) Until and unless a trustee assumes an executory contract or unexpired lease under which the debtor has granted rights in intellectual property, the trustee may not interfere with the grantee's rights (A) to deal with the intellectual property, as provided in the contract or lease, (B) to gain access to or possession of any information or property in existence as of the time of the filing which the contract or lease provided would be made available to the grantee if the debtor failed to perform its affirmative obligations, and (C) in the case of a trademark, trade name, service mark, or similar intellectual property, to permit existing grantees to continue in concert the quality assurance procedures of the licensor. If the trustee rejects such contract or lease, the trustee is relieved only from the specific performance of prospective obligations thereunder measured from the filing date and is pro-

hibited from taking any action which would interfere with the grantee's rights set forth in subparagraphs (A), (B), and (C) of this paragraph. Subject to subsection (g) of this section and to section 553 of this title, if the grantee elects to exercise its rights under the contract or lease as set forth in this subsection, the grantee must satisfy its obligations under such contract or lease.

"(3) If the debtor was the grantee under an executory contract or unexpired lease which granted rights in intellectual property, prior to assumption or rejection and notwithstanding rejection of such contract or lease, the trustee, the debtor, and the grantor must maintain the confidentiality of any protected information obtained pursuant to the executory contract or unexpired lease to the extent required by applicable nonbankruptcy law. Prior to assumption or rejection, the grantor is entitled to adequate assurance of the continued confidential treatment of such protected information. If the contract or lease is rejected, upon request by the grantor including an offer of reimbursement of expenses, all materials embodying protected information shall be returned to the grantor. The trustee, after he has received actual notice of the existence of the protected information in the bankruptcy estate, and the debtor, are not, by reason of the rejection, permitted to disclose protected information without the con-

sent of the person to whom the obligation of confidentiality is owed.".

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