

103<sup>RD</sup> CONGRESS  
1<sup>ST</sup> SESSION

**H. R. 2632**

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**AMENDMENTS**

***In the House of Representatives, U. S.,***

*November 19, 1993.*

*Resolved*, That the House agree to the amendment of the Senate to the bill (H.R. 2632) entitled “An Act to authorize appropriations for the Patent and Trademark Office in the Department of Commerce for fiscal year 1994”, with the following

**AMENDMENTS:**

In lieu of the text proposed to be inserted by the Senate amendment, insert the following:

1 ***SEC. 5. INTERIM PATENT EXTENSIONS.***

2 *Section 156 of title 35, United States Code, is amend-*  
3 *ed—*

4 *(1) in subsection (c)(4) by striking out “ex-*  
5 *tended” and inserting “extended under subsection*  
6 *(e)(1)”;*

7 *(2) in the second sentence of subsection (d)(1) by*  
8 *striking “Such” and inserting “Except as provided in*  
9 *paragraph (5), such”; and*

10 *(3) by adding at the end of subsection (d) the fol-*  
11 *lowing new paragraph:*

12 *“(5)(A) If the owner of record of the patent or its agent*  
13 *reasonably expects that the applicable regulatory review pe-*  
14 *riod described in paragraph (1)(B)(ii), (2)(B)(ii),*

1 (3)(B)(ii), (4)(B)(ii), or (5)(B)(ii) of subsection (g) that  
2 began for a product that is the subject of such patent may  
3 extend beyond the expiration of the patent term in effect,  
4 the owner or its agent may submit an application to the  
5 Commissioner for an interim extension during the period  
6 beginning 6 months, and ending 15 days, before such term  
7 is due to expire. The application shall contain—

8           “(i) the identity of the product subject to regu-  
9           latory review and the Federal statute under which  
10          such review is occurring;

11          “(ii) the identity of the patent for which interim  
12          extension is being sought and the identity of each  
13          claim of such patent which claims the product under  
14          regulatory review or a method of using or manufac-  
15          turing the product;

16          “(iii) information to enable the Commissioner to  
17          determine under subsection (a)(1), (2), and (3) the  
18          eligibility of a patent for extension;

19          “(iv) a brief description of the activities under-  
20          taken by the applicant during the applicable regu-  
21          latory review period to date with respect to the prod-  
22          uct under review and the significant dates applicable  
23          to such activities; and

24          “(v) such patent or other information as the  
25          Commissioner may require.

1       “(B) If the Commissioner determines that, except for  
2 permission to market or use the product commercially, the  
3 patent would be eligible for an extension of the patent term  
4 under this section, the Commissioner shall publish in the  
5 Federal Register a notice of such determination, including  
6 the identity of the product under regulatory review, and  
7 shall issue to the applicant a certificate of interim extension  
8 for a period of not more than 1 year.

9       “(C) The owner of record of a patent, or its agent, for  
10 which an interim extension has been granted under sub-  
11 paragraph (B), may apply for not more than 4 subsequent  
12 interim extensions under this paragraph, except that, in the  
13 case of a patent subject to subsection (g)(6)(C), the owner  
14 of record of the patent, or its agent, may apply for only  
15 1 subsequent interim extension under this paragraph. Each  
16 such subsequent application shall be made during the period  
17 beginning 60 days before, and ending 30 days before, the  
18 expiration of the preceding interim extension.

19       “(D) Each certificate of interim extension under this  
20 paragraph shall be recorded in the official file of the patent  
21 and shall be considered part of the original patent.

22       “(E) Any interim extension granted under this para-  
23 graph shall terminate at the end of the 60-day period begin-  
24 ning on the date on which the product involved receives per-  
25 mission for commercial marketing or use, except that, if

1 *within that 60-day period the applicant notifies the Com-*  
2 *missioner of such permission and submits any additional*  
3 *information under paragraph (1) of this subsection not pre-*  
4 *viously contained in the application for interim extension,*  
5 *the patent shall be further extended, in accordance with the*  
6 *provisions of this section—*

7           “(i) *for not to exceed 5 years from the date of ex-*  
8 *piration of the original patent term; or*

9           “(ii) *if the patent is subject to subsection*  
10 *(g)(6)(C), from the date on which the product in-*  
11 *volved receives approval for commercial marketing or*  
12 *use.*

13           “(F) *The rights derived from any patent the term of*  
14 *which is extended under this paragraph shall, during the*  
15 *period of interim extension—*

16           “(i) *in the case of a patent which claims a prod-*  
17 *uct, be limited to any use then under regulatory re-*  
18 *view;*

19           “(ii) *in the case of a patent which claims a*  
20 *method of using a product, be limited to any use*  
21 *claimed by the patent then under regulatory review;*  
22 *and*

23           “(iii) *in the case of a patent which claims a*  
24 *method of manufacturing a product, be limited to the*

1 *method of manufacturing as used to make the product*  
2 *then under regulatory review.”.*

3 **SEC. 6. CONFORMING AMENDMENTS.**

4 *Section 156 of title 35, United States Code, is amend-*  
5 *ed—*

6 *(1) in subsection (a)—*

7 *(A) in paragraph (1) by striking “(d)” and*  
8 *inserting “(d)(1)”;* and

9 *(B) in paragraph (3) by striking “sub-*  
10 *section (d)” and inserting “paragraphs (1*  
11 *through (4) of subsection (d)”;*

12 *(2) in subsection (b) by striking “The rights”*  
13 *and inserting “Except as provided in subsection*  
14 *(d)(5)(F), the rights”;* and

15 *(3) in subsection (e)—*

16 *(A) in paragraph (1) by striking “sub-*  
17 *section (d)” and inserting “paragraphs (1*  
18 *through (4) of subsection (d)”;* and

19 *(B) in paragraph (2) by striking “(d)” and*  
20 *inserting “(d)(1)”.*

21 **SEC. 7. PATENT TERM EXTENSIONS FOR AMERICAN LE-**  
22 **GIION.**

23 *(a) BADGE OF AMERICAN LEGION.—The term of a cer-*  
24 *tain design patent numbered 54,296 (for the badge of the*  
25 *American Legion) is renewed and extended for a period of*

1 14 years beginning on the date of enactment of this Act,  
2 with all the rights and privileges pertaining to such patent.

3 (b) *BADGE OF AMERICAN LEGION WOMEN'S AUXIL-*  
4 *IARY.*—The term of a certain design patent numbered  
5 55,398 (for the badge of the American Legion Women's Aux-  
6 iliary) is renewed and extended for a period of 14 years  
7 beginning on the date of enactment of this Act, with all  
8 the rights and privileges pertaining to such patent.

9 (c) *BADGE OF SONS OF THE AMERICAN LEGION.*—The  
10 term of a certain design patent numbered 92,187 (for the  
11 badge of the Sons of the American Legion) is renewed and  
12 extended for a period of 14 years beginning on the date of  
13 enactment of this Act, with all the rights and privileges per-  
14 taining to such patent.

15 **SEC. 8. INTERVENING RIGHTS.**

16 *The renewals and extensions of the patents under sec-*  
17 *tion 6 shall not result in infringement of any such patent*  
18 *on account of any use of the subject matter of the patent,*  
19 *or substantial preparation for such use, which began after*  
20 *the patent expired, but before the date of the enactment of*  
21 *this Act.*

Amend the title so as to read: “An Act to authorize appropriations for the Patent and Trademark Office in

the Department of Commerce for fiscal year 1994, and for other purposes.”.

Attest:

*Clerk.*