

36.6 PATENT SYSTEM IMPROVEMENTS

The SPEAKER pro tempore, Mr. BARRETT of Nebraska, pursuant to House Resolution 116 and rule XXIII, declared the House resolved into the Committee of the Whole House on the state of the Union for the further consideration of the bill (H.R. 400) to amend title 35, United States Code, with respect to patents, and for other purposes.

Mr. HASTINGS of Washington, Acting Chairman, assumed the chair; and after some time spent therein,

36.7 RECORDED VOTE

A recorded vote by electronic device was ordered in the Committee of the Whole on the following amendment submitted by Mr. CAMPBELL:

Amend section 302(C)(2), p. 68 of March 20 text: Strike lines 4-6.

Insert: "under this chapter, and such use shall not be greater in quantity, volume, or scope than had been the actual quantity, volume, or scope of the prior use, however, the defense shall also extend to improvements in"

Amend section 302(C)(6), p. 69 of March 20 text:

At line 23, strike "," add: "; in which case the use of the defense shall not be greater in quantity, volume, or scope than had been the actual quantity, volume, or scope of the prior use."

It was decided in the Yeas 185 negative Nays 224

36.8 [Roll No. 86] AYES—185

Table listing names of members voting AYES for section 36.8, including Abercrombie, Bachus, Baker, Baldacci, Barcia, Barr, Barrett (WI), Bartlett, Bass, Bereuter, Bilbray, Bilirakis, Blumenauer, Bonilla, Bonior, Bono, Brown (FL), Brown (OH), Calvert, Camp, Campbell, Chenoweth, Christensen, Clayton, Clement, Coburn, Combust, Condit, Cook, Cooksey, Costello, Cox, Coyne, Crapo, Cunningham, Danner, Davis (VA), DeFazio, Dellums, Dixon, Doolittle, Doyle, Duncan, Ehlers, Emerson, Engel, Ensign, Everett, Filner, Foley.

Table listing names of members voting NOES for section 36.6, including Ryun, Salmon, Sanchez, Sanders, Saxton, Scarborough, Schaefer, Dan, Schaffer, Bob, Shadegg, Smith (MI), Smith (NJ), Smith, Linda, Snowbarger, Solomon, Stark, Stearns, Strickland, Stump, Stupak, Talent, Tauscher, Thornberry, Thune, Thurman, NOES—224

Table listing names of members voting NOES for section 36.8, including Ackerman, Aderholt, Allen, Archer, Arney, Baesler, Barrett (NE), Barton, Bateman, Becerra, Bentsen, Berman, Berry, Bishop, Blagojevich, Bliley, Blunt, Boehlert, Boehner, Borski, Boswell, Boucher, Boyd, Brady, Brown (CA), Bunning, Burr, Burton, Buyer, Callahan, Canady, Cannon, Capps, Cardin, Carson, Castle, Chabot, Chambliss, Clay, Clyburn, Coble, Conyers, Cramer, Crane, Davis (FL), Davis (IL), Deal, DeGette, Delahunt, DeLauro, DeLay, Dickey, Dicks, Dingell, Doggett, Dooley, Dreier, Dunn, Edwards, Ehrlich, English, Eshoo, Etheridge, Evans, Ewing, Farr, Fattah, Fawell, Fazio, Flake, Foglietta, Ford, Fox, Franks (NJ), Frelinghuysen, Frost, Ganske, Gejdenson, Gekas, Gilchrest, Gilman, Gonzalez, Goodlatte, Goodling, Granger, Greenwood, Gutknecht, Hall (OH), Hall (TX), Hamilton, Harman, Hastert, Hastings (FL), Hefner, Hilliard, Hinchey, Hinojosa, Holden, Hooley, Horn, Hostettler, Houghton, Hutchinson, Hyde, Jackson (IL), Jefferson, Jenkins, John, Johnson (CT), Johnson (WI), Johnson, Sam, Kasich, Kelly, Kennedy (RI), Kennelly, Kind (WI), Knollenberg, Kolbe, LaFalce, Lampton, Lantos, Latham, Lazio, Levin, Lewis (CA), Lewis (GA), Linder, Lofgren, Lowey, Luther, Maloney (NY), Manton, Markey, Matsui, McCarthy (MO), McCrery, McDermott, McHale, Meehan, Meek, Millender-McDonald, Miller (CA), Minge, Moakley, Mollohan, Moran (VA), Morella, Nadler, Neal, Andrews, Ballenger, Bryant, Collins, Cubin, Cummings, Deutsch, Diaz-Balart, Furse, Hoekstra, Inglis, Kilpatrick, Kingston, Rahall, Rush, Sanford, Schiff, Smith (OR), Taylor (MS), Taylor (NC), Towns, Velazquez, Wise, Yates.

NOT VOTING—24

Table listing names of members who did not vote, including Andrews, Ballenger, Bryant, Collins, Cubin, Cummings, Deutsch, Diaz-Balart, Furse, Hoekstra, Inglis, Kilpatrick, Kingston, Rahall, Rush, Sanford, Schiff, Smith (OR), Taylor (MS), Taylor (NC), Towns, Velazquez, Wise, Yates.

So the amendment was not agreed to.

36.9 RECORDED VOTE

A recorded vote by electronic device was ordered in the Committee of the Whole on the following amendment submitted by Mr. CAMPBELL:

Page 48 of March 20 text, strike line 3, insert:

"111(b) of this title, as to which there have been two substantive Patent Office actions since the filing, shall be published, in accordance"

Line 17, insert: "(D) 'Substantive Patent Office action' means an action by the patent office relating to the patentability of the material of the application (not including an action to separate a patent application into parts), unless the patent applicant demonstrates under procedures to be established by the patent office that the office action in question was sought in greater part for a purpose other than to achieve a delay in the date of publication of the application. Such Patent Office decision shall not be appealable, or subject to the Administrative Procedures Act."

It was decided in the Yeas 167 negative Nays 242

36.10 [Roll No. 87] AYES—167

Table listing names of members voting AYES for section 36.10, including Abercrombie, Archer, Bachus, Baker, Baldacci, Barcia, Barr, Barrett (WI), Bartlett, Bass, Bereuter, Bilirakis, Bonilla, Bonior, Bono, Brown (OH), Calvert, Campbell, Cardin, Chenoweth, Christensen, Clayton, Clement, Coburn, Combust, Condit, Cook, Cooksey, Costello, Cox, Crapo, Cunningham, Danner, Deal, DeFazio, Dellums, Dixon, Doolittle, Doyle, Duncan, Emerson, English, Ensign, Everett, Ewing, Filner, Foley, Forbes, Gallegly, Gephardt, Gibbons, Goode, Graham, Green, Gutierrez, Hall (TX), Hansen, Hastert, Hastings (WA), Hayworth, Hefley, Herger, Hill, Hilleary, Hobson, Holden, Hoyer, Hulshof, Hunter, Hutchinson, Istook, Jones, Kanjorski, Kaptur, Kildee, King (NY), King (NY), Kleczka, Klink, Kucinich, LaHood, Largent, LaTourette, Leach, Lewis (CA), Lewis (KY), Lipinski, Livingston, LoBiondo, Lucas, Manzullo, Martinez, Mascara, McCarthy (NY), McCrery, McDade, McHugh, McInnis, McIntyre, Mink, Molinari, Moran (KS), Myrick, Neumann, Ney, Norwood, Oberstar, Obey, Olver, Ortiz, Pappas, Parker, Pascrell, Paul, Petri, Pickering, Picking, Poshard, Regula, Riggs, Riley, Rivers, Rohrabacher, Ros-Lehtinen, Royce, Ryan, Salmon, Sanders, Saxton, Scarborough, Schaefer, Dan, Schaffer, Bob, Sensenbrenner, Sessions, Smith (MI), Smith (NJ), Smith, Linda, Snowbarger, Solomon, Stark, Strickland, Stump, Stupak, Sununu, Talent, Thornberry, Thune, Thurman, Tiahrt, Traficant, Walsh, Wamp, Waters, Watt (NC), Watts (OK), Weldon (FL), Weller, Whitfield.

NOES—242

Table listing names of members voting NOES for section 36.10, including Ackerman, Aderholt, Allen, Arney, Baesler, Barrett (NE), Barton, Bateman, Becerra, Bentsen, Berman, Berry, Bilbray, Bishop, Blagojevich, Bliley, Blumenauer, Blunt.

Boehler	Hamilton	Pease
Boehner	Harman	Pelosi
Borski	Hastings (FL)	Peterson (MN)
Boswell	Hefner	Peterson (PA)
Boucher	Hilliard	Pickett
Boyd	Hinchev	Pitts
Brady	Hinojosa	Pomeroy
Brown (CA)	Hooley	Porter
Brown (FL)	Horn	Portman
Bunning	Hostettler	Price (NC)
Burr	Houghton	Pryce (OH)
Burton	Hyde	Quinn
Buyer	Jackson (IL)	Radanovich
Callahan	Jackson-Lee	Ramstad
Camp	(TX)	Rangel
Canady	Jefferson	Reyes
Cannon	Jenkins	Rodriguez
Capps	John	Roemer
Carson	Johnson (CT)	Rogan
Castle	Johnson (WI)	Rogers
Chabot	Johnson, E. B.	Rothman
Chambliss	Johnson, Sam	Roukema
Clay	Kasich	Roybal-Allard
Clyburn	Kelly	Sabo
Coble	Kennedy (MA)	Sanchez
Conyers	Kennedy (RI)	Sandlin
Coyne	Kennelly	Sawyer
Cramer	Kim	Schumer
Crane	Kind (WI)	Scott
Cummings	Klug	Serrano
Davis (FL)	Knollenberg	Shadegg
Davis (IL)	Kolbe	Shaw
Davis (VA)	LaFalce	Shays
DeGette	Lampson	Sherman
Delahunt	Lantos	Shimkus
DeLauro	Latham	Shuster
Dickey	Levin	Sisisky
Dicks	Lewis (GA)	Skaggs
Dingell	Linder	Skeen
Doggett	Lofgren	Skelton
Dooley	Lowe	Slaughter
Dreier	Luther	Smith (TX)
Dunn	Maloney (CT)	Smith, Adam
Edwards	Maloney (NY)	Snyder
Ehlers	Manton	Souder
Ehrlich	Markey	Spence
Engel	Matsui	Spratt
Eshoo	McCarthy (MO)	Stabenow
Etheridge	McCollum	Stearns
Evans	McDermott	Stenholm
Farr	McGovern	Stokes
Fattah	McHale	Tanner
Fawell	McIntosh	Tauscher
Fazio	Meehan	Tauzin
Flake	Meek	Thomas
Foglietta	Menendez	Thompson
Ford	Millender-	Tierney
Fowler	McDonald	Torres
Fox	Miller (CA)	Turner
Frank (MA)	Minge	Upton
Franks (NJ)	Moakley	Vento
Frelinghuysen	Mollohan	Visclosky
Frost	Moran (VA)	Watkins
Ganske	Morella	Waxman
Gejdenson	Murtha	Weldon (PA)
Gilchrest	Nadler	Wexler
Gillmor	Neal	Weygand
Gilman	Nethercutt	White
Gonzalez	Northup	Wicker
Goodlatte	Nussle	Wolf
Goodling	Owens	Woolsey
Gordon	Oxley	Wynn
Granger	Packard	Young (AK)
Greenwood	Pastor	Young (FL)
Gutknecht	Paxon	
Hall (OH)	Payne	

NOT VOTING—24

Andrews	Gekas	Schiff
Ballenger	Hoekstra	Smith (OR)
Bryant	Inglis	Taylor (MS)
Collins	Kilpatrick	Taylor (NC)
Cubin	Kingston	Towns
Deutsch	Rahall	Velazquez
Diaz-Balart	Rush	Wise
Furse	Sanford	Yates

So the amendment was not agreed to.

36.11 RECORDED VOTE

A recorded vote by electronic device was ordered in the Committee of the Whole on the following amendment submitted by Ms. KAPTUR:

Page 48, insert the following after line 21: "(C) An application filed by a small business concern entitled to reduced fees under section 41(h)(1) of this title, by an individual

who is an independent inventor entitled to reduced fees under such section, or by an institution of higher education (as defined in section 1202 of the Higher Education Act of 1965) entitled to reduced fees under such section 41(h)(1) shall not be published until a patent is issued thereon, except upon the request of applicant, or in any of the following circumstances:

"(i) In the case of an application under section 111(a) for a patent for an invention for which the applicant intends to file or has filed an application for a patent in a foreign country, the Commissioner may publish, at the discretion of the Commissioner and by means determined suitable for the purpose, no more than that data from such application under section 111(a) which will be made or has been made public in such foreign country. Such a publication shall be made only after the date of the publication in such foreign country and shall be made only if the data is not available, or cannot be made readily available, in the English language through commercial services.

"(ii) If the Commissioner determines that a patent application which is filed after the date of the enactment of this paragraph—

"(I) has been pending more than 5 years from the effective filing date of the application,

"(II) has not been previously published by the Patent and Trademark Office,

"(III) is not under any appellate review by the Board of Patent Appeals and Interferences,

"(IV) is not under interference proceedings in accordance with section 135(a),

"(V) is not under any secrecy order pursuant to section 181,

"(VI) is not being diligently pursued by the applicant in accordance with this title, and

"(VII) is not in abandonment, the Commissioner shall notify the applicant of such determination.

"(iii) An applicant which received notice of a determination described in clause (ii) may, within 30 days of receiving such notice, petition the Commissioner to review the determination to verify that subclauses (I) through (VII) are all applicable to the applicant's application. If the applicant makes such a petition, the Commissioner shall not publish the applicant's application before the Commissioner's review of the petition is completed. If the applicant does not submit a petition, the Commissioner may publish the applicant's application no earlier than 90 days after giving such a notice.

"(iv) If after the date of the enactment of this paragraph a continuing application has been filed more than 6 months after the date of the initial filing of an application, the Commissioner shall notify the applicant under such application. The Commissioner shall establish a procedure for an applicant which receives such a notice to demonstrate that the purpose of the continuing application was for reasons other than to achieve a delay in the time of publication of the application. If the Commissioner agrees with such a demonstration by the applicant, the Commissioner shall not publish the applicant's application. If the Commissioner does not agree with such a demonstration by the applicant or if the applicant does not make an attempt at such a demonstration within a reasonable period of time as determined by the Commissioner, the Commissioner shall publish the applicant's application.

Page 48, line 22, strike "(C)" and insert "(D)".

Page 49, line 16, strike "(D)" and insert "(E)".

Page 49, line 17, strike "(C)" and insert "(D)".

Page 50, line 2, strike "(C)" and insert "(D)".

Strike title V of the bill and redesignate the succeeding title, and sections thereof, and references thereto, accordingly.

Amend the table of contents accordingly. It was decided in the { Yeas 220 affirmative } { Nays 193

36.12 [Roll No. 88] AYES—220

Abercrombie	Harman	Olver
Aderholt	Hastert	Ortiz
Archer	Hastings (WA)	Owens
Bachus	Hayworth	Pallone
Baker	Hefley	Pappas
Baldacci	Herger	Parker
Barcia	Hill	Pascrell
Barr	Hilleary	Paul
Barrett (WI)	Hilliard	Payne
Bartlett	Holden	Pelosi
Bereuter	Hostettler	Peterson (PA)
Bilbray	Hoyer	Petri
Bilirakis	Hulshof	Pickering
Bishop	Hunter	Pombo
Bonilla	Hutchinson	Pomeroy
Bonior	Istook	Porter
Bono	Jackson-Lee	Poshad
Boyd	(TX)	Radanovich
Brady	Jefferson	Rahall
Brown (FL)	Jones	Rangel
Brown (OH)	Kanjorski	Regula
Calvert	Kaptur	Riggs
Campbell	Kildee	Riley
Cardin	Kim	Rivers
Chenoweth	King (NY)	Rodriguez
Christensen	Klecza	Rohrabacher
Clay	Klink	Ros-Lehtinen
Clayton	Kucinich	Royce
Clyburn	LaHood	Ryun
Coburn	Largent	Salmon
Collins	LaTourrette	Sanders
Combest	Lazio	Saxton
Condit	Leach	Scarborough
Cook	Levin	Schaefer, Dan
Costello	Lewis (KY)	Schaefer, Bob
Cox	Lipinski	Sensenbrenner
Cramer	Livingston	Shadegg
Crapo	LoBiondo	Smith (MI)
Danner	Lucas	Smith (NJ)
Deal	Manzullo	Smith, Linda
DeFazio	Martinez	Snowbarger
DeLauro	Mascara	Solomon
DeLay	McCarthy (NY)	Spence
Dellums	McCrery	Spratt
Dickey	McDade	Stabenow
Dixon	McGovern	Stark
Doollittle	McHale	Stearns
Doyle	McHugh	Stenholm
Duncan	McInnis	Strickland
Emerson	McIntosh	Stump
English	McIntyre	Stupak
Ensign	McKeon	Sununu
Everett	McKinney	Talent
Ewing	McNulty	Tauzin
Fattah	Meek	Thompson
Filner	Menendez	Thornberry
Foley	Metcalf	Thune
Forbes	Mica	Tiahrt
Fowler	Millender-	Torres
Fox	McDonald	Traficant
Franks (NJ)	Miller (CA)	Upton
Galleghy	Miller (FL)	Walsh
Gejdenson	Mink	Wamp
Gephardt	Molinari	Waters
Gillmor	Moran (KS)	Watt (NC)
Goode	Moran (VA)	Watts (OK)
Gordon	Murtha	Weldon (PA)
Goss	Myrick	Weller
Graham	Nethercutt	Weygand
Green	Neumann	Whitfield
Gutierrez	Ney	Wicker
Hall (OH)	Norwood	Woolsey
Hall (TX)	Oberstar	Wynn
Hansen	Obey	Young (AK)

NOES—193

Ackerman	Bliley	Buyer
Allen	Blumenauer	Callahan
Armey	Blunt	Camp
Baesler	Boehler	Canady
Barrett (NE)	Boehner	Cannon
Barton	Borski	Capps
Bass	Boswell	Carson
Bateman	Boucher	Castle
Becerra	Brown (CA)	Chabot
Bentsen	Bryant	Chambliss
Berman	Bunning	Clement
Berry	Burr	Coble
Blagojevich	Burton	Conyers