S. RES. 92

Resolved,

SECTION 1. AUTHORIZATION OF THE PAYMENT OF LEGAL EXPENSES.

(a) IN GENERAL.—The Committee on Rules and Administration is authorized to pay out of the contingent fund of the Senate the legal expenses incurred by Jean Manning and Erica Watkins for the employment of private counsel to represent them with respect to official actions and responsibilities before the grand jury in the United States District Court for the District of Columbia.

(b) DETERMINATION.—The amount of expenses paid pursuant to subsection (a) shall be determined by the Committee on Rules and Administration.

SENATE CONCURRENT RESOLUTION 10—AUTHORIZING THE REMAINS OF FRANK W. BUCKLES, THE LAST SURVIVING UNITED STATES VETERAN OF THE FIRST WORLD WAR, TO LIE IN HONOR IN THE ROTUNDA OF THE CAPITOL

Mr. ROCKEFELLER (for himself, Mr. BURR, Mr. MANCHIN, Mr. UDALL of Colorado, Mr. BEGICH, Mrs. MCCASKILL, Mr. MENENDEZ, Mr. BROWN of Ohio, Mr. LIEBERMAN, Mr. NELSON of Florida, Mr. KERRY, Mr. WYDEN, Ms. LANDRIEU, Mr. BROWN of Massachusetts, and Mr. MCCAIN) submitted the following concurrent resolution; which was referred to the Committee on Rules and Administration:

S. CON. RES. 10

Resolved by the Senate (the House of Representatives concurring),

SECTION 1. HONORING VETERANS OF THE FIRST WORLD WAR.

(a) IN GENERAL.—In recognition of the historic contributions of United States veterans who served in the First World War, the remains of Frank W. Buckles, the last surviving United States veteran of the First World War, shall be permitted to lie in honor in the rotunda of the Capitol from March 14, 2011 to March 15, 2011, so that the citizens of the United States may pay their last respects to those great Americans.

(b) IMPLEMENTATION.—The Architect of the Capitol, under the direction and supervision of the President pro tempore of the Senate and the Speaker of the House of Representatives shall take the necessary steps to implement subsection (a).

AMENDMENTS SUBMITTED AND PROPOSED

SA 141. Mr. BAUCUS (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed by him to the bill S. 23, to amend title 35, United States Code, to provide for patent reform; which was ordered to lie on the table.

SA 142. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 23, supra.

SA 143. Mr. REID of Nevada (for himself and Mr. ENSIGN) submitted an amendment intended to be proposed by him to the bill S. 23, supra; which was ordered to lie on the table.

SA 144. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 23, supra; which was ordered to lie on the table.

SA 145. Mr. CARDIN submitted an amendment intended to be proposed by him to the bill S. 23, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 141. Mr. BAUCUS (for himself and Mr. GRASSLEY) submitted an amendment intended to be proposed by him to the bill S. 23, to amend title 35, United States Code, to provide for patent reform; which was ordered to lie on the table; as follows:

On page 94, between lines 22 and 23, insert the following:

(e) EXCLUSION.—This section shall not apply to that part of an invention that is a method, apparatus, computer program product or system used solely for preparing a tax or information return or other tax filing, including one that records, transmits, transfers or organizes data related to such filing.

SA 142. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 23, to amend title 35, United States Code, to provide for patent reform; as follows:

On page 50, between lines 2 and 3, insert the following:

''(c) DATA ON LENGTH OF REVIEW.—The Patent and Trademark Office shall make available to the public data describing the length of time between the commencement of each inter partes review and the conclusion of that review.''.

On page 65, between lines 9 and 10, insert the following:

''(c) DATA ON LENGTH OF REVIEW.—The Patent and Trademark Office shall make available to the public data describing the length of time between the commencement of each post-grant review and the conclusion of that review.''.

SA 143. Mr. REID of Nevada (for himself and Mr. ENSIGN) submitted an amendment intended to be proposed by him to the bill S. 23, to amend title 35, United States Code, to provide for patent reform; which was ordered to lie on the table; as follows:

On page 93, before line 18, insert the following:

''(d) EPSCOR.—For purposes of this section, a micro entity shall include an applicant who certifies that—

''(1) the applicant's employer, from which the applicant obtains the majority of the applicant's income, is a State public institution of higher education, as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002), in a jurisdiction that is eligible to qualify under the Research Infrastructure Improvement Grant Program administered by the Office of Experimental Program to Stimulate Competitive Research (EPSCoR); or

''(2) the applicant has assigned, granted, conveyed, or is under an obligation by contract or law to assign, grant, or convey, a license or other ownership interest in the particular application to such State public institution, which is in a jurisdiction that is eligible to qualify under the Research Infrastructure Improvement Grant Program administered by the Office of Experimental Program to Stimulate Competitive Research (EPSCoR).''.

SA 144. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 23, to amend title 35, United States Code, to provide for patent reform; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ____. DAMAGES.

Section 284 of title 35, United States Code, is amended—

(1) by striking ''Upon finding'' and inserting the following: ''(a) IN GENERAL.—Upon finding'';

(2) by striking ''fixed by the court'' and all that follows through ''When the damages'' and inserting the following: ''fixed by the court. When the damages'';

(3) by striking ''shall assess them.'' and all that follows through ''The court may receive'' and inserting the following: ''shall assess them.In either event the court may increase the damages up to 3 times the amount found or assessed. Increased damages under this subsection shall not apply to provisional rights under section 154(d) of this title. The court may receive''; and

(4) by adding at the end the following:

''(b) PROCEDURE FOR DETERMINING DAMAGES.—

''(1) IN GENERAL.—The court shall identify the methodologies and factors that are relevant to the determination of damages, and the court or jury shall consider only those methodologies and factors relevant to making such determination.

''(2) DISCLOSURE OF CLAIMS.—By no later than the entry of the final pretrial order, unless otherwise ordered by the court, the parties shall state, in writing and with particularity, the methodologies and factors the parties propose for instruction to the jury in determining damages under this section, specifying the relevant underlying legal and factual bases for their assertions.

''(3) SUFFICIENCY OF EVIDENCE.—Prior to the introduction of any evidence concerning the determination of damages, upon motion of either party or sua sponte, the court shall consider whether one or more of a party's damages contentions lacks a legally sufficient evidentiary basis. After providing a nonmovant the opportunity to be heard, and after any further proffer of evidence, briefing, or argument that the court may deem appropriate, the court shall identify on the record those methodologies and factors as to which there is a legally sufficient evidentiary basis, and the court or jury shall consider only those methodologies and factors in making the determination of damages under this section. The court shall only permit the introduction of evidence relating to the determination of damages that is relevant to the methodologies and factors that the court determines may be considered in making the damages determination.

''(c) SEQUENCING.—Any party may request that a patent-infringement trial be sequenced so that the trier of fact decides questions of the patent's infringement and validity before the issues of damages and willful infringement are tried to the court or the jury. The court shall grant such a request absent good cause to reject the request, such as the absence of issues of significant damages or infringement and validity. The sequencing of a trial pursuant to this subsection shall not affect other matters, such as the timing of discovery. This subsection does not authorize a party to request that the issues of damages and willful infringement be tried to a jury different than the one that will decide questions of the patent's infringement and validity.''.

SA 145. Mr. CARDIN submitted an amendment intended to be proposed by him to the bill S. 23, to amend title 35, United States Code, to provide for patent reform; which was ordered to lie on the table; as follows:

On page 83, between lines 6 and 7, insert the following: