LDS 1091

PATENT OFFICE FEES

File

HEARING

BEFORE

SUBCOMMITTEE NO. 3

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 10966

A BILL TO FIX THE FEES PAYABLE TO THE PATENT OFFICE, AND FOR OTHER PURPOSES

APRIL 19, 1962

Serial No. 26

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PATENT OFFICE FEES

THURSDAY, APRIL 19, 1962

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 3
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 346, Old House Office Building, Washington, D.C., the Honorable Roland V. Libonati presiding.

Present: Messrs. Libonati, Toll, Kastenmeier, Lindsay, and Mathias.

Also present: Herbert Fuchs, counsel; and William H. Copenhaver, associate counsel.

After hearing testimony on H.R. 11015, the subcommittee received testimony from Hon. David L. Ladd, Commissioner of Patents, U.S. Patent Office, Commerce Department, on H.R. 10966. A copy of H.R. 10966 is as follows:

[H.R. 10966, 87th Cong., 2d sess.]

A BILL To fix the fees payable to the Patent Office and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the items numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, respectively, in subsection (a) of section 41, title 35, United States Code, are amended to read as follows:

"1. On filing each application for an original patent, except in design cases, $40; in addition, on filing or on presentation at any other time, $10 for each claim in independent form which is in excess of one, and $2 for each claim (whether independent or dependent) which is in excess of ten.

"2. For issuing each original or reissue patent, except in design cases, $40; in addition, $10 for each page (or portion thereof) of specification as printed, and $2 for each sheet of drawing.

"3. In design cases:

"a. On filing each design application, $20.

"b. On issuing each design patent: For three years and six months, $10; for seven years, $20; and for fourteen years, $30.

"4. On filing each application for the reissue of a patent, $40; in addition, on filing or on presentation at any other time, $10 for each claim in independent form which is in excess of the number of independent claims of the original patent, and $2 for each claim (whether independent or dependent) which is in excess of ten and also in excess of the number of claims of the original patent.

"5. On filing each disclaimer, $15.

"6. On an appeal for the first time from the examiner to the Board of Appeals, $100. If an oral hearing is not requested prior to any consideration by the Board, $50 of the $100 fee will be refunded; or, alternatively, if the appeal is withdrawn prior to any consideration by the Board, all of the fee over $25 will be refunded.

"7. On filing each petition for the revival of an abandoned application for a patent or for the delayed payment of the fee for issuing each patent, $15.

"8. For certificate under section 255 or under section 256 of this title, $15.

"9. As available and if in print: For uncertified printed copies of specifications and drawings of patents (except design patents), 25 cents per copy; for design patents, 10 cents per copy; the Commissioner may establish a charge not to

exceed $1 per copy for patents in excess of twenty-five pages of drawings and specifications and for plant patents printed in color; special rates for libraries specified in section 13 of this title, $50 for patents issued in one year.

"10. For recording each assignment of an application or a patent, $20; for recording any other paper, $20."

SEC. 2. Section 41 of title 35, United States Code, is further amended by adding the following subsection:

"(c) The fees prescribed by or under this section shall apply to any other Government department or agency, or officer thereof, except that the Commissioner may waive the payment of any fee for services or materials in cases of occasional or incidental requests by a Government department or agency, or officer thereof."

SEC. 3. Section 31 of the Act approved July 5, 1946 (ch. 540, 60 Stat. 427; U.S.C., title 15, sec. 1113), as amended, is amended to read as follows:

"(a) The following fees shall be paid to the Patent Office under this Act:

"1. On filing each original application for registration of a mark in each class, $35.

"2. On filing each application for renewal in each class, $25; and on filing each application for renewal in each class after expiration of the registration, an additional fee of $5.

"3. On filing an affidavit under section 8(a) or section 8(b), $10.

"4. On filing each petition for the revival of an abandoned application, $15.

"5. On filing notice of opposition or application for cancellation, $25.

"6. On appeal from an examiner in charge of the registration of marks to the Trademark Trial and Appeal Board, $25.

"7. For issuance of a new certificate of registration following change of ownership of a mark or correction of a registrant's mistake, $15.

"8. For certificate of correction of registrant's mistake or amendment after registration, $15.

"9. For certifying in any case, $1.

"10. For filing each disclaimer after registration, $15.

"11. For printed copy of registered mark, 10 cents.

"12. For recording each assignment of a registration, $20; for recording any other paper, $20.

"13. On filing notice of claim of benefits of this Act for a mark to be published under section 12(c) hereof, $10.

"(b) The Commissioner may establish charges for copies of records, publication, or services furnished by the Patent Office, not specified above.

"(c) The Commissioner may refund any sum paid by mistake or in excess."

SEC. 4. Section 151 of title 35, United States Code, is amended to read as follows:

"§ 151. Issue of patent

"If it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant, and the Commissioner shall thereafter issue the patent.

"The issue fee, as specified in item 2 of section 41(a) of this title, shall be paid within three months after the date of the issue of the patent. However, at the time of giving notice of allowance, the Commissioner may require a sum, constituting a portion of the issue fee, to be paid within three months after the date of the notice of allowance. If payment of this sum is not timely made, the application shall be regarded as abandoned.

"If the issue fee is not fully paid within three months after the date of the issue of the patent, the patent shall lapse as of the date the issue fee was due.

"If any payment called for herein is not timely submitted, but is submitted with the fee for delayed payment within three months after the due date and sufficient cause is shown for the late payment, it may be accepted by the Commissioner as though no abandonment or lapse had ever occurred."

SEC. 5. Section 154 of title 35, United States Code, is amended by inserting the words "subject to the payment of issue and maintenance fees as provided for in this title," after the words "seventeen years,".

SEC. 6. Title 35. United States Code, is amended by adding the following new section after section 154:

"§ 155. Maintenance fees

"(a) During the term of a patent, other than for a design, the following fees shall be due:

"(1) a first maintenance fee on or before the fifth anniversary of the issue date of the patent;

"(2) a second maintenance fee on or before the ninth anniversary of the issue date of the patent; and

"(3) a third maintenance fee on or before the thirteenth anniversary of the issue date of the patent.

In the case of a reissue patent the times specified herein shall run from the date of the original patent.

"(b) A grace period of six months will be allowed in which to pay any maintenance fee, provided it is accompanied by the fee prescribed for delayed payment.

"(c) The first and second maintenance fees may be deferred in accordance with subsection (f) of this section.

"(d) A patent will terminate on the due date for any maintenance fee unless, as provided for in this section, the fee due (including any fees previously deferred) is paid or a statement in accordance with subsection (f) of this section requesting deferment is filed. Such termination or lapsing shall be without prejudice to rights existing under any other patent.

"(e) Notice of the requirement for the payment of the maintenance fees and the filing of statements in compliance with this section shall be attached to or be embodied in the patent, and the Commissioner shall not be required to give further notice thereof.

"(f) Any inventor to whom a patent issued (or his heirs) and who owns the patent may within six months of the fifth anniversary of the issue date of the patent (by a statement under oath) request deferment of the first maintenance fee if the total benefit received by the inventor or any other party having or having had any interest in the subject matter of the patent, from, under, or by virtue of the patent or from the manufacture, use, or sale of the invention, was less in value than the amount of the fee, and the statement so specifies. The fee shall thereupon be deferred until the time the second maintenance fee is due and shall be paid in addition to the second maintenance fee.

"Any inventor to whom a patent issued (or his heirs) and who owns the patent may within six months of the ninth anniversary of the issue date of the patent (by a statement under oath) request deferment of the second maintenance fee (and further deferment of the first maintenance fee if such fee has been deferred) if the total benefit received by the inventor or any other party having or having had any interest in the subject matter of the patent during the preceding four years, from, under, or by virtue of the patent or from the manufacture, use, or sale of the invention, was less in value than the amount of the second fee, and the statement so specifies. The second fee, or the first and second fees, as the case may be, shall thereupon be deferred until the time the third maintenance fee is due and shall be paid in addition to the third maintenance fee and with the same result if not paid. No deferment of any of the fees beyond the thirteenth anniversary of the issue date of the patent shall be permitted and the patent will terminate at the end of the thirteenth anniversary of the issue date unless all maintenance fees are paid in accordance with the provisions of this section."

SEC. 7. The analysis of chapter 14 of title 35, United States Code, immediately preceding section 151, is amended to read as follows:

"Sec.
"151. Issue of patent.
"152. Issue of patent to assignee.
"153. How issued.
"154. Contents and term of patent.
"155. Maintenance of fees."

SEC. 8. Subsection (a) of section 41 of title 35, United States Code, is further amended by adding the following:

"12. For maintaining a patent (other than for a design) in force

"a. beyond the fifth anniversary of the issue date of the patent, $100;

"b. beyond the ninth anniversary of the issue date of the patent, $200; and

"c. beyond the thirteenth anniversary of the issue date of the patent, $300.

"13. For delayed payment of a maintenance fee, $25."

SEC. 9. (a) This Act shall take effect three months after its enactment.

(b) Items 1, 3, and 4 of section 41(a) of title 35, United States Code, as amended by section 1 of this Act, do not apply in further proceedings in applications filed prior to the effective date of this Act.

(c) Item 2 of section 41(a), as amended by section 1 of this Act, and sections 4, 6, and 8 of this Act do not apply in cases in which the notice of allowance of the application was sent, or in which a patent issued, prior to the effective date; and, in such cases, the fee due is the fee specified in this title prior to the effective date of this Act.

(d) Item 3 of section 31 of the Trademark Act, as amended by section 3 of this Act, applies only in the case of registrations issued and registrations published under the provisions of section 12(c) of the Trademark Act on or after the effective date of this Act.

SEC. 10. Section 266 of title 35, United States Code, is repealed.

The chapter analysis of chapter 27 of title 35, United States Code, is amended by striking out the following item:

"266. Issue of patents without fees to Government employees."

Mr. LIBONATI. Now, will you proceed with H.R. 10966?

Mr. LADD. I have filed with the committee copies of my prepared statement, which has three sets of appendixes labeled "A", "B", and "C".

Knowing the pressure of time upon the Congressmen generally, and upon this committee in particular, I do not intend to read that statement.

Mr. LIBONATI. This statement is really a compendium or report; is it not?

Mr. LADD. Yes; it is.

Mr. LIBONATI. It is a book.

Mr. LADD. Yes, I think it could be described that way.

Mr. LIBONATI. Will you proceed to analyze and summarize what you desire as to the need and necessity of this program, and what caused you to initiate it?

Mr. LADD. I shall be pleased to, and I shall do it as briefly as possible, because it is my understanding that this committee would like to complete hearings this morning, including the other witnesses who wish to appear.

Let me point out, first of all, that H.R. 10966 is intended as a substitute for H.R. 7731. Let me explain very briefly what we consider the differences between the two bills to be, aside from the differences in the particular fees which are contained in the two bills.

Both bills, of course, are concerned with raising revenue. H.R. 10966, unlike H.R. 7731, is intended as well to provide economic incentives to exert what we believe to be a beneficial effect upon the prosecution and examination of patent applications in the Patent Office. We were gratified to see that some of the changes in H.R. 10966 are consistent with the report of two committees of the New York Patent Law Association, which, I must point out, is still under consideration by the board of governors of that group, indicating that some of the shifts from the fees in the first bill to those in the second bill are consistent with their recommendations.

Specifically, one of the committees called the Halle subcommittee—and I will submit for the record an issue of the April 1962 New York Patent Law Association Bulletin containing the statement—was not averse to increasing filing fees. It suggested "increasing final fees to as much as $75 or $100, and perhaps devising some method of collecting higher filing or final fees for cases with lengthy specifications, numerous drawings, which require substantially greater serivce from the Patent Office than ordinary or average cases."

I will leave this for the record.

Mr. LIBONATI. It may be so incorporated in the record.

Mr. LADD. Thank you, Mr. Chairman.

(The article from the bulletin referred to follows:)

The Dampier committee recommended that "the increase in the fee charged for initial filing of a patent application be kept to a minimum." They suggested that the "increase be made in such categories as fees for claims allowed, appeals fees and assignment fees—in short, fees whose impact on the indigent inventor is not as direct as in the case of the initial filing fee."

The Halle committee, on the other hand, was not averse to increasing filing fees. It suggested "increasing final fees to as much as $75 or $100 and perhaps * * * devising some method of collecting higher filing or final fees for cases with lengthy specifications, numerous drawings, which require substantially greater service from the Patent Office than ordinary or average cases."

Elimination of "deadwood."—In discussing the argument that one function of maintenance fees is to deter worthless applications or eliminate unimportant patents, the Dampier committee pointed out the serious risk that was involved in drawing the line between good patents and "deadwood." A patent, they said, might not be commercialized because adequate financing was not then available or the time was not ripe for the introduction of the product, whereas it might become a valuable patent a few years later; the Goddard rocket patents being cited as an example. Such a patent, they concluded, might well be dropped before it was ready for commercialization if high maintenance fees were in force. The Halle committee questioned the use of maintenance fees to eliminate "deadwood," indicating that raising filing fees was perhaps a more appropriate approach to the problem.

The Halle committee made the point that if Patent Office fees were pushed too high there would presumably be a corresponding reduction in the revenues collected from patent owners as income taxes. The committee also felt that since the Patent Office is of immense value to the general public as a unique storehouse of technical information, the general public should be primarily responsible for supporting it.

Mr. LADD. Now, as this committee knows, this is another in a series of bills which have been submitted to this committee for the purpose of raising Patent Office fees. To indicate to this committee the concern of other members of Congress, as expressed in other congressional committees, we have attached in appendix C, as C–1, statements made by members of the House and Senate Appropriations Committees, both present and past, relating to Patent Office fees.

I am not going to read this. I can refer to these charts, rather than going through the whole presentation.

I might say, before I turn to these charts, that no one likes higher fees any more than anyone likes higher taxes. They are never greeted with enthusiasm, and they are accepted only when there is a demonstrated need for them. I intend now to demonstrate that need.

This chart, figure 1, which is supported by table 18 in one of the appendixes, indicates the income and operating costs of the Patent Office.

Let me stop here for a moment, Mr. Chairman. All of these figures which I am going to show here are also incorporated in appendix A, so you may follow them right at your desk, if you like.

This chart, figure 1, shows the course of the Patent Office operating costs and income from 1910 to the present. If one looks at the period around 1940, we see the beginning of a divergence between operating costs and income. Please note on this chart that during the period 1910 to 1940, the Patent Office was substantially entirely

self-sustaining. From that period on there has been an increasing gap to the place where today we recover approximately 31 percent of our operating costs as against, for example, 100 percent in the mid-1930's.

Figure 2, which is supported by table 20 in the appendixes, indicates that the rise in the cost of operating the American Patent Office is consistent with similar rises in other countries.

On this chart we have used various countries—Canada, Denmark, the Netherlands, Sweden, the United States, Great Britain, Switzerland, and Germany. We have used the average for the years 1930 to 1939 as 100, using that as a base.

Using that as a base, we can see that the U.S. expenses are now a little short of 500. The Netherlands, for example, over 800; Canada, over 1,100; and so on. The conclusion to be drawn, therefore, is that the expense of operating these Patent Offices has risen.

Figure 3, which is supported by table 19, shows the recovery of patent costs, with 100-percent recovery along the medial axis. These arrows to the right indicate that Switzerland, Germany, and Denmark actually run their offices at a profit. The arrows on the left show that Sweden, Great Britain, Canada, the Netherlands, and the United States run their patent offices at a loss, and that the U.S. loss in operating its Patent Office is substantially greater than any other country.

Mr. LIBONATI. What is the comparable amount of business that each has done? Certainly it is no support to your argument that small countries operate at a profit and large countries operate at a loss. Why do you feel that it should be self-sustaining, in view of the fact that the Patent Office is a typically different public service than any other department?

Why do you not get to the meat of your argument?

Mr. LADD. I will try to address myself to that question.

I am trying to make a more modest point. I am not contending that, as a matter of principle, the Patent Office should be entirely self-sustaining. What I have tried to show is that countries, both large and small, abroad do recover in some cases more than their total operating costs, but, in any case, a substantial part of it.

The other point that I am trying to make with this presentation — a very minimal one—is that historically it has not been out of the question to consider the fact that the Patent Office might be entirely self-supporting. As a matter of fact, I might explicitly explain here the premise upon which this bill has been built. It is based upon a policy of the Bureau of the Budget.

I have delivered to the committee a letter from Mr. Bell, Director of the Budget, setting forth that policy—or reiterating the policy, I should say—supporting this bill.

Mr. LIBONATI. Does the bar association support this contention?

Mr. LADD. There will be a representative of the bar association here later, and I think it is safe to say that they do not.

Mr. LIBONATI. Is it my understanding that most of the fees for the patents are paid by lawyers?

Mr. LADD. No, that is not correct, Mr. Chairman.

Mr. LIBONATI. It is not like a divorce practice, is it?

Mr. LADD. I am not familiar with divorce practice at all, Mr. Chairman. I might add, I am a bachelor.

The policy of the Bureau of the Budget, Bulletin No. 58–3, later restated and amplified, and the date of that is November 13, 1957. It is restated and amplified in circular A–25, dated September 23, 1959. And I might state briefly for the committee what it is.

The policy is that in those instances where there is a dual benefit, a general public benefit and a specific benefit to an individual, that there should be some equitable distribution of the costs of operating the Government service. In this case H.R. 10966 is premised upon 75 percent recovery, using our 1962–63 budget as a basis for the estimate.

So I might add that this assumes that full recovery would occur immediately under this bill. That is not the case because the maintenance fees and certain other fees, which I shall discuss later, would not come fully into operation until 13 years after the enactment of the bill. It would be some time before we achieve that percentage of recovery.

(Bulletin No. 58–3 and circular No. A–25 referred to are as follows:)

EXECUTIVE OFFICE OF THE PRESIDENT

BUREAU OF THE BUDGET

WASHINGTON 25, D. C.

BULLETIN NO. 58-3 November 13, 1957

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: User charges for certain Government services

1. Purpose. This Bulletin calls for the preparation of legislative proposals essential for the development of an equitable and uniform Government-wide policy on charges for certain Government services or property.

Following a careful and thorough joint interdepartmental review of this problem, the President has approved the recommendations made to him. The review, including these recommendations, is attached for information and guidance.

The President has requested the Bureau of the Budget to initiate actions in accordance with those approved recommendations. This Bulletin therefore requests each executive agency to prepare legislative proposals for removing all present limitations or restrictions on the agency's authority to (a) recover full costs for Government services which provide a special benefit; and (b) obtain a fair market value for Government-owned resources or properties sold or leased.

This Bulletin supersedes Bureau of the Budget Circular No. A-25 dated November 5, 1953, the coverage of which was more limited.

2. Coverage. Except for the specific exclusions mentioned later in this Bulletin, the legislative proposals should include all areas in which existing legislation prohibits or restricts the application of charges or fees. The proposals should also include areas in which existing legislation is silent on the subject of such charges but where the agency considers an expression of congressional policy desirable prior to initiating charges.

Legislation shall be considered restrictive when it does not permit full cost recovery by the Federal Government for Federal services or products provided which convey to some recipients a special benefit above and beyond that accruing to the public at large. In addition, legislation shall be considered restrictive if it hampers (a) the realization of a fair market value from the sale or use of federally owned resources or property or (b) the application of sound business management principles and comparable commercial practices in the sale of such resources and property.

The areas excluded from the attached document (see second paragraph under "Coverage") are also excluded from the provisions of this Bulletin. In addition, this Bulletin does not apply to the disposal of property under approved programs to charitable, governmental, and related agencies or instrumentalities.

3. Data to be submitted. Legislative proposals will be submitted to the Bureau of the Budget in accordance with Circular A-19, Revised, not later than February 1, 1958. They shall be accompanied by a short explanation of their background and effect.

4. Other actions. In those areas where present legislative authority is adequate and no legislative proposal is submitted, the head of each agency should determine and act on applying user charges in his agency in accordance with the recommendations in the attached report and the provisions of existing law. These actions should not be deferred pending efforts to remove or clarify legislation restricting user charges in other areas.

By direction of the President:

PERCIVAL F. BRUNDAGE
Director

Attachment

Attachment
to Bureau of the Budget
Bulletin No. 58-3

USER CHARGES FOR CERTAIN GOVERNMENT SERVICES

The problem

Among the numerous services performed by the Federal Government in the public interest, many provide an added special benefit to individuals or groups. The Government is also extensively engaged in the sale and leasing of Government-owned resources and property. Uniform Government-wide policies or procedures for applying user charges, however, do not exist. Variations in charges for similar activities exist between and even within agencies, resulting in hidden subsidies, inequities, and a burden on the general taxpayer. Efforts to correct the present situation have been piecemeal and have had only limited success. The President, however, on several occasions has stated his firm belief in the principle that, as a matter of equity, the recipients of the special benefits should pay for the full applicable cost of the special services provided, and that a fair market value should be obtained from the use or sale of Government-owned resources or property.

Joint interagency study

To achieve the above objective, the President requested that several executive agencies join together to study the problems involved and make any necessary recommendations to him. In the resulting report an overall review of agency user charge practices has been made and recommendations have been developed with respect to (1) general policies governing charges, (2) specific standards and criteria to be used in determining fees, and (3) measures for implementing a positive user charge program.

Coverage

The scope of the study was Government-wide in its application, but the study itself covered only a selected number of agencies and operations within those agencies. The activities examined on a sample basis included: licensing; testing, inspection and grading; use of air and water navigation aids and facilities; use of money and credit; publications; maps, charts, and aerial photographs; special studies, recreation and tourist facilities; grazing; oil, gas, and mineral leasing and mining claims; miscellaneous land uses; and use of Government-owned patents. Selected operations which reflect the major non-Federal users or beneficiaries within each of these general activities were examined.

It was agreed that even though there had been a request to examine the fee aspects of water resources (power, flood control and irrigation), this area should be excluded from the study because comprehensive recent studies already exist. Similarly, the areas of postal rates,

fringe benefits for military and Federal employees and sale of surplus property have been excluded from the scope of this review. Also excluded are the activities of the legislative branch, the Judiciary, and the municipal governments of the District of Columbia and the Canal Zone.

General situation

Basically there are two broad categories of charges -- those related to recovering the cost of providing a special service or benefit, and those concerned with recovering a fair market value for the use or sale of federally owned resources or property. With respect to the first, there is no consistent approach in the application of user charges. In some cases, the special services are provided by Government agencies without charge. In others, the fees are equal to a portion of the costs, and in a few instances the full cost of providing the service is recovered. The method of determining costs varies from agency to agency. In some cases, all or a portion of the revenues are earmarked for use by the agency, while in others all receipts are deposited as miscellaneous receipts in the general fund of the Treasury. In several areas, the exact amount of the charge is specified in legislation; in others, legislation provides for a charge but the exact amount is left for administrative determination; in a number, a charge is neither specifically called for nor prohibited by legislation, but is based on an administrative determination; and in some instances a charge is prohibited by law.

Illustrations of varying practices

Some examples illustrative of different agency charge practices are set forth below.

1. In the licensing activity, the charges range from zero to 100 percent of the costs. No charge, for example, is made for the issuance of Federal Communications Commission and Interstate Commerce Commission regulatory licenses. On the other hand, the regulatory operation concerned with the national banks by the Comptroller of Currency is self-sustaining, and the issuance of patents and the registration of trademarks by the Patent Office is approximately 45 percent self-sustaining. Within the Federal Power Commission, the licensing of utility company hydroelectric power facilities is nearly self-sustaining, while a comparable license in the natural gas field is provided free.

2. In the field of publications, some agencies refer requests for publications to the Superintendent of Documents, who sells them. Other agencies provide a similar type of publication free. In fact, the same publication may be for sale by the Superintendent of Documents and given away free by the sponsoring agency.

3. For maps and navigation charts, the sales price is generally determined by applying a modified proportional cost concept (full cost of printing and distribution, including plate preparation for all copies) in contrast to the incremental cost concept (cost of printing and distribution of only those additional copies to be sold), which is used as the basis for establishing the sale price of publications sold by the Superintendent of Documents. A much greater proportion of printed maps are sold than is the case for publications. Although the practices in the mapping agencies are generally uniform, there are some inconsistencies as, for example, in the case of the Corps of Engineers. One Corps district distributes its waterway bulletins and navigation charts free, while another district applies a nominal charge.

4. In the use of money and credit, the Export-Import Bank recovers costs. But this is one of the few cases of complete recovery, since the rates charged by most lending agencies are considerably below costs because of statutory limitations or program considerations.

5. In testing and inspecting, the General Services Administration recovers costs for product qualification tests for procurement, while the Department of Defense pays a large share of the costs of similar tests. Within the Department of Health, Education, and Welfare, the Food and Drug Administration recovers the cost of testing batches of antibiotic drugs, while there is no charge for batch tests of vaccines tested by the Public Health Service, another bureau in the same Department. Due to various provisions of law, international agreements, and administrative regulations, the charge policy for inspections performed outside regular duty hours varies between inspecting agency (Treasury, Justice, HEW, Agriculture, and others), location, day of the week, and also the type of transportation inspected.

6. The Federal-aid highway program may be considered to be on a self-sustaining basis, while the Government recovers only a relatively small portion of the costs of providing airway and inland waterway navigation aids and facilities.

7. In the recreation area, the costs of conducting tours of dams are now recovered by the Bureau of Reclamation, but no charge is made by the Corps of Engineers.

Similar variations exist in the choice of methods used in determining charges for the use or sale of Government-owned resources or property. The charge may be based on competitive bidding in one agency for a resource or use of land while in another agency the charge for the

same resource or use is determined by appraisal or is based on a fee schedule not necessarily related to market value. In some instances, the amount charged is specified by legislation enacted many years ago, and despite changes in values or conditions, the rate has remained the same.

8. There is a wide variation in charges between Federal agencies and private companies for grazing privileges on similar range land. For example, in the Klamath and Lake County area of Oregon within a radius of 100 miles, the fees per cow-month for range land, much of which is similar in value, vary as follows:

Bureau of Land Management (Interior)	$.15
Forest Service (Agriculture)	.44
Indian Service (Interior)	1.38
Weyerhauser Timber Company (private)	.99-1.08

In a 1953 study made by the Forest Service comparing the same type of privately owned land with national forest land, the following extreme differences in charges for cattle were noted:

State	National forest	Average 1953 fee per cow-month on national forests	Average 1953 fee per cow-month for similar private land
Montana	Lewis and Clark	$.78	$5.00
Colorado	Uncompahgre	.65	6.50
Arizona	Apache	.42	2.50 to 5.00
Idaho	Boise	.50	4.80
Utah	Dixie	.67	5.00

9. With respect to oil and gas leasing, the situation adjacent to the San Juan River in southern Utah is representative of the variation in governmental charge policies. The Navajo reservation lies to the south of the river and public domain on the north side. Several oil companies paid rentals of $1.00 per acre for the public domain for a 5-year lease, while at approximately the same time they paid $6.25 in rentals per acre for 5 years plus a bonus ranging from $1.27 to $129.00 per acre for leases within the reservation. The charge for a noncompetitive 5-year lease of public domain lands is one-third lower today than it was from 1935 to 1940. Likewise, the charge for oil and gas leases on lands that have been acquired by the Government is lower today than it was in 1947. The present charge is $1.00 per acre for a 5-year lease compared to the 1947 rate of $5.00 per acre for a similar period plus a bonus. In the case of acquired lands administered by the Forest Service, the average bonus amounted to over $19.00 per acre prior to 1947.

All leases involving Indian lands and the Outer Continental Shelf require competitive bidding. In contrast, on public domain and acquired lands, no competitive bidding is required when the lands are outside the boundary of a known geologic structure. These noncompetitive leases represent over 95 percent of the number of leases, acreage under lease, and workload.

10. In the case of mineral leasing, the Government receives a 25 cent per acre annual rental for prospecting permits for certain minerals, while permits for other minerals are granted on approximately 2 million acres with no charge.

11. Under the mining laws, title to the land is granted the claimant for $5.00 per acre, irrespective of timber or other nonmineral values, which may be worth several hundred dollars per acre. The $5.00 fee was established in 1872 and has remained the same since then.

Many of the special benefits provided by the Government service represent hidden subsidies which have developed over the years, and, in some cases, reflect efforts which were made to stimulate an "infant" industry or provide temporary aid to a specific segment of the population. As these benefits and subsidies continued, the recipients became accustomed to them, and now naturally oppose initiation of charges or any increases. Increases have not been made in many fees even though costs to the Government and values to the recipient have risen manifold.

Progress to date

Many inequities have been noted during the past several years, and the administration has initiated corrective action in a number of areas, including the following:

1. New and substantially higher filing fee schedules have been established by the Bureau of Land Management for public land transactions. This has raised annual receipts from this source from $397,000 to over $842,000 in the past few years.

2. After request by the Department of State, the Congress repealed a fixed service charge, established in 1789, for authenticating copies of records, thus permitting the establishment of charges commensurate with current costs.

3. The Bureau of the Budget issued Circulars on fees for licensing, registration and related activities (A-25) and for copying, certification, and search of records (A-28).

4. Separate laws were passed to assess a reasonable registration and renewal fee for brokers under the Commodity Exchange Act and to increase the fees for executing passport applications. Legislation to increase patent fees was also proposed in the last Congress to raise the proportion of costs (as currently calculated) recovered by the Patent Office from 45 percent to 78 percent.

5. Fees have also been increased for a number of uses of Federal land, such as grazing on the public domain, the sale or lease of small tracts on the public domain, summer home sites on the national forests, entrance to various national parks and monuments.

Progress has thus been made, but it has been piecemeal and quite limited in scope. In some cases the Congress rescinded actions taken by the Executive Branch, or caused a deferral of administration plans to increase charges. The Congress, for example, passed legislation discontinuing the fees which were being charged for certificates in lieu of lost military discharges. In view of studies being conducted by Senate Committees, action was deferred on the charging of fees for licensing, registration, and related activities as proposed by the Bureau of the Budget. The study of fees for Government services which was completed by the Senate Committee on Government Operations on February 1, 1956, concluded that the congressional committee having oversight jurisdiction of the agency providing the special benefit should (1) ascertain the need for adjusting fees and (2) initiate appropriate legislative action required to implement the agency fee program.

Conclusions

The problem should be examined from the viewpoint of the Government as a whole. While limited success might be obtained by continuing a piecemeal approach, greater strides can be made from a Government-wide approach to assure equity and comparability in charges for related services and for use or sale of Government-owned resources or properties. It is felt that this approach would enlist the support of groups concerned with the general overall objectives of equity, fairness to the general taxpayer, and fiscal soundness. It would provide the basis for eliminating arguments sometimes advanced by individual pressure groups that they have been singled out for discriminatory treatment. In addition, it is believed that the existence of a clear expression of administration and congressional policy would provide the necessary stimulus for an aggressive program.

The successful implementation of the recommendations which follow will (a) provide greater equity in the provision of Government services, (b) reduce pressures for special services, (c) provide a yardstick to evaluate future legislation and program requirements, and (d) increase receipts by many millions of dollars annually.

Recommendations

That an active approach to the solution of the user charge problem be developed and that the following policies and principles be adopted on a Government-wide basis:

A. General policy for charges

1. Cost recovery for services. Where a service (or privilege) provides special benefits above and beyond those which accrue to the public at large, a charge should be imposed to recover the full cost to the Federal Government of rendering that service. For example, a special benefit will be considered to accrue and a charge should be imposed when a Government-rendered service:

   a. Enables the beneficiary to obtain more immediate and substantial gains (sometimes measurable in monetary terms) than those which accrue to the general public (e.g., granting a patent); and/or

   b. Provides business stability or assures public confidence in the business activity of the beneficiary (e.g., certificates of necessity and convenience for airline routes); and/or

   c. Is performed at the request of the recipient and is above and beyond the services provided to other members of the same industry or group, or to the general public (e.g., passports, visas, airman's certificates).

2. Sale or use of federally owned resources or property. The fair market value should be realized from the sale or use of federally owned resources or property. Sound business management principles and comparable commercial practices should be followed so far as practicable and feasible. Generally this activity should be revenue producing and should not be based on the recovery of costs alone.

B. Costs, fees and receipts and their determination

1. Agency responsibility. The primary responsibility for the initiation and development of a program of charges and fees continues to be in the agency. The agency should:

   a. Determine the extent of the special benefits provided,

b. Apply accepted governmental accounting principles in determining costs,

c. Establish the charges, and

d. In the case of the use or sale of Government-owned resources or property, apply sound business management principles and comparable commercial practices.

2. Determination of costs to be recovered. The computation of the cost to the Federal Government of providing services shall be in accordance with accepted governmental accounting principles. Costs shall be determined or estimated from the best available existing records in the agency, and should not necessitate the establishment of new cost accounting systems. The cost computation shall include all direct and indirect costs of carrying out the activity, including but not limited to:

a. Salaries, employee leave, travel expense, rent, cost of fee collection, postage, maintenance, operation and depreciation of buildings and equipment and payroll burden costs (e.g., retirement and employee insurances);

b. A proportionate share of the Cabinet department (or other agency) supervisory costs;

c. A proportionate share of military pay and allowances, where applicable;

d. The costs of enforcement, research, establishing standards, and regulation to the extent the agency head determines these costs are properly chargeable to the activity.

3. Establishment of fees to recover costs. The maximum fee will be governed by the total costs involved and not by the value of the service to the beneficiary. The rate of fee established should not seriously impair the objectives of the program or other public policy. The cost of providing the service shall be reviewed at least once every three years and the fees adjusted accordingly.

The agency may make exceptions to recovery of full costs under the illustrative conditions stated below:

a. The cost of collecting the fees would be an unduly large part of the receipts from the activity.

b. The furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization.

c. Comparable fees are set on a reciprocal basis with a foreign country. (In line with the policy of requesting legislative changes for the removal of legal limitations, the Department of State should endeavor to renegotiate those international agreements which prohibit the establishment of a fair and equitable user charge for special benefits provided by the Federal Government.)

d. The special beneficiary is engaged in a nonprofit activity designed for the public safety, health, or welfare.

e. Payment of the full fee by a State, local government, or nonprofit group would not be in the interest of the program.

The application of such exceptions would be subject to the review, when necessary, of the advisory committee on fees and charges (see Recommendations for Implementation of Policy).

4. Disposition of receipts. All receipts shall go to the general fund of the Treasury as miscellaneous receipts except:

a. Where it is intended that an agency or program or some part of a program be operated on a fully self-sustaining basis from receipts for services performed or proceeds from the sale or use of Government-owned resources or property.

b. Where the agency head can demonstrate that earmarking of receipts is necessary to encourage the initiation or increase of fees or charges.

c. Where the receipts are used to offset the cost of authorized special services or programs for which the demand is irregular and unpredictable, such as inspections performed upon request outside of regular duty hours.

The present system of sharing receipts with States and counties for the use of land and sale of resources should be left undisturbed.

C. Recommendations for implementation of policy

To implement an equitable and uniform user charge program in line with the general policies, it is recommended that:

1. The Bureau of the Budget request the executive agencies to prepare legislative proposals removing all present limitations or restrictions on the agencies' authority to (a) recover full costs for Government services which provide a special benefit; and (b) obtain a fair market value for Government-owned resources or properties sold or leased. These proposals should incorporate a recommended expression of congressional policy on charges and fees, and authorize the President to initiate such rules, regulations, and advisory groups as he deems necessary to implement an aggressive and continuing user charge program throughout the Government.

   The agency proposals should also include areas where legislation is now silent on the initiation of user charges and where the agency considers an expression of congressional policy desirable prior to initiating charges.

2. This program of user charges should be carried through within the existing governmental framework in both the agencies and the Bureau of the Budget. The Bureau of the Budget would continue to exercise its coordinating role.

3. After enactment of authorizing legislation, the President should designate an advisory committee of five qualified persons, familiar with Government operations, to advise the President and the agencies and to provide guidance to the Bureau of the Budget on the public policy considerations involved in applying user charges. The advisory committee would concern itself principally with determinations of the extent of public interest or special interest on those issues referred to it by the agencies or by the Bureau of the Budget. The Bureau of the Budget would furnish the secretariat for this committee.

4. Increased efforts to carry out the recommended policies should be effected in those areas where legislative authority already exists for initiating or increasing charges, concurrent with the efforts to obtain legislation for the removal of restrictions in other areas.

EXECUTIVE OFFICE OF THE PRESIDENT
BUREAU OF THE BUDGET
WASHINGTON 25, D.C.

September 23, 1959 CIRCULAR NO. A-25

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: User Charges

1. Purpose. Bureau of the Budget Bulletin No. 58-3 of November 13, 1957, set forth some general policies for developing an equitable and uniform system of charges for certain Government services and property. This Circular incorporates the policies contained in that Bulletin and gives further information with respect to: (a) the scope of user charge activities; (b) guidelines for carrying out the approved policies; and (c) agency submission of periodic status reports. It also prescribes Standard Form No. 4 on which periodic status reports are required.

Because this Circular applies also to the areas previously covered by Bureau of the Budget Circular No. A-28 of January 23, 1954, that Circular is hereby rescinded.

2. Coverage. Except for exclusions specifically made hereafter, the provisions of this Circular cover all Federal activities which convey special benefits to recipients above and beyond those accruing to the public at large. The specific exclusions which continue to be governed by separate policies are fringe benefits for military personnel and civilian employees; sale or disposal under approved programs of surplus property; postal rates; interest rates; and fee aspects of certain water resources projects (power, flood control, and irrigation). In addition this Circular does not apply to activities of the legislative and judicial branches, the municipal government of the District of Columbia, the Panama Canal Company or the Canal Zone Government.

3. General policy. A reasonable charge, as described below, should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which he derives a special benefit.

a. Special services.

(1) Where a service (or privilege) provides special benefits to an identifiable recipient above and beyond those which accrue to the public at large, a charge should be imposed to recover the full cost to the Federal Government of rendering that service. For example, a special benefit will be considered to accrue and a charge should be imposed when a Government-rendered service:

(a) Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public (e.g., receiving a patent, crop insurance, or a license to carry on a specific business); or

(b) Provides business stability or assures public confidence in the business activity of the beneficiary (e.g., certificates of necessity and convenience for airline routes, or safety inspections of craft); or

(c) Is performed at the request of the recipient and is above and beyond the services regularly received by other members of the same industry or group, or of the general public (e.g., receiving a passport, visa, airman's certificate, or an inspection after regular duty hours).

(2) No charge should be made for services when the identification of the ultimate beneficiary is obscure and the service can be primarily considered as benefitting broadly the general public (e.g., licensing of new biological products).

b. Lease or sale. Where federally owned resources or property are leased or sold, a fair market value should be obtained. Charges are to be determined by the application of sound business management principles, and so far as practicable and feasible in accordance with comparable commercial practices. Charges need not be limited to the recovery of costs; they may produce net revenues to the Government.

4. Agency responsibility. The responsibility for the initiation, development, and adoption of schedules of charges and fees consistent with the policies in this Circular continues to rest with the agency. Each agency shall:

a. Identify the services or activities covered by this Circular;

b. Determine the extent of the special benefits provided;

c. Apply accepted cost accounting principles in determining costs;

d. Establish the charges; and

e. In determining the charges for the lease and sale of Government-owned resources or property, apply sound business management principles and comparable commercial practices.

5. Cost, fees and receipts, and their determination.

a. Determination of costs. Costs shall be determined or estimated from the best available records in the agency, and new cost accounting systems will not be established solely for this purpose. The cost computation shall cover the direct and indirect costs to the Government of carrying out the activity, including but not limited to:

(1) Salaries, employee leave, travel expense, rent, cost of fee collection, postage, maintenance, operation and depreciation of buildings and equipment, and personnel costs other than direct salaries (e.g., retirement and employee insurance);

(2) A proportionate share of the agency's management and supervisory costs;

(3) A proportionate share of military pay and allowances, where applicable;

(4) The costs of enforcement, research, establishing standards, and regulation, to the extent they are determined by the agency head to be properly chargeable to the activity.

b. Establishment of fees to recover costs. Each agency shall establish fees in accordance with the policies and procedures herein set forth. The provisions of this Circular, however, are not to be construed in such a way as to reduce or eliminate fees and charges in effect on the date of its issuance. The maximum fee for a special service will be governed by its total cost and not by the value of the service to the recipient. The cost of providing the service shall be reviewed every year and the fees adjusted as necessary. In establishing new fees and increasing existing fees the agency may make exceptions to the general policy (paragraph 3, above) under such conditions as illustrated below.

(1) The incremental cost of collecting the fees would be an unduly large part of the receipts from the activity.

(2) The furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization; or comparable fees are set on a reciprocal basis with a foreign country.

(3) The recipient is engaged in a nonprofit activity designed for the public safety, health, or welfare.

(4) Payment of the full fee by a State, local government, or nonprofit group would not be in the interest of the program.

c. Disposition of receipts. Legislative proposals shall generally avoid disturbing the present rule that collections go into the general fund of the Treasury as miscellaneous receipts. However, exceptions may be made where:

(1) It is intended that an agency or program or a specifically identifiable part of a program be operated on a substantially self-sustaining basis from receipts for services performed or from the sale of products or use of Government-owned resources or property.

(2) The agency can show that the initiation or increase of fees or charges is not feasible without earmarking of receipts.

(3) The receipts are in payment of the cost of authorized special benefits for which the demand is irregular or unpredictable, such as inspections performed upon request outside the regular duty hours.

This Circular is not intended to change the present system of sharing with States and counties receipts from the lease of certain lands and the sale of certain resources.

6. Changes in existing law. In cases where collection of fees and charges for services or property in accordance with this Circular is limited or restricted by provisions of existing law, the agencies concerned will submit appropriate remedial legislative proposals to the Bureau of the Budget under the established clearance procedure, as provided in Bureau of the Budget Circular No. A-19.

7. New activities. In the establishment of new Federal activities which would provide special benefits, the agencies concerned are to apply the policies and criteria set forth in this Circular.

8. Reports to the Bureau of the Budget. Each agency shall make a report by December 31, 1959, for each bureau or comparable organizational unit, of the costs and charges for all services or property covered by this Circular, and shall also make a report of changes not later than

December 31 of each succeeding year as a result of its annual review of such costs and charges. The initial report for any new agency hereafter established (including those established by reorganization) shall be submitted on December 31 following the end of the first fiscal year during which the agency was in operation. Each report shall cover the situation as of the preceding June 30, and shall be prepared in accordance with the instructions set forth in the attachments to this Circular.

By direction of the President:

MAURICE H. STANS
Director

Attachments

Attachment A
Circular No. A-25

INSTRUCTIONS FOR THE PREPARATION OF
ANNUAL REPORTS ON USER CHARGES

1. Form and coverage of reports. Reports shall be prepared on Standard Form No. 4, as illustrated in Attachment B. An original and two copies will be required.

The initial report should represent a complete inventory of all services of the agency which provide a special benefit to recipients above and beyond those accruing to the public at large, and all activities under which federally owned resources or property are or could be sold or leased.

Subsequent reports covering the annual review of costs and charges shall cover only (a) services and activities not reported earlier; (b) services and activities for which charges have been changed; and (c) services and activities for which changes in the applicable category (as described below) have taken place.

2. Preparation of Standard Form No. 4.

a. A separate form will be prepared for each of the following categories, where applicable:

(1) Special services for which existing charges are producing full cost recovery; and lease or sale activities which are returning fair market value.

(2) Special services for which existing charges are producing less than full cost recovery; and lease or sale activities for which less than fair market value is being obtained.

(3) Special services and activities for which no charges are currently being made, and for which charges are apparently required by the provisions of this Circular.

(4) Special services and activities for which no charges are to be made in accordance with the policy guidelines and exceptions provided in this Circular.

(5) Services and activities which have been discontinued or transferred to other agencies since the previous report. (This category is not applicable to the initial report.)

The category of items covered by each form will be identified in the heading by placing an "X" in the box corresponding with the number of the category as shown above. Forms need not be submitted for categories in which there is nothing to be reported.

b. Columns on the form will be completed as follows:

(1) Enter the identification number for the service or activity. Each service and activity shall be assigned an identification number which shall be retained from year to year, to facilitate identification in future annual reports. Agencies may devise their own coding systems for this purpose.

(2) List each special service provided under a heading "Special services", and each lease or sale activity under a heading "Lease or Sale."

(3) Enter the unit for measuring the service or property provided.

(4) Enter the amount of the charge being made for each unit as of the preceding June 30. In cases where there are various rates for differing situations, a summary schedule of rates may be attached in lieu of listing each rate individually.

(5) Enter the date the charge shown in column 4 became effective.

(6) Enter the amount of the charge which was made previous to the date in column 5.

(7) Enter the number of units of activity for the last completed fiscal year.

(8) Enter (in thousands of dollars) the cost of providing the service or the fair market value of resources or property sold or leased.

(9) Enter (in thousands of dollars) the amount of collections (net of refunds) during the last completed fiscal year.

(10) Enter the symbol of the receipt account, appropriation account, or fund account (excluding deposit funds) to which the collections were or will be credited.

(11) Enter any pertinent explanatory comments relating to the information shown in the preceding columns. On reports covering cagetories 2, 3, and 4, specifically note in this column, for each item, the reason(s) that full cost recovery or fair market value is not obtained. Also indicate whether full cost recovery for special services or fair market value for lease and sale activities can be obtained under existing law; the status of specific legislative proposals (e.g., under study, drafted, cleared, introduced, or reported); and the status of proposed administrative changes in fees and charges, including effective dates.

On reports subsequent to the initial report, indicate in this column the previous category in which the item was reported. On reports covering category (5), identify the services and activities transferred to other agencies or organizational units and the agency or organizational unit to which the transfer was made.

Standard Form No. 4
(September 1959)
Bureau of the Budget
Circular No. A-25

USER CHARGES REPORT

CATEGORY OF ITEMS (Check)
1 [X] 2 [ ] 3 [ ] 4 [ ] 5 [ ]

Agency	Bureau	Contact	Date submitted
Department of Government	Bureau of Public Affairs	John Doe, Ext. 555	December 15, 1959

Identification Number	SPECIAL SERVICES OR ACTIVITIES	CHARGE AS OF JUNE 30				ACTIVITY, FISCAL YEAR 19				REMARKS
		Unit	Amount	Date established	Previous charge	Volume	Cost or fair market value (Thous.)	Collections (Thous.)	Collections symbol	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	SPECIAL SERVICES:									
PA-101	Licenses under Federal Licensing Act	Application and renewal	Schedule	12/12/58	Schedule	10,155	$195	$200	740699	See fee schedules attached.
PA-102	Entrance to Central National Park	Permit	$1.00 per car	7/ 7/58	$.75	49,765	48	50	740810	
PA-103	Registration of documents	Document	2.00	11/20/57	1.75	3,789	8	8	7490100	
	SALE OR LEASE:									
PA-105	Lease of land for commercial purposes	Acre	3.00 to 12.50	5/13/57	2.00 to 11.50	12,250	52	53	741830	

Standard Form No. 4
(September 1959)
Bureau of the Budget
Circular No. A-25

USER CHARGES REPORT

CATEGORY OF ITEMS (Check)
1 [ ] 2 [X] 3 [ ] 4 [ ] 5 [ ]

Agency	Bureau	Contact	Date submitted
Department of Government	Bureau of Public Affairs	John Doe, Ext. 555	December 15, 1959

Identification Number	SPECIAL SERVICES OR ACTIVITIES	CHARGE AS OF JUNE 30				ACTIVITY, FISCAL YEAR 19				REMARKS
		Unit	Amount	Date established	Previous charge	Volume	Cost or fair market value (Thous.)	Collections (Thous.)	Collections symbol	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)
	SALE OR LEASE:									
PA-104	Rental of floor space for business concessions	Sq. ft.	10.00	6/18/59	8.00	8,150 to 10,000	85	79	745999	1,850 sq. ft. rented for part of year only.
	(Supplies of Standard Form No. 4 will be available in GSA Supply Center by October 30, 1959.)									

Attachment B

Mr. LIBONATI. What do you estimate will be the amount of business that under this new bill will at least offset from your 31-percent income, your present 31-percent contribution as collected fees and so forth?

Mr. LADD. We expect eventually to be able to recover 75 percent of our operating expenses.

By the way, Mr. Chairman, these data relating to projected income from the bill are set forth completely in the tables.

I am not going to talk about figure 4, the data for which appear in table 21, except to say it shows the percentage of recovery in the United States in comparison with certain other countries.

Figure 5, which is supported by table 23, makes this point. The basic fees in the Patent Office are a $30 filing fee and a $30 final fee. There are some other charges for claims in excess of $20, but I am going to leave those aside for the moment, for the purpose of this discussion.

This chart shows that if we were simply to make a cost-of-living adjustment of the $60 fee, which was adopted in 1932, of the $144 which will be the average fee under the new bill—$131 would represent nothing more than a cost-of-living adjustment to this fee which was passed in 1932.

Figure 6, which is supported by table 6, indicates the very small proportion of the total cost of obtaining a patent represented by the final fee and the filing fee.

As a matter of fact, taken together, under the present arrangement, it totals 8.8 percent of the total cost of obtaining a patent. This, as against, for example, 4.4 for the drawings, 3.7 for review before issue, 26.5 for amendments, and 47.8 for preparation and filing.

This cost structure, under the new bill, H.R. 10966, shows that these fees would represent 18 percent of the total cost of obtaining a patent.

The point to be made here is that the Patent Office fees are but a fraction of the total cost of obtaining patent protection.

Mr. LIBONATI. If you were to place in a separate classification that, the mere filing obligation or responsibility, it would be more than sufficient to pay for that segment of the expenses of your Office. Is that right?

Mr. LADD. I am sorry, I didn't quite get your question.

Mr. LIBONATI. The filing of these papers and everything connected with it, at the rate of the present fees would be sufficient to take care of the costs as far as filing the document and perfecting the inventive process; is that right?

Mr. LADD. It certainly would not take the application through the Patent Office.

Mr. LIBONATI. It would not?

Mr. LADD. Not by a long stretch.

Mr. LIBONATI. I thought you had accumulated costs in holding hearings and so forth and so forth, and other mechanics of the Office, and other procedures in the Office.

Mr. LADD. These fees represent the cost to the applicant on the outside.

For example, the preparation of filing and amendments represent, in large part, legal fees.

84863—62——3

Mr. LIBONATI. But is it not true that your hearing officers and your procedures are far in excess, comparatively, in cost than the filing of a document and its later processing?

Mr. LADD. Yes.

Mr. LIBONATI. Of course.

Mr. LADD. I am going to refer only very briefly to figure 7, and indicate that this is in your papers. This is a flow diagram, which shows how a patent application moves through the Patent Office. There is also in the appendixes a description of how a patent application moves through the Patent Office, and I simply want to lay that foundation in the context of which we can later discuss the fees. The document that I refer to is appendix C–3.

Now, let me turn to what I call the incentive aspects of this bill.

We attempted, by the fees in H.R. 10966, to encourage two things:

The filing of dependent as distinguished from independent claims. And I will explain that in just a moment.

Also, the filing of short and concise patent applications, consistent with a complete disclosure of the invention sought to be covered. I can demonstrate this very quickly by showing you the differences between an independent and dependent claim.

Mr. LIBONATI. You may proceed.

Mr. LADD. If you will refer to figure 18, which is in appendix A, this chart shows an invention covered by Patent No. 2,970,326. Right above the drawing there is a statement of the invention. In the second column there are four claims in independent form.

The point to be made is that claim 3, which one can determine after long analysis, is the broadest claim—it has the fewest limitations of any claim in the patent.

Now, the important thing is that claim 1 is exactly the same as claim 3, except for one element—the gas cell is hourglass-shaped. In other words, the dependent claim form says exactly what claim 1 in the patent says.

Likewise, in claim 4, claim 4 says exactly what claim 3 says, except that it adds that this gas cell may be manually broken.

Now, when an examiner must examine these claims in independent form, he must read through carefully each one of these claims to determine what the limitations are in one claim and what they are in another.

If these claims had been put in dependent form, I ask you to compare the independent form of Claim 1 with its dependent form. Rather than reading some 10 lines, one can see that claim is "A neckband as in claim 3 in which said gas cell is hourglass shaped." This says the same thing except it is hourglass shaped.

Now, I might say that this is not a revolutionary concept, by any means. Dependent claims are used as a matter of course by many patent lawyers today, and have been for many years.

Mr. LIBONATI. Is that not a form of protection for any changes that may be brought about by someone else, and thereby create an embarrassment to the original inventor?

Mr. LADD. No, Mr. Chairman.

Mr. LIBONATI. A financial embarrassment.

Mr. LADD. No, I think the relevant point to be made here is what you see in independent form is exactly the same scope in these two lines in dependent form. These cover the same thing.

Mr. LIBONATI. And you say the protection would be equally the same?

Mr. LADD. That is correct.

To demonstrate the differences in time in the office, the demand upon our resources and examiners, we ran a controlled experiment, in which various examiners compared the length of time that it required them to examine claims in an independent and dependent form, using the same subject matter.

On figure 17, and the data supporting this is in table 9, this is analyzed.

Now, I ask you to consider what this would mean to the Patent Office, which takes in some 82,000 to 85,000 applications a year, to be able to save this much time in the examination of each of the patent applications that comes in. It would be a substantial saving.

The other incentive, which we feel has been built into H.R. 10966, deals with the length of specification. I will not argue at length that specifications are sometimes too long. I leave you, instead, to read the quotations from the court opinions, which have been incorporated into the prepared statement.

We hope to be able to encourage short and concise statements in the Patent Office by means of the new issue fee.

I would like to explain what the new issue fee is in H.R. 10966, and compare it with the fee which is paid today.

Basically, the final fee is, again under present conditions, $30. Under the new arrangement, the issue fee would be based upon a basic fee of $40 plus a per-page charge for the number of pages of specifications, and a per-page charge for the sheets of drawings. This would create some relationship between the size of the application and the enormous printing cost, which the Patent Office has.

Of our present budget, which is in the order of $25 million, $3 million of that goes immediately to the Government Printing Office for the expense of printing these patents.

So that is another feature which we have tried to build into the bill.

Figure 15, which is supported by table 24, indicates that there is some relationship between the size of applications and the amount of time that is spent on them. The red line indicates the disposal rate for the U.S. Patent Office as a whole.

Let me explain what I mean by disposal. That means that an application which is under consideration is finally disposed of, either by allowing the patent or by the applicant having exhausted his last recourse for consideration.

Division 8 and Division 37, these are examining divisions in the Patent Office, and they examine relatively simple arts for applications, that tend to be a great deal shorter. This is supported by table 24.

Others, such as Division 36 and Division 42, where the arts are complex and where the applications are large, the production of examiners, measured by disposals, is very much lower.

Mr. LIBONATI. Could you give us a graduated scale of increases, based upon relative costs, I suppose in ratio, as to the increase in a short, concise way?

Mr. LADD. Do you want the increases in the schedule of fees?

Mr. LIBONATI. The increase as against the present costs, and the increases in expenses which necessitated, rather, at this higher cost figure. I think if you arrive at this analysis—the committee then

can determine in conformity with the increase in costs, and the basic figure as represented by the payments now as costs, we will get a better picture of the problems of your department in order to arrive at the conclusion that you seek; to be accomplished in part by this bill.

Mr. LADD. If you will indulge me just a moment, Mr. Chairman.

I think we can get that information you want, Mr. Chairman, by looking at figure 8, which is supported by table 7. This compares the income under the present structure with what the income would be for the same items under H.R. 10966.

For example, you will see that the vertical axis is marked off in millions of dollars. Under H.R. 10966 we would recover from the filing fee in excess of $5 million.

Turning to the patent issue fee, at the present we would recover about $1.5 million; under the new bill, H.R. 10966, we would recover $3.75 million.

For design applications, the amounts there are very small, and I am going to pass over those.

Trademark fees would rise approximately to—from $650,000 to $1 million.

Ex parte appeals are very small.

Recording assignments. There will be a substantial jump, as shown on the chart.

And maintenance fees, which are introduced in this bill,—and there are no maintenance fees today at all—shows a projected income of between $5 million and $6 million.

Mr. LIBONATI. Under your maintenance fee, I take it that that suggestion is the one that will bring you within 75 percent of your expenses; is that right?

Mr. LADD. This would bring us closer; yes.

Mr. LIBONATI. Will you desist a moment? I would like to have the members determine whether they would like to ask you any questions, specifically.

Mr. LADD. With pleasure, Mr. Chairman.

Mr. LIBONATI. Mr. Mathias?

Mr. Mathias, do you have some questions to ask at this time?

Mr. MATHIAS. No, sir.

Mr. LIBONATI. Mr. Kastenmeier?

Mr. KASTENMEIER. I have one or two questions.

You said that about 30 years ago the Patent Office used to be nearly self-sustaining, if not completely so, and of course now you are not. You did talk somewhat about lawyer's fees. I am wondering what happened to the lawyer's fees in the 30 years: have they gone up a substantial amount?

Mr. LADD. Yes; there are data in the tables indicating the increases. I would like to find those for you.

One example has been taken from the minimum fee schedule of the State of Wisconsin (app. B, table 4). Then, figures in table 6 show costs as relating to patent applications for legal services; that is, in 1937 and 1959 and at present. The figures in the first two columns were taken from a widely used book, "Inventions and Their Management," by A. K. Berle and L. S. DeCamp. Those in column 3, as explained in the footnote, were derived and adjusted from that to the present.

I am confident those figures are not excessive; and, as a matter of fact, there may be later witnesses who, from their own personal knowledge, can testify about what legal fees are today.

Mr. KASTENMEIER. Obviously, the fee schedule is fairly complex; but, comparably, do you have any sort of percentage increase of the 30 years that you can speculate about, in terms of fees charged by attorneys?

Would you say it would be twice as great, or any other figure?

Mr. LADD. Those data are given in the statement, if you will give me just a moment.

I would ask you again, Congressman Kastenmeier, to look at table 6, which indicates, for example—let us take, as an example, an hourly rate for an attorney. This is item 5 on that table. In 1937 it was at least $5. In 1959 it was at least $20. Today we indicate that we believe most patent lawyers charge somewhere between $20 and $50 an hour for their time.

There is one other indication tending to corroborate these data, and these are in table 4.

Mr. LIBONATI. Has he answered your question, Mr. Kastenmeier?

Mr. KASTENMEIER. I think so. I gather you are not able to—perhaps no one is—speculate across the board what type of increase, generally, the experience has shown in the period of 30 years. But I assume from looking at the tables it would be on the order of perhaps several times as high.

Mr. LADD. Two to three, I would guess. That is since 1932.

Mr. LIBONATI. Mr. Lindsay?

Mr. LINDSAY. Do you plan to tell us something about the maintenance fees?

Mr. LADD. I do.

Mr. LINDSAY. The reason why you are proposing it and why you think the arguments are not valid.

Mr. LADD. I will be glad to turn to that. If you like, I can turn to that right now. That is the last point.

Mr. LINDSAY. As far as I am concerned, you can follow your regular schedule of testimony.

Mr. LADD. I think if I turn to that, I will complete what I need to say, because my assistants have done such a splendid job.

Mr. COPENHAVER. Mr. Ladd, did you develop any figures in your statement concerning the mean number of independent claims over a period of time, which are filed with the application, 5 or 6 or 10?

Mr. LADD. Mr. Ellis has just handed me the kind of computation that you are asking for.

Mr. COPENHAVER. Will you tell me what is the mean number of independent claims, please?

Mr. LADD. The average number of independent claims in a patent is 4.38.

Mr. COPENHAVER. The reason I ask that is this: I understand the way it was presently worded, after 20 independent claims in a particular application of $1 charge, and you bring out the fact that the ratio is about 2 to 1 of the time element to review independent as opposed to dependent claims; and that is the reason why you wish to revise the present law.

As revision now stands, you will require $10 fee for every independent claim over one; meaning, if I may just expand the average to

five, meaning that there would be a $40 initial filing fee, and $40 additional independent claim fee, or $80, not counting any additional cost.

I would want to know—it would seem to me, perhaps, that this might be an undue burden in some instances.

My question is: Has consideration been given perhaps to a compromise, and instead of requiring a $10 fee for each individual claim over one, if perhaps there would be a cutoff after five, which is about your medium of independent claims?

Mr. LADD. Ordinarily, one does not come to Congress with a compromise. Consideration has been given to this.

Mr. COPENHAVER. I am merely asking whether consideration has been given to this.

Mr. LADD. Certainly; thorough consideration has been given to it. Our belief is that most inventions upon which applications are filed in the Patent Office can be covered by very few independent claims. As a matter of fact, this is not only our opinion, but patent lawyers, a lot of patent lawyers feel this way; and, as a matter of fact, it is interesing to see what it is in Great Britain, where it is most extraordinary.

I would ask you to look at table 14 of appendix B.

Mr. LIBONATI. I think your main purpose is to get them to file it the proper way by making it dependent on the first one; is that right?

Mr. LADD. That is correct.

Mr. LIBONATI. And this will not cost them anything, will it?

I mean comparatively.

Mr. LADD. The cost will be much less for dependent claims; that is correct.

Mr. COPENHAVER. The reason I asked the question is that merely there may be a distinction between filing a patent application from 20 to 100 independent claims and 1.

Mr. LIBONATI. That is why I followed through. He was trying to get them to file the simple way, and so forth.

Mr. LADD. May I answer, in summary, the point that I think counsel has made? The bill does not cut off the use of independent claims. It simply puts a cost taking on using them.

If a man wants to file an indefinite number of independent claims, if he will pay for them, he may have them. In the case which counsel posed, for example, the increase in cost because of the additional independent claims, would be $40. This must be stacked up against what would ordinarily be an average cost of preparing an application of somewhere between $300 and $400.

So in those terms, I don't think it can be considered excessively burdensome.

Mr. LIBONATI. You may proceed.

Mr. MATHIAS. Mr. Chairman.

Mr. LIBONATI. Mr. Mathias.

Mr. MATHIAS. One question develops in light of this colloquy. Mr. Ladd just said one does not approach Congress with a compromise. I wonder if the committee is expected to use the same standard in applying it to the other proposals?

Mr. LADD. Congressman, let me say this, and I am very glad you brought it up. We have brought in a bill which we think is best for the public and the best for the Patent Office. I would be much distressed if this bill were not adopted exactly as presented before this committee. If, for reasons which I know nothing about now, the bill is changed, we will evaluate the proposed changes on their merits; but we are confident this bill, as presented, is the best possible bill in the public interest.

Mr. LIBONATI. That is the reason why I caused you to proceed on basic values with compared tables, so we can understand why this is necessitous, this action, on your part. If you follow that through, there is no argument with this committee.

Mr. LADD. Thank you, Mr. Chairman.

With that, relying upon the materials which you already have, I am going to turn to the maintenance fees.

The maintenance fees, as you can see from the chart which I showed you a moment ago, would be responsible for a substantial part of the total recovery of the fees. I am referring, of course, to figure 8, which is supported by table 7.

Let me first state the reasons why maintenance fees have been included; then let me take up some of the objections which have been made and try to answer those, and then I am sure that some of the committee members may have some questions.

Mr. LINDSAY. This is where all the heat develops, over the maintenance fees? Is this not where the rub occurs?

Mr. LADD. I think that is the center of the battle, yes, sir.

In the first place, we suggest maintenance fees because if we were not to recover the money in that form, and if we were to assume that we were to recover a substantial portion of our costs, then other fees would have to be increased greatly.

Now, where would those fees have to fall in order to make up for the revenue which would be lost if maintenance fees were excluded?

In the first place, it would have to fall, to a large extent, upon those fees from which the Patent Office today derives most of its income. That is a filing fee. The premise which we have had in this bill is that we should do as little as possible to discourage the filing of patent applications.

We try, by the fees proposed in H.R. 10966, to encourage an economic and rational prosecution and examination of those applications, but we do not want to discourage the filings.

In a sense, therefore, to recover moneys we are driven to maintenance fees.

I may add that the amount of maintenance fees in H.R. 10966 is lower than that which was in the former bill, H.R. 7731. There are other, affirmative reasons why the maintenance fees should be adopted. It is well known that many of the patents which issue from the Patent Office do not come into commercial use.

Therefore, when an infringement study is made—and I want to explain what that is—an attorney must go through the patents which are not in commercial use, which may have been taken out for defensive purposes—and I will explain what that is also—in order to give his client an opinion.

An infringement study is done by a lawyer in behalf of his client when the client wants to put a new product on the market, or adopt a new process in his plant. He has a check made to be sure that he will be clear, so he cannot be accused of patent infringement. The attorney therefore must study all the outstanding unexpired patents in that field to see whether the proposed process or product will come under those claims.

There is no distinction at all in this search for the attorney, as to whether the patentee intends to enforce the patent or not.

The effect of maintenance fees, especially if we judge from experience in foreign countries, is to encourage those holding patents to allow those to lapse which have no commercial relevance, which have been superseded, or which have found no commercial market at all.

There is this advantage also to maintenance fees: Under this system, the first maintenance fee would become payable in the fifth year. That means that the patentee has had 5 years in which to judge the market. He would have that time in which to decide whether the patent has any commercial value or not.

If he has not assigned the patent, if there is no revenue under it, up to $100, he may, by filing an affidavit, skip that payment.

Likewise, in the ninth year, if he hasn't made up to $200 he can skip that payment. In the 13th year, however, he must either make the deferred payments and the one for the 13th year or the patent lapses.

It allows the choice to be made at that time, when the patentee can determine what the value of his patent is to him.

If the patent has turned out to be commercially of little or no value, he may allow it to lapse. If, in his judgment, he has received money or the chances are very good that he is going to receive money, he may simply, by maintaining the patent fee, allow it to remain in existence.

Mr. LINDSAY. What is the maximum he pays?

Mr. LADD. $100 is the first fee, $200 is the second fee, and $300 is the third fee; so the total is $600. It is 5, 9, and 13 years.

Mr. LIBONATI. That is problematical, though, on the question of realization of any funds, I mean, on a strict basis.

Mr. LADD. That is quite right.

Mr. LIBONATI. And of course you are dealing with a situation that is probably in futuro, too, the success of the patent.

Mr. LADD. The United States and Canada are the only major industrial countries which do not have maintenance fees or taxes of some kind.

Their experience has been fairly consistent in the number of patents which are allowed to lapse because of nonpayment of maintenance fees. That is the only guide that we could have on which to project what our experience and what our income might be from such fees.

Mr. LINDSAY. What are the basic public-policy questions involved? I would think you would address yourself to those——

Mr. LADD. Which, in particular?

Mr. LINDSAY. On the maintenance fees. Is it desirable or undesirable to discourage loitering patents, if I may use that word; secondly, to what extent does this proposal make life more complicated for the individual patent owner, the small inventor? It puts no burden at all, relatively speaking, on the large corporation?

Mr. TOLL. Will the gentleman yield? There is a supplement to that.

Is it not true that some of these loitering patents, some of these big firms decide not to pick up the commercial value because of stocks on hand, and it may eventually rise to the point where, we will say, in the 14th year they have exhausted their stock, and that is the time to negotiate?

Where does the small patentee have any encouragement, if he is going to be charged just for the sake of holding?

Mr. LIBONATI. Of course the little fellow can file a new one.

Mr. LADD. We may as well get to this point.

Mr. LIBONATI. He wants to go through all that bother and perhaps jeopardize his inherent rights in the original patent by some three persons who may claim an interest. He could circumvent this proceeding, if he saw fit.

Did I say the right thing or not?

Mr. LADD. I am not sure I understand your point, Mr. Chairman.

Mr. LIBONATI. He can circumvent any of these payments by filing a new patent, can he not? And then he only pays the original fee.

Mr. LADD. An affidavit, Mr. Chairman. He files an affidavit that he has not received income equal in amount and value to the maintenance fee which is due; yes.

Mr. LIBONATI. I want to know one thing you have not touched upon yet. How are you able to keep such fine men in the Patent Office, so qualified, so talented, so skilled—do not forget, I go with them to various conventions, and that is important work. How do you keep them at such low salaries? These are men who are in a specialized area, that very few lawyers know anything about. Their services are in demand by large corporations, both as advisers and as lawyers in this field. How do you keep them?

I do not hear you say anything about the need for increase in salaries for these men, in order to hold them to this dedicated work in their specialty.

Mr. LADD. Mr. Chairman, if it were a matter of unilateral decision on my part, I would increase all their salaries to be comparable to those paid to people with similar talents and experience on the outside. That, however, does not lie within my power. I think Congress will soon have the opportunity.

Mr. LIBONATI. But you make your recommendation. Your office is a very important one. You make the recommendations.

Mr. LADD. I think what I have had to say in this matter within the executive branch, Mr. Chairman, could be described as something stronger than making a recommendation.

Mr. LIBONATI. This is an added cost in the future that you must admit.

Mr. LADD. May I have your permission, Mr. Chairman, to attach an appendix to this record, setting forth a comparison of the salaries of Patent Office examiners with people on the outside; and a statement of my views about what should be done about this?

(The insert referred to is as follows:)

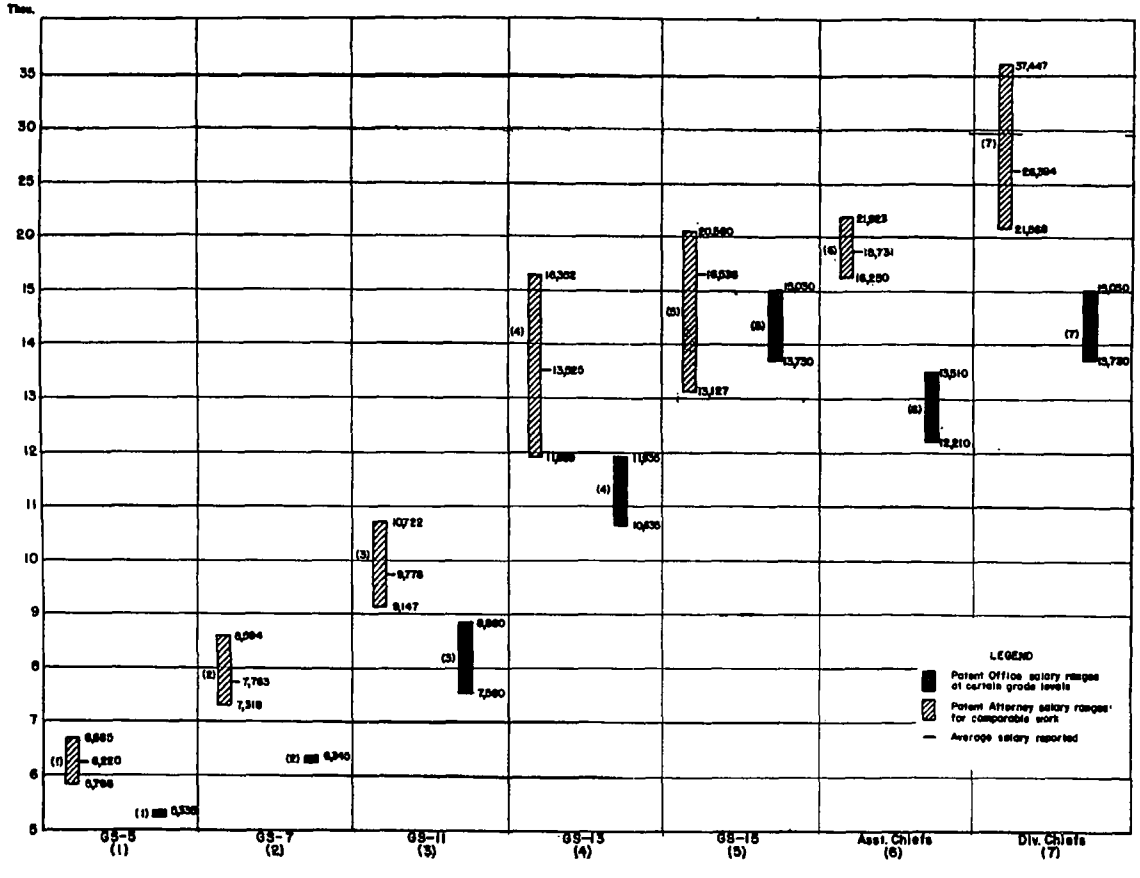
The attached chart and table show a comparison of the pay of patent practitioners in private industry with the pay of patent examiners who have equivalent duties and responsibilities. It is the result of a salary survey made by the Patent Office within the patent profession as of December 1961.

The proposals of the administration that salaries for higher level professional employees be increased so that they will be more nearly competitive will be especially beneficial to the Patent Office. We feel that these benefits will not be materially reduced by the 3-year period during which the increases will be put into effect because our examiners would take into account the deferred benefits as well as the immediate ones. In addition, the proposed provision to permit substantial differences in pay for employees in the same grade based on the value of the individual to the Government will give the administrators of the Patent Office an excellent incentive to offer those who do superior work. This is an incentive which we do not now possess. In general, I feel that the salary provisions which have been endorsed by the administration would be an enormous help in overcoming our turnover problems.

Salary comparison

	Patent professionals in corporations and law firms			Comparable GS-grade	
	Average of low	Average of high	Average of all salaries reported	Grade	Salary
1. Engineering graduate; no experience; no law	$5,798	$6,685	$6,220	GS-5	$5,335
2. Engineering graduate; LLB degree; no experience	7,318	8,596	7,763	GS-7	6,345
3. 3 years' experience in Patent Office as examiner; LLB degree; very little, if any additional experience	9,147	10,722	9,778	GS-11	$7,560-8,860
4. Fully experienced patent attorney; handles all types of work before Patent Office; very little courtwork	11,899	16,352	13,525	GS-13	10,635-11,935
5. Fully experienced patent attorney; courtwork is common; handles any type of case	13,127	20,560	16,536	GS-15	13,730-15,030
6. Supervises a small (fewer than 10) group of patent attorneys	16,250	21,923	18,731	GS-14	12,210-13,510
7. Head of patent department or partner in firm	21,568	37,447	26,394	GS-15	13,730-15,030

U.S. PATENT OFFICE SALARY SURVEY – DECEMBER, 1961



Mr. LIBONATI. That may be your strongest argument for what you are trying to do here, on the question of naked services and added costs in accordance with material, printing, and so forth. Do you understand me?

Mr. LADD. Yes; I do, sir.

Mr. LINDSAY. May I interrupt? I did not get any answer to the questions by Mr. Toll and myself here.

Mr. LADD. I would like to come back to either question. Mr. Toll, would you repeat your question?

Mr. TOLL. My question was the problem of a patent holder who does not find the market immediately, because many of the concerns may have stocks on hand and not want to pick up the patent, except—eventually he is called upon to pay that extra money. How do you encourage these small patent owners?

Mr. LADD. The small patent owner, if he has not assigned his patent, and we have to make the assumption that if it is assigned it has some value, simply files the affidavit that he has not received benefits from his patent up to the amount of the fee which is then due.

If he can file such an affidavit, the payment is deferred.

Likewise, in the ninth year as well as in the fifth year he does this. In the 13th year, which is 4 years from the end of the patent, then, so to speak, he must "fish or cut bait"; and then he has 4 years left. And it is not unreasonable to expect him to make up his mind then.

Mr. LIBONATI. Now, Mr. Lindsay's question. Would you please repeat it?

Mr. LINDSAY. Is part of the objective here to shake down the number of patents that are on file and force some out that are serving no useful purpose?

Mr. LADD. That argument is referred to in discussions in bar associations, and I am not trying to represent, by that statement, that the bar associations are in favor of maintenance fees at all. But it is a concept which is so commonly understood that it is used by the shorthand expression, "clearing out the deadwood."

Mr. LINDSAY. Is that part of it?

Mr. LADD. That is one objective.

Mr. LINDSAY. That is part of the objective of the bill in addition to getting some housekeeping money?

Mr. LADD. Right. I personally would not characterize it as an objective, so much as an incidental—a desirable incidental effect. But that is quarreling over phrases.

Mr. LINDSAY. If there is a desirable effect, to what extent will it shake out the small patent owner and leave in the large corporate patent owners, who write off the charge?

Mr. LADD. Let us return to the point Mr. Toll made, and talk about the small inventor.

First of all, let's get clearly in mind that 71 percent of the patents, which are issued today, are assigned to corporations and the U.S. Government.

Mr. LINDSAY. You say 71?

Mr. LADD. Over 70 percent.

Now, talking about the independent inventor, who is the small inventor who is represented in the balance of that, as I have pointed out, the maintenance fees will not fall upon this man at all unless he makes income from his patent. If he gets no benefit, no income, then

he does not pay the maintenance fee. He simply files the affidavit and says he has not received that much income or benefit, both in the 5th and 9th years.

The day of reckoning does come in the 13th year, when there are 4 years remaining in the patent.

Mr. LIBONATI. Would you please close your statement now?

Mr. LADD. Yes; I can make this brief.

This is another in a series of bills to raise the Patent Office fees, which have been submitted before this committee. I think there is wide consensus that a raise of some order is desirable, even though there is strong disagreement over what the amount of those raises should be, and what kind of fees should be used to recover.

In any event, we know that the cost of operating the Patent Office has risen dramatically since 1932, and most particularly since 1955. We submit that it is reasonable for the beneficiaries of the patent system to share in the cost of the maintenance of the Office. This is not for a moment to deny that the patent system provides the general public with a great benefit as well as it does the special beneficiaries of the system.

We feel that the bill which we have presented not only raised the revenue that is necessary, but also distributes the fees in such a manner that will promote good prosecution and examination of the patent examiners in the Office.

Mr. LIBONATI. Thank you.

(Prepared statement of Mr. Ladd, with accompanying appendices, follows:)

STATEMENT OF DAVID L. LADD, COMMISSIONER OF PATENTS, RELATING TO H.R. 10966, A BILL TO FIX THE FEES PAYABLE TO THE PATENT OFFICE, AND FOR OTHER PURPOSES

Mr. Chairman and members of the subcommittee, as you know, the Department of Commerce sent to the Congress the proposed bill which has now been introduced as H.R. 10966. We view this bill as a substitute for H.R. 7731, which was introduced last year. We believe this legislation necessary and desirable, and I am here today to present to your committee the reasons why H.R. 10966 should be acted upon favorably by your committee and the Congress.

The bill proposes changes in both patent and trademark fees. Because the changes in patent fees are more significant, my comments will be directed primarily to them.

Bills to raise patent fees are not new. They have been introduced with regularity for a number of years, as this committee knows; and hearings have been held on many of them. In fact, the question of the adequacy or inadequacy of Patent Office fees is an annual subject of discussion among persons interested in the patent system, whether or not any specific bill is under consideration. Members of the subcommittees of the Committees on Appropriations of both the House of Representatives and the Senate which hear our budget requests have repeatedly shown concern with the relation of our fees to our expenses. Last year, for example, fees were again discussed in some detail, and during the discussion, Congressman Gary of Virginia commented:

"I do not know how the citizens of this country expect the Government to pay increased costs and not increase their charges. Apparently there is very little complaint when private business increases its charges to cover increased costs, but the minute you suggest increased charges to take care of increased costs in providing Government service, a howl goes up from all quarters. I suppose it is just a part of the philosophy that is developing now that the Government should take care of the people rather than the people take care of the Government. I think it is a very dangerous philosophy, myself."

(To give this committee a sampling of sentiment from other congressional committees on Patent Office fees, we have attached appendix C–1, which excerpts remarks of Members of Congress and congressional committee reports.)

No one likes to pay increased fees any more than higher taxes. They are never greeted with enthusiasm, and they are accepted only when there is a compelling need. It gives me no great satisfaction to advocate higher fees. Yet, I feel—and the Bureau of the Budget concurs—that it would be irresponsible for us not to suggest ways in which to provide for the greatly increased costs of the Patent Office.

I suggest that this bill is different from those which have been introduced in the past. I hope that I can convey to you why I believe it is and why it should be given serious consideration by your committee and the Congress.

H.R. 10966 has these four objectives:

1. It provides adequate income.
2. It includes incentives to efficient and economical prosecution and examination of patent applications.
3. It fixes a time for the payment of part of the fees, specifically the maintenance fees, at a point when the patent owner is in a better position to judge the commercial value of his patent.
4. It does not unduly discourage the filing of new applications.

Any fee bill assumes a concern for income. A fee bill must provide an amount of money which, in the considered judgment of this committee and the Congress, is a reasonable proportion of the operating costs incurred by the Patent Office. H.R. 10966 is designed eventually to recover approximately 75 percent of our operating costs, a figure adopted by this and the previous administration.

The Bureau of the Budget, in consultation with various agencies, has determined that a reasonable part of the cost of patent services be recovered because the patent system confers a more direct benefit on patent owners than is the case with certain other Government services. The Bureau of the Budget has asked me to transmit to this committee a letter explaining this policy, and a copy of it is attached to this statement. The reasonableness of a 75-percent recovery figure is reinforced by the fact that, historically, our Patent Office and those of most foreign countries have been substantially self-supporting. During the last 20 years our income has failed substantially to cover our operating costs, and the gap has widened more and more.

Congress has been responsive to the needs of the Patent Office. Starting in fiscal 1956, for example, the Congress has permitted us to increase substantially the examining force so that the backlog could be attacked. This buildup in the size of our examining corps, it was thought, would allow us to eliminate the backlog. After the Office had reduced the workload to a normal one, it was proposed, the examining corps would be allowed to decline in size by virtue of our heavy turnover, which is well known. For a number of reasons that approach did not fulfill all its goals, and we no longer rely upon it for planning. But the point here is that this buildup has required larger and larger appropriations, and they may well need to become larger yet. While there has been a substantial reduction in the backlog, it is now clear that this rapid buildup in personnel has not totally solved our problem.

Not only does the number of patent applications filed each year increase, but the average disposal rates of examiners have continued to drop in a long-established trend during the past 20 years, largely because of the increased complexity of the subject matter to be examined, and because of both the increased complexity and the increased quantity of the prior art to be searched. These and other reasons for the present difficulties of the Patent Office have been explained in detail to the subcommittee of the Committee on Appropriations of the House of Representatives which examines our budget requests. A copy of our statement before that subcommittee this year will be submitted for this record when transcripts of the appropriations hearings are published.

This has created what I have referred to as a crisis in our examining system. We are attacking this problem on several fronts: Research and development in information retrieval, reorganization of the administrative apparatus of the Office, including establishment of a planning and operations audit group to check performance and evaluate substantive changes in the field of patent law, improvement of the physical facilities of the Office, and revision of our personnel and promotion policies. We have also adopted, as a quasi-emergency step, a policy of expediting action on older cases in the Office. The result is that we have at least temporarily checked the rise in our backlog and since the beginning of this fiscal year reduced it by some 1,500 cases, despite a very high rate of receipts. We may in the long run have to "pay back" some of the advantages we have gained by concentrating on older cases, but we felt it important to stem the tide, even in the short run.

In short, we are attacking this problem on all fronts, but it appears clear to us that we will continue to need substantial budgets. It is no longer a case of asking Congress to be generous temporarily. These heavy and growing burdens on the Patent Office are a natural result of the revolution in research and development in both the Government and private industry since the war. We know now that the allocation of greatly increased expenditures to research and development is not merely temporary. We know that burdens on the Office will continue to grow. The solutions we are seeking will require additional money. The present bill is no panacea, but it will alleviate or reduce the outflow from the Federal Treasury as we work toward the solution of our problems.

This fee bill provides incentives to efficient prosecution and examination of patent applications. Most fee bills have been designed merely to increase income, little consideration being given to a fee structure that influences the conduct of the examination process. One of the basic purposes of this bill is to use fees to encourage applicants and attorneys to follow what we believe are orderly and efficient practices. This lies behind the substitution of H.R. 10966 for H.R. 7731. The estimated revenues from the fees of each bill are comparable, but the incentive features we have built into H.R. 10966 will improve practice and more reasonably relate the cost of examining a given case to the fees involved.

The third objective is to fix the time of payment of the maintenance fees—which will eventually represent about 25 percent of all Patent Office income—at a time when the patent owner is in a better position to pay. The first maintenance fee would become payable before the end of the fifth year of the life of the patent. At that point, the patent owner can evaluate his patent, determine what, if anything his patent has earned, and decide whether it is worth paying the fee to keep his patent in effect. For any patent of value, this first maintenance fee of $100 must be considered nominal. There is here an additional beneficial effect: Those patents that are not being exploited should be discarded at the earliest possible time so that the so-called "deadwood" does not impede commercially usable innovations. Maintenance fees would encourage patentees to discard patents whose disclosures they do not expect to come into commercial use. Not all patented inventions come into commercial use, and many of those that do come into commercial use are superseded by later developments.

Moreover, many patent applications are filed as "defensive" applications. Such applications are filed primarily to protect the applicant against charges of infringement from someone else who claims to have made the invention and to have made it first. There is often no intention to enforce the patent against others, and the purpose of the "defensive" application has been served with the publication of the patent. (This phenomenon is discussed in detail in "The Patent System and the Modern Economy," study No. 2 of the Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, U.S. Senate, 85th Cong., 1st sess., Doc. 22.)

The lapse of such patents because of nonpayment of maintenance or renewal fees would reduce the number of patents that must be considered in infringement investigations and would place more of the expenses of the Patent Office on owners who are exploiting their patented inventions and benefiting from the patent system. Unless maintenance fees are imposed, the other patent fees will have to be increased steeply. In my judgment, fees in connection with obtaining patents should only be high enough to encourage good practice and the balance should be recovered by fees which bear some reasonable relation to the value to the patent owner which the patent represents.

This points up the fourth objective of H.R. 10966. It would produce the necessary income, yes; but in doing so, it should have a minimum deterrent effect on the filing of new patent applications. No matter how little fees are raised, any rise might tend to deter filing of some applications. Even so, a fee bill should be structured to minimize any such adverse effect on filing, consistent with the income that must be recovered.

Thus the present fee bill endeavors to recover a reasonable part of our costs, to encourage better prosecution before the Office, to fix payments of the fees at more convenient times, and to reduce the number of unused patents in force, all without significantly discouraging the filing of new applications.

In light of this introduction, it will now be easier to perceive why patentees and patent owners can be conceived of as special beneficiaries of the patent system. This view is important to understand because, in part, H.R. 10966 was developed on the policy of the Bureau of the Budget of recovering a reasonable proportion of the cost of Government services from those to whom these services represent a special benefit. This is not at all to deny the broad general benefit which the

patent system and the issuance of patents confer upon the public as a whole. That theory has been frequently stated and is well understood. The patent system by its very nature, it is believed, encourages invention, and, equally important, encourages early and complete disclosure and investment in the invention to bring its commercial benefits to the public. To restate this classic and almost universally accepted rationale for the patent system, however, it is not to gainsay that these public benefits are achieved by means of special benefits—specifically the patents themselves and the rights they confer—which are thus made available to inventors and their assignees.

GENERAL REASONS FOR INCREASING FEES

H.R. 10966, broadly speaking, presents this committee with two questions: (1) Does the Congress concur that the Patent Office should recover a higher percentage of its operating costs and specifically about 75 percent thereof instead of the present recovery of about 30 percent? (2) Assuming the Congress does want us to recover a higher percentage of our operating costs, the present fee schedule must be changed; then the only remaining question is, In what manner shall the new fee schedule be structured?

H.R. 10966 represents a definite point of view on both of these questions. The answers which we have submitted for your approval are that the Patent Office should recover a substantial portion of its costs; and that certain of the fees through which costs are recovered should be distributed in a manner designed to improve our examining procedures in the Office, as well as to increase the amount of money taken in.

I believe that it will be helpful if I deal with these two questions separately. Therefore, I intend to turn immediately to a discussion of the disparity between our operating expenses and our income. Thereafter I shall turn separately to the manner in which we propose to change the fees to close this gap and, at the same time, to encourage better practice before the Patent Office.

Historically, the income from patent and trademark fees and services once covered our operating costs. Only in the last 20 years has there occurred an increasing divergence between income and operating costs. Figure 1 graphically illustrates the fact that our operating costs have risen sharply, particularly in the last 15 years. Our income has fallen behind our expenses at an increasing rate. When the last major fee change was instituted in 1932, it was to reestablish a balance between income and operating costs that had permitted our operation to be substantially self-supporting.

This problem is not unique to the U.S. Patent Office. Patent operating costs have increased drastically in many other countries. For example, figure 2 compares operating cost increases for a number of countries, the United States included, using the average for 1930–39 as a base. Using the figure 100 to represent this base, our operating costs today are approximately 500. On the same basis of comparing the average costs of 1930–39 with today, Germany, Switzerland, Great Britain, the Netherlands, and Canada, today have expenditures represented by the readings of over 300, 500, 550, 800, and 1,100, respectively. And that is not the end of the story.

Figure 3 gives an idea of the average cost recovery for a number of countries, including the United States, during the period 1957–60. A number of countries show surpluses; and, although a number of others did not break even, they were far closer to the break-even point than was the United States. We continue to have the lowest recovery ratio of any of the countries for which we could find financial data. In 1961, for example, we recovered approximately 32 percent of our operating costs by fees, whereas in 1932 the percentage was 81 percent before the legislation of that year again brought income to near full recovery of operating expenses for a few years.

Figure 4 illustrates the percentage of cost recovery for these countries and the United States for the averaged period 1930–39 and the years 1950 through 1960.

Whatever can be said about the amount requested by the present fee bill, some substantial adjustment in income to the Patent Office for services rendered to applicants and patentees should be provided. There is far too great a difference between our present cost recovery figures and those following the last major legislation in 1932, judged both against our own history and in comparison with the experience of other industrialized countries.

The estimated income from H.R. 10966 assumes full application of the revised fee schedule proposed therein (see table 1); but the full income from the revisions cannot be realized until 13 years have elapsed from enactment—primarily because

the maintenance fees proposed in the bill would apply only prospectively to patents issued after the effective date of the legislation. Thus, initially, the recovery would amount to no more than 55 percent of our budgeted operating costs for fiscal 1963.

Quite aside from the question of whether our income from services and examination activities should substantially cover our operating costs, it is revealing to look to the changes in the 1932 fee structure necessary to provide a comparable position for us today. A substantial increase is required. In fact, if we take into account only what is commonly called the decreased purchasing power of the dollar, the 1932 filing and final fees totaling $60 would have to be $131 in 1962. This is illustrated by figure 5. Beyond this adjustment, H.R. 10966 would require only an additional $13 for an average size patent—not counting the maintenance fees. In short, a substantial part of H.R. 10966 represents what we can call a cost-of-living adjustment of 1932 fees, not new burdens.

In fairness to the Patent Office and to my predecessors, I think I should explain the reasons for the large increases in budget required for the Patent Office since 1932. For the most part the increases represent simple, relentless increases in the basic expenses of our operation. A few examples will illustrate this fully.

The principal components of our budget are compensation and benefits for our employees and printing. Taken together, these represent over 95 percent of our budget today, they represented over 95 percent of our budget in 1932, and they represented over 95 percent of our budget in 1940. In 1940, when the growing disparity between income and expenses began, the average salary for Patent Office employees was $2,600 per annum. Today the average of salary and benefits amounts to $8,100—$7,500 salary, and $600 benefits—three times as much. (See tables 2 and 3.)

In 1940 the rate per page for printing patent specifications was $4.41. Today it is $14.75, over three times the former amount. To print the specifications and drawings, and to publish the issuance in the Official Gazette, the average patent of today costs about $63. At 1940 prices the cost would be about $19. The present cost is over three times the former.

(Incidentally, all our printing is required by law to be done at the Government Printing Office.)

If we look to other Government fees, we see that those costs have also risen (table 5). Not so the patent fees. They have remained pegged to the 1932 level. This has naturally and inexorably caused a substantial decrease in the percentage of our operating costs recovered.

Also illustrative of the marked change that three decades have wrought in costs, is the increase in minimum fee schedules for typical legal services. We see in table 4—Wisconsin is used as an example—that, whereas the minimum fee for drafting a simple contract in 1928 (just before the depression) was $5, it is now $15. The minimum fee for organizing a simple corporation was $75 in 1928; it is now $250. It is unnecessary to expound on this at length. The increase in the cost of legal services, like those of all services, reflects a drastically changed economy and is a fact of which we are all aware.

Further evidence of increased charges to cover increased costs is provided by estimates of charges made by patent lawyers for various patent services in 1937 as compared to those made in 1959. Some figures were taken from different editions of a widely used book, "Inventions and Their Management," by Berle and De Camp. We have revised these figures and updated them to 1961 on the basis of informal discussions with patent lawyers throughout the country.

To some extent, these revisions have been corroborated with data provided us by National Aeronautics and Space Administration, which received bids from three patent law firms in California for the preparation of patent applications (appendix C-2).

It is my understanding that the committee has expressed interest in the relation of Patent Office fees to the total costs of obtaining a patent. We have given here the best data which we have. Fortunately, the committee can expect, I believe, that several witnesses who may appear at these hearings can of their own personal knowledge give the committee additional information about legal expenses connected with patents.

Table 6 shows that most costs connected with patent prosecution and litigation have at least doubled between the mid-1930's and 1960. This has reduced to approximately 9 percent the percentage that Patent Office fees now represent in the total costs for procuring a patent on a simple invention. Surely, there is no reason why Patent Office fees should not undergo a change proportional to the changes that have occurred in the cost of legal services connected with patent

procurement. We must remember that most of the applications filed in 1961 were prepared and filed by attorneys. Even the increased filing and issue fees proposed by H.R. 10966 would amount to less than 20 percent of the typical bill for obtaining a patent on a simple invention (fig. 6).

SUMMARY OF PROVISIONS OF H.R. 10966

I propose first to survey the specific provisions of H.R. 10966 and the revenue anticipated therefrom with only brief comments on the reasons for the charges. The detailed consideration of the reasons will be deferred. (In connection with the incidence of the fees, appendix C–3 may be helpful for it explains the examining process in conjunction with fig. 7.)

The more important of the Patent Office fees are collected in table 7, which indicates the date of the last change and the fee imposed prior to the present fees. Figure 8 illustrates the difference in income estimates for 1962 between the principal present fees and those proposed by H.R. 10966.

Section 1. Patent fees

Section 1 of the bill makes various changes in the fees payable to the Patent Office in connection with patent applications and patents.

The two basic fees in patent cases are a fee payable when the application for patent is filed and a fee payable when the patent is to be issued. These now are $30 each (with a charge of $1 for each claim in excess of 20, the results of which are relatively minor). These two fees produce approximately 50 percent of the revenue of the Patent Office.

Item 1 of section 1 proposes to raise the filing fee from $30 to $40 with a further payment of $2 for each claim presented in excess of 10 (whether in independent or dependent form) and $10 for each independent claim presented in excess of 1. The difference in form between an independent and a dependent claim is simple enough. A claim in independent form stands on its own in defining the invention, while the dependent form incorporates by reference a previous claim and adds some additional limitation. For example, a dependent form would be: "Claim 2. A life preserver in accordance with claim 1 and means to fasten the preserver around the waist of the user." A further discussion of dependent and independent claims and the reasons for the difference in charges will be made in detail later.

It is estimated that this revision will approximately double the income from filing fees for original and reissue applications. (See table 1.)

The second important change in fees by section 1 (item 2) is to raise the fee required to issue a patent from $30 to $40 with an additional charge of $10 for each page of specification as printed and $2 for each sheet of drawing. It is estimated that this change will more than double the income from the issue or final fee. (Illustrated in fig. 8.)

Section 1 also changes the design fee structure. Item 3 requires a filing fee of $20, an issue fee of $10, $20, or $30, depending upon whether the applicant wants a term of 3½, 7, or 14 years. The present design fee is a filing fee of $10, $15, or $30, depending upon the term of the patent that is wanted. One of the purposes in changing this section is to have design fees parallel the filing and issue fees for other types of patent applications and to avoid the present practice wherein an applicant files for a 3½-year term and, upon allowance, requests that the term be increased to 7 or 14 years, paying the balance of the fees. The increase in revenue from this change is less than $90,000 a year, but it is estimated that the change will reduce to a reasonable extent some of the burdens on the Office and, for that matter, on the applicant himself.

For a similar reason, section 1 changes the structure of the reissue patent fees from a flat charge of $30 for filing the application to a filing fee of $40 with an additional charge of $2 and $10 for total claims over 10 and independent claims over 1 newly presented (item 4); and an issue fee of $40 plus $10 for each page of specification as printed and $2 for each sheet of drawing (item 2). There is no fee currently charged for issuing a reissue patent. Here again, the revenue from the change is slight. There are only approximately 200 reissue applications filed each year; however, the revision will establish uniform treatment for all patent applications, whether original or reissue. It costs as much to print the reissue patent as it does an original patent, and certainly the cost of examining such applications, although it starts from where the previous application left off, can be and usually is substantial in most cases. These facts being true, it is not unreasonable for reissue applicants to pay the same fees as new applicants are required to pay.

Item 6 of section 1 changes the fee on appeal to the Board of Appeals from $25 to $50 if the Board considers the appeal on the merits and to $100 if an oral hearing is requested. It is provided, however, that all but $25 of either of these fees will be refunded if the applicant withdraws the appeal before the Board takes it up for consideration.

Here the purpose is twofold: (1) to increase the appeal fee to be more nearly commensurate with the expense involved, and (2) to encourage submissions on briefs or, at least at a minimum, make a charge for oral hearings, rather than burden those who are willing to submit their appeals on written briefs. Beyond this, we want to encourage withdrawals at the earliest possible time.

In many cases, after the brief is filed, the case is reconsidered, by the examiner, the claims allowed, and the appeal withdrawn. In other cases, the appellant may lose interest in the invention and abandon efforts to get his patent. In both cases, the fee structure will encourage applicants to resolve the issue at an early time and withdraw the appeal. This will unburden the Board of Appeals from its increasing backlog.

Approximately 60 percent of the appeals filed do not proceed to hearing or decision; as to these, there would be no change in the appeal fee. Of those decided, in only 30 percent is the examiner reversed in whole or in part.

The final important change in section 1 pertains to the recording of assignments. At present a basic charge of approximately $3, with small surcharges for size and additional items, is made to record an assignment even though a number of applications, registrations, or patents are assigned by one instrument. The combined charges average about $3.20. Item 10 of section 1 of the bill proposes a charge of $20 for each item recorded. A substantial increase in income to the Patent Office from this charge is illustrated in figure 8. One of the principal purposes in raising the fee for recording an assignment is to place more of the burden for Patent Office operations on those applications, patents, and registrations which have proved to be valuable. Presumably, there would be no traffic in patents, applications, and registrations which are valueless. Conversely, if anyone goes to the trouble to arrange an assignment of any one of these, it must have some value.

Items 5, 7, and 8 deal with procedures of relatively infrequent occurrence and the income from these is small. Changes are made to keep them in line with the other changes in the bill. The reference to certificates under section 256 in item 8 is new and to this extent a minor new fee is added.

The sale of printed copies of patent specifications at 25 cents per copy represents a large fraction of Patent Office income, at present about 20 percent of the total. No change in this fee is proposed, but item 9 of section 1 adds a provision giving the Commissioner authority to raise the charge to not more than $1 in the case of specifications above a certain size and for plant patents printed in color.

Sections 2 and 10, fees to be paid by Government agencies

Section 2 of H.R. 10966 provides that patent fees shall apply to Government agencies; in other words, they are to pay the same fees as anybody else, except that fees for incidental or occasional requests may be waived. Section 10 makes a coordinating change. Objections may be raised to this provision on the ground that it is purely a bookkeeping operation and should not be required.

To this, there are several answers. For one thing, it seems desirable to keep a record of how deeply involved other Government agencies are in the patent procurement business. This information would also be helpful in any evaluation of Government patent policy, and also in connection with various appropriation considerations.

We are not exempt from making payments to other agencies of the Federal Government. Most notably, we paid the Government Printing Office nearly $3 million in 1961 for printing patent specifications and various publications such as the Official Gazette and the like. If interagency transfers are simply bookkeeping entries, this should not have been necessary. However, I think it is a good thing. It causes us to keep our printing costs in mind and look for ways to simplify, reduce patent size, and the like. In general, it acts as a brake on the total outlay for the Patent Office operation and is, therefore, I believe, salutary in effect.

It does not seem unreasonable to allow the Patent Office to receive income from other Government agencies which file and prosecute patent applications. The applications filed by these agencies take up examining time and require other patent service functions just as do those filed by individuals and companies. There is no reason why their proportionate share of our costs should not be reflected in our income receipts just as those of any private individual or company are reflected.

The note on table 1 points out that we would realize approximately $300,000—based on the current volume of business—from fees paid by Government agencies if H.R. 10966 is enacted into law. For the even heavier commitments by Government in research and development programs, this is bound to increase. I believe the other agencies should pay for our services and a number of Government agencies, including the Bureau of the Budget, agree with this view. Any Government agency should be made to think twice before ordering many copies of many different documents. People tend to treat costs more respectfully when they come out of their own budget. It is good business to put some restrain on practices like ordering 7,882 copies of patents with a sale value of $1,970.50, requiring 2 man-weeks to fill the order, and then notifying the Patent Office that the copies were not wanted after all. This is not an isolated case.

Moreover, we have referred to what we call the incentive aspects of the bill to promote more efficient prosecution before the Office. There is no reason to believe that this discipline will be any less effective on practitioners representing Government agencies in soliciting patents than on those representing private clients.

As a matter of fact, the similar sections in the previous bill, H.R. 7731, responded to earlier action on this point by this committee. During an earlier hearing in 1955, on H.R. 4893, which required Government agencies to pay only certain fees and not all the major ones, it was the committee's suggestion that the Patent Office should collect all fees from Government agencies just as it does from private businesses. The committee reported a substitute bill, H.R. 7416 (H. Rept. 1201, 84th Cong.) in which it revised the provision so as to require Government agencies to pay all fees, including application and issue fees.

There is another compelling reason for this provision. The Patent Office goes before the Appropriations Subcommittees each year and is required to make a showing of how its income stacks up against its operating costs. Part of our deficiencies arise because Government agencies do not have to pay fees. If we can receive reimbursement for expenses falling upon the Patent Office because of demands of other Government agencies, as we must pay them for expenses incurred by the Patent Office, financial responsibility will be fixed and encouraged; and accountability to the Congress will be much easier for all.

Section 3, trademark fees

Section 3 of the bill makes various changes in fees related to trademark cases. In form, the section of the Trademark Act dealing with fees is reorganized, so that fees which are not changed are repeated. There are three major changes in trademark fees and a few minor ones. First, the fee for filing an application to register a mark is proposed to be raised from $25 to $35; second, a fee of $10 is made payable at the time an affidavit of use is filed (at the end of 5 years); and third, the fee for recording an assignment of a trademark registration is increased to $20 to be consistent with that for recording patent assignments.

For the first time, a fee is made payable on the filing of a petition to revive an abandoned trademark application. And, the fee for surrendering a registration has been dropped.

Section 4. Payment of issue fee

This section of the bill proposes a different procedure for the payment of the issue fee. At present a notice of allowance is sent to the applicant. There then is a 6-month period within which the final fee must be paid, and thereafter the patent normally issues within 7 weeks. (There is also a provision for the delayed payment of the issue fee up to 1 year.) It is proposed that once the notice of allowance has been mailed to the applicant, the Patent Office will proceed to issue the patent forthwith. In most cases, the patent will issue in a normal course of time (30 to 60 days) after the notice of allowance is mailed. The issue fee will be due 3 months after the date the patent is issued.

However, section 4 will permit the Commissioner to require a deposit to be applied against the issue fee before issuing the patent. This provision will give sufficient flexibility to the Commissioner so that in the case of particularly large applications, the heavy cost of printing is not incurred, or at least not incurred without good likelihood that the fees will be paid.

This particular arrangement for the payment of the issue fee is used for two reasons. First, it will allow the Patent Office to issue patents substantially sooner—in fact, the waiting period of 6 months for paying the final fee vanishes. This decrease in the period of pendency will permit us, without anything more, to get new technology to the public at an earlier date. Second, this particular arrangement as to the issue fee will enable the applicant to calculate the amount of the components of the issue fee easily before it is due.

If the fee were to be paid after the notice of allowance was sent out, but before the patent issues, it would be necessary to make a rough page count of the application and an estimate of how many printed pages are involved. Since applications have many interlineations and other additions and deletions during the course of prosecution, it would be quite time-consuming to attempt to make such an estimate. It might also be inaccurate in the final analysis. By waiting until after the patent issues, and basing the charge on the number of sheets of drawings and pages of specification as printed, the applicant can easily make an exact determination of the amount of the final fee and submit it within 3 months of the issue date.

Sections 5–8. Maintenance fees

Sections 5 to 8 of the bill introduce maintenance fees in patent cases. To keep a patent in force after it issues, the patentee would be required to pay a first fee of $100 due at the end of the 5th year of its life, a second fee of $200 due at the end of the 9th year, and a third fee of $300 due at the end of the 13th year. The successive payment of these fees is required to maintain the patent in force. Failure to pay any of them would result in the lapse of the patent.

Let me make a few comments on the maintenance fees.

First, a grace period of 6 months is provided in which to pay the maintenance fees as they become due. This is to save the patentee if he misses the anniversary date for some reason. The grace period provision also satisfies our obligation under the Paris Convention for the Protection of Industrial Property.

Second, there is a provision in these sections which permits deferment by an inventor who still owns his patent and has not made money or received value from the patent at least equal to the amount of the maintenance fee prior to the date that fee is due. For example, at the end of the fifth year, if the inventor still owns his patent, and has not made money, or received equivalent value from or under the patent, at least equal to the $100 fee required, he can file an affidavit to this effect and the payment will be deferred until the second maintenance fee is due.

At the end of the ninth year, if the inventor has not made at least the $200 then due (or received such value), he can request a deferment of the second fee by affidavit; a second deferment of the first fee can also be requested.

At the time the third maintenance fee is due (at the end of the 13th year), however, even though the inventor has not realized anything on his invention, the patent will lapse unless the fees then due are paid. This means an inventor-owner can maintain his patent in force for 13 years without any payment of maintenance fees unless and until he has successfully exploited his invention at least to a point where the benefits therefrom are at least equal to the cumulative amount of the first two maintenance fees.

In the case of maintenance fees and assignments, there is here an effort to place part of the burden of running the patent operation on those patents which prove successful at least to some extent.

The basic provision for maintenance fees is in section 6 of the bill; section 8 specifies the amount of the fees; sections 5 and 7 make incidental amendments.

Section 9. Time of coming into force

Section 9 works out the time of coming into force of various provisions which need special treatment.

The maintenance fees are not made retroactive to existing patents but are made to apply only to patents issued in the future in the manner indicated.

The new patent issue fee and issuance procedures apply to cases in which the notice of allowance is sent after the effective date of the act.

The new trademark affidavit fee is applied only to registrations issued after the effective date of the act and to certain old registrations which are brought into the condition of requiring the affidavit, after the effective date.

INCOME RESULTS OF THE BILL

The results of the fees specified in the bill are based on estimates for the current fiscal year (table 1). Under the present schedule of fees the income—using fiscal 1962 as a basis—is estimated at $7.7 million, which would be 31 percent of operating costs, and a lesser percentage of the budgeted operating costs for the coming fiscal year 1963. The effect of the maintenance fees would not commence for 5 years and would not become complete for 13 years; and the trademark affidavit fee would not come into the picture for 5 years. Without these items the return

from the bill would be $15 million or 60 percent of 1962 operating costs and about 55 percent of operating costs budgeted for fiscal year 1963. However, if all the fees were in full effect, the anticipated revenue would be $20,984,000, which amounts to approximately 75 percent of the budget for fiscal year 1963 which has been submitted to the Congress.

The results with respect to the major individual items are indicated in the following: Figures 9–13 depict the income derived from patent and trademark fees and also the operating cost incurred in the various segments of the Office. Figure 9 indicates that the patent filing fee at the present time accounts for approximately 32 percent of Patent Office income (*see also* tables 29–30).

The final fee accounts for approximately 18 percent, patent copy sales account for 20 percent, and trademark filing fees account for 8 percent. Hence, it can be seen that the two most important fees in terms of the income produced are the filing and final fees for patents.

Figures 10 to 13 break down the operating costs of the Patent Office by function. Figure 10 illustrates the distribution of operating costs between the functions of patent examination and adjudication, trademark examination and adjudication, and administration and program services. The patent examination and adjudication function accounts for approximately 77.1 percent of our operating costs, the trademark examination and adjudication function for approximately 4.1 percent, and the miscellaneous costs under administration and program services for approximately 18.8 percent.

Breaking the patent examination and adjudication function down further, figure 11 illustrates that examining and classification account for approximately 59.4 percent of the total Patent Office costs, with 17.7 percent accounted by the cost of printing and publishing, and the costs of Board of Appeals, Board of Patent Interferences, and research and development. Figures 12 and 13 similarly break down the trademark examination and adjudication costs and the administration program services into their respective parts.

Figure 14 compares the cumulative fee structures for selected foreign countries and the United States. For the United States, the present fees are compared with those that would be due if all fees under H.R. 10966 were paid.

HOW H.R. 10966 ACHIEVES ITS OTHER OBJECTIVES

I would like to turn now to some of the conditions—other than our low cost recovery which I have already discussed—which I feel can be improved by the proposed bill. They are in the order in which I shall discuss them:

1. The absence of a relation between the size and complexity of a given application and the fees involved;
2. The lack of incentives to encourage better practice before the Patent Office;
3. The delay in issuing patents; and
4. The accumulation of unexpired patents that are never used or whose disclosures are commercially superseded.

The absence of a relation between size and complexity and the fees involved

Item 2 of section 1 of the bill is directed to this problem. It calls for a charge of $2 for each sheet of drawing and $10 for each printed page of specification, thereby making the issue fee somewhat proportional to the size of the application. There is nothing new about this problem. It has been with us for a long time.

Simple fairness suggests that there should be a substantial difference between the charge on patents exemplified by No. 1,817,451 and on patents exemplified by No. 1,826,026. The former includes 40 sheets of drawings and 98 pages of printed specification, while the latter consists of 1 drawing and 1 printed page of specification. Nonetheless, even in 1932, the basic filing and final fees assessed for both were the same.

The situation is no better in the 1960's. Patent No. 2,925,957 (which includes 354 sheets of drawing and 216 pages of printed specification) was obtained for the same filing and final fees totaling $60 that were required for Patent No. 2,955,299 (which consists of 1 sheet of drawing and 1 page of specification).

Admittedly, in both comparisons, charges were made in the larger cases for claims over 20; but the fees for the smaller and larger cases are still comparable even when that is taken into account.

Here we are concerned not with how much money we should receive from patent fees, but where the money ought to come from. I think everyone would agree that there was a marked difference in the time required to examine the patents I have cited. Patents Nos. 1,817,451 and 2,925,957 are what are commonly

referred to as "jumbo" patents. They required large amounts of time on the part of the examiner, particularly when contrasted with the time required to act on patents Nos. 1,826,026 and 2,955,299. Even if it is assumed that the large patents contribute far more to the storehouse of technical knowledge—a doubtful assumption—there is no reason why inventors whose inventions are described in short applications should be required to pay a large share of the cost of examining and issuing the "jumbo" patents. Many pioneer patents—for example, 821,393 (flying machine), 879,532 (triode vacuum tube), 2,524,035 (transistor)—involved short patent disclosures.

Figure 15 compares disposal rates for the average examiner who examines subject matter of different degrees of complexity. Those divisions that handle more complex subject matter have average disposal rates substantially below those that handle what we call ordinary or simple inventions. And the complex application divisions even have disposal rates substantially below the overall average for the Office, whereas those handling simpler subject matter are well above the overall average.

Figure 16 illustrates this another way. It shows the relationship—or more precisely, the lack of relationship—between the number of claims and number of sheets of drawings and pages of specification, based on a sample of patents issued in 1961. With respect to this sample, table 14 shows that the overall average number of sheets of drawing is 2, the average number of pages of printed specification is 3.7, and the average total number of claims is 6.7. But it also shows that the overall averages cover a wide range. If there were perfect correlation, all the lines connecting the number of claims to the average number of sheets of drawings and to the average number of pages of specification would be parallel. in our judgment, it is not fair to the applicant on the low end of the range to pay the freight for those on the high side. It is our hope that this condition will be, in part, corrected by the structure of the present fee bill.

Not only does the uniformity of the present fees unnecessarily assess the applicant who files a short and succinct disclosure, but it provides no economic incentive to the good practitioner. We want to encourage applicants and attorneys who file good applications and in some way discourage those who employ unnecessary drawings, redundant and excessive descriptions, and unreasonable permutations and combinations of claims.

We believe that the discrepancy between the size and complexity of inventions, on the one hand, and the fee involved on the other, needs correction. A more reasonable relationship should be established between these factors, and this is what item 2 of section 1 of the bill is designed to do.

The lack of incentives to encourage better practice before the Patent Office

1. *Claim obscurity and prolixity.*—As I mentioned earlier, item 1 of section 1 of the bill calls for a charge of $10 for each independent claim in excess of 1 and a charge of $2 for each claim, independent or dependent, in excess of 10. (Sec. 112 of title 35 states in part, "The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.") Item 1 of section 1 of H.R. 10966 has a provision that will do much to discourage the unreasonably multiplied permutations and combinations of claims filed by some applicants and to encourage the dependent form of claim.

The need to check the unnecessary multiplicity of claims contained in patent applications has been long acknowledged. In 1924 a Committee on Patent Office Procedure was formed by the Secretary of the Interior (the Patent Office was then a bureau of the Department of the Interior) by inviting several Patent Law Associations, the Chamber of Commerce of the United States, the National Association of Manufacturers and the American Engineering Council to nominate representatives to serve on the Committee. The membership of the Committee was distinguished, and a list of the members is attached hereto as appendix C–4.

The Committee filed its report with the Honorable Herbert Hoover, then Secretary of Commerce, on April 15, 1926. (The Patent Office had by that time been transferred to the Department of Commerce.) Among the observations and recommendations of the Committee was the following:

"The work of the Patent Office is enormously and unnecessarily added to by the multiplicity of claims contained in applications. There is no one change which would be so helpful in the present situation as the placing of a limit upon the number of claims. There are attorneys who make a practice of writing claims by a permutation and combination formula or system. Such a practice is unnecessary and is fearfully wasteful of public money."

Later commentators on the patent system and the Patent Office have perceived the same difficulty. For example, Mr. George E. Frost of Chicago in his monograph "The Patent System and the Modern Economy," which was published as study No. 2 in a series sponsored by the Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, U.S. Senate said:

"A broad field for improvement—helpful to the Patent Office, the public, and applicants alike—lies in simplifying and streamlining the preparation and prosecution of patent applications. Excessive numbers of patent claims, for example, extend the time required for the examiner to pass on an application and, if embodied in the issued patent, they unnecessarily complicate the efforts of competitors to evaluate the patent and labors of a court in enforcing it. However, with an understandable abundance of caution—and in some instances because of inadequate care in preparing the applications—patent applicants may file a number of claims greatly in excess of those called for by the circumstances. No categorical rules can overcome this difficulty—for there are occasions when many claims are necessary. The solution to the problem accordingly lies in giving the Patent Office ample authority to control the number of claims and *in placing a substantial incentive upon the applicant to submit only such claims as are really necessary.*" [Emphasis added.]

Item 1 of section 1 of H.R. 10966, by setting different fees for dependent and independent claims, is designed to provide the incentive of which Mr. Frost speaks.

To date, the only effort to charge according to the number of claims became law in 1927. It invoked a nominal charge of $1 for each claim in excess of 20. However, the regulatory effect of this nominal charge, if such was intended, is not demonstrated by the facts. A study designed to evaluate this effect showed that in the applications surveyed there was no statistically significant decrease in the number of claims over 20.

One phase of an examiner's job is to analyze the differences between claims so that he can ascertain in what areas he should look for anticipatory art. In an effort to measure the time required for an examiner to analyze the differences in scope when the forms of the claims are different, a number of experienced examiners were asked to evaluate a selected number of patents having claims in both independent and dependent form. (As I mentioned earlier, the independent form requires no reference to any other claim, while a claim in dependent form incorporates merely by reference a previous claim and adds some additional elements or limitations.) Figure 17 demonstrates that even in the case of simple patents, the time saved in analyzing the differences between claims is approximately 2 to 1 in favor of the dependent form of claim. (See also table 9.)

To make the point more clearly, consider patent No. 1,817,451. It not only includes 40 sheets of drawings and 99 pages of printed specifications but over 900 claims. Reflect for a moment on the difficulty faced by an examiner, even if he is experienced, in analyzing the differences between these claims, a job which he must do to perform his examining task properly. There is no reason why this sort of prolixity in claiming should be allowed. It should be discouraged.

One way of reducing the number of claims, in order both to establish better practice in the Office and to make the job of interpretation easier for the courts, is simply to require applicants to limit the number of claims which they file.

We submit restraints through financial incentives will be more effective than a mere power in the Patent Office to restrain prolix claiming. An applicant can always contest a Patent Office rejection of claims for multiplicity. The work imposed on the Office in adjudicating such a contest can be as great as an adjudication on the merits of the claims themselves. The cost incentive that we propose is self-executing and continuing.

Figure 18 is helpful in demonstrating the difference in form between independent and dependent claims and the marked advantage of the dependent form. In this display of the claims for a simple inventive concept, note that the four claims of the patent were written in independent form, so that it is difficult to ascertain the differences between them without a careful comparison. Yet claims 1, 2, and 4 differ from claim 3 only in minor ways. Claim 3 is the broadest claim, but the reader is not aware of this in his first scanning. Had the claims been written in the dependent form you see in figure 18, with claim 3 first, the examiner's job clearly would have been easier. He would have been able to tell immediately that the claims differ from one another only slightly. Multiply this savings in the time to analyze one application by the more than 80,000 applications examined per year, many of which concern much more difficult technology than does the patent of figure 18, and you will be able to appreciate what this dependent claim

form can mean in our efforts to reduce the backlog of pending applications. H.R. 10966 will encourage the drafting of claims in dependent form, to the everlasting appreciation of all those in and out of the Office who must subsequently evaluate them.

As I have noted, the purpose of the claim structure fee differentials for claims is to put a premium on limited numbers of claims and on the dependent form, not only for the sake of the Patent Office, in which the examining process will be made easier, but also for the sake of the courts. The courts in a number of instances have commented rather critically on the unreasonable numbers of obscure claims before them.

For example, as to multiplicity of claims, Judge Learned Hand in *Victor Talking Machine Co.* v. *Thomas A. Edison, Inc.*, 229 Fed. 999 (S.D.N.Y. 1915), at one point commented:

"* * * the court should discourage * * * practice which permits 48 claims on a simple and perfectly obvious machine like this. Such claims violate the very purpose of any claims at all, which is to define the forbidden field. In such a waste of abstract verbiage it is quite impossible to find any guide. It takes the scholastic ingenuity of a St. Thomas with the patience of a yogi to decipher their meaning as they stand."

And as to prolixity, Judge Hand had this to say:

"* * * Amid the wilderness of words I have tried to find and tread a path of logic, though the simpler way might have been to rest the case upon broader lines."

In 1873, Mr. Justice Bradley said in *Carlton* v. *Bokee*, 17 Wall. 463 (472 U.S. 1873), with respect to ambiguous specifications and nebuluous claims:

"Without deciding that a repetition of substantially the same claim in different words will vitiate a patent, we hold that where a specification by ambiguity and a needless multiplication of nebulous claims is calculated to deceive and mislead the public, the patent is void."

The evils of which Judge Hand and Mr. Justice Bradley spoke are still prevalent. For example, Judge Brown in *Thurber Corp.* v. *Fairchild Motor Corp.*, 269 F. 2d 841, 850, (5th Cir., 1959) said:

"There is no question but what the claims are complex and drafted with language and in a style that makes them difficult if not impossible for laymen—and indeed, for most lawyers and judges—to understand. As an example of that with which the jury was confronted, we have set forth in the margin the 334-word sentence which is claim 45 of the * * * patent."

The dependent form of claims is important, not only because it facilitates the examining process in the Patent Office and makes the interpretation by the courts easier should the claims ever be litigated, but also because it helps industry to understand better what is being claimed by others.

The purpose of claims is to define the invention clearly, not to obscure it—for the Patent Office, the public, and the courts. Dependent claims serve the purpose of setting out in clear relief the distinctions among various claims.

This clarity is especially important when new claims are added late in the prosecution of a patent application. There, unless the examiner can readily grasp the relationship of the new to the older claims in the same case, there is a hazard that limitations upon which the examiner has insisted as a condition of allowance may be omitted and the omission escape his notice.

Mr. Harry R. Mayers, general patent counsel, General Electric Co., in a lecture before the Practicing Law Institute in 1956, listed the disadvantages of excessive patent claims as—

(1) Adverse effect upon the examiner's determination of patentability,

(2) Adverse effect upon the court's approach to the issue of validity and infringement and to the application of the doctrine of equivalents.

This incentive to use dependent claims is consistent with the "Recommendations Affecting Prosecution of Patent Applications," filed with the Commissioner of Patents by a committee of primary examiners in 1961. (There are at present some 75 examining divisions in the Patent Office, each headed by a primary examiner.) Their report urged: "In order to facilitate consideration of the claims it is recommended that [the] applicant be strongly urged or required to present the claims in a form convenient for the examiner to consider such as in an orderly sequence as well as an orderly internal arrangement." The report further recommended a change in Patent Office rules to require that where claims "are substantial duplicates except for added elements or restrictions, they should be placed in dependent form * * *" 43 JPOS 317,319,322 (1961).

2. *Excessive and circumlocutory disclosures.*—I mentioned previously that item 2 of section 1 of the bill would set a charge of $2 for each sheet of drawing

and $10 for each printed page of specification. We hope by this measure to limit obfuscating verbiage by encouraging an applicant to consider seriously his inventive concept when he first prepares the application. In far too many applications, the invention is submerged in circumlocution. This not only makes it difficult for the courts when they are called upon to interpret the patent document, but also places an unconscionable burden on the examiners during the prosecution of the application. We want to use the fee structure of H.R. 10966 to promote adequate, but concise disclosure, consistent with the requirements of the patent laws.

3. *Appeals.*—Item 6 of section 1 of the bill, as I mentioned earlier, calls for an appeal fee of $100, $50 of which would be refunded if an oral hearing is not requested prior to consideration by the Board. In the event the appeal is withdrawn prior to any substantive consideration by the Board then the cost to the appellant would be only $25, the rest of the appeal fee being refunded to him.

The Board of Appeals receives for its consideration 4,000 cases each year and its backlog is high. Another 6,000 appeals are filed annually, but withdrawn before consideration by the Board. One thing which contributes to the Board's problems is the fact that so many oral hearings are requested and then not attended. Table 10 sets out some statistics on the Board. Approximately 25 percent of the applicants requesting an oral hearing withdraw their requests and often they do not notify the Board that they are not going to appear until a few days before the hearing date, and about 33 percent of the appellants scheduled to appear for oral hearings do not even bother to inform the Board that they are not going to be present for the hearing.

There can be little doubt that at least some appeals are perfected to the Board of Appeals for the purpose of delay. It is sometimes safer for an applicant to appeal and pay the negligible fee now required than to take the responsibility and stand the expense of reaching a business decision to abandon the application. Because of this, a recent management survey of the Patent Office, of which a copy of the final report has been sent to the chairman of this subcommittee, in one of its 179 specific recommendations, urges an "increase [in] the fee for filing notice of appeal."

While we cannot calculate with absolute certainty what this means in terms of the loss of efficiency, there can be no question that the loss exists. Equally important, such practice diminishes respect for the Board and the Patent Office. It is the type of practice that should not be countenanced on any basis. An attorney would not ignore a hearing scheduled before a judge in a court of law without informing the court. Knowing the consequences, he would be mindful of his obligations.

The proposed appeal fee has been arranged to encourage timely withdrawals of appeals, and to encourage parties to waive oral hearings when they are not necessary and/or there is no intent to be heard.

THE DELAY IN ISSUING PATENTS

The unreasonable delay between the time a patent application is filed and the time the patent issues is a longstanding problem which the Patent Office has faced and which has occasioned regretful comment by a number of persons interested in the patent system. (See the discussion of Dr. Vannevar Bush in "Proposals for Improving the Patent System," Doc. 21, Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, U.S. Senate, 85th Cong., 1st sess., passim, especially p. 7.)

Ideally patents should issue promptly. In every appropriations hearing for the Patent Office, for many years, the Congress has expressed concern about the backlog. Indeed, it is often the dominant element of discussion at the hearings. The substantial buildup in the staff of the Patent Office since 1955 was authorized with the understanding that this was done to reduce the backlog.

There are several compelling reasons why patents should issue promptly. First, a patent is granted for 17 years from the date of issue, and an unduly prolonged pendency extends the life of the patent. The Senate at one time was so much concerned about long pendency that it passed a bill to limit the life of patents to not more than 20 years from the time of filing (S. 2688, 76th Cong., passed the Senate Apr. 26, 1940).

Moreover, the consideration for the grant of the patent is the disclosure of the invention to the public; and that disclosure is made to the public when the patent issues. This consideration is of special importance today when the rate of technological innovation is at an alltime high and increasing. Beyond that, while a

patent is pending, important business decisions about investment must often be delayed both on the part of the applicant or his assignee and on the part of competitors. All of these reasons argue for as prompt an examination and adjudication of patent applications as possible.

While the period of prosecution of an application has varied over the years, at the present time it takes an average application more than 3 years to go through the examination process. Consistent with proper examination, this period should be reduced to provide for early publication, thereby stimulating the research and product competition of others.

A fee bill, at least in part should seek to reduce unreasonable delay in prosecution, and it is believed that the issue procedure provided by H.R. 10966 works toward this end.

Figure 19 compares the period of pendency of a typical application in 1960 and 1961 with the period expected under the new arrangement. In 1960 the typical period was 37 months; and even with the shortened time for response following the third Office action, which, as I have said, was instituted in 1961 to speed up final disposition of the older cases, the period now averages 34 months. Under this bill, the average spread between the application filing date and the issuance of the patent would be reduced to approximately 27 months. This would be accomplished by issuing the patent immediately after allowance as a matter of course, and collecting the fee after issue. The present practice is to notify the applicant that the patent is believed allowable, give him 6 months in which to pay the final fee, and thereafter permit him to defer issue of the patent up to 90 days after the final fee is paid. (See app. C–3.)

H.R. 10966 will not reduce the period of pendency of applications as much as we would like to reduce it, but it will help.

THE ACCUMULATION OF UNEXPIRED PATENTS THAT ARE NEVER USED

A reduction in the number of unexpired patents, for which use or potential use is not contemplated by the patentees, would simplify right-to-use investigations which are undertaken by parties prior to commercial use of a product in order reasonably to ascertain that they will not be infringing the rights of others.

I explained earlier the maintenance fees that would be required by sections 5 to 8 of the bill. If the history of the patent systems of European countries may be used as examples, we have every reason to believe that a dramatic reduction in the number of patents in force at any one time will occur under a maintenance fee system. Figure 20 illustrates the renewal experiences of a selected number of foreign countries. Roughly speaking, in the experience of these foreign countries, after the first 5 years of the period considered, around 80 percent of patents were still in force, after the 9th year about 30 to 50 percent were still in force and after the 13th year only 20 to 25 percent were still in force. These times run from the filing date of the application and not the issue date; in our calculations we have adopted the figures of 50 percent after 5 years, 25 percent after 9 years, and 15 percent after 13 years, these times being from the issue date of the patent (see table 11). What this means can best be appreciated when it is remembered that we now issue approximately 50,000 patents each year and this number will increase if the present trend continues. At this rate, we will have approximately 850,000 patents in force, say, 15 years from now. If, on the other hand, maintenance fees are in effect during that period and the experience of European countries also proves to be ours, instead of 850,000 there would be only about 430,000 patents still in force. The resulting simplification in infringement searches, and in other investigations, primarily concerned with patents still in force, would be of considerable help to industry. In addition, new businesses would be far freer to utilize prior art in the development of their products and processes.

POSSIBLE OBJECTIONS TO H.R. 10966

Arguments may be made, just as they have been in the past on bills designed to raise the level of fees for Patent Office services, that the proposed bill will impede progress in general and, in particular, that some of its provisions are discriminatory.

If we were to catalog the objections to this bill, they would go something like this:

1. Fees should not be raised because the patent system benefits the public and the applicant is a public benefactor to be honored, not taxed.

2. Higher fees will suppress the flow of applications by reducing the incentive to inventors, and the patent incentive to technological innovation will abate accordingly.

3. The claim differential charges are unreasonable, arbitrary, and discriminatory.
4. The issue fee is harsh and unworkable.
5. The fee for recording an assignment is much higher than the actual cost of recording the document.
6. The fee structure favors applicants and unfairly discriminates against patentees and assignees.

I think we should face these arguments squarely. Let us take them up in order.

1. Argument: Fees should not be raised at all

There is little support for this contention at the present time. Bar associations, and many private attorneys have stated for a number of years that some reasonable increase in fees is both desirable and necessary. For example, the American Patent Law Association in 1953 adopted the following resolution:

"Whereas, it is understood that the Director of the Bureau of the Budget, after studying the question of charges which should be made by the various departments of the Government for services which it renders, made a statement which may be summarized in substance as follows:

"1. Where the service rendered is a special, direct benefit to the recipient of that service, full payment should be made for that service;

"2. Where the service is only a public service no specific charge should be made for the service, the total cost to be borne by the Government;

"3. Where the service rendered is one which is partly of direct benefit to the recipient of the service and is also of service to the public generally, an equitable division of the costs should be made between the two;

"4. Where there is doubt as to whether or not there is special direct benefit to the recipient of the service, the costs of rendering that service should be borne by the Government: Now, therefore, be it

"I

"*Resolved,* That the American Patent Law Association approves in principle the impartial application of these stated propositions to all Government agencies.

"II

"*Resolved,* That the granting of patents and the distribution and sale of patent copies is beneficial to the public as well as to the patentees and is a joint service to both, the cost of which should be equitably divided.

"III

"*Resolved,* That if an adjustment of Patent Office fees be required to effect such a division of cost, the valuation of printing done for the Patent Office by the Government Printing Office should be made to accord with its competitive commercial value.

"IV

"*Resolved,* That the services rendered and goods sold in all Patent Office operations other than the examination of patent applications and the granting of patents thereon, and other than the distribution and sale of patent copies, should be deemed a special, direct benefit to the recipient who should make full payment therefor.

"V

"*Resolved,* That an increase of Patent Office fees conforming to these principles is supported by the American Patent Law Association."

While this resolution acknowledges the relevance of the special benefit theory, it should not go unnoticed that the exception stated in section IV of the resolution relates to nearly 80 percent of the expenses of the Office. Especially on the proposition that the patent system benefits both the public generally and the patentee specially, it is interesting to compare this resolution with the Bureau of the Budget letter attached to this statement. The Patent, Trademark, and Copyright Section of the American Bar Association is also on record as approving "a reasonable increase" in fees charged by the Patent Office.

The fact that we have covered our operating costs in the past has also suggested to many others that there should be some relation between fees and operating costs. For example, the report of the House Committee on Appropriations of the 79th Congress, 2d session, Report 1890, 1947, had this to say:

"The committee believes that this agency should again be made self-sustaining by increasing many of the fees connected with the processing of applications and the sale of copies of patents. Recommendations for major changes in the present fee system are now before the Patent Committee of the House."

Members of the House and Senate Appropriations Committees have made it clear for many years that the Patent Office should collect a higher percentage of its operating costs. (See app. C–1.)

For example, Senator Ferguson had this to say at one appropriations hearing.

"We have been talking about this in the Judiciary Committee for years, and the chairman has urged this for years. There seems to be always a resistance to the Patent Office on charging, on getting your fees sufficient to carry it" ("Department of Commerce appropriations for 1952", Committee on Appropriations, U.S. Senate, 82d Cong., 1st sess., H.R. 4704.)

In sum, the argument that our fees should not be raised is no longer consonant with the times.

2. Argument: Higher fees means fewer applications

This objection is leveled against any fee bill that proposes to raise fees. It is, I believe, ill founded. We may approach this contention by considering the per capita figures for application submissions. The per capita filing of applications in the United States is less than in many European countries even though these countries have substantially higher fees. Table 12 makes this clear. For example, in Germany the per capita number of applications filed is 1.01 per 1,000 population. By contrast, the U.S. per capita figure is 0.44. High per capita figures are also prevalent in Great Britain (0.61), the Netherlands (1.00), Sweden (1.65), Norway (1.09), and Switzerland (2.63). A large proportion of the applications filed in these countries are filed by U.S. companies. These figures exceed those of the United States, even though all of the European countries named have maintenance fees—which American patent owners pay as well as do others—and the total sum of the fees paid during the life of a patent is considerably greater than the U.S. total of $60.

The experience of European countries fails to bear out the fear behind this objection in another way. European countries have not found that the number of applications filed decreases significantly after they increase their fees (table 13). Many European countries increased their fees in the 1950's, some even twice. There was no significant change in the number of applications filed before and after the fees were changed. This suggests, at least to some extent, that increases in fees have not had depressing effects on the number of patent applications filed.

Here, again, it is relevant to say that the present filing and final fees (and those proposed by H.R. 10966) constitute a relatively small part of the cost of obtaining a patent of average size when an attorney is employed (table 6 and fig. 6). And approximately 96 percent of all applications filed in the U.S. Patent Office are prepared by someone other than the inventor. It is not unreasonable to assume that this percentage reflects, with a small margin of error, the number of applications prepared by attorneys. Many of the few inventors who prepare their applications themselves subsequently have them prosecuted by an attorney, upon either their own initiative or that of their assignees, as the case may be.

Now let me talk about the "garret," indigent, or independent inventor about whom this committee, I expect, will hear a great deal if past hearings are a guide. It is sometimes asserted that by increasing the fees even slightly we will discourage the independent inventor from filing his application, and therefore will prevent the public from obtaining his inventive contributions. In spite of the fact that inventions are coming increasingly from complex research centers, we feel, nevertheless, that the independent inventor should be given consideration.

This bill treats him equitably. It permits him to defer the first two maintenance fees if he has not been successful in exploiting his invention. It minimizes the increase in the filing fee in comparison to the issue, appeal, assignment, and maintenance fees, so that he can have his "day in court" at a minimum price. And, finally, under this bill the small application that he usually files is less costly than are the lengthy applications filed almost exclusively by corporations.

In point of fact, much of the rhetoric against rises in Patent Office fees is inevitably cast in terms of the small inventor. Yet, as shown by our assignment records, over 70 percent of patents issued in 1961 were assigned to companies and to the U.S. Government.

3. Argument: The claim fee differential is unrealistic and unfair

I have already dealt at length with the unreasonable impositions that vast numbers of prolix claims in applications make on examiners, judges and other attorneys. I think that this alone answers the argument that economic incentives for better claim practices are unfair or unrealistic.

One may look at the claim practices in European countries, where applications are filed on most important U.S. inventions. Table 14 enumerates the characteristics of the average patent in the United States, Great Britain, and Germany. These figures show that the average U.S. patent is substantially larger than its German and British counterparts, and that the number of independent claims in a U.S. patent averages 4.38, compared to 1.02 in German patents, and 2.70 in British patents. Certainly there are differences in patent practices and law in Great Britain, Germany, and the United States (both as to the approach they take to patent disclosures and as to the breadth of protection their courts provide). The fact remains that these examining countries, in common with most other examining countries in the world, require the applicant to limit himself to a few independent claims. In Great Britain, rarely is an application filed that has more than four independent claims. Any number over a very few is rejected by the examiner, as a matter of course, as unnecessary. The British patents agents, recognizing that the courts will uphold the Office in this connection, withdraw excessive claims. More often, they are never submitted. In Germany, practice requires that a main claim be used with other claims depending from it, as I illustrated to you in connection with figure 18. Any other method of claiming is almost always refused consideration.

The American Bar Association has recently acknowledged that the use of dependent claims should be encouraged. At the meeting of the Section of Patent, Trademark, and Copyright Law of the American Bar Association at its annual convention in St. Louis last August, the following resolution was adopted:

"*Resolved,* That the section approves the principle that, in the case of any additional fee for excess claims over a predetermined maximum, a lesser fee be charged for claims in dependent form to encourage their use."

4. Argument: The issue fee is harsh and unworkable

The size of an application, in terms of the number of pages of specification and the number of sheets of drawings, has a direct bearing on the amount of time it takes an examiner to study and understand the invention, regardless of how many claims define the invention. It seems eminently fair to me, without saying how much an issue fee should be, to say that those applicants who file the longer and more complicated patent applications should bear a greater proportion of the cost of operating the Patent Office than those applicants who file short, succinct, and simple disclosures.

The reasonableness of the components of the proposed issue fee is evidenced by the cost of printing alone. (See table 3.) Ignoring completely the increasing difficulty of examination, which is at least roughly related to the length of the specification and the number of sheets of drawings, the cost for printing and publishing an average patent is approximately $63. This amounts to a printing charge per page of approximately $15 (excluding the printing cost for the Official Gazette and other materials allocable to the patent). As I have noted, this is not an internal cost which is subject to the natural error of any estimated cost, but is the amount which the Government Printing Office charges us for printing the patent specification. Over and above this, it costs us $1.75 for each sheet of drawing in the patent.

If we add to the printing cost and complexity factor, the cost of examining the application and providing other services in connection with it, it is abundantly clear that the proposed charge of $10 for each page of specification as printed and $2 for each sheet of drawing is quite low.

Originally we considered suggesting a charge for the number of pages of specification as filed and the number of sheets of drawings as submitted. One of the difficulties with this proposal, however, was the objection earlier raised by members of the bar to the effect that it would be difficult to compute the actual fee in advance. For this reason, we preferred the issue fee set forth in H.R. 10966. Under the concept embodied in H.R. 10966, it is a simple matter for the applicant or his attorney to determine the exact amount of the issue fee after the patent issues and before the fee is due.

Some have opposed a charge based on the size of the patent, arguing that a charge for the number of claims is really a charge for length, and hence, a double charge for size. Our studies do not bear out this theory. Though there is some

rough correlation between the length of applications and the average number of claims, figure 21 shows the scatter for applications is large (the horizontal lines represent the average number of claims for each 40 pages of specification). The data for figure 21 were taken from two divisions that handle complex subject matter and a high percentage of jumbo applications, but the fact remains that the variations in the number of claims for applications of a given size are extreme. This should dispel any misgivings that our claim differential charge is primarily a charge for lengthy applications. Rather, it is a charge to encourage clarity in claiming and to discourage prolixity. The charge for the long and complex application is obtained by the proposed issue fee.

5. Argument: The assignment recording fee is too high

H.R. 10966 proposes a substantial increase in the fee for recording assignments. I do not pretend that this is based upon the actual cost of the work to the Patent Office. It is primarily an effort to provide income which otherwise would have to be recovered by increasing the other fees provided for in H.R. 10966.

This is not to say that there are quite defensible reasons for a recording fee of the size provided for in H.R. 10966.

As I have previously pointed out, patents would not be assigned if the assignee did not consider them of value. At least, we know that this recordation fee is being assessed upon a person who is receiving value from the patent system.

As I have stated, more than 70 percent of patents nowadays are issued or assigned to American or foreign companies or the U.S. Government (table 15). Surely when the cost of an average application prosecuted by corporations is probably $1,500 to $2,000, the assessment of a $20 recording fee for recording the assignment to them of the invention is not unreasonable.

In sum, all we are trying to do is assess some part of our operating expenses against assignees of patent and trademark instruments rather than against the applicants themselves. Under this arrangement, until an inventor is able to sell his invention, nothing is exacted from him by the proposed recording fee. Once he has successfully sold his invention it would not seem unreasonable to require the purchaser of that property to pay a fee for the privilege of recording the valuable interest transferred to him.

6. Argument: The fee structure discriminates against patentees

The objection may be made that this bill does discriminate against patentees and assignees. We have exercised judgment, however, in allocating the fee cost as between applicants, patentees, and assignees in order to obtain both the necessary incentives to good practice and the necessary revenue.

For example, the charge of $10 per page of printed specification and $2 for each sheet of drawing is a charge designed to reduce excess verbiage in applications as filed. To this extent, the applicants whose applications are abandoned do not pay this charge for complexity and length, and it is instead borne by the patentees.

It is our judgment that those who are successful in obtaining patents can to some extent pay for the cost of the examination of unsuccessful applications. Even so, the issue fee is still much below the actual cost of examining and issuing patents.

Maintenance fees are more favorable to applicants than to patentees. Applicants will not bear the maintenance fees at all. Four or 5 years after the patent issues, the patentee is in better position to judge whether his invention is worth paying the renewal fee. If it is worthless, he skips the fee and the patent lapses. If it has value—as little as $100—he pays the fee and is confirmed in his rights and benefits.

In all these cases, to some extent, we have proceeded on the theory that beneficiaries of issued patents should bear part of the burden of the Patent Office and the patent system which made these benefits possible.

I emphasize that I do not regard this as a naked ability-to-pay principle. As between the applicant and the patentee, the examination system is for the patentee, not the applicant. The Patent Office and our examination system are great hurdles to the applicant; they are great safeguards to the patentee. The applicant must convince the Patent Office that his invention is patentable over all the world's prior art. Many applicants will testify that this may be an arduous task. The patentee, however, because of the examination in the Patent Office and his success in the Patent Office, has a legal presumption of the validity of his patent and protection against the award of patents to worthless rivals. I suggest, therefore, that it is not at all unreasonable that the patentee share in the cost of maintaining the Patent Office and the examining system.

Opposition to maintenance fees is by no means universal. The proceedings of the Patent, Trademark, and Copyright Section of the American Bar Association after the 1961 St. Louis meeting reported (pp. 59–60):

"Robert C. Watson [the former Commissioner of Patents] * * * said that during six trips to Europe during his service as Commissioner of Patents he asked two questions of the heads of foreign patent offices. These were: First, is there a full cost recovery in your country of the cost of operation of the Patent Office? The answer always was 'Yes.' Second, is there any disposition by any elements in your country to eliminate maintenance fees? The answer was always 'No.'

"He saw many advantages to the adoption of a system of such fees * * *."

Thus, we have made an effort to place as little burden as possible on the individual seeking to present his invention and determine its value if any. There can be no doubt that the incentive to invent is not materially weakened.

Persons opposing this fee bill must make up their mind, assuming some fee increase is necessary, about where the burden should be placed. If they do not want to harm the independent inventor and the incentive to invent, then our judgment seems sound. On the other hand, if they really don't care about the small inventor, they can suggest substantial across-the-board increases of all fees.

ARE THERE ALTERNATIVES?

Some may argue that the structure of the fees in H.R. 10966 is not fair even though the total estimated income, on balance, is not unreasonable. To this, we can only say that we have made an effort to allocate the impact of the fees consistent with the substantive features we believe are important, so that those who have applications, patents, and registrations of demonstrated value, will bear a larger share of Patent Office costs attributable to them than will those who are not so fortunate.

It should be incumbent upon those who object to specific features of H.R. 10966 to suggest what other fees should be increased or what new fees should be established to make up for the loss that will occur if the feature they consider objectionable is eliminated or modified. For example, it can be argued that the assignment fee is unreasonable. But if the amount of this fee is materially reduced, which fee should be increased to make up the loss? Should the maintenance fees be increased to a higher level, as they were in the earlier bill (H.R. 7731)? Should the filing fees be raised to $100, $200, $300? Should the issue fee be doubled or trebled so that the other fees can be reduced? In each case, a judgment must be made as to where the burden of fees for the operation of the Patent Office should be placed.

We here submit our judgment on the desirable balance among filing and issue fees, design fees, trademark fees, appeal fees, recording fees, and maintenance fees. Other judgments are possible. It perhaps cannot be argued that our judgment is the final word.

At the very least, however, anyone who objects to this bill, in whole or in part, should propose alternatives which increase Patent Office income and beneficially affect Patent Office work.

SUMMARY

Let me sum up. The first question here is, Should the Patent Office recover a substantial portion of its costs? Several Members of Congress have said "Yes," the Bureau of the Budget says "Yes," and we say "Yes." The President through his budget has also said "Yes."

Upon that assumption, how should the fees be changed? We submit that they should be adapted to influence beneficially the work of the Patent Office, consistent with recommendations of expert committees and knowledgeable commentators on the patent system.

In the final analysis, the issue is one of fiscal responsibility. If one is not to use that phrase as mere pious talk, then he who speaks must be fiscally responsible even when it touches his own pocket. We must not talk only about those sacrifices which others are supposed to make. And that is particularly true of the beneficiaries of the patent system, which is now in rough waters and will need even more congressional help in the years ahead.

APPENDIX A. LIST OF FIGURES

Figure number and description

1. Income and operating costs, U.S. Patent Office (1910–63). (See table 18.)
2. Operating cost increases: Trends in United States and selected foreign countries compared on 1930–39 base. (See table 20.)
3. Recovery of patent costs (1957–60 average): United States and selected foreign countries compared. (See table 19.)
4. Cost recovery (selected countries): United States compared with selected foreign countries. (See table 21.)
5. Patent fees (United States): Present fees in terms of 1932 dollars compared with 1962 dollar-equivalent and fees proposed in H.R. 10966 for an average application. (See table 23.)
6. Patent costs: That portion of total for obtaining a patent represented by present filing and issue fees and those proposed by H.R. 10966. (See table 6.)
7. Patent application flow diagram: Illustrates the examining process.
8. Income from selected fees (1962 estimates): Present fee schedule and that of H.R. 10966 compared. (See table 1.)
9. Income by fees (1961): From various Patent Office fees. (See table 22.)
10. Distribution of operating costs (1961): For U.S. Patent Office. (See table 29.)
11. Patent examination and adjudication (1961): Operating costs for U.S. Patent Office. (See table 29.)
12. Trademark examination and adjudication (1961): Operating costs for U.S. Patent Office. (See table 29.)
13. Administration and program services (1961): Operating costs for U.S. Patent Office. (See table 29.)
14. Cumulative fees comparison: U.S. compared with selected foreign countries. (See table 35.)
15. Disposal rates versus complexity factor: Comparison of average disposals per year by examiners in different technical areas. (See table 24.)
16. U.S. Patent parameters (1961 sample): Relationship between pages of specification, sheets of drawing, and number of claims. (See table 8.)
17. Claim analysis: Average time for analysis of independent and dependent claims of selected patents. (See table 9.)
18. Claim form: Independent versus dependent: The independent claims of a simple patent are analyzed and rewritten in dependent form.
19. Pendency of U.S. applications: Comparison of periods between filing and issue of typical application: 1960 versus 1961 versus H.R. 10966.
20. Patent renewals: For selected foreign countries. (See tables 25–28 inc.)
21. U.S. application parameters (divisions 42 and 68): Relation between pages of specification and number of claims; random selection in complex arts handled by Divisions 42 and 68. (See table 32.)

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FIGURE 1

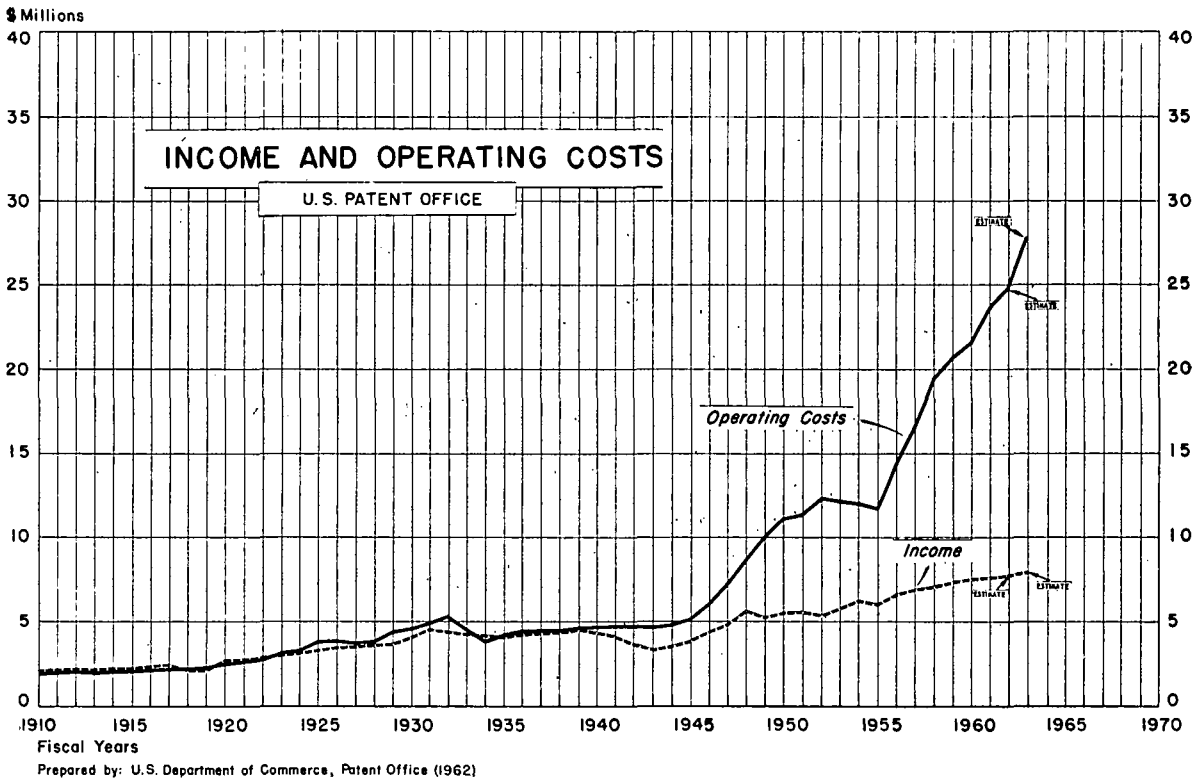
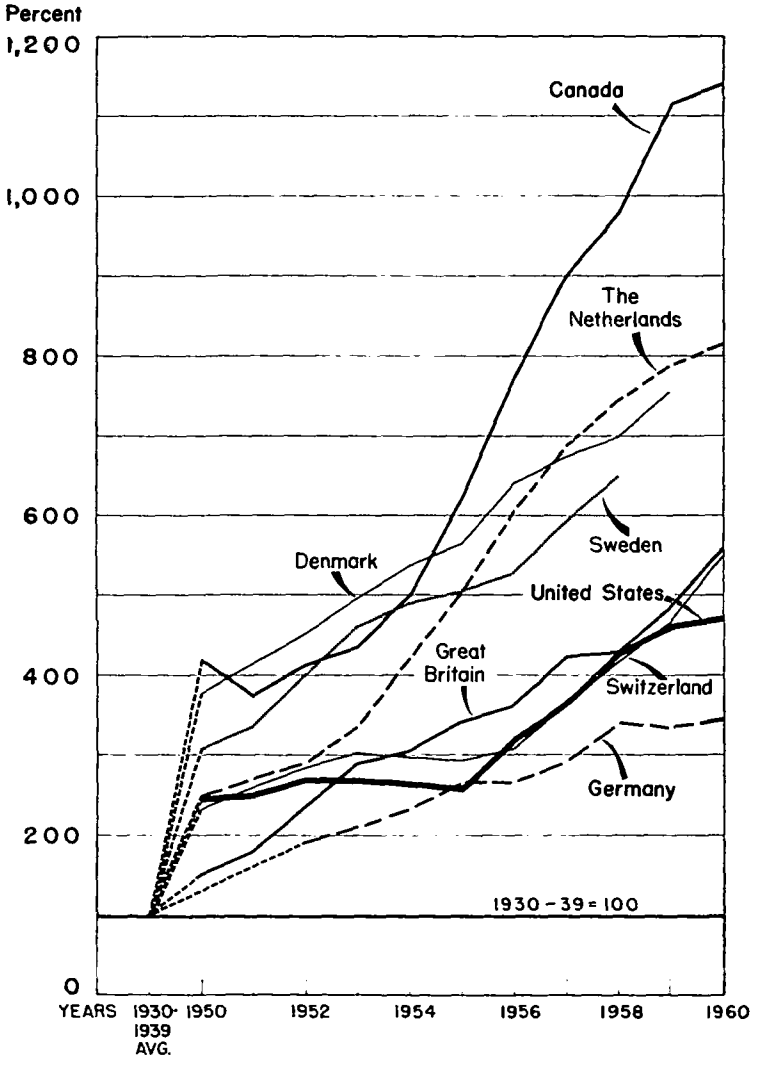

$ Millions
INCOME AND OPERATING COSTS
U.S. PATENT OFFICE
Operating Costs
Income
ESTIMATE
ESTIMATE
ESTIMATE
ESTIMATE
40
35
30
25
20
15
10
5
0
1910
1915
1920
1925
1930
1935
1940
1945
1950
1955
1960
1965
1970
Fiscal Years
Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 2

OPERATING COST INCREASES

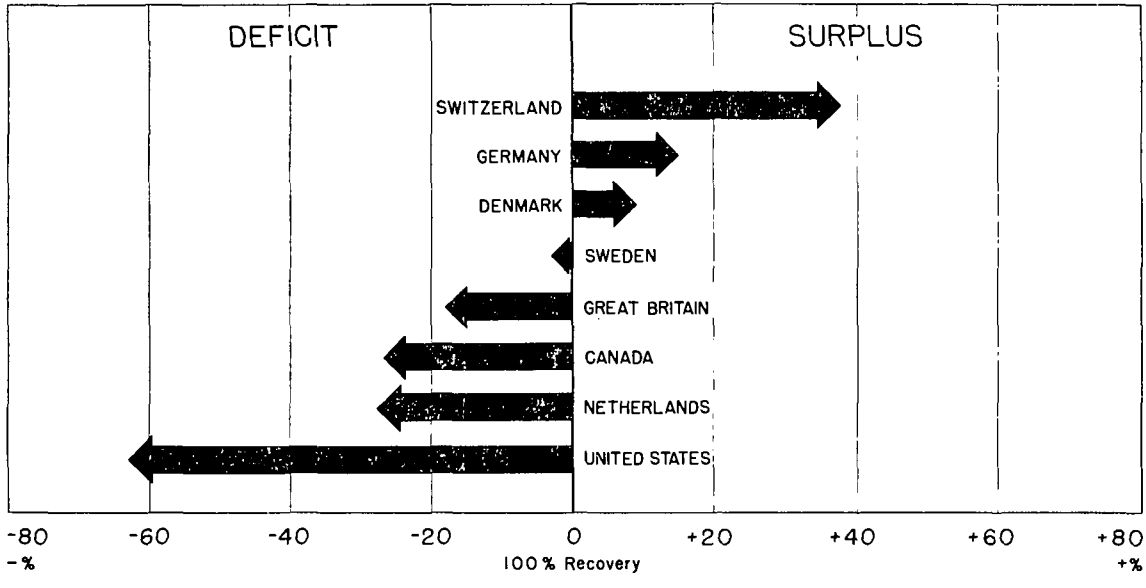


Prepared by U.S. Department of Commerce, Patent Office (1962)

FIGURE 3

RECOVERY OF PATENT COSTS

(1957-1960 AVG.)

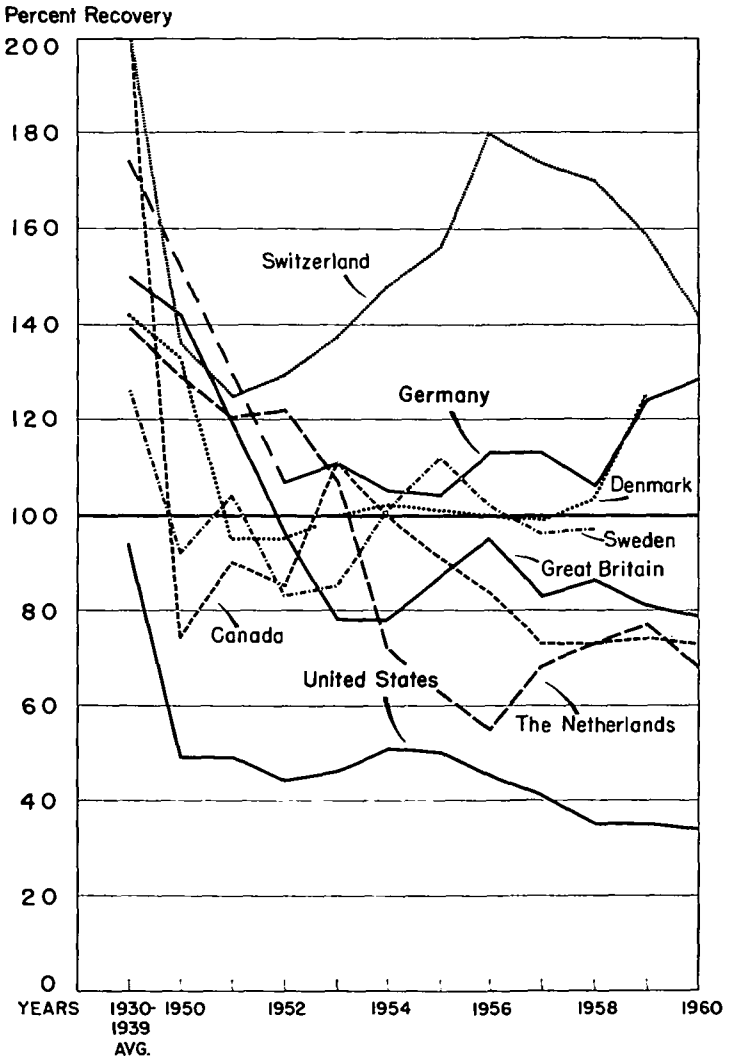


Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 4

COST RECOVERY

(SELECTED COUNTRIES-%)

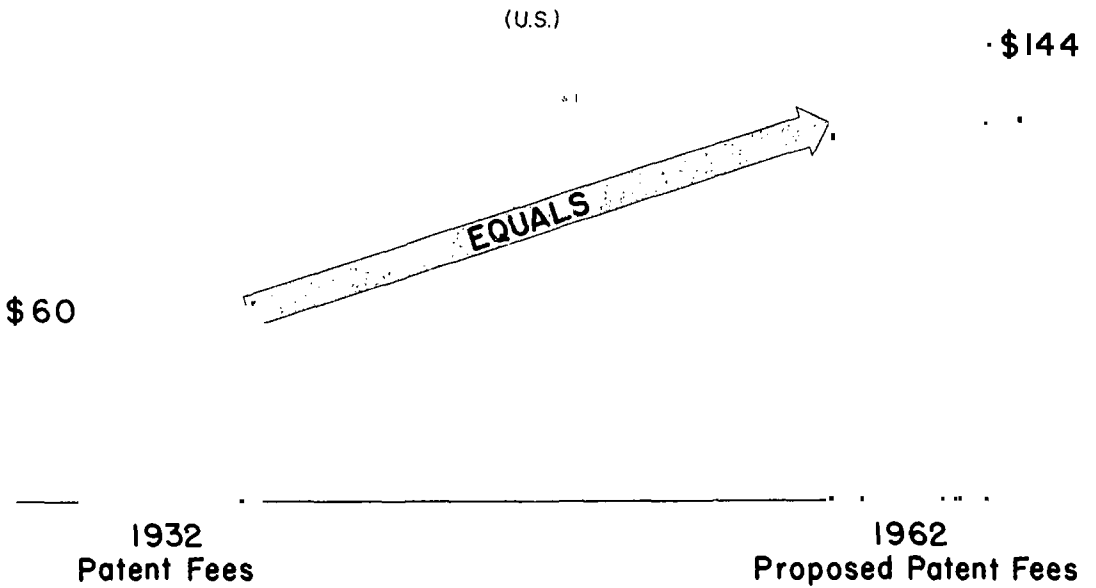


Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 5

PATENT FEES

(U.S.)



Notes: 1/ $131 reflects decrease in purchasing power of 1932 dollars.

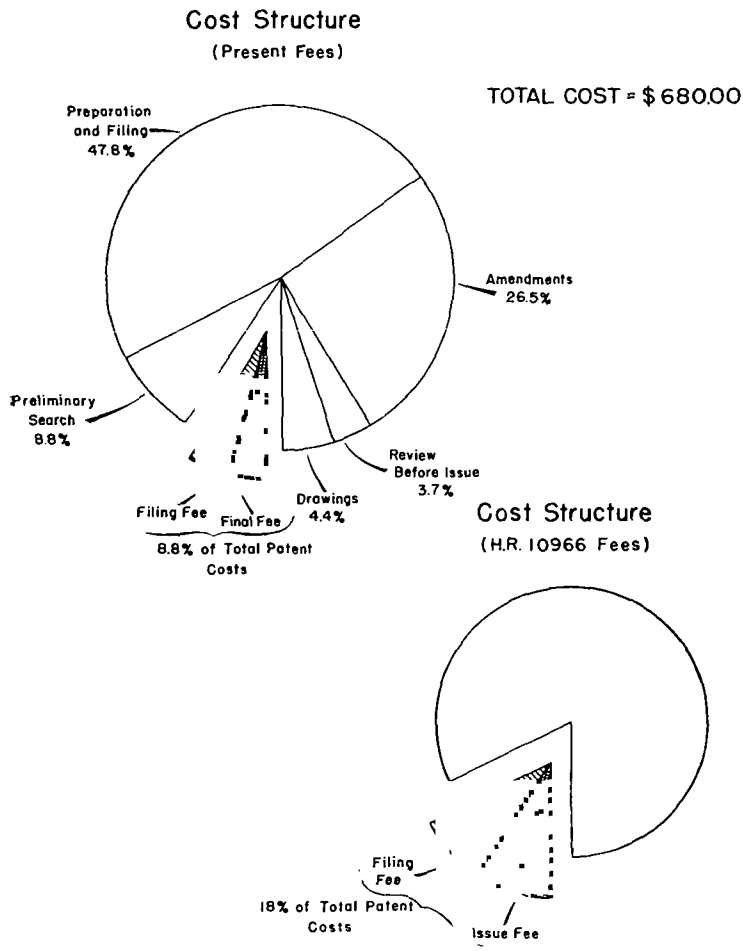
2/ 1962 proposed patent fees are for average patent and excludes proposed maintenance fees.

Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 6

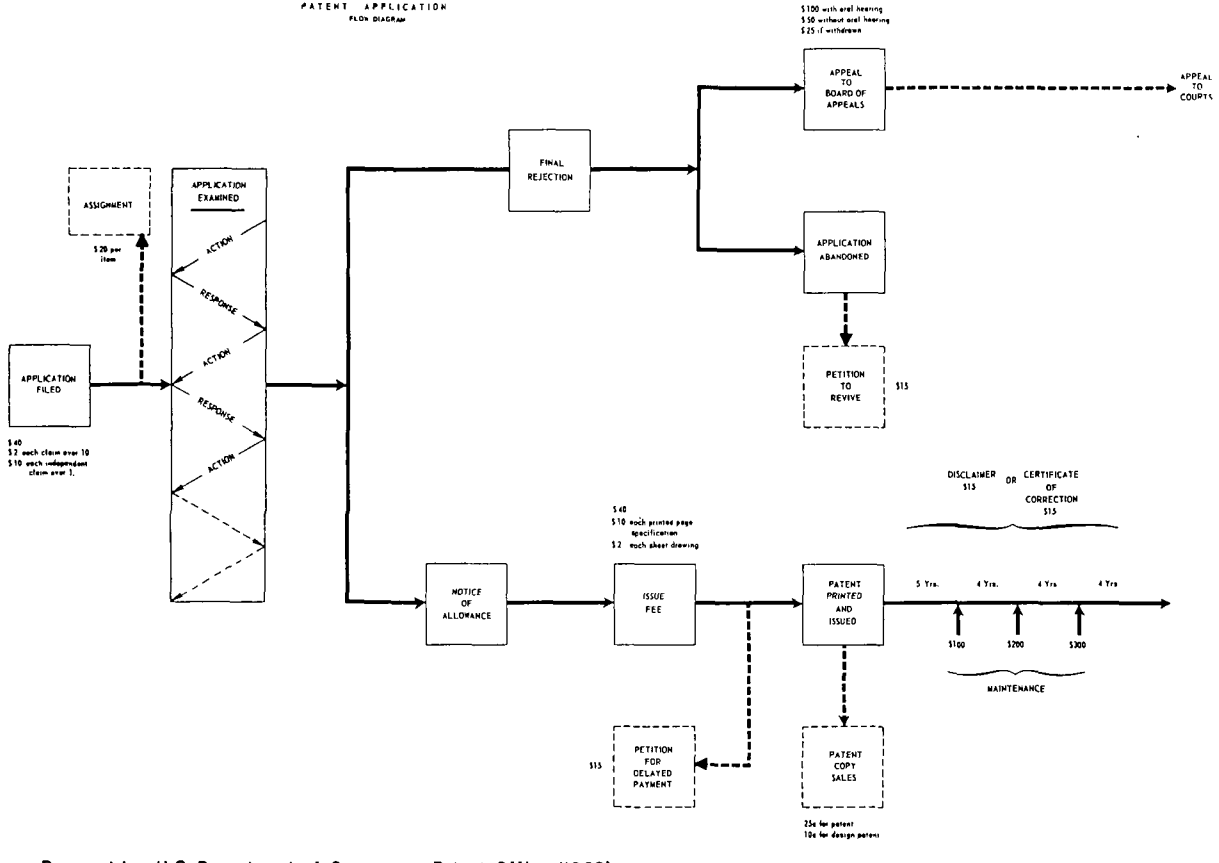
PATENT COSTS

Typical Costs For Obtaining a Patent on a Simple Invention:
5-10 Pages of Specification, 1 Sheet of Drawing, 5-10 Claims
(No Appeals, Interferences, etc.)



Prepared by U.S. Department of Commerce, Patent Office (1962)

FIGURE 7

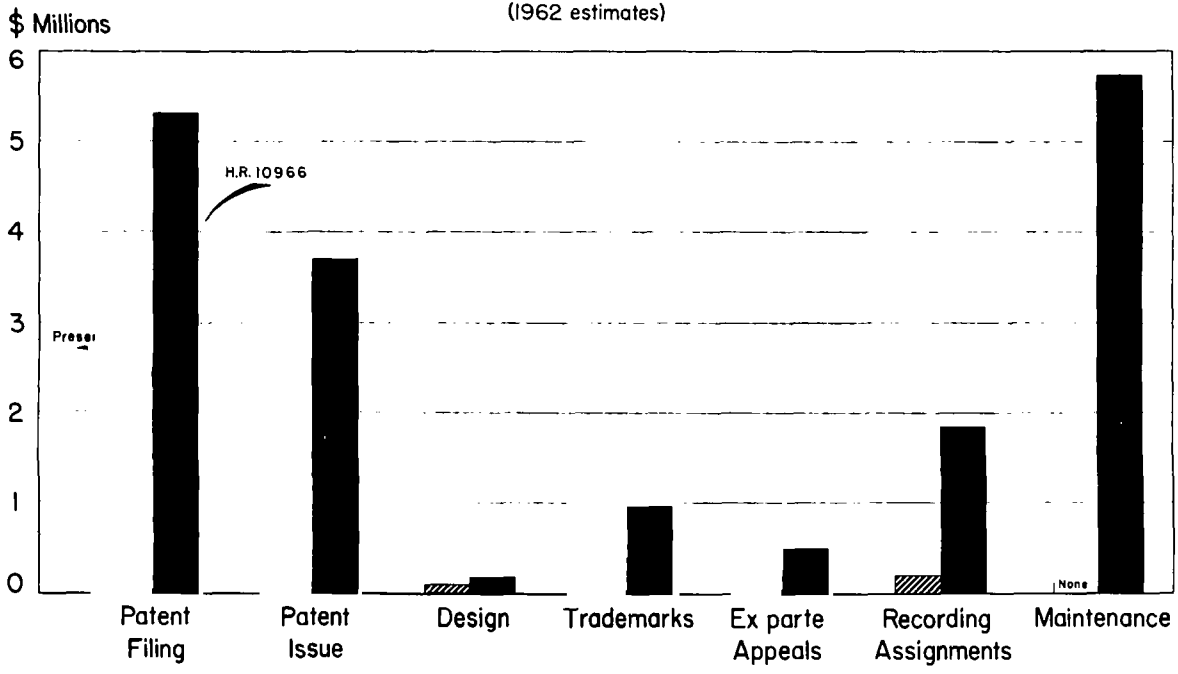


Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 8

INCOME FROM SELECTED FEES

(1962 estimates)

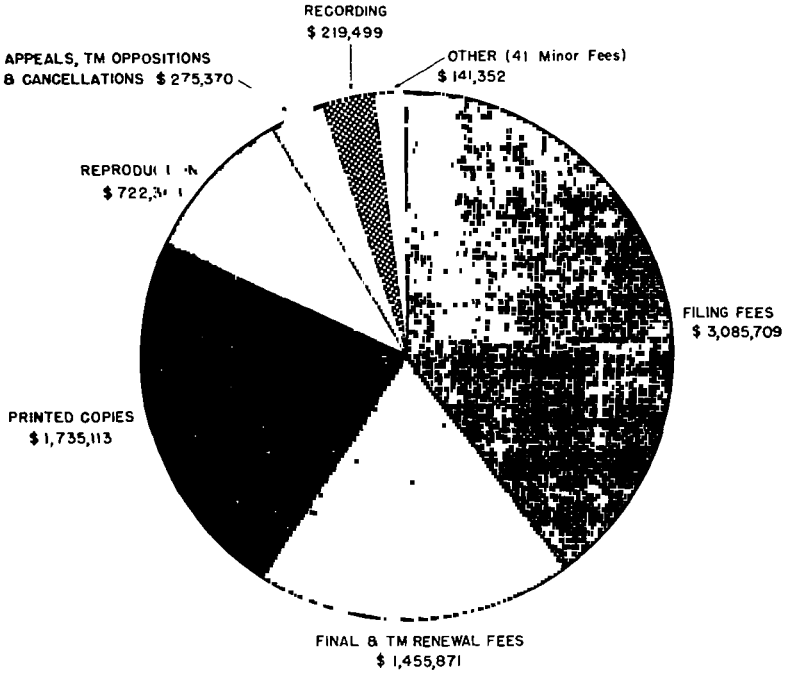


Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 9

INCOME BY FEES

(1961)

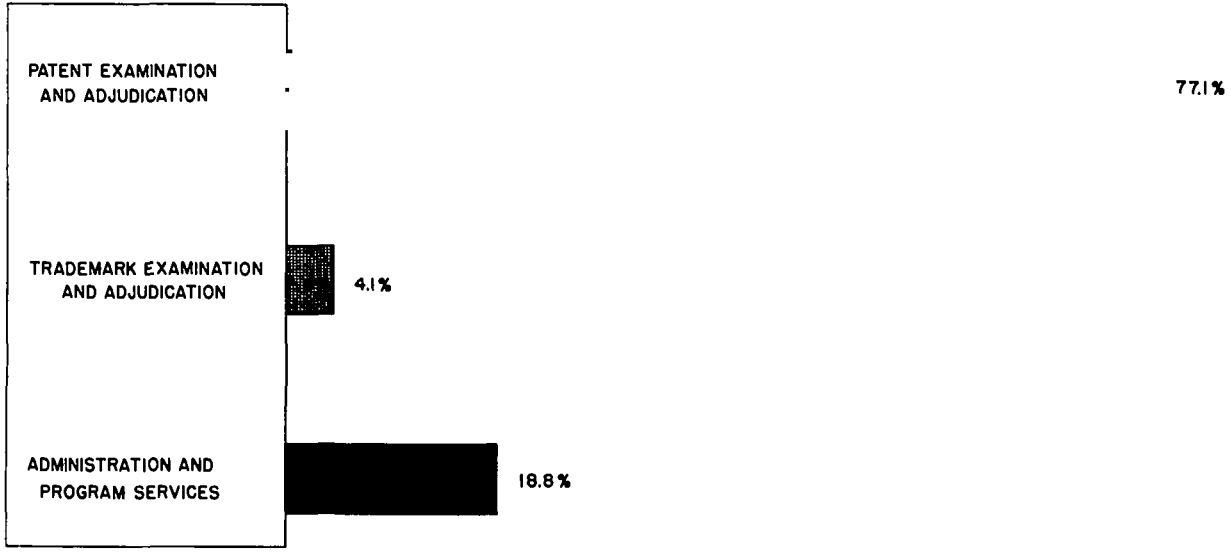


TOTAL = $ 7,635,282

Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 10

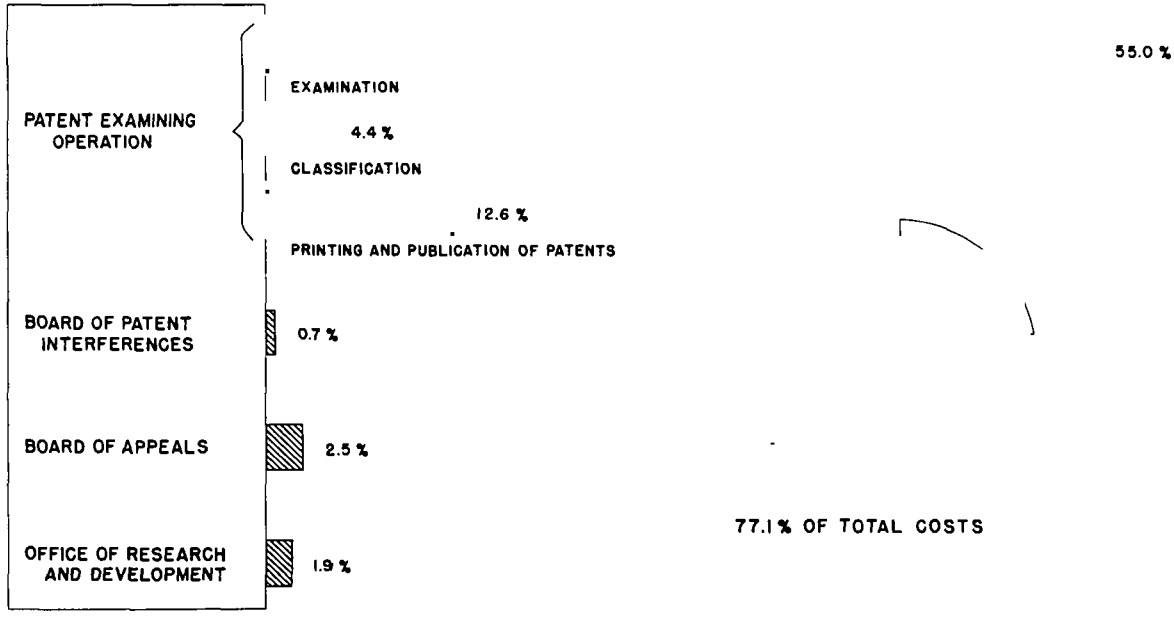
DISTRIBUTION OF OPERATING COSTS (1961)



Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 11

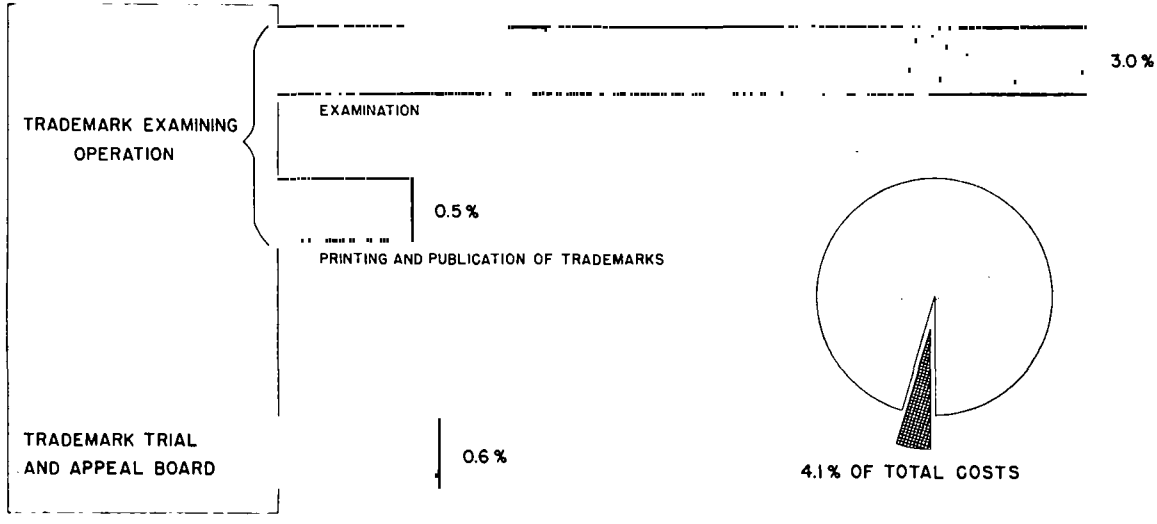
PATENT EXAMINATION AND ADJUDICATION (1961)



Prepared by: U.S. Department of Commerce, Patent Office (1962).

FIGURE 12

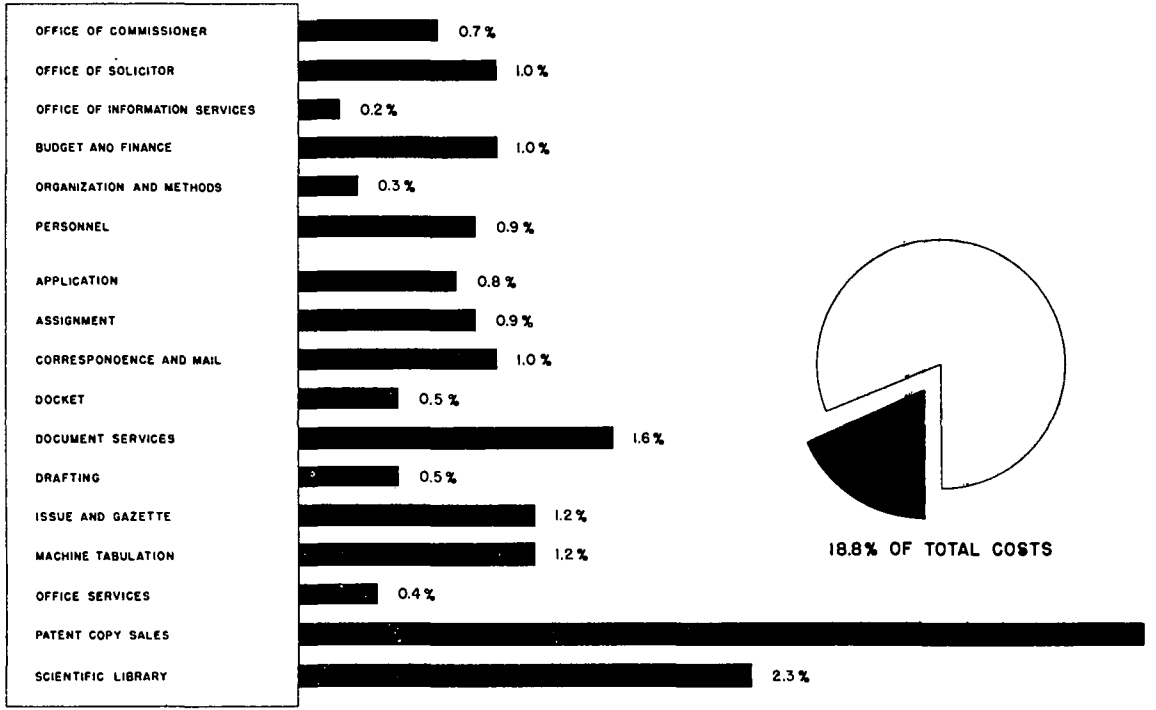
TRADEMARK EXAMINATION AND ADJUDICATION (1961)



Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 13

ADMINISTRATION AND PROGRAM SERVICES (1961)



Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 14

CUMULATIVE FEES COMPARISON

(Selected Countries)

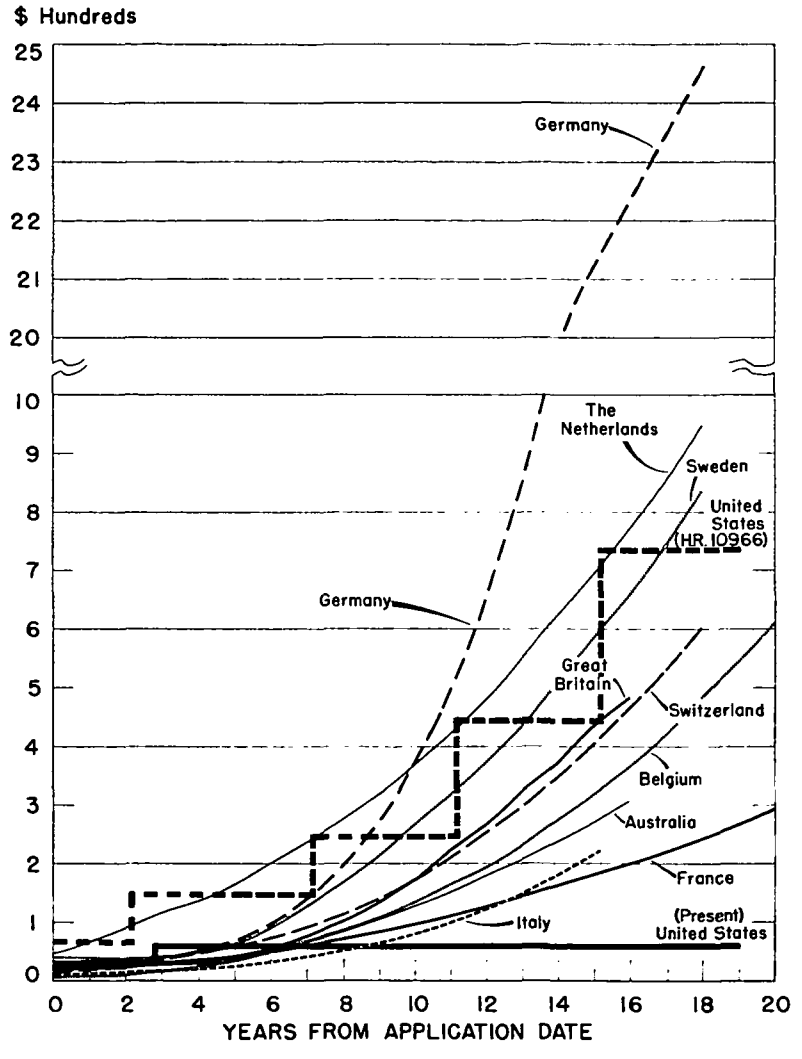
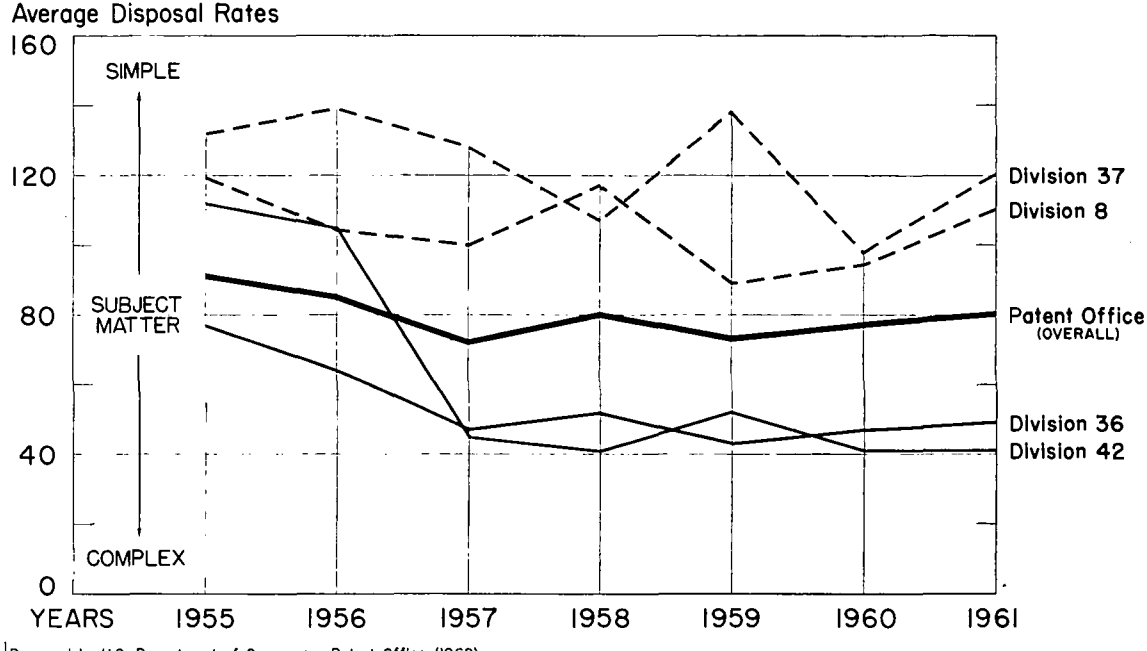


FIGURE 15

DISPOSAL RATES & COMPLEXITY FACTOR

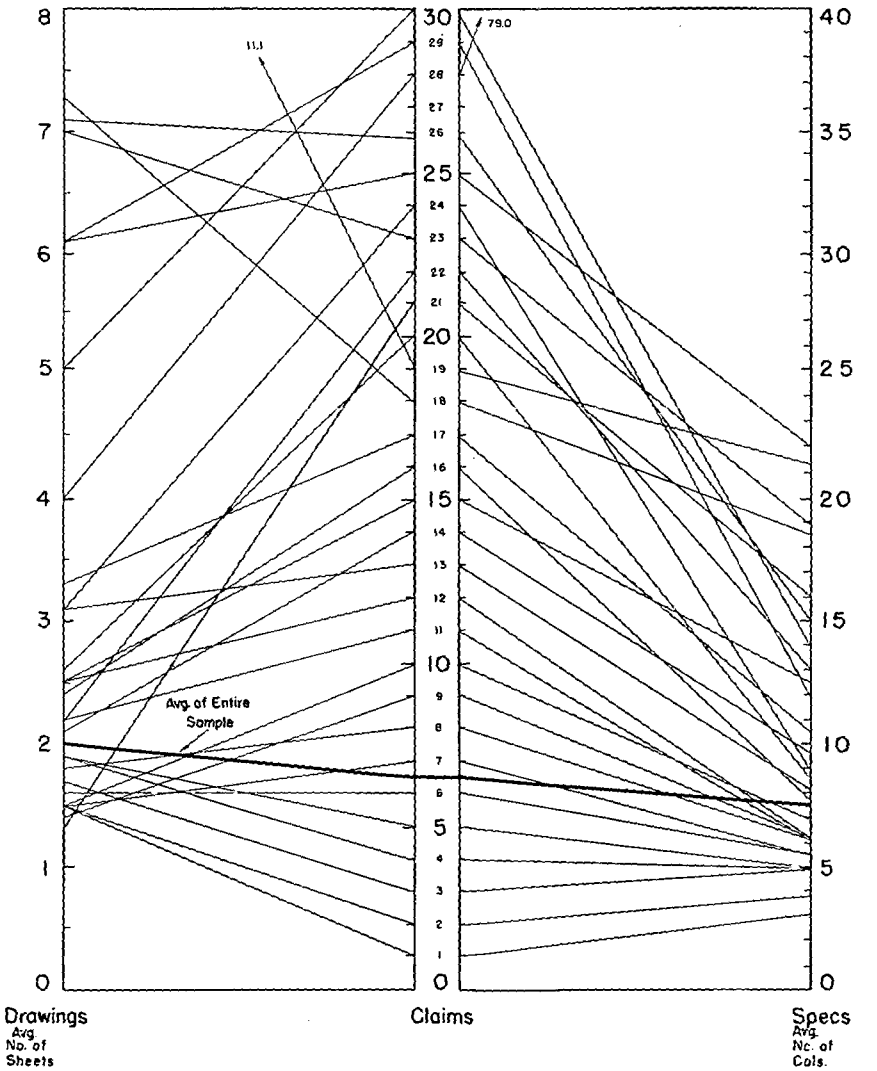


Prepared by U.S. Department of Commerce, Patent Office (1962)

FIGURE 16

U. S. PATENT PARAMETERS

1961 SAMPLE

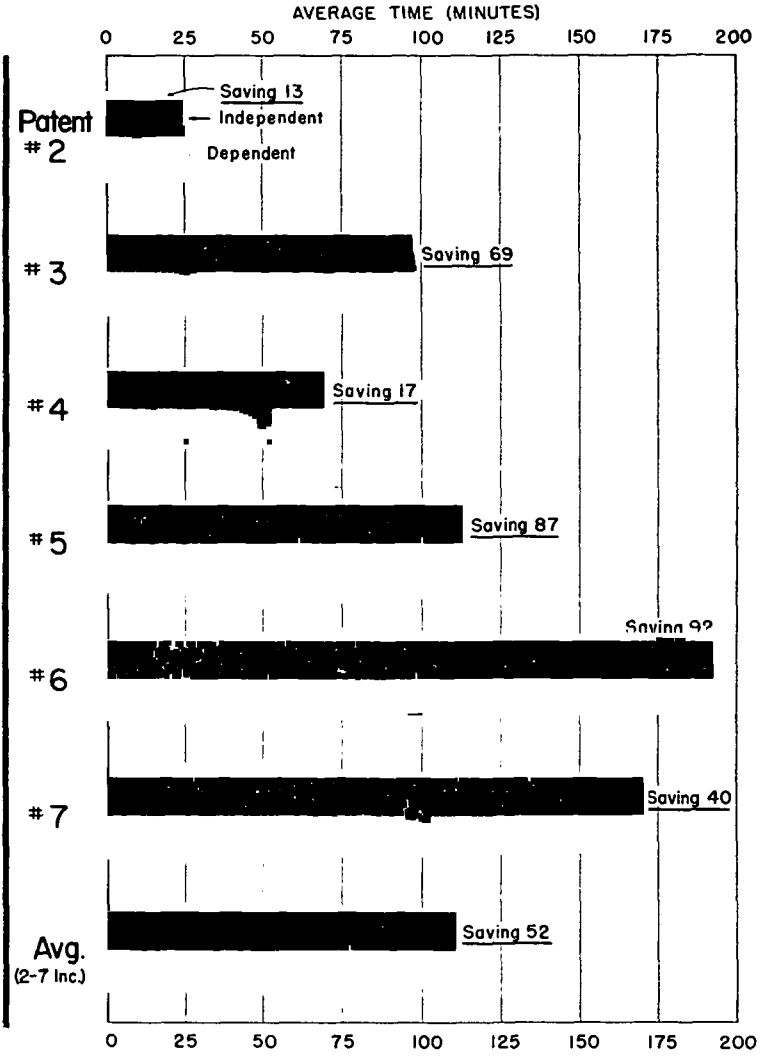


Prepared by: U.S. Department of Commerce, Patent Office (1962)

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FIGURE 17

CLAIM ANALYSIS



Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 18

CLAIM FORM: INDEPENDENT vs. DEPENDENT

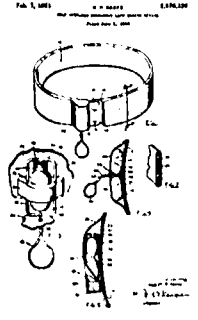
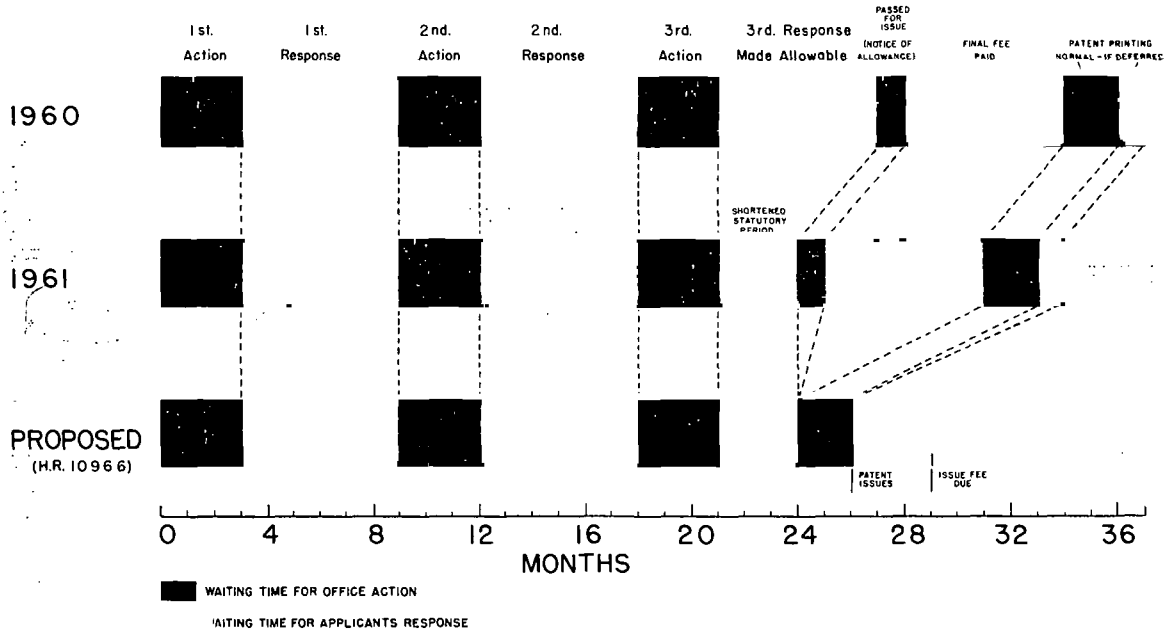
THE INVENTION	INDEPENDENT FORM (The claims as patented)	CLAIM ANALYSIS	DEPENDENT FORM
A life preserver that is worn around the neck as a necklace. The necklace band houses an hourglass-shaped gas cell that breaks and thereby inflates the necklace preserver when the necklace is grasped and bent. 	1. An inflatable neckband, comprising a narrow thin flat tubular band comprising a relatively heavy flexible inelastic neck engaging backing portion, and a thin highly elastic outer portion extending substantially the length of the band, and sealed at its ends, an elongated hourglass-shaped cell mounted within said tubular band and containing liquified gas, a flexible air-tight tube closely surrounding said cell and disposed in said band, and having one end extending through an end of said thin elastic outer portion in sealed relation thereto, said tube being open at its other end within said band, and having an air-tight removable closure in its one end whereby cells may be replaceable	CLAIM 3 + gas cell is HOURGLASS SHAPED	A neckband as in claim 3 in which said gas cell is hourglass-shaped
	2. An inflatable neckband, comprising a narrow thin flat tubular band comprising a relatively heavy flexible inelastic neck engaging backing portion, and a thin highly elastic outer portion extending substantially the length of the band, and sealed at its ends, an elongated hourglass shaped cell mounted within said tubular band and containing liquified gas, a flexible air-tight tube closely surrounding said cell and disposed in said band, and having one end extending through an end of said thin elastic outer portion in sealed relation thereto, said tube being open at its other end within said band, and having an air-tight removable closure in its one end whereby cells may be replaceable and *means for manually flexing said tube to bend and break a cell* contained therewithin.	CLAIM 3 + gas cell is HOURGLASS SHAPED and can be MANUALLY BROKEN to inflate preserver	A neckband as in claim 3 in which said gas cell is hourglass-shaped and means are provided to break said cell manually.
	3. An inflatable neckband, comprising a narrow thin flat tubular band comprising a relatively heavy flexible inelastic neck engaging backing portion, and a thin highly elastic outer portion extending substantially the length of the band, and sealed at its ends, an elongated cell mounted within said tubular band and containing liquified gas, a flexible air-tight tube closely surrounding said cell and disposed in said band, and having one end extending through an end of said thin elastic outer portion in sealed relation thereto, said tube being open at its other end within said band, and having an air-tight removable closure in its one end whereby cells may be replaceable.	BROADEST CLAIM	
	4. An inflatable neckband, comprising a narrow thin flat tubular band comprising a relatively heavy flexible inelastic neck engaging backing portion, and a thin highly elastic outer portion extending substantially the length of the band, and sealed at its ends, an elongated cell mounted within said tubular band and containing liquified gas, flexible air-tight tube closely surrounding said cell and disposed in said band, and having one end extending through an end of said thin elastic outer portion in sealed relation thereto, said tube being open at its other end within said band, and having an air-tight removable closure in its one end whereby cells may be replaceable and means for manually flexing said tube to bend and break a cell contained therewithin	CLAIM 3 + gas cell can be MANUALLY BROKEN to inflate the preserver	A neckband as in claim 3 and means to break said gas cell manually.

FIGURE 19

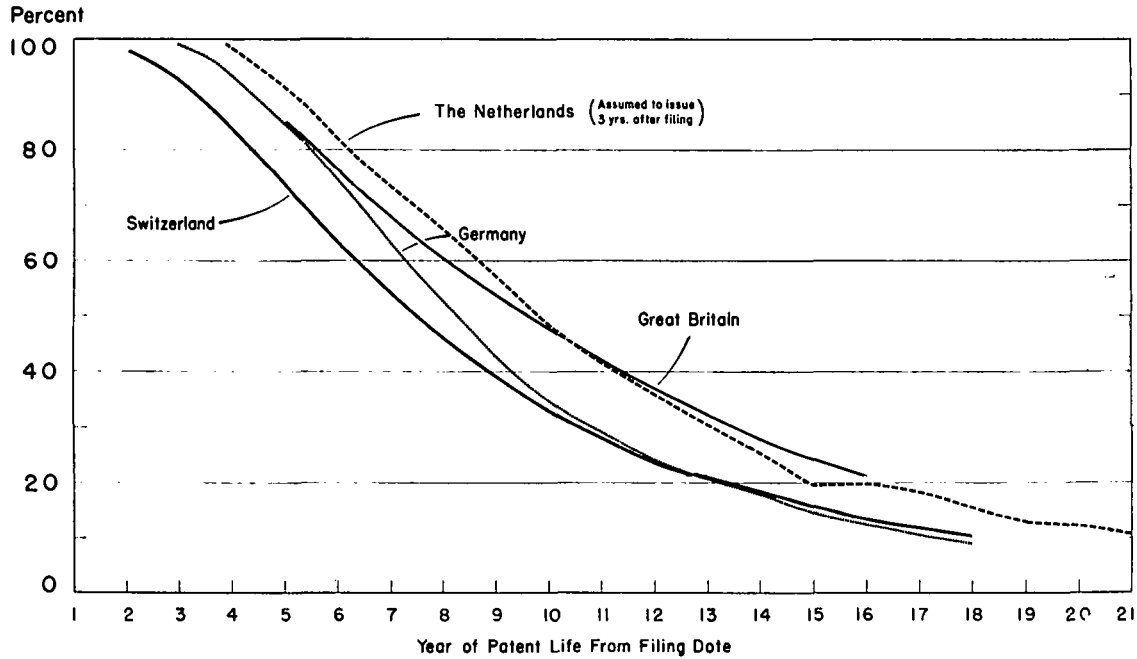
PENDENCY OF U.S. APPLICATIONS



Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 20

PATENT RENEWALS

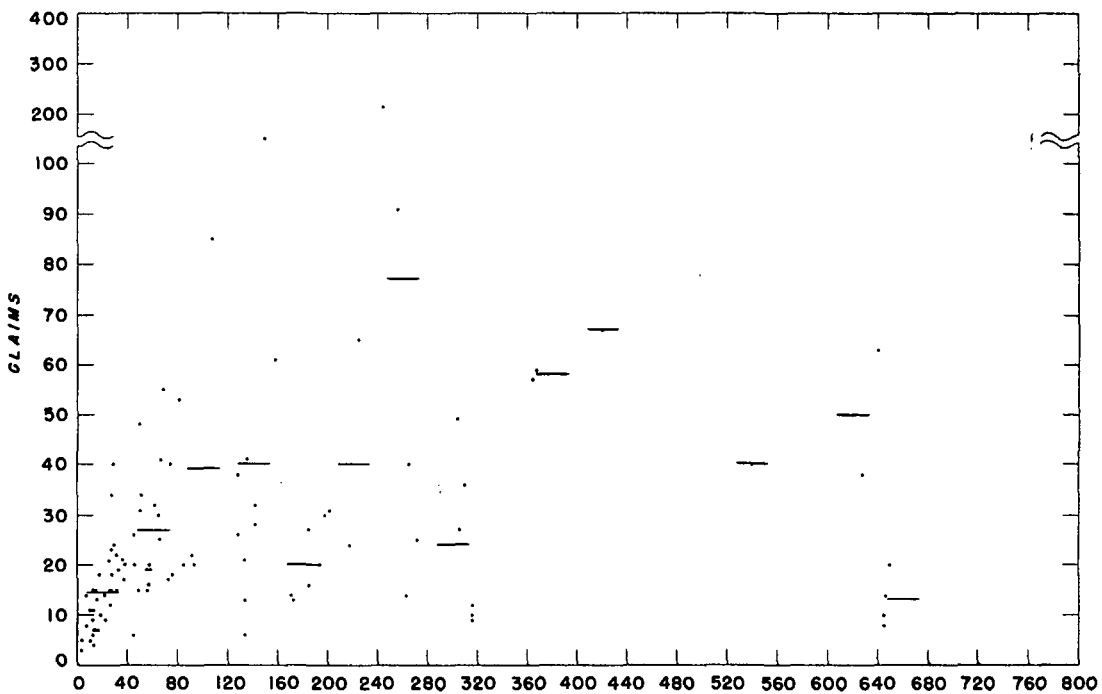


Prepared by: U.S. Department of Commerce, Patent Office (1962)

FIGURE 21

U.S. APPLICATION PARAMETERS

(DIVISIONS 42 AND 68)



Prepared by U.S. Department of Commerce, Patent Office (1962)

Appendix B. List of Tables

Table number and description

1. Fee income comparison (present and H.R. 10966): Estimates of income from the various Patent Office fees. (See fig. 8.)
2. Major cost increases since 1940 (Patent Office): Increases due to personnel compensation and benefits, printing and reproduction, and the increasing volume and complexity of the workload are given.
3. Change in personnel compensation and printing costs (1932–62).
4. Increase in minimum fees for selected legal services (1928 versus 1962).
5. Changes in selected Government fees: For example, Bureau of Standards, AEC, Departments of the Interior, the Treasury, and Agriculture.
6. Patent service cost estimates: Comparison of typical patent legal fees in 1937, 1959, and 1962. (See fig. 6.)
7. Comparison of selected U.S. fees: Prior versus present versus H.R. 10966.
8. U.S. Patent characteristics (1961 sample): Average correspondence between number of claims, columns of printed specification, and sheets of drawing. (See fig. 16.)
9. Claim form versus analysis time: A comparison of the time required to analyze independent claims and their dependent counterparts. Selected examiners and patents of varying complexity used. (See fig. 17.)
10. Board of Appeals statistics: The number of appeals filed, pending, disposed of, and in which oral hearings were requested during the years 1957–61.
11. Major volume assumptions for H.R. 10966 fees (1962 basis): Number of applications and patents, their average nature (claim structure, pages of specification, sheets of drawing) and the fees that would be charged, including maintenance fees.
12. Per capita figures on patent applications filed in selected countries (1956–60 average).
13. Effect of fee increases on applications filed (selected countries) (1951–60).
14. Average size of patents (selected countries, 1961).
15. Assignment of U.S. patents (fiscal 1955 and 1961): By U.S. corporations, foreign corporations, U.S. Government, and individuals.
16. Fee income comparison (present and H.R. 7731 and H.R. 10966): Estimated incomes in 1961 under each of the fee schedules.
17. Major volume assumptions for H.R. 7731 fees (1962 basis): Number of applications and patents, their average claim structure and the fees that would be charged, including maintenance fees.
18. Income and operating costs (United States): Over the period 1900–61, showing the percent ratio of income to cost. (See fig. 1.)
19. Income and operating costs, selected countries: Over the years 1950–60 and the average for 1930–39. (See fig. 3.)
20. Operating cost changes, selected countries: Percent change over the years 1950–60 using average operating cost in 1930–39 as base. (See fig. 2.)
21. Operating cost recovery, selected countries: Over the years 1950–60 and the 1930–39 average. (See fig. 4.)
22. Income by fees (1957–61): For the various U.S. Patent Office fees. (See fig. 9.)
23. Consumer Price Index (1957–59=100). (See fig. 5.)
24. Comparison of disposal rates and complexity factors: Average disposal rates over years 1955–61, by examining division and field of technology. (See fig. 15.)
25. Payment of renewal fees (Germany): Response of applicants to fees due during life of patent. (See fig. 20.)
26. Payment of renewal fees (Great Britain): Response of applicants to fees due during life of patent. (See fig. 20.)
27. Payment of renewal fees (Switzerland): Response of applicants to fees due during life of patent. (See fig. 20.)
28. Payment of renewal fees (The Netherlands): Response of applicants to fees due during life of patent. (See fig. 20.)
29. Operating costs and employment by cost centers: During the fiscal years 1952–61. (See figs. 10, 11, 12, and 13.)
30. Income and operating costs, patent and trademark operations: For fiscal 1960 and 1961.

31. Schedule of fees: Now in effect; amount of each fee, date established, and previous fee are shown.
32. U.S. application parameters (Divisions 42 and 68): Relationship between number of claims, sheets of drawing, and pages of specification of randomly selected applications. (See fig. 21.)
33. Renewal fee schedule, selected countries: Comparison with renewal fee called for by H.R. 10966.
34. Comparison of total fees, selected countries: United States compared as to fees charged, average number of patents issued per year, and term of patent.
35. Cumulative fee schedule, selected countries: United States compared as to fees due during life of application and patent. (See fig. 14.)
36. Technical subject matter handled by certain divisions in Patent Office. (See figs. 15 and 21.)

TABLE 1.—*Fee income comparison (present and H.R. 10966)*

Description (section and item of H.R. 10966)	Present fee	Estimated income, fiscal year 1962	Proposed fee, H.R. 10966	Estimated income, 1962 basis	Change from present fee income
		Thousands		*Thousands*	*Thousands*
Patent filing, original patent (sec. 1, item 1)	$30	$2,440	$40	$3,320	
	$1 each claim over 20	46	$2 each claim over 10	332	
			$10 each independent claim over 1	1,660	
		2,486		5,312	+$2,826
Patent issue, original patent (sec. 1, item 2—part)	$30	1,510	$40	1,872	
	$1 each claim over 20	10	$10 each page of specification as printed.	1,685	
			$2 each sheet of drawing	187	
		1,520		3,744	+2,224
Patent issue, reissue patent (sec. 1, item 2—part)	None		$40	8	
			$10 each page of specification as printed.	7	
			$2 each sheet of drawing	1	
				16	+16
Design filing (sec. 1, item 3a)	$10 for 3½ years	21	$20	100	
	$15 for 7 years	6			
	$30 for 14 years	75			
		102		100	−2
Design issue (sec. 1, item 3b)	None		$10 for 3½ years	1	
			$20 for 7 years	6	
			$30 for 14 years	77	
				84	+84
Patent filing, reissue patent (sec. 1, item 4)	$30	6	$40	8	
	$1 each excess claim over 20	(1)	$2 each excess claim over 10	(1)	
			$10 each excess independent claim	3	
		6		11	+5
Patent disclaimer (sec. 1, item 5)	$10	1	$15	1	(1)

See footnotes at end of table, p. 87.

TABLE 1.—*Fee income comparison (present and H.R. 10966)*—Continued

Description (section and item of H.R. 10966)	Present fee	Estimated income, fiscal year 1962	Proposed fee, H.R. 10966	Estimated income, 1962 basis	Change from present fee income
		Thousands		*Thousands*	*Thousands*
Patent appeal (sec. 1, item 6)	$25	$250	$100 with oral hearing	$300	
			$50 without oral hearing	50	
			$25 if withdrawn	150	
		250		500	+$250
Patent petition to revive (sec. 1, item 7—part)	$10	7	$15	11	+4
Patent petition for delay of issue fee (sec. 1, item 7—part)	$10	2	$15	3	+1
Patent certificate—sec. 255 or 256 (sec. 1, item 8)	$10	4	$15	6	+2
Patent copies (sec. 1, item 9)	25 cents, except designs	1,504	25 cents, except designs	1,529	
	10 cents for designs	5	10 cents for designs	5	
	$50 annual for libraries	1	$50 annual for libraries	1	
			$1 for large ones and plant patents in color.	15	
		1,510		1,550	+40
Recording patent assignments (sec. 1, item 10)	$3 for 6 pages	180	$20 each item	1,600	
	$1 each 2 pages over 6	1			
	50 cents each extra item	10			
		191		1,600	+1,409
Trademark filing (sec. 3, item 1)	$25	588	$35	823	+235
Trademark affidavit (sec. 3, item 3)	None		$10	150	+150
Trademark petition to revive (sec. 3, item 4)	None		$15	2	+2
New trademark certificate (sec. 3, item 7)	$10	2	$15	3	+1
Trademark certificate of correction or amendment (sec. 3, item 8).	$10	2	$15	3	+1
Trademark disclaimer (sec. 3, item 10)	$10	(1)	$15	(1)	(1)
Recording trademark assignments (sec. 3, item 12)	$3 for 6 pages	10	$20 each item	264	
	$1 each 2 pages over 6	(1)			
	50 cents each extra item	5			
		15		264	+249

Patent maintenance (sec. 8)	None		$100 first fee, prior to end of 5th year	2,247	
			$200 second fee, prior to end of 9th year	2,129	
			$300 third fee, prior to end of 13th year	1,370	
			$25 for delayed payment of a maintenance fee	4	
				5,750	+5,750
Other fees not changed		1,014		1,051	+37
Total		7,700		20,984	+13,284

¹ Less than $500.

NOTES.—(1) Estimated income from H.R. 10966 includes amounts applicable to other Government agencies under sec. 2 ($293,000).

(2) Estimated amounts for trademark affidavits and patent maintenance are included to show the resulting income if all the provisions were in full operation during 1962. However, fees for these items would not be effective immediately to bring in receipts.

(3) For major volume assumptions, see table 11.

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 2.—*Major cost increases since 1940 (Patent Office)*

[NOTE.—Costs were relatively stable from 1932 to 1940. During this period, income from fees averaged about 95 percent of operating costs]

PERSONNEL COMPENSATION AND BENEFITS	*Percent*
Salary and related benefits for employees now comprise about 80 percent of total operating costs. Since 1940, there have been eight general increases in basic compensation of classified employees:	
1. Federal Employees Pay Act of 1945 (Public Law 79–106), effective July 1, 1945	14. 0
2. Federal Employees Pay Act of 1946 (Public Law 79–390), effective July 1, 1946	14. 0
3. Federal Employees Salary Act of 1948 (Public Law 80–900), effective July 11, 1948	9. 0
4. Classification Act of 1949 (Public Law 81–429), effective Oct. 30, 1949	3. 0
5. Classification Act of 1949, Amendments (Public Law 82–201), effective July 8, 1951	10. 0
6. Federal Employees Salary Increase Act of 1955 (Public Law 84–94), effective Mar. 13, 1955	7. 5
7. Federal Employees Salary Increase Act of 1958 (Public Law 85–462), effective Jan. 12, 1958	10. 0
8. Federal Employees Salary Increase Act of 1960 (Public Law 86–568), effective July 10, 1960	7. 5
Also, the following legislation requiring employer contributions from operating funds for employee group life insurance, retirement, and health benefits has added costs which, in relation to personnel compensation, amount to	7. 5
1. Federal Employees Group Life Insurance Act of 1954 (Public Law 83–598), effective Aug. 29, 1954	. 3
2. Civil Service Retirement Act Amendments of 1956 (Public Law 84–854), effective July 14, 1957	6. 5
3. Federal Employees Health Benefits Act of 1959 (Public Law 86–382), effective July 10, 1960	. 7

The combined cumulative effect of these changes in compensation and benefits has been to increase the 1940 basic cost rates by an average of about 120 percent.

Other increases in average salary and related employee benefits are attributable to progressive changes in position structure since 1940, consistent with civil service regulations. The largest single factor has been the effect of improved promotional opportunities for professional members of the staff.

The average salary for Patent Office employees in 1940 was approximately $2,600 per annum. Today the average of salary and benefits amounts to about $8,100 ($7,500 salary and $600 benefits), an increase of about 210 percent.

PRINTING AND REPRODUCTION

Printing and reproduction costs now comprise about 15 percent of total operating costs. The largest element of printing costs (over 70 percent) involves specifications of patents. The rate per page for printing of patent specifications was $4.41 in 1940; today it is $14.75, an increase of 235 percent.

To print the specifications and drawings, and to publish the issuance in the Official Gazette, the average patent of today costs about $63. At 1940 prices, the cost would be about $19. The increase in cost amounts to $44, or about 230 percent.

GENERAL

In addition to the very substantial increases since 1940 in the cost rates for personnel compensation and benefits and for printing and reproduction (together comprising 95 percent of total operating costs), a very significant increase in total cost of operations is attributable to the ever-increasing complexity of applications and the enlarging search task facing the examiners in considering and disposing of applications. In 1940, an examiner was able to dispose of about 120 patent applications, on the average, in a year's time. Now the average is about 80, a decrease of one-third in productivity. This, in itself, is equivalent to an increase of 50 percent in the cost of doing the same quantity of work.

The remaining major factor affecting the change in total operating costs since 1940 is the increase in quantity or volume of work. Principal indicators of the greater volume of work today include an increase of over 25 percent in the number of patent application disposals, nearly 25 percent in the number of patent issuances, over 50 percent in the number of printed copies furnished, over 150 percent in the number of certificates prepared, and nearly 300 percent in the number of pages of records reproduced and furnished. As compared with about 62,000 patent applications filed during 1940, the rate is now nearing 85,000 per year, an increase of 37 percent in annual intake. As compared with about 116,000 patent applications pending disposal in 1940, there are now about 200,000, an increase of 72 percent in total workload.

TABLE 3.—*Change in personnel compensation and printing costs (1932–62)*

Fiscal year	Operating cost (thousands of dollars)				Average employment	Average compensation and benefits	Printing price per page			Average patent application disposals per examiner
	Personnel compensation and benefits	Printing and reproduction	Other	Total			Patent specifications	Patent drawings	Official Gazette	
1932	3,460	1,657	198	5,315	1,428	$2,423				167
1933	3,033	1,486	70	4,589	1,408	2,154				161
1934	2,761	1,050	66	3,877	1,345	2,053				135
1935	3,100	975	79	4,154	1,293	2,398				119
1936	3,331	1,013	103	4,447	1,325	2,514	$5.05	$0.55	$6.40	113
1937	3,377	1,027	88	4,492	1,353	2,496	5.05	.50	6.40	107
1938	3,378	1,008	91	4,477	1,351	2,500	5.05	.47	6.40	112
1939	3,534	1,001	81	4,616	1,370	2,580	4.41	.49	6.40	128
1940	3,557	1,010	96	4,663	1,364	2,608	4.41	.45	6.40	120
1941	3,625	994	126	4,745	1,368	2,650	4.41	.49	5.50	120
1961	18,816	3,720	1,123	23,659	2,301	8,177	14.75	1.64	11.95	79
1962, operating budget	19,922	3,922	901	24,745	2,400	8,300	14.75	1.74	11.95	79

Prepared by: U.S. Department of Commerce, Patent Office (1962).

TABLE 4.—*Increase in minimum fees for selected legal services (1928 versus 1962)*[1]

Service	Minimum fee, 1928	Minimum fee, 1962
Simple contract	$5	$15
Uncontested, simple divorce	75	175
Organizing a simple corporation	75	250
Lease	3	10
Handling a small estate	50	150

[1] Figures are for Wisconsin and were furnished by the State bar of Wisconsin.

Prepared by: U.S. Department of Commerce, Patent Office (1962).

TABLE 5.—*Changes in selected Government fees*

Activity	Agency	Current fee	Old fee and year
Registration of futures commission merchant	Agriculture	$30	$10.00(1936)
Testing of eye-protective devices	Bureau of Standards	20	11.50(1949)
Recording a trademark or a copyright	Treasury	75	25.00(1954)
Personnel security investigations for secret clearance	Atomic Energy	385	305.00(1958)
Testing of stemming devices for permissibility	Interior	1,250	950.00(1957)

NOTE.—For other Government fee charges, see "User Charges—a Progress Report," issued by the Bureau of the Budget, May 1960, and Report No. 1467 of the Senate Committee on Government Operations entitled "Fees for Government Services," 84th Cong., 2d sess., 1956.

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 6.—*Patent service cost estimates*

Service	1937 [1]	1959 [2]	Present [3]
1. Preliminary search	$15 to $25	$35 to $60	$50 to $100.
2. Preparation of specification and claims (simple invention).	$70 to $120	$120 to $270 [4]	$200 to $450.
3. Preparation of drawings, per sheet	$15 to $20	At least $25	$25 to $45.
4. Total legal fees (no appeals or interferences)	$100 to $150	$150 to $500	$450 to $900.
5. Attorney's hourly rate	At least $5	At least $20	$20 to $50.
6. Infringement study (average complexity)	$50 to $100	[5]	$250 to ?
7. Validity study	$100 to $200	$100 to $200	$200 to ?
8. Litigation, attorney's fees per day in court	$300	$300	$200 to $400 (6 hours).

[1] "Inventions and Their Management," A. K. Berle et al. (1st ed. 1937).
[2] "Inventions, Patents, and Their Management," A. K. Berle et al. (1959).
[3] These figures were derived from conversations with experienced patent lawyers.
[4] This is taken from "Inventions and Their Management," A. K. Berle et al., p. 189 (2d ed. 1947).
[5] No specific figure given.

Prepared by: U.S. Department of Commerce, Patent Office (1962).

TABLE 7.—*Comparison of selected U.S. fees*

Description	Prior	Present		H.R. 10966
		Amount	Date established	
Patent filing:				
Original application	$25	$30	1927	$40.
		$1 each claim over 20		$2 each claim over 10.
				$10 each independent claim over 1.
Reissue application	$15	$30	1861	$40.
		$1 each excess claim over 20	1953	$2 each excess claim over 10.
				$10 each excess independent claim.
Design application		$10 for 3½ years	1861	$20.
		$15 for 7 years		
		$30 for 14 years		
Patent issue:				
Original application	$25	$30	1927	$40.
		$1 each claim over 20	1932	$10 each page of specification as printed.
				$2 each sheet of drawing.
Reissue application				$40.
				$10 each page of specification as printed.
				$2 each sheet of drawing.
Design application				$10 for 3½ years.
				$20 for 7 years.
				$30 for 14 years.
Patent appeal	$15	$25	1953	$100 with oral hearing.
				$50 without oral hearing.
				$25 if withdrawn.
Recording assignments	$2 per 1,000 words	$3 for 6 pages	1930	$20 each item.
	$1 for each additional 1,000 words	$1 each 2 pages over 6		
	25¢ each extra item	$0.50 each extra item		
Patent maintenance				$100 first fee, prior to end of 5th year.
				$200 second fee, prior to end of 9th year.
				$300 third fee, prior to end of 13th year.
				$25 for delayed payment of a maintenance fee.
Patent:				
Disclaimer		$10	1837	$15.
Petition to revive		$10	1932	$15.
Petition for delay		$10	1939	$15.
Certificate		$10	1953	$15.
Trademark:				
Filing	$15	$25	1947	$35.
Affidavit				$10.
Petition to revive				$15.
New certificate		$10	1947	$15.
Certificate of correction		$10	1947	$15.
Disclaimer		$10	1947	$15.
Recording assignments	$2 for 1,000 words	$3 for 6 pages	1930	$20 each item.
		$1 each 2 pages over 6		
		$0.50 each extra item		

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 8.—*U.S. patent characteristics (1961 sample)*

Claims	Total patents	Independent claims (average)	Columns of specification (average)	Sheets of drawing (average)
001	79	1.0	3.1	1.5
002	100	1.7	3.8	1.5
003	92	2.2	4.8	1.7
004	120	2.9	4.9	1.9
005	99	3.5	4.9	1.9
006	72	4.9	5.6	1.6
007	76	4.3	5.6	1.5
008	67	5.2	6.2	1.6
009	46	5.4	6.3	1.4
010	49	6.4	7.1	1.5
011	28	5.1	6.2	2.2
012	30	6.2	6.3	2.5
013	19	7.2	8.2	3.1
014	14	9.8	9.7	2.1
015	9	8.7	12.5	2.5
016	15	8.7	8.2	2.4
017	9	13.6	10.6	3.3
018	6	9.5	18.5	7.3
019	6	11.3	21.5	11.1
020	8	12.5	8.7	2.6
021	5	13.3	16.1	1.3
022	3	13.1	13.2	2.1
023	2	13.0	19.0	7.0
024	2	11.1	9.0	3.0
025	3	19.0	22.2	6.1
026	2	13.0	15.0	7.1
028	1	10.0	79.0	4.0
029	2	12.0	12.0	6.1
030	1	13.0	14.0	5.0
040	1	20.0	22.0	5.0
Total	966	4.4	6.1	2.0

Prepared by U.S. Department of Commerce, Patent Office (1962).

Table 9

CLAIM FORM VS. ANALYSIS TIME

PATENT	CLAIM STRUCTURE		EXAMINER	TIME (minutes)	
	Number	Type		Total	Average
1 Life Preserver	4	All Independent	A B C D E F G	5 5 6 6 6 7 15	7
		No Test			
2 Fan Blade Coupling	7	All Independent	A C F	27 27 19	24
		1 Independent	D B E G	13 15 10 20	11
3 Spinning Reel	9	All Independent	D B E G	45 50 110 88	97 (1hr. 37min.)
		3 Independent	A C F	20 20 45	28
4 Brush Clearing Machine	13	All Independent	A C F	55 78 75	69 (1hr. 9min.)
		1 Independent	D B E G	50 22 25 85	52
5 Threshing Machine	15	All Independent	D B E	130 90 120	113 (1hr. 53min.)
		1 Independent	A C F	23 30 25	26
6 Logging System	31	All Independent	H I J K	150 735 110 134	192 (3hrs. 12min.)
		3 Independent	L M N	90 105 105	100 (1hr. 40min.)
7 Electromagnet	45	9 Independent	M L N A	105 200 205 106	170 (2hrs. 50min.)
		1 Independent	J I H	45 80 160	130 (2hrs. 10min.)
Average Patents 2 - 7					111 59

Prepared by:
U.S. Department of Commerce
Patent Office (1962)

84863—62——7

TABLE 10.—*Board of Appeals statistics*

	Calendar year—				
	1957	1958	1959	1960	1961
Appeals filed:					
New	6,269	9,564	10,040	10,787	10,855
Reconsideration	278	263	263	343	384
Oral hearings: [1]					
Appearances	1,079	1,126	506	1,478	1,329
Failure to appear (without prior notice)	483	364	254	751	611
Disposition:					
Dismissals [2]	565	1,005	1,144	1,149	980
Withdrawals:					
By applicant	1,650	1,685	3,387	3,528	3,618
By Office	923	1,315	2,217	2,303	2,180
Decisions	2,155	2,203	2,870	2,860	3,811
Reconsiderations	279	256	264	325	352
Appeals pending: [3]					
On Board docket	4,406	5,039	6,254	6,750	7,380
Total	6,049	8,081	9,530	10,199	10,662

[1] An oral hearing is requested in approximately 60 percent of all appeals filed. For those cases not totally withdrawn (approximately 40 percent of all appeals filed) the request for oral hearing is withdrawn about 25 percent of the time and often occurs 1 or 2 days before a scheduled hearing. All appeals for which requests for oral hearing are not withdrawn are formally docketed for the hearing. In approximately 33 percent of these docketed appeals, there is a failure to appear without prior notice.
[2] Usually caused by appellant's failure to file a brief or a reply brief.
[3] At June 30 of year indicated.

Prepared by U.S. Department of Commerce Patent Office (1962).

TABLE 11.—*Major volume assumptions for H.R. 10966 fees (1962 basis)*

Patent filing, original patent	83,000 applications with average of 2 claims over 10 and 2 independent claims over 1 (average combined fee, $64).
Patent issue, original patent	52,000 patents, less 10 percent forfeitures, with average of 3.6 pages of specifications and 2 sheets of drawings (average combined fee, $80).
Design filing	5,000 design applications.
Design issue	3,000 design patents: 5 percent for 3½ years; 10 percent for 7 years; 85 percent for 14 years.
Patent appeals	10,000 appeals: 30 percent considered with oral hearing; 10 percent considered without oral hearing; 60 percent withdrawn.
Recording patent assignments	80,000 items (patent, application, or any other paper) involved in 60,000 writings.
Trademark filing	23,500 applications.
Trademark affidavit	15,000 affidavits.
Recording trademark assignments	13,200 items (trademark registration or any other paper) involved in 3,300 writings.
Patent maintenance	1st fee, 22,470 patents (50 percent of 1957 issuances of 44,939); 2d fee, 10,643 patents (25 percent of 1953 issuances of 42,571); 3d fee, 4,567 patents (15 percent of 1949 issuances of 30,446).

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 12.—*Per capita figures on patent applications filed in selected countries (1956–60 average)*

	Number of applications [1]	Population in 1,000 [2]	Ratio		Number of applications [1]	Population in 1,000 [2]	Ratio
Switzerland	13,615	5,185	2.63	Netherlands	11,264	11,221	1.00
Sweden	12,212	7,415	1.65	France	32,366	44,500	.73
Austria	8,936	7,021	1.27	United Kingdom	[3] 31,738	51,680	.61
Belgium	10,925	9,053	1.21	United States	[4] 76,752	173,260	.44
Norway	3,860	3,526	1.09	Italy	[5] 20,649	48,635	.42
Denmark	4,722	4,500	1.05	Japan	37,998	91,760	.41
Germany	54,932	54,373	1.01				

[1] Includes applications filed by foreigners.
[2] 1958 estimates.
[3] Complete specifications only.
[4] Excludes designs and reissues.
[5] 4 years only.

Prepared by: U.S. Department of Commerce, Patent Office (1962).

TABLE 13.—*Effect of fee increases on applications filed (selected countries)*

Country	Number of applications filed									
	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960
Germany	55,457	58,561	60,202	59,317	[1] 54,778	53,452	52,988	54,492	56,610	57,119
Great Britain	22,694	22,256	24,368	26,629	[2] 28,658	29,136	29,611	30,878	33,653	35,412
Sweden	11,243	11,369	[3] 11,708	12,133	11,838	.....	11,859	[4] 12,174	12,304	12,744
Switzerland	11,765	12,131	13,177	13,781	14,144	[5] 12,666	13,124	13,616	14,606	14,664
The Netherlands	8,139	8,592	9,053	9,646	9,607	10,075	[6] 10,330	11,038	12,247	12,629

[1] Fees raised in 1955.
[2] Fees raised in mid-1955.
[3] Fees raised on July 1, 1953.
[4] Fees raised in fall, 1958.
[5] Fees raised Jan. 1, 1956.
[6] Fees raised in 1957.

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 14.—*Average size of patents (selected countries, 1961)*

	United States	Great Britain	Germany
Printed pages of specification [1]	3.70	2.75	2.16
Sheets of drawing	2.00	1.70	1.32
Independent claims	4.38	2.70	1.02
Total claims	6.73	9.50	4.70

[1] The printed pages of the British and German patents have been converted to equivalent pages of U.S. patents in accordance with the following: 1st page of U.S. patent equals 1.91 British pages and 1.87 German pages; other page of U.S. patent equals 1.38 British pages and 1.13 German pages.

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 15.—*Assignment of U.S. patents, fiscal 1955 and 1961* [1]

[In percent]

Entity	1955	1961
U.S. corporations	52.85	59.67
Foreign corporations	5.73	10.26
All corporations	58.58	69.93
U.S. Government	2.27	2.72
Individuals	39.15	27.35
Total	100.00	100.00

[1] Excludes reissue, plant, and design patents.

Prepared by: U.S. Department of Commerce, Patent Office (1962).

TABLE 16.—*Fee income comparison (present and H.R. 7731 and H.R. 10966)*

[Dollars in thousands]

Description (section and item of H.R. 10966)	Present fee	Estimated income, fiscal year 1962	Proposed fee, H.R. 7731	Estimated income, 1962 basis	Proposed fee, H.R. 10966	Estimated income, 1962 basis	Change from present fee income	
							H.R. 7731	H.R. 10966
Patent filing, original patent (sec. 1, item 1).	$30 $1 each claim over 20	$2,440 46	$40 $2 each claim over 10	$3,320 332	$40 $2 each claim over 10 $10 each independent claim over 1.	$3,320 332 1,660		
Subtotal		2,486		3,652		5,312	+$1,166	+$2,826
Patent issue, original patent (sec. 1, item 2, part).	$30 $1 each claim over 20	1,510 10	$50 $2 each claim over 10	2,600 104	$40 $10 each page of specification as printed. $2 each sheet of drawing	1,872 1,685 187		
Subtotal		1,520		2,704		3,744	+1,184	+2,224
Patent issue, reissue patent (sec. 1, item 2, part).	None		None		$40 $10 each page of specification as printed. $2 each sheet of drawing	8 7 1		
Subtotal						16		+16
Design filing (sec. 1, item 3a)	$10 for 3½ years $15 for 7 years $30 for 14 years	21 6 75	$20 for 3½ years $30 for 7 years $40 for 14 years	42 12 100	$20	100		
Subtotal		102		154		100	+52	−2
Design issue (sec. 1, item 3b)	None		None		$10 for 3½ years $20 for 7 years $30 for 14 years	1 6 77		
Subtotal						84		+84

Patent filing, reissue patent (sec. 1, item 4).	$30	6	$40	8	$40	8		
	$1 each excess claim over 20	(1)	$2 each excess claim over 10	(1)	$2 each excess claim over 10	(1)		
					$10 each excess independent claim.	3		
Subtotal		6		8		11	+2	+5
Patent disclaimer (sec. 1, item 5)	$10	1	$10	1	$15	1		(1)
Patent appeal (sec. 1, item 6)	$25	250	$50	500	$100 with oral hearing	300		
					$50 without oral hearing	50		
					$25 if withdrawn	150		
Subtotal		250		500		500	+250	+250
Patent petition to revive (sec.1, item 7, part).	$10	7	$10	7	$15	11		+4
Patent petition for delay of issue fee (sec. 1, item 7, part).	$10	2	$10	2	$15	3		+1
Patent certificate, sec. 255 or 256 (sec. 1, item 8).	$10	4	$15	6	$15	6	+2	+2
Patent copies (sec. 1, item 9)	25 cents, except designs	1,504	25 cents, except designs	1,529	25 cents except designs	1,529		
	10 cents for designs	5	10 cents for designs	5	10 cents for designs	5		
	$50 annual for libraries	1	$50 annual for libraries	1	$50 annual for libraries	1		
			$1 for large ones and plant patents in color.	15	$1 for large ones and plant patents in color.	15		
Subtotal		1,510		1,550		1,550	+40	+40
Recording patent assignments (sec. 1, item 10).	$3 for 6 pages	180	$3 for 6 pages	180	$20 each item	1,600		
	$1 each 2 pages over 6	1	$1 each 2 pages over 6	1				
	50 cents each extra item	10	50 cents each extra item	10				
Subtotal		191		191		1,600		+1,409
Trademark filing (sec. 3, item 1)	$25	588	$35	823	$35	823	+235	+235
Trademark affidavit (sec. 3, item 3)	None		$10	150	$10	150	+150	+150
Trademark petition to revive (sec. 3, item 4).	None		$10	1	$15	2	+1	+2
New trademark certificate (sec. 3, item 7).	$10	2	$15	3	$15	3	+1	+1
Trademark certificate of correction or amendment (sec. 3, item 8).	$10	2	$15	3	$15	3	+1	+1
Trademark disclaimer (sec. 3, item 10).	$10	(1)	$15	(1)	$15	(1)	(1)	(1)
Recording trademark assignments (sec. 3, item 12).	$3 for 6 pages	10	$3 for 6 pages	10	$20 each item	264		
	$1 each 2 pages over 6	(1)	$1 each 2 pages over 6	(1)				
	50 cents each extra item	5	$1 each extra item	10				
Subtotal		15		20		264	+5	+249

See footnotes at end of table, p. 98.

TABLE 16.—*Fee income comparison (present and H.R. 7731 and H.R. 10966)*—Continued

Description (section and item of H.R. 10966)	Present fee	Estimated income, fiscal year 1962	Proposed fee, H.R. 7731	Estimated income, 1962 basis	Proposed fee, H.R. 10966	Estimated income, 1962 basis	Change from present fee income	
							H.R. 7731	H.R. 10966
Patent maintenance (sec. 8)	None		$100 1st fee, prior to end of 5th year.	$2,247	$100 1st fee, prior to end of 5th year.	$2,247		
			$300 2d fee, prior to end of 9th year.	3,193	$200 2d fee, prior to end of 9th year.	2,129		
			$500 3d fee, prior to end of 13th year.	2,284	$300 3d fee, prior to end of 13th year.	1,370		
			$25 for delayed payment of a maintenance fee.	4	$25 for delayed payment of a maintenance fee.	4		
Subtotal				7,728		5,750	+7,728	+5,750
Other fees not changed		$1,014		1,051		1,051	+37	+37
Total		7,700		18,554		20,984	+10,854	+13,284

[1] Less than $500.

NOTES.—(1) Estimated income from proposed legislation includes amounts applicable to other Government agencies under sec. 2 ($225,000 under H.R. 7731 and $293,000 under H.R. 10966).

(2) Estimated amounts for trademark affidavits and patent maintenance are included to show the resulting income if all the provisions were in full operation during 1962. However, fees for these items would not be effective immediately to bring in receipts.

(3) For major volume assumptions, see tables 11 and 17.

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 17.—*Major volume assumptions for H.R. 7731 fees (1962 basis)*

Patent filing, original patent	83,000 applications with average of 2 claims over 10 (average combined fee, $44).
Patent issue, original patent	52,000 patents with average of 1 claim over 10 (average combined fee, $52).
Design filing	5,000 design applications, including effect of term extensions: 42 percent for 3½ years, 8 percent for 7 years, 50 percent for 14 years.
Trademark filing	23,500 applications.
Trademark affidavits	15,000 affidavits.
Patent maintenance	1st fee, 22,470 patents (50 percent of 1957 issuances of 44,939); 2d fee, 10,643 patents (25 percent of 1953 issuances of 42,571); 3d fee, 4,567 patents (15 percent of 1949 issuances of 30,446).

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 18.—*Income and operating costs (United States)*

Year	Operating cost	Income from fees		Year	Operating cost	Income from fees	
		Amount	Percent of cost			Amount	Percent of cost
1900	$1,247,828	$1,358,228	109	1931	$4,832,278	$4,470,310	93
1901	1,288,970	1,408,878	109	1932	5,314,852	4,306,389	81
1902	1,329,925	1,491,539	112	1933	4,588,585	4,245,899	93
1903	1,423,094	1,591,251	112	1934	3,876,785	4,197,024	108
1904	1,469,124	1,663,880	113	1935	4,153,591	4,075,387	98
1905	1,472,468	1,737,334	118	1936	4,446,464	4,171,867	94
1906	1,538,149	1,811,298	118	1937	4,492,273	4,356,331	97
1907	1,584,490	1,859,593	117	1938	4,476,913	4,346,860	97
1908	1,608,292	1,874,181	117	1939	4,615,505	4,527,292	98
1909	1,887,443	1,975,920	105	1940	4,663,092	4,344,967	93
1910	1,953,550	2,022,043	104	1941	4,745,019	4,149,142	87
1911	1,957,002	1,987,779	102	1942	4,728,808	3,678,028	78
1912	2,025,912	2,074,788	102	1943	4,609,995	3,304,477	72
1913	1,924,459	2,065,067	107	1944	4,858,852	3,450,656	71
1914	1,929,133	2,154,375	112	1945	5,041,562	3,777,632	75
1915	2,087,581	2,253,341	108	1946	5,914,471	4,427,682	75
1916	2,051,657	2,316,402	113	1947	7,262,472	4,689,441	65
1917	2,095,139	2,300,423	110	1948	8,603,032	5,525,842	64
1918	2,131,616	2,086,319	98	1949	10,101,923	5,201,598	51
1919	2,178,578	2,095,096	96	1950	11,023,036	5,448,342	49
1920	2,436,561	2,595,697	107	1951	11,248,339	5,503,881	49
1921	2,640,374	2,689,476	102	1952	12,219,557	5,377,667	44
1922	2,722,205	2,870,287	105	1953	12,129,581	5,620,310	46
1923	3,112,022	3,004,326	97	1954	11,933,934	6,054,792	51
1924	3,273,341	3,027,468	92	1955	11,629,318	5,872,059	50
1925	3,775,477	3,240,030	86	1956	14,471,723	6,547,469	45
1926	3,857,952	3,429,674	89	1957	16,514,067	6,829,855	41
1927	3,769,604	3,464,633	92	1958	19,528,142	6,938,521	36
1928	3,839,772	3,627,805	94	1959	20,701,925	7,347,194	35
1929	4,391,860	3,693,460	84	1960	21,505,872	7,435,148	35
1930	4,552,685	3,990,042	88	1961	23,658,824	7,648,198	32

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 19.—*Income and operating costs, selected countries*

[In millions of dollars]

Country	1930–39 average	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960	1957–60 average
United States:													
Income	4.269	5.448	5.504	5.378	5.620	6.055	5.872	6.547	6.830	6.939	7.347	7.435	7.122
Operating costs	4.535	11.023	11.248	12.219	12.130	11.934	11.629	14.472	16.513	19.526	20.779	21.506	19.581
Germany:													
Income	3.748	(1)	(1)	4.421	5.046	5.239	5.941	6.408	7.095	7.749	8.942	9.525	8.328
Operating costs	2.147	(1)	(1)	4.132	4.529	4.994	5.681	5.689	6.264	7.302	7.212	7.436	7.053
Great Britain:													
Income	1.823	2.624	2.596	2.710	2.747	2.898	3.606	4.200	4.250	4.446	4.732	5.370	4.699
Operating costs	1.215	1.851	2.181	2.825	3.531	3.718	4.144	4.402	5.132	5.193	5.852	6.782	5.715
Canada:													
Income	.418	.620	.680	.707	.791	1.008	1.143	1.298	1.329	1.441	1.655	1.669	1.523
Operating costs	.201	.842	.752	.829	.877	1.005	1.255	1.553	1.811	1.972	2.239	2.296	2.080
Switzerland:													
Income	.445	.663	.685	.766	.866	.922	.961	1.168	1.326	1.466	1.550	1.634	1.494
Operating costs	.210	.487	.547	.596	.633	.623	.615	.650	.764	.863	.974	1.150	.925
Sweden:													
Income	.348	.780	.965	.926	1.083	1.361	1.565	1.486	1.583	1.752	(1)	(1)	1.667
Operating costs	.277	.851	.928	1.114	1.276	1.351	1.396	1.458	1.642	1.799	(1)	(1)	1.720
The Netherlands:													
Income	.305	.699	.714	.770	.786	.661	.693	.729	1.016	1.193	1.328	1.213	1.187
Operating costs	.219	.541	.594	.632	.733	.919	1.099	1.323	1.503	1.628	1.723	1.785	1.660
Denmark:													
Income	.088	.311	.245	.267	.308	.338	.354	.397	.412	.448	.584	(1)	.481
Operating costs	.062	.234	.257	.280	.307	.333	.350	.397	.417	.433	.468	(1)	.439

[1] Not available.

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 20.—*Operating cost changes—selected countries*

[In percent]

Country	1930-39 average	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960
United States	100	243	248	269	267	263	256	319	364	430	458	474
Germany	100	(1)	(1)	192	211	233	265	265	292	340	336	346
Great Britain	100	152	180	233	291	306	341	362	422	427	482	558
Canada	100	419	374	412	436	500	624	773	901	981	1, 114	1, 142
Switzerland	100	232	260	284	301	297	293	310	364	411	464	548
Sweden	100	307	335	402	461	488	504	527	593	649	(1)	(1)
The Netherlands	100	247	271	289	335	420	502	604	686	743	787	815
Denmark	100	377	415	452	495	537	565	640	673	698	755	(1)

[1] Not available.

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 21.—*Operating cost recovery—Selected countries*

[In percent]

Country	1930-39 average	1950	1951	1952	1953	1954	1955	1956	1957	1958	1959	1960
United States	94	49	49	44	46	51	50	45	41	35	35	34
Germany	174	(1)	(1)	107	111	105	104	113	113	106	124	128
Great Britain	150	142	119	96	78	78	87	95	83	86	81	79
Canada	208	74	90	85	111	100	91	84	73	73	74	73
Switzerland	211	136	125	129	137	148	156	180	174	170	159	142
Sweden	126	92	104	83	85	101	112	102	96	97	(1)	(1)
The Netherlands	139	129	120	122	107	72	63	55	68	73	77	68
Denmark	142	133	95	95	100	102	101	100	99	103	125	(1)

[1] Not available.

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 22.—*Income by fees (1957–61)*

	Fiscal 1957		Fiscal 1958		Fiscal 1959		Fiscal 1960		Fiscal 1961	
	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total
Patent filing fee, including extra claims	$2,297,183	33.7	$2,299,476	33.5	$2,341,478	32.0	$2,372,169	32.0	$2,419,034	31.7
Patent final fee, including extra claims	1,353,326	19.9	1,371,666	20.0	1,502,805	20.6	1,434,962	19.3	1,368,368	17.9
Patent copies	1,328,440	19.5	1,324,841	19.3	1,395,467	19.1	1,414,959	19.1	1,503,712	19.7
Reproduction of records	459,625	6.7	486,547	7.1	587,538	8.0	638,280	8.6	722,368	9.5
Trademark filing fee	570,456	8.4	541,989	7.9	557,893	7.6	583,241	7.9	573,767	7.5
Patent appeals	142,495	2.1	192,332	2.8	238,725	3.3	249,485	3.4	245,730	3.2
Recording assignments	184,301	2.7	175,529	2.6	184,457	2.5	189,323	2.5	195,387	2.6
Design filing fee, including term extensions	89,863	1.3	89,481	1.3	94,591	1.3	96,375	1.3	92,908	1.2
Trademark renewal fee	103,602	1.5	79,718	1.2	80,122	1.1	98,032	1.3	87,503	1.2
Certification of copies	46,785	.7	48,197	.7	54,151	.7	58,805	.8	66,487	.8
Drawings and corrections	37,559	.6	56,972	.8	62,201	.8	57,613	.8	61,908	.8
Trademark copies	22,999	.3	23,755	.3	26,085	.4	31,867	.4	31,798	.4
Trademark oppositions and cancellations	31,495	.5	26,100	.4	30,490	.4	32,750	.4	29,640	.4
Subscription service for copies	23,454	.3	24,822	.4	26,571	.4	26,189	.3	28,522	.4
Title reports	23,152	.3	20,542	.3	20,590	.3	22,445	.3	24,112	.3
Special service on orders	14,113	.2	16,559	.2	15,133	.2	19,458	.3	96,639	1.3
Classified lists of patents	6,983	.1	7,826	.1	14,839	.2	9,754	.1	7,955	.1
Other fees (approximately 40 in number) less than $10,000 each	81,104	1.2	79,751	1.1	80,557	1.1	85,560	1.2	79,444	1.0
Subtotal	6,816,935	100.0	6,866,103	100.0	7,313,693	100.0	7,421,267	100.0	7,635,282	100.0
Excess of coupon sales over coupon redemption	12,920		72,418		33,501		13,881		12,916	
Total income	6,829,855		6,938,521		7,347,194		7,435,148		7,648,198	

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 23.—*Consumer Price Index*

[1957-59=100]

Year	Calendar basis	Fiscal basis	Year	Calendar basis	Fiscal basis
1932	47.6	50.2	1947	77.8	74.0
1933	45.1	45.3	1948	83.8	81.2
1934	46.6	46.1	1949	83.0	84.0
1935	47.8	47.3	1950	83.8	82.5
1936	48.3	47.9	1951	90.5	87.6
1937	50.0	49.2	1952	92.5	91.6
1938	49.1	49.9	1953	93.2	92.9
1939	48.4	48.6	1954	93.6	93.7
1940	48.8	48.7	1955	93.3	93.3
1941	51.3	49.3	1956	94.7	93.7
1942	56.8	54.3	1957	98.0	96.4
1943	60.3	58.9	1958	100.7	99.6
1944	61.3	60.7	1959	101.5	100.9
1945	62.7	62.0	1960	103.1	102.4
1946	68.0	63.5	1961	104.2	103.7

Prepared by: U.S. Department of Commerce, Patent Office (1962).

Source: U.S. Department of Labor, Bureau of Labor Statistics.

TABLE 24.—*Comparison of disposal rates and complexity factors*

AVERAGE DISPOSAL RATES

Type of art	Mechanical		Electrical		Overall office
Complexity	Average	Complex	Average	Complex	
Division	8	36	37	42	
Year					
1955	119	77	132	112	91
1956	104	64	139	105	85
1957	100	47	128	45	72
1958	117	52	107	41	80
1959	89	43	138	52	73
1960	94	47	108	41	77
1961	110	49	120	41	80

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 25.—*Payment of renewal fees—Germany*

Year of patent life	Base years	Base patents	Number on which indicated fee was due	Number paying indicated fee	Percent of those due which paid	Percent of base patents which paid
1			[1]			
2			[1]			
3	1948–58	187,870	187,870	185,770	98.9	98.9
4	1948–57	182,132	180,106	170,254	94.5	93.5
5	1948–56	172,629	161,212	146,974	91.2	85.1
6	1948–55	159,820	135,505	119,167	87.9	74.6
7	1948–54	145,039	107,135	91,915	85.8	63.4
8	1948–53	128,478	80,086	67,385	84.1	52.5
9	1948–52	111,226	56,588	47,652	84.2	42.8
10	1948–51	93,309	38,400	32,424	84.4	34.8
11	1948–50	65,493	22,853	19,316	84.5	29.5
12	1948–49	35,419	10,147	8,560	84.4	24.2
13	1948	13,456	3,409	2,878	84.4	21.4
14						18.0
15						15.0
16						12.8
17						10.8
18						9.1

[1] No fees due.

NOTE.—Renewal fees, and the term of the patent, are counted from the filing date of the application which resulted in the patent involved. No renewal fees are required for the first and second year. The table includes patents granted on applications filed from 1948 on, and the fees paid on these patents up to the end of 1960. Each line represents a different age group of patents; for only 1 year have any reached their 13th year. None of the patents included have passed the 13th year and the figures in the last column for the years after 13 are estimates calculated from the preceding items. Addition patents, on which no renewal fees are due, are not included.

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 26.—*Payment of renewal fees—Great Britain*

Year of patent life	Base years	Base patents	Number on which indicated fee was due	Number paying indicated fee	Percent of those due which paid	Percent of base patents which paid
1			[1]			
2			[1]			
3			[1]			
4			[1]			
5	1946–56		(190,000)	162,122	(85.3)	85.3
6	1946–55		142,547	127,439	89.4	76.3
7	1946–54		109,642	97,828	89.2	68.1
8	1946–53		82,991	73,654	88.8	60.4
9	1946–52		61,884	55,296	89.4	54.0
10	1946–51		45,682	40,629	88.9	48.0
11	1946–50		32,071	28,201	87.9	42.2
12	1946–49		21,176	18,573	87.7	37.0
13	1946–48		13,139	11,477	87.4	32.4
14	1946–47		7,506	6,467	86.2	27.9
15	1946		3,205	2,791	87.1	24.3
16						21.1

[1] No fees due.

NOTE.—Renewal fees and the term of the patent are counted from the filing date of the application which resulted in the patent involved. No renewal fees are required for the first 4 years. The table includes patents granted in applications filed from 1946 on and the fees paid on these patent up to the end of 1960. Each line represents a different age group of patents; for only 1 year have any reached their 15th year. The number of base patents is not given in the reports and cannot be determined; the last column is calculated from the estimated figures written parentheses.

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 27.—*Payment of renewal fees—Switzerland*

Year of patent life	Base years	Base patents	Number on which indicated fee was due	Number paying indicated fee	Percent of those due which paid	Percent of base patents which paid
1			(1)			
2	1947–58	75,307	75,307	73,576	97.7	97.7
3	1947–57	74,836	73,140	69,317	94.8	92.6
4	1947–56	73,417	68,062	61,335	90.1	83.5
5	1947–55	69,457	57,904	51,326	88.6	73.9
6	1947–54	61,429	44,707	38,990	87.2	63.5
7	1947–53	53,291	33,086	28,980	87.6	54.4
8	1947–52	44,952	23,755	20,715	87.2	46.1
9	1947–51	36,764	16,531	14,401	87.1	39.2
10	1947–50	28,650	10,838	9,438	87.1	32.9
11	1947–49	21,074	6,829	5,951	87.1	28.2
12	1947–48	13,772	3,825	3,266	85.1	23.7
13	1947	7,693	1,889	1,617	85.6	21.0
14						18.2
15						15.8
16						13.6
17						11.8
18						10.2

[1] No fees due.

NOTE.—Renewal fees, and the term of the patent, are counted from the filing date of the application which resulted in the patent involved. No renewal fee is required for the first year. The table includes patents issued on applications filed from 1947 on, and the fees paid on these patents up to the end of 1959. Each line represents a different age group of patents, for only 1 year have any reached their 13th year. None of the patents included have passed the 13th year and the figures in the last column for the years after 13 are estimates calculated from the preceding items. Addition patents, on which no renewal fees are due, are not included.

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 28.—*Payment of renewal fees—The Netherlands*

Year of patent life	Base years	Base patents	Number on which indicated fee was due	Number paying indicated fee	Percent of those due which paid	Percent of base patents which paid
1	1951–60	29,540	29,540	29,153	98.7	98.7
2	1951–59	26,010	25,660	23,832	92.9	91.6
3	1950–58	24,947	22,814	20,488	89.8	82.1
4	1949–57	24,925	20,408	18,328	89.8	73.5
5	1948–56	23,497	17,148	15,333	89.4	65.3
6	1948–55	19,902	12,947	11,388	88.0	57.2
7	1948–54	16,615	9,469	8,005	84.5	48.2
8	1948–53	13,479	6,375	5,618	88.1	41.7
9	1948–52	11,084	4,507	3,956	87.8	35.7
10	1948–51	8,877	3,076	2,699	87.7	30.4
11	1948–50	6,752	2,007	1,735	86.4	25.7
12	1948–49	4,609	1,054	913	86.6	19.8
13	1948	1,919	456	401	87.9	20.9
14						18.2
15						15.6
16						13.8
17						12.0
18						10.5

NOTE.—Renewal fees and the term of the patent are counted from the granting of the patent, and a fee is required for the first year. The table includes patents granted from 1948 on, and the fees paid on these patents up to the end of 1960. Each line represents a different age group of patents; for only 1 year have any reached their 13th year. None of the patents included have passed the 13th year, and the figures in the last column for the years after 13 are estimates calculated from the preceding items. Addition patents, on which no renewal fees are due, are not included.

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 29.—*Operating costs and employment by cost centers (fiscal years)*

	1952	1953	1954	1955	1956	1957	1958	1959	1960	1961
Operating cost:										
Patent examining operation	$8,579,148	$8,586,891	$8,416,549	$8,164,037	$10,311,858	$11,834,828	$14,431,278	$15,287,936	$15,552,464	$17,027,067
Office of Research and Development					194,040	290,267	372,738	316,955	390,979	460,406
Board of Patent Interferences	80,443	81,602	82,767	92,760	109,522	83,293	93,473	119,429	126,475	156,660
Board of Appeals	178,381	176,866	167,518	184,299	200,819	379,883	358,048	454,530	553,914	582,168
Trademark examining operation	710,162	720,310	700,400	653,921	698,907	666,826	733,219	773,429	771,095	836,827
Trademark Trial and Appeal Board	29,030	29,136	26,876	27,840	22,614	49,481	55,626	89,312	113,583	130,087
Office of Commissioner	100,466	87,072	97,482	114,666	130,987	147,084	166,741	182,066	180,248	180,417
Office of Solicitor	78,525	79,637	84,736	91,174	99,868	126,750	150,131	176,208	194,313	237,246
Office of Administration	2,463,402	2,368,067	2,357,606	2,300,621	2,703,108	2,934,363	3,164,600	3,283,214	3,581,418	3,988,337
Office of Information Services								18,731	41,383	49,665
Reimbursed services to other accounts						1,292	2,288	115		9,944
Total	12,219,557	12,219,581	11,933,934	11,629,318	14,471,723	16,514,067	19,528,142	20,701,925	21,505,872	23,658,824
Average employment:										
Patent examining operation	1,185	1,116	1,043	985	1,136	1,378	1,567	1,495	1,487	1,512
Office of Research and Development					8	10	14	20	27	36
Board of Patent Interferences	8	8	8	9	10	8	7	8	9	11
Board of Appeals	27	27	26	26	27	49	42	47	52	52
Trademark examining operation	114	112	106	98	95	95	100	95	94	95
Trademark Trial and Appeal Board	3	3	3	3	2	4	4	11	13	14
Office of Commissioner	16	14	14	16	16	17	17	17	17	15
Office of Solicitor	9	9	10	11	11	15	17	18	20	22
Office of Administration	507	488	441	403	411	461	487	484	517	540
Office of Information Services								2	4	4
Reimbursed services to other accounts										
Total	1,869	1,777	1,651	1,551	1,716	2,036	2,255	2,197	2,240	2,301

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 30.—*Income and operating costs—Patent and trademark operations*

	Fiscal 1960			Fiscal 1961		
	Total	Patent operations	Trademark operations	Total	Patent operations	Trademark operations
Income:						
1. Patent filing fee, including extra claims	$2,372,619	$2,372,619		$2,419,034	$2,419,034	
2. Patent final fee, including extra claims	1,434,962	1,434,962		1,368,368	1,368,368	
3. Patent copies	1,414,959	1,414,959		1,503,712	1,503,712	
4. Reproduction of records	638,280	632,159	$6,121	722,368	716,050	$6,318
5. Trademark filing fee	583,241		583,241	573,767		573,767
6. Patent appeals	249,485	249,485		245,730	245,730	
7. Recording assignments	189,323	178,945	10,378	195,387	179,227	16,160
8. Special service on orders	19,458	18,599	859	96,639	91,463	5,176
9. Design filing fee, including term extensions	96,375	96,375		92,908	92,908	
10. Trademark renewal fee	98,032		98,032	87,503		87,503
11. Certification of copies	58,805	51,719	7,086	66,487	58,530	7,957
12. Drawings and corrections	57,613	53,846	3,767	61,908	57,969	3,939
13. Trademark copies	31,867		31,867	31,798		31,798
14. Trademark oppositions and cancellations	32,750		32,750	29,640		29,640
15. Subscription service for copies	26,189	26,077	112	28,522	28,522	
16. Title reports	22,445	2,406	20,039	24,112	1,271	22,841
17. Other fees (approximately 40 in number), less than $10,000 each	95,314	75,680	19,634	87,399	67,891	19,508
Subtotal	7,421,267	6,607,381	813,886	7,635,282	6,830,675	804,607
Excess of coupon sales over coupon redemption	13,881	13,576	305	12,916	12,645	271
Total income	7,435,148	6,620,957	814,191	7,648,198	6,843,320	804,878
Percent of operating cost	35	32	75	32	30	68
Operating cost:						
Patent examining operation	$15,552,464	$15,552,464		$17,027,067	$17,027,067	
Office of Research and Development	390,979	390,979		460,406	460,406	
Board of Patent Interferences	126,475	126,475		156,660	156,660	
Board of Appeals	553,914	553,914		582,168	582,168	
Trademark examining operation	771,095		$771,095	836,827		$836,827
Trademark Trial and Appeal Board	113,583		113,583	130,087		130,087
Subtotal	17,508,510	16,623,832	884,678	19,193,215	18,226,301	966,914
Office of Commissioner [1]	180,248	171,145	9,103	180,417	171,324	9,093
Office of Solicitor [1]	194,313	184,500	9,813	237,246	225,289	11,957
Office of Administration [1]	3,581,418	3,400,556	180,862	3,988,337	3,787,325	201,012
Office of Information Services [1]	41,383	39,293	2,090	49,665	47,162	2,503
Total operating cost [2]	21,505,872	20,419,326	1,086,546	23,648,880	22,457,401	1,191,479

[1] Distribution estimated. Excludes reimbursed services to other accounts.

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 31.—*Schedule of fees*

[Statutes: 35 U.S.C. 41 (Patents), 15 U.S.C. 1113 (Trademarks). Regulations: 37 CFR 1.21 (Patents), 37 CFR 2.6 (Trademarks)]

Footnote reference	Nature of fee	Amount	Date established	Previous charge
A	On filing each application for an original patent, except in design cases.	$30.00	1932	$25.00
	and			
	For each claim in excess of 20	1.00	1927	
A	On issuing each orginal patent, except in design cases.	30.00	1932	25.00
	and			
	For each claim in excess of 20	1.00	1927	
A	On filing each application for an original patent in design cases:			
	For 3 years 6 months	10.00	1861	
	For 7 years	15.00	1842	
	For 14 years	30.00	1861	
A	For extending term of design patent, prior to allowance:			
	From 3 years 6 months to 7 years	5.00	1861	
	From 3 years 6 months to 14 years	20.00	1861	
	From 7 years to 14 years	15.00	1861	
A	On every application for the reissue of a patent	30.00	1861	15.00
	and			
	For each claim in excess of 20 over and above the number of claims of the original patent	1.00	1953	
B	On filing each original application for registration of a trademark in each class	25.00	1947	15.00
B	On filing each application for renewal of trademark registration in each class	25.00	1947	15.00
	and			
	On filing each application for renewal in each class after expiration of the registration, additional	5.00	1947	
B	On filing notice of opposition in trademark cases	25.00	1947	10.00
B	On filing petition for cancellation in trademark cases	25.00	1947	
B	For issuance of a new certificate of registration following change of ownership of a trademark or correction of a registrant's mistake.	10.00	1947	----------
A	On filing each disclaimer in patent, under 35 U.S.C. 253	10.00	1837	----------
B	For filing each disclaimer, amendment, surrender, or cancellation after registration of a trademark.	10.00	1947	----------
B	On filing notice of claim of benefits of the Trademark Act for a mark to be published under sec. 12(c) thereof.	10.00	1947	----------
A	On an appeal for the first time from the examiner to the Board of Appeals (patent cases).	25.00	1953	15.00
B	On appeal from an examiner in charge of the registration of trademarks to Trial and Appeal Board.	25.00	1947	15.00
A	On filing each petition for the revival of an abandoned application for a patent.	10.00	1932	----------
A	On filing each petition for the delayed payment of the fee for issuing each patent.	10.00	1939	----------
A	For certificate of correction of patent applicant's mistake, under 35 U.S.C. 255	10.00	1953	----------
B	For certificate of correction of trademark registrant's mistake	10.00	1947	----------
A	For printed copies of patents (except design patents), per copy	.25	1946	.10
A	For printed copies of design patents, per copy	.10	1919	.05
B	For printed copies of registered trademarks, per copy	.10	1919	.05
A	For printed copies of patents issued in 1 year, special rate for libraries specified in 35 U.S.C. 13	50.00	1922	----------
A	For recording every assignment, agreement, or other paper not exceeding 6 pages in patent cases	3.00	1930	[1] 2.00
	and			
	For each additional 2 pages or less	1.00	1930	[1] 1.00
	and			
	For each additional patent or application included in 1 writing where more than 1 is so included	.50	1930	.25
B	For recording every assignment or other paper not exceeding 6 pages in trademark cases	3.00	1930	[1] 2.00
	and			
	For each additional 2 pages or less	1.00	1930	[1] 1.00
	and			
	For each additional registration or application included or involved in 1 writing, where more than 1 is so included or involved	.50	1930	.25
A	For each certificate in patent cases	1.00	1953	.50
B	For certifying in trademark cases	1.00	1947	.50
	and			
	For each additional registration or application which may be included under a single certificate	.50	1947	----------
C	For typewritten copies of records, for each page produced (double spaced) or fraction thereof	1.00	1960	----------
B	For comparing copies, for every 100 words or fraction thereof	.05	1946	----------
C	For photocopies or other reproduction of records, drawings, or printed material, per page of material copied	.30	1953	.20
B	For manuscript copies of records, for every 100 words or fraction thereof	.10	1930	----------

See footnotes at end of table, p. 109.

TABLE 31.—*Schedule of fees*—Continued

[Statutes: 35 U.S.C. 41 (Patents), 15 U.S.C. 1113 (Trademarks). Regulations: 37 CFR 1.21 (Patents), 37 CFR 2.6 (Trademarks)]

Footnote reference	Nature of fee	Amount	Date established	Previous charge
C	For copy of patent grant	$1.00	1953	$0.50
B	For copy of trademark grant or certificate of renewal	1.00	1947	.50
D	For abstracts of title, for the search, 1 hour or less, and certificate	3.00	1931	2.00
	and			
	For each additional hour or fraction thereof	1.50	1931	1.00
	and			
	For each brief from the digest of assignments, of 200 words or less	1.00	1948	.50
	and			
	For each additional 100 words or fraction thereof (not included in trademark statute)	.10	1916	
D	For title reports required for Office use	1.00	1927	
B	For certificate that trademark has not been registered—search and certificate (for deposit in foreign countries only)	3.00	1947	1.50
C	For each printed copy of a trademark registration with data entered or record as of the date of mailing, relating to renewal, cancellation, publication under sec. 12(c) of the Trademark Act and affidavits under secs. 8 and 15 of such act (in addition to the fee for the printed copy)	.40	1954	
C	For written translations from foreign languages into English, made only of references cited in applications or of papers filed in the Patent Office insofar as facilities may be available, for every 100 words of the original language, or fraction thereof	3.00	1957	1.25
C	For oral translations (dictation or assistance) from foreign language into English, made only of references cited in applications or of papers filed in the Patent Office insofar as facilities may be available, for each ½ hour or fraction thereof that service is rendered	4.00	1957	[3] 1.25
C	On admission to practice as attorney or agent	5.00	1925	
C	For certificate of good standing as attorney or agent	1.00	1925	
C	For making drawings, when facilities are available, the cost of making the same, minimum charge per sheet:			
	Patent drawings	25.00	1957	15.00
	Trademark drawings	10.00	1957	5.00
C	For correcting drawings, the cost of making the correction, minimum charge	3.00	1957	1.00
C	For the mounting of unmounted drawings and photoprints received with patent applications, provided they are of approved permanency	1.00	1949	
C	For photographic prints of patent models, building facilities, etc., if available:			
	5 x 7 photographic print	.50	1949	
	8 x 10 photographic print	.75	1949	
C	Subscription order for printed copies of patents as issued, in addition to the fee for printed copies supplied, annual service charge for entry of order and one subclass	2.00	1957	1.00
	and			
	For each additional subclass included	.20	1957	.10
C	List of U.S. patents:			
	All patents in a subclass, per sheet containing 100 patent numbers or less	.30	1957	.20
	Patents in a subclass, limited by date or patent number, per sheet containing 50 patent numbers or less	.30	1957	.20
C	Local delivery box rental, per annum	12.00	1959	5.00
C	For publication in the Official Gazette of a notice of the availability of a patent for licensing or sale, each patent	3.00	1954	
C	For search of Patent Office records, for purposes not otherwise specified in the schedule of fees, per hour of search or fraction thereof	3.00	1957	1.50
C	For special service to expedite furnishing items or services ahead of regular order:			
	On orders for copies of U.S. patents and trademark registrations, in addition to the charge for the copies, for each copy ordered	.25	1960	
	On all other orders or requests for which special service facilities are available, in addition to the regular charge, a special charge equal to the amount of regular charge; minimum special service charge per order or request	1.00	1960	

FOOTNOTES

A—Established by law (35 U.S.C. 41).
B—Established by law (15 U.S.C. 1113).
C—Established by Patent Office under authority contained in 35 U.S.C. 41.
D—Established by law (15 U.S.C. 1113) for trademark cases and established by Patent Office (35 U.S.C. 41) for patent cases.

[1] For 1,000 words.
[2] For additional 1,000.
[3] Per 100 words.

Prepared by U.S. Department of Commerce, Patent Office (1962).

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TABLE 32.—*U.S. application parameters (divisions 42 and 68)*

Application number	Specifications (pages)	Claims	Drawings (sheets)	Class interval average (40 pp.)	Application number	Specifications (pages)	Claims	Drawings (sheets)	Class interval average (40 pp.)
1	3	5	1		52	66	25	20	
2	4	3	1		53	67	41	14	
3	6	14	1		54	69	55	6	
4	7	8	1		55	73	17	9	
5	9	11	2		56	75	40	8	
6	10	11	2		57	77	18	17	27.5
7	10	5	3		58	81	53	19	
8	12	6	3		59	85	20	13	
9	13	15	3		60	92	22	12	
10	13	9	4		61	94	20	16	
11	13	11	3		62	108	85	28	39.0
12	14	7	3		63	128	38	35	
13	14	7	1		64	128	26	38	
14	14	4	2		65	134	21	31	
15	15	15	4		66	134	13	30	
16	15	7	2		67	134	6	30	
17	16	13	1		68	136	41	9	
18	17	7	3		69	142	28	29	
19	18	18	2		70	146	32	29	
20	19	10	5		71	150	105	18	
21	22	14	2		72	158	61	15	40.0
22	23	9	11		73	171	14	75	
23	26	21	24		74	173	13	39	
24	26	15	3		75	185	16	39	
25	27	15	5		76	185	27	31	
26	27	12	1		77	195	20	52	
27	28	18	5		78	198	30	100	20.0
28	28	34	6		79	201	31	66	
29	28	23	5		80	218	24	44	
30	30	40	6		81	225	65	30	40.0
31	30	24	6		82	244	216	57	
32	32	22	6		83	256	91	95	
33	32	15	15		84	263	14	395	
34	34	19	11		85	265	40	43	
35	37	21	4		86	272	25	35	77.0
36	38	17	2		87	304	49	60	
37	39	20	6	14.5	88	306	27	81	
38	45	6	3		89	311	36	59	
39	45	26	4		90	317	10	36	
40	46	20	17		91	317	12	36	
41	49	15	6		92	317	9	36	24.0
42	49	48	3		93	364	57	70	
43	50	31	6		94	367	59	620	58.0
44	51	34	10		95	420	67	112	67.0
45	56	15	7		96	540	40	377	40.0
46	56	19	8		97	628	38	22	
47	57	16	10		98	640	63	77	50.0
48	58	20	7		99	645	8	252	
49	59	19	5		100	645	10	252	
50	62	32	9		101	646	14	252	
51	65	30	8		102	650	20	252	13.0

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 33.—*Renewal fee schedule—Selected countries*

[In dollars]

Country [1]	Year																			
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
United States, 1961																				
H.R. 10966					100.00				200.00				300.00							
France		6.00	6.00	6.00	6.00	10.80	10.80	10.80	10.80	10.80	16.80	16.80	16.80	16.80	16.80	24.00	24.00	24.00	24.00	24.00
Germany			11.90	11.90	19.04	29.75	41.65	59.50	77.35	95.20	124.95	160.65	196.35	238.00	279.65	321.30	362.95	404.60		
Great Britain					14.00	16.80	22.40	28.00	33.60	39.20	44.80	47.60	50.40	53.20	56.00	56.00				
Italy		1.93	2.90	4.02	5.64	8.05	9.66	11.27	12.88	16.10	19.32	22.54	27.37	32.20	37.03					
Canada																				
Belgium		4.00	6.00	8.00	11.00	14.00	17.00	20.00	23.00	26.00	30.00	34.00	38.00	42.00	46.00	50.00	54.00	58.00	62.00	66.00
Switzerland		6.99	9.32	11.65	13.98	16.31	18.64	23.30	27.96	32.62	37.28	41.94	46.60	51.26	55.92	60.58	65.24	69.90		
Japan				2.22	2.22	2.22	4.16	4.16	4.16	8.31	8.31	8.31	16.62	16.62	16.62					
Spain	0.23	.46	.69	.92	1.74	2.18	2.43	2.78	3.13	3.47	5.10	5.55	6.00	6.40	6.90	7.50	7.80	8.40	8.80	9.30
Australia					11.25	13.50	15.75	18.00	20.25	22.50	24.75	27.00	29.25	31.50	33.75	36.00				
Sweden				9.65	14.47	19.29	24.07	28.89	33.71	38.60	48.25	57.90	67.55	77.20	86.85	96.50	106.15			
The Netherlands	21.12	23.76	26.40	29.04	31.68	34.32	38.28	42.24	46.20	50.16	54.12	58.08	63.36	68.64	73.92	79.20	84.48	89.76		

[1] See table 34 for terms of patents.

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 34.—*Comparison of total fees—Selected countries*

Country	Average issued patents per year	Term of patent from—		Fees			Type of renewal
		Filing date	Issue or publication date	Filing and issue	Renewal (total)	Total	
United States:							
Present			17	$60	0	$60	
Proposed (average size)			17	144	$600	744	Periodic.
France	28,460	20		17	282	299	Annual.
Germany	25,268	18		26	2,435	2,461	Do.
Great Britain	19,563	16		22	462	484	Do.
Italy	17,080	15		9	211	220	Do.
Canada	11,366		17	60	0	60	
Belgium	9,074	20		6	609	615	Annual
Switzerland	7,657	18		14	589	603	Do.
Japan	7,270		15	6	94	100	Do.
Spain	5,601		20	7	90	97	Do.
Australia	5,500	16		26	284	310	Do.
Sweden	4,596	17		40	710	750	Do.
The Netherlands	2,924		18	46	332	378	Do.

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 35.—*Cumulative fee schedule—Selected countries*

[In dollars]

Country	Filing and issue [1]	Years from date of issue																			
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
United States, 1961	60																				
H.R. 10966	144					244				444				744							
France	17		23	29	35	41	52	63	73	84	95	112	129	145	162	175	199	223	247	271	295
Germany	26			38	50	69	99	140	200	277	372	497	658	854	1,092	1,372	1,693	2,056	2,461		
Great Britain	22					36	53	75	103	137	176	221	268	319	372	428	484				
Italy	9		11	14	18	23	32	41	52	65	81	101	123	151	183	220					
Canada	60																				
Belgium	6		10	16	24	35	49	66	86	109	135	165	194	232	274	320	370	424	482	544	610
Switzerland	14		21	30	42	56	72	91	114	142	175	212	254	300	352	408	468	534	603		
Japan	6				8	10	13	17	21	25	33	42	50	67	83	100					
Spain	7	7+	8	8+	9	11	13	15	18	21	25	30	35	41	48	55	62	70	78	87	97
Australia	26					37	51	66	84	105	127	152	179	208	240	273	309				
Sweden	40				50	54	88	127	169	215	265	319	378	441	510	583	663	747	837		
The Netherlands	46	67	91	117	136	168	202	241	283	329	379	433	491	555	623	697	777	861	951		

[1] It is assumed for this schedule that all applications issue shortly after their filing date; a current U.S. application is assumed to issue 3 years after filing.

Prepared by U.S. Department of Commerce, Patent Office (1962).

TABLE 36.—*Technical subject matter handled by certain divisions in Patent Office (see figs. 15 and 21)*

Division 8, classes 5, 45, 182, 232, 297, 311, 312: Beds, chairs and seats, tables, cabinet structures, and general furniture; fire escapes, ladders, and scaffolds; deposit and collection receptacles.
Division 36, class 73: Processes and apparatus for making any kind of measurement or test.
Division 37, classes 200, 219, 250: Devices for opening and closing electrical circuits; devices which heat by electricity and devices for converting various forms of energy into a form for transmission through air, earth, or water and for transmitting such energy.
Division 42, classes 307, 340: Devices relating to electrical transmission and to electrical communications.
Division 68, class 235: Electronic data-processing machines which involve calculators.

Prepared by U.S. Department of Commerce, Patent Office (1962).

APPENDIX C

C–1. Statements made by members of the House and Senate Appropriations Committees, both present and past, relating to Patent Office fees.
C–2. Bids on overflow patent applications (National Aeronautics and Space Administration).
C–3. The examining process.
C–4. List of members of Committee on Patent Office Procedure (1924).
C–5. Increase in the incomes of lawyers (1932–54).

APPENDIX C–1

STATEMENTS MADE BY MEMBERS OF THE HOUSE AND SENATE APPROPRIATIONS COMMITTEES, BOTH PRESENT AND PAST, RELATING TO PATENT OFFICE FEES

[Chronologically listed with emphasis added]

1. Hearings, Department of Commerce appropriation bill for 1946, 79th Congress, 2d session, House (February 6, 1945): Pursuing the matter of the charge for copies of patents, Mr. Rabaut, chairman of the subcommittee, had this to say:

"* * * I think the whole situation should be looked over with the idea of increasing the prices on items sold by the Patent Office."

2. Hearings, Department of Commerce appropriation bill for 1947, 79th Congress, 2d session, House (January 25–March 14, 1946): Mr. Rabaut, chairman of the subcommittee, had this to say to Commissioner Ooms:

"* * * It would be timely for you to make a suggestion that the price of that (patent copies) be increased, if it costs 18 cents *there is no reason for the Government to take a loss on it* and the price should be increased to a price which would reflect certainly, at least, cost on these documents."

And later, Mr. Rabaut stated:

"Any place where money can be saved it should be saved, *any place where legitimate charges can be made they should be set up.* Any place there is inadequate attention being given to something or an adequate condition existing that can be changed in the interest of efficiency in the Government, that should be done."

3. House Report No. 1817, 79th Congress, 2d session (March 26, 1946): The report, by Mr. Cannon for the Committee on Appropriations, included the following language:

"The committee is advised that if a proper schedule of prices were established, there would be a growth of income (for patent copies) of $3 million or more annually. Legislation would be necessary and the committee hopes that the Committee on Patents will give the matter early and earnest consideration."

4. House Report No. 1890, 79th Congress, 2d session (April 19, 1946), submitted by Mr. Rabaut for the Committee on Appropriations:

"*The committee believes that this agency should again be made self-sustaining* by increasing many of the fees connected with the processing of applications and the sale of copies of patents. Recommendations for major changes in the present fee system are now before the Patent Committee of the House."

5. Hearings, Department of Commerce appropriation bill for 1948, 80th Congress, 1st session, House (March 12, 1947). Mr. Horan of the subcommittee asked the following question:

"Is there any reason why the Patent Office should not always be self-sustaining? * * * Why will you not be out of the red this year?

"Mr. MURPHY (Acting Commissioner). I suppose the reason is that our fees are not high enough.

"Mr. HORAN. We are constantly made conscious of the fact here on the Appropriations Committee that *our economy has shifted and that a fee that was adequate in 1936 is no longer adequate.* I do not think that it is the fees charged by the Patent Office that represents an obstruction to the average individual in America in the matter of taking advantage of the facilities of the Office.

"Mr. MURPHY. I think that is true it is a small part of the total cost.

"Mr. HORAN. That is right, so I [have] no objection to immediate consideration of an adjustment of those fees, *because certainly the Patent Office should be self-sustaining.*"

6. Hearings, Department of Commerce appropriation bill for 1949, 80th Congress, 2d session, House (January 21, 1948):

"Mr. CLEVENGER. I am interested now in seeing how nearly this Bureau is sustained by fees. * * * *It seems to me that this is one service that ought to nearly pay its own way and sufficient fees should be charged to carry on the operations of the Office.*"

7. Hearings, Department of Commerce appropriation bill for 1950, 81st Congress, 1st session, House (March 7, 1949):

"Mr. CLEVENGER. Should higher fees be charged under present conditions?

"Mr. FEDERICO. The Appropriations Committee several years ago pursued this subject of revising fees to put them more in line with cost of the operation * * *."

8. Hearings, Department of Commerce Appropriations for 1952, 82d Congress, 1st session, Senate (March 21, 1951):

"Senator MCCARRAN. Why can't the fees be brought up to meet the overhead? * * * I still go back to the thought, and dwell on it, that it might be brought up to that point without any danger to inventions * * *. Do you not think that by raising the fees you would accomplish another angle? You answered Senator Ellender that you grant about 50 percent (of the patents filed) * * *. You find 50 percent are frivolous anyway, a haphazard proposition, some fellow making a try at it. If he had to pay $50 to file and $60 for his patent, maybe he wouldn't be so anxious.

"Senator FERGUSON. I think this is the kind of service that should pay.

"Senator MCCARRAN. I tell you frankly why I am asking these questions. *I would like to find a way to make this thing break even sometime or other.*

"Senator FERGUSON. *Why should it not pay?* We have a clerk's office, where if they want to file they pay a fee for getting it filed. That is the way to make it support itself * * *. We have been talking about this in the Judiciary Committee for years, and the chairman has urged this for years. *There seems to be always a resistance in the Patent Office* on charging, *on getting your fees sufficient to carry it* * * *. I just don't think that we are on the right track on some of these services."

9. Hearings, Second Supplemental Appropriations bill, 1953, 83d Congress, 1st session, House (February 3, 1953):

"Mr. MURRAY (Commerce Under Secretary). As you probably know, there is a study going on, which started some time ago in regard to this 'user charge' problem * * *. That study will get into such things as the Patent Office and all phases of the 'user' situation, and certainly, as far as the Commerce Department is concerned, we are waiting for that with a great deal of interest.

"Mr. CLEVENGER. I hope that your efforts prove successful in creating some 'user' charges, but *this is not the first time that that has been gone into,* by any means, not only in regard to the Patent Office but on many other facilities. I do hope you are successful. *The Government furnishes many services for which they never receive adequate compensation.*"

10. Hearings, Department of Commerce Appropriations for 1955, 83d Congress, 2d session, House (January 11, 1954):

"Secretary WEEKS. Very roughly the Patent Office has taken in about half as much as it has cost to run the Office. Under new service charges that we are asking Congress to approve we will be asking about 75 percent of what the Patent Office cost * * *. I still have not lost hope that we can get that operation on a paying basis.

"Mr. CLEVENGER. *It always seems to me, and I think to most of the members of the committee, that (the Patent Office) should be on a more self-sustaining basis* * * *. So we have been hoping, of course, that there would be an increase in revenue toward carrying these costs.

"Mr. WILLIAMS (Under Secretary of Commerce). I think when we get to the Patent Office * * * *you will be rather pleased* with the proposals there, because the new legislation which is being suggested will step up fees; * * * I think it will be possible to institute a schedule of fees which will go much further than now toward making the Patent Office self-supporting * * *."

"Mr. CLEVENGER. When was the last change in rates made?

"Mr. WATSON. In 1932.

"Mr. CLEVENGER. None since then?

"Mr. WATSON. No major changes.

"Mr. CLEVENGER. What percentage of the cost of the present budget are you collecting in fees?

"Mr. WATSON. I think last year it was 46 percent.

"Mr. CLEVENGER. Is there any particular reason why the man-on-the-street who is not expecting to patent anything should be taxed for this service? *It is a particular service to special beneficiaries, is it not?* Is there any reason why the general taxpayer should be forced to carry this and other governmental services in which he has only a remote interest? Why should not the Patent Office get on a self-sustaining basis? * * * They always argue with me that the average man getting a patent is a poor man. We know the multitude of your patents are corporation patents. Joe Doakes is a poor man too. When he buys the daily paper, instead of paying 2 pennies it is 5 pennies and in some cities 7 pennies. The Saturday Evening Post is 15 cents instead of 5 cents. *Why should a man expect to get a patent at the same cost that it was 30 years back?* The argument does not hold water. The poor fellow in this country is John Q. Taxpayer * * *. There is a lot more to this than meets the eye, and there are many Government services the average taxpayer should not have to carry * * *. When we ask for increases in Government spending we are just loading the ordinary citizen with more and more and leaving him with less and less * * *.

"Mr. Bow. You say the lawyers feel these fees should not be increased, and I have all the sympathy in the world with lawyers, having practiced law for 30 years. I wonder how much those lawyers' fees have been increased in the past 30 years?

"Mr. WATSON. * * * They did go up."

10. Hearings, Department of Commerce Appropriations for 1955, 83d Congress, 2d session, Senate (April 5, 1954):

"Chairman BRIDGES. Were the fees increased last year?

"Mr. WATSON. No; they were not.

"Chairman BRIDGES. When were they last increased?

"Mr. WATSON. 1932.

"Chairman BRIDGES. Do you not think it is time we should be getting the fiscal budget of the Government in shape and that the fiscal situation and the fee situation should be reviewed?

"Mr. WATSON. Mr. Chairman, I think the time is ripe for an upward adjustment of patent fees which would recognize the realities of the present situation."

11. Hearings, Department of Commerce Appropriations for 1956, 84th Congress, 1st session, House (April 18, 1955):

"Mr. THOMAS. Is there any good reason why these applicants should not pay the cost of issuing these certificates? * * * They would be glad to pay for it."

12. Hearings, Department of Commerce Appropriations for 1960, 86th Congress, 1st session, Senate (June 5, 1959):

"Senator HOLLAND (presiding). Your budget as submitted does not reflect any dependence at all upon the passage of the new fee bill that is pending in the House."

13. Hearings, Department of Commerce appropriations for 1961, 86th Congress, 2d session (January 13, 1960):

"Mr. ROONEY. Is the patent filing fee still $30?

"Mr. WATSON. Yes, sir.

"Mr. PRESTON. Whatever happened to the legislation that you have been discussing now for a number of years to increase the filing fee?

"Mr. HORAN. The point I am getting at, Mr. Chairman, I don't know who spearheads any action to get legislation to increase the fees unless it is the Appropriations Committee. Obviously, with costs going up it would seem to be a normal function of business management to urge an increase, proportionate and reasonable increase, in the fees. Yet we have had favorable reports on legislation now pending and we have had no action.

"Mr. OECHSLE. I think we have two problems in the Patent Office. One is the matter of income and what it costs to get a patent. The last patent fee increase was in 1932. Certainly the cost of everything has gone up. When you try to increase something like a public service, it is the same situation in the post office, you have a howl from certain segments of the economy that feel that the Government should give this service free to their constituents and their people within their country. On the other hand, the costs of operation of these departments have gone up and in the case of personnel, we are competing today with private industry.

"Mr. CEDERBERG. * * * it seems to me if we establish a fee in any area of Government, whether in the post office or wherever it might be, when we establish that fee, the fee should keep pace with the increased costs of everything else in our economy."

14. Hearings, Department of Commerce Appropriations for 1962, 87th Congress, 1st session, House (May 4, 1961):

"Mr. ANDREWS. Has there been a bill introduced seeking to increase your fees?

"Mr. LADD. From time to time in the past, bills have been presented to the Congress. Some of them have been reportedly favorably out of the committees, not the Rules Committee, but the committees which heard the bills on the merits.

"Mr. ANDREWS. Is there a bill pending now?

"Mr. LADD. The bill is not pending now. It is being prepared to be forwarded to the Congress.

"Mr. ANDREWS. You state here that legislation will be presented which would increase fees to recover approximately 75 percent of the operating costs.

"Mr. LADD. That is correct, Mr. Chairman.

"Mr. ANDREWS. *I think, if the fees have not been raised since 1931, they should be increased.* I do not know of anything else that has not increased since 1931.

"Mr. GARY. *I do not know how the citizens of this country expect the Government to pay increased costs and not increase their charges.* Apparently there is very little complaint when private business increases its charges to cover increases costs, but the minute you suggest increased charges to take care of increased costs in providing Government service, a howl goes up from all quarters. I suppose it is just a part of the philosophy that is developing now that the Government should take care of the people rather than the people take care of the Government. I think it is a very dangerous philosophy, myself.

"Mr. HORAN. I would like Mr. Ladd to comment on this matter in view of the fact that, to my knowledge, *we have recommended fee revisions in previous reports from the committee* on the Department of Commerce appropriation. Perhaps comment on that might be well at this time.

"Mr. LADD. I think there is a widespread opinion that a fee increase of at least some magnitude is in order. The President's budget for fiscal 1962 indicated clearly that an increase in Patent Office fees is contemplated. It is my personal feeling that the fees should be increased.

"Mr. ANDREWS. The fees were established in 1931 and have not been increased since that time?

"Mr. LADD. Not since the 1930's.

"Mr. HORAN. Have you made any recommendation to the President or to the appropriate committees of Congress regarding fee revisions?

"Mr. LADD. The legislation is now being prepared and will soon be forwarded to the Congress. The legislation is already drafted."

APPENDIX C–2

BIDS ON OVERFLOW PATENT APPLICATIONS (NATIONAL AERONAUTICS AND SPACE ADMINISTRATION)

Attachment A

Item	Price ranges of proposals					
	A		B		C	
Preparation of documents in the form of patent specifications and claims describing (from an adequate disclosure assured by us) formal patent drawings furnished by us:						
1. For mechanical and general cases:						
(a) For the 1st sheet of drawings	275	600	250	450	250	250
(b) For each additional sheet	75	75	50	150	150	150
2. For electrical and electronic cases:						
(a) For the 1st sheet of drawings	300	650	350	600	250	250
(b) For each additional sheet	100	100	100	200	150	150
3. For chemical or other no-drawing cases, subject to a mutually acceptable statement in each instance of the maximum number of pages desired in a given case:						
(a) For the 1st 12 pages of specification	300	650	350	650	250	250
(b) For each additional 4 pages	100	100	50	150	100	100

NOTE.—Separate cost of drawing preparation, $35 per sheet.

APPENDIX C–3

THE EXAMINING PROCESS

The following is an explanation of the movement of a patent application through the Patent Office. (No account is taken of interferences, examination of design applications, reissue applications and trademarks in this explanation.)

Figure 7 is a flow diagram of the patent examining process, particularly with reference to those steps in the process at which various fees are collected and the impact of the provisions of H.R. 10966. The heavy lined boxes in the flow diagram indicate passage of an application through the examining process from the time it is filed until it is finally rejected and abandoned or appealed, or, alternatively, it is allowed and passed to issue. The dotted boxes and lines indicate optional petitions and other procedural undertakings that may occur during the prosecution of a patent application.

The typical application that arrives at the Patent Office includes one or more sheets of drawings, a specification, consisting of an introduction and a detailed description of the invention, and a series of claims setting forth the specific invention for which protection is sought. The filing fee and an oath by the applicant stating that he believes himself to be the inventor and that there are no prohibitions to his applying for or obtaining a patent, must accompany the application. Once these papers are received by the Office, the application is docketed and given a serial number and filing date, which number and date thereafter identify it during its pendency in the Office.

The application then passes through a classification operation which results in its assignment to the appropriate examining division where the examining process begins. Once the application reaches the examining division, the application is docketed and assigned to one of the examiners who, ordinarily, takes the application up in chronological order (first in, first out).

During the examination process, a series of "Office actions" by the examiner and responses or "amendments" by the applicant are exchanged. When the examiner first takes an application up to act on it, he studies the nature of the invention, and the scope of the claims. Thereafter he conducts a search of the prior art which includes U.S. and foreign patent and literature to find out what has gone before. With the best available prior art at hand, the examiner evaluates the claimed subject matter and in an Office action addressed to the applicant, he analyzes the references he thinks are pertinent to the claims submitted. He points out why certain ones of the claims are not patentable over the cited art. and also, perhaps, may allow some of the claims or indicate that some are allowable if certain changes are made.

Once the applicant receives this first Office action, he normally has 6 months in which to respond by way of an argument with or without amendment. His response normally will be one in which he makes certain changes in the claim language and/or argues the inappropriateness of the cited art. Thereafter, the examiner again takes up the application, reviews the arguments of applicant's attorney, and responds. In some cases the examiner will reapply the references he originally cited, and in other cases he may conduct an additional search to find new references which are more pertinent to the claims as amended.

When the applicant receives the second Office action, he again responds (ordinarily within 6 months), perhaps conceding the propriety of some part of the rejection and contraverting other parts. A number of these exchanges between the examiner and the applicant normally occur until an issue is reached, at which time the application is finally rejected or all of the claims remaining in the case are allowed. In the latter case, a notice of allowance is sent to indicate that the patent application is ready for issue. The number of these exchanges averages between three and four per application.

If all, or certain ones of the claims are finally rejected by the examiner, the applicant has 6 months in which to file a notice of appeal to the Board of Appeals if he wants to contest, in which case the Board will review the final rejection of the examiner to determine whether it was proper. While the Board's function is judicial in nature, it is quasi-judicial in fact because its appellate function is within the Patent Office. It is not an independent judicial entity.

Unless a notice of appeal is filed within 6 months, the application is abandoned. This is indicated on the flow diagram. This is the end of the matter unless, within a reasonable time, the applicant petitions to revive the application, but he must show that the delay was unavoidable and why the Commissioner should exercise his discretion to permit a revival. A prescribed fee must accompany the petition to revive.

If, instead of permitting the application to become abandoned, applicant files a notice of appeal, the appeal fee must be submitted. Within 60 days, the applicant must file his brief which is followed by an examiner's answer. The appeal may be decided on the briefs or, in addition, an oral hearing may be requested.

After the decision of the Board of Appeals is known and the applicant is still dissatisfied, he may either appeal to the Court of Customs and Patent Appeals or institute an original action in the U.S. District Court for the District of Columbia to seek an order requiring the Commissioner of Patents to issue a patent to him.

If the application, instead of being finally rejected, is allowed, it is passed to issue. Within a short time thereafter a notice of allowance is mailed to the applicant, after which the applicant has 6 months within which to pay the final fee. After this fee is paid the application is prepared for printing and will issue in 30 to 60 days unless a request for deferment up to 90 days after the date the final fee was paid, is made.

In the event the final fee is not paid within the 6-month period but a year has not elapsed from the date the fee was originally due, the applicant may petition for leave to make late payment of the final fee. If the reason for failing to make timely payment is adequate, the petition will be granted by the Commissioner. A fee must accompany such a petition.

Once the patent issues, its 17-year life begins. During the life of the patent, the owner may, if it appears necessary or desirable, file a disclaimer of certain claims, for which a fee is required. He also can petition for correction of a mistake of a clerical nature. If it was the fault of the Office, there is no charge, but if it was the patentee's fault, then a fee is required. An assignment may be recorded at any time during pendency of the application or after the patent issues.

Though the foregoing explanation is applicable to our present practice, it can be seen on the flow diagram of figure 7 that the points at which maintenance fees would fall due are indicated. Most of the fees proposed by H.R. 10966 are also identified at their point of application.

APPENDIX C-4

PERSONNEL OF COMMITTEE ON PATENT OFFICE PROCEDURE

Mr. Jo. Baily Brown, of Pittsburgh, Pa., one of the patent advisers representing the United States at the Paris Peace Conference; nominated by the Pittsburgh Patent Law Association.

Mr. A. J. Brosseau, of New York City, a prominent automobile manufacturer; nominated by the Chamber of Commerce of the United States.

Mr. Wallace Clark, counsulting engineer of New York, N.Y.; nominated by the American Society of Mechanical Engineers.

Hon. Thomas Ewing, of New York City, formerly Commissioner of Patents; nominated by the New York Patent Law Association.

Col. Harry Frease, of Canton, Ohio, formerly president of the Cleveland Patent Law Association; nominated by that association.

Mr. Henry M. Huxley, of Chicago, Ill., secretary of the Chicago Patent Law Association; nominated by that association.

Mr. W. H. Leffingwell, consulting engineer of New York, N.Y.; nominated by the American Society of Mechanical Engineers.

Mr. Eugene G. Mason, of Washington, D.C., formerly secretary of the patent section of the American Bar Association; nominated by the Honorable Charles E. Hughes, president of that association.

Mr. Henry N. Paul, of Philadelphia, Pa., patent attorney; nominated by the Philadelphia Patent Law Association.

Mr. George A. Prevost, of Washington, D.C., vice president of the American Patent Law Association; nominated by that association.

Mr. Edwin J. Prindle, of New York City, formerly secretary of the Patent Committee of the National Research Council; nominated by the National Association of Manufacturers.

Mr. Milton Tibbetts, of Detroit, Mich., assistant secretary of the Packard Motor Car Co., and formerly president of the Michigan Patent Law Association; nominated by that association.

Mr. L. W. Wallace, of Washington, D.C., executive secretary of the American Engineering Council; nominated by the council.

APPENDIX C–5

INCREASE IN THE INCOMES OF LAWYERS (1932–54)

In 1932, the year of the last significant increase in patent fees, the per capita income of lawyers in the United States as a whole was $4,156.[1] In 1954 the average net income of lawyers in the United States was $10,220.[2] It is reasonable to assume that this average net income would be still higher in 1962.[3] Nonetheless, the average net income of lawyers in 1954 was almost 2½ times that of lawyers in 1932. And it can reasonably be assumed that patent lawyers, who are in the main urban-centered, have at least kept apace this nationwide trend.[4]

(Following Commissioner Ladd's statement the Commissioner submitted the following:)

U.S. DEPARTMENT OF COMMERCE,
PATENT OFFICE,
Washington, May 21, 1962.

Hon. EDWIN E. WILLIS,
Chairman, Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: While reviewing my remarks in the transcript of the hearing on H.R. 10966, I considered also the alternative recommendations and comments which were made by other witnesses.

In the preparation of the proposal which was introduced as H.R. 10966, we in the Patent Office considered extensively all previous proposals made to increase the income of the Office as well as all others which seemed to offer any possibility

[1] "The Economics of the Legal Profession," published in June 1938 by the Special Committee on the Economic Condition of the Bar, American Bar Association.

[2] "Income of Lawyers in the Postwar Period," Survey of Current Business, U.S. Department of Commerce, December 1956.

[3] Current data on the average net income of lawyers in the United States as a whole are unavailable. But various States have conducted 1961 surveys of the average annual income of their lawyers. The Economics of the Bar Survey of the State Bar of New Mexico, for example, reveals that the average income of New Mexico lawyers was $13,942 in 1961, almost 3½ times the 1932 income of lawyers in the United States as a whole.

[4] Surveys show that the incomes of lawyers generally vary directly with the populations of the cities in which they practice. See, for example, "The Economics of the Legal Profession," cited in footnote 1, supra, and "Minimum Fee Schedules: Are They Worthwhile?," 40 Iowa Law Review 642 (1955). Patent lawyers, because of the nature of their specialty, usually practice in or near the largest cities.

of help. Our aim was to accomplish the desired increase consistent with good practice before the Patent Office and, at the same time, to avoid or at least minimize the deterrent effect an increase in fees might have on an inventor in applying for a patent.

With these considerations in mind, I have undertaken to examine the recommendations made by others to your subcommittee. If you believe it will be helpful, this letter could be included in the record of the hearing to assist the committee.

The alternative recommendations made to your subcommittee suggested a fee structure differing in a number of ways from that envisioned by H.R. 10966. The principal changes recommended were that—

(1) The filing fee, which is presently $30, be increased to $100;

(2) The issue fee, which is presently $30, be increased to $300, payable in two or three installments after the patent issues, or at least as a condition precedent to bringing suit or otherwise enforcing the patent;

(3) The appeal fee, which is presently $25, be raised to $50;

(4) The assignment recording fee, which is presently $3 or $4 on the average, be raised to $5;

(5) The trademark opposition or cancellation fee, which is presently $25, be raised to $75;

(6) The maintenance fees be eliminated altogether.

A comparison of the income that might reasonably be expected from these recommendations with the income anticipated under H.R. 10966 and that received under the present fee structure is set forth in the table below.

TABLE

Type of fee	Present	H.R. 10966	Recommendations	
Filing	$2,440,000	$5,312,000	$8,300,000	($100)
Excess claims	46,000		46,000	
Issue	1,510,000	3,744,000	[1] 156,000	(300)
Excess claims	10,000		10,000	
Appeal	250,000	500,000	500,000	(50)
Assignments	204,000	1,864,000	466,000	(5)
TM opposition or cancellation	30,000	30,000	90,000	(75)
Maintenance fees	None	5,750,000	None	
All other	3,210,000	3,784,000	3,784,000	
Total	7,700,000	20,984,000	13,352,000	

[1] Payable as condition precedent to bringing suit, etc. (approximately 1 percent of patents are ever involved in litigation).

NOTE.—This table based on tables 1 and 11 in appendix B of the Statement of David L. Ladd, Commissioner of Patents, April 19, 1962.

As indicated in the table, the $100 filing fee at our present rate of receipts of patent applications would bring in $8,300,000 a year, an increase of roughly $3,000,000 over the filing fee income anticipated under H.R. 10966.

The issue fee of $300 would bring in some undetermined amount above $156,000. This amount is indeterminate because—as I understand the recommendation—the fee would not have to be paid until the patent owner sought to enforce the patent or otherwise assert it. At that time, as a condition precedent, he would have to pay the $300 fee. In other words, the patent would not lapse on the failure to pay any of the installments but would merely be unenforceable until the fee was paid.

Since there would be no disability if final fee payments were deferred, it is not unreasonable to expect that the fees would be paid principally on those patents involved in infringement actions, although some patentees might pay the full fee before that time. Only approximately 1 percent of the patents issued in any year are ever involved in infringement actions and, if we assume that these are the only patents for which the fees would be paid, we get the $156,000 figure. This figure is some $3½ million short of the income anticipated from the issue fee of H.R. 10966.

The argument is made that this final fee would be paid initially by many of the companies having large numbers of patents in their portfolios because it would be less trouble than setting up an accounting system to keep track of the part payments or nonpayment. While we cannot be sure how all companies would react, those companies having relatively large holdings would find it to their decided advantage, from an economic standpoint, to defer making payments. For example, in 1960, the General Electric Co. had approximately 895 patents

assigned to it during the course of the year and the Radio Corp. of America had 333 assigned to it. It would cost these companies $270,000 and $100,000, respectively, to pay all $300 final fees for the year in question. If we assume that the percentage of GE and RCA patents involved in court actions is roughly the same 1 percent as for all patents, then the final fee costs for those patents they would want to enforce would only have to be $2,700 and $990, respectively. These companies are singled out only to exemplify the substantial savings inherent in not paying the final fees until the patents become valuable. Furthermore, these companies would not incur large bookkeeping expenses to keep track of the status of their fees because they already do it in most cases for foreign patents, practically all of which require maintenance fees. It is likely that they could merely extend their systems to their U.S. patent holdings. The cost would be nominal.

The general suggestion of a high final fee payable in a few installments is not entirely new. The Patent Fee Committee of the American Patent Law Association at its meeting in January 1962 passed a resolution opposing the mintenance fee provisions of H.R. 7731. In their place, the APLA committee recommended a $200 or $300 final fee payable in two or three annual installments. However, this proposal differed from that recommended to your subcommittee during the hearing, because, if any of the fee installments were not paid at the time due, it was felt that the patent should either lapse or, if late payment were permitted, penalties and interest should be collected. Though the APLA committee called its charge a final fee, it is difficult to see the difference between that type of fee and the maintenance fee proposed in H.R. 10966. The major difference appears to be whether all patentees must pay all of the amount within 3 years after their patents issue or whether they can pay it in installments at the end of the 5th, 9th, and 13th years—after they have had time to assess the potential value of their patented inventions. Then, too, H.R. 10966 will allow the inventor-owner who has not been able to realize on his patent to defer the first two payments.

The straight appeal fee of $50 that was recommended would bring in the same revenue as the appeal fee proposed in H.R. 10966.

As to recording assignments, the recommendation was made that the $3 or $4 average recordation fee of the present fee structure be increased to $5, instead of $20 as proposed by H.R. 10966. As the table shows, this would reduce the amount of anticipated revenue from $1,864,000 to $466,000.

It was also recommended that the trademark opposition or cancellation fee be increased from the present $25 to $75. This would bring in an additional $55,000 a year (there are approximately 1,100 such proceedings each year). H.R. 10966 did not include any change in this fee.

Finally, the recommendation was made that the maintenance fees be eliminated, which would reduce the expected income under H.R. 10966 by some $5,750,000.

The changes recommended to your subcommittee along with the remaining fees proposed by H.R. 10966 would bring in approximately $13 million compared to the nearly $21 million believed to be recoverable ultimately under H.R. 10966. This comparison assumes that the much higher filing fee—for big and small applications alike—will not have a deterrent effect on the number of applications filed. It is also relevant to note that these recommendations would eliminate all features of H.R. 10966 which have been incorporated to rationalize the practice before the Patent Office.

Aside from the recommendations of alternative ways to obtain needed revenue, criticisms or objections were leveled against various provisions of H.R. 10966 by some of the witnesses. The more significant ones may be paraphrased as follows:

1. The charges for excessive claims will discourage full disclosure in claims and be expensive to administer;
2. The appeal fee is unfair and will be administratively expensive;
3. The assignment fee of $20 is excessive because it bears no relation to the cost of the service;
4. The cost of administering the overall fee structure will also be high due to the issue fee and maintenance fee proposals; and,
5. H.R. 10966 will weaken the incentives of the patent system, generally.

I would like to comment on these criticisms.

Criticism 1

It was suggested that the charges for claims may tend to encourage inadequate disclosures. Judging from the approval of the claim-charge principle by the Patent Section of the American Bar Association and by many thoughtful patent lawyers, we believe the encouragement of fewer numbers of claims by economic incentives is sound. It will encourage applicants to consider the scope of their inventions thoroughly, so that they will be able to define the technological areas

they believe to be theirs. But there is no reason to expect that this will cause them to submit incomplete specification disclosures. On the contrary, it is much easier to describe an invention that is firmly in mind and has been claimed concisely.

We have given a great deal of thought to the problem of how to handle the claim charges administratively. There are a number of ways that it can be done simply and economically. The method that has been in use in connection with the present charge for claims in excess of 20 can be adopted if desired. Under it, whenever an application is received which has more than 20 claims but does not include the payment for all or some of the excess claims ($1 per claim over 20), we cancel the claims not paid for starting with the last one presented. The application is examined as to those for which payment was received. The canceled claims may be added by amendment if the applicant wishes to do so. Applying this procedure to H.R. 10966, if, for example, no payment for excess claims accompanies an application (or an amendment if the application has already been filed), we would cancel the claims not paid for and examine only those not requiring an excess charge. The applicant could subsequently add the canceled claims and pay for them if he wants to do so. A number of other plans are under consideration, most of which are no more difficult to put into practice.

Independent of the way in which we handle the matter, any slight increase in administrative costs in assessing and collecting the claim fees has to be balanced against the substantial savings in examiners' time that will be gained by having fewer total claims and independent claims in an application. Our studies make it clear that these substantial savings will be realized provided applicants are in good faith in structuring their claims. If attempts are made to put independent claims in dependent form, it may become necessary to establish ground rules under the administrative authority of the Commissioner.

Criticism 2

The structure of the appeal fee in H.R. 10966 was criticized on the theory that an applicant should not be penalized if an oral hearing is requested. Our fee structure is not designed to penalize an appellant if he requests an oral hearing but to require him, if he feels it is needed, to pay a reasonable portion of the cost therefor. In our view, it is more unreasonable to put part of the cost on parties who do not want oral hearings. The only penalty aspect of the fee is to encourage appellants to treat the Board of Appeals and the Patent Office as they would any judicial body: if they do not intend to appear for an oral hearing, they should notify the Board. The appeal fee is also structured to encourage early withdrawal of appeals. Though there may be some additional costs involved in administering the proposed fee, we believe it is worth the price in view of the better practice it will encourage before the Board of Appeals.

Criticism 3

The assignment fee proposed by H.R. 10966 is criticized as excessive on the basis that its amount bears no close relationship to the cost of the service. This much was conceded in my statement on H.R. 10966. This fee is one way in which part of the support of our operations is placed on owners having patents of demonstrated value. If the fee is reduced here, it only means that additional money must be obtained elsewhere, more particularly, by higher issue, filing or maintenance fees.

Criticism 4

Aside from the allegation of high administrative costs mentioned in connection with criticisms 1 to 3 above, general broadside objections were made, particularly to the arrangement of the issue and maintenance fees. These charges will not bear careful scrutiny. They seem to flow more from substantative opposition to some of the fees recommended by H.R. 10966 than from a careful analysis of the procedures required to incorporate the fees into the Patent Office operation.

In one case, the issue fee arrangement under H.R. 10966 ($10 per printed page of specification and $2 for each sheet of drawing payable after the patent issues) was criticized as costly to administer. The fact is that the cost of handling the proposed issue fee is no more expensive than the cost of handling final fees under current practice.

Let me emphasize that the concern for administrative costs is a proper one, one to which we have devoted considerable thought. To assist the committee in evaluating the problem, I have had the attached statement prepared which outlines the major problems and which estimates the additional costs which may

reasonably be expected in handling the new procedures. The attached statement deals with the increased administrative costs generally, although we are also preparing a statement for the record, at the request of Congressman Mathias, of the estimated cost involved in notifying individual patent owners prior to the due date of their maintenance fees.

The attached statement indicates that the additional cost to the Office of putting into effect the various provisions of H.R. 10966 is less than $100,000 (0.61 percent of the additional revenue). In terms of the substantial improvement in practice before the Office, not to mention the increased revenue, we even believe we will offset a substantial part of this increased cost. In our view, an increased administrative cost of about one-half of 1 percent of the expected additional revenue is not so substantial as to justify abandonment of the guiding principles of H.R. 10966.

The fear that high administrative costs might offset much of the actual revenues obtained from the maintenance fee proposals was also based, in part, on uncertainty as to whether we can rely on European experience in estimating the revenues to be expected. This, too, is a reasonable question. I agree that the experience of European countries with maintenance fees, upon which we have based our revenue estimates, is not conclusive when it comes to anticipating what our experiences will be. On the other hand, when it is recalled that 15 to 20 percent of the applications filed in the major European countries that have renewal fees are filed by U.S. nationals, I do not believe it is unreasonable to assume that these applicants will follow practices under a maintenance fee system in the United States which are similar to the ones they now follow in the various European countries.

Criticism 5

The final broad criticism made against H.R. 10966 is that it will weaken the incentives of the patent system. This criticism is argued on two levels—the first being that any increase in fees will be harmful, and the second being that only certain of the fees in H.R. 10966 will have this effect.

I discussed the question of how much of our operating costs should be recovered at length in my statement. I concluded that we should recover approximately 75 percent of these costs. If the judgment of this subcommittee and the Congress is that at least something more than the present 30-percent recovery should be obtained, it will present the problem of allocating the burden between various functions in the Office. In making this allocation the basic considerations should be: will it promote improved practice before the Office, and will it minimize the deterrent effect on the filing of applications.

Most of us agree that some increase in fees is both desirable and necessary, even though it is conceivable that it might deter filing in a few cases.

Turning to those specific criticisms of the fees proposed by H.R. 10966, let me comment on our view as to where the incidence of the increased fees should be to preserve the incentives of the system with as little dislocation as possible. Higher filing and final fees will have some deterrent effect on the use of the patent system. Therefore, we decided that it is better to keep the filing fees low—consistent with good practice before the Office, to raise the issue fee to a point where it bears some relationship to the complexity and length of the application, and to collect the remainder of the money from maintenance and assignment fees, which are related to the commercial value of the invention. The recommendations made to your subcommittee during the hearing seek to obtain additional income by a large, across-the-board filing fee and a substantial final fee that is unrelated to the commercial success of the invention—means which, to us, are greater deterrents to the use of the patent system.

Naturally, it is up to your subcommittee and the Congress to determine how much income the Patent Office should receive from its operations. Once this has been decided, it is necessary to determine whether it is better to obtain the money by the fee structure of H.R. 10966—which will not only bring in the revenue but, at the same time, provide economic incentives to better practice before the Office, or by substantially raising the filing and issue fees. We urge you to keep the fees for the small inventor and applicant at reasonable levels and to place the heavier burden on those applicants having excessively long applications and unnecessarily complex claim structures, and, by the maintenance and assignment fees, on those patentees who have been successful in exploiting their inventions.

Sincerely yours,

DAVID L. LADD, *Commissioner.*

ESTIMATE OF ADDITIONAL ADMINISTRATIVE COSTS RELATING TO CHANGES IN FEE STRUCTURE PROPOSED BY H.R. 10966

Consideration has been given to the probable extent to which the provisions of H.R. 10966 would cause an increase in administrative costs in the Patent Office. Two categories of possible effect need to be considered: (1) the effect upon the fiscal accountability task relating to a change in volume and character of fee transactions, and (2) the effect upon program services relating to the processing of applications, patents, and other items for which a change in treatment or procedure would be necessary.

(1)

Apart from exercising accountability control on redemption of over 5 million Patent Office coupons per year, under either the present fee structure or the structure of H.R. 10966, the Finance Branch processes approximately 625,000 fee transactions and 9,000 refunds per year under the present fee structure. Assuming the fee structure of H.R. 10966 to be fully effective, it is estimated that there would be about 820,000 fee transactions and 16,000 refunds per year, increases of about 30 percent in fee transactions and 80 percent in refunds. For this change in the fiscal accountability task, it is estimated that additional costs in the Finance Branch of the Budget and Finance Division would amount to about $15,000 per year.

(2)

The principal change in treatment or procedure in the program service areas of the Office would concern the newly proposed maintenance fees. Here the Patent Office would be required to maintain individual patent status records to keep track of payments and fee deferment affidavits, and to provide a means of giving public notice as to patent termination due to nonpayment of fees. By extending the use of machine records systems now employed by the Patent Office, the basic records can be created and maintained at an approximate annual cost of $10,000. By further extending the application of this system, adequate notice by publication can be accomplished for an estimated $17,000 per year. An additional estimate of $8,000 per year would appear to be adequate for other contingencies relating to operations affected by maintenance fees, making a total estimate of $35,000 per year as the net additional administrative costs associate with the maintenance fee provisions of H.R. 10966.

OTHER

Other less significant changes in treatment or procedure in the program service areas of the Office include the following:

1. In addition to a determination concerning the total number of claims in patent applications as filed, required under the present fee structure, a determination would need to be made concerning the number of such claims which are in independent form, to ascertain the admissibility of claims in relation to the amount of filing fee payment.

2. Each amendment which changes the claim structure of a patent application would need to be considered, along with the application and any prior amendments, for a determination as to the admissibility of claims in relation to the amount of fee payment.

3. Instead of a determination concerning the number of claims in each allowed patent application, as is required under the present fee structure, a determination would need to be made concerning the number of pages of specifications as printed and the number of sheets of drawing, for each patent issued, to ascertain that requirements concerning the issue fee have been met. It can be noted that, under the present fee structure, over 20,000 allowed application files (roughly 5 months of allowances) are on hand at any given time awaiting payment of final fees. Under H.R. 10966, there probably would be about half this number of patented files (maximum would be 3 months of patent issuances) on hand at any given time awaiting payment of the issue fees. Associating the payment of issue fees with the pertinent cases would involve procedures similar to those which are now necessary to associate the payment of final fees with the pertinent cases.

4. Upon termination of each patent appeal proceeding, a determination will need to be made concerning the portion, if any, of the appeal fee to be refunded.

5. Instead of a determination concerning both the number of pages and the number of "items" involved in one assignment "writing," as is required under

the present fee structure for both patents and trademarks, a determination concerning only the number of "items" would be needed under H.R. 10966.

Considering that some increases and some decreases of administrative effort would evolve, the collective net effect of these other changes on the operational effort in the program service areas would appear to be amply covered by an estimate of $35,000 in additional annual cost.

In all, therefore, it is estimated that the total change in annual administrative costs relating to changes in fee structure proposed by H.R. 10966 would amount to an increase of approximately $85,000, equivalent to substantially less than 1 percent of the additional income to be realized.

Particularly with respect to the use of dependent claims and the use of short and concise statements in specifications, H.R. 10966 is intended to provide economic incentives to exert beneficial effect upon the substantive prosecution and examination of patent applications in the Patent Office. As a matter of judgment, it can be suggested that the value of these beneficial effects may far exceed the additional administrative costs which are estimated to be involved in administering the provisions of H.R. 10966.

Mr. LIBONATI. Is there a representative of the Department of Justice here?

A VOICE. I am here, but I think we are submitting written statements on these bills.

Mr. LIBONATI. Have you submitted a statement?

The VOICE. I don't know whether they have been sent to you yet, but I think you will receive statements.

Mr. LINDSAY. Is the Department of Justice in support of this bill or in opposition?

The VOICE. In the bill on fees?

Mr. LINDSAY. The first bill we were discussing this morning.

The VOICE. Well, I would rather not speak until you get our comments; but I would say we are in support of the principle but not the method of approach or the sanctions imposed by the first bill.

We believe agreements should be filed, but we don't believe there is sufficient incentive to have them filed.

Mr. LINDSAY. You spell out your reasons in the statement?

The VOICE. The statement, I am sure, will spell out the reasons.

Mr. LIBONATI. H.R. 11015?

The VOICE. Yes.

Mr. LIBONATI. You have no position relative to this H.R. 10966, have you?

The VOICE. I think you will have to wait for the statement. I do not know what our position on that will be.

Mr. LIBONATI. All right, we will proceed.

Mr. MATHIAS. Before Mr. Ladd leaves, I have just one more question.

The burden that might be put upon a patentee by the fact that he gets no notice as time goes on, of the fact that his maintenance fees will become due—that is the question.

Mr. LADD. There was a notice provision in H.R. 7731. We do not think it is necessary. People know when patents issue. We can print on the patent, as it issues, the date when the renewal fees will be due.

However, if it were insisted upon, we could reinsert the notice provision; but I do not think it is necessary, and I would not recommend it.

Mr. MATHIAS. Would it be a very costly thing for the Patent Office to do?

Mr. LADD. I think, rather than trying to characterize as very costly and not very costly, it would be best if we made an estimate and showed you the basis for the estimate, and put it into the record.

Mr. MATHIAS. Would you do so?

Mr. LADD. Yes.

(Information requested follows:)

These estimates of the cost of notifying patent owners before the maintenance fees of H.R. 10966 become due are based on the following assumptions:

1. Fifty thousand patents are issued each year on which the issue fees are paid.

2. The number of patents for which maintenance fees will become due when the maintenance fee provisions of H.R. 10966 are fully in effect is 88,000 per year, based on 100 percent of the patents in the 5th year (50,000), 50 percent of the patents in the 9th year (25,000), and 25 percent of the patents in the 13th year (12,500) being in force.

The maintenance fee provisions of H.R. 10966 will require the Patent Office to provide notice of the maintenance fees and their due dates as part of the patent, and to maintain individual patent status records to keep track of payments and fee deferment affidavits. These status records will be used to notify the public that specified patents have lapsed because the maintenance fees have not been paid nor an affidavit filed. By extending the machine records system now employed by the Patent Office for other purposes, these patent status records can be created and maintained for approximately $10,000 per year.

Further extension of our machine records system can generate and address separate notices to each patent owner that a maintenance fee is coming due. If the address of the patentee of record at the time the patent issued is used, the estimated additional cost is $15,000 per year.

A really effective system of notification, however, would require the Patent Office to maintain a record of ownership and address changes for all patents in force. Assuming the owners cooperated fully in notifying the Office of changes of ownership and address over a period of years so that the system could work perfectly, it is estimated that it will add another $20,000 to the $15,000 figure. It is appropriate to note that this procedure would require patent owners to meet their responsibilities of ownership or addresses change.

As an alternative to the expensive and possibly ineffectual system of individual notices sketched above, the Patent Office could identify in the weekly Official Gazette, the patents for which maintenance fees are coming due. Patents for which maintenance fees are past due though within the grace period of 6 months could also be identified. This double notice would appear to offer ample protection to the patent owner interested in further maintaining his patent and it can be accomplished for an estimated cost of $17,000 per year as compared to the $35,000 cost of individual notices.

Mr. LIBONATI. I want to thank you for appearing before us. I want to congratulate you on your assistance and your presentation.

Mr. LADD. Thank you, Mr. Chairman. It is a pleasure and great honor to appear here. Thank you.

(The executive communication requesting congressional action on H.R. 10966 and the letter from the Director of the Bureau of the Budget to Subcommittee Chairman Willis are as follows:)

THE SECRETARY OF COMMERCE,
Washington, D.C., March 22, 1962.

Hon. JOHN W. MCCORMACK,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: There are enclosed four copies of draft legislation that revises H.R. 7731. The earlier bill was designed to increase fees collected by the U.S. Patent Office of the Department of Commerce in the consideration and issuance of patents and registrations of trademarks and the performance of related activities. There are also enclosed copies of a section-by-section analysis and explanation of the revised legislation. The fees which would be modified by the revised proposal are presently established by statute and, therefore, congressional action is necessary to effect changes. The new fees and statutory changes which are proposed also require congressional action.

As was noted in my letter of transmittal, dated June 13, 1961, accompanying H.R. 7731, the last major change in patent fees was in 1932 when the application and issuance fees were raised to $30 each. Immediately after the 1932 revision of fees the Patent Office was collecting in fees a sum exceeding 90 percent of the cost of operating the Patent Office. Although since that time the costs of operation of the Patent Office have risen considerably, no major adjustment of fees has been made to effect the same recovery of costs. In each of the 4 years, 1958–61, the Patent Office recovered in fees approximately one-third of its cost of operation. For fiscal year 1962 the estimated receipts on the basis of current fees would amount to approximately 32 percent of the proposed budget for that year. The fees presented in the proposed bill have been calculated so that if they were in full operation, the cost recovery would be approximately 75 percent. However, it should be noted that certain of the new fees proposed, namely the maintenance fees payable after a patent has issued and the trademark affidavit fee payable after the registration has issued, would not be effective immediately to bring in receipts since they apply only to patents and trademark registrations issued after the effective date of the proposed legislation, if enacted.

The principal purpose in submitting this revised form of H.R. 7731 is to design the fee structure for patent and trademark activities so that not only are approximately 75 percent of operating costs recovered, but the fees charged for filing an application and for issuing a patent bear a more reasonable relation to the cost of examining a specific application and issuing a particular patent. In the past, patent fees have distinguished only incidentally, if at all, between short and clear disclosures, and long and obscure ones. This revised legislation proposes to encourage clarity, brevity and improved form by fee differentials.

The Department urges early congressional action to enable the Government to effect greater recovery of costs from special beneficiaries of this Government program as well as to encourage better practice before the Patent Office by applicants. Such action would be in furtherance of the administration's policy of charging special beneficiaries of Government programs for the costs of operation attributable to special beneficiaries.

The Bureau of the Budget advises that the draft bill would be consistent with the administration's objectives.

Sincerely yours,

EDWARD GUDEMAN,
Acting Secretary of Commerce.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., April 18, 1962.

Hon. EDWIN E. WILLIS,
Chairman, Subcommittee on Patents, Trademarks, and Copyrights of the Committee on the Judiciary, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to the statement of Commissioner of Patents David L. Ladd in support of H.R. 10966, a bill "To fix the fees payable to the Patent Office, and for other purposes." This letter sets forth the general policy of the administration on the matter of charges for Government services rendered to identifiable recipients, as well as our views on the merits of the subject bill.

In the conduct of their various activities many Federal agencies are required to provide certain services, supply products, or authorize the use of public resources which convey special benefits to identifiable recipients above and beyond those which accrue to the public at large. In fairness to the taxpayer, who carries the major burden of support of Federal activities, the Government has adopted the policy that the recipient of these special benefits should pay a reasonable charge for the service or product received or for the resource used.

The Congress gave statutory expression to this basic principle in title V of the Independent Offices Appropriation Act of 1952 (5 U.S.C. 140) which established as an objective that services rendered to special beneficiaries by Federal agencies should be self-sustaining to the fullest extent possible. It is our opinion that the patent system does provide such a special benefit to identifiable recipients—i.e., the inventors, applicants, and holders of patents—and that accordingly these beneficiaries should bear a fair share of the cost of the system's support. The monetary value of rights acquired through the patent system is often very large. A large subsidy to the system is not necessary to protect the public. In fact, the

bill seeks only to restore the well-established principle that the patent system should be substantially self-supporting by providing for fees which are commensurate with current needs.

At present many problems bear heavily on the Patent Office. The complexity of applications and mounting search load have reduced the production of examiners and forced a persistent expansion of the size of the examining corps. In addition, salaries, printing, and other elements of continuing overhead cost are sharply increased. A major new effort is being initiated in research and development which will require increased support. In order to overcome severe problems created by personnel turnover and excessive backlogs, attention is also being focused on the need for additional space and the modernization of examining facilities.

Action by the Congress to modernize patent fees will contribute to the improvement of the patent system in at least three ways. First, the fee structure which would be introduced by enactment of H.R. 10966 will provide remedies to certain inefficient practices by reducing the number of unnecessarily complicated claims and inactive patents. Second, the additional revenues generated by increased fees will at least partially offset the cost of providing desirable improvements in the range and level of Patent Office services. Finally, enactment of the bill will provide important evidence of the determination of the beneficiaries of the patent system to join with the Government in accomplishing whatever improvements may be necessary to preserve this country's traditional system of patent examination and award.

To summarize, it is our position that H.R. 10966, by updating the patent fee structure, provides for recovery of a fair share of the costs of the Patent Office through a fair and reasonable system of fees. Furthermore, the revisions to the fee structure incorporated in the bill provide valuable corrective measures which would further benefit the operation of the Patent Office and the patent system. Accordingly, we concur in the intent of the legislation and strongly recommend its enactment.

Sincerely yours,

(Signed) DAVID E. BELL, *Director.*

Mr. LIBONATI. Mrs. Daphne Leeds. Mrs. Leeds is well known to this committee, and we have always admired your intelligence and your directness in presenting evidence.

Have you a written statement?

TESTIMONY OF MRS. DAPHNE LEEDS, LAWYER AND TRADEMARK CONSULTANT, FORMER ASSISTANT COMMISSIONER OF PATENTS

Mrs. LEEDS. Yes, I have.

What I am going to say will not be popular with very many people, except the taxpayers, but there are a lot of them; so maybe I will be more popular.

Mr. LIBONATI. We realize more than ever the loss the Government suffered when you separated from the service.

Mrs. LEEDS. I would like first to give a little of my personal philosophy about patent fees.

First, a little history:

From the beginning of patent issuance in this country to 1932 it was the position of Congress, often directly expressed, that the Patent Office should be self-sustaining from fees; and whenever it appeared that the costs of a given department of the Patent Office were not being recovered from fees charged, the fees were increased.

Until 1940, the revenue received by the Patent Office was approximately the same as the operating costs of the Office; and, so far as I can find out, there was no great hue and cry from industry or inventors or lawyers specializing in patent practice that full cost recovery was wrong, or that the taxpayer should bear any specific portion of the cost of the Patent Office.

It is my personal conviction that while the public is indeed the long-range beneficiary of our patent system of incentives and rewards to inventors, the immediate beneficiary is the patentee. The public, for a period of 17 years, sanctions a monopoly in a competitive economy, and it is my belief that this is adequate payment for the system.

The inventor-patentee who is rewarded by the system should, I believe, pay the cost of procedures for obtaining his patent.

This personal philosophy of mine was obviously shared by the Congress until the 1940's when we found ourselves so busy in our effort to save our Nation that no one took time to examine what was happening to cost recovery in the Patent Office.

Let us look for a moment at the record:

In 1793 there was a single fee of $30 for registering inventions.

In 1836, the first real Patent Act was passed, and it provided a filing fee of $30.

In 1861, the fee was split: $15 for filing; and $25 for a final fee upon issuance.

In 1922, these fees were not increased but they were equalized: $20 for filing; and $20 on issuance.

In 1930—and you will recall that we were entering the great depression in that year—fees were increased to $25 for filing and $25 for issuance.

In 1932, at the depths of the depression, the fees were increased to $30 for filing and $30 for issuance; and the hearings on the bill which brought this increase about show that the specific purpose of the increase was to make the Patent Office self-sustaining.

For 30 years the filing and final fees have remained static, while we have witnessed tremendous increases in everything else, reflecting inflation and increased costs resulting, among other things, from an ever higher standard of living.

Lawyers' fees for representing inventors have not remained static for the past 30 years. Their costs, as well as the costs of inventors, industry, and everybody else, have increased sharply during the past 30 years. So have the costs of the Patent Office—yet individuals and organizations are asking the public to bear a great portion of those costs.

Is it because we have become accustomed to having the Government take care of so many things that we are willing to load the taxpayer with just a little more?

This bit of philosophy is given because it will, I hope, explain why I feel strongly that there should be a substantial increase in fees of the Patent Office, but am opposed to the present bill.

It is my position that fees should be high enough to discourage the frivolous, but low enough not to discourage invention; that fees for services should bear some relationship to the cost of rendering the services; and that fees should be so established as to avoid high administrative costs.

The proposed filing fee in H.R. 10966, at page 1, line 7, is, in my opinion, to low. If a $30 filing fee was justified in 1932, then a filing fee of $100 is justified now. This is high enough to discourage at least a substantial portion of the frivolous, yet it is as reasonable as $30 was in 1932.

The 1932 fee apparently did not discourage inventors unnecessarily because more than 56,000 applications were filed in fiscal 1933—and I believe we all recognize that $30 was hard to come by in 1932.

The proposed fee of $10 for each independent claim—page 1, lines 8 through 10; page 2, lines 12 through 15—is, in my opinion, excessive and might tend toward a lessening of complete disclosure.

Moreover, the different fees for dependent claims and independent claims could create administrative problems during the course of prosecution so that the applicant could not be apprised with any degree of certainty as to what his fees would be. If a fee for excessive claims is considered desirable, it should be fixed as of the filing date and should be the same for both dependent and independent claims.

The proposed printing fee of $10 per page of specification and $2 for each sheet of drawing, at page 2, line 2, is an undesirable fee, since it will involve high administrative costs. The final fee should, I believe, be made high enough to absorb the printing costs.

The proposed appeal fee, page 2, lines 18 through 23, is highly undesirable. The fee would be $100 if an oral hearing is requested; and if an oral hearing is not requested, $50 of the fee would be refunded; and if the appeal is withdrawn before Board consideration, all except $25 of the fee would be refunded.

Now, either an oral hearing is helpful, or it is not. If it is, then the applicant should not be penalized, and if it is not, it should be abolished.

Furthermore, if an appeal is taken, the fee should remain in the Treasury, whether or not the appeal is withdrawn.

The proposal would, I believe, open a Pandora's box of obligations, and would create substantial administrative costs in the Office. I suggest an appeal fee of $50 in all patent cases.

The proposed final fee of $40, at page 2, lines 1 and 2, is unrealistic and insufficient; and the proposed after-issue maintenance fees—page 5, et seq. section 151—would not only be burdensome to the patentee, but they would be quite costly to administer.

There is no way, really, adequately to estimate receipts from such fees; but, in any event, they would not solve any problems of cost recovery immediately, since they would not add to the revenues of the Patent Office for 5 years.

We know that a number of foreign countries have such fees, but that fact does not necessarily make them desirable here; nor are the income experiences of such foreign Patent Offices necessarily a guide for what would happen here. The cost of administration of the maintenance fee system would be great, especially when the nature of government by bureaucracy is considered.

A whole new division would have to be set up, and, in the very nature of government, that division will not get smaller as the years go on.

Finally, I am strongly opposed to such fees because here again, in the nature of government, as administrative costs increase—sometimes unnecessarily—the fees will increase.

I propose a final fee of $300, payable, at the option of the patentee, in a lump sum within 3 months after notice of allowance, or $100 within 3 months after such notice and $100 on or before the end of the first and second years, respectively, after the issue date.

Under this proposal, the patent would not be enforcible, licensable or salable during a period when any of the payments were in default; and in order to reinstate full rights under the patent during its 17-year term, the amount of final fee due and unpaid would have to be paid, plus a $25 penalty fee.

During its term, the patent would not lapse for nonpayment of fees, but it would simply be without effect as to enforcement until the amount due is paid.

This proposal would keep administrative costs at a minimum, since there would be no necessity for giving a patentee any notice of fees due, and the Office bookkeeping would therefore be kept to an almost irreducible minimum. The burden of maintaining status of the patent would be on interested private parties, where it properly belongs, and not on Government.

Additionally, those patentees with "stables" of patents who are quite "solvent" may relieve themselves of maintaining installment dockets by paying the entire fee when they receive their patents. The independent inventor, to whom an installment docket would probably not be an annoyance, could avoid the necessity of paying out the substantial sum at one time.

The proposed fee of $20 for recording assignments in connection with both patents and trademarks—page 3, lines 14, 15; page 5, lines 3, 4—is excessive and bears no real relationship to the cost of the service. Prior bills have proposed a $10 fee, which might be reasonable but still exceeds substantially the cost. The present fee is $3. I believe a $5 fee would cover the costs of the recording procedure.

The proposed fee of $25 for filing opposition and cancellation proceedings bears no relationship to the cost of the services performed.

Last year the operating cost of the Trademark Trial and Appeal Board was $130,000 and the income from fees was $29,600. This indicates a quadrupling of the present $25 fee for full cost recovery; but I propose a $75 fee and an effecting of economies in operation.

Such a fee would, I believe, eliminate many oppositions which should really not be filed, but, at the same time, it is not so high as to discourage the businessman from protecting his interests if he believes he will be damaged by registration to another of a given mark.

The balance of the fees set out in H.R. 10966 are, I believe, reasonable and justified.

It is respectfully submitted that the fees which I have recommended as high enough—they probably seem very high to many, because we have been spoiled for 30 years—to discourage the frivolous, but not so high as to discourage those who are indeed promoting the progress of science and the useful arts from filing; and I believe the fees would represent substantially full cost recovery for the Patent Office.

Moreover, they would represent net increases, the greater portion to be realized immediately.

We hear much about the poor, oppressed, small inventor. Where is he? Does he not have an automobile, or a television or the myriad other things which he considers to be necessities of life? He who has made a contribution to the progress of science and the useful arts—not merely a gadget of short-term commercial success—will not be too hard pressed, I am sure, to find the fees for his protection. I do not believe that he wants or expects the overburdened taxpayer to share his expenses.

Thank you for your kind attention.

Mr. LIBONATI. I want to congratulate you on your fine statement. I can see that your experience has dictated some of your advice to the committee. I know that you seem to place the costs where the costs should lie in any operations that cost the Government money to furnish the machinery for appeals and so forth, investigations and the like. I want to thank you for your contribution to this committee.

Mr. LINDSAY. I would like to compliment you on your testimony. Let me just ask you about the maintenance fees.

Your proposal is, in effect, a maintenance fee, it is not?

Mrs. LEEDS. No.

Mr. LINDSAY. Do you have a substitute proposal?

Mrs. LEEDS. No, it is not a maintenance fee at all. All it is is a final fee.

Mr. LINDSAY. Payable when?

Mrs. LEEDS. It is payable on issue. But two payments may be deferred.

Mr. LINDSAY. Until when?

Mrs. LEEDS. For the third year; until the end of the third year.

Mr. LINDSAY. I suppose it is a question of semantics, but it seems to me what you are suggesting is that there be continuing payment for issued patents. It is a final fee, to be sure, but it still is staggered along for those who wish it?

Mrs. LEEDS. It can be paid in installments, yes.

Mr. LINDSAY. The total amount amounts to what?

Mrs. LEEDS. $300.

Mr. LINDSAY. This is something that is nonexistent now?

Mrs. LEEDS. That is correct. The right to pay installments is not in existence now; that is correct.

Mr. LINDSAY. Now, the Commissioner suggested a total maintenance fee, as they call if, of —what was it—$500?

Mrs. LEEDS. $600.

Mr. LINDSAY. $600. If that was cut back to $300, it would be, in effect, the same as your proposal, would it not?

Mrs. LEEDS. Except that if the maintenance fee is not paid under the Patent Office's bill, and no showing is made as to why payment a should be deferred, the patent would lapse.

Mr. LINDSAY. Right. And you would make the unenforceability matter for private practitioner?

In other words, if anybody challenged the patent, the holder would have a right to say, "Well, the fee has been paid; therefore the patent is still good."

Mrs. LEEDS. The patent would be issued for the full 17-year term, but the patentee would not be able to enforce his rights under it until and unless he paid all of the payments which were due.

Now, let me explain what would happen. If he wants to sue for infringement, he has a patent with final fee, not fully paid.

Mr. LINDSAY. Right.

Mrs. LEEDS. He has to pay up whatever is due on this final fee before he can enforce his rights.

Mr. LINDSAY. Based on your experience, then, as a practical matter, how many patents would be shaken out, as it were, by the competitive processes going to work, forcing the payment of fees or the patent is not enforcible? Do you follow the question?

Mrs. LEEDS. Yes, I think I do.

I think the answer would be this: That most of the corporate patentees would pay the fee in a lump sum, because it is costly to them to set up a bookkeeping system otherwise. That is approximately 65 percent of the patents issued. So 65 percent of them would probably pay the $300 at the time of issuance.

Then the other 35 percent would probably—this would have to be a guess, there is no possible way of estimating it, because we have never had anything like this; but I would guess that perhaps one-fifth would pay the fee at the end of the first year; one-tenth would pay the fee at the end of the second year.

However, if, during the 17-year term, this patent became of commercial value, then the fees would have to be paid in order to license or to sell.

Mr. LINDSAY. Tell me, do you think it is desirable to shake out the files?

Mrs. LEEDS. I do not think it serves much purpose, really.

Mr. LINDSAY. In other words, this has some purpose, some purpose to be served in forcing some of the—I do not know, is it lingering patents or dormant patents? Is that the proper word? Forcing some of those out by insisting upon a series of payments during the life of the patent, the maintenance fee system?

Mrs. LEEDS. I am really not convinced, I have never been convinced it would ever serve any real purpose.

Certainly, so far as those who have stables of patents are concerned, they would pay their fees, anyway.

Mr. LINDSAY. Thank you.

Mr. LIBONATI. Mr. Toll.

Mr. TOLL. Mrs. Leeds, when you left the Office, which was about a year or two ago, how many applications were there in the last fiscal year in which you served?

Mrs. LEEDS. How many?

Mr. TOLL. Approximately.

Mrs. LEEDS. About 74,000 or 75,000, excluding designs, is my recollection.

Mr. TOLL. And you recollect approximately how many of those were filed by lawyers or legal services?

Mrs. LEEDS. Well, of course, I would have no way of knowing that; but I would suspect that a great percent of them were filed by lawyers, because it is almost impossible, in the ordinary course of events, for one not versed in this practice to represent himself.

Mr. TOLL. Well, what percentage would you say were filed by people without lawyers, by citizens without lawyers?

Mrs. LEEDS. I would say perhaps one-half of 1 percent.

Mr. TOLL. That little.

Now, one more question: In the course of the history of the Patent Office, did the Patent Office ever collect as much money as it cost to operate in its whole entire history?

Mrs. LEEDS. It did for 100 years, the first 100 years of its operation.

Mr. TOLL. It did collect?

Mrs. LEEDS. Yes.

Mr. TOLL. From 1893?

Mrs. LEEDS. From 1836 to 1940, roughly.

Mr. TOLL. It did collect as much as it cost to operate?

Mrs. LEEDS. The amount of money that came in was approximately the same as the operating cost of the Office; and, in this regard——

Mr. LIBONATI. Just a moment.

Congressman Meader is here, and we would like to have him sit with the committee.

Congressman, will you sit with the committee?

He is a member of this distinguished general committee, a very valuable member, brilliant person in his own right.

Mr. Meader.

Mr. MEADER. Thank you.

Mrs. LEEDS. Have I answered your question?

Mr. TOLL. Thank you.

Mrs. LEEDS. Mr. Chairman, I would like to refer to one thing you asked of the Commissioner when he was testifying. That is, how he kept the fine young people in the Office, and so forth.

I sympathize with his problem, but I would like the record to show that the fees do not necessarily bear any relationship to the amount of money available for salaries, because they come from two different places. The fees go into the Treasury and are not used by the Patent Office in the operation of the Office; so the increase in fees would not necessarily have anything to do with any salary adjustments which might——

Mr. LIBONATI. Of course, on the overall operations of the Department, everything that goes into a department is, in some way, related to its operation. You have to admit that.

Mrs. LEEDS. Except there have been some substantial salary increases through the years, when there has not been any increase in fees.

Mr. LIBONATI. I want to thank you for your kindness.

Any questions?

Mr. MATHIAS. Just one question.

You refer to the fact the cost of administration of the maintenance fee system would be great.

Do you contemplate, or is it your understanding from your general knowledge of the Patent Office, that it would be sort of a winnowing-out process periodically, checking over which patents have——

Mrs. LEEDS. No, not necessarily, because that is done now by private people who are making infringement searches and patentability searches. The Patent Office would not—they have all the information—distinguish between patents which have been issued and patents which are presently in force by reason of the fees. They have this information for certain purposes.

Mr. MATHIAS. But there would have to be, relative to each patent, some record made, some public record made——

Mrs. LEEDS. That is correct.

Mr. MATHIAS (continuing). As to whether or not the maintenance fees have been paid?

Mrs. LEEDS. That is correct; and that is where the administrative costs come in, plus the handling of the funds themselves. There would be a substantial increase in the cost of handling funds.

Mr. LIBONATI. They are now, on the record side, microfilming many of the records, are they not?

Mrs. LEEDS. Yes, sir. Yes, sir.

Mr. LIBONATI. And the fact you have 75,000 filed; how many of those follow through, by percentage, approximately?

Mrs. LEEDS. And how many are abandoned?

Mr. LIBONATI. Yes.

Mrs. LEEDS. Well, it depends on what you mean by "follow through," Mr. Chairman.

Mr. LIBONATI. Well, I mean to the full procedure of acceptance.

Mrs. LEEDS. Well——

Mr. LIBONATI. Patent and approved.

Mrs. LEEDS. Well, this, here again I would have to draw on my recollection and my mathematical sense is not very great, particularly without a pencil and paper in my hand; but my guess is—my estimate is that of, let's say, roughly 80,000 applications filed, perhaps 60,000 of those would go to issue.

Somebody from the Patent Office could guess that better than I could, but that would be my best estimate.

Mr. LIBONATI. Mr. Federico would know. He is a mathematician.

Mr. FEDERICO. I would say a little over 60 percent.

Mr. LIBONATI. Sixty percent of those filed go to approval or issuance of the patent?

Mr. FEDERICO. A little over 60 percent.

Mr. LIBONATI. Thank you. Thank you very much.

Mr. Roberts B. Larson, immediate past president of American Patent Law Association.

Have you a statement, Mr. Larson?

Mr. LARSON. Yes; I have a brief statement that I will give to the reporter.

Mr. LIBONATI. Would you like to file it with us?

Mr. LARSON. Yes.

Mr. LIBONATI. You may proceed, Mr. Larson.

TESTIMONY OF ROBERTS B. LARSON, IMMEDIATE PAST PRESIDENT, AMERICAN PATENT LAW ASSOCIATION

Mr. LARSON. Mr. Chairman, my name is Roberts B. Larson, and I am a patent lawyer located here in Washington. I have been practicing for the past 32 years here.

As you said, I am the immediate past president of the American Patent Law Association, and I am appearing here today as a representative of that association, and by authorization of its board of managers.

Now, our association has a special committee on Patent Office fees. We have had one for quite some years. It gave consideration to the predecessor bill, and, although the time has been short, it has given consideration to this new bill, H.R. 10966.

It has presented a report to the board of managers, but, unfortunately, the board has not had an opportunity to consider that report as of this time.

The board meets next week in Cleveland, on the 26th. Its members are located in all parts of the country, and this matter will be on their agenda.

Now, because of this, I cannot, at this time, give you the position of the association, with respect to any of the specific provisions of the bill. I ask your indulgence to include in the record at a later date a supplemental statement with respect to the specific provisions.

I can give you that shortly after the board meets in Cleveland next week.

Mr. LIBONATI. You may rest assured we will be very happy to receive it, as we realize that the bill was just introduced on March 28 of this year.

Mr. LARSON. Thank you.

Now, the board has taken a general position with respect to this bill, and I want to mention to this committee some of the fundamental propositions which the board has in mind, considering a bill of this type, relating to an increase in patent fees.

What I am going to say now is familiar to some of you, but it cannot be said too often or too strongly.

Our patent system is an incentive system, and it is predicated on the principle that the grant of patents will, by affording protection to the inventor for a limited time, stimulate the creative faculties, encourage the making of inventions, and thus promote the progress of science and the useful arts for the benefit of this country and for all mankind.

I do not need to dwell on the importance of such a system; what it has done for this country, everybody knows.

The industry which has been started and encouraged by patents, and the attendant benefits which have accrued to this country, have surpassed the wildest dreams of our Founding Fathers.

Consider but one such benefit, namely, the vast amounts of tax moneys which this Government has derived from such patent-born industries. Never has a country gained so much from the expenditure of so little.

There has never been a time in our history when the incentive provided by the patent system is more necessary and important to our Nation. It it were possible to increase that incentive, that, indeed, would be salutary.

In Russia today they are doing everything possible to encourage the inventors by every possible means of incentive. We should bear that very much in mind in consideration of this bill.

So when we who believe so strongly in our patent system consider any proposal for changing any part of the system, we ask ourselves the basic question: Would the suggested change decrease or increase the incentive the system has provided?

If the effect would be to lessen the incentive, we would tend to disapprove of the change.

In the judgment of many, the Patent Office is and always has been the most profitable agency in the Government. The costs of its operation are really minute, when compared with the economic benefits to the Nation, and, more particularly, with the taxes collected by the Government from the industries and businesses which have been created by patents, from the employees of such industries, and from the suppliers of such industries and their employees.

Notwithstanding this, our association believes that some increase in the amount of the filing and final fees is, perhaps, in order. Our Committee on Patent Office Fees, in general, has approved the increases in such fees which this bill would provide.

In fact, our association has been on record since 1954, at least, as being in favor of some increase in the amount of the patent filing and final fees.

Mr. LIBONATI. Just right there. If you were to select between the two positions, Mrs. Leeds' and the proposed bill, would you be in a position to approve either one or the other?

Mr. LARSON. I would say this, Mr. Chairman—and I am not speaking for the association at the present time; but I feel sure in my own mind that if it were a choice between the two, the maintenance fees on the one hand, and some type of system such as Mrs. Leeds recommended, that they would choose the latter, which is merely an increase, regardless of the amount of size, in the filing and final fees.

Mr. LIBONATI. And you would favor Mrs. Leeds in that respect?

Mr. LARSON. I would certainly, personally, favor that type of system.

Mr. LIBONATI. OK.

Mr. LARSON. As for the so-called maintenance fees, our association is very strongly opposed to these.

Instead of rewarding the inventor for his creative contribution, he is obliged to pay for his own reward.

Not only do its provisions lead to uncertainty and give rise to administrative complications, but they are basically unfair, in that the commercially successful inventor is saddled with paying for the Patent Office costs of examining the applications of many unsuccessful patent applicants.

Now, for these and a number of other considerations of real importance, we consider that maintenance fees are most harmful to the patent system, and to the incentive which it provides.

Mr. LIBONATI. Thank you very much.

Mr. LARSON. You are very welcome.

I would be happy to answer any questions that you might have with respect to this general proposition.

Mr. LIBONATI. Do you feel that you can get the material to us on the basic stand of the association on either the proposals that Mrs. Leeds brought in as suggestions or the bill?

Mr. LARSON. I am sure I can, Mr. Chairman. As a matter of fact, it is my recollection that much of what Mrs. Leeds has said has been, for some time, considered by our Patent Office Fees Committee as a possible alternative to this bill.

Mr. LIBONATI. Thank you very much.

Are there any questions? Mr. Lindsay?

Mr. LINDSAY. No, Mr. Chairman.

Mr. LIBONATI. Mr. Toll?

Mr. TOLL. No.

Mr. LIBONATI. Mr. Mathias?

Mr. MATHIAS. No.

Mr. LIBONATI. Counsel?

Thank you very much, sir.

Mr. LARSON. Thank you, Mr. Chairman.

Mr. LIBONATI. We appreciate your coming, and we look forward to your submitting a written report on the position of your organization.

Mr. LARSON. Yes.

Mr. LIBONATI. Thank you.

(Prepared statement of Mr. Larson follows:)

STATEMENT BY ROBERTS B. LARSON ON BEHALF OF THE AMERICAN PATENT LAW ASSOCIATION, WASHINGTON, D.C., RELATIVE TO H.R. 10966, THE PATENT OFFICE FEE BILL

My name is Roberts B. Larson. I am a patent lawyer and have been engaged in the private practice of patent law here in Washington for 32 years. I am the immediate past president of the American Patent Law Association. I appear today as a representative of that association and by authorization by its board of managers.

Our association has a special committee on patent office fees. It gave consideration to the predecessor bill. Although the time has been short, it has given consideration (by an exchange of correspondence route) to the present bill, H.R. 10966. It has presented a report to our board of managers. As soon as received this was circulated to our 20 board members who are located in all parts of the country. The board will next meet on April 26 in Cleveland and this matter will be on their agenda. For these reasons I cannot at this time give you the position of the association on the specific provisions of the bill.

The board, however, has taken a general position which I shall refer to shortly. Moreover, we ask the indulgence of this committee to include as a part of the printed record, a supplemental statement which we will submit shortly after the board meets next week. I should like to mention what the board regards as a few of the fundamental principles involved.

Our patent system is an incentive system predicated on the principle that the grant of patents will, by affording protection to the inventor for a limited time, stimulate the creative faculties, encourage the making of inventions, and thus promote the progress of science and the useful arts for the benefit of our country and all mankind.

I need not dwell on the importance of such a system. What it has done for this country is well known. The industry which has been started and encouraged by patents, and the attendant benefits which have accrued to this country, have surpassed the wildest dreams of our Founding Fathers. Consider but one such benefit, namely the vast amounts of tax moneys which the Government has derived from such patent-born industries. Never has a country gained so much from the expenditure of so little.

There has never been a time in our history when the incentive provided by the patent system is more necessary and important to our Nation. If it were possible to increase this incentive that indeed would be salutary.

So when we who believe so strongly in our patent system consider any proposal for changing any part of the system, we ask ourselves the basic question—Would the suggested change decrease or increase the incentive the system has provided? If the effect would be to lessen the incentive, we tend to disapprove the change.

In the judgment of many, the Patent Office is and always has been the most profitable agency of the Government. The costs of its operation are minute when compared with the economic benefits to the Nation, and more particularly, with the taxes collected by the Government from industries and businesses created under patents, the employees of such industries, and the suppliers of such industries, and their employees.

Notwithstanding this, our association believes that some increase in the amount of the filing and final fees, is perhaps in order. Our Committee on Patent Office Fees in general has approved the increases in such fees which the bill would provide.

As for that part of the bill which calls for so-called maintenance fees, our association strongly opposes these. Instead of rewarding the inventor for his creative contribution, he is obliged to pay for his own reward. Not only do its provisions lead to uncertainty and give rise to administrative complications, but they are basically unfair in that the commercially successful inventor is saddled with paying for the Patent Office costs of examining the applications of the many unsuccessful patent applicants. For these and a number of other important considerations we feel that the maintenance fee idea is most harmful to the patent system and the most valuable incentive it provides.

Mr. LIBONATI. Mr. Ralph D. Blakeslee, chairman, legislative committee, Patent Office Society. He is accompanied by Mr. Irving Rotkin, member, executive committee, Patent Office Society.

Will you both come up, and whoever is to participate, do so.

You have a report?

TESTIMONY OF RALPH D. BLAKESLEE, CHAIRMAN, LEGISLATIVE COMMITTEE; ACCOMPANIED BY IRVING ROTKIN, MEMBER, EXECUTIVE COMMITTEE, PATENT OFFICE SOCIETY

Mr. BLAKESLEE. Yes. I am Mr. Blakeslee, and on my left, here, is Mr. Rotkin.

We are both patent examiners on annual leave, and we know, perhaps firsthand, of some of the problems involving an application.

This statement is very short; it is only three pages, double spaced.

The Patent Office Society is an organization devoted to promoting the professional development of the examining corps and the improvement of the patent system in general. Over 900 examiners are active members; and the society has an associate membership of about 400. The latter includes attorneys, inventors, scientists, and other persons interested in our patent system.

The executive committee of the society, at a recent meeting during which the fee bill, H.R. 10966, was discussed, passed the following resolution:

> The Patent Office Society goes on record as generally supporting H.R. 10966 as presented.

This approval means examiners who are members of our society believe the provisions of H.R. 10966 will promote the best interest of the patent system in the long run and, in the short run, encourage better practice before the Patent Office.

It will improve the lot of each patent examiner in his struggle to reduce the backlog on his own overloaded docket.

Examiners know from experience that dependent claims take less time to examine than those in independent form. We also know that dependent claims minimize the mental gymnastics necessary to decipher large numbers of claims which obscure the invention, rather than setting it out clearly for us.

An error anywhere in the train of mental gymnastics involves the risk that a claim will be allowed that should not have been allowed.

We are rightly indignant when claim language is unduly verbose, when claims are unduly multiplied, and when they are written in independent form for no apparent reason other than to equivocate, or even hide, the inventive concept.

Examiners know, of course, that it takes much longer to examine a jumbo application than it does a simple one. We recognize that some inventions are necessarily complex and their descriptions necessarily long, but many cannot be defended on either ground. The issue fee of H.R. 10966 will place a penalty on unnecessary length.

H.R. 10966 proposes to change the appeal fees, and we applaud the direction taken.

We know that it takes a great deal of time to carefully prepare the Patent Office side of the issue before our Board of Appeals, which issue is ordinarily whether we should allow claims so broad that we believe they intrude on the public domain.

Examiners believe that an appeal, filed as delaying tactics to keep an application of little merit in "patent pending" status, should be discouraged.

Patent examiners know these things because each one of us judges eight or so applications a week, week after week, and year after year.

Examiners are in the best position to know what eats up examining time and what kinds of reform will help us do our jobs better.

Because Society members know these problems, they commend H.R. 10966 to you. In the vital areas of practice mentioned, it makes an effort to rationalize our examining process. The result will be in the public interest.

Gentlemen, that concludes our statement.

Mr. LIBONATI. Thank you very much.

Mr. BLAKESLEE. If we can help you at all——

Mr. LIBONATI. Are there any questions?

Mr. Mathias?

Mr. MATHIAS. Mr. Blakeslee, what is your view on this maintenance fee question from the point of view of public policy?

Mr. BLAKESLEE. The Patent Office Society has a comparatively small group of people to consider these bills, and we had a particularly short time to consider this one.

We have not developed enough evidence that we think we could helpfully make a suggestion to you on that portion of the bill.

Mr. MATHIAS. If you have any further thoughts on it, do you want to submit any further statement?

Could you get it together within a short time?

Mr. BLAKESLEE. Yes, I think we could go into that, if you gentlemen think it would be helpful.

Mr. MATHIAS. You are dealing with the practical mechanics of this thing, and you would know what mechanical complications could arise on the maintenance system. I think your point of view might be helpful.

Mr. BLAKESLEE. Fine.

Mr. LINDSAY. Mr. Chairman, may I ask a question?

Mr. LIBONATI. Yes, Mr. Lindsay.

Mr. LINDSAY. The maintenance fee seems to be the essential point of debate about this bill. Yet you have no opinion on that question. I am a little surprised you so wholeheartedly endorsed the bill.

Mr. BLAKESLEE. If you will notice, the resolution says we do generally support the bill; and we generally support it, especially as to those aspects which we believe will improve practice before the Office.

Mr. LINDSAY. What you are in favor of is an increase in fee schedules in general, I would suppose, then?

Mr. BLAKESLEE. Yes. Because fees have not been increased since 1932, and since our operation is becoming increasingly costly, I think nobody opposes a fee increase in general.

Mr. LINDSAY. Are you troubled by the Leeds approach?

Mr. BLAKESLEE. Only in one respect, and I will have to speak personally here—may I? Not representing the society.

Mr. LIBONATI. Yes, sir.

Mr. BLAKESLEE. The inventor only has 2 years in which to decide whether his invention is commercially useful or not. Under H.R. 10966 he has—what? Thirteen?

Mr. TOLL. That is a good answer.

Mr. BLAKESLEE. Mr. Rotkin would like to say something.

Are you addressing yourself to this question?

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Mr. ROTKIN. Yes. Mr. Lindsay, the society's executive board, in discussing this matter, chose not to make any specific comment with respect to the maintenance fee. But in the discussion, this point was made—and I think it is important for your record—the bill should be looked upon in its entirety.

If it is agreed that the fees must be raised, the question involved is how to best raise the fees without discouraging the independent and small applicant; in other words, without in any way adversely affecting the importance of the patent system, to encourage applicants.

If the entire fee is to be applied, that is the fee raised at the beginning of the patent process, whether it be as an application fee or as a final fee, the independent man has a financial burden which can be rather harsh before he has any opportunity to recover on the basis of what the Office gives him in the way of a patent grant.

To that extent, a maintenance fee arrangement gives him some opportunity to reap benefits from his patent grant before there is a burden on him.

So that if one looks upon the bill as a balanced measure, I think in that perspective, I can say that the society is in favor of the entire bill.

We are in no position to say that the recovery percentage should be 75 percent or 65 percent or 90 percent. But we think the recovery should be higher than the approximate 30 percent it is now.

Mr. LIBONATI. Thank you very much, gentlemen.

(Prepared statement of Mr. Blakeslee follows:)

STATEMENT OF RALPH D. BLAKESLEE, CHAIRMAN, PATENT OFFICE SOCIETY LEGISLATIVE COMMITTEE, RELATING TO H.R. 10966, A BILL TO FIX THE FEES PAYABLE TO THE PATENT OFFICE, AND FOR OTHER PURPOSES

Mr. Chairman and members of the subcommittee, the Patent Office Society is an organization devoted to promoting the professional development of the examining corps and the improvement of the patent system in general. Over 900 examiners are active members; and the society has an associate membership of about 400. The latter includes attorneys, inventors, scientists, and other persons interested in our patent system.

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Because society members know these problems they commend H.R. 10966 to you. In the vital areas of practice mentioned, it makes an effort to rationalize our examining process. The result will be in the public interest.

Mr. LIBONATI. I want to read into the record the statements that were received or are being prepared for this committee on H.R. 10966: United States Trademark Association, the New York Patent Law Association, the National Association of Manufacturers, Houston Patent Law Association, the Pure Oil Co., Minnesota State Bar Association, California Research Corp., the Chicago Bar Association, and Chauncey Carter, Esq.

(Statements referred to and additional statements received after conclusion of the hearing follow:)

THE UNITED STATES TRADEMARK ASSOCIATION,
New York, N.Y., April 13, 1962.

Re H.R. 10966.

Hon. EMANUEL CELLER,
Chairman, Committee of the Judiciary,
House of Representatives,
House Office Building,
Washington, D.C.

DEAR SIR: The United States Trademark Association would like to file a statement concerning H.R. 10966 for insertion in the record of the hearing to be held on this bill on April 19, 1962.

The United States Trademark Association was formed 85 years ago to protect the interests of the public and trademark owners and to promote the trademark system. It is an association with 865 members who are trademark owners, lawyers, advertising agencies, and others interested in trademarks.

The association believes there is a need for increased trademark fees in order to place the trademark operation of the Patent Office on a financially more self-supporting basis. We are wholeheartedly in support of legislation which will accomplish this result.

Our review of H.R. 10966 leads us to the opinion that it is consistent with this goal and we support the bill except for one of the provisions. This is the clause found at lines 3 and 4 on page 5 which reads as follows:

"12: for recording each assignment of a registration, $20.00; for recording any other paper, $20.00"

The association believes that this provision would prove burdensome to trademark owners. It represents a substantial increase over the present fees for the recording of assignments and other papers. In some instances it is necessary for a trademark owner to record at one time many separate trademark assignments. The high fee proposed in paragraph 12 would vastly increase the cost of such action over the cost required by the present fee schedule.

However, in recognition of the need to increase the earnings of the trademark operation, the association, through action by the board of directors taken some time ago, indicated approval of a proposal for the recording of assignments of $10 for each assignment plus $1 for each additional mark.

Respectfully yours,

(Signed) THACHER H. FISK,
President.

THE NEW YORK PATENT LAW ASSOCIATION,
New York, N.Y., April 12, 1962.

Re H.R. 10966.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CELLER: The New York Patent Law Association does not intend to present testimony regarding the Patent Office fee bill but asks that the following statement of its position be considered at the hearing on that bill, now scheduled for April 19:

We are in accord with sections 1, 2, and 3 of H.R. 10966. The increased fees they provide appear to be justified generally by the need for additional revenues to offset the increased cost of Patent Office operations. There is merit, too, in their encouragement of succinctness and brevity in patent applications, their recognition of the differential fee principle in requiring higher fees for applications which are normally more demanding of Patent Office services, and their discouragement of filing appeals for the purpose of delay.

We are opposed to section 4 in its present form and are opposed to sections 6 and 8, for these reasons:

SECTION 4

By the proposed amendment of United States Code 35, section 151, the Commissioner is required to issue the patent at some indefinite time after the notice of allowance, regardless of whether the final fee is paid. This would have the effect of taking away from the applicant his present right to abandon the application after its allowance and thus rely on protection through continued secrecy of the invention rather than through the patent—a choice which is important to his best interests in some instances, as when pertinent prior art is first brought to his attention after allowance of the application but before the patent would normally issue. It would also seriously impair his present right to file a "divisional" or a "continuation" application after allowance of the "parent" application, in order to present new claims or an improved disclosure in the light of newly acquired information. Finally, it would adversely affect the applicant's present right to await the final outcome of examination of his application in the U.S. Patent Office before incurring the expenses of filing corresponding patent applications in foreign countries.

We believe that the purposes underlying this provision can be accomplished in the main without these objectionable effects, by rewriting the first paragraph of the proposed new section 151 to read as follows:

"If it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant, and after sixty days following such notice the Commissioner shall issue the patent unless, before expiration of said sixty days, the application is expressly abandoned by filing in the Patent Office a written declaration of abandonment signed by the applicant himself and the assignee of record, if any, and identifying the application.

"Before expiration of said sixty days following the notice of allowance, the applicant or his assignee of record may petition the Commissioner to defer issuance of the patent up to six months after such notice, upon a showing that earlier issuance might prejudice a right of the applicant or his assignee of record."

SECTIONS 6 AND 8

In our view, any benefits to be derived from the proposed maintenance fees are outweighed by their adverse effects and, moreover, are illusory.

The net amount of additional revenue they would provide to the Patent Office is speculative, particularly in view of the uncertainty as to the number of patents which would be allowed to lapse for nonpayment of maintenance fees. Whatever this additional amount might be, it may in time be offset or more than offset by loss of revenue to the Internal Revenue Department as a result of premature lapsing of patents under the maintenance fee provisions. For example, many small or struggling corporations develop patentable products which they cannot produce or sell immediately. The development may come in the middle of a recession or at a time when the corporation itself is short of capital; or the product may be ahead of its time. Whatever the cause, the product is apt to be shelved. In these circumstances there is a serious risk that the patent maintenance fee will not be paid. Then, later on, when conditions are more favorable for pro-

moting the invention, the corporation is unwilling to risk the necessary capital investment because its patent protection has been forfeited, with consequent loss of taxable income which the invention might otherwise have produced.

We also question the arguments by proponents of maintenance fees that elimination of "deadwood" patents will be effected through nonpayment of such fees. This elimination is not apt to occur in cases where the patent owner can easily pay these fees, unless the patented invention is proved conclusively to be valueless. Moreover, it is difficult to determine when a patent is of no value or is "deadwood." There have been many patents for inventions which did not attain commercial success until a decade or more after the patent grant. It is likely that the patent system would suffer more through forfeiture of patents of this type, due to incorrect predictions by patentees or their inability to pay the maintenance fees, than it would gain through elimination of patent rights which are truly "deadwood."

Other factors on which our view is based are the burdens involved to insure timely payment of maintenance fees by patentees, the risks of inadvertent nonpayment of these fees within the time allowed, and the discrimination against small corporations and indigent assignees with respect to fee deferrals.

Taking into account all of these considerations, we are opposed to the principle of maintenance fees, and the more so because it appears that their primary purpose is to increase Patent Office revenues to some arbitrary percentage well over 50 percent of its budget. We believe this to be an unfair burden on patent owners, who, after all, represent only a small number of those benefiting from the facilities of the Patent Office. Industry in general benefits by having readily available a vast central store of well-classified technical information on which to base further technical advances. The general public benefits from the progress in the useful arts which is brought about through the workings of the patent system. This, indeed, is the basic reason for the existence of the Patent Office.

We believe, therefore, that the revenue derived through Patent Office fees from applicants and patentees, to constitute their fair share of the Patent Office budget, should be about 50 percent and certainly not more than 60 percent of that budget. If the fees proposed by sections 1–3 of H.R. 10966 will not produce such revenue, the necessary additional amount should be provided by increasing these fees, especially the fee for issuance of a patent, rather than by imposing patent maintenance fees.

Very truly yours,

CYRUS S. HAPGOOD,
1st Vice President.

NATIONAL ASSOCIATION OF MANUFACTURERS
OF THE UNITED STATES OF AMERICA,
Washington, D.C., April 18, 1962.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CELLER: On behalf of the National Association of Manufacturers, I appreciate the opportunity to submit for the hearing record the attached statement relating to H.R. 10966, the Patent Office fee bill.

Your letter to me of March 29, 1962, raised several important questions with regard to costs involved in patent activities. The Patents Committee of the National Association of Manufacturers is in the process of gathering pertinent data, and we hope that the information obtained, shortly, will be of value to you.

With appreciation,

Sincerely yours,

FRANK E. FOOTE,
Chairman, Patent Office Affairs Subcommittee.

STATEMENT OF THE NATIONAL ASSOCIATION OF MANUFACTURERS ON H.R. 10966

This statement is made on behalf of the National Association of Manufacturers, a voluntary membership corporation with approximately 17,000 member companies, 83 percent of which are small businesses. Moreover, the association membership consists of representatives from every segment of American industry.

The bill, H.R. 10966, would make major revisions in the fees now charged by the Patent Office in the prosecution of patent and trademark applications. In addition, it provides for maintenance fees payable after a patent has been issued. Our principal interest in this bill arises because of the provisions contained therein for maintenance fees.

Generally, the association approves the objective of the Patent Office to realize substantially increased revenue to cover a greater portion of the cost of the work of the Office leading toward the issuance of the patent. The association has no objection to increasing the presently existing fees charged by the Patent Office to accomplish this end. We do not agree, however, with the proposal to realize a part of the projected increased revenue by the imposition of maintenance fees on issue. We are, therefore, opposed to H.R. 10966.

Our objections to maintenance fees is largely grounded on the fact that they would impose upon the U.S. patent system certain requirements detrimental to the desired objectives of the system merely to obtain increased revenue. This does not seem desirable when the objective can be accomplished simply by increasing existing fees.

It should be kept in mind that the patent system was set up for the benefit of the public and not any class of individuals. The public benefits from the disclosures in all patents and benefits mostly from the disclosures in patents on advance inventions which are not available commercially. Others may then utilize such information in additional work to make further or alternate inventions. This results in a continuing stream of more practicable devices for the benefit of the public. If these disclosures are not made, it follows that the public is the loser.

Maintenance fees will not only tend to discourage the filing of patent applications in general, but particularly, will discourage the filing of patent applications on inventions which result from advance development and research and which are "ahead of their time." Patents will continue to be taken out on detailed designs of products which are being placed on the market since it will be known that the sales will justify paying the fees. In contrast with this, it will be hard to justify filing on inventions, the commercial future of which is unknown, if the threat of future payments is present.

There are other specific objections to maintenance fees which are quite serious. One is that they will greatly complicate matters from the point of view of the individual inventor. He will have to be careful to bring up in good time the maintenance fee due and probably will be compelled to employ counsel to advise and help make the hard decision as to whether to let his brain child go by the board or to pay the required amount and hope to commercialize the invention further during the ensuing 5 years.

From the Patent Office standpoint, it is difficult to believe that the proposal will result in anything but a substantial increase in administrative costs which would cut down on any revenue realized from maintenance fees.

Another objection to maintenance fees is that there is considerable doubt as to how much revenue would be raised since it is difficult to determine how many patents would be maintained or how much the revenue would be 5, 10 or 13 years in the future.

The U.S. Patent System has generally been recognized as the most successful in the world. The superiority of our system is illustrated in the high proportion of sales by U.S. companies in the last several years of new developed products, the majority of which are patented, and the large degree to which industry abroad has taken up the innovations arising in this country. Bearing this in mind, and as already indicated, an increase in presently existing fees charged by the Patent Office is a matter which we favor if based on the structure presently existing.

For many years the Patents Committee of the NAM has strongly supported the efforts of the Patent Office in its worthy attempts to increase its overall efficiency and to reduce its work backlog. In making a recommendation for increases within the existing fee structure, we have devoted serious consideration to the problems of individual inventors as well as to applications and issuances involving companies and their employees. We are of the firm belief that an increase would be fair and reasonable to all concerned. It is very unlikely that discoveries or inventions of any value will be lost to the public by the requirement of an increase in fees, which have not changed in 30 years. In summary, we believe the patents system of the United States stands to be best served by legislation based on fee increases within existing structures rather than attempting to institute a maintenance fee system.

BUTLER, BINION, RICE & COOK,
Houston, Tex., April 16, 1962.

Re H.R. 10966.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House Office Building, Washington, D.C.

DEAR SIR: The Board of Governors of the Houston Patent Law Association, whose membership comprises a majority of the patent attorneys practicing in the Houston area, has instructed me to advise you that the association has adopted the following resolution:

"Whereas the Celler bill, H.R. 10966, introduces an innovation which is a form of taxation on patents labeled "Maintenance fees" heretofore unknown in patent statutes in the United States; and

"Whereas adequate consideration for the patent grant is found in the full disclosure by the inventor of the nature of his invention and the manner of practicing it; and

"Whereas such a tax would constitute an entry by the Federal Government into the field of taxation on the mere possession of personal property, a field historically belonging to the States: Now, therefore, be it

"*Resolved,* That the Houston Patent Law Association opposes all provisions for taxation on patents, including without limitation the maintenance fees and discriminatory maintenance fee deferral provisions of the Celler bill, H.R. 10966."

We hope you will give serious consideration to the views expressed in this resolution during the hearings on H.R. 10966 scheduled for April 19, 1962.

Very truly yours,

NED L. CONLEY,
Secretary, Houston Patent Law Association.

THE PURE OIL CO.,
Palatine, Ill., April 3, 1962.

STATEMENT

I am in accord with the general purpose of H.R. 7731 and H.R. 10966 to increase the revenue of the Patent Office to bring these revenues more in line with the cost of operating the Patent Office. However, I am not in accord with all the provisions of the bills.

Patent Office fees should be fixed to accomplish the following objectives:

1. The filing fee should be high enough to discourage indiscriminate filing of applications for patent and should bear a reasonable relation to the cost of processing the application to allowance or abandonment.

2. The fee for issuing the patent should be sufficient to cover the Government expense in processing an allowed application to patent.

3. The services performed by the Patent Office, such as supplying patent copies, recording assignments, etc., should be on a self-supporting basis.

4. The total Patent Office fees should be fixed giving due regard to free services rendered to Government employees and to various Government departments, and to the free distribution or distribution below cost of printed patents and other materials from the Patent Office.

With these objectives in mind, I have reviewed a survey made by Mr. P. J. Federico on Patent Office fees and expenses, published at 35 JOPS 725 to 738. On page 732 of that article, Mr. Federico pointed out that the examination function of the Patent Office amounts to 74 percent of the total cost, with an additional 8 percent to cover the cost of the Classification Section, the Board of Appeals, and Patent Interference Section. The last general increase in fees relating to patent applications occurred in 1932 and, therefore, on the basis of the devaluation of the dollar, an increase is justified at this time. It is my feeling, however, that the filing fee should be increased more than the issuance fee, since the greatest part of the cost is involved in the examination of the application. It is my feeling that the filing fee should be approximately $50 and that instead of charging $10 for each independent claim in excess of one, the charge should be $10 for each independent claim in excess of two, for the reason that an applicant must commonly claim both method and apparatus, or product and method of making the product, in the same application and, therefore, requires at least two independent claims.

I do not feel that the increase in the filing fee to $50 would have any substantial effect on the independent inventor since the fees he now must pay to an

attorney to prepare and application are several times the filing fee and, in my opinion, constitutes the major barrier to the independent inventor's ability to file an application.

I am also in sympathy with the idea of making an additional charge for lengthy and verbose patent specifications, but it is my feeling that this extra charge should go on the application as filed rather than on the patent as issued. Approximately 40 percent of applications filed are never issued and hence the Patent Office is never properly paid for these 40 percent. I would advocate that the Patent Office charge an additional fee of $1 per typewritten or printed page for each page of specification, not including claims, in excess of 20, and $2 for each sheet of drawing in excess of 2. The Patent Office can and should more strictly define the size of paper, type, and spacing as required in printing a specification than it now does by way of rule 52. An applicant should be allowed a reasonable number of pages of specification and drawing with his filing fee.

The provision increasing the appeal to the Board of Appeals to $100 does not appeal to my sense of fairness. It sounds like an attempt to coerce the applicant into accepting the judgment of the examiner instead of appealing. I would favor keeping the present appeal fee the same as it is now, namely, $25, with the requirement that the applicant be required to pay an additional $25 if he requests an oral hearing.

The increase in assignment recording fee is clearly out of line. In Mr. Federico's article, on page 731, it is indicated that the present fees substantially cover the cost of recording assignments. It is my feeling, therefore, that an increase in recording fee to $5, with $1 for each additional two pages or less and $1 for each additional registration or patent, is adequate to cover the cost of this service. The same is true with regard to trademark recordations.

At the time Mr. Federico made his survey, the fees for trademark registrations were insufficient to cover the cost of this operation. It is my feeling that the increase from $25 to $35 in the filing fee is still insufficient. Since registration is primarily for the benefit of the registrant, it is my feeling that he should pay the cost of this service. Since the present fee was fixed in 1947 and the value of the dollar has depreciated very considerably since that time, I would consider that a fee closer to $50 for filing would be more in line.

I am unalterably opposed to the maintenance fee provision of the bill. It is my feeling that once an applicant had paid for the examination and issuance of his patent, he should not be taxed for the right to hold it. If the patent yields him income, the income is taxed by the Government. If it does not yield him any income, the proposed bill would not tax the patent holder. It seems to me there would be more justification for taxing the patent in the hands of the man who did not use it to derive income, since the Government is getting no benefit in the way of additional money from the patent. In fact, the Government is encouraging a man not to use his patent since by so doing he does not have to pay the Government any money.

Moreover, the provisions of the bills under which the holder of a patent who did not derive benefit therefrom commensurate with the maintenance fees would be excused from payment of the maintenance fees, would place an onerous burden on the holder of a number of patents who licensed the entire group of patents to a licensee in a specific field. Since the licensor would not know which patents the licensee was operating under, if any, the licensor would not know whether he was required to pay the maintenance fee to the Government or not. As a specific example, suppose A owns 100 patents which he licenses to B. B pays A $9,000 in royalty. The question is, Does A owe the Government any money in order to maintain these 100 patents after the first 5 years?

I would be in favor of a provision which would have the effect of removing from the register worthless patents after a reasonable time. The effect of the proposed bill would be to establish 5 years as a reasonable time. In view of the experience in our own company, I am not prepared to say that 5 years is reasonable. About 10 years ago we sold a patent that had 9 years longer to run, and received a considerable sum of money for it. I think that the area of maintenance fees should be left in abeyance until we have more information of the type that the George Washington Foundation is accumulating on patent utilization. Their survey up to the present time indicates that practically no inventions go into use 8 years after the date of an application, but this conclusion is based on insufficient samplings and I think a greater cross section of patents should be sampled before any final conclusions are made. See the Patent, Trademark, and Copyright Journal of Research and Education, Volume 5, 1961, of the Patent, Trademark, and Copyright Foundation, the George Washington University, page 108, table B.

EDWARD H. LANG.

CARPENTER, ABBOTT, COULTER & KINNEY,
St. Paul, Minn., March 26, 1962.

Re House file H.R. 7731, 87th Congress.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CELLER: The proposed act that is involved in the above file concerns Patent Office fees.

Our committee wishes respectfully to advise that it approves nominal increases in the cost of procuring patents, but that it does not believe that there should be any taxes or other charges against patents after they have issued.

We will not be able to appear in person and would therefore request that the present letter be included as part of the record of your committee's work in this matter. If the record is printed, we would also ask that you kindly supply us with a copy.

Very truly yours,

MARK SEVERANCE,
Secretary, Committee on Patent, Trademark and Copyright Law, Minnesota State Bar Association.

CALIFORNIA RESEARCH CORP.,
San Francisco, Calif., March 13, 1962.

Re H.R. 7731, proposed legislation for renewal taxes and increased fees on patents.

Hon. EDWIN E. WILLIS,
Chairman, Subcommittee on Patents, Trademarks, and Copyrights and Revision of the Laws, House Committee on the Judiciary, Washington, D.C.

SIR: The above bill proposes to raise patent fees to $90 and to add maintenance taxes of $900. Thus, the cost for Patent Office charges would be increased from the present $60 to $990—a change to 1,650 percent of the present patent fees.

This tremendous increase in costs, in my opinion, could only result in a depressing effect on the filing of patents. I am sure most large companies would cut down on their patent filings, and it would be particularly detrimental to small businesses and individual inventors. It seems to me that the stimulation of inventions and subsequent filing of patents which result in more business ventures is a much more fruitful source of tax income.

The early disclosure of ideas through patents, and the resultant freedom to publish in the technical literature after patents are applied for, promotes the progress of science. Early disclosure of ideas benefits the public as published ideas are used as a springboard to improved technology as well as to entirely new approaches. There are many examples of patents which have never been commercialized by the inventors but, through publication, other companies have become interested, bought the patent rights, and used the ideas in commercial ventures. Without publication the technology would remain for all practical purposes a secret and never reach the commercial stage.

The large increase in costs proposed is said to be based on the desire to make the Patent Office self-supporting. However, to make inventors support the full costs of the Patent Office operations is contrary to the widely accepted principle that where the public shares the benefits, the public should share in the costs. Clearly, the public benefits from the patent system through the early disclosure of ideas.

We would have no objection to the raising of patent fees to $90 but we particularly object to the innovation of maintenance taxes on patents. Such taxes appear to be a new revenue-raising device without assurance that the funds generated would be used to support the Patent Office. The exemption provision, coupled to the proposed maintenance taxes, provides for deferring the taxes for a while if the patentee can prove he received no benefit from the patent. This exemption would be difficult and costly for both the Government and the patentee to administer on account of the complexities of keeping records, such as on patented inventions which are capable of being used as part of an apparatus or process. I believe the recordkeeping would be most burdensome to the individual inventor and the small companies, who would also then be most hurt by maintenance taxes. Hence, the merit in the so-called exemption is questionable.

In summary, we believe that raising patent costs to 1,650 percent of the present fees is unreasonable and contrary to the best interests of the general public. It would tend to discourage public disclosures of ideas and inventions and to cause a

shift to technical developments on a "trade secrets" philosophy. We especially object to the proposed maintenance tax feature since it establishes the precedent of taxing patents. Such a tax would be difficult to administer if applied fairly, and present taxes on profits already reach to the beneficial use of patented inventions. Taxes on patents, if once enacted into law, would not be limited to the needs of the Patent Office. Such taxes would become merely another burden on potential inventors and would tend to discourage inventions.

It is our understanding that a hearing on this matter has not been scheduled yet. We request that this letter be put into the record at such time as the hearing is held.

Yours very truly,

R. L. LYMAN.

THE CHICAGO BAR ASSOCIATION,
Chicago, Ill., February 23, 1962.

Hon. EMANUEL CELLER,
Chairman, Judiciary Committee,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CELLER: The board of managers of the Chicago Bar Association at a meeting on February 22, 1962, adopted the enclosed report of its committee on patents, trademarks, and trade practices. This action by the board caused the report to become the position of the Chicago Bar Association.

We hope that the report will be helpful to your committee in the consideration of the proposed legislation.

Respectfully submitted.

R. H. CAIN, *Executive Secretary.*

CHICAGO BAR ASSOCIATION—COMMITTEE ON PATENTS, TRADEMARKS, AND TRADE PRACTICES

This is a report on H.R. 7731, introduced June 19, 1961, by Mr. Celler and presently before the Committee on the Judiciary.

The bill calls for increases in the fees of the Patent Office for the filing and issuance of patent applications and for other services provided by the Patent Office. In addition, the bill creates a new burden for inventors and companies who carry on research. It introduces a completely foreign practice into our patent system, the payment of graduated maintenance fees on issued patents.

We are opposed to H.R. 7731 in its present form because we believe that the concept of maintenance fees is not in public interest, but we would not oppose a bill which provides for the Patent Office fee increases of H.R. 7731.

The Patent Office fees for filing of applications and issuance of patents have been unchanged since 1932. At the time of the adoption of the present fee schedule, fees accounted for a substantial portion of the budget of the Patent Office and the filing and issue fees contributed the major share of the revenue. At the present time these fees represent about one-third the cost of the Patent Office operation.

The Bureau of Budget, under a program stated in 1946 and continued through the Eisenhower administration, has been striving to establish fees for special services rendered to individuals which are commensurate with the cost of furnishing the service. Bills seeking to raise the Patent Office fees have been introduced before several Congresses, but have not met with success.

It is the feeling of this committee that the charge for special services, primarily for benefit of the one requesting the service, should be such that the cost of the service is completely recovered. This applies to such matters as recording of assignments, provision of copies of documents, and the like.

The principal expense in the operation of the Patent Office is involved in the processing and examination of patent applications. Strict and thorough examination is fundamental to the U.S. patent system. This examination seeks to insure to the inventor only the protection to which he is entitled while preserving all rights which belong to the public. Without the examination procedure, our patent system could not have made its great contribution to our national economy. While a patent may provide some measure of private benefit, the inventor makes a full disclosure of the invention for the benefit of the public. Accordingly, it is the position of the committee that the fees for filing an application and issuing a patent should not be equated with the cost of the examining operation of the Patent Office. However, in the interests of fiscal responsibility, we are not opposed to the increases in the Patent Office fees proposed by this bill.

The bill's further provisions for periodic patent maintenance fees similar to the taxes levied on patents by many foreign countries are objectionable. The graduated fee schedule ranges from $100 at the expiration of the 5th year of the patent and $300 at the expiration of the 13th year of the patent. If the fees are not paid, the patent terminates. The maintenance fees may be deferred in the case of an individual inventor who has not obtained from the patent an amount equal to the fee due. This committee is strongly opposed to the concept of maintenance fees applied to patents.

We believe that the imposition of maintenance fee will reduce the incentive to file patent applications which make available a full disclosure of technical information that is often developed at high cost. Consider, for example, a manufacturing process which is not indentifiable from the finished product. There is scant incentive for patenting such processes now, and the additional tribute required by these fees will certainly cause many of them to be kept secret. This is true also of products that are not immediately planned for production. This will result in an increase in the number and type of matters which are kept secret, and a decrease in the technical information available to future workers, hampering the scientific progress of our national economy.

If an invention enjoys commercial success, the user of the invention presumably makes profits which are subject to income tax. In this manner, successful inventions contribute substantially to the Federal revenue. A further contribution by way of maintenance fees on the patents themselves is unwarranted.

In those foreign countries which impose fees of this type, a large portion of the patents are granted to foreigners, and the maintenance fees are one means of securing revenue which would not otherwise be paid by the foreign patent owner who does not pay local income taxes on royalties received. This situation is not true in the United States, where only a small portion of the patents are granted to foreigners. Furthermore, the increased clerical work required by the Patent Office and patent owners to maintain the necessary maintenance fee records would materially reduce the net increase in revenue to the Federal Government.

STATEMENT OF CHAUNCEY P. CARTER, ATTORNEY AND COUNSELOR, WASHINGTON, D.C., WITH RESPECT TO H.R. 10966

It is generally agreed among trademark owners and attorneys that it is appropriate to revise official trademark fees to meet the estimated cost of the trademark operation. With respect to patent fees, however, there is no such unanimity of opinion, and this fact, together with the fact that the official proposals for increases of patent and trademark fees are always presented in a single bill, has prevented the enactment of any increases for trademarks or patents in recent Congresses.

If an equitable proposal for revising trademark fees to make the trademark operation self-supporting is presented separately from any proposal with respect to patent fees, it is believed that corresponding legislation can be had promptly with immediate increase in return to the Treasury.

With a view to such procedure, I have prepared and annex hereto a proposed bill dealing only with trademark fees. The principal difference between the schedule in this bill and the schedule in H.R. 10966 is that the present bill increases the original application for registration fee only 20 percent instead of 40 percent to $35. The corresponding loss of revenue, however, amounting to approximately $125,000 is made up in the annexed proposal in two ways, (1) by fixing for various procedures fees larger than, or in addition to those prescribed in H.R. 10966, and particularly the fees for recording assignments and for proceedings before the Trademark Trial and Appeal Board which entail so much official expense due to the rank of Board members and the substantial records involved in these proceedings, and (2) by making applicable immediately, rather than 5 years hence, the fee for processing affidavits under section 8 amounting to more than $150,000 per year. It appears to be the position of the Patent Office that since the Lanham Act provides that a registration may be canceled if within the sixth year the registrant fails to file an acceptable affidavit relating to use of the mark, and since the act did not provide any fee for processing such affidavits, it is not now constitutional to impose such a fee on registrations heretofore issued or qualified under that act. (The Office has been charging a fee of $1 for searching the title of registrations when such affidavit is filed.) There appears to be no constitutional prohibition against establishing a charge for services theretofore officially rendered gratis, and it is believed there is considerable precedent in the Patent Office for doing so, if not in H.R. 10966. For instance the Patent Office proposes

an increase of from $10 to $15 for issuance of new certificate of registration following as ignment, for certain certificates of correction, disclaimer or amendment. If the charge for filing an amendment of an existing registration can be increased during the life of the registration how can it be said that the present charge of $1 in connection with an affidavit under section 8 cannot be increased to $10?

It is believed that the annexed bill more nearly reflects the costs of the various trademark operations and will be less inequitable to trademark claimants than the official proposal which aims to put the heaviest burden on those who have just commenced the use of a trademark and are least able to bear an increased payment.

[H.R. ——, 87th Cong., 2d sess.]

A BILL To amend section 31 of the Act approved July 5, 1946 (ch. 540, 60 Stat. 427; U.S.C. title 15, sec. 1113) as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 31 of the Act approved July 5, 1946 (ch. 540, 60 Stat. 427; U.S.C., title 15, sec. 1113), as amended, is amended to read as follows:

"(a) The following fees shall be paid to the Commissioner of Patents under this Act:

"On filing application for registration of a mark, for each class of goods or services, $30;

"On filing application for renewal of registration for each class of goods or services, $25;

"On filing affidavit under subsection (a) or (b) of section 8, $10;

"On filing petition for revival of abandoned application, $15;

"On filing notice of opposition to an application, $50;

"For each additional application of same applicant identified in the same notice, $10;

"On filing application for cancellation of registration, for each class of goods or services, $50;

"For each additional registration of same registrant identified in the same application, for each class of goods or services, $20;

"On filing appeal under section 20, $35;

"On filing application for amendment or disclaimer in part under subsection (d) of section 7, $20;

"On filing by registrant of certificate of registration for surrender, cancellation or disclaimer in whole under subsection (d) of section 7, $5;

"On filing request for certificate of correction under subsection (g) of section 7, $20;

"For printed copy of drawing and statement referred to in subsection (a) of section 7, 10 cents;

"For recording any instrument of not more than six pages affecting the title to an application or registration, $20;

"For each additional 3 pages or fraction thereof in such instrument, $5;

"For each additional application or registration affected by such instrument, $10;

"On filing affidavit under subsection (c) of section 12, $10;

"Provided, that all of the foregoing fees shall be inclusive of any required search or examination of official records of the Patent Office.

"(b) The Commissioner may establish charges for copies of records, publications, and for certifying the same, as well as for authorized services not specified in subsection (a) and may refund any sum paid by mistake or in excess."

RESOLUTION

Whereas the Celler bills H.R. 7731 and H.R. 10966 propose an increase in Patent Office fees and charges; and

Whereas the Celler bills H.R. 7731 and H.R. 10966 also introduce an innovation which is in the form of taxation of patents labeled "Maintenance fees," heretofore unknown to patent statutes in the United States: Now, therefore, be it

Resolved, That the patent, trademark and copyright section of the State Bar of Texas opposes all provisions for taxation on patents and including, but without limitation to, the maintenance fees and the discriminatory maintenance fee deferral provisions of the Celler bills H.R. 7731 and H.R. 10966; and be it further

Resolved, That the patent, trademark and copyright section of the State Bar

of Texas opposes all other provisions of Celler bill H.R. 10966 as they differ from provisions of Celler bill H.R. 7731; and be it further

Resolved, That the patent, trademark and copyright section of the State Bar of Texas reaffirms its endorsement of the provisions of the Celler bill H.R. 7731, pertaining to an increase in other Patent Office fees and charges.

CHAMBER OF COMMERCE OF THE UNITED STATES,
Washington, D.C., April 27, 1962.

Hon. EDWIN E. WILLIS,
Chairman, Subcommittee on Patents, Trademarks, Copyrights and Revision of the Laws, House Judiciary Committee, Washington, D.C.

DEAR MR. WILLIS: The National Chamber urges your subcommittee to recommend a realistic schedule of fees which would enable the Patent Office to be self-supporting. H.R. 10966, now being considered by you, would substantially increase such fees, but would not provide sufficient revenue to recover all Patent Office costs.

The Chamber believes that whenever practicable, the costs of Government programs, which provide special benefits to identifiable groups or individuals in excess of benefits to the general public, should be borne by those receiving the benefits.

The Patent Office does provide special benefits to inventors, applicants for patents and holders of patents. We believe they should bear the cost of the patent system. For many years they did. The Patent Office was self-supporting over a large part of its existence. However, the fee structure instituted in 1932, and designed to maintain a balance between income and expenses at that time, has been woefully inadequate in the face of increases in operating costs since approximately 1940.

A table of income and operating costs of the Patent Office, submitted to your subcommittee by the Commissioner of Patents, is a graphic portrayal of the inadequacy of the out-of-date fee structure. In the period 1900 to 1940, income from fees actually exceed operating costs in 22 years, and in the same 41-year period only 5 years show income of less than 90 percent of costs.

Cost recovery has eroded rapidly since 1940; it has not again reached 90 percent. In a steady decline, it has dropped to 32 percent in 1961 and is estimated at 31 percent in the current year.

It is true that income from fees has increased 77 percent—$4.3 million in 1940 to $7.6 million in 1961. But operating costs in the same years increased 413 percent—$4.6 million in 1940 to $23.6 million in 1961. Substantial increases in personnel costs (including eight general pay raises since 1945) and printing and reproduction costs have left fee collections far behind.

The chamber is of the firm opinion that under existing rates the general public is subsidizing the specific beneficiaries of the patent system. It strongly recommends enactment of legislation which would provide for recovery of the costs of the Patent Office by means of an equitable fee system.

We urge your favorable consideration of this letter. Also, I will appreciate it if you will include this in the record of hearings on H.R. 10966.

Sincerely yours,

THERON J. RICE,
Legislative Action General Manager.

STATEMENT OF JOHN W. ANDERSON, PRESIDENT, NATIONAL PATENT COUNCIL

My name is John W. Anderson. My residence is 578 Broadway, Gary, Ind.

I speak in behalf of National Patent Council, of which I am president, and of the smaller manufacturers of America who, since the organization of that council in 1945, have supported it. I speak in behalf of the Anderson Co. of Gary, Ind., of which I am founder and president. My company manufactures improved and patented devices for original equipment and replacement, in the automotive field.

I speak, in the broadest sense, in behalf of the American people—of this and oncoming generations. I presume so to speak because of the clear intent of our Constitution that:

"The Congress shall have Power . . . to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;".

Not only does that provision of our Constitution establish clearly its intent. It expressly directs Congress as to the means by which effect is to be given to the intent of the provision.

Over many years I have striven for words with which to arouse the leadership of American industry and of the three constitutionally established divisions of our Government to the frightening fact that radical departures from the clear intent of our Constitution, as it relates to our patent system, are steadily weakening that system and its power to continue to induce, within our citizenry, that creative diligence from which our economy has attained its phenomenal growth—and its power to bury, under its relentless waves of industrial achievement and resultant wealth, the effects of our most serious social, industrial, and economic errors.

My instant statement is directed to another deterrent to inventive incentive as encompassed in H.R. 10966, to increase Patent Office fees.

Nothing is said in the Constitution about levying a deterrent tax upon inventors—who, during the period when fees must be paid by them to the Patent Office—usually are unable to pay them out of any special benefits which have been conveyed them. Usually those fees are assessed at a time when the inventive project is nonproductive—and when there is no positive assurance that it ever will be productive to the inventor.

It seems rather that the constitutional concept of our patent system is that the chance for a patent is offered as an inducement, to those capable of inventive diligence, and to those who finance their inventions, to make whatever sacrifices may be necessary as they seek the uncertain rewards of patent protection. It is thus that the patent system is intended to "promote the progress of science and useful arts." At the initial stage special benefits to the inventor remain highly speculative—and usually are conditioned upon ultimate patent protection adequate to induce others to risk their savings in providing capital by which to produce and distribute the invention.

Men of industry have dealt constantly, over the years—with the problems of inducing men capable of invention to consecrate themselves to the relentless studies and efforts usually required to produce a result of value to the public. Watchful men long have feared that Government has grown so absorbed in the growing problems encountered in disposing of the ultimate fruits of invention—manifested in taxes—as to have become somewhat insensitive to the incentives which impel men to invent—and others to finance the reduction of inventions to service to the public.

Many thoughtful men of industry are gravely concerned today at the prospect, already well in process, that Government, by restrictions and compulsions, will dry up the fountainheads of invention so that our economy will have lost its phenomenal capacity for growth.

That tremendous industrial growth, which in turn has served as the seedbed of all our cultures, many foreign nations are striving hard to equal or surpass. Men closest to the problem fear that growth in America will subside and our strength for survial will decline and disappear—unless we at once remove lately imposed compulsions that have closed vast fields to the inventor and manufacturer—and cautiously refrain from imposing even the slightest further burdens upon our inventors.

Only because of that vision of our Founding Fathers which gave us our constitutional basis for our patent system have we had our phenomenal growth in strength for national security. Only because of the productivity created by our patent system have we been possessed of the plenty which, up to now, has served our needs and supported our wastes.

Since our needs must grow—and since we cannot with certainty stop our wastes, should we not, before we reach the point of no return, restore the capacities of our patent system to "feed free enterprise" for growth of strength for national security?

By adoption of House Joint Resolution 554—appended to this statement—this Congress can give great encouragement to the inventors of America—and to those who finance the patenting, production, and distribution of their inventions.

The functioning of our patent system, unlike achievements in basic research, is so nonspectacular as to have kept our legislators and the public but little advised as to the tremendous forces developed, in the aggregate, by our patent system.

If every citizen could be interested once to undertake to name a single product of America that has not been made better or cheaper because of one or more patented inventions embodied in it or in the equipment and processes employed in its production and distribution, we would surely have a patentwise public

that would diligently defend our patent system against any additional burdens or encroachments. Try it, and you will soon know that America's strength roots in our patent system and in our other institutions that provide for the citizen incentives that serve the whole of us.

In America our patent system feeds free enterprise. It can do that successfully only in whatever enterprise remains free.

This council believes that H.R. 10966 should be defeated and that House Joint Resolution 554 should be adopted. This council prays that the patent system and our economy in general will not be subjected to the depressing psychology of an increase in Patent Office fees—in this critical period when we need to avoid all influences depressive of the incentives intended by our Constitution to be provided for inventors—to "promote the progress of science and useful arts."

Respectfully submitted.

JNO. W. ANDERSON, *President.*

[H.J. Res. 554, 87th Cong., 1st sess.]

JOINT RESOLUTION To avoid suppression of inventive diligence in America

Whereas it has long been recognized by subversive alien agencies that the United States patent system is the "nerve center" of our industrial economy and makes indispensable contributions to our national security, and

Whereas vast research organizations of Government, and of industry subsidized by Government, are constantly advancing our knowledge of basic forces applicable, both beneficially and destructively, to our Nation and to the world, and

Whereas, since invention is a function of the individual and never of a corporation, the implementation of those great forces, as traditionally has been true of applications of the power inherent in waterfalls, steam, electricity, and fuel combustion, depends in important measure upon the creative diligence of individual inventors, working either singly or in cooperation with smaller business organizations not receiving governmental grants or assistance, organizations perhaps depending upon their patented devices for growth against entrenched competition, and

Whereas the impetus for growth of facilities for production, transportation, and communication in America, and for the growth of employment incidental to their expanding operations, roots in incentives to create, produce, and distribute, generated by our patent system, and

Whereas the greater part of the taxable income of American enterprise today has resulted directly from incentives provided by our patent system to invent, develop, and produce new devices, methods, and compositions of matter useful to our people, and

Whereas such inventions, originating in America, have contributed more to the advancement of underprivileged people of backward nations than has been, or can ever be, accomplished by vast gifts to them, however designated, and

Where any further act or omission by this Congress that would result in diminishing the incentive offered by our patent system to invent, finance, produce, and distribute new and better products would certainly be contrasted in history with the generosity of Congress in this period toward vitalizing the economies of foreign nations against whose future hostility we cannot be assured, and

Whereas some of our most beneficial inventions have come from individuals who were hard pressed to provide the money necessary to support them in their inventive work and to pay the governmental and professional fees neccssary to secure to themselves the rights to their inventions, without which security their creative diligence would not be sustained, and

Whereas in these days of high taxation, which adds also to the problems of inventors, it is in the interests of our Nation that we provide for inventors encouragement through all reasonable relief from financial discouragement, and

Whereas, except for one condition, our Government could well afford to pay out of funds available from general taxation, all the costs of maintaining, improving, and operating the United States Patent Office, that condition being that except for token governmental fees to be paid in the process of securing a patent the Patent Office would no doubt be engulfed by profitless patent applications for frivolous inventions, and

Whereas, in these days of extraordinary urgencies for new and enlarged sources of tax income, there is danger that our prime sources of incentive for creative and productive propulsion in our economy may be critically depleted or inadvertently restricted, to the end that a basic and vital stimulus to our growth and security may be depressed, thus to endanger our future security, and

Whereas a single invention implementing but one of the vast forces discovered by our massive efforts in basic research may, as in the past, contribute importantly to the survival of our way of life: Now, therefore, as a gesture of encouragement by this great Nation, to those largely unsung individual inventors who have contributed so much to our national growth and security, and as a means of reducing somewhat their financial burdens in the process of procuring patents on their inventions,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That items 1, 2, and 4, respectively, in subsection (a) of section 41 of title 35, United States Code, are amended to read as follows:

"1. On filing each application for an original patent, except in design cases, $25; in addition, $1 for each claim presented at any time which is in excess of twenty claims in the case.

"2. On issuing each original patent, except in design cases, $25, and $1 for each claim in excess of twenty.

"4. On every application for the reissue of a patent, $25, and $1 for each claim in excess of twenty which is also over and above the number of claims of the original patent."

All other fees provided for in subsection (a) of section 41 of title 35, United States Code, shall remain as stated therein.

STATEMENT OF FRITZ G. LANHAM, REPRESENTING NATIONAL PATENT COUNCIL

Mr. Chairman and members of the subcommittee, my name is Fritz G. Lanham and my home city is Fort Worth, Tex.

It is my pleasure to represent the National Patent Council, a nonprofit organization of smaller manufacturers devoted to the preservation, the protection, and the promotion of our American patent system, which has been the basis of so much of our country's progress and prosperity. And let us bear in mind that in a great many instances small business enterprises are absolutely dependent upon patents of independent inventors for their successful operation.

May I say also that for 25 years I was a member of the standing Committee on Patents, Trademarks, and Copyrights of the House of Representatives. The knowledge gained in that experience is of further service in prompting me to oppose vigorously the enactment of H.R. 10966 now pending before you to increase fees of the Patent Office.

In my judgment, a proper designation of this measure could well be a bill to discourage further the activities of our creative citizens from undertaking discoveries that would promote our country's progress in science and the useful arts.

This bill indicates a misunderstanding of the purpose of our patent system and is based upon premises that are not tenable in keeping with that purpose. The patent system was designed to enable inventors, with as little restriction as possible, to prosecute their beneficent labors for our progress and prosperity. We all realize that some patent fees are necessary to prevent crackpots from interfering at will with the normal operations and activities of the Patent Office, but existing fees are adequate to assure by their payment the confidence of applicants in the merits of their discoveries.

Bills similar to the pending one have been considered through three or four Congresses, but fortunately have failed of passage. Away back in 1947, Mr. Thomas F. Murphy, then the Acting Commissioner of Patents, testified: "If fees are raised, we will have less applications coming in. Therefore, the small inventor, possibly, will be the one that would be squeezed out." Representative Horan then inquired: "What would squeeze the small inventor out?" And Mr. Murphy replied: "The cost of filing applications. That is the thought of many. If we increase costs, then the man with little money will not be able to file applications, as he would if fees were low or if the service were free."

And these so-called small inventors with little money, gentlemen, have been the source of many of our basic discoveries. Such instances could be cited in great number. Do we wish to discourage the further efforts of such inventors to be helpful to our country by diminishing their incentive as this bill proposes? The constitutional provision concerning patents was designed to protect them. It recites that the power of Congress in promoting the progress of science and the useful arts should be exercised "by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." It is evidently our constitutional duty, therefore, to make them secure for limited

times in the use of their exclusive right. Is it either logical or patriotic to amend the Constitution by proscribed legislative enactment to deny them that right?

The pending bill, like others of its kind heretofore considered, seeks to make the Patent Office through its fees, contrary to general governmental policy, sufficiently revenue producing that this agency may be self-supporting. Why, as recently as 1957, the then Secretary of Commerce stated with reference to a similar bill that "the purpose of the proposed legislation is to place the Patent Office on a wholly self-sustaining basis. And another Secretary of Commerce statement was that the purpose of such legislation was "to effect a greater recovery of costs from special beneficiaries of this Government program."

Patentees special beneficiaries of the Government? Can you imagine a more shocking instance of mistaken identity? Why, on the contrary, the Government is a special beneficiary of the discoveries of the patentees. A very great bulk of governmental revenue is derived from industries, large and small, established—and jobs created—through the discoveries of these patentees.

A patent is not a gift from the Government. The inventor makes a gift to the Government. A patent is something the inventor has earned and is entitled to receive under the constitutional provision and its issuance is simply an acknowledgment by the Government of a gift the inventor has made for the benefit of the people of the country and for the Government itself.

Now what is the congressional and governmental attitude concerning the other Federal departments and agencies? Do we expect them to be wholly self-sustaining or even largely so? You gentlemen know very well that we have no such policy and shouldn't have.

So it becomes appropriate to ask what becomes of all this revenue the Government receives through the use of patents? You know the answer as well as I do. It is passed out through appropriations to various governmental departments and agencies that exist and carry on through governmental bounty and that make no corresponding contributions to the revenue of the Government. The pending bill proposes that we require applicants for patents to pay three-fourths of the Patent Office budget. To put this additional burden on patent applicants to enable the Government to distribute with greater ease the bounty it bestows upon others would seem unfair.

Remember that we are here dealing with our patent system which from the very beginning of our Government has been a fundamental institution of our national policy. Let us return to and adhere to its original purpose of providing adequate incentive to those who labor diligently to make discoveries for our progress in science and the useful arts.

Now the pending bill recommends that, in addition to the expense of an applicant for patent in all his labor and costly research and usually the payment of a fee to a patent attorney to prosecute his claim, he must pay the Government what is called maintenance fees before the 5th, 9th, and 13th anniversaries of the issue date of his patent. Let me inquire what maintenance fees the Government is recommending for lawyers and doctors and others of many categories who carry on their useful work? The patentees pay their income taxes for what they receive, just as all of us do, but what logical reason can there possibly be to assess this extra income tax against these benefactors so largely responsible for all our progress? Call it what you please, but in essence it is an unjustifiable increase in their income taxes not applicable to our citizens in general.

Alas, the inventor. Such legislative proposals as the one now pending advise that we should continue to discourage him. Already there is existing law to warn him that, if he creates something useful for national defense, a term so comprehensive that it includes practically everything, the Government will take his patent from him and deny him the fruits of his discovery. On the contrary, the Government will give it to some contractor who had nothing whatever to do with the discovery upon which the patent is based.

And now the adoption of the pending bill would make it still less beneficial to a patentee to carry on his useful labors. Such labors led to the undoubted erstwhile pre-eminence of our country, but many contend that in several important fields of discovery we are now running second to a totalitarian regime. Whether or not that is true I do not know, but I do know that we cannot continue to be preeminent if we destroy the incentive of those upon whom we must depend to achieve and hold that preferred status.

In conclusion, let me cite a little Scripture which by way of reverent paraphrase seems pertinent. In I Kings XVII we are told that in a long period of drought Elijah was admonished to dwell by the brook Cherith and to drink of the brook

and be fed by the ravens. We are told in that Holy Writ, "And it came to pass after a while that the brook dried up because there had been no rain in the land." I hope and pray that it may never be a fitting paraphrase of that Scripture to say of the work of the creative citizens of our country, "And it came to pass after a while that the source of our inventive progress dried up because there was no incentive in the land."

May I commend to your serious study in this regard another measure pending before your committee with reference to this situation, but which I regret to say evidently is not being considered. I refer to House Joint Resolution 554, "To avoid suppression of inventive diligence in America." It recites the forceful reasons for its introduction and provides for some slight decrease in certain patent fees that would, if enacted, bring cheer to our discouraged inventors and inspire them with new courage to carry on actively their beneficent study and research for the progress of our country.

I thank you very much for your patient hearing.

LAW OFFICES OF WOFFORD & RICHARDS,
Fort Worth, Tex., April 13, 1962.

Re H.R. 10966.

Mr. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR SIR: In relation to the Patent Office fee bill to be considered by your committee later this month, I have studied same and submit the following comments for your consideration.

I have been engaged in the practice of patent law for the past 15 years. The first several years of my practice were in the patent department of a large corporation. For the past several years I have been engaged in private practice representing small corporate clients and individuals.

While I can appreciate the desire on the part of the administration to make every department of Government self-supporting to whatever extent may be reasonable in the particular case; at the same time, however, I feel that it is most important that this consideration should not be allowed to overshadow some other even more important considerations. Certainly the desire to make a particular Government function self-supporting, should in no case be allowed to even approach a defeat of the basic purpose for which that Government function was established. It should be remembered that the U.S. patent system was established pursuant to authority found in article I, section 8 of the Constitution, wherein its purpose is clearly set forth.

I feel very strongly that the Patent Office fee bill as proposed by H.R. 10966 would have a dangerous and far-reaching effect on our patent system. Specifically, the proposed legislation would require an additional fee of $10 for each independent claim in excess of one. No significant invention can be protected adequately by only a single claim. The proposed legislation is tantamount to a requirement that the applicant either resort to dependent claims (which deny flexibility and are not satisfactory in most instances) or pay dearly for the adequate protection to which he is entitled for his invention.

Further, a fee of $10 for each sheet of specification and drawing is unrealistic. In the first place, it invites the applicant to drastically limit the extent of disclosure to the public. Secondly, it compounds the cost to the applicant to an unreasonable extent.

The proposed fee bill would require an applicant in a typical average case (having one sheet of drawings, three sheets of specification, and five independent claims) to pay total Patent Office prosecution fees of at least $160, as opposed to the present $60. At the same time, fees received by the attorney prosecuting this same average case (assuming two office actions) should not exceed $150. Furthermore, the nature of practice before the Patent Office requires the attorney to do a far greater portion of the prosecution work than that which is required of the Patent Office examiner. From this example (and believe me, it is a typical one), it is readily apparent that the proposed fee increase is totally unrealistic, onerous, and emasculating.

If it were actually the desire of those sponsoring this legislation to destroy our patent system, then I would certainly say that the proposed fee bill takes a long step in that direction.

Needless to say, I am also very much opposed to the maintenance fee provisions of the proposed legislation for so many reasons that it would burden this letter to tell you about them.

I will appreciate your careful consideration of the foregoing, and I would be glad to furnish any further information that may be helpful for your consideration of this matter.

In conclusion, I submit that while a reasonable fee increase may be in order and would not be objectionable to most applicants, yet it is most important that such fee increase be kept within limits that will not result in any reduction in the effectiveness and usefulness of our patent system. Finally, I submit that this country owes its greatness to free incentives; that such incentives are being seriously attacked on many fronts, and that such attacks must be opposed on every front.

Very truly yours,

WM. T. WOFFORD.

DALLAS-FORT WORTH PATENT ASSOCIATION,
April 24, 1962.

Mr. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

SIR: Enclosed is a resolution pertaining to H.R. 7731 and H.R. 10966 which has been adopted by the Dallas-Fort Worth Patent Association. This is to make of record this position, requesting that it be given consideration in connection with hearings and studies conducted by your committee relative to Patent Office fees.

Very truly yours,

D. CARL RICHARDS, *President.*

RESOLUTION

Whereas the Celler bills, H.R. 7731 and H.R. 10966, propose an increase in Patent Office fees and charges; and

Whereas the Celler bills, H.R. 7731 and H.R. 10966, also introduce an innovation which is in the form of taxation on patents labeled "Maintenance fees," heretofore unknown to patent statutes in the United States: Now, therefore, be it

Resolved, That the Dallas-Fort Worth Patent Association opposes all provisions for taxation on patents and including, but without limitation to, the maintenance fees and the discriminatory maintenance fee deferral provisions of the Celler bills, H.R. 7731 and H.R. 10966; and be it yet further

Resolved, That the Dallas-Fort Worth Patent Association opposes the other provisions of the Celler bill, H.R. 10966, pertaining to an increase in Patent Office fees and charges; and be it further

Resolved, That the Dallas-Fort Worth Patent Association endorses the other provisions of the Celler bill, H.R. 7731, pertaining to an increase in Patent Office fees and charges.

DALLAS-FORT WORTH PATENT ASSOCIATION.
By D. CARL RICHARDS, *Chairman.*

APRIL 23, 1962.

THE TOLEDO PATENT ASSOCIATION,
Toledo, Ohio, April 23, 1962.

SUBCOMMITTEE ON PATENTS,
House Committee on the Judiciary,
House Office Building, Washington, D.C.

GENTLEMEN: The Toledo Patent Association respectfully submits that, in the best interests of the public, Patent Office fees should be based upon the actual cost of operating the Office, and should not significantly affect procedures in the preparation and prosecution of patent applications. Accordingly, in view of increased costs of operation of the Office, fee increases are believed to be in order. However, some of the new fees and increases contemplated by H.R. 10966 are believed not to be in the best interests of the public because they are not based upon costs of operation, because they are disproportionate, or because they would tend to affect procedures.

Our views are summarized in the following table:

Proposed fees not based upon cost of operation of Office	Proposed fees which are disproportionately increased	Proposed fees which would tend to affect procedure
Maintenance fees	Assignment recording fee of $20, almost a 7-fold increase. Appeal fee of $100 if there is an oral hearing; $50 if not.	Additional filing fee of $10 for each independent claim in excess of 1.

We also believe that so major a procedural change as issuance of a patent forthwith after allowance of an application has no proper place in a fee bill, and has serious consequences which should militate against its adoption.

A more detailed discussion of these several points is attached.

Respectfully submitted.

By DANIEL D. MAST.

DISCUSSION

The Toledo Patent Association opposes:

I. A fee of $10 for each independent claim in excess of one.

Reasons:

A. A patent frequently can and should contain claims to several statutory classes—processes, machine, manufacture, composition of matter, or material—as well as to combinations and subcombinations for the same statutory class, which can only be done at considerable expense under this portion of the bill. Hence, those who can afford it will obtain better patent protection than those who cannot.

B. Such fee bears no reasonable relationship to the cost of Patent Office examination of the claims.

II. A larger increase in the filing fee if a given number of claims in independent form are presented than if the same number of claims are presented partly in dependent form.

Reasons:

A. This places an unreasonable financial burden on an inventor.

B. It is believed not to be closely related to operating costs of the Patent Office.

III. An appeal fee of $100 with a refund of $50 if an oral hearing is not held.

Reasons:

A. No refund of the fee is to be made when the examiner is reversed at least in part by the Board of Appeals; often an appeal would not be made if the examiner had allowed those claims which the Board allows when the examiner is reversed in part.

B. When the examiner errs the applicant should not stand the expense.

C. The $50 cost for the oral hearing is substantially greater than the cost to the Government of one-half hour time for each of the three members of the Board.

D. The oral hearing often can reduce the overall time required by the members of the Board to review and decide the issue.

IV. The almost sevenfold increase in the basic fee for recording assignments.

Reasons:

A. Any increase should be based solely on the cost of operating the assignment branch of the Patent Office.

B. This appears to be directed at corporations, perhaps on the basis that they are more able to afford the fee.

V. The fee for a patent based on $10 for each page of printed specification and $2 for each sheet of drawing.

Reasons:

A. Printing of the patent with wide dissemination is in the public interest.

B. The public should pay for the overall cost of printing by the charge made for printed copies.

VI. The amendment to section 191 which requires the subsequent payment of the issue fee.

Reasons:

A. An unknown number of patents would be issued and printed, without receipt of issuing fee or proposed printing fee, so that infringement investigations would require determination by attorneys as to whether or not individual patents had lapsed.

B. The Commissioner could issue a patent shortly after allowance of the application, which could occur as the first action by the Patent Office, and this would be undesirable because—

1. It could preclude amending the claims by proper phraseology that would express the invention in the light of prior art called to the applicant's attention for the first time by an examiner's action;

2. The applicant loses control over the decision as to whether a patent should issue or the application should be replaced by a new application containing a broader disclosure to insure adequate scope of protection of the invention;

3. The procedure should have an adverse effect on foreign filing in each country that does not adhere to the international convention and that bars applications where there has been a publication anywhere prior to filing in that country.

VII. The institution of maintenance fees.

Reasons:

A. The fees bear no relationship to the costs of operation of the Patent Office.

B. Those who can least afford it must pass the highest ratio of fees to income.

C. Patent licensing procedures would be unduly complicated.

D. Revenues from larger corporations would be insignificant because they could be deducted for income tax purposes.

E. The decision on whether or not to pay the maintenance fees would be costly because conferences with scientists and others would be required to properly evaluate the subject patent.

NEW JERSEY PATENT LAW ASSOCIATION,
April 30, 1962.

Re H.R. 7731 (Celler) and H.R. 10966 (Celler).

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CELLER: The Legislation Committee of the New Jersey Patent Law Association has submitted to the board of managers of the association a statement opposing the above legislation. This statement was reviewed by the board of managers at their regular meeting on April 19 and the board unanimously approved submitting the statement to the House Committee on the Judiciary to be included in the record of the hearings held on the two bills. Both the legislation committee and the board of managers of our association believe that the premises on which these bills have apparently been proposed are incorrect.

First, it appears that these bills are intended to place the Patent Office on a more nearly self-sustaining basis because of the apparent belief that persons who file patent applications in the U.S. Patent Office should bear substantially the full cost of running the Office. We believe very strongly however, that the citizens of the United States as a group are the prime benefactors of the U.S. patent system. The tremendous growth and progress of the United States in the last 200 years is due to a large extent to the U.S. patent system and the incentives which it has provided to the inventive minds of our Nation. It seems only fair that the general public which is the ultimate beneficiary of new inventions should bear a very substantial part of the cost of running the Patent Office and that inventors and their assignees should not be called upon to bear the full cost. The proposed increases in fees plus the proposed maintenance fees could very well cause many individual inventors and many corporations to refrain from making known to the public their inventions, and instead such inventions would either be practiced as trade secrets or would never be disclosed to anyone with the general public being the major loser. Knowledge begets knowledge and withholding of knowledge of an invention from the public may result in some other inventor not having available a piece of information that would trigger his mind into developing a further advance in that field of knowledge.

The second premise which we believe is erroneous is that patent owners should be required to pay periodic maintenance fees in order to keep their patents in force. In many cases a new invention does not become commercially practicable until some years after it has been patented. This may be due to inadequate financing available to the inventor or due to the public's lack of realization of the

invention's value. An excellent example of the latter situation is Professor Goddard's work in rocket development. It would be inequitable for a patent owner who has benefited the public by making his invention public knowledge to lose his patent rights after a few short years because of lack of financing or lack of realization by the public of the value of his invention. This could and would happen in many cases if it becomes necessary to pay maintenance fees to keep patents in force.

For the above reasons and for other reasons more fully set forth in the statement of our legislation committee, we respectfully urge that the present status be maintained with respect to the fees of the U.S. Patent Office.

Sincerely yours,

J. J. DENZLER, *Secretary.*

STATEMENT IN OPPOSITION TO H.R. 7731

The New Jersey Patent Law Association, an organization of approximately 250 members in the patent practice, offer the following studied views for the consideration of this committee in acting on H.R. 7731 (Celler), a bill to increase fees charged by the Patent Office.

The association is mindful of the mounting costs of operating the Patent Office. There is, however, a fine balance between those conditions which foster a dynamic patent system and the scientific and technological advances which it promotes and the conditions which tend to stifle or discourage this. Economic considerations form a major factor.

The purpose of H.R. 7731 appears to be to place the Patent Office on a more nearly self-sustaining basis. This is based on the premise that the Patent Office confers benefits on the comparative few who avail themselves of its services and therefore the costs should be borne by them. But the benefits of the patent system reach far beyond those granted the exclusive rights of patents and trademarks. The Nation as a whole benefits on a variety of fronts.

Inventions call forth investments which would otherwise not be forthcoming were the risks not substantially reduced by the protective cloak of exclusivity. Research, production, and exploitation of patented subject matter generate employment, income, and enjoyment of the products resulting from such activity with benefit to all segments of the economy and the public as a whole. It is not only impossible to apportion the value of the Patent Office functions to any particular group, but it is also not inequitable for the public to bear a substantial part of the costs of the Patent Office. This is, moreover, consistent with existing policy of public support of many governmental functions which immediately benefit only a part of the populace.

From a practical point of view, the tangible, net proceeds of a bill such as that under consideration, while difficult to calculate may not result in any substantial monetary gain in governmental income. Increased fees are the subject of one group of provisions of H.R. 7731. Increased fees and charges in any field almost invariably bring a reduction in demand for the services calling for the fees by those "priced out of the market." A more important detriment lies in the loss of the advancement or discovery which would otherwise have been made available if the cost had not been too great.

The sections providing for periodic fees for maintaining patents in force introduce particularly onerous burdens. They are burdensome to the individual inventor to whom the fees are substantial and even to the more affluent business or corporation which in general will have a larger portfolio to maintain.

Because of the advanced nature of most inventions; i.e., on the frontier of knowledge, the value of a patent is not readily ascertainable early in its life. The patent owner is forced to decide at certain intervals, often without adequate basis for such a decision, whether he wishes to invest additional sums of money to maintain his patent or to forfeit possibly valuable rights. Thus the full term of a patent is available to the owner only if he is willing and able to make substantial financial investments in addition to those incurred in making the invention and obtaining the patent. The deferment provisions only partially meet this objection. This also introduces the new concept and by indirection shortens the term of a patent from the 17 years set by statute.

It is furthermore not unreasonable to expect that, to a great extent, only those patents will be maintained which demonstrate financial success in the periods preceding in the first or second maintenance fees. Thus maintenance fees wil be derived only from a proportion, probably a relatively small proportion, of the patents granted and will not add substantially to income.

In a larger view, the net addition to Government revenue is not equal to the full amount of the fee. Since maintenance fees would constitute legitimate items of business expense, reduction in tax payments would offset the gain from fees paid. The moneys paid are after all paid into the general fund and not credited specifically to the Patent Office.

This argument has been made that maintenance fees would cull the deadwood from the patent files. But the lapse in effectiveness of a patent would not remove it as a publication or reference. Termination of the patent grant would merely remove it as a bar to one who would otherwise infringe. The patentee would thus be deprived of the very fruits of his efforts which the patent system was designed to reward. In a sense, many patents would be the source of royalty income particularly in later years only if they would be worked by the owners, especially at the outset.

Sentiment in favor of maintenance fees has often been based on European patent systems embodying such provisions. But data are not available on the comparative additions to revenues due to such fees. Moreover, the patent systems referred to for comparison are entirely unlike in concept and the countries using them are totally different from the U.S. system.

For the reasons discussed, the Legislation Committee of the New Jersey Patent Law Association respectfully recommends against the enactment of H.R. 7731.

NEW ROCHELLE, N.Y., *April 23, 1962.*

EMANUEL CELLER, Esq.,
House of Representatives,
Committee on the Judiciary,
Washington, D.C.

DEAR CONGRESSMAN CELLER: I wish to thank you for your letter of April 16, and your wire of the 18th. I regret very much that I was unable to change my office appointments in time to enable me to get down to the hearing.

Very few of the members of the patent bar, and I am no exception, feel that a rise in patent fees is unjustified. All of us feel that patents can be very valuable property, and that the present fees are inadequate to meet the needs of the Patent Office. I cannot speak for other members of the patent bar, but my real objection to H.R. 10966 is that it will both complicate the matter of fees, and the prosecution of patent applications in the Patent Office, but will also weigh heavily on the independent inventor. I have represented a fair number of independent inventors in my years at the patent bar, although the bulk of my work has been with large corporations as clients. Frankly, the independent inventor is a nuisance to the busy practitioner because he takes up more time than he is worth in proportion to the fees he pays; he inevitably runs out of money during the prosecution of the case and his patent lawyer just cannot bow out of the picture; generally because he has come to like the inventor. The result is that for the payment of out-of-pocket expenses, and the cost of preparing the original application, independent inventors are often carried by patent lawyers to the point where the Patent Office has determined that a patent will, or will not, be granted.

Once the patent is granted it has been my experience that the independent inventor can begin to look around for financial backing and get someone to take over the cost, and to start commercializing the invention. I might add that I have carried a fair number of inventors for my billings for services, but have always felt that the traditions of the bar prevents a lawyer from making disbursements for a client's account. Certainly I know of a great many cases in which an appeal fee of $100 would have effectively prevented a grant of a meritorious patent.

It makes very little difference to the large corporation whether filing fees, prosecution fees, and fees such as appeal fees are increased or whether the added patent costs come out of final fees and taxes on the patents. The small inventor, however, really cannot afford to pay increased filing fees and increased prosecution fees. He can only afford larger fees after he knows he is going to get a patent.

If the Congress does not want to increase the concentration of the patents in the hands of large corporations, and does not want to discourage the small inventor, it would be well advised to keep the application and prosecution fees at a minimum and concentrate the increases in the area of fees to be collected after the grant of the patent. In particular, taxes after the grant are an effective way of increasing income of the Patent Office and of removing useless patents from the file of active patents.

I should be happy to present these views orally to the committee if further hearings are to be held, and I could have a reasonable notice of the hearings.

Sincerely,

MILTON ZUCKER, *Attorney at Law.*

AUTOMOBILE MANUFACTURERS ASSOCIATION, INC.,
Detroit, Mich., April 19, 1962.

Hon. EDWIN E. WILLIS,
Chairman, Subcommittee on Patents, Trademarks, Copyrights, and Revision of Laws, Committee on the Judiciary, House of Representatives, Washington, D.C.

HONORABLE SIR: On behalf of the Patent Committee of the Automobile Manufacturers Association, Inc., which includes in its membership the manufacturers, both large and small, of well over 90 percent of all passenger automobiles, trucks, and buses produced in the United States, I submit the accompanying statement relative to the Patent Office fee bill, H.R. 10966, and request that it be incorported in the record of the public hearing held on April 19, 1962.

Respectfully submitted.

WILLIAM L. SCHERER, *Secretary.*

STATEMENT OF THE PATENT COMMITTEE OF AUTOMOBILE MANUFACTURERS ASSOCIATION, INC., RELATIVE TO THE PATENT OFFICE FEE BILL, H.R. 10966

The Patent Committee of the Automobile Manufacturers Association, Inc., desires to record its disapproval of the proposed Patent Office fee bill known as H.R. 10966, filed March 28, 1962, by Representative Emanuel Celler.

The issuance of patents is based upon the constitutional provision for the promotion of progress in the useful arts. Any deterrent effect upon the filing of applications for the issuance of patents is contrary to the public good.

While one of the declared purposes of the legislation in question is to bring the income from fees more nearly into line with the expense of operation of the Patent Office, we anticipate that the ultimate effect of the proposed fee increase will be to discourage the disclosure of inventions to the public. Individual inventors and small corporations will be deterred from the filing of patent applications with a consequent reduction in the accumulation of public information and knowledge essential to the promotion of progress in the useful arts.

Our specific objections to H.R. 10966 are based principally upon three important considerations in the proposal:

1. The provision of the bill for maintenance fees;
2. The exorbitant charge for independent claims; and
3. The charge for printed pages of specification and drawing.

The proposed maintenance fees, while reduced from those specified in H.R. 7731, will materially delay the financial recovery to the Patent Office and also will create serious administrative problems in the Office, as well as in the offices of attorneys. The Patent Office must wait for the full benefit of the increase from this source over the span of 13 years. Moreover, the added cost to the Patent Office of maintaining records of all issued patents which are subject to payment of maintenance fees, to record the current status of individual patents, as well as to carry on the complex accounting procedures required by deferred payments and the like would seem to offset any substantial financial gain therefrom.

We believe that the maintenance fee provisions of the proposed bill also discriminate between individual and corporate owners of patents in permitting deferment of the payment of these fees for individuals only. In our opinion, this provision is wrong in principle and, because of the manner in which many patent rights are held, would not even achieve the intended result.

The proposal to charge a fee of $10 per claim over one, if the claim is of independent form, is a step which is diametrically opposed to the long established requirement that an applicant point out and distinctly claim his invention. We believe this provision to be detrimental to the public interest in that it defeats the purpose of the patent statutes by denying an applicant his right to define the full extent of his departure from the disclosures of the prior art, thereby unduly restricting the scope of his application.

We find a similar defect in the proposal that the final fee be based upon a charge for each page of printed specification and each sheet of drawing. This provision would encourage a reduction in the extent of disclosure by the patentee in order to reduce the cost of his patent. It, too, is detrimental to the public interest in

that the completeness of the disclosure may be seriously affected and even insufficient to comply with the statutory requirement for clarity of definition.

We, therefore, conclude that these proposals of H.R. 10966 are not only ineffective to produce the desired increase in Patent Office income within a reasonable period of time, but would also impede the progress of the useful arts by discouraging the filing of patent applications with complete disclosures. For these reasons H.R. 10966 is, in our opinion, opposed to the public interest.

Although doubling of the present Patent Office fees would, to some extent, be detrimental to the public interest, such a proposal might be a reasonable compromise and be less likely to deter the filing of patent applications while making an effort to meet the increased costs of operation brought about by inflation. We recommend that serious consideration be given to this method of increasing Patent Office revenue as a means of avoiding the difficulties we foresee in the maintenance fees, penalties for independent claims, and the charges for printed pages of specification and drawings contemplated by H.R. 10966.

Mr. LIBONATI. Now, we have two more witnesses.

Thank you very much, gentlemen.

Mr. BLAKESLEE. Thank you very much for the opportunity to testify.

Mr. LIBONATI. We have the Honorable Fritz Lanham. Mr. Lanham represents the National Patent Council and is well know to us.

Sometimes he is with the little fellow, and sometimes he is with the important interests.

The last bill I had, he was against me, with the little fellow; and now he is here. I suppose he is here with the little fellow and against the important interests—or vice versa.

So, you see, I keep good record of you, because you are sort of a milestone in my career of defeat.

Mr. LANHAM. I thank you and I appreciate your good words. My opposition of a bill of yours heretofore was because it provided for extension of patents.

Mr. LIBONATI. Thank you.

Mr. LANHAM. I have been delayed in preparing this statement of my testimony. I do not have copies for everyone, but I shall be glad to have copies made and submitted.

Mr. LIBONATI. All right, sir.

TESTIMONY OF HON. FRITZ G. LANHAM, NATIONAL PATENT COUNCIL

Mr. LANHAM. My name is Fritz G. Lanham. My home city is Fort Worth, Tex.

It is my pleasure to represent the National Patent Council, a nonprofit organization of smaller manufacturers devoted to the preservation, the protection, and the promotion of our American patent system, which has been the basis of so much of our country's progress and prosperity.

And let us bear in mind that in a great many instances, small business enterprises are absolutely dependent upon patents of independent inventors for their successful operation.

May I say also that for 25 years I was a member of the Standing Committee on Patents, Trademarks and Copyrights of the House of Representatives. The knowledge gained in that experience is of further service in prompting me to oppose vigorously the enactment of H.R. 10966 now pending before you, to increase fees of the Patent Office.

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In my judgment, a proper designation of this measure could well be "A bill to discourage further the activities of our creative citizens from undertaking discoveries that would promote our country's progress in science and the useful arts."

This bill indicates a misunderstanding of the purpose of our patent system and is based upon premises that are not tenable in keeping with that purpose. It was designed to enable inventors, with as little restriction as possible, to prosecute their beneficent labors for our progress and prosperity.

We all realize that some patent fees are necessary to prevent crackpots at will from interfering with the normal operations and activities of the Patent Office, but existing fees are adequate to assure by their payment the confidence of applicants in the merits of their discoveries.

Similar bills to the pending one have been considered through three or four Congresses, but, fortunately, have failed of passage.

Way back in 1947, Mr. Thomas F. Murphy, then the Acting Commissioner of Patents, testified:

> If fees are raised, we will have less applications coming in. Therefore, the small inventor, possibly, will be the one that would be squeezed out.

Representative Horan then inquired: "What would squeeze the small inventor out?"

And Mr. Murphy replied:

> The cost of filing applications. That is the thought of many. If we increase costs, then the man with little money will not be able to file applications, as he would if fees were low or if the service were free.

And these so-called small inventors with little money, gentlemen, have been the source of many of our basic discoveries. Such instances could be cited in great number.

Do we wish to discourage the further efforts of such inventors to be helpful to our country by diminishing their incentive, as this pending bill proposes?

The constitutional provision concerning patents was designed to protect them. It recites that the power of Congress in promoting the progress of science and the useful arts shall be exercised—

> by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

It is evidently our constitutional duty, therefore, to make them secure for limited times in the use of their exclusive right. Is it either logical or patriotic to amend the Constitution by proscribed legislative enactment to deny them that right?

The pending bill, like others of its kind heretofore considered, seeks to make the Patent Office, through its fees, contrary to general governmental policy, sufficiently revenue-producing that this agency may be self-supporting. Why, as recently as 1957, the then Secretary of Commerce stated, with reference to a similar bill, that:

> The purpose of the proposed legislation is to place the Patent Office on a wholly self-sustaining basis.

And another Secretary of Commerce statement was that the purpose of such legislation was—

> to effect a greater recovery of costs from special beneficiaries of this Government program.

Patentees special beneficiaries of the Government? Can you imagine a more shocking instance of mistaken identity? Why, on

the contrary, the Government is a special beneficiary of the discoveries of the patentees. A very great bulk of governmental revenue is derived from industries, large and small, established, and jobs created through the discoveries of these patentees.

A patent is not a gift from the Government. The inventor makes a gift to the Government. A patent is something the inventor has earned and is entitled to receive under the constitutional provision, and its issuance is simply an acknowledgment by the Government of a gift the inventor has made for the benefit of the people of the country and of the Government itself.

Now, what is the congressional and governmental attitude concerning the other Federal departments and agencies? Do we expect them to be wholly self-sustaining, or even largely so?

You gentlemen know very well that we have no such policy, and should not have.

So it becomes appropriate to ask, What becomes of all this revenue the Government receives through the use of patents?

You know the answer as well as I do. It is passed out through appropriations to various governmental departments and agencies that exist and carry on through governmental bounty, and that make no corresponding contributions to the revenue of the Government.

So the pending bill proposes that we require applicants for patents to pay three-fourths of the Patent Office budget, and to put this additional burden on them to enable the Government to distribute with greater ease the bounty it bestows upon others.

Remember that we are here dealing with our patent system which, from the beginning of our Government, has been a fundamental institution of our national policy. Let us return to and adhere to its original purpose of providing adequate incentive to those who labor diligently to make discoveries for our progress in science and the useful arts.

And now the pending bill recommends that, in addition to the expense of an applicant for patent in all his labor and costly research, and usually the payment of a fee to a patent attorney to prosecute his claim, he just must pay the Government what is called maintenance fees before the 5th, 9th, and 13th anniversaries of the issue date of his patent.

Let me inquire what maintenance fees the Government is recommending for lawyers and doctors and others of many categories who carry on their useful work?

These patentees pay their income taxes for what they receive, just as all of us do; but what logical reason can there possibly be to assess this extra income tax against these benefactors, so largely responsible for all our progress?

Call it what you please, but in essence it is an unjustifiable increase in their income taxes, not applicable to our citizens in general.

Alas, the inventor. Such legislative proposals as the one now pending advise that we should continue to discourage him. Already there is existing law to warn him that, if he creates something useful for national defense—a term so comprehensive that it includes practically everything—the Government will take his patent from him and deny him the fruits of his discovery.

On the contrary, the Government will give it to some contractor who had nothing whatever to do with the discovery upon which the patent is based.

And now the adoption of the pending bill would make it less beneficial to a patentee to carry on his useful labors. Such labors led to the undoubted erstwhile preeminence of our country, but many contend that in several important fields of discovery we are now running second to a totalitarian regime.

Whether or not that is true, I do not know; but I do know that we cannot continue to be preeminent if we destroy the incentive of those upon whom we must depend to achieve and hold that preferred status.

In conclusion, let me cite a little Scripture which, by way of reverent paraphrase, seems pertinent.

In the 17th chapter of First Kings we are told that in a long period of drought Elijah was admonished to dwell by the brook Cherith and to drink of the brook and be fed by the ravens. We are told in that Holy Writ:

> And it came to pass after a while that the brook dried up because there had been no rain in the land.

I hope and pray that it may never be a fitting paraphrase of that Scripture to say of the work of the creative citizens of our country: "And it came to pass after a while that the source of our inventive progress dried up because there was no incentive in the land."

May I commend to your serious study in this regard another measure pending before your committee with reference to this situation, but which I regret to say evidently is not being considered.

I refer to House Joint Resolution 554, "To avoid suppression of inventive diligence in America."

It recites the forceful reasons for its introduction, and provides for some slight decrease in certain patent fees that would, if enacted, bring cheer to our discouraged inventors and inspire them with new courage to carry on actively their beneficent study and research for the progress of our country.

I thank you very much for your patient hearing.

Mr. LIBONATI. We thank you.

We always have an interesting treatment of the subject when you come before us. But you shifted back now to your position with the little fellow.

Mr. LANHAM. I beg your pardon?

Mr. LIBONATI. You were back the last time against the little fellows in accordance with extension of the patents.

Mr. LANHAM. Yes. I had to oppose the extension of patents, Mr. Libonati.

Mr. LIBONATI. We have a great respect for your position, and we watch your reasoning very closely; but the last time you showed a little divergence in thought there. I do not know what caused it—a pebble in the road of thought, for instance.

Mr. LANHAM. That was with reference to a proposal, Mr. Chairman, to extend the terms of patents.

Mr. LIBONATI. That is right.

Mr. LANHAM. Which has long been contrary——

Mr. LIBONATI. Yes, but still there are seven nations of the earth—but you know the Common Market will dictate a change in our attitudes, too, to conform to the national laws of other nations.

We are sort of influenced by other nations in our arrangements under international conditions, including patents, you know.

Mr. LANHAM. There are many reasons which prompt me to oppose the extension of patents, but I do not think it would be apposite to bring them into——

Mr. LIBONATI. We thank you for your fine presentation.

Mr. LANHAM. Thank you very much. I am grateful for the opportunity to appear before you.

Mr. LIBONATI. Mr. Kastenmeier would like to ask you a question.

Mr. KASTENMEIER. Just one question.

You indicated that you thought one of the reasons for the fee was to discourage crackpot inventors, whether it was $30 or some other figure.

But I am wondering, really, whether that is the case, because today it costs, for example, many, many hundreds of dollars for a prospective inventor patentee for legal fees. Surely this would discourage the crackpot, rather than the fee that would be charged by the Patent Office.

Do you not agree?

Mr. LANHAM. Well, I must say unfortunately I did not hear you distinctly, sufficiently to answer your question.

Mr. KASTENMEIER. I talked in terms of discouraging the crackpot inventor.

Mr. LANHAM. Yes, sir.

Mr. KASTENMEIER. And in that connection, is it not only the fee that the Patent Office charges but the fee that the patent attorney charges which would discourage the crackpot inventor?

Mr. LANHAM. I think that is true of both of those fees, and also when you stop to consider the various ones who have made such great contributions to our basic development in discoveries, they were often very poor people.

And let me say that if the Government wished something invented, and would let the American people in general know what they wanted invented, instead of turning over the project to a contractor, why, they would get a great many responses, and some that would probably solve the problem; and from unexpected sources. Just as when the Wright brothers were working, scientists and everybody else believed that it was a ridiculous and foolish effort on their part. But, nevertheless, they became the founders of our great aviation industry, which is putting revenue constantly into our coffers.

Mr. KASTENMEIER. I thank you.

Mr. LIBONATI. Thank you very much.

Mr. LANHAM. Thank you, Mr. Chairman.

Mr. LIBONATI. We have with us as our next witness Mr. Watson, former Commissioner of Patents, a very distinguished lawyer and still, in his specialty, one of the finest minds that ever served in this capacity.

We welcome you before the committee, before which you have been many times in the past.

We really like you. We really do like you, and we respect your legal contentions in many fields of this subject.

TESTIMONY OF HON. ROBERT C. WATSON, FORMER COMMISSIONER OF PATENTS

Mr. WATSON. Thank you very much.

I have never appeared before this committee nor dealt with it that I was not treated with the utmost courtesy.

May I say at this stage of the hearing, time is running out.

Mr. LIBONATI. Right.

Mr. WATSON. I could talk for a long time on that problem of the Patent Office which relates to the size of the fee.

At this time, however, because I represent only myself, may I make this suggestion: there may be here the head of some organization who has not yet been heard——

Mr. LIBONATI. No.

Mr. WATSON. Who is more important.

Mr. LIBONATI. We honored your request to call upon you last.

Mr. WATSON. I can appear any time and advise your staff at great length.

Mr. LIBONATI. I appreciate that.

Mr. WATSON. I was invited to appear by Chairman Celler but unfortunately have no prepared statement.

I stand here to claim the same privilege Fritz Lanham had by reason of the same kind of physical difficulty, a hearing deficiency.

It has not been possible for me to hear all of the testimony which has been given.

Actually, my views on the question of fees are pretty well known as a result of my two prior appearances at hearings at which I testified.

So it is not necessary for me to go into many aspects of the pending bill.

What is new, of course, is the provision providing for maintenance fees. I might explain to you how that first was brought into the picture.

At the 1955 hearings, it was made clear that it was the belief of the then Secretary Weeks that the recovery of the Patent Office in fees should be 75 percent of the cost of operation. There was no problem then to devise a bill which would bring that about, because the appropriations were comparatively quite low, about $12 million.

Then in 1957, the cost of operation, considering a 3-year average, was still rather low, although the 1957 budget had been raised to $17 million from the $12 million.

But by 1960, the cost of operation of the Patent Office had vastly increased due to the generosity of the Congress from year to year which recognized its increasing workload, and the inflationary factor. So that at the end of my term as Commissioner, when we were requested to again prepare a bill which would bring into being about 75 percent cost recovery, the figures show that the filing and final fees, which are the principal sources of income, would be too high, in our opinion, to impose upon an inventor.

So then we resorted to the maintenance fees.

Now, the theory of the maintenance fee, however, was not new to us or to the bar associations or to the inventors of the country at that time. We had originally informed the bar in 1954 and all others interested in the subject of patent fees, that it might be necessary to eventually adopt a schedule of maintenance fees.

And in the Journal of the Patent Office Society, full information was given—newspapers, radio, published articles—which gave full information on the nature of that fee. Actually, it was well known without the information we gave, because most of the countries, I think, with the exception of six, most of the patent-issuing countries of the world had long ago adopted this method of fee collection.

Now, this method of fee collection is highly unpopular and I have not yet met with anyone who enthusiastically supports it.

Mr. LIBONATI. Yes.

Mr. WATSON. It requires a certain amount of bookkeeping, and it requires the making of hard decisions, which people do not like to make; namely, is the patent worth the fee that is due?

As a practitioner for many years, I found it very difficult to get some of my clients to make up their minds to pay or not to pay this fee in Germany or in some other country where they had secured patents. And that is a difficulty which will be experienced by patent owners if we have a maintenance fee in this country.

Now the whole question comes back to this: What is the philosophy of this committee? What do you think that the inventor should contribute?

The philosophy originally adopted by the administration, which came in with President Eisenhower, was, I think, a continuation of one which had actually been developed previously in Congress itself, stemming probably from a statement of the Senate Committee on the Expenditures in the Executive Departments, in which it was said that those who obtained special services of Government—I forget the exact phraseology—were to be charged for those services. And the administration adopted that philosophy, particularly with respect to the payment of patent fees and trademark fees.

So the Budget Bureau issued a circular, A–25, in which that philosophy was expressed. There was a loophole: namely, if it proved not to be in the public interest, you did not have to adopt the principle of full cost recovery.

But, after that program was initiated, it was decided to put in two bills, one initially on the filing and final fees, and other minor charges, and a second bill later, to bring up the cost recovery to 100 percent.

May I say——

Mr. LIBONATI. May I interrupt you there?

In view of the testimony received under the general bill, and Mr. Ladd's testimony relating to various portions of the bill in which he disagrees with the costs, et cetera, would you have an opinion on which position you would approve? In general, I mean.

Mr. WATSON. Which two positions? On maintenance fees?

Mr. LIBONATI. On maintenance fees, yes.

Mr. WATSON. I pass the ball back to you, Mr. Chairman: How much money do you think should be collected?

Do you think that the Patent Office must run on a full cost recovery basis?

Mr. LIBONATI. I personally feel, from my identification with the work at the conventions and so forth, that primarily the Patent Office is a service rather than an office of emoluments received to meet expenses of operation.

I feel about the same way as to post office services to our citizens. Basically, I think they are a public service that operate at a loss.

That is my personal opinion, and does not affect the thinking of the membership of the committee in any way.

Mr. WATSON. I am also on record, I am sure, over there in the Appropriations Committee, and the fee question always crept into discussions of the question of appropriations, that in the event a fee charged to an applicant for a patent deters him from filing his application—is a substantial deterrent—we should abolish the fee system entirely.

Mr. LIBONATI. That is right. I agree.

Mr. WATSON. It is too important for us to receive the applications.

Mr. LIBONATI. Right.

Mr. WATSON. And fees which deter applicants should not be exacted, although a screening fee—some sort of screening fee, is highly to be desired.

Mr. LIBONATI. I think the economy dictates that position. The economy itself dictates that position because it is only through patents that we have developed the economy that we enjoy.

Mr. WATSON. That is exactly right Mr. Chairman. I am a firm believer in that principle.

Well, if I start on that subject, we would not adjourn for a long time, unless you bring down the gavel.

Our excellent defense capabilities, great industrial capacity and our high standard of living may all be largely attributed, in my opinion, to the contributions of a technological nature which have been contributed over the years by really hundreds of thousands of inventors. And we need those contributions now more than we ever have in the past.

We should not adopt any fee schedule which would actually be a deterrent.

Now, what will deter people and what will not deter people is a hard question. I suggest an economist might make a study and tell you jut where you begin to meet resistance to payment of patent fees by various inventors after having looked into their financial condition.

I will say this, however, that I have never seen an invention of importance fail to be patented because of the impoverishment of the inventor. But he will have to surrender part of his control.

Mr. LIBONATI. Yes.

Mr. WATSON. He will have to go to his brother, to his next door neighbor, or somebody like that, and borrow some money, and finance the filing of the application.

I have never seen a good invention fail to be patented because of high Patent Office charges. But it is true that the poor inventor cannot control the situation if he has not the money to finance himself.

Now, the maintenance fee, in my way of thinking, if the philosophy of the Congress is to require a very high return, 75 percent of the cost or 100 percent of the cost, of the operation of the Patent Office, must be adopted, in my opinion.

There you will receive funds from successful inventors, persons who have put their applications in at a low cost in fees, while the inventions were perhaps of uncertain economic value, but who have secured a patent and who, because of the nature of their invention and its commercial reception, are able to pay the maintenance fee very easily.

I will add this: In the course of a number of trips which I made abroad when I was Commissioner of Patents, for conferences with the heads of other patent offices, I made it my particular business, in view of the pressure on me to attempt to bring about a high rate of recovery of cost of operation of our Office, to ask them whether or not their systems of exacting maintenance fees from inventors were operating satisfactorily or whether they were contemplating changes.

And the replies that I received, sometimes through translators, were all to the same effect: that the maintenance fee system was working very satisfactorily; and they had no ideas for making any changes. And I have not heard anything to the contrary.

Now, of course, the Common Market is something else again. You will not know until June, when they publish their proposed patent law, what they will require by way of fees.

And possibly what they do do will be of great interest to this committee. But I think there are 38 countries or more——

Mr. LIBONATI. That is right.

Mr. WATSON (continuing). Which have this system of maintenance fees. So it will work.

It is a nuisance, we will say; bookkeeping is increased and the patent owner has got to make up his mind periodically whether the patent which he has obtained, is worthwhile maintaining or keeping in force.

Mr. LIBONATI. Would you not say that in reality the moneys that are paid in this instance are really moneys that are juggled for the Government? Because this money comes off the top of the earnings of the patent, and ordinarily a good portion of it that they pay in for fees, would be the same money they would include in their corporate income taxes that are exempted under this payment?

Mr. WATSON. That is true.

Mr. LIBONATI. Am I correct about that?

Mr. WATSON. Bid for the corporate dollar.

Mr. LIBONATI. The Government is therefore juggling its own money into another spot within the Government.

Mr. WATSON. Yes. Yes. That is perfectly true.

Now, may I ask you if you have questions?

Mr. KASTENMEIER. Mr. Chairman.

Mr. LIBONATI. Yes, Mr. Kastenmeier.

Mr. KASTENMEIER. Just to follow that up——

Mr. LIBONATI. Yes.

Mr. KASTENMEIER. What do you think about the suggestion that other Federal agencies ought to be paying the Patent Office something in the way of minor fees for copies and whatnot?

Mr. WATSON. Oh, they definitely should. That was part of the preceding two bills, and does not make any sense for our expenses——

Mr. LIBONATI. Yes.

Mr. WATSON (continuing). Their expenses to be put on our budget.

The Department of Defense should have its own budget, and as far as the Patent Office is concerned, would be merely an individual.

There is no sense in us——

Mr. LIBONATI. It is an accountancy trick.

Mr. WATSON. Yes.

Mr. LIBONATI. Yes, Mr. Lindsay.

Are you through?

Mr. KASTENMEIER. Just one.

Mr. LIBONATI. Go ahead. I am sorry.

Mr. KASTENMEIER. One of the purposes of the bill, as I understood, was for administrative purposes, to put in somewhat better order administrative practices in the Patent Office by virtue of the fee schedule I wonder whether there was anything in the bill which would cut down the timelag between patent application and patent issuance, in terms of the fee?

Mr. WATSON. That is just a question of manpower.

There is one provision of the bill which relates to dependent claims. I did not hear the testimony on that. It is supposedly a timesaver, and it would save time in claim reading.

We discussed that many times in the Patent Office when I was there, and I was always against adopting any Patent Office rule which would tend to force applicants to use dependent claims.

You have a principal claim, and your second, third, fourth, fifth, and sixth claims attach themselves to the principal claim. The combination set forth in claim 1 plus some other element.

Well, that dependent claim, in my way of thinking—and I base my observation on years of practice before the Patent Office—has not the same legal dignity as the principal claim and a court is not as likely to consider the subject matter of such a claim to be as important as it would if the same subject matter were described in an independent claim. I decided that a dependent claim was a relatively weaker claim; and, as a practitioner, I seldom used it.

I am not opposing the use of dependent claims, but only attempts to force applicants to use them.

Mr. LIBONATI. Would you differentiate, though, according to certain types of patents—on locks, lamps, and so forth—where a slight diversity of form or modeling would give another patentee a right to supersede or competitively jeopardize the other patent?

I mean there are certain instances, are there not, where patents of this nature, supporting patents, are almost necessary to protect the original mold or——

Mr. WATSON. Oh, yes; alternative forms.

You are talking about additional patents?

Mr. LIBONATI. Yes.

Mr. WATSON. I was just talking about the way an invention was claimed in a single patent.

Mr. LIBONATI. Oh.

Mr. WATSON. You are familiar with the dependent claim system?

Mr. KASTENMEIER. Very vaguely, Mr. Watson.

Mr. WATSON. Anyhow, it is a matter of psychology.

I am convinced that the examining corps of the Patent Office can be directed to regard a dependent claim as fully, as dignified as a principal claim. But when you get out into the courts, with the constant changing personnel there, I doubt it.

Then you have this problem, too, and I think this has arisen; your principal claim may be held to be invalid as a result of litigation, and a dependent claim held valid. So what do you do? If you disclaim the invalid principal claim, your dependent claim is hanging out on a limb somewhere.

I do not know exactly where. But it looks to me as though you would have to surrender your patent to the Patent Office and rewrite the whole schedule of claims; whereas, if they were independent, you would just disclaim invalid ones and continue to rely on the remaining ones which have not been found invalid.

One other point on the bill that struck my attention—I have forgotten what it was.

Mr. LIBONATI. On the fees, you mean?

Mr. WATSON. What is that?

Mr. LIBONATI. On the fees?

You mean staggering of the sums over such a long period?

Mr. WATSON. No. No.

As I read the bill, as soon as the case is allowed, the Commissioner is going to issue the patent. It did not look to me as if the final fee was going to be exacted. But that is just a question of phraseology.

Mr. LIBONATI. What do you think of the extended time payment of these fees?

Mr. WATSON. The expansive? You mean maintenance fee?

Mr. LIBONATI. Maintenance fee.

Mr. WATSON. I would say the maintenance fee schedule, which was drawn up by Mr. Federico—5 years, 9 years, 13 years—will never inconvenience anybody.

I believe that in most foreign countries you pay on a yearly basis, sometimes omitting an initial delay period of, say, 2 or 3 or 4 years.

But this schedule, to a man who has a good patent under which he is receiving an income, would certainly not be disturbing to him in any manner.

It is a good schedule. And while some inventions are exploited even before the patent applications are filed, and are continually exploited even after the patents have expired at a later time——

Mr. LIBONATI. Yes.

Mr. WATSON. The average one is not of that category.

Recent but as yet unpublished studies by the George Washington Patent, Trademark & Copyright Foundation, have indicated, for instance, that of those inventions which are both exploited and patented by corporations, 40 percent are commercially exploited even before the application is filed, and 50 percent are commercially exploited for the first time during the pendency of the application, and only 10 percent after the patent is issued.

And that is a very significant thing to me.

Mr. LIBONATI. Yes.

It seems a high figure, does it not, in both instances, before the issuance of a patent?

Mr. WATSON. That study has not yet been printed. We were discussing it yesterday in a meeting of the foundation.

By the way, may I put in a plug for the foundation?

Mr. LIBONATI. Yes.

Mr. WATSON. It was established, I think, about 9 years ago. It has a record of accomplishment. It has done much in the way of research in the fields of patents, trademarks, and copyrights, and has been generally recognized as employing an important and a very impartial group of researchers who analyze purely objectively and publish their findings for the benefit of the public.

We were discussing yesterday the question of budget. We want to double our budget. And if there is any inclination here to help us receive a little more money, so we can become more effective, why, we would be delighted to have it.

Mr. LIBONATI. You are not talking on the record; you are now talking off the record? [Laughter.]

Do you find now in your studies that a patentee with a patent which is exploited has any difficulty in financing today as he did in the past?

Mr. WATSON. The problem of financing is always present from the biggest corporation down to the poorest inventor. I would not say that there had been any change in that fact of life.

There are people, I believe, in business, who seek inventors——

Mr. LIBONATI. That is correct.

Mr. WATSON. And offer to finance them. But during my period of practice, even when I was in the Patent Office, I heard of no instance of one of these corporations which advertise that they will be of great service to inventors, being of any real service.

Mr. LIBONATI. No?

Mr. WATSON. Mostly they are for fees.

Mr. LIBONATI. They generally wind up with the patent, too?

Mr. WATSON. For a fee they will list your patent or advise you where to go, and so on; but I do not believe they are very effective.

Mr. LIBONATI. Mr. Lindsay has a question.

Mr. LINDSAY. Mr. Watson, the bill has no provision in it for notice to be sent to the patent holder, that his payment is due in the maintenance fee section. Do you think that is a weakness of the bill or not?

Mr. WATSON. Well, I think that is a matter which the Patent Office could easily take care of. Whether or not you should put it in the bill—I mean, that is not too important, it seems to me.

But, as a safeguard, it might be put in; a provision to the effect that within a certain number of months prior to the time when the fee becomes due and payable, a notice shall be sent to the patentee.

Actually, the schedule could be printed on the patent when it was issued, too. And I do not anticipate any difficulty there.

Mr. KASTENMEIER. If the gentleman will yield on that point, it does provide: "filing statement shall be attached to or be embodied in the patents," in terms of requirement, but not as you suggest—which is an excellent suggestion—in the years as they come up, that the patentee be advised.

Mr. WATSON. And almost every attorney is used to keeping track of the need to pay in timely manner final fees—I mean renewal fees—all over the world. So that most of the offices of attorneys are already equipped to do that.

Mr. LINDSAY. One final question, Mr. Watson.

Mrs. Leeds argued that alternatively to the maintenance fee proposal contained in the bill, that she would recommend a larger filing fee, final fee substantially larger, and let the enforcibility of that be controlled by the pressures of competition in the marketplace.

I wonder if you would comment on that?

Mr. WATSON. Larger final fee?

Mr. LINDSAY. She argues that a $300 fee be exacted on final issuance, and that instead of the payment of that being enforced by the Patent Office under penalty of leaving or losing the patent right, that

that, in an infringement case or in suit, to protect the patent, the patent would be invalid unless the fee was paid.

Do you follow me?

Mr. WATSON. I think I do.

In other words, if there be sort of a deferred obligation——

Mr. LINDSAY. Yes.

Mr. WATSON. And the man did not reserve his patent right, unless he did——

Mr. LINDSAY. Unless he was paid up. She argued this would protect the Government's fees, and, at the same time, would reduce overhead, administrative burdens, and all the rest of it, in the Patent Office.

Mr. WATSON. If you want a "Yes" or "No" answer, I will give you a "No" answer.

I think that the system as proposed in the bill would be much simpler and is much better known, and people are already used to it. So I would not recommend Mrs. Leeds' plan.

Mr. LINDSAY. Thank you, sir.

Mr. LIBONATI. Anything further, gentlemen?

I think we have exhausted our list of witnesses.

I want to compliment you, Mr. Watson, for your testimony. You always elucidate and help the committee with your discussions. We appreciate and admire you for your professional talents.

Mr. WATSON. Thank you very much.

May I again say that now being largely unemployed and in Washington, I would be very glad to consult with the committee's staff.

Mr. LIBONATI. If we had an appointment to make, we would make you the appointee.

Mr. WATSON. Thank you.

Mr. LIBONATI. Now we conclude the hearing on both bills.

Meeting adjourned.

(At 12:45 p.m., the subcommittee adjourned.)

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