506

TO INCREASE CERTAIN PATENT AND TRADEMARK FEES

HEARINGS

BEFORE

SUBCOMMITTEE NO. 3

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

EIGHTY-FOURTH CONGRESS

FIRST SESSION

ON

H. R. 4983 and H. R. 6175

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

JUNE 3 AND 17, 1955

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TO INCREASE CERTAIN PATENT AND TRADEMARK FEES

FRIDAY, JUNE 3, 1955

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

The subcommittee met at 10 a. m. in the committee room of the House Committee on the Judiciary, Hon. Edwin E. Willis (chairman of the subcommittee) presiding.

Present: Representatives Willis (chairman), Jones, Quigley, Crumpacker, and Curtis.

Also present: Cyril F. Brickfield, counsel.

Mr. WILLIS. The subcommittee will come to order. We will take up today H. R. 4983 and H. R. 6175, bills to fix the fees payable to the Patent Office and for other purposes.

(The bills are as follows:)

[H. R. 4983, 84th Cong., 1st 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 items numbered 1, 2, 3, 4, 8, 9, and 10, 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, $40; in addition, $5 for each claim presented at any time which is in excess of five claims in the case.

"2. On issuing each original patent, except in design cases, $50, and $5 for each claim in excess of five.

"3. In design cases: For three years and six months, $20; for seven years, $30; for fourteen years, $40.

"4. On every application for the reissue of a patent, $40 and $5 for each claim in excess of five which is also over and above the number of claims of the original patent.

"8. For certificate of correction of applicant's mistake under section 255 or certificate under section 256 of this title, $15.

"9. 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 25 pages of drawings and specification and for plant patents printed in color; special rate for libraries specified in section 13 of this title, $50 for patents issued in one year.

"10. For recording every assignment, agreement, or other paper not exceeding six pages, $10; for each additional two pages or less, $1; for each additional patent or application included in one writing, where more than one is so included, $1 additional."

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

"(c) The fees prescribed by or under this section apply to any other Government department or agency, or officer thereof, except in the case of application fees and fees for issuing a patent in cases coming under section 266 of this title and except

as otherwise provided by law; 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), 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, $25.

"2. On issuing each original certificate of registration, $10, payable within three months from the time when notice of allowance of the application is sent to the applicant; if the fee is not paid within this period, the registration shall not be issued on that application, but the fee may be paid within a further period of three months on payment of an additional fee of $10.

"3. 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.

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

"5. On filing each petition for the revival of an abandoned application, $10.

"6. On filing notice of opposition or application for cancellation, or for declaring an interference between an application and a prior issued registration, $25.

"7. On appeal from an examiner in charge of the registration of marks to the Commissioner, $25.

"8. On appeal from an examiner in charge of interferences to the Commission, $25.

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

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

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

"12. For filing each disclaimer, $10.

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

"14. For recording every assignment or other paper not exceeding six pages, $10; for each additional two pages or less, $1; for each additional registration or application included, or involved in one writing where more than one is so included or involved, additional, $1.

"15. 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, publications, 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. (a) This Act shall take effect three months after its enactment.

(b) Item 1 of section 41 (a) of title 35, as amended by this Act, does not apply in further proceedings in applications filed prior to the effective date.

(c) The amendment of item 2 of section 41 (a) of title 35 by this Act does not apply in cases in which the notice of allowance of the application was sent prior to the effective date and in such cases the fee due is the fee specified by item 2 prior to its amendment.

(d) The amendment of item 3 of section 41 (a) of title 35 applies in the case of applications for design patents filed prior to the effective date for one of the lower terms and which are amended after the effective date to one of the higher terms.

(e) Item 4 of section 41 (a) of title 35, as amended by this Act, does not apply in further proceedings in applications for reissues filed prior to the effective date.

(f) Item 2 of section 31 of the Trade-Mark Act, as amended by section 3 of this Act, applies only in cases in which the notice of allowance is sent on or after the effective date.

(g) Item 4 of section 31 of the Trade-Mark 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 Trade-Mark Act on or after the effective date.

[H. R. 6175, 84th Cong., 1st sess.]

A BILL To amend section 31 of the Act of Congress approved July 5, 1946 (ch. 540, 60 Stat. 427; 15 U. S. C. 1113)

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 of Congress approved July 5, 1946 (ch. 540, 60 Stat. 427; 15 U. S. C. 1113), is amended to read as follows:

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

"(a) On filing application for registration for goods or services included in one class, $30.

'(b) On filing request to transfer application from the principal to the supplemental register or vice versa, $10.

"(c) On filing application for renewal of registration for goods or services within a single class, $25; for goods or services covered by the registration within each additional class, $10: *Provided*, That if application is filed within the three-month period following expiration, there shall be an additional fee of $5 per class.

"(d) On filing affidavit and claim under section 12 (c) for goods included in one class, $10; for goods in each additional class, $5.

"(e) On filing affidavit under subsection (a) or (b) of section 8 or under section 15, $10.

"(f) On filing petition for revival of abandoned application, $10.

"(g) On filing notice of opposition, for each application opposed, $30.

"(h) On filing petition for cancellation, for each registration sought to be cancelled, $35.

"(i) On requesting declaration of interference, for each application or registration with which interference is requested, $25.

"(j) On filing appeal to the Commissioner from a final decision of the examiner in charge of the registration of marks, $25.

"(k) On filing appeal to the Commissioner from a final decision of the examiner in charge of interferences, $35.

"(l) On filing request for the issuance of new certificate of registration under section 7 (c), $15.

"(m) On filing request for amendment or disclaimer under section 7 (d), $15.

"(n) On filing request for correction of applicant's mistake under section 7 (g), $15.

"(o) For recording assignment or other instrument not exceeding six pages, $10; for each additional two pages or less, $1; for each additional registration or application included or involved where more than one is so included or involved, additional $5.

"(p) For printed copy of registered mark, 10 cents.

"(q) For certified copy of registration showing record ownership and status thereof, $5.

"(B) The fees stipulated in subsection (A), paragraphs (c), (d), (e), (h), (i), (l), (m), (n), and (q) shall be inclusive of any necessary title search.

"(C) The Commissioner may establish charges for copies of records, publications, or services furnished by the Patent Office with respect to trademarks, not specified in subsection (A) hereof.

"(D) The Commissioner shall refund any sum paid by mistake or in excess."

SEC. 2. This Act shall take effect three months after enactment but shall not apply to any matters then pending in the Patent Office.

Mr. BRICKFIELD. Mr. Chairman, Congressman Celler, the chairman of this committee, who is the author of H. R. 4983, asked to have the executive communication, which I have here, dated March 11 and addressed to the Speaker of the House, inserted at this time in the record. It was accompanied by a draft bill which Mr. Celler introduced in his own name at the request of the Speaker.

(The letter is as follows:)

DEPARTMENT OF COMMERCE,
Washington 25, March 11, 1955.

The Honorable SAM RAYBURN,
The Speaker, the House of Representatives,
Washington, D. C.

MY DEAR MR. SPEAKER: There are enclosed four copies of draft legislation for the general purpose of increasing fees collected by the United States Patent Office of the Department of Commerce for consideration and issuance of patents and registration of trademarks and the performance of related activities. There are also enclosed copies of a section-by-section analysis and explanation of the legislation. The fees which would be modified by the proposal are presently established by statute and, therefore, congressional action is necessary to effect changes.

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 sharply, no major adjustment in fees has been made to effect the same recovery of costs. In the 3 years, 1952–54, the Patent Office recovered only 47 percent in fees of its cost of operation. The attached proposal would recover in fees over 75 percent of the cost of operation of the Patent Office.

The Department urges early congressional action to enable the Government to effect greater recovery of costs from special beneficiaries of this Government program. 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.

At the present time, the Department is continuing an intensive study to determine whether a further recovery in costs should be sought under the present general fee program or whether a new type of fee schedule should be adopted. If the study results in conclusions that the principle of patent issuance and attending fees should be materially changed and a new system be instituted, that matter will be presented. We urge, however, that congressional action with respect to the proposal herewith submitted not be delayed pending the conclusion of these additional studies, and decision with respect to further legislation and the submission of such a proposal. It is believed that in view of the present great disproportion between the amounts collected by the Patent Office and the cost of operation of that Office, immediate corrective legislation is highly desirable.

We are advised by the Bureau of the Budget that there would be no objection to submission to the Congress of this proposed draft legislation.

Sincerely yours,

SINCLAIR WEEKS, *Secretary of Commerce.*

Mr. BRICKFIELD. I also have here, Mr. Chairman, a section-by-section analysis of this legislation, which was submitted by the Department of Commerce, and which Mr. Celler would also like to have inserted in the record at this time.

(The information is as follows:)

SECTION-BY-SECTION ANALYSIS AND EXPLANATION OF LEGISLATION TO FIX THE FEES PAYABLE TO THE PATENT OFFICE, AND FOR OTHER PURPOSES

Section 1 of this bill makes various changes in the fees payable to the Patent Office in patent cases.

The major change is to raise the fee payable on applying for a patent from $30 to $40, with the further payment of a charge of $5 for each claim presented in excess of 5 claims (item 1 of sec. 1). This application filing fee is the most important fee payable in the Patent Office and accounts for 36 percent of the receipts of the Patent Office.

The charge for claims presented over five is a method devised to make the application fee in a general way proportional to the amount of work involved in applications since the larger and more difficult cases requiring more work require a larger number of claims in their presentation and the average time spent by the Office on applications for patents increases in accordance with the number of claims in the cases.

The next important change in fees is the raising of the fee payable on issue of a patent from $30 to $50, also with a charge for each claim in excess of 5 (item 2 of sec. 1). The issue fee is the second most important of the Patent Office fees and accounts for 22 percent of the receipts of the Patent Office.

The next major change in the fees in section 1 is to change the fee for recording assignments from $3 to $10 (item 10).

The fees payable for obtaining a design patent are changed from $10, $15, and $30, for design patents of terms of 3½, 7, and 14 years, to $20, $30, and $40, respectively (item 3). The design patent fees account for only about 2 percent of Patent Office receipts and the increases here are of about the same order proportionately as the increases in the other patent application fees.

A few adjustments in minor fees are also made by this section.

Section 2 of the bill provides that Government departments and agencies shall pay the same fees as are paid in the Patent Office by others, except as otherwise provided.

Section 3 of the bill makes various changes in fees payable in the Patent Office in trademark cases. This section is in the form of a complete rewriting of section 31 of the Trade-Mark Act providing for fees. The items have been tabulated and numbered for convenience of reference and a few minor fees have been omitted from the act to be included in the group of fees fixed administratively by the Commissioner.

Two major changes in trademark fees are made. First, a new fee of $10 is to be paid on issuance of the trademark registration (item 2 of sec. 3). Second, a fee of $10 is to be paid at the time that an affidavit to maintain the trademark registration in force must be filed (item 4 of sec. 3). In addition, the fee for recording an assignment has been raised from $3 to $10 (item 14) in the same manner as the same fee in patent cases. A few adjustments in minor fees have also been made. The additional revenue which would be received in trademark cases under this revised schedule of fees would make the function of examining and issuing trademark registrations and related activities of the Patent Office, considered separately, substantially self-supporting.

Section 4 of the bill relates to the time of taking effect.

Mr. WILLIS. This bill was introduced by our chairman, Mr. Celler, as a result of an executive communication addressed by the Secretary of Commerce, the Honorable Sinclair Weeks, to our beloved Speaker, the Honorable Sam Rayburn.

The first witness on the agenda prepared by our counsel this morning is the Honorable Walter Williams, Under Secretary of the Department of Commerce. We are not only pleased but honored to have you with us today, Mr. Williams. As usual, we do not expect you to descend to details, but we should like your overall administrative appraisal of the proposal we have before us.

STATEMENT OF WALTER WILLIAMS, UNDER SECRETARY, DEPARTMENT OF COMMERCE

Mr. WILLIAMS. Thank you very much, Mr. Chairman and gentlemen.

I have prepared a short statement, but I think perhaps rather than read it if we merely insert it into the record I can paraphrase rather briefly the essential points that are involved.

Mr. WILLIS. Do you desire that your statement be included after your further presentation?

Mr. WILLIAMS. If we may, please.

Mr. WILLIS. That will be done.

Mr. WILLIAMS. This measure provides for a new fee schedule for the issuance of patents, trademarks, registrations, and so on. I think it is rather significant to bear in mind that there has been no change in the patent fee schedule in the Patent Office since 1932, 23 years ago.

As we all know, many things have happened since 1932. The costs in the operation of the Patent Office have mounted very sharply. It is necessary only to tell you what I am sure you all know, because of the fact that these rising costs have expressed themselves in so many other ways in our daily lives.

By applying these rising costs to the Patent Office, we find that salaries have increased about 125 percent in that period. Then there are the printing costs, which have approximately doubled, where there is an increase of just about 100 percent over the printing costs back in 1932. Then a third factor which bears on this question of additional cost is the question of productivity; that is, the output per examiner. This output has gone down, and that has been occasioned because of the fact that there is a pile of papers which goes to make up each category which is being studied, and it gets thicker and thicker, and, therefore, it simply means it takes more and more time on the part of the examiner to wade through this laborious stack of sheets of paper and information. Obviously, then, in order

to produce the same output you have to have more examiners, which means more money.

Fourth and finally, the costs have increased because of the fact that applications have tended to become more complex. We live now in an era where we know or are finding out more and more about the electrical, radio, infrared, high energy X-ray, gamma ray, and cosmic ray world in which we live. As we learn more about this world in which we live the applications become more and more complex. That means a slowing down.

The applications themselves are more physically voluminous, and that takes a lot more time. The result is that all these different factors have added up to the fact that costs have mounted tremendously and all during that time of rising costs of operation there has been no increase of fees whatever.

Now, the actual revenue derived during the period 1952 to 1954 runs at just about 47 percent of the cost of operating the Patent Office. If this schedule of the fees that is proposed in this piece of legislation, H. R. 4983, had been in effect during these years of 1952 to 1954 the receipts would have been approximately 80 percent. In other words, the Office would have been on about an 80 percent self-sustaining basis instead of a 47 percent self-sustaining basis.

By the way, I think I ought to revert back to the 1932 period once more, to point out the fact that at that time the fees that were charged constituted about 94 percent of the costs of services rendered by the Patent Office.

Mr. WILLIS. That was after the increase of 1932?

Mr. WILLIAMS. That was after the increase of 1932, yes.

I do not know that this is particularly germane, but my recollection is that the rates were increased in 1930, and then they were jumped again somewhat in 1932.

But to answer your question, yes, with the increase that was adopted in 1932 then you had a revenue of about 94 percent of the cost of operation of the Patent Office.

Mr. WILLIS. And the recovery of cost from fees has dropped from about 90 percent after the adoption of the measure in 1932 to about 40 percent at this time?

Mr. WILLIAMS. About 47 percent at this time.

Mr. WILLIS. The difference between those two figures is accounted for by the increased costs of operation, as you mention?

Mr. WILLIAMS. That is right.

Mr. WILLIS. As I understand the proposal here, if adopted, would result in a recovery of something like 75 percent of the cost of operation through collection of fees?

Mr. WILLIAMS. Approximately so; yes. That has to be on the basis of an estimate, but the estimate can be figured out reasonably accurately, because we know the flow of the operation and therefore can estimate pretty accurately what that sum will be.

Mr. WILLIS. We know it cannot be right on the button.

Mr. WILLIAMS. Your figure of 75 percent is a close estimate as to where we would land, I think.

Perhaps this statement might be well to emphasize: It has been the policy of the administration that agencies providing services of special benefit to the recipients thereof should establish a system of fair and equitable fees which take into account the cost to the Govern-

ment of such services. A similar policy has been announced by the Congress in the Independent Offices Appropriation Act for 1952. It is recognized that the public interest is to be taken into account, and it may be, therefore, that the full cost of recovery would not be appropriate at this time; and, as a matter of fact, in the proposals that are submitted and the fees that would be accrued as was pointed out a moment ago, the actual recovery would be about 75 percent and not 100 percent.

Mr. WILLIS. In that connection, if you do not mind, may I ask you this question: I appreciate very much the necessity to have this Office and others pay their way as much as possible. On the other hand, there is the other side to the coin; that is, the servicing of applications for patents. Now, you may not be able to answer this question, but it has been in my mind very strongly, and the question is this: As I understand it, the fees collected under law made by the Congress find their way into the General Treasury, and the Appropriations Committee makes a yearly appropriation for the cost of operation.

Mr. WILLIAMS. That is right.

Mr. WILLIS. I am so concerned about the slowness of the prosecution of applications. Certainly it is not due to the fault of the good Commissioner and his staff, but nevertheless everyone, including himself, would want the period of time cut down and the caseload cut down. What disturbs me is this: If these fees are increased—and I am sympathetic to the proposal—I wonder if our friends on the Appropriations Committee are going to give the good Commissioner as much money as he received in the past, so that this contribution by the patent applicants would serve them in cutting down the caseload? In other words, if as a result of the greater recovery of money through collection of fees nothing is accomplished so far as services are concerned—unless the Appropriations Committee increases the appropriation—I wonder how much we have accomplished in the direction of reducing the time of processing of a patent? I do not know how well I have stated the question, but I know that is the problem we will have to wrestle with in this committee a great deal. If someone could give us some encouragement that as a result of this proposal somehow the processing time would be cut down then this legislation would have a very strong appeal to this committee. Both elements could be considered.

I say that in the very beginning, for everyone to be thinking about it. I should like for somebody to address himself to that subject.

Mr. WILLIAMS. I should be glad to say a few words on that subject, although I am sure Commissioner Watson in his testimony, and his associates, can round out what I have to say.

I think what you have said really includes two areas of thought. One is the question of no matter how high you raise your schedule of fees, is that going to reflect itself in money available to the operation of the Patent Office? Of course, periodically there comes up the question as to whether or not revenues thus charged should be directly poured back under the operating control of the Patent Office itself. I do not think there is anything contemplated—not anything I know of, at any rate—for a change of plan in that respect. I think it still is contemplated, whatever the fee schedules may be, present or future,

that that money would revert to the General Treasury just as it has done and is doing at the present time.

Now, on the question of meeting the problems that confront the Patent Office, which is the second half of the problems that you are posing, we are certainly very, very much alert to the situation down there. I think I might take just a few words to express our views. In the first place, I think it was back in 1948 that the backlog of patent applications was considerably higher than it is now. It is high and higher than it ought to be now; let me emphasize that. It is not, however, as high as it has been at other times.

That is accounted for in part because of the fact that there was a sharp down curve so far as the chart is concerned in applications, and it rather looked as if that curve projected into the future would continue to go down. Then about 2 or 2½ years ago it took a sharp upturn and has continued to go up in almost a vertically steep incline. That, plus this complexity of applications to which I referred, and the fact that ultimately there is going to have to be a reclassification—a breaking down of classifications so as to simplify the jobs of examiners—all of those things together have posed a real problem there in the Patent Office.

Last summer we had a technical committee appointed—the Secretary of Commerce appointed this body—headed by Dr. Vannevar Bush, an eminent scientist, as you all know. That committee made a careful study as to what might be done to streamline and make more effective the operation of the Patent Office. Prior to the receipt of the findings of that committee the budget figures had to be prepared for the 1956 budget. When this report came in it was an excellent report. It had certain concrete recommendations. But it became rather obvious, however, that any expected hope of a sort of a push-button solution to problems was not going to happen either in terms of extent or speed.

We can see out of that Vannevar Bush committee report a lot of gain to be had. I think without question when their findings are applied to the operation of the Department over a period of time I can feel rather sure, and we feel rather sure, that they are going to be followed by distinct benefits in terms of efficiency and therefore cost of operation. In the meantime it is not going to be either as fast or as extensive as perhaps we had hoped.

So while we are getting the applications and recommendations of the Vannevar Bush committee into operation we simply have to face right squarely up to the question of what the problem is with the mounting number of applications and with the mounting pile of papers through which the examiners have to wade, and therefore the decline in the productivity rate or the output per examiner.

Now, I think both subcommittees of the Appropriations Committees are aware of the need. So are we administratively aware of the need to have an adequate additional amount of funds to hire the necessary number of examiners which, together with these recommendations of the Vannevar Bush committee, which are gradually being implemented into action, will, we believe, gradually begin to pull down that backlog, and we will have it in a good balance again.

That is somewhat an extended answer to your question, Mr. Chairman, but I think that while at the moment we are in a bulge position so far as this accumulated backlog is concerned, I think: (1) It is not

as high as it has been in the past, and (2) we are most certainly cognizant of the problem and the need to find solutions to the problem. And I think that with the cooperation which we are certainly getting from the legislative branch of the Government to provide the necessary financial sinews that we can see our way through to the solution of this problem, so that we will cut down the time delay that you referred to and in other ways give the public the speed and the quality of service that we all want to provide through the Patent Office.

I think perhaps that may be all I should like to say in these introductory remarks, except to say this: In anticipation of the submission of this measure or of a program to increase the schedule of fees the Commissioner of Patents, Mr. Watson, has done, I think, a very excellent job in testing out sentiment within the Patent bar groups and the public generally, and other groups that have particular interest. While of course you never expect to have complete unanimity of opinion generally speaking I think it is not inaccurate to state that Mr. Watson has found general acceptance to the kind of accomplishments which are sought by this legislation.

The enactment of this measure would be in accord with the program of the President and therefore we hope that favorable action will be taken so that we may in that way bring the Patent Office operation up to date feewise, where indirectly at least we are satisfied it will help toward giving the Patent Office the sufficiently additional funds necessary with which to do the right kind of job.

(The statement of Mr. Williams is as follows:)

STATEMENT OF THE UNDER SECRETARY OF COMMERCE, WALTER WILLIAMS, WITH RESPECT TO H. R. 4983

I am Walter Williams, Under Secretary of the Department of Commerce, and I am glad to have this opportunity to appear before the committee to present the views of the Department with respect to H. R. 4983, a bill for the general purpose of setting up a new fee schedule for the issuance of patents, trademark registrations, etc., in the Patent Office of the Department of Commerce.

There has been no major revision of patent fees since 1932. At that time the fees charged constituted about 94 percent of the cost of the service. There has been a marked increase in the cost of furnishing the services attendant upon the issuance of patents and trademark registrations. This expense is accounted for by increased salaries to office personnel, increased printing costs, and the increased complexity of the problems involved in examination of applications arising from the enormous expansion of the prior art which must be considered in determining whether or not a particular application represents an original step forward.

The Commissioner of Patents in his statement will set forth the details of the income of the Office and the effect of each change proposed by this legislation. In general, I should say that during the period 1952–54, the average receipts from fees and other charges of the Patent Office amounted to approximately 47 percent of the cost of the operations. If the schedule proposed by H. R. 4983 had been in operation, the receipts would have been approximately 80 percent of the cost.

It is the policy of the administration that agencies providing services of special benefit to the recipients thereof should establish a system of fair and equitable fees which take into account the cost to the Government of such services. A similar policy has been announced by the Congress in the Independent Offices Appropriation Act for 1952. In establishing such fees, the agency should also take into account the public interest involved in the performance of the service, and it may very well be therefore that full cost recovery would not be appropriate at this time. H. R. 4983 recognizes this public interest and would not, if enacted, effect complete recovery of costs.

It appears appropriate at this time to bring to the attention of this committee the views of the Committee on Appropriations of the House of Representatives

on the matter of increased fees. In its report on the appropriation bill for fiscal 1956 relating to the Department of Commerce and related agencies, that committee stated:

"The Patent Office was established as a constitutional agency designed to protect the individual and serve the public. At no time was it contemplated that it should be self-sustaining. While there is no objection to a review and study of fees, the committee does not subscribe to the principle that the agency should be self-supporting."

H. R. 4983 would, in our opinion, be acceptable to the members of that committee and to others who espouse this view because, as stated previously, the recovery resulting from its enactment would reflect the public interest.

The Commissioner of Patents has taken great care to assure that H. R. 4983 reflects the changes in fees which will bring about the maximum recovery which will meet with reasonable acceptance by the public generally as well as the patent bars and other groups with special interests in the operation of the Patent Office. We do not claim that this proposal will have universal acceptance. There will always be persons who object to any increase in fees. We believe, however, that, subject to your consideration of two amendments to be proposed by the Commissioner, H. R. 4983 represents the best legislation for the purpose at this time.

Enactment of H. R. 4983 would be in accord with the program of the President and we urge early and favorable action by the Congress on this measure.

Mr. WILLIS. May I say that I certainly share your respect for the Commissioner. I know he is doing a tremendous job.

But my mail, as chairman of this subcommittee, hints rather broadly that a lot of the people in favor of this proposal are somewhat taking for granted that since the applicants are going to have to pay increased fees that they can look forward to relief in the time of processing of their applications. That is why I asked you that question, because you speak for the Commissioner and for the administration, and we certainly are going to take you at your word that you will back us up. If you say so, I will make a bargain with you, and you and I both will go before the Appropriations Committee to recommend that if we pass this law now we are not forgetting your promise to seek a situation where they are going to get more money, to the end that those people who are backing this proposal—with the thought in mind that they are going to get better service from the point of time of processing—will not be disappointed.

Are there any questions?

Mr. CURTIS. I have just one question.

Did the House not add $2 million to your appropriation?

Mr. WILLIAMS. Yes, sir.

Mr. CURTIS. Were you satisfied?

Mr. WILLIAMS. We think so, Mr. Curtis, because you cannot spend that money overnight, you see. We have got to engage examiners, both in terms of number and in terms of quality, that will do the job. You do not just go out overnight and get that army of new examiners that quickly.

I should have added, probably, as I indicated, we had submitted the 1956 budget figures before we had had the report of the Vannevar Bush committee. After receiving the report of the Vannevar Bush committee and recognizing the fact that benefits would accrue from their recommendations, but that they were not going to come as fast as had been hoped, then we were at work putting together a proposal for a supplemental request; so that there again I think there has been somewhat of a meeting of minds as between the Appropriations Committee and ourselves. We have been very much pleased with the sympathetic understanding we have had from the Appropriations Subcommittees of both bodies.

Mr. WILLIS. Any other questions?

Mr. JONES. No questions.

Mr. BROOKS. I have one question.

Did you have an estimate, sir—you may have mentioned it earlier, and I may have missed it—of the amount that this new fee schedule would yield annually?

Mr. WILLIAMS. Yes. The estimate is that it will add about $4 million. I think it is between $3½ million and $4 million worth of additional revenue which, on top of the little less than $6 million now—I think about $5.8 million at the present time—will give approximately a 75 percent coverage.

Mr. BROOKS. Thank you.

Mr. QUIGLEY. No questions, Mr. Chairman.

Mr. WILLIS. Have you completed your statement?

Mr. WILLIAMS. Yes, sir. Thank you.

Mr. WILLIS. Thank you very much. We appreciate your appearance.

Mr. WILLIAMS. Thank you very much.

Mr. WILLIS. Now we will be pleased to hear from the Commissioner of Patents, Hon. Robert C. Watson. We would be glad to hear from you, Mr. Watson.

STATEMENT OF ROBERT C. WATSON, COMMISSIONER OF PATENTS, DEPARTMENT OF COMMERCE

Mr. WATSON. Mr. Chairman, I should like first to introduce the several members of the Patent Office staff whom I have asked to accompany me.

First let me present Mr. Crocker, Assistant Commissioner.

Mrs. Robert Leeds, Assistant Commissioner, who works entirely in the trademark branch of our operation.

Mr. Federico, a member of our Board of Appeals, who has done a great deal of spadework in connection with the calculations which must necessarily be made to determine the amount or size of the fees which we propose to charge.

Mr. Ellis, our indispensable budget officer.

And Mr. Reynolds, our solicitor.

I have prepared a statement which has been reproduced and I hope has been made available to each of you. I will not attempt to repeat what is said in that statement.

You will find that it is accompanied by a sort of summarization sheet, which lists the various items which are actually included in the bill; the present fee is set forth, the annual receipts from the present fees, the nature of the proposed fee, the estimated receipts, and in that last column the increase which is expected.

Before going into the details I will say that following administration advice we have given the widest publicity to the nature of the bill. The various bar associations have been alerted, and industrial groups, and there is a very considerable knowledge, not only general knowledge but rather specific knowledge, of the effect of the increase upon the Patent Office receipts.

Mr. Federico has drafted two very pertinent articles which have appeared in the journal of the Patent Office Society for October 1953, and November 1954, respectively. I had laid aside a copy of

each issue of that journal to place in the record, because I think that they contain information pertinent to this problem and which the committee should have. I find that for some reason I did not bring them with me, and I ask the privilege of introducing them at a later time.

Mr. WILLIS. They will be received at whatever point in the record you prefer to have them.

Mr. WATSON. They deal with the problem of the patent fee.

(The exhibits are on file with the committee.)

Mr. WATSON. Then, again, in the report of the Commissioner of Patents for the year 1954 there are a number of references to the problem of finances, including the problem of the patent fee; and I wish to introduce a copy of that document into the record.

(The annual Report of the Commissioner of Patents, fiscal year 1954, is on file in the offices of the committee.)

Mr. WATSON. The bill is in four sections. The first deals with an increase in the schedule of fees which the Patent Office charges for the services which it renders in connection with patent applications. That has 10 subsections.

Section No. 2 deals with the relationship of the Patent Office to other governmental agencies. It is not a particularly important section, moneywise, but inasmuch as the Patent Office has been required to furnish without charge to other governmental agencies services and goods in the form of documents, we think it is important to plug that loophole and place on the budgets of those other departments the expenses which are legitimately theirs.

Mr. WILLIS. Before you leave section 2 let me ask you this: As I understand it, under the present law and practice no charge is made for processing a so-called Government-connected patent; is that right?

Mr. WATSON. That is right. We do not propose to change the old law of 1883 which requires us to issue a patent without charging a fee to a Government employee who wishes to license his patent freely, but the Department of Justice and other Government departments, like the Department of Defense, do subject us to considerable expense by ordering copies of publications, photostats, and by requiring us to process applications without charge. We think that that is not quite as it should be, and should be corrected.

Mr. WILLIS. That is a matter of bookkeeping?

Mr. WATSON. Yes.

Mr. WILLIS. But you would prefer for the expense to be laid on the doorstep of the departments?

Mr. WATSON. Yes. We prefer to keep our own books, and we would like to have them keep their books. The Comptroller General's rulings have not made that arrangement possible.

Mr. WILLIS. As I understand it, the Department of Defense is not so well disposed to that particular section.

Mr. WATSON. I imagine they are not so well disposed toward it, though I believe it would not be subject to great controversy, because the amount involved is not too great at the present time.

However, with the situation existing as it exists today it has great possibilities. Should they become a little more pressed for funds than they are at present or should the situation change in other respects, the burden imposed upon the Patent Office might be material.

The third section of the bill deals with trademarks, and it enumerates a number of proposed increases. It goes all the way through,

however, and includes those items in which no change is to be made as well as those which are to be changed by way of increase.

The fourth section of the bill relates to timing. I imagine that is a matter of no great interest.

I anticipate that the greatest difficulty which we face is in connection with section 1 dealing with patents, and that from the angle of trademark practitioners—the trademark registrants—there will not be any large opposition to increases.

The situation with respect to patents is different from that which obtains with respect to trademarks. The applicant for a patent is in a way a gambler. He invests his money in research and development, and his patent application is quite a speculation in many instances. The reverse is true in the case of the trademark, where the trademark application is filed and the registration sought as an incident to a man's successful business. The application is not filed in the Patent Office until the product has been sold in interstate commerce, and therefore it is thought to be an incident of a successful business.

However, there will be, as Mr. Williams has said, those who oppose any raise in fees. I must say that the question of the magnitude of the patent fee is one which involves those who discuss it in a great deal of controversy.

My own attitude has from the start been to the effect that those of us who are trying to administer the Patent Office would be in a better position to secure from the Congress the funds necessary for our operation if the schedule of fees which we charge were adjusted upward and thereby made more realistic.

We all know what has happened to the dollar in recent years. We all know that the prices of everything else have gone up. Mr. Williams has made reference to the fact that salaries now are 125 percent higher than they were in the 1930's. Of course, there is another immediate prospect of another salary raise.

I have here on a sheet, which I would like to place in the record, a tabulation showing other increases to which the Patent Office has been subjected. The cost per page of printing specifications, for instance, has gone up 122 percent since 1940. Drawings have gone up 144 percent. Reproduction of patent copies has gone up 120 percent. The Official Gazette has gone up 100 percent. The cost of storage cases for patents has gone up 269 percent. And so on.

Mr. WILLIS. Would you like to have the document included at this point in the record?

Mr. WATSON. Well, no, I will keep it. You might wish to ask a question about it.

Mr. WILLIS. You may keep it before you, but as to the record would you like to have it included at this point?

Mr. WATSON. I would prefer to keep it, and perhaps introduce it at the end. It may not be pertinent, even, as a matter of fact, because what has happened is known to so many, and there are probably many better sources of information than the one which I have.

Now we come to the question of patent fees. Specifically we in this country, unlike most countries of the world, charge the applicant during the time that his case is pending in the Patent Office, all of the fees which he at any time ever pays to the Government because of the processing of the application and issue of the patent.

The fees include a filing fee and a final fee and certain other fees. The principal source of income of the Patent Office is the filing fee, the first fee which the applicant pays.

Section 1 of the bill provides that the filing fee shall be raised from $30 to $40. That is an increase of $10. I paraphrase that, of course. The words which I have used are not the words which actually appear in the bill, but the effect is a $10 increase in the filing fee.

Then there is a further increase; $5 for each claim presented at any time which is in excess of 5 claims in the case. The number of claims which the application contains is one indication of the complexity of the invention which is covered by that application. When we say that the applicant shall pay $5 for each claim in excess of 5 claims, it means that those who file 6 claims or more shall pay a higher filing fee, and that seems to be a fair arrangement, if you take into consideration the increased amount of work which the Patent Office must do in processing the application having the increased number of claims.

Each claim stands on its own bottom. It defines an invention which is quite distinct from the invention defined in each of the other claims of the application, so that the examiner is faced with the need to examine each one when he has the case before him for consideration. If he makes a search with respect to one claim that does not mean he has answered the question of whether or not any other claim discloses patentable subject matter.

So in an application you have the problem of examining carefully each claim which is presented, and possibly making an independent search with respect to each independent claim.

Now, the claims vary widely in number in the various applications which we receive. About 25 percent of our applications contain only 1 to 5 claims. Some of them contain several hundred claims. So that the work involved in processing applications varies widely. Some of the applications require weeks of an examiner's time.

It seems only fair that the charge which is made to the applicant should reflect in some measure the amount of work which the Patent Office must perform in processing his application.

In discussing orally the problem presented by the new charge of $5 a claim, we have found a very considerable opposition. The members of the bar who are primarily interested, and who I think very wisely in the main interpret the wishes of their clients and of industry, have pointed out that in many cases a filing fee with that $5 attachment for claims would be very high.

In some discussions we have suggested an alternative, which I am allowed to present to you by special permission of the Bureau of the Budget, in which the charge for each claim over 5 is reduced to $2, and fees are also assessed upon the number of pages of specification of the application and the number of sheets of drawings which are presented. That arrangement would seem to me to be somewhat more fair. It would bring in the same amount of revenue.

The $5 per claim over 5 charge, if adopted, would be expected to bring in an increased revenue of $1,328,000. By changing it, however, so that the charge is reduced to $2 per claim over 5 and then a charge added, based upon the number of pages of specification, which amounts to $2 per page over 10, and a charge based upon the number of sheets of drawings, amountint to $2 for each sheet over 1, we anticipate being able to receive approximately the same amount of revenue and in a fashion which is probably more fair to the applicant.

The three items are involved: The number of claims, the number of pages of specification, and the number of sheets of drawings. They all reflect what we call the complexity of the invention submitted for our consideration.

We have applications—and I have seen applications—comprising, for instance, 1,200 pages of specification, 350 sheets of drawings, and many, many claims. As compared with that, at the other end you have applications which comprise 2 or 3 pages of specification, no drawings, and perhaps 1 claim.

I think that of the patents which we issue, some 12 percent contain only 1 claim, but claims are usually presented in larger numbers. As I have said before, the amount of work imposed upon the examiner in processing any application varies widely with the nature of the application.

I am not quite sure how the proposed alternative form of assessing fees against applications based upon complexity will be received, but I think that the alternative proposal is preferable to the original proposal which appears in the bill; i. e., $5 per claim presented at anytime which is in excess of 5 claims in the case.

Generally speaking, what we have done in this patent schedule of the bill is to attempt to approximately double the fees received by the Patent Office in recognition of the fact that the dollar has since the last fee adjustment gone down approximately 50 percent in value.

The bill purports to effect an adjustment which, overall, will not bring the Patent Office to a full cost recovery status insofar as its patent operations are concerned, but will, on the basis of a $14 million appropriation, bring it to about a 71-percent recovery status.

Now, going further, we come to the final fee and we reach item 2 of section 1 of the bill:

On issuing each original patent, except in design cases, $50, and $5 for each claim in excess of 5.

The old charges were $30 and $1 per claim over 20, respectively, so there has been a recommended increase of $20 in the final fee, and then this item of $5 for each claim in excess of 5 constitutes an increase in rate from $1 to $5, and the number of claims which may be presented without extra charge has been reduced from 20 claims to 5 claims. We expect that the $20 increase in the final fee will give us an increased return of about $827,000, and that the assessment against the claims in excess of 5 will bring us an increased return of about $400,000.

The next item, No. 3, is as follows:

In design cases: For 3 years 6 months, $20; for 7 years, $30; for 14 years, $4.

Now, item 4, on every application for the reissue of a patent, $40, which is an increase of $10, and for each claim in excess of 5 a charge of $5 instead of a charge of $1 for each claim in excess of 20, as heretofore.

Mr. WILLIS. Let me ask you, the alternative or the alternate proposal you made applies only to item 1 and not to items 2 and 4?

Mr. WATSON. Each of the four items I have mentioned has been modified and increased revenue provided.

Mr. WILLIS. When you were addressing yourself to item 1 you spoke about an alternate proposal.

Mr. WATSON. Yes.

Mr. WILLIS. Does that address itself to item 1 only?

Mr. WATSON. Yes.

Mr. WILLIS. Or does it apply to items 2 and 4 also?

Mr. WATSON. It addresses itself to item 1 only. We have only two alternative proposals; one with respect to item 1 of the bill, and a second one with respect to a change in the trademark schedule which we will discuss later.

Now, for item 8, for certificate of correction of applicant's mistakes under section 255 or certificate under section 256 of this title, $15, we get an increase there of $1,755, which is not very much.

For uncertified printed copies of specifications we have proposed a very small change. For some of the larger patents copies we propose to charge $1 per copy instead of 25 cents, and in addition we propose to make a charge of $1 for certain of the plant patents which are printed in color. That increase, however, will be $15,000, approximately. It will leave unchanged the charge of 25 cents which applies to the great bulk of the patent copies which we sell.

Item 10 of the bill deals with the recording of assignment and purports to increase our charge for the recording of an assignment not exceeding 6 pages from $3 to $10. It will increase our revenue for services of that character some $320,000 or $321,000. That sum includes, however, the increased revenue we expect to derive from recording trademark assignments as well as patent assignments, so that is a cumulative sum, I believe, which takes into consideration not only item 10 here, but a certain item in the trademark section of the bill.

Section 2 deals with the problem presented by the demands made by other Government agencies upon the Patent Office for free goods and services.

Mr. WILLIS. This is a new proposal?

Mr. WATSON. This is a new proposal, and we estimate that we lost some $66,000 last year by our inability to make charges against other Government departments for their requirements, and as I have said before, we would much prefer to have them put that on their own budgets than for us to put it on our budget.

Mr. QUIGLEY. Is that $66,000 what you would have charged me if I were looking for the same information?

Mr. WATSON. Yes, that is the basis.

Mr. QUIGLEY. And if the fee that you charged me was low, lower than it should have been, you would have lost more than $66,000?

Mr. WATSON. Yes. If you had come to the Patent Office you would have paid our regular service fees, and for the services we gave them free you would have paid some $66,000.

Mr. QUIGLEY. And if we were to increase the fee to me, that would mean that the other departments would be getting that much more service?

Mr. WATSON. That is right. They would realize an increased windfall, you might say.

Mr. BRICKFIELD. Mr. Commissioner, section 2 will now require the Government agency to pay a fee, the regular fee, for processing an application for a patent; is that right?

Mr. WATSON. That is my understanding of the section.

Mr. BRICKFIELD. However, when the inventor is a Government employee, then the present law continues in effect; in other words, there will continue to be no charge?

Mr. WATSON. That is right.

Mr. BRICKFIELD. Do you have on hand the number of applications which were made by Government agencies last year where the Government agency itself was the applicant and where the Government agency was processing the application on behalf of a Government employee?

Mr. WATSON. Under the old act of 1883, which is known as 35 United States Code 266, there were, in the fiscal year 1954, 900 applications filed.

Mr. ELLIS. There were a little over 500 applications filed by Government agencies free of charge under the Comptroller General's ruling that the Patent Office could not apply a charge to applications——

Mr. BRICKFIELD. Then that would leave about 400 filed on behalf of Government employees?

Mr. ELLIS. The 530 are in addition to the 900, so in combination, there were 1,430 in all, of which 900 passed through free of charge under the existing statute. The other 530 were under the Comptroller General's ruling.

Those would be picked up and charged for under this proposed section 2.

Mr. BRICKFIELD. Where does the Government secure the inventions which it processes on its own behalf?

Mr. WATSON. Well, of course, the Government employees make inventions. The employees of the Department of Defense, the Bureau of Standards, the Department of Agriculture, and in fact even Commerce and employees all through the Government make inventions. The employees of the Department of Defense make the greater number of inventions and there are many applications filed yearly on behalf of that group. I wish that I had brought with me a statement showing the total number of applications which are now pending and which have been filed in the Patent Office by Government agencies, which applications are either wholly Government owned or in which the Government has a large interest. The number is quite substantial, and an increasing number of patents are issued each year to Government departments which, to my way of thinking, is a situation which should be taken in hand because when a patent is issued to the Government, it is never used wholly as a patent.

Mr. BRICKFIELD. Mr. Commissioner, could you give the subcommittee a reason for the department's exempting Government employees from the fee provisions of this bill? Why was it decided to write into this bill an exemption for Government employees?

Mr. WATSON. Well, this bill relates to fees, and to go further and exclude the exemption would involve a repeal of the old law of 1883. We did not think it was appropriate to do that in this kind of a bill.

Mr. BRICKFIELD. The first part of the section repeals the old law, does it not, insofar as it relates to Government agencies?

Mr. WATSON. No. It exempts those Government employees who make inventions and who, you might say, dedicate them to the public under the provisions of the law which was passed in 1883. But to include in the fee bill that group would require repeal of the law. We have decided not to go that far. We will retrieve what we can. Of course, the bill can be amended, I suppose, to do something about the original law.

Mr. BRICKFIELD. On page 3, line 3, the bill reads:

The Commissioner may waive the payment of any fee for services or materials in case of occasional or incidental requests by a Government department or agency, or officer thereof.

Now, do you interpret that to mean that the Commissioner would have the power to waive all fees when the Government makes an application for an invention?

Mr. WATSON. It so reads, as I understand it. May I ask a question of one of my staff? I would like to have the privilege of having Mr. Ellis make a statement about that particular point.

Mr. ELLIS. The intent of that provision was to make it possible to avoid excessive bookkeeping costs in making a transaction between one Government agency and another, where they might come to us only occasionally for a photostatic copy of a record, or a copy of a printed patent. We do not like to spend 25 cents to catch a nickel, in other words. It is to prevent that type of thing. It gives the Commissioner authority to waive the charge where it is determined it would be more expensive to process the transaction than it is worth. There was no intent in it to broaden the authority to in effect nullify the provision, although it might be taken to read that way.

Mr. BRICKFIELD. Mr. Ellis, in other words, this last provision is aimed at supplying a Government agency with printed copies of a patent rather than permitting the Commissioner to waive the initial fee, and issuing fees?

Mr. ELLIS. That is correct. The words "occasional or incidentals requests," and the words "services or materials" have the intent of specifying the type of service that would be involved, or the materials that would be involved in making a copy of a record, or furnishing a printed copy which might be in stock.

Mr. BRICKFIELD. On line 3, after the semicolon, would you think that it might be possible or proper to insert the words "and except that," or perhaps start a new sentence?

Mr. WATSON. I think the phraseology could be considerably improved in the light of your remarks because, as it reads, it would seem to give the Commissioner pretty wide authority, which was not sought.

Mr. WILLIS. We will consider that. You may proceed.

Mr. WATSON. Section 3 of the bill deals with fees chargeable against those who present applications for registration of trademarks. Item 1 reads:

On filing each original application for registration of a mark in each class, $25.

There is no change proposed in that item as written. However, our second alternative applies at this point. We had intended to exact from a successful application for registration a final fee of $10. That, however, posed administrative difficulties, involving the sending out of notices and considerable bookkeeping. It was suggested that we might increase the charge for applications by the same amount; namely, to increase the filing fee from $25 to $35, which would not meet with substantial opposition, according to our understanding, and would give us actually an increased revenue with less administrative cost.

The second item reads as follows:

On issuing each original certificate of registration, $10, payable within 3 months from the time when notice of allowance of the application is sent to the applicant; if the fee is not paid within this period, the registration shall not be issued on that application, but the fee may be paid within a further period of 3 months on payment of an additional fee of $10.

This is a new item which purports to bring in about $160,000 if passed in the form which it is written in the bill, but as I have just said, we favor at this time the increase of the filing from $25 to $35 in item 1, thereby making item 2 of section 3 of the bill unnecessary.

Mr. WILLIS. Mr. Commissioner, could you leave with our counsel a draft form of your alternative proposal, so that it may be distributed in fairness to the patent bar in their study?

Mr. WATSON. It is in a very definite form and it is ready for presentation. It is actually included in the statement.

Mr. WILLIS. It is a part of your statement?

Mr. WATSON. It is included in the statement.

Mr. WILLIS. I am told it is on page 7.

Mr. WATSON. With regard to item 3 there has been no change, and we will pass that.

Item 4 reads as follows:

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

That is a new provision intended to bring in an estimated increase in the sum of about $130,000.

Item No. 5 reads as follows:

On filing each petition for the revival of an abandoned application, $10.

That is a new provision that will probably bring us in around $1,000.

Item No. 6 reads as follows:

On filing notice of opposition or application for cancellation, or for declaring an interference between an application and a prior issued registration, $25.

The charge of $25 for the declaration of an interference is a new charge which will probably bring in an increase in revenue of $2,500.

There are no changes in items 7 and 8 over existing law.

Item 9 is as follows:

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

That represents an increase of $5 and a probable increased revenue amounting to somewhat over $500.

Item 10 is as follows:

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

This is an increase of $5 giving us a small increase in revenue somewhat perhaps over $200.

We will now go to item 14, which is as follows:

For recording every assignment or other paper not exceeding six pages, $10; for each additional two pages or less, $1; for each additional registration or application included, or involved in one writing where more than one is so included or involved, additional, $1.

That, together with the increase in the patent section of the bill for the recording of assignments, will give us an increased revenue of over $320,000, we believe.

That concludes the reference to those portions of the schedule of fees charged for trademark services which have been modified.

Section 4 of the bill relates to the timing and to various amendments which I think probably need no discussion, so let me conclude in this manner; and perhaps a little repetition will do no harm.

The first section of the bill dealing with the increases which we propose to make in the services we perform for patent applicants is the most controversial. It is often contended that the poor inventor should be protected and that the fees which we now charge at this time are sufficiently large. Many will take the position, no doubt, that they should not be raised for that reason.

I can say as the result of many years of actual practice there are indeed poor inventors and that in some instances the poor inventor does develop something which is worthwhile. On the other hand, it has never been my experience that an inventor of small means failed to have his application placed on file if the invention which he had made was one of some substance. He would not fail to interest capital in his invention if it was attractive to others.

Now, naturally, when capital comes in the inventor must make some sacrifice in his control, but that is inevitable in almost any enterprise in which that same man would engage. Those who would advance him money want to know how the money is spent, and if it is a speculation, as is the investment in an invention, they must have some measure of control over the manner in which it is expended.

I have the utmost sympathy for the inventor of small means, and I think that the patent fee schedule should never be so high that it would constitute a real deterrent to a person of that character, nor to the small business organization, the small corporation or a partnership. I do not believe that this bill will have the effect of throwing in the path of persons of that character insurmountable obstacles. The small inventor will have to pay, if this bill becomes law, an increase of $10 in his filing fee, but under all the circumstances which exist it seems to me that is not an unreasonable increase. I am assuming that the invention can be disclosed on one sheet of drawings, in less than 10 pages of specifications, and claimed in 5 claims or fewer. If the invention is of greater complexity, we would run into additional charges, but even so, I think the great majority of the inventors of small means do invent simple things and that at the beginning the average inventor of that class would only be met with an additional charge of $10. At the end he would perhaps be met with an increase of $20 over the schedule presently in force because he would have to pay a final fee of $50 instead of a final fee of $30 as of now. But that, in the way we operate in the Patent Office, would be a charge which would be brought to his attention several years after the filing of his application, and after the Patent Office has processed it, so he would know, or would be in much better position to judge, what the value of his expected patent is likely to be.

So I think the payment of that additional final fee would not prove to be burdensome to him.

Now, from here on, I would like to answer any questions that you might care to propound.

Mr. WILLIS. Mr. Commissioner, we all realize you have brought years of experience and good judgment and vast knowledge to your high office, and you made a very good impression on the full committee the other day from the personal presentation of the problems of your office. At that time you were addressing yourself to caseloads

and unfortunate delays that people have to suffer because of the lack of personnel which can be translated into dollars and the need for more money. As far as I am concerned, unless my impression can be erased, I see some appeal to the proposal as you have advanced it today in the light of the fact of the increased costs of operation and in light of the fact that no relief has been granted for the last 23 years.

On the other hand, in the context of what you told us this committee, the full committee, the other day, I have some apprehension that quite a number of the members are even now laboring under the impression that this bill increasing the fees will afford some relief to the people in the more prompt processing of their applications. I hope that will be the result, and I hope that in giving me your appraisal of what might happen you can lend encouragement to that hope which would be of tremendous help in the passage of this bill.

What do you think about that?

Mr. WATSON. Mr. Chairman, there cannot be traced any direct relationship between the charges which we make for our services and the appropriations which we receive for our operations. We come here and suggest that fees be raised, and that seems to be appropriate. However, we go to another committee of Congress for our appropriations. The money which is received by the Patent Office from the charges made flows directly to the Treasury. We cannot retain it and spend it. We have no authority.

But it is my position, and I have stated it many times, that after all the whole welfare of the patent system is in your hands, in the hands of the Congress, and it would be better if the patent bar and those who are vitally concerned with its welfare should go along with a fee schedule which reflects, as I understand it, the wishes of the Members of Congress who have expressed themselves. And during my appearances before the several committees I have been questioned at various times about what we charge and why we should not charge more and so on, showing that those gentlemen entertained the belief that we should charge more. I thought it not to be very good strategy to request from the Appropriations Committee the money which we think to be absolutely essential to the operation of our Department without at the same time paying attention to those Members of Congress who have indicated their belief that the fees which we charged should be somewhat larger, particularly in view of the long record of the Patent Office as a nearly self-sustaining agency.

For many years the fees which were received aggregated the entire sum involved in the cost of operation. So we have that kind of background, which does not escape the notice of those who have the duty of appropriating money to keep the Patent Office in good working condition.

Now, I have represented to the members of the bar, who are vitally interested, and to industry groups, that very same theses—that we should not be constantly demanding more money and at the same time opposing any increase in fees.

I realize that I cannot assure them that if we do increase fees we shall also get increased appropriations. That is one of the difficulties of the situation. I wish there were somebody with whom we could make a lasting compact, but it is a little difficult, as you can readily appreciate.

For instance, I noted that the House Appropriations Committee expressed the view in its report in 1947 that the fees should be sufficiently large in the aggregate to pay the cost of operation. The present Committee on Appropriations said in its latest report that the Patent Office was never intended to be self-supporting, and further said that this business of full-cost recovery was not appropriate.

So we work in sort of a difficult situation in that respect. I do believe that if this fee schedule is placed in effect the Congress will be more inclined to give us the money which we need, and which we need very badly. There is no question about that.

The rate at which we are receiving applications which, as Mr. Williams has said, has recently increased, continues to be a high rate of filing and is exceeding our estimates for this year. I think that we may even receive close to 80,000 applications for the current fiscal year, compared with many fewer applications in the past.

It is just a question of manpower. We must have a staff which is adequate to dispose of the work as it comes in and that is difficult for the simple reason we have no control over the activities of the inventors of the country and their backers. When an application comes to the Patent Office we receive it, we process it, and we do the very best we can with it.

When applications keep coming in, in increased numbers, it just means that more men must be put to work examining them. If there were a way out of this whereby we could rest assured that, if the receipts from fees are at a certain high level our appropriations would also be at a certain high level, it will clear up a sort of ambiguity in the situation, but I suppose that this difficulty cannot be overcome and is inherent in the nature of the Government which we have.

Mr. WILLIS. I appreciate your problem. I am very much in favor of doing something to reduce the caseload.

Mr. WATSON. Well, it is a dangerous situation, in my opinion, with approximately 220,000 applications now pending. The situation may become so bad that the Patent Office will fall into disrepute. People may cease to patronize it.

In my practice as an attorney, clients have asked me, first, "Is this invention patentable?" And I have said after investigation, "Yes, it is patentable." They will ask, "How long will it take to get a patent?" I will say, "Oh, 3, 4 or 5 years, if you do not have complications." They will say, "Well, I do not think that I will go ahead with it under those circumstances. It is a speculation and it perhaps has a temporary vogue, and in 5, 6 or 7 years from now it might not be worth anything. Anyway, my personal circumstances are such that I will not file the application."

Now, that is discouraging. Those applications, disclosing new ideas, should be filed. It is clear that the backlog of pending applications should be brought down as quickly as possible.

Mr. WILLIS. My only regret is that I cannot in debate tell the Members of Congress this will bring it about. Because of the tremendous respect the patent attorneys and patent people have for you, there have been a lot of favorable articles printed all in your favor, all on your side, but to whom much is given, much is expected. This may be putting you in a box.

Mr. CURTIS. I would like to ask the Commissioner a question on that same point that the chairman has just raised. Let me put it

this way: if you go before the Appropriations Committee for an appropriation for the Patent Office and you say to them, "Gentlemen, 50 percent of the money that I am asking for will come back to the Government," that is a pretty good argument, is it not?

Mr. WATSON. Yes, it is.

Mr. CURTIS. Now, Mr. Commissioner, if you could say to the Appropriations Committee, "Gentlemen, 80 percent of this money that I am asking for will come back to the Government, you are really only giving us 20 percent of this figure that we request," would not that be still a better argument?

Mr. WATSON. Yes, it would.

Mr. CURTIS. Do you not think it is enough better so you can say that there is a very direct connection; and that if we increase your fees, you will almost surely get a better result from the Appropriations Committee, human nature being what it is?

Mr. WATSON. Mr. Curtis, that is exactly the theory upon which I have been working. I feel, as I have expressed myself, that those of the members who are on the Appropriations Committee would be inclined to give us more money if we had a larger return. Perhaps it is not appropriate for me to refer to any other division of Government, but take, for instance, a department like the Copyright Office. Their income from fees is quite adequate to cover their expenses. Their return from their schedule of fees aggregates the cost of operation, and their experiences before the Appropriations Committees are rather pleasant for that reason.

Mr. QUIGLEY. You have presented 2 alternatives here, 1 on the patent fees and 1 on the trademark registration fees. Are you prepared to give those a priority? Do you personally, or does your staff, have a preference for one over the other, or are these to be left to the wisdom and discretion and guess of this committee?

Mr. WATSON. I personally expressed a preference for both alternatives, and I speak from more experience in connection with the alternative patent fee.

Mrs. Leeds, who is Assistant Commissioner in charge of our trademark operations, is here, and I am sure that if you will let her answer that question on behalf of the trademark group, I think she will give the same answer. Is that not so, Mrs. Leeds?

Mrs. LEEDS. Yes.

Mr. QUIGLEY. So you are not only presenting the alternative proposals, you are recommending them?

Mr. WATSON. I am recommending them.

(The statement of Mr. Watson is as follows:)

STATEMENT OF ROBERT C. WATSON, COMMISSIONER OF PATENTS

This is a bill to fix the fees payable to the Patent Office for the services which it renders and the papers and documents which it furnishes the public upon request. If enacted into law, the total income accruing from the activities of the Patent Office and payable into the Treasury would be substantially increased. The bill was transmitted to the Congress by the Department of Commerce and is believed to reflect the wishes of both the executive and legislative branches of Government. It is substantially identical with H. R. 9794 of the 83d Congress, which was introduced at too late a period in the session of that Congress to permit it to be acted upon.

This bill purports to increase the amount of money received in the form of fees and is believed to be appropriate in view of the fact that there has been no upward adjustment of major fees of the Patent Office since 1932, despite steady rising costs.

The bill contemplates increases in those patent fees to which inventors and industry have long been accustomed, i. e., fees payable by the applicant upon the filing of his application and fees payable after it is allowed and before it is issued as a patent. Inventors and their backers have, from the time when our patent system first began to function, paid fees when securing patents. A substantial fee is necessary to make certain that the Patent Office is not deluged with applications which disclose and claim devices of little value. Fees larger than those necessary to bring about this screening must be regarded as having the production of revenue as their objective.

INCREASE IN COSTS

During the last 3 complete fiscal years, 1952, 1953, and 1954, the annual expenses of the Patent Office averaged $12,094,357 per year (but even this sum is not sufficiently large to enable us to employ a sufficient number of examiners to keep abreast of the inflow of new work which is 25 percent greater than it was 3 years ago). During this same period, 1952 to 1954, the average annual income of the Patent Office from fees and charges was $5,684,256. This amount was equal to 47 percent of the expenses.

In contrast, there may be mentioned the expenses and income of the prewar period. During the 1930's the expenses of the Patent Office averaged $4,535,000 per year and the income averaged $4,269,000 per year; the income was 94 percent of the expenses.

The last time that the major patent fees were changed was in 1932. Since that time the expenses of the Patent Office have increased considerably, particularly during the last 10 years. During the 1930's, as has been stated, the expenses averaged approximately $4½ million per year. Since that time, however, expenses have risen to slightly over $12 million, which is 2⅔ times the average during the 1930's. This increase has been due to several factors, the primary ones being the successive increases in salary costs and the increases in printing costs. About 78 percent of the Office expenditures goes toward the salaries of its employees. The average salary paid by the Patent Office today to its employees is about 125 percent higher than it was during the 1930's. About half of this increase has come about by statutory increases in the salary scales of Government employees, notable increases in the salary scales having taken place in 1945, 1946, 1948, 1949, and 1951. The other part of the increase in the average salary is due to changes in the position structure, consistent with civil-service regulations, and includes the effect of improved promotional opportunities for professional members of the staff.

The next major item of expense in the Patent Office is printing, mainly of copies of patents, which account for about 20 percent of the total expenses. This cost has also increased over the past 20 years. The printing rates paid to the Government Printing Office today are slightly over 100 percent greater than they were 20 years ago. The other items of costs in the Patent Office have also increased proportionately. Part of the increase in cost of operation is also attributable to the fact that present-day applications are on the average larger in size and disclose more complex inventions than those of past years and thus require more time and effort to dispose of.

These rises in costs are in general parallel to the rise in the cost of living generally. Using the Bureau of Labor statistics data of price indexes and the purchasing power of the dollar, the patent fees that the applicant for patent paid in 1934 has decreased to about half its value. Stated in other words, if the applicant was paying in the same proportion as he pays for other items, the fees should be about twice what they were 20 years ago.

These factors indicate that some increase in Patent Office fees is necessary.

AUTHORITY FOR PATENT OFFICE FEES

The Patent Office administers both the patent and trademark laws. The trademark work of the Patent Office is about 8 percent of the work of the Office insofar as expenses are concerned. Trademarks will be discussed separately, and what immediately follows is concerned primarily with patents and patent fees.

Patent fees are charged by the Patent Office under authority of section 41 of title 35. Section 41 specifies fees for 11 different items, and contains authorization for the Patent Office to establish charges for other services which are not specifically enumerated in the statutory schedule. Under this latter authority a number of fees have been established administratively by the Patent Office. The fees, both those fixed by statute and the administrative fees, comprise a

large number of different items but only a very few are of any substantial consequence.

PATENT FILING AND FINAL FEES

The most important fees in patent cases are the fee payable by an applicant for patent when he files the application, and the fee paid by him when he is to receive the patent. These 2 fees account for 58 percent of the total revenue of the Patent Office. The fee on filing the patent application is $30, and the fee payable when the patent is obtained, called the final fee, is also $30 (in addition there is a charge of $1 for each claim in excess of 20, but this plays only a small part in the total revenue received from these 2 fees). The filing fee and the final fee of $30 each were so established in 1932.

It may be interesting at this point to say a few words on the evolution of these fees, or those corresponding to them. The Patent Act of 1793 prescribed a single fee of $30 for obtaining a patent. When the patent law was revised in 1836, this fee of $30 was retained. The fee was payable on filing the application, but if the patent was refused the applicant was entitled to a refund of $20. Since a large proportion of applications are refused and do not issue as patents, administrative convenience led to a change in the law in 1861 to split the fee for obtaining a patent into 2 parts, 1 part payable on filing the application and the other part payable when the patent was to be granted. At the same time an increase in the fee was made. The act of 1861 established a filing fee of $15 and a final fee of $20. These 2 fees remained unchanged until 1922 when the filing fee was raised to $20, making both fees $20 each. In 1930 these fees were both changed to $25, and in 1932 they were both raised to $30, which are the fees today. The additional fee for claims over 20 was added in 1927.

PROPOSED INCREASE IN FILING AND FINAL FEES

The fees just mentioned being the major fees of the Patent Office, both in importance and in volume, it is apparent that any increase in Patent Office fees must primarily be directed to them if any substantial increase in revenue is to be obtained.

The bill proposes to raise the filing fee from $30 to $40, and proposes to raise the final fee from $30 to $50; at the same time a charge of $5 for each claim presented at any time which is in excess of 5 claims in the case, is also imposed. The result of these proposals would be to approximately double the present patent filing and final fees, on the average.

During the 3 years 1952–54, the Patent Office received an average of $2,057,733 per year from patent filing fees. Had the proposed rate been in effect and with the same volume of work, the receipts from filing fees would have been over $4 million, part of the increase (two-thirds of a million) coming from the increase of $10 in the basic filing fee, and part of the increase (1⅓ million) from the charge for claims over 5.

During this same period, the receipts from patent final fees averaged $1,221,805. Under the proposed rate of a basic final fee of $50 plus an additional charge for each claim over 5, the receipts would have been $2,451,100.

From both filing and final fees, the actual receipts were $3,279,538. Estimated receipts under the proposed schedule would have been $6,533,680, about twice the actual receipts.

FEE GRADUATED BY SIZE OF APPLICATION

It should be noted that part of the increase in the filing and final fees is based upon the number of claims in the application and would be variable.

The applications for patent which are filed in the Patent Office vary considerably in their nature and in the amount of work that is required to examine them. One application may be very short and simple and require only a few hours of the examiner's time, while another application may be considerably involved and lengthy and require days and even weeks of the examiner's time. The proposal has often been made and considered that the charge be made proportionately to the size of the application or to the amount of work involved in connection with the application. A study of the size of applications and of the amount of time involved in examining them shows that there is an average progressive increase in the time required in accordance with the number of claims presented in the application, and also the average number of claims in an application increases with the size of an application as measured by the number of pages of description and sheets of drawings. Accordingly, a part of the fee to be paid on applying for and on obtaining a patent is calculated according to the number of claims in the case.

For each claim over 5, a fee of $5 is proposed. This is approximately equivalent to charging according to the size of the case or according to the amount of work involved.

The distribution of claims in applications shows that 25 percent of the applications are filed with only 5 or fewer claims, and the charge for extra claims will not affect these applications. It is commonly accepted that many applications contain more claims than are necessary and the charge for claims over five will have the salutary effect of decreasing the number of unnecessary claims in some cases and thus saving work on the part of the Patent Office. Taking into account the anticipated decrease in the number of claims, the charge of $5 for each claim presented over 5 is estimated as being equivalent to about $20 per application filed, in revenue received on filing, and about $10 per patent issued in revenue received on issuing the patent.

ALTERNATE PROPOSAL

Some objections have been raised to the charge of $5 for each claim over 5 presented in an application, particularly with respect to the amount of the charge. Should these objections be considered sufficient to warrant disapproval of this amount, an alternate proposal is presented which would produce the same amount of revenue but which would distribute the charge in a different manner.

The size of an application is measured by the number of claims, the number of pages of specification and the number of sheets of drawing. One of these factors alone may not be a sufficient indication of the size nor of the amount of work which would be involved in disposing of the application. Consequently, it is proposed that the variable charge be based upon all three of these factors. A charge of only $2 for each claim over 5, $2 for each page of specification over 10, and $2 for each sheet of drawing over 1, is proposed as a substitute for the charge of $5 for each claim over 5. It has already been stated that 25 percent of applications filed have 5 or less claims, these would not be affected by the charge per claim. The proportion of applications with 10 or fewer pages of specification is 44 percent of the total, these would not be affected by the charge per page of specification. The number of applications with no or only 1 sheet of drawing is 59 percent of the total, these would not be affected by the charge per sheet of drawing. The total amount collected from the substitute charges would be about the same as, probably even a little more than, the amount collected from the charge per claim of the bill.

The exact amendment would be somewhat as follows:

Page 1 of the bill, cancel lines 6 to 9, and substitute:

"1. On filing each application for an original patent, except in design cases, $40; in addition, $2 for each claim presented at any time which is in excess of 5 claims in the case, $2 for each sheet of drawing over 1, and $2 for each page of specification over 10, the size of such pages to be determined by the Commissioner; if the additional fees due are not received at the time of filing the application they may be paid within 6 months thereafter without affecting the filing date."

PRINTED COPIES OF PATENTS

The source of revenue which produces the next highest percentage of the total receipts of the Patent Office, after the patent filing and final fees, is the charge for printed copies of patents. These patents must be printed and made available to the examining corps for use in the examination of later filed applications, being the most important part of the Patent Office Library and vitally essential to the examination system. The library must be maintained and patents added week by week as issued. The cost of maintaining the library is to be added to salary costs in determining the total cost of examining.

The revenue received from the sale of copies of patents during the 3 years 1952–54 averaged $1,049,076 (not counting design and trademark copies), which was about 18½ percent of the total receipts of the Patent Office. The charge for copies of patents is 25 cents, which was fixed in 1946. Prior to that time the charge was 10 cents per copy, which had been established in 1919. The bill does not propose to change the present charge of 25 cents per copy except in a minor respect.

The bill contains a proviso authorizing the Commissioner to establish a charge not to exceed $1 per copy for patents in excess of 25 pages of drawings and specification, and for copies of plant patents printed in color. These patents are not very numerous in proportion to the total patents printed and the purpose of this

proviso is primarily to enable a higher price to be charged for the patents which are most expensive to reprint, to discourage their purchase except when necessary. The added revenue which would be received, assuming the higher price were to be charged, is estimated at $15,000 per year.

Printing copies of the specifications and drawings of patents must be regarded as an essential feature of an examination system of granting patents. Aside from the printed copy which is attached to the grant, many printed copies are needed for the examiners' search files which are used when searching the prior art in the examination of new applications, and for the library (including the public search room), to be used for library purposes.

Of the printed copies which are disposed of, part are used by the Patent Office itself, for the search files and for other purposes. Part of the copies are supplied to foreign governments in exchange for printed copies of the patents issued by those governments. These foreign patents are placed in the examiners' search files to be utilized as part of the prior art to be searched, and are also placed in the library to be utilized for library purposes. This is a way of obtaining material essential to the operation of the Patent Office which would otherwise have to be paid for in cash. Another part of the printed copies are supplied to public libraries in the United States at a nominal charge, to be used by the public. About half of the copies are used for these Patent Office and public service purposes.

It is thus seen that the printing of patents is an essential part of having an examination system. The copies which are sold to the public may be looked upon as a byproduct or a surplus, from which some revenue is obtained. With this view the purchasers of the printed copies should not be required to pay the entire expense of producing all the copies utilized. The present charge of 25 cents is believed to be a reasonable charge under the circumstances.

PHOTOCOPIES OF RECORD

The source of revenue (excluding trademark fees) which is next in volume of receipts is the supplying of photocopies of records, which brings in about 3½ percent of the total Patent Office receipts. The charge for photocopies is fixed administratively, and was raised from 20 cents per sheet to 30 cents per sheet on January 1, 1953. This item is not included in the bill since it is one of the administrative fees, but it is mentioned here to make the reference to the major patent fees complete. There are no plans for changing this fee since, with the recent increase, which has not met with any dissatisfaction, the charge for copies of records is sufficient to pay for the work involved in producing such copies. For the 3 years 1952–54, the average cost in this area was $314,123 while the actual receipts averaged $314,877, but half of the period was at the old lower charge; the receipts currently are greater than the expenses by a wider margin.

RECORDING ASSIGNMENTS

The next significant item is the charge for recording assignments, which produces about 2½ percent of the receipts of the Patent Office. The present charge for recording assignments is a basic charge of $3 for each paper, with an additional charge depending upon the size of the paper. The present bill proposes to raise the basic charge to $10, both for patents and trademarks. This is somewhat in excess of the expenses involved in recording assignments, but this is believed to be a place in which such a charge can be imposed.

The expenses of the Assignment Branch of the Patent Office averaged $151,091 per year during the 3 years 1952–54 and the receipts averaged $151,716. The receipts under the proposed fee would be $472,635 per year.

DESIGN PATENTS

The next item in importance from the standpoint of the amount of receipts is the fee charged for design patent applications, which accounts for about 2 percent of the total Patent Office receipts. Design patents are issued for a term of 3½, 7, or 14 years, as the applicant may request, and the present fees fixed by statute are $10, $15, and $30, respectively. These fees were established in 1861 and there has been no change since then. The present bill proposes to change these fees to $20, $30, and $40, respectively.

The proposed fees would raise the income from design applications from $90,000 to $146,000.

REMAINING PATENT FEES

The remaining patent fees chargeable in the Patent Office are of minor significance from the standpoint of revenue produced. The bill proposes to change only two others.

The fee for applying for a reissue patent is raised from $30 to $40, with $5 for each claim in excess of 5, to parallel the change in the other fees. The fee for a certificate of correction of an applicant's mistake is changed from $10 to $15. The revenue from both of these fees is quite small in proportion to the total receipts of the Patent Office and they are adjusted incidental to the changes in the other fees.

CHARGES TO OTHER GOVERNMENT AGENCIES

The bill contains a provision requiring other Government departments and agencies to pay the same fees that are paid by private individuals when they have business before the Patent Office, except in connection with the application fees for applications coming under section 266 of title 35. Various Government departments file large numbers of patent applications in the Patent Office and order large numbers of patent copies and other copies of records. Considerable dissatisfaction has been expressed that the Government should obtain these materials and services free when private individuals must pay. Altogether, between 1 and 2 percent of the work of the Patent Office is done free for other Government departments or agencies. The proposal would still waive application and issue fees in the case of inventions of Government employees, but all other fees would be charged. For the fiscal year 1954 the total fee value of items and services furnished other Government agencies was $109,869 (at the current rates of fees). Under the proposal all except $43,520 of this amount would have been payable. At the new rates of fees proposed in the bill, approximately $100,000 per year would be realized.

TRADEMARK FEES

In the preceding discussion very little has been said concerning trademarks. As has been stated, the trademark work of the Patent Office accounts for about 8 percent of the expenses. There is considerable unanimity of opinion among the interested segment of the bar that fees for trademarks could be reasonably made such that the total expense of the trademark operation is recovered. The situation in connection with trademarks is different from that in connection with patents, since trademarks are registered only when there is a going business in connection with the goods on which the trademark is used, and the expense of registering a trademark could be considered as an ordinary minor business expense.

The bill proposes a number of changes in the schedule of fees charged in trademark cases which are such that the total receipts would be approximately equal to or slightly greater than the expenses involved in the trademark section of the Patent Office.

Trademark fees are specified in section 31 of the Trademark Act of 1946 (15 U. S. C. 1113). Section 3 of the present bill completely rewrites section 31 of the act; it arranges the different fees in separately numbered paragraphs, and omits a number of minor fees specified in the present statute so that they can be fixed administratively, paralleling the corresponding section of the patent statute. The 15 fee items listed in section 3 of the bill are not all new or changed; only items 2, 4, 5, 6, 9, 10, and 14 represent changes over the present law.

The basic trademark fee is a fee of $25 payable when an application for registration of a trademark is filed (item 1). This fee is not proposed to be changed by the bill.

Item 2 of section 3 of the bill proposes a new fee of $10 to be paid when an application is allowed, a final fee similar to the final fee in patent cases. This new item would produce an estimated revenue of $160,000 per year but would involve a certain amount of administrative expense.

Some objection has been encountered to this new fee because it introduces some new steps in the procedure, requiring the writing of additional letters and the consumption of additional time. A substitute proposal is therefore made. This is to raise the filing fee $10 in place of the proposed $10 final fee. This would be more convenient and would not involve any additional administrative expense; also the returns would be somewhat higher, $177,576 instead of $160,000.

Item 4 is a new fee. The Trademark Act provides in section 8 that a registrant must file an affidavit of use during the sixth year of the life of the registration in order to maintain the registration in force. If this affidavit is not filed

the registration is canceled. The filing of the affidavit is not a mere formality from the standpoint of the work involved in the Patent Office, since certain requirements must be met and the affidavits must be examined and either accepted or refused, and, if refused, further proceedings take place. In view of this fact, and the fact that the affidavit is necessary to preserve the life of the registration, it is proposed to charge a fee of $10 on the filing of these affidavits. The estimated revenue would be $130,000 per year but, as this new fee is not applied to existing registrations, this amount will not be realized until after 5 years have passed.

Items 5, 6, 9, and 10 make some minor changes or adjustments in the fees involved.

Item 14 is the fee for recording assignments; it has been changed in the same manner as for patent assignments.

The cost of all trademark activities, including the appropriate proportion of general activities of the Patent Office, averaged $959,529 per year during the years 1952–54. During this same period the receipts averaged $652,176 per year. If the proposed fee schedule had been in operation the receipts would have been $994,973, which is greater than the cost of operation. With the substitute which has been suggested, the receipts would have been even greater, $1,012,549.

EFFECT OF PROPOSED CHANGES

The above discussion presents the changes in patent and trademark fees proposed by the present bill. It has been stated that the income of the Patent Office for the 3 years 1952–54 averaged $5,684,256, which was 47 percent of the cost of $12,094,357. If the proposed schedule had been in operation, and assuming the same volume of business, the receipts would have been $9,661,458, which would be 80 percent of the cost. This is based on a cost of operation of $12 million. If the cost is raised to say $14 million, the percent recovery would of course be different, and it is estimated at about 70 percent instead of 80 percent.

Estimated effect of changes in fees, as proposed in H. R. 4983

[Based on average volume of business during fiscal years 1952–54]

Item	Present fee	Actual receipts, 1952–54 average	Proposed fee	Estimated receipts, 1952–54 basis	Increase
Patent filing fee	$30	$2,025,390	$40	$2,721,720	$696,330
Sec. 1, item 1	$1 each claim over 20	32,343	$5 each claim over 5	1,360,860	1,328,517
Patent final fee	$30	1,215,050	$50	2,042,583	827,533
Sec 1, item 2	$1 each claim over 20	6,755	$5 each claim over 5	408,517	401,762
Design fee: Sec. 1, item 3	$10, 15, 30	90,003	$20, 30, 40	146,006	56,003
Reissue fee: Sec. 1, item 4	$30 plus $1 each claim over 20.	5,945	$40 plus $5 each claim over 5.	9,784	3,839
Certificate of correction, Sec. 1, item 8.	$10	877	$15	2,632	1,755
Patent copies: Sec. 1, item 9.	$0.25	1,049,076	$0.25 $1 for large ones and plant patents in color.	1,087,076	38,000
Recording assignments Sec. 1, item 10 Sec. 3, item 14	$3 for 6 pages $1 for each 2 pages over. $0.50 for each extra item.	130,851	$10 for 6 pages $1 for each 2 pages over. $1 for each extra item.	451,770	320,919
Trademark issue fee: Sec. 3, item 2.	None	0	$10	160,000	160,000
Affidavit fee: Sec. 3, item 4	do	0	$10	130,000	130,000
Petition to revise: Sec. 3, item 5.	do	0	$10	1,000	1,000
Interference fee: Sec. 3, item 6.	do	0	$25	2,500	2,500
New certificate: Sec. 3, item 9.	$10	1,053	$15	1,580	527
Certificate of correction: Sec. 3, item 10.	$10	433	$15	650	217
Feeds not changed		1,126,480		1,134,780	8,300
Totals		5,684,256		9,661,458	3,977,202

NOTE.—Estimated receipts include those which would be applicable to Government agencies, as provided by sec. 2 of the bill, aggregating $100,000.

Source: Department of Commerce, Patent Office. June 1, 1955.

Mr. WILLIS. We thank you very much, Mr. Watson.

Mr. BRICKFIELD. Mr. Chairman, I have here a tabulation of Patent Office receipts and expenditures, and a complete analysis of Patent Office fees, for insertion in the record at this point.

Mr. WILLIS. All right, insert it in the record.

(The matter referred to is as follows:)

Statement of expenses and income, fiscal years 1900 through past year

Year	Expenses	Income [1]		Year	Expenses	Income [1]	
		Amount	Percent of expenses			Amount	Percent of expenses
1900	$1,247,828	$1,358,228	109	1928	$3,839,772	$3,627,805	94
1901	1,288,970	1,408,878	109	1929	4,391,860	3,693,460	84
1902	1,329,925	1,491,539	112	1930	4,552,685	3,990,042	88
1903	1,423,094	1,591,251	112	1931	4,832,278	4,470,310	93
1904	1,469,124	1,663,880	113	1932	5,314,852	4,306,389	81
1905	1,472,468	1,737,334	118	1933	4,588,585	4,245,899	93
1906	1,538,149	1,811,298	118	1934	3,876,785	4,197,024	108
1907	1,584,490	1,859,593	117	1935	4,153,591	4,075,387	98
1908	1,608,292	1,874,181	117	1936	4,446,464	4,171,867	94
1909	1,887,443	1,975,920	105	1937	4,492,273	4,356,331	97
1910	1,953,550	2,022,043	104	1938	4,476,913	4,346,860	97
1911	1,957,002	1,987,779	102	1939	4,615,505	4,527,292	98
1912	2,025,912	2,074,788	102	1940	4,663,539	4,344,967	93
1913	1,924,459	2,065,067	107	1941	4,743,991	4,149,142	87
1914	1,929,133	2,154,375	112	1942	4,726,304	3,678,028	78
1915	2,087,581	2,253,341	108	1943	4,610,780	3,304,477	72
1916	2,051,657	2,316,402	113	1944	4,858,851	3,450,656	71
1917	2,095,139	2,300,423	110	1945	5,041,187	3,777,632	75
1918	2,131,616	2,086,319	98	1946	5,914,470	4,427,682	75
1919	2,178,578	2,095,096	96	1947	7,262,472	4,689,441	65
1920	2,436,561	2,595,697	107	1948	8,603,032	5,525,842	64
1921	2,640,374	2,689,476	102	1949	10,101,938	5,201,598	51
1922	2,722,205	2,870,287	105	1950	11,023,036	5,448,342	49
1923	3,112,022	3,004,326	97	1951	11,248,339	5,503,881	49
1924	3,273,341	3,027,468	92	1952	12,219,338	5,377,667	44
1925	3,775,477	3,240,030	86	1953	12,129,581	5,620,310	46
1926	3,857,952	3,429,674	89	1954	11,933,934	6,054,792	51
1927	3,769,604	3,464,633	92				

[1] Beginning with 1923, income is stated in terms of total receipts less refundments, as further adjusted by increase or decrease during the year in the unearned fee deposit fund for unredeemed coupons, unapplied customers' account balances, and unidentified collections. The income so stated is equivalent to earned fees. For years prior to 1923, the accounting system in use did not disclose figures on total receipts, refundments, and unearned deposit fund balances; data of the earned fee concept are not available and the income figures taken from annual reports are stated in terms of total receipts less refundments. All amounts are exclusive of income received by the Superintendent of Documents for the Official Gazette and other Patent Office publications sold through the Government Printing Office.

Source: Annual Reports of Commissioner of Patents.

ANALYSIS OF PATENT OFFICE FEES AND RECEIPTS

(Prepared by U. S. Patent Office)

A. AUTHORITY FOR CHARGING FEES

Fees are charged by the Patent Office under authority of two separate sections of the statutes, one a section of the patent statute and the other a section of the trademark statute.

Section 41 (a) of title 35, United States Code, prescribes 11 different fees. Section 41 (b) authorizes the Patent Office to establish charges for copies of records, publications, and services supplied by the Patent Office which are not specified in subsection (a). Acting under this authority a number of fees have been fixed. A table of fees, including both those prescribed by statute and those established by the Office, appears as Rule 21 of the Rules of Practice in Patent Cases (37 C. F. R. 1.21). This rule lists 32 numbered items.

Section 31 of the Trade-Mark Act of 1946 (15 U. S. C. 1113) specifies about 15 fees payable in connection with trademark matters. These, together with other fees established by the Office, are listed in Rule 2.1 of the Rules of Practice in Trade-Mark Cases (37 C. F. R. 100.21). This rule lists 24 items. Some of the items in the trade mark rule are duplicates of items in the patent rule.

The following sections analyze the various fees, explaining their nature and the amount of revenue received, and giving some background information concerning many of them.

B. MAJOR FEES

There are only 9 items of revenue which during the last 3 years, have brought in receipts averaging over $50,000 each per year. Together, these items account for 96 percent of the receipts of the Patent Office. These items, the average amount received from each during the fiscal years 1952–54, and the percent of total receipts due to that item, are given in the following table.

	Amount received, annual average 1952–54	Percent of total receipts
1. Patent filing fee	$2,057,733	36.20
2. Patent final fee	1,221,805	21.49
3. Design fees	90,003	1.58
4. Trademark filing fee	443,940	7.81
5. Patent copies	1,049,076	18.46
6. Photostat copies	268,852	4.73
7. Recording assignments	130,851	2.30
8. Appeals to Board of Appeals	98,400	1.73
9. Trademark renewal fees	87,324	1.53
Total	5,447,984	95.83
All other fees	236,272	4.17

These nine major fees are discussed in the next section, using the same numbering as in the above table.

C. ANALYSIS OF MAJOR FEES

1 and 2. *Patent filing and final fees.*—The patent statute provides that a fee of $30 (plus $1 for each claim in excess of 20) must be paid on filing each application for patent, and on issuing each patent. These two fees, called the filing fee and the final fee, are the basic fees concerning patents. Together they account for 57.69 percent of the total Patent Office receipts.

Omitting the $1 for claims in excess of 20, which is a minor amount treated under the next heading, the amounts received from these 2 fees in the last 3 years are as follows:

	Filing fee	Final fee	Total
1952	$1,831,710	$1,271,790	$3,103,500
1953	2,025,000	1,238,310	3,263,310
1954	2,219,460	1,135,050	3,354,510
Average	2,025,390	1,215,050	3,240,440

The amount received in final fees is only about 60 percent of the amount received in filing fees since many applications do not become patents; only about 60 percent of applications filed are patented.

The historical development of these fees is as follows. The Patent Act of 1836 prescribed $30 as the fee for obtaining a patent (there was a higher fee for foreigners for a short time). This fee was payable on filing the application, but if the patent was refused, the applicant was entitled to a refund of $20. Since such a large proportion of the applications are refused and do not issue as patents, administrative convenience led to a change in the law in 1861 to split the fee for obtaining a patent into 2 parts, 1 part payable on filing the application, and the other part payable when the patent was to be granted; at the same time an increase was made. The act of 1861 established a filing fee of $15, and a final fee of $20. These 2 fees remained unchanged until 1922 when the filing fee was raised to $20, making both the filing fee and the final fee $20 each. In 1930 both of these fees were changed to $25, and in 1932 they were both raised to $30, which are the fees today. The additional fee for claims over 20 was added in 1927.

1a and 2a. *Fee for excess claims.*—In addition to $30, the statute prescribes a fee of $1 for each claim over 20 on filing the application, and also $1 for each

claim over 20 when the patent is issued. The receipts from filing fees listed as item 1 in section B include $32,343 received on claims over 20, and the receipts from final fees listed as item 2 include $6,755 received on claims over 20.

The fees for claims over 20 were established in 1927. The purpose was not to raise revenue but to decrease excess numbers of claims in applications and thus save work on the part of the Office. While one result was to decrease the proportion of applications filed and patents issued with more than 20 claims, nevertheless the average number of claims in applications and patents actually increased, since the average was well under 20. The amounts received from these 2 fees in the last 3 years are as follows:

	Filing	Issue	Total
1952	$29,095	$7,075	$36,170
1953	33,370	6,882	40,252
1954	34,563	6,308	40,871
Average	32,343	6,755	39,098

3. *Design fees.*—Design patents are issued for a term of 3½, 7, or 14 years as the applicant may request, and the fees fixed by statute are $10, $15, and $30, respectively. These fees were established in 1861 and there has been no change since. They are payable on filing the application (except that an application for one of the shorter terms may be amended to one of the longer terms on paying the difference) and there is no final fee as in the case of other patents.

The amounts of design fees received are as follows:

	3½ years ($10)	7 years ($15)	14 years ($30)	Total
1952	$18,590	$12,255	$58,050	$88,895
1953	26,610	13,635	49,680	89,925
1954	29,720	14,850	46,620	91,190
Average	24,973	13,580	51,450	90,003

4. *Trademark filing fee.*—The basic fee in connection with the registration of trademarks is a statutory filing fee of $25. There is no final fee as in connection with patent applications. The Trade-Mark Act of 1905 established $10 as the fee for registering a trademark. This was raised to $15 in 1930 and to $25 by the Trade-Mark Act of 1946 which went into effect July 5, 1947.

The amounts received from this trademark filing fee are as follows:

1952	$404,215
1953	439,270
1954	488,335
Average	443,940

5. *Patent copies.*—Printed copies of the specifications and drawings of issued patents are published and sold for 25 cents per copy. From 1896 this charge was 5 cents per copy, with lower rates of 3 cents, 2 cents, and 1 cent for copies purchased in quantity. In 1919 the price was fixed at 10 cents by statute. This was increased to 25 cents in July 1946.

The amounts received are as follows:

1952	$1,025,566
1953	1,011,266
1954	1,110,395
Average	1,049,076

6. *Photostat copies.*—The Patent Office supplies large quantities of photostat copies of its records and printed publications. Prior to 1930 the rate charged was 15 cents per page. In 1930 it was changed to 20 cents per page where it remained until January 1. 1953, when it was raised to 30 cents per page. This fee is fixed administratively.

The amounts received are as follows:

1952	$200, 595	($300, 893)
1953	248, 517	(307, 199)
1954	357, 443	(357, 443)
Average	268, 852	(321, 845)

The receipts for 1952 are at the old rate of 20 cents per page and for 1953 partly at the old rate and partly at the new rate of 30 cents. The figures in parentheses represent an approximation of what would have been received had the new rate been in effect throughout these years.

7. *Recording assignments.*—The fees for recording assignments of patents and trademark registrations are specified in the statutes and are:

For recording every assignment, agreement or other paper, not exceeding 6 pages	$3. 00
For each additional patent (trademark) or application included or involved in 1 writing, where more than 1 is so included or involved, additional	. 50
For each additional 2 pages or less	1. 00

The amounts received are as follows:

1952	$133, 452
1953	127, 293
1954	131, 809
Average	130, 851

Prior to 1927 the recording fees were calculated on the basis of the number of words rather than the number of pages and were somewhat less than the present scale of fees.

8. *Appeals to Board of Appeals.*—The fee for appealing to the Board of Appeals in the Patent Office in patent cases was established by statute in 1866 at $10, and was raised to $15 in 1927. On January 1, 1953, this fee was raised to $25.

The amount received is as follows:

1952	$72, 525	($120, 875)
1953	100, 700	(130, 075)
1954	121, 975	(121, 975)
Average	98, 400	(124, 308)

The first year in this table is at the old rate of $15, the second year is partly at the old rate and partly at the new rate of $25. The figures in parentheses are approximations of what the receipts would have been had the new rate been in effect all 3 years.

9. *Trademark renewal fees.*—A trademark registration expires in 20 years but it may be renewed at the end of this period for an additional 20 years. The fee for renewal is $25 with a penalty of $5 for late payment. The renewal fee was established at $10 by the Trade-Mark Act of 1905. This was raised to $15 in 1930, and to $25 in 1947 at which time the penalty for late payment was added.

The amounts received are:

	Renewal fee	Penalty	Total
1952	$84, 650	$830	$85, 480
1953	77, 375	1, 035	78, 410
1954	96, 625	1, 455	98, 080
Average	86, 217	1, 107	87, 324

D. INTERMEDIATE FEES

Seventeen fees from which were received an average of less than $50,000 and more than $4,000 per year during the last 3 years are grouped as intermediate fees. The receipts from all of these 17 items together supplied 3.78 percent of the total receipts of the Patent Office. These fees are listed in the following table with the average annual amount received.

10. Reissue applications	$5,945
11. Petitions to revive	5,710
12. Trademark oppositions	25,658
13. Trademark cancellations	4,533
14. Trademark appeals	5,875
15. Trademark republications	13,663
16. Drawings and corrections	36,500
17, 18. Design and trademark copies	28,712
19. Certification of copies	27,220
20. Subscription service for copies	11,835
21. Special handling fee for copies	5,841
22. Title reports	11,661
23. Abstracts of title	9,204
24. Copies of trademark grants	8,055
25. Class lists	7,003
26. Photoprints of drawings	7,519
Total	214,934

The following section analyzes the above fees in somewhat greater detail.

E. ANALYSIS OF INTERMEDIATE FEES

10. *Reissue applications.*—A reissued patent may be obtained to correct some defect or insufficiency in the original patent. The fee for filing a reissue application is $30, with no final fee. This fee was raised from $15 to $30 in 1861. On January 1, 1953, a small additional charge for extra claims was made.

The amount received is as follows:

1952	$5,520
1953	6,378
1954	5,937
Average	5,945

The last 2 years of this table include $48 and $177, respectively, for extra claims.

11. *Petitions to revive abandoned applications for patent.*—This fee, established by statute in 1932, is $10.

The amount received is as follows:

1952	$5,690
1953	6,230
1954	5,210
Average	5,710

12. *Trademark oppositions.*—The statutory fee for filing an opposition to a trademark registration is $25, having been $15 before 1947.

The amounts received are:

1952	$24,805
1953	25,720
1954	26,450
Average	25,658

13. *Trademark cancellation.*—The statutory fee for filing a petition to cancel a trademark registration of another is $25. Prior to July 5, 1947, these was no fee.

The amounts received are:

1952	$3,875
1953	5,075
1954	4,650
Average	4,533

14. *Trademark appeals.*—The statutory fee for appealing to the Commissioner in trademark cases is $25, having been raised from $15 in 1947.

The amounts received are:

1952	$5,850
1953	6,200
1954	5,575
Average	5,875

15. *Trademark republications.*—This is a statutory fee of $10 for taking certain action under section 12 (c) of the Trademark Act of 1946 in connection with trademark registrations issued under the old law. This item is nonrecurring, and in time will practically disappear.

The amounts received are:

1952	$11,650
1953	13,200
1954	16,140
Average	13,663

16. *Drawings and corrections.*—Some drawings are made for applicants at cost, with a minimum charge of $15 per sheet in patent cases and $5 per sheet in trademark cases. Corrections to drawings are made at cost with a minimum charge of $1.

The amounts received are:

1952	$38,268
1953	36,042
1954	35,190
Average	36,500

17, 18. *Design and trademark copies.*—Printed copies of design patents and of trademark registrations are sold at 10 cents each. This fee is less than that for patents since they are smaller and less expensive to print. The portion of receipts for each of the two items is estimated.

The amounts received are:

	Designs	Trademarks	Total
1952	$5,502	$31,178	$36,680
1953	3,332	18,880	22,212
1954	4,087	23,158	27,245
Average	4,307	24,405	28,712

19. *Certification of copies of records.*—Prior to July 5, 1947, the charge for certifying copies of records was 50 cents in both patent and trade-mark cases. In 1947 it was changed to $1 in trademark cases, but it was not changed to $1 in patent cases until January 1, 1953.

The amounts received are—

1952	$19,848	($31,467)
1953	24,706	(30,908)
1954	37,105	37,105
Average	27,220	(33,160)

The figures in parentheses are approximations of the receipts, had the fee been $1 for all cases during the 3 years.

20. *Subscription service fee for patent copies.*—This is a service charge to those who by advance order regularly buy copies of patents relating to designated subject matter as they are issued.

The amounts received are—

1952	$11,731
1953	12,097
1954	11,677
Average	11,835

21. *Special handling fee on patent copies.*—This is a special handling fee of 10 cents on rush orders for copies of patents. It was established in 1950.
The amounts received are:

1952	$4, 684
1953	5, 438
1954	7, 402
Average	5, 841

22. *Title reports for Office use.*—This fee is $1, and the receipts are primarily from trademark cases. The fee is charged when the Office searches its assignment records in certain cases.
The amounts received are:

1952	$5, 777
1953	6, 994
1954	22, 213
Average	11, 661

The increase in receipts for fiscal year 1954 is attributable to title reports in connection with affidavits which must be filed under section 8 of the Trademark Act of 1946, the first full year in which this requirement came due being fiscal year 1954.

23. *Abstracts of title.*—The fee for supplying an abstract of title from the assignment records is, for both patent and trademark cases—

For the search, 1 hour or less and certificate	$3. 00
Each additional hour or fraction thereof	1. 50
For each brief from the digest of assignments, of 200 words or less	1. 00

This fee is statutory in trademark cases and administrative in patent cases. The amounts received are:

1952	$8, 928
1953	8, 419
1954	10, 265
Average	9, 204

24. *Copies of trademark grants.*—These are single-sheet copies of records for which a charge of $1 each is made. This was raised from 50 cents in 1947.
The amounts received are:

1952	$8, 133
1953	8, 106
1954	7, 925
Average	8, 055

25. *Class lists.*—Lists of patents in each subclass of the Patent Office classification of patents are supplied at 20 cents per sheet.
The amounts received are:

1952	$7, 684
1953	8, 211
1954	5, 115
Average	7, 003

26. *Photoprints of drawings.*—Photoprint copies of drawings were supplied at 20 cents per sheet prior to January 1, 1953, when the charge was raised to 30 cents.
The amounts received are:

1952	$6, 797	($10, 196)
1953	6, 843	(8, 649)
1954	8, 916	8, 916
Average	7, 519	(9, 254)

The first year is at the old rate and the second year partly at the old and partly at the new rate of 30 cents. The figures in parentheses are approximations of the receipts had the fee been 30 cents during the 3 years.

F. MINOR FEES

The other fees charged by the Patent Office bring in less than $4,000 each and all together account for less than four-tenths of 1 percent of the total Patent Office receipts. Some of these fees, namely the ones that average over $1,000 each per year, are listed in the following paragraphs.

27. *Certificate of correction of patentee's mistake.*—This is a new fee of $10 established January 1, 1953. The amount collected in the first half-year was $1,230, but this is higher than normal since this type of correction did not exist before the new patent law went into effect. The amount received in 1954 was $1,400.

28. *Issuance of new certificate of registration following change of ownership or correction of a mark.*—This is a statutory fee of $10, and the following amounts have been received:

1952	$1,490
1953	740
1954	930
Average	1,053

29. *Trademark registration disclaimers, corrections, amendments, etc.*—A trademark registration may be corrected, amended, or revised under several different sections of the Trademark Act; the fee for each, established in 1947, is $10. The amounts received in the last 3 years are as follows:

1952	$830
1953	970
1954	2,150
Average	1,317

30. *Manuscript copies of records.*—The charge is 10 cents per 100 words and the following amounts have been received.

1952	$2,680
1953	2,350
1954	2,572
Average	2,534

31. *Translations.*—This is a fee of $1.25 per 100 words for translations made of references cited in patent applications and of papers filed in the Office. The amounts received are:

1952	$2,408
1953	2,132
1954	2,696
Average	2,412

32. *Delayed payment of final fee.*—The amount of this fee is $10, and the following was received.

1952	$2,250
1953	1,760
1954	1,700
Average	1,903

33. *Box rental.*—This is a charge of $5 fixed by the Office (raised from $1 in 1949) for rental of a local delivery box for patent copies. The amounts received are:

1952	$2,007
1953	1,120
1954	3,242
Average	2,123

34. *Registration fee for attorneys and agents.*—This fee is $5 and the following amounts have been received:

1952	$1,290
1953	1,285
1954	2,265
Average	1,613

35. *Disclaimers in patents.*—The statutory fee for filing a disclaimer in a patent is $10, which was established in 1837.

The amounts received are as follows:

1952	$1,310
1953	1,180
1954	740
Average	1,077

36. *Library subscription fee.*—Public libraries obtain copies of all patents issued in 1 year for $50 which is fixed by statute. The following amounts have been received:

1952	$1,150
1953	1,200
1954	1,200
Average	1,183

37. *Mounting of prints.*—This is a service charge of $1 in mounting prints to be used as temporary drawings in patent applications.

The amounts received are:

1952	$1,360
1953	1,100
1954	1,016
Average	1,159

Other fees.—The remaining fees, about seven in number, are so minor that they are not listed. The total amount received from these remaining fees averages $4,310 per year, or less than one-tenth of 1 percent of total Office receipts.

Mr. WILLIS. Our next witness is Mr. Cyril A. Soans.

Will you please have a seat and identify yourself and state the capacity in which you appear?

STATEMENT OF CYRIL A. SOANS, ATTORNEY

Mr. SOANS. My name is Cyril A. Soans. I live in River Forest, Ill., and I practice law in Chicago, specializing in patents, trademarks, and copyrights. I am senior member of the firm of Soans, Glaister & Anderson, with which I have been connected, or its predecessors, for about 40 years. That firm goes back to the year 1866.

I have been practicing now not only in the Patent Office but before the Federal Courts and various circuit courts of appeal and the district courts of the United States for the past 40 years, having been admitted to the bar in the year 1915.

Now that I have identified myself, Your Honor, I wish to make the statement that I represent only myself. I do not represent any association. I come here paying my own expenses, and you can draw your own conclusions from that.

My experience was in engineering between the year 1904 and 1913 in the electrical field.

During the past 40 years I have filed in my own name and obtained a few United States patents. I have now pending in the United

States Patent Office in my own name an application for what the Supreme Court perhaps would call a gadget.

Mr. WILLIS. In other words, you have a novel patent—the usual run of patent?

Mr. SOANS. The usual run of patents.

Mr. WILLIS. According to the Supreme Court?

Mr. SOANS. Yes.

Of course, the firm that I represent represents small investors, medium-size investors, and fairly large corporations, so I have a complete background of the entire field.

I have filed with the committee copies of my statement, and I do not think it is necessary for me to take the time of this tribunal to read the paper.

Mr. WILLIS. I think that it would be better if you would paraphrase it and we will insert it in the record at this point.

(The paper referred to is as follows:)

STATEMENT OF CYRIL A. SOANS IN SUPPORT OF THE BILL

QUALIFICATIONS OF THE WITNESS

My name is Cyril A. Soans. I live in River Forest, Ill. I was born in England on May 31, 1884. I received an engineering education, and was engaged in various lines of industry in a technical capacity in the United States between 1904 and 1913, at which time I became interested in the practice of patent law. I was admitted to practice law in Illinois in 1915, and have since been admitted to practice in many of the United States district courts and circuit courts of appeal throughout the United States.

I have practiced in the patent field in the United States for more than 40 years, during all of which time I have been connected with the firm of Soans, Glaister & Anderson of Chicago, of which I am the senior partner, or with its predecessors. The firm was founded in about the year 1866.

All of my experience in engineering between 1904 and 1913 was in research and development in the electrical industry. During the past 40 years I have obtained a number of United States patents in my own name. At the present time I have an application on file in the United States Patent Office describing an invention which some of our courts would call a gadget.

I am not being paid for this trip from Chicago to Washington by any corporation or other client. I am paying my own expenses. I speak solely on my own behalf, and I represent nobody but myself.

POSITION ON THE MICHENER BILL IN 1947

I was president of the Chicago Patent Law Association (the oldest patent law association in the United States) in the year 1948, and in the preceding year 1947, I was vice president of the association and chairman of its legislative committee. In the spring of 1947 the board of governors of the Chicago Patent Law Association sent me to Washington, D. C., to oppose the Michener bill, H. R. 2520, a bill introduced in the 80th Congress to adjust Patent Office fees. At that time I was similarly instructed by the Chicago Bar Association, and I appeared before the committee and presented the views of the two associations. When I was on the witness stand officially presenting the opposition of the two associations, I was apprehensive that I would be asked two questions:

1. Since July 1932, when the present fees were established, to what extent has the United States dollar fallen off in purchasing power?

2. To what extent have you raised professional fees charged against your clients for the filing and prosecution of United States patents?

If I had been asked these questions I would have justified my position in opposition to the Michener bill by saying that in 1947 there was a fear that we were due for another depression, which would, in part at least, correct the currency inflation which had occurred between 1932 and 1947. But, that fear, it seems, was not borne out by subsequent events.

INFLATION SINCE 1932

The facts are that instead of a depression, which might have corrected the inflation which had occurred since 1932, we have had a further inflation of about 24 percent between 1947 and 1955 and, although the cost of living has held fairly steady for about 3 years, the monetary requirements for prompt operation of the Patent Office has continued to advance. One reason for the increase is that the Patent Office needs scientific and engineering graduates as examiners,[1] and their pay scales are rising as the importance and need of technical research and development becomes more and more recognized by industry. Furthermore, the time spent per case by the examining corps of the Patent Office has increased because:

1. The field of search has been increased as shown by the fact that in July 1932 there had been issued only 1,865,422 patents, as compared with 2,708,751 by May 17, 1955, an increase of 45 percent,[2] and
2. The technology involved in the various branches of the arts has become more detailed, complicated, and voluminous.

DELAYS IN THE PATENT OFFICE

Since about the year 1935, I have observed a progressive increase in the time required between the filing of the application and the actual issuance of the patent. The backlog is getting bigger and bigger every month. Some of the delay undoubtedly is caused by the increased complexity of the average patent application, requiring the expenditure of more time by the patent lawyer and his client in responding to communications from the Patent Office examiner. Undoubtedly a part of this delay can be charged to the patent lawyer, which perhaps is traditional, but at the present time the amount of time lost by the delay of the Patent Office in responding to attorneys' communications far exceeds any delay caused by the patent attorneys. As compared with 1932 when an attorney was able to advise his client that an invention, if patentable, could be patented in a year or so, the patent attorney today might have to multiply that time by a factor of four or more.[3]

From the standpoint of a patent lawyer who has spent 40 years in handling patent applications for small individual clients and corporations of respectable size, as well as from the standpoint of the individual inventor, I can state that nothing is more calculated to destroy the enthusiasm and the incentive of the inventor or client than to be told that it may take 5 or 6 or 7 years before the patent will issue. During this period the inventor will not know whether some competitor may come out with a prior patent, which will not only stop the inventor from getting a patent, but may stop him from manufacturing the thing of which he thought he was the first inventor. I say that if this period of uncertainty can be reduced by 25 percent, the average inventor, and particularly the little fellow, will be more than willing to pay an additional $50 or $100 into the Patent Office.

The fact is that the Patent Office is getting more and more behind every day, and the figures show that the only practical remedy is to materially increase the size of the examining force.

PATENTS AND THE PUBLIC INTEREST

Those opposing the readjustment of the fees argue that the issuance of patents is of unique benefit to the public, because industry is stimulated, royalties are paid, and hence the Federal Government receives more taxes, and therefore the taxpayers can afford to foot the bill for running the Patent Office. The same argument would apply to the business of generating electric power and the business of transportation. If these two businesses were stopped, the wheels of industry would stop, and accordingly, the taxpayers should take them over and charge nothing for either service, if the reasoning of the opposers of a fee raise is adopted. The argument, in effect, seeks to take me down the road to socialism. I am not a Socialist.

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[1] The pay to examiners accounts for a substantial majority of the expense of operating the Patent Division of the Patent Office.

[2] The field of technical publications has also greatly expanded and these are also included in the search of the Patent Office.

[3] A recent application which has come to the attention of my office took 12 years to issue as a patent.

RELATION BETWEEN PATENT OFFICE INCOME AND EXPENSE

Part of the "hullabaloo" against readjusting fees is an emotional appeal addressed to the independent (small) inventors. I have had a good deal of contact with "small" inventors since 1913. At that time, in the case of the usual run of inventions, the patent fees, amounting to a total of $35, were about one-third of the total expense of obtaining a patent. In 1932 when the Patent Office fees were raised to $60 the other expenses had risen to a point that the Patent Office fees represented about 20 percent of the total, and now the same kind of a patent costs so much more than in 1932 that the $60 of Patent Office fees, in the average case, is more often than not, less than 10 percent of the filing and prosecution cost of the patent. Frequently, the fees are less than 5 percent of the cost.

Nevertheless, during all this period from 1913 to date, I have not heard any client complain about the Patent Office fees, nor have I ever known of an invention which was not patented because the inventor could not pay the Government fees.

If anyone thinks that there are any such poverty-stricken inventors, I suggest that he promote a bill which will permit the Commissioner to waive a fee if the inventor can make a proper showing of hardship because of the Government fees. This is done in the courts.

The opponents of fee readjustment talk about the Patent Office as though it were a one-way street for the sole benefit of the public. That is not so. The patentee gets the right, for 17 years, to exclude all unlicensed persons from using the patented invention. This benefit may be thousands of times as valuable as the few extra dollars which the taxpayers would charge him for his patent under the terms of the present bill.

Those who oppose any adjustment of Patent Office fees assert that there is no relation between Patent Office fees and the amount of money which is appropriated for the Patent Office. Theoretically, that is true. Practically, it is a fallacy. In the 1920's, almost everybody argued that the Patent Office was self-supporting,[4] and therefore, that the appropriations should not be reduced. But now the opponents of this bill say that there is no connection between Patent Office fees and appropriations for the Patent Office.

H. R. 4983 DOES NOT RAISE FEES

The fact is the H. R. 4983 does not raise Patent Office fees as established in 1932. It merely calls for a partial readjustment of the figures of 1932 in accordance with the rise in the cost of living since that date. Any refusal to recognize that fact is, in effect, a plea for a continuation of the substantial subsidy which the general taxpayers have been paying for the last 10 or 15 years.

For many years prior to 1940 the fees paid into the United States Patent Office were sufficient to pay substantially all of its operating expenses. I believe that that policy should be reestablished and that the fees charged by the Patent Office should be adjusted accordingly, as proposed in the present bill. I am against subsidies. I think the patent system should stand on its own feet.

SPECIFIC FEE PROVISIONS OF H. R. 4983

The Commissioner has told us that the proposed readjustment in fees will not nearly compensate for the increases in Patent operating costs since 1932. He is quite modest in his request and might have asked for higher fees which would make the Patent Office truly self-supporting.

Section 1, paragraph 1, raises the minimum filing fee figure 33⅓ percent as compared with 1932, and section 1, paragraph 2, raises the minimum issue fee figure 66 percent over the 1932 amount.

Obviously, these adjustments do not compensate for the rise in the cost of living (in dollar figures) which, since 1932, has risen considerably more than 100 percent, by any formula or price index. This is a compromise which favors the "gadget" inventor for whom a patent containing five properly worded claims may be sufficient in most cases. Part of the remaining shortage is made up by charging $5 for each claim in excess of 5.

THE EXCESS CLAIMS FEES

The excess claims fee has the additional important feature in that it is an incentive for the attorney to exercise greater care and skill in presenting fewer but better claims, thereby reducing the time spent by the examiner in processing the

[4] In fact, the Patent Office was substantially self-supporting from 1919 to 1940.

application. The provision in the present statute for an extra fee of only $1 per claim in excess of 20 does not seem to have been of sufficient effect along this line, although it is true that many attorneys often find it convenient to call it a day when they have prepared a total of 20 claims. Whether the figure of $5 for every claim in excess of 5 is correct, is a matter for experience to determine. In the absence of any experience record, I am not prepared to say that these particular figures are incorrect.

ASSIGNMENT RECORDING FEE

I would suggest that in paragraph 10, the fees for recording assignments, etc., should be changed to $5 for 1 page, and $1 for each additional page. I think that change would tend to prevent loading of the files of the Patent Office with voluminous documents containing matters not connected with the patent grant.

Mr. SOANS. There is one thing that I would like to point out and that is the statement that I make on page 2 of my statement.

In 1947 I was vice president of the Chicago Patent Law Association, the oldest patent law association in the United States, and as vice president I was the chairman of its legislative committee.

Now, at that time—and I think it was the 80th Congress—there was pending in Congress a bill known as the Michener bill, H. R. 2520, and that was for the purpose of increasing patent fees.

Now, the committee of which I was chairman presented a resolution which was adopted by the board of managers of the Chicago Patent Law Association instructing opposition to the bill, and at the same time also the Chicago Bar Association opposed the bill and authorized me—and I was authorized by the Chicago Patent Law Association—to come down here and oppose that bill, which I did. The bill failed, not because I opposed it, it just failed, that is all.

Now, at that time when I was on the stand here, I was very apprehensive that I would be asked two questions. The first question was, since July 1932, when the present fees were established, to what extent has the United States dollar fallen off in purchasing power? The other question was, to what extent have you raised professional fees charged against your clients for the filing and prosecution of United States patents? Fortunately, they did not ask those questions. I suppose if I had been asked those questions and had been smart I would have said, "I am glad that you asked that question," as some of us do, but I would have had to say that at that time I was representing these two associations and there was a fear that the inflationary effect would not only start a depression, but we would have a depression——

Mr. WILLIS. I have an idea that you are leading to the point where you are going to say you changed your mind in favor of this bill.

Mr. SOANS. I did not state what my mind was at that time, Your Honor. I was acting simply as a representative of the two associations. I was afraid that we were on thin ice, but I did not know. Of course, we all know what inflation has done.

Mr. JONES. I suspect we all know the answer to those two questions.

Mr. SOANS. The Commissioner has well set out the reason for the delays in the Patent Office, and from my standpoint, I know that one of the greatest difficulties we have in the practice is to explain to our clients why it takes so long to get a patent. They will say, "I cannot wait that long. I do not know whether some other patent is going to come out when I get started in 3 or 4 years and then my investment is ruined and I will have to stop."

Now, if we can reduce that period of uncertainty 25 percent, I think the average inventor, and certainly the average corporation,

would be more than glad to pay several times the amount of the fees which are contemplated in this bill as an increase over the prior fees.

The fact is, the Patent Office is getting so far behind that if you want to get a patent through the Patent Office there is only one way to do it, and I must say that the Patent Office cooperates very well in this respect—they will allow you to interview the examiner so that he can discuss the case with you. He may have forgotten all about it in the past year since the thing was filed, but right then and there you can sit down with the examiner and discuss the thing and reach an agreement as to what probably will be allowed, or what he thinks is patentable, and if you have an agreement you can file an amendment accordingly and get your patent quite promptly in an ordinary case.

That does not look very well in the subsequent history of the application because they will always say when you take that patent into court, "Ah ah, I see you went down to see the examiner, and you did some fussy work with the examiner." It does not look very good in the history of the patent if it shows that you went down and interviewed the examiner 2 or 3 times and finally induced him to allow the application. But that is the only way you can get the thing through in a hurry, or you can have it made special, and when you do that you wear out your welcome.

In 1 or 2 cases it is all right, but ordinarily you cannot depend upon doing that with every application you file.

Now, I have discussed the question of patents in the public interest. Of course, this idea of subsidizing the patent system and the inventors is, to my way of thinking, going down the road to socialism, and I am not a Socialist.

There is a lot of hullabaloo about the bill here, especially in the seventh circuit, I have to admit. That is a sort of an emotional appeal, I think, which is addressed to the small inventor, meaning the fellow who sits up in an attic and thinks up an invention while he is starving to death, like the authors do, and so forth.

Well, so far as the authors are concerned, I understand that the Copyright Office is still self-supporting, and they have not any difficulty in getting the fees and paying their registration fees to the Copyright Office. And I have never heard of a case, never seen a case in my whole 40 years of practice, where a small inventor, a poverty-stricken inventor, was prevented from filing an application, or could not get somebody to put up the fee for him for filing his application.

If these people who are so insistent about the needs of the poor inventor would realize the remedy, why do they not come before this committee or this Congress and ask for some pauper's oath bill, such as we have in the courts?

No doubt if there is any such difficulty there of raising fees and you make a proper showing to the Patent Office, the Commissioner could do away with the fee. That is the remedy if you want to take care of poverty, Mr. Chairman.

Mr. WILLIS. And that is a very good thought.

Mr. SOARS. There is no reason why that should not be done if there is any difficulty. I do not think there is any need for it; if there is any need for it, if there is any need for such a bill, I am sure Congress would be glad to include inventors in the same way as they include litigants in the Federal courts.

Of course the Commissioner has brought out the fact that during the years from 1920, I think, to 1940, the Patent Office was actually self-supporting in effect. Of course no Government agency will include rent, or anything of that sort, and we do not think about those things; but as far as outgo charged to the Patent Office is concerned, that was equal to the income of the Patent Office, substantially. 80 percent is near enough; that is substantial.

As a matter of fact, the patent fees are a relatively small percentage of the money spent by an inventor, or the inventor's assignee in obtaining the patent. When I started to practice in 1913, the fees were $35 for the filing of the application and for issuing the patent. That is all the inventor paid. Now I won't tell you what our fees were for the legal work, but I can tell you the Patent Office fees represented one-third of the total expense of obtaining a small patent at that time.

In 1932 the patent fees were raised to $60 and then for the same kind of patent which we would have in our office the fees would represent about 20 percent of the total amount paid by the inventor for his patent. At the present time, in the average case for the normal patent, the small patent I am referring to, the Patent Office fees are less than 10 percent, generally, of the cost of obtaining the patent and often less than 5 percent.

So, so far as interfering with the normal operations of the inventor is concerned, why there is little basis for that generalization as compared with the situation in the period between 1913 and 1940 when the dollar had been substantially depreciated in value.

Of course the Commissioner has brought out the fact that this bill, which is called a patent fee-raising bill is not actually a patent fee-raising bill. It does not raise fees at all compared with 1932 when the fees were established. Even the bill in its present form only goes a small part of the way toward equalizing the cost which we have due to inflation and the increased complexity of the operation.

Now you asked a question about whether this bill would speed up the operation of the patent system, or whether the appropriation would speed up, an increased appropriation would speed up the operation. Of course, that question is a little premature. First of all, before we can pay a dividend, we have to get the corporation on a self-supporting basis. When we pile up a surplus, then we can declare a dividend. In other words, the problem here is to prevent an accelerated slowing down and the Patent Office getting bogged down because it does not have enough men to take care of the backlog of cases. The backlog of cases is increasing at a tremendous rate at the present time and something has to be done. Even to maintain our present speed of operation—or slowness, whichever you want to call it—you have to increase the amount of fees to enable the Commissioner to employ a much greater staff of examining personnel. Then, when he gets taken care of, that is time to talk about whether you can put on some more men and speed it up.

Now generally my statement here is confined only to section 1 of the bill, I think it is, relating to patents.

On this question of acceleration, or slowing down, of the operation, I have just one suggestion to make as to the 5 and 5 change, the alternate proposal suggested by the Commissioner which he said he would approve, that is, changing the 5 and 5 in section 1, or item 1 of the act, to 10 and 2, and an extra charge for specification and drawings.

Of course that is something I have not completely thought out. But there is a disadvantage to that, and that is that the purpose of a patent and the purpose of a specification for a patent is to give a full and complete description of the invention from the standpoint of the inventor, so that the inventor can have a basis for every possible claim of novelty which he thinks he may have in his invention; secondly, from the standpoint of the public which, when the patent expires, has a right to use the invention, so that they have complete information and not an inadequate disclosure of how the invention can be processed. So that there is that disadvantage about an extra fee for a drawing and a specification, as compared with the fee of $5 for the excess over 5 pages.

I have one suggestion for a change in the present bill and that is in paragraph 10 of the act.

Mr. WILLIS. To what page and line are you referring?

Mr. SOANS. Paragraph 10 of the bill.

Mr. WILLIS. Page 2.

Mr. SOANS. Page 2. This is section 1. My remarks are addressed entirely to section 1; I am not discussing any other section. It reads:

> For recording every assignment * * * not exceeding six pages, $10; for each additional two pages or less, $1.

Now, as to that, I think we should be a little more realistic, because the ordinary assignment of a patent can be made on a single page. Our assignments are made on a single page, and they seem to be satisfactory to the Patent Office as to form, and there is no reason why an assignment should be cluttered up.

Mr. WILLIS. You mean in an instrument assigning a patent that more than six pages is consumed? Is that what you are talking about, that a document assigning a patent might actually be more than six pages?

Mr. SOANS. It could, but not in our office. We have a one-page form that we use on all of our applications. I have a copy of it right here, if you would care to see it.

Mr. QUIGLEY. Are not you only speaking there of assignments?

Mr. SOANS. I am only speaking of assignments; yes.

Mr. QUIGLEY. Does not subsection 10 cover, in addition to assignments, agreements or any other papers?

Mr. SOANS. Yes; but if it has more, then they would pay the extra $1 per page.

Mr. WILLIS. Of course the language reads "not exceeding six pages."

Mr. SOANS. If it was 6 pages, they would pay but $10.

Mr. WILLIS. And if it was 1 page, they would pay $10.

Mr. SOANS. Under paragraph 10, which is not fair. There is no reason why a man should pay the same amount for 1 page that he pays for 5. It is not realistic; it is just a tax, that is all.

Mr. WILLIS. I suspect these lawyers will try to cut down on their pages. I can assign a million-dollar oil lease in one paragraph. Why can't the same be true of a patent assignment?

Mr. SOANS. Of course you could. And there is no reason why the Patent Office records should be cluttered up with a lot of useless things

which do not relate to the assignment of the patent itself. That is the only criticism I have of the bill.

Mr. QUIGLEY. Do you have any specific suggestion as to what that $10 should be changed to?

Mr. SOANS. Five—five and one. In my statement, I say I would suggest that in paragraph 10, fees for recordation of assignments, and so forth, should be changed to $5 for 1 page and $1 for each additional page. That is a very minor point, but that is the only point of disagreement I have with section 1 as originally proposed and as discussed by Commissioner Watson.

Thank you very much.

Mr. WILLIS. Thank you.

Mr. SOANS. Are there any questions?

Mr. WILLIS. No; you have made yourself very plain. We appreciate your statement.

The next individual on the list is Mr. Don L. Davis. Do you appear for yourself?

STATEMENT OF DON L. DAVIS, CHAIRMAN, COORDINATING COUNCIL OF THE GADGET AND INVENTION INDUSTRY

Mr. DAVIS. My name is Don L. Davis. I am appearing today in my general capacity as chairman of the Coordinating Council of the Gadget and Invention Industry. I am here at my own expense.

Mr. WILLIS. As director of the Gadget——

Mr. DAVIS. I am chairman of the Coordinating Council of the Gadget and Invention Industry.

Mr. WILLIS. Is that the same as the Gadget-of-the-Month Club, Inc.?

Mr. DAVIS. No, sir; the Gadget-of-the-Month Club is one of the segments. There are seven organizations which comprise the Coordinating Council of the Gadget and Invention Industry.

I have a statement here in opposition to the bill, prepared statement to Subcommittee No. 3, House Committee on the Judiciary, by Robert Willard Hodgson, chief patent consultant, National Association of Inventors, who was unable to be here, and I ask that this be made a part of the record.

Mr. WILLIS. It will be received.

(The statement above referred to is as follows:)

STATEMENT BY ROBERT WILLARD HODGSON, CHIEF PATENT CONSULTANT, NATIONAL ASSOCIATION OF INVENTORS, RE H. R. 4983

Mr. Chairman and members of the committee, for the past 10 years I have been engaged in assisting, advising, and counseling individual inventors in the protection of their inventions.

Most of my work has been with individual lay inventors rather than corporate patent work. For the purposes of the record, and for clarification, may I say that by lay inventors I mean the individual nonprofessional American who is neither a research man nor an engineer, nor is he gainfully employed in research work by a corporation. I am referring primarily to the man, irrespective of his profession, who has an invention; who has developed it by his own labors.

It is because of this very considerable contact with the lay inventor that H. R. 4983 has disturbed me to the extent that I feel called upon to express my opinion, and, I believe, the opinion of the substantial majority of all the lay inventors with whom I have talked. Increasing the Patent Office fees would work a terrific hardship on such lay inventors. They simply do not have the funds even to afford present patent application costs, and certainly not increased costs as this bill proposes.

The average inventor is not a particularly wealthy man. By usual standards, I suppose he would be below the average in income. It may be that fact that makes him think; perhaps because of that fact, he invents.

As a result of many discussions with inventors, and of having seen many an inventor make the initial contact to try to protect his invention, I know that a great many do not proceed because of financial difficulties. It is my professional and personal belief that the great majority of inventions never actually come to light, but die by the wayside because the inventors are not properly encouraged. One of the principal reasons for discouragement is the cost involved in the filing of a patent application. And I sincerely believe that raising Patent Office filing fees 33⅓ percent to several hundred percent is a step in the wrong direction.

Under this bill, the minimum total fees for a granted patent would be $90, an increase of 50 percent, and the maximum total fees for a 20-claim patent would be $240, an increase of 300 percent; truly an enormous jump in patent fees.

We are living in an age of research and accelerated technological development, and so an important question should be asked: Do the lay inventors make an important contribution? If they do, anything that tends to discourage them is wrong for the country.

In recent years, there has been organized activity on the part of the lay inventors. Washington has finally recognized that this problem does exist. I have reason to believe that more letters have been written to Senators and Congressmen on Capitol Hill this year on matters relating to patents than at any time in the past decade. As a result, there is legislation pending which is designed to establish a Commission to review and investigate our patent laws and administration and to make appropriate recommendations in connection therewith.

As one working in the field, I feel that this bill to increase Patent Office fees immediately is ill-timed and undesirable and is an unrealistic attempt to solve a major problem. If pending legislation to establish a Commission to investigate our Patent Laws and Administration is passed this session, and it, by the way, is certainly noncontroversial and nonpartisan, but designed primarily to investigate and make recommendations, and if it makes these recommendations as required by the bill in 1956, it appears to me good commonsense that we of the Nation can await the report of this Commission before rushing premature legislation into law.

If the recommendation of this impartial Commission is that Patent Office fees be raised, I believe there will be no opposition from any quarter, because it will be the result of a thorough and exhaustive analysis of our patent laws and administration. Then, and only then, it appears to me to be the time to increase Patent Office fees.

It is wholly possible the Commission might decide to decrease Patent Office fees in order to encourage not only the lay inventor, but all inventive progress as well.

So why, gentlemen, after decades of indifference, must there be this sudden rush to increase Patent Office fees? I believe it is ill-timed and ill-conceived and not in the best interests and welfare of our country.

The inventive genius of our country has made many invaluable contributions to our Nation's progress. Therefore, any hasty, premature legislation enacted at this time without due consideration of all the factors involved is inimicable to the best interests of the Nation, in my opinion.

These sentiments are sincere, well-meaning and represent, gentlemen, not only my own conclusions, but a cross-section of opinion of all my clients and the overwhelming majority of the individual lay inventors that I meet in my post as chief patent consultant of the National Association of Inventors.

Mr. DAVIS. I also have here, Mr. Chairman, Resolution Submitted to Subcommittee No. 3, House Judiciary Committee, a 3-page statement, signed by 10 various segments, which I have been requested to present and have made a part of the record.

Mr. WILLIS. What are those segments as you refer to them?

Mr. DAVIS. These are organizations who signed this resolution in opposition to H. R. 4983. I will be glad to name them, if you wish: Coordinating Council of the Gadget and Invention Industry; National Gadget Manufacturers Association, Inc.; National Association of Inventors, Inc.; American Society of Women Inventors; Boy Inventors of America; Gadget-of-the-Month Club Foundation, Inc.;

International Federation of Inventors; National Independent Distributors Association, Inc.; Gadget-of-the-Month Club, Inc.; American Invention Progress Foundation.

The resolution is dated May 28, 1955, and I ask that it be made a part of the record.

Mr. WILLIS. Do these 10 segments have common officers?

Mr. DAVIS. Not all in one building, but the majority of the invention and gadget industry is located in the State of California—in southern California.

(The statement referred to is as follows:)

RESOLUTION SUBMITTED TO SUBCOMMITTEE NO. 3, HOUSE JUDICIARY COMMITTEE

Whereas the new patented inventions mean new industries, new jobs, and new opportunities for the people of America; and

Whereas approximately 57 percent of all the patent applications filed with the United States Patent Office are filed by lay inventors; and

Whereas the lay inventor has made consistently outstanding contributions to the field of invention which has materially contributed to the progress of the Nation; and

Whereas the average annual income of the average lay inventor is less than $4,000 per year; and

Whereas the old, archaic extremely legalistic patent application forms make it almost mandatory that the lay inventor have his patent application prepared by a professional patent attorney or agent; and

Whereas patent attorney and agent fees for the preparation of patent applications have steadily increased in line with the rising cost of living placing added financial obstacles in the path of the ambitious lay inventor; and

Whereas the lay inventor and the invention industry has never asked nor received Federal aid, assistance, or subsidy in any shape, manner, or form; and

Whereas invention activity by lay inventors helps provide and contribute to the diversification of the Nation's economy and future industrial development; and

Whereas inventions by lay inventors afford small-business men the opportunity to engage in profitable commercial and industrial activities; and

Whereas the patent applications presented by the lay inventor are simple in comparison to the processing required of patent applications prepared by major American corporations, which require more work on the part of the Patent Office staff to process those corporate patent applications as against those filed by lay inventors; and

Whereas inventive activity is generally regarded by the leaders of the Nation as extremely beneficial to the progress of America; and

Whereas our modern times require encouragement in inventive activity to keep our Nation in the lead in invention and research to protect the welfare, security, and defense of the Nation; and

Whereas H. R. 4267 is a bill which provides for a Patent Office Commission to study and make recommendations for the modernization of the United States patent system; and

Whereas S. 92 provides for a study of the Patent Office problems; and

Whereas representatives of the undersigned group worked diligently to restore a one-half million dollar cut in the Patent Office budget in the 83d Congress in 1954; and

Whereas any increase in Patent Office fees before the studies by the House and Senate committees are completed is believed to be hasty, ill-conceived, ill-timed, and not in keeping with the best interests of the country; and

Whereas any increase of Patent Office fees or costs will act as a strong deterrent, because of financial reasons, to the millions of lay inventors in their efforts to protect their new inventions; and

Whereas the present Commissioner of the United States Patent Office has been advised and informed that Patent Office fee increases are not designed to stimulate inventive activity on the part of lay inventors, and that lay inventors are opposed to any such proposed increases, and has nevertheless persistently maneuvered, striven, and pushed hard for Patent Office fee increases; and

Whereas the Patent Office Commissioner had a similar bill introduced in the Congress last year which was not passed; and

Whereas, in spite of this knowledge, the Patent Office Commissioner has persistently maneuvered to obtain Patent Office fee increases: Be it therefore

Resolved, That the following organizations, representing important segments of the invention industry of the United States, go on record as being unalterably opposed to any Patent Office fee increase at this time, and do so inform the members of the House Judiciary Committee, the subcommittee and all of the Members of the Congress of the United States, and further resolved that the Congress be requested to reject H. R. 4983, on the grounds that its passage would not be in the best interests of the Nation nor to the millions of lay inventors who, from the beginning of America, have made invaluable contributions to the progress, the welfare, and the advancement of our country.

Coordinating Council of the Gadget and Invention Industry; National Gadget Manufacturers Association, Inc; National Association of Inventors, Inc.; American Society of Women Inventors; Boy Inventors of America; Gadget-of-the-Month Club Foundation, Inc; International Federation of Inventors; National Independent Distributors Association, Inc; Gadget-of-the-Month Club, Inc; American Invention Progress Foundation.

Dated: May 28, 1955.

Mr. DAVIS. The Patent Chamber of Commerce is leading the Nation in invention submission. I am very new to this sort of thing and I beg the committee's indulgence. If I do anything or say anything, my intentions are sincere.

To me, it is very interesting that in the comments made by the Honorable Under Secretary of Commerce and the Honorable Commissioner of the Patent Office, that in their repeated references they say that prior to the introduction of this bill, or since, they have explained it to the interested people, and it was significant to me, sir, that a reference was made to the bar association, the Patent Law Association, and corporations. If my figures are correct, the predominant individual group who are submitting the majority of applications to the United States Patent Office are the lay inventors of this country and, to me, it is a significant fact that in hearings of this kind designed to get all of the facts, that a single Californian and an inventor from the District are the only ones we have here to present our case. I mean that very kindly, but I think it is significant to point out that the Patent Office was very ably represented with its full staff, and I am sorry that I have only my humble self to present this matter.

To me, it was very significant that on three separate occasions the chairman (Mr. Willis) asked the Patent Office Commissioner how long it would take the Office if the committee and the House and Congress gave the Patent Office this increase in fees and this $2 million appropriation was passed and is made part of their increased budget—how long would it be before, or could you promise me that the backlog of patent applications would be reduced. We, as lay inventors, think that is a fair question; we think we have a right to an answer. As the Administrator and the Agency will be responsible, we think that is a fair question—if you increase the Patent Office fees, get more money from Congress, is it going to be as it is today, or is it going to be worse, or is the Patent Office going to come back next year and ask for $2 million more, or are we going to increase the fees more?

Mr. WILLIS. I would like you to describe what you mean by "significant" as you used it in the first place—it is significant that the Patent Office did something or other. What do you mean by that?

Mr. DAVIS. You mean my original statement?

Mr. WILLIS. Yes.

Mr. DAVIS. That I thought "it was significant when both the Honorable Under Secretary of Commerce and the Commissioner"—is that the statement you are referring to?

Mr. WILLIS. Yes.

Mr. DAVIS. In presenting their statements said that they had discussed this matter with people and representatives of the patent bar and others with special experience and interest in the patent field, that in mentioning that to the committee they mentioned the patent bar, members of the Patent Law Association, and corporations. I think if you will read the record, because I was listening very closely, there was no significant mention—no mention at all—of any interest in their presentation anywhere representing the individual lay inventors or their organizations. I thought that was significant.

Do I make myself clear?

Mr. WILLIS. You imply, I take it, that it was deliberate?

Mr. DAVIS. No, sir; I make no such implication.

Mr. WILLIS. Because, if you do, here is the forum for you to say it.

Mr. DAVIS. Yes, sir; and that is the reason I am extremely delighted to be here today. And to underscore that, may I quote from a letter from the Office of the General Counsel of the Department of Commerce, sent to me as president of the Gadget-of-the-Month Club, Inc., under date of April 11, 1955, signed by Philip A. Ray, in which Mr. Ray says to me:

> You may be assured, sir, that this proposal—

talking about the proposal to increase fees—

> was advanced only after much consideration and discussion with representatives of the patent bar and others with special experience and interest in the field. It was almost unanimously agreed by such representatives that some increase in patent fees is appropriate—

Then he goes on to say:

> but the general idea has little opposition.

Mr. Chairman, I am trying and I want to be very accurate. I have a prepared statement which I will paraphrase. It is important that I do it, because I want you to know exactly how we feel about it.

I am here to ask you to reject H. R. 4983, a bill designed to increase Patent Office fees. I appear before you today in my official capacity as chairman of the Coordinating Council of the Gadget and Invention Industry, which is composed of important segments of an industry dedicated to the promotion of progress and prosperity of America exclusively through new inventions, new products and new processes.

Mr. WILLIS. When you say "coordinating council," who are the officers of the council and whom do they represent, specifically?

Mr. DAVIS. They are comprised of the presidents of the various groups, like the president of the National Gadget Manufacturers Association; the president of the National Association of Inventors, and the president of the National Independent Distributors Association. We found out some 10 years ago that getting an idea was one thing; getting a patent on it was another thing; that there had to be cooperation between the manufacturers, inventors, and distributors.

Mr. WILLIS. Proceed.

Mr. DAVIS. I have been delegated to give you this statement in person to underscore the intensity of the opposition to the passage of

H. R. 4983. I think it will be helpful for the committee to know a few facts about my professional activities. I probably see, talk to, and correspond with more inventors every year of my life than any other man in the country. Consequently, I feel thoroughly and intimately acquainted with the feelings, the attitudes, and the sentiments of the average American inventor. In addition to my normal routine, I make an annual cross-country tour of the Nation, meeting the inventors in their communities and supplementing that with professional lectures, radio and television appearances. Incidentally, last year about this time, I appeared before the Senate Appropriations Committee and pleaded with them for restoration of a cut in the Patent Office budget. One-half of that cut was restored.

We are opposed to the Patent Office fee increase because we feel it is premature. Currently, legislation is pending asking for the appointment of a Patent Commission to study Patent Office laws and administration. The Senate recently passed S. 92, in which the Senate approved the appropriation of $50,000 for a study of the Patent Office system. We feel, and we think rightly so, that any increase at this moment in advance of a careful, indpendent, unbiased, exhaustive study of the whole Patent Office administration is premature, ill-conceived and unfair to the Government and to the people.

If there is to be an increase in Patent Office fees, we think that increase should come as a result of a careful study by an independent, outside group, such as a House or a Senate committee. This attempt to raise Patent Office fees is a bill introduced through the efforts of the present Commissioner of the United States Patent Office. He is pressing hard for the passage of this bill. A similar bill was introduced last year, but failed.

The attitude of the Patent Office Commissioner in asking for legislation to increase Patent Office fees is best reflected, I believe, in the following statement made in a letter by the Commissioner to myself on November 3, 1953, in which he states:

> In your last paragraph, you point out that you represent many lay inventors, and I would like to know how many you represent—

Gentlemen, may I stop there and point out that this is a very unusual attitude, in my opinion, for the Patent Office Commissioner to assume. This letter was written to us as a result of correspondence with him in which we indicated, away back in 1953, that we were opposed to premature Patent Office fee increases. Yet to the Commissioner, the validity and merit of our opposition would be considered, presumably, only on the basis of the number of inventors we represented. Continuing to quote from the Commissioner's letter, he says:

> and whether or not you are quite certain that you are reflecting the views of this group when you comment on any proposed revision in our fee schedules.

Mr. Chairman, I have a sample stack of thousands of petitions from Maine to California opposing an increase in Patent Office fees and asking for a whole overhaul of the Patent Office system.

Gentlemen, I believe that letter speaks for itself. No man who was thoroughly familiar with lay inventors, who has ever met them and talked to them personally could ever ask that kind of a question if he were well informed.

It may be of interest to the committee to know that the proposed fee increases as outlined by this bill are increases which range percentagewise from 33⅓ percent——

Mr. WILLIS. Before you proceed further, why would you object to telling them whom you represent and how many?

Mr. DAVIS. We did not object; we told them whom we represented.

Mr. WILLIS. Yes, but that was the council, was it, of the Gadget & Invention Industry? Why could not you particularize?

Mr. DAVIS. Well, this letter came as a result of a series of letters. It is our feeling, if I may express this, maybe wrongly so, but we feel that the Commissioner is not as sympathetic to the plight of the average lay inventor as he should be. And today I have heard pleas, one from the Honorable Commissioner of the United States Patent Office, and one from the preceding witness who said, roughly—the last witness said that never in 40 years has he ever met an inventor who could not afford to pay for his Patent Office application and the fees. I will be glad to show you, sir, and the members of this committee, thousands of people who cannot do that. Then the Commissioner of Patents in his statement said that any inventor with a good idea could always get a lot of money behind it to put the application in and get it protected. I am talking to inventors day and night; I am talking to manufacturers and financiers and, believe me, I can assure you that it is not as easy as the Commissioner would have you believe.

As I say, the proposed fee increases as outlined by this bill are increases which range percentage-wise, from 33⅓ percent on filing fees to 62⅔ percent on final fees, to increases on claims in patent applications that range as high as 400 percent. I think you will agree that these recommended increases indicate and underline our contention that the proposed plan to increase Patent Office fees is premature, ill conceived, and unrealistic. They are the result of bureaucratic planning and projection with a total and complete disregard of the facts and financial conditions of the average American inventor.

When you learn, as I have, that the average inventor is earning less than $4,000 per year, has a minimum of 2 dependents, for him to absorb increases of from 33⅓ to 400 percent, somebody—and that somebody is the Patent Office staff—is being unrealistic, or there is an indifference and complete disregard for the inventive contributions which lay inventors have made to the progress of America.

And I want to underline that statement with this aside: I do not believe, gentlemen, and I think this is important for the members of the committee to get—we do not believe at all that a patent or the Patent Office is to serve a special interest; we think the only special interests they serve are the people of this country.

No business could, or would, take that kind of an increase without raising a national furor. I do not want to let myself believe that the Patent Office is attempting to reduce its present backlog of 220,000 patent applications by deliberately placing financial obstacles in the path of the lay inventor and thus tend to stunt and curtail or completely discourage him from any further patent activity. That may be one way to reduce the number of patent applications filed each year, thus giving the Patent Office an opportunity to reduce its backlog. It is my judgment, however, that this Nation cannot afford any deliberate stunting or interruption of the inventive activities of our people, particularly at this time. Whether in peace or in war, the national ingenuity must be stimulated rather than stunted to keep us in the lead in the mad technological race in science and research now being conducted between our country and her enemies.

Mr. WILLIS. Are you implying in opposing this legislation that the Commissioner's thought was to increase the cost of processing patents deliberately to stunt the ingenuity of our inventors and deprive them of the right to knock at his door?

Mr. DAVIS. No, sir, I do not believe that, because industry has a tremendous respect for the integrity and service of Mr. Watson, but I think you will agree it is possible to interpret the fact, if you have 220,000 backlog, that one way to reduce the backlog is to cut down the number of applications coming in.

Mr. WILLIS. What would you do?

Mr. DAVIS. The first thing I would do, Mr. Chairman, as a businessman—I am not an inventor; I am a businessman—when you have a problem which has been a national problem for as long as the United States Patent Office has been in operation, I say go out of the field of patent law, put an able administrator in, let him find out what is wrong. If the Patent Office needs $20 million increase, give it to them; if it needs an increase of 100 percent or 200 percent, do it. It might be you might find it might be wise to decrease the Patent Office fees; but I mean let us get the facts; let us find out what is wrong. It is not a question that every time something goes wrong that you need more money, more money, and more money, or raise this, raise that. So let us find out. It may be an unsolvable problem. The Patent Office has had a tremendous influence placed on it by members of the patent bar and the patent practitioners; but unfortunately—or fortunately—there is tremendous significance in the number of people involved. There are the people who are administering it; there are the lay inventors who are the customers. Nobody does anything about finding out how those customers feel, and you cannot raise anything at any time you want to.

Mr. WILLIS. You say it is premature. When would you do it?

Mr. DAVIS. This may be of interest to the committee. H. R. 4267 was introduced 4 weeks before H. R. 4983. H. R. 4267 is still awaiting a report from a Government agency, but here we are having a hearing on H. R. 4983. H. R. 4267 calls for the Commissioner to report back next year. We have had the problem a long time of whether we must raise the fees or not. Let us find out what an independent study discloses, and then the committee discuss it and go ahead.

Mr. WILLIS. That is the bill which proposes a revision of the patent law?

Mr. DAVIS. No; it is a study to find out what the trouble is. It is a fact, however, it must have some merit, must have some appeal, must have some basic logic. The Senate appropriated $50,000 to do the same thing.

Now this may come as a surprise to you gentlemen, but there are literally thousands of inventors who have paid their filing fees totaling $60, plus several hundred dollars in attorneys' fees, who have not realized as much as 60 cents. The only ones who have received any compensation have been the patent attorneys and the Government; yet the inventor who has done all of the work, made all of the sacrifices personally, professionally, and financially, has not even realized, in many cases, a single penny's return. And for those who have been lucky and successful, they have made their contribution and shared their success with the Government—perhaps not through the Patent Office, but the Patent Office's sister agency, the Bureau of Internal

Revenue. So what difference does it make, as long as the people and the Government profit? When a man makes $1 million, Uncle Sam gets 70, 80, or 90 percent of it and do we not want that encouraged in this country?

As a result, the way we see it, the cards are pretty well stacked against the inventor as far as his Government is concerned. Uncle Sam wants his fees whether the inventor wins or loses. If the inventor wins, Uncle Sam is his partner, because of the income-tax provisions of our country. It is the feeling of many inventors—and I share this opinion—that Patent Office fees should be decreased instead of increased, so that more people will file applications and we will have a greater number of winning inventions and successful inventors.

Patents mean jobs; jobs mean employment, new communities, new industries, and new payrolls. Approximately 57 percent, or more than half of all the people employed in America today, are working in jobs and industries which were not in existence 50 years ago. Uncle Sam shares far greater in the fruits of a successful invention than does the inventor. This is as it should be and if invention has made any contributions to the progress of our country, which no one will deny, then it is our feeling that everything possible should be done to stimulate invention activity and not to stunt it.

We repeat that no matter how objective we try to be, we feel that the Patent Office recommendations in raising fees are designed to stunt invention activity rather than to stimulate it. It is fortunate for the inventors of our land that the Founding Fathers of our country had the vision to make the increase of Patent Office fees an exclusive prerogative of the Congress, and not an arbitrary act of any agency. This present situation is a sterling example of the vision of the men who wrote the Constitution.

Every inventor that I have talked to from Maine to California has an awe and respect for the American patent system which would thrill the Members of Congress. They believe in the American patent system with the fervor and fanaticism of the patriots of 1776. The American patent system means to them, in our present day of major corporate control, the one remaining opportunity for a man with an idea to become a millionaire overnight. Only in the American inventor do we still retain the spirit of pioneering; the inventor is America's true perpetual pioneer.

We ask you to reject H. R. 4983 because it is unfair, premature, unworthy, and unjustified. We ask that the Congress make a thorough study of the Patent Office laws and administration. If this study is fair, just, thorough, and all-inclusive, and if it is the conclusion of such a study that Patent Office fees be raised, there isn't an inventor in the land who wouldn't gladly pay the increased fee. It may be, too, that such a study might reveal that it would be to the best interests of the Nation to decrease the fees. All the inventors of this country want is a "fair shake"; they want you to get the facts, get them straight, and lay them out on the table. But to ramrod and railroad a bill through to arbitrarily increase Patent Office fees without a thorough study is too much to ask of any group of Americans.

Gentlemen, I have come to Washington armed with documentary evidence, proving that your constituents and the people of the land are opposed to Patent Office fee increases. I have here today evidence

in the form of individually signed petitions asking for a reorganization of the Patent Office. I have copies and original letters sent by Members of Congress to lay inventors throughout the country, expressing a sympathy for the plight of the inventor and a willingness to help. I have documentation and facts which are sample soundings of the crying need that the Patent Office administration and operations be investigated by Congress, the results of which investigation, some people believe, might even border on a national scandal.

In fairness to the Nation, and as a token gesture of recognition of the contributions that inventors have made to this Nation, we ask you to reject H. R. 4983.

Mr. WILLIS. You wind up pretty tough; you imply there is a national scandal. I wish you would reconsider that, or explain it.

What, incidentally, are your duties?

Mr. DAVIS. My professional duties?

Mr. WILLIS. Yes.

Mr. DAVIS. I am a consultant of management and industry where I am supposed to know a great deal on what to do with a new idea, a new invention—what do you do with it; how do you protect yourself; how do you commercialize it; how do you deal with it.

Mr. WILLIS. You do that through consultation with individual inventors?

Mr. DAVIS. My primary duty as a private management consultant is with manufacturers and distributors, as chairman of the board of the Gadget-of-the-Month Club; that is right, doing the clinical dispensary work, where we counsel and work with inventors without charge. Last year I think we saw, or the last 18 months, more new ideas than did the United States Patent Office.

That is a very challenging statement. Let me explain. By the time an inventor files a patent application in the United States Patent Office, he has spent many months working and clearing and improving. Our Gadget-of-the-Month Club gets the idea first; they check it, as to whether it is new, practical and commercial.

Mr. WILLIS. How do you get the ideas—by writing inventors and soliciting them?

Mr. DAVIS. No; they have not spent a dime whatsoever. This is the 11th year of their operation. They have been reported on and recorded in almost every major national publication from the Reader's Digest on down.

Mr. WILLIS. How does it exist; is there a charge imposed upon the inventors you serve?

Mr. DAVIS. There is a charge of $12 per year. The manufacturers pay a fee. If you would like a further explanation, I would be glad to give it to you. We say our organization has four major doors. Through one door comes the inventor seeking assistance with his idea. There is no money spent on advertising; 98 percent of the people who come to us come to us because of personal recommendation.

Through another door come the manufacturers who want the right to get screened confidential reports on the new ideas, from a 10-cent gadget to a $100,000 process to refine oil.

Then through another door come the distributors who want the right to sell it.

Then through another door come your specialty sales organizations like the mail-order houses, discount houses, jobbers.

We coordinate, and I think we have been a success because, forgive me, we say out in California when you are in business for 8 years in Los Angeles, it is equivalent to being in a business in Boston for 400 years.

Mr. WILLIS. I do not want to take issue with you on the Gadget-of-the-Month Club; I know nothing about it personally, but I do know you have not gotten along very well with the Better Business Bureau.

Mr. DAVIS. Yes, sir; but we are members of the United States Chamber of Commerce, the Los Angeles Chamber of Commerce and 14 State organizations. But we are not here discussing the Gadget-of-the-Month Club; we are talking about our——

Mr. WILLIS. You have identified that division as your primary source of activity.

Mr. DAVIS. Yes; but I come here as a trade association executive, as chairman of the Coordinating Council of the Gadget and Invention Industry, which I serve without pay; and I will be glad to present proof——

Mr. WILLIS. Without pay?

Mr. DAVIS. Yes, sir. This Coordinating Council of the Gadget and Invention Industry is a trade organization. I serve as voluntary chairman. I do not get paid for that.

Mr. WILLIS. On whose payroll are you?

Mr. DAVIS. I am a private management consultant, and I am also director of the Gadget-of-the-Month Club.

Mr. WILLIS. You referred awhile ago—and I only bring it up because you opened the door to it—to something about correspondence with the Office of the Commissioner. Did you get any reply? I see from a publication here by the Better Business Bureau where they say something about you in the issue of July 4, 1951. Here is the quotation:

According to many complaints, the club—

meaning your club—

will not even answer the correspondence. The Better Business Bureau has had the same experience. We have requested them to make explanations on various phases of their activity and replies have been extremely few and far between, with little or no information as to their activity.

And I see here there is a complaint against you pending before the Federal Trade Commission for misrepresentation.

Mr. DAVIS. Yes, sir. And I am very glad you brought that out. May I comment on that?

Mr. WILLIS. Yes.

Mr. DAVIS. There is a very interesting thing about that complaint and we are battling through it, because it is tied up with a Patent Office appeal—we are fighting the Federal Trade Commission on the basic issue that it has traditionally been correct and that issue with the Federal Trade Commission is this—does the manufacturer or inventor of a patent or invention have an inalienable American right to place an arbitrary retail price on his invention, and we say unequivocally "Yes," and the issue will be fought out.

Now since you point that out, Mr. Chairman, and since it cannot help but cloud some of the things I have said, I would like to have a right to present to you a sample of the petitions signed by people,

and I think this is a sample which contains 6,000 signatures, or more, which is only a sample of some 100,000. To me, that should be evidence more overpowering than anything you can read in the publicity file of a self-ordained private organization. It will be tested in a court suit which I am personally bringing against BBB.

I would like to show them to you, because I could not get signatures from Maine to California. Would you like to see them?

Mr. WILLIS. Yes.

Mr. DAVIS. These are petitions signed by people, and inventors, interested citizens. It is a petition to the President and the Congress of the United States. I took a sample all the way from Maine to California, from Arizona to Washington, and I think it would be interesting for you to look at their names. I think we have some from Louisiana. But more important than that——

Mr. WILLIS. I do not want what I have said to be accepted as a challenge to your views; but you are the one who made a very serious implication, or innuendo, about a scandal in the administration of the Patent Office and things of that sort. And I hope other witnesses who are to testify in opposition to this bill will not take what I have said as meaning we will not give the most careful consideration to the opposition, because we are very much concerned about it. But I have to take issue with you personally about the attitude you displayed.

That is all I have to say.

Mr. DAVIS. Mr. Chairman, if I may repeat, I merely said that the operation be investigated by Congress, the result of which investigation some people believe might even border on a national scandal.

The situation of the American inventor and his plight is very dire, gentlemen. I am sorry he has not got the money to come to Washington or to take off from work.

Mr. CURTIS. I find someone mentioned on a list here, David M. White, director of the Gadget-of-the-Month Club. Is he here also?

Mr. DAVIS. No, sir; it is a long way from California. It costs around $500 or $600 to send a man here, and the industry is not that financially well fixed.

Mr. CURTIS. Do you represent that same organization, or which one?

Mr. DAVIS. Yes, sir; I am one of the directors of the Gadget-of-the-Month Club. Mr. David M. White is director of special activities.

Mr. CURTIS. You mentioned four doors to explain the activities of this organization?

Mr. DAVIS. Yes, sir.

Mr. CURTIS. What organization were you referring to?

Mr. DAVIS. The chairman was asking me about the Gadget-of-the-Month Club, Inc.; is that not so, Mr. Chairman? Yes.

Mr. CURTIS. Your explanation related to the Gadget-of-the-Month Club?

Mr. DAVIS. I was trying to give an illustration of the activities of that one organization. However, I am not here representing them. I am here representing the coordinating council of the gadget and inventing industry.

Mr. CURTIS. You said you traveled far and wide, from Maine to California, interviewing inventors?

Mr. DAVIS. Yes, sir.

Mr. CURTIS. You were doing that as a business transaction as an official or executive secretary of some organization?

Mr. DAVIS. I was doing that, sir, as a public lecturer. I talk about gadgets in my business. I talk about the role of product diversification and industrial development. I talk about the contribution of women to invention and the role they play. I have newspaper clippings to prove where I have been. I address rotary clubs, service clubs, chambers of commerce, women's clubs, as a professional lecturer.

Mr. CURTIS. That could all be called promotion, could it not? Is it not a fact that you are interested in a commercial business, trying to bring inventors and possible users of inventions together, helping people get patents, and so forth?

Mr. DAVIS. I do not help them get patents. My specific skill, sir, and knowledge is that wherein the organization I work with myself—my special skill is knowing what is a good invention and how to market it, how to protect it, and how to promote it; yes, sir. I am a promoter of new ideas, products, and processes. That is my profession.

Mr. CURTIS. These various organizations you have mentioned are in the commercial business of promoting inventions? It is not a charitable business, in other words? It is not what the lawyers call an eleemosynary institution?

Mr. DAVIS. Yes, sir. The National Association of Inventors, sir, is a nonprofit California corporation. It is a trade association. The National Gadget Manufacturers Association, Inc., is an eleemosynary corporation.

Mr. CURTIS. Some of these 10 organizations you mentioned are business corporations; are they not?

Mr. DAVIS. No, sir. The only one——

Mr. CURTIS. Incorporated under business laws?

Mr. DAVIS. The only one that is a commercial organization and the only one—the only single one, sir—is the Gadget-of-the-Month Club, Inc. That is the only profitmaking corporation. It was through their funds that these organizations under their contributions were able to help these various organizations operate.

Mr. CURTIS. And they get their money through fees from people that they work with and serve?

Mr. DAVIS. They get their fees from services they render, like any other business in this country; yes, sir. Only this one Gadget-of-the-Month Club, Inc.

Mr. CURTIS. You are on the payroll of that organization?

Mr. DAVIS. Yes, sir; I am on the payroll of that organization, but it does not represent my major source of income. Actually no, sir; I am sorry. That is not technically correct.

I am on the payroll of Davis, Harrison Simmons Advertising Agency. In that capacity I am loaned to Gadget-of-the-Month Club as a consultant; but I am on the payroll of Davis, Harrison Simmons.

Mr. QUIGLEY. I have one question, Mr. Davis.

Mr. DAVIS. Yes, sir.

Mr. QUIGLEY. I think you indicated in your testimony that the average annual income for lay inventors was $4,000?

Mr. DAVIS. That was what he makes for a living; yes, sir.

Mr. QUIGLEY. Do you have any statistics or figures to show what his average income was in 1932?

Mr. DAVIS. No, sir; I do not.
Mr. QUIGLEY. That is all.
Mr. DAVIS. Thank you, gentlemen.
(The statement of Mr. Davis is as follows:)

PREPARED BY DON L. DAVIS, RE H. R. 4983

Mr. Chairman and members of the committee, I am here to ask you to reject H. R. 4983, a bill designed to increase Patent Office fees. I appear before you today in my official capacity as chairman of the Coordinating Council of the Gadget and Invention Industry, which is composed of important segments of an industry dedicated to the promotion of progress and prosperity of America exclusively through new inventions, new products, and new processes.[1]

One of the council members, the National Association of Inventors, has submitted a statement to this committee through Robert W. Hodgson, its chief patent consultant, copies of which have been sent to the individual members. The coordinating council and other interested groups have sent you a resolution opposing the passage of H. R. 4983. I have been delegated to give you this statement in person to underscore the intensity of the opposition to the passage of H. R. 4983.

I think it will be helpful for the committee to know a few facts about my professional activities. I probably see, talk to, and correspond with more inventors every year of my life than any other man in the country. Consequently I feel thoroughly and intimately acquainted with the feelings, the attitudes, and the sentiments of the average American inventor. In addition to my normal routine, I make an annual cross-country tour of the Nation, meeting the inventors in their communities and supplementing that with professional lectures, radio, and television appearances.

Incidentally, last year about this time, I appeared before the Senate Appropriations Committee and pleaded with them for restoration of a cut in the Patent Office budget; one-half of that cut was restored.

We are opposed to the Patent Office fee increase because we feel it is premature. Currently, legislation is pending, (H. R. 4267) asking for the appointment of a Patent Commission to study Patent Office laws and administration. The Senate recently passed S. 92, in which the Senate approved the appropriation of $50,000 for a study of the Patent Office system. We feel, and we think rightly so, that any increase at this moment in advance of a careful, independent, unbiased, exhaustive study of the whole Patent Office administration is premature, ill-conceived, and unfair to the Government and to the people.

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The attitude of the Patent Office Commissioner in asking for legislation to increase Patent Office fees is best reflected, I believe, in the following statement made in a letter by the Commissioner to myself on November 3, 1953, in which he states:

"In your last paragraph, you point out that you represent many lay inventors and I would like to know how many you represent"—may I stop there, gentlemen, and point out that this is a very unusual attitude, in my opinion, for the Patent Office Commissioner to assume. This letter was written to us as a result of correspondence with him in which we indicated, way back in 1953, that we were opposed to premature Patent Office fee increases. Yet to the Commissioner, the validity and merit of our opposition would be considered, presumably, only on the basis of the number of inventors we represented. Continuing to quote

[1] The Coordinating Council of the Gadget and Invention Industry is composed of the National Association of Inventors, Inc., a trade association of American inventors duly chartered as a nonprofit organization under the State laws of California; the National Gadget Manufacturers Association, a trade organization composed of manufacturers who make new products, duly chartered as a nonprofit corporation under the State laws of California; the National Independent Distributors Association, Inc., a nonprofit corporation chartered under the State laws of Illinois; the Gadget-Of-The-Month Club, Inc., a worldwide manufacturing and marketing organization specializing in new patented products of every nature, kind and description; Consumers Testing League, a new product research organization; and Gadget-Of-The-Month Club Foundation, a worldwide, nonprofit corporation founded to stimulate and sustain international interest in invention, as the keystone of human progress. The council, established in 1947, is the public-relations agency for the industry.

from the Commissioner's letter, he says—"and whether or not you are quite certain that you are reflecting the views of this group when you comment on any proposed revision in our fee schedules."

Gentlemen, I believe that letter speaks for itself. No man who was thoroughly familiar with lay inventors, who has ever met them and talked to them personally, could ever ask that kind of a question if he were well informed.

It may be of interest to the committee to know that the proposed fee increases as outlined by this bill are increases which range percentagewise from 33⅓ percent on filing fees to 66⅔ percent on final fees, to increases on claims in patent applications that range as high as 400 percent. I think you will agree that these recommended increases indicate and underline our contention that the proposed plan to increase Patent Office fees is premature, ill-conceived, and unrealistic. They are the result of bureaucratic planning and projection with a total and complete disregard of the facts and financial conditions of the average American inventor.

When you learn, as I have, that the average inventor is earning less than $4,000 per year, has a minimum of two dependents—for him to absorb increases of from 33⅓ to 400 percent, somebody, and that somebody is the Patent Office staff, is being unrealistic, or there is an indifference and complete disregard for the inventive contributions lay inventors have made to the progress of America.

No business could, or would, take that kind of an increase without raising a national furor. I don't want to let myself believe that the Patent Office is attempting to reduce its present backlog of 200,000 patent applications by deliberately placing financial obstacles in the path of the lay inventor and thus tend to stunt and curtail or completely discourage him from any further patent activity. That may be one way to reduce the number of patent applications filed each year; thus giving the Patent Office an opportunity to reduce its backlog. It is my opinion, however, that this Nation cannot afford any deliberate stunting or interruption of the inventive activities of our people, particularly at this time. Whether in peace or in war, the national ingenuity must be stimulated rather than stunted to keep us in the lead in the mad technological race in science and research, now being conducted between our country and her enemies.

This may come as a surprise to you gentlemen, but there are literally thousands of inventors who have paid their filing fees, totaling $60, plus several hundred dollars in attorney's fees, who have not realized as much as 60 cents. The only ones who have received any compensation have been the patent attorneys and the Government; yet the inventor who has done all of the work, made all of the sacrifices personally, professionally, and financially, has not even realized, in many cases, a single penny's return. And for those who have been lucky and successful, they have made their contribution and shared their success with the Government; perhaps not through the Patent Office, but the Patent Office's sister agency—the Bureau of Internal Revenue.

As a result, the way we see it, the cards are pretty well stacked against the inventor as far as his Government is concerned. Uncle Sam wants his fees whether the inventor wins or loses. If the inventor wins, Uncle Sam is his partner because of the income-tax provisions of our country. It is the feeling of many inventors, and I share this opinion, that Patent Office fees should be decreased intead of increased, so that more people will file applications and we will have a greater number of winning inventions and successful inventors.

Patents means jobs; jobs mean employment, new communities, new industries, and new payrolls. Approximately 57 percent, or more than half of all the people employed in America today, are working in jobs and industries which were not in existence 50 years ago. Uncle Sam shares far greater in the fruits of a successful invention than does the inventor. This is as it should be, and if invention has made any contributions to the progress of our country—which no one will deny—then it is our feeling that everything possible should be done to stimulate invention activity and not to stunt it.

We repeat that no matter how objective we try to be, we feel that the Patent Office recommendations in raising fees are designed to stunt invention activity rather than to stimulate it. It is fortunate for the inventors of our land that the Founding Fathers of our country had the vision to make the increase of Patent Office fees an exclusive prerogative of the Congress, and not an arbitrary act of any agency. This present situation is a sterling example of the vision of the men who wrote the Constitution.

Every inventor that I have talked to from Maine to California has an awe and respect for the American patent system which would thrill the Members of Congress. They believe in the American patent system with the fervor and fanaticism of the patriots of 1776. The American patent system means to them,

in our present day of major corporate control, the one remaining opportunity for a man with an idea to become a millionaire overnight. Only in the American inventor do we still retain the spirit of pioneering; the inventor is America's true perpetual pioneer.

We ask you to reject H. R. 4983 because it is unfair, premature, unworthy, and unjustified. We ask that the Congress make a thorough study of the Patent Office laws and administration. If this study is fair, just, thorough, and all-inclusive, and, if it is the conclusion of such a study that Patent Office fees be raised, there isn't an inventor in the land who wouldn't gladly pay the increased fee. It may be, too, that such a study might reveal that it would be to the best interests of the Nation to decrease the fees. All the inventors of this country want is a fair shake; they want you to get the facts, get them straight, and lay them out on the table. But to ramrod and railroad a bill through to arbitrarily increase Patent Office fees without a thorough study, is too much to ask of any group of Americans.

Gentlemen, I have come to Washington armed with documentary evidence, proving that your constituents and the people of the land are opposed to Patent Office fee increases. I have here today evidence in the form of individually signed petitions asking for a reorganization of the Patent Office. I have copies and original letters sent by Members of Congress to lay inventors throughout the country, expressing a sympathy for the plight of the inventor and a willingness to help. I have documentation and facts which are sample soundings of the crying need that the Patent Office administration and operations be investigated by Congress, the results of which investigation, some people believe, might even border on a national scandal.

In fairness to the Nation, and as a token gesture of recognition of the contributions that inventors have made to this Nation, we ask you to reject H. R. 4983.

Thank you, gentlemen.

STATEMENT OF ROBERT C. WATSON, COMMISSIONER OF PATENTS, DEPARTMENT OF COMMERCE—Resumed

Mr. WATSON. Mr. Chairman, I would like the record to show that I remained in the room during the testimony of Mr. Davis and would be very happy to answer any questions which the committee would like to put to me at this time, in the light of his testimony.

Mr. WILLIS. I do not have any questions, but if you have any comments we would be delighted to have them in the record either now, or to be supplemented later.

Mr. WATSON. I will simply make this comment: That we receive in the Patent Office inquiries from individual inventors, corporations, bar associations, Members of Congress, officials of the Government, not only located here but in many foreign countries. To each of those letters we compose and mail a courteous reply giving the information sought wherever it is available to us.

I can recollect having received a letter from Mr. Davis in 1953. He has quoted extracts from my reply. As I recollect it, the letterhead bore the names of all these gadget industries, and I was very much interested, so I, in accordance with my custom, tried to find out the nature of the group which he did represent. Now, ordinarily when I write to a bar association, corporation or business group, I know the members of that group and I can evaluate the information which I get from it because of personal contacts which I have had or by looking into the customary books of reference. I can by such means ascertain what standing that group has. So I made an inquiry of Mr. Davis in an attempt to find out how many inventors he really did represent, so that I might evaluate his comments. As of now I am still in the dark.

Mr. WILLIS. The next individual on the list is Mr. Browne. Is he present? Mr. Francis C. Browne? I understand he is a member of a firm of lawyers from Washington, Mead, Browne, Schuyler & Beveridge. Since he is a local individual, Mr. Counsel, will you ask that if he desires he submit a statement in writing, or, for that matter, I think we are going to have additional hearings.

Mr. BRICKFIELD. That is right; June 17.

Mr. WILLIS. This completes the list of witnesses to be heard today. We are going to have a continued hearing on this same subject on June 17. If your desire is to be heard you may contact our counsel, and we will be glad to try to accommodate you.

The committee will stand adjourned.

(Thereupon, at 12:59 p. m., Friday, June 3, 1955, an adjournment was taken until 10 a. m. Friday, June 17, 1955.)

TO INCREASE CERTAIN PATENT AND TRADEMARK FEES

FRIDAY, JUNE 17, 1955

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

The subcommittee met at 10 a. m., in the committee room of the House Committee on the Judiciary, Hon. Edwin E. Willis (chairman of the subcommittee) presiding.

Present: Representatives Willis (chairman), Jones, Quigley, Crumpacker, and Curtis.

Also present: Cyril F. Brickfield, counsel.

Mr. WILLIS. The subcommittee will come to order.

Today we resume hearings on the bills H. R. 4983 and H. R. 6175, to fix the fees payable to the Patent Office and for other purposes.

The first witness on the list as prepared by our counsel is Mr. W. Houston Kenyon. Mr. Kenyon, will you come forward, make yourself comfortable, identify yourself and state the capacity in which you appear.

STATEMENT OF W. HOUSTON KENYON, JR., FIRST VICE PRESIDENT, NEW YORK PATENT LAW ASSOCIATION, NEW YORK

Mr. KENYON. My name is W. Houston Kenyon, Jr.

Mr. WILLIS. Do you have a prepared statement?

Mr. KENYON. And I have submitted a prepared statement to the committee.

Mr. WILLIS. I suppose you will speak from it rather than read it.

Mr. KENYON. I do not want to read it.

Mr. WILLIS. I think it would be better. May I suggest that we have quite a list of witnesses and we want everybody to be fully heard, and it will be better, I think, if you spoke from the statement rather than read it, and we can follow you. We know the heart of the matter, I believe.

Mr. KENYON. I am first vice president of the New York Patent Law Association and appear in that capacity today.

I want to say first that we feel that some raise in the fees is a proper thing to be done at this time. The question, of course, is the amount of the level at which you arrive when you have done it. We would like to say that the Patent Office does not exist, in our judgment, solely for the benefit of the inventor. It performs a service in the public interest which is entirely out of the category of a service institution which our civilian individuals can call upon. And I think that is

best demonstrated if we bear in mind the purpose for which the Patent Office was originally created.

Prior to the year 1836, there was no Patent Office. Anybody who wanted a patent took it over to the Office, paid his fee, and it was handed out to him, and a great many scandals and difficulties arose because of that practice.

Congress created the Patent Office as the report of the committee in 1836—or 1835—will show, for the purpose of having an examination made to determine whether the inventions being submitted were in fact new at all.

The Office—at first a Commissioner and then a Commissioner and examiners, and finally the great operation we have today—was created to constitute a check on the granting of patents, and in that sense it serves the public interest. And I think looking at this question of fees today, we would do well to recall that the Patent Office serves a great public interest in the examination procedure, to defend the public against misrepresentation in patent applications, as well as performing a service to the inventor.

There is no logic in saying what percentage the inventor should pay, or what percentage the public should pay. We suggest as a rule of thumb a 50–50 basis; the inventor calls the machinery into play; the machinery then protects the public and serves the public ultimately, if the patent so warrants.

So with that general statement on the policy angle on this subject, let me proceed immediately to the biggest problem we have before us, which is the question of the fee to be paid on excess claims, the filing fee.

The Commissioner of Patents made a statement before this committee, I think on June 3, or thereabouts, in which he gave a table showing the yield of each provision of this bill, and from that table it will appear that the biggest single revenue-producing factor in this entire bill—and I refer now to H. R. 4983—is the first item in section 1, which would raise the filing fee from $1 on each claim in excess of 20, to $5 on each claim in excess of 5.

That is the nub of the discussion, because when that same collection of words, $5 on each claim in excess of 5 is applied to the later places concerning the issues of fees, it does not involve, in fact, much more. And still later on, later applied to reissue fee, the dollars are so small that we can forget them.

The big talk of the whole problem from the dollar point of view is raising the filing fee and the excess claims fee.

Mr. CURTIS. Mr. Chairman, may I interpose a question?

Mr. WILLIS. Yes.

Mr. CURTIS. As you know, we heard from the Patent Office and they gave us some alternative suggestions which they said would be equally acceptable to them. It would he helpful to have that in mind in listening to these witnesses.

Mr. WILLIS. Are you familiar with the alternate proposal?

Mr. KENYON. The alternate plan I do not have before me.

Mr. BRICKFIELD. Mr. Chairman, we will have a statement today from the American Patent Law Association, and the third page of the statement, plan No. 2, contains the proposal by the Commerce Department, the Patent Office.

Mr. WILLIS. And we have that statement?

Mr. BRICKFIELD. Yes; we have that right in front of us.

Mr. CURTIS. That is Mr. Stevens' statement?

Mr. BRICKFIELD. Yes.

Mr. KENYON. The question of $5 on each claim over 5 on filing is what I am going to talk about primarily.

As the Commissioner's figures show, this provision would yield about $1,300,000 per year by itself, divorced from anything else in the bill; it is for an increase of about $1.3 million—a small fraction of difference. An increase of $1.3 million over existing law. That is the biggest single item in the whole bill.

The provision on excess fee in the present law, $1 on each claim over 20—and I am talking about filing fees—produces now an annual revenue of about $32,000 which we can disregard as negligible. But if that is changed to $5 on each claim over 5, the revenue goes up to $1,360,000 or a gain of $1,328,000.

Turning now to the issue fees, the second biggest item in this bill, the provision for $5 on each claim over 5 would produce an estimated annual revenue of about $408,000.

Of those two—between them—they make up most of what this bill is about, and the position of my association is that in so elevating these fees, the Congress would go somewhat too far.

The present operation, with a $12 million cost per annum for the operation of the Patent Office, the fees realized are around 45 percent. We do not object to, and would support, a raise in that. If the cost of the Patent Office stays at $12 million, this bill, as I understand it, is going to bring the fees received up to about 80 percent, which we consider much too high a share for the inventor to carry.

If, as seems likely now, the appropriation for the Patent Office is going to be raised from $12 million to $14 million, then the bill does not bring it up to 80 percent; it brings it up to about 70 percent. That, we still think, is too high.

My association, therefore, aims its criticism mainly at the two biggest revenue-producing provisions in the bill, that of a change in the excess fees, and we propose that they be curtailed to an extent which would bring the fees realized by the Patent Office, on the assumption of $14 million operating costs, down to about 55 percent.

Our proposal of $2 on each claim in excess of 10 will approximately achieve that result. And the primary purpose of my appearing here is to urge the adoption of those figures, at each of those 2 points.

Now, as I have indicated, those are the main things.

There are little details, on the reissue fees, simply to carry along the same as the bigger fees; that is just for the sake of consistency. The dollar in revenue is unimportant.

Turning now to another subject, which is trademark issue fees, the position of our association is that of inserting a brand new fee at a place where there has been none before, means offsetting costs of operation because of the clerical and other work that is involved in administration.

We would prefer not to have the issue fee introduced on trademarks at this time. But for simplicity, we support an increase in the filing fee, not increased in this bill for some reason, but put $5 additional on the filing fee, which involves no increase in clerical operation at all, and which should be a net gain to the Government.

We also have some minor suggestions which are with regard to the language of the bill, which I need not go into. They are in my prepared remarks. But I suggest, in view of the number of witnesses to appear, that perhaps that could be just as well covered since it is in the prepared statement.

Mr. Willis, if there are any statements, I will be glad to answer them.

Mr. WILLIS. Mr. Kenyon, you have made yourself sufficiently clear to me, that I do not have any questions.

Any questions, Mr. Jones?

Mr. JONES. No questions.

Mr. WILLIS. Mr. Curtis?

Mr. CURTIS. No questions.

Mr. BRICKFIELD. Are your suggested changes similar to, or substantially similar to, those being proposed by the American Patent Bar Association?

Mr. KENYON. I have not seen what their final proposal is. They had, I know, some early proposals in which they would put the fees on the excess number of pages and on the excess number of sheets of drawings. My association thought it simpler not to get into that type of thing. We have not gone along on that proposal, but we do not have any serious objections to it, if that is what the committee feels ought to be adopted. We are not here to oppose it. We are here on the suggestions as made. Those perhaps have merit, but I am right now not prepared to discuss them at great length at this time.

Mr. BRICKFIELD. Last week, when the Commissioner of the Patent Office appeared and testified before this committee, he, at that time, suggested an alternative plan, as he called it, which the Department prefers, and it is something similar—I will not say it is identical—to what you have suggested this morning, and to that extent you are addressing yourself apparently to a moot point, because you and the Patent Office now may be speaking along the same lines.

Mr. KENYON. You mean in advocating $2 over 10?

Mr. BRICKFIELD. They advocate $2 over 5, in excess of 5.

The American Patent Bar Association advocates $2 over 10, the same as you.

Mr. WILLIS. But still, as I recall, the Commissioner's alternative plan would produce just about the same revenue.

Mr. BRICKFIELD. Yes, because in addition, Mr. Chairman, they would also charge $2 for each page of specifications over 10, and they believe, at least, that it is more realistic in that they would be charging for work rendered.

Mr. WILLIS. That is right.

Mr. BRICKFIELD. For each page of specification.

Mr. KENYON. I recall some discussion on that. There would be the problem of people trying to crowd too much on a page and to crowd too much into one sheet of drawings, and how those problems were going to be controlled. They may be small but it does create a problem to some extent.

Mr. WILLIS. Thank you very much, Mr. Kenyon, for your statement.

Mr. KENYON. Thank you.

(The statement of Mr. Kenyon is as follows:)

STATEMENT OF W. HOUSTON KENYON, JR., FIRST VICE PRESIDENT, NEW YORK PATENT LAW ASSOCIATION, NEW YORK, N. Y., IN RELATION TO H. R. 4983

SUMMARY

This association, supporting the general objectives of the bill, opposes it only because in four respects it believes the fee provisions should be changed. In two respects this association thinks the language ambiguous, and urges that it be made clear.

The New York Patent Law Association is the oldest and largest of the local or regional patent law associations in this country. It has a 30-year record of constructive assistance to congressional committees considering changes in the patent and trademark statutes.

Our discussion of H. R. 4983 will be divided into three parts:

1. A statement of our general position upon the raising of Patent Office fees:
2. A statement of four detailed objections to the financial provisions contained in the bill and suggestions for change therein; and
3. Two suggestions for improvement in phraseology of the bill to remove possible ambiguity or uncertainty.

RAISING PATENT OFFICE FEES

The New York Patent Law Association believes that no valid objection can be interposed at this time to a reasonable increase in Patent Office fees. The present fees have been in force since 1932. Costs have risen greatly since that time. These costs affect the Patent Office as well as every other operation employing labor and paying salaries. Great pressure to economize, exerted upon the Patent Office especially in recent years, has to some extent increased the efficiency of operation in some of its departments. On the other hand, the growing complexity of modern technology progressively slows the examining operation, and makes it more time consuming and costly. An increase of fees is justified by the increased costs.

The Patent Office, however, was not created merely to serve the Nation's inventors, and does not exist for that sole purpose today. Had service to inventors in issuing them patents been the only purpose for which the Patent Office was founded in 1836 there would have been no need to create it at all. Before that time patents were given out on request to those who took an oath and paid the prescribed fee. The great purpose of Congress in the Patent Act of 1836, creating the first patent examination system which existed anywhere in the world, was to serve the public interest by preventing the issue of patents where no invention had in fact been made.

Insofar as the Patent Office serves the public interest, by its examination procedures, it is not serving the inventor and he should not be expected to pay. To this extent the Patent Office should be supported out of the general revenues.

On the other hand, it is the inventor who sets the machinery of examination in motion, and whose demands impose a greater or lesser burden upon the Office. We recognize that the inventor himself should pay a fair proportion of the cost of an operation he calls into play.

As a working rule of thumb, we favor dividing the cost about equally between the inventor and the public. That is, we think Patent Office fees should be adjusted so as to realize about half the costs of operating the Patent Office.

Believing that the fee revenues of the Patent Office have fallen below the halfway mark, we support legislation to restore the balance. But we oppose provisions which would overshoot the mark.

OBJECTIONS TO FOUR SPECIFIC FINANCIAL PROVISIONS

1. We object to the provision of section 1 of the bill, insofar as it would amend item No. 1 (filing fee) of subsection (a) of section 41 of title 35, United States Code, to insert therein "$5 for each claim * * * in excess of five." This we think would unduly burden the inventor. It represents too great a jump from the present figure of "$1 for each claim in excess of twenty." We favor an intermediate provision in which the language of the bill would be amended to provide "$2 for each claim in excess of ten."

2. We object to the provisions of section 1 of the bill, insofar as it would amend item No. 2 (issuing fee or final fee) in subsection (a) of section 41 of title 35, United States Code, to read "$5 for each claim in excess of five." For many years the final fee on excess claims has been "$1 for each claim in excess of twenty".

We think the proposed jump in the final fee is too large. We favor amending this portion of the bill to read "$2 for each claim in excess of ten".

3. We object to the provisions of section 1 of the bill, insofar as it would amend item No. 4 (reissue fee) in subsection (a) of section 41 of title 35, United States Code, to insert the words "$5 for each claim in excess of five". In this case, as in the items previously mentioned, the law for many years has provided "$1 for each claim in excess of twenty" and we think the proposed increase is larger than it should be at this time. In this instance also we suggest as a compromise the amendment of H. R. 4983 so as to insert therein the expression "$2 for each claim in excess of ten".

We urge the foregoing suggested changes because of our belief that the larger amounts proposed in H. R. 4983 ($5 for each claim over 5, in each case) would produce so large an increase in Patent Office revenue as to require inventors collectively to support something like 60 to 70 percent of the total costs of office operation. This we think too high. Basic fees for filing, issue, and reissue would be raised by this bill from $30, $30, and $30 to $40, $50, and $40, respectively, and to this we do not object. Our objection is solely to the high rates on excess claims. We understand that the lower fee figures we advocate will substantially achieve the 50–50 division of cost which we urge as being proper.

4. We object to that provision of section 3 of the bill which would amend section 31 of the Trademark Act of 1946 so as to provide a fee of $10 when the examination of an application to register a trademark has been completed and notice of allowance has been sent to the applicant.

Our objection rests upon the fact that the introduction of this new fee in trademark cases, not heretofore required, will expand the administrative duties of the Patent Office and create new and offsetting costs of unknown magnitude in that agency. Added clerical personnel will be needed to keep records, handle notices and remittances, and check defaults. The $10 fee may perhaps be a moneymaker; it may also create more costs than revenues. We are not impressed with the need for the added services, nor do we think that a bill raising fees is the place or the time to introduce changes in administrative policy into the trademark laws.

However, we do not oppose reasonable increase in trademark fees. We suggest that the provision for a trademark issue fee be stricken from H. R. 4983, and that in lieu thereof the fee on filing each original application for registration of a trademark in each class be raised from $25, as it is in existing law and also in H. R. 4983, to $30.

If the $10 fee be eliminated from the bill the further reference thereto in subsection (f) of section 4 of the bill, should likewise be eliminated.

SUGGESTION FOR IMPROVEMENT IN PHRASEOLOGY

1. The language appearing in section 1 of H. R. 4983 insofar as it would amend item No. 1 (filing fee) in subsection (a) of section 41 of title 35, United States Code, reads "$5 for each claim presented at any time which is in excess of five claims in the case".

This language contains an ambiguity which, if construed by the Comptroller General or other appropriate official in a light most favorable to the United States, would result in a large increase of fees in excess of those presently contemplated, and result in the creation of a situation correctable only by further legislation after material harm had been done.

The ambiguity resides in the phrase "presented at any time." Under present practice in the Patent Office, made necessary by the complexity of technical subject matter, the claims which an inventor submits must often be extensively amended to meet requirements of both substance and form. Clerks enter these amendments on the original papers in red ink as directed by the inventor. Often original claims become overlaid with amendments so they are hard to read, and difficult for the Public Printer to set up in type. The practice has long been followed of encouraging submission of amended claims in cleanly typewritten text embodying former or further amendments, as a convenient mode of keeping the record legible and clear.

Since about 1930, to avoid occasional mixups when claims were rewritten, the Patent Office has enforced a rule that each time a claim is rewritten it must receive a new number, even though it is simply a clean rewriting of some previously amended claim. This practice has helped a great deal to clarify Patent Office practice. Where a small number of claims must be rewritten several times, the claim numbers may go quite high.

For example, an applicant submitting 8 original claims and rewriting each of them twice, would use numbers from 1 through 24, even though he would never at any time be presenting for the examiner's consideration a greater number of claims than 8.

Under the language of the bill as now written, in which an applicant is obliged to pay $5 for each claim "presented at any time" which is in excess of 5, it might be held that the applicant above mentioned would be required to pay on a total of 24 claims, even though he never had more than 8 under examination at any one time. Thus a rule-numbering convenience in the Patent Office would become a fee-obligation, and applicants to save money would insist that examiners work with overlaid amendments, when that may be very inconvenient for all concerned.

We believe the intention is to determine the fee obligation by the maximum number of claims pending at any one time, which is in excess of the critical number. This can be achieved by amending the quoted language so as to read "$5 for each claim which is in excess of five claims pending in the case at any one time."

2. We suggest that the effective date on which the act takes effect shall be upon the first of a calendar month, and not some random date occurring in the middle of a calendar month depending upon the date that the bill is signed into law.

We urge that section 4 (a) of H. R. 4983 be amended so as to strike out the words "This Act shall take effect three months after date of enactment" and to substitute in lieu thereof the following: "This Act shall take effect on the first day of the third calendar month next following the calendar month in which it is enacted."

STATEMENT OF WILLIAM R. BALLARD, ADVISER TO THE COMMITTEE ON PATENTS OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. WILLIS. Mr. Ballard, will you identify yourself by name and the capacity in which you appear?

Mr. BALLARD. My name is William R. Ballard.

I have filed a statement with the committee. It is very brief, a little over three pages and if it is agreeable with you, I will run through that and then submit to questions if you desire.

Mr. WILLIS. Will you tell the capacity in which you appear?

Mr. BALLARD. I am adviser to the committee on patents of the National Association of Manufacturers and I am speaking for that association today. As you may know, it is a voluntary organization of approximately 20,000 manufacturers, 83 percent of whose members have less than 500 employees each, so we represent a cross section of American industry, including in our membership manufacturing companies of all sizes.

The association has the position formally adopted on the subject of Patent Office fees, which I think is very brief and with your permission, I will read it.

Mr. WILLIS. Yes.

Mr. BALLARD. It reads:

> The association favors a moderate increase in Patent Office fees not inconsistent with the principle that the general public should bear a fair proportion of the cost of operation of the Patent Office. There should be no imposition of any levy on patents subsequent to the date of the grant.

There is some disagreement among those interested, both within and without our association membership as to the total of the increase that should be made, and also as to the widest distribution of any given total among the several different fees charged.

Our purpose in appearing here is not to advocate any particular total or any particular distribution, but rather to suggest to the committee some general principles upon which a wise decision on this question can be reached by you, as far as fees for patents are concerned.

The basic fact from which we start is that our entire patent system including the Patent Office was set up wholly for the benefit of the general public, in a sense not true of most Government operations.

It all springs from article I, section 8 of the Constitution, authorizing the granting to inventors of the exclusive right to their respective inventions, for a limited time. The purpose of this is there explicitly stated as being "to promote the progress of the useful arts."

The "useful arts" was their name for the things we use in our daily lives in our ways of doing things. These things make up what we call today our standard of living. Quite obviously the plan was to improve the standard of living of the whole people by giving a limited grant as pay to those who were able and willing to make improvements in our standard of living. It is certain that the gentlemen who wrote this into the Constitution were not proposing class legislation for the benefit of any particular group of citizens.

The patent system is a plan for getting things—that is, inventions—from individuals and giving them to the public as the patent expires. It is planned for hitching the horsepower of private interests to the cart of public benefit.

Chief Justice Marshall stated it so aptly in these words long ago:

> It is the reward stipulated for the advantages derived by the public from the exertions of the individual and it is intended as a stimulus to those exertions.

And only a few years ago, Dr. Karl T. Compton said:

> The patent system itself is fundamentally one of the greatest social inventions which has been made for the benefit of the human race.

The inventor or his backer does sometimes make money from the patent and if they never did, the reward proposed by the Constitution would have no value, of course, and its plan to benefit the public would fail entirely, but the inventor's benefit is altogether subordinate in this plan. It corresponds to the benefit which others serving the public derive from their paychecks. Patents are to reward inventors for having created and disclosed to the public something new and useful to it.

Since the Patent Office, then, is set up for the purpose of benefiting the public, it is obviously a mistake to fix the fees in that office with the idea of making the inventor bear its entire cost. They already have to bear all of the cost of creating the improvements and have to take all the risk of getting them onto the market.

In deciding, then, what fee increases shall be made by this bill, we urge the committee not to fix the fees with the idea that this is a plan, or a part of a plan, to make the Patent Office self-supporting. Inventors are not special beneficiaries to whom the Patent Office's cost of operation is attributable.

On the other hand, both reason and precedent justify charging inventors some fees. To begin with, if you charge no fees, the Patent Office would quite certainly be literally swamped under a deluge of requests for patents on trivial and ridiculous suggestions.

Again, in connection with many applications for patents, the Office is of more or less help to the inventor in reaching an exact statement of the novelty which his invention presents.

Also there are certain special services which the Office does perform entirely for the benefit of the particular individuals concerned, such as the recording of assignments, furnishing copies of Office records,

issuing certificates of correction for applicants' mistakes, etc. Fees for such services should properly cover the entire cost of the particular service involved.

Through no fault of inventors, the examination of applications for patent is becoming more and more difficult, time-consuming, and costly, than it was, say 50 years ago. The field to be searched to determine novelty is about 3 times as large as it was some 50 years ago, and the advances in organic chemistry, electronics, atomic energy, etc. have resulted in inventions of a much more complex character than in former years. It should be recognized, therefore, that the mere fact that fees charged in years gone by did at the time nearly, or fully, cover the Patent Office costs of those days, does not mean that this is practicable today. The minute we load the inventor with more expense than he is willing to risk, we choke down the stream of improvements necessary for a rising standard of living.

Now, to that I may add, I think properly one other fact: Since this was written and submitted to the committee there was a meeting of the patent committee of the NAM at which this subject was discussed, and a majority of those present approved this bill—and I am speaking of H. R. 4983—with two changes. Well, I might say, 4, but the first 3 of these are all alike: Items 1, 2, and 4 of the bill, where you have a charge for excess claims set out at $5 for each claim in excess of 5. That is alike in those three items.

Then the majority approved the charge of $2 for each claim over 10 in each of those 3 items.

The other change relates to trademark fees, and their position, then, was what Mr. Kenyon has suggested to you: they opposed the issuance fee, which is put in now for the first time and suggested that the $25 filing fee be raised to $30.

Mr. WILLIS. Will anyone of you tell us what the revenues on the $2 in excess of 10, amount to?

Mr. BRICKFIELD. I think, Mr. Chairman, we have a representative here from the Patent Office, and they can give you that figure.

Mr. WILLIS. Very well.

Thank you very much, Mr. Ballard.

Mr. BALLARD. Thank you.

(A supplementary statement submitted by Mr. Ballard follows:)

SUPPLEMENTARY STATEMENT SUBMITTED BY WILLIAM R. BALLARD

MONEY FOR THE PATENT OFFICE [1]

Careful estimates by the Commissioner indicate that the Patent Office needs about $15 million a year until it can complete a long overdue reclassification of its field of search and overtake its backlog of cases awaiting action, and then about $13 million a year for its regular examining duties. Fees now received cover less than half the amount needed.

The Department's plan for getting the money is to induce Congress to increase fees to cover the expense, and to permit receipts to be kept in a separate fund for Office expenses only. The intention is to make the Office self-supporting.

If the Secretary limits his request for funds to only what is in prospect in the way of receipts it may make it impossible to get from Congress the amount really needed.

The self-supporting theory implies that the business of the Patent Office is to serve the individuals dealing with it by selling them patents for the fees charged.

[1] Historical data taken in part from The Story of the American Patent System, 1790–1952 prepared by the U. S. Patent Office.

That is wholly untrue. A patent is granted only because an inventor has completed a job the public wanted done, viz, he has created and disclosed to the public something new and useful to it.

Not only is the self-supporting theory wrong but history shows that the expedients proposed for getting the money cannot be relied upon. The Patent Office fund plan was tried in the last century and proved a failure. Such use of Government funds is inconsistent with regular Government theory and practice. Congress of course repealed the fund law; and a new law of like character quite certainly could not resist the pressures on Congress for money. "You can't bargain with Congress."

Moreover the fund plan did not solve the problem even when we had it. While it was in force there was a slump in Patent Office business (about 1862) which left the Office so short of funds that some employees had to be discharged and others reduced in pay. And finally Congress had to come to the rescue with a deficiency appropriation to keep the Office going.

History also shows that the amount Congress will appropriate for the Office has practically no relation to the self-supporting status of the Office.

During my own service in the Patent Office (1904 to 1917) I sat in on committee hearings where Office officials and others sought in vain to get needed funds from Congress even while Office receipts were running ahead of Office expenses and there was a neat balance in the Treasury to the Patent Office credit.

Commissioner Craig reported a similar situation and made a like complaint as far back as 1829: and we have heard it often since.

In 1931 the Office had a total balance of receipts over expenses of over $5½ million (business 1826 to 1931) yet some applicants were having to wait 8 and 10 months for a first Office action on their cases.

We may as well face the fact that the only way to get the money the Office needs is to convince Congress that the public interest requires it.

The plight of our Patent Office can only be explained on the assumption that too many of us, including Congressmen, have forgotten why we have such an Office at all.

The whole patent system including the Patent Office was set up entirely for the benefit of the public, and nothing else. This public benefit does not appear as such on anyone's annual balance sheet but the authors of our Constitution foresaw it clearly and anyone can see it today by comparing our "progress in the useful arts"—our standard of living—with that in preceding centuries or in other countries even today.

Any benefit inventors or patent owners may derive from the patent system is purely incidental—like the benefit of the paycheck to a public servant. We do not set up a public servant's office and employ him so that he may receive a paycheck. We do it solely because the public is to receive a benefit. When an inventor gets a patent it is merely his paycheck for doing the job above referred to, that is for creating and disclosing something new and useful to the public.

The Constitution, authorizing the patent system, makes clear that it is for the public benefit, for it says the purpose is to "promote the progress of the useful arts," the status of which fixes our "standard of living."

If anyone doubts that the plan has worked, and that the public does in fact get the benefit as planned, he should recall the report of the National Patent Planning Commission in 1943. That Commission was set up for the express purpose of finding fault with the patent system—and it came up with such statements as these:

"The system has accomplished all that the framers of the Constitution intended * * * it has * * * placed the United States far ahead of other countries in the field of scientific and technological endeavor; * * * contributed to the achievement of the highest standard of living that any nation has ever enjoyed; * * *. The Patent System is the foundation of American enterprise and has demonstrated its value over a period coextensive with the life of our Government."

If the rule as to the support of Government agencies is that the public shall support those activities which are entirely for the public benefit, then all of the patent activities of the Patent Office should be supported wholly by the public, with the exception only of the few fringe services the Office has assumed for individuals such as recording assignments, furnishing copies of records, etc.

These minor fringe services to individuals should of course be supported by fees adequate to cover the expense they involve. On principle it is hard to justify fees for processing patent application. However, as a practical matter reasonable fees for this are probably necessary to prevent the Patent Office from being literally swamped by a deluge of requests for patents on trivial and ridiculous

suggestions; and history shows that reasonable fees for examining applications and issuing patents can be endured.

However, let us not spend our effort in trying to make the Office self-supporting. It is wrong in theory and experience shows that it will have little or no effect upon the funds actually allowed for Office expenses.

The same effort spent in keeping Congress aware of the importance to the public of having the Office well supported will be much more rewarding.

ECONOMIZING ON THE PATENT OFFICE

There are some Government agencies support for which can be cut with only a proportionate decrease in benefit. There are others, like the Government Patents Board, which can be eliminated with little or no loss in benefit. The Patent Office has a job that cannot be done half way without wasting the money spent on the part done.

The reason is that the one and only purpose is to stimulate improvements in the useful arts by issuing the stipulated reward. If we cripple the machinery for issuing the rewards so that they are too long delayed, or so that when issued they are found generally worthless, the stimulus disappears. Once that occurs, any money we spend merely going through the motions is wasted.

By the same sign, the true economy is to give the Patent Office all it takes to do its job as well as is humanly possible. We have kept the Office in a marginal or submarginal condition too long. By giving the Office all it needs in staff and equipment to do the job really well the return per dollar to the public on the added investment would be many fold. It would come in an increased flow of improvements in the useful arts, bringing an increased living standard, and it would come in more taxes received in the Public Treasury from new and revived business enterprises. It would also come in decreased litigation costs (for both Government and citizens) because patents would soon be found so predominantly valid that industry would generally respect them, and would rejoice in a freedom from annoyance due to improvidently issued patents.

STATEMENT OF RICHARD K. STEVENS, CHAIRMAN, SPECIAL COMMITTEE ON PATENT OFFICE FEES, AMERICAN PATENT LAW ASSOCIATION

Mr. WILLIS. Is Mr. Stevens with us?

Mr. STEVENS. Yes.

Mr. WILLIS. We are glad to have you with us, Mr. Stevens. Will you kindly identify yourself by name and state the capacity in which you appear?

Mr. STEVENS. Mr. Richard K. Stevens. I am appearing here as the chairman of the special committee on Patent Office fees of the American Patent Law Association. The American Patent Law Association is a national association and has approximately 1,550 members.

I am going to direct my statement primarily to a referendum which has been forwarded to our membership. There are a number of plans in the referendum which appears on the third page of the written statement which I have filed with the committee.

Our first plan, No. 1, has a breakdown of the controversial points of H. R. 4983.

The second plan is a plan that was developed as a result of talks by the Commissioner of Patents in Chicago on February 19, 1955.

And plan No. 3 is a plan which was proposed at the meeting in our association library, at a meeting of the National Council of Patent Law Associations which our association then adopted for the purpose of the referendum.

We realize that there was no plan No. 2, or any plan No. 3, before the committee, but we wanted to get the reaction of our membership.

With regard to plan No. 1, that is in H. R. 4983, the vote of the membership was opposed, 716; 156 for. Now, proposal No. 2——

Mr. BRICKFIELD. Is that for or against, the 716?

Mr. STEVENS. Against; the 716 against.

Mr. BRICKFIELD. Against it.

Mr. STEVENS. That is right.

Proposal No. 2, which was a modification and still contained the reference to payment of fees for claims in excess of 5, and they had $2 in that case, and also a payment of $2 for each page of the specifications over 10, was opposed almost on the same basis; that was 700 against and 161 for.

Now, plan No. 3 seemed to be very close to the plan which has been discussed before you this morning. There we had proposed a $40 filing fee and $2 for each claim presented at any time in excess of 10 claims. The final fee agreed with the bill in that respect, $50 plus $2 for each claim in excess of 10.

Now that departs from the bill only in the number of claims and the amount paid for each claim in excess of the particular number.

Now, on the issue, the fee was the same: $40; the reduction was $2 for each claim in excess of 10 over the number of claims on the original patent.

And our proposal also included a $30 filing fee for trademarks with no final fee.

The vote on that was 751 for and 141 against.

The association was pleased to receive such a large number of votes because 915 voted in this referendum.

I think that statement shows that we are in favor of an increase in fee, or at least, I had better put it this way, we have no objection to it; I do not think we would say we were in favor of it, but we do not object, and we had filed with our statement a proposed amendment which we think will cause the bill to carry out the views that we have here expressed.

Mr. WILLIS. That is a very nice statement, Mr. Stevens, and we thank you.

Mr. STEVENS. Thank you.

(The statement of Mr. Stevens is as follows:)

STATEMENT BY RICHARD K. STEVENS, CHAIRMAN, SPECIAL COMMITTEE ON PATENT OFFICE FEES, AMERICAN PATENT LAW ASSOCIATION, OPPOSING H. R. 4983 AND SUGGESTING AMENDMENT THEREOF

My name is Richard K. Stevens. I have been engaged in the practice of patent law in the District of Columbia for over 30 years. The board of managers of the American Patent Law Association, 802 National Press Building, Washington 4, D. C., has requested me, as chairman of the association's special committee on Patent Office fees to appear before your committee and report to you the results of a referendum in which our 1,550 members were asked to express their approval or disapproval of H. R. 4983 and two other suggested plans for increasing the fees payable to the Patent Office.

The American Patent Law Association is a national association and its membership of approximately 1,550 is scattered throughout the United States. From time to time, the association seeks the opinion of its members through referendum vote on issues of importance to the profession. The interest of the patent bar in the bill to increase the fees payable to the Patent Office was demonstrated in the response received to this referendum. Nine hundred and fifteen members responded, the largest number ever to vote on any question. A copy of the referendum which was submitted to the members follows:

"REFERENDUM ON PATENT OFFICE FEE BILL TAKEN BY DIRECTION OF BOARD OF MANAGERS

"EXPLANATORY NOTE

"The House has passed the appropriation bill for Commerce, which provides $14 million for the Patent Office for fiscal year 1956. This is $2,500,000 more than the appropriation for fiscal 1955.

"There has been no increase in Patent Office fees since 1932. Last year there was introduced in Congress a fee bill, H. R. 9794, which died in committee. This year the same bill was reintroduced as H. R. 4983. This bill is reproduced in full in APLA Bulletin of March 1955, pages 137–141. The filing fee, final fee, reissue fee, and filing and final trademark fees of H. R. 4983 are set out in accompanying plan No. 1.

"At a meeting of the National Council of Patent Law Associations in Chicago on February 19, 1955, Commissioner Watson submitted data bearing on several different Patent Office fee schedules. After an expression of viewpoints by the members of the National Council, Commissioner Watson indicated that the Patent Office might well support an alternative schedule of fees different from those of H. R. 4983. This alternative schedule is set forth as plan No. 2.

"At a subsequent meeting of the National Council of Patent Law Associations on May 20, 1955, the fee schedule of H. R. 4983 and the schedule of fees in plan No. 2 were considered. The members of the council present considered the provisions of H. R. 4983 as originally introduced and the complex problems of administration both in and out of the Patent Office that would be entailed under the fee schedule set forth in plan No. 2 of this referendum, and unanimously adopted the following resolution:

" '*Be it resolved,* That the members of the national council in attendance at this meeting for advisory purposes only, have reached a unanimous conclusion that a Patent Office fee schedule, calling for a filing fee for each original application for patent of $40 plus $2 for each claim which is in excess of 10 claims pending in the case at any one time, a final fee of $50 plus $2 for each claim over 10 at the time of issue, and a $40 fee for each reissue application plus $2 for each claim over 10, which is also over and above the number of claims of the original patent, should not be opposed; and be it further

" '*Resolved,* That the fee bill, H. R. 4983, in its present form as it relates to patents should be opposed, but should not be opposed if amended to conform with the foregoing schedule.'

"They also approved a trademark filing fee of $30 with no final trademark fee.

"The fee schedule which members of the national council indicated they would not oppose is set out in accompanying plan No. 3.

" '*Proposals*

	" 'Plan No. 1	Plan No. 2	Plan No. 3
Filing fee	H. R. 4983 as is: $40 plus $5 for each claim presented at any time which is in excess of 5 claims in the case.	H. R. 4983 amended as follows: $40 plus (*a*) $2 for each claim presented at any time which is in excess of 5 claims in the case plus (*b*) $2 for each page of specification over 10 (the Commissioner to fix definition of a page) plus (*c*) $2 for each sheet of drawings over 1.	H. R. 4983 amended as follows: $40 plus $2 for each claim presented at any time which is in excess of 10 claims in the case.
Final fee	$50 plus $5 for each claim in excess of 5.	$50 plus $5 for each claim in excess of 5.	$50 plus $2 for each claim in excess of 10.
Reissue fee	$40 plus $5 for each claim in excess of 5 and which is over the number of claims of original patent.	$40 plus $5 for each claim in excess of 5 and which is over the number of claims of original patent.	$40 plus $2 for each claim in excess of 10 and which is over the number of claims in original patent.
Trademark filing fee.	$25	$35	$30.
Trademark final fee.	$10	None	None.'

"All other fees set out in H. R. 4983 will apply under each of the above plans.

" 'Please vote on each of the three questions on the enclosed self-addressed post card, sign and mail. In order that the results of this referendum may be made available to the subcommittee of the House Committee on the Judiciary, which will be conducting hearings on the fee bill, the deadline for receipt of your vote at APLA headquarters is June 10, 1955.

" ' *Ballot*

" '1. Would you support H. R. 4983 if amended to embrace the fee schedule of plan No. 3?

" 'Yes ____ No ____

" '2. Would you also support H. R. 4983 if amended to embrace the fee schedule of plan No. 2?

" 'Yes ____ No ____

" '3. Would you further support H. R. 4983 as originally introduced, plan No. 1. (See March Bulletin pp. 137–141.)

" 'Yes ____ No ____

" '(Signature) _____

" 'This ballot must be signed and returned by June 10, 1955.' "

The results of our referendum show that our membership opposes H. R. 4983 in the form introduced by a vote of 716 to 156 (plan No. 1 of the referendum). The referendum also shows that our membership opposes the alternate plan suggested by the Commissioner of Patents by a vote of 700 to 161 (plan No. 2 of the referendum).

Plan No. 3 of the referendum presents a fee schedule providing a patent application filing fee of $40 plus $2 for each claim which is in excess of 10 claims pending in the case at any one time, a final fee of $50 plus $2 for each claim over 10 at the time of issue and a reissue fee of $40 plus $2 for each claim in excess of 10 and which is over the number of claims in the original patent. It also provides for a trademark filing fee of $30 with no trademark final fee. On the referendum our members voted 751 to 141 not to oppose H. R. 4983, if amended, to substitute therein the latter fee schedule. The necessary amendatory provisions to render H. R. 4983 unobjectionable are attached hereto.

Our association has followed very closely the operations of the Patent Office and proposed legislation to increase Patent Office fees. The association has been on record since 1953 to the effect that it will not oppose a reasonable increase in these fees; however, as indicated in the recent referendum, a majority of our members feel that the fee increase contemplated by H. R. 4983 in its present form is unreasonable and will operate adversely to the public interest.

PROPOSED AMENDMENT TO H. R. 4983

Page 1, lines 6 to and including 11, rewrite sections 1 and 2 as follows:

"SECTION 1. On filing each application for an original patent, except in design cases, $40; in addition $2 for each claim which is in excess of 10 claims pending in the case at any one time.

"SEC. 2. On issuing each original patent, except in design cases, $50, and $2 for each claim in excess of 10 at the time of issue."

Page 2, line 4, strike the figure "$5" and substitute the figure "$2"; strike the word "five" and substitute the word "ten".

Page 3, line 13, strike the figure "$25" and substitute the figure "$30". Eliminate completely lines 14 to and including line 20.

The remaining section numbers on pages 3 and 4 should then be renumbered by decreasing each number by 1.

STATEMENT OF HON. FRITZ G. LANHAM, REPRESENTING THE NATIONAL PATENT COUNCIL

Mr. WILLIS. We are very glad to have our former colleague with us, Hon. Fritz G. Lanham, whom we will be pleased to hear at this time.

Mr. LANHAM. Thank you, Mr. Chairman, I represent the National Patent Council, a nonprofit organization of smaller manufacturers

devoted to the preservation and promotion of our American patent system.

Mr. WILLIS. And they are well represented too.

Mr. LANHAM. That is very kind of you, thank you.

It is seldom that I find myself in disagreement with our distinguished Commissioner of Patents, for whom I have a very high regard, but in opposing favorable action on the pending bill, I think I am continuing my consistent record through many years of seeking to protect our patent system which, through the incentive it affords, has been the major factor in placing and keeping our country in the forefront of nations industrially and otherwise. And I believe, too, that the objections I shall urge give further evidence of my friendly interest in the success of the Patent Office in its intended purpose and in the continuing progress and development of this great country of ours.

First, I should like to call your attention to a similar bill to increase patent fees, H. R. 2520, which was introduced in the 80th Congress and with reference to which extensive hearings were held. The committee then, after due deliberation, declined wisely, in my judgment, to report the measure favorably.

That former bill was introduced at the request of the then Secretary of Commerce in a letter to the Speaker of the House of Representatives. In that letter the Secretary stated:

> The purpose of the proposed legislation is to place the Patent Office on a wholly self-sustaining basis.

Something akin to that purpose is contemplated in the bill now before you. In his testimony a few days ago, the Commissioner of Patents stated that, if the fees here proposed had been in effect during the 3 years 1952–54, they would have yielded 80 percent of the cost of operation of the Patent Office.

I believe that the effort to make the Patent Office self-supporting is decidedly at variance with the original and constitutional concept of its functions and that such a purpose is based upon a false, inequitable, and unsound policy. We do not apply this principle to other governmental institutions, and there are convincing reasons why it should not be applied to our patent system. In our other Federal institutions we expend vast sums, in most instances wholly at Government expense, in providing benefits for the people of this country who usually are required to make no reciprocal contribution.

We do not expect, for instance, that the Department of Agriculture should be self-sustaining because we realize that the benefits it bestows upon farmers and the consuming public are sufficient to justify the Federal cost. In a similar way we operate the Weather Bureau and the Reclamation Service. Through the fourth-class postage rate we grant financial concessions to the publishers of newspapers and magazines. You could amplify the number of such services at great length.

Mr. WILLIS. About the only agency of the Government that is self-supporting is the Department of Internal Revenue, is it not?

Mr. LANHAM. I think that is probably true.

Now, on the contrary and by way of contrast, reflect upon the valuable contributions which inventors, under the incentive of our patent system, have made and are making for the progress and prosperity of our land. In their research they toil night and day,

spend their own funds and often deprive themselves of enough food and sleep in order to accomplish something that will be helpful to all our citizens. They have made our Nation wealthy and outstanding in every character of worthy achievement. What Government service has promoted our progress and our comfort and our convenience like the American patent system? There is no avenue of rural, urban, domestic, or commercial life that it has not blessed with its beneficient contributions. But now it is proposed that we single out these benefactors to impose increased charges upon them for doing so much for our country while at Government expense we distribute many and varied bounties to our citizens in all walks of life. It seems to be forgotten by some that these inventors render and have rendered great public service and are eminently entitled to the encouragement of public support.

So why should we single out the Patent Office, thus so helpfully differentiated in its operations from other Government institutions, to be placed on or near a self-supporting basis? There is no such intimation in the constitutional provision to promote the progress of science and the useful arts and I do not think it was for one moment contemplated by the framers of our organic law. If we reduce or impair the incentive of inventors to bless our land with new and useful discoveries, we are likely even to demote the progress of science and the useful arts. In my judgment, the committee's prime consideration is the matter of giving assurance that American ingenuity unhampered will continue through undisturbed incentive to manifest its wholesome and progressive influence upon our American life.

After all, what is a patent? It is not, as some seem to think, a gift from the Government. On the contrary, it is something the inventor has earned and is entitled to receive if his discovery meets the prescribed qualifications. Then what is a patent? It is simply an acknowledgement by the Government of a gift that the inventor has made for the benefit of all the people of the country and for the Government itself in many particulars. Certainly we must encourage inventors in every proper way to continue the contribution of their gifts for the promotion of our progress and prosperity.

Think of the many ways in which the Government benefits from useful inventions. Can you estimate the number of the thousands of jobs that the inventions of Thomas Edison alone have created? I was advised recently that a single large corporation now employs more than 12,000 men and women for work based upon the original invention of the electric light. And the same truth is characteristic of what has followed since an invention of Elias Howe made possible the sewing machine. Consider also the Wright brothers who have made aviation the source of income to untold thousands of people. Such instances could be cited almost without number, and it is significant that so many of these accomplishments have come from humble citizens who, though scantily blessed with this world's goods, have been encouraged in their tireless labors by the incentive of our patent system.

And now let us look at this situation from the Government angle. Just contemplate for a moment the vast amount of revenue the Government derives from these workers and from industry and those in our domestic life who enjoy daily the benefits the inventors have bestowed upon them. Perhaps you can get from some governmental

source the enormous aggregate of revenue our Government thus acquires. Think, too, of the added millions who through the discoveries of inventors are now on the rolls of employed citizens whose earnings help to swell the receipts of Federal revenue. Contemplate what our unemployment problem would be but for these benefactors.

And what is now proposed in the bill before you? It is that we put a brake on the activities of those whose contributions make and keep our country great and that we dilute the encouragement of the incentive to continue their arduous labors in our behalf. That seems somewhat equivalent to saying that the Government will go on playing a beneficent godfather to our citizens in general but that it will take all the toll it can from those whose contributions make possible the prosperity of our Government and our people. Let us not foolishly approach such a policy of diminishing returns.

When that bill to increase patent fees was pending in 1947, a representative of the Patent Office testified that the large corporations were responsible for only 17 percent of the patents issued, while 43 percent represented patents to individuals and 40 percent those to small business. In the absence of these hearings of any testimony to the contrary, I assume that those figures are still approximately accurate. Evidently, therefore, much of your thought must be centered upon the incentive of individuals and small-business concerns whose research has resulted in 83 percent of the patents that have kept America in the forefront.

I wish now to call your attention to another revealing incident in 1947. I refer to a statement made by Mr. Thomas F. Murphy, Acting Commissioner of Patents at that time. On March 12, 1947, he was appearing at a hearing by the House Subcommittee on Appropriations for the Department of Commerce and the question of making the Patent Office self-sustaining was being discussed. I quote from page 260 of the printed copy of that hearing:

Mr. MURPHY. If fees are raised, we will have less applications coming in. Therefore, the small inventor, possibly, would be the one that would be squeezed out.

Mr. HORAN. What would squeeze the small inventor out?

Mr. MURPHY. 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.

In other words, gentlemen, it was contended that, if we would squeeze out the little fellow and destroy his incentive to contribute to the welfare and progress of our country, the Patent Office could operate with greater ease. Why, if we had had that spurious policy in effect through the years, Thomas Edison might have been squeezed out. He started as a little fellow and there was nothing in his educational background to forecast his outstanding discoveries. It could have squeezed out a lowly Methodist preacher by the name of Goodwin who gave us our photographic film. Elias Howe with his sewing machine invention was a little fellow. Such a list could be extended at great length. Rather than deny us the advantages of such discoveries, it would be the part of wisdom even to decrease fees rather than to increase them. We must not discourage such inventors who come so often from the ranks of the lowly. Doubtless many of them would be here testifying to that effect if they could afford an expensive trip to Washington. The amount of the fees makes relatively little difference to the big corporations, but it is a very vital consideration

to the humble citizen whose inventive discovery may prove of great benefit to the Government and the people.

In his testimony a few days ago, our respected friend Commissioner Watson, made this statement:

> A substantial fee is necessary to make certain that the Patent Office is not deluged with applications which disclose and claim devices of little value.

I think in many cases it would be a very difficult undertaking to predetermine the value of an invention. Certainly the inventor believes it to be of value or he would not have gone to the expense of paying the fee, and possibly employing an attorney, for its consideration by the Patent Office. I recall an interesting incident that happened several years ago when I was invited to speak about the Wright brothers on Aviation Day at the first of the historic annual pageants down in the Kitty Hawk neighborhood. There I met and talked with the telegraph operator who sent out to the country the news of the first successful flight of the Wright brothers. It was so incredible that only six newspapers in the United States mentioned the report and each with only a few lines. But many newspaper editors phoned or wired back to North Carolina asking what was the matter with that drunk telegrapher. Maybe the Wright brothers were little fellows; certainly the value of their discovery was not at once recognized. Yet today aviation is one of our leading industries. I can remember when it was predicted we would never have a practical automobile, but today every family either owns or craves one. Let us not be too hasty in declaring various inventive claims to be of little value.

The Secretary of Commerce has stated that the purpose of H. R. 4983 is "to effect a greater recovery of costs from special beneficiaries of this Government program."

Evidently the Secretary thinks that those who receive patents to bless our country are "special beneficiaries." In my judgment, that is a clear case of mistaken identity. I do not think it requires an extensive knowledge of the purpose and operations of our patent system to enable one to realize that its "special beneficiaries" are the Government and the people. It was designed for and has functioned for the benefit of the public. The grant by the Government is to encourage inventors to disclose their discoveries and get their useful inventions introduced through industry so that we can maintain our supremacy and economic prosperty. And every one of use knows how wonderfully that sytem has worked. The patentee is accorded only a limited time in which to enjoy the fruits of his discovery but the use and enjoyment of it by the Government and the people go on like Tennyson's brook.

In conclusion, may I remind you that we are dealing with something which from the very beginning of our Governmeng has been fundamental in our national economy. We built upon a firm foundation in the constitutional provision to promote the progress of science and the useful arts, but unfortunately in recent years there have been efforts to weaken the wonderful superstructure of our patent system, We like to think that such efforts have sprung less from design than from lack of understanding of the transcendent importance of keeping our patent system and its inspiring incentive absolutely unimpaired. It behooves us to see to it that that system continues to operate in full

force and vigor with incentive appeal to the humble as well as to the mighty. Let us proceed with caution and with the one definite objective of assuring the preeminence of America through the salutary policy that has made and kept it great.

May I make one additional comment, Mr. Chairman: I think those of us who are informed with reference to the situation at the Patent Office know that the trouble there, from the standpoint of its operation, and the trouble there, from the standpoint of discouragement in the incentive to inventors, is the enormous backlog of applications for patents which has accumulated. They now have in that backlog over 200,000 of applications for patents. What is the consequence?

It takes 4 years for an application for patent to be finally passed upon by the Patent Office, and during those 4 years the inventor has no protection whatever. Consequently, when you consider the humble fellow, he cannot afford to wait 4 years and he turns his skill to some other field in order to make a living.

Now, that backlog has arisen somewhat by reason of the fact that in the war years the examiners in the Patent Office could get greater remuneration in private industry, and we lost a great many. We were then paying attention to many other things, perhaps more directly and immediately connected with our war effort, and so we have acquired this great accumulation of applications for patents unacted upon.

Now, I think we are taking the proper step and adopting the proper policy, from the standpoint of the Appropriations Committee, in making appropriations that will enable us at least to get well started upon the elimination of that backlog so that there can be more prompt action upon the applications for patents and relief in the discouragement to inventors which is great enough at the present time, without increasing the fees.

I thank you, Mr. Chairman.

Mr. WILLIS. There has not been an increase for a long time; is that right?

Mr. LANHAM. That is true and any increase in fees, in my judgment, is absolutely a violation of the whole purpose of the Patent Office and of our patent system to inspire these inventors to carry on their work and give us the beneficial results of their labors.

But we are not going to cure the backlog trouble by such a bill as is here proposed. We are merely going to discourage many inventors who now have to wait 4 years to get patent protection for their discoveries.

So the proper thing for us to do is to keep this system as it was intended to be from the days of the constitutional planing down to the present, to encourage these inventors to continue their work and make their disclosures, as they have done in placing our country right in the forefront of nations. Why, we could not begin even to approximate our budget requirements but for the inventions that have been bestowed upon us through American ingenuity by those who still devote their time and their labor at great sacrifice to make useful things for our country.

Mr. WILLIS. Thank you very much, Mr. Lanham. We appreciate the benefit of your helpful statement.

Mr. LANHAM. Thank you.

STATEMENT OF C. WILLARD HAYES, CHAIRMAN OF THE LEGISLATIVE COMMITTEE OF NATIONAL COUNCIL OF PATENT LAW ASSOCIATIONS

Mr. WILLIS. Mr. Hayes, will you come around and identify yourself?

Mr. HAYES. Mr. Chairman, my name is C. Willard Hayes. I am appearing here as chairman of the legislative committee of the National Council of Patent Law Associations.

I prepared and filed a written statement and I will not read from that statement but will merely summarize the contents of it in explaining the action the national council has taken.

Mr. WILLIS. For the benefit of my own information, what is the difference between the American Patent Law Association and the National Council of Patent Law Associations, in representation, I mean?

Mr. HAYES. The National Council of Patent Law Associations is a council made up of delegates from local associations throughout the country. I would like to read into the record a list of the members of this association who are members of the council.

The American Bar Association, patent section, is a member.

The American Patent Law Association is a member.

The Boston Patent Law Association; the Chicago Patent Law Association; the Cincinnati Patent Law Association; the Cleveland Patent Law Association; the Columbus Bar Association, patent section; the Connecticut Patent Law Association; the Dayton Patent Law Association; the Los Angeles Patent Law Association; the Michigan Patent Law Association; the Milwaukee Patent Law Association; the Minnesota Patent Law Association; the New Jersey Patent Law Association; the New York Patent Law Association; the Oregon Patent Law Association; the Philadelphia Patent Law Association; the Pittsburgh Patent Law Association; the Rochester Patent Law Association; the San Francisco Patent Law Association; the St. Louis Bar Association, patent section; the Seattle Patent Law Association; the Texas State Bar Association, patent, trademark and copyright section; and the Toledo Patent Law Association.

So you see this council is made up of representatives from all of these local patent law associations throughout the country; and I think its representation, its membership, is tremendously larger than the American Patent Law Association, or than the patent section of the American Bar Association.

It is purely an advisory organization and it cannot bind any of its members. The whole purpose is to attempt to coordinate the viewpoint of the various local associations and to reconcile the patent bar associations as a whole, in order to present to the Congress a unified approach if possible.

This council held a meeting in Chicago on February 19. There were about 30 representatives there, as I recall it, and the Commissioner of Patents was present. At that meeting, a number of things were taken up, among which was the question of raising the Patent Office fees. And everyone, of course, was opposed to the amounts in the corresponding bill in the last Congress and the Commissioner realized there was opposition by the bar to such a large increase and

he came up with this alternative plan which has been discussed here this morning.

And at that time, in view of his urging, and the statement that the Patent Office probably could go along with the plan, the council, that is, the members present of the council, agreed that they would not oppose it. That was the $40 filing fee, plus $2 for each claim presented at any time in excess of 5; $2 for each page of specifications, in excess of 10, with the right of the Commissioner to define what constituted a page; and $2 for each drawing and so on. That plan, as I say, was tentatively approved, or should I say was not disapproved by the members at that meeting.

However, I think——

Mr. WILLIS. Was that the alternative plan described by the Commissioner?

Mr. HAYES. Yes. I think when the delegates got back home and heard from their members, they found that nobody was happy about that plan. I think they felt that it would be too complicated to administer, if every lawyer who had a case took it down to the Patent Office and they had to count the pages, count the sheets of drawings, and all of that, that it would just be too burdensome, and that it would also be a burden on the Patent Office. So a further meeting was held by the council in the latter part of May, May 20, and at that time, after considerable heated debate, all of the people present voted unanimously in favor of this resolution, which has the fee schedules which are incorporated in this statement:

Be it resolved, That the members of the national council in attendance at this meeting for advisory purposes only, have reached a unanimous conclusion that a Patent Office fee schedule, calling for a filing fee for each original application for patent of $40, plus $2 for each claim which is in excess of 10 claims pending in the case at any one time, a final fee of $50, plus $2 for each claim over 10 at the time of issue, and a $40 fee for each reissue application plus $2 for each claim over 10, which is also over and above the number of claims of the original patent, should not be opposed; and be it further

Resolved, That the fee bill H. R. 4983 in its present form as it relates to patents should be opposed, but should not be opposed if amended to conform with the foregoing schedule.

Now, that resolution was circulated by the committee on legislation to all members of the council and the members of the council were requested either to send its members here to testify or to authorize me as chairman of the legislative committee to express their views to this committee.

As a result, I have received communications from quite a number of the associations as they appear in the summarized form in my statement.

The following patent law associations have authorized me to speak for them, and to state that they would not oppose this alternative fee schedule; namely:

Chicago, Dayton, Los Angeles, Minnesota, New Jersey, Oregon, Philadelphia, San Francisco, and Seattle.

I think that gives you a good cross section of the patent bar of the United States, and I think that the patent bar as a whole favors—not any increase in fees, but acknowledges and recognizes that from a realistic point of view, some increase in fees is in the cards, and they will have to live with it, and we think this alternative plan is much better.

Attached to my statement is a proposed amendment to the bill which I believe is identical to the proposal that Mr. Stevens has submitted.

Mr. WILLIS. That is as to the matter of charge?

Mr. HAYES. Yes.

Mr. WILLIS. Thank you very much. Are there any questions? If not, we thank you very much, Mr. Hayes.

Mr. HAYES. Thank you.

(The statement of Mr. Hayes is as follows:)

STATEMENT BY C. WILLARD HAYES, CHAIRMAN OF THE LEGISLATIVE COMMITTEE OF NATIONAL COUNCIL OF PATENT LAW ASSOCIATIONS, OPPOSING H. R. 4983 AS ORIGINALLY INTRODUCED

My name is C. Willard Hayes. I am a resident of Montgomery County, Md., engaged in the practice of patent law in the District of Columbia and am chairman of the legislative committee of the National Council of Patent Law Associations, having its headquarters in the National Press Building, Washington, D. C. The council is made up of duly accredited officers of 24 local patent law associations, and of the patent section of the American Bar Association, and the American Patent Law Association. The functions of the council are to give consideration to all matters in which the patent profession is interested and to bring about cooperation between the constituent associations, especially in matters of legislation, and to keep the members advised with respect to legislation pending before Congress which may be of interest to the patent profession. The actions of the council are advisory only and cannot bind the respective members.

A meeting of the council was held in Chicago on February 19, 1955, at which time a number of proposals to increase Patent Office fees were considered. One alternative to the schedule of fees subsequently embodied in H. R. 4983 was tentatively approved at this meeting, in view of an indication by the Commissioner of Patents that the Patent Office might support this alternative. This plan proposed a schedule differing from H. R. 4983 as follows:

"Filing fee $40 plus (*a*) $2 for each claim presented at any time which is in excess of 5 claims in the case, plus (*b*) $2 for each page of specification over 10 (the Commissioner to fix the definition of a page), plus (*c*) $2 for each sheet of drawings over 1. Final fees and reissue fees remained the same under this proposal. The trademark filing fee was increased to $35 and the proposed final trademark fee of H. R. 4983 was eliminated."

After the introduction of H. R. 4983 on March 16, and after considerable discussion among members of the council, a further meeting of the council was called on May 20, 1955, for the purpose of attempting to reconcile the widely diverging views of the members of the council. Representatives from the American Patent Law Association, the officers of the council, and representatives from the following local associations were present at this meeting: Chicago, Connecticut, Dayton, Los Angeles, New Jersey, New York, Philadelphia, Pittsburgh, and San Francisco.

After much discussion, the following resolution was unanimously adopted:

"*Be it resolved*, That the members of the national council in attendance at this meeting for advisory purposes only, have reached a unanimous conclusion that a Patent Office fee schedule, calling for a filing fee for each original application for patent of $40 plus $2 for each claim which is in excess of 10 claims pending in the case at any one time, a final fee of $50 plus $2 for each claim over 10 at the time of issue, and a $40 fee for each reissue application plus $2 for each claim over 10, which is also over and above the number of claims of the original patent, should not be opposed; and be it further

"*Resolved*, That the fee bill, H. R. 4983, in its present form as it relates to patents should be opposed, but should not be opposed if amended to conform with the foregoing schedule."

The council further recommended an increase in the trademark filing fee from $25 to $30 and the elimination of the proposed final trademark fee.

The results of this meeting were reported to all members of the council with the following statement:

"If your association wishes to adopt these recommendations and to have your position reported at the hearings before the subcommittee of the House Committee on the Judiciary on June 1, arrangements will be made for either Mr. Foorman

L. Mueller or Mr. C. Willard Hayes to appear on your behalf * * *. However, if you desire to present any other position, you should send your own representative to the hearings or file a statement with the committee in accordance with the rules * * *."

Pursuant to this recommendation, I have been requested to appear and report as follows:

The Oregon Patent Law Association writes:

"Please record the Oregon Patent Law Association as approving the fee schedule recommended by the national council at their meeting of May 20, and please list us as supporters of the position of the national council."

The Los Angeles Patent Law Association wired on May 27 that it had adopted the recommendations outlined above and requested that its position be reported to this subcommittee at the hearings.

The board of governors of the Minnesota Patent Law Association unanimously supported the resolution adopted by the members of the national council on May 20, quoted above. A number of members of the board of this association requested me to make it clear that their approval of the resolution does not necessarily indicate approval of the idea of any increase in Patent Office fees, but merely indicated opposition to a fee schedule exceeding the amounts set forth in the resolution.

The New Jersey Patent Law Association by its board of managers at a special meeting on May 26, 1955, passed a resolution opposing H. R. 4983 as originally introduced, but concluding that if the fee schedule set out in the national council resolution were substituted by amendment, the bill should not be opposed.

The Patent Law Association of Chicago by its board of managers approved the conclusion reached by the members of the national council in attendance at the meeting on May 20, when the foregoing resolution was passed.

The Dayton Patent Law Association advised me that it was the consensus of the board of governors that it approved the proposed amendment to the fee bill set forth in the national council resolution and that the members of the board were satisfied that the entire association would approve this modification. The association as a whole had previously approved the bill with the exception of the fee of $5 for each claim over 5. Hence, this association approves the resolution.

The Philadelphia Patent Law Association reported to me that the resolution adopted by the national council was substantially in accord with the position formerly taken by that association and that it was in favor of the suggested amendment, while opposing the bill as originally presented.

The Patent Law Association of San Francisco, at its regular meeting on May 25, 1955, voted that it would not oppose the proposed fees set forth in the resolution adopted by the National Council of Patent Law Associations at its meeting of May 20, 1955.

The Seattle Patent Law Association originally opposed H. R. 4983. Its position was reconsidered, in the light of the resolution of the national council, and I was advised by a letter, dated June 6, 1955, as follows:

"Please be advised that in view of substantial differences of opinion among members of the association as to what present position should be taken, the association although not positively favoring the smaller increases reflected in the proposed fee schedule, unanimously recommended by the national council committee, does not take a position objecting to such recommendation, since it is clearly the consensus of the profession as represented by the national council."

No communications received opposed this plan. Possibly other members of the council have filed written statements with the subcommittee directly, or have sent representatives to testify before you.

From the responses I have received, it is clear that the majority of members of the National Council of Patent Law Associations believe that the schedule set forth in H. R. 4983 is oppressively high and is objectionable; and that a realistic approach to the problem dictates a conclusion that a reasonable increase in fees is justified in view of general inflationary conditions and the increase in practically all other costs and expenses.

Thus, the patent law associations in Chicago, Dayton, Los Angeles, Minnesota, New Jersey, Oregon, Philadelphia, San Francisco, and Seattle will not oppose H. R. 4983 if amended in accordance with the aforementioned resolution to provide:

1. A filing fee for letters patent of $40 plus $2 for each claim presented at any time which is in excess of 10 claims in the case.
2. A final fee of $50 plus $2 for each claim in excess of 10.

3. A reissue fee of $40 plus $2 for each claim in excess of 10 and which is over the number of claims in the original patent.
4. A trademark filing fee of $30, and
5. No final trademark fee.

A suggested amendment to H. R. 4983, incorporating the above proposed changes, is attached hereto.

PROPOSED AMENDMENT TO H. R. 4983

Page 1, lines 6 to and including 11, rewrite sections 1 and 2 as follows:

"SECTION 1. On filing each application for an original patent, except in design cases, $40; in addition $2 for each claim which is in excess of ten claims pending in the case at any one time.

"SEC. 2. On issuing each original patent, except in design cases, $50, and $2 for each claim in excess of ten at the time of issue."

Page 2, line 4, strike the figure "$5" and substitute the figure "$2"; strike the word "five" and substitute the word "ten".

Page 3, line 13, strike the figure "$25" and substitute the figure "$30". Eliminate completely lines 14 to and including line 20.

The remaining section numbers on pages 3 and 4 should then be renumbered by decreasing each number by one.

STATEMENT OF SIDNEY G. FABER, PATENT COUNSEL FOR KOLLSMAN INSTRUMENT CORP., ALSO APPEARING FOR AIRCRAFT INDUSTRIES ASSOCIATION

Mr. WILLIS. Mr. Faber, will you kindly give the committee your name and the capacity in which you appear?

Mr. FABER, Mr. Chairman, my name is Sidney G. Faber, and I am a member of the law firm of Ostrolenk, Faber, Gerb & Soffen, and counsel for the Kollsman Instrument Corp.

I appear here as a member of the patent committee of the Aircraft Industries Association, an association of manufacturers of aircraft and instruments and accessories and other parts that are made for aircraft.

The identification is taking a little time.

I am also appearing as a substitute for Mr. Servicle, whose statement has previously been filed and, since he is ill and since I am a member of his subcommittee in the aircraft industry, I am appearing in his behalf.

Now, in line with your request to summarize, rather than to read, the basis of our endorsement of the idea of increasing the Patent Office fee is primarily toward the end that the work of the Patent Office can be performed better, in a more expeditious manner, by an additional staff and facilities.

We have here a very strange situation which we have seen this morning, that the very important people who will pay the fee, are favoring the increase, so there must be some basis for it, and you have heard something about that from the Honorable Mr. Lanham.

We have a desperate situation which leads to the issuance of a patent which tends to destroy the value of the patent system entirely. In fact, where the inventor is without the useful intermediate step, and only has such a short time until it leads to another invention, the delay in issuing a patent means the inventor receives no reward at all when it takes over 4 years for the patent to issue.

To that extent, the incentive system, which is the basis for the constitutional provision in the whole patent system, is completely bypassed by the delay, so any material delay in issuing a patent, or

delay in promptly examining the application for a patent, adversely affects the aviation industry as well as other industries who have similar problems; it is not only in this industry alone, but that is true in all other industries today.

The delay in issuing a patent not only defeats technical progress but the filing of the first application.

Many times now, we find in private industry, and in the aircraft industry as well, that a patent cannot issue during the time that the invention is worth anything and that causes them not to file. Even with the fees that are now in existence there is a delay.

Now, the fact is that the increased fees which are provided for in this bill, or any substitute therefor, would merely put another form of taxation, and taxation on a very limited group—the technical, inventive people in this country—unless these additional fees are in some way incorporated in an increase in appropriation. I know that this committee cannot do that, but I think the record should be made of the fact that if there is an increase of fees, there should be some relationship to the increased appropriation, and an increase in appropriation by one-sixth, where fees are increased in effect, in many cases, to almost double that, is not a fair relationship.

Mr. WILLIS. I think that is a very fair point. And that is a point that concerns me, anyway. However, I think Mr. Curtis expressed it very well the other day. Just how did you express it, Mr. Curtis?

Mr. CURTIS. That if the fees defray a large proportion of the costs of running the Patent Office, then it can be argued to the Appropriations Committee that the appropriation for that Office is not a real expense, as most of the money appropriated will come back to the Government in the form of fees.

Mr. WILLIS. Yes.

That is what I am after, really, more than an increase, is the hope that it will do something about better service.

Mr. FABER. You can see from all the testimony here today how desperate the need is for the relief if everyone comes in and says, "Please, we want to pay more in fees just so that we get the relief."

Mr. WILLIS. I tried the other day to pin down the Assistant Secretary of Commerce and the Commissioner, but my action on this bill is based on the hope that this will decrease the delay involved.

I offered to appear with the Commissioner, representing this subcommittee, before the Appropriations Committee to tell them our views and I said that deliberately to remind the good Secretary of Commerce that if he expects the people to pay more money the people have a right somehow to expect better service, not better quality of service but a shortened, quicker service.

Mr. FABER. I think that you will find that the patent bar as a whole has felt that the quality of service given by the Patent Office is almost completely minimized in its value by the necessary delays that occur between the time an application is filed and the time it reaches the top of the pile. An amendment is filed and the application has to move up through that pile again.

The Aircraft Industry Association makes some specific recommendations which are a little bit at variance with those which already had been made.

Our recommendation is that the filing fee be $50 with the issue fee $40, which is a reversal of the respective fees in the bill even though the amounts in reverse are the same, the point being that there will

probably be a greater revenue if the filing fee is higher than the issue fee because the filing fee always has to be paid and the final fee or issue fee is entirely optional with the inventor if he desires to have the patent issued or if it is allowed.

In addition, we disagree with the concept of a fee for each claim in excess of five.

As Judge Hannon once put it, in any invention there is a constant series of prosecutions before the Patent Office, where the attorney cannot know and neither can the inventor know what the scope of his claim should be, so that he must present necessarily broader claims, and by the give and take of amendment, finally end up with other claims.

To limit the initial number of claims to five plus an excess fee for others seriously restricts that give and take so that our recommendation is that the initial number of claims be set at 15 for the initial filing fee to permit at least some of that give and take to occur and with a fairly substantial additional fee for each claim in excess of 15.

So we have proposed a filing fee of $50 plus $5 for each claim in excess of 15 and a final fee of $40 instead of $50 plus $5 for each claim in excess of 5.

We would rather that there would be no increase in fees but as we pointed out to you before, the efficiency of the Patent Office is paramount not only to the members of our association and our association but to the public generally.

Mr. WILLIS. It would be helpful, for your views to be specifically considered rather than to have to read your testimony, for you to attach to your statement a little draft of what carries out your ideas.

Mr. FABER. It is on page 3 of our statement, sir; and it is summarized in the index page of our statement.

There are two points in conclusion. I think Mr. Lanham has made them possibly in better form.

The thing to keep in mind is that not only are patents an incentive to the technical people of this country to provide benefits to all of the people of this country, but the vast amount of technical information available in patents in many cases can be obtained in no other way than from the patents, and patents themselves have, in effect, two essential elements: They provide some means of protection, some means of rewarding the people who have actually devised the invention, and more importantly, the character of the American people being what it is, a patent may be regarded as setting up an obstacle, and the one thing that happens when an American sees an obstacle is that he figures how to get over, around, sideways, or under it, and that is what happens in the patent system.

We have technological progress not merely because of the rewards offered by patents but because of the challenge offered by the patents owned by others so that a new inventor and a new designer and another company being told that for 17 years we cannot do it this way, does not stop him dead there, but he moves around and does it another and a better way and in turn makes it necessary for the first fellow to do the same thing.

So that setting up of these obstacles is a setting up of another form of incentive toward invention that has made our country great.

That alone should not make the patent system free if only because we just cannot have, I suppose, in any Government organization the piling in of application after application without any stop at all, so

at least there should be some fee that makes a person think twice before writing a letter to the Patent Office saying, "Look at my invention."

In conclusion, it is submitted that the amount of fees charged by the Patent Office is relatively unimportant when compared to the advantages to the public and the industry inventor by the patent system.

It is for this reason only that increased fees are entirely acceptable to the aircraft industry and probably even to the individual inventor, provided, however, that the increase in fees results in more funds being made available for the operation of the Patent Office. Otherwise the increase in fees alone would be merely an additional tax on the limited group responsible for the technological progress for the standard of living and for the security of our country.

Mr. WILLIS. You understand that this committee is not in a position to give a warranty that that will happen. The only thing we can have is the hope. You realize that.

Mr. FABER. Of course, I realize that, sir.

Mr. WILLIS. Realizing that, do you think the hope is sufficiently present for us to go forward?

Mr. FABER. Yes, sir; I do, for two reasons: This committee has all of the authority of Congress vested in it, and the people on this committee cast votes in Congress and can talk to other committees of Congress as you yourself have pointed out in your very generous offer to testify before the Appropriations Committee. While this committee can give no warranties and no warranties are ever expected by those who testify before this committee—the warranties should flow the other way if any do exist—the expression of the attitude of the chairman of this committee with respect to appropriations at this time is very, very encouraging to patent people generally.

I think that I speak for every one when I say we appreciate it.

Mr. WILLIS. Thank you very much, Mr. Faber.

Now, Mr. Carter.

STATEMENT OF CHAUNCEY P. CARTER, ATTORNEY AT LAW, WASHINGTON 16, D. C.

Mr. WILLIS. Make yourself comfortable, Mr. Carter. We are happy to have you.

Mr. CARTER. My name is Chauncey P. Carter. I am a local attorney, who practices almost entirely in trademarks and my remarks today will be directed wholly to the trademark features of this bill.

Mr. WILLIS. We understood from the Commissioner that that presents quite a different problem than does the patent situation.

Mr. CARTER. I think so. There apparently is a sharp difference of opinion as to whether patent fees should equal patent operation costs and on the question of trademarks, however, I have not heard anybody testify here or elsewhere that the trademark revenue should not equal the cost of the trademark operation.

I think the chief difficulty has been in finding out the cost of a trademark operation as distinguished from a patent operation. Only today I have received some additional figures which require a change in my 2-page mimeographed statement.

May I insert that at this point in the record?

Mr. WILLIS. Yes.

(The statement referred to follows:)

STATEMENT SUBMITTED BY CHAUNCEY P. CARTER, ATTORNEY AT LAW, WASHINGTON 16, D. C.

If trademark revenues must be increased, I favor the schedule of fees set forth in the Mahon bill (H. R. 10037 of the 83d Cong.) as against those provided in the Celler bill (H. R. 4983 of the 84th Cong.) which latter bill is, I believe, identical with the Reed bill (H. R. 9794 of the 83d Cong.).

Within the past year, the Office has eliminated notices of allowance in trademark applications and thereby expedites issuance of trademark certificates and saves, I am told, some $20,000 per annum.

The imposition of a final fee in trademark cases will require the Office to resume sending out notices of allowance and will (*a*) lose the $20,000 per annum saving; (*b*) delay issuance of certificates of registration; and (*c*) require processing of the additional fee by the Office and attorneys. Having regard to these facts and the ratio of applications filed to registrations that will be issued, a $30 filing fee will produce more net revenue than a $25 filing fee and a $10 issue fee.

Below is a comparison of the fees as to which the two bills differ. It is believed the fees fixed by the Mahon bill are more realistic than those fixed by the Celler bill if one takes into consideration the services normally rendered by the Office in each particular case. For instance, the average inter partes appeal requires more official man-hours than the average ex parte appeal. One who wishes to cancel a registration should pay a premium over one who opposes an application for registration. The Mahon bill provides for payment of a separate fee for each application or registration with which an applicant requests an interference and is intended to discourage interferences in favor of oppositions and cancellations. Statutory provision for certified copy of registration showing record ownership seems desirable.

	H. R. 4983, 84th Cong.	H. R. 10037, 83d Cong.
Application for registration	$25	$30
Final fee	10	
Total fee registration	35	30
Renewal for goods in each additional class covered by registration	25	10
12 cents claim for goods in each additional class covered by registration		5
Affidavit under sec. 15		10
Opposition	25	30
Cancellation	25	35
Interference with each prior application		25
Interference with registrations	25	[1] 25
Inter partes appeal to Commissioner	25	35
Disclaimer under sec. 7 (d)	10	15
Disclaimer in application	10	
Record assignment of each additional mark in same instrument	1	5
Certified copy of registration showing record ownership thereof		5
Necessary official title search	1	

[1] Each.

Copies of this communication are being mailed as required by ABA rules.

COMMENTS, PROPOSED AMENDMENTS, AND COMPARISON OF REVENUES (TRADEMARK FEES (H. R. 4983))

(By Chauncey P. Carter)

I. COMMENTS

Referring to section 3 of the bill and its proposed revision of section 31 of the Trademark Act:

Item 1. The administration has now proposed that the fee for filing be increased from $25 to $35. This will produce more money than the original proposal since the additional $10 will be collected from every applicant and not only from those whose applications are allowed who choose to pay the additional

fee. It is believed that if the filing fee is increased to $35, this item alone will produce some $700,000 which is only $100,000 less than the cost of the entire trademark operation. H. R. 6175 proposed an increase of $5 to make the filing fee $30 and this increase has been approved by the profession and is believed to be ample. There is no reason why the trademark operation should be required to produce excess revenues to offset a deficit in patent revenues.

Item 2. In view of widespread objection to the imposition of any issue fee and official recognition of the fact that the imposition of such a fee would seriously delay the issuance of certificates of registration and wipe out present annual savings of at least $20,000 per annum, the administration now requests that no issue fee be imposed.

Item 3. Where an official change in classification results in an existing registration covering goods in more than one class, it is not fair to require the owner of such registration to pay a renewal fee of $25 for each class.

Item 4. In view of section 4 (g) of the bill, the Patent Office will receive no revenue from this item for at least 5 years. The charge should become effective with respect to all such affidavits filed after the act goes into effect.

Item 6. This is badly drawn, and the fee for cancellations and interferences inadequate. Such fee should be at least $30 for each registration drawn into the controversy by the plaintiff.

Item 8. The fee for an inter partes appeal should be higher than for an ex parte appeal.

Item 10. The words "or disclaimer" should be inserted after the word "amendment" in line 14.

Item 12. There cannot properly be a charge for a disclaimer in a filed or pending application. This item should be eliminated and the Patent Office agrees.

Item 14. A three-page minimum seems adequate. The charge of only $1 for every additional application or registration transferred is not believed equal to the cost of properly filing and indexing each such additional application or registration.

II. PROPOSED AMENDMENTS

Page 3

Line 13, substitute "30" for "25".
Lines 14 to 20, inclusive, delete.
Lines 21 to 23, inclusive, substitute the following:
"2. On filing application for renewal of registration for goods or services within a single class, $25; for goods or services covered by the registration within each additional class, $5: *Provided*, That if application is filed within the three-month period following expiration, there shall be an additional fee of $10."
Line 24, substitute "3" for "4".
Line 25, substitute "5" for "10".

Page 4

Line 1, substitute "4" for "5".
Lines 3 to 5, inclusive, substitute the following:
"5. On filing notice of opposition, for each application opposed, $25.
"6. On filing petition for cancellation or requesting declaration of an interference, for each respondent registration, $30."
Line 9, substitute "35" for "25".
Line 14, insert "or disclaimer" after "amendment".
Line 16, delete.
Line 17, substitute "12" for "13".
Line 18, substitute "13" for "14".
Line 19, substitute "three" for "six".
Line 22, substitute "2.50" for "1".
Line 23, substitute "14" for "15".

Page 5

Lines 23 and 24, delete.

Page 6

Delete everything on this page.

III. COMPARISON OF ESTIMATED REVENUES UNDER H. R. 4983 IF AMENDED AS PROPOSED WITH ACTUAL REVENUES FOR FISCAL YEAR 1954

Comparison based on 1952–54 averages

Activity	1952–54 average [1]	H. R. 4983	
		As introduced [1]	As proposed to be amended by C. P. Carter
Filing fees	$443,940	$443,940	$532,728
Renewal fees	87,324	87,324	87,324
Final fees		160,000	
Oppositions	25,658	25,658	25,658
Assignments and records	38,501	87,054	100,000
Sales of copies	24,405	24,405	24,405
Affidavit fees		[2]	[3] 65,000
All other [4]	32,348	36,592	50,000
Total	652,176	864,973	885,115

[1] Patent Office figures.
[2] Under the bill as introduced, no affidavit fees will be received during the first 5 years.
[3] Based on Patent Office estimate.
[4] Presumably includes petitions to revise, cancellations and interferences, appeals, issuance of new certificates, corrections, amendments, disclaimers, title searches, and manuscript copies and certifications.

Cost of operation, annual average 1952–54

Salaries:	
Examiner personnel	$426,521
Clerical and administrative	365,825
Printing and reproduction	144,587
All other	22,596
Total	959,529

Percentage of cost recovered under H. R. 4983

	Percent
As introduced	90
With Carter amendments	92

NOTE.—Elimination of final or issue fee as proposed by Carter amendment will save approximately $20,000 per annum in processing and accounting costs, with corresponding increased percentage of recovery.

Mr. CARTER. I have filed the complete statement and the table of revenues at the end.

I have estimated the revenue from recording assignments in 1954 at $10,000 and am now informed that a recent survey shows that it was approximately $38,000.

On the same basis, my estimate from this bill, as I proposed it be revised from that same item, recording assignments, would bring in close to $100,000.

This changes the totals from $653,655 to $681,655, and from $850,160 to $937,160.

I am further informed that while the last official statement I saw in the Journal of the Patent Office Society about a year ago indicated that the cost of applications was about $800,000, it appears that the average over the last 2 or 3 years has been closer to $900,000.

I further understand that considerable savings have been made by Mrs. Leeds in the trademark operation within the past year, particularly in printing costs and processing applications, and I suspect that this current fiscal year will show a cost of not over $900,000, or at least I think we can take that as about the best figure you can get on the cost of this operation.

It is unfortunate that the trademark activity is in the Patent Office, because it is an entirely different activity. It is not a grant of any kind. It is merely a registration of claims which are obtained at common law. There is no secrecy involved, and there is no question but what it is primarily of benefit to trademark owners who ought to pay the cost of same.

For the same reason, I am sorry that this proposed increase in trademark fees is in the bill, which also carries the patent fees, because I do not know of any objection to a reasonable increase in trademark fees and there are some fees that should be imposed that are not now imposed regardless of what may be determined by the patent situation.

When this official proposal was first introduced in the previous Congress by Mr. Reed, I was particularly opposed to the proposal to impose a final fee of $10 on trademarks, not so much because of the increased cost but because the imposition of a final fee is something we inherit from patents and it does not belong in trademarks and would seriously impede the processing of trademark applications because that means that when an application for registration is found allowable, the Patent Office must notify the applicant and give him a period of time within which to decide whether he wants to pay the final fee and have it issued and pay such fee. That has to be processed by the Patent Office and by the trademark owner, his attorney, and then the Patent Office has to go ahead and issue the registration.

I assume that that would undoubtedly delay the average term that a trademark application pends before registration at least 30 days and probably 60 to 90 days and I am against that for that reason. So I prepared a substitute bill relating only to trademarks which my good friend, George Mahon, introduced in the last session and has reintroduced again in this session as H. R. 6175. However, since that bill was originally drafted over a year ago, I have learned more about the actual costs in the Patent Office and one thing and another, and some of my figures have changed so that in order to concentrate all the fire on this particular bill which the committee is considering, I have ignored the Mahon bill and directed my proposals to the trademark features of the Celler bill.

I would like very much, however, if the trademark features of the Celler bill were lifted out of it and put into a separate bill and separately considered.

I think this statement of estimated revenues here may be the first of its kind that has ever been presented on the Hill.

I had some little difficulty in getting some of these figures and it does breakdown the trademark operation about as much as can be done in view of the fact that certain operations are still combined as to patents and trademarks.

Mr. WILLIS. Those figures have been checked by the Commissioner?

Mr. CARTER. No, not so far as I know. They have been communicated to the Patent Office.

Mr. WILLIS. You have no expression of their opinion as to their accuracy?

Mr. CARTER. No, no comment as to the accuracies of these figures. I have just been discussing them with Mr. Federico, and I think he finds no serious error in them, and he has supplied me with some further information which has been helpful.

As I say, my main objection was to the final fee in this other bill. Since that time, the United States Trademark Association has voted to increase the filing fee to $30 rather than to impose a final fee, and a committee of the American Bar Association has reached a similar conclusion, although I believe that no one is entitled to speak for the American Bar Association in the absence of ruling by the House of delegates.

But I do know that a committee has reached that conclusion.

There are 2 or 3 other points in this bill beside that. I think the Patent Office has also reached the same conclusion and I think the Commissioner, in his testimony, suggested the elimination of item 2 on page 3.

The only serious difference now between the Patent Office and me on that is that they want to increase it to $35, which I think is a Budget Bureau suggestion or requirement, whereas I think a $30 fee will be sufficient.

My table, as revised, indicates that a $30 filing fee with the other proposals in this bill, as I proposed to modify them, will produce over $900,000, and that that will be in excess of the cost of the trademark operation.

I think that should satisfy everybody. I do not know why we should go all out in order to provide an excess that would be applied to a patent deficit.

There is some language that I think should be changed. There is some difference in fees. I have tried to be realistic, for instance, as between an ex parte appeal where one lawyer appears for a half hour and argues the right to register a certain mark and I felt that the fee for that should not be as high as the fee for an inter partes appeal for two parties and argue and perhaps have a large printed record of testimony taken around the country. Certainly it involves a great deal more time in the Patent Office so that I have tried to make a little difference there related to the actual fees.

Everyone admits, including the Patent Office, I think, that line 16 on page 4 is an error, because it would apply to applications as well as registration, and a great majority of applications can claim disclaimers of descriptive words and things which involve no cost, or activity on the part of the Patent Office; and while it would produce a tremendous revenue, it would be most inequitable and meaningless.

The only disclaimers for which a person should pay is after you have secured a registration and you want to change the certificate and disclaim some feature of the mark. Then you have to go to the Commissioner and the Commissioner has to consider whether it changes the whole mark and eventually he either affirms or denies that fee for disclaimer of a registered mark. For that there should be a payment so the words "or disclaimer" should go in line 14 on page 4, and line 16 should come out.

In the assignment section for recording of an assignment, here the Patent Office, of course, is using the same language as it does in regard to patents.

I think the situation with respect to trademarks is slightly different because we want a more or less record registration in the Patent Office of every trademark and we do not want these assignment records in one room and the trademark records in another. We want to know who owns every given registered trademark.

So I think the Patent Office is entitled to get a little more money, and I have suggested that the minimum be reduced from 6 pages to 3 pages, and where more than 1 trademark is involved, in an instrument that the Patent Office should get $2.50 rather than $1, so that they will have a little leeway to index each mark properly.

A serious item of this bill is found in lines 24 and 25 of page 3. On filing an affidavit under section 8 (a) or section 8 (b), the Lanham Act provided for the first time that after you had secured registration of a trademark and the registration had been in effect for 6 years, you have to come in and either show that the mark is still in use, or, if it is not in use, that the nonuse is not an abandonment but is excusable.

We never had that before. That affidavit has to be filed within the sixth year and if it is not filed, the registration is canceled automatically.

There are a great many of those affidavits being filed now because the law became effective in 1947 and we are in the eighth or ninth year and these affidavits are being filed every day.

Up to this time, the Patent Office has made no charge whatsoever for processing these affidavits except a dollar for a title search to be sure that the person filing the affidavit is the one who owns the registration.

We all agree that there should be a charge for these and the administration purposes on filing such an affidavit $10. But if you go to page 6 of the bill, the last item, (g), it states:

> Item 4 of section 31 of the Trade-Mark Act as amended by section 3 of this Act applies only in the case of registration issued and registrations published under the provisions of section 12 (c) of the Trade-Mark Act on or after the the effective date.

In other words, you get no revenue from this provision for 5 years so you are getting something for 5 years later.

I see no reason why this cannot be made immediately effective and I suggest making the fee $5, which I think is ample for receiving and recording a simple affidavit of use, but making it effective immediately and the affidavits filed after this act goes into effect will pay the $5 fee.

That makes quite a serious difference in revenues.

Under that section of the bill as now drawn, the Patent Office would get nothing for 5 years. Under my substitute estimate, it would get close to $70,000 this year, which would more than make up for the $5 difference between the Patent Office and me on filing fee.

I think there are no other serious differences between the Patent Office and me, and, unless there are questions, that completes my testimony.

Mr. WILLIS. Thank you very much.

STATEMENT OF FRITZ LANHAM, NATIONAL PATENT COUNCIL, WASHINGTON, D. C.—Resumed

Mr. LANHAM. Mr. Chairman, may I say a word with reference to this matter?

I make this statement inasmuch as the Trademark Act is usually designated by my name by reason of the fact that I worked for 8 years getting a law more in keeping with our modern business conditions and practices.

I would like to call attention to this: Trademarks and patents are differentiated in that you cannot get a trademark on an article unless it is in production and use, whereas an inventor of a very useful discovery would hesitate to get his product in production until he had acquired his patent.

So there are considerations which apply with reference to trademarks that do not apply to a consideration of patents.

Mr. WILLIS. I see Mr. Federico and Mr. Ellis here. I wonder if you, for the record, could interpret in dollar form the alternate proposals that have been suggested here?

STATEMENT OF P. J. FEDERICO, UNITED STATES PATENT OFFICE

Mr. FEDERICO. I presume you refer to the proposal of the bar associations to change the charge of $5 for each claim over 5 and have instead a charge of $2 for each claim over 10?

Mr. WILLIS. That is right.

Mr. FEDERICO. The Commissioner's testimony stated that an estimate of $1,328,000 would be brought in by the charge of $5 for each claim over 5 on filing the application, based on the last 3 years' average amount of business.

A charge of $2 for every claim over 10 on the same theories of calculation would bring in $240,000, which would be $1,088,000 less.

Now, on the issue fees where the same difference applies, the estimate on the $5 for each claim over 5 is $400,000. On the $2 for each claim over 10, the estimate is $75,000 which would be a decrease of about $325,000, in total, a difference of over $1,400,000.

Mr. BRICKFIELD. On these claims, Mr. Federico, what is the average number of claims that are now made with each patent application?

Mr. FEDERICO. The average number of claims of all cases filed is over 10, but there is a great variation in the number of cases with different numbers of claims.

The average number of claims over 5, that is, counting only the claims that are only 5, we estimate as being about 5½ per application, but we use the figure of 4 in making estimates because we anticipate some claims would drop out. Over 10, the average number of claims, counting only the ones over 10 is 2½ per case, but 2 is taken in making estimates.

Mr. BRICKFIELD. In the present bill, H. R. 4983, and in the alternate plan that has been suggested by the Commissioner, would there in fact be any decrease in the amount of fees that are collected, or is this just another way of stating the problem?

Mr. FEDERICO. It was pointed out by the Commissioner that the alternate plan is to charge $2 for each claim over 5 and $2 for each page over 10, and $2 for each sheet of drawing over 1.

Now, the number of pages of specifications over 10 and the number of sheets of drawings over 1, the average number, by chance happened to be such that they will make up the $3 taken off by reducing the $5 to $2, so the three $2 items together will bring in practically the identical amount. Actually, it is slightly greater, but so slightly that it is within the margin of error of the estimate.

So we say practically the identical amount, but that is a result of chance in the average number of pages of specification and sheets of drawings.

Mr. BRICKFIELD. So as a result of these two plans or the provisions as set out in the bill and the alternate plan, there is no actual difference or any substantial difference in the amount of money to be received.

Mr. FEDERICO. The amount of money would be the same.

Mr. BRICKFIELD. It would be about the same?

Mr. FEDERICO. With respect to Mr. Carter's proposal of $30 for the trademark filing fee, instead of $35 which was proposed by the Commissioner's alternate plan, the situation is such that if the $30 is the filing fee, the total revenue, including all the other items, will be somewhat under the operating expenses for trademarks. If the filing fee is $35, the revenue will be a little over the operating expenses.

As to the other items in trademarks, other than the $10 fee for assignments and for filing the affidavit, they are all in the minor category where the total amount of revenue is not very great.

Mr. BRICKFIELD. When the Commissioner testified last week, did he give us a chart that would indicate what the present operating expense to the Patent Office is for each item listed here and whether or not this increased revenue would equal the operating expense. In other words, for supplying the service for which you are charging a fee, would the fee equal the cost of the service to the Patent Department?

Mr. FEDERICO. No table was given on all the items except that some remarks were made on particular items as to whether they did or did not. Since the total result of the bill is to bring in 80 or 70 percent of the operating costs, depending on what basis is used, it is obvious that there are some items for which the fee does not equal the cost, and the major item is the examination of applications.

Other than that, on most other items the fee and the cost are about the same, but it is the big item of the filing of final fees which does not equal the cost.

Mr. BRICKFIELD. 1932 was the last time there was any substantial raise in the fees; is that so?

Mr. FEDERICO. Only in patent fees.

Mr. BRICKFIELD. In patent fees.

Mr. FEDERICO. There was a raise in trademark fees in 1946.

Mr. BRICKFIELD. And at the time these patent fees were raised in 1932, did they have the effect of putting the Patent Office on a pay-as-you-go basis and equal the costs of operating the Patent Office at that time, do you recall?

Mr. FEDERICO. Not quite. During the thirties the Commissioner stated the receipts of the Patent Office averaged about 94 percent of the expenses.

Mr. BRICKFIELD. And at that time was there an increase in the appropriations commensurate with the increase in the fees which the Patent Office received?

Mr. FEDERICO. There was no connection at the time. The appropriations went along depending on what was asked for.

Mr. BRICKFIELD. When they gave this increase in fee in the law in 1932, the next year when the Patent Office went before the Congress for an appropriation, did they get an increase in the appropriation that was commensurate?

Mr. FEDERICO. The expenses in 1933 were less than the expenses in 1932.

Mr. JONES. Of course, in 1933, the Economy Act became effective, you remember, when all Government operation was cut across the board 25 percent.

Mr. FEDERICO. That is what came into the picture at that time, so you cannot say that there was any particular relationship.

Mr. BRICKFIELD. Mr. Federico, could most of the patent associations which have submitted written statements or rendered oral testimony here, and who have supported this plan 3 as we have labeled it, have suggested something which shows a big gap in the amount of anticipated receipts from what the Commissioner suggested?

As you pointed out in one item alone, there is an estimated difference of over $1,088,000.

Mr. FEDERICO. Yes.

Mr. BRICKFIELD. Now in the event that the Congress may try to strike a happy medium, we do not have any testimony before this committee in support of either position or a middle-of-the-road position.

Mr. WILLIS. I just brought that out to our counsel.

The net result, as I see the record as made up right now, is that no one has come out affirmatively in favor of the Commissioner's proposal. They all want to go along with an increase, but the difference is so great between what they want to go along for, that there is quite a gap.

Now, we do not have the facilities to strike a medium because we do not know what could be changed.

Mr. BRICKFIELD. And the heart of the bill is in these first two items, I think you will agree.

Mr. FEDERICO. Yes; the others are merely geared along the same lines and some are just minor rearrangements.

Practically, the first two items are the heart of the bill.

Mr. WILLIS. In other words, frankly, and I may as well say it for the record, there is not quite the harmony that I thought was prevailing.

Mr. FEDERICO. I am sorry. I am not authorized to suggest a compromise.

Mr. WILLIS. I am not asking you to say that but I am just commenting on the state of the testimony.

Mr. FEDERICO. I am sure when the committee studies the testimony and wants information on any point or any information, we would supply whatever data and information we can.

Mr. WILLIS. We would be glad to call on you.

I believe that completes the hearing.

Thank you very much, gentlemen.

STATEMENT OF KARL F. ROSS, NEW YORK, N. Y.

Mr. Ross. My name is Karl F. Ross. I represent the American Association of Registered Patent Attorneys and Agents, which is a relatively young but rapidly growing organization of registered patent attorneys and agents who are not members of the bar.

Our members are mostly dealing with the so-called small inventors and we do feel that with these inventors, it is often a hairline decision whether or not they can afford to pay a patent application.

Mr. WILLIS. What is the name of your association?

Mr. ROSS. AARPAA, American Association of Registered Patent Attorneys and Agents, limited expressly to nonlawyers.

Mr. WILLIS. Nonlawyers?

Mr. ROSS. That is right.

Mr. WILLIS. But qualified to practice?

Mr. ROSS. Qualified to practice before the United States Patent Office. It is our understanding that the raising of fees, if necessary, should come at the end rather than the beginning of the prosecution of a patent application for this reason: If the inventor does not register his invention because he cannot afford it, it is his loss and the loss to the public. Once he has filed an application, he can approach a banker without too much reluctance. Before he has protected the invention he will not readily do so unless he is affiliated with a corporation which a small inventor is not.

Therefore if the fees must be raised it would be more practicable to raise the final fee, to raise the fee for the allowance of claims in excess of a certain number, say, in excess of five.

If the inventor knows what he is getting he can then decide whether or not to take these extra claims and they will be worth to him, to his banker, investor, or assignee, the money which is not much. If it is $2 or $3 that does not amount to much after you have spent $500 for the prosecution of a patent, but if it is taking a gamble at the outset, the situation is very much different.

We have also given some consideration to the question of imposing a levy after grant.

I think Mr. Ballard has touched on the subject before on this witness stand.

In principle, we figure there would be nothing inequitable basically about that except that it would have to come later in the life of the patent when the commercial value of the invention presumably has been established.

For this reason, we do not want to press the point further because the revenue from such a proposal would not come immediately but would come only after a few years.

Generally, we would suggest that this might be an alternative to be considered as against the raising of the initial fees outright.

Now, I would like to at this point add my voice to those that have been raised here before in connection with the question of speed in prosecution.

Mr. WILLIS. We are very familiar with that problem.

Mr. ROSS. It is a very famous problem. I do not want to belabor the point except that we do feel, as do the rest of the practitioners, that if an improvement can be had in this direction, the inventors and investors would mind much less to pay the higher fees that have been proposed.

Mr. WILLIS. Thank you very much for the statement.

Mr. BRICKFIELD. There are additional statements and letters which are to be made a part of this hearing.

Mr. WILLIS. All right.

(The matter referred to is as follows:)

STATEMENT OF STEPHEN CERSTVIK ON BEHALF OF AIRCRAFT INDUSTRIES ASSOCIATION OF AMERICA, INC., RE H. R. 4983, TO FIX THE FEES PAYBALE TO THE PATENT OFFICE AND FOR OTHER PURPOSES

My name is Stephen Cerstvik. I am patent counsel for the eastern divisions of Bendix Aviation Corp., but I am appearing on behalf of the patent committee of the Aircraft Industries Association, as chairman of the subcommittee having cognizance of H. R. 4983. Our main committee has no objection to the various increases proposed under H. R. 4983 and indeed it endorses the increase of Patent Office fees in general to the end that the work of the Patent Office can be performed better and more expeditiously by an adequate staff and facilities.

The Patent Office, as presently staffed, is greatly overburdened with work and there is every indication that this burden will be increased rather than decreased in the future. This results in a delay in the issuance of patents, unsatisfactory actions by the examiners because of the volume of work, and has an adverse effect on industry generally. This is particularly true in the aviation industry and probably many other industries where long periods of time are consumed in research and development work which frequently becomes obsolete before completion. Therefore, any material delay in the issuance of patents or in the prompt and thorough examination of the applications adversely affects the aviation industry as well as the other industries having similar problems.

The delay in issuance of patents not only impedes technical progress but also leads to the filing of fewer applications than would otherwise be filed and therefore reduces the income attributable to Patent Office operations.

For this reason, the Aircraft Industries Association is in favor of any bill affecting Patent Office fees which will make additional funds available to the Patent Office that will permit it to carry out its functions adequately and to employ trained personnel for that purpose. However, the increased fees alone, as proposed by H. R. 4983, would merely be in another form of taxation unless these additional fees are earmarked for the Patent Office and incorporated in increased appropriations for the Patent Office by Congress.

It has been urged that the Patent Office should be self-supporting. This is a fallacy because of the public interest which is manifest. The disclosures in patents become public property after the expiration of the patent. Additionally, immediately upon the issuance of a patent, its disclosure gives impetus to research and development in that field, which results in improved technology and improved products for the public.

The tremendous technical and material growth of the United States can be attributed to the patent system and to the research and development encouraged and occasioned by it.

With increased personnel and facilities, as a result of increased funds available to the Patent Office, the Patent Office will be able to act expeditiously on patent applications to cause the patent to be issued in a reasonable time. Many applications would be filed with respect to inventive ideas and conceptions having a relatively short life, where it is now useless to file such applications in cases where the patent will be issued after the commercial applicability of the idea is over and done with. Thus, an increase in Patent Office fees, coupled with greatly increased funds available for the operations of the Patent Office, will result in an increase of actual receipts greater in proportion than the amount of increase in fees.

The only comments offered are as follows:

Section 1, item 1: The filing fee should be increased to $50, instead of $40, as proposed in the bill, and, in addition, $5 for each claim presented at any time which is in excess of 15 claims in the case.

Section 1, item 2: The final fee for issuing of each original patent should be $40 instead of $50, and, in addition, $5 for each claim in excess of 5.

The reason for increasing the filing fee from $40 to $50, and decreasing the final fee from $50 to $40, is that the greater fee is charged upon the filing of the application which entails the greatest amount of work by the Patent Office and assures the Patent Office of getting this increased fee; whereas the Patent Office has no assurance that it will ever receive a final fee even if the application is allowed, because the payment of it is contingent first on allowance of the patent application, which does not always occur, and, second, on the desire of the inventor to pay the final fee which he does not have to do, or upon the desire of the owner of the application to pay the final fee which is usually determined by the degree of protection that is allowed by the Patent Office in the patent to be granted.

This leads back to the concept that the availability of sufficient funds for Patent Office operations will bring about the allowance of a patent application

more quickly and will result in an increased likelihood that the owner of the allowed patent application will be willing to pay the final fee even though it may be greater than under the present scale of fees.

It is apparent that corporate organizations such as the members of the Aircraft Industries Association are not too materially affected by the amount of Patent Office fees but it is urged that Congress should not lose sight of the fact that a very large percentage of all applications are filed by individual inventors who do not have any corporate affiliation. The amount of fees that these individuals or inventors are required to pay may have an effect on whether or not they will file, or can afford to file, applications for patent. This might result in a material loss in the sum total of technical information available to the public and to that extent would affect adversely the technical position of the United States, not only from a commercial point of view, but from a military point of view, and would also affect adversely the rate of technical progress of which we are capable.

In conclusion, it is submitted that the amount of fees charged by the Patent Office is relatively unimportant when compared to the advantages to the public and to the individual inventor by the operation of the patent system. It is for this reason that increased fees are entirely acceptable to the aircraft industry and probably to the individual inventor; provided, however, that the increase in fees results in more funds being made available by Congress for the operation of the Patent Office. Otherwise, the increase in fees alone would be merely an additional tax on the limited group responsible for the technological progress, for our standard of living and for the security of our country.

STATEMENT OF JAMES EDWIN ARCHER, CHAIRMAN, LEGISLATIVE COMMITTEE, CONNECTICUT PATENT LAW ASSOCIATION

The Connecticut Patent Law Association, at a meeting held April 28, 1955, voted to go on record as opposed to H. R. 4983 but favoring an increase in fees provided that the public bears that part of the cost of the Patent Office which generally corresponds to the public benefit.

Since that time there was a compromise proposal developed by the National Council of Patent Law Associations. This proposal called for a filing fee for each original application for patent of $40 plus $2 for each claim which is in excess of 10 claims pending in the case at any one time, a final fee of $50 plus $2 for any claim over 10 at the time of issue, and a $40 fee for each reissue application plus $2 for each claim over 10 which is also over and above the number of claims of the original patent. The council also approved of a trademark filing fee of $30 with no trademark final fee. This compromise was presented to the board of governors of the Connecticut Patent Law Association who considered this to be in accordance with the resolution of the association on April 28, and therefore authorized me to state that our association would not oppose H. R. 4983 if amended in accordance with the proposal worked out by the national council.

It is to be noted that the national council proposal would still increase fees by over 50 percent. This is believed to be a very substantial increase in fees and should be adequate to cover increased costs of operation of the Patent Office insofar as costs have increased since the present fees were established. It is recognized that in addition to the normal increase in costs since the establishment of the present fees there are other factors which have increased the costs of operation of the Patent Office. However, it is submitted that the Government itself has added substantially to the costs of operation of the Patent Office in view of the vast research program which is being carried on by the Government, particularly in the Department of Defense and in the Atomic Energy Commission. A great amount of Government-financed research is being carried out by private industry and all of this research which is either directly or indirectly Government research results in patent applications. These must be handled by the Patent Office, some of them without the payment of fees under 35 United States Code 266. Many contracts between the Government and private contractors require that patent applications be filed on any inventions developed during the course of the work. There are therefore a large number of patent applications which the Patent Office must process and which directly or indirectly are for the benefit of the Government and accordingly the public should bear a substantial portion of the costs of the principal operation of the Patent Office.

In addition to the patent applications which are handled by the Patent Office, a substantial amount of other service is rendered by the Patent Office to other

Government agencies. This is another reason for the public bearing a substantial part of the costs of operation of the Patent Office.

Logically, the really important reason why the public should bear a substantial part of the cost of the Patent Office operation is that the patent system is really not maintained for the benefit of inventors but, instead, is maintained for the promotion of useful arts and sciences. In other words, the patent system is intended as a reservoir of knowledge made available to the public, and the issuance of patents has the effect of stimulating further inventions.

New business which develops as a result of patents accounts for a very high percentage of the income of our Nation which, in turn, produces a very considerable part of the revenue of the Federal Government. Accordingly, the patent system indirectly contributes many times its cost to the support of the Federal Government.

In considering fees it is sometimes assumed that business can well afford to pay any fees which may be charged. While it may not be a great burden on large corporations to pay high fees, it must be remembered that many inventions are made by individuals or by small-business concerns where the cost of fees is a substantial factor. If the patent system is to accomplish its purposes, nothing should be done to suppress the filing of patent applications on meritorious inventions by those who might not be able to afford the costs. In many cases several years are required from the time an invention is made until its commercial value becomes apparent. It is therefore usually a gamble as to whether or not anything is to come out of an invention when a patent application is filed. There is therefore no established business to pay high fees with respect to the patenting of pioneer inventions.

CONCLUSIONS

1. The Patent Office supplies considerable service to the Government directly or indirectly and therefore the public should bear a substantial part of the cost of operating the Patent Office.

2. The patent system was not established for the benefit of individual inventors but, instead for the common good and therefore, again, the public should bear part of the cost of operation of the Patent Office in order that the patent system may accomplish the desired objectives.

3. The patent system indirectly produces an enormous amount of revenue from the new business which is developed under the patent system. Accordingly, the income to the Government resulting from the patent system cannot be measured purely by the income of the fees received by the Patent Office.

STATEMENT OF WILLIAM E. SCHUYLER, JR., CHAIRMAN, COMMITTEE ON LEGISLATION, PATENT, TRADEMARK, AND COPYRIGHT SECTION, AMERICAN BAR ASSOCIATION

For several years, the American Bar Association has been opposed, in principle, to any change increasing fees incident to the filing and securing of patents. In view of existing conditions, the membership of the patent, trademark, and copyright section of the American Bar Association now recognizes the probable need for a reasonable increase in fees charged by the Patent Office. However, the fees proposed in H. R. 4983 are considered excessive and unreasonable.

The present position of the American Bar Association with respect to Patent Office fees generally and H. R. 4983 in particular is set forth in the following resolution adopted by the board of governors during its meetings here in Washington on May 16–17, 1955:

"*Resolved*, That the American Bar Association approves in principle a reasonable increase in the fees charged by the United States Patent Office; and further

"*Resolved*, That the American Bar Association disapproves as excessive and unreasonable the schedule of Patent Office fees proposed in H. R. 4983."

THE DAYTON PATENT LAW ASSOCIATION,
Dayton, Ohio, May 1955.

To the Honorable Members of Congress:

The United States patent system faces serious difficulties by drastic limitation of funds for operation of the United States Patent Office and action must be taken if it is to continue to serve the best interests of our country.

The patent system is of major importance to the economy of the United States. Only a strong patent system provides the necessary incentive for the competition which results in constant improvement in the many things that we now take for granted. Many of the world's leading scientific advancements have been made in the United States as a result of the protection offered by our patent system. Industries such as aircraft, television, and nylon, which furnish jobs for millions of people in the United States, were and are based on patent and trademark protection.

Another basic function of the patent system is to assure the prompt disclosure of technical advances and provide a storehouse of information for the general public.

Patent Office operations largely determine the effectiveness of our entire patent system. During the past few years the well-being of our patent system has been threatened because insufficient funds have been made available for the needs of the Patent Office.

Up to the present time there have been more than 2,700,000 patents issued by the Patent Office, keeping in step with the many rapid technical advances of our Nation. Patent Office examiners are finding their work of proper examination of patent applications more difficult and time consuming. This is mainly a result of inadequate facilities to keep abreast of the increased number of issued patents.

The number of patent applications being filed each year is steadily increasing. During 1952 there were approximately 60,000 patent applications filed and in 1954 there were approximately 75,000 patent applications filed. Between 1952 and 1955, as a result of inadequate appropriations for the Patent Office, the number of examiners has decreased from approximately 720 to about 600. Consequently, the average time between filing an application for a patent and the issuance of a patent is approaching 4 years.

This increased delay and difficulty in obtaining a patent has a twofold result. First, it tends to delay the disclosure to the public of the latest scientific developments and to suppress the entry of new products into the open market, thereby retarding scientific advancements and depriving the public of their benefits. Manufacturers are reluctant to undertake the expense of bringing a new product on the market if competitors can copy their product without fear of liability as provided by the patent statutes.

This is especially true in the case of items having a short life span on the market. Secondly, examination by an undermanned examining staff gives rise to greater possibility that the issued patent may not be valid. The eventual result is an increase in the amount of litigation presented to an already overburdened judicial system.

The simple answer to these difficulties is additional manpower and improved facilities for the Patent Office.

The only way to provide manpower and proper facilities is a sufficient Patent Office appropriation. A patent examiner must possess legal and technical knowledge to do his job efficiently and therefore his salary must be comparable to that paid by industry. In order that these men be able to operate efficiently, they must have modern facilities.

During the fiscal year 1954 the income of the Patent Office from fees and similar charges, was over $6 million. This represents more than one-half of the $11,500,000 appropriation it received for that fiscal year. How many other Government agencies have such a record?

We strongly urge that Congress recognize the necessity for greater Patent Office manpower and improved facilities, and substantially increase the Patent Office funds either by increasing the Patent Office appropriation or by appropriating additional funds for modernization.

BOARD OF GOVERNORS, THE DAYTON PATENT LAW ASSOCIATION.

THE UNITED STATES TRADEMARK ASSOCIATION,
New York, N. Y., May 26, 1955.

Re H. R. 4983.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D. C.

DEAR MR. CELLER: The United States Trademark Association is an organization made up of more than 200 trademark owners and 190 lawyers, law firms, and others interested in trademarks. It was formed 77 years ago to protect the interests of the public and trademark owners and to promote the trademark system.

A copy of our membership roster is enclosed for your reference. On behalf of our membership, we respectfully request that consideration be given by the Committee on the Judiciary to the following comments with regard to the above bill.

Insofar as H. R. 4983 relates to trademark fees, the United States Trademark Association approves and wishes to recommend the enactment into law of H. R. 4983, with one exception.

Section 3 (a) 1 provides for a filing fee of $25 for each application to register a trademark and section 3 (a) 2 provides for a fee of $10 on the issuance of each registration.

We have been convinced that an application fee of $30 and no issuance fee would mean a larger net income to the Patent Office than the separate filing fee and issuance fee. In addition, an issuance fee would entail delay in the Patent Office and unnecessary work for lawyers handling trademark matters. We, therefore, urge that an application fee of $30 be inserted in the bill, and that the issuance fee be eliminated.

Respectfully yours,

SHERWOOD E. SILLIMAN, *President.*

THE PATENT LAW ASSOCIATION OF CHICAGO,
June 15, 1955.

Re H. R. 4983.

Hon. EDWIN E. WILLIS,
Chairman, House Committee on the Judiciary,
Subcommittee No. 3,
House of Representatives, Washington, D. C.

DEAR REPRESENTATIVE WILLIS: The Patent Law Association of Chicago, through its board of managers, has authorized a spokesman of the National Council of Patent Law Associations to state our association's adherence to the position of several other patent law associations on the Patent Office fee bill H. R. 4983, as follows:

We oppose H. R. 4983 in its present form, but will not oppose it if the fee schedule is amended to call for a filing fee of $40 for each original patent, plus $2 for each claim which is in excess of 10 claims pending in the case at any one time, a final fee of $50 plus $2 for each claim over 10 at the time of issue, and a $40 fee for each reissue application plus $2 for each claim over 10, which is also over and above the number of claims of the original patent, and a trademark filing fee of $30, with no final trademark fee.

We wish to supplement the above statement by observing that in the main, our members do not welcome any increase in Patent Office fees, but recognize that a moderate increase in fees should not be opposed in view of the decreased value of the dollar.

We also wish to go on record as follows:

1. We are strongly opposed to the proposition that the Patent Office should be self-sustaining, or substantially so. In view of the public service rendered by the Patent Office, the public should bear a large part of Patent Office operations.

2. Any substantial increase in Patent Office fees, even under present inflationary trends, will discourage invention, and the filing of patent applications thereon, especially by a large and important group of struggling inventors having limited financial resources.

3. In particular, we oppose the additional fees of $5 for each claim over 5 called for in sections 1, 2 and 4 of the present bill. Although apparently insignificant, these additional $5 charges are admittedly designed to bring in about one-half of $3 million additional income being sought by the Department of Commerce. Patent Office estimates show that with these $5 fees, the average fees for obtaining a patent will be approximately doubled. But for especially meritorious inventions the fees may often amount to 3, 4, 5, or even 10 times the present fees. Therefore, we believe that these $5 charges would be greatly excessive, unnecessary and undesirable, as constituting a serious deterrent to inventive efforts.

4. We believe that the reduced fee schedule set forth in the second paragraph above represents the maximum increase in Patent Office fees that should be borne by inventors.

THE PATENT LAW ASSOCIATION OF CHICAGO,
By B. A. SCHROEDER, *President.*

OREGON PATENT LAW ASSOCIATION,
Portland, Oreg., July 5, 1955.

Re Patent Office fee bill, H. R. 4983.

Hon. EDWIN E. WILLIS,
Chairman, Subcommittee No. 3,
House Judiciary Committee,
House Office Building, Washington, D. C.

DEAR MR. WILLIS: The purpose of this letter is to make known to you the view of the Oregon Patent Law Association concerning the raising of the fees for the Patent Office.

It has come to our attention that you have expressed the opinion that there is no connection between the Patent Office fees and the appropriations for the Patent Office. This is the consensus of opinion of this association.

Our association believes that the public derives such a benefit from the operations of the patent system that the fees imposed upon the individual inventor should not be increased beyond the amount presently set. However, if the view of the public at large is that the inventor should carry a larger share of the cost of operating the Patent Office, the Oregon Patent Law Association recommends that a moderate increase in fees be adapted such as in the schedule approved by the National Council of Patent Law Associations at their meeting of May 20, 1955, and of which action, we believe, your committee has been advised.

The views of the Oregon Patent Law Association were expressed in a formal resolution moved and approved at a meeting held June 28:

"*Be It Resolved,* That we, the Oregon Patent Law Association are opposed to any increase in Patent Office fees; however, if it is impossible to obtain any adequate appropriation from Congress without raising the fees, we approve this schedule recommended by the National Council of Patent Law Associations at their meeting of May 20, 1955."

Accordingly, Oregon Patent Law Association urges that your committee give full consideration to the benefits the public at large derives from the patent system and which we believe will indicate to you that the fees of the Patent Office should not be raised or if raised the raise should be by a very moderate amount so that the public will continue to share in the support of the Patent Office in proportion to the benefits which they derive therefrom.

Very truly yours,

KENNETH S. KLARQUIST, *Secretary.*

RESOLUTION BY THE PATENT SECTION OF THE BAR ASSOCIATION OF ST. LOUIS, IN RE H. R. 4983

Be it resolved that the patent section of the Bar Association of St. Louis is in favor of keeping the filing fee for patent applications in the United States Patent Office at $30 and increasing the issuance fee to $60 and modifying the fee on claims originally presented in the application to $2 each for all claims over 10 in number.

No action has been taken by this section with regard to any other proposed changes in fees for patents or trademark registrations.

ALFRED W. PETCHAFT, *Chairman.*
NEAL E. WILLIS, *Vice Chairman,*
GLENN K. ROBBINS, *Secretary and Treasurer.*

THOMAS, ORR, ISAKSEN & WERNER,
Madison, Wis., May 24, 1955.

Congressman GLENN DAVIS,
House Office Building, Washington, D. C.

DEAR GLENN: I have been greatly disturbed by the proposed legislation which would increase fees for patent applications. I am particularly concerned with the effect upon the individual inventors, such as farmers, workmen, and retired people, who develop some worthwhile ideas during their spare time. Such persons would be discouraged from seeking patent protection if the fees are increased as proposed. Many of them feel that the present Patent Office fee, plus the expense of having drawings and the application prepared, is already high enough.

It must be remembered that usually such individuals have no idea whether or not they will receive any return from their invention at the time they file a patent application. As you know, many manufacturers will not even appraise or look

at an individual's invention until after he has filed a patent application for it. It is to his advantage to file an application before disclosing his invention, but the expense of the application is usually a gamble of his money at that stage, because he doesn't know whether or not he has a marketable item.

Such higher application fees, along with the proposed final fee for trademarks, would also have a serious effect upon small industries and concerns which are engaged in the stiff competitive struggle with large national corporations.

If higher fees are invoked, it is my firm belief that the patents will be obtained for the most part by larger corporations to the disadvantage of the individual inventor and the small concern. In the end, it is the general public which will suffer from such a result. As you know, the patent system affords protection to an inventor for a limited number of years in order that our country may obtain from him such advances in science and industry as he may develop. After the expiration of his patent his inventions become public property and can be used by everyone without royalty. To get the fullest advantage from the system, we should encourage invention by individuals and small concerns as well as big industry, since such developments benefit all of our economy from top to bottom.

It is my personal view that the Department of Commerce does not represent the voice of the individual inventors and small business concerns when it encourages increased fees for patent applications. As I am practising in an area which is not largely industrialized I perhaps have a better opportunity to see the efforts of the individual inventor and small business than do those in large industrial centers.

I hope that if you have occasion to discourage an increase in the Patent Office fees you will exercise that opportunity. I am sending several copies of this letter to you so that you may forward them to any Congressman whom you think might be interested in my view. While I generally prefer to see governmental agencies become self-supporting where possible, I do not believe the increase in Patent Office fees is wise where it will reduce the incentive of the individual and small business to make new discoveries. This appears to be a case where increased appropriations should be made to the Patent Office by Congress if that Office is to carry on its important responsibilities and maintain the full advantage of our patent system.

Kindest personal regards to you and your family.

Sincerely,

JOSEPH G. WERNER.

Mr. WILLIS. That concludes the hearings on these proposals.

(Whereupon, at 12:05 p. m., the hearing was adjourned.)