PATENT LAW CODIFICATION AND REVISION

WEDNESDAY, JUNE 13, 1934

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

The subcommittee met at 10 a. m., pursuant to notice, the Honorable Joseph B. Hymen (subcommittee chairman) presiding, for consideration of H. R. 3769, which is as follows:

(H. R. 3769, 83rd Cong., 1st sess.)

A BILL To revise and codify the laws relating to patents and the Patent Office, and to enact into law title 35 of the United States Code entitled "Patents".

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That title 35 of the United States Code, entitled "Patents", be revised, codified, and enacted into law, and may be cited, "Title 35, United States Code, section—", as follows:

TITLE 35—PATENTS

CHAPTER 1—PATENT OFFICE

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4. Regulations on officers and employees as to interest in patents.
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PATENT FEES

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§ 1. Establishment.
The Patent Office shall continue as an office in the Department of Commerce where records, books, drawings, specifications, and other papers and things...
pertaining to patents and to trademark registrations shall be kept and preserved, except as otherwise provided by law.

2. Seal
The Patent Office shall have a seal with which letters patent, certificates of trademark registrations, and patents issued from the Office shall be authenticated.

3. Officers and employees
A Commissioner of Patents, one first assistant commissioner, two assistant commissioners, and nine examiners in chief, shall be appointed by the President of the United States and with the advice and consent of the Senate. The assistant examiners in chief shall perform the duties pertaining to the office of commissioner not assigned to them by the Commissioner. The first assistant commissioner, or the assistant commissioner, under date of appointment in the event of a vacancy in the office of first assistant commissioner, shall fill the office of Commissioner during the vacancy in such office until a Commissioner is appointed and takes office. All other officers, clerks, and employees shall be appointed by the Commissioner upon the nomination of the Commissioner in accordance with law.

4. Restrictions on officers and employees as to interest in patents
Officers and employees of the Patent Office shall be incapable, during the period for which they hold their appointments and one year thereafter, of applying for a patent or of acquiring, directly or indirectly, except by inheritance or bequest, any interest in any patent or any right or interest in any patent, issued or to be issued, by the Office. In patents applied for thereafter they shall not be entitled to any priority as to any other applicant one year after the termination of their appointment.

5. Bond of Commissioner and other officers
The Commissioner and each and every officer as he designates, before entering upon their duties, shall execute and file a bond, with sureties, the sum of $10,000, and the latter in some prescribed by the Commissioner, conditioned for the faithful discharge of their respective duties and that they shall render to the proper officers of the Treasury a true account of all moneys received by virtue of their offices.

6. Duties of Commissioner
The Commissioner, under the direction of the Secretary of Commerce, shall superintend or perform all duties required by law respecting the granting and issuing of patents and the registration of trademarks, and he shall be the official custodian of property belonging to the Patent Office. He may, subject to the approval of the Secretary of Commerce, establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office.

7. Board of Appeals
The Commissioner may prescribe and perform all duties required by law respecting the granting and issuing of patents and the registration of trademarks, and he shall be the official custodian of property belonging to the Patent Office. He may, subject to the approval of the Secretary of Commerce, establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office.

8. Library
The Commissioner, shall maintain a library of scientific and other works and periodicals, both foreign and domestic, in the Patent Office to aid the officers in the discharge of their duties.

9. Classification of patents
The Commissioner may revise and maintain the classification by subject matter of United States letters patent, and such other patents and printed publications as may be necessary or practicable, for the purpose of determining

10. Certified copies of records
The Commissioner may furnish certified copies of specifications and drawings of patents issued by the Patent Office, and of other records available either to the public or to the person applying therefor.

11. Publications
(a) The Commissioner may print, or cause to be printed, the following:
(i) The Patent Office may publish the Handy Book of drawings for patent purposes of photostatting of the drawings for purposes of photostatting of the drawings for the purpose of reproducing the drawings for the purpose of reproducing
(ii) The Commissioner may exchange with foreign states the publications specified in item 3, 5, and 6 of subsection (a) of this section for publications of like or similar character.

12. Exchange of patents with foreign countries
The Commissioner may exchange copies of specifications and drawings of United States patents for those of foreign countries.

13. Copies of patents for public libraries
The Commissioner may prescribe and perform all duties required by law respecting the granting and issuing of patents and the registration of trademarks, and he shall be the official custodian of property belonging to the Patent Office. He may, subject to the approval of the Secretary of Commerce, establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent Office.

14. Day for taking action falling on Saturday, Sunday, or holiday
When the day of the patent period falls on a Saturday, Sunday, or a legal holiday within the District of Columbia, the action may be taken on the next working day.

15. Powers of Appeals Board
The Commissioner may require papers filed in the Patent Office to be printed or typewritten.

16. Testimony in Patent Office cases
The Commissioner may require the testimony on oath of any person, being sworn to, to state and explain the material matters relating to the attendance of witnesses and to the production of documents and things shall apply to contested cases in the Patent Office.

17. Subpoenas, witnesses
The Commissioner, upon request of any person, may bring before him, any person, witness or exhibiting any of the material matters relating to the attendance of witnesses and to the production of documents and things shall apply to contested cases in the Patent Office.

18. Proof of payment
The fees and expenses allowed to witnesses attending the United States District courts.

19. Proof of payment
The fees and expenses allowed to witnesses attending the United States District courts.
A judge of a court whose clerk issued a subpoena may, on proof of the neglect or refusal of a witness, after being duly served with such subpoena, to appear and answer, to testify, to enforce obedience to the process or punish the disobedience as in other like cases. No witness shall be deemed guilty of contempt, nor by appearing and answering or going to and returning from, and one day's attendance at the place of examination, be held or considered him at the time of the service of the subpoena, nor for refusing to disclose any secret matter except upon appropriate order of the court which issued the subpoena.

PRACTICE BEFORE PATENT OFFICE

§ 31. Regulations for agents and attorneys

The Commissioner, subject to the approval of the Secretary of Commerce, may prescribe regulations governing the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Patent Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation, are possessed of the necessary qualifications to render to applicants or others for persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office.

§ 32. Suspension or exclusion from practice

The Commissioner may, after notice and opportunity for a hearing, suspend or exclude, either generally or in any particular case, from further practice before the Patent Office, any person, agent, or attorney shown to be incompetent, dishonest, or disreputable, or guilty of gross misconduct, or who does not comply with the regulations established under section 31 of this title, or who shall, with intent to defraud, deceive, mislead, or threaten any applicant or prospective applicant, or otherwise having immediate or prospective business before the Office. The reasons for any such suspension or exclusion shall be duly recorded. The United States District Court for the District of Columbia, under such conditions and upon such proceedings as it by its rules determines, may review the action of the Commissioner upon the petition of the person so refused recognition or so suspended or excluded.

§ 33. Unauthorized representation as practitioner

Whoever, not being recognized as practitioner, appears in any other case, or represents himself to be held out as so recognized, or as being able to prepare or prosecute applications for patent, shall be fined not more than $1,000 for each offense.

§ 41. Patent fees

(a) The Commissioner shall charge the following fees:
1. For filing each application for an original patent, except in design cases, $30, and $1 for each claim in excess of twenty.
2. For issuing each original patent, except in design cases, $30, and $1 for each claim in excess of twenty.
3. In design cases: For three years and six months, $10; for seven years, $15; for fourteen years, $50.
4. On every application for the renewal of a patent, $30 and $1 for each claim in excess of twenty over and above the number of claims of the original patent.
5. On filing each disclaimer, $10.
6. On an appeal for the first time from the examiner to the Board of Appeals, $25.
7. On filing each petition for the revival of an abandoned application for a patent or for the delayed payment of the fee for issuing each patent, $10.
8. For certificate of correction of applicant's mistake under section 205 of this title, $5.
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, for the special rate for libraries specified in section 15 of this title, $50 for patents issued in one year.
10. For recording every assignment, agreement, or other paper not exceeding six pages, $1; for each additional two pages or less, $1; for each additional patent or application covered in one writing, where more than six is so included, 20 cents each additional.

§ 42. Payment of patent fees; return of excess amounts

Any excess fee shall be paid to the Commissioner who shall deposit the same in the Treasury of the United States in such manner as the Secretary of the Treasury may direct, and the Commissioner may refund any sum paid by mistake or in excess of the fee required by law.

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DEFINITIONS

101. Inventions patentable

Whoever invents or discovers any new and useful process, machine, manufacture, composition of matter or any new and useful improvement thereof, ...
may obtain a patent therefore, subject to the conditions and requirements of this title.

§ 102. Conditions for patentability: novelty and loss of right to patent
(a) The invention shall be new and not described in any printed publication in or in any foreign country, or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States;
(b) the invention shall be an improvement patented or described in any printed publication in or in any foreign country, or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States.

A patent may not be obtained though the invention is not described, or is not described in the prior art set forth in section 102 of this title, if the differences between the subject matter sought to be patented and that prior art are such that the subject matter as a whole would not have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

§ 104. Invention made abroad
In proceedings in the Patent Office and in the courts, an applicant for a patent, or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country, unless such activity is a prior invention or use as provided in section 119 of this title, and is of a nature that would be recognized in the United States as being an invention, or other activity, which would be entitled to the same rights of priority as the invention as if the same had been made in the United States.

§ 111. Application for patent
Application for patent shall be made by the inventor, except as otherwise provided in this title, and shall be in accordance with section 112 of this title; (2) an oath by the applicant as prescribed in section 115 of this title; the application shall be signed by the applicant and accompanied by the fees required by law.

§ 112. Specification
The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, exact terms as to enable any such person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same, and set forth the best mode contemplated by the inventor of carrying out his invention. The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention. An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure or means as in a claim for a combination and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof.

§ 113. Drawings
When the nature of the case admits, the applicant shall furnish a drawing.

§ 114. Models, specimens
The Commissioner may require the applicant to furnish a model or specimen to exhibit advantageously the several parts of his invention.

§ 115. Oath of applicant
The applicant shall make oath that he believes himself to be the original and first inventor of the process, machine, manufacture, or composition, or improvement, and that no one else has a legal right to the same, and shall state in the oath that he is a citizen of the United States. Such oath may be made before any person within the United States authorized by law to administer oaths, or, when made in a foreign country, before any diplomatic or consular officer of the United States authorized to administer oaths, or before any officer having an official seal and authorized to administer oaths in the foreign country, to which he may be sent, who may, if authorized by the United States, be a diplomatic or consular officer of the United States. Such oath shall be valid if it complies with the laws of the state or country where made. When the application is made as provided in this title by a person other than the inventor, the oath may be so varied in form that it can be made by him.

§ 116. Joint inventors
When an invention is made by two or more persons jointly, they shall apply for patent jointly and each shall apply for the same and make the required oath, except as otherwise provided in this title.

§ 117. Death or incapacity of inventor
When a joint inventor dies or becomes incapacitated, the application may be continued by the surviving joint inventors, or by the legal representatives of the deceased joint inventor, or by any person who, with the consent of the other joint inventors, becomes a party to the application.

§ 118. Filing by other than inventor
When a joint inventor refuses to join in an application for patent, or cannot be found or reached after diligent effort, a person to whom the inventor has assigned or conveyed or who otherwise qualifies for sufficient proprietary interest in the matter, and who satisfies all other requirements in respect to an application for a patent, and who files an application for a patent on behalf of and as agent for the inventor, may, upon the application of the inventor or his legal representatives, or by the person who has assigned the interest, or by any other person who is entitled thereto, obtain a patent for the inventor.

§ 119. Benefit of earlier filing
An application for a patent on an invention filed in this country by any person who is, or whose legal representatives or assigns have, previously received the benefit of any patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in the United States, shall be treated on its filing in the United States, as the same as the corresponding application if the application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country.
date on which such foreign application was filed; but no patent shall be granted on any application for a patent for an invention which had been patented or desired to be patented in any country more than one year before the date of the actual filing of the application in this country, or which has been designating or claiming to be in force or sale in this country more than one year prior to such filing.

No application for patent shall be entitled to this right of priority unless a claim is made. nor shall a certified copy of the original foreign application be filed at the same time or within one year of the filing of the application in this country. any certification shall be made by the patent office of the foreign country in which it filed and shall show the date of the application and of the filing of the application and other papers. The Commissioner may require a translation of the papers filed if not in the English language and such other information as he deems necessary.

130. Benefit of earlier filing date in the United States

An application for an invention described in the manner provided by the first paragraph of section 112 of this title in an application previously filed in the United States by the same inventor shall have the benefit of the filing date of such application. If the application is filed before the filing of the patent application or of the patent in foreign country, it shall have the benefit of the filing date of the earlier application or of the patent in foreign country, as the case may be. If the patent application is filed before the filing of the earlier application or of the patent in foreign country, the filing date of the present application shall be considered as the filing date of the earlier application or of the patent in foreign country, as the case may be. If the application is filed before the filing of the patent in foreign country, the filing date of the present application shall be considered as the filing date of the patent in foreign country, as the case may be. If the application is filed before the filing of the patent in foreign country, the filing date of the present application shall be considered as the filing date of the patent in foreign country, as the case may be.

131. Divisional applications

If two or more independent and distinct inventions are claimed in one application, the Commissioner may, upon request, divide the application into two or more divisional applications. A divisional application shall be entitled to the benefit of the filing date of the original application if it complies with the requirements of section 133 of this title. A divisional application filed within one year of the filing date of the original application shall be considered as having the same filing date as the original application.

132. Confidential status of applications

Applications for patents shall be kept in confidence by the Commissioner and no information concerning the same given without authority of the applicant or owner thereof necessary to carry out the provisions of any Act of Congress or in such special circumstances as may be determined by the Commissioner.

EXAMINATION OF APPLICATION

133. Examination of application

The Commissioner shall cause an examination to be made of the application and the new invention; and if on such examination it appears that the applicant is entitled to a patent under the law. The Commissioner shall issue a patent therefor.

134. Notice of rejection; reconsideration

Whenever an examination, a claim for a patent is rejected, or any objection or requirement made, the Commissioner shall notify the applicant thereof, stating the reasons for such rejection, or objection or requirement, together with such information and references as may be useful in judging of the propriety of continuing the prosecution of his application; and if after receiving such notice, the applicant persists in his claim for a patent, with or without amendment, the application shall be reconsidered. No amendment shall introduce new matter into the disclosure of the invention.

135. Time for presenting application

Upon failure of the applicant to prosecute the application within six months (or such shorter time, not less than thirty days, as shall be fixed by the Commissioner) after the date on which notice shall have been given or mailed to the applicant, the application shall be considered abandoned, and any other person shall be entitled to the benefits of the same. But if the Commissioner shall be satisfied that the delay was due to special causes, it shall be considered as not having occurred.

136. Appeal to the Board of Appeals

Any applicant for a patent, any of whose claims has been rejected, may appeal to the Board of Appeals of the Commissioner for the examination of the Board of Appeals, having cause, to appeal for such aid.

137. Interferences

Whenever, an application is made for a patent in which the Commissioner would interfere with any pending application, or with any unexpired patent, the Commissioner shall give notice thereof to the applicant, or patent, as the case may be. It is to be determined by the Commissioner, or the Board of Interference Examiners, or by a board of examiners, or by any other competent body, whether or not the applicant is entitled to a patent, or patent, as the case may be. The decision of the Commissioner in the interference shall be final and conclusive.

138. Priority of invention

The Commissioner shall determine the priority of invention, and shall be the final arbiter in such determinations. The decision of the Commissioner in such determinations shall be final and conclusive.

139. Validity of a patent

No patent shall be valid if it is not in compliance with the requirements of this title.

140. Decision on appeal

The Commissioner shall decide the question of the validity of the patent, and the decision of the Commissioner shall be final and conclusive.

141. Notice of appeal

When an appeal is taken to the United States Court of Customs and Patent Appeals, the applicant shall have the right to appeal to that court, and the decision of the Commissioner shall be final and conclusive.

142. Proceedings on appeal

The United States Court of Customs and Patent Appeals shall, before hearing such appeal, give notice of the time and place of the hearing to the Commissioner and the parties thereto. The Commissioner shall transmit to the court the original papers and evidence, and the court shall hear the case, and the Commissioner shall furnish the court with the grounds of the decision of the Patent Office, in writing, touching all the points involved by the reasons of appeal.
Upon its determination the court shall return to the Commissioner a certificate of its proceedings and decision, which shall be entered of record in the Patent Office and govern the further proceedings in the case.

§ 142. Civil action to obtain patent

An applicant dissatisfied with the decision of the Board of Appeals may, unless appeal has been taken to the United States Court of Customs and Patent Appeals, have remedy by civil action against the Commissioner in the United States District Court for the District of Columbia if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints. The Court may adjudge that such applicant is entitled to receive a patent for his invention, as specified, and any of his claims involved in the decision of the Board of Appeals, as the facts in the case may appear and such adjudication shall authorize the Commissioner to issue such patent on compliance with the requirements of law. All the expenses of the proceedings shall be paid by the applicant.

§ 144. Civil action in case of interference

Any party to an interference dissatisfied with the decision of the board of interference examiners on the question of priority, may have remedy by civil action, if commenced within such time after such decision, not less than sixty days, as the Commissioner appoints or provided in section 141 of the title, is filed to the United States Court of Customs and Patent Appeals, and such appeal is pending or has been decided. In such suits the record of the Patent Office shall be admitted in evidence upon the terms and conditions as to costs, expenses, and the further cross-examination of the witnesses as the court deems just, without prejudice to the right of the parties to take other evidence. The testimony and exhibits of the record in the Patent Office when admitted shall have the same effect as if originally taken and produced in the suit. Such suit may be instituted against the party in interest as shown by the records of the Patent Office at the time of the decision complained of, but any party in interest may become a party to the action. If there be adverse parties residing in the District of Columbia or not embraced within the same State, or an adverse party residing in a foreign country, the United States District Court for the District of Columbia shall have jurisdiction and may issue summons against the adverse parties directed to the marshal of any district in which any adverse party resides. Summons against adverse parties residing in foreign countries may be served by publication or otherwise as the court directs. The Commissioner shall not be a necessary party but shall be notified of the filing of the suit and the court shall have the right to intervene. Judgment of the court in favor of the right of an applicant to a patent shall authorize the Commissioner to issue such patent on the record of the Patent Office in accordance with the requirements of law.

ISSUE OF PATENT

§ 151. Time of issue of patent

The patent shall issue within three months from the date of the payment of the final fee, which shall be paid not later than six months after written notice to the applicant of allowance of the application, but the Commissioner may require an additional fee if paid within one year after the six months period for payment, and the patent shall issue.

§ 152. Issue of patent to assignee

Patents may be granted to the assignee of the inventor of record in the Patent Office, upon the application made and the specification sworn to by the inventor, except as otherwise provided in this title.

§ 154. How issued

Patents shall be issued in the name of the United States of America, under the seal of the Patent Office, and shall be signed by the Commissioner or by the person designated by the Commissioner, and shall be recorded in the Patent Office.

§ 154. Contents and term of patent

Every patent shall contain a short title of the invention and a grant to the patentee, his heirs or assigns, for the term of seventeen years, of the right to exclude others from making, using, or selling the invention throughout the United States, or any part thereof.

§ 201. Reissue of defective patents

When any application for a patent is deemed wholly or partly inept, defective or invalid, by reason of a defective specification or drawing, or by reason of the priority of any other of the requirements of the patent, without any defective intention, the Commissioner shall, on the surrender of such patent and the payment of the fee required by law, reissue the patent for the invention described in the original patent and in accordance with the new and amended application, for the unexpired term of the part of the original patent. New matter may not, however, be introduced into the application for reissue.

The Commissioner may issue several reissued patents for distinct and separate parts of the invention patented, upon demand of the applicant, and upon payment of the required fee for a reissue for each of such reissued patents.

The provisions of this title relating to applications for patent shall be applicable to applications for reissue of a patent, except that an application for reissue may be made to the assignee of the entire interest in the said patent. Applications for reissue shall not void the scope of the claims of the original patent.

No reissued patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of original patent.

§ 202. Effect of reissue

The reissue of the original patent shall take effect upon the issue of the reissued patent, and every reissued patent shall have the same effect and operation in law as the original and be construed as if it had been originally granted in such amended form, but in so far as the claims of the original and reissued patents are identical, such reissue shall not affect any action then pending or not yet brought by any party to the action, and the reissued patent, to the extent that its claims are identical with those of the original patent, shall be construed as a continuation thereof and have effect consequently from the date of the original patent.

No reissued patent shall bar or affect the right of any person or his
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OWNERSHIP AND ASSIGNMENT

211. Ownership; assignment

Subject to the provisions of this title, patents shall have the applicable rights, of the person in whose name it is registered which was in the original patent.

Applications for patent, or any interest therein, shall be assignable in a manner that the assignor, patentee, or his legal representatives may in like manner grant or assign to a foreigner, for, or to any other person for patent, or for the whole or any specified part of the United States.

A certificate of acknowledgment signed by the head and official seal of a person assigning a patent, shall be sufficient evidence, under such terms as the Commissioner of Patents may require, of the true character and extent of the interest of such assignor, patentee, or his legal representatives, in the said patent or right, and shall be deemed of the same validity as a certificate of the United States Secretary of State. A certificate of application, or any other certificate, when used as evidence of the character or extent of any right, shall have the same validity as a certificate of the United States Secretary of State.

212. Joint owners

Any joint owner shall have, the same legal capacity to convey all or any part of his interest in the patent, as an individual owner has. A certificate of assignment or conveyance of a patent shall not convey to any such joint owner any right in the patent, and shall be voidable by the other joint owner, in whole or in part, if the assignment or conveyance is voidable by the other owner or owners, and shall be voidable by the other owner or owners, in whole or in part, if the assignment or conveyance is voidable by the other owners or owners, as the case may be.

213. Patent interference in patents

Subject to the provisions of sections 190, 145, and 651 of this title, the Commissioner may extend the time for taking any action for or three years, when an applicant for a patent or patentee or patentee has filed the said application, if the Commissioner shall have certified that the said application has been filed in good faith, and that the said application has been filed in any of the cases specified in sections 190, 145, and 651 of this title.

INFRINGEMENT OF PATENTS

251. Infringement of patent

(a) Except as otherwise provided in this title, whoever without authority makes, uses, or sells an invention, within the United States during the term of the patent therefor, infringes the patent.

(b) Whoever actively induces infringement of a patent shall be liable as an

(c) Whoever knowingly sells a component of a patented machine, apparatus, or other thing, which infringes a patent, shall be liable to the owner of the patent for any damages the owner sustains by reason of such infringement.

(d) No patent owner otherwise entitled to relief for infringement of contributory infringement of a patent shall be denied relief or deemed guilty of misuse of the process, or by reason of his having one or more of the following: (1) derived revenue from acts which, if performed by another without his consent, would constitute contributory infringement of the patent; (2) inadvertent misappropriation of the rights of others. One guilty of contributory infringement of a patent shall be liable to the owner of the patent for any damages the owner sustains by reason of such contributory infringement, and shall be enjoined from further infringing the patent.
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322. Temporary presence in the United States.

The use of any invention in any vessel, aircraft, or vehicle of any country which affords similar privileges to vessels, aircraft, or vehicles of the United States, without the notification of the patentee, shall constitute infringement of any patent, and the patentee shall be entitled to recover, either in its own name or in the name of the vessel, aircraft, or vehicle and is not sold in or used for the manufacture of anything to be sold in or exported from the United States.

REMEDIES FOR INFRINGEMENT OF PATENT AND OTHER ACTIONS

324. Remedy for infringement of patent.

A patentee shall have remedy by civil action for infringement of his patent.

325. Preemption of validity; defenses.

A patent shall be presumed valid. The burden of establishing invalidity of a patent shall rest on a party asserting it.

The following shall be defenses to any action involving the validity or infringement of a patent and shall be pleaded:

1. Infringement of the patent or any claim thereof on any ground specified in chapter 28 of this title as a condition for patentability.

2. Invalidity of the patent or any claim thereof on any ground specified in chapter 28 of this title.

3. Infringement on any ground specified in chapter 28 of this title.

4. Any other fact or event made a defense in this section or in any other section of this title.

326. Injunction.

The court having jurisdiction of cases under this title may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable.

327. Damages.

Upon adjusting a patent valid and infringed, the court shall award the claimant damages adequate to compensate for the infringement, but no award less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court.

When the damages are not found by the court, every court having jurisdiction of such cases shall assess damages therefor.

328. Attorney fees.

In exceptional cases the court may award reasonable attorney fees to the prevailing party.

329. Time limitation on damages.

Except as provided by law, no recovery shall be had for any infringement committed more than six years prior to the filing of the complaint of complaint in infringement in the action.

330. Limitation on damages; marking and notice.

Patentees, and persons making or selling any patented article for or under them, may give notice to the public that the same is patented, either by fixing thereon the word "patent" or the abbreviation "pat.", together with the number of the patent, or when, from the character of the article, this cannot be done, by fixing it, or to the package wherein one or more of them is contained, or affixed containing a like notice. In the event of failure so to mark, no damages shall be recovered by the patentee in any action for infringement, except on proof that the infringer was notified of the infringement and continued to infringe thereafter, in which case damages may be recovered only for infringer subsequent to such notice. Filing of an action for infringement shall constitute such notice.

331. Action for infringement of a patent containing an invalid claim.

Whenever, without consent of a patentee, the invention is used exclusively of the vessel, aircraft, or vehicle and is not sold in or used for the manufacture of anything to be sold in or exported from the United States.

332. Notice of patent suits.

The clerks of the courts of the United States, within one month after the filing of an action under this title shall give notice thereof to the Register or the Secretary of the Patent Office before the commencement of the suit.

333. Interfering patents.

No action for interfering patent may have relief against the owner of another by civil action, nor shall civil action be brought against the owner of another patent, the title to which is not then pending or on file with the Register or the Secretary of the Patent Office.

334. False marking.

Whoever, without the consent of the owner of a patent, marks or affixes to, or uses in advertising or sales or in connection with any article made or sold, or by him marked or used, the word "patent," or the abbreviation of the name of the patentee, the word or words "patent," or "patented," or the like, with the intent of misleading or imitating the mark of the patentee, or of deceiving the public and inducing them to believe the thing was made or sold by or with the consent of the patentee; or

Whoever marks upon, or affixes to, or uses in advertising in connection with any article, the words "patent applied for," or "patent pending," or any word or words importing the like, or the like, with the intent of misleading or deceiving the public; or

Whoever marks upon, or affixes to, or uses in advertising in connection with any article, the words "patent applied for," or "patent pending," or any word or words importing the like, or the like, with the intent of misleading or deceiving the public.

335. Damages.

Shall be paid as follows for every such offense:

The damages shall not be less than $50 for every such offense.

CHAPTER 1-PLANTS AND DESIGNS


337. Description, claim.

338. Application.

339. Allowance.
Sec. 311. Patents for designs.

Whoever invents any new, original, and ornamental design for an article of manufacture may obtain a patent therefor, subject to the conditions and requirements of this title. The provisions of this title relating to patents for inventions shall apply to patents for designs, except as otherwise provided.

Sec. 312. Right of priority.

The right of priority provided for by section 119 of this title shall be six months in the case of designs.

Sec. 313. Term of design patent.

Patents for designs may be granted for the term of three years and six months, or for seven years, or for fourteen years, as the applicant, in his application, elects.

Sec. 314. Additional remedy for infringement of design patent.

Whoever, during the term of a patent for a design, without license of the owner, (1) applies the patented design, or any colorable imitation thereof, to any article of manufacture for the purposes of sale, or (2) sells or exposes for sale any article of manufacture to which such design or colorable imitation has been applied shall be liable to the owner to the extent of his total profit, but not less than $200 if recoverable in any United States district court having jurisdiction of the parties. No action under this section shall prevent, bar, or enjoin any other remedy which an owner of an infringed patent has under the provisions of this title, but he shall not thereby recover the profit made from the infringement.

Sec. 315. Additional remedy for infringement of design patent.

Whoever, during the term of a patent for a design, without license of the owner, (1) applies the patented design, or any colorable imitation thereof, to any article of manufacture for the purposes of sale, or (2) sells or exposes for sale any article of manufacture to which such design or colorable imitation has been applied shall be liable to the owner to the extent of his total profit, but not less than $200 if recoverable in any United States district court having jurisdiction of the parties.

Sec. 316. Additional remedy for infringement of design patent.

Whoever, during the term of a patent for a design, without license of the owner, (1) applies the patented design, or any colorable imitation thereof, to any article of manufacture for the purposes of sale, or (2) sells or exposes for sale any article of manufacture to which such design or colorable imitation has been applied shall be liable to the owner to the extent of his total profit, but not less than $200 if recoverable in any United States district court having jurisdiction of the parties.

Sec. 317. Additional remedy for infringement of design patent.

Whoever, during the term of a patent for a design, without license of the owner, (1) applies the patented design, or any colorable imitation thereof, to any article of manufacture for the purposes of sale, or (2) sells or exposes for sale any article of manufacture to which such design or colorable imitation has been applied shall be liable to the owner to the extent of his total profit, but not less than $200 if recoverable in any United States district court having jurisdiction of the parties.

Sec. 318. Additional remedy for infringement of design patent.

Whoever, during the term of a patent for a design, without license of the owner, (1) applies the patented design, or any colorable imitation thereof, to any article of manufacture for the purposes of sale, or (2) sells or exposes for sale any article of manufacture to which such design or colorable imitation has been applied shall be liable to the owner to the extent of his total profit, but not less than $200 if recoverable in any United States district court having jurisdiction of the parties.

Sec. 319. Additional remedy for infringement of design patent.

Whoever, during the term of a patent for a design, without license of the owner, (1) applies the patented design, or any colorable imitation thereof, to any article of manufacture for the purposes of sale, or (2) sells or exposes for sale any article of manufacture to which such design or colorable imitation has been applied shall be liable to the owner to the extent of his total profit, but not less than $200 if recoverable in any United States district court having jurisdiction of the parties.

Sec. 320. Additional remedy for infringement of design patent.

Whoever, during the term of a patent for a design, without license of the owner, (1) applies the patented design, or any colorable imitation thereof, to any article of manufacture for the purposes of sale, or (2) sells or exposes for sale any article of manufacture to which such design or colorable imitation has been applied shall be liable to the owner to the extent of his total profit, but not less than $200 if recoverable in any United States district court having jurisdiction of the parties.

Sec. 321. Additional remedy for infringement of design patent.

Whoever, during the term of a patent for a design, without license of the owner, (1) applies the patented design, or any colorable imitation thereof, to any article of manufacture for the purposes of sale, or (2) sells or exposes for sale any article of manufacture to which such design or colorable imitation has been applied shall be liable to the owner to the extent of his total profit, but not less than $200 if recoverable in any United States district court having jurisdiction of the parties.


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Footnotes:
1. The part relating to the granting of patents to government employees without fees.
2. The part relating to a superior appeal and specifications.
3. The part relating to fees for service agreements.
4. The part regarding the expense of copies of patents.
5. The part relating to the price of copies of specifications and drawings of patents.

Present: Representatives Bryson, Ramsay, Boggs, Rogers, Crumpacker, and Bakewell.

Above present, Charles J. Zinn, law revision counsel, Committee on the Judiciary; L. James Harris, committee counsel, Committee on the Judiciary.

Mr. Bryson. Gentlemen, the committee will come to order, and as our good Congressman Jennings used to say, "We hate to find ourselves like an Egyptian mummy, pressed for time.

We received a telegram this morning from the Democratic whip, Mr. Priest, that we would be expected to be on the floor, and the House meets at 12 o'clock. We will try to make some arrangements about it, however.

We are pleased to note the interest in this hearing; and we will proceed as expeditiously as possible.

The first witness on the schedule is our law revision counsel, Mr. Charles J. Zinn, who will now make a brief statement.

The acoustics in this room are not too good, and if some of you gentlemen have difficulty in hearing you might move up here and occupy some of the seats nearer to the front.

All right, Mr. Zinn.

STATEMENT OF CHARLES J. ZINN, LAW REVISION COUNSEL, COMMITTEE ON THE JUDICIARY

Mr. Zinn. Mr. Chairman, I will make a brief preliminary statement regarding the background and objectives of this bill. As its title indicates, the bill, H.R. 5790, is intended to revise and codify the laws relating to patents and enact into law title 35 of the United States Code entitled "Patents."

By a fortunate distribution of committee functions your subcommittee is charged both with the revision of the laws and with the consideration of bills relating to patents.
About 5 years ago it was suggested that, since this subcommittee had jurisdiction over both the revision of the laws and the subject of patents, we ought to undertake the preparation of the present bill. The preparation of a preliminary draft of a bill for the revision, amendment and codification of the Patent Laws, which was printed and distributed in February of last year.

The preliminary draft included a collection of a large number of recommendations, reports, and other studies which had been made by committees of the Congress, as well as the codification itself. The preliminary draft was widely distributed with a request for criticisms and suggestions. As a result of this, the draft was adopted, and on Sunday, June 12, 1875, a bill was prepared and introduced in the Eighty-fifth Congress, 1st Session, dated July 17, 1875. This bill was widely distributed and again amended, and was eventually received by the committee from the patent bar and others. As a result of this material, the bill was reprinted in revised form as the bill before us, H. R. 3769.

In the preparation of the draft leading to the present bill, all acts of Congress were considered or mentioned, which have been enacted since 1874 and 1875, and those acts which had not been specifically repealed were used in preparing the draft.

The changes introduced in the bill were obtained mainly by a study of all the bills relating to patents which had been introduced in Congress since 1865, and in addition the reports of various committees making studies of the patent laws, reports and recommendations of patent officers, and miscellaneous sources.

The committee as a matter of policy for a number of years has been calling on official and unofficial experts in the field to assist the committee, and our committee has been very fortunate in receiving the assistance of learned persons like Mr. J. F. Forer, of the Patent Office, and Mr. Robert J. Woodruff, of the Department of Commerce; and the coordinating committee of the bar has rendered invaluable service in the coordination of the bills and the bill, and the report which will follow.

Mr. Barlow, Thank you. Are there any questions?

STATEMENT OF HENRY R. ASHTON, REPRESENTING THE COORDINATING COMMITTEE ON REVISION AND AMENDMENT, OF THE PATENT LAWS OF THE NATIONAL COUNCIL OF PATENT LAW ASSOCIATIONS

Mr. Barlow, Mr. Ashton, will you give the reporter your full name and address and in what capacity you now appear?

I am J. F. Ashton. My name is Henry R. Ashton.

I appear in support of H. R. 3769 on behalf of the Coordinating Committee on Revision and Amendment of the Patent Laws, of which I am chairman.
Mr. Burdon. You may be seated if you like, Mr. Ashton.

Mr. Ashton. Thank you.

Mr. Burdon. Do you have a prepared statement?

Mr. Ashton. Yes, I have, of which 10 copies have been supplied to you, and I have additional copies here if anyone wishes a copy.

Mr. Burdon. Do you have any preference as to whether you be permitted to make your complete statement before any questions be asked, or would you like to have questions propounded as you go along?

Mr. Ashton. I have no objection whatsoever to having questions asked as I go along. However, we might expedite it a little more if they were withheld to the end.

Mr. Burdon. We do want to conserve time because we have a number of witnesses to be heard this morning.

Mr. Ashton. Yes, sir.

Mr. Burdon. We have to be as rapid as possible; so you may proceed.

Mr. Ashton. Thank you.

The committee was organized February 8, 1930. The following patent law associations, patent committees of general bar associations, and industrial associations have been regularly represented on or have otherwise participated in the work of the committee:

National Council of Patent Law Associations
American Patent Law Association
American Bar Association, Patent Section
American Drug Manufacturers Association
Association of the Bar of the City of New York, Patent Committee
Bar Association of Chicago, Patent Law Association
Bar Association of Cleveland, Patent Law Association
Bar Association of the State of Colorado, Patent Section
Bar Association of the State of Connecticut, Patent Law Association
Bar Association of the State of Delaware, Patent Law Association
District of Columbia Bar Association, Patent Section
Los Angeles Patent Law Association
Manufacturing Chemists Association
Michigan Patent Law Association
Milwaukee Patent Law Association
Minnesota Patent Law Association
National Association of Manufacturers
New Jersey Patent Law Association
New York Patent Law Association
Oregon Patent Law Association
Philadelphia Patent Law Association
Pittsburgh Patent Law Association
Rockefeller Corporation
St. Louis Bar Association, Patent Section
San Francisco Patent Law Association
Seattle Patent Law Association
Syracuse Patent Law Association

You will recall, Mr. Burdon, that on May 23, 1930, on the floor of the House of Representatives, you formally advised the House of the undertaking by your committee to revise and codify the patent laws. I called the attention of the House to your committee's work. I know your committee's work on that subject, and I have served the basis of all the work that has been done during the past year, culminating in H. R. 2597. At the same time you very graciously made the following statement:

I am heartened by the manner in which the organized patent bar has come forward in a constructive and cooperative fashion to help Congress in undertaking this task. Your instantaneous cooperation has been one of the most dramatic evidences of the democratic process that I have had the privilege of witnessing. With the attitude you have adopted, I am confident that we shall perform a far-reaching, objective study of the subject that will ultimately produce a body of laws which will serve our future as well as the present ones have served our past.

And you further said with reference to the patent bar:

If you learned gentlemen feel disposed to question the diligence of your legislators in considering your patent problems, let it not to our lack of interest but rather to the extent, which you have displayed.

We in the National Council of Patent Law Associations were familiar with the much too frequent inability of the patent bar to agree on various proposals to amend the patent laws. Although it might have been convenient to refer to some of our disagreements as "tainted disagreements," they were nevertheless disagreements which sometimes made it exceedingly difficult if not impossible for your committee to obtain the enactment of constructive patent legislation.

The experience of the Trademark Coordinating Committee which worked on the Lanham Act, the officers of the National Council of Patent Law Associations, whose membership includes the 12 principal patent law associations in the country, held a meeting in Washington on February 8, 1934, for the purpose of forming a coordinating committee to coordinate the views of the patent law associations, other organizations, and individuals with respect to the proposed revision and amendment of the patent laws contained in your committee report.

Nearly all of the member associations sent representatives to this first meeting, and these present voted unanimously to form the coordinating committee. A drafting committee, consisting of Giles A. Rich of New York, and Paul A. Rosen of Washington, D.C., was appointed at the same meeting and instructed to prepare a revision and amendment of the patent laws based upon the committee report containing only such changes as are in the judgment of the drafting committee, would meet with substantial approval of the patent profession.

A number of industrial associations then joined in the work of the coordinating committee. The committee print was submitted to the coordination committee, revised as directed, and numerous reports and suggestions were sent to the drafting committee. These reports and suggestions were studied by the drafting committee which prepared a careful redraft representing its best judgment of those reports that would meet with general approval. Seven hundred and fifty copies of this redraft were printed by our committee and submitted on April 14, 1930, to the legislative committees of the represented associations. At a second meeting of the coordinating committee held on May 9 and 10, 1930, this redraft was carefully considered section by section, was reprinted with changes adopted at this 2-day meeting, and was then submitted to your committee.

H. R. 3133 was widely distributed, our committee alone having distributed 4,400 copies to the profession and industry. H. R. 3133 was then submitted to close study by the legislative committees of our associations and by the associations themselves over a period of 6 months, which again submitted their reports to our drafting committee. The drafting committee not only studied these reports but also earlier bills to amend the patent law, such as the Wiley bill, S. 2518. In addition, it carefully examined the patent laws of other countries, including those of Great Britain and Canada. Based upon
this thorough study, the drafting committee submitted proposals for changes in H. R. 3633 to a third meeting of the coordinating committee held on December 4 and 7, 1903. At this meeting H. R. 3633 was considered and voted upon section by section, and our resulting final draft was presented to your committee.

During the early spring of this year, and I think this is of great significance, this draft was subjected to the usual thorough and careful scrutiny at a 3-day meeting here in Washington of the patent section of the American Bar Association, the results of which were also reported to your committee.

I may say a number of the most able patent lawyers in the country not only attended that meeting, but vigorously participated in it. As is well known to you, much additional work was then done by your law revision counsel, Mr. Zinn, and your counsel, Mr. Harris, which culminated in the introduction on April 18, 1904, of H. R. 3760, now under consideration.

H. R. 3760 was promptly distributed to the 4,288 patent lawyers and agents registered to practice before the Patent Office, to the industrial associations, and other interested persons. Since April 18, 1904, H. R. 3760 has been carefully studied by the legislative committees of several associations on our committee preparatory to a fourth coordinating committee meeting held in Washington on May 22-25, 1904. Thirty persons representing 25 associations attended this meeting. H. R. 3760 was considered section by section, and the relatively few changes which were favored have been communicated to your committee.

It should also be stated that all of the reports which have come to the coordinating committee or its drafting committee during the year and one half of its existence have been made available to your committee through your committee's counsel.

It is my understanding that one of the "talented disagreements" of the patent bar on legislative matters prompted your committee to initiate this important program of revising and codifying the patent laws. In doing so your committee rendered a most valuable service to our country. Those most interested in a sound patent system an opportunity to demonstrate that they also have talent for a large measure of agreement, when the matter involved is of major importance. It is our earnest hope and belief that the National Council of Patent Law Associations, to which our coordinating committee owes its origin and whose good offices it employs, will in the future stand ready to support the work of your committee by contributing the talent like that employed in helping to develop the bill now under consideration.

I can at least be said that in this instance we have worked effectively among ourselves and with your committee. Certainly an extensive amount of patent legislation has heretofore received such thorough consideration by as many qualified persons over such an extended period of time.

There was submitted here with a list of the approximate membership of the several patent-law associations which have been represented on our committee or have otherwise cooperated with it. The total membership of these associations is nearly 30,000. I do not have available the number or names of the companies which are members of the industrial associations which have worked with our committee. Of the total companies represented in these associations, the small companies far outnumber the larger ones.

Several of our associations expect to present at these hearings their own reports and resolutions in support of H. R. 3760. However, I have been asked to present letters or resolutions from the other associations, a consideration of which is attached to my statement.

These resolutions are 18 in number. I have an extra copy of them which I can hand up to the committee. I would like to submit them, but the chairman's permission I would like quickly to refer to, two or three of them so that the committee will see exactly the character of them, if I may have that permission.

Mr. Burrows. You may do that.

Mr. Aspens. I would like first to call attention to the resolution of the Chicago Patent Law Association. The letter is addressed to me, and it was dated June 6, 1904. It states,

At a biennial meeting of our association, held on Monday, the 26th day of May, 1904, the following resolution:

Resolved, That H. R. 3760, with the changes recommended by the coordinating committee of the National Council of Patent Law Associations, its members, and the Joint Committee of May 22-25, 1904, be approved as a whole.

As you are aware, the present bill H. R. 3760 and its predecessor H. R. 3753 have been the subject of very intensive study by the Patent Law Association of Chicago. We conducted a series of symposia last year under the direction of several subcommittees appointed to consider various sections of the bill, which symposia were well attended by members of our association. Copies of the reports of such symposia were printed and distributed to all the members of the association, and the final reports of our legislative committee and the board of managers were also printed and distributed to all our members.

Similarly, subcommittees were again appointed this year for consideration of H. R. 3760. The above resolution therefore may be considered as representing the thinking of a most careful body of our association.

Now, that is a direct statement of the type of work which was conducted by every one of these associations.


I do not know whether Mr. Levy plans to present the resolution of the New York Patent Law Association. It is apparently unused by me, so I present, as I am authorized to do, the New York Patent Law Association's resolution.

It may be that Mr. Levy later will have the opportunity to and wish to present the resolution of the New York Patent Law Association. I might quickly refer to that at this time. It was a resolution passed by the board of governors of that association on May 24, 1904, and reads:

Resolved, That the President of the New York Patent Law Association, acting on behalf of the board of governors, is authorized to explore and to testify in any manner in connection with the proposed bill, H. R. 3760, it being also authorized to explore and to testify in any manner in connection with the recommendation made by the coordinating committee as valuable suggestions for improvement in the bill which should be included in it if possible.
I also have the resolutions of the Philadelphia Patent Law Association, the Pittsburgh Patent Law Association; of the St. Louis Patent section of its bar association, and the resolution of the San Francisco Patent Law Association and of the Toledo Patent Law Association, which I now offer to the committee.

Mr. Bavayan. They will be included in the record.

(The matter referred to is as follows:)

THE BOSTON PATENT LAW ASSOCIATION.

Boston, Mass., June 6, 1951.

DEAR SIR: At a meeting of the executive committee of the Boston Patent Law Association on June 5, 1951, it was

"Resolved, That the executive committee of the Boston Patent Law Association fully supports the passage of H. R. 3760, preferably with the proposed changes adopted at the meeting of the coordinating committee on May 22, 1951." Respectfully,

M. R. JENNEY, Secretary.

Mr. Henry R. Ashton, New York, N. Y.

Dear Mr. Ashton: At a board meeting of our association today we unanimously passed the following resolution:

"Resolved, That H. R. 3760 with the changes recommended by the coordinating committee of National Council of Patent Law Associations at its meeting on May 22, 1951, be approved as a whole."

As you may know, the present bill H. R. 3760 and its predecessor H. R. 9133 have been the subject of very intensive study by the Patent Law Association of Chicago. We conducted a series of symposia last year under the direction of several subcommittees appointed to consider various sections of the bill. At which symposia were well attended, by members of our association. Copies of the reports of each subcommittee were printed and distributed to all members of the association, and the final reports of our legislative committee and the board of managers were also printed and distributed to all our members.

Similar subcommittees were again appointed this year for consideration of H. R. 3760. The above resolution therefore may be considered as representing the results of a careful study by our association.

Yours very truly,

Representative of the Patent Law Association of Chicago,


Henry R. Ashton, Esq., New York, N. Y.

Dear Mr. Ashton: At its annual meeting on May 20, 1951, the Cleveland Patent Law Association approved the following resolution:

"Resolved, That the Patent Law Association approves in principle the reclassification of the patent laws set forth in the bill H. R. 3760 now pending in the House of Representatives subject to such corrections as are being made by the coordinating committee of the Council of Patent Law Associations."

I believe that this will give the assurance which you will wish to have for presentation to the House Judiciary Committee, while permitting correction of the various errors and ambiguities on which your committee has been working.

Very truly yours,

HAROLD S. MEYER,
Chairman, Legislative Committee, the Cleveland Patent Law Association.
(2) The Patent Law Association of Los Angeles approved the changes approved by your coordinating committee at its meeting in Washington on May 22, 1911, but delegates full authority to your committee to negotiate these changes.

Very truly yours,

Lovy W. Stilke.

Resolution of the Board of Directors of the Minneapolis Patent Law Association, Assembled June 8, 1911.

Resolved, That the Board of Directors of the Minneapolis Patent Law Association adopt the following policy with respect to the Bryan bill (H. R. 3700):

That our association present a united front with the other patent organizations of America before the House Committee on the Judiciary, in endorsement of the Bryan bill, and that Henry R. Ashton, Esq., be authorized to make this declaration, so as to inform the House committee.

That advocacy of alternative legislation by our association, be for the present withheld, at least until the House develops its attitude toward the Bryan bill.

That, so long as the Bryan bill is treated as a mere "revisor's bill," largely uncontroversial, and thus appears likely to pass the House substantially in its present form, advocacy of alternative legislation continues to be withheld, as long as the House passage seems likely, but that we reserve the right to attempt to obtain the adoption by the Senate of such amendments as our legislative committee subject to control by our board of directors may deem necessary, having previously reported such amendments to the smallest possible number.

That, if the Bryan bill be defeated in either the House or the Senate, or even merely become a controversial measure with serious opposition in either the House or the Senate, then we reserve the right to work for the introduction of alternative legislation.

And that the secretary be instructed to mail a copy of this resolution at once to Mr. Ashton.

THE MINNESOTA PATENT LAW ASSOCIATION.

June 7, 1911.


Washington, D. C.

Attention of Mr. Francis D. Stephens, chairman of committee on patent legislation.

Mr. Mr. Stephens: At the annual meeting of the Minnesota Patent Law Association on May 17, 1911, at which time the writer took over as president for the ensuing year, the resolution was passed approving H. R. 3700, now being considered by Congress.

In picking up the loose ends, the writer notes that no notification of this was forwarded to you; hence, this letter.

Yours very truly,

THE MINNESOTA PATENT LAW ASSOCIATION.

Ralph B. Herrick, President.

Resolution of the New Jersey Patent Law Association, Newark, N. J.

June 1, 1911.

Resolved, That the New Jersey Patent Law Association approves in principle the provisions of H. R. 3700 and the various sections thereof, and, moreover, approves and adopts as its own views such modifications in H. R. 3700 as may be approved by the coordinating committee on revision and amendment of the patent laws of the National Council of Patent Law Associations; and be it

Resolved further That the American patent law association, composed of the views of the coordinating committee at hearings with respect to said bill, are specifically recognized as acting forth the official views of the New Jersey Patent Law Association; and be it

The PHILADELPHIA PATENT LAW ASSOCIATION.

Henry H. Ashton, Esq.


PITTSBURGH PLATE GLASS CO.

Pittsburgh, Pa., June 1, 1911.

Henry H. Ashton, Esq.

Chairman of Committee on Revision and Amendment of the Patent Law, New York City, N. Y.

Dear Mr. Ashton: The Patent Law Association of Pittsburgh cannot at this time to pass a resolution supporting the passage of H. R. 3700.

Under the circumstances, I have polled the members of the board of managers of the association, and they have authorized me to write you this letter for me at the hearings before the subcommittee of the Legislative Committee as showing that the governing body of this association approves the passage of H. R. 3700.

Very truly yours,

[Signature]


THE MINNESOTA PATENT LAW ASSOCIATION.

June 7, 1911.


Washington, D. C.

Attention of Mr. Francis D. Stephens, chairman of committee on patent legislation.

Mr. Mr. Stephens: At the annual meeting of the Minneapolis Patent Law Association on May 17, 1911, at which time the writer took over as president for the ensuing year, the resolution was passed approving H. R. 3700, now being considered by Congress.

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Ralph B. Herrick, President.

Resolution of the New Jersey Patent Law Association, Newark, N. J.

June 1, 1911.

Resolved, That the New Jersey Patent Law Association approves in principle the provisions of H. R. 3700 and the various sections thereof, and, moreover, approves and adopts as its own views such modifications in H. R. 3700 as may be approved by the coordinating committee on revision and amendment of the patent laws of the National Council of Patent Law Associations; and be it

Resolved further That the American patent law association, composed of the views of the coordinating committee at hearings with respect to said bill, are specifically recognized as acting forth the official views of the New Jersey Patent Law Association; and be it

The PHILADELPHIA PATENT LAW ASSOCIATION.

Henry H. Ashton, Esq.


PITTSBURGH PLATE GLASS CO.

Pittsburgh, Pa., June 1, 1911.

Henry H. Ashton, Esq.

Chairman of Committee on Revision and Amendment of the Patent Law, New York City, N. Y.

Dear Mr. Ashton: The Patent Law Association of Pittsburgh cannot at this time to pass a resolution supporting the passage of H. R. 3700.

Under the circumstances, I have polled the members of the board of managers of the association, and they have authorized me to write you this letter for me at the hearings before the subcommittee of the Legislative Committee as showing that the governing body of this association approves the passage of H. R. 3700.

Very truly yours,

[Signature]


THE MINNESOTA PATENT LAW ASSOCIATION.

June 7, 1911.


Washington, D. C.

Attention of Mr. Francis D. Stephens, chairman of committee on patent legislation.

Mr. Mr. Stephens: At the annual meeting of the Minneapolis Patent Law Association on May 17, 1911, at which time the writer took over as president for the ensuing year, the resolution was passed approving H. R. 3700, now being considered by Congress.

In picking up the loose ends, the writer notes that no notification of this was forwarded to you; hence, this letter.

Yours very truly,

THE MINNESOTA PATENT LAW ASSOCIATION.

Ralph B. Herrick, President.

Resolution of the New Jersey Patent Law Association, Newark, N. J.

June 1, 1911.

Resolved, That the New Jersey Patent Law Association approves in principle the provisions of H. R. 3700 and the various sections thereof, and, moreover, approves and adopts as its own views such modifications in H. R. 3700 as may be approved by the coordinating committee on revision and amendment of the patent laws of the National Council of Patent Law Associations; and be it

Resolved further That the American patent law association, composed of the views of the coordinating committee at hearings with respect to said bill, are specifically recognized as acting forth the official views of the New Jersey Patent Law Association; and be it

The PHILADELPHIA PATENT LAW ASSOCIATION.

Henry H. Ashton, Esq.


PITTSBURGH PLATE GLASS CO.

Pittsburgh, Pa., June 1, 1911.

Henry H. Ashton, Esq.

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Under the circumstances, I have polled the members of the board of managers of the association, and they have authorized me to write you this letter for me at the hearings before the subcommittee of the Legislative Committee as showing that the governing body of this association approves the passage of H. R. 3700.

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Henry H. Ashton, Esq.

Chairman of Committee on Revision and Amendment of the Patent Law, New York City, N. Y.

Dear Mr. Ashton: The Patent Law Association of Pittsburgh cannot at this time to pass a resolution supporting the passage of H. R. 3700.

Under the circumstances, I have polled the members of the board of managers of the association, and they have authorized me to write you this letter for me at the hearings before the subcommittee of the Legislative Committee as showing that the governing body of this association approves the passage of H. R. 3700.

Very truly yours,

[Signature]


THE MINNESOTA PATENT LAW ASSOCIATION.

June 7, 1911.


Washington, D. C.

Attention of Mr. Francis D. Stephens, chairman of committee on patent legislation.

Mr. Mr. Stephens: At the annual meeting of the Minneapolis Patent Law Association on May 17, 1911, at which time the writer took over as president for the ensuing year, the resolution was passed approving H. R. 3700, now being considered by Congress.

In picking up the loose ends, the writer notes that no notification of this was forwarded to you; hence, this letter.

Yours very truly,

THE MINNESOTA PATENT LAW ASSOCIATION.

Ralph B. Herrick, President.
Resolution of the Toledo Patent Law Association

Resolved, That the Executive Committee of the Toledo Patent Law Association shall apply the passage of H.R. 3750 as amended by the suggestion submitted by the coordinating committee of the National Council of Patent Law Associations; and that the Secretary and Treasurer shall transmit copies of this resolution to the National Council of Patent Law Associations.

Henry K. Leonard, Secretary.

Mr. Brayton. Incidentally, those resolutions to which you have made reference apparently represent the larger associations in the country.

Mr. ASHTON. There were included in our group all of the patent law associations in the country. In fact, they all worked with us, so they included all of the large ones, and also all of the small ones.

In conclusion, I wish to thank the chairman, the members of this committee and the committee's counsel for the opportunity we have had to assist in this important work. It also seems appropriate to recognize here our thanks to the officers and members of the Executive Committee of the Patent Law Association of the United States and Canada, and to the members of the various state patent law associations.

At the last meeting of the coordinating committee on May 28, 1913, an advisory committee was appointed to act for the coordinating committee in the absence of its members. Several members of this advisory committee, in addition to myself, are present. They will be glad to testify and to answer questions on any part of the bill if your committee so desires.

I thank you.

Mr. Rogers. May I ask a question, Mr. Chairman?

Mr. Brayton. Congressman Rogers desires to propose a question.

Mr. ASHTON. Yes, sir.

Mr. Rogers. You made a statement, I think, on page 3 of your report—

Mr. ASHTON. Yes, sir.

Mr. Rogers. In which you said:

Only such changes in existing law as in the judgment of the drafting committee would meet with substantial approval of the patent profession.

Of course, we would infer from that that it was not unanimous as to all of the terms and conditions of this latest recorded bill; that is correct, isn't it?

Mr. ASHTON. You see, Mr. Rogers, at the time that resolution was passed by our coordinating committee at the very first meeting, we had before it your committee print which contained a number of new proposals in the law as well as codifications, and there were a number of proposals of that sort in which many recognized at once would be controversial.

This group organized itself, therefore, on the basis of having a redraft made on which we thought we could get substantial agreement, and this committee included industrial associations, and so forth. And the drafting committee worked up and brought into the committee a revision leaving out the contested proposals, and where, in its judgment it felt would meet with general approval, but you must bear in mind that the whole project is primarily codification.

Mr. Rogers. We appreciate the good work that the committee has done, of course, we are trying to arrive at what may have been controversial matters therein.

Mr. ASHTON. Are you implying as to within the committee itself, on various phases of the bill?

Mr. Rogers. Let me ask you this question: I understand the present bill, H.R. 3750, is the one that has been more or less agreed upon among members of the Patent Attorneys' Association, subject to some of the recommendations in May.

Mr. ASHTON. The coordinating committee met May 22 and adopted a list of suggestions, and they were suggestions to your committee. They were adopted by most of the associations in changes which they would like to see made in the bill. Most of them feel that the bill as a whole is a desirable bill, and they hope that these changes which are clarifying and not controversial matters in any way should be made.

It is not at all strange that there should be some suggestions for changes which would be approved by your committee and changed in a number of respects so that it had to be thoroughly considered again.

Mr. Rogers. Then do I understand that concerns the proposed clarifying amendments you have filed here with the clerk?

Mr. ASHTON. That is so.

Mr. Rogers. That you have filed with the clerk of the committee?

Mr. ASHTON. And as a result they will be discussed by the various members who appear here, and pointed out from time to time by those representing the committee that has gone through all of this work.

Mr. ASHTON. Well, they can be discussed by me, for example, or someone else. They are of such a character that we have not been thinking of them as requiring much discussion, because they are pretty apparent.

Mr. Rogers. That is, they are clarifying amendments?

Mr. ASHTON. That is right.

I might add that we are continuing this policy which we have had throughout of transmitting all of the suggestions that come to us to your committee counsel. I should add in that connection that suggestions of improvement in language and some substantive suggestions that should not meet with any opposition at all have been proposed, and that material is being sent to your counsel for this committee as soon as it is received by us.

Mr. Rogers. Do I understand also that your committee has received suggestions from others than the members of the Patent Law Associations concerning the provisions of this bill?
Mr. Ashton. Yes, sir. I should say we have all of these industrial associations as well in our organizations, and, of course, they represent industry, as I have stated, and these associations, of course, around the country have received suggestions from a very large cross section of the country.

The way the association worked was this: in Chicago they received suggestions from various people, and they took all of these together and considered them in their open meetings, and then made their report and sent their representatives to our committee.

So, in order to inquire as to the scope of the study and the suggestions which have been made, we have also to reach out to these associations which hold all of these meetings, and all of the material, I repeat, that has come to us has been regularly supplied to your committee.

Mr. Bayson. Are there any further questions?

Mr. Baysom has just handed me a letter from the Michigan Patent Law Association, dated June 11, in which they state that the Michigan Patent Law Association endorses and recommends the enactment of H. R. 3750.

Mr. HENRY R. ASHTON.

Chairman of the Coordinating Committee on Revision and Amendment of the Patent Laws.

Dear Mr. Ashton: The Board of managers of the Michigan Patent Law Association having been duly empowered to act for the association in the matter of the revision and amendment of the United States patent laws, have under date of June 11, 1901, passed the following resolution:

"Whereas there is pending in Congress a bill to revise and codify the patent laws of the United States, H. R. 3750, and

"Whereas this association's patent law revision committee has studied that bill and its predecessors and has participated in the joint study thereof with representatives of other patent law associations and trade associations conducted by the Coordinating Committee on Revision and Amendment of the Patent Laws, and

"Whereas the membership of this Association in open meeting have considered the predecessor bill H. R. 1032 of the Eighty-first Congress and have expressed approval of that bill; and

"Whereas the patent law revision committee has reported that H. R. 3750 with changes proposed by the said coordinating committee is similar in principle to H. R. 1032 and is a desirable bill; Now, therefore, be it

"Resolved, That the Michigan Patent Law Association endorses and recommends to the Congress the passage of H. R. 3750 preferably with the clarifying changes recommended by the coordinating committee on revision and amendment of the patent laws; that the chairman of the said coordinating committee be authorized to present this association at the congressional hearings on the bill and that the secretary send copies of this resolution to Michigan Senators and Representatives, to the subcommittee No. 3 of the House Judiciary Committee and to the chairman of the coordinating committee."

It is assumed that you will take the necessary action to see that this resolution is brought to the attention of all interested parties. It would be appreciated if copies could be forwarded to the undersigned of any decisions, minutes of meetings, committee reports or other reports that may be subsequently published relative to the proposed congressional bill H. R. 3750.

Very truly yours,

GEORGE W. TALMADGE.
Secretary-Treasurer.

Mr. Ashton. Yes, I just received a copy of it this morning, and I include it in with those papers I handed up to the committee.
Patent Law Codification and Revision

Chapter 5, section 411, page 25:

Strike out entire paragraph and substitute the following:

Whenever two or more persons own a patent jointly, either by the leasing of the patent to them jointly or by reason of the assignment of an undivided interest in the patent, or by reason of title by such interest, each of the joint owners, in the absence of any agreement to the contrary, shall be entitled to make, use or sell the patented invention, or license others to make use or sell it, or assign or transfer his interest without accounting to the other joint owners.

Chapter 5, section 451, page 25:

Line 2, after "liable" insert "for infringement."

Line 5, strike out "a person" and insert "a judgment order or deed of conveyance."

Chapter 5, section 442, page 25:

Line 8, after "patent" insert "with the right to a trial by jury except in cases heretofore assignable only in a court of equity."

Chapter 5, section 412, page 25:

Line 10, change any claim to "the claim" and after "obtain" insert "in suit."

Line 11, change "of" after "validity" to "of." or "valid."

Chapter 5, section 211, page 21:

Line 2, strike out "the court" and insert "damages; after "shall" insert "be" and change "award" to "awarded."

Chapter 5, section 251, page 25:

Line 10, after "patented" insert "or made by a patented process."


Mr. Burbox. Mr. Federico, will you please identify yourself for the record?

Mr. Federico. Mr. Chairman and gentlemen of the committee, my name is P. J. Federico. I am an Examiner in Chief in the Patent Office, and I am appearing here at the request of the chairman and with the consent of the Commissioner to give an explanation of the background of the bill, and to supply any information relating to the patent laws that the committee might ask for.

Mr. Burbox. You may be seated, Mr. Federico.

Mr. Federico. Mr. Ann, in his statement, referred to the Patent Act of 1790 with subsequent enactments adding to or changing various sections of that original act. The first patent law was enacted in the second session of the First Congress in 1790. As a matter of fact, when the First Congress met one of its very first items of business was the consideration of patents and copyrights, and the first patent bill was H. R. 10 of the First Congress.

These patent laws were enacted by Congress in accordance with the provisions of the Constitution in article 1, section 8, which provides that:

The Congress shall have power...to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

This provision was unanimously adopted by the Constitutional Convention following suggestions for Federal jurisdiction over patents and copyrights which had been made in the Convention by James Madison, of Virginia, and Charles Pinckney, of South Carolina.

Each of these gentlemen proposed separate provisions relating to patents and copyrights which were merged in the general statement we now have by the Drafting Committee of the Convention, and was thereby rendered by Congress of 1790.

The provision merits more study than has actually been given to it, particularly in the matter of the language used.

The background shows that it was a merging of two suggestions for patents and copyrights, the balance of the construction and the usage current then and later indicates that it is really two provisions written into one sentence.

The first provision would be to promote the progress of science by securing for limited times to authors the exclusive right to their writings. The word "science" in this connection, has the meaning of knowledge in general, which is one of its meanings today.

The second provision would be that Congress has the power to promote the progress of useful arts by securing for limited times to inventors the exclusive right to their discoveries. The first patent law and all patent laws up to quite a good time later were entitled "Acts to promote the progress of useful arts."

The first law which was enacted, on April 10, 1790, vested the jurisdiction to issue patents in a Board consisting of the Secretary of State, the Attorney General, and the Secretary of War. The person principally interested and the leader of the group, was the Secretary of State, Thomas Jefferson, who was greatly interested in the subject matter of patent law.

Mr. Burbox. He was a patentee himself.

Mr. Federico. He was not actually a patentee, but he was the inventor of a number of different devices, most of them being gadgets. Jefferson has been called a lover of gadgets, and I think there is even a poem about it.

Mr. Burbox. He had a few good qualities too.

This law continued on the books until 1836 when the dissatisfaction with the granting of patents without any examination as to novelty or other matters led to the appointment of a select committee by the Senate which introduced a bill that became the new law which was enacted on July 4, 1836.

This new law contains the fundamental principles of our present patent law. It created a Patent Office with a Commissioner of Patents at the head, and examiners with the function of examining applications for patents and the power to refuse patents, which was not present in the previous law.

Then, of course, the law had a great many other provisions in relation to the details of procedure, enforcement of patents, and matters of that sort.
Amendments were made to this act of 1836 at various times until in 1870 the law was completely revised by the Commissions and the committee that Mr. Zinn has referred to. The present bill in a sense, then, is the second combined revision of the Patent laws by the Committee on Revision of the Laws and the committee in charge of patents. I will describe the bill, endeavoring to give the over-all picture of the structure of the bill and its provisions. One of the main things in the bill is difficult to describe, because to do so it would have to be compared with the Revised Statutes of 1874 and its language and arrangement, and the various acts passed since. The organization, language, arrangement, and matters of that sort which make the present bill seem comparatively simple cannot be appreciated without comparison with the existing statutes.

The bill divides the sections into four chapters. The subject of patents has been divided into three main topics. The first chapter contains the sections relating to the Patent Office generally, its powers and duties and some ancillary matters of that kind. The second chapter collects the sections relating to the conditions under which a patent may be obtained and the procedure in obtaining patents. The third chapter has the sections relating to patents themselves and the protection of rights under patents, and matters relating to that phase of the subject.

Stated generally, the three chapters relate to: first, the Patent Office; second, obtaining a patent; and third, the patent itself. Of course it has not been possible to maintain this three-part division strictly, and there may be a slight amount of overlapping of the three phases of that subject. In addition to the three chapters mentioned, a further chapter collects the laws relating to patents for plants and for designs, which are treated as supplementary topics.

The organization of the bill and the arrangement of the sections is such that many new topics relating to the patent laws which have come up through the past, or which have not been considered at the moment, can readily find their place in the organization.

I will now try to give a bird's-eye view of the sections themselves. The sections are divided into several groups of more or less homogeneous subject matter with unnumbered subheadings.

The first subgroup in chapter I relates to the Patent Office and its sections; the establishment of the Patent Office; the seal; officers and employees; restrictions on officers and employees as to interest in patents. The powers of the Commissioner of the Commission; the Board of Appeals, and the Patent Office Library. Very little change has been introduced in these sections; there is a change in section 3 relating to a succession of the Commissioner when the office is vacant, filling a gap in the present law.

There is a change in section 4 on the ability of Patent Office employees to obtain patents. Of course, the sections in this chapter apply to the Patent Office as such and include trade-marks, as well as patents, when they go to organizational and procedural matters.

Then there is this section on classification of patents, which is one of the functions of the Patent Office; supplying certified copies of records; the listing of publications put out by the Patent Office; the exact number of copies of patents with foreign countries; copies of patents for public libraries, and the annual report to Congress.

There is very little change in these sections other than language, matters of form, and possibly other minor changes.

The next group of sections contains some of the details relating to procedure in the Patent Office which apply generally, and have little or no changes in them.

The next group, sections 31, 32, and 33, relate to practice before the Patent Office. In them the language has been rearranged and divided into several sections.

There has been no change of substance in these sections, except in the third of this group which is a criminal provision for unauthorized practice. The language has been considerably simplified, and the maximum fine has been raised from $100 to $1,000.

In the next group of sections, relating to Patent Office fees, there have been a few reductions in some minor fees, and one change in the fee for an appeal to the Board of Appeals.

It includes the description of chapter I, which, in the main, represent purely formal changes, with only a few changes over the present law.

Chapter II relates to patentability of inventions and grant of patents; some of the sections of which might require a little more explanation.

Referring to section 101 first, this section specifies the type of material that can be the subject matter of a patent.

The present law states that any person who has invented any new and useful art, machine, manufacture, or composition of matter, or any new or useful improvement thereof may obtain a patent.

The language has been preserved except that the word "art" which appears in the present statute has been changed to the word "process.

"Art" in this place in the present statute has a different meaning than in the phrase "useful arts" in the Constitution, and a different meaning than that of the word "art" in other places in the statute, and it is interpreted by the courts to be synonymous with "process" or "method". The word "process" has been used to avoid the necessity of defining what is meant every time the word "art" or used in this place means "process or method," and it does not mean the same thing as the word "art" in other places.

The definition of "process" has been added in section 100 to make certain the term is used in the sense intended by the patent laws, and which has been expressed, although not very substantially.

The section says, "subject to the conditions and requirements of this title" after stating the subject matter that can be patented. The conditions under which a patent may be obtained must follow, and section 102 selects the conditions relating to novelty.

Now, under section 101 a person may have invented a machine or a manufacture, which may include anything under the sun that is made by man, but it may not necessarily be patentable unless the conditions are fulfilled.

Section 102 in paragraphs (a), (b), and (c) repeat the conditions in the present statute relating to novelty; if the invention was known
or used before, or described in any printed publication, et cetera, it cannot be patented.

Subsection (a) is the present language, although the interpretation by the courts excludes various kinds of private knowledge not known to the public.

Paragraph (d) relates to a bar to patentability when the inventor has previously obtained a patent in a foreign country, which represents a change, a liberalizing change, in the present law.

Paragraph (e) is another condition that has been expressed in a decision of the Supreme Court that is not now expressed in the statute.

Paragraph (f) merely emphasizes that it is the inventor who applies for the patent, and it is probably unnecessary.

Paragraph (g) relates to the question of priority of invention between rival inventors.

Now, section 102 in general may be said to describe the statutory novelty for an invention, that it must be new in the manner described. Section 103 does something attempted for the first time in our statute, and that is to write down a condition which exists in the law and has existed for the past 120 years, and that is to judge the law by decisions of the courts.

We have an invention which has been made and which is now in the sense that the same thing has not been made or described before. It still may not necessarily be patentable if the difference between this new thing and what was before known is not considered sufficiently great to warrant a patent.

That has been expressed in a large variety of ways in decisions of the courts and in writings.

Section 104 is an attempt to state it in the statute. It refers to the difference between the subject matter to be patented and the prior art, meaning what was known before: if this difference is such that subject matter as a whole would have been obvious at the time to a person skilled in the art, then this new thing cannot be patented.

That language paraphrases language which has been used quite often in decisions of the courts, and the section was added with the thought of having it expressed in the statute. It appears in article 1. The phrase has led to considerable difficulty in understanding because the statute does not grant the right to make, use, or sell, but only the right of patent to the inventor, and in numerous decisions, particularly decisions of the Supreme Court, it has been stated that all the patent does is grant the right to exclude others from making, using, or selling the invention, and the language used by the Supreme Court corresponding to section 104 has often been inserted in the particular section.

That finishes chapter 2. If the time was short I might stop and resume this section of chapter 3 later if necessary.

Mr. Basso. That section might be best, Mr. Federico, in view of the fact that you will be here right along and we do have a number of out-of-town witnesses here today.

Mr. Federico. Yes. Mr. Basso. Your analysis of the bill has been excellent, and we appreciate it.

Mr. Basso. I want to ask him some questions later on.

Mr. Basso. You will be available, will you, Mr. Federico?
were without reservation and 132 included statements disapproving
or advocating modification of 1 or more of the recommendations con-
tained in the report.

These recommendations of the committee, as set forth in the
committee report, which evoked the greatest comment from those
who voted with respect to the sections of the bill which are listed
below. The vote upon the corresponding committee recommendations
in each case is also given. It will be understood that reference to the
committee report for a full and complete understanding of the nature
of the vote received will be necessary.

In this table which we have included in our statement, we have elimi-
nated single suggestions from various members, where only one sugges-
tion or disapproval was received because that would make the table
too long, but have selected those which are most numerous.

We have elected to read this table because it shows how few people really
are in disagreement with the general feeling in favor of the bills
with our recommendations with respect to it for amendment. They
are very few.

On section 1 of the bill there were 342 votes favorable and only 8
opposed. We had a very slight clerical change in that section, and
the 8 opposition votes went to the 1 year limitation on the filing of
applications by examiners after leaving the office. These eight
thought that 1 year was a little too harsh.

On section 2 of the bill there were 307 votes favorable to the recom-
manded revision; 7 were opposed, and 8 proposed other changes.

On section 3 of the bill there were 201 favorable votes, and 10 opposed, but
clarified their opposition with suggestions for further amendment to
the section to strengthen it, rather than being disapprovals of the
proposed amendment.

On section 112 there were 310 favorable and 30 opposed but with
accompanying suggestions for amendment indicating approval
principally.

On section 119 there were 315 favorable and 5 opposed with accom-
panying suggestions for amendment.

On section 155, 312 were favorable, and 8 were opposed with accom-
panying suggestions for amendments.

On section 212, the committee recommended a substitute section for
section 212, and that was approved by 305 votes in favor of it, and 15
opposed who wished to retain the section as is in the bill.

On section 221 there were 201 favorable, and 19 opposed to one or
more subsections or proposed clarifying amendments.

We proposed an additional section to the bill calling for publication by
the Commissioner of patents at the request of applicants for patents which
may or may not thereafter mature into patents.

On that proposed additional section 474 votes were in favor of its
addition, and 66 were opposed to the addition.

By another section of the bill received more than four comments or
suggestions for amendments. So, in this table illustrates that
the membership of the American Patent Law Association is over-
whelmingly in favor of the bill with the amendments proposed by
its laws and rules committee.

The specific suggestions and comments received from the members
as a result of the referendum have been omitted from this statement,
but will be made available to the committee or its counsel, upon request.

Mr. Rose. We have not met in the past in working with the coordinating committee, and we will make those available to the counsel.

(The statement submitted by Mr. Rose is as follows:)

Statement of the American Patent Law Association on H. R. 3760

The American Patent Law Association endorses H. R. 3760, Eighty-second Cong., and recommends its passage when amended to include the provisions contained in the report of its laws and rules committee, a copy of which is attached hereto.

The recommendation has followed with interest the proceedings which have occurred in the drafting and introduction of H. R. 3760, beginning with the recommendations made by the Judiciary Committee in November 1950, that the Patent Law Association study the law and rules committee and advise the Judiciary Committee in the task of lifting the patent law.

When H. R. 3760 was introduced, the laws and rules committee of the American Patent Law Association was given a letter requesting its assistance in drafting the bill. The committee was also given the task of preparing a list of changes to be made in the existing laws to the extent possible. The committee was then submitted to the entire membership of the association, and each member was given the opportunity to approve the report of the laws and rules committee without modification or to state in detail and in what respects this report should be changed. The membership of the association has now voted by written ballot in the report as laws and rules committee but with the statements and suggestions of those voting.

No. 1570 members of the United States signed to vote 354 returned signed ballots. Of this group 320 approved adoption of the report of the laws and rules committee, 116 were recommended with or without reservation, and 4 disapproved the report in its entirety and hence wholly dissipated the full. Of the 320 approvals of the report, 288 were without reservation and 32 were with reservation and 22 without reservation and 4 disapproved the report in its entirety and hence wholly dissipated the full. Of those 320 approvals of the report, 288 were without reservation and 32 were with reservation and 22 without reservation.
The coordinating committee in Washington on December 6 and 7, 1900. Again the bill had been through thorough consideration by the coordinating committee and a final draft of a proposed bill for presentation in the Eighty-second Congress was prepared. The drafting subcommittee presented this draft to the committee and it was made the subject of a number of conferences between committee counsel and representatives of the major departments of Government. As the result of this effort, the draft of the present bill was finally prepared and introduced in the House of Representatives on April 18, 1901, as H. R. 3780.

Most of the controversial proposals have been eliminated from the bill.

From the above discussions it will be observed that the proposals contained in this bill have received careful consideration by a large cross section of the bar, industry, and other interested in the patent system. It is therefore the hope and expectation of those most closely associated with this important effort to codify and revise the present patent laws, that the bill will live up to the grand and whole-hearted support of the patent bar and industry, with a minimum of revisions and of sections.

While there has been a great deal of rewriting in the interest of clarification and simplification of language, the bill in large measure represents codification of existing law.

In the interest of brevity this report can and will be confined to specific mention only of those sections that embody some important change, in addition to existing law which should be brought to the attention of the membership.

CHAPTER 1

This chapter deals with the establishment and organization of the Patent Office and the registration of patents.

Section 3 provides for the continued issue of patents in the event of a vacancy in the office of Commissioner, thus correcting a deficiency in the present law. In line 14 it is recommended that "clerks," be excised as superfluous and to agree with "officers and employees" in section 4.

Section 4 extends the restrictions of the filing of applications by former employees of the Patent Office to a period of 1 year from the severance of their employment, instead of 3 years as now provided.

Section 7 retains the authority of the Commissioner to utilize primary examiners in the Board of Appeals for limited periods in order to keep the work of the Board current.

Section 9 provides that when the last day for taking any action in the Patent Office falls on Saturday, as well as on Sunday or a holiday within the District of Columbia, the action may be taken on the next secular or business day. The inclusion of Saturday in the Patent Office on that line is recommended, that such be changed to the "fifth" to make it clear that the priority of only the first filed foreign application may be claimed.

Section 12 is in keeping with the closer attention relative to the right to the filing date of an earlier application for common subject matter in a continuation application.

Section 121 gives statutory expression to division practice and specifically provides that the division either be the original or the division as a separate division, with the same effect as the signing of a true division and provides that a patent will not be questioned for failure of the Commissioner to require division.

Section 125 provides for the automatic cancellation of the claims involved in a losing patent in a patent infringement suit. The second paragraph is intended to extend no change from the existing law.

Sections 135 and 136 change the time for filing a civil action (old R. S. 405) to conform to the time for appeal to the C.C.A.

The committee disapproves paragraph (a) because it may be interpreted to constitute a secret reduction to practice an anticipated of an issued patent, and recommends that the following language be substituted in lieu thereof:

"m. before the applicant's invention thereof the invention was in fact made by another who in this country was using reasonable diligence in reduction to practice or had reduced it to practice, provided such other had not abandoned, suppressed or concealed the invention or had made a clear showing putting it into use or in otherwise making knowledge thereof available to the public."
PATENT LAW CONFIRMATION AND REVISION

Section 246 clarifies the application of the statute of limitations to the filing of action notice of infringement. Section 247 clarifies the dates from which recovery may be had in cases where no written or spoken agreement exists, and defines when the last realistic opportunity to file a notice of infringement. The section also adds a provision making it possible to determine the question of intervening rights by reference to the release alone if no claim of the original patent not included in the release need be considered.

Section 248 eliminates disclosure of part of a claim and omits the penalty of invalidating the whole patent for delay in abstaining from suit in the坐着 paragraph introduces a new thought in providing a disclaimer of the entire or any term of the term of any patent. This last provision should be of value in eliminating questions of double patenting.

Section 249 provides for correction of accidental mistakes and fills a long-felt need in the present. A fee of $10 is provided for aplication of correction in such cases.

Section 250 provides for deletion of addition of a misprinted, misformed patent in the case of an inserted patent and provides that a patent cannot be invalid for inadvertent, misprinted, or misformed. These and similar innovations in the law since there is no valid reason why a patent should not be corrected before the same is issued. It is recommended that "application for patent" be inserted after "patent" in line 1 of the first paragraph. In the third paragraph, last line "suit" should be singular.

Section 251 is a new provision in providing that joint owners either must join in an assignment or license or account to each other in the absence of an agreement to the contrary. The committee disapproves this section because it is believed that the attempt to restrict the rights of joint owners by manner will create more difficulties and evils than arise under existing law, and recommends that the following language of section 212 of H. R. 925, Hisht first Congress, be substituted:

"Whenever two or more persons own a patent jointly, either by the assignee of the patent to them jointly or by reason of the assignment of an unregistered inventory from the patent to the patent or by reason of succession in title to such interest, each of the joint owners, in the absence of any agreement to the contrary, shall be entitled to make, use, or sell the patented invention, or license others to do so, or assign to others his interest without granting to the other joint owners."

Section 252 relates to infringement, and contributory infringement. Paragraph (a) makes one who actively induces infringement liable as an infringer. Paragraph (b) defines contributory infringement and returns this to the proper place in the patent law while safeguarding the right granted in the original patent to assignee and articles in the normal course of business. Paragraph (c) recognizes legitimate defenses of the patent rights as the court may control or condemn in render decisions, and it is hoped that a congressional declaration shall be made to the same end.

Section 253 enacts into law treaty provisions governing the freedom from patent infringement of the use of inventions in ships and vessels engaged in international service.

Section 254 in the first paragraph includes a positive declaration of the presence of asserting validity and places the burden of proving invalidity on the party asserting it. In view of the general principles in the present case for one to lose or pay more than one's part of the value of a claim and for strengthening the patent system. The third paragraph expresses the position that references to be relied upon in district courts or under the claim of "showing the state of the art" is calculated to be an abuse of the privilege of the right to introduce without notice surprise references to the state of the art. Provision is made for the proof of such matters within the discretion of the court even in the absence of the requirements.

In the second paragraph, subparagraph (2), line 1, it is recommended that "any claim thereof" be changed to read "the claim thereof in suit" so that the validity of a claim not in suit should not be a defense. In the third paragraph, line 1, it should be "or."
In one respect, in my proposed substitute for section 212, dealing with accounting by joint inventors to one another in the licensing or sale of a patent, the recommendations in the American Patent Law Association's report are identical with those of the coordinating committee. The only other matter of real substance or change where we suggested an amendment, as I recall now, was in section 102 (m). The suggestions of the coordinating committee and of our committee are so closely parallel and have been made for the same purpose, that I think we may say that we are in substantial agreement as to the substance of our recommendations with the coordinating committee, although in the drafting of the bill the views of the American Patent Law Association and its board of managers, and then the membership voting on it, was not bound by the action of the coordinating committee. In fact, our action was taken prior to the coordinating committee meeting, so that we did not have at that time the full benefit of all of the discussion which went on at that time.

Mr. Roos. What I was getting at is this: As I understand it, you recognize the American Patent Law Association as a group, and their recommendations are set forth in your statement here. Did not your group also constitute part of the coordinating committee?

Mr. Roos. Yes, sir.

Mr. Roos. And you are in substantial agreement with them, but due to the fact that you adopted this before the coordinating committee had made its final report, you were not able to get together on everything, but all those any substantial differences between your committee and the coordinating committee?

Mr. Roos. The only substantial difference between our committee and the coordinating committee's recommendations is that we have recommended the addition of the publication section, which I referred to in the former paragraph of the statement in the record, and the coordinating committee thoroughly considered that question and voted against the addition of such a section. On that proposal our members voted, as the table here will show, 47 in favor of the addition of the publication section and 46 opposed.

Mr. Hays. So more of your own members voted against that proposal than voted against any of the others?

Mr. Roos. Yes, sir, more voted against it than against any of the others. That 46 votes opposed to the additional section was twice as many votes as there were against any other proposal or section in the bill.

I might add here for the benefit of the committee that the American Patent Law Association is a thoroughly national group in that it has 750 members who are spread all over the country and cover all most all of the States of the Union as well as the District of Columbia and that the members of the various committees of the association are selected not only from Washington, where I happen to be from, but our membership includes 104,000 members from various sections of the country, including Los Angeles, New York, Chicago, and so forth.

Mr. Roos. Is this association a part of the American Bar Association, or is that a separate group?

Mr. Roos. It is not a part of the American Bar Association, but it is affiliated with the American Bar Association.

Mr. Rogers. Thank you, sir.

Mr. Hays. All right. Thank you very much, sir.

STATEMENT OF GEORGE E. FOLK, ADVISER TO THE COMMITTEE ON PATENTS OF THE NATIONAL ASSOCIATION OF MANUFACTURERS

Mr. Hays. Now, we have Mr. George E. Folk as the next witness. I believe Mr. Folk has lately had an operation on his eye, and he has asked that someone read his statement for him.

Mr. Hays. Mr. Folk, will you identify yourself for the record?

Mr. Folk. Mr. Chairman and members of the committee, the information you ask for is confined in the first paragraph of the section, and I refer you to that page in the record.

Mr. Hays. All right.

Mr. Folk. As the table here will show, 47 in favor of the addition of the publication section and 46 opposed.

Mr. Roos. Mr. Chairman and members of the committee, my name is George E. Folk. I have been an adviser to the committee on patents of the National Association of Manufacturers for many years. I am a member of the National Association of Manufacturers, and a voluntary association of over 6,000 manufacturers, 83 percent of whose members have less than 500 employees each.

The National Association of Manufacturers consists of approximately 150 members representing 100 classes of industry, the large, the medium, and the small companies. I am submitting herewith a list of the membership of the committee which states the names of the members and the companies they represent.

I have knowledge of the National Association of Manufacturers for many years. It has 750 members who are spread all over the country and cover all most all of the States of the Union as well as the District of Columbia, and that the members of the various committees of the association are selected not only from Washington, where I happen to be from, but our membership includes 104,000 members from various sections of the country, including Los Angeles, New York, Chicago, and so forth.

Mr. Roos. Is this association a part of the American Bar Association, or is that a separate group?

Mr. Roos. It is not a part of the American Bar Association, but it is affiliated with the American Bar Association.

Mr. Rogers. The American Bar Association does have a patent section.

Mr. Roos. Yes, sir.

Mr. Roos. And the American Bar Association is a part of the American Bar Association.

Mr. Rogers. And of the coordinating committee?

Mr. Roos. Yes, sir.

Mr. Rogers. Many of the members in your association may be in the other associations that are individual members may be members of the patent section.

Mr. Roos. As a matter of fact, Mr. Rogers, I think the overwhelming majority of our members are active in the American Bar Association—that is, the patent section—and the reverse is also true, that a great many of the members of the various patent law associations throughout the country, local groups, and national groups, are also members of the American Bar Association.

Mr. Rogers. Thank you.
fined in the draft, and suggestions of additional proposals for consideration. Section 19. No second or additional applications for a patent based upon the same invention shall be allowed unless such application is made within three years from the date of the first application.

The act provides that the Patent Office shall issue a certificate of patent to the person or persons who may be entitled to the patent rights under the act, provided that the applicant has paid the required fees. The certificate of patent shall contain the title of the invention, a description of the steps of the invention, and any other information that may be necessary to enable the public to understand the invention.

The act also provides that the Patent Office shall issue a certificate of registration to the person or persons who may be entitled to the registration rights under the act, provided that the applicant has paid the required fees. The certificate of registration shall contain the title of the invention, a description of the steps of the invention, and any other information that may be necessary to enable the public to understand the invention.
That is true, but there are acts which are not processes, and I am afraid that there may be something cut out of the present statute, especially when it comes to the question of what new use is to be defined. You all find that definition includes new uses, 

Mr. Potter. Are you satisfied with the definition set forth in section 231 dealing with infringement of patents as recited therein? Mr. Facts. That is all right.

Mr. Brayson. I notice you did not make any recommendation for any changes on that.

Mr. Potter. Yes. Have you compared your recommendation with that of the coordinating committee?

Mr. Brayson. Our committee recommended a change in the existing law with respect to the right of joint owners, that the same is a substantial change and that the section be amended to set forth the existing law. The present provision is not enough.

Mr. Potter. I have a question on section 235. I want to know what is the meaning of the word "patent" as used in that section.

Mr. Brayson. I examined patent applications for a couple of years, and the practice of the Patent Office was to add the term "patent" to the title of the application. However, it was then promoted to the Interference Division, and for the next 5 years all the priority questions that came up in interferences, which were then appealable to the court of appeals in the District.

Then I engaged in the independent practice of law in Chicago for 10 years. At the end of 10 years I was asked by the American Telephone & Telegraph Co. to take charge of some of the litigation they had pending with regard to electronics. I saw that there was much to be said on both sides. I entered into these matters in June of 1918, and continued with them until April, 1937, when I reached retiring age.

I then took up this work with the National Association of Manufacturers. They asked me to do so, and I agreed to do so for 3 months, but the hearings of the Temporary National Economic Committee were concluded at the end of 3 months. I am still with the NAM after 15 years.

Mr. Potter. So that you have been actively engaged in patent work for more than 60 years.

Mr. Brayson. Mr. Potter, there is only one change I would like to especially call your attention to, and that is in sections 100 and 101, changing the word "art" to "process." I think if that is changed in the patent law industry will live to regret it. In the first place, "art" and "process" are not synonymous, and especially with the definition which follows there is likelihood of getting a false impression of what a new process is. Secondly, I hope it will be given serious consideration, but as I said we do not want to jeopardize the passage of the bill. In other words, they consider the bill as a whole as a desirable one.

Mr. Potter. Yes.

Mr. Brayson. There is only one change I would like to especially call your attention to, and that is in sections 100 and 101, changing the word "art" to "process." I think if that is changed in the patent law industry will live to regret it. In the first place, "art" and "process" are not synonymous, and especially with the definition which follows there is likelihood of getting a false impression of what a new process is. Secondly, I hope it will be given serious consideration, but as I said we do not want to jeopardize the passage of the bill. In other words, they consider the bill as a whole as a desirable one.

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Mr. Potter. Yes.
Mr. Forst: There was no particular objection to that from our committee, and I think that is all right.

Mr. Boos: Mr. Chairman, unless counsel of the committee already has it available here I would like to get more examples of how this change in language from "art" to "useful processes" affects the language of our bill.

Mr. Forst: I merely commented on it very briefly. I should be glad to prepare an additional memorandum on the subject if you wish.

Mr. Boos: Personally I would like to have it.

Mr. Forst: I would be very glad to do it.

Mr. Byrson: Yes, if you will supply the memorandum on that.

Mr. Forst: I know that industry as a whole is opposed to the change.

Mr. Boos: I want to support why the bar association is not. I am a member of the New York Patent Law Association and the American Bar Association.

Mr. Forst: You will supply us with a memorandum on that we will appreciate it very much. Thank you.

Mr. Forst: Thank you for your report on the subject.

(The memorandum requested is as follows:)

SUPPLEMENTARY STATEMENT RE SECTIONS 100 AND 101 OF H. R. 3705 COMPILED BY GEORGE E. FORST, ADJOURN TO THE COMMITTEE ON PATENTS OF THE NATIONAL ASSOCIATION OF MANUFACTURERS.

We are in full accord with the objections sought to be accomplished by the language of sections 100 and 101 of H. R. 3705. That is, that it should be made clear that processes may be patentable as such, and that a new use of an old invention may be patentable. This is in accordance with decisions of the Supreme Court. We fear, however, that the language of these sections, in order to clarify the subject, behind it, and may lead to the necessity of the Supreme Court giving interpretations to the changed language.

The patent laws, Revised Statutes 4800 (35 L. 167), state: "Any person who has invented or discovered any new and useful art, machine, or manufacture, or composition of matter or any new and useful improvement thereof shall be entitled to patent therefor..." The language of section 101 substitutes the word "art" for the word "process," so that section 100 reads: "Whoever invents or discovers any new and useful art, machine, or manufacture, or composition of matter or any new and useful improvement thereof may obtain a patent therefor..." The section as reprinted in the Revised Statutes 4800 (35 L. 167) is as follows:

"Any person who has invented or discovered any new and useful art, machine, or manufacture, or composition of matter or any new and useful improvement thereof shall be entitled to patent therefor..."

It is submitted that this interpretation of the term "art" as included in this section 100 so that paragraph 101 is thereby charged to read substantially as follows: The term "art" includes a method or process of manufacturing, the use of a known product, machine, or manufacture, or composition of matter of any new and useful improvement thereof.

The terms of the new section 100 and 101, as reprinted in the Revised Statutes 4800 (35 L. 167) are as follows:

"Any person who has invented or discovered any new and useful art, machine, or manufacture, or composition of matter or any new and useful improvement thereof shall be entitled to patent therefor..."

The term "art" as defined in section 100 includes a method or process of manufacturing, or the use of a known product, machine, or manufacture, or composition of matter of any new and useful improvement thereof. It is submitted that the interpretation of the term "art" as included in this section 100 so that paragraph 101 is thereby charged to read substantially as follows: The term "art" includes a method or process of manufacturing, or the use of a known product, machine, or manufacture, or composition of matter of any new and useful improvement thereof.

It is submitted that this interpretation of the term "art" as included in this section 100 so that paragraph 101 is thereby charged to read substantially as follows: The term "art" includes a method or process of manufacturing, or the use of a known product, machine, or manufacture, or composition of matter of any new and useful improvement thereof.

The term "art" as defined in section 100 includes a method or process of manufacturing, or the use of a known product, machine, or manufacture, or composition of matter of any new and useful improvement thereof. It is submitted that the interpretation of the term "art" as included in this section 100 so that paragraph 101 is thereby charged to read substantially as follows: The term "art" includes a method or process of manufacturing, or the use of a known product, machine, or manufacture, or composition of matter of any new and useful improvement thereof.

The term "art" as defined in section 100 includes a method or process of manufacturing, or the use of a known product, machine, or manufacture, or composition of matter of any new and useful improvement thereof. It is submitted that the interpretation of the term "art" as included in this section 100 so that paragraph 101 is thereby charged to read substantially as follows: The term "art" includes a method or process of manufacturing, or the use of a known product, machine, or manufacture, or composition of matter of any new and useful improvement thereof.

STATEMENT OF JENNINGS BAILEY, JR., CHAIRMAN OF SECTION OF PATENT, TRADE-MARK, AND COPYRIGHT LAW, AMERICAN BAR ASSOCIATION.

Mr. Byrson: Mr. Jennings Bailey, Jr., chairman of the section of patent, trade-mark, and copyright law, American Bar Association.

Mr. Byrson: Yes, sir...

Mr. Byrson: Please identify yourself for the record.

Mr. Bailey: Jennings Bailey, Jr., Washington, D. C.--I am chairman of the section of patent, trade-mark, and copyright law of the American Bar Association.

Mr. Byrson: You may be seated, if you like.

Mr. Bailey: Mr. Chairman, the American Bar Association is composed of members of sections of the bar, and any member of the bar may participate in a committee of any section. It is impossible for any member of the American Bar Association to participate in any of the deliberations of the American Bar Association.

The various sections, however, are not any more qualified to speak for the whole association than this committee is qualified to speak for the whole Congress. Nothing is done in the association until it has the approval of the house of delegates of the association. The house of delegates meets twice a year, and as a result we have to have a section meeting, and then we have to get approval by the house of delegates. The work of the association is of course in some way is rather slow in getting complete approval.

We had a special meeting of the section of patent, trade-mark, and copyright law in Washington last year, at which this matter was taken up. It is my understanding that this section met within the last year, and that the new use of certain old inventions likewise came within the scope of the act.

This catch-all interpretation of the word "art" is found in an able and well-known article on patents in "The Journal of the Patent Office Society," page 92.

The Patent Act of 1836, section 1, provides for patents by any persons who have invented or discovered any new and useful art, machine, manufacture, or composition thereof, as follows:

"Any person who has invented or discovered any new and useful art, machine, or manufacture, or composition thereof, may obtain a patent therefor..."
Mr. Chairman, those are the substantial changes which the patent section of the bar association has adopted.

As to specific changes in language which have been suggested to the coordinating committee, and most of them have been adopted, I would not want to leave to me or to anyone outside the coordinating committee the responsibility to finalize, in the absence of the lawyer, the meaning of the changing sections.

Mr. Burson, did you sit in with the coordinating committee?

Mr. Burt. Yes, we had one or two representatives at every meeting of the coordinating committee, and we have served as a committee in the absence of the lawyer.

Mr. Burt. Well, that is the change as far as specific language changes are concerned, and we have yet to see what the final approval is to be.

Mr. Burson, thank you very much.

STATEMENT OF CECIL C. KENT, FETHOREWSTONE & KENT, WINNIPEG, CANADA

Mr. Burson. We have a distinguished visitor here from Canada, Mr. Cecil C. Kent. We think you will come around and will you identify yourself for the record.

Mr. Burt. Yes, my name is Cecil Kent, Winnipeg, Canada, and I would like the opportunity of speaking to Mr. Hays' bill on my own behalf as a lawyer and as a student of the law.

Mr. Burson. Do you have a prepared statement?

Mr. Burt. Yes, I have, Mr. Hays.

Mr. Chairman and gentleman, I greatly appreciate this opportunity to testify on behalf of Mr. Hays' bill H.R. 3570. As a Canadian patent attorney registered to practice before your Patent Office, I have a vested interest in the public interest of Canadian manufacturers and private inventors who have applications pending in this country. That is because our economy is very closely related to yours. And our Canadian patent law has also been very similar in its general nature.

Now, this bill is significant in that it becomes statute law in anything like its present form. I understand it will represent the first major revision in the United States patent laws in nearly 50 years. And I would like to see the law it will, in my opinion, provide, to have been needed stimulus to a creative enterprise. Society and its technology has gone through profound changes in the last 50 years, profound, perhaps, than these 10 or more years. It has been a period of great industrial expansion and useful extent has, I believe, assisted that expansion. The last 20 years, however, have seen a very pronounced modification of the previous expansion - a modification that is in favor of increasing security and protection for the individual in society, but of course at the cost of increasing taxation and governmental control. It is not my intention to criticize this trend, but simply to suggest that it tends to stifle creative or inventive ingenuity, for it is necessarily the mother
of invention, and any measure which can be enacted which will effect the inexpediency caused by too much protection and by too much time spent on filling out forms, and so forth, should be encouraged. Nor is the interest of the public arrested for any reason it is seldom merely out of humanitarian concern that any progress is arrested for some reason, and there is more often in some way or other thrown into reverse. Living processes, including human society, never stand still, and the way toward a more mature and scientific way of living about patents in our present-day industrial society. One of these concerns the concept of invention. The other which is the last paragraph of section 112, concerns the use of functional clauses in patent claims; namely, that the functional clause, as an additional means of protection, is appropriate and necessary in the patent law as we now have it, and that it should be allowed to proceed as an amendment to the section of the bill covering design patents, section 317.

The next topic of my testimony therefore falls into these headings: (1) "Concept of invention," (2) "Functional definition in patent claims," and (3) "Scope of protection for design patents."

In talking about invention, I would like to ask the so-called patent attorney who becomes a patent attorney over 80 years ago as a result of some sort of attitude for investing myself. I was also interested in descriptive writing, psychology, and logic, and so, although I have not been a pure inventor, I have made many practical improvements for clients as well as thinking up a number of ideas of a not particularly useful kind. Most significant perhaps in my testimony is that I have learned that in the invention I have made or something for others, the personal history of its evolution has always held a fascination for me. Besides reading extensively on the subject, I have subjected a number of my ideas to considerable introspective analysis to find their principal points.

As a result of all this, I have formed certain ideas about the so-called inventive act. Or rather, it would be more proper to say, I have inferred, that what I continually find myself observing is the views of scientists, psychologists, and so forth, namely that words like "invention," "creation," and so forth, have become a common desserts enveloping concept of metaphysical meaning. Scientifically, the simplest explanation of the whole phenomenon of so-called invention is that change is going on constantly and increasingly everywhere, all the time, in ourselves and the external world. How little of these changes are very slow. So we do not necessarily find the infinite gradation within. We only notice, from time to time, the accumulated result of a period of slow persistent change. And it seems probable, say a scientist, first finds the effect of a series of such extremely small changes in some aspect of nature and remarks on it after he has missed.

assiduously observed and absorbed by a given inventor, and society grasps at that use, I think that invention should be given a patent if it is a patentable one; moreover, that such a patent should be made as a result of a reasonably well-documented and non-patentable one, not simply by a governmentally sanctioned fragment of paper.

Now I take it that the intent of the definitions covered by section 100 in Mr. Bryant's bill is that under the definiteness covered by section 161 have been drafted in the hope of directing inventions toward the court which are more benevolently disposed toward patented ideas which may ordinarily appear small, insignificant, and not especially remarkable to the judgment of the mind. If that is the purpose of the section I am quite sure that by the words they may represent the best compromise at this time.

I have something on which I have already had good reasons to publish in a new patent statute, it seems to me that they should have the desirable effect of directing your courts to the new, more mature orientation which is commencing to prevail toward protected creative enterprise in our modern industrial society. With these sections made law and with assiduous study of the education by way of good magazine articles by members of the patent profession and the inventive public, I can see the future of more harmonious cooperation between that small but greatly valuable creative class in society and the much larger consuming class. Up to now, I should not say that on the whole the relationship has been too good.

Mankind is by nature predatory and the numerically small, perceptive, and sensitive advanced elements of society who we call creative, such as artists and inventors—and it is surprising how many inventive moments are just a way to speak of myself. Most of them, for example, the personal history of its evolution has always held a fascination for me. Besides reading extensively on the subject, I have subjected a number of my ideas to considerable introspective analysis to find their principal points.

As a result of all this, I have formed certain ideas about the so-called inventive act. Or rather, it would be more proper to say, I have inferred, that what I continually find myself observing is the views of scientists, psychologists, and so forth, namely that words like "invention," "creation," and so forth, have become a common desserts enveloping concept of metaphysical meaning. Scientifically, the simplest explanation of the whole phenomenon of so-called invention is that change is going on constantly and increasingly everywhere, all the time, in ourselves and the external world. How little of these changes are very slow. So we do not necessarily find the infinite gradation within. We only notice, from time to time, the accumulated result of a period of slow persistent change. And it seems probable, say a scientist, first finds the effect of a series of such extremely small changes in some aspect of nature and remarks on it after he has missed.
the inventor introduce "improvements" on the legal fact, while the courts deny it on the improvement of the legal language. Although other examples of the courts denying the improvements in recent times, I complied with the observations of Mr. Justice Douglas in the Supreme Court case of "Great Atlantic & Pacific Tea Company v. Super Market Engraving Corporation," 1855 P. 485. In that opinion the granting of a number of minor patents of considerable commercial utility, but low inventive novelty (all more than 30 years old, incidentally) was most strongly condemned, and the thought would like to bring attention to what I think may be called "characterizing" this sort of familiar disparagement of small inventions and gadget patents by the courts and others. It is this:

If it hadn't been for a host of minor patents issuing week by week, building up coral islands of technological know-how, this one patent which pays it in the neck by the Supreme Court might either not have been secured, or else quite possibly be considered of no merit. A remarkable but fanciful travesty of an agency, having no practical utility in a "patentless" society. I think, will all agree that our society, would be very different but for the invention of the gadget system. I am not saying that the patent has been an unqualified boon to mankind. I am simply suggesting that society would have been different and many people, I believe, take it for granted that it should be less technologically advanced.

You see, the slightest patte of today's way of life continuously dismissed as "trivia", "gadgets" are really the cumulative result of a reservoir of earlier and equally slight inventions. A tremendous amount of all we see around us in our material culture had its origin in the Patent Office.

Not all made any money, only a very little made a decent living (if you consider it would be a good copy, for magazine editors, science writers, and so forth, found their way into the general horizon of the more technically minded, some of whom used it to make further patented inventions, and so on). The accumulated creative know-how as Coca-Cola, is the result of this continuous, dynamic, and abundant outpouring.

So, since Mr. Bryan's bill introduces a new and more beneficent concept of invention, it may be rewarding to try to understand not what we mean by it, but what the class of persons we call inventors, do.

When following the activity we must walk (for that is a better word). I incline to agree with G. Searman, a psychologist whose work I shall refer to presently, that essentially what we do when we sell in the so-called "creative act" is to take some similar or different ideas or objects known to us and observe their relationships when put together or tested together in various ways. We notice what significant and different happenings take place through their being together in various quantities, positions, etc., and move with respect to each other in different ways or at different times. Thus some primitive ancestor of ours, by placing a stick and a stick together in a certain way, and repeating the stick, was able to produce the result we call "fire in a new way". Almost certainly he was not searching for a way to produce fire. It is far more likely that the discovery was an accidental one, stumbled upon during play, like most primitive inventions.

But the point is that we tend to notice what happened when two or more things are put together in a novel manner or when we subject two or more abstract ideas to a mental relationship analysis. Thus we ask, "What possibilities have these happenings? Then, as possi

bilities emerge, we construct, either in our minds or on paper, with unaided mental rehearsal which will help these happenings to occur again more easily and still more regular predictable.

These again, we analyze and speculate, rejecting in increasing pressure those which we think we choose to call a "synthesis.

Viewed in this step-by-step way, it would appear that inventors of Quality there is little difference between a scumbled invention and a small invention, although in terms of quality, or actual number of individuals who attempt the individual steps, there is a very big difference. And, of course, each line in a long and complicated succession of individual steps would involve the additional mental process as well by such means as Judge ability, and so forth.

So my belief is that so-called inventive ability is a matter of much, much background knowledge, a person's level of wit, and of course his "mind."

For myself, I strongly believe that the concept of "the concept" stability and unchangeability. There is quite an extensive literature on the nature of creative thinking which I believe the committee might read with considerable profit toward clarifying this matter of inventive genius. Here's a short list:

1. Your "Creative Power" by Dr. F. O. Siegel (of the well-known advertising firm of Bath, Burton, & Dobson).  
2. The "How Think Creatively," by Dr. D. H. Koehler.  
11. I would also draw to your attention the following article of the "Science of Mental Health" which was published in the "Journal of Chemical Education," page 958, October 36.


7. Even a cursory reading of a few of the above articles, I think, convince any one of who had any real doubt of what the attitude with respect to new ideas or "imagination's abilities of the mind, by scientists, psychologists, anthropologists, etc., is not the metaphysical hypothesis on which some judges appear to have. Neither is it the almost unanimously negative one which other judges exhibit.

I should perhaps remind you that the idea of "intuitive genius" having been considered by now, and to a factor in decisions following the leading case of "Hutchins v. Greenawood," and not by any legislative enactment on the subject. But that this case did provide a precedent which we could effectively dispel-
is an equal and opposite reaction." Well, in a sense it's the very last word in obviouss. Not only mankind, but every moving organism in nature "knows" it, in the sense that it makes use of the law constantly and automatically when it jumps from branch to branch, for instance. But Sir Isaac Newton, with our human faculty for language, who made the thing by asking an ingenious question. The question was: "Can it be that every action there is an equal and opposite reaction?" Having asked it, it was easy to establish by experiments that such is indeed the case. He probably put to himself numerous preliminary questions of course. But the affirmative proof of the final question is a cornerstone of Newtonian physics, and was revolutionary in its consequences. The formulation of a progressive set of consistently precise questions (even though we are generally not consciously aware of it), is, I believe, the essence of scientific discovery and invention.

Gentlemen, you will understand that I speak predominantly for the small manufacturer and the private inventor. I am not interested in the big enterprises, for whom I should imagine the patent system in its present state is all too well suited. It is well suited to the circumstances of the great corporations because of the technical complexity, the legal costs, and the high cost of litigation arising out of that complexity. Furthermore, it is becoming increasingly the case that it is only the wealthy corporations which can produce ideas likely to lead to valid patents. This is because they have vast research facilities. The small manufacturer and the private inventor, on the other hand, are greatly handicapped. They are liquidated in no less than three ways. First, by only being able to draw on a personal background of knowledge or skill of a limited sort, and experiment with no financial facilities so that there is less likelihood of the development of any worthwhile patentable invention. Second, any patent obtained is less likely to be held valid through its greater probable simplicity or obviousness.

Third, the economic disadvantage suffered by the small business resulting in lack of advertising and distributing power, capital equipment, etc.

I would like to advert to my earlier reference to a society without a patent system. Without a system for rewarding technical innovators. I am aware that some antagonists of the patent system are fond of saying that society would be much the worse if had no patent system been instituted. Very obviously it is impossible to prove or disprove such assertions. I only suggest that such a proposal is as unlikely to be the case as it would be if the idea of the joint stock company—shareholding corporations—had not been thought of. But even if it be admitted that a society has been invented and commercially adopted would have been invented and adopted in a patentless society—even if this be admitted, please consider all the vast wealth of ideas, suggestions, and instructions contained in the printed publications or patents adopted commercially. Only a very small percentage of things patented get taken up commercially. There is a tremendous waste just as there is in nature. But yet, because of the patent-office publication system it is often means a complete waste on a more mature view. For most of the so-called unsuccessful patents contain, in one way or another, valuable leads to those who come after. Because we have a patent system, in your country and in mine, inventors were encouraged...
to publish their inventions in exchange for a patent and the hope of gain which went with it. Without a patent system, what invention would there be for this army of inventors to publish their ideas so that one in a thousand learning selectively from the others might develop an economically valuable invention? This was the Patent Week system, with patents a week which have been issuing week in and week out, year in and year out for the past 30 years or so, as repeatedly scrutinized by science writers for the popular-science press, which has made a much greater success of it than many other Patent Weeks. These days of trust, these technologic industrial builders, with all their unscrupulous but truly published ideas, when taken collectively, are every bit as valuable as the so-called inventive genius. Without them, he couldn't be the genius he is hailed to be. Just as Andrew Jackson wrote in his monumental History of Art that the only inspiration for a work of art is an unceasing work of art, so the only inspiration for an invention is an unceasing invention. And that seems to me to be the crucial fallacy in the reasoning of people like Mr. Justice Douglas in his dismissal of the ostensibly slight invention. Such seeming demonstration of either independent creative enterprise or one day when you consider the extent to which it is given publicity, I am just now there is a colossal mortality in the world of invention. Yet up to now it had survived (albeit to an attenuated extent). But like a species in nature, mortality can commemorate to against survival. This happens when conditions become too precarious to make life worth living. We are in danger of this happening in this patent system. Mr. Evarts, Mr. Kent, I am sure that you understand the situation here, but we have advised this morning by specific request for every negation which is under debate in the House now would require our presence on the floor.

Mr. Kent. Yes, Mr. Bryan. It is now 12:15, and the members will have to report to the House. You will be seated, Mr. Chairman, so that the present witness will not have to come back I suggest that his entire statement be incorporated in the record.

Mr. Bryan. Yes, we will be pleased to have your entire statement in the record. If you would like, I don't know who may do that.

Mr. Kent. I would like to, Mr. Bryan.

(The balance of Mr. Kent's statement is as follows:)

The balance of Mr. Kent's statement is as follows:

The public has little interest in whether or not these new things were the result of a flash of genius or the result of long and continuous research and effort. The benefit to the public in no degree, depends upon how the new things were produced. Moreover, the public is the payers of the price of the invention. The value of the new thing is substantially increased and useful, the public will not use it. The trouble starts with the Patent Office (41st, 42d, 43d, 44th), which held "it was not the invention of the patent laws to grant a monopoly for writing devices, even a shadow of a shade of an idea." This statement was approved in Thompson v. Boulton (131, 7, 1, 20, 48, 161; Western
Great harm, however, is done by the courts under this fiction. An application is made an abuse in the art and convicted the Patent Office. The application is not sufficient and the court simply considers de novo whether the applicant is using the invention or not. If the court decides that the patent was invalid due to lack of invention under the prior art, it will simply say that the patentee is not entitled to a patent. This is a denial of the applicant's rights of defense. The court does not consider the application in its entirety, but only the patentee's right to a patent. The court does not consider the evidence presented by the applicant. The court does not consider the evidence presented by the applicant. The court does not consider the evidence presented by the applicant. The court does not consider the evidence presented by the applicant.

The last form of searching, in my opinion, is wrong. And my conclusion is that the courts have not done it, because it is not exactly in line.

That the great body of technical know-how in the art, the United States Patent Office, should remain available to the public study, as it is today, is a matter not of current use but of future invention. I mean it should no longer be possible for the acquisition of any printed material published more than 25 years ago. The time was reconditioned in 1874 and the time was extended in 1929, but the period of usefulness would no longer be as a practical matter a patent which is more than 25 years old, of course, is not usable by the public. The usefulness of a patent which is more than 25 years old would be ten times that of a patent which is less than 25 years old. The usefulness of a patent which is more than 25 years old would be ten times that of a patent which is less than 25 years old. The usefulness of a patent which is more than 25 years old would be ten times that of a patent which is less than 25 years old. The usefulness of a patent which is more than 25 years old would be ten times that of a patent which is less than 25 years old. The usefulness of a patent which is more than 25 years old would be ten times that of a patent which is less than 25 years old.

Intrusion into the business of the trade mark. It will be the same in the future. I am not sure that the idea is well conceived, but I am sure that the idea is sound. I am not sure that the idea is well conceived, but I am sure that the idea is sound. I am not sure that the idea is well conceived, but I am sure that the idea is sound. I am not sure that the idea is well conceived, but I am sure that the idea is sound. I am not sure that the idea is well conceived, but I am sure that the idea is sound.

The various stringent rules laid down recently by the Supreme Court with regard to the requirements for a patentable invention are leading to the conclusion that there may be some who have invented something that is not patentable, but who, in consequence of being unable to obtain a patent, will not be able to use it. The courts have insisted on the necessity of securing a patent which may be held valid for a period of 17 years. Now we do not want to go back to the medical practice of trade secrecy. There has been a long tradition with the situation in the medical field and the medical profession is more or less capable of obtaining information currently or recently made available to the public in concrete manufacturing processes.
food departments of both Canada and the United States. Operating their in- 
ventions for us, they are supplying perishable articles to a number of 
cities, such as railroads, railroads, etc. Without consultation with patent 
attorneys, the companies are based on the patentees, and their approval of the 
patent system through the reading of newspapers and professional journals, they do 
not know that the patent laws are intended by the patentees, and have not 
recently have had the same opportunity. I believe, before the advent of the 
patent laws, before the advent of the 1- and 2-year provisions of the United States and Canada, respectively, that they are not the ultimate 
view of the public benefit of the patent law and a better deal for inventors, and 
we have them as the best judgment of that we can at this time. If they try 
to preserve their secrecy, I will do my best to do so.

Now I understand the position of these inventors. They do well explain 
the dilemma in which the small-business man finds himself. The big 
corporation has these three distinctive advantages:

1. A much greater possibility of making inventions which will rise to 
the heights required for patentable validity by the courts through greater 
capital facilities.

2. More money to prosecute infringement, and to defend them, 
including any infringement, to the very end.

3. Economic advantage, that is to say, national distribution systems, 
national resource bases, and manufacturing assets.

However, the only free and abundant advantage in favor of the 
smaller manufacturer and private inventor would appear to be valid patents 
for small inventions, equally, if not more, equally, with the big corporations. 
In other words, your courts have said a number of times that the Constitution did 
ot contemplate the granting of a patent on very small inventions. Well, of course, 
what is meant by "small inventions" depends on time and circumstance.

Probably your founding fathers did not contemplate the modern industrial 
state. They would hardly have been able to predict a billion-dollar 
corporation. So, if you expect to contemplate society 100 years from now, 
you are still not contemplating what the Constitution did contemplate. The 
Congress shall have power . . .

To promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

When I read of Mr. Lake's clarification of this clause: That there was a wrong emphasis, or a wrong wording of the word "science" with the word. By contrast, the terms "writing" and "discovery." It is his contention which should be coupled together with the words "writing" and "discovery." The first group includes "authors" and "writing." The second group includes arts, inventions, and discoveries. Mr. Lake would therefore have the clause read as:"... the Congress shall have power . . .

The Congress shall have power . . .

To promote the progress of science, by securing for limited times to authors and inventors the exclusive rights to their respective writings.

Then, obviously, so far as constitutional restrictions in the more-exalted field of science are concerned, the clause means what the framers read.

The Congress shall have power . . .

To promote the progress of science, by securing for limited times to authors and inventors the exclusive rights to their respective writings.

I suggest, from the point of social practicality, that is what may well have been intended.

But, if so, it seems to have been lost in the shuffle. In any event, the answer to the question of Mr. John S. Bingham of, what is a "science," or what is patentable? It is not that the mere ownership of a patent is to be patented, but that which evolves from the application of the law to a particular field of endeavor, and that which is concerned with the protection of the field of endeavor, and that which is concerned with the protection of the public.

In our society we have two forms of registration. One is compulsory registration, a practice whereby the State may know what is being done by whom. If that, at least, has been lost in the shuffle, we have two forms of registration. One is compulsory registration, a practice whereby the State may know what is being done by whom. That is its primary submission to authority, the elimination of certain freedoms, and those are freedoms that are necessary after examination of his right to them. In a good electric system we have two forms of registration, such as that it would be a matter of security to the continuous need for security and vigilance. There is a spirit and a flexibility to these forms of registration which breeds a feeling of security and freedom to operate. Such a feeling of freedom is utterly lacking in the patent system.

Correct utilization upon the definitions in section 100 and the conditions for patentability of the phraseology, where the word "system" is now defined, read in comparison with the press at patentable status can be read in a manner which gives it a meaning which is not necessarily limited to earlier rudiments even though ostensibly slight.

For the patentee the faculty of not being told post expired, discussing it, and finally or finally, a patentee is often a fantastic way of development. But the fact that he can withdraw his applications and thereby try to preserve their secrecy later on if they still prefer to do so.

The Congress shall have power . . .

To secure the laws of the United States for promoting the progress of science and the useful arts by securing for limited times to authors and inventors the exclusive rights to their writings and discoveries.
FUNCTIONAL CLAIMING

I would next like to discuss the third paragraph of section 112 of Mr. Bryan's bill. It reads:

"An element in a claim for a combination may be expressed as a means or step for performing a specific function or step of a specific structure, material, or act described in the specification and for which a new and distinct recognition in the art results."

I think this is to be interpreted in its true meaning to be extremely important. It is, in my opinion, very much needed in a revised patent statute adequate for today's industrial society. It is difficult to recognize any valid reason for the expression "element" or the expression "step" in regard every invention in the final analysis, as a combination of elements, and not as a whole. Anything that can be defined as a "unit," from the commonest and most identifiable parts, is an integral structure, and a unit of a whole, in contrast to what we define as "elementals" or "true identifiable parts." Thus, for example, a nail consists of a head and a shank and a helix, in a beating, in a connecting portion, etc. There never has been a binding definition of a combination. It is not enough to say generally relied upon in one definition, and accordingly I would very respectfully submit the following as an amendment to the last paragraph of section 112:

"A claim for an invention may be expressed in terms of the means or steps for performing a specific function or step without reciting the structure, material, or act thereof described in the specifications for performing the specific function."
do, because what it does can be tested by seeing if it do, while what it is means can be so tested. John Locke, for example, may say, 'This is a wheel, because it is circular, symmetrical, rotatable, and rimmed'; but Jack Smith may say, 'It is not a wheel because it's too wide to be properly called a wheel; it is a roller, because it is narrow, heavy, and has a roller bearing.' If Jack Jones is to have any chance of returning to the original, you must make your contracts to be kept, and when I utter the word 'kettle,' and ask you to visualize a kettle, you also tend to recall crockery, and to the extent it do so, blocks mental reception of it. It is not the visual, but the mental, image that is the basic image. If the image is not one that you conjure up a different picture in your mind. (The ancient Greeks, for instance, didn't have a word for color, because they didn't care for color. The Romans didn't have a word for color, because they didn't care for color.) The image does tend to evoke emotion, and to the extent it do so, objects mean more toward the views of the other fellow. It's in ways like these that big influences are started—because of differences in interpretation. I know of no other field of writing where 'buses' is a required practice to the extent that if is in patent claiming. And in my article in last February's Journal, I have traced a section of the Patent Act, and a clause of a standard reviving agreement into this kind of form to illustrate its absoluteness. I'm sure you will see, from what I've just said, how the structural framework of legal terms can be manipulated to any manner of uses as I call them. The examiner or the court can say that such and such a thing is not what you claim it is. If you rely on the same word in the specification, in effect all you have said is that is what you have. I would only like to launch into an exposition of general semantics in this test. I refer you to my article on this. I want to suggest here that it is quite important that you call a thing by the term as you make your structural and functional meaning clear. That is the only effective way of communicating as far as I am concerned. But by functional, behavioristic claims you can also that you can communicate more effectively. It, for example, a person resides in describing a thing to a practical man, any piece of machinery, in terms of what it is, that is, like an object, especially when you get important and ask 'What is it for?' If you do not forthcoming he will then say, "Let's have a look at it." Or "Let's see it in operation."" Is it only trying to argue to the technical, a term of reality. Language itself progresses from the primitive naming stage to the operational way of talking, and every child reveals a linguistically evolutionary development. A child first asks, "What is it?" What is it? Often, when it has developed fairly considerable reasoning power does ask, "How would it work?" Functioning language is highly desirable in my opinion because it enable as much as it is a necessary, particularly in a narrow patent, the claim to be drafted to use different uses of functional language, which will be cleaner than the structural language. However, when you do not doubt, just the opposite is true. Implicit, with the use of operations to force immaturity, the mental operations have played into hands of big business and function. Mere function, being a term of what from which we seem satisfied we know what means, because, on a muscular, tactile, and other sensory levels, according to the prevailing levels, the same thing performed basically the same bodily operations, if not, for example, the same sense analysis. We have all felt, seen, and so forth, the same thing performed basically the same bodily operation, yet this in sharp distinction to the case of abstract reasoning, which is subject to the laws of logic, and the requirements of this title. Grammar, as word has been, is the great metaphysic, because it has the principle of consideration, of speech, or its principle of consideration of thought. The hierarchy of those categories by which we conceive the world.

We, as long as we define meanings and names, are in a sense being the laws of the universe, in a sense being the laws of the universe. Our influence is in the degree in which we can control the world's infinite possibility. It is a way in which we define meanings and names, the laws of the universe. The concept of a model is not the model. It is the model of the model. It is the model of the model. It is the model of the model. It is the model of the model. It is the model of the model. It is the model of the model.
use me" appeal. I therefore define good industrial design as greater product employment.

Accordingly, I would like to suggest a definition of design to be included in Mr. Besson's bill substantially in accordance with what I have suggested to the Patent Institute of Canada which is also working on a new industrial design act for Canada. It is this:

"In this paragraph, the expression 'design' means features of shape, pattern, ornament, operation, location of parts, or relationship of materials, colors, surface effects, or combination of the foregoing, which, in a finished article, are intended to and are judged by the senses, and other than as a useful invention under this Act, or additionally thereto, and does not include any features of shape, pattern, operation, location of parts or relationship of material, colors, surface effects, or any combination of the foregoing, which are dictated solely by the function of the article which the invention is made to perform.

My last suggestion in connection with the design provisions of your bill, is that you consider the inclusion of a claim of claim for industrial design patents beyond the brief form now used. As you know, the standard form of claim now used in design patents is: The ornamental design, for a and so on (inserting the class of article) or the like, substantially as shown.

Now I think the important point that industrial design occupies in modern industry would cattie industrial design patents to a more careful definition than that. I would, therefore, recommend a claim or claims along the lines of regular utility-patent claims, except that such claims would be formal, or in other words structural, of necessity, since considerations of utility as we are excluded from design patents. I mean that you could not possibly write a functional claim or claims for subject matter which had novelty appear only. Structural claims would, therefore, be the proper form to use in these cases.

And the reason for a claim or claims for design patents will, I think, be claims: without a definition of any sort the intending competitor is bound to be uncertain as to how close he may come and how far he must stay away. There are many industrial designs which contain a structural idea of considerable aesthetic originality, and infringement should not be allowed by the nearest chance. Of course, I admit that you would have to use names for the things or parts or configurations in your structural claim or claims in design cases, but what you mean most accurately by the names chosen, could be defined in the specification, somewhat as I have described on pages 110 and 121 of my article in last February's Journal of the Patent Office Society. There is not much objection to structural terms in a claim when clearly defined, even in patents of utility.

For instance, I have recently designed a bed having these design features: It has encloising ends with side curtains between them, it may or may not have a light fabric top which can be drawn across or left rolled or drawn back according to choice, so that a complete enclosure or just a surrounding curtain effect can be attained. Now clearly, this idea had its origin in the big, four-poster beds of the eighteenth century, but my proposal is a very light and airy modernization of those gloomy affairs, and could, I believe, be successfully patented by one of the more exclusive furniture houses.

However, the design patent which I shall obtain upon the idea will be highly uncertain as to the extent of protection I shall have upon the obvious variations occurring to others after seeing it. Sufficient protection I can obtain perhaps by taking out several design patents to cover the most likely modifications. My submission therefore is that close variations of novel designs should be protectable by means of one patent having provision for a brief specification and a claim or set of claims as utility patents.

Finally, the design-example I have just given serves to indicate why for the expression "or additionally thereof" in my proposed definition of a "design." You see, a bed like this with side curtains and an optional like either flat or sloping like a roof, could be argued as subject matter for a utility patent. The curtains and top of their characteristics of enclosure find movability are certainly things that function to some useful extent. Yet improved utility had hardly any place in my mind when thinking up the proposal. My main object was aesthetic or sensory novelty, and it developed concurrently with the advertising angle I thought might fit in with it. So my definition of design is intended not to assimilate that utility patents which can be had for designs possessing incidental utility. After all, some might think this bed is better, an improvement, and in a sense "useful" to them than an open bed. There are many instances of a similar kind, and so this is something which I suggest be carefully kept in mind, although I am aware of these decisions in which the existence of a utility patent and a design patent have been held not mutually fatal as applied to the present patent statute.

This ends my testimony. Thank you, Mr. Chairman and gentlemen.

Mr. Besson. You understand we are especially anxious to give you every opportunity since you are here from our neighboring country up there.

We will stand in adjournment until tomorrow. Thursday, at 2 o'clock. The hearing is tentatively set for tomorrow at 2 o'clock. We will close now to definitely meet at 10 o'clock Friday morning, but if possible we will proceed tomorrow afternoon at 2 o'clock, and we will again meet on Friday.

Mr. Asburn. When is it likely to be known definitely whether you will sit tomorrow?

Mr. Besson. Mr. Harris will try to keep in touch with the House.

(The evening, on 12:15 p.m., the subcommittee adjourned until tomorrow, Thursday, June 14, 1921, at 2 p.m.)