PATENT LAW REVISION AND CODIFICATION

THURSDAY, JUNE 14, 1912

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

The subcommittee met at 2 p. m., pursuant to notice, in room 330, Old House Office Building, Hon. Joseph R. Byrson (chairman of the subcommittee) presiding.

Mr. Byrson. The subcommittee will come to order.

Gentlemen, Mr. Kane wishes to make a brief statement. As I understand if you wish to reserve the right to file a written statement?

STATEMENT OF AL. PHILIP KANE, KANE & KOONS,
WASHINGTON, D. C.

Mr. Kane. That is correct, Mr. Chairman.

Mr. Chairman and members of the subcommittee, my name is Al Philip Kane. I am a member of the firm of Kane & Koons, a member of the law firm of Kane & Koons, general practicing attorneys, patent attorneys, or patent attorneys, in the city of Washington, D. C. I appear here today on behalf of Victor J. Kane & Co., registered patent attorneys and McMorran, Lehman, and Davidson, registered patent attorneys.

We are particularly interested in sections 31, 32, and 33 of the bill which is before the subcommittee. We have been having certain discussions with members of the committee staff with regard to the provisions of these sections, and we desire to continue our discussions with the staff to see if the differences which we have between ourselves and the staff can be ironed out amicably and to our satisfaction.

We therefore desire at this time merely to state we do intend to continue our discussions and that we reserve the right to file a written statement. We hope that if we are unable to iron out our differences, we may have the privilege of an oral statement at some later date.

Mr. Byrson. We will try to grant that.

So we may understand your position correctly, it revolves around the custom of advertising?

Mr. Kane. That is correct.

Mr. Byrson. You wish to retain the status quo in this pending bill?

Mr. Kane. That is correct.

Mr. Byrson. You wish to continue the practice that lawyers follow now?

Mr. Kane. You subject to approval of the advertising by the Commissioner of Patents, which is the present practice.

Mr. Byrson. You will try to get together with our staff in the hope of working out your differences and respective views at an early date.
Mr. Kane. We are holding ourselves available for meetings with the staff at the staff's convenience.

Mr. Buxton. Thank you.

Mr. Scott, will you identify yourself?

STATEMENT OF JOHN W. SCOTT, SCOTT & LITTMAN, WASHINGTON, D.C.

Mr. Scott. I am John W. Scott. I am a member of the firm of Scott & Littman, attorneys, 1925 Vermont Avenue, Washington, D.C. I appear here for Clarence O'Brien and Harvey B. Jacobsen, patent attorneys.

I join in the statement that Mr. Kane has just made. I, too, am working with the group. We hope that there can be some satisfactory solution of the problems which we have been working on with the staff.

I would like to reserve the right in case that does not materialize to submit a statement on behalf of my clients and also be heard at the further session of the committee may be held in that regard. Mr. Buxton. We will try to extend every courtesy. Thank you.

Mr. Scott. Thank you.

Mr. Buxton. We now have Captain Rouillard of the United States Navy. We will be pleased to have you come around.

Do you have a prepared statement?

STATEMENT OF CAPT. GEORGE N. ROUILLARD, UNITED STATES NAVY, APPEARING FOR THE DEPARTMENT OF DEFENSE.

Captain Rouillard. Mr. Chairman, I understand that you have received the copy of the report. I have not prepared any statement in addition. I would like to add a few comments as to what is in the report.

(The report is as follows):


Hon. Samuel M. Clark, Chairman, Committee on the Judiciary, House of Representatives.

Mr. Chairman: Your request for comments on H.R. 3358, to revise and extend the term of a patent, has been referred to this Department for a report thereon expressing the views of the Department of Defense.

The purpose of this proposed legislation is expressed in the title of the bill, to extend the term of a patent.

The Department of the Navy, on behalf of the President of the United States, has made no objection to the enactment of H.R. 3358. If approved, the term of the patent will be extended.

A change in the first sentence in section 211, inserting the word "after" before the word "provide" and making the same change in section 213 is recommended to avoid misinterpretation. H.R. 3358 has eliminated the term "gilt" before the word "provision". The term "gilt" is not used in the patent law and makes the change in the constitutional provision permitting the extension of the patent term inapplicable.
neither of us would have the pressure on us to try to reach a settlement, and the patent owner would not be losing his right to go into the Court of Claims in the period between the time he files the claim and we fix it. It would be particularly beneficial to the Government, and I think, in view of the fact that in many instances we cannot arrive at a very satisfactory compromise, many times including settlements for past infringement and future use, which, of course, is extremely important to use where the patent has not expired and we will continue to use it.

Mr. Cushman. I see that this language which you have recommended says that the period of time from the date a written claim is received until the date of mailing of a notice of denial shall not be counted in the 6-year period unless suit is brought before the last named date. If a claim were filed, say, 5 years after the infringement and negotiations continued for more than one year thereafter, and no suit was filed, then from the time the 6-year period had expired until the Government saw fit to act on the claim the patent would be entirely without remedy or recourse. Would that be your position?

Mr. Chairman. Your point is well taken, sir. The language is poor. That was not the intent. The intent was to mold the language to state that if that is in there, then at the beginning with the words "unless on," would that create any new defects?

Mr. Cushman. Would want to point out if a claim is pending and during that pending the claimant brings suit, then the statute would begin over?

Mr. Chairman. The filing of the suit tolls the statute in any event, does it not?

Mr. Cushman. Yes, I think it is right to strike it out. Would you let me give it a little more thought and discuss it with the committee in case we have any worries about it?

Mr. Cushman. Yes.

Mr. Chairman. When we go into executive session to mark the bill up, we would appreciate your being available to assist us in making any changes.

Mr. Cushman. They are the three provisions, I consider very important. The others, I think, are directed more to clarification than anything else. That is all I have to say.

Mr. Byrnes. You do not care to discuss the others?

Mr. Cushman. No, sir. I do not think they are important enough to take up the time of the committee.

Mr. Byrnes. Thank you, Captain.

We wish to offer for the record here a statement dated June 12, 1931, from the Federal Security Agency and likewise a statement dated June 12, 1931, from the National Advisory Committee on Aeronautics.

(The statements referred to follow.)
permits (1) a joint inventor, without receiving any remuneration therefor, to assign his interest in a patent application or patent, or to give a license, unless the assignee or licensor is to receive royalty fees therefrom, unless under such assignment or licensed such license; and (2) permits the Government or any other person or the public to use a patent application or patent, without licensing the same to the owner thereof, unless under such application or patent, without receiving any remuneration.

It is suggested that this result might be obtained at the same time possible for an apportionment of remuneration actually, received by delay the last clause of section 212 to read somewhat as follows:

"... and any owner may grant license or assign his interest, or any part thereof, without the consent of the other owner, provided the person granting or assigning his interest in the patent holds or is entitled to receive full payment for the same.

The exact meaning of the quoted language is not entirely clear, however, it might be interpreted as requiring the owner to either obtain the consent of the other owner or to assign his interest, without granting license. On the other hand, it could also be read as requiring him to do both. In the latter event particularly, the change in the law would create a problem for this agency in certain cases and presumably also for other government agencies making research grants.

This difficulty arises outside of the circumstances that patentable invention sometimes occur in the course of research performed by a research scientist who, for example, may have been receiving a Public Health Service fellowship, who has not been working in a laboratory jointly with one or more other individuals who received support from public funds. In such cases, the inventors and the Federal funds, in support of his work would be free, under existing law, to assign his interest in the patent without receiving any remuneration. But, the Government, on the other hand, may wish to make use of the invention. However, the agreement of the colleague who participated in the research (who was under no obligation to the Government) would not appear to be directly involved in the event of such assignment, the Government or other interested persons is also free to assign licenses under any such patent to any commercial firm or other persons who may wish to make use of the invention. Hence, it is clear that the Government might want to take the position in its interest in the patent.

If the bill were passed in its present form and narrowly interpreted, it might be impossible to take effective steps to prevent the public interest in such inventions. For example, it would not be practicable to enter into any such agreement in which the Government would be required to receive a royalty. Even if such an arrangement were to be the result of a federal employee, it would result from the expenditure of public funds if the patent were to be assigned to the public, it would be very difficult to connect the language of the statute to the restrictions that the invention is likely to be used "by or for the Government." It might operate to prevent the assignment of some inventions made with the use of public funds where it would be in the public interest to secure to the public.

It would also seem to be logical and justifiable to extend the scope of section 212 to include all such inventions, not only those made by a government employee, if it resulted from the expenditure of public funds and if the patent were to be assigned to the public, it would be very difficult to connect the language of the statute to the restrictions that the invention is likely to be used "by or for the Government." It might operate to prevent the assignment of some inventions made with the use of public funds where it would be in the public interest to secure to the public.

Suggested language to carry out this recommendation is enclosed for the committee's consideration.

This agency has no objection to the enactment of the bill, but we recommend that it be modified as suggested above.
Mr. Byrnes. We now have the privilege of hearing Mr. S. B. Fracker of the Department of Agriculture.

STATEMENT OF S. B. FRACKER, ASSISTANT TO RESEARCH ADMINISTRATOR, DEPARTMENT OF AGRICULTURE

Mr. Fracker. My name is S. B. Fracker, assistant to the Research Administrator in the Department of Agriculture, and representative of the Bureau of Animal Industry of the Government Patents Board. I am appearing in favor of the bill introduced by this committee with the suggestion of two changes in section 221 of the bill. The committee has been supplied with copies of a letter of June 12 from the Assistant Secretary of Agriculture on this subject. I wish merely to make a few brief informal comments.

Section 221 of the bill constituting a restatement of what is commonly known as the Nonuse Act which inventors must have government employees in the course of their duties or otherwise may be patented without the payment of patent fees. The original authorization to accomplish this purpose was passed on March 3, 1883, and has been continued with little change since that time. Under present law in accordance with the original statute, when a patent application is filed under the Nonuse Act by an employee of the Government for a patent on an invention resulting from his research, the head of the agency is required to certify that the invention is "in the public interest." The inventor is also required to give the Government shop rights.

Section 221 of the bill before the committee changes the certification requirement so that Government inventions are exempt from the payment of fees, when the inventions are to be used or likely to be used by the Government in the public interest.

I should like to comment on the difference in meaning of these two phrases and the effect of the changes. The change in the language will make the law more satisfactory with respect to military inventions where the Government is the principal user and in many instances only purchaser of the product or the device invented. The Department of Agriculture, however, was established for the purpose of the development and diffusion of the products of the soil, and this purpose is served by a statute that is carried on in the Department is not research aimed toward the development of articles for the procurement by Government. The change in the bill, in most cases, is not the principal user of the invention. Accordingly, the Department feels that the language in the present law, "in the public interest," is more satisfactory as a description of the type of inventions that come from Department of Agriculture research than the proposed change.

I would like to illustrate the difference by mentioning a number of recent patents.

For example, one issued on February 20, 1954, assigned to the Secretary of Agriculture covers a process for the glazing of fruit that is to be stored, transported, and sold in frozen packages. The fruit so glazed under this process remains separate. The individual pieces of the individual fruits do not rest in a solid mass in the package as is now the case with frozen fruit available on the market. It can be packed mechanically instead of by hand. The berries, cherries, or individual pieces of larger fruits are frozen hard and the glazing pro...
of Agriculture carries on considerable research in cooperation with the agricultural experiment stations.

It also engages in contract research with various contractors. Such research is subject to special conditions, and, second, to the advantage of the consumer in having a more desirable product. It is probable that at some time in the future the Quartermaster Corps may have occasion to use such products, but a description of the invention as being "in the public interest" is more applicable than to say that the product is "likely to be used by and for the Government."

There is another type of invention to which this difference is also applicable. Some of the inventions, particularly in the departments of Agriculture and Industrial Chemistry and at the Forest Products Laboratory of the Department, involve products that are intermediate to final manufacturing processes, and do not primarily involve the utilization of farm and forest products without regard to the end uses that may later be developed. For example, a patent issued on February 27, 1861, provides certain methods for treating feathers to obtain a protein in the form of a white matter, which are used by manufacturing companies for a wide variety of materials, including the development of fibers, bristles, and similar articles, or the development of protein feeds for poultry, or the manufacture of plastics, or many other different uses to which protein materials can be put.

The invention is intended primarily to provide for the utilization of feathers when in surplus, and while the Government might at some time use some of the end products manufactured, the Government is not likely to engage in the treatment of feathers for this purpose.

The committee is doubtless also familiar with the work of the Department in the development of certain medicinal products from agricultural products. One of these that has come into use is Rutin, now made largely from buckwheat. It is a product used in medicine to relieve the danger of bleeding, in the case of persons whose capillaries and other blood vessels have become fragile and brittle with a tendency to break under pressure or damage.

There are several patents in regard to the method of manufacturing and purifying this product. These inventions are better described as "in the public interest," rather than as "to be used by and for the Government."

As another illustration, a Department employee has applied for a public-service patent on a method of removing the last traces of fatty matter from eggs, which is in the public interest. This is a process that is useful in connection with the utilization of agricultural by-products, and is likely to be used by Government agencies, but it is not generally of the use of agricultural products and in the interest of consumers.

That being said, we are making with respect to section 221 of H. R. 5280, that the language go back to the wording that was used in H. R. 2125 of the last Congress, namely, use the term "in the public interest" in place of the proposed change.

In the Secretary's letter to the committee, there is an additional suggestion which does involve a change in the present law. The committee wishes to consider it. This relates to the cooperative research of the Department. Under various statutes the Department
Mr. FRACKE. I suppose there are patents that are issued that benefit either the inventor or the assignees, and they do that.

Mr. CHUMPACKER. I presume the fees charged by the Patent Office are scaled primarily just to pay their expenses of operation, are they not?

Mr. FRACKE. I am not familiar with how they are sealed.

Mr. BYRSON. We have that.

Mr. CHUMPACKER. What I am thinking is, in the interest of more orderly governmental accounting so that it will be easier, particularly for a Congress looking at the appropriations bills, to know where the money is being spent and why, would it not be more appropriate to let these other Government agencies pay the normal expenses irrespective of what the purpose of the patent is, and have the Patent Office on a self-sustaining basis rather than have what you might call supplementary payments covered up in the Patent Office appropriation?

I think, in the interest of arranging your bookkeeping so that you can see where the money goes and for what purpose, it would be more proper even though the Government is merely taking money out of one pocket and putting it in another. Then would it not be better to eliminate this provision entirely and merely have the Government departments pay the normal fees?

Mr. FRACKE. The financial effect on the Government is the same either way.

Mr. CHUMPACKER. I can see that. It is the same number of dollars either way. It is merely a matter of bookkeeping.

Mr. FRACKE. The making of these transfers has two disadvantages—the clerical cost within the Government and the delay in certain cases while payment is going through, which would affect the validity of the patent. Otherwise the matter is one for determination of general Government policy.

Mr. CHUMPACKER. I can recognize these two objections to doing it that way. But if an application states at the time you would probably have a fairly steady flow of this type of application through your department. That is, year in and year out there would be about the same number of patents, something you could anticipate in the budget need. Is that right?

Mr. FRACKE. The department applies for patents on inventions in numbers approximating about 100 a year, varying above and below that by about 20 percent perhaps.

Mr. BYRSON. Thank you, Mr. Fracker.

We will now hear from Mr. Edward R. Walton.

STATEMENT OF EDWARD R. WALTON, JR., REPRESENTING THE DISTRICT BAR ASSOCIATION FOR THE DISTRICT OF COLUMBIA

Mr. WALTON. Mr. Chairman and Members, I am Edward R. Walton, Jr., a member of the bar of the District of Columbia and also chairman of its patent committee this year. I am here representing the Bar Association for the District of Columbia.
Since the existing law appears unnecessarily harsh and United States nationals do not face a similar disability in most foreign jurisdictions, the Department fully supports this modification.

3. Section 117, "Right of priority based on foreign application."—This section adds a new requirement to the patent law by providing that no application or patent shall be allowed until a filing fee and a non-refundable filing fee (equal to one-fourth the filing fee for such right) and a certified copy of the original foreign application are filed with the Patent Office. It also provides that the Commissioner may require an English translation and such other information as he may deem necessary if he determines that the requirements are not met. If the requirements are not met, the application and any claim for the benefit of the foreign application may be dismissed by the Commissioner.

4. Section 222, "Temporary presence in the United States."—This section provides that no patent shall be granted to an invention made in any ship, vessel, aircraft, or land vehicle of another country temporarily entering the United States. This provision applies where the requirements of article 5 of the International Convention for the Protection of Industrial Property are satisfied. The Convention provides that the Commissioner, after an examination of an application, may grant a patent to an invention if the requirements are met and that the patent is not to be revoked if the requirements are not met. The Department believes that this provision has been added for the benefit of American residents desiring to bring action against persons owning United States patents. The present time American manufacturers are challenged by charges of infringement of United States patents by persons resident abroad are especially handicapped by inability to bring suit for declaratory judgment. Most foreign countries in their patent laws require foreign owners of patents issued by them to have resident agents upon whom service may be made. The Department has no objections to any of these modifications or to enactment of the bill as drafted.

The Department appreciates the invitation to have a representative present at the hearings on this bill. However, in view of the technical and legal nature of the hearings, the Department has no objections to any of these modifications or to enactment of the bill as drafted.

PROPOSED REVISION OF PATENT LAWS

5. Section 105, "Conditions for patentability."—Subsection (d) of this section provides that the application should be filed in the United States prior to issuance of a patent in a foreign country.
In the history of the United States, the United States Code has been compiled and updated. As a result, the United States Code contains the law of the United States Code. Consequently, the Congress has undertaken to revise and enact various titles of the Code. The revision and enactment of the United States Code have been performed by a committee appointed by the Chairman of the Committee on Rules. The revision and enactment of the United States Code is intended to improve the organization and clarity of the law. The revision of the United States Code is a complex and time-consuming process. The revision of the United States Code involves the consideration of a large number of statutes and regulations. The revision of the United States Code is intended to provide a comprehensive and up-to-date source of law for all citizens of the United States.
In cases of codification there is a general presumption of legislative intent to follow existing statutes, notwithstanding changes in the subject matter which would not be applicable where the law is also being amended substantially. As a result, it becomes difficult to ascertain upon a doubtful point whether a substantial change in existing law has taken place, a change being intended and the ultimate effect may be to cause confusion in the interpretation of the law.

It is particularly important that the patent law not be unsettled or complicated ambiguously at this time of national emergency, when patents will play a large part in the expansion of industry incidental to national defense needs.

The Government has a particular interest in this since it must pay, directly or indirectly, for the use of patent rights in such expansion and in the war program.

There is also the danger that in attempting to revise the whole subject matter, a sufficient cause to particular sections and their interrelationship with the consequence that unintended changes in the law may result.

It is suggested that if enactment of the present bill into law is deemed necessary, this be done without attempting to revise the law substantially at the same time.

If, on the other hand, over-all substantive changes are deemed necessary, it would seem better to handle such changes by separate enactments.

The element in a claim for a combination may be expressed as a means or step for performing a specified function without the restriction of structure or acts to support such claim shall be construed to cover the corresponding structure, materials, or acts described in the specification and equivalents thereof.

This section may substantially alter existing law. At present the courts will invalidate a single "means" claim when its function; that is, when it covers all means for performing an act, or when the step is not a "point of invention." The burden at present is on the patentee to describe his invention in exact terms and it is not clear to what extent he might be relieved of this duty under the proposed section.

The section does not include in the statute for the first time the controversial doctrine of equivalents without defining its scope.

The section does not, in the opinion of the experts, establish the same patent policy that is intended to materially extend existing law, to use that is obvious or to uses that do not require invention.
permits employers, including the government, to the applications for patent on inventions made by employees who are unavailable when an application is ready to be filed. This is not uncommon in these troublous days when many military and other personnel are beyond their time, even for the execution of a patent application. This section does not change any substantive rights. It merely permits the timely filing of an application by the party who thinks he has an interest therein without in any way affecting the inventor's rights.

Section 292, "Decision on appeal," embodies the existing statute except that it omits the last sentence of the present section 911 (35 U. S. C. 62) which states that—

"...an opinion or decision of the court in any such case shall provide any person interested from the right to contest the validity of such patent in any court wherein the same may be called in question."

Deletion of this sentence might be interpreted as expressing a contrary intent to make patent validity conclusive where the patent has been upheld by the Court of Customs and Patent Appeals in what is frequently an ex parte action. This Department would be opposed to such a change in the law and would suggest that the bill be amended so as to retain the above language.

"With respect to section 292, it is suggested that if the existing court law is to be embodied in a statute, as that section contemplates, the established court rule of diligence in applying for a reissue should be included as well as the present rule that a delay of more than 2 years will create a presumption of intervening rights in the public.

Section 292 of this bill provides that in the absence of such a joint owner of a patent may not individually grant licenses or assign their interest without the consent of the other owners or without accounting to them. This section introduces a new concept to the patent law but it is believed to be identical to the statute currently in force.

Paragraph (b) of section 293 provides that any person who actively induces infringement shall be liable as an infringer. Paragraph (c) provides that it shall constitute contributory infringement to the use or sale of a component part of a patented machine, manufacture, combination or composition or material or apparatus for use therewith, if a material part of the invention, especially made or especially adapted for use in any manner in which the infringing device is or may be used as a whole, or for which there is no reasonable non-infringing use.

Paragraph (d) provides that:

"No patent owner otherwise entitled to relief for infringement or contributory infringement of a patent shall be denied relief or deemed guilty of an illegal extension of the patent right because he has done one or more of the following: (1) derived revenue from acts which if performed by another patentee would constitute contributory infringement of the patent; (2) authorized another to perform acts which if performed without his consent would constitute contributory infringement of the patent; (3) suggested or encouraged a person to perform acts which if performed without his consent would constitute contributory infringement of the patent; and (4) failed to exercise diligence in the enforcement of his patent rights against infringement or contributory infringement."

These provisions would result in writing into the patent statutes for the first time the strictly judicial doctrine of contributory infringement, a doctrine which has been the subject of considerable controversy and has been properly limited by the courts in recent years.
Section 251 raises the false marking penalty from $500 to a maximum of $2,500. This change is believed to be desirable in that it will aid the policing of false marking. With the present law the information concerning a qui tam action rarely receives more than $500, which does not pay him for his time and trouble.

Section 252 (Service and notice; nonresident patentee) provides that a nonresident patentee may designate by notice to the Patent Office a person within the United States upon whom service of process may be served and that in lieu of such designation such notice or process may be served upon the Commissioner. This is a new section. It does not represent codification, but the Department has indicated that it is in favor of it.

The Department understands that this provision has been added for the benefit of American citizens desiring to bring actions against foreign owners of United States patents. At the present time American manufacturers threatened by charges of infringement of United States patents by persons resident abroad are especially handicapped by liability to bring suit in declaratory judgment. Most foreign countries in their patent laws require foreign owners of patents issued by them to have resident agents upon whom service may be made.

Except for the specific sections to which objections or questions have been raised, the Department of Justice is not opposed to H. R. 3765.

Mr. Hay. Thank you, Mr. Brown.

Mr. Lantham, we are always pleased to have you present.

Would you like to make some comment or statement that would be helpful and constructive here?

STATEMENT OF FRITZ G. LANHAM, FORMER REPRESENTATIVE FROM TEXAS

Mr. LANHAM. Mr. Chairman and members of the Committee: I had not intended to testify. I am not a patent attorney.

Mr. DAWELL. You are a patent authority, though.

Mr. LANHAM. I had the pleasure of serving for about a quarter of a century on the Committee of Patents of the House of Representatives. I have acquired some familiarity with the structure of our patent system. I also in appearances which I have made before this committee since my voluntary retirement from the Congress after 28 years of service.

I have been since my retirement a representative of the National Patent Council, which is a nonprofit organization of every manufacturer primarily interested in the education of the public with reference to the importance of our patent system and the fact that patents make jobs and promote the development of our economy.

However, that council is not a patent law association. Because of their interest in its policy, many patent attorneys are connected with it as associates. It is to be assumed that there is some diversity of opinion and sentiment among those patent attorneys who are associates with reference to certain provisions of the pending proposal, just as we have seen cropping here in the testimony some differences of opinion concerning special sections. Consequently my appearance is merely as an individual in compliance with the request of the chairman just made and not as a representative of the National Patent Council.

This bill seeks to codify provisions with reference to patents. Certainly a codification measure is desirable, but in my judgment, what is placed in the law codifying patent provisions should be, first, of course, clear and understandable. Certain controversies have arisen in the discussion thus far and likely further differences of opinion as to a few provisions will be presented by other witnesses. There are two or three provisions in particular which I recall have been the subject of outside criticism from the bar and others. These are possibly in the last Congress, one having to do with the test of invention or the patentability and the other having to do with contributory infringement.

I recall that among others I testified on each of those matters before the subcommittee in the Eighty-first Congress. It appears that they are somewhat controversial.

Would it be advisable, therefore, in view of the fact that this bill seeks the codification of the patent law, to eliminate one or two controversial provisions from present consideration and have separate consideration of each in appropriate and appropriate bills which would permit much more detailed and thoughtful study of the matters involved than could be possible in such testimony as will be given before this committee. That would not preclude codification of provisions which could be agreed upon.

I recall, for instance, in my long service on the Committee on Patents, I was requested to endeavor to get enactment with reference to trade-marks that would be more in keeping with modern conditions and practices in view of the fact that the old laws of 1856 and 1882 had become somewhat obsolete and not applicable to the business conditions and practices today. Though I have now, and had then, no personal interest in any trade-mark except as a consumer, I undertook that task with a comprehensive understanding of the technical and legal aspects just as the consideration of this measure involves many technical considerations.

I labored as the chairman of a subcommittee with different personnel in each Congress through four different Congresses to get the final result of the trade-mark law now on the statute books. When we first began the consideration of that subject matters, those who appeared were speaking figuratively, at one another's throats. Then there was great diversity of opinion concerning provisions that should be incorporated in such a law.

So I served perhaps no more, less, as a mediator and conciliator and tried to get the groups together upon something with reference to which they could agree.

Finally, after 4 years of such effort and the introduction of several different bills with modifications which had been suggested, we got the enactment, with the terms of which practically all of those in original disagreement found themselves quite in conformity and accord.

We took up those bills, section by section, and heard testimony upon each section, in order that we might have all of the facts and information upon which we could base our final judgment.

Here are many provisions of this bill, some of which are technical as evidenced by the testimony thus far adduced. I believe that proper conferences practically all of the differences can be settled and the codification effected. I hereby inquire as a policy of procedure whether
it would be wise just now to include one or two highly controversial
provisions in the codification or leave them for early consideration in
separate bills for more extended and detailed discussion and study.
We are all anxious to have a proper codification of the patent laws,
and the coordinating committee has labored diligently with such a
problem. We are all specially anxious to have them properly
aligned in the codification of the patent laws, because upon the
ingeniousness of this country, through the incentive of our patent system
we have obtained the progress and prosperity which has made us the first Nation of the world. Let us keep it up and let us be very sure that whatever we enact will rest
an incentive and inspire these workers of America, who give us so many
things useful for our progress, to carry on their labors in undertakings.
If very interesting, in that connection, to note that many and per-
haps most of our very useful inventions which have greatly accelerated
our progress and our prosperity have come from most humble sources.

Leonardo da Vinci was in a way an authority on aviation, but they
had no internal combustion motor in his day and there was no practical
application of his ideas.

Langley and others worked with aviation, and finally two bicycle
designers in North Carolina disclosed that it was practical in abso-
A great leap forward in this Government ever since we first had
our patent law, largely through the efforts and the activity of Thomas
Jefferson.

These random thoughts may not be helpful to you, and they are
purely individual opinions. Although I have no patent and I have
not made no discovery, I doubt if anyone, by reason of my long service on
a similar committee and the realization of the importance of protecting
our patent system, has any greater interest in the making proper legislation
continue so that that incentive will continue which will make for
our greater progress and prosperity. Let us hope that to this end proper
codification may be had as promptly as possible.

Mr. Buxton. We are much obliged to you.

I am sure we are starting toward the same objective. I believe the
record will disclose this particular committee has sought to give ample
opportunity and study to any controversial issue that we now consider
or we may consider.

You know we have distributed literally thousands of the proposed
revision to the codification of Commerce to every possible agency. These representa-
tives from these well established reputable organizations from every
point throughout the country are feeding us with their suggestions and
thoughts. In these hearings here we are going to give everyone
an opportunity to be fully heard, whether he favors or opposes
the bill. There will be no disposition to shorten these hearings at all.

Mr. Latham. I appreciate that. I am well advised concerning the fairness of this committee. I am well advised also
concerning its unremittent activity to bring about the very objectives
in which you and I and I think all of the loyal American citizens, are
properly interested. And please understand that I am not opposing
codification and that I have merely offered a suggestion with refer-
ence to procedure in the consideration of one or two controversial
issues.

Mr. Buxton. You recognize that the revision and the old Committee
on Patents is all accumulated here in this subcommittee under the
organization?

Mr. Latham. I appreciate that.

Mr. Buxton. Do you think, due to the fact we have this controversy
existing as to what constitutes the law makes it almost an insurmount-
able task to recodify the law?

Mr. Latham. I think most of the provisions in this bill before you
can be codified.

I would not appear as being opposed to codification of patent laws.
I think we should codify what is not highly controversial and what
through conferences can be agreed upon.

Mr. Buxton. Have you, in the study of this proposed bill, any
particular objection to any particular provision that you feel should not
be there without a thorough study and a different bill introduced
to take its course through Congress?

Mr. Latham. I will repeat, I am not a patent attorney. I am not
versed in all the technical provisions. I feel that with reference
to practically all of the provisions of this bill some agreement can
be reached from the standpoint of codification. On one or two con-
troversial provisions I think the action should assure a basis of clarity
for judicial interpretation and the protection of the discoverers of
useful and novel inventions. In other words, the result concerning them should be both fair and definite.

Mr. Buxton. In other words, you feel, to take the noncontroversial
ones, to make that the codified bill and then the controversial ones
could be considered separately?

Mr. Latham. They could be enacted as amendments to the codifi-
cation and in that way perhaps we could get a better final result.

There are several provisions here concerning which there is some
controversy, I think these differences can be ironed out and most
of the bill could thus be codified without any particular difficulty.

Mr. Buxton. Thank you sir.

Mr. Federico, will you come around, please?

STATEMENT OF P. J. FEDERICO, UNITED STATES PATENT OFFICE

Mr. Buxton. Mr. Federico, before you begin, may I ask: Has the
Department of Commerce made a formal report on the pending bill?

Mr. Federico. Yes.

Mr. Buxton. Favoring the enactment of the bill preferably with
certain amendments?

Mr. Federico. Yes.
Mr. Buxson. But favoring the enactment of the general principle?
Mr. Federico. Yes.
Mr. Buxson. Would you care to address yourself or make any other comments on the positions taken by the different department representatives today or to testify yesterday, or would you care to make any statement on your own observations?
If so, you may proceed.
Mr. Federico. With respect to the reports from the other depart-ments, I am sorry to say I do not feel in a position to comment on their specific suggestions for the reason that most of them I have seen today for the first time. The Department has not had the opportunity to make a report on them.
I would like to state generally that the reports of the three departments that have testified orally strike me that some of their proposals are things that none of the other departments would have any special objection to. A large number of them relate to matters of language and clarification which could be straightened out by some slight dis-()ersion. Possibly all of the reports of the departments would be, except one or two, might be brought into agreement between the depart-ments.
I do not feel that I can comment on any of the specific provisions.
Mr. Buxson. Without giving further study to them?
Mr. Federico. They would have to be studied.
Shall I continue with the survey of the structure of the bill?
Mr. Buxson. Yes.
Mr. Federico. As I stated yesterday, chapter I of the bill collects the provisions relating to the Patent Office. Chapter II collects the provisions relating to the requirements for obtaining a patent and the procedure in obtaining a patent.
Chapter III deals with the patent itself after it has been granted.
A first group of sections relate to correcting and amending a patent, which is a necessary thing.
Sections 281 and 282 are a development of the present statute relating to what are called reissues. Under certain circumstances the patentee may obtain a new patent to replace the old one to cor-
rect various defects that he may have discovered in the patent. These two sections together replace the present one, making a number of clarifications with a few additions of further development in the subject which I do not believe need be gone into at the moment.
Section 283 relates to another form of correction of a patent known as the disclaimer. The patentee files a paper in the Office which is presented. He discloses certain things from the scope of the original patent that he will not be claiming or disclaims certain claims. This subject of disclaimers in the present law has resulted in a great deal of confusion and uncertainty in certain situations, which are almost ridiculous at times. Consequently, the bill in the two sections 283 and 284 has introduced certain changes relating to disclaimers. One of these changes is that only a whole claim can be disclaimed. A claim cannot be rewritten by filing a paper in the Patent Office. Only a whole claim can be disclaimed.
The second change relates to the situation when a patent has two or more claims and one of them may be declared to be invalid.
Under the existing law, there is a provision in the statute that says that the invalid claim must be disclaimed without unreasonable delay in order to save the rest of the patent. What that unreasonable delay may be is quite confusing; and the present law does not give a matter of fact prevent the patentee from suing again on the invalid claim if he so wishes.
So the bill has eliminated that requirement. It has left the situation that if one claim of a patent is invalid, the patentee may take it out. He may still sue on the remaining claims which have what- ever validity they might have on their original merits. That is, one bad claim does not affect the other claims, unless they are themselves bad.
Other provisions of the bill, perhaps take care as well as is done in the present law of the possibility of a patentee suing again after his patent has been held invalid. That cannot be done today and the bill makes no change in that situation, except that certain provisions might tend to deter doing such a thing.
Mr. Buxson. How many times can he renew his request for a patent?
Mr. Federico. You mean if he has been refused a patent?
Mr. Buxson. Yes.
Mr. Federico. That goes to obtaining a patent. Under the statute the applicant has an absolute right to a reconsideration with whatever amendment, not charging the invention, he wishes to present. By the practice of the Patent Office in its regulations there may be two, three, or more reconsiderations until the matter reaches clearer issues which are not one or the other.
Mr. Buxson. Must he supplement his petition by what we would call in the general practice "after discovered" or "newly discovered"
evidence?
Mr. Federico. Again referring to obtaining a patent and the procedure in the Office, if the Patent Office refuses the patent the first time, he is at liberty to present whatever he wishes, arguments, tests, evidence. He is free to do anything he wishes. Whatever he does is reconsidered in the light of his arguments. He is given a new examination. That may continue for one or two times more after that.
Mr. Buxson. In the discretion of the examiner?
Mr. Federico. To a large extent yes.
Mr. Roers. Getting back to the subject of section 283 of disclaimers, I referred to a moment ago, did I understand you to say that the law at the present time is that in the event a man wants to disclaim he has got to disclaim the whole patent?
Mr. Federico. No, the whole claim.
Mr. Roers. As in this new section 283 affect that? There was some testimony it omitted part of the statute.
Mr. Federico. Under the bill, he must disclaim the whole claim. Under the present law, it is worded he may revise a claim.
The change in the present law is in omitting the requirement that an invalid claim must be disclaimed within a reasonable time; that is, in omitting out of the patent within a reasonable time to save the validity of other claims in the patent.
Mr. Roers. If the does not disclaim within a reasonable time under the present set-up, does that vitiate the entire patent?
Mr. Federico. That theoretically vitiates the entire patent, but he is still free to sue on that invalid claim again.
Mr. Rogers. He would not get very far.

Mr. Frazmoox. That's right.

Mr. Rogers. Your objective in this section is to change it in what manner?

Mr. Frazmoox. That particular change is made by section 280, in title 28, of the Revised Statutes.

They dovetail together. The manner of making that change is if a claim is invalid, held invalid by a court, the patentee may disclaim it himself if he wants to and in the usual case he will. If he does not disclaim it, nothing happens to the remaining claims.

Mr. Rogers. If he disclaims as to those that are invalid, he still retains the valid one?

Mr. Frazmoox. Yes.

Mr. Rogers. That is the present law?

Mr. Frazmoox. Yes. Of course, if a patentee does not disclaim under the present law and under the bill he cannot recover costs in a suit.

Under a later provision in this bill, which is in the present law, too, if a patentee sets up a patent that is invalid and the suit is wholly unfounded, the court could assess him attorney fees as well as other deterrents to sowing on a claim or on a patent that is invalid.

The deterrents under the bill are about the same order as under the present law.

In making these comments, I am making them only by the way of explanation of what was the intention in introducing these particular provisions into this bill, rather than arguing for or against any of them.

Referring still to the correction of patents, section 281 is a section for correcting a certificate a clerical error due to the Patent Office.

Section 283 is a section that is new in the patent law that permits the Patent Office to correct by a certificate a clerical error of the patentee.

Section 284 is a new section in the law that is correlated with section 116 in chapter 2 relating to a mistake in joining a person as inventor. Very often two or three persons make an invention together. They must apply as joint inventors. If they make a mistake in determining that the third one is one of the three inventors that actually made the invention, they do so at their peril.

This provision permits a bona fide mistake in joining a person as inventor or in failing to join a person as an inventor to be corrected.

The next group of two sections relates to assignments and othership.

Section 292 introduces a change over the present law relating to joint assignment.

The next two sections collect provisions now in the law relating to Government interests in patents without making any significant change in the present statute.

The next group of sections relates to infringements of patents.

Section 281, paragraph (a), is merely a declaration of what constitutes infringement.

Incidentally, there is no declaration of what constitutes infringement in the present statute. It is actually not really necessary because the granting clause grants exclusive rights and infringement would be any violation of that grant.

Mr. Frazmoox. Yes.

Mr. Rogers. Just to interrupt you there, do I understand your position to be that, so far as section 281 is concerned, that any rights of the patent exist under the present law?

Mr. Frazmoox. Section 281 (a), the first paragraph,

I was referring to the first paragraph in that statement.

Now paragraphs (b), (c), and (d), bring up the subject that has been referred to as contributory infringement, on which I understand to go into too much detail at the moment except to state that the key word, was the subject of the group working on it as an attempt to start in statute for the theory of what has been called contributory infringement of patents in a sense in which what has looked at from certain points of view, might be considered so intricate of what has been held in the past and looked at from certain points of view might be considered broader.

Mr. Rogers. What is the present status of the contributory infringement in that sense?

Mr. Frazmoox. It is entirely uncertain in what status of contributory infringement of patents.

Mr. Rogers. Then this part that is added here in 281 (c) is something new, so far as.

Mr. Frazmoox. As being stated in the statutes is concerned, yes.

Mr. Rogers. Do you consider that the section (c), to which you referred, will change the decisions that have been announced by the Supreme Court, or is this just an attempt to say what these decisions have herebefore held?

Mr. Frazmoox. There has been such argument about what the Supreme Court decisions do so that I am afraid I cannot answer that question.

If a person takes the position that the decisions mean a certain thing, then it could be said these do not do very much. But it is very easy to take another position, that the decision mean something quite different; in which event the section would do something.

Mr. Rogers. Would anybody's rights be affected in any manner if we eliminated this section 281 (c) and (d) altogether?

I will put it this way: if the Court eventually is to pass upon it, do you know of any necessity why the Congress of the United States should determine what an infringement is, whether he is a contributor, or what?

Mr. Frazmoox. Speaking personally, my view would be that the court not only is entitled to have clarity in the language.

Mr. Rogers. Do you not know that lawyers have existed for many years upon disputes, and we have never been able to get anybody to write a law that applies to all situations?

Do you think that this would clarify it in any manner if it was enacted, that is the definitions as set forth here and what constitutes a contributory infringement?

Does this clarify it in any manner so that it may be a guide to the lawyers in the future?

Mr. Frazmoox. Yes.

Well, it would clarify it to this extent: That having a written formula in the statute, you have a guidepost which would settle or determine the way the development of the law would be after that would be passed.
Without a guidepost, there would be a lot of bumbling. Eventually, however, there would be something stable.

Mr. Roane. Do you think that, as written here in § 222, is the guidepost or the interpretation that some have placed upon decisions that have been rendered by the Supreme Court dealing with contributory infringement?

Mr. Frazee. I think it represents what a large body thinks is an interpretation of a large number of decisions in the past.

Mr. Roane. I would it necessarily follow that if we did include it, in this bill, that the argument would be that Congress has at least accepted the interpretation that certain individuals have placed upon those decisions, as to what constitutes contributory infringement, and say that Congress is entitled to interpret those decisions in this manner.

Mr. Frazee. I think it would. I think it would be picking a path. Mr. Roane. And in that manner clarify an issue that lawyers are unable to give the clients proper advice upon when the question of contributory infringement is brought up?

Mr. Frazee. Yes. I think it would be a great deal of what Mr. Roane. Although the Supreme Court, of course, would follow its precedent by exercising its right to have the last word, they just say, very.

Mr. Frazee. Section 222 is a new section in the law relating to infringement, but it is of relatively little importance and it follows a paragraph in a treaty that the United States adhered to.

Mr. Frazee. Mr. Frazee. Now, if an act by the National Advisory Committee on Aeronautics is not seen with their views on the subject.

Mr. Frazee. I have not seen them; no sir.

Well, I will state what 222 does in a problem concerning it.

Under the present law, which is by decision, not by expression in the statute, if two persons own a patent jointly, either one can do what he pleases in respect to making and using the invention for his own use without granting licenses to others and selling his share, or any part of his share, without regard to the other person.

That is stated generally.

Under the provision here, the two owners could still make manufacture the invention for their own profit, but if one granted licenses, or sold his interest to others, he would have to negotiate to the other owner, or get his consent.

Now, I think there have been some problems in this aspect, as I think there are quite a few questions that have come to the committee to make the change at the present moment. The advantage of having the change, but some problems have been mentioned in connection with doing it in the form here stated.

Mr. Frazee. We have the several views as expressed by these agencies.

The Federal Security Agency inquires as to the effect on desirability of adding this clause on the end of the suggested section 222.

And any owner may make any license or assign his interest or any part thereof, without the consent of the other owner, provided that he may account to them for their proportionate shares in the event he receives any remuneration therefor.
The hearings and the reports of the committees showed that they intended to apply to exceptional cases without going into detail, and the court decisions have followed that principle of awarding attorney fees in exceptional cases.

What constitutes an "exceptional case," and stays left to the discretion of the court conducting the case.

Mr. FROST. Should there not be some kind of an expression of the particular areas that they intended to apply to? For example, any statutory language as unclear to the uninitiated as that would be. It may mean something to an experienced patent lawyer, but just to look at it...

Mr. ULRICH. That provision, as I said, came into the statute in 1990. There have been a number of rulings on it. In some cases the courts have denied attorney fees and in others, they have allowed them.

Mr. CUMMINS. You say the 1890 statute just said that the court in its discretion may award reasonable attorney fees; is that right?

Mr. FROST. Yes.

Mr. CUMMINS. But this term "exceptional cases" is introduced for the first time here, is it not?

Mr. FROST. Yes. It was picked up from the reports in passing the law which indicated that that was what we meant, and the decision of the courts that have followed that.

Mr. CUMMINS. That is all.

Mr. FROST. Proceed, Mr. Federico.

Mr. FEDERICO. Section 239 is the only companion section to the disclaimer section that I mentioned before.

Sections 239 and 250 involve merely changes in language.

Section 251 is a criminal statute relating to falsely marking an article as being patented when it is not patented, which is now in the present law.

But the section removes or makes a few changes as to the time for false marking and a few other things, and also makes it an even more criminal action as well as an information action that is in the present statute.

Section 252 is a new section that is needed to obtain jurisdiction over foreign patent owners, those that do not reside in the United States.

That is necessary on some occasions.

Mr. BOWEN. That has been discussed by a previous witness.

Mr. FROST. Yes.

Chapter 1 is the chapter that collects the provisions relating to plant patents and to design patents.

In the group of sections relating to plants, there is no change in the present law except in section 365, relating to the nature of the rights granted by a plant patent.

The wording here is that the plant patent grants to the patentee the right to exclude others from reproducing the plant and selling the plant so reproduced.

Under the present law, there is some ambiguity in interpretation, and this section settles what the interpretation should be in the manner indicated.

The next group of sections relate to design patents.

The effort in this group was to state the present statute.

In the committee's preliminary print that introduced this codification the statement was made that the subject of design patents was
reserved for later consideration, and the present code merely puts it in its place without attempting to make any changes in the statute.

Following are a few miscellaneous provisions with the code of statutes repealed, and that concludes the description of the bill.

Mr. Busby. Thank you, Mr. Federico.

We have one other witness, the President of the New York Patent Law Association, Mr. Neave.

STATEMENT OF ALEXANDER C. NEAVE, PRESIDENT, NEW YORK PATENT LAW ASSOCIATION, NEW YORK CITY


Our committee has written a committee letter, Mr. Chairman. Mr. Busby. We have your letter. Would you like to read it, or would you like to have it submitted for the record and make comments on it?

Mr. Neave. May I have it submitted for the record? I do not think it necessary for me to read it.

Mr. Busby. All right.

(The letter referred to follows:)

THE NEW YORK PATENT LAW ASSOCIATION

June 5, 1951


The committee on patent law and practice of this association, after an earnest study of the Haysen H. R. 3700, and of its predecessors in the Eighty-sixth Congress, H. R. 3753, reached the following conclusion in regard to bill H. R. 3700:

The committee highly recommends the adoption of this bill by Congress as an important and long-needed measure. Indeed, it believes that the present code of statutes is inadequate and should be revised. The committee is optimistic that the bill will result in a more uniform and simplified code of statutes, which will be of great benefit to all concerned in the field of patents.

The committee recommends that the bill be passed in its present form, with the amendments suggested by the Antitrust Division of the Department of Justice.

Sincerely yours,

ALEXANDER C. NEAVE, President.

P.S. Mr. Neave. Mr. Ashton has read to your committee a resolution favoring the bill in question.

Mr. Neave. Mr. Ashton has read to your committee a resolution favoring the bill in question.

The bill has been referred by the Senate to the committee of the whole, which has reported an extract from our patent law committee's report on the bill. A great deal of study over a period of 2 years was given the bill by our committee.

There is one additional matter which is not contained in our letter to your committee. That would be the matter of the Antitrust Division of the Department of Justice which Mr. Ashton would like to mention, since the matter has been brought up by Captain Robillard.

The committee of our association which the bill related to it was to be advisable to have included in the bill a section of a character which Captain Robillard referred to, with respect to publication of applications. This suggestion was specifically made to the coordinating committee, and was discussed in their meetings, in several of their meetings.

The committee, as a whole, voted against such a provision, and in interest of not having a talent for disagreement, we thought we would not protest the matter.

We believe, however, since the Navy has made the suggestion, it might be helpful to your committee to have some specific language with respect to that matter.

Of course, I have no idea whether the Navy would approve of the language, because Captain Robillard has not seen that.

The language which we are suggesting—and conceivably it might be a separate section, section 123—would be as follows:

Section 123. The only other matter that I would like to mention is to be upon the statement by Mr. Landham that there are in the bill a number of controversial sections.

Our association does not feel that is so.

In that connection, I would like to recall the attention of the committee to the statement of Justice's report on the bill contains only eight suggestions or criticisms. I would say criticism of eight paragraphs.

When you consider that the Antitrust Division has had quite a talent for criticizing patents, I think that is a real accomplishment.

I also feel, although I have not had much time to study the bill on the Antitrust Division's report, the Department of Justice has made that practically all of the recommendations of the Antitrust Division's report, which is a matter of which we are pleased.

I also agree that many of them are perhaps justifiable if the bill is understood to be the matter of which the bill is not sufficiently clear.

As to the remaining criticisms that the Antitrust Division has made it is entirely a matter of whether the Antitrust Division's policies with respect to patents, which came from a sharp at the time Mr. Arnold came into the Department, should be followed, or another policy is this committee's policy, which should recommend and urge the legislation that should be the next step.

I feel that the work that has been done by the Department of Justice on this bill and the comments that they have made to it show that the bill is an excellent bill, and we recommend it very highly to your committee.

Mr. Busby. Thank you very much.
Mr. Rogers. May I ask this: You state that, in your opinion, there are not enough controversial things in this recodification that would justify our not going ahead with the codification and that there are, as pointed out by Mr. Lanham, possibilities that is, he points out possibilities, and it has been directed to our attention perhaps this contributory infringement is one controversial point.

Do you feel that the section here, 231, as it is now written, actually states what the decisions of the courts have announced within recent years?

Mr. NEAVE. My difficulty in answering that Mr. Rogers, is rather the same difficulty Mr. Federico had. The law is in a considerable state of confusion on that point. I prefer not to go into it because it is going to be gone into tomorrow, I believe, by somebody who is more capable of doing it than I am.

On the other hand, I do very much feel that where the law is in a very confused situation, it is up to the Congress to clarify it.

Mr. ROACH. Do you think that this clarification is sufficient in words as placed in the section 231 to properly advise the legal profession and the many lawyers as to when and where they may be likely to become contributors to a patent infringement?

Mr. NEAVE. As to that, I think that this will very much help the lawyers in straightening the matter out. It does not go the whole way; but it is better than nothing, and it will help us in knowing what the law is, insofar as it goes.

Mr. ROACH. The main objection so far, of the legal profession, as I understand it, is to have it clarified.

Mr. NEAVE. That is right, sir.

Mr. ROACH. It is not so much as to which way it may go as to how far must act before he becomes a contributor to an infringement.

Mr. NEAVE. That is always a matter depending upon the facts themselves.

Mr. ROACH. That is all.

Mr. DAYTON. Mr. Neave, do you have any questions of Mr. Neave?

Mr. CRUMPACHER. No questions.

Mr. DAYTON. I believe that is all.

Thank you, sir.

Mr. NEAVE. Thank you, Mr. Chairman.

Mr. DAYTON. We will meet in the morning at 10 o'clock, gentlemen. (The hearing, at 4:40 p.m., the hearing recessed, to reconvene at 10 a.m., Friday, June 15, 1931.)

FRIDAY, JUNE 15, 1931

HOUSE OF REPRESENTATIVES

COMMITTEE ON THE JUDICIARY

WASHINGTON, D. C.

The subcommittee met at 10 a.m., Hon. Joseph R. Brycey, chairman.

Mr. BRYCEY. Gentlemen, the committee will come to order. We want to make as much time as possible today, due to the fact that some of the gentlemen have come a great distance.

Mr. Mosier, counsel for Helen Martin Co., did you want to be heard?

STATEMENT OF HAROLD MOSIER, REPRESENTING PATENT COMMITTEE AIRCRAFT INDUSTRY ASSOCIATION

Mr. Mosier, Mr. Chairman, my name is Harold Mosier. On behalf of the patent committee of the Aircraft Industry Association I ask to leave with the committee a short statement for the record on this matter. I have already given copies to the clerk.

Mr. DAYTON. You are familiar with and have read the bill, have you?

Mr. Mosier. I am not a patent lawyer, and I am afraid I do not know much about the bill, but I am told by our people that this statement approves the bill.

Mr. BRYCEY. And you have already submitted a statement?

Mr. Mosier. Yes, I have.

(The statement referred to is as follows:)

STATEMENT OF AIRCRAFT INDUSTRY ASSOCIATION OF AMERICA, INC.

WASHINGTON, D. C., APR. 25, 1930

The aircraft industry is a manufacturing industry but it is also a contracting industry. It produces highly technical products by virtue of continuous research and development which is based upon the changing needs of its customers, both government and commercial. This industry illustrates considerably in its size and relationship to other industries. During recent years it has increased among the larger industries and the industry as a whole is composed of small A committee of representatives of manufacturers of aircraft and aircraft components has reviewed H. R. 3599 and also all of the previous drafts. It is believed that the following suggested changes will strengthen existing laws and will result in indirect savings to government and to industry.

Section 204. Definitions:

Delete: (a) The term "process" includes method, and a new use of a known process, machine, manufacture, composition of matter or material.

Comment: The definition of section 204 is too broad. It was obviously intended to merely cover new use of chemical compound without alteration of