Mr. Rogers. May I ask this: You state that, in your opinion, there are not enough controversial things in this codification that would justify our not going ahead with the codification and that there are, as pointed out by Mr. Latham, 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. Rogers. Do you think that this clarification is sufficient in words as placed in the section 231 to properly advise the legal profession and the manufacturers 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. Rogers. The main objective so far, of the legal profession, as I understand it, is to have it clarified.

Mr. Neave. That is right, sir.

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

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

Mr. Rogers. That is all.

Mr. Buxton. Mr. Cummings, do you have any questions on Mr. Neave?

Mr. Cummings. No questions.

Mr. Buxton. I believe that is all.

Thank you, sir.

Mr. Neave. Thank you, Mr. Chairman.

Mr. Buxton. We will meet in the morning at 10 o'clock, gentlemen.

(The testimony, at 4:30 p.m., the hearing recessed, to reconvene at 10 a.m., Friday, June 15, 1931.)
Section 112. Death or Incapacity of Inventor. — If the applicant be deceased, or if he shall become incapable of conducting the business, the legal representative of the deceased shall be entitled to the benefits of the patent, if any, and shall have power to act for the applicant in the manner prescribed by law.

The legal representative of the deceased inventor shall be entitled to the benefits of the patent, if any, and shall have power to act for the applicant in the manner prescribed by law.

The legal representative of the deceased inventor shall be entitled to the benefits of the patent, if any, and shall have power to act for the applicant in the manner prescribed by law.
Mr. BARTON. Do you have a prepared statement?

Mr. FELLNER. No, sir. I have not. I just want to make a few comments. Would you permit me to talk on sections 101 and 103?

Mr. BARTON. Well.

Mr. FELLNER. Of course, these comments are comments rather in the way of suggestions for improvement than criticism, and I just want to point out the difference between the old language in H.R. 9135 and the new version in H.R. 3760 as follows: "Whenever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, and that to the end that the wordings in the new proposed bill may be the same with the old bill, H.R. 9135, there was the additional qualification as to what inventions are:

An invention in the nature of a discovery, as embodied in a new and useful process, machine, manufacture, or composition of matter, or new and useful improvements thereof may be patented.

I feel that the deletion of this paragraph in the old version might give rise to certain implications, namely, that the invention in any event must be in the nature of some kind of mechanical structure, but that the discovery, for instance, of a new principle of nature which can be embodied in some useful art, machine, or composition of matter, such as disease therapy, might not be eligible for a patent.

To illustrate the case I would like to point to an opinion which was recently rendered by the Supreme Court of the United States in Funk Bros. Seed Co. v. Kalo Insecticides, Inc. That was a case in which the inventor had found or discovered that among six different species of mutably inhibitory bacteria there was certain discovery which could be mixed selectively without harmful effect on each other for the purpose of fixing nitrogen in certain leguminous plants. This was a very important discovery, for the simple reason that it permitted the agriculturist, or the farmer to buy a package of these various strains and use it for different crops, such as alfalfa, soybeans, and to store inoculum in large packages. Before that invention made it he had to buy a special package for each and every one of his crops and if he kept the different inoculants in one package they would not preserve their usefulness very long.

There is a great problem to the farmer as to how to get the right and compatible mixture for the purpose of enhancing the development of the crop.

The discovery in that particular case was that there is such a thing as a bacterial strain in each bacterial species, within the six different possibilities which is not subject to mutual inhibition.

The Supreme Court pointed out that this invention was simply a discovery of a law of nature which cannot be patented, and which is not patentable subject matter in accordance with the statute. However, the statute actually reads:

Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter may receive a patent, and the controversial question was: Was this a patentable new and useful composition of matter? The Supreme Court of the United States rendered its decision, and as far as it relates to this bill, it has simply to be interpreted as a discovery of a law of nature which therefore cannot be patented.
Mr. BELL. They are patentable, but unfortunately we are afraid, I would say, about bringing these patents into court and having them contested, because we know, as we have said, that the quoted decision of the Supreme Court respecting the discovery of a law of nature is questionable whether such patents would be upheld.

Mr. WILLIS. Is that consistent with the statement just made that they are patentable today?

Mr. BELL. Yes, sir. They are patentable in the Patent Office, but being patentable in the Patent Office is one thing; and being sustaining by the courts is another. Many patents have been granted in the Patent Office, but opinions differ in different courts. For instance, the patent referred to in the Funk brothers' case was upheld in the circuit court of appeals. It had been held invalid in the United States Supreme Court, and then was decided again in the Supreme Court of the United States. This shows the great diversity of opinion concerning the patents of this type.

Mr. WILLIS. And the party you are advocating would be taken care of if the case I referred to could be dropped out of the wording of H. R. 1933?

Mr. FISHER. Yes, sir.

Mr. WILLIS. In the language which is not carried into the new bill, and it is my point that it could be cleared up, and that the difficulty covered.

Mr. FISHER. I would say if we had that section in the previous language of the proposed concept of patentable discovery, would be embodied in a new and useful art, and that language is not used in the new bill.

Mr. WILLIS. That would be the case where an inventor finds in an old compound a new remedy, a new drug, for instance, which results in a certain disease or certain epidemic conditions in cases even in human beings.

Mr. FISHER. However, if you reword this section such action might possibly be taken as a reversal of this principle, one of the previously described concepts of patentable discovery, and it might be read. Let us say, as the committee wanted to exclude inventions of this type which were originally included in the speed legislative text, as the new and abbreviated version actually speaks that which was accepted by the previous language in H. R. 1933.

Mr. FISHER. I understand, in our new version the term "invention," has been defined as follows:

Mr. WILLIS. If it is, I think that this single sentence, the statement of this definition, is subject to various interpretations, and I do not believe that the following version was used when you said that an invention in the nature of a discovery was embodied, or if it can be denominated "in a new and useful art, machine, manufacture or composition of matter may be patented." In other words, the latter part of the invention just resides in the discovery, but the practical application thereof is important.

Mr. FISHER. If we carry this concept in the new bill by retaining the previous language, I believe we would be greatly helped by adequate investigation and subsequent engagement of industrial development by investing hundreds of useful things, which you are carrying on or pursuing research in laboratories, you do not intend just to hold, as all of this research to the public right from the beginning, so that practically anybody can take a free hold of it.

It is for this reason that I suggest that the previous language in paragraph 101 is reinstated.

Mr. WILLIS. Yes, sir.
Mr. Willis. That is the point I thought you had in mind. I am simply trying to follow you clearly.

Mr. Feller. Yes, sir. Now, if I may, I would like to say just a few words in reference to the provisions contained in section 101. Section 103 touches upon...

Mr. Chemnitz. Before you go into that may I ask you a question.

Mr. Feller. Yes, sir.

Mr. Chemnitz. Referring to section 101. You think that the second paragraph, which is entirely omitted in the pending bill, would if included give you protection?

Mr. Feller. I think it would give better protection, if I had to interpret a wording, where such a wording is put in the bill.

Mr. Chemnitz. In the paragraph of the new bill, the wording "art" is omitted. Do you think including it would help?

Mr. Feller. Of course, the question of what is art may be very controversial. We do not know how the courts might define it; for instance, it may or may not cover a treatment.

Mr. Chemnitz. Then you are not recommending the word "art" included in it?

Mr. Feller. I would have no comment on that.

Mr. Chemnitz. If the second paragraph is included.

Mr. Feller. I would have no comment on that. But I certainly would have a comment on the term "composition of matter."

Mr. Willis. As I understand it, from the point of view of the industry you represent, your requirements would have been met by the language of section 101 of the old bill, R. 9335, particularly using the second paragraph beginning with "an invention in the nature of a discovery."

Mr. Feller. Yes, sir.

Mr. Willis. You do not consider that the new bill, section 101 of H. R. 9335 with the definition, accomplishes what you have in mind? In other words, is it not simply a question of some wording. Does not the definition, if included in section 101, embodied in section 101, carry all the implications you used in the second paragraph of section 101 of H. R. 9335? You see, in H. R. 9335 you did not have the definition contained in section 101 of the new bill. Now with these definitions, would not they supply the purpose of the second paragraph in the old bill? What it was intended to cover?

Mr. Feller. I would be inclined to admit that, had we not had the same situation in spite of the prior law which also reads "any person who has invented or discovered" as provided in Revised Statutes 580, 53 U. S. C. 51. And yet we are confronted with the decision in the case of "composition of matter," rendered by the Supreme Court. That is why we would rather have the clear and specific wording of H. R. 9335 in the law. If the present statutes must be considered as including inventions of that type, I thought that the provision 101 with the new definition of the term "invention" to include discovery, might still not cover that type of case.

Mr. Willis. Just take a look at section 100 of this bill, the pending bill.
practical embodiment must display inventive ingenuity. That is, what I have called about, a court may hold that it is not sufficient for consideration only to the genius of discovery as the heart of the invention, but may also find it necessary, in accordance with the statute that the actual embodiment or practical application of the discovery may be patentable if the heart of the invention resides in the discovery of a principle of nature. But under the present language, as provided in the pending bill, such an interpretation is only acceptable but not clearly called for.

Mr. Curtiss. It seems to me that, to accomplish the purpose which you seek to accomplish, you will need clearer language than is in effect, the present bill or the pending bill, or the old bill, because the three of them use the same language, with slight differences in arrangement of the words.

Mr. Felger. Well, I would say that the second paragraph of section 101, makes things pretty clear by definition. If you say that "invention in the nature of a discovery as embodied in a new and useful art, machine, manufacture, or composition of matter" cannot be patented, then you are recognizing the fact that even in a mechanical invention, the addition to mechanical inventions which displays a peculiarity of principle of nature may be the basis of a patentable invention.

Mr. Curtiss. Does not the language of the pending bill say "whenever discovers any new and useful process, machine, manufacture, or composition of matter" or "may obtain a patent covering it"? I think that would specifically cover the case referred to. And, if the Supreme Court has interpreted the words as you have, I do not see how including that language in the paragraph would cause them to make a different interpretation.

Mr. Felger. I believe that the Supreme Court in that particular case did not interpret it in the way that the bill has not contemplated. If the law had been couched in such language, and if language had been before the Supreme Court, I believe a different decision in Fox v. Kohl would have been reached. The Supreme Court under such language would have recognized invention in the evidence of discovery as it was, however, the Court was able to hold that a discovery of a law of nature is not patentable if the practical application suggested itself. In other words, it is not an invention, but just a discovery, and a discovery is not patentable.

But if you go to the point of adding that an invention in the nature of a discovery, embodied in a new and useful art, or composition, that is, if you can give a practical embodiment to that particular principle of nature, such as the discovery of the usefulness of a particular drug which under certain conditions can not be incorporated in a new and useful composition that such an invention can be patented, I believe that would afford as much protection to the pharmacist as the old bill. This would allow application for differentiated ingredients for inventive ingenuity. And I personally feel that this is not quite justifiable, because the real heart of the invention must be recognized in the discovery of the law of nature.

As I have indicated this was the original concept of what is provided for in the Revised Statutes of 1886. But in order to make that clear and to avoid controversies as above in connection with the Supreme Court decision in the case of Fox v. Kohl Co., I believe it to be necessary to be advisedly to define it clearly that an inventive principle may be patentable if the heart of the invention resides in the discovery of a principle of nature. But under the present language, as provided in the pending bill, such an interpretation is only acceptable but not clearly called for.

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The question now before the committee is, whether it is of the opinion that the patents act should have a positively evaluative criterion for inventions. In other words, shall we say that evidence of invention is recognized in the fact itself that a new device or a new machine satisfying a need of long standing is presented to the inventor in the first instance, and that the solution, though it be simple for it, and when the solution was readily accepted by the trade, is that evidence of invention or not?

I thought the committee was of that opinion when I read the original version in H. R. 9133; where it was specified that "patentability as to this condition shall be determined by the nature of the contribution to the art." In other words, evidence of invention is the readiness with which the novelty has been accepted; and it is spelled out by the value which actually resides in the contribution to art. Under this definition we would not have to go into a particular inquiry with regard to the question of inventiveness or what has been called "inventive genius," which terms have been used by various Supreme Court decisions and in various other court opinions.

Now, in the new bill, this positive criterion of evidence of invention has been omitted. Does that mean to repeat part of that part of the concept according to which evidence of invention may actually be represented by the value of the thing that has been invented or has been found by the inventor? We thought it did.

Mr. BRYSON. I think you are not.

Mr. FELLNER. Maybe not?

Mr. BRYSON. We think so. But, of course, we would be glad to evaluate your views.

Mr. FELLNER. Do you think that the sentence in the second paragraph "patentability shall not be negatived by the manner in which such invention was made" broadens, so to speak, the concept of invention so as to include the positive criterion as found in the original bill?

Mr. BRYSON. I do.

Mr. FELLNER. We thought that by the deletion of this criterion from the original bill H. R. 9133, we would still find ourselves in the situation as before, that the term "invention" remain unspecified, or relatively unspecified, and that it would continue to be subject to judicial interpretation. That is why we thought it would be very valuable to have this clarifying language in the law so that it would say what is patentable and what isn't.

Mr. BRYSON. Of course, the report accompanying the bill will elaborate on your views and the other views that may be expressed on these matters.

Mr. FELLNER. Thank you, Mr. Chairman.

Mr. BRYSON. We will call next Mr. G. Wright Arnold. Do you have an extended statement, Mr. Arnold? First, I think you should identify yourself for the record.

STATEMENT OF G. WRIGHT ARNOLD, SEATTLE, WASH.

Mr. ARNOLD. Mr. Chairman, my name is G. Wright Arnold, senior member, Arnold & Mathis, 1014 Smith Tower, Seattle, Wash., lawyers specializing in the practice of patent and trademark causes, member of the following organizations:
the subject of publication for some 25 years, and was copyrighted in 1927.

Now you may ask, how does the new functional test apply in the chemical field? In the chemical field we take the case of the Barred Cotton. The prior art showed cotton batting had been used saturated with boracic acid solely, but such cotton saturated with boracic acid would crystallize; it tended to dry upon the cotton and form crystals which impaired its effectiveness or efficiency and irritated the sensitive Risks of a wound.

On the other hand we also had cotton batting saturated with glycine, but the glycine was not as effective as an antiseptic as boracic acid, so what this particular inventor did was to combine the two, and this is exactly what happened. The glycine prevented the boracic acid from crystallizing, and thus we had a new functional relationship, and the greater antiseptic properties of boracic acid were made available in this combination.

So this is applied to both the chemical field and the mechanical field, this test of new functional relationship.

The National Patent Planning Commission, of which Mr. Charles F. Kettering was chair, in 1930 reported:

"The most serious weakness in the present patent system is the lack of a uniform test or standard for determining whether the particular contribution of the inventor merits the number of the patent grant."

"It is inconsistent with sound national policy to continue to grant patents with existing uncertainty as to their validity, and unfair to the inventors of the country and to manufacturers and inventors who have invested on the basis of a protective security in the form of a patent issued to them by the government. The problems of enforceability and the burden of proof for the patentee would be far more serious, by legislative enactment, to lay down a reasonable, understandable test by which inventions shall be judged both from the standpoint of the grant of the patent and the validity of the patent subsequent and the utility of the patent therefrom.

Lawbreakers abound with cases where the court has seriously stated, in effect, "in our opinion the patented device is obvious to those skilled in the art," or at other times that, "it is well within the skill of the ordinary skilled mechanic." This occurs even when the device or invention is a long-felt need and the public has manifested such is the case by the wide adoption of the invention.

After spending years in inventing, developing, and marketing the device of an invention it was aptly mounted. In the later stages of such efforts, it is submitted that it is a tragedy of justice to be met with a holding of a court that the patent is invalid for the reason that, "It is obvious to one skilled in the art." Such a conclusion is flawing and upsetting both to the public and the court. In short, the reasoning amounts to nothing more than, "I think anyone skilled in the art could make such an invention." When legal decisions have no meaning to one skilled in the art, the patent system as an incentive to mechanics and industrial leaders cannot truly serve its purpose. The reward of efforts of inventors, financial backers and industrial leaders involving years of their life may well be wasted if no criteria definition with which to test patent system as an incentive to mechanics and industrial leaders cannot truly serve its purpose. The reward of efforts of inventors, financial backers and industrial leaders involving years of their life may well be wasted if no criteria definition with which to test the validity of a claim is established. After the solution of the problem, of course, it is obvious, but post facto knowledge renders much obvious.

Mr. Roberts, in the introduction, page viii of his text, very definitely pointed out that the commonly employed criteria of obviousness or
mechanical skill or genius, and so forth, were entirely subjective in character. He sought an objective test and states:

No question of patent law has perplexed bench and bar more than that of patentability. For the most part, if not invariably, this question has been approached in an almost subjective and mute; many have been the speculations as to the distinction between the inventive faculty or "genius," and the skill or ingenuity normally possessed by persons skilled in art; the criteria suggested for the definition of this distinction have, the author submits, failed to satisfy the standards of logic because quite as subtle, indefinite, and incapable of definition as the positive quantities they are invoked to define.

This we have the origin of the terms "subjective" and "objective" in the report of the National Patent Planning Commission and thus also in the support of the new functional relationship test a very careful and prepared text by one of the recognized very early in the patent profession. In short, if the committee recommends the adoption of the inclusion of the new functional relationship test to section 103 and the same becomes law, the courts will have a test of the result of 25 years of effort, which carefully analyzes and applies the test to the Supreme Court cases obtaining before the requirement for the writ of certiorari. The test, it will be noted, satisfies all those with the exception of 3 which are deemed against annulment.

In the Patent Office the examiners have great difficulty in trying to decide questions of patentable novelty. For the most part they rely upon the subjective test and the more conscientious they are the more difficulty they have in trying to pass on the patentability of an application's contribution is obvious in view of the prior art or whether it is not obvious. The time and energy involved in correspondence and conference by examiners with the examiners in attempting to point out that an applicant's invention is not obvious and that it is patentable consumes a very large percentage of the examining corps time. In this connection the examiner often answers an applicant:

"In view of the references (that is, prior patents of Joe Doe and Harry Roe) it is held that the device of applicant is obvious and therefore not patentable." The applicant then often answers, "Since the patent of Joe Doe was issued 25 years previous and the one to Harry Roe was issued 15 years ago, it is submitted that it has not been obvious." All such comments and answers manifestly are based on purely subjective processes rather than objective reasoning. In this connection Mr. Roberts states:

The course of nearly any patentable invention leads first through the Patent Office, where the examiner and examiner base on cooperation and communication between the agents of both parties to the transactions in this bureau. This is a reliable criterion, derived from judicial authority, by which to determine whether or not a subject matter presented is a patentable invention, how much time and effort in argument might not be spared.

There is another point, which is that the functional relationship is not something taken out of the air, something conceived out of the air. It is deduced from the judicial decisions, it has all of that backing. If we want to know what sulfur is we do not ask anybody it is obvious as to whether that is sulfur or not. We apply the objective test, such as is a certain boiling point or not, does it combine with other chemicals or not, as to proportions, and we know definitely this is sulfur. We want to get the same approach to patentability. We cannot do it exactly, and in saying that I am not detracting from its reliability.

Take the case of the barbed wire. Today you might have an argument about it, that it is just an adaptation, but we know there was a functional relationship. The inventor made that barb stand up and do the work, and that invention made it possible to fence in the great and fruit-growing industry into something that is quite pertinent today, by the way.

Mr. Roberts worked some 25 years or more in carefully digesting all the patent law Court cases before write of certiorari were required and there conceded the test set forth in his text and hereabove as the paragraph desired to be added to section 103:

On page 3 of the introduction, Mr. Roberts states:

In making this essay, the author had a prior definition of his own with which to be in line. Only after analysis and comparison of the cases did the definition appear which harmonizes all this group of cases -- 184 cases, the negligible exception of which the author has objected to as an anachronism and out of step with the impressive procession formed by tradition.

Let it be particularly noted that many of the examiners in the Patent Office at the present time are applying the objective test of Mr. Roberts. Some have declared that they give great reliance upon Mr. Roberts' text and have been applying his objective test in their work.

So, this committee is not being asked to bring in something new that has no precedent, that has no testing or previous history.

As a result, I have in trying to decide whether the applicant, Mr. Charles F. Kettering, who recommended the objective approach calls attention to the difficulties of the subjective approach, and the confusion we are in at the present time.

I am not stating that the Commission approved these very words, and I will get the wording of the report which is:

"The Commission therefore recommends the enactment of a declaration of patentability shall be determined objectively by the nature of the contribution, to the advancement of the art, and not subjectively by the nature of the examiner by which the invention may have been accomplished. There you have objectivity contrasted with subjectivity.

Accordingly, if the above paragraph set out in the beginning is added to section 103 we would have the law recodified as it is being practiced by many examiners today. Unfortunately, we do not have the advantage of such practice in many of the courts and the additional would give needed protection against subjective tests and nullifying of patents where direct new functional relationships exist between the patent and prior art combination. If the addition sought to be added to section 103 is not added, then we have given statutory endorsement for the first time to the "obviousness" test without a corresponding endorsement of the objective test followed by many of the examiners of the Patent Office.

There may be those who feel that we are now trying to put something into definite form that is too rigid, that it might take care of some little invention and require that to be patented where it would not be, and the obviousness test. I submit that is not an answer. I call your attention to the barb-wire case. Let us remember that this test must be applicable at the time when the inventor comes to the attorney. The inventor should not have to wait until after he has
made his contribution to the art. The lawyer who takes that man's money is taking it to tell that man whether or not he has a patentable invention. It is a question as to whether or not we should be taking that man's money on a mere guess. Personally I do not take upon that basis. When a man comes in, if I cannot find a new functional relationship involved in that man's invention, where I feel it has some other test than the subjective test I tell him that I do not think he has a chance for a patent and, if he insists upon going forward with it anyhow then I give him a letter to that effect, stating that he can take his chances on whether or not the Patent Office will see the case on the basis of the obviousness test. This is very wasteful.

The Patent System of the United States provides great new frontiers for our graduates from electrical, mechanical, and chemical engineering institutions as well as for the ordinary mechanic who does not have the advantage of a university technical training. These countries have great resources and have great ability, but they have not made the progress which this country has. Certainly when all the factors are weighted, the conclusion is inevitable that the patent system of the United States is greatly responsible for a great part of the success of our country economically, and militarily. I consider these words right here of the utmost importance: I consider this the real national defense committee of our country. You have in your hands the power of deciding whether we are putting into this proposed law one of the keys to this whole patent system. If you do not have a proper test for patentable novelty you cannot get a worthwhile patent, and if you do not have a patent then when you go into the court you have the risk of having the court tell you, "We think this comes within the skill of the art." Just as in the following case, in which the court said:

Although the method advanced by applicants might well result in a saving of time, that of itself does not necessarily involve the invention. Contrary to the method advanced by applicants eliminates or consolidates one of the prior parties—

we believe such elimination and consolidation is within the skill of the art.


Now, after a party has invested years of his life in a patent, and has induced his friends to bring in their money and help him, to be told after that "We think this comes within the skill of the art" is a satisfactory reason for judicial decision. It is almost unthinkable that we have such an inconsiderable basis for testing patentable novelty. It is a question respectfully, it is high time we get down to a sounder (new functional relationship) test to give the inventors, the manufacturers and industrial leaders something to guard their interests.

The patent laws constitute some of the most democratic legislation we have. If a man is working at his bench, on his time and he conceives of a new idea that idea is his. It is not that of his employer's unless he has made a written agreement to assign the right to his inventions, or has been hired as an inventor. The American Federation of Labor out our way will not allow its men to sign agreements that any inventions they make belong to their employers. They have to take it up with the unions, and they will make an arrangement whereby he is hired as an inventor, and then he is paid accordingly.

A mechanic without an inventor's contract should never have to assign all of his time that he regards an idea and all of the work he gives to it to the employer. He should be recognized as the iron worker who got the idea of the charging steel into one receptacle and thereby separating out the grass, and the steel company, as you know, provided a trust fund for him, and took out his patent, and created royalties to protect that man. This is the kind of a democratic nation we have. Right down to the grass root.

The patent system has made it possible for us to serve most of the workmen with the necessary fuel for their daily living. The hours of living are recognized in the United States to be far superior to that of other countries. If this is to continue, then the patent system, it is respectfully submitted, must be protected.

_Mr. Rogers, Mr. Arnold, may I interrupt you there?

_Mr. Rogers, No.

_Mr. Rogers, Do you understand you contend that at any place in this law that this will prohibit contracts?

_Mr. Arnold, No, your Honor, I have no such conception as that.

_Mr. Arnold, I am trying to do in these sentences to imply the importance of your patent system. I consider this patent system fundamental to the idea of the protection of our country.

_Mr. Rogers, We agree in that, I am sure.

_Mr. Arnold, That is good. There are some, though, who think it is a monopoly. I am glad you raised this issue. They say it is a monopoly. Now, that is entirely a wrong term to apply to a patent. Thank your United States University for that idea. He has pointed out that the patent lawyers are depletion in stopping the use of the word "patent monopoly." It is no more of a monopoly than your automobile or your library. Nobody can use these without your permission. An invention is only your property for 17 years.

_Mr. Arnold, I was curious about your reply when you made reference to labor unions and corporations and the laboring class go on to work as an inventor.

_Mr. Arnold, Exactly.

_Mr. Arnold, There is nothing in this law that would prohibit that.

_Mr. Arnold, No, not a bit. I had no conception of suggesting any such idea, and I am glad you make that clear, and I want to be definitely understood on that point.

_Mr. Rogers, Have you any thought of the proposition of the large corporations who hire individuals as inventors and require them to assign their interests to anything that may be developed from their inventive knowledge? How will this increase this democratic system or leads to monopoly?

_Mr. Arnold, No. I am glad you asked that question. This is Mr. Rogers, is it not?

_Mr. Arnold, Yes, Mr. Rogers.

_Mr. Arnold, I am glad you asked that question. I feel that the requirement that they sign a contract and get paid accordingly opens up a field for employment for our graduate engineers, both chemical and electrical.

_Mr. Rogers, It opens up the employment for them, but, on the other hand, by virtue of that arrangement or contract which it is necessary to sign at the time they accept employment, is there not a tendency...
target all of the new patentable inventions into the hands of those large corporations with the result that there may be a monopoly given to those who maintain the laboratories. Do you see any possibility out of that that might develop as a result of that provision? You feel that we should have a patent code so that the attorneys and inventors may thereafter determine by reading the code whether it is patentable or not? That is your thought, is it not?

That thought is to have in the code a test that will be objective in character.

Mr. ROXX: What assurance can you give that if it is written into the code that the courts will not differ in their interpretations upon it so that you may pay upon it as we read it, as they have done in the past?

Mr. ARNOLD: I think I am a very important question and I am very glad to find there is a tendency to break away from a company and start out on your own, and that is bringing about an increased sharing in those rewards.

Mr. ROEX: We have also had instances of those who have accepted employment and helped to perfect an invention only to have it left with their original inventors. That is the case with the companies that are about to share in the awards of the inventors. In other cases there is a tendency to break away from a company and start out on your own, and that is bringing about an increased sharing in those rewards.

Mr. ARNOLD: Unfortunately, Mr. Rogers, we have weaknesses among inventors as well as among editors as editors may have been used to the companies that are about to share in the awards of the inventors. In other cases there is a tendency to break away from a company and start out on your own, and that is bringing about an increased sharing in those rewards.

Mr. ROEX: Do you not feel that with section 103, inclusive of 104, the court is pretty well covered with the authority of those cases that have been decided, trying to put it in concise language?

Mr. ARNOLD: I say I do not think so, Mr. Rogers. I feel that it is better to put it in the objective test. It is the "unobvious" and the obvious character that is in the case of section 103 that is exactly what Roberts is contending against.

Mr. BARRON: Would you have us spell it out by statute so plain and simple that he who reads it may read, including the Supreme Court?

Mr. ARNOLD: I say I would have you put in just those words we have suggested because that is the definition of objective patentability or new functional relationship that Mr. Roberts has worked out so much effort. I do submit that this section is a little different from the law that is in the case of section 103 that is exactly what Roberts is contending against.

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point out the situation to the court and put in your evidence and your opponents can bring up new evidence showing that as a matter of,.the functional relationship existed before, that it was existing in the art, and the court can hold the alleged new functional relationship old then you have not established a new functional relationship. But if there is a new functional relationship then it is important to get in evidence of possibly thousands of the old and new relationships in support of your invention upon the basis of which you have spent years of your life and years of work, and have invented the name of your friends involving investments of possibly hundreds of thousands of dollars.

Mr. Rogers, assuming for the purpose of this question, that we should adopt your definition as set forth on page 2 of your prepared statement, your suggested addition to section 15, could you have a case of one applying for a patent and then received a patent from the Patent Office, could have the same declared invalid in this court?

We think the answer is no. If we adopt your definition, the question would be, whether the invention is new and not abstract. That is a question of fact, and is obvious to one and other.

We add the proposed new functional relationship test ( objective test) and it is not a question whether the invention would not be in any sense a condition of which we are not aware. We have found in the past that we would try to follow the court's decision, and we would not follow the court's decision in this case.

Mr. Roberts, in such a case I would not be done with that particular case. There would be one of the courts which determined whether it was valid or not.

Mr. Roberts, let us forget the lower court and say you are in the higher court.

Mr. Roberts, and you see in the higher court the same huffle or fear that is now held by the industry and the inventors that the patent is not valid and cannot be determined to be a valid patent until it has been declared invalid by the highest court of the land, would your definition here or any other phrase of this law have removed that fear and made it impossible?

Mr. Roberts. Of course, Mr. Rogers, please understand that I am not saying that Mr. Roberts has discovered the last invalid test that we can always submit to the Supreme Court.

Mr. Roberts (interposing). That may be, but the point is, as I understand it, you know that the proposition of trying to reconcile this law has been going on for some time.

Mr. Anson. Yes, indeed.

Mr. Roberts. And there are a number of cases where the business, and some of them, such as yourself, have devoted a great deal of time to it.

Mr. Anson. Indeed they have.

Mr. Roberts. As you have stated in your testimony here, the objective is to try to establish with some security after a patent has been issued by the Patent Office that thereafter the courts will not sit. Now, that is more or less part of your statement this morning.

Mr. Anson. Yes; it is part of it, but not conclusive, because I think I have the right.
the frame with your groceries up to her station. She can pull those groceries up there and let go without any further action, and the frame is erected for the next customer coming along. The evidence showed in that case that there had been a tremendous increase in the number of customers served and in a shorter time, that it was of benefit to the customer and of advantage to the store. So, we had all of the industrial working in that matter, and benefit given to the public in that in-\n\nventors. Then that went to the court, and Justice Justice of the sixth circuit, at Cincinnati, pointed out in her opinion in the circuit court of appeals that the defendant admitted that there had been no such prior arrangement as that which constituted this bottomless open framework with open front, and yet the Supreme Court, and I do not know how they ever missed it, went right on and said there is no arrangement in this at all that was new, and yet here we have in that very case that situation.

If the court does not want to listen to the record, we cannot stop that, but I want to point out that in that case Justice Allen very clearly points out the new functional relationship, because when the frame was pulled up there you let go and all of the groceries were left there at station of clerk on the counter. The alleged anticipating court arrangement depended on was the billiard ball triangle, where you take billiard balls and put them in a triangle and very carefully pick up the triangle when the balls are in position. The new functional relationship was in there in that case, and yet the court struck it down.

Mr. ROGERS. That is the point. If we took your amendment and put it in there, do you think the Court would then be prohibited from arriving at any conclusion? I suppose this law had been recodified and your amendment was in there, would the Court then have been bound to have arrived at some different conclusion, or what would have been the situation?

Mr. ARNOLD. Off the record.

(Discussion on the record.)

Mr. ANDREWS. The question is very pertinent, and I am glad to have it put by the gentleman, that we have something that is perfect, but if I cannot get a plane that will take me clear across the country I will take one that will get me as far as I can go, to Chicago, for example, and transfer to another one, and so forth, until I get into Washington. Let us get as far as we can with our objective test.

In this case I think if we had a law like this that many members of the Court might have no idea, so far as they have evidence, they do not seem to have any idea of the logical test that gives them any kind of a basis for making a determination, and that is why Mr. Jackson has pointed out here that the only patent that is valid is one which "this Court has not been able to get its hands on." I think that is a very serious indictment that I have ever heard a patent lawyer make of a court, and I do feel if we had this law that when the functional relationships are established we have the point established, that this does deal with some degree of certainty, and that is a good law.

In legal jurisprudence that principle of law is good which works out to give the best justice with the greatest uniformity and certainty to the greatest number.
Mr. Burson. We have heard mention of your company in connection with a decision of the Supreme Court.

Mr. McCauley. Yes, I believe you have. I have here a statement of which has been brought to your attention in the record.

Mr. Burson. So far down, and please observe the rule we have impressed on the other witnesses. Do you desire to read your statement or do you wish to reserve it for the record?

Mr. McCauley. For the purpose of discussion I would like to point out two or three matters I have mentioned in my statement, and file it for the record.

Mr. Burson. Your statement will be filed in the record in full, and you may make such comments as you care to make.

(The statement referred to is as follows:)

COMMENTS ON H. R. 2550 -(S. 253, 1st Sess.) TO REVISE AND COURT THE LAW RELATING TO PATENTS, IN PATENTS, AND TO ENACT STATUTORY LAW TITLE 35 OF THE UNITED STATES CODE ENTITLED "PATENTS".

(Prepared by E. K. McCauley, chief engineer and chairman of the board of the

Mellon Corp., Chicago, Ill.)

My name is Ira K. McCauley, chief engineer and chairman of the board of the Mellon Corp., Chicago, Ill., manufacturers of automatic controls and switches, I filed my first patent application in 1892 and since that time more than 125 patents have been issued in my name, and I have patents pending as well as others to be filed. Incidentally, a considerable number of my inventions have found commercial use, and I have witnessed their progress. In my opinion, granted to inventors in the art and industry, and the constitutional powers granted to Congress to promote the progress of science and useful arts, are not only a privilege but a right which is naturally among the privileges of authors to their respective writings and discoveries. What is herein suggested is that the progress of science and useful arts are not only entitled to the protection and encouragement of the government but that Congress has been granted the power and authority to provide such protection and encouragement. This bill is entitled "A bill to revise and codify the laws relating to patents and to enact statutory law title 35 of the United States Code entitled "Patents".

This bill would seem to be an admirable purpose, but I note that neither the bill nor the report mention many of those things which are a controversial nature which have not been individually accepted by the Congress or possibly in some cases even considered before.

It would seem to me that inclusion of those controversial matters in a revision of existing statutes is both improper and unfair, as some of those proposals, such as Patent, 101, 231 and 233, and particularly paragraphs 101, 231, and 233, cannot stand on their own and only by association with them as a whole could they be included into the law.

As an inventor, engineer, and businessman, I can assure you that there is more to that which appears in the planning, invention, and in the act. The people who deal with the obtaining of patents are involved in the whole process of invention and the Constitution and the amendments are involved in the question of their benefit or effect upon the public, other than those who can write into the statute or by the systems of heating thermostats in present systems. Why should the new system gather in the efficiency of the heating system without the present systems and man many of these things which we have been involved in?

In your business you manufacture several thousand specifications of instruments and apparatus. Your order department must process forty or fifty thousand orders every day. Your product is in innumerable products, and planers and grinders have more than 300 people in your organization, and it can readily be seen that new and different inventions are made every day.

Mr. Burson. It is possible that the present infringe- ment will take place in your industry involving nearly 300,000 unpatented patents embodying several million dollars worth of claims. It must be remembered that a claim is recognized as a separate invention. Certainly in the manufacture of the devices themselves we make every effort to avoid building infringing struc- tures, but if we do infringe, the devices will arise involving prior stages and conditions without any relation. The question is not the legality or whether the device is within the scope of a patent or not. If, for example, a manufacturer were to become effective, every time a customer ordered with some deviation such as a smaller bulb in a temperature instrument, or made of a certain alloy to withstand chemical effects we would then produce another possible patent liability, and not become a device infringer but because our customer brought about such infringement with a control he had "infringe- d", and this bill says in paragraph 231 (b) that an infringer is one who "causes such a performance for an infringing use and one therefore liable to be sued for patent infringement," as already mentioned, his position is very strong, and Mr. Jacks, counsel, said in his dissenting opinion in the case of Mercoid Corp. v. Mid Continental Fur Co. 225 U.S. 851, January 3, 1914:"

"Heart want of knowledge" of patent issue is not ordinarily available to diminish patent protection. The court does not see how that issue can make infringement of such a device not within the scope of a patent.

In this circumstance I think we should protect the patent owner in the enjoyment of the conditions are being met.

The last sentence in the above citation by Justice Jackson is one which I believe refers to a consideration in passing upon the advancement of the law and as not matter in the patent monopoly the unpatented parts and whether or not the device is included into the patent monopoly the unpatented parts and whether or not the device is included into the patent monopoly the unpatented parts and whether or not the device is included into the patent monopoly the unpatented parts and whether or not the device is included into the patent monopoly the unpatented parts.

If Congress has free rein to extend such monopoly power to the inventors, there is to be no feature that would increase the use of the patent monopoly, and the monopoly for that matter is not entitled to sell for the then and that the maker therefore is not entitled to sell for the benefit of the public. Paragraph 231 relating to contributory infringement is one which has been examined by the courts.

The other day it was predicted that the cooling systems of electric systems of heating and cooling would be beneficial to the home for 100 years. Controls for such a function are obviously expensive construction of such materials and they would be especially made, and the use would result from the sale of present heating systems. The text of this paragraph is not before the public, but the efficiency of the heating systems without the present systems and man many of these things which we have been involved in.

It is constitutionally impossible to make patents without the devices of others. The power of Congress to permit grants to the government in certain cases is not defined by article I, section 8. It provided for the grant for a limited time to inventors the exclusive right to their invention or discovery for the term of 17 years. The Congress cannot stand on their own and only by association with them as a whole. The entire bill has been included into the law.

As an inventor, engineer, and businessman I can assure you that there is more to that which appears in the planning, invention, and in the act. The people who deal with the obtaining of patents are involved in the whole process of invention and the Constitution and the amendments are involved in the question of their benefit or effect upon the public, other than those who can write into the statute or by the systems of heating thermostats in present systems. Why should the new system gather in the efficiency of the heating system without the present systems and man many of these things which we have been involved in?

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Every patent is the grant of a privilege of making, using, or selling the thing patented, exclusive of all others; and it does not extend to the discovery of the thing patented, for which there is no monopoly. The word "patent" is given to a public notice, to which all others are invited. The word "patent" is derived from the Latin word "patentum," meaning "open." The patentee has the exclusive right to make, use, and sell the patented article. The patentee is not the inventor of the invention, but the person to whom the invention was granted by the government. The patent is a public record, and all persons are bound by its terms.

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to know in all cases whether we infringed or not. When we build a machine or a process, we usually get an idea whether the particular construction of the machine or process we make would infringe a patent on that device, but there are hundreds of uses for these instruments, and we have a number of salesmen out, and a number of people handling incoming orders, and between these salesmen, and the people handling orders, it is a safe estimate that there are 200 people. The number of orders involved is between 40,000 and 50,000 every year. This bill includes salesmen, we were told. He might know the use but not know it is my belief, knowing the wording in the bill is, "Knowing fully," and I will refer to it.

"Knowing fully" will thus become highly controversial, and it will be necessary for the parties to bring before the Court by various patent lawyers to meet their particular construction, and we have had in the past experience of that nature. Need not appeal to the importance of the cases, but if you go into those cases you will see the thing I am talking about. Those words mean different things to different people, and the attempt is usually made by the lawyers to get the Court to accept their construction of these words. For instance, take the words "knowingly sells this device," and later the same you, and they state, "You made this article to infringe this patent." The question is what does "knowingly made," mean. If a man said he was going to use it on a chemical process, that he was going to use it there, and for instance it might infringe a chemical process of some sort. It he used a Mercoid switch he might have used it knowingly, if he did, it would infringe a patent, but without it, it would not infringe. Suppose this man added the switch, and he told the salesmen to use the switch, to use that on such a process. He would not probably say that it infringed a patent, but the inference would be there, and in the future where would we be if the owner of that patent decided to sue us?

Nothing in this bill that compels the owner of the patent to sue the infringer because in section 231 it states under (c), "Whenever knowingly sells, and suppose we knowingly sell this article—shall be held a contributory infringer." When section 231 was first proposed as H. R. 3998, it was "to provide for the protection of patent rights where in enforcement against direct infringers is impracticable." That was the purpose of that bill, but the bill does not provide for that purpose. It does not say you have to have a direct infringer if practicable. I find nothing in the bill requiring that. I might supply a $10 or a $13 switch for use in a very large process. They might say it in that process and we could be subjected to a suit against such a form of infringement. We had sold the switch in good faith. We knew our product that we built was not an infringing device, but it was put to infringing use. There is the question of what "knowingly" means. We might have been selling this device for some other purpose, but the words "knowingly infringing" are very substantial words when you put it in the hands of a man fighting a case. We had that in the Mercoid case, and even in the case that was involved there was another use. The Court held there was no proof it was used that way, but let us consider that we usually get an idea whether the particular construction of this case there is no other use. When you put the word "substantial," in front of it, can you tell me what "substantial" means?

I hate here a device. Here is a switch we build, and perhaps it will help the Court, and employ less than 200 people, but for a customer who needs it. Here it became another structure. We took this off, and this [indicating]. Part of this we especially made, and the customer ordered it. I believe you use that on something, and at some time it sounds innocuous enough, and we sell it to him in good faith.

Mr. ROOKES: Referring to the last instrument you had in your hand, is that a stable line?

Mr. McCANN: This is a stable article [indicating]. The words in this section (c) are "or especially adapted for use." You cannot put this on that job. Our customers order this (another part) made up, this to be added in. There is it is the same switch, but with the addition the construction by the people in the patent field, would be, it is especially made. I do not think that was the intent there, but it is a point which will await when we get out in the field and you make this law. At present the court could have some discretion in it.

Mr. ROOKES: May I interrupt you there just a moment?

Mr. McCANN: Yes.

Mr. ROOKES: Section 231 (c) says—especially made or especially adapted for use in infringement of such patent.

Mr. McCANN: That is right.

Mr. ROOKES: Then it goes ahead and says—

and not a single article or commodity of Commerce suitable for substantial

Mr. McCANN: That is right.

Mr. ROOKES: Now, the intent there is that where one especially made it for the purpose of infringing a patent, if an individual did especially made or made for that purpose, for the purpose of infringement, do not think that the patentee should have such relief?

Mr. McCANN: Provided it is especially made, but the point that I made in my last session with this committee on this last bill before this was the fact that if you had a commercially noninfringing use, it would relieve you of infringement. In this case you have added, the words which say, "substantial noninfringing use."

Mr. ROOKES: And the testimony in that previous case, and I would like very much for you to do that, because I believe you will catch the difference in the legislation on this, and noninfringing use in one case might relieve you of contributory infringement when you were infringing. On the other hand it might enforce your contributory infringement in a case where you were perfectly innocent of any intent to injure the inventor. You have sold your product, but because the purchaser came in and asked you to do this particular thing, that is not something you sell normally, you are no longer relieved of infringement.

It seems to me whether you have any knowledge of how to get the facts concerning that particular situation and not be governed by a statutory definition. For instance, in some of our transactions we will sell any number of items, $15 or $20 items that
have been purchased especially under this construction of the words of the act, and they get on these devices. Now there may only be one infringed, but the patent owner may have known of the infringement, and by what stretch of the imagination should he be held liable when they can reach the direct infringer? The original purpose of the bill H.R. 888 said where it was not convenient to reach the direct infringer.

Here is a case which I think you will agree can be brought under this act as it is now stated. If a few words it is possible where we sold to the patentee, which is supposed to be a McNeil switch which infringes, in that case why should the patent owner be permitted to sue us on that small item when he can reach the direct infringer? Now, invent something, but I cannot do anything in the world, I do not have all the knowledge and research, so why should I be subjected; or more companies be subjected, to suit because it sold after the things where the purpose is to reach the direct infringer. The point is, why is it not necessary in order to reach these people, you have these things? What about the individual part maker? Why should there be some remedy of protection to the main against such suits?

Mr. Rosens. Do they attempt in the latter part of section 202(c) to say that it does not apply to articles or commodities in commerce, do you feel that is broad enough?

Mr. McCann. I feel that it is one in which there would be considerable dispute, because it says substantially.

Lever is not in connection with a case that was made in connection with the phonograph record. Lewis & Catlin. Why put that word in the statute for something that I am not building if it is to relieve me from being a contributing infringer. At the time I said I thought it was wrong. On the other hand, when you include the word substantial, what constitutes substantial? Here is a case, a case next to where we have to leave it to the discretion of the court that can judge the infringer or the contributing infringer from the facts, and can handle them.

As it is now, it will be a statutory definition, which in my own mind will make it be the enlarging small business in the manufacturing of products, because I think it will be susceptible of interpretations that can infringe small business.

Mr. Rosens. You told the committee about a suit that went to the Supreme Court.

Mr. McCann. Yes.

Mr. Rosens. And you have in the past been advised with suits of this kind, that large suits, that suits, potential suits that infringe on your suits that section 202(c) were adopted.

Mr. McCann. I think you would find it absolutely would greatly infringe any infringer in the field, because he would not be able to defend himself.

Mr. Rosens. In the chemical industry, the chemical industry, we know about the nature of the industry, to know whether a product was the infringer or not, whether infringing product with background particular to that field.

Mr. McCann. I have some 12 patents and I have not had to go to court except in one instance and the case was settled out of court and may I stop long enough to say that I think most patent cases that reach the Supreme Court are of the doubtful validity, and I do not feel that all of them are

Now in case you throw the burden of proof, for instance, to try to prove the entire patent field and have knowledge of everything to avoid the pitfalls, it would be like buying this building for a strangle would not be very good thing.

I hope I have made myself clear to you in my brief, as it sets up several cases and imaginary cases in order that you can see the way it may be stated.

Mr. Branson. That is in your brief.

Mr. McCann. Yes, and I hope you will study it, you will see the errors that have been made.

Another thing that should be limited in this matter of contributory infringement is the reference to any person who contributes to the infringement of a patent shall be liable as the infringer. Suppose the process upon using a certain item. I think there should not be the right to sue the supplier of that item. The infringer is using it, it is not made by us, we have developed and made available to all individuals.

This is not a separate matter. And it would not be a matter of justice to hold the contributor for damages based on profits derived from the process, and not hold the direct infringer who might be able to avoid, for some reason or other, the financial responsibility. One person may be financially responsible for profits derived from the direct infringement while the other is not from the sale of the parts.

Mr. Chumley. Are you opposed to the whole doctrine of contributory infringement, or opposed only to the special language used here?

Mr. McCann. I am opposing the statutory definition, of the right of approval by the court.

Mr. Rosens. Does your brief suggest any other language, more desirable language?

Mr. McCann. As I have said before, I am not enough of a lawyer to make definitions. I do not believe I have not seen the definition that I believe it should not be used, but that the contributory infringer has been well. I may, I believe, there have been cases which I think have consumed much time before they have been held to be contributors. And I feel with the removal of the discretion of the court, from the court, where it must find contributor to infringe, the court only has to find the fact, and then he is governed by section 214.

Mr. Rosens. If our brief had to leave it to the court to determine who is the contributory infringer?

Mr. McCann. I think the contributor should be held in these cases that are brought in good faith, although there is nothing here that guarantees the result of such. It may be well.

The court shall award the plaintiff damages as a whole for the infringement.
I do not believe that was intended by the people who wrote this law; I do not think it should have that kind of interpretation. Whether the courts would do it I do not know.

I question personally whether this act to extend the patent beyond the period of the invention or discovery, I question whether it is constitutional or not. I do not believe that the Congress—and let me say I respect, of course, the Congress, but the point is I am trying to say here is that both cannot be done under the provision of the Constitution which provides that Congress has the power "to promote the progress of science and the useful arts by securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries." I do not think that when you extend this right it is within the scope of the constitutional powers granted.

Mr. Hay: We are very much obliged to you. We are called to the floor now. I shall consider it a great honor to have full statement and we have access also to the statement you have made heretofore, year before last.

MAY 27, 1892.

COMMENTS ON H. R. 2988 (NEW YORK, 1ST SINO) DEFENDING "CONTRIBUTORY INFRINGEMENT"

I have previously studied the predecessor bill H. R. 2988, and appeared before the subcommittee of the Committee on the Judiciary, House of Representatives, Eighteenth Congress, to express my convictions in the matter. Now, I find that the present bill H. R. 2988 is identical with H. R. 2988 and, therefore, take substantially the same stand in opposition thereto as I did in the previous bill.

I do not agree that the record made of the hearings before the committee on H. R. 2988 have to make with the opponents of the bill, as expressed in the present form, with regard to defining contributory infringement in such a manner as would restore the doctrine formerly announced in the Lees & Cattin case without making any change in the patent's presently contained in the prior doctrine or in the Cattin case.

I am opposed to any bill which will extend the patent monopoly into fields of commerce where the genuine good and unauthorized and patented articles, sold, used, or incorporated as component parts of a patented structure or process which such goods or articles are not made by the patentee, or are not made by the patentee without the consent of the patentee and the meaning of this phrase is not a change or a physical form, or, by site or under any untrue or misleading designation.

I do not believe the bill in its present form, nor, by any of the proposed amendments to the existing record of the case, properly defines what constitutes contributory infringement.

In earlier days, in citing the Lees & Cattin case, the United States Supreme Court, with reference to it, attributed certain specific characteristics to the unpatented article.
aluminum foil from the manufacturer as a trouble to use in the patented
enabling the use of other aluminum of certain patents as not now
of the above and obtain in effect a monoply of aluminum for the case. Although a patent would not be valid on the unpatented,.
Sliced enough and pateu to acquire a large aluminum foil, not.
be used in the manufacture of metal which could be and is.
not be used by his competitor or market to materially obtain a sympathy monopoly.
There is nothing in the present patent that would not.
be held harmless and or not adapted for use practices, would not.
and by the fact that the machine not particularly required in the case, might.
be so adapted a design or design of customer identification such that his
in a patented manner would be unlawful.

It is the intent of the patent holder to make disposal of the aluminum foil to such an extent that no other aluminum can be
within the meaning of especially made and adapted, the use in infringement of
from the hand of the purchaser, but will not grant more to the patentee than the
and which will not constitute a danger of a public service or public
4.
If it should not be for any interpretation or legal right to such a provision of
It is the character of the thing made is
terminated by the one who practices, or prevent the practice of the patent and
be used in the manufacture of metal which could be and is.
been "especially made or adapted for use" the writing of a check or deed
may be the case that it becomes a requisite to the proper use of the
representation of the patentee, it does not become and cannot be
a patentee, or right to exploit it within his patented monopol.

3.

The object of the patent holder is to make it unlawful for anyone to make or
of the article of manufacture, or made and adapted for the particular
the element or "especially made or adapted for use." No article of

4.

With the present patent holder to "especially made or adapted for use" a
their rights in the element, per se, as well as the goods or
the patentee, expire after 17 years, and thereafter the
of the element, per se, who had to be re-
item upon which, per se, a patent has expired, or they were obliged to pay.

5.

I believe that we should also give consideration to the effect of a
a definition of conditions upon the replacement of parts in a patented
The definition would wipe out the present rule that an element in a patented combination may be replaced without infringement. It

The item which shall be declared invalid by the judge or jury may be
the bill.

Mr. Brown. Thank you very much.

Without objection, the Committee will resume its hearings at 3.

At 12:10 p.m., recess was taken until 2 p.m. of the same day.