ART. III. The deposit of a trade-mark in one of the signatory States produces in favor of the depositor a right of priority for the period of six months, so as to enable the depositor to make the deposit in the other States.

Therefore the deposit made subsequently and prior to the expiration of this period can not be annulled by acts performed in the interval, especially by another deposit, by publication, or by the use of the mark.

ART. IV. The following shall be considered as trade-mark: Any sign, emblem, or especial name that merchants or manufacturers may adopt or apply to their goods or products in order to distinguish them from those of other manufacturers or merchants who manufacture or deal in articles of the same kind.

ART. V. The following can not be adopted or used as trade-mark: National, provincal, or municipal flags or coats-of-arms; immoral or scandalous figures; distinctive marks which may have been obtained by others or which may give rise to confusion with other marks; the general classification of articles; pictures or names of persons without their permission; and any design which may have been adopted as an emblem by any fraternal or humanitarian association.

The foregoing provisions shall be construed without prejudice to the particular provisions of the laws of each State.

ART. VI. All questions which may arise regarding the priority of the deposit or the adoption of a trade-mark shall be decided with due regard to the date of the deposit in the State in which the first application was made therefor.

ART. VII. The ownership of a trade-mark includes the right to enjoy the benefits thereof and the right of assignment or transfer in whole or in part of its ownership or its use in accordance with the provisions of the laws of the respective States.

ART. VIII. The falsification, imitation, or unauthorized use of a trade-mark, as also the false representation as to the origin of a product, shall be prosecuted by the interested party in accordance with the laws of the State wherein the offense is committed.

For the effects of this article, interested parties shall be understood to be any producer, manufacturer, or merchant engaged in the production, manufacture, or traffic of said product, or in the case of false representation of origin, one doing business in the locality falsely indicated as that of origin, or in the territory in which said locality is situated.

ART. IX. Any person in any of the signatory States shall have the right to petition and obtain in any of the States, through its competent judicial authority, the annulment of the registration of a trade-mark, when he shall have made application for the registration of that mark, or of any other mark, calculated to be confused, in such State, with the mark in whose annulment he is interested upon proving—

(*a*) That the mark the registration whereof he solicits has been employed or used within the country prior to the employment or use of the mark registered by the person registering it or by the persons from whom he has derived title;

(*b*) That the registrant had knowledge of the ownership, employment, or use in any of the signatory States of the mark of the applicant the annulment whereof is sought prior to the use of the registered mark by the registrant or by those from whom he has derived title;

(*c*) That the registrant had no right to the ownership, employment, or use of the registered mark on the date of its deposit;

(*d*) That the registered mark had not been used or employed by the registrant or by his assigns within the term fixed by the laws of the State in which the registration shall have been made.

ART. X. Commercial names shall be protected in all the States of the union, without deposit or registration, whether the same form part of a trade-mark or not.

ART. XI. For the purposes indicated in the present convention a union of American Nations is hereby constituted, which shall act through two international bureaux established one in the city of Habana, Cuba, and the other in the city of Rio de Janeiro, Brazil, acting in complete accord with each other.

ART. XII. The international bureaux shall have the following duties:

1. To keep a register of the certificates of ownership of trade-mark issued by any of the signatory States.

2. To collect such reports and data as relate to the protection of intellectual and industrial property and to publish and circulate them among the nations of the union, as well as to furnish them whatever special information they may need upon this subject.

3. To encourage the study and publicity of the questions relating to the protection of intellectual and industrial property; to publish for this purpose one or more official reviews, containing the full texts or digest of all documents forwarded to the bureaux by the authorities of the signatory States.

The Governments of said States shall send to the International American Bureaux their official publications which contain the announcements of the registrations of trade-marks, and commercial names, and the grants of patents and privileges as well as the judgments rendered by the respective courts concerning the invalidity of trade-marks and patents.

4. To communicate to the Governments of the union any difficulties or obstacles that may oppose or delay the effective application of this convention.

5. To aid the Governments of the signatory States in the preparations of international conferences for the study of legislation concerning industrial property, and to secure such alterations as it may be proper to propose in the regulations of the union, or in treaties in force to protect industrial property. In case such conferences take place, the directors of the bureaux shall have the right to attend the meetings and there to express their opinions, but not to vote.

6. To present to the Governments of Cuba and of the United States of Brazil, respectively, yearly reports of their labors which shall be communicated at the same time to all the Governments of the other States of the union.

7. To initiate and establish relations with similar bureaux and with the scientific and industrial associations and institutions for the exchange of publications, information, and data conducive to the progress of the protection of industrial property.

8. To investigate cases where trade-marks, designs, and industrial models have failed to obtain the recognition of registration provided for by this convention, on the part of the authorities of any one of the States forming the union, and to communicate the facts and reasons to the Government of the country of origin and to interested parties.

9. To coöperate as agents for each one of the Governments of the signatory States before the respective authorities for the better performance of any act tending to promote or accomplish the ends of this convention.

ART. XIII. The bureau established in the city of Habana, Cuba, shall have charge of the registration of trade-marks coming from the United States of America, Mexico, Cuba, Haiti, the Dominican Republic, El Salvador, Honduras, Nicaragua, Costa Rica, Guatemala, and Panama.

The bureau established in the city of Rio de Janeiro shall have charge of the registration of trade-marks coming from Brazil, Uruguay, the Argentine Republic, Paraguay, Bolivia, Chili, Peru, Ecuador, Venezuela, and Colombia.

ART. XIV. The two international bureaux shall be considered as one, and for the purpose of the unification of the registrations it is provided:

(*a*) Both shall have the same books and the same accounts kept under an identical system.

(*b*) Copies shall be reciprocally transmitted weekly from one to the other of all applications, registrations, communications, and other documents affecting the recognition of the rights of owners of trade-marks.

ART. XV. The international bureaux shall be governed by identical regulations, formed with the concurrence of the Governments of the Republic of Cuba and of the United States of Brazil and approved by all the other signatory States.

Their budgets, after being sanctioned by the said Governments, shall be defrayed by all the signatory States in the same proportion as that established for the International Bureau of the American Republics at Washington, and in this particular they shall be placed under the control of those Governments within whose territories they are established.

The international bureaux may establish such rules of practice and procedure, not inconsistent with the terms of this convention, as they may deem necessary and proper to give effect to its provisions.

ART. XVI. The Governments of the Republic of Cuba and of the United States of Brazil shall proceed with the organization of the Bureaux of the International Union as herein provided, upon the ratification of this convention by at least two-thirds of the nations belonging to each group.

The simultaneous establishment of both bureaux shall not be necessary; one only may be established if there be the number of adherent Governments provided for above.

ART. XVII. The treaties on trade-marks previously concluded by and between the signatory States, shall be substituted by the present convention from the date of its ratification, as far as the relations between the signatory States are concerned.

ART. XVIII. The ratifications or adhesion of the American States to the present convention shall be communicated to the Government of the Argentine Republic, which shall lay them before the other States of the union. These communications shall take the place of an exchange of ratifications.

ART. XIX. Any signatory State that may see fit to withdraw from the present convention shall so notify the Government of the Argentine Republic, which shall communicate this fact to the other States of the union, and one year afer the receipt of such communication this convention shall cease with regard to the State that shall have withdrawn.

In witness whereof the plenipotentiaries and delegates sign this convention and affix to it the seal of the Fourth International American Conference.

Made and signed in the city of Buenos Ayres, on the 20th day of August, in the year 1910, in Spanish, English, Portuguese, and French, and filed in the Ministry of Foreign Affairs of the Argentine Republic in order that certified copies may be made, to be forwarded through appropriate diplomatic channels to each one of the signatory nations.

For the United States of America:

HENRY WHITE.
ENOCH H. CROWDER.
LEWIS NIXON.
JOHN BASSETT MOORE.
BERNARD MOSES.
LAMAR C. QUINTERO.
PAUL S. REINSCH.
DAVID KINLEY.

For the Argentine Republic:

ANTONIO BERMEJO.
EDUARDO L. BIDAU.
MANUEL A. MONTES DE OCA.
EPIFANIO PORTELA.
CARLOS SALAS.
JOSÉ A. TERRY.
ESTANISLAO S. ZEBALLOS.

For the United States of Brazil:

JOAQUIM MURTINHO.
DOMICIO DA GAMA.
JOSÉ L. ALMEIDA NORGUEIRA.
OLAVO BILAC.
GASTÃO DA CUNHA.
HERCULANO DE FREITAS.

For the Republic of Chili:

MIGUEL CRUCHAGA TOCORNAL.
EMILIO BELLO CODECIDO.
ANÍBAL CRUZ DÍAZ.
BELTRÁN MATHIEU.

For the Republic of Colombia:

ROBERTO ANCÍZAR.

For the Republic of Costa Rica:

ALFREDO VOLIO.

For the Republic of Cuba:

CARLOS GARCÍA VELEZ.
RAFAEL MONTORO Y VALDÉS.
GONZALO DE QUESADA Y ARÓSTEGUI.
ANTONIO GONZALO PÉREZ.
JOSÉ M. CARBONELL.

For the Dominican Republic:

AMÉRICO LUGO.

For the Republic of Ecuador:

ALEJANDRO CÁRDENAS.

Mr. NEWTON. Gentlemen, I would like to go into the history this bill before we consider the advisability of passing it.

This convention was called for the purpose of providing for i ternational treatment of trade-marks, patents and copyrights. V have nothing this morning to do with the patent part of the co vention. The trade-mark section of it proposes to establish tv trade-mark bureaus for the registration of trade-marks used in t American republics: one at Habana, Cuba, and the other at Rio Janeiro, whenever two-thirds of the members of the two groups countries, northern and southern, ratified this convention.

This convention has been ratified by the United States, has bee proclaimed by the President and is now in as full force and effe as any treaty could be. It has also been ratified by nearly all tl countries of the northern group—more than the required two-third and there has been a trade-mark bureau established at Haban Cuba.

The Cuban Government has appropriated—I have forgotten ho much money—but they have an office there. They have appointe a director of the office and he is now in a position to receive applica tions for registrations from this country, and to register them i Habana, Cuba, and in other countries.

Not quite two-thirds of the countries in the southern group have ye ratified this convention. I think they lack two yet of having two-thirds majority in the southern group. So that no registratio bureau has yet been established in Rio de Janeiro.

This bill was up a year ago before the last Congress and, afte considerable discussion before the Senate committee, this bill tha is before you, 9023, in exactly this form, was finally agreed upon (se S. 4783, 65th Cong. 2d Sess.). There is considerable difficulty in drawing a bill to apply to all these countries in South America and our own country, for this main reason: In this country the ownership of a trade-mark depends on who was the first to use it, absolutely. Registration has very little if any effect. In fact, it has no effect on ownership, except to make out a prima facie case of ownership. In the South American countries, all of those countries that operate under the Roman law, the first person to register is the owner of the mark, irrespective of who was the first to use it.

Now, to harmonize the operation of these two laws was by no means an easy thing, and you will find, if you read the provisions of this convention, that the people who participated in it, were at a loss, frequently, to express just how certain things should be done on account of the conflict of the laws governing the ownership of trade-marks.

For instance, a mark might be a trade-mark in Cuba. We say a mark to be a good mark must have no meaning. Kodak, for example has no meaning at all. That is a good mark in our country. Syrup of Figs, for a medicine, we say is not a good mark. It is descriptive of the medicine. We would not register that here. And it was, in the court, declared to be an invalid mark because it was descriptive of the medicine. That might be a good mark in South American countries; I do not know.

Now, to say that every mark that should be registered in South America should be registered here, would upset all our ideas about what is a good trade-mark. So that, in the discussions before the

Senate committee a year ago, this thought was finally adopted and seemed to remove all of the trouble—that all marks that were received from South America, we would put them on a register here. This does not give them prima facie ownership.

There is nothing in this bill that says that registration shall be prima facie evidence of ownership. We simply register them and provide that if the registration has been improperly granted it can be canceled, and then we have incorporated the various other sections, that you see in the bill; and the sections of this bill provide for very much the same thing as our present trade-mark statutes do for ordinary registration. In fact, the only difference between the registration under this bill and the registration under the present statutes, is that under the present statutes, when a man registers, he gets a prima facie ownership of the mark. Under this registration he does not; under the registration as provided for in H. R. 9023, he does not. Consequently, there would be no harm to any one, that I can see, in putting these marks on the register here and complying with this bill in all its provisions.

It is true there will not be very much benefit received by those countries abroad by registering under this bill. A registration is not necessary in this country at all. A mark is protected without registration, and those people in those countries get just about the same benefits under this bill as we get under any trade-mark bill that they might pass because a mark is of no value at all in South America until it is registered. Prior use does not give you the right to sue on it or to get an injunction on it. You have to register it before you can do anything.

In this country first use gives you the right of ownership and you do not have to register.

Consequently we are giving those people in South America, under this registration bill, although it is a very small matter, we are giving them as much as they give us. We protect their marks, in other words. So that no advantage of those people is being taken in any way in this bill. We are giving them about the same thing that they give us; but we do it by simply registering their marks here and allowing them to get their rights under the common law that we have in force regarding all trade-marks.

As I say, this bill was passed by the last Senate after considerable discussion in the committee, and there was no opposition to it, and I do not see how anybody could oppose it, except for the expense in maintaining the registration bureau that might be incurred. But I do not think there will be any expense. The registration of trade-marks in this country a great deal more than pays for itself now. Our fees that we charge for registration of trade-marks probably twice over cover the expenses of registration, and the Government is under no expense to register trade-marks in this country at present. This bill proposes to charge a fee of $50, which will cover the expense of registering their marks in all the South American countries. At present it would cost an applicant, I should say, hundreds of dollars to register in all of those countries. Under this bill he gefs registration in all of those countries for $50.

Mr. CAMPBELL. Can we assure the House that any expense incurred will be taken care of by those fees?

Mr. NEWTON. We can if we are to judge by our past experiences in the registration of trade-marks generally.

Mr. CAMPBELL. Then, if the question of expense is raised, we can assure them that will be offset by the fees?

Mr. NEWTON. I think you can as safely as you can assure them of anything in the future that is unknown.

I have at present applications in my office to the extent of about $3,000 awaiting the passage of this bill.

The CHAIRMAN. Outside of that, Mr. Commissioner, there is a moral obligation on us to pass this legislation?

Mr. NEWTON. I will come to that.

Mr. MACCRATE. Does any of that $50 have to be distributed among these other countries?

Mr. NEWTON. None at all; it all goes to this bureau. This created some friction between some of those countries and that bureau because they said they did not understand that $50 was all to do to it; it has been understood now, and they have accepted that view of it, and all of that $50 goes now to this bureau in Habana for the northern group.

Mr. MACCRATE. Then what revenue do we get out of it?

Mr. NEWTON. We do not get any revenue out of it; we get no revenue out of it at all, and there is no expense other than the keeping up of that bureau. We get no revenue, except this, we get this indirect revenue, that no man in this country, no citizen of this country, can register under that bill until he registers first in this country. That compels him to register here first, and we get that revenue.

Now, as to the point Mr. Nolan raised, about the obligation we are under in passing this bill: It has been the policy of this country for some time to cultivate closer commercial relations with the South American countries. We think that probably nothing will do more to clear up some of the commercial troubles that they have had than the passage of this bill.

For example, as I say, in those countries where registration gives the ownership of the mark, there has been a great deal of piracy of valuable marks. Let me give you an illustration that has come under my own observation. The Eagle Pencil Co.—I suppose you all have Eagle pencils—registered their mark all over the world. They have tried to. But they imported some of those pencils into one of the South American countries before they registered there. A man who was acquainted with the value of that trade-mark, the word "eagle," with a representation of an eagle, had gone to that South American country and registered that mark; and when the Eagle Co.'s cargo of pencils arrived there (under the trade-mark laws of various countries, no trade-mark that is an infringement of a trade-mark registered in that country can enter at all, they can stop them at the port of entry) that cargo of pencils was confiscated and I understand they have been in litigation over that matter for 20 years, and they never have gotten it settled. Now, that is not an uncommon experience.

The Indian bicycle or motorcycle had the same experience—quite a celebrated mark in this country and quite a valuable mark.

If you gentlemen have had no experience in the value of those trade-marks, you would be surprised to know how some manufac-

turers value their trade-marks. Pillsburys Best, for flour—they say is worth more than the mills that are manufacturing the flour.

Prince Albert tobacco is another one.

Those people spend probably hundreds of thousands of dollars every year advertising those marks and they get very valuable. Now, a pirate can find out the valuable marks in this country and go to South American countries and register them and keep the goods under that mark out of that country. It is done, every day probably. And it is the object of this bill to stop that; that is, to give those people here who own valuable trade-marks a vehicle or a way of conveniently registering those marks in the South American countries and preventing that form of unfair trading. So there is no reason why it should not be quite an encouragement to commerce between this country and those of South America, which is now quite a valuable thing and something we ought to encourage.

That is the reason the Secretary of the Treasury is interested in it. They have taken a good deal of interest. The Department of Commerce is also very much interested in it, and the State Department, which is doing everything it can to foster the commercial relations between the northern and southern groups of American Republics; they are all very anxious the bill should be passed.

Mr. MACCRATE. Just there, Mr. Commissioner, as I understood it, you said that in South America a name that was suggestive could be registered, but here, if it indicates its connection with the article, it can not be registered?

Mr. NEWTON. That is right.

Mr. MACCRATE. Suppose a man comes to the bureau now and wants to register a name that suggests the article. Would you permit him to register it under this bill?

Mr. NEWTON. We will under this bill, because we simply put in on the register. That is the keynote of the difference between this bill and the present trade-mark registration bill. The present trade-mark registration bill specifies what can not be registered. You can not register your name; you can not register a descriptive word or geographical word—New York, Washington, etc.; you can not register such words. But we may get those words to register from South America. We simply put those words on that register for what it is worth.

Mr. MACCRATE. You do not issue a mark for them?

Mr. NEWTON. We issue a registration certificate for them.

Mr. MACCRATE. But you will not issue a trade-mark?

Mr. NEWTON. No.

Mr. MACCRATE. Not even under this bill?

Mr. NEWTON. No. There would be no complications on that line that I can see.

Mr. CARTER. There are two points there. One is article 5 of the convention, which defines certain marks that can not be registered, and really includes descriptive trade-marks. But the point is that sometimes our courts protect marks that you do not register: is not that the case?

Mr. NEWTON. Yes; but that goes into such refinements. I doubt if I should raise them this morning. Sometimes a court will protect those marks on the grounds of unfair competition. They do not protect them as trade-marks, but they will protect them on the ground

of unfair competition. Take Singer sewing machine, for instance. That went up to the Supreme Court, and they held that while the word "Singer" was not technically a trade-mark, they forbade every other company from using the word "Singer" unless they showed the machine did not come from the Singer company. And that is the way they treat a great many marks not registered in this country, and even where they can not get a trade-mark registration on it, they stop infringements on the ground of unfair competition; they stop the use of it where it is an unfair trade competition whether they can get a trade-mark or not.

And that is the way they would proceed with marks registered under this bill; the court would protect these marks, possibly, even though they can not get trade-marks—they would protect them on the ground of unfair competition.

So that we are giving these people in South America—and this is one point I want to emphasize, because a good many of the people from there say, "You are giving us nothing; we are giving you the whole right of your mark," but that is not true, because we give them by law the right to sue and to get injunctions in this country; they may do so even without registration. They do not give that to us; you can not sue in South America without registration. So that we are giving them just as many trade-mark privileges as they are giving us, but we do it in a different way. We give them by common law the substantial equivalent of what we ask them to give us by putting this convention into effect, and what, as a matter of fact, their representatives have approved in signing the convention in 1910.

The CHAIRMAN. Mr. Commissioner, you say this bill is identical with the one that was reported and passed by the Senate in the last Congress?

Mr. NEWTON. Identical, word for word. It also was reported favorably by this committee to the House last year and put on the calendar, but was never reached for action; it came just that close to passing last session.

The CHAIRMAN. Mr. Smith tried to get it passed, but in the jam toward the end of the session he was not successful.

Mr. NEWTON. I know, but he did not succeed.

Now, as to the desirability of passing this bill: As I say, I do not think there is any danger that the enactment of this bill is going to be any expense to the country, and it certainly may be a great deal of benefit to those who are engaged in commerce with those South American countries. But, in addition to that, matters in the Patent Office under this convention have reached an embarrassing place to me. We have a good many applications for registration already filed. I think we have two or three thousand dollars worth of applications already filed under this convention, and I do not know what to do with them. I am going to send them on to Cuba, I suppose. Although this convention already carries into effect this measure establishing this bureau at Habana, the Supreme Court has held that this country can not operate under a convention without appropriate legislation. (See Foster *v.* Neilsen, 2 Peters, 314, and Rousseau *v.* Brown, 104 O. G., 1120; 21 App. D. C., 23.) So that while I am receiving these applications for trade-marks under the convention, I have no legal authority; there has been no bill passed.

And it is uncertain as to what I should do with them until you pass this bill. We are holding them up there in the office, and whether they should be held up or sent on to Cuba I do not know. Probably I will send them on. But that is the condition that affairs are in now.

Dr. Díaz Irízar, who has been appointed director of the bureau in Cuba, has been up to the Patent Office and we have formulated some articles of procedure as to how these registrations should be filed, in what form they should be filed, what they should include, and I would like to ask, Mr. Chairman, if you have no objection, to get that into the record. These regulations have been approved between the Patent Office officials here and Dr. Díaz Irízar as to what is necessary in these applications for registration. I would like to put it in the record if you have no objection. It is only three pages of this pamphlet.

The CHAIRMAN. If there is no objection, it will be incorporated in the hearing.

(The regulations referred to are as follows:)

REGULATIONS TO CARRY INTO EFFECT THE CONVENTION ON TRADE-MARKS SIGNED AT THE FOURTH INTERNATIONAL CONFERENCE OF AMERICAN STATES AT BUENOS AIRES, AUGUST 20, 1910.

ARTICLE I.

Any application for international registration of a trade-mark through the bureaus created by the Fourth International Conference of American States held at Buenos Aires in 1910, in accordance with the provisions of the convention, shall be made by the owner of the trade-mark or his duly authorized representatives to the trade-mark registration office of the country of origin in the manner prescribed by the latter office. The application shall be accompanied by an international money order payable to the director of the international trade-mark registration bureau of the respective group in the sum of fifty dollars ($50) for each trade-mark, pursuant to paragraph two of the second article of the convention.

The application and postal money order shall be accompanied by an electrotype of the design of the trade-mark, with a view to print such copies as are to be sent to the other nations, and to publish the trade-mark in the official bulletins of the international trade-mark registration bureaus. The electrotype shall display the design of the mark exactly as it has been registered by the trade-mark registration office of the country of origin without any alteration. Its dimensions may not exceed 10 centimeters on either side.

ARTICLE II.

The trade-mark registration office of the country of origin, having ascertained that the registration of the trade-mark is regular and still in force, shall communicate to the international trade-mark registration bureau of the respective group, the following data with a view to secure the international registration of the mark:

(*a*) The international money order for $50 gold.
(*b*) The electrotype of the trade-mark.
(*c*) A certificate in duplicate containing the following information:
(1) The name of the owner of the trade-mark.
(2) The address of the owner of the trade-mark .
(3) The date of registration of the trade-mark in the country of origin.
(4) The order number of the trade-mark in the country of origin.
(5) The date of expiration of the registration of the trade-mark in the country of origin.
(6) A facsimile of the design of the trade-mark as registered.
(7) Statement of goods on which the mark is used.

Should the applicant wish to claim one or more colors as distinctive elements of his trade-mark, the international trade-mark registration bureau shall be furnished in addition with 30 printed copies of the trade-mark reproduced in colors, together with their brief description.

ARTICLE III.

The international trade-mark registration bureaus, upon receipt of the communication required in the foregoing article, shall enter all the information in appropriate registers, communicating the entry numbers and dates of entry to the trade-mark registration office of the country of origin.

ARTICLE IV.

Copies of the entries in the registers of the international trade-mark registration bureaus, embracing all the information required under Article II, should be sent to the trade-mark registration offices of those countries in which the convention is in full force and effect, in order that the trade-mark may be afforded the protection given by their laws. In case of a claim that colors constitute distinctive elements of the trade-mark the international trade-mark registration bureau shall also transmit one copy of the trade-mark reproduced in colors.

ARTICLE V.

The international trade-mark registration bureaus shall publish in their official bulletin, or in supplements thereto, reproductions of all trade-marks received, together with such particulars as are deemed necessary.

ARTICLE VI.

The protection afforded by international registration shall continue through such time as the registration of the mark in question remains valid in the country of origin; and may be renewed if the registration of the trade-mark has been renewed in the country of origin in compliance with the original procedure as to application and payment of fee. In such cases the information that the application is for the renewal of a trade-mark shall be included in the certificate required under paragraph C of Article II of these regulations.

ARTICLE VII.

The notice of acceptance or refusal of a trade-mark, respectively, by those countries in which the convention is in full force and effect shall be transmitted by the international trade-mark registration bureaus to the trade-mark registration office of the country of origin, with a view to its further communication to whom it may concern.

ARTICLE VIII.

Changes in ownership of a trade-mark shall be communicated to the international trade-mark registration bureaus for entry in their registers and corresponding notice to the other countries of the international trade-mark union of the American Republics.

ARTICLE IX.

At the beginning of each year the international trade-mark registration bureaus shall submit their accounts to the governments of the States in which this convention is in full force and effect, setting forth their income and expenses during the preceding year, in order that any Government may make such comment or suggestion as it may deem justified.

When either of the directors does not find it possible to accept such suggestions or modifications, he shall submit a statement of his views to the governments of the Republics of the respective group. The governments shall decide whether or not the director should accept the suggestions or modifications in question. No such suggestion may be given effect until accepted by all the governments of the respective group.

ARTICLE X.

The directors of the international trade-mark registration bureaus may, in their discretion, appoint or remove the officials and employees of the bureaus, giving notice to the governments of the respective group of such appointments and removals.

Mr. NEWTON. So that all we need to carry this matter into effect is the passage of this bill. We have the applications ready and the passage of the bill will clear it all up.

I thank you, gentlemen.

The CHAIRMAN. Are there any questions members of the committee care to ask Commissioner Newton?

Mr. MACCRATE. Mr. Commissioner, I do not understand why you say there will be no expense to the Government, because your office will have to make a register of all of these as you receive them, will you not?

Mr. NEWTON. That will take practically no time at all.

Mr. MACCRATE. And then you have to have the clerical help to transfer these to the bureau at Habana?

Mr. NEWTON. That is correct.

Mr. MACCRATE. And you will have to have an accountant and clerks, will you not?

Mr. NEWTON. I do not believe it will take the time of probably one person.

Mr. MACCRATE. Simply to get into the record the fact there will be no expense, it will be merely the formal work your department will have to do in transmission?

Mr. NEWTON. That is all. It will be merely formal, and I do not think it will take one man's time, probably not as much as that. All he has to do is to enter it into the register.

Mr. MACCRATE. You have now $3,000 in hand. That would be 60 applications at $50 apiece?

Mr. NEWTON. We have more than that. I did not look it up to see, but we have more than 60 applications now.

Mr. MACCRATE. For what period do these application cover?

Mr. NEWTON. They began nearly a year ago, but they stopped after being filed for awhile, because people began to find we were just keeping them there in the office without doing anything with them, pending the passage of this bill.

Mr. MACCRATE. Is there any method by which you can determine about the average number of applications there would be a month?

Mr. NEWTON. No: I have no very reliable data, except that the registrations of trade-marks in this country are practically double this year over last year, for instance; and commerce with South America, as we all know, is growing. So I do not know why the number should not continue to grow, just as other applications for registration in this country have grown. That is the only data I have in mind.

Mr. MACCRATE. This withdraws no funds from our country, however; and in fact they will still have to pay the registration fee in this country in addition to this $50 for registration in the other countries?

Mr. NEWTON. Correct.

The CHAIRMAN. Section 8 also provides—

That the same fees shall be required for certified and uncertified copies of papers and for records, transfers, and other papers, under this act, as are required by law for such copies of patents and for recording assignments and other papers relating to patents.

Mr. NEWTON. Oh, yes: there will be a source of income, incidentally, that way.

The CHAIRMAN. Anything in addition to the work of registering and transmission is to be paid for?

Mr. NEWTON. That is right, and paid for to this office and kept by the United States and deposited in the United States Treasury.

The CHAIRMAN. Who is your next witness, Mr. Commissioner?

Mr. NEWTON. Dr. McGuire, who represents the United States section of the International High Commission, is here.

STATEMENT OF MR. CONSTANTINE E. McGUIRE, ASSISTANT SECRETARY GENERAL, UNITED STATES INTERNATIONAL HIGH COMMISSION, UNITED STATES TREASURY DEPARTMENT.

Mr. McGUIRE. Gentlemen of the committee, I have very little to add in detail to what Mr. Newton has said.

This commission, of which I am assistant secretary, is interested in bringing about the realization of any international agreements of a nondiplomatic character—that is to say, of a technical or commercial character—between the Latin American Republics and the United States. And that is the reason why we are vitally interested, and have been for several years, in making this convention of 1910 effective.

The points that I have noted down, which I would like especially to emphasize, are, in the first place, the fact that this convention of 1910, signed at Buenos Aires, is in fact a really equitable exchange of rights.

In the second place, certain facts with reference to the element of cost.

In the third place, certain facts as to the ratifications already made or expected.

And then a reference to our feeling, due to the correspondence that we have had with the various ministers of finance of South America, as to the increase in registrations under this convention.

First, then, as to the exchange of rights. As Mr. Newton has said, a number of Latin-American authorities on the subject of trade-mark law have pointed out that this convention protects the industrial property of the citizens of the United States quite effectively in their countries and gives in the United States, to their owners of trade-marks practically nothing more than they get now. That was a point urged with considerable skill and force by a representative of the Argentine Government who, I believe, last summer was introduced to your committee, Mr. De Marval, of Buenos Aires.

The convention was the third of a series of trade-mark conventions. In the first Pan-American conference held in Washington, which lasted from October, 1889, to March, 1890, a very ambitious convention, covering patents, trade-marks, and copyrights, was presented for consideration.

The second Pan-American conference met in Mexico in 1902. If anything, it elaborated that convention of 1889–90 still more.

In 1906 a third conference at Rio de Janeiro still struggled with the difficulty that arose out of the disparate and unrelated nature of the three classes of property—literary property, that is, copyright, and industrial property—including both patents and trade-marks.

Finally, in 1910, after a great deal of correspondence with the then Commissioner of Patents and with various authorities on this matter

in Latin America, it was decided to treat the three subjects entirely distinctly and, instead of having one general registration bureau, to have appropriate methods of dealing with the subjects separately.

Copyright protection was agreed upon by a simple method of notice without any international bureau.

The patent convention provided for the mutual exchange of rights.

Trade-mark protection was a little more subtle; trade-marks are more difficult to protect. It was decided to set up an international agency and, for geographical convenience, two bureaus were decided upon—one for the countries of North and Central America and the West Indies and one for the continent of South America.

The convention had to wrestle with those sharp differences pointed out by Mr. Newton—the fact that Latin-American law gives the prior registrant all of the rights while the law in the United States bases its case upon use. Reconciling these points of view was not very easy, but a compromise was worked out, and it was incorporated in this convention of 1910, which attempts to do nothing more than to effect an exchange of rights for domestic registrants.

In the first place, it deals only with registrants, as Mr. Newton has said, and no man can enjoy this protection who has not a domestic registration. That in itself is important in that it brings owners of trade-marks who want to enter into this arrangement to the Patent Office and makes it expedient for them to secure such protection as prima facie ownership, conferred by registration, will give them. Dealing only with domestic registrants, then, the convention makes it possible for a registrant in one country to have due notice of the fact that he has received all the protection, to which his own laws entitle him, conveyed to the trade-mark authorities in the other countries. And if there are no obstacles inherent in the nature of the trade-mark, if it does not conflict with the local law, if it is not a coat-of-arms of some sort, or a name, or is not otherwise objectionable, he will automatically receive all the rights that a domestic registrant in any one of those other countries would receive. It puts him on a footing, in other words, with the domestic registrant in Guatemala, in Brazil, in Peru. It does not give him any more rights than those people get from their domestic legislation, nor does it give him any less.

The bill which is now under consideration, intending to give effect to that convention in the United States, will not give any more rights, and we hope it will give no less rights, to the registrant in Guatemala or Brazil or Peru, who duly complies with the convention and whose application is transmitted by the international bureau to Washington for entry on the register, which it is here proposed to set up.

A word as to cost. There were, of course, considerable initial expenses in relation to the setting up of this bureau, which were met by an appropriation passed by Congress in one of the deficiency bills last October, the unexpended balance of which was made available for the present fiscal year until June 30, next, in the Diplomatic and Consular appropriation act now in force. That appropriation amounted to $56,450. It represented 93 per cent of the total cost of operation, or the estimated total cost of operation, of the bureau, for

a period of 12 months. And it was 93 per cent because it was based on the population ratios of the countries adhering to the convention. The convention itself expressly provides that any expense not met by registration fees shall be distributed pro rata on the same basis as the expenses of the Pan American Union; that is to say, on the official record of population.

Unfortunately for our contribution to the initial expenses in this present year, Mexico has not adhered to this convention. It is the only large country in the northern group to refrain from coming in. If Mexico with her 15,000,000 population had adhered, the quota of the United States would not have been more than 80 or 85 per cent. But that expense, it may be noted, is all initial expense—installation, the setting up and the acquisition of all that is necessary for the international office. The ordinary budget will probably not be so much, and it is estimated by all of those who have looked into it that the registration fees will take care of it, and even, perhaps, occasionally provide a surplus. It is the hope of the Governments concerned that the expenses will eventually be less, through the acquisition of a permanent home. At the present time the bureau is paying $300 a month for the rent of quarters in Habana. The expenses of the southern bureau, when that is opened, will be borne exclusively by the countries of the southern group, and the expenses of the northern bureau are borne by the countries of the northern group.

The two bureaus function as one, and are intended to function as one, and to exchange each week automatically all registration entries and all correspondence of importance.

Now, as to the ratifications. In the northern group, only two countries have failed to ratify—Mexico and Salvador.

In the southern group, five countries have not ratified out of ten. We are assured, that two Governments propose to make it a matter of great importance as soon as their national congresses convene in regular session. As to the other three, we can only hope for the best, and when the bureau in Rio is functioning, that will stimulate them doubtless to look into it more closely.

Finally, as to the increase in registration. The objection noted by Mr. Newton that has been raised in some of the countries to the convention, namely, that it robs them of foreign fees, that is to say, fees paid by registrants from the United States or elsewhere, to their several domestic registration offices, has not proved effective, as the ministers of finance and the other higher officials have taken a somewhat broader view of it. They realize the fact that it stimulates domestic commerce very much to have foreign trade-marks expeditiously and inexpensively registered. It brings more articles of commerce in and, of course, stimulates imitation. It is looked upon as a very substantial encouragement to domestic business. The registrations in their own countries, it has been stated to us, will probably increase; that is to say, registrations on the part of nationals desirous of securing protection abroad for marks that they regard as having industrial value.

As for our own country, the number of persons registering at the Patent Office, it is thought, I believe, by Mr. Newton and others, will certainly increase.

I thank you.

The CHAIRMAN. Can you give us some idea what it would cost to register an American trade-mark in all of the Central and South American countries?

Mr. MCGUIRE. It would be hard to make a guess. I think Mr. Carter will probably be able to give you more accurate figures, since he has been actually in practice in this field, but my opinion is it would run pretty close to $500. That is a guess, as I am trying to add up the figures quickly.

Mr. MACCRATE. So far as this country is concerned, is there any real gain financially to be expected?

Mr. MCGUIRE. To the Government?

Mr. MACCRATE. Financial gain.

Mr. MCGUIRE. To the country as a whole, and to the men engaged in the manufacture of articles which have a good-will value, I would say a very great financial gain.

Mr. MACCRATE. The greater gain we are expecting, however, is the diplomatic gain, is it not?

Mr. MCGUIRE. Of course, it means a great deal of comfort if you have some international instrument of this kind to which to turn when you get into a snarl over property. The State Department has had a good many occasions to wish something of this kind were in existence, when the owner of some very valuable trade-mark finds that through some carelessness, through delay, perhaps through a blunder on the part of his subordinates, a valuable trade-mark has been registered in advance without any investigation into the bona fide intentions of the registrant; and that when he sends a shipment of goods to the country in question he may run into the danger of having the whole thing confiscated.

I will give you one very brief instance, more or less classic. A certain corporation in this country sent a man to one country where he was successful in taking a great many orders. He was instructed to register the trade-mark while he was there, but delayed doing so. Something like $100,000 worth of the products of this company were shipped to that country; but it was learned, while the ship was on its way, that the week before the agent instructed to file application for trade-mark had done so, some domestic registrant had got in ahead. In other words, the moment that shipment arrived at the dock of the country of destination, it was liable to immediate confiscation, with the prospect of long and costly litigation. The State Department took energetic action, and on technicality the shipment remained a long time in the customs house until things could be straightened out. But it is clearly incumbent to remove so fruitful a source of friction.

Mr. MACCRATE. In that connection, as I understand it, there are many marks or trade names that are not registerable by us now: What will prevent a pirate taking a good American trade name now and registering it in the central bureau and not only gaining the registration benefit in his own country, but the registration benefit in all of these other countries where first registration does count?

Mr. NEWTON. That is a very pertinent question. We do have a great many of those cases. I have some on my desk now, where they make that very plea. They say you won't register it in this country. Take New Jersey Zinc, for example; it is geographical.