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THE HISTORY OF PRIVATE PATENT LEGISLATION IN THE HOUSE OF REPRESENTATIVES

[By Christine P. Benagh, American Law Division]

Every year hundreds of private bills are introduced in the United States Congress.[1] Defined as bills "for the relief of one or several specified persons, corporations, institutions, etc.,"[2] this type of legislation offers a unique remedy—special legislation drafted to grant a particular person or group an exemption from the law. Most private bills introduced propose either exemptions from the immigration laws and quotas or extend payment to persons who have monetary claims against the government.[3] In recent years, few have been concerned with patents. In the 94th Congress 14 private patent bills were introduced,[4] while in the 95th there were only five.[5] Arguments that such legislation violates the equal protection clause have been rejected by the Supreme Court,[6] primarily because the purpose of private legislation is to relieve the beneficiary of the private enactment of an inequitable legal burden—to preserve justice and fairness in the application of public laws which by their very nature cannot be responsive to the occasional individual to whom these laws may be unjust.

DEVELOPMENT OF PRIVATE LEGISLATION GENERALLY

Private bills originated in the English Parliament, which, in its formative period, was not merely a legislative body. Its houses were "regarded as assemblies for the redress of wrongs and the remedy of abuses." [7] Since the early 1400's Parliament received petitions which asked for relief from the law, and thus, were beyond the jurisdiction

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[1] *See, e.g.*, "Calendars of the United States House of Representatives and History of Legislation," 94th Cong., 2d Sess. 300-02 (1976) (lists private legislation which received Congressional action in the 94th Congress).

[2] IV "Hinds' Precedents of the United States House of Representatives" § 3285 (A. Hinds ed. 1907) [hereinafter cited as Hinds'].

[3] Cf. "Digest of General Public Bills and Resolutions," 94th Congress (1977) (contains summaries of all private and public bills introduced in the 94th Congress).

[4] *See* "Digest of Public Bills and Resolutions," 94th Congress (1977).

[5] *See id.* 95th Congress (publication pending 1979).

[6] *See Paramino Lumber Co.* v. *Marshall*, 309 U.S. 370, 379-380 (1930).

[7] R. Gneist, "The History of the English Constitution" 327 (1891). *See generally*, C. Dodd and H. Wilberforce, "Private Bill Procedure" 1-5 (1898).

Requests for special or "personal" legislation in Britain are not normally introduced as bills by Members of Parliament, but rather as petitions submitted to Parliament by the beneficiary of the relief. Most petitions historically requested monetary relief necessitated by some governmental act, or exception from a statutory requirement or limitation. Interview: J. U. Reid, Private Secretary to the Parliamentary Counsel of the House of Lords (Aug. 31, 1977). Procedural rules applicable to these petitions in the House of Lords are contained in the "Standing Orders of the House of Lords Relative to Private Bills in Force on 1st May 1977."

In modern British practice, the approval of such a petition is very rare. The need for them has been precluded by granting authority to the governmental departments to exercise their discretion in granting "equitable" relief from their own regulations. Interview: Edward G. Caldwell, Senior Assistant Parliamentary Counsel to the House of Lords (Aug. 31, 1977).

of even the equity courts.[8] These petitions for special treatment and benefits, which not infrequently granted exceptions to general legislation, became what is known as private legislation. This quasi-judicial function in the modern American context has been thus regarded by commentators as an implementation of the right of petition,[9] and has been accepted by the Congress [10] and the courts.[11]

Private legislation was first challenged before the Supreme Court as early as 1827 in *Williams* v. *Norris*.[12] In holding that the Supreme Court had no jurisdiction over the private legislation of a state that does not violate a federal right, Chief Justice Marshall commented, "There are, undoubtedly, great and solid objections to legislation for particular cases. But these objections do not necessarily make such legislation repugnant to the constitution of the United States." [13] The constitutional authority of Congress to pass private claims legislation was first directly recognized in *United States* v. *Realty Co.*[14] This case upheld the validity of legislation appropriating funds to pay claims arising under sugar bounty acts, by construing the power of Congress to "pay the debts of the United States," [15] to authorize payment for compliance with the sugar bounty act, even though the debt rested upon "a merely equitable or honorary obligation, . . . which would not be recoverable in a court of law if existing against an individual." [16] The classes of legislation which fell within the parameters of this authority "to pay the debts of the United States" gave rise to a great volume of pension and tort claims bills.[17]

As the volume of private legislation grew, Congress established various judicial and administrative forums for the relief of large classes of petitioners which were once considered proper subjects of private legislation. For example, in 1790, Congress granted to the

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[8] Oneist, *Supra* note 7. See W. Anson, "The Law and Customs of the Constitution, Parliament" 239-40 (1886); T.E. May, "A Treatise on the Law, Privileges, and Proceedings and Usage of Parliament" 824 (14th ed. 1946). The House of Lords still possesses ultimate appellate jurisdiction in the British judicial system. *See* May, *id.* at 824.

[9] *See* C. Binney, "Restrictions upon Local and Special Legislation in State Constitutions" 1-2 (1894); W. Gellhorn and L. Lauer, "Congressional Settlement of Tort Claims Against the United States," 55 Col. L. Rev. 1 (1955); Note, "Private Bills in Congress," 79 Harv. L. Rev. 1684, 1685 (1966).

[10] House Subcommittee on Administrative Law and Governmental Relations, 94th Cong., 1st Sess., Rules 9-10 (1975) [hereinafter cited as Ad. Law Subcom. Rules].

The acceptance of the private legislative function by Congress met with opposition from John Quincy Adams who regarded it as a contradiction of the separation of powers doctrine: "There ought to be no private bills before Congress. There is a great defect in our institutions by want of a court of Exchequer or Chambers of Accounts * * * A deliberative assembly is the worst of all tribunals for the administration of justice." J. Q. Adams, 8 "Memoirs" 479-80 (1876). However, the use of private bills was adopted by the First Congress which passed the first two private bills in 1789. Act of Sep. 29, 1789, ch. 26, 6 Stat. 1 (1864); Resolution of Sep. 29, Res. No. 4, 6 Stat. 1 (1846).

Between 1876 and 1909, thirteen constitutional amendments were introduced to prohibit private legislation, but all of these were sponsored by the same two congressmen. M. Musmann, "Proposed Amendments to the Constitution," H.R. Doc. 70-551, 70th Cong., 2d Sess. (1929), reprinted by Greenwood Press, 149-150 (1976). In 1932, Representative Robert Luce of Massachusetts, urging the extension of the jurisdiction of the Court of Claims to tort claims, argued, "If purely a question of justice, nothing can be worse than to leave [a claim decision] to a legislative body, particularly a large body like the House of Representatives. Parliamentary history abounds in instances of the miscarriage of justice at the hands of legislators." R. Luce, "*Petty Business in Congress*," 26 Am. Pol. Sci. Rev. 815, 820 (1932).

See also 48 U.S.C. § 1471 (1970) (certain types of special or local legislation in the territories of the United States prohibited); *Binney*, *supra* note 9, at 127-180 (exhaustive, if outdated, examination of restrictions on private, special, or local legislation under State constitutions).

[11] *See United States* v. *Realty Co.*, 163 U.S. 427 (1896).

[12] 25 U.S. (12 Wheat.) 117 (1827).

[13] *Id.* at 128.

[14] 163 U.S. 427, 439-44 (1896).

[15] U.S. Const., art. 1, § 8.

[16] *United States* v. *Realty Co.*, 163 U.S. 427, 440 (1896). *See also Powell* v. *Link*, 114 F. 2d 550 (4th Cir. 1940). The constitutionality of private acts and related case law are discussed in M. Bennett, "Private Claims Acts and Congressional References," 90th Cong., 2d Sess. (H. Comm. Print 88-926, 1968); Note, "Private Bills in Congress," *supra* note 9; Note, "The Constitutionality of Private Acts in Congress," 49 Yale L. J. 712 (1940).

[17] *Cf.* Luce, *supra* note 10 (commentary on volume of private legislation and need for procedures other than Congressional for relief).

executive branch the authority to issue patents.[18] In 1855, the United States Court of Claims was created to investigate claims against the government [19] and was empowered in 1863 [20] and 1887 [21] to adjudicate certain contract claims and to investigate the facts underlying private claims bills upon reference to the Court by Congress.[22] In 1920, executive departments were granted the power to settle property damage claims caused by the negligence of Federal officers or employees, when the claims did not exceed $1,000.[23] The volume of private bills resulting from large claims of this kind gave impetus to the passage of the Federal Tort Claims Act in 1946.[24]

The creation of new causes of action against the Federal Government and forums in which to hear them was accompanied by corresponding restrictions upon the classes of private bills which could be introduced in Congress. The Legislative Reorganization Acts of 1946 [25] and 1970 [26] prohibited introduction in the House or the Senate of claims for property damage, personal injury, or death, which could be adjudicated under the Federal Tort Claims Act, certain pensions, the construction of a bridge over a naviagble stream, or the correction of naval or military records.[27] The statutory prohibitions are reflected in the "Rules of the House of Representatives." [28]

The equitable function of private legislation, in the tradition of Parliament as a forum for petitions for exceptions to the law,[29] is widely accepted. The Rules of the House of Representatives Subcommittee on Administrative Law and Governmental Operations states that, "In the settlement of claims, Congress is always the place of last resort." [30] The Supreme Court, in speaking of private legislation, has said,

> The nation, speaking broadly, owes a "debt" to an individual when his claim grows out of general principles of right and

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[18] Act of Apr. 10, 1790, ch. 7, 1 Stat. 109 (1848).
[19] Act of Feb. 24, 1855, ch. 122, 10 Stat. 612 (1855).
[20] Act of Mar. 3, 1863, ch. 92, § 2, 12 Stat. 765 (1863).
[21] Act of Mar. 3, 1887, ch. 35, § 1 (general grant of jurisdiction), § 4 (grant of jurisdiction to investiagte private claims bills referred by either House of Congress), 24 Stat. 505-06 (1887).
[22] The original grant of authority to investigate private claims bills when referred by Congress evolved into a procedure whereby claims referred to the judges and the Chief Commissioner of the Court of Claims were given a trial on the merits. The findings and recommendations of the Court were returned to the House, where the referral had originated, for further action, since no "final judgment" had been rendered. In *Glidden* v. *Zdanok* the Court of Claims was held to be a constitutional court created under Art. III of the Constitution. 370 U.S. 530 (1962). *See also* 28 U.S.C. § 171 (1970) (Congressional declaration that Court of Claims is Article III court, enacted in 1953). In a separate opinion by Justice Clark and Chief Justice Warren it was suggested that the role of judges of the Court of Claims in Congressional reference cases involved the rendering of advisory opinions. *Glidden* v. *Zdanok*, 370 U.S. 530, 586-87 (1962). Congress responded with a new procedure under which private claims bills can be referred only to the Chief Commissioner of the Court of Claims who refers the bills to a trial commissioner. The resultant report of the trial commissioner is reviewed by three other commissioners, and their recommendation is sent to Congress. Act of Oct. 15, 1966, Pub. L. 89-681, 80 Stat. 958 (1966). This procedure circumvents the problem of advisory opinions by the judges. *E.g.* S. Res. 484, 94th Cong. 2d Sess. (1976) referring S. 3643, 94th Cong., 2d Sess. (1976) (claim arising from withholding of claimant's disability retirement pay pursuant to his employment by a foreign government) to the Chief Commissioner of the Court of Claims for findings and conclusions, rather than for adjudication. *See* Bennett, *supra* note 16; Ad. Law Subcom. *Rules*, *supra* note 10, at 22-24; S. Jacoby, "Recent Legislation Affecting the Court of Claims," 55 Geo. L.J. 397, 414-21 (1966).
[23] Act of Dec. 28, 1922, § 2, 42 Stat. 1066 (1922) (repealed by Act of Aug. 2, 1946, ch. 7513, title IV, § 424(a), 60 Stat. 846 (1946). *Cf.* 10 U.S.C. § 2737(a) (1970) (similar authority for heads of military departments).
[24] 28 U.S.C. §§ 1291, 1346, 1402, 1504, 2110, 2401, 2402, 2411, 2412, 2671-2680 (1964). *See* "Hearings Before the Committee on Expenditures in the Executive Departments United States Senate Eightieth Congress Second Session on Evaluation of the Legislative Reorganization Act," 80th Cong., 2d Sess. (1948) (remarks of Sen. Wiley).
[25] Legislative Reorganization Act of 1946, Pub. L. No. 601, §§ 123, 131, 60 Stat. 831 (1946).
[26] U.S.C. § 190g (1970).
[27] *See* "Standing Rules of the United States Senate and Provisions of the Legislative Reorganization Acts of 1946 and 1970 Relating to the Operation of the Senate, 87-88 (1978); Ad. Law Subcom. *Rules*, *supra* note 10, at 48-51. *See generally* G. Galloway, "The Legislative Process in Congress" 530 (1953); 95 *Cong. Rec.* A2901 (1949) (remarks of Rep. Cellar).
[28] "Rules of the House of Representatives of the United States Ninety-Fourth Congress," House Doc. 416, 93rd Cong., 2d Sess. Rule XXI § 4 (1975).
[29] *Supra* notes 7 and 8 and accompanying text.
[30] Ad. Law Subcom. *Rules*, *supra* note 10, at 16.

justice; when, in other words, it is based upon considerations of a moral or merely honorary nature, such as are binding on the conscience or the honor of an individual, although the debt could obtain no recognition in a court of law. The power of Congress extends at least as far as the recognition and payment of claims against the government which are thus founded. To no other branch of government than the Congress could any application be successfully made on the part of the owners of such claims or debts for the payment thereof. Their recognition depends solely upon Congress, and whether it will recognize claims thus founded must be left to the discretion of the body.[31]

Commentators have also emphasized the purpose of private bills as instruments to assure fairness. Judge Marion T. Bennett of the United States Court of Claims has characterized such legislation as a demonstration of the "* * * Nation's conscience. In this context, equity appears to be ethical rather than jural and not grounded in any sanction of positive law." [32] Gellhorn and Lauer maintain that the power of Congress to grant relief "affirm[s] the equity factor in relations between the Government and the private persons * * * [and gives to the Congress the authority to] remedy defects of general application." [33] Thus, the policy underlying private legislation is the assurance of a just result and equality of treatment.

HISTORY OF PRIVATE PATENT LEGISLATION

Conceptually letters patent are grants of monopoly intended to encourage invention and industry by means of a specified period of state protection.[34] The earliest known statute articulating this principle and establishing a general patent system was enacted in 1474 by the Republic of Venice.[35] The word "patent" derives from Letters Patent based on the English practice of royal grants which were sealed in closed condition (Literae Clausae) or open condition. A royal grant sealed in open condition was referred to as "literae patentes"—open letters—which could be read without breaking the royal seal. In England, as in other countries, where royal prerogative was the source of the grants, abuses arose and public opinion was reflected in complaints to the House of Commons and in the submission of bills to curb the practice.[36] The result was a Statute of Monopolies passed by Parliament in 1623.[37] English law was reflected in the American colonies, many of which adopted patent statutes of their own.[38] This practice was continued by the states, even after the adoption of the Constitution.[39] The protection of inventors was considered by the framers of the Constitution resulting in Article I, section 8: "The Congress shall have power * * * To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries." [40]

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[31] *United States* v. *Realty Co.*, 163 U.S. 427, 440-41 (1896).
[32] Bennett, *supra* note 16, at 1-2.
[33] Gellhorn and Lauer, *supra* note 39, at 12. *See Burkhardt* v. *United States*, 84 F. Supp. 553 (Ct. Cl. 1949).
[34] S. Oppenheim, "A New Approach to Evaluation of the American Patent System," 33 J. Pat Off. Soc'y 555 (1951).
[35] G. Mandich, "Venetian Patents (1450-1550," 30 J. Pat. Off. Soc'y 166, 172-174 (1948).
[36] R. Choate, "Patent Law" 60-61 (1973).
[37] Statute of Monopolies, 1623, 21 James 1, c. 3, in *id.* at 62-63.
[38] *See* 1 Deller's "Walker on Patents" 51 (2d ed. 1964).
[39] P. Frederico, "State Patents," 13 J. Pat. Off. Soc'y 166, 176 (1931).
[40] U.S. Const. art. I, § 8, cl. 8.

It was the introduction of a private patent bill which prompted the enactment of the first general patent legislation of the United States. On April 20, 1789, a committee of the House of Representatives reported favorably on the petition of John Churchman:

> The first clause, in the words following, to wit: "That the committee have conferred with Mr. Churchman, and find that he has made many calculations which tend to establish his position, that there are two magnetic points which give direction to the needle; that upon this doctrine he has endeavored to ascertain from a given latitude, and a given variation, what must be the longitude of the place; and having applied his principles to many instances in Cook's voyages, has found the result to correspond with considerable accuracy with the real facts, as far as they could be determined by the reckoning of the ship: That the object to which Mr. Churchman's labors are directed, is confessedly of very high importance, and his ideas on the subject appear to be ingenious: That, with a view of applying them to practice, he has contrived a map and a globe, whereby to shew the angles which are made by the intersection of the real and the magnetic meridians in different parts of the earth: That he is also engaged in constructing tables for determining the longitude at sea upon magnetic principles: That the committee are of opinion that such efforts deserve encouragement, and that a law should pass to secure to Mr. Churchman, for a term of years, the exclusive pecuniary emolument to be derived from the publication of these several inventions; was again read, and, on the question put thereupon, agreed to by the House.[41]

This bill, which was not to pass, was followed by a motion that "a bill or bills be brought in, making a general provision for securing to authors and inventors the exclusive right of their respective writings and discoveries . . . ." [42] Nearly a year later, the first general patent statute was signed into law.[43] The authority to grant letters patent for useful and important inventions or discoveries was vested jointly in the Secretary of State, the Secretary of War, and the Attorney-General, subject to Presidential approval, and provision was made that such letters patent were to be recorded in the office of the Secretary of State.[44] The Congress had decided to delegate its constitutional authority to grant patents.[45] During the first twenty years of Congress, there were a number of applications to Congress, but none of them were approved and the reasons for disapproval were not stated.[46]

The first private patent acts were passed as a response to problems with the general patent legislation. The act of 1790 made no provision for the extension of patents.[47] Its successor, passed in 1793, required patent applicants to be citizens of the United States,[48] but still did not provide for patent extension.[49]

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[41] 1 "Journal of the House of Representatives" 18 (April 20, 1789).
[42] *Id.*
[43] Act of Apr. 10, 1790, ch. 7, 1 Stat. 109 (1848).
[44] *Id.* § 1 at 109-110.
[45] "Encouragement for Useful Inventions and Discoveries," H.R. Doc. No. 74, 4th Cong., 1st Sess. (1796) in 1 "American State Papers (1789-1809)," Misc. 140 (1834).
[46] *See, e.g.*, "Journal of the Senate," 1st Cong., 2d Sess. 117, Mar. 4, 1790 (a bill for exclusive rights in a type punch); "Application of Steam to Navigation," 5 Doc. No. 14, 1st Cong., 2d Sess. (1790) in 1 "American State Papers (1789-1809)." Misc. 12 (1834) (petition for a patent on "the use of fire and steam to navigation").
[47] *See* Act of Apr. 10, 1790, ch. 7, 1 Stat. 109 (1848).
[48] Act of Feb. 21, 1793, ch. 11, § 1, 1 Stat. 318 (1848). Citizenship required a 2-year residency within the United States. Act of Mar. 26, 1790, § 1, ch. 3, 1 Stat. 103 (1848).
[49] See Act of Feb. 21, 1793, ch. 11, 1 Stat. 318 (1848).

The first private patent act granted letters patent to one Anthony Boucherie, who had not yet completed his two years of residency in the United States required for citizenship.[50] At least one similar petition had been presented to Congress as early as 1795.[51] A committee of the Senate had recommended passage of the earlier bill along with an amendment to the patent act authorizing letters patent to be granted to aliens who intended to become citizens, but these recommendations were rejected.[52] In his petition, Mr. Boucherie pointed out the great utility and value of his sugar refiner, his advanced age, and his intent to become an American citizen.[53] Without report or debate,[54] an act waiving the two year residency requirement for this petitioner became law on January 7, 1808.[55]

In 1805 the House Committee on Commerce and Manufactures reported favorably on the petition of one Oliver Evans for the extension of his patent improving flour mills,[56] the first request for a patent extension. Mr. Evans contended that his improvements were important, that he had been unable "to collect any considerable sums for his patent" due to the size of the United States and other marketing difficulties, and finally, that he had insufficient funds for further experimentation.[57] The committee recommended extension of the patent, commenting,

> The petitioner appears to possess a mind capable of conceiving, and a strong propensity for making, new discoveries and inventions, and the greater part of his life seems to have been devoted to improvements in the labor-saving machines; and, if he could be encouraged to persevere, it is highly probable his discoveries may be rendered useful to his country, and, at the same time, profitable and honorable to himself.[58]

At the same time, the committee pointed out that numerous requests of this nature were likely to be made in the future; and, since copyright extensions were permitted,[59] the committee requested permission to report a bill authorizing extension of patents as well.[60] Mr. Evans' extension was not granted by the Eighth Congress. He persevered, making petitions in the Ninth Congress [61] and the Tenth [62] By this time, he had sued an alleged patent infringer, but the court had found the patent description insufficient [63] so that he could neither get judicial relief for the infringement nor appeal to the Supreme Court for lack of $2,000 in controversy.[64] A committee of the Tenth Congress was

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[50] "Application of an Alien for a Patent Right," H. Doc. No. 236, 10th Cong., 1st Sess. (1807) in I "American State Papers (1789-1809)," Misc. 655 (1834).
[51] "Journal of the Senate," 4th Cong., 1st Sess. 203, Dec. 29, 1795.
[52] *Id.*
[53] *Id.*
[54] *See, e.g.*, 16 "Annals of Cong." 63, 1245 (1807, 1808).
[55] Act of Jan. 7, 1808, ch. 6, 6 Stat 70. (1853).
[56] "Extension of Patent and Copyrights," H.R. Rep. No. 186, 8th Cong., 2d Sess. (1805) in I "American State Papers (1789-1809)" Misc. 416 (1834).
[57] *Id.*
[58] *Id.*
[59] Act of May 31, 1790, ch. 15, § 1, 1 Stat. 124 (1848).
[60] "Extension of Patent and Copyrights," H.R. Rep. No. 186, 8th Cong., 2d Sess. (1805) in I "American State Papers (1789-1809)," Misc. 416 (1834).
[61] "Application of Oliver Evans for an Extension of His Patent," H. Doc. 196, 9th Cong., 1st Sess. (1808) in I "American State Papers (1789-1809)" Misc. 434 (1834).
[62] "Extension of Patent Rights," H.R. Rep. No. 231, 10th Cong. 1st Sess. (1807) in I "American State Papers (1789-1809)," Misc. 646 (1834).
[63] *Evans* v. *Chambers*, 8 F. Cas. 837 (C.C.D. Pa. 1807) (No. 4,555).
[64] *See* "Extension of Patent Rights," H.R. Rep. No. 231, 10th Cong., 1st Sess. (1807) in I "American State Papers (1789-1809)," Misc. 646 (1834).

favorably impressed by Evans' plight and asked leave to report out his bill.[65] His patent was extended by act of Congress in late January of 1808.[66]

Between 1808 and 1836, 34 other private patent laws were enacted.[67] Eighteen of these were waivers of the two year residency requirement for aliens.[68] Six were extensions,[69] while the others were miscellaneous grants transferring patent rights to the widow of an inventor,[70] issuing patents to aliens who wanted to exploit American markets,[71] and even one issuing a patent for which the specifications were declared secret.[72] Unfortunately, no reports were issued on these bills precluding the examination of the reasons for passage.[73]

The first Patent Act of 1790 authorized the issuance of a patent to the "first and true inventor or discoverer" of an invention which was "not before known or used" and was found "sufficiently useful and important" by the Attorney General and the Secretaries of War and State.[74] The required examination was burdensome on the Cabinet officer administrators and resulted in public dissatisfaction with the slowness of the application process and with the high standards applied by the administrators of the Act. The Patent Act of 1793 eliminated the examination to determine if the applicant's invention were "sufficiently useful and important" and substituted a ministerial registration system. The validity of such patents was to be determined by the Federal Courts.[75] By 1836 this loss of discretion had resulted in many worthless patents, much burdensome litigation, and many frauds involving patent rights.[76]

In 1836 the patent records were burned giving impetus to the revision of the patent laws and the establishment of the Patent Office as an independent department.[77] The Patent Act of 1836,[78] which provided the general outline of the present patent system, established the Patent Office as a Bureau of the Department of State under a Commissioner of Patents and required a novelty examination and a determination of whether the invention were "sufficiently useful and important." [79] This act permitted patent applications to be filed by aliens [80] and authorized the extension of patents for seven years upon a showing by the holder that, without fault or negligence upon his part, the patentee had failed to obtain "reasonable remuneration for the time, ingenuity, and expense [invested in its development], and the introduction thereof into use." [81]

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[65] *Id.*
[66] Act of Jan. 21, 1801, ch. 13, 6 Stat. 70 (1853).
[67] *See* 6 Stat. 972 (1846) (index listing private patent statutes).
[68] *See, e.g.*, Act of Feb. 5, 1810, ch. 6, 6 Stat. 87 (1846).
[69] *See, e.g.*, Act of Mar. 3, 1821, ch. 62, 6 Stat. 262 (1846).
[70] Act of Feb. 21, 1828, ch. 7, 6 Stat. 371 (1846).
[71] *See, e.g.*, Act of Jul. 3, 1832, ch. 160, 6 Stat. 502 (1846).
[72] Act of Jul. 3, 1832, ch. 159, 6 Stat. 502 (1846).
[73] There exists only one other report on a private patent bill prior to 1836. "Extension of Patent Rights," H.R. Rep. No. 207, 9th Cong., 1st Sess. (1906) in I "American State Papers (1789-1809)" Misc. 453 (1834) (refusing a patent extension to holders whose production facilities had been destroyed by fire on the grounds that (1) the holders were assignees who had paid the inventor no consideration for use beyond 14 years; and (2) the policy of the patent statute was to put inventions into the public domain after a specified period).
[74] Act of Apr. 10, 1790, ch. 7, § 1, 1 Stat. 109 (1848).
[75] H. Comm. on Patents, "Promote and Encourage the Useful Arts," H.R. Rep. No. 797, 25th Cong., 2d Sess. 1 (1838); Act of Feb. 21, 1793, ch. 11, § 1, 1 Stat. 318 (1848).
[76] R. Choate, "Patent Law" 76-77 (1973). *See* S. Doc. N. 338, 24th Cong., 1st Sess. (1836).
[77] H. Comm. on Patents, "Promote and Encourage the Useful Arts," H.R. Rep. No. 797, 25th Cong., 2d Sess. 1 (1838).
[78] Act of July 4, 1836, ch. 361, 5 Stat. 117 (1846).
[79] *See* R. Choate, "Patent Law" 77 (1973).
[80] Act of July 4, 1836, ch. 361, § 6, 5 Stat. 117, 119 (1846).
[81] *Id.* § 18 at 124-125.

The principal reasons underlying the passage of the earlier private patent bills had been addressed through general legislation. For the next 10 years the rationales were more varied. Generally, in keeping with the historical purpose of private legislation,[83] the Federal government had contributed to the problems which motivated the patent holder to petition Congress for relief.[84] For example, acts were passed to replace letters patent destroyed in a fire where the Patent Act did not authorize replacement,[84] to relieve a prospective patentee of the oath required on a patent application,[85] to direct extension of a patent where the Patent Office had refused to accept timely application because it could not be processed before the expiration of the patent,[86] and to re-extend a patent and extension for which had been granted by act of Congress in 1834 but voided for a defect in its terms.[87] Also during this period, bills began to be favorably reported from the House Committee on Patents requesting compensation for the use by the United States of the patentable inventions of Federal employees,[88] but only one passed [89]—awarding $25,000 to the inventor of the percussion cap upon the admission of the War Department that the United States was in open infringement of the patent and that the invention was such a great technological advance that the United States would not refrain from its use.[90] 1844 saw the appearance of another class of petition which was to plague the Congress for the next forty years. In that year Stephen McCormick petitioned for extension of his patent on the grounds that lawsuits and the failure of the public to accept his patented reaper had prevented his receipt of adequate compensation.[91] His petition was adversely reported because, as the Committee explained, the Patent Appeals Board had denied the request and

> your committee would not feel at liberty to report a bill for his relief, believing that it would be unwise to establish a precedent, that numerous persons, who now have and may hereafter obtain patents, if their expectations of profit are not fully realized, might, by applying to Congress, have their exclusive right prolonged from time to time, until their invention should fully remunerate them for their time and trouble.[92]

This statement was to prove to be prophetic. In 1848, the Committee favorably reported a bill where it felt the inventor had had insufficient time for market development.[93] The floodgates were open. In the 30th

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[83] *See supra* notes 14–33 and accompanying text.

[84] One glaring exception to this was the act for the relief of John Howard Kyan. Act of May 31, 1838, ch. 40, 6 Stat. 717 (1853). This statute directed the Commissioner of Patents to issue a patent to the petitioner for an ineligible invention because the invention was an important one. H. Comm. on Patents, "John Howard Kyan," H.R. Rep. No. 662, 25th Cong., 2d Sess. 1 (1838).

[84] H. Comm. on Patents, John Blanc, H.R. Rep. No. 666, 25th Cong., 2d Sess. (1938) accompanying Act of Mar. 3, 1839, ch. 129, 6 Stat. 767 (1853).

[85] H. Comm. on Patents, Stephen P. W. Douglass, H.R. Rep. No. 668, 25th Cong., 2d Sess. (1838) accompanying Act of Mar. 3, 1839, ch. 155, 6 Stat. 778 (1853).

[86] H. Comm. on Patents, William Gale, H.R. Rep. No. 671, 27th Cong., 2d Sess. (1842) accompanying Act of Mar. 3, 1843, ch. 131, 6 Stat. 895 (1853).

[87] H. Comm. on Patents, Thomas Blanchard, H.R. Rep. No. 713, 29th Cong., 1st Sess. (1846) accompanying Act of Feb. 15, 1847, ch. 10, 9 Stat. 683 (1854).

[88] H. Comm. on Patents, Daniel Pettibone, H.R. Rep. No. 160, 26th Cong., 2d Sess. (1841); H. Comm. on Patents, Dr. William M. Wright, H.R. Rep. No. 123, 28th Cong., 2d Sess. (1845); H. Comm. on Patents, Elisha H. Holmes, H.R. Rep. No. 160, 29th Cong., 1st Sess. (1846); H. Comm. on Patents, Henry M. Shrene, H.R. Rep. No. 369, 29th Cong., 1st Sess. (1846) (an outright patent infringement by the United States).

[89] Act of Feb. 20, 1847, ch. 14, 9 Stat. 684 (1854).

[90] Letters of William Wilkins, Secretary of War, to Hon. J. Vance, Chairman of the H. Committee on Claims, Dec. 30, 1844, and G. Talcott, Lt. Col. Ordnance, to William Wilkins, Secretary of War, Dec. 24, 1844, in H. Comm. on Patents, Joshua Shaw, H.R. Rep. No. 212, 29th Cong., 1st Sess. App. (1846).

[91] H. Comm. on Patents, Stephen McCormick, H.R. Rep. No. 431, 28th Cong., 1st Sess. (1844).

[92] *Id.* at 1.

[93] H. Comm. on Patents, John J. Adams, H.R. Rep. No. 32, 30th Cong. 1st Sess. (1848).

and 31st Congresses nearly twenty bills of this nature were favorably reported.[94] The first of these did not pass until 1854,[95] and, although few others ever became law, they easily out numbered any other patent petitions until around 1880.[96] Even Samuel Colt requested an extension on his revolver patent, but his was denied since, as the committee pointed out, he had already made a fortune on it.[97]

Of course, the more usual variety of bills continued to be favorably reported, but these too rarely passed. Between 1845 and 1855 there was only one such act,[98] extending a patent after the Commissioner had denied extension.[99] The Commissioner's refusal was based upon a finding that the invention in question was of insufficient novelty and importance. The committee disagreed, pointing out that when, as part of the fire restoration of the Patent Office, descriptive models were choosen to be re-built on the basis of value, interest, and importance to the public, the petitioner's invention was among those re-built.[100] In 1858 antother patent extension bill passed after the Patent Office had lost the application.[101] During the 19th century, petitions for private patent relief were numerous, but only three or four were enacted into law each Congress.[102]

In 1879 the House Committee on Patents began to cut off the flow of petitions based upon inadequate compensation personal hardship. In one report, it commented,

> Full weight has been given to the appeal made in behalf of the inventor, Adams, an account of his advance years, misfortunes of various kinds, straitened circumstances, and bodily infirmities; but committee feel constrained to exclude these comsiderations in arrising at a determination and regard the subject solely in its effect on the public interests.[103]

In a similar report the same year, the committee articulated the standard for patent extension by private act.

> In the opinion of the committee, an extension should not be granted unless it can be shown; 1st. That the invention is valuable; 2d. That the inventor has not received compensation adequate, and for reasons not only beyond his control but beyond the control of a man of reasonable prudence and foresight; and 3d. That the public will not be essentially injured by the extension.[104]

In the face of this apparent hostility, the number of petitions dwindled rapidly as did favorable reports. In 1899, the House Committee on Patents reported out eight private patent bills, but contrary to the spirit of the two quoted reports from 20 years before, three of these bills recommended extensions based upon personal and

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[94] *See generally Reports o the H. Comm. on Patents, 33rd-44th Congresses 1837-1877* (compiled by the Patent Office for office use).
[95] Act of Mar. 28, 1854, ch. 31, 10 Stat. 776 (52) (1855).
[96] *See generally Reports o the H. Comm. on Patents, 33rd-44th Congresses 1837-1877* (compiled by the Patent Office for office use).
[97] H. Comm. on Patents Samuel Colt, H.R. Rep. No. 194, 35th Cong., 1st Sess. (1959).
[98] Act of Aug. 11, 1848, ch. 158, 9 Stat. 734 (1854).
[99] H. Comm. on Patents, Oliver C. Harris, H.R. Rep. No. 567, 30th Cong., 1st Sess. (1848).
[100] *Id.*
[101] Act of Jun. 8, 1858, ch. 124, 11 Stat. 346 (1863); H. Comm. on Patents, David Bruce, H.R. Rep. No. 89, 35th Cong., 1st Sess. (1858).
[102] *C. Reports o the Congressional Committees on Patents* (1837-1899) (compiled by the Patent Office for office use) with 6 through 30 Statutes at Large (1789-1899) (indexes of private laws).
[103] H. Comm. on Patents, Calvin Adams, H.R. Rept. 195, 45th Cong., 3rd Sess. (1879).
[104] H. Comm. on Patents, Moses Marshall, H.R. Rep. No. 177, 45th Cong., 3rd Sess. (1879).

financial difficulties encountered by various inventors.[105] However, the heyday of private patent petitions ended with the century. Between the 56th and 64th Congresses only four such bills were reported out of the House committee.[106] 1916 saw the last favorable report on a bill to extend a patent on the ground of inadequate compensation.[107]

Early in the 20th century the House committee began to consider the extensions of design patents which protect the insignia of certain service organizations, which have become the most frequent private patent acts in modern times. Such an extension was granted to the Daughters of the American Revolution in 1916.[108] In the same Congress the House Committee on Patents reported favorably on extensions of the design patents held by the United Daughters of the Confederacy [109] and the United States Daughters of 1812.[110] Between 1918 and 1936, the only reports published were concerned with extensions of the design patents held by the Daughters of the American Revolution and the United Daughters of the Confederacy. In the latter year, public laws [111] were passed renewing design patents for the American Legion,[112] the American Legion Auxiliary,[113] the United States Daughters of 1812,[114] and the Disabled American Veterans of the World War.[115]

Shortly after the passage of these acts, the final requests for private patent bills grounded upon inadequate compensation were introduced,[116] at the behest of the investors in two lapsed patents. The House Committee on Patents reverted to the outmoded practice of filing an adverse report to make it clear that it would not consider relief which potentially could make chaos of the patent system.[117] At about the same time one of the most famous of all private statutes was reported out of this committee. The act extended a patent held by Art Metal Works, Inc., after it had been declared invalid as a result of judicial corruption.[118] This was a classic example of the traditional purpose of private legislation, to relieve a private party in circumstances in which the government had incurred a moral or ethical obligation toward the party.[119]

Immediately following the Second World War, this traditional view was the motivation behind a series of private patent bills which were intended to recompense inventors whose patents had been allegedly infringed by the United States or whose inventions had contributed to the war effort but were not patentable either because of secrecy restrictions or because the inventor had been an officer or employee

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[105] H. Comm. on Patents, "Certain Patents of S. H. Smith," H.R. No. 2072 55th Cong., 3rd Sess. (1899); H. Comm. on Patents, "Extension of Letters Patent No. 244306," H.R. Rep. No. 2102, 55th Cong., 3rd Sess. (1899); H. Comm. on Patents, "Daniel T. Lawson," H.R. Rep. No. 2194, 55th Cong., 3rd Sess. (1899).

[106] See "Reports of the House Comm. on Patents, 50th to 75th Congresses, 1888-1938" (1940) (index).

[107] H. Comm. on Patents, Thomas A. Dicks, H.R. Rep. No. 1199, 64th Cong., 1st Sess. (1916).

[108] Priv. L. No. 14, ch. 84, 39 Stat. 1200 (1916).

[109] H. Comm. on Patents, H.R. Rep. No. 533, 64th Cong., 1st Sess. (1916); H. Comm. on Patents, "Extension of Patent Design," H.R. Rep. No. 1344, 64th Cong., 2d Sess. (1917).

[110] H. Comm. on Patents, H.R. Rep. No. 1361, 64th Cong., 2d Sess. (1917).

[111] This classification was probably erroneous. See supra note 2 and accompanying text (definition of a private bill).

[112] Pub. L. No. 230, ch. 427, 49 Stat. 510 (1935).

[113] Pub. L. No. 231, ch. 428, 49 Stat. 510 (1935).

[114] Pub. L. No. 551, ch. 278, 49 Stat. 1257 (1936).

[115] Pub. L. No. 627, ch. 466, 49 Stat. 1389 (1936).

[116] H.R. 7685 and H.R. 9341, 76th Cong., 3rd Sess. (1940).

[117] H. Comm. on Patents, "Elbert R. Robinson Patents," H.R. Rep. No. 2691, 76th Cong., 3d Sess. 1 (1940); H. Comm. on Patents, "Steve Kaliss and Stella Lakomski," H.R. Rep. No. 2692, 76th Cong., 3rd Sess. 1 (1940).

[118] Priv. L. No. 554, ch. 738, 58 Stat. 1095 (1944). *See United States* v. *Manton*, 107 F. 2d 834 (2d Cir. 1939).

[119] *See United States* v. *Realty Co.*, 163 U.S. 427, 439-44 (1896).

of the Federal government at the time. For example, one bill urged conferring upon the United States District Court for the Southern District of Iowa jurisdiction to hear the patent infringement claims of the inventor of the jeep.[120] Another granted compensation to the developer of a low altitude bombing system who had discovered the system outside working hours, made it available to the United States, and could not sell it to other nations because of the security laws.[121] Still other compensation claims resulted from bureaucratic errors made by executive departments in filing patent applications on behalf of employee-inventors.[122] Although the United States could retain all rights to these inventions, [123] it was customary for the government to waive its rights especially with regard to foreign patent rights, [124] but the requirement of formal waiver gave rise to several paperwork errors which were corrected by private legislation.[125]

In the last twenty years, the House Committee on the Judiciary, which has had patent jurisdiction since 1947, [126] has reported out 30 private patent bills of which all but two have passed. Thirteen of these bills have recommended compensation to persons whose patent rights have been infringed or impaired by the United States or have granted court jurisdiction to permit such claims to be litigated.[127] Three bills were reported recommending tax exemptions with respect to monetary awards: (1) a Congressional grant of compensation for use of the invention of an employee-developer of the bazooka, [128] (2) a prize for aeronautic contribution awarded by the National Aeronautics and Space Administration, [129] and (3) a judicial award for damages in a patent infringement case against the United States.[130] The reports of several of these compensation bills commented upon the relief they granted being predicated upon moral, rather than legal obligations.[131] It is useful to compare the fate of most modern patent bills with that of the last two bills mentioned. These attempts to exempt from taxation an award from NASA and a judicial award for damages were unsuccessful in the face of arguments by executive

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[120] H. Comm. on Judiciary, Lt. Col. Homer G. Hamilton, H.R. Rep. No. 290, 83rd Cong., 1st Sess. (1953).

[121] Priv. L. No. 86-492, 74 Stat. A103 (1960); H. Comm. on Judiciary, Col. John A. Ryan, Jr., H.R. Rept. No. 2052, 86th Cong., 2d Sess. (1960).

[122] *See, e.g.*, Priv. L. No. 389, ch. 258, 68 Stat. A61 (1954).

[123] 35 U.S.C. § 100.1 *et seq.* (1970).

[124] *See* H. Comm. on Judiciary, "Transfer by the United States to Vernon F. Parry of Interest in an Invention," H.R. Rep. No. 1178, 83rd Cong., 2d Sess. (1954).

[125] *See, e.g.*, H. Comm. on Judiciary, H.R. Rep. No. 260, 84th Cong., 1st Sess. 1-8 (1955) accompanying Priv. L. No. 625, ch. 264, 70 Stat. A53 (1956).

[126] "Rules of the House of Representatives," Rule X, 1.(m)(14), § 682(a), H. Doc. No. 416, 93rd Cong., 2d Sess. (1975).

[127] *See, e.g.*, H. Comm. on Judiciary, Mrs. Paul M. Tedder, H.R. Rep. No. 157, 86th Cong., 1st Sess. (1959) accompanying Priv. L. No. 86-10, 73 Stat. A7 (1959) (compensation); H. Comm. on Judiciary, Col. John A. Ryan, H.R. Rep. No. 2052, 86th Cong., 2d Sess. (1960), Priv. L. No. 86-492, 74 Stat. A103 (1960) (jurisdiction); H. Comm. on Judiciary, George Edward Barnhart, H.R. Rep. No. 808, 87th Cong., 1st Sess. (1961) accompanying Priv. L. No. 87-297, 76 Stat. 1267 (1961) (jurisdiction); H. Comm. on Judiciary, Charles F. Ward, Jr., and Billy W. Crane, Sr., H.R. Rep. No. 1851, 87th Cong., 2d Sess. (1962) accompanying Priv. L. No. 87-539, 76 Stat. 1354 (1962) (compensation); H. Comm. on Judiciary, Estate of Gregory J. Kessenich, H.R. Rep. No. 2261, 87th Cong., 2d Sess. (1962) accompanying Priv. L. No. 87-578, 76 Stat. 1368 (1962) (compensation); H. Comm. on Judiciary, John S. Antinello, H.R. Rep. No. 92-172, 92nd Cong., 1st Sess. (1971) accompanying Priv. L. No. 92-131, 86 Stat. 1554 (1971) (Congressional reference to the Court of Claims).

[128] H. Comm. on Judiciary, Estate of Gregory J. Kessenich, H.R. Rep. No. 513, 88th Cong., 1st Sess. (1963) accompanying Priv. L. No. 88-32, 77 Stat. 384 (1963). *See also* Priv. L. No. 87-578, 76 Stat. 1368 (1962) (original grant of compensation).

[129] H. Comm. on Judiciary, Francis M. Rongalls and Gertrude S. Rongalls, H.R. Rep. No. 1780, 90th Cong., 2 Sess. (1968).

[130] H. Comm. on Judiciary, Bert N. Adams and Emma Adams, H.R. Rep. No. 91-443, 91st Cong., 1st Sess. (1969).

[131] *See* H. Comm. on Judiciary, Charles F. Ward, Jr., and Billy W. Crane, Sr., H.R. Rep. 1851, 87th Cong., 2d Sess. 1 (1962); H. Comm. on Judiciary, Estate of Gregory J. Kessenich, H.R. Rep. No. 2261, 87th Cong., 2d Sess. 4 (1962); H. Comm. on Judiciary, Estate of Gregory J. Kessenich, H.R. Rep. No. 513, 88thCong., 1st Sess. 4-5 (1963).

departments that many similar awards were made each year which were taxed and that there were no special circumstances relating to these petitions which incurred the sense of moral obligation on which private legislation was normally based.[132]

Bills for the extension of the design patents of service organizations did not, at their inception, conform to the requirement that some inequitable legal burden has been placed upon the petitioner by the United States, yet twelve of them have passed since 1969.[133] The organizations in question were, for the most part, granted design patents for their emblems early in the 20th century,[134] and have had their 14-year patent rights extended repeatedly.[135] Interestingly, it appears that this recurrent renewal procedure is unnecessary. All of these organizations hold design patents which are statutorily defined as "any new, original and ornamental design for an article of manufacture . . . ." [136] It appears that the protection of insignia of this type would be more appropriate under the trademark laws, since trademarks, specifically "collective marks," [137] are normally used to ensure exclusive rights in the names of fraternal organizations, etc.: [138]

> The term "trade-mark" includes any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others.
>
> The term "service mark" means a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others. Titles, character names and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.
>
> The term "certification mark" means a mark used upon or in connection with the products or services of one or more persons other than the owner of the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy or other characteristics of such goods or services or that the work or labor on the goods or services was performed by members of a union or other organization.
>
> The term "collective mark" means a trade-mark or service mark used by the members of a cooperative, an association or other collective group or organization and includes marks used to indicate membership in a union, an association or other organization.[139]

The parties currently holding these design patents would apparently lose no rights if the patents were converted into trademarks by

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[132] H. Comm. on Judiciary, Francis M. Rongalls and Gertrude S. Rongalls, H.R. Rep. No. 1780, 90th Cong., 2d Sess. (1968); H. Comm. on Judiciary, Bert N. Adams and Emma Adams, 91st Cong., 1st Sess. 4 (1969).

[133] *See, e.g.*, Pub. L. No. 88-213, 77 Stat. 421 (1963) (United Daughters of the Confederacy); Priv. L. No. 89-295, 79 Stat. 1070 (1965) (Massachusetts Department of the United American Veterans of the United States of America, Inc.); Priv. L. No. 94-39, 90 Stat. 2971 (1976) (American Legion); Priv. L. No. 95-168, —— Stat. —— (1979) (United Daughters of the Confederacy).

[134] *See, e.g.*, H. Comm. on Judiciary, Renewal of Patent Relating to Badge of the American Legion, H.R. Rep. No. 94-922, 94th Cong., 2d Sess. 1 (1976) (granted in 1919).

[135] *See, e.g.*, H. Comm. on Judiciary, "Design Patent of the United Daughters of the Confederacy," 95th Cong., 1st Sess. 1 (1977) (renewed in 1926, 1941, 1963, and 1977).

[136] 35 U.S.C. § 171 (1970) (emphasis added).

[137] 15 U.S.C. §§ 1054, 1127 (1976).

[138] *R. M. Hollingshead Corp.* v. *Davies-Young Soap Co.*, 121 F. 2d 500, 504, (1941).

[139] 15 U.S.C. § 1127 (1976). *See, e.g.*, H. Comm. on Judiciary, "Renewal of Patent Relating to Badge of the American Legion," H.R. Rep. No. 94-922, 94th Cong., 2d Sess. (1976) (protection of trademark law more appropriate).

means of private legislation. Indeed, such a measure would eliminate the need to periodically approach Congress for renewal every fourteen years; the trademark statutes protect exclusive rights to registered trademarks in 20 year increments for so long as the registrant files affidavits for continued use.[140]

Organizations holding these patents [141] could also be accorded the "trademark" protection granted to some of the patriotic societies chartered under title 36 of the United States Code. Several of these groups already hold charters under title 36, but none of their charters contain a provision granting the "exclusive right to name, seals, emblems, and badges." For example, the pertinent provision of the charter of the American Veterans of World War II reads, "The corporation and its State, regional, and local subdivision shall have the sole and exclusive right to have and use in carrying out its purpose the name AMVETS (American Veterans of World War II) and such seals, emblems, and badges as the corporation may lawfully adopt." [142]

Protection of this variety was recommended for the Daughters of the American Revolution by the House Judiciary Committee in the 94th Congress upon the suggestion of the Department of Commerce,[143] but the bill did not pass. There is no indication that such protection has been considered for the other relevant organizations, but the committee refused in both the 94th and 95th Congresses to convert several of these design patents to trademarks, preferring to rely upon the 50-year precedent for patent extensions for such organizations.[144] It appears, in light of the traditional function of private legislation to honor the equitable and moral debts of the United States, that the original grant of such extensions by Congress may have been erroneous.[145]

The final act which remains to be discussed did not meet this criteria either. It directed the Commissioner of Patents to accept late payment of the final fee on the patent application of a party who had given the money to his attorney, but it was not tendered to the Patent Office due to the subsequent mental collapse of the attorney.[146] Although the sympathy of the committee was stirred by the plight of the petitioner,[147] the wrong which he had suffered was not attributable to the United States government and a legal remedy did exist in a malpractice action. Since it did not fulfill the essential requirements of the appropriate circumstances for private legislation,[148] the Committee may wish to give serious consideration to the question of whether it will recommend such legislation in the future. Consideration of claims of this variety may trigger a deluge of requests for Congress to resolve

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[140] 15 U.S.C. § 1058 (1976).

[141] During the last 20 years, such extensions have been granted to the (1) American Legion, (2) American Legion Auxiliary, (3) Sons of the American Legion, (4) Massachusetts Department of the United American Veterans of the United States of America, Inc., (5) Daughters of the American Revolution, and (6) United Daughters of the Confederacy.

[142] 36 U.S.C. § 67p (1976). *See also, e.g.*, 36 U.S.C. § 780, 117 (1976)

[143] H. Comm. on Judiciary, "National Society of the Daughters of the American Revolution," H.R. Rep. No. 94-1286, 94th Cong., 2d Sess. (1976).

[144] *See, e.g.*, H. Comm. on Judiciary, "Renewal of Patent Relating to Badge of the American Legion," H.R. Rep. 94-922, 94th Cong., 2d Sess. 1 (1976); H. Comm. on Judiciary, "Design Patents of the United Daughters of the Conderacy," H.R. Rep. No. 95-745, 95th Cong., 1st Sess. 1 (1977).

[145] *See supra* notes 14-33 and accompanying text.

[146] H. Comm. on Judiciary, "For the Relief of Jack L. Good," H.R. Rep. No. 814, 90th Cong., 1st Sess. (1967) accompanying Priv. L. No. 90-21, 82 Stat. 1378 (1969).

[147] *Id.*

[148] Statutes of this variety could be difficult to construe, as falling within the power of Congress to "pay the debts of the United States," U.S. Const., art. 1, § 8, which is the basis for the Congressional power to enact private legislation. United States v. Realty Co., 163 U.S. 427, 439-44 (1896).

private difficulties in the many areas of Federal regulation, certainly an enormous task. However, this act is the only one in current times which seems to lack the element of equitable debt.[149]

CONCLUSION

The history of private patent legislation predates the American republic. From their inception in this country, these statues conformed to the historical purpose of private laws—to resolve wrongs committed by the government which were too particularized to fall within the scope of general legislation. There was a period in the mid-19th century when the Congress attempted to assure adequate compensation to every inventor with the device of private legislation, but the concept of guaranteed income proved to be too time-consuming and open to frivolous claims. In more recent years, two classes of private patent bills have been popular—design patent extensions for service societies and compensation to inventors who are officers or employees of the United States—which could be addressed by one-time or general legislation. Throughout their history, however, the common thread which runs through most private patent bills is the desire to ensure the relief of a private party who can legitimately claim that his or her interests have been impaired by an act or omission of the United States.

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[149] Arguably, the long history of design patents for certain organizations has given these organizations the expectation that protection will be continued.