

# HEINONLINE

Citation: 2 An Act to Amend Title 35 United States Code with  
to Patents on Biotechnological Processes Pub. L.  
109 Stat. 351 E2909 1995

Content downloaded/printed from  
HeinOnline (<http://heinonline.org>)  
Tue Mar 19 17:55:05 2013

-- Your use of this HeinOnline PDF indicates your acceptance  
of HeinOnline's Terms and Conditions of the license  
agreement available at <http://heinonline.org/HOL/License>

-- The search text of this PDF is generated from  
uncorrected OCR text.

column, John Sloan, president and CEO of NFIB, discusses the European economic renaissance in light of the American economy.

In his column, John Sloan says that some economists and journalists are already anticipating the decline of the American free-enterprise system in the wake of the resurgence taking place in Europe.

"But before we Americans sell our homes and enroll in foreign language classes," Sloan advises, "we should closely study the political, social and economic foundations of several major European nations, especially their labor policies."

Sloan says small businesses, the engines of economic growth in the United States, have been stifled by Government mandated labor policies from high minimum wages to extraordinary family leave policies. He urges policymakers abroad to concentrate on creating an environment in which enterprise can thrive.

I would like to share with the House of Representatives the remainder of Mr. Sloan's column:

**SMALL BUSINESS COULD BE KEY TO EUROPEAN RENEWAL**

"Bigger" . . . "extraordinarily large" . . . "unexpectedly strong" . . . "new generation."

Is this advertising for a new brand of detergent? The latest model automobile? A fashion rage? No, these are typical words and phrases found in today's headlines, reporting the unusual changes occurring in Europe.

Ever since the Berlin Wall toppled, we have been bombarded by an unending stream of hyperbole. Not only are some economists and journalists predicting a European renaissance, but they are already anticipating the decline of the American free enterprise system in its wake. One noted Washington-based economics columnist has suggested that the U.S. is rapidly headed for third place, behind Japan and Europe.

While it is fascinating to ponder the possibilities of a re-united Europe, there are a few things that should not be overlooked in the excitement. Not only are there differences in cultures and languages, but social policies and political ideologies will present major obstacles. As with any story, there is always at least one other side.

This is not to say that Europe lacks the potential to achieve greatness through unity. One only has to look at the resources of the many nations involved to realize that once harnessed, vast economic power could be wielded.

But before we Americans sell our homes and enroll in foreign language classes, we should closely study the political, social and economic foundations of several major European nations, especially their labor policies.

Over the years, the Europeans, under heavy pressure from pro-labor forces, have saddled their business sectors with wage and benefit mandates. The liberal vacation policies, high minimum wages, unusually long periods of parental leave and government-run health systems just didn't work. Productivity remains low. Business growth is stagnant.

Small businesses in particular, which in the U.S. are generators of jobs and economic opportunities, have been stifled in Europe because of the mandates. Since 1980, there has been virtually no entrepreneurial growth overseas.

National Federation of Independent Business economist William J. Dennis, in a recent report written for Eastern Europe, says that new small businesses are essential

for growth and are the most important source of experiments through which an economy tests change. Just as scientists experiment in a laboratory, he says, entrepreneurs experiment in the marketplace.

But mandated benefits, Dennis notes, are destructive labor policies. "Through minimum wages and mandated benefits are well-intentioned, the practical effects of them are to close job opportunities, eliminate an employee's opportunity to grow with a new business and reduce the total number of economic experiments," he said.

Small-business activity, properly guided but not unencumbered by government mandates and regulations could be the key to the economic transformation of Europe. We should urge our friends overseas to concentrate on creating an environment in which entrepreneurship can thrive, rather than being distracted by all the ballyhoo.

**DEATH IN ESTONIA**

**HON. C. CHRISTOPHER COX**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 18, 1990

Mr. COX. Mr. Speaker, I would like to share with my colleagues some deeply disturbing information I have received from the Honorable Tunne Kelam, chairman of the Council of Estonia and a leader and founder of the Estonian National Independence Party. Mr. Kelam believes that, now that opposition to Communist rule in Estonia is resulting in investigations into the activities and corruption of the Soviet bureaucracy and KGB "mafia," a critical point had been reached.

**DEATHS OF THREE ESTONIAN ACTIVISTS SUSPICIOUS; KGB INVOLVEMENT SEEN**

The third annual convention of the Estonian National Independence Party (ERSP) held in Tallinn August 25-26 was tragically marred by the deaths of three young Estonian political activists when an automobile crashed into a group of 13 people walking to a bus stop late Saturday night. They had attended an ERSP convention banquet at a Pirita restaurant in Tallinn. Tiina Hallik, Alge Sullaa and Ilmar Pallas were killed. Several others were treated and released.

According to the latest reports from Estonia, the group was struck by a car leaving the same restaurant, where known KGB surveillance personnel had been seen that evening. Although witnesses estimated that the vehicle was traveling at least 100 km per hour, there were no skid marks nor signs of braking. The vehicle apparently stopped several hundred meters away only because Ms. Hallik's body was thrown up onto the hood and remained against the windshield. Witnesses also reported that the driver and his female companion did not seem to be intoxicated.

Curiously, the investigator assigned to the case is the same one who looked into a break-in and theft of computers and data from the Congress of Estonia in March, another case which has not been satisfactorily resolved. The investigator has not contracted any of the witnesses to the accident or even spoken to those injured.

In a further coincidence, Jevgeni Kuuskmae, a member of the Estonian Council's Committee to Fight Corruption, reported that three attempts were made August 26 to run him down in Tallinn. Kuuskmae, a journalist who has been investigating corruption and KGB "mafia-type" operations in the Parnu area for several years, is convinced

that the three deaths can be attributed to the KGB.

**PROCESS PATENT AMENDMENTS OF 1990**

**HON. RICK BOUCHER**

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 18, 1990

Mr. BOUCHER. Mr. Speaker, today I am pleased to introduce with my distinguished colleague from California, Mr. MOORHEAD, the Process Patent Amendments of 1990. This bill will further the public interest by rewarding the creative genius of American inventors with patent protection commensurate with their contribution.

Earlier this year, I introduced a measure, H.R. 3957, designed to address the emerging problems of the biotechnology industry, including protection from unfair foreign competition. (See CONGRESSIONAL RECORD, February 7, 1990, page E-213.) I was pleased that a large number of my colleagues on the Committee on the Judiciary, and in the whole House, joined with me by cosponsoring that measure. I was also glad to have been able to work with my distinguished colleague in the Senate, Senator DENNIS DECONCINI, in securing the introduction of a companion measure in the Senate. These earlier bills generated a great deal of support from the biotechnology industry and the university community. The high profile achieved by that legislation also has produced a number of useful comments. The most significant assessment of the earlier bill, H.R. 3957, came from the administration.

In a letter from the General Counsel of the Department of Commerce of July 5, 1990, the administration's views are set forth. The administration concluded that:

American industry needs to be encouraged to expand its research and development efforts that are so necessary to keep this country on the cutting edge of technology . . . [thus] the United States can ill afford to let any leading, technically oriented, industry fall victim to unfair competition . . . H.R. 3957 would provide an effective means of protecting technology patented in the United States from unfair foreign competition.

The views of the administration, as well as a number of other commentators, suggest, however, that the formulation in the original legislation could be improved. In place of the original bill, the Department of Commerce urged the adoption of language—first suggested by my letter of March 2, 1990, to the Patent Office—that would accomplish virtually the same result as the original bill, but without some of the controversy that attended the initial measure.

Let me briefly describe how the Process Patent Amendments of 1990 differs from its predecessor measure. First, H.R. 3957 amended both domestic patent law and the border enforcement structure found in section 337 of the Tariff Act of 1930. This measure, which I am introducing today, only amends domestic patent law. The change accommodates concerns raised by some, including the administration, about the wisdom of amending section 337 at the same time that remedy is the subject of extensive negotiations within

HR 3957

the General Agreement on Tariff and Trade [GATT]. Second, because the Process Patent Amendments of 1990 amends domestic patent law with respect to all types of inventive processes, the bill is not subject to criticism as being industry specific. The new measure also eliminates some unnecessary ambiguity found in the language of the initial bill. Third, the new proposal more clearly addresses all of the problems associated with obtaining process patents.

Like H.R. 3957, the new measure overrules the case, *In re Durden*, which is the source of problems that inventors have in obtaining appropriate patent protection. As I explained to the House in February, that case had the net effect of leaving U.S. patent holders worse off than inventors in other nations. The *Durden* case also encouraged the Patent Office to inappropriately segment a patent application into very small parts. The legislation being offered today would, as pointed out by the administration, incorporate the concept of the "unity of the invention" in process patents:

The inclusion in a patent of claims covering the use or manufacture of material that is also claimed in that patent, can properly be viewed as merely a different expression of the inventor's contribution to the particular field of technology, involving a single inventive concept. To permit the inclusion of such process claims in a patent containing product claims would not enlarge the limited exclusive rights that the patent owner already enjoys by virtue of the product claims. It would, however, place the patent owner in a better position to enforce his rights against those who use the patented technology and import the resulting product [into the United States] without authorization.

As recent cases from the Patent Office and the Court of Appeals for the Federal circuit clearly illustrate, the need for a legislative solution to the existing jumble of judicially created set of rules is pressing.

It is a commonplace concern that sound investment decisions require a degree of economic certainty. The biggest problem facing U.S. industry, especially the biotechnology industry, is the lack of clarity in the rules for obtaining patents. As the administration has pointed out:

Under present law an inventor is helpless to prevent the importation of a product that was made abroad with the use of a material patented in the United States, if the inventor was unable to obtain patent protection for the process of using such material.

This concrete problem under current law can be easily remedied by providing a set of sensible rules for inventors to obtain process patent protection. When the Congress enacted the Process Patent Amendments of 1988—authored by my colleagues BOB KASTENMEIER and CARLOS MOORHEAD—the remedies available to the holders of process patents were enhanced. What this legislation will do is make the promise of that earlier law a reality by providing a clear and fair set of rules for obtaining the process patent in the first place.

I urge my colleagues to join with me in supporting this bill to enhance the industrial competitiveness of the United States.

**HONORING VAL EIGENMANN, A COMPLETE PROFESSIONAL WHO SERVED THE PHARMACEUTICAL INDUSTRY FOR 43 YEARS**

**HON. CHARLES B. RANGEL**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 18, 1990*

Mr. RANGEL. Mr. Speaker, on Saturday evening, September 22, 1990, friends and business colleagues of Val Eigenmann and his wonderful wife Maggie will gather in San Juan, PR, to honor Val upon his retirement from the Bristol-Myers Squibb Co. Val is retiring after 30 years in the Squibb organization and a total of 43 years in the pharmaceutical industry.

It has been my pleasure to know Val Eigenmann and his wife, Margarita Blondet Eigenmann for over 10 years. During that period I have come to rely on their counsel and marvel at their boundless enthusiasm for Val's work as vice president of public affairs for the Squibb Corp. of Puerto Rico.

When Val decided to retire in July, Richard M. Furlaud, president of Bristol-Myers Squibb sent a warm reflection on Val's career to his colleagues in the company. I am pleased to include the text of that communication for the RECORD:

BRISTOL-MYERS SQUIBB CO.,  
New York, NY, July 27, 1990.

DEAR FELLOW EMPLOYEES: After 30 years of dedicated service to Squibb Corporation, and a total of 43 years in the pharmaceutical industry, Val A. Eigenmann is retiring from his present position as Vice President of Public Affairs from Squibb Corporation of Puerto Rico. Val's decision to retire brings to a close one of the most diverse and effective careers in our industry.

Val joined Squibb Corporation in 1960, while it was still a division of Olin Mathieson Chemical Corporation, as Assistant Director of Western Hemisphere Operations. He was rapidly promoted to a series of critical positions of increasing responsibility. Among the positions Val filled were: General Manager of Squibb Uruguay, Regional Director of the Southern Latin American Division, and General Manager of Venezuela.

In 1969, Val began a new chapter in his career by conducting a feasibility study for a pharmaceutical plant in Dacca, East Pakistan, (today it is known as Bangladesh). After successfully completing this assignment, Val was named General Manager of the pharmaceutical manufacturing compound for Squibb's Humacao facility. This project included obtaining government approval of the site, as well as the construction of four manufacturing operations.

After bringing this facility into very efficient operations, Val was assigned to direct the construction and start-up for the Life Savers, Inc. facility, which at the time was a subsidiary of Squibb Corporation. Because of his thoroughness and efficiency, the plant was built, employees were trained, and production began in November of 1977, ahead of schedule.

With our growing presence in Puerto Rico, Val agreed in 1978 to assume yet another new assignment: Vice President of Public Affairs for Squibb Corporation of Puerto Rico. Since that appointment, Val has established a relationship of trust and confidence with public officials in the Commonwealth and on the mainland second to none. He is called upon for advice and assist-

ance by Members of the Commonwealth government of all political persuasions, and counts among his personal friends numerous Members of the United States House of Representatives and Senate.

Val has also established an extremely effective working relationship with the business community serving in key capacities with the Puerto Rico Chamber of Commerce, as well as other organizations. He has played a pivotal role with the Section 936 education program of the Puerto Rico-USA Foundation since it was founded in 1984. Since our merger, Val has worked diligently to further strengthen the voice of Bristol-Myers Squibb in matters of concern to the Company.

Val Eigenmann's unique international perspective and broad experience will be greatly missed by the countless friends and associates he has met in his four decades in the industry. He and his wife, Margarita Blondet Eigenmann, have been outstanding representatives of the Company whenever they have been asked to serve. To them, their eight children and fourteen grandchildren, we extend our sincere appreciation for all they have done and our warmest best wishes for many years of health and happiness.

RICHARD M. FURLAUD.

P.S. Val: Personal thanks to you and Maggie for a really fabulous job over many, many years.—Dick.

**A RETIREMENT SALUTE TO JOHN M. NEGRI, OF ALTOONA, PA**

**HON. BUD SHUSTER**

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, September 18, 1990*

Mr. SHUSTER. Mr. Speaker, it is with great pride that I recognize and honor a gentleman from my Ninth Congressional District, Mr. John M. Negri. He has recently retired after 40 years of service with Conrail, without sustaining any accidents on the job. He was first employed by the Pennsylvania Railroad on September 8, 1950, which later became Conrail.

Mr. Negri is a lifelong resident of Altoona. He was born on September 27, 1928. He graduated from Altoona Area High and later attended Altoona School of Commerce. Mr. Negri served in the Army during the Korean war.

Mr. Negri is a loving husband and caring father. He has been married to his wife Darlene for 34 years and has three children; John M. Jr.—who is currently deployed in Saudi Arabia with the 82d Airborne—Michelle and Theresa, as well as three grandchildren, Andrew, Alexandra, and Victoria.

He is an active member of the St. Rose Lima Parish where he serves as an usher. He has coached the Jewish Memorial Teener League baseball, and became one of the first to umpire the original girls softball league in Altoona. He has contributed much to community involvement and service.

Mr. Speaker, I ask that his colleagues and community join me in saluting this fine citizen on his retirement from Conrail.

