Mr. BILIRAKIS. Mr. Speaker, I rise reluctantly today to highlight problems within the Department of Veterans Affairs.

Over the past several months, incidents of sexual harassment by several VA senior career managers have come to my attention and, I might add, probably to all of our attention.

This greatly disturbs me because Secretary Brown has repeatedly stated his support for a policy of zero tolerance toward sexual abuse.

Recently one former VA medical center director who was found to have sexually harassed a female staff member and who also engaged in abusive, threatening, and inappropriate behavior toward other female staffers was transferred to the Bay Pines VA Medical Center in St. Petersburg, FL. This center serves many of the veterans in my Ninth Congressional District. He was also permitted to retain his salary in excess of $100,000 in a position that was created specifically for him. I am greatly concerned, Mr. Speaker, that the VA's policy of zero tolerance has, at best, not been implemented uniformly and, at worst, has been ignored. More disturbing have been revelations of mismanagement within the VA health care system itself.

Our veterans, Mr. Speaker, have made tremendous sacrifices in defense of our freedoms and way of life.

These sacrifices cannot be imagined by most people. Our veterans are entitled to the best and most timely health care services available.

And overall, Mr. Speaker, I believe that the majority of our veterans receive high-quality care in VA facilities around the country; and yet, these allegations of mismanagement do raise serious questions: Can resources be allocated more efficiently? Is the VA fulfilling its obligation in meeting its commitment to our Nation's veterans?

Mr. Speaker, these questions must be answered. I am pleased that Veterans' Affairs chairman, the gentleman from Arizona [Mr. STUMP], and Oversight Investigation Subcommittee chairman, the gentleman from Alabama [Mr. EVERETT], have agreed to my request to hold hearings on these important matters. Tomorrow we will begin this process.

Our Nation's veterans deserve to know, Mr. Speaker, that the money we appropriated to their health care will not be misspent on $26,000 fish tanks and $500 faucets but, rather, will be spent to meet their health care needs.

Mr. Speaker, since coming to Congress, most of us have committed to fighting for our veterans. That commitment has never diminished. And so, we are anxious to hear from the VA about how they intend to continue to provide high-quality care to our Nation's veterans and how they will rectify any problems detrimental to that pursuit. Our veterans deserve no less.

H.R. 400, THE 21ST CENTURY PATENT IMPROVEMENT ACT OF 1997

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Virginia [Mr. GOODLATTE] is recognized for 5 minutes.

Mr. GOODLATTE. Mr. Speaker, in light of the deluge of misinformation that has been circulating recently on H.R. 400, the 21st Century Patent Improvement Act, I would like to speak briefly on how this legislation benefits small inventors as well as the entire Nation.

H.R. 400 benefits small inventors in four key areas. First, it allows small inventors to acquire venture capital more quickly and easily than they can under either the current system or H.R. 811, the submarine substitute offered by Mr. ROHRABACHER. Presently, small inventors often have trouble attracting venture capital to transform their ideas into marketable products. By allowing publication after 18 months from filing, however, H.R. 400 brings venture capitalists together with small inventors to market ideas that will benefit all of society.

Second, H.R. 400 gives inventors greater protection against would-be thieves who want to steal their ideas than they currently receive. In the present system, inventors have no protection against people who steal their ideas and commercialize them before their patents are granted. For example, third parties can currently commercialize unpublished patents by manufacturing a product and offering it for sale. The inventor is then powerless to stop the sales or to share in the profits until the patent is actually granted.

Under the Rohrabacher submarine substitute, small inventors would be left to fend for themselves in these situations. H.R. 400, however, allows small inventors to receive fair compensation from any third party who steals their ideas between the time a patent is published and the time a patent is granted. This patent pending protection will give small inventors the protection they need to stop commercial thieves from stealing their ideas.

Third, H.R. 400 gives small inventors longer patent terms than they receive under current law. In the old system, which the Rohrabacher submarine substitute seeks to resurrect, inventors received patent protection for only 17 years from the date the patent was granted. H.R. 400, on the other hand, gives good-faith patent applicants a minimum of 17 years of protection—and in most cases, more than that. Also, H.R. 400 provides extended protection for up to 10 years, and diligent applicants who do not receive timely ruling from the patent office will receive additional protection. Only H.R. 400 give small inventors the protection they need to survive in the marketplace.

Finally, H.R. 400 gives small inventors a special option to avoid publication. While most diligent inventors will want to take advantage of the venture capital and additional protection that comes with publication, some may have second thoughts about publishing their protected ideas—especially in cases where the Patent Office indicates that it might not issue a patent.

In these cases, H.R. 400 gives small inventors the option of withdrawing their applications prior to publication. They may then continue to refine their applications or seek protection under State trade secrecy law. This option is only available to small inventors—large corporations will be required to publish their patents after 18 months.

As an example of how H.R. 400 benefits small inventors, I would like to insert in the RECORD a letter I recently received from a small Virginia inventor supporting H.R. 400. Although a vocal minority has been engaged in a campaign of deliberate misinformation against H.R. 400 in recent weeks, I believe that this letter represents the silent majority of small inventors who fully support H.R. 400.

I would also like to insert into the RECORD a recent Wall Street Journal article exposing the scam of submarine patents. While some may argue that submarine patents do not occur very often, this article clearly shows that submarine patents cost American consumers and taxpayers hundreds of millions of dollars. A single submarine patent can wipe out an entire small business—and with some submarine patents, an entire corporation. The Rohrabacher submarine substitute, which the House will consider tomorrow, would continue to encourage this devastating practice.

Mr. Speaker, in closing, I would like to urge each of my colleagues to oppose the Rohrabacher submarine substitute and to support the unanimous product of the Judiciary Committee, H.R. 400. A vote for the Rohrabacher submarine substitute is a vote against small inventors. Only H.R. 400 will give them the protection they need to compete in the marketplace.

UNIQUE SPECIALTY PRODUCTS

Arlington, VA, April 11, 1997.

Hon. BOB GOODLATTE,
123 Cannon HOB,
Washington, DC.

DEAR CONGRESSMAN GOODLATTE: The 21st Century Patent System Improvement Act, H.R. 400, has been favorably reported from the House Judiciary Committee and is scheduled to be considered on the House floor next week. This letter is to urge your support for the committee bill and to resist crippling amendments.

The bill is the work product of a bipartisan effort over several years to modernize the Patent and Trademark Office and to streamline the U.S. patent system. Extensive hearings have been held on the measure and concerted efforts have been made to accommodate those with keen interests in the legislation.

The bill, if enacted, would be extremely beneficial for my company. USP is a small business engaged in the development of medical imaging software. Currently, we are engaged in an effort jointly with an European pharmaceutical company to enhance the reliability of X-ray mammography. A patent application is pending now and several others may be filed in the next several months. We will then license the European company to utilize our imaging technology in clinical trials.

Several provisions of H.R. 400 will significantly help us in this regard. First, the bill authorizes and encourages the electronic filing and processing of patent applications. This is especially important in software development, where time is of the essence. The hardware and software imaging technology is evolving so rapidly, that quick response from the Patent Office is absolutely essential to survival of a company such as USP. Further, and more important, these advances in technology much reach the marketplace as soon as possible. Many lives are at stake.

Second, the bill's provisions on early publication are quite significant. The U.S. is the only major advanced society that does not have early publication as a key part of its patent law. As a result, our inventors and technology companies are at the mercy of

''submariners'' who file generic, all-purpose inventions, deliberately delay consideration of the application by the PTO through delaying and dilatory tactics for years. Meanwhile, the state of the art of the technology advances. Then, belatedly a patent is approved which is overly broad and then forces others—after the fact—to pay royalties.

This uncertainty can be devastating to a company such as mine. In licensing our software, we must warrant that there will be no future claims on it. We could be at the mercy of someone who had an application pending while ours was offered in the marketplace. Early publication of the claims of a pending patent go along way in preventing manipulators from playing havoc with legitimate technology developers. Only the U.S. allows this to happen. Our European clients are simply incredulous that we still follow the old practice.

Further, the ''corporatizations'' of the PTO is important for us ''users'' of its services. The PTO should be insulated from bureaucratic meddling and political influence. It is a totally ''user fee'' self-supporting organization. Our filing fees should be utilized for improvement and modernization of the PTO, not siphoned off to support the Legal Services Corp or some other politically correct governmental activity that is facing budget cuts. The workload at the PTO is already overwhelming. Automation is expensive, both in terms of acquisition costs and training.

In summary, I urge you to support H.R. 400.

With best regards.

Sincerely yours,

RICHARD W. VELDE,
Manager.

[From the Wall Street Journal, Apr. 9, 1997]

HOW PATENT LAWSUITS MAKE A QUIET ENGINEER RICH AND CONTROVERSIAL

(By Bernard Wysocki, Jr.)

SCOTTSDALE, ARIZ.—Few people paid much attention to Jerome H. Lemelson until he figured out a way to make $500 million.

For decades, Mr. Lemelson has been a soft-spoken, somewhat-nerdy engineer who doesn't manufacture products and rarely even makes prototypes but who turns out a steady stream of blueprints and drawings and has filed huge applications at the U.S. Patent and Trademark Office. He files and amends and divides his applications. Eventually, sometimes 20 years later, he usually gets a patent.

Over the years, the 73-year-old Mr. Lemelson has accumulated nearly 500 U.S. patents, more than anybody alive today. They cut through a wide swath of industry, from automated warehousing to camcorder parts to robotic-vision systems.

But he hasn't just hung the patents on a wall, like vanity plates. Seeking royalties, he has turned the strongest ones into patent-infringement claims—and a fortune. In 1992 alone, he collected a total of $100 million from 12 Japanese automotive companies, which decided to settle with him rather than fight him in court over a portfolio of some of his innovations: ''machine vision'' and image-processing patents. The claims cover various factory uses ranging from welding robots to vehicle-inspection equipment.

''This is what made him rich,'' says Frederick Michaud, an Alexandria, Va., attorney who represented the Japan Automobile manufacturers Association. ''But he's still current, let me tell you.''

These days, Mr. Lemelson is casting a longer shadow than ever. True, he makes huge donations, including funding the annual $500,000 Lemelson-MIT Prize for innovation that will be presented tomorrow night at a gala in Washington.

MUCH CONTROVERSY

But behind the pomp lies controversy. Critics say Mr. Lemelson not only exploits the patent system but manipulates it.

He is currently embroiled in a brutal legal battle with Ford Motor Co. Unlike more than 20 other automotive companies, Ford has refused to get a license from him on the machine-vision and image-processing patents. In a filing in federal court in Reno, Nev., it charged that Mr. Lemelson, in an abuse of the system, ''manipulated'' the U.S. Patent Office. Ford contended in its suit that Mr. Lemelson ''unreasonably and inexcusably delayed'' the processing of his applications to make the patents more valuable and more up-to-date. A Ford lawyer, in testimony before a congressional committee, once compared his patents to ''submarines,'' sometimes surfacing decades after they were filed, with claims covering new technology.

In 1995, U.S. Magistrate Judge Phyllis Atkins in Nevada sided with Ford, stating that ''Lemelson's use of continuing applications has been abusive and he should be barred from enforcing his asserted patent rights.'' In her report, she also stated that Mr. Lemelson ''designs his claims on top of existing inventions for the purpose of creating infringements.'' Mr. Lemelson has appealed, blaming the Patent Office for his delays in filing claims. A federal district judge is expected to rule soon.

EDISON RECALLED

To Mr. Lemelson and his friends, the litigation is the price paid by genius. ''When Edison was alive, he was involved in a lot of litigation,'' says Mr. Lemelson's lead attorney, Gerald Hosier. ''He was also a guy that all of the big companies said every nasty thing they could think of about him. It's only when he died that [Edison] became revered as a great inventor.''

Mr. Lemelson's extensive patent filings have the hallmarks of a technical whiz. He holds three engineering degrees from New York University, and his drawings show a draftsman's touch. He is a man with a voracious appetite for technical journals, trade magazines and conference proceedings. A 1993 letter to a potential licensee cited articles in 17 electronics journals.

An inveterate note-taker, Mr. Lemelson says he still churns out ideas nearly every day. His recent notes, grist for future patent filings, fill a folder on file at his lawyer's office here.

Another battle on the horizon will pit Mr. Lemelson against Ford and more than a dozen secret allies. In dispute are some of his pending patent applications that cover ''flexible manufacturing'' techniques. Ford is trying to prevent them from being issued; if the patents are issued, Mr. Lemelson plans to enforce them. Discussing the litigation—Mr. Lemelson estimates the two sides have spent well over $10 million, with no end in sight—he says, ''It's almost, in my opinion, madness.''

Meanwhile, Mr. Lemelson is inspiring a horde of imitators. Firms are springing up whose main business is obtaining patents and, like him, enforcing them by first offering a license and then, if refused, suing. Working with them are individual inventors who have decided that patented ideas, legally enforced, can be more lucrative than manufacturing and marketing.

''I'm not interested in building a company and getting into manufacturing. I focus on new inventions, on new things,'' say Charles Freeny Jr., a 65-year-old inventor in Irving, Texas, with a patent covering transmission of digital information over a network. Today, enforcement of Mr. Freeny's rights is in the hands of E-data Corp., a tiny Secaucus, N.J., company with three employees. Its main business is to try to extract royalty payments from alleged infringers.

A new breed of intellectual-property lawyer has emerged, too. Many seem to be inspired by Mr. Hosier, who pioneered the use of contingency fees in patent cases and whose work for Mr. Lemelson alone has brought him more than $150 million in fees. The lawyer's success—he lives in a 15,000-square-foot house near Aspen, Colo.—has made the field ''a very hot area. It's going crazy,'' says Joseph Potenza, a patent attorney in Washington. Between 1991 and 1996, the American Bar Association says, the number of intellectual-property lawyers soared to 14,000 from 9,400.

One Houston company, Litigation Risk Management Inc., is even helping finance inventors' intellectual-property efforts by bringing in Lloyd's of London to finance 80% of the cost of the litigation. Joby Hughes, Litigation Risk's president, says that if the licensing or litigation effort succeeds, the London insurance exchange will get a 25% profit on the money it puts up. Mr. Hughes's company gets a fee for arranging the deal.

A BOOMING FIELD

Companies long active in intellectual-property enforcement say business is strong. One is Refac Technology Development Corp. The New York company buys the rights to patents and licenses them to manufacturers, which pay royalties to both Refac and the inventors. Last year, Refac's net income more than doubled to $4.7 million on revenue of $9.2 million.

The purpose of the U.S. patent system comes into question, however. A patent doesn't require the inventor to go into manufacturing; technically, a patent is a right to exclude somebody else from using your ideas in commercial products, for 20 years from the date of filing. (Before June 1995, patents were valid for 17 years from date of issue. These and other patent revisions remain a hot topic in Congress.)

U.S. Commissioner of Patents and Trademarks Bruce Lehman says he is outraged by ''these people who file patent applications and never, ever, ever go to market with an invention, based on their application. I thought what the patent system was all about was coming here and getting a patent and going to some banker or venture capitalist or something and get money, and then you go out and start a company and put products out on the marketplace. And you go sue the people that infringe on you.''

But to the new intellectual-property players, it is the patent itself that has the economic value. And that has long been Mr. Lemelson's notion.

A native New Yorker, Mr. Lemelson worked for big companies and tried his hand at toy manufacturing. By his own testimony, that venture didn't succeed. Over time, he turned to crafting patents and then to seeking licenses. He often got involved in legal battles. His biggest one in toyland was a 15-year fight with Mattel Inc. over the flexible track in its Hot Wheels toys. In 1989, he won a $71 million patent-infringement judgment, but it was overturned on appeal.

BIG DEAL WITH IBM

In electronics, Mr. Lemelson's big break came in 1980, when International Business Machines Corp. agreed to take a license on a portfolio of his computer patents. ''After the IBM deal, I became a multimillionaire,'' he says. ''It didn't put me on easy street because I had so many balls in the air at one time. But it certainly helped a lot.''

An even bigger break came in the mid-1980s, when Mr. Lemelson met Mr. Hosier. In 1989, the already successful patent lawyer put together the ''machine vision'' licensing campaign. Mr. Hosier focused his negotiations on 12 Japanese automotive companies,

and the talks dragged on through mid-1992. That July, Mr. Lemelson sued four of the companies, Toyota Motor Corp., Nissan Motor Co., Mazda Motor Corp. and Honda Motor Co. Within a month, the Japanese agreed to settle; the 12 companies paid him the $100 million.

At a post-settlement celebration of sorts, in the Brown Palace Hotel in Denver, the Japanese insisted on taking photographs, which show eight grim-looking Japanese surrounding a beaming Mr. Lemelson. He contends that it was a heroic victory, a patriotic act. ''My federal government has made [in taxes] probably over a quarter of a billion dollars on my patents over the years,'' he says. ''A good part of it has been foreign money.''

Similar infringement suits followed, against Mitsubishi Electric Corp., against Motorola Inc., against the Big Three Detroit auto makers. Initially, both Mitsubishi and Motorola decided to fight; later, they settled. The suits against General Motors Corp. and Chrysler Corp. were ''dismissed without prejudice.'' In effect, any further action against GM or Chrysler is in abeyance until the Ford outcome is known.

WHY THEY SETTLED

By all accounts, the strategy was well-planned and well-executed. Mr. Hosier says the Japanese were more inclined to settle than the Americans. Commissioner Lehman says the Japanese are ''particularly freaked by litigation. And so you start out with them. . . . And, of course, they all pay up, and that establishes a precedent.'' After the Japanese settlement, several European auto makers also agreed to take licenses on Mr. Lemelson's patents.

Some who settled say they concluded that Mr. Lemelson had a good case. Others call it an uphill battle to try to persuade a judge or jury that the government had repeatedly made mistakes in issuing him all those patents. With a legal presumption that patents are valid, his opponents say they had the burden of proving the Patent Office had goofed 11 times in a row.

In any event, by 1994, Mr. Lemelson had amassed about $500 million in royalties from his patents. But Ford has held out.

Even as the lawyers haggled over the law, many of the facts in the case were undisputed. In 1954 and 1956, both sides agree, Mr. Lemelson made massive patent filings, which included, for example, many drawings and descriptions of an electronic scanning device. As an object moved down a conveyor belt, a camera would snap a picture of it. Then that image could be compared with a previously stored one. If they matched, a computer controlling the assembly line would let the object pass. If the two images didn't match up, it might be tossed on a reject pile.

But because Mr. Lemelson's filings were so extensive and complex, the Patent Office divided up his claims into multiple inventions and initially dealt with only some of them. Thus, for whatever reason, his applications kept dividing and subdividing, amended from time to time with new claims and with new patents.

It was as if the 1954 and 1956 filings were the roots of a vast tree. One branch ''surfaced'' in 1963, another in 1969, and more in the late 1970s, the mid-1980s and the early 1990s. All direct descendants of the mid-1950s filings, they have up-to-date claims covering more recent technology, such as that for bar-coding scanning.

The lineage was presented to the court in a color-coded chart produced by Ford. It shows how the mid-1950s applications spawned further applications all through the 1970s and 1980s. One result: a group of four bar-code patents issued in 1990 and 1992, with a total of 182 patent claims, all new and forming the basis of 14 infringement claims against Ford. But because of their 1950s roots, these patents claim the ancient heritage of Mr. Lemelson's old applications and establish precedence over any inventor with a later date.

The entire battle has become numbingly complex, a battle over whether the long stretch between the mid-1950s and the new claims in the 1990s constituted undue delay. Ford says yes. Mr. Lemelson says no. The magistrate judge found for Ford.

Another question is whether Mr. Lemelson's original filings—his scanner and camera and picture of images on a conveyer belt—should be considered the concepts of bar-code scanning, and thus Ford's use of bar coding in its factories make it an infringer of his patents. Mr. Lemelson says yes. Ford says no, arguing Mr. Lemelson depicted a fixed scanner (bar-code scanners can be hand-held).

''As we said in our lawsuit, if you walk into the Grand Union and show up for work with a 'Lemelson' bar-code scanner, it won't work,'' quips Jesse Jenner, a lawyer for Ford.

It's impossible to say which side will ultimately prevail. Or whether there will be a settlement. But the clear winners so far are the lawyers. Mr. Lemelson alone employs a small army of them. And Mr. Hosier pretty much thanks himself for that, noting an old joke: ''One lawyer in town, you're broke. Two lawyers in town, you're rich.''

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Washington, Mrs. LINDA SMITH, is recognized for 5 minutes.

[Mrs. LINDA SMITH of Washington addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.]

STEAL AMERICAN TECHNOLOGY ACT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New York [Mr. FORBES] is recognized for 5 minutes.

Mr. FORBES. Mr. Speaker, I take the floor today in this, the people's House. Yes, we proudly proclaim that this is the people's House where we stand up for the individual.

Mr. Speaker, tomorrow there is going to be a very startling series of events on an issue that will be before this House. I refer specifically to H.R. 400, the Steal American Technology Act.

This act will take American individuals and American interests and supplant them to the foreign interests. It will take multinational corporation interests and put them over the individual's interest. It will weigh in for power and prestige over the needs of Americans and our economy.

Mr. Speaker, H.R. 400 is about gaining access to foreign markets. If my colleagues are concerned about the terrible exporting of American jobs overseas, they will be absolutely outraged if H.R. 400 is to pass this House and become law because it sells out our children's future and our grandchildren's future, it puts us at an economic disadvantage in the world marketplace, and it makes American interests secondary to foreign interests.

Patent protections go back to the beginning of this Republic. They are spelled out in our Constitution. They say that, if a man or woman comes up with a great idea, they can get that idea protected by our Government and by our patent offices, Eli Whitney and his cotton gin protected by the patent system, Henry Ford protected by the patent system, Thomas Edison protected by the patent system.

Mr. Speaker, what this body is about to do tomorrow will put us at a distinct disadvantage. It will say to the little guy, forget you, multinational interests are supreme over individual interests; we need access to foreign markets, so we are going to sell out the individual.

This is a horrendous activity that is about to take place. Mr. Speaker, telling men and women across America, the individuals, the little guys, that come up with the good idea that they are no longer going to be protected because after 18 months, whether they have their patent or not, we will open it up for the whole world to see their idea so that the whole world can copy that idea.

And who better than the more aggressive nations around the globe that are trying to take our American ideas, Asian nations particularly have pleaded with the administration to loosen up on patents, to loosen up those protections, water down our ability to protect American ideas; and in return, we will give you access to foreign markets.

Multinational corporations love it because with their vast legal departments they can protect their interests. But what about the little guy who does not have the resources to get a bank of attorneys to protect their idea?

The American patent system has historically protected the little guy, and tomorrow we are going to sell down the river the little guy in America for the sake of multinational corporations. We must oppose the watering down of our patent protections.

This will put Horatio Alger's notion of this Nation, that an average man or woman with a good idea could build upon that idea and create new jobs, create whole new industries, create a stronger and better America.

As we march into the 21st century, we are going to hand off that notion to foreign interests because multinational corporations want access to foreign markets. And if we let this pass in this House, shame on us, Mr. Speaker.

☐ 1545

Shame on us for selling down the American people in what we have lovingly called the people's House.

REGARDING JUDICIAL ACTIVISM

The SPEAKER pro tempore (Mr. ROGAN). Under the Speaker's announced policy of January 7, 1997, the