well and said, this is not about submarine patenting. Mr. Chairman, it is about submarine patenting.

I direct the gentleman's attention to the front page of the Wall Street Journal, to which the gentleman from Michigan previously alluded, indicating in broad print that it is a big-time problem, submarine patenting. For the benefit of the uninformed, the last time I checked, the Wall Street Journal is not a yellow journalistic sheet, so I think there is some authenticity behind that.

I say to my good friend, the gentleman from California [Mr. CAMPBELL], one of the most learned people in this body, he mentioned the university system. He will recall that in the dialog in which he and I engaged we made amendments in order, and the manager's amendment reflects some of that, that satisfies the university community. They came back to me, and perhaps to others on the committee, telling us that it is far better than it was earlier. I think they are taking no position on either bill. So we did do some good work on that.

Mr. ROHRABACHER. Mr. Chairman, I yield myself the balance of my time.

The CHAIRMAN pro tempore. The gentleman from California [Mr. ROHRABACHER] is recognized for his remaining 1 minute.

Mr. ROHRABACHER. Mr. Chairman, that is why this is not about submarine patents, because the Congressional Research Service has found that my bill, as well as the bill we are talking about, H.R. 400, deals with submarine patents. What we are talking about is a subterranean agreement with Japan, which I have held up, put in the CONGRESSIONAL RECORD, no one wants to comment on it, to harmonize our law with Japan's; Japan, where economic shoguns beat their people into submission because all of the secrets of the average person are made vulnerable to the big guys coming in and stealing it legally.

It does not make me feel any better that you have given the rights to the American people, after exposing them to theft, to sue Mitsubishi Corp. or the People's Liberation Army if they come over here and start stealing from our people.

This is about exposing the gentleman from Maryland [Mr. ROSCOE BARTLETT] and every other inventor in this country, and the five Nobel laureates who support my substitute bill, to grand theft and the lowering of the American standard of living because we have lost our technological edge, because we have given it away.

We have exposed it to theft, and if we pass this bill, a bill that opens up all of our secrets for our enemies to steal, we deserve it.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we heard about a secret agreement with Japan that no one speaks about. I am happy to find out about it. I presume that the gentleman from California is referring to a part of the GATT conference?

At any rate, I will be happy to deal with that in the 5 minutes.

Mr. Chairman, could I just review a few circumstances that may come out as the debate goes on. The substitute of the gentleman from California [Mr. ROHRABACHER] provides that applications filed in this country may not be published sooner than 5 years after they are filed, and then, not if the application is under appellate review.

This is one of the ways a submariner delays its own application, is to file spurious law claims and appeals. In addition, the director of the PTO must find that the application is not being pursued by an applicant before the publication can occur. I think we have some problems, because as anyone can imagine, it is almost impossible to identify maneuvers by patent lawyers to delay the processing of their applications.

So this provision is not very helpful in eliminating submarining, and is almost impossible to enforce, from my perspective. Imagine telling a judge that he can only allow the public to see the court documents relating to a case when a finding was made as to whether the merits were diligently pursued.

All judges, patent judges included, must give the benefit of the doubt to the filers that they are proceeding in good faith, and that they are legitimately pursuing their claims, or the whole system goes down.

The Rohrabacher substitute, as I understand it, demands a presumption of guilt in order to require publishing. This is a presumption that almost never can be established, and therein lies a serious grievance between the substitute and the bill, H.R. 400.

Mr. Chairman, what we are saying here is that we have a little submarining going on here on the floor. We have one bill that corrects submarining, a substitute that says, but we do, too, and then when we look at it a little more carefully there are a number of questions. And they may be drafting problems, or they may just not have been as tightly drawn, but they certainly cannot equally be said to deal with the problem of submarining. I do not think that is the case.

There is another way to game the system, under the Rohrabacher substitute. An applicant could file appeals, and listen carefully to this, an applicant under the Rohrabacher substitute could file an appeal to the Board of Patent Appeals which, while unlikely to succeed, are not so frivolous as to draw sanctions. That is what submariners love, new ways to game the system.

I am not saying this is done in bad faith. I am sure he is trying to cure it. But it simply does not cure it. That is why 37 members on the Committee on the Judiciary took this approach in H.R. 400.

PARLIAMENTARY INQUIRY

Mr. ROHRABACHER. Parliamentary inquiry, Mr. Chairman. If a Member is referred to by name on the floor and a question is asked, is it out of order for the Member then to ask if the person wants an answer to the point?

The CHAIRMAN pro tempore. The Member who controls the time decides if he wants to relinquish the time.

Ms. KAPTUR. Mr. Chairman, I yield myself the balance of my time.

The CHAIRMAN pro tempore. The gentlewoman from Ohio [Ms. KAPTUR] is recognized for 1¼ minutes.

Ms. KAPTUR. Mr. Chairman, I say to the Members, if they have not read H.R. 400, I say vote ''no.'' No one will have been able to read it because it has been changed so much, there is no final bill for Members to review.

Support the substitute. Remember, the United States leads the world in intellectual property breakthroughs by 10 times. Why change a system that is working, for a bill which Members have no final copy of to review? Why support a bill that takes away the guaranty of secrecy our patent applicants receive until their patent is granted? Why do that to them?

Why support H.R. 400, when it puts a greater burden of proof on our inventors to defend themselves, forcing them to sue, forcing them to greater re-examination procedures? Why do this to them?

Why support a bill that undermines the objectivity of our patent examiners, and changes our Patent Office?

This is a battle that goes to the heart of the constitutional rights of our citizens to invent opportunity in the 21st century. Vote ''no'' on H.R. 400. Support the substitute.

Mr. COBLE. Mr. Chairman, I yield the balance of my time to the gentleman from Illinois [Mr. HYDE], the distinguished chairman of the Committee on the Judiciary.

The CHAIRMAN pro tempore. The gentleman from Illinois [Mr. HYDE] is recognized for 5 minutes.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, this is about submarine patenting, and lest anyone be confused, a submarine patent is an application made by somebody who does not really want a quick and speedy issuance or grant of a patent. He wants to keep his application alive below the surface, hoping that somebody else will come along and start marketing, start manufacturing, start using an idea which is a part of his application. Then he surfaces suddenly, periscope up, and sues.

That may sound convoluted, but there are people making millions and millions of dollars, and the only way to effectively dispel that gaming of the system is to expose the applicant to publication after a reasonable length of time. Eighteen months has been determined by the world and us to be a reasonable length of time.

The gentleman from California [Mr. ROHRABACHER], claims that his substitute effectively dispels the submarine problem. That is, forgive me, nonsense. Here is how he dispels the submarine problem.

His amendment provides for publication no sooner than 5 years after the filing date, but not even then, if the submariner files an appeal, which may or may not be legitimate.

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That is a way to stretch this thing out. So under his curative amendment, submarines must surface after 5 years. That is a lifetime in the computer business. That is a lifetime in the pharmaceutical business. That is a lifetime in the biotech industry.

It is just no cure. I just think it is a convoluted way to continue gaming the system.

We have heard about stealing secrets. My God, we Americans are so brilliant and we invent these things and we clutch them to our bosom and nobody is going to steal them. Well, the problem is, if you want to be protected in Japan, if you want to be protected in France or Germany, you have to file over there. And if you file over there, you are going to be published in 18 months. On the other hand, 45 percent of the applications for patents in our country are from foreign countries, foreign inventors, rather, and they are not published under our present law, so we cannot see what they are doing; but, boy, they can see what we are doing.

Now, after publication, which is a healthy, good thing, not a poisonous thing, publication gives rise to what are called provisional rights, which means after your idea has been published but before you get a patent, you have rights which are enforceable in damages should somebody steal your idea and infringe your patent. So those things have to be taken into consideration.

This patent law is esoteric. It is difficult. But it is darned important to our economy and it is critical to our international competitiveness. I have heard language I expect to hear in the early 1940s about this country can go it alone, we are not involved in an international trade situation. Oh, yes we are. And this committee, the Committee on the Judiciary, has been involved in hearings and the study of this legislation for 3 years. There have been full and open hearings on this issue, and we have heard from scores of witnesses.

Mr. Chairman, the committee has marked up the bill twice, and both times key improvements were made to address the reasonable concerns of the parties involved. I ask that Members consider the fact that the Committee on the Judiciary has produced a bill that has twice been unanimously approved by voice vote.

Yes, the United States is the world's largest producer of intellectual property, but this success is dependent on a rational and sound and modern system of protection. To stay on top of an ever-changing technology and ever-changing economy, we have to make a number of changes in our patent code over the years. And we cannot ignore what is going on overseas.

First, in an era of unprecedented competition, the intellectual property industries have emerged as an area of American strength; and, second, technological innovations, especially in the areas of biotechnology and computer science, have increased substantially.

Today there are more than 1,300 companies employing more than 100,000 Americans in the biotech industry. That is just one industry that would not exist if we did not have strong patent protection.

Mr. WELDON of Florida. Mr. Chairman, I rise to express my concerns about H.R. 400, patent reform legislation. As the bill is currently drafted, I cannot support this legislation. While I appreciate the concerns by Members on both sides of this issue, I believe that H.R. 400 has some flaws that I cannot overlook.

For the past 200 years, the U.S. patent system has been the envy of the world. I believe that H.R. 400 as brought to the House floor would significantly alter this system which has done so much throughout our history to make the United States the world's leading source of innovation. We must carefully guard against any changes that might adversely impact the United States.

If major issues are not addressed during the debate on this bill, I will cast a no vote when we take a final vote on H.R. 400.

I thank the chairman for giving me this opportunity to speak on this matter.

Mr. SPENCE. Mr. Chairman, I rise in support of the manager's amendment to H.R. 400, the 21st Century Patent System Improvement Act.

Section 202 of this act would require the publication of patent applications 18 months after they are filed with the Patent and Trademark Office. This is a significant departure from the current practice, whereby this information is not published until after the patent is granted. There is a national security issue here. Under the current process, before a patent is issued a review of the patent application is conducted to determine if it contains technical information that is sensitive from a national security standpoint. If, after a review by the Department of Defense and the Department of Energy it is determined that the public release of the information in the patent application would be detrimental to national security, the patent application is put under a secrecy order prohibiting its public release.

In reviewing the original draft of H.R. 400, I was concerned that it would require the publication of the patent application before the Defense Department had completed its security review. A historical review determined that during fiscal years 1994 and 1995 eight of the patent applications that were eventually placed under secrecy orders did not have security review completed within 18 months. While that number is small, in 2 years there would have been eight instances in which classified technical information would have been publicly released under the procedures proposed by H.R. 400.

To address this problem, I submitted an amendment on behalf of the National Security Committee to the Judiciary Committee that would prevent the publication of patent applications until the secrecy reviews have been completed and it is found that their publication would not be detrimental to national security. I am pleased to report that the chairman of the Courts and Intellectual Property Subcommittee, Mr. COBLE, has agreed to accept this change and thereby fix this problem.

I want to thank the Judiciary Committee and its staff for their assistance and for working with us to ensure that sensitive national security information is not inadvertently released as a consequence of reforming the patent system.

Mrs. KELLY. Mr. Chairman, I rise in strong support of H.R. 400, the 21st Century Patent System Improvement Act, legislation which might be more aptly titled the Keep America Competitive Act.

H.R. 400 makes a number of commonsense improvements to our patent system, but I want to focus on one particular problem inherent in the current system that this legislation will correct.

I'm talking about the problem of so-called submarine patents, situations where a patent applicant intentionally delays the issuance of a patent, sometimes for a decade or more, through repeated refilings, which has the effect of submerging their original application from public view.

At the same time, other individuals or companies, without knowledge of that pending application, develop and market the same new technology. The original filer then allows his pending application to issue as a patent—the submarine surfaces—and then proceeds to hit unknowing businesses with costly royalty claims.

Mr. Chairman, this is not how our patent system was intended to work. We need a system which encourages innovation and protects legitimate inventors who develop new ideas with the intention of bringing those ideas to market—not a system which encourages sham artists who file patent applications with no intention of developing a product, but every intention of hitting unsuspecting companies with huge royalties.

This is a very real problem for one of the major employers in my district—IBM. Time and time again, IBM is hit with royalty claims from patents that were filed as much as 20 years ago, but only recently surface as the patent issues. This is not rhetoric, Mr. Chairman, this is real; it costs the company millions of dollars and it hurts their ability to compete.

Now let me share with you some additional facts. The information technology industry is characterized by very short product cycles. A technology that is developed and goes to market today could be obsolete less than a year from now. Our patent system has not kept up with the pace of technology development in today's economy. We need a patent system that will take us into the 21st century, and yet forcing companies like IBM to wait 5 years or more before a patent application is published is totally out of step with the realities of the information age.

A 5-year publication requirement will accomplish one of two things: You will either inhibit new technologies from coming to market or you will ensure that submarine patents remain a problem, or both.

An 18-month publication requirement, as included in H.R. 400, gets the technology to the

marketplace quicker and, most importantly, ensures that the inventor enjoys the royalty proceeds from their invention sooner.

I urge my colleagues to join me in supporting this important legislation to keep America competitive in the 21st century. Vote for H.R. 400. Thank you, Mr. Chairman.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill, modified as specified in section 2 of House Resolution 116, shall be considered as an original bill for the purpose of amendment under the 5-minute rule and shall be considered read.

The text of the committee amendment in the nature of a substitute, as modified, is as follows:

H.R. 400

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''21st Century Patent System Improvement Act''.

SEC. 2. TABLE OF CONTENTS.

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—PATENT AND TRADEMARK OFFICE MODERNIZATION

Sec. 101. Short title.

Subtitle A—United States Patent and Trademark Office

Sec. 111. Establishment of Patent and Trademark Office as a Government corporation.
Sec. 112. Powers and duties.
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Subtitle B—Effective Date; Technical Amendments

Sec. 131. Effective date.
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Subtitle C—Miscellaneous Provisions

Sec. 141. References.
Sec. 142. Exercise of authorities.
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Sec. 144. Transfer of assets.
Sec. 145. Delegation and assignment.
Sec. 146. Authority of Director of the Office of Management and Budget with respect to functions transferred.
Sec. 147. Certain vesting of functions considered transfers.
Sec. 148. Availability of existing funds.
Sec. 149. Definitions.

TITLE II—EXAMINING PROCEDURE IMPROVEMENTS: PUBLICATION WITH PROVISIONAL ROYALTIES; TERM EXTENSIONS; FURTHER EXAMINATION

Sec. 201. Short title.
Sec. 202. Publication.
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Sec. 208. Patent term extension authority.
Sec. 209. Further examination of patent applications.
Sec. 210. Last day of pendency of provisional application.
Sec. 211. Reporting requirement.
Sec. 212. Effective date.

TITLE III—PROTECTION FOR PRIOR DOMESTIC USERS OF PATENTED TECHNOLOGIES

Sec. 301. Short title.
Sec. 302. Defense to patent infringement based on prior domestic commercial or research use.
Sec. 303. Effective date and applicability.

TITLE IV—ENHANCED PROTECTION OF INVENTORS' RIGHTS

Sec. 401. Short title.
Sec. 402. Invention development services.
Sec. 403. Technical and conforming amendment.
Sec. 404. Effective date.

TITLE V—IMPROVED REEXAMINATION PROCEDURES

Sec. 501. Short title.
Sec. 502. Definitions.
Sec. 503. Reexamination procedures.
Sec. 504. Conforming amendments.
Sec. 505. Effective date.

TITLE VI—MISCELLANEOUS IMPROVEMENTS

Sec. 601. Provisional applications.
Sec. 602. International applications.
Sec. 603. Plant patents.
Sec. 604. Electronic filing.
Sec. 605. Divisional applications.

TITLE I—PATENT AND TRADEMARK OFFICE MODERNIZATION

SEC. 101. SHORT TITLE.

This title may be cited as the ''Patent and Trademark Office Modernization Act''.

Subtitle A—United States Patent and Trademark Office

SEC. 111. ESTABLISHMENT OF PATENT AND TRADEMARK OFFICE AS A GOVERNMENT CORPORATION.

Section 1 of title 35, United States Code, is amended to read as follows:

''§ 1. Establishment

''(a) ESTABLISHMENT.—The United States Patent and Trademark Office is established as a wholly owned Government corporation subject to chapter 91 of title 31, separate from any department of the United States, and shall be an agency of the United States under the policy direction of the Secretary of Commerce. For purposes of internal management, the United States Patent and Trademark Office shall be a corporate body not subject to direction or supervision by any department of the United States, except as otherwise provided in this title.

''(b) OFFICES.—The United States Patent and Trademark Office shall maintain its principal office in the metropolitan Washington, D.C. area, for the service of process and papers and for the purpose of carrying out its functions. The United States Patent and Trademark Office shall be deemed, for purposes of venue in civil actions, to be a resident of the district in which its principal office is located, except where jurisdiction is otherwise provided by law. The United States Patent and Trademark Office may establish satellite offices in such other places as it considers necessary and appropriate in the conduct of its business.

''(c) REFERENCE.—For purposes of this title, the United States Patent and Trademark Office shall also be referred to as the 'Office' and the 'Patent and Trademark Office'.''.

SEC. 112. POWERS AND DUTIES.

Section 2 of title 35, United States Code, is amended to read as follows:

''§ 2. Powers and duties

''(a) IN GENERAL.—The United States Patent and Trademark Office, under the policy direction of the Secretary of Commerce—

''(1) shall be responsible for the granting and issuing of patents and the registration of trademarks;

''(2) may conduct studies, programs, or exchanges of items or services regarding domestic and international law of patents, trademarks, and other matters, the administration of the Office, or any function vested in the Office by law, including programs to recognize, identify, assess, and forecast the technology of patented inventions and their utility to industry;

''(3)(A) may authorize or conduct studies and programs cooperatively with foreign patent and trademark offices and international organizations, in connection with patents, trademarks, and other matters; and

''(B) with the concurrence of the Secretary of State, may authorize the transfer of not to exceed $100,000 in any year to the Department of State for the purpose of making special payments to international intergovernmental organizations for studies and programs for advancing international cooperation concerning patents, trademarks, and other matters; and

''(4) shall be responsible for disseminating to the public information with respect to patents and trademarks.

The special payments under paragraph (3)(B) shall be in addition to any other payments or contributions to international organizations described in paragraph (3)(B) and shall not be subject to any limitations imposed by law on the amounts of such other payments or contributions by the United States Government.

''(b) SPECIFIC POWERS.—The Office—

''(1) shall have perpetual succession;

''(2) shall adopt and use a corporate seal, which shall be judicially noticed and with which letters patent, certificates of trademark registrations, and papers issued by the Office shall be authenticated;

''(3) may sue and be sued in its corporate name and be represented by its own attorneys in all judicial and administrative proceedings, subject to the provisions of section 7;

''(4) may indemnify the Director, and other officers, attorneys, agents, and employees (including members of the Management Advisory Board established in section 5) of the Office for liabilities and expenses incurred within the scope of their employment;

''(5) may adopt, amend, and repeal bylaws, rules, regulations, and determinations, which—

''(A) shall govern the manner in which its business will be conducted and the powers granted to it by law will be exercised;

''(B) shall be made after notice and opportunity for full participation by interested public and private parties;

''(C) shall facilitate and expedite the processing of patent applications, particularly those which can be filed, stored, processed, searched, and retrieved electronically, subject to the provisions of section 122 relating to the confidential status of applications;

''(D) may govern the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office, and may require them, before being recognized as representatives of applicants or other persons, to show that they are of good moral character and reputation and are possessed of the necessary qualifications to render to applicants or other persons valuable service, advice, and assistance in the presentation or prosecution of their applications or other business before the Office; and

''(E) recognize the public interest in continuing to safeguard broad access to the United States patent system through the reduced fee structure for small entities under section 41(h)(1) of this title;

''(6) may acquire, construct, purchase, lease, hold, manage, operate, improve, alter, and renovate any real, personal, or mixed property, or any interest therein, as it considers necessary to carry out its functions;

''(7)(A) may make such purchases, contracts for the construction, maintenance, or management and operation of facilities, and contracts for supplies or services, without regard to the provisions of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 and following), the Public Buildings Act (40 U.S.C. 601 and following), and the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 and following); and

''(B) may enter into and perform such purchases and contracts for printing services, including the process of composition, platemaking, presswork, silk screen processes, binding, microform, and the products of such processes, as it considers necessary to carry out the functions of the Office, without regard to sections 501 through 517 and 1101 through 1123 of title 44;

''(8) may use, with their consent, services, equipment, personnel, and facilities of other departments, agencies, and instrumentalities of the Federal Government, on a reimbursable basis, and cooperate with such other departments, agencies, and instrumentalities in the establishment and use of services, equipment, and facilities of the Office;

''(9) may obtain from the Administrator of General Services such services as the Administrator is authorized to provide to other agencies of the United States, on the same basis as those services are provided to other agencies of the United States;

''(10) may, when the Director determines that it is practicable, efficient, and cost-effective to do so, use, with the consent of the United States and the agency, government, or international organization concerned, the services, records, facilities, or personnel of any State or local government agency or instrumentality or foreign government or international organization to perform functions on its behalf;

''(11) may determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, subject to the provisions of this title and the Act of July 5, 1946 (commonly referred to as the 'Trademark Act of 1946');

''(12) may retain and use all of its revenues and receipts, including revenues from the sale, lease, or disposal of any real, personal, or mixed property, or any interest therein, of the Office, including for research and development and capital investment, subject to the provisions of section 10101 of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. 41 note);

''(13) shall have the priority of the United States with respect to the payment of debts from bankrupt, insolvent, and decedents' estates;

''(14) may accept monetary gifts or donations of services, or of real, personal, or mixed property, in order to carry out the functions of the Office;

''(15) may execute, in accordance with its bylaws, rules, and regulations, all instruments necessary and appropriate in the exercise of any of its powers; and

''(16) may provide for liability insurance and insurance against any loss in connection with its property, other assets, or operations either by contract or by self-insurance.

''(c) CONSTRUCTION.—Nothing in this section shall be construed to nullify, void, cancel, or interrupt any pending request-for-proposal let or contract issued by the General Services Administration for the specific purpose of relocating or leasing space to the United States Patent and Trademark Office.''.

SEC. 113. ORGANIZATION AND MANAGEMENT.

Section 3 of title 35, United States Code, is amended to read as follows:

''§ 3. Officers and employees

''(a) DIRECTOR.—

''(1) IN GENERAL.—The management of the United States Patent and Trademark Office shall be vested in a Director of the United States Patent and Trademark Office (in this title referred to as the 'Director'), who shall be a citizen of the United States and who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be a person who, by reason of professional background and experience in patent or trademark law, is especially qualified to manage the Office.

''(2) DUTIES.—

''(A) IN GENERAL.—The Director shall be responsible for the management and direction of the Office, including the issuance of patents and the registration of trademarks, and shall perform these duties in a fair, impartial, and equitable manner.

''(B) ADVISING THE PRESIDENT.—The Director shall advise the President, through the Secretary of Commerce, of all activities of the Office undertaken in response to obligations of the United States under treaties and executive agreements, or which relate to cooperative programs with those authorities of foreign governments that are responsible for granting patents or registering trademarks. The Director shall also recommend to the President, through the Secretary of Commerce, changes in law or policy which may improve the ability of United States citizens to secure and enforce patent rights or trademark rights in the United States or in foreign countries.

''(C) CONSULTING WITH THE MANAGEMENT ADVISORY BOARD.—The Director shall consult with the Management Advisory Board established in section 5 on a regular basis on matters relating to the operation of the Office, and shall consult with the Advisory Board before submitting budgetary proposals to the Office of Management and Budget or changing or proposing to change patent or trademark user fees or patent or trademark regulations.

''(D) SECURITY CLEARANCES.—The Director, in consultation with the Director of the Office of Personnel Management, shall maintain a program for identifying national security positions and providing for appropriate security clearances.

''(3) TERM.—The Director shall serve a term of 5 years, and may continue to serve after the expiration of the Director's term until a successor is appointed and assumes office. The Director may be reappointed to subsequent terms.

''(4) OATH.—The Director shall, before taking office, take an oath to discharge faithfully the duties of the Office.

''(5) COMPENSATION.—The Director shall receive compensation at a rate not to exceed the rate of pay in effect for level III of the Executive Schedule under section 5314 of title 5 and, in addition, may receive as a bonus, an amount which would raise the Director's total compensation to not more than the equivalent of the level of the rate of pay in effect for level I of the Executive Schedule under section 5312 of title 5, based upon an evaluation by the Secretary of Commerce of the Director's performance as defined in an annual performance agreement between the Director and the Secretary. The annual performance agreement shall incorporate measurable goals as delineated in an annual performance plan agreed to by the Director and the Secretary.

''(6) REMOVAL.—The Director may be removed from office by the President. The President shall provide notification of any such removal to both Houses of Congress.

''(7) DESIGNEE OF DIRECTOR.—The Director shall designate an officer of the Office who shall be vested with the authority to act in the capacity of the Director in the event of the absence or incapacity of the Director.

''(b) OFFICERS AND EMPLOYEES OF THE OFFICE.—

''(1) COMMISSIONERS.—The Director shall appoint a Commissioner for Patents and a Commissioner for Trademarks for terms that shall expire on the date on which the Director's term expires. The Commissioner for Patents shall be a person with demonstrated experience in patent law and the Commissioner for Trademarks shall be a person with demonstrated experience in trademark law. The Commissioner for Patents and the Commissioner for Trademarks shall be the principal policy and management advisers to the Director on all aspects of the activities of the Office that affect the administration of patent and trademark operations, respectively.

''(2) OTHER OFFICERS AND EMPLOYEES.—The Director shall—

''(A) appoint such officers, employees (including attorneys), and agents of the Office as the Director considers necessary to carry out the functions of the Office; and

''(B) define the authority and duties of such officers and employees and delegate to them such of the powers vested in the Office as the Director may determine.

The Office shall not be subject to any administratively or statutorily imposed limitation on positions or personnel, and no positions or personnel of the Office shall be taken into account for purposes of applying any such limitation.

''(c) CONTINUED APPLICABILITY OF TITLE 5.—Officers and employees of the Office shall be subject to the provisions of title 5 relating to Federal employees. Section 2302 of title 5 applies to the Office, notwithstanding subsection (a)(2)(B)(i) of such section.

''(d) ADOPTION OF EXISTING LABOR AGREEMENTS.—The Office shall adopt all labor agreements which are in effect, as of the day before the effective date of the Patent and Trademark Office Modernization Act, with respect to such Office (as then in effect).

''(e) CARRYOVER OF PERSONNEL.—

''(1) FROM PTO.—Effective as of the effective date of the Patent and Trademark Office Modernization Act, all officers and employees of the Patent and Trademark Office on the day before such effective date shall become officers and employees of the Office, without a break in service.

''(2) OTHER PERSONNEL.—Any individual who, on the day before the effective date of the Patent and Trademark Office Modernization Act, is an officer or employee of the Department of Commerce (other than an officer or employee under paragraph (1)) shall be transferred to the Office if—

''(A) such individual serves in a position for which a major function is the performance of work reimbursed by the Patent and Trademark Office, as determined by the Secretary of Commerce;

''(B) such individual serves in a position that performed work in support of the Patent and Trademark Office during at least half of the incumbent's work time, as determined by the Secretary of Commerce; or

''(C) such transfer would be in the interest of the Office, as determined by the Secretary of Commerce in consultation with the Director.

Any transfer under this paragraph shall be effective as of the same effective date as referred to in paragraph (1), and shall be made without a break in service.

''(3) ACCUMULATED LEAVE.—The amount of sick and annual leave and compensatory time accumulated under title 5 before the effective date described in paragraph (1), by those becoming officers or employees of the Office pursuant to this subsection, are obligations of the Office.

''(f) TRANSITION PROVISIONS.—

''(1) INTERIM APPOINTMENT OF DIRECTOR.—On or after the effective date of the Patent and Trademark Office Modernization Act, the President shall appoint an individual to serve as the Director until the date on which a Director qualifies under subsection (a). The President shall not make more than one such appointment under this subsection.

''(2) CONTINUATION IN OFFICE OF CERTAIN OFFICERS.—(A) The individual serving as the Assistant Commissioner for Patents on the day before the effective date of the Patent and Trademark Office Modernization Act may serve as the Commissioner for Patents until the date on

which a Commissioner for Patents is appointed under subsection (b).

''(B) The individual serving as the Assistant Commissioner for Trademarks on the day before the effective date of the Patent and Trademark Office Modernization Act may serve as the Commissioner for Trademarks until the date on which a Commissioner for Trademarks is appointed under subsection (b).''.

SEC. 114. MANAGEMENT ADVISORY BOARD.

Chapter 1 of part I of title 35, United States Code, is amended by inserting after section 4 the following:

''§ 5. Patent and Trademark Office Management Advisory Board

''(a) ESTABLISHMENT OF MANAGEMENT ADVISORY BOARD.—

''(1) APPOINTMENT.—The United States Patent and Trademark Office shall have a Management Advisory Board (hereafter in this title referred to as the 'Advisory Board') of 12 members, 4 of whom shall be appointed by the President, 4 of whom shall be appointed by the Speaker of the House of Representatives, and 4 of whom shall be appointed by the majority leader of the Senate. Not more than 3 of the 4 members appointed by each appointing authority shall be members of the same political party.

''(2) TERMS.—Members of the Advisory Board shall be appointed for a term of 4 years each, except that of the members first appointed by each appointing authority, 1 shall be for a term of 1 year, 1 shall be for a term of 2 years, and 1 shall be for a term of 3 years. No member may serve more than 1 term.

''(3) CHAIR.—The President shall designate the chair of the Advisory Board, whose term as chair shall be for 3 years.

''(4) TIMING OF APPOINTMENTS.—Initial appointments to the Advisory Board shall be made within 3 months after the effective date of the Patent and Trademark Office Modernization Act, and vacancies shall be filled within 3 months after they occur.

''(5) VACANCIES.—Vacancies shall be filled in the manner in which the original appointment was made under this subsection. Members appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term. A member may serve after the expiration of that member's term until a successor is appointed.

''(6) COMMITTEES.—The Chair shall designate members of the Advisory Board to serve on a committee on patent operations and on a committee on trademark operations to perform the duties set forth in subsection (e) as they relate specifically to the Office's patent operations, and the Office's trademark operations, respectively.

''(b) BASIS FOR APPOINTMENTS.—Members of the Advisory Board shall be citizens of the United States who shall be chosen so as to represent the interests of diverse users of the United States Patent and Trademark Office, and shall include individuals with substantial background and achievement in corporate finance and management.

''(c) APPLICABILITY OF CERTAIN ETHICS LAWS.—Members of the Advisory Board shall be special Government employees within the meaning of section 202 of title 18.

''(d) MEETINGS.—The Advisory Board shall meet at the call of the chair to consider an agenda set by the chair.

''(e) DUTIES.—The Advisory Board shall—

''(1) review the policies, goals, performance, budget, and user fees of the United States Patent and Trademark Office, and advise the Director on these matters; and

''(2) within 60 days after the end of each fiscal year, prepare an annual report on the matters referred to in paragraph (1), transmit the report to the President and the Committees on the Judiciary of the Senate and the House of Representatives, and publish the report in the Patent and Trademark Office Official Gazette.

''(f) COMPENSATION.—Members of the Advisory Board shall be compensated for each day (including travel time) during which they are attending meetings or conferences of the Advisory Board or otherwise engaged in the business of the Advisory Board, at the rate which is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

''(g) ACCESS TO INFORMATION.—Members of the Advisory Board shall be provided access to records and information in the United States Patent and Trademark Office, except for personnel or other privileged information and information concerning patent applications required to be kept in confidence by section 122.''.

SEC. 115. CONFORMING AMENDMENTS.

(a) DUTIES.—Chapter 1 of title 35, United States Code, is amended by striking section 6.

(b) REGULATIONS FOR AGENTS AND ATTORNEYS.—Section 31 of title 35, United States Code, and the item relating to such section in the table of sections for chapter 3 of title 35, United States Code, are repealed.

SEC. 116. TRADEMARK TRIAL AND APPEAL BOARD.

Section 17 of the Act of July 5, 1946 (commonly referred to as the ''Trademark Act of 1946'') (15 U.S.C. 1067) is amended to read as follows:

''SEC. 17. (a) In every case of interference, opposition to registration, application to register as a lawful concurrent user, or application to cancel the registration of a mark, the Director shall give notice to all parties and shall direct a Trademark Trial and Appeal Board to determine and decide the respective rights of registration.

''(b) The Trademark Trial and Appeal Board shall include the Director, the Commissioner for Patents, the Commissioner for Trademarks, and administrative trademark judges who are appointed by the Director.''.

SEC. 117. BOARD OF PATENT APPEALS AND INTERFERENCES.

Chapter 1 of title 35, United States Code, is amended by striking section 7 and inserting after section 5 the following:

''§ 6. Board of Patent Appeals and Interferences

''(a) ESTABLISHMENT AND COMPOSITION.—There shall be in the United States Patent and Trademark Office a Board of Patent Appeals and Interferences. The Director, the Commissioner for Patents, the Commissioner for Trademarks, and the administrative patent judges shall constitute the Board. The administrative patent judges shall be persons of competent legal knowledge and scientific ability who are appointed by the Director.

''(b) DUTIES.—The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, review adverse decisions of examiners upon applications for patents and shall determine priority and patentability of invention in interferences declared under section 135(a). Each appeal and interference shall be heard by at least 3 members of the Board, who shall be designated by the Director. Only the Board of Patent Appeals and Interferences may grant rehearings.''.

SEC. 118. SUITS BY AND AGAINST THE OFFICE.

Chapter 1 of part I of title 35, United States Code, is amended by inserting after section 6 the following new section:

''§ 7. Suits by and against the Office

''(a) ACTIONS UNDER UNITED STATES LAW.—Any civil action or proceeding to which the United States Patent and Trademark Office is a party is deemed to arise under the laws of the United States. The Federal courts shall have exclusive jurisdiction over all civil actions by or against the Office.

''(b) REPRESENTATION BY THE DEPARTMENT OF JUSTICE.—The United States Patent and Trademark Office shall be deemed an agency of the United States for purposes of section 516 of title 28.

''(c) PROHIBITION ON ATTACHMENT, LIENS, ETC.—No attachment, garnishment, lien, or similar process, intermediate or final, in law or equity, may be issued against property of the Office.''.

SEC. 119. ANNUAL REPORT OF DIRECTOR.

Section 14 of title 35, United States Code, is amended to read as follows:

''§ 14. Annual report to Congress

''The Director shall report to the Congress, not later than 180 days after the end of each fiscal year, the moneys received and expended by the Office, the purposes for which the moneys were spent, the quality and quantity of the work of the Office, and other information relating to the Office. The report under this section shall also meet the requirements of section 9106 of title 31, to the extent that such requirements are not inconsistent with the preceding sentence. The report required under this section shall not be deemed to be the report of the United States Patent and Trademark Office under section 9106 of title 31, and the Director shall file a separate report under such section.''.

SEC. 120. SUSPENSION OR EXCLUSION FROM PRACTICE.

Section 32 of title 35, United States Code, is amended by inserting before the last sentence the following: ''The Director shall have the discretion to designate any attorney who is an officer or employee of the United States Patent and Trademark Office to conduct the hearing required by this section.''.

SEC. 121. FUNDING.

Section 42 of title 35, United States Code, is amended to read as follows:

''§ 42. Patent and Trademark Office funding

''(a) FEES PAYABLE TO THE OFFICE.—All fees for services performed by or materials furnished by the United States Patent and Trademark Office shall be payable to the Office.

''(b) USE OF MONEYS.—Moneys from fees shall be available to the United States Patent and Trademark Office to carry out, to the extent provided in appropriations Acts, the functions of the Office. Moneys of the Office not otherwise used to carry out the functions of the Office shall be kept in cash on hand or on deposit, or invested in obligations of the United States or guaranteed by the United States, or in obligations or other instruments which are lawful investments for fiduciary, trust, or public funds. Fees available to the Office under this title shall be used for the processing of patent applications and for other services and materials relating to patents. Fees available to the Office under section 31 of the Act of July 5, 1946 (commonly referred to as the 'Trademark Act of 1946'; 15 U.S.C. 1113), shall be used only for the processing of trademark registrations and for other services and materials relating to trademarks.

''(c) BORROWING AUTHORITY.—The United States Patent and Trademark Office is authorized to issue from time to time for purchase by the Secretary of the Treasury its debentures, bonds, notes, and other evidences of indebtedness (hereafter in this subsection referred to as 'obligations') to assist in financing its activities. Borrowing under this subsection shall be subject to prior approval in appropriations Acts. Such borrowing shall not exceed amounts approved in appropriations Acts. Any borrowing under this subsection shall be repaid only from fees paid to the Office and surcharges appropriated by the Congress. Such obligations shall be redeemable at the option of the Office before maturity in the manner stipulated in such obligations and shall have such maturity as is determined by the Office with the approval of the Secretary of the Treasury. Each such obligation issued to the Treasury shall bear interest at a rate not less than the current yield on outstanding marketable obligations of the United States of comparable maturity during the month preceding

the issuance of the obligation as determined by the Secretary of the Treasury. The Secretary of the Treasury shall purchase any obligations of the Office issued under this subsection and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of any securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under that chapter are extended to include such purpose. Payment under this subsection of the purchase price of such obligations of the United States Patent and Trademark Office shall be treated as public debt transactions of the United States.''.

SEC. 122. EXTENSION OF SURCHARGES ON PATENT FEES.

(a) IN GENERAL.—Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. 41 note) is amended to read as follows:

''SEC. 10101. PATENT AND TRADEMARK OFFICE USER FEES.

''(a) SURCHARGES.—There shall be a surcharge on all fees authorized by subsections (a) and (b) of section 41 of title 35, United States Code, in order to ensure that the amounts specified in subsection (c) are collected.

''(b) USE OF SURCHARGES.—Notwithstanding section 3302 of title 31, United States Code, all surcharges collected by the Patent and Trademark Office—

''(1) shall be credited to a separate account established in the Treasury and ascribed to the activities of the United States Patent and Trademark Office as offsetting collections,

''(2) shall be collected by and available to the United States Patent and Trademark Office for all authorized activities and operations of the Office, including all direct and indirect costs of services provided by the office, and

''(3) shall remain available until expended.

''(c) ESTABLISHMENT OF SURCHARGES.—The Director of the United States Patent and Trademark Office shall establish surcharges under subsection (a), subject to the provisions of section 553 of title 5, United States Code, in order to ensure that $119,000,000, but not more than $119,000,000, are collected in fiscal year 1999 and each fiscal year thereafter.

''(d) APPROPRIATIONS ACT REQUIRED.—Notwithstanding subsections (a) through (c), no fee established by subsection (a) shall be collected nor shall be available for spending without prior authorization in appropriations Acts.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1998.

SEC. 123. TRANSFERS.

(a) TRANSFER OF FUNCTIONS.—Except to the extent that such functions, powers, and duties relate to the direction of patent or trademark policy, there are transferred to, and vested in, the United States Patent and Trademark Office all functions, powers, and duties vested by law in the Secretary of Commerce or the Department of Commerce or in the officers or components in the Department of Commerce with respect to the authority to grant patents and register trademarks, and in the Patent and Trademark Office, as in effect on the day before the effective date of this title, and in the officers and components of such Office.

(b) TRANSFER OF FUNDS AND PROPERTY.—The Secretary of Commerce shall transfer to the United States Patent and Trademark Office, on the effective date of this title, so much of the assets, liabilities, contracts, property, records, and unexpended and unobligated balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Department of Commerce, including funds set aside for accounts receivable, which are related to functions, powers, and duties which are vested in the Patent and Trademark Office by this title.

SEC. 124. GAO STUDY AND REPORT.

The Comptroller General shall conduct a study of and, not later than the date that is 2 years after the effective date of this title, submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report on—

(1) the operations of the Patent and Trademark Office as a Government corporation; and

(2) the feasibility and desirability of making the trademark operations of the Patent and Trademark Office a separate Government corporation or agency.

Subtitle B—Effective Date; Technical Amendments

SEC. 131. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect 4 months after the date of the enactment of this Act.

SEC. 132. TECHNICAL AND CONFORMING AMENDMENTS.

(a) AMENDMENTS TO TITLE 35.—

(1) The item relating to part I in the table of parts for chapter 35, United States Code, is amended to read as follows:

''I. United States Patent and Trademark Office ..... 1''.

(2) The heading for part I of title 35, United States Code, is amended to read as follows:

''PART I—UNITED STATES PATENT AND TRADEMARK OFFICE''.

(3) The table of chapters for part I of title 35, United States Code, is amended by amending the item relating to chapter 1 to read as follows:

''1. Establishment, Officers and Employees, Functions ..... 1''.

(4) The table of sections for chapter 1 of title 35, United States Code, is amended to read as follows:

''CHAPTER 1—ESTABLISHMENT, OFFICERS AND EMPLOYEES, FUNCTIONS

''Sec.
''1. Establishment.
''2. Powers and duties.
''3. Officers and employees.
''4. Restrictions on officers and employees as to interest in patents.
''5. Patent and Trademark Office Management Advisory Board.
''6. Board of Patent Appeals and Interferences.
''7. Suits by and against the Office.
''8. Library.
''9. Classification of patents.
''10. Certified copies of records.
''11. Publications.
''12. Exchange of copies of patents with foreign countries.
''13. Copies of patents for public libraries.
''14. Annual report to Congress.''.

(5) Section 155 of title 35, United States Code, is amended by striking ''Commissioner of Patents and Trademarks'' and inserting ''Director''.

(6) Section 155A(c) of title 35, United States Code, is amended by striking ''Commissioner of Patents and Trademarks'' and inserting ''Director''.

(7) Section 302 of title 35, United States Code, is amended by striking ''Commissioner of Patents'' and inserting ''Director''.

(8) Section 303(b) of title 35, United States Code, is amended by striking ''Commissioner's'' and inserting ''Director's''.

(9) Title 35, United States Code, is amended by striking ''Commissioner'' each place it appears and inserting ''Director''.

(10) Section 41(a)(8)(A) of title 35, United States Code, is amended by striking ''On'' and inserting ''on''.

(b) OTHER PROVISIONS OF LAW.—

(1)(A) Section 45 of the Act of July 5, 1946 (commonly referred to as the ''Trademark Act of 1946''; 15 U.S.C. 1127), is amended by striking ''The term 'Commissioner' means the Commissioner of Patents and Trademarks.'' and inserting ''The term 'Director' means the Director of the United States Patent and Trademark Office.''.

(B) The Act of July 5, 1946 (commonly referred to as the ''Trademark Act of 1946''; 15 U.S.C. 1051 and following), except for section 17, as amended by section 116 of this Act, is amended by striking ''Commissioner'' each place it appears and inserting ''Director''.

(2) Section 9101(3) of title 31, United States Code, is amended by adding at the end the following:

''(R) the United States Patent and Trademark Office.''.

(3) Section 500(e) of title 5, United States Code, is amended by striking ''Patent Office'' and inserting ''United States Patent and Trademark Office''.

(4) Section 5102(c)(23) of title 5, United States Code, is amended to read as follows:

''(23) administrative patent judges and designated administrative patent judges in the United States Patent and Trademark Office;''.

(5) Section 5316 of title 5, United States Code (5 U.S.C. 5316) is amended by striking ''Commissioner of Patents, Department of Commerce.'', ''Deputy Commissioner of Patents and Trademarks.'', ''Assistant Commissioner for Patents.'', and ''Assistant Commissioner for Trademarks.''.

(6) Section 9(p)(1)(B) of the Small Business Act (15 U.S.C. 638(p)(1)(B)) is amended to read as follows:

''(B) the Director of the United States Patent and Trademark Office; and''.

(7) Section 12 of the Act of February 14, 1903 (15 U.S.C. 1511) is amended by striking ''(d) Patent and Trademark Office;'' and redesignating subsections (a) through (g) as paragraphs (1) through (6), respectively.

(8) Section 19 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831r) is amended—

(A) by striking ''Patent Office of the United States'' and inserting ''United States Patent and Trademark Office''; and

(B) by striking ''Commissioner of Patents'' and inserting ''Director of the United States Patent and Trademark Office''.

(9) Section 182(b)(2)(A) of the Trade Act of 1974 (19 U.S.C. 2242(b)(2)(A)) is amended by striking ''Commissioner of Patents and Trademarks'' and inserting ''Director of the United States Patent and Trademark Office''.

(10) Section 302(b)(2)(D) of the Trade Act of 1974 (19 U.S.C. 2412(b)(2)(D)) is amended by striking ''Commissioner of Patents and Trademarks'' and inserting ''Director of the United States Patent and Trademark Office''.

(11) The Act of April 12, 1892 (27 Stat. 395; 20 U.S.C. 91) is amended by striking ''Patent Office'' and inserting ''United States Patent and Trademark Office''.

(12) Sections 505(m) and 512(o) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(m) and 360b(o)) are each amended by striking ''Patent and Trademark Office of the Department of Commerce'' and inserting ''United States Patent and Trademark Office''.

(13) Section 702(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 372(d)) is amended by striking ''Commissioner of Patents'' and inserting ''Director of the United States Patent and Trademark Office''.

(14) Section 105(e) of the Federal Alcohol Administration Act (27 U.S.C. 205(e)) is amended by striking ''United States Patent Office'' and inserting ''United States Patent and Trademark Office''.

(15) Section 1295(a)(4) of title 28, United States Code, is amended—

(A) in subparagraph (A) by inserting ''United States'' before ''Patent and Trademark''; and

(B) in subparagraph (B) by striking ''Commissioner of Patents and Trademarks'' and inserting ''Director of the United States Patent and Trademark Office''.

(16) Section 1744 of title 28, United States Code is amended—

(A) by striking ''Patent Office'' each place it appears in the text and section heading and inserting ''United States Patent and Trademark Office'';

(B) by striking ''Commissioner of Patents'' and inserting ''Director of the United States Patent and Trademark Office''; and

(C) by striking ''Commissioner'' and inserting ''Director''.

(17) Section 1745 of title 28, United States Code, is amended by striking ''United States Patent Office'' and inserting ''United States Patent and Trademark Office''.

(18) Section 1928 of title 28, United States Code, is amended by striking ''Patent Office'' and inserting ''United States Patent and Trademark Office''.

(19) Section 151 of the Atomic Energy Act of 1954 (42 U.S.C. 2181) is amended in subsections c. and d. by striking ''Commissioner of Patents'' and inserting ''Director of the United States Patent and Trademark Office''.

(20) Section 152 of the Atomic Energy Act of 1954 (42 U.S.C. 2182) is amended by striking ''Commissioner of Patents'' each place it appears and inserting ''Director of the United States Patent and Trademark Office''.

(21) Section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457) is amended—

(A) in subsection (c) by striking ''Commissioner of Patents'' and inserting ''Director of the United States Patent and Trademark Office (hereafter in this section referred to as the 'Director')''; and

(B) by striking ''Commissioner'' each subsequent place it appears and inserting ''Director''.

(22) Section 12(a) of the Solar Heating and Cooling Demonstration Act of 1974 (42 U.S.C. 5510(a)) is amended by striking ''Commissioner of the Patent Office'' and inserting ''Director of the United States Patent and Trademark Office''.

(23) Section 1111 of title 44, United States Code, is amended by striking ''the Commissioner of Patents,''.

(24) Section 1114 of title 44, United States Code, is amended by striking ''the Commissioner of Patents,''.

(25) Section 1123 of title 44, United States Code, is amended by striking ''the Patent Office,''.

(26) Sections 1337 and 1338 of title 44, United States Code, and the items relating to those sections in the table of contents for chapter 13 of such title, are repealed.

(27) Section 10(i) of the Trading With the Enemy Act (50 U.S.C. App. 10(i)) is amended by striking ''Commissioner of Patents'' and inserting ''Director of the United States Patent and Trademark Office''.

(28) Section 11 of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(A) in paragraph (1)—

(i) by striking ''and'' before ''the chief executive officer of the Resolution Trust Corporation;'';

(ii) by striking ''and'' before ''the Chairperson of the Federal Deposit Insurance Corporation;'';

(iii) by striking ''or'' before ''the Commissioner of Social Security,''; and

(iv) by inserting ''or the Director of the United States Patent and Trademark Office;'' after ''Social Security Administration;''; and

(B) in paragraph (2)—

(i) by striking ''or'' before ''the Veterans' Administration,''; and

(ii) by striking ''or the Social Security Administration'' and inserting ''the Social Security Administration, or the United States Patent and Trademark Office''.

Subtitle C—Miscellaneous Provisions

SEC. 141. REFERENCES.

(a) IN GENERAL.—Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a department or office from which a function is transferred by this title—

(1) to the head of such department or office is deemed to refer to the head of the department or office to which such function is transferred; or

(2) to such department or office is deemed to refer to the department or office to which such function is transferred.

(b) SPECIFIC REFERENCES.—Any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to the Patent and Trademark Office—

(1) to the Commissioner of Patents and Trademarks is deemed to refer to the Director of the United States Patent and Trademark Office;

(2) to the Assistant Commissioner for Patents is deemed to refer to the Commissioner for Patents; or

(3) to the Assistant Commissioner for Trademarks is deemed to refer to the Commissioner for Trademarks.

SEC. 142. EXERCISE OF AUTHORITIES.

Except as otherwise provided by law, a Federal official to whom a function is transferred by this title may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date of the transfer of the function under this title.

SEC. 143. SAVINGS PROVISIONS.

(a) LEGAL DOCUMENTS.—All orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, certificates, licenses, and privileges—

(1) that have been issued, made, granted, or allowed to become effective by the President, the Secretary of Commerce, any officer or employee of any office transferred by this title, or any other Government official, or by a court of competent jurisdiction, in the performance of any function that is transferred by this title, and

(2) that are in effect on the effective date of such transfer (or become effective after such date pursuant to their terms as in effect on such effective date),

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, any other authorized official, a court of competent jurisdiction, or operation of law.

(b) PROCEEDINGS.—This title shall not affect any proceedings or any application for any benefits, service, license, permit, certificate, or financial assistance pending on the effective date of this title before an office transferred by this title, but such proceedings and applications shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this title had not been enacted, and orders issued in any such proceeding shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be considered to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this title had not been enacted.

(c) SUITS.—This title shall not affect suits commenced before the effective date of this title, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this title had not been enacted.

(d) NONABATEMENT OF ACTIONS.—No suit, action, or other proceeding commenced by or against the Department of Commerce or the Secretary of Commerce, or by or against any individual in the official capacity of such individual as an officer or employee of an office transferred by this title, shall abate by reason of the enactment of this title.

(e) CONTINUANCE OF SUITS.—If any Government officer in the official capacity of such officer is party to a suit with respect to a function of the officer, and under this title such function is transferred to any other officer or office, then such suit shall be continued with the other officer or the head of such other office, as applicable, substituted or added as a party.

(f) ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW.—Except as otherwise provided by this title, any statutory requirements relating to notice, hearings, action upon the record, or administrative or judicial review that apply to any function transferred by this title shall apply to the exercise of such function by the head of the Federal agency, and other officers of the agency, to which such function is transferred by this title.

SEC. 144. TRANSFER OF ASSETS.

Except as otherwise provided in this title, so much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with a function transferred to an official or agency by this title shall be available to the official or the head of that agency, respectively, at such time or times as the Director of the Office of Management and Budget directs for use in connection with the functions transferred.

SEC. 145. DELEGATION AND ASSIGNMENT.

Except as otherwise expressly prohibited by law or otherwise provided in this title, an official to whom functions are transferred under this title (including the head of any office to which functions are transferred under this title) may delegate any of the functions so transferred to such officers and employees of the office of the official as the official may designate, and may authorize successive redelegations of such functions as may be necessary or appropriate. No delegation of functions under this section or under any other provision of this title shall relieve the official to whom a function is transferred under this title of responsibility for the administration of the function.

SEC. 146. AUTHORITY OF DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET WITH RESPECT TO FUNCTIONS TRANSFERRED.

(a) DETERMINATIONS.—If necessary, the Director of the Office of Management and Budget shall make any determination of the functions that are transferred under this title.

(b) INCIDENTAL TRANSFERS.—The Director of the Office of Management and Budget, at such time or times as the Director shall provide, may make such determinations as may be necessary with regard to the functions transferred by this title, and to make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this title. The Director shall provide for the termination of the affairs of all entities terminated by this title and for such further measures and dispositions as may be necessary to effectuate the purposes of this title.

SEC. 147. CERTAIN VESTING OF FUNCTIONS CONSIDERED TRANSFERS.

For purposes of this title, the vesting of a function in a department or office pursuant to reestablishment of an office shall be considered to be the transfer of the function.

SEC. 148. AVAILABILITY OF EXISTING FUNDS.

Existing appropriations and funds available for the performance of functions, programs, and activities terminated pursuant to this title shall remain available, for the duration of their period of availability, for necessary expenses in connection with the termination and resolution of such functions, programs, and activities, subject to the submission of a plan to the Committees on Appropriations of the House and Senate in accordance with the procedures set forth in section 605 of the Departments of Commerce,

Justice, and State, the Judiciary, and Related Agencies Appropriations Act 1997.

SEC. 149. DEFINITIONS.

For purposes of this title—

(1) the term ''function'' includes any duty, obligation, power, authority, responsibility, right, privilege, activity, or program; and

(2) the term ''office'' includes any office, administration, agency, bureau, institute, council, unit, organizational entity, or component thereof.

TITLE II—EXAMINING PROCEDURE IMPROVEMENTS: PUBLICATION WITH PROVISIONAL ROYALTIES; TERM EXTENSIONS; FURTHER EXAMINATION

SEC. 201. SHORT TITLE.

This title may be cited as the ''Examining Procedure Improvements Act''.

SEC. 202. PUBLICATION.

Section 122 of title 35, United States Code, is amended to read as follows:

''§ 122. Confidential status of applications; publication of patent applications

''(a) CONFIDENTIALITY.—Except as provided in subsection (b), applications for patents shall be kept in confidence by the Patent and Trademark Office and no information concerning applications for patents shall be given without authority of the applicant or owner unless necessary to carry out the provisions of an Act of Congress or in such special circumstances as may be determined by the Director.

''(b) PUBLICATION.—

''(1) IN GENERAL.—(A) Subject to paragraph (2), each application for patent, except applications for design patents filed under chapter 16 of this title and provisional applications filed under section 111(b) of this title, shall be published, in accordance with procedures determined by the Director, promptly after the expiration of a period of 18 months from the earliest filing date for which a benefit is sought under this title. At the request of the applicant, an application may be published earlier than the end of such 18-month period.

''(B) No information concerning published patent applications shall be made available to the public except as the Director determines.

''(C) Notwithstanding any other provision of law, a determination by the Director to release or not to release information concerning a published patent application shall be final and nonreviewable.

''(2) EXCEPTIONS.—(A) An application that is no longer pending shall not be published.

''(B) An application that is subject to a secrecy order pursuant to section 181 of this title shall not be published.

''(C)(i) Upon the request of the applicant at the time of filing, the application shall not be published in accordance with paragraph (1) until 3 months after the Director makes a notification to the applicant under section 132 of this title.

''(ii) Applications filed pursuant to section 363 of this title, applications asserting priority under section 119 or 365(a) of this title, and applications asserting the benefit of an earlier application under section 120, 121, or 365(c) of this title shall not be eligible for a request pursuant to this subparagraph.

''(iii) In a request under this subparagraph, the applicant shall certify that the invention disclosed in the application was not and will not be the subject of an application filed in a foreign country.

''(iv) The Director may establish appropriate procedures and fees for making a request under this subparagraph.

''(D)(i) In a case in which an applicant, after making a request under subparagraph (C)(i), determines to file an application in a foreign country, the applicant shall notify the Director promptly. The application shall then be published in accordance with the provisions of paragraph (1).

''(ii) The Director may establish appropriate fees to cover the costs of processing notifications under clause (i), including the costs of any special handling of applications resulting from the initial request under subparagraph (C)(i).

''(c) PRE-ISSUANCE OPPOSITION.—The provisions of this section shall not operate to create any new opportunity for pre-issuance opposition. The Director may establish appropriate procedures to ensure that this section does not create any new opportunity for pre-issuance opposition.''.

SEC. 203. TIME FOR CLAIMING BENEFIT OF EARLIER FILING DATE.

(a) IN A FOREIGN COUNTRY.—Section 119(b) of title 35, United States Code, is amended to read as follows:

''(b)(1) No application for patent shall be entitled to this right of priority unless a claim is filed in the Patent and Trademark Office, at such time during the pendency of the application as is required by the Director, that identifies the foreign application by specifying its application number, the country in or for which the application was filed, and the date of its filing.

''(2) The Director may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim, and may require the payment of a surcharge as a condition of accepting an untimely claim during the pendency of the application.

''(3) The Director may require a certified copy of the original foreign application, specification, and drawings upon which it is based, a translation if not in the English language, and such other information as the Director considers necessary. Any such certification shall be made by the intellectual property authority in the foreign country in which the foreign application was filed and show the date of the application and of the filing of the specification and other papers.''.

(b) IN THE UNITED STATES.—Section 120 of title 35, United States Code, is amended by adding at the end the following: ''No application shall be entitled to the benefit of an earlier filed application under this section unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as is required by the Commissioner. The Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under this section. The Director may establish procedures, including the payment of a surcharge, to accept unavoidably late submissions of amendments under this section.''.

SEC. 204. PROVISIONAL RIGHTS.

Section 154 of title 35, United States Code, is amended—

*(1) in the section caption by inserting ''**; provisional rights**'' after ''**patent**''; and*

(2) by adding at the end the following new subsection:

''(d) PROVISIONAL RIGHTS.—

''(1) IN GENERAL.—In addition to other rights provided by this section, a patent shall include the right to obtain a reasonable royalty from any person who, during the period beginning on the date of publication of the application for such patent pursuant to section 122(b) of this title, or in the case of an international application filed under the treaty defined in section 351(a) of this title designating the United States under Article 21(2)(a) of such treaty, the date of publication of the application, and ending on the date the patent is issued—

''(A)(i) makes, uses, offers for sale, or sells in the United States the invention as claimed in the published patent application or imports such an invention into the United States; or

''(ii) if the invention as claimed in the published patent application is a process, uses, offers for sale, or sells in the United States or imports into the United States products made by that process as claimed in the published patent application; and

''(B) had actual notice of the published patent application and, where the right arising under this paragraph is based upon an international application designating the United States that is published in a language other than English, a translation of the international application into the English language.

''(2) RIGHT BASED ON SUBSTANTIALLY IDENTICAL INVENTIONS.—The right under paragraph (1) to obtain a reasonable royalty shall not be available under this subsection unless the invention as claimed in the patent is substantially identical to the invention as claimed in the published patent application.

''(3) TIME LIMITATION ON OBTAINING A REASONABLE ROYALTY.—The right under paragraph (1) to obtain a reasonable royalty shall be available only in an action brought not later than 6 years after the patent is issued. The right under paragraph (1) to obtain a reasonable royalty shall not be affected by the duration of the period described in paragraph (1).

''(4) REQUIREMENTS FOR INTERNATIONAL APPLICATIONS.—The right under paragraph (1) to obtain a reasonable royalty based upon the publication under the treaty defined in section 351(a) of this title of an international application designating the United States shall commence from the date that the Patent and Trademark Office receives a copy of the publication under such treaty of the international application, or, if the publication under the treaty of the international application is in a language other than English, from the date that the Patent and Trademark Office receives a translation of the international application in the English language. The Director may require the applicant to provide a copy of the international publication of the international application and a translation thereof.''.

SEC. 205. PRIOR ART EFFECT OF PUBLISHED APPLICATIONS.

Section 102(e) of title 35, United States Code, is amended to read as follows:

''(e) the invention was described in—

''(1) an application for patent, published pursuant to section 122(b) of this title, by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) of this title shall have the effect under this subsection of a national application published under section 122(b) of this title only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language, or

''(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, or''.

SEC. 206. COST RECOVERY FOR PUBLICATION.

The Director of the United States Patent and Trademark Office shall recover the cost of early publication required by the amendment made by section 202 by adjusting the filing, issue, and maintenance fees under title 35, United States Code, by charging a separate publication fee, or by any combination of these methods.

SEC. 207. CONFORMING CHANGES.

The following provisions of title 35, United States Code, are amended:

(1) Section 11 is amended in paragraph 1 of subsection (a) by inserting ''and published applications for patents'' after ''Patents''.

(2) Section 12 is amended—

*(A) in the section caption by inserting ''**and applications**'' after ''**patents**''; and*

(B) by inserting ''and published applications for patents'' after ''patents''.

(3) Section 13 is amended—

*(A) in the section caption by inserting ''**and applications**'' after ''**patents**''; and*

(B) by inserting ''and published applications for patents'' after ''patents''.

(4) The items relating to sections 12 and 13 in the table of sections for chapter 1, as amended

by section 132(a)(4) of this Act, are each amended by inserting ''and applications'' after ''patents''.

(5) The item relating to section 122 in the table of sections for chapter 11 is amended by inserting

''; publication of patent applications'' after ''applications''.

(6) The item relating to section 154 in the table of sections for chapter 14 is amended by inserting

''; provisional rights'' after ''patent''.

(7) Section 181 is amended—

(A) in the first paragraph—

(i) by inserting ''by the publication of an application or'' after ''disclosure''; and

(ii) by inserting ''the publication of the application or'' after ''withhold'';

(B) in the second paragraph by inserting ''by the publication of an application or'' after ''disclosure of an invention'';

(C) in the third paragraph—

(i) by inserting ''by the publication of the application or'' after ''disclosure of the invention''; and

(ii) by inserting ''the publication of the application or'' after ''withhold''; and

(D) in the fourth paragraph by inserting ''the publication of an application or'' after ''and'' in the first sentence.

(8) Section 252 is amended in the first paragraph by inserting ''substantially'' before ''identical'' each place it appears.

(9) Section 284 is amended by adding at the end of the second paragraph the following: ''Increased damages under this paragraph shall not apply to provisional rights under section 154(d) of this title.''.

(10) Section 374 is amended to read as follows:

''§ 374. Publication of international application: Effect

''The publication under the treaty defined in section 351(a) of this title of an international application designating the United States shall confer the same rights and shall have the same effect under this title as an application for patent published under section 122(b), except as provided in sections 102(e) and 154(d) of this title.''.

(11) Section 135(b) of title 35, United States Code, is amended—

(A) by inserting ''(1)'' after ''(b)'';

(B) by striking ''from the date on which the patent was granted'' and inserting ''after the date on which the patent is granted and the applicant makes a prima facie showing of prior invention''; and

(C) by adding at the end the following:

''(2) A claim which is the same as, or for the same or substantially the same subject matter as, a claim of a published application may be made in an application filed after the published application is published only if the claim is made prior to one year after the date on which the published application is published and the applicant of the later filed application makes a prime facie showing of prior invention.''.

SEC. 208. PATENT TERM EXTENSION AUTHORITY.

Section 154(b) of title 35, United States Code, is amended to read as follows:

''(b) TERM EXTENSION.—

''(1) BASIS FOR PATENT TERM EXTENSION.—

''(A) DELAY.—Subject to the limitations set forth in paragraph (2), if the issue of an original patent is delayed due to—

''(i) a proceeding under section 135(a) of this title, including any appeal under section 141, or any civil action under section 146, of this title,

''(ii) the imposition of an order pursuant to section 181 of this title,

''(iii) appellate review by the Board of Patent Appeals and Interferences or by a Federal court in a case in which the patent was issued pursuant to a decision in the review reversing an adverse determination of patentability, or

''(iv) an unusual administrative delay by the Patent and Trademark Office in issuing the patent,

the term of the patent shall be extended for the period of delay.

''(B) ADMINISTRATIVE DELAY.—For purposes of subparagraph (A)(iv), an unusual administrative delay by the Patent and Trademark office is the failure to—

''(i) make a notification of the rejection of any claim for a patent or any objection or argument under section 132 of this title or give or mail a written notice of allowance under section 151 of this title not later than 14 months after the date on which the application was filed;

''(ii) respond to a reply under section 132 of this title or to an appeal taken under section 134 of this title not later than 4 months after the date on which the reply was filed or the appeal was taken;

''(iii) act on an application not later than 4 months after the date of a decision by the Board of Patent Appeals and Interferences under section 134 or 135 of this title or a decision by a Federal court under section 141, 145, or 146 of this title in a case in which allowable claims remain in an application;

''(iv) issue a patent not later than 4 months after the date on which the issue fee was paid under section 151 of this title and all outstanding requirements were satisfied; or

''(v) issue a patent within 3 years after the filing date of the application in the United States, if the applicant—

''(I) has not obtained further limited examination of the application under section 209 of the Examining Procedure Improvements Act;

''(II) has responded to all rejections, objections, arguments, or other requests of the Patent and Trademark Office within 3 months after the date on which they are made;

''(III) has not benefitted from an extension of patent term under clause (i), (ii) or (iii) of paragraph (1)(A);

''(IV) has not sought or obtained appellate review by the Board of Patent Appeals and Interferences or by a Federal Court other than in a case in which the patent was issued pursuant to a decision in the review reversing an adverse determination of patentability; and

''(V) has not requested any delay in the processing of the application by the Patent and Trademark Office.

''(2) LIMITATIONS.—(A) The total duration of any extensions granted pursuant to either clause (iii) or (iv) of paragraph (1)(A) or both such clauses shall not exceed 10 years. To the extent that periods of delay attributable to grounds specified in paragraph (1) overlap, the period of any extension granted under this subsection shall not exceed the actual number of days the issuance of the patent was delayed.

''(B) The period of extension of the term of a patent under this subsection shall be reduced by a period equal to the time in which the applicant failed to engage in reasonable efforts to conclude prosecution of the application. The Director shall prescribe regulations establishing the circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application in order to ensure that applicants are appropriately compensated for any delays by the Patent and Trademark Office in excess of the time periods specified in paragraph (1)(B).

''(C) No patent the term of which has been disclaimed beyond a specified date may be extended under this section beyond the expiration date specified in the disclaimer.

''(3) PROCEDURES.—The Director shall prescribe regulations establishing procedures for the notification of patent term extensions under this subsection and procedures for contesting patent term extensions under this subsection.''.

SEC. 209. FURTHER EXAMINATION OF PATENT APPLICATIONS.

The Director of the United States Patent and Trademark Office shall prescribe regulations to provide for the further limited reexamination of applications for patent. The Director may establish appropriate fees for such further limited reexamination and shall be authorized to provide a 50 percent reduction on such fees for small entities that qualify for reduced fees under section 41(h)(1) of title 35, United States Code.

SEC. 210. LAST DAY OF PENDENCY OF PROVISIONAL APPLICATION.

Section 119(e) of title 35, United States Code, is amended by adding at the end the following:

''(3) If the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the period of pendency of the provisional application shall be extended to the next succeeding business day.''.

SEC. 211. REPORTING REQUIREMENT.

The Director of the United States Patent and Trademark Office shall report to the Congress not later than April 1, 2001, and not later than April 1 of each year thereafter, regarding the impact of publication on the patent applications filed by an applicant who has been accorded the status of independent inventor under section 41(h) of title 35, United States Code. The report shall include information concerning the frequency and number of initial and continuing patent applications, pendency, interferences, reexaminations, rejection, abandonment rates, fees, other expenses, and other relevant information related to the prosecution of patent applications.

SEC. 212. EFFECTIVE DATE.

(a) SECTIONS 202 THROUGH 207.—Sections 202 through 207, and the amendments made by such sections, shall take effect on April 1, 1998, and shall apply to all applications filed under section 111 of title 35, United States Code, on or after that date, and all international applications designating the United States that are filed on or after that date.

(b) SECTIONS 208 THROUGH 210.—The amendments made by sections 208 through 210 shall take effect on the date of the enactment of this Act and, except for a design patent application filed under chapter 16 of title 35, United States Code, shall apply to any application filed on or after June 8, 1995.

TITLE III—PROTECTION FOR PRIOR DOMESTIC USERS OF PATENTED TECHNOLOGIES

SEC. 301. SHORT TITLE.

This title may be cited as the ''Protection for Prior Domestic Commercial and Research Users of Patented Technologies Act''.

SEC. 302. DEFENSE TO PATENT INFRINGEMENT BASED ON PRIOR DOMESTIC COMMERCIAL OR RESEARCH USE.

(a) DEFENSE.—Chapter 28 of title 35, United States Code, is amended by adding at the end the following new section:

''§ 273. Prior domestic commercial or research use; defense to infringement

''(a) DEFINITIONS.—For purposes of this section—

''(1) the terms 'commercially used', 'commercially use', and 'commercial use' mean the use in the United States in commerce or the use in the design, testing, or production in the United States of a product or service which is used in commerce, whether or not the subject matter at issue is accessible to or otherwise known to the public;

''(2) in the case of activities performed by a nonprofit research laboratory, or nonprofit entity such as a university, research center, or hospital, a use for which the public is the intended beneficiary shall be considered to be a use described in paragraph (1) if the use is limited to activity that occurred within the laboratory or nonprofit entity or by persons in privity with that laboratory or nonprofit entity before the effective filing date of the application for patent at issue, except that the use—

''(A) may be asserted as a defense under this section only by the laboratory or nonprofit entity; and

''(B) may not be asserted as a defense with respect to any subsequent use by any entity other

than such laboratory, nonprofit entity, or persons in privity;

''(3) the terms 'used in commerce', and 'use in commerce' mean that there has been an actual sale or other arm's-length commercial transfer of the subject matter at issue or that there has been an actual sale or other arm's-length commercial transfer of a product or service resulting from the use of the subject matter at issue; and

''(4) the 'effective filing date' of a patent is the earlier of the actual filing date of the application for the patent or the filing date of any earlier United States, foreign, or international application to which the subject matter at issue is entitled under section 119, 120, or 365 of this title.

''(b) DEFENSE TO INFRINGEMENT.—(1) A person shall not be liable as an infringer under section 271 of this title with respect to any subject matter that would otherwise infringe one or more claims in the patent being asserted against such person, if such person had, acting in good faith, commercially used the subject matter before the effective filing date of such patent.

''(2) The sale or other disposition of the subject matter of a patent by a person entitled to assert a defense under this section with respect to that subject matter shall exhaust the patent owner's rights under the patent to the extent such rights would have been exhausted had such sale or other disposition been made by the patent owner.

''(c) LIMITATIONS AND QUALIFICATIONS OF DEFENSE.—The defense to infringement under this section is subject to the following:

''(1) DERIVATION.—A person may not assert the defense under this section if the subject matter on which the defense is based was derived from the patentee or persons in privity with the patentee.

''(2) NOT A GENERAL LICENSE.—The defense asserted by a person under this section is not a general license under all claims of the patent at issue, but extends only to the subject matter claimed in the patent with respect to which the person can assert a defense under this chapter, except that the defense shall also extend to variations in the quantity or volume of use of the claimed subject matter, and to improvements in the claimed subject matter that do not infringe additional specifically claimed subject matter of the patent.

''(3) EFFECTIVE AND SERIOUS PREPARATION.—With respect to subject matter that cannot be commercialized without a significant investment of time, money, and effort, a person shall be deemed to have commercially used the subject matter if—

''(A) before the effective filing date of the patent, the person actually reduced the subject matter to practice in the United States, completed a significant portion of the total investment necessary to commercially use the subject matter, and made an arm's-length commercial transaction in the United States in connection with the preparation to use the subject matter; and

''(B) thereafter the person diligently completed the remainder of the activities and investments necessary to commercially use the subject matter, and promptly began commercial use of the subject matter, even if such activities were conducted after the effective filing date of the patent.

''(4) BURDEN OF PROOF.—A person asserting the defense under this section shall have the burden of establishing the defense.

''(5) ABANDONMENT OF USE.—A person who has abandoned commercial use of subject matter may not rely on activities performed before the date of such abandonment in establishing a defense under subsection (b) with respect to actions taken after the date of such abandonment.

''(6) PERSONAL DEFENSE.—The defense under this section may only be asserted by the person who performed the acts necessary to establish the defense and, except for any transfer to the patent owner, the right to assert the defense shall not be licensed or assigned or transferred to another person except in connection with the good faith assignment or transfer of the entire enterprise or line of business to which the defense relates.

''(7) ONE-YEAR LIMITATION.—A person may not assert a defense under this section unless the subject matter on which the defense is based had been commercially used or actually reduced to practice more than one year prior to the effective filing date of the patent by the person asserting the defense or someone in privity with that person.

''(d) UNSUCCESSFUL ASSERTION OF DEFENSE.—If the defense under this section is pleaded by a person who is found to infringe the patent and who subsequently fails to demonstrate a reasonable basis for asserting the defense, the court shall find the case exceptional for the purpose of awarding attorney's fees under section 285 of this title.

''(e) INVALIDITY.—A patent shall not be deemed to be invalid under section 102 or 103 of this title solely because a defense is established under this section.''.

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 28 of title 35, United States Code, is amended by adding at the end the following new item:

''273. Prior domestic commercial or research use; defense to infringement.''.

SEC. 303. EFFECTIVE DATE AND APPLICABILITY.

This title and the amendments made by this title shall take effect on the date of the enactment of this Act, but shall not apply to any action for infringement that is pending on such date of enactment or with respect to any subject matter for which an adjudication of infringement, including a consent judgment, has been made before such date of enactment.

TITLE IV—ENHANCED PROTECTION OF INVENTORS' RIGHTS

SEC. 401. SHORT TITLE.

This title may be cited as the ''Enhanced Protection of Inventors' Rights Act''.

SEC. 402. INVENTION DEVELOPMENT SERVICES.

Part I of title 35, United States Code, is amended by adding after chapter 4 the following new chapter:

''CHAPTER 5—INVENTION DEVELOPMENT SERVICES

''Sec.
''51. Definitions.
''52. Contracting requirements.
''53. Standard provisions for cover notice.
''54. Reports to customer required.
''55. Mandatory contract terms.
''56. Remedies.
''57. Records of complaints.
''58. Fraudulent representation by an invention developer.
''59. Rule of construction.

''§ 51. Definitions

''For purposes of this chapter—

''(1) the term 'contract for invention development services' means a contract by which an invention developer undertakes invention development services for a customer;

''(2) the term 'customer' means any person, firm, partnership, corporation, or other entity who is solicited by, seeks the services of, or enters into a contract with an invention promoter for invention promotion services;

''(3) the term 'invention promoter' means any person, firm, partnership, corporation, or other entity who offers to perform or performs for, or on behalf of, a customer any act described under paragraph (4), but does not include—

''(A) any department or agency of the Federal Government or of a State or local government;

''(B) any nonprofit, charitable, scientific, or educational organization, qualified under applicable State law or described under section 170(b)(1)(A) of the Internal Revenue Code of 1986; or

''(C) any person duly registered with, and in good standing before, the United States Patent and Trademark Office acting within the scope of that person's registration to practice before the Patent and Trademark Office; and

''(4) the term 'invention development services' means, with respect to an invention by a customer, any act involved in—

''(A) evaluating the invention to determine its protectability as some form of intellectual property, other than evaluation by a person licensed by a State to practice law who is acting solely within the scope of that person's professional license;

''(B) evaluating the invention to determine its commercial potential by any person for purposes other than providing venture capital; or

''(C) marketing, brokering, licensing, selling, or promoting the invention or a product or service in which the invention is incorporated or used, except that the display only of an invention at a trade show or exhibit shall not be considered to be invention development services.

''§ 52. Contracting requirements

''(a) IN GENERAL.—(1) Every contract for invention development services shall be in writing and shall be subject to the provisions of this chapter. A copy of the signed written contract shall be given to the customer at the time the customer enters into the contract.

''(2) If a contract is entered into for the benefit of a third party, such party shall be considered a customer for purposes of this chapter.

''(b) REQUIREMENTS OF INVENTION DEVELOPER.—The invention developer shall—

''(1) state in a written document, at the time a customer enters into a contract for invention development services, whether the usual business practice of the invention developer is to—

''(A) seek more than 1 contract in connection with an invention; or

''(B) seek to perform services in connection with an invention in 1 or more phases, with the performance of each phase covered in 1 or more subsequent contracts; and

''(2) supply to the customer a copy of the written document together with a written summary of the usual business practices of the invention developer, including—

''(A) the usual business terms of contracts; and

''(B) the approximate amount of the usual fees or other consideration that may be required from the customer for each of the services provided by the developer.

''(c) RIGHT OF CUSTOMER TO CANCEL CONTRACT.—(1) Notwithstanding any contractual provision to the contrary, a customer shall have the right to terminate a contract for invention development services by sending a written letter to the invention developer stating the customer's intent to cancel the contract. The letter of termination must be deposited with the United States Postal Service on or before 5 business days after the date upon which the customer or the invention developer executes the contract, whichever is later.

''(2) Delivery of a promissory note, check, bill of exchange, or negotiable instrument of any kind to the invention developer or to a third party for the benefit of the invention developer, without regard to the date or dates appearing in such instrument, shall be deemed payment received by the invention developer on the date received for purposes of this section.

''§ 53. Standard provisions for cover notice

''(a) CONTENTS.—Every contract for invention development services shall have a conspicuous and legible cover sheet attached with the following notice imprinted in boldface type of not less than 12-point size:

'''YOU HAVE THE RIGHT TO TERMINATE THIS CONTRACT. TO TERMINATE THIS CONTRACT, YOU MUST SEND A WRITTEN LETTER TO THE COMPANY STATING YOUR INTENT TO CANCEL THIS CONTRACT. THE

LETTER OF TERMINATION MUST BE DEPOSITED WITH THE UNITED STATES POSTAL SERVICE ON OR BEFORE FIVE (5) BUSINESS DAYS AFTER THE DATE ON WHICH YOU OR THE COMPANY EXECUTE THE CONTRACT, WHICHEVER IS LATER.

'''THE TOTAL NUMBER OF INVENTIONS EVALUATED BY THE INVENTION DEVELOPER FOR COMMERCIAL POTENTIAL IN THE PAST FIVE (5) YEARS IS _____. OF THAT NUMBER, _____ RECEIVED POSITIVE EVALUATIONS AND _____ RECEIVED NEGATIVE EVALUATIONS.

'''IF YOU ASSIGN EVEN A PARTIAL INTEREST IN THE INVENTION TO THE INVENTION DEVELOPER, THE INVENTION DEVELOPER MAY HAVE THE RIGHT TO SELL OR DISPOSE OF THE INVENTION WITHOUT YOUR CONSENT AND MAY NOT HAVE TO SHARE THE PROFITS WITH YOU.

'''THE TOTAL NUMBER OF CUSTOMERS WHO HAVE CONTRACTED WITH THE INVENTION DEVELOPER IN THE PAST FIVE (5) YEARS IS _____. THE TOTAL NUMBER OF CUSTOMERS KNOWN BY THIS INVENTION DEVELOPER TO HAVE RECEIVED, BY VIRTUE OF THIS INVENTION DEVELOPER'S PERFORMANCE, AN AMOUNT OF MONEY IN EXCESS OF THE AMOUNT PAID BY THE CUSTOMER TO THIS INVENTION DEVELOPER IS _____.

'''THE OFFICERS OF THIS INVENTION DEVELOPER HAVE COLLECTIVELY OR INDIVIDUALLY BEEN AFFILIATED IN THE LAST TEN (10) YEARS WITH THE FOLLOWING INVENTION DEVELOPMENT COMPANIES: (LIST THE NAMES AND ADDRESSES OF ALL PREVIOUS INVENTION DEVELOPMENT COMPANIES WITH WHICH THE PRINCIPAL OFFICERS HAVE BEEN AFFILIATED AS OWNERS, AGENTS, OR EMPLOYEES). YOU ARE ENCOURAGED TO CHECK WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE, THE FEDERAL TRADE COMMISSION, YOUR STATE ATTORNEY GENERAL'S OFFICE, AND THE BETTER BUSINESS BUREAU FOR ANY COMPLAINTS FILED AGAINST ANY OF THESE COMPANIES.

'''YOU ARE ENCOURAGED TO CONSULT WITH AN ATTORNEY OF YOUR OWN CHOOSING BEFORE SIGNING THIS CONTRACT. BY PROCEEDING WITHOUT THE ADVICE OF AN ATTORNEY REGISTERED TO PRACTICE BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE, YOU COULD LOSE ANY RIGHTS YOU MIGHT HAVE IN YOUR IDEA OR INVENTION.'.

''(b) OTHER REQUIREMENTS FOR COVER NOTICE.—The cover notice shall contain the items required under subsection (a) and the name, primary office address, and local office address of the invention developer, and may contain no other matter.

''(c) DISCLOSURE OF CERTAIN CUSTOMERS NOT REQUIRED.—The requirement in the notice set forth in subsection (a) to include the 'TOTAL NUMBER OF CUSTOMERS WHO HAVE CONTRACTED WITH THE INVENTION DEVELOPER IN THE PAST FIVE (5) YEARS' need not include information with respect to customers who have purchased trade show services, research, advertising, or other nonmarketing services from the invention developer, nor with respect to customers who have defaulted in their payments to the invention developer.

"§ 54. Reports to customer required

''With respect to every contract for invention development services, the invention developer shall deliver to the customer at the address specified in the contract, at least once every 3 months throughout the term of the contract, a written report that identifies the contract and includes—

''(1) a full, clear, and concise description of the services performed to the date of the report and of the services yet to be performed and names of all persons who it is known will perform the services; and

''(2) the name and address of each person, firm, corporation, or other entity to whom the subject matter of the contract has been disclosed, the reason for each such disclosure, the nature of the disclosure, and complete and accurate summaries of all responses received as a result of those disclosures.

"§ 55. Mandatory contract terms

''(a) MANDATORY TERMS.—Each contract for invention development services shall include in boldface type of not less than 12-point size—

''(1) the terms and conditions of payment and contract termination rights required under section 52;

''(2) a statement that the customer may avoid entering into the contract by not making a payment to the invention developer;

''(3) a full, clear, and concise description of the specific acts or services that the invention developer undertakes to perform for the customer;

''(4) a statement as to whether the invention developer undertakes to construct, sell, or distribute one or more prototypes, models, or devices embodying the invention of the customer;

''(5) the full name and principal place of business of the invention developer and the name and principal place of business of any parent, subsidiary, agent, independent contractor, and any affiliated company or person who it is known will perform any of the services or acts that the invention developer undertakes to perform for the customer;

''(6) if any oral or written representation of estimated or projected customer earnings is given by the invention developer (or any agent, employee, officer, director, partner, or independent contractor of such invention developer), a statement of that estimation or projection and a description of the data upon which such representation is based;

''(7) the name and address of the custodian of all records and correspondence relating to the contracted for invention development services, and a statement that the invention developer is required to maintain all records and correspondence relating to performance of the invention development services for such customer for a period of not less than 2 years after expiration of the term of such contract; and

''(8) a statement setting forth a time schedule for performance of the invention development services, including an estimated date in which such performance is expected to be completed.

''(b) INVENTION DEVELOPER AS FIDUCIARY.—To the extent that the description of the specific acts or services affords discretion to the invention developer with respect to what specific acts or services shall be performed, the invention developer shall be deemed a fiduciary.

''(c) AVAILABILITY OF INFORMATION.—Records and correspondence described under subsection (a)(7) shall be made available after 7 days written notice to the customer or the representative of the customer to review and copy at a reasonable cost on the invention developer's premises during normal business hours.

"§ 56. Remedies

''(a) IN GENERAL.—(1) Any contract for invention development services that does not comply with the applicable provisions of this chapter shall be voidable at the option of the customer.

''(2) Any contract for invention development services entered into in reliance upon any material false, fraudulent, or misleading information, representation, notice, or advertisement of the invention developer (or any agent, employee, officer, director, partner, or independent contractor of such invention developer) shall be voidable at the option of the customer.

''(3) Any waiver by the customer of any provision of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

''(4) Any contract for invention development services which provides for filing for and obtaining utility, design, or plant patent protection shall be voidable at the option of the customer unless the invention developer offers to perform or performs such act through a person duly registered to practice before, and in good standing with, the Patent and Trademark Office.

''(b) CIVIL ACTION.—(1) Any customer who is injured by a violation of this chapter by an invention developer or by any material false or fraudulent statement or representation, or any omission of material fact, by an invention developer (or any agent, employee, director, officer, partner, or independent contractor of such invention developer) or by failure of an invention developer to make all the disclosures required under this chapter, may recover in a civil action against the invention developer (or the officers, directors, or partners of such invention developer) in addition to reasonable costs and attorneys' fees, the greater of—

''(A) $5,000; or

''(B) the amount of actual damages sustained by the customer.

''(2) Notwithstanding paragraph (1), the court may increase damages to not more than 3 times the amount awarded.

''(c) REBUTTABLE PRESUMPTION OF INJURY.—For purposes of this section, substantial violation of any provision of this chapter by an invention developer or execution by the customer of a contract for invention development services in reliance on any material false or fraudulent statements or representations or omissions of material fact shall establish a rebuttable presumption of injury.

"§ 57. Records of complaints

''(a) RELEASE OF COMPLAINTS.—The Director shall make all complaints received by the United States Patent and Trademark Office involving invention developers publicly available, together with any response of the invention developers.

''(b) REQUEST FOR COMPLAINTS.—The Director may request complaints relating to invention development services from any Federal or State agency and include such complaints in the records maintained under subsection (a), together with any response of the invention developers.

"§ 58. Fraudulent representation by an invention developer

''Whoever, in providing invention development services, knowingly provides any false or misleading statement, representation, or omission of material fact to a customer or fails to make all the disclosures required under this chapter, shall be guilty of a misdemeanor and fined not more than $10,000 for each offense.

"§ 59. Rule of construction

''Except as expressly provided in this chapter, no provision of this chapter shall be construed to affect any obligation, right, or remedy provided under any other Federal or State law.''.

SEC. 403. TECHNICAL AND CONFORMING AMENDMENT.

The table of chapters for part I of title 35, United States Code, is amended by adding after the item relating to chapter 4 the following:

"5. Invention Development Services .... 51".

SEC. 404. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect 60 days after the date of the enactment of this Act.

TITLE V—IMPROVED REEXAMINATION PROCEDURES

SEC. 501. SHORT TITLE.

This title may be cited as the ''Improved Reexamination Procedures Act''.

SEC. 502. DEFINITIONS.

Section 100 of title 35, United States Code, is amended by adding at the end the following new subsection:

''(e) The term 'third-party requester' means a person requesting reexamination under section 302 of this title who is not the patent owner.''.

SEC. 503. REEXAMINATION PROCEDURES.

(a) REQUEST FOR REEXAMINATION.—Section 302 of title 35, United States Code, is amended to read as follows:

''§ 302. Request for reexamination

''Any person at any time may file a request for reexamination by the Office of a patent on the basis of any prior art cited under the provisions of section 301 of this title or on the basis of the requirements of section 112 of this title other than the requirement to set forth the best mode of carrying out the invention. The request must be in writing, must include the identity of the real party in interest, and must be accompanied by payment of a reexamination fee established by the Director pursuant to the provisions of section 41 of this title. The request must set forth the pertinency and manner of applying cited prior art to every claim for which reexamination is requested or the manner in which the patent specification or claims fail to comply with the requirements of section 112 of this title. Unless the requesting person is the owner of the patent, the Director promptly shall send a copy of the request to the owner of record of the patent.''.

(b) DETERMINATION OF ISSUE BY DIRECTOR.—Section 303 of title 35, United States Code, is amended to read as follows:

''§ 303. Determination of issue by Director

''(a) REEXAMINATION.—Not later than 3 months after the filing of a request for reexamination under the provisions of section 302 of this title, the Director shall determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request, with or without consideration of other patents or printed publications. On the Director's initiative, at any time, the Director may determine whether a substantial new question of patentability is raised by any other patent or publication or by the failure of the patent specification or claims of a patent to comply with the requirements of section 112 of this title other than the best mode requirement described in section 302.

''(b) RECORD.—A record of the Director's determination under subsection (a) shall be placed in the official file of the patent, and a copy shall be promptly given or mailed to the owner of record of the patent and to the third-party requester, if any.

''(c) FINAL DECISION.—A determination by the Director pursuant to subsection (a) shall be final and nonappealable. Upon a determination that no substantial new question of patentability has been raised, the Director may refund a portion of the reexamination fee required under section 302 of this title.''.

(c) REEXAMINATION ORDER BY DIRECTOR.—Section 304 of title 35, United States Code, is amended to read as follows:

''§ 304. Reexamination order by Director

''If, in a determination made under the provisions of section 303(a) of this title, the Director finds that a substantial new question of patentability affecting a claim of a patent is raised, the determination shall include an order for reexamination of the patent for resolution of the question. The order may be accompanied by the initial action of the Patent and Trademark Office on the merits of the reexamination conducted in accordance with section 305 of this title.''.

(d) CONDUCT OF REEXAMINATION PROCEEDINGS.—Section 305 of title 35, United States Code, is amended to read as follows:

''§ 305. Conduct of reexamination proceedings

''(a) IN GENERAL.—Subject to subsection (b), reexamination shall be conducted according to the procedures established for initial examination under the provisions of sections 132 and 133 of this title. In any reexamination proceeding under this chapter, the patent owner shall be permitted to propose any amendment to the patent and a new claim or claims, except that no proposed amended or new claim enlarging the scope of the claims of the patent shall be permitted.

''(b) RESPONSE.—(1) This subsection shall apply to any reexamination proceeding in which the order for reexamination is based upon a request by a third-party requester.

''(2) With the exception of the reexamination request, any document filed by either the patent owner or the third-party requester shall be served on the other party.

''(3) If the patent owner files a response to any action on the merits by the Patent and Trademark Office, the third-party requester shall have 1 opportunity to file written comments within a reasonable period not less than 1 month after the date of service of the patent owner's response. Written comments provided under this paragraph shall be limited to issues covered by action of the Patent and Trademark Office or the patent owner's response.

''(c) SPECIAL DISPATCH.—Unless otherwise provided by the Director for good cause, all reexamination proceedings under this section, including any appeal to the Board of Patent Appeals and Interferences, shall be conducted with special dispatch within the Office.''.

(e) APPEAL.—Section 306 of title 35, United States Code, is amended to read as follows:

''§ 306. Appeal

''(a) PATENT OWNER.—The patent owner involved in a reexamination proceeding under this chapter—

''(1) may appeal under the provisions of section 134 of this title, and may appeal under the provisions of sections 141 through 144 of this title, with respect to any decision adverse to the patentability of any original or proposed amended or new claim of the patent; and

''(2) may be a party to any appeal taken by a third-party requester pursuant to subsection (b) of this section.

''(b) THIRD-PARTY REQUESTER.—A third-party requester in a reexamination proceeding—

''(1) may appeal under the provisions of section 134 of this title, and may appeal under the provisions of sections 141 through 144 of this title, with respect to any final decision in the reexamination proceeding that is favorable to the patentability of any original or proposed amended or new claim of the patent; and

''(2) may be a party to any appeal taken by the patent owner with respect to a decision in the reexamination proceeding, subject to subsection (c) of this section.

''(c) PARTICIPATION AS PARTY.—(1) A third-party requester who, under the provisions of sections 141 through 144 of this title, files a notice of appeal, or who participates as a party to an appeal by the patent owner, with respect to a reexamination proceeding, is estopped from asserting at a later time, in any forum, the invalidity of any claim determined to be patentable on that appeal on any ground which the third-party requester raised or could have raised during the reexamination proceeding. This subsection does not prevent the assertion of invalidity based on newly discovered prior art unavailable to the third-party requester and the Patent and Trademark Office at the time of the reexamination proceeding.

''(2) For purposes of paragraph (1), a third-party requester is deemed not to have participated as a party to an appeal by the patent owner unless, not later than 20 days after the patent owner has filed a notice of appeal, the third-party requester files notice with the Commissioner electing to participate.''.

(f) REEXAMINATION PROHIBITED.—(1) Chapter 30 of title 35, United States Code, is amended by adding at the end the following new section:

''§ 308. Reexamination prohibited

''(a) ORDER FOR REEXAMINATION.—Notwithstanding any provision of this chapter, once an order for reexamination of a patent has been issued under section 304 of this title, neither the patent owner nor the third-party requester, if any, nor privies of either, may, unless authorized by the Director, file a subsequent request for reexamination of the patent until a certificate relating to that reexamination proceeding is issued and published under section 307 of this title.

''(b) FINAL DECISION.—Once a final decision has been entered against a party in a civil action arising in whole or in part under section 1338 of title 28 that the party has not sustained its burden of proving the invalidity of any patent claim in suit, or if a final decision in a reexamination proceeding instituted by a third-party requester is favorable to the patentability or any original or proposed amended or new claim of the patent and such decision is not appealed by the third-party requester under section 306(b), then neither that party nor its privies may thereafter request reexamination of any such patent claim on the basis of issues which that party or its privies raised or could have raised in such civil action or reexamination proceeding. This subsection does not prevent the assertion of invalidity based on newly discovered prior art unavailable to the party or privies and the Office at the time of the civil action or reexamination proceeding, as the case may be.''.

(2) The table of sections for chapter 30 of title 35, United States Code, is amended by adding at the end the following:

''308. Reexamination prohibited.''.

(g) REPORT TO CONGRESS.—Within 4 years after the effective date of this title, the Director of the United States Patent and Trademark Office shall submit to the Congress a report evaluating whether the reexamination proceedings established under the amendments made by this title are inequitable to any of the parties in interest and, if so, the report shall contain recommendations for changes to the amendments made by this title to remove such inequity.

SEC. 504. CONFORMING AMENDMENTS.

(a) BOARD OF PATENT APPEALS AND INTERFERENCES.—The first sentence of section 6(b) of title 35, United States Code, as amended by section 117 of this Act, is amended to read as follows: ''The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, or a patent owner or a third-party requester in a reexamination proceeding, review adverse decisions of examiners upon applications for patents and decisions of examiners in reexamination proceedings, and shall determine priority and patentability of invention in interferences declared under section 135(a) of this title.''.

(b) PATENT FEES; PATENT AND TRADEMARK SEARCH SYSTEMS.—Section 41(a)(7) of title 35, United States Code, is amended to read as follows:

''(7) On filing each petition for the revival of an unintentionally abandoned application for a patent, for the unintentionally delayed payment of the fee for issuing each patent, or for an unintentionally delayed response by the patent owner in a reexamination proceeding, $1,250, unless the petition is filed under section 133 or 151 of this title, in which case the fee shall be $110.''.

(c) APPEAL TO THE BOARD OF PATENT APPEALS AND INTERFERENCES.—Section 134 of title 35, United States Code, is amended to read as follows:

''§ 134. Appeal to the Board of Patent Appeals and Interferences

''(a) PATENT APPLICANT.—An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.

''(b) PATENT OWNER.—A patent owner in a reexamination proceeding may appeal from the final rejection of any claim by the primary examiner to the Board of Patent Appeals and

Interferences, having once paid the fee for such appeal.

''(c) THIRD-PARTY.—A third-party requester may appeal to the Board of Patent Appeals and Interferences from the final decision of the primary examiner favorable to the patentability of any original or proposed amended or new claim of a patent, having once paid the fee for such appeal.''.

(d) APPEAL TO COURT OF APPEALS FOR THE FEDERAL CIRCUIT.—Section 141 of title 35, United States Code, is amended by amending the first sentence to read as follows: ''An applicant, a patent owner, or a third-party requester, dissatisfied with the final decision in an appeal to the Board of Patent Appeals and Interferences under section 134 of this title, may appeal the decision to the United States Court of Appeals for the Federal Circuit.''.

(e) PROCEEDINGS ON APPEAL.—Section 143 of title 35, United States Code, is amended by amending the third sentence to read as follows: ''In ex parte and reexamination cases, the Director shall submit to the court in writing the grounds for the decision of the United States Patent and Trademark Office, addressing all the issues involved in the appeal.''.

(f) CIVIL ACTION TO OBTAIN PATENT.—Section 145 of title 35, United States Code, is amended in the first sentence by inserting ''(a)'' after ''section 134''.

SEC. 505. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date that is 6 months after the date of the enactment of this Act and shall apply to all reexamination requests filed on or after such date.

TITLE VI—MISCELLANEOUS IMPROVEMENTS

SEC. 601. PROVISIONAL APPLICATIONS.

(a) ABANDONMENT.—Section 111(b)(5) of title 35, United States Code, is amended to read as follows:

''(5) ABANDONMENT.—Notwithstanding the absence of a claim, upon timely request and as prescribed by the Director, a provisional application may be treated as an application filed under subsection (a). If no such request is made, the provisional application shall be regarded as abandoned 12 months after the filing date of such application and shall not be subject to revival thereafter.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to any provisional application filed on or after June 8, 1995.

SEC. 602. INTERNATIONAL APPLICATIONS.

Section 119 of title 35, United States Code, is amended—

(1) in subsection (a), by inserting ''or in a WTO member country,'' after ''or to citizens of the United States,''; and

(2) by adding at the end the following new subsections:

''(f) APPLICATIONS FOR PLANT BREEDER'S RIGHTS.—Applications for plant breeder's rights filed in a WTO member country (or in a UPOV Contracting Party) shall have the same effect for the purpose of the right of priority under subsections (a) through (c) of this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents.

''(g) DEFINITIONS.—As used in this section—

''(1) the term 'WTO member country' has the same meaning as the term is defined in section 104(b)(2) of this title; and

''(2) the term 'UPOV Contracting Party' means a member of the International Convention for the Protection of New Varieties of Plants.''.

SEC. 603. PLANT PATENTS.

(a) TUBER PROPAGATED PLANTS.—Section 161 of title 35, United States Code, is amended by striking ''a tuber propagated plant or''.

(b) RIGHTS IN PLANT PATENTS.—The text of section 163 of title 35, United States Code, is amended to read as follows: ''In the case of a plant patent, the grant shall include the right to exclude others from asexually reproducing the plant, and from using, offering for sale, or selling the plant so reproduced, or any of its parts, throughout the United States, or from importing the plant so reproduced, or any parts thereof, into the United States.''.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply on the date of the enactment of this Act. The amendment made by subsection (b) shall apply to any plant patent issued on or after the date of the enactment of this Act.

SEC. 604. ELECTRONIC FILING.

Section 22 of title 35, United States Code, is amended by striking ''printed or typewritten'' and inserting ''printed, typewritten, or on an electronic medium''.

SEC. 605. DIVISIONAL APPLICATIONS.

Section 121 of title 35, United States Code, is amended—

(1) in the first sentence by striking ''If'' and inserting ''(a) If''; and

(2) by adding at the end the following new subsections:

''(b) In a case in which restriction is required on the ground that two or more independent and distinct inventions are claimed in an application, the applicant shall be entitled to submit an examination fee and request examination for each independent and distinct invention in excess of one. The examination fee shall be equal to the filing fee, including excess claims fees, that would have applied had the claims corresponding to the asserted independent and distinct inventions been presented in a separate application for patent. For each of the independent and distinct inventions in excess of one for which the applicant pays an examination fee within two months after the requirement for restriction, the Director shall cause an examination to be made and a notification of rejection or written notice of allowance provided to the applicant within the time period specified in section 154(b)(1)(B)(i) of this title for the original application. Failure to meet this or any other time limit set forth in section 154(b)(1)(B) of this title shall be treated as an unusual administrative delay under section 154(b)(1)(A)(iv) of this title.

''(c) An applicant who requests reconsideration of a requirement for restriction under this section and submits examination fees pursuant to such requirement shall, if the requirement is determined to be improper, be entitled to a refund of any examination fees determined to have been paid pursuant to the requirement.''.

The CHAIRMAN. During consideration of the bill for amendment, the Chair may accord priority in recognition to a Member offering an amendment that he has printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered as read.

The Chairman of the Committee of the Whole may postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment and may reduce to not less than 5 minutes the time for voting by electronic device on any postponed question that immediately follows another vote by electronic device, without intervening business, provided that the time for voting by electronic device on the first in a series of questions shall not be less than 15 minutes.

Are there any amendments?

AMENDMENT OFFERED BY MR. COBLE

Mr. COBLE. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. COBLE:

Page 3, insert in the table of contents after the item relating to section 149 the following:

Subtitle D—Under Secretary of Commerce for Intellectual Property Policy

Sec. 151. Under Secretary of Commerce for Intellectual Property Policy.

Sec. 152. Relationship with existing authorities.

Page 3, in the item relating to section 402, strike ''development'' and insert ''promotion''.

Page 5, line 12, insert ''(1)'' before ''For purposes''.

Page 5, insert after line 15 the following:

''(2) As used in this title, the term 'Under Secretary' means the Under Secretary of Commerce for Intellectual Property Policy.

Page 5, line 21, strike ''under'' and insert ''subject to''.

Page 6, line 1, strike ''conduct'' and insert '', in support of the Under Secretary, assist with''.

Page 6, line 4, strike '', the administration'' and all that follows through line 8 and insert a semicolon.

Page 6, line 9, strike ''authorize or conduct studies and programs cooperatively'' and insert '', in support of the Under Secretary, assist with studies and programs conducted cooperatively''.

Page 7, strike line 23 and all that follows through page 8, line 3, and insert the following:

''(5) may establish regulations, not inconsistent with law, which—

''(A) shall govern the conduct of proceedings in the Office;

Page 9, line 1, insert ''shall'' after ''(E)''.

Page 9, after line 6, insert the following:

''(F) provide for the development of a performance-based process that includes quantitative and qualitative measures and standards for evaluating cost-effectiveness and is consistent with the principles of impartiality and competitiveness;

Page 11, strike lines 15 through 17 and redesignate the succeeding paragraphs accordingly.

Page 11, add the following after line 25:

''In exercising the Director's powers under paragraphs (6) and (7)(A), the Director shall consult with the Administrator of General Services when the Director determines that it is practicable, efficient, and cost-effective to do so.''.

Page 13, strike lines 4 through 18 and redesignate the succeeding subparagraphs accordingly.

Page 14, strike line 18 and all that follows through page 15, line 7, and insert the following:

''(5) COMPENSATION.—The Director shall be paid an annual rate of basic pay not to exceed the maximum rate of basic pay of the Senior Executive Service established under section 5382 of title 5, including any applicable locality-based comparability payment that may be authorized under section 5304(h)(2)(C) of title 5. In addition, the Director may receive a bonus in an amount up to, but not in excess of, 50 percent of such annual rate of basic pay, based upon an evaluation by the Secretary of Commerce of the Director's performance as defined in an annual performance agreement between the Director and the Secretary. The annual performance agreement shall incorporate measurable organization and individual goals in key operational areas as delineated in an annual performance plan agreed to by the Director

and the Secretary. Payment of a bonus under this paragraph may be made to the Director only to the extent that such payment does not cause the Director's total aggregate compensation in a calendar year to equal or exceed the amount of the salary of the President under section 102 of title 3.

Page 16, line 2, strike ''policy and''.

Page 16, insert the following after line 20:

''(3) TRAINING OF EXAMINERS.—The Patent and Trademark Office shall develop an incentive program to retain as employees patent and trademark examiners of the primary examiner grade or higher who are eligible for retirement, for the sole purpose of training patent and trademark examiners.''.

Page 21, line 13, insert ''including inventors,'' after ''Office,''.

Page 21, line 20, insert after ''call of the chair'' the following: '', not less than every 6 months,''.

Page 27, line 9, insert after the period close quotation marks and a second period.

Page 27, strike line 10 and all that follows through page 28, line 14.

Page 32, insert the following immediately before line 10 and redesignate the succeeding paragraphs accordingly:

(5) Section 41(h) of title 35, United States Code, is amended by striking ''Commissioner of Patents and Trademarks'' and inserting ''Director''.

Page 33, line 7, strike ''Title'' and insert ''(A) Except as provided in subparagraph (B), title''.

Page 33, insert the following after line 9:

(B) Chapter 17 of title 35, United States Code, is amended by striking ''Commissioner'' each place it appears and inserting ''Commissioner of Patents''.

Page 33, insert the following after line 12:

(12) Section 157(d) of title 35, United States Code, is amended by striking ''Secretary of Commerce'' and inserting ''Director''.

(13) Section 181 of title 35, United States Code, is amended in the third paragraph by striking ''Secretary of Commerce under rules prescribed by him'' and inserting ''Director under rules prescribed by the Patent and Trademark Office''.

(14) Section 188 of title 35, United States Code, is amended by striking ''Secretary of Commerce'' and inserting ''Patent and Trademark Office''.

(15) Section 202(a) of title 35, United States Code, is amended by striking ''iv)'' and inserting ''(iv)''.

Page 46, add the following after line 23:

Subtitle D—Under Secretary of Commerce for Intellectual Property Policy

SEC. 151. UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY POLICY.

(a) APPOINTMENT.—There shall be within the Department of Commerce an Under Secretary of Commerce for Intellectual Property Policy, who shall be appointed by the President, by and with the advice and consent of the Senate. On or after the effective date of this title, the President may appoint an individual to serve as the Under Secretary until the date on which an Under Secretary qualifies under this subsection. The President shall not make more than 1 appointment under the preceding sentence.

(b) DUTIES.—The Under Secretary of Commerce for Intellectual Property Policy, under the direction of the Secretary of Commerce, shall perform the following functions with respect to intellectual property policy:

(1) In coordination with the Under Secretary of Commerce for International Trade, promote exports of goods and services of the United States industries that rely on intellectual property.

(2) Advise the President, through the Secretary of Commerce, on national and international intellectual property policy issues.

(3) Advise Federal departments and agencies on matters of intellectual property protection in other countries.

(4) Provide guidance, as appropriate, with respect to proposals by agencies to assist foreign governments and international intergovernmental organizations on matters of intellectual property protection.

(5) Conduct programs and studies related to the effectiveness of intellectual property protection throughout the world.

(6) Advise the Secretary of Commerce on programs and studies relating to intellectual property policy that are conducted, or authorized to be conducted, cooperatively with foreign patent and trademark offices and international intergovernmental organizations.

(7) In coordination with the Department of State, conduct programs and studies cooperatively with foreign intellectual property offices and international intergovernmental organizations.

(c) DEPUTY UNDER SECRETARIES.—To assist the Under Secretary of Commerce for Intellectual Property Policy, the Secretary of Commerce shall appoint a Deputy Under Secretary for Patent Policy and a Deputy Under Secretary for Trademark Policy as members of the Senior Executive Service in accordance with the provisions of title 5, United States Code. The Deputy Under Secretaries shall perform such duties and functions as the Under Secretary for Intellectual Property Policy shall prescribe.

(d) COMPENSATION.—Section 5314 of title 5, United States Code, is amended by adding at the end the following:

''Under Secretary of Commerce for Intellectual Property Policy.''.

(e) FUNDING.—Funds available to the United States Patent and Trademark Office shall be made available for all expenses of the office of the Under Secretary for Intellectual Property Policy, subject to prior approval in appropriations Acts. Amounts made available under this subsection shall not exceed 2 percent of the projected annual revenues of the Patent and Trademark Office from fees for services and goods of that Office. The Secretary of Commerce shall determine the budget requirements of the office of the Under Secretary for Intellectual Property Policy.

SEC. 152. RELATIONSHIP WITH EXISTING AUTHORITIES.

Nothing in section 151 shall derogate from the duties of the United States Trade Representative as set forth in section 141 of the Trade Act of 1974 (19 U.S.C. 2171).

Page 48, insert the following after line 18:

''(B) An application that is in the process of being reviewed by the Atomic Energy Commission, the Department of Defense, or a defense agency pursuant to section 181 of this title shall not be published until the Director has been notified by the Atomic Energy Commission, the Secretary of Defense, or the chief officer of the defense agency, as the case may be, that in the opinion of the Atomic Energy Commission, the Secretary of Defense, or such chief officer, as the case may be, publication or disclosure of the invention by the granting of a patent would not be detrimental to the national security of the United States.''.

Page 48, line 19, strike ''(B)'' and insert ''(C)''.

Page 48, strike line 22 and all that follows through page 49, line 2, and insert the following:

''(D)(i) Upon the request at the time of filing by an applicant that is a small business concern or an independent inventor entitled to reduced fees under section 41(h)(1) of this title, the application shall not be published in accordance with paragraph (1) until 3 months after the Director makes a second notification to such applicant on the merits of the application under section 132 of this title. The Director may require applicants that no longer have the status of a small business concern or an independent inventor to so notify the Director not later than 15 months after the earliest filing date for which a benefit is sought under this title.

Page 49, line 7, strike '', 121,''.

Page 49, insert after line 8 the following:

''(iii) Applications asserting the benefit of an earlier application under section 121 shall not be eligible for a request pursuant to this subparagraph unless filed within 2 months after the date on which the Director required the earlier application to be restricted to 1 of 2 or more inventions in the earlier application.

Page 49, line 9, strike ''(iii)'' and insert ''(iv)''.

Page 49, line 13, strike ''(iv)'' and insert ''(v)''.

Page 49, line 14, insert ''nominal'' before ''fees''.

Page 49, line 16, strike ''(D)'' and insert ''(E)''.

Page 49, line 17, strike ''(C)'' and insert ''(D)''.

Page 50, line 2, strike ''(C)'' and insert ''(D)''.

Page 50, after line 2, insert the following:

''(F) No fee established under this section shall be collected nor shall be available for spending without prior authorization in appropriations Acts.''.

Page 58, strike lines 1 through 17 and insert the following:

(11) Section 135(b) of title 35, United States Code, is amended to read as follows:

''(b)(1) A claim which is the same as, or for the same or substantially the same subject matter as, a claim of an issued patent may only be made in an application if—

''(A) such a claim is made prior to 1 year after the date on which the patent was granted; and

''(B) the applicant files evidence which demonstrates that the applicant is prima facie entitled to a judgment relative to the patent.

''(2)(A) A claim which is the same as, or for the same or substantially the same subject matter as, a claim of a published application may only be made in an application filed after the date of publication of the published application if, except in a case to which subparagraph (B) applies—

''(i) such a claim is made prior to 1 year after the date of publication of the published application; and

''(ii) the applicant of the application filed after the date of publication of the published application files evidence that demonstrates that the applicant is prima facie entitled to a judgment relative to the published application.

''(B) If the applicant of the application filed after the date of publication of the published application alleges that the invention claimed in the published application was derived from that applicant, such a claim may only be made if that applicant files evidence which demonstrates that the applicant is prima facie entitled to a judgment relative to the published application.''.

Page 59, line 7, strike ''appellate''.

Page 61, strike lines 5 through 9 and redesignate subclauses (III) through (V) as subclauses (II) through (IV), respectively.

Page 62, insert the following after line 6:

''(B) The period of extension of the term of a patent under clause (iv) of paragraph (1)(A), which is based on the failure of the Patent and Trademark Office to meet the criteria set forth in clause (v) of paragraph (1)(B), shall be reduced by the cumulative total of any periods of time that an applicant takes to respond in excess of 3 months

after the date on which the Patent and Trademark Office makes any rejection, objection, argument, or other request.

Page 62, line 7, strike ''(B)'' and insert ''(C)''.

Page 62, line 19, strike ''(C)'' and insert ''(D)''.

Page 63, insert the following after line 4:

Section 132 of title 35, United States Code, is amended—

(1) in the first sentence by striking ''Whenever'' and inserting ''(a) Whenever''; and

(2) by adding at the end the following:

Page 63, strike lines 5 through 7 and insert the following:

''(b) The Director shall prescribe regulations to provide for the further limited examination of applications for patent at the request of the applicant.

Page 63, line 9, strike ''reexamination'' and insert ''examination''.

Page 63, strike lines 11 and 12 and insert the following:

qualify for reduced fees under section 41(h)(1) of this title.''

Page 63, line 21, insert ''secular or'' after ''succeeding''.

Page 64, lines 2 and 3, strike ''an applicant who has been accorded the status of independent inventor under section 41(h)'' and insert ''applicants who are independent inventors entitled to reduced fees under section 41(h)(1)''.

Page 71, line 8, strike ''**DEVELOPMENT**'' and insert ''**PROMOTION**''.

Page 71, line 11, strike ''**DEVELOPMENT**'' and insert ''**PROMOTION**''.

Page 71, in the item relating to section 58 in the matter after line 12, strike ''developer'' and insert ''promoter''.

Page 71, line 15, strike ''development'' and insert ''promotion''.

Page 71, lines 16 and 17, strike ''developer'' and insert ''promoter''.

Page 71, line 17, strike ''development'' and inserting ''promotion''.

Page 71, strike line 20 and all that follows through page 72, line 1, and insert the following: ''partnership, corporation, or other entity who enters into a financial relationship or a contract''.

Page 72, line 22, strike ''development'' and insert ''promotion''.

Pages 73 through 84, strike ''invention developer'' and ''INVENTION DEVELOPER'' each place it appears and insert ''invention promoter'' and ''INVENTION PROMOTER'', respectively.

Pages 73 through 84, strike ''invention development'' and ''INVENTION DEVELOPMENT'' each place it appears and insert ''invention promotion'' and ''INVENTION PROMOTION'', respectively.

Page 74, line 1, strike ''DEVELOPER'' and insert ''PROMOTER''.

Page 74, line 22, strike ''developer'' and insert ''invention promoter''.

Page 77, line 1, strike ''DEVELOPER'S'' and insert ''PROMOTER'S''.

Page 81, line 7, strike ''DEVELOPER'' and insert ''PROMOTER''.

Page 81, line 16, strike ''developer's'' and insert ''promoter's.

Page 83, lines 19 and 21, and page 84, line 2, strike ''developers'' and insert ''promoters''.

Page 84, lines 3 and 4, strike ''**developer**'' and insert ''**promoter**''.

Page 84, in the matter after line 19, strike ''**Development**'' and insert ''**Promotion**''.

Page 85, line 16, strike ''Any'' and insert ''(a) REQUEST FOR REEXAMINATION.—''.

Page 85, line 19, strike ''or on the basis of'' and all that follows through ''invention'' on line 21.

Page 86, line 2, strike ''or the'' and all that follows through line 4 and insert a period.

Page 86, line 7, strike the quotation marks and second period and insert the following: ''If multiple requests for reexamination of a patent are filed, they shall be consolidated by the Office into a single reexamination, if a reexamination is ordered.

''(b) COLLECTION AND AVAILABILITY OF FEES.—No fee for reexamination shall be collected nor shall be available for spending without prior authorization in appropriations Acts.''.

Page 86, line 21, strike ''or by the failure'' and all that follows through line 24 and insert a period.

Page 89, line 8, insert before the quotation marks the following: ''Special dispatch shall not be construed to limit the patent owner's ability to extend the time for taking action by payment of the fees set forth in section 41(a)(8) of this title.''.

Page 95, line 13, strike ''6 months'' and insert ''1 year''.

Page 95, line 15, insert ''effective'' after ''such''.

Page 95, line 25, strike ''If'' and insert ''Subject to section 119(e)(3) of this title, if''.

Page 98, line 2, strike ''Section'' and insert ''(a) IN GENERAL.—Section''.

Page 99, add the following after line 8:

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date that is 2 years after the date of the enactment of this Act and shall apply to applications for patent filed on or after such effective date.

SEC. 606. PUBLICATIONS.

Section 11 of title 35, United States Code, is amended by adding at the end the following:

''(c) The Patent and Trademark Office shall make available for public inspection during regular business hours all solicitations issued by the Office for contracts for goods or services, and all contracts entered into by the Office for goods or services.''.

Amend the table of contents accordingly.

Mr. COBLE. Mr. Chairman, generally on this Hill the Committee on the Judiciary is not known as the most bipartisan committee here, but there is an exception which has been struck to that belief on this bill. I would be remiss prior to putting my oars into the water and commencing this voyage if I did not recognize a few of my colleagues. Start naming Members and I will inevitably omit someone who should have been named, but I want to mention the gentleman from Michigan [Mr. CONYERS], the gentleman from Massachusetts [Mr. FRANK], the gentleman from Massachusetts [Mr. DELAHUNT], the gentlewoman from California [Ms. LOFGREN], of course, our chairman, the gentleman from Illinois [Mr. HYDE], the gentleman from Roanoke Valley, VA [Mr. GOODLATTE], the gentleman from Indiana [Mr. PEASE] has been helpful, the gentleman from Utah [Mr. CANNON]; others I am sure, as well. But we have done this in a bipartisan manner, Mr. Chairman. I think we have crafted a bill, perfect; no, there is not much perfect done around this town or in this world, but a good, solid bill that will serve Americans well.

I rise in support of the manager's amendment to H.R. 400, Mr. Chairman. Some of these amendments are technical. Most of them have been created for the benefits of small businesses defined as those who employ under 500 workers, and independent inventors, who are deserving of some extra protection in our patent system. The manager's amendment took an extremely long time to develop, and it strikes some very crucial compromises by granting additional protection while still preventing abuse.

Inventors have complained that the Patent and Trademark Office has not been able to spend its valuable resources on the most important function of the office, that is, granting patents and registering trademarks with quality review in the shortest time possible. The manager's amendment separates completely policy functions from operational functions. Policy functions are left to the Department of Commerce, giving patent and trademark policy a necessary representative at the President's table, while management and operational functions, day to day, if you will, are vested completely in the PTO. This will allow the PTO to be led by a director who will have only one mission: to process and adjudicate efficiently and fairly the important Government functions of granting and issuing patents and registering trademarks.

As we know, Mr. Chairman, the Committee on the Judiciary has been working with several groups to reach a compromise on special protections for small businesses and independent inventors from publication. We are offering a compromise which will grant protection while still preventing the practice of submarine patenting. While publication has many benefits for both independent inventors and small businesses, the manager's amendment gives these groups a choice over whether or not they wish to be published. It will effectively exempt independent inventors and small businesses from publication by deferring publication until 3 months after the inventor has received at least two determinations on the merits of each invention claimed, on whether or not their patent will issue.

At this stage, the applicant knows whether or not he or she will receive a patent, in which case the patent would be published upon grant anyway under today's law. If it will not be granted, the applicant then may withdraw his application and avoid publication and protect the invention by another means.

Mr. Chairman, this is not a perfect exemption for opponents of this bill, nor is it a perfect exemption for supporters; rather, it is a compromise. If the applicant purposely tries to delay an application between the first and second office action, he or she will, unfortunately, succeed. If the PTO is slow and does not issue a second office action within 18 months, publication will still not occur until 3 months after that second action. The PTO has indicated that after two office actions of those who wish to proceed, 97 percent are granted in short order and, therefore, published. This should move the date of publication to almost exactly the time when publication would occur today.

However, those who want to purposely procrastinate for long periods of time and frustrate the prosecution of their patent applications will be published and, therefore, ultimately unable to submarine.

Another provision concerned the so-called gift provision contained in the bill. While the provisions contained in the bill did not grant the PTO any authority it does not already possess, we have deleted it from the bill. The PTO can accept a gift today.

The CHAIRMAN. The time of the gentleman from North Carolina [Mr. COBLE] has expired.

(By unanimous consent, Mr. COBLE was allowed to proceed for 3 additional minutes.)

Mr. COBLE. Mr. Chairman, the manager's amendment also adopts two measures included in the bill introduced by the gentleman from California [Mr. HUNTER] which provide for an incentive program to better train examiners. While the current bill ensures that the advisory board for the new PTO should be composed of diverse users of the office in order to help Congress conduct more effective oversight, the manager's amendment expressly requires that inventors be included as members.

The Committee on Appropriations has expressed concern over the borrowing authority in the bill, as have some critics, although many misunderstood how the authority works under the control of Congress. Much ado has been made about a procedure which would offer a small possibility for the new PTO to borrow money instead of having to raise fees on inventors to pay for any high-technology future products. Accordingly, our amendment strikes the borrowing authority.

In further guaranteeing diligent inventors at least 17 years of patent term from the time of issuance, the manager's amendment allows inventors adequate time to respond to inquiries from the PTO regarding their applications.

Small businesses and independent inventors have been concerned that the new PTO may not recognize the longstanding reduction in fees applicable to these constituencies. The manager's amendment requires that the agency continue to provide that small businesses and independent inventors pay half price for their patent applications.

Independent inventors have claimed that the scope of the reexamination provisions contained in H.R. 400 is too broad. This has been amended to extend greater due process. As we can tell, Mr. Chairman, the committee has worked hard to accommodate the interests of our small business community, not just in this amendment but in the many amendments adopted throughout the process, while maintaining strong protection for U.S. interests against our foreign competitors. I strongly urge all of my colleagues to vote ''yes'' on the manager's amendment.

Mr. CAMPBELL. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I wonder if I could engage my colleague and friend from North Carolina in a colloquy regarding the manager's amendment.

Mr. Chairman, I will state what I believe is true, and I just want to know if I have it correct or not. I believe that, even with the manager's amendment, every filer for a patent in the United States under the gentleman's bill would have to make public that application even if the patent has not yet been granted; is that correct?

Mr. COBLE. Mr. Chairman, will the gentleman yield?

Mr. CAMPBELL. I yield to the gentleman from North Carolina.

Mr. COBLE. Mr. Chairman, the applicant can, of course, withdraw if it is not to be granted.

Mr. CAMPBELL. Mr. Chairman, every applicant for a patent in the United States who intends to continue in the application process for a patent, even if he has not yet gotten that patent, must eventually disclose under the bill; is that correct?

Mr. COBLE. The purpose for that, Mr. Chairman, if I may say so, is to direct attention to the submariner.

Mr. CAMPBELL. Mr. Chairman, I appreciate the gentleman's understanding. But I believe his answer is yes; am I correct?

Mr. COBLE. Yes, sir.

Mr. CAMPBELL. I thank the gentleman.

Mr. Chairman, we have, I think, very clearly identified what is wrong with H.R. 400 and that it is not solved by the manager's amendment.

Every applicant for a patent who wishes to get that patent, even before they get the patent, is obliged to disclose. Goodbye to the strategy that you say, ''Well I am trying for a patent but if I do not get it, I want to keep it secret and try the trade secret route.''

One of the aspects that American patent law has right now is a tremendous incentive to the inventor because it allows just that opportunity. I will try for the patent, but if I do not get it, if it does not look like I am going to, then I am going to try the trade secret route.

Ms. KAPTUR. Mr. Chairman, will the gentleman yield?

Mr. CAMPBELL. I yield to the gentlewoman from Ohio.

Ms. KAPTUR. Mr. Chairman, I just wanted to ask a question. Assuming that happened to an inventor and he or she were published and that information were taken by some other interest in another nation, knowing some of the inventors that I know, if they had to sue, many of them do not have deep enough pockets. In fact, 80 percent of the inventors are small inventors and, if they had to take a case, would it not be extremely difficult for many inventors to try to protect their property rights internationally?

Mr. CAMPBELL. Mr. Chairman, my colleague from Ohio is quite right, but even more right than one might think; because what is the lawsuit about? Under H.R. 400, it is permitted to disclose. It is required to disclose. So if a foreigner takes that and uses that, what are you going to be hiring an attorney for?

Here is a question, Mr. Chairman, if I might instruct my colleagues to allow me to continue.

□ 1445

Mr. CAMPBELL. Mr. Chairman, why are we messing with the U.S. patent system? Why are we messing with it?

We saw the chart of my colleague from California, Mr. HUNTER. We have Nobel prize winners. We have technology advancement second to none in the world. Why are we messing with it? Do my colleagues not think we should have a good reason before we change such a system as this that has produced such success for our country?

What answers have we heard today? We have heard one, submarine patents. This is what the Congressional Research Service says about the Rohrabacher substitute and House Resolution 400. It says the patent disclosure provisions of the Rohrabacher substitute, House Resolution 811, should substantially curtail the practice of submarine patenting. Both bills seek to curtail submarine patenting and would likely end the practice. That is on pages 12 and 13 of the CRS report.

Let me repeat that. Both bills seek to curtail submarine patenting and would likely end the practice.

If we are messing with the U.S. patent system because of the abuse of the submarine patent, for heaven sakes, let us not go as broad and do the additional damage as House Resolution 400 would do when we can solve it with a much narrower solution, which is in the Rohrabacher substitute.

But let us ask one further question. How large, how deep, how profound is this problem of the submarine patent? Commissioner Lehman, in GATT hearings, was reported in the Washington Times of April 15 of this year to have said that the submarine patent constitutes approximately 1 percent of 1 percent of all patent filings. The numbers that he gave worked out to thirteen one-thousandths of 1 percent of all patent filings.

For that we are going to compel all patent filings, after 18 months, to be made public, whether or not there has been the patent granted? It simply is unnecessary for the small problem and it does a tremendous amount of collateral damage.

Mr. Chairman, I wish to conclude by pointing out that there has been no other case made for changing this present system that has worked so well, no other compelling case. If at the very least we do no harm, we have served our constituents well.

Mr. Chairman, I ask unanimous consent, as my colleague did, for 2 additional minutes.

Mr. GOODLATTE. Mr. Chairman, reserving the right to object, and I will

not object, but I would ask that the gentleman from California, if we are going to conduct this debate under the 5-minute rule, recognize that he can make unanimous-consent requests for additional time.

No one here wants to do it, but if the gentleman is only going to recognize folks who agree with his opinion, he is not entering into a genuine debate, and I think we should have that.

So I will not object, but I would make the point to the gentleman.

The CHAIRMAN. The gentleman withdraws his objection and the gentleman from California is recognized for 2 additional minutes.

Mr. CAMPBELL. Mr. Chairman, since my colleague from North Carolina had 3, I would ask unanimous consent for 3 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. CAMPBELL. Mr. Chairman, I will reserve one of those minutes for a colloquy with my good friend, the gentleman from Virginia [Mr. GOODLATTE].

So we have the submarine patent as rationale for messing with the system, a small problem and one which is equally solved by the Rohrabacher substitute.

We have heard that research institutions are holding off. They are. Is it not troubling to my colleagues that we are going to be changing the U.S. patent system in a way that the major research universities of our country have chosen not to embrace?

Let me be very clear. They do not embrace the Rohrabacher substitute; they do not embrace the bill introduced by the gentleman from North Carolina. It seems they do not want a change. And I cannot blame them for that attitude. If we are going to change such a successful system, does it not cause us concern that the research universities are not here asking us to do it?

Oh, the commercializers are. And I do not put any negative spin on that phrase, a commercializer is important, as well as an inventor, but they are different, and the motive of the commercializer is to get available as quickly as possible the information and to use it for commercial purpose as quickly as possible. The inventor loses under House Resolution 400 in order to achieve that objective.

Last, we have heard the reference to a need to level the playing field. Well, I do not think we need to rush to equalize when we see the comparison in the numbers of inventions and Nobel prizes as a signal measure of the state of our country and others.

I repeat, in closing, reserving the last minute for our colloquy, no one responded to my point about a prior commercial user. Under the Coble bill, House Resolution 400, somebody who did not file, but has made use of this idea, can expand that use, can take what was making $10 a month and make it $1 million a month, totally eviscerating the value of the patent and destroying the incentive to invent in the first place.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. CAMPBELL. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, I thank the gentleman for yielding, and I wanted to join in the conversation he had with the gentlewoman from Ohio, and point out the concern expressed by the two of them about situations in which foreign businesses might steal patent ideas published after 18 months presumes some important facts:

First, that that inventor did not file for a patent in a number of other foreign countries. If they do not file for the patent when the patent is issued, and the average patent is issued in 19 months in this country, there is nothing to stop that same thing from happening upon issuance of the patent all over the world.

Mr. CAMPBELL. Mr. Chairman, if I can reclaim my time to respond, the gentleman's point is quite right. If we file overseas, we put ourselves into the overseas system. If we file overseas, we put ourselves into the European system. And if we choose not to, because we prefer the American system, and for good reason we prefer it, because it has more incentives for invention and more protections for the inventor, we should be allowed to proceed under the American system.

The CHAIRMAN. The time of the gentleman from California [Mr. CAMPBELL] has expired.

The Chair would advise all Members that we will go back and forth and we will give priority to members of the committee.

Mr. FRANK of Massachusetts. Mr. Chairman, I move to strike the last word, although I might want to put it back by the time I am through.

I rise in support of the manager's amendment of the bill. I am the ranking minority member of the relevant subcommittee, so I have immersed myself to some extent in this. I have had some of my colleagues say to me that they do not quite understand why there is all this passion about the bill, and I will say to those who are looking to me for enlightenment on this that they will go unenlightened.

I think there is a dynamic of rhetoric that keeps arguments going even when they are not necessarily there anymore. There has been some convergence here. Originally, I was a cosponsor with the gentleman from California [Mr. ROHRABACHER]. I had heard from the biotechnology people that they did not like the alternative. That was several years ago.

In the interim, the bills have become less different. I do not expect the entrenched partisans on either side to acknowledge that, but it does seem to me we may want to look at it. In fact, the manager's amendment that came forward further bridges the difference, further reduces the problem of publication.

One point that should be made clear, and I say this because not every Member is fully familiar with it, and some Members were puzzled by publication, people should understand that we do not lose any legal right by publication.

There are some people who think it will be published before I have my patent and then I am not protected. No, that is not true. There is absolutely no diminution of legal right. What people are arguing is that the practical situation in which we are put to defend our legal right might be more difficult. But understand that there is no diminution of our legal right.

Mr. GOODLATTE. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, the gentleman is correct, and not only that, but because we improve the patent pending protections, then we can come back and get royalties during that patent pending term after we have been published that we cannot get under current law.

And, in addition, we found that the Europeans get that capital financing. One of the problems they have is the gap between the 18-month publication, when the patent is actually issued, saying, I am going to be exposed during that time. But, actually, the capital comes sooner because they know that since we have been published and no one else has been published ahead of us, we are the one that has that idea; and if they want to invest in it, they can do it now rather than wait until the patent is issued.

Mr. FRANK of Massachusetts. Mr. Chairman, reclaiming my time, I think the general rule is sentence-yield, sentence-yield. So now it is time for a sentence, and then I will yield again after I get to say a sentence.

The sentence is, and it is actually a couple: We made another change in this. Under prior law, if two people both filed a similar patent, they were on equal terms before the law and had an equal burden in terms of proving who had invented first, not who filed first, which is not relevant.

We added to the bill after the bill was filed and added language that says, if we have published and someone files subsequent to our publication, we are no longer on an equal footing. We are now in a super-legal position. The person who filed subsequent to us has the burden of proof.

We will indeed, in fact, almost assume that the person copied our patent from the publication. And that is a very important difference.

It is true under old law we could file, somebody else could file, we would publish, someone else would file, and we would be at greater risk. We have further strengthened the hand of the person who files and is subject to publication.

Ms. KAPTUR. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentlewoman from Ohio.

Ms. KAPTUR. Mr. Chairman, I thank the gentleman, because I know he approaches all these issues with complete objectivity and he tries to do what is best for the country.

Mr. FRANK of Massachusetts. On these issues. I get worked up on some others.

Ms. KAPTUR. In this case we disagree. I think that one of my greatest misgivings about the H.R. 400, and the reason I am supporting the substitute is because, having met many inventors, in a State like Ohio, what this bill does is it, and the gentleman says, well, they can defend their rights, and the gentleman from the other side was saying the same thing, but this is a real lawyers' field day because the small inventor, maybe the person who is working on their first patent, will be forced to take money that many of them do not have.

People can defend themselves if they are representatives of a large corporation that has a patent or is filing for a patent. They do not have as much trouble. But the average small inventor under this bill is seriously compromised by the system the gentleman is setting up where we publish after 18 months.

Mr. FRANK of Massachusetts. Mr. Chairman, reclaiming my time, I say to the gentlewoman she has made her point and I want both to affirm it and then respond to it.

That is what I meant before. The legal right is not diminished. The gentlewoman is not contesting that. We have the same legal right whether or not there has been publication. The argument has been that those who want to intrude on our patent will do so, and if we are not a person with a lawyer, then we are at a disadvantage.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. FRANK] has expired.

(By unanimous consent, Mr. FRANK of Massachusetts was allowed to proceed for 2 additional minutes.)

Mr. FRANK of Massachusetts. That is also true once we have gotten a patent, Mr. Chairman.

In other words, if there are people out there who are determined to use their superior resources and their access to lawyers to infringe on and chip away at and take the benefit from our patent, they can do that whether it has been published or not once it is patented.

Yes, anybody in this society, I guess, who might be in difficulty is at more of a disadvantage if they do not have a lawyer handy than if they do. There might be other cases when people might consider it a disadvantage to be too near a lawyer, but in the case of a dispute, it is probably helpful. But that is true whether the patent is issued or not, whether or not there are people out there after us.

The point I would make is that publication, particularly with the safeguards we have, does not weaken either our legal position nor the disadvantage we might be at because of a lack of access to attorneys.

Mr. CAMPBELL. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from California.

Mr. CAMPBELL. Mr. Chairman, it was for exactly that reason I never made the argument about the burdensome lawyers. My argument was different. I wonder what the gentleman's response might be to that.

I understand our legal rights are not changed by H.R. 400 in this regard, but as a practical matter, publication does destroy the applicant's opportunity to go the trade secret route and existing patent law does not. Would the gentleman agree?

Mr. FRANK of Massachusetts. Well, Mr. Chairman, first of all, let me say I welcome the support of the gentleman from California of my argument against the gentlewoman from Ohio. Because he just said he did not like her argument, and I appreciate that. I know they are friends in general, but I should like to point out that the gentleman from California——

Ms. KAPTUR. They are both attorneys. It is so interesting the way this debate goes.

Mr. FRANK of Massachusetts. Yes, but I have never practiced.

I did want to point out that my friend from California has just joined me in opposing the argument of the gentlewoman from Ohio, and I would say there may be an argument of his that she may not like, and I would be glad to have her join in on that one, too.

The next point is that that is true, that we are not forced, except for this thing. There is an inconsistency in the gentleman's question.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. FRANK] has expired.

(By unanimous consent, Mr. FRANK of Massachusetts was allowed to proceed for 2 additional minutes.)

Mr. FRANK of Massachusetts. Mr. Chairman, my understanding is that the trade secret is what we invoke as an alternative to patent.

The gentleman said if we file and are published, we lose our right to go for trade secrets. But my understanding is if we go the patent route, that is the alternative to trade secrets. So, therefore, yes, if we decide to get a patent, then we have given up our right to go the trade secret route.

Mr. CAMPBELL. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from California.

Mr. CAMPBELL. Mr. Chairman, here is the question I was asking, and I did take the gentleman's answer to my previous question to be ''yes,'' for which I am grateful.

Mr. FRANK of Massachusetts. Mr. Chairman, reclaiming my time, maybe the gentleman misunderstood me, and I will clarify it.

The question was, if we are published, do we give up our ability to use trade secrets. My answer was, if that was the question, the answer is that any time we go for a patent, we give up the right to go trade secrets.

□ 1500

I want to finish the one question which was, is there a conflict between trade secrets and publication? My understanding, as I said, is that applying for a patent is an alternative to trade secret. If that was not the question, rather than claiming I answered ''Yes,'' the gentleman ought to rephrase the question.

Mr. CAMPBELL. It was the question, if the gentleman will yield.

Mr. FRANK of Massachusetts. I tried to respond to the gentleman. He then frankly, it seemed to me, somewhat distorted what I said. I am not going to simply allow that to happen, so I want to restate it.

If the question was, does publication take away your right to do trade secret, I would have to say I am surprised at the question, because any patent takes away your chance to use trade secret. Publication is not the operational problem there, it is the desire to ask for a patent.

Mr. CAMPBELL. Mr. Chairman, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield again to the gentleman from California.

Mr. CAMPBELL. I thank the gentleman. If somebody under present law wants to try for a patent and wants to keep that going until they are fairly sure they will not get it, they can still go the trade secret route, but under House Resolution 400, come 18 months, they cannot. That is a difference, is it not?

Mr. FRANK of Massachusetts. I would say this to the gentleman. That is a circumstance I had not previously thought about. In other words, what the gentleman is saying is you decide you are not going to get the patent and you withdraw it. I would be prepared to work on an amendment, which I suspect would make no difference to the gentleman overall.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. FRANK] has again expired.

Mr. FRANK of Massachusetts. Mr. Chairman, I ask unanimous consent to proceed for 2 additional minutes.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

Mr. CAMPBELL. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. FRANK of Massachusetts. Mr. Chairman, I ask unanimous consent to proceed for an additional 30 seconds.

The CHAIRMAN. Is there objection to the request of the gentleman from Massachusetts?

Mr. CAMPBELL. Mr. Chairman, reserving the right to object, if the gentleman would split the time with me.

Mr. FRANK of Massachusetts. No. I do not think the gentleman is interested in the conversation.

Mr. CAMPBELL. Mr. Chairman, I object.

The CHAIRMAN. Objection is heard.

Mr. GOODLATTE. Mr. Chairman, I move to strike the requisite number of words,, and I yield to the gentleman from Massachusetts [Mr. FRANK].

Mr. FRANK of Massachusetts. I thank my friend from Virginia for yielding.

Mr. Chairman, the point is this. We are talking about a very, very limited circumstance. I think to some extent what we may be patenting—and maybe you cannot patent this, maybe we would copyright it—examples of horrible and extremist that we can come up with that might possibly under certain circumstances create a problem. The gentleman from California has had one. Here is what I think he is positing.

You apply for a patent. Your patent application is published. You subsequently decide that you are not going to get the patent, so you withdraw it and have you then lost your right to protect it under trade secrets?

I do not think it would do any violence to the bill in that circumstance where no one had previously suggested to say that no, you would not lose that. I would be glad to do that. I would be glad to support an amendment in a subsequent part of the process that said if in fact the only thing that happened was that you were published and you were not going to get a patent, that that would not destroy your limited right of trade secrets. That one does not bother me at all. It is the first I had heard of it in all my conversations with the gentleman.

Mr. GOODLATTE. Reclaiming my time, I would point out to the gentleman that there is a provision in the bill already that preserves the right of anybody to withdraw their patent application prior to the 18-month publication date and preserve their right to go the trade secret route. The problem we have here is there is an inherent difference between trade secrets and patents. Trade secrets are protected by keeping them secret. The formula for Coca-Cola, that is not patented, that is a recipe. They keep it locked up in a safe.

On the other hand, if you want to protect something by use of the patent system, the way we do that is the U.S. Government tells the whole world that that individual is the first person to come forward with that patent and they have that protection and that right, and all publication does is give them that right sooner. It does not in any way harm them or take away that right. If they want to go the trade secret route, they can still do it by withdrawing that application.

I would also point out that the average patent in this country takes 19 months, 1 month longer than the 18-month provision. So the fact of the matter is that we are doing very little to harm people and in fact publication is a positive thing.

Ms. LOFGREN. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentlewoman from California.

Ms. LOFGREN. Is it not the case that in the bill if you are only filing in the United States and not abroad and are a small inventor or small businessperson, you have the ability to delay publication until after the second Office action, which is an up or down, and then have the ability to withdraw? So, the issue being raised is really not a problem because it has been dealt with in the bill.

Mr. GOODLATTE. The gentlewoman is correct.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. I would also say I was a little bit surprised to hear my friend from California worried so much about the rights of people under trade secrets because I had previously in my conversations with him and in his amendment understood him to be somewhat critical of the trade secrets doctrine and to be interested in narrowing it substantially.

Mr. KIM. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from California.

Mr. KIM. I thank the gentleman for yielding. Mr. Chairman, I would like to have a colloquy with the gentleman from North Carolina [Mr. COBLE].

I would like to talk about a totally new subject, real estate.

Under section 112 of H.R. 400, the new Government corporation is not subject to the provisions of the Property Act of 1949, nor the Public Buildings Act of 1959. The bill would grant to each new corporation the ability to sign a lease and buy and sell property, construct a facility without regard to this law that I mentioned.

Indeed, the Patent and Trademark Office [PTO] is currently in the midst of having a new headquarters acquired by GSA, the landlord of the Federal Government. The PTO has requested acquisition of 2.3 million square feet of office space that could cost over $57 million annually, or even $1 billion over the next 20 years.

In fact, section 112 recognizes this action by stating that the land does not nullify, void, cancel or interrupt any pending request for proposal or acquisition by GSA for the express purpose of relocating or leasing space for the Patent and Trademark Office.

Is that the gentleman's understanding?

Mr. COBLE. If the gentleman will yield, that is my understanding, and I will be happy and any of the rest of us on the committee will be happy to work with the gentleman from California [Mr. KIM] on his committee of jurisdiction with Federal buildings, and I presume that is what prompts his question.

Mr. CAMPBELL. Mr. Chairman, will the gentleman yield?

Mr. GOODLATTE. I yield to the gentleman from California.

Mr. CAMPBELL. I thank the gentleman for yielding.

Mr. Chairman, I simply wanted to point out this distinction and then get the benefit of the gentleman's response to it. Many people go into the patent system hoping to get the patent and they are disappointed, but they get indications of that disappointment.

The CHAIRMAN. The time of the gentleman from Virginia [Mr. GOODLATTE] has expired.

(By unanimous consent, Mr. GOODLATTE was allowed to proceed for 1 additional minute.)

Mr. GOODLATTE. Mr. Chairman, I continue to yield to the gentleman from California.

Mr. CAMPBELL. So disappointed, they then choose to go the trade secret route. So that the choice is not only at the beginning but along the path when it does not look like you are going to get a patent. In that context the average time of a patent being 19 months means that a substantial number, more than half, will see the present right held by a patent applicant being taken away. That is my point. I would be grateful to hear the gentleman's response.

Mr. GOODLATTE. I would be happy to respond.

The individual who is in the process and is having a lengthier time processing the patent application than the 19-month average would be concerned about that. Under those circumstances, they would withdraw the patent application and if they wanted to try for the patent again, they are not in any way deprived from having the opportunity to resubmit the patent application which will then pick up with a lot of the work already having been done previously and process the patent through. I doubt there will be very much time lost.

Against that, I want to weigh the benefit of publication. No inventor wants to spend years of their life working on something to find out that somebody else had previously already filed, whether they are a deliberate submarine patenter like some who have kept them submerged for 30 years or others.

The CHAIRMAN. The time of the gentleman from Virginia [Mr. GOODLATTE] has again expired.

(By unanimous consent, Mr. GOODLATTE was allowed to proceed for 1 additional minute.)

Mr. GOODLATTE. Therefore, publication has a number of benefits to inventors, including knowing that you are not wasting your time doing something that somebody else is already ahead of you on, and getting capital investment in your invention sooner because they know that you are the first out there because you are the first published and therefore they can invest in you sooner than they can if they have

to wait until they are sure you are going to get the patent because they do not know under our current secret process whether or not somebody else got in there ahead of you. This is a benefit to the small investor, not a harm.

I yield to the gentleman again.

Mr. CAMPBELL. Mr. Chairman, I would just conclude, and I sure do appreciate the gentleman yielding, that overwhelmingly the commercializers are with the gentleman from North Carolina [Mr. COBLE], but overwhelmingly the inventors are with the gentleman from California [Mr. ROHRABACHER].

Mr. GOODLATTE. I have not found that to be the case.

Mr. CAMPBELL. That has been my observation, though I appreciate the gentleman might have a different one. I think that distinction speaks volumes to what the inventor sees as a hurt to his or her entrepreneurial activity.

Mr. GOODLATTE. That has not been the experience in Europe where this process has been used, and I would suggest that this is very much the type of change that we need in this country. This committee has improved the patent system for 200 years. I urge the support of this bill.

Mr. CONYERS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I rise in support of the manager's amendment offered by the gentleman from North Carolina [Mr. COBLE], the subcommittee chairman.

Mr. Chairman, I would point out that the two major items in this amendment is, one, to completely separate the operational function of the Patent and Trademark Office from the policy responsibilities of the Patent and Trademark Office, thereby making it most efficient.

I presume that most everybody is for that. I do not recall much objection to it.

Mr. COBLE. I would say to the gentleman from Michigan, not unlike many other features about this bill, a lot of it was misunderstood, but I have heard virtually no complaints about that.

Mr. CONYERS. I did not think so.

I thank the gentleman.

The second most important part of the manager's amendment, from my point of view, is the exemption of the small inventor from the necessity of publication if he chooses to do so. And so, here this exemption from publication for the small inventor is that they do not have to publish until 3 months after the second patent and trademark action, which is usually the final decision regarding a patent.

That has great merit because it gives the protection to the small inventor. Ladies and gentlemen, those who are against GATT and NAFTA, listen up. This is precisely why I am supporting the bill and the manager's amendment because we provide additional protection to the small inventor, we give him the option of publishing 3 months after what is called the second PTO action, which is almost always the final decision regarding the issuance of a patent.

There are a number of technical amendments to the Coble manager's amendment. It is 18 pages long. The provision that I am referring to that exempts small inventors starts at page 10, line 1. Please read it. It is not complicated language.

It is not any more complex than anything we handle every day in the making of laws for the United States of America. It is pretty straightforward. It should not create any problem to anybody that is interested in protecting American inventors who are not corporations to give them the option that they require that they have never had before which does not subvert the patent process, it makes it stronger and is why we are here on the floor with this bill after several years.

Mr. TIAHRT. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I just went through the manager's amendment, and it is a little difficult to sort through. I am not a lawyer, and I kind of think this ought to be approached in more of a pragmatic way. And so, in weighing this bill, I went back to those who are concerned with it and I talked to some of the people that deal with patents on a daily basis and in trying to improve themselves and our lives by taking their ideas into the patent system.

And I just want to tell my colleagues about a guy in Wichita, KS. His name is Jay Hajeer. He works for Sol Gate, and he has a very simple idea. This simple idea was to increase the size of a memory for most computer models even beyond the amount of design capacity that the computer already has in it.

Jay was able to keep his simple idea quiet enough as it went through the patent process until he did a little planning as far as production, a little planning as far as a way of marketing his product; and he was able to acquire the patent and go ahead and produce this simple product.

And now that it is out and available on the market, I would like to explain it. It is simply a clip. You take the memory board out of your computer, slip this clip in place and slide your memory board in plus an additional memory board, thereby, in this case, doubling the size of the memory.

You can do it for additional memory boards, also. But it is just a very simple idea, just a little plastic clip with a couple of connectors on it. And so, when he had this idea, he did not have to lay it out in front of other people.

□ 1515

I think that having to publish these ideas before they get a patent on it is kind of like playing cards with a mirror at your back. The opponent on the other side of the table is able to read your cards, and he can see what is in your hand. And so in that respect it becomes a level playing field for your opponent, and I do not think we want to make a level playing field for our opponents, especially for other countries.

So let me go back to this simple design. Not only did Jay have time to develop the concept, get the drawings done, also develop a manufacturing plan and a marketing plan by the time he got his patent, once that was achieved, he was able to go right into the marketplace. Now if he had to publish this and there was a delay in his plans, it would have made it easier, especially for the companies in Southeast Asia, to capture this idea and go ahead with manufacturing and push them out of the market. He is a small investor, does not have a big company; he just has good ideas. So this open publishing of the idea, I think, would have made him vulnerable to larger manufacturers even in foreign governments.

So I am a little concerned about this level playing field concept, I am a little concerned about forcing someone to lay their cards on the table, letting them play cards with a mirror to their back. I think that we want to protect ideas and provide incentives for individuals.

And I guess the second point I would like to make is I am not very concerned about these alleged submariners, and perhaps I do not quite have a good grasp of the idea, but what we are trying to do is protect people who have ideas. That is why we have so many Nobel laureates, and that is why we have so many people who come up with ideas in America, is we give them incentives to sit around and dream up ideas.

I rode back to Wichita one time with a guy on the airplane who came up with an idea of mixing naphtha and water together, and one can burn it in a gasoline engine; and he has a license with Caterpillar to do just that. It is an idea that he has come up with that we can use water as a portion of the fuel. It cuts down emissions, it is a great idea. But he has to have a way of protecting his ideas so that he cannot lay his cards on the table and allow someone else to run with the ball until he gets the capital or gets the needs that he has.

So I guess I am not as concerned about the submariners as everybody else is because I think it is good to have a bank of ideas, to have them protected so that you can go on to the next idea while somebody develops a manufacturing process.

So those are my concerns on H.R. 400 and also in the manager's amendment, and that is why I will be voting against it, because it levels the playing field when I do not think it should; it levels it for the opponents.

Mr. HYDE. Mr. Chairman, I have a unanimous consent request that I would like to present to the House, but I would like just to say about those

Nobel Prize winners, a lot of them have foreign accents, the ones I have met anyway.

Mr. Chairman, I ask unanimous consent that, when we finish with this manager's amendment, which I pray will be soon, I pray it is imminent, that debate on the Rohrabacher amendment and all amendments thereto be limited to 2 hours equally divided between proponents and opponents, the time to be controlled by the gentleman from California [Mr. ROHRABACHER] and the gentleman from North Carolina [Mr. COBLE] and that they be permitted to yield blocks of time.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

Mr. ROHRABACHER. Reserving my right to object, Mr. Chairman, is his unanimous consent request saying that there would be 2 hours of debate for my substitute?

Mr. HYDE. Yes, Mr. Chairman.

Mr. ROHRABACHER. Mr. Chairman, but not for my substitute coupled with all the other amendments?

Mr. HYDE. No, Mr. Chairman. No, the other amendments will stand on their own, and we will probably get to them next week. It is simply trying to get the important amendment, if the other offerers will forgive me for downgrading their amendments, and get it out of the way and have an idea when we can secure because people would like to leave.

Mr. ROHRABACHER. Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. FORBES. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, in all due respect, I have not had a chance, but 1 minute, to speak at various times here, so I would like to make a couple of points. I know the dialogue has gone on, and I will not try not to indulge the House too much longer.

I think it is very, very important though in this critical debate to understand that, while we have spent a lot of time on the submarine patent idea—you know, the notion that somebody hides this kind of prospective patent and it rears its ugly head to challenge somebody else later in the future, I appreciate that. And I think it has been well established here in this body this afternoon that either the main bill, H.R. 400, or the Rohrabacher substitute does deal with the submarine patent issue.

I think it is important again to stress that of the 2.3 million patents that were issued from 1971 to 1993, 2.3 million patents, 627 of those patents were deemed submarine, and almost half of those were by the U.S. Government. So the problem is not necessarily foreign interests bearing these submarine, these patents. So I think that is an important point to understand here, but we have dealt with the submarine issue, so I will not prolong that.

I think we get back to the essence here, and the essence of all of this really is again that we have American inventors who have defined this Nation as a place where somebody with a good American idea could come to Washington, DC, with that idea and protect that idea and it would not be made available to the whole world to steal.

I understand the distinction if one files overseas. I am today talking specifically about our American citizens who come up with good ideas and want to protect those ideas on American soil. That is what I am talking about, and I think we need to protect them.

That is why I am asking in a most aggressive manner through my amendment that we do protect the entrepreneur, the people who are working extra jobs to protect this idea that they have been working on, the small business people.

Look, the corporations, the multinational corporations, are well protected. They will be well protected in this legislation, they will have the battery of lawyers they need, but the little guys out there with no resources who have wonderful ideas that have made America great who have made us the superior Nation on the face of the earth because of our ideas and our technology, we are going to compromise that away. We will no longer have Alexander Graham Bells, we will no longer have first generation Americans coming up with a great ideas like Thomas Edison, and we will no longer have the Eli Whitneys or all the other people who have come through generations that have made this country the greatest Nation because of our people that go out there, come up with a great idea, send it to Washington and protect it. Now we are saying, ''Sorry, individuals; sorry, small business people; you are not going to have the protections because you'll have to share your idea with the whole world after 18 months or some few months after that based on the manager's amendment which says, well, we will make a little alteration there.''

If we are really caring about the individual in this country and not the corporate interests, we will make an exception for individuals, small business people, who do not have the resources that this bill will mandate.

Mr. Chairman, my colleague from Ohio was exactly correct. This will be a lawyer's field day because we will turn it over to the courts, and even the presumption that the patent holder is protected will be put in jeopardy under these changes.

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. FORBES. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, is the gentleman aware of page 10 of the Coble manager's amendment starting at line one that exempts the small independent inventor from publication?

Mr. FORBES. Only if that inventor withdraws their patent application. It is not exemption.

Mr. CONYERS. It is optional with the small inventor; and if I might just read the sentence, it might change the gentleman's entire speech, and here is what it says. Just hear this.

The small, the independent, inventor in small businesses have expressed concern, and so the manager's amendment will give them a choice over whether or not they wish to be published. It will effectively exempt independent inventors by deferring until 3 months.

Mr. FORBES. Reclaiming my time, with all due respect I say to the gentleman I read it myself. And what it says is if someone is an individual in this country or a small business, and they do not have the resources, and they do not want their patent protected; I mean published, excuse me; then what they can do is they can opt out of participating in the patent protection system because then they will not get published.

Mr. CAMPBELL. Mr. Chairman, will the gentleman yield?

Mr. FORBES. I yield to the gentleman from California.

Mr. CAMPBELL. Mr. Chairman, the gentleman is reading from the summary and not from the actual text. I note that point. But the summary is correct, and so was my colleague from New York. One can always get out of the mandatory publication rule.

The CHAIRMAN. The time of the gentleman from New York [Mr. FORBES] has expired.

(By unanimous consent, Mr. FORBES was allowed to proceed for 2 additional minutes.)

Mr. FORBES. Mr. Chairman, I yield to the gentleman from California [Mr. CAMPBELL].

Mr. CAMPBELL. Mr. Chairman, I appreciate the gentleman yielding continuously.

All that speaks to, Mr. Chairman, the gentleman from Michigan's point, all it speaks to, if one chooses to opt out of the patent system, then they do not have to disclose. But that is always the case. One can opt out of the patent system.

Mr. FORBES. Reclaiming my time, if I might, and in my remaining minute here I think it is just important to stress to my colleagues who have real problems understanding the technicalities of this issue, and I can appreciate it, this is very, very important. I am talking about the little people in this country, the small inventors, the people who do not have vast sums of money who have made this country great and changed the face of the economy of this Nation over the last 200 years. They will be hurt by this change.

Mr. Chairman, this is a harmful piece of legislation. In all due respect to the folks who have drafted it, this is not

good for the little people in America, it is not good for small businesses, and I urge the defeat of H.R. 400.

Ms. LOFGREN. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I doubt that I will use the entire 5 minutes. I just think it is important to point out a few things. There is an accuracy deficit here.

Mr. Chairman, in the bill with the exemptions provided for in the manager's amendment, which I support, publication is at 18 months, and the inventor is protected from that time forward. So it is not as if we are asking people to publish their invention without protection.

Mr. Chairman, I would like to complete my sentence. There has been a lot of discussion that the little guy will not be protected because he or she does not have access to the fancy lawyers and the legal system that is necessary to protect themselves. Let me point this out:

If someone obtains a patent—they have an invention, they file for their patent and their patent is issued—that patent is only as good as their ability to enforce it. Enforcing the patent requires them to oftentimes come into contact with the legal profession and to actually expend fees in pursuit of protecting their patent. And I would point out that there are many lawyers, if they have a good case, who will take the case on a contingent fee if the patent holder is being attacked by a foreign corporation in a patent infringement action.

It is important to talk about the issue of submarine patents. I have heard a lot about statistics. I do not hear those same sorts of arguments when we stand here and talk about, for example, product liability law. It is not our problem because it is only a percentage. If it is 500 million, it does not matter because it is only one case.

Let me talk about the case of Jerome Lemelson who filed in America for a bar code and robotic technologies who delayed his patent for 35 years. He collected $500 million in royalties from manufacturers from the late 1980's until the early 1990's. His patent attorney made $150 million in 1 year, and then later the Federal district court found that he did not have an enforceable patent.

I do not know Mr. Lemelson, I have nothing against him personally. I would just say that is nothing to advance the economic interests of America or of working people or of countries or of innovation. That is important; do not tell me about percentages. We need to prevent it.

Mr. GOODLATTE. Mr. Chairman, will the gentlewoman yield?

Ms. LOFGREN. I yield to the gentleman from Virginia.

Mr. GOODLATTE. Mr. Chairman, I ask do we know how many hundreds of millions of dollars the attorney for Mr. Lemelson received in fees thus far for his submarine patenting?

Ms. LOFGREN. I do not know and I certainly never fault an attorney for earning an honest living. I would just point out that this issue is a big deal to those companies that paid those fees and the attorney fees.

I will tell the gentleman something else, and I do not want to quote the entire letter, but some of my colleagues have heard of Charles Trimble, the president and CEO of Trimble Navigation, a brilliant physicist and an individual who owns many patents and who was a leader in global positioning systems. Were it not for Dr. Trimble, we may not have that technology at all. I had the opportunity to talk to Dr. Trimble just a few short weeks ago. He followed our conversation with a letter to me. He is the owner of the patents. He is the one who has designed this system. He is fighting off submarine patents right and left.

□ 1530

It is not the right thing for our country to allow.

Mr. GOODLATTE. Mr. Chairman, if the gentlewoman will continue to yield, I think the point is that this patent reform bill fights against abuse of and gaming of the current system, which is a great playground for some lawyers to make huge fees at the expense of the American consumers and taxpayers, and we are correcting that with this legislation today, quite to the contrary of those who would allege that the new laws will help lawyers, quite to the contrary.

Ms. LOFGREN. Mr. Chairman, reclaiming my time, that is correct. The main point I wanted to make is to have rights that are enforceable one must seek access to courts, which requires lawyers, whether your rights attach at publication, whether the rights attach, as used to be the case, at issuance or the like. Your rights are only as good as what you stand up for.

Mr. DICKS. Mr. Chairman, will the gentlewoman yield?

Ms. LOFGREN. I yield to the gentleman from Washington.

(Mr. DICKS asked and was given permission to revise and extend his remarks.)

Mr. DICKS. Mr. Chairman, I rise today to speak in strong support of H.R. 400, a package of patent reforms that will have significant positive impact in several key industries in the State of Washington, namely the information technology, biotech, aerospace, and defense industries. I believe that this legislation will result in tangible improvements in our Nation's patent system, and that it strikes a balance between the need to assure strong patent protection for inventors while allowing for the free flow of information regarding new technologies. In this regard, I believe that H.R. 400 will foster the best of American ingenuity and serve as an important mechanism for spurring U.S. economic growth and competitiveness.

I regret, Mr. Chairman, that opponents of this legislation have sought to portray this patent debate as a David versus Goliath fight when, in fact, the reforms contained in the bill will benefit large and small companies alike. The committee bill protects the work and intellectual capital of thousands of Americans, whether working in basement laboratories or in teams at major U.S. corporations. By cutting bureaucratic red tape, reducing the operating costs, and promoting self-funded PTO, all patent filers stand to gain from a more predictable, efficient, inexpensive, and equitable patent system. H.R. 400 also contains several safeguards to protect independent inventors, and in this regard I note that nationwide associations representing 30,000 small business members are in support of the legislation we are debating today.

I also rise in strong opposition today to the amendment offered by the gentleman from California [Mr. ROHRABACHER] who seeks to substitute his legislation which, in my judgment, will reverse the positive patent reforms that were achieved through the GATT and would encourage abuse and manipulation of the patent system. The gentleman from California has maintained that the issue of the so-called submarine patents represent only a miniscule problem for our system. But I believe it has been shown that this gaming of the system has cost inventors, U.S. companies, and consumers billions of dollars and it would only continue under the language Mr. ROHRABACHER is asking us to adopt.

As a member of the National Security Appropriations Subcommittee and the House Intelligence Committee, and as a Representative of a State that depends upon the best of human and intellectual creativity, I can assure you I would never endorse a proposal that undermines our national security or undercuts our global competitiveness. In the 2 years prior to the passage of the 1995 GATT law, 300 foreign companies manipulated the patent system to their advantage, at the expense of American inventors and consumers. Despite Mr. ROHRABACHER's disingenuous label of H.R. 400 as the ''Steal American Technology Act,'' I am afraid that the bill he is offering as a substitute would only worsen that draining of intellectual capital from the United States.

This is a major issue for all high-technology areas of the United States, and particularly for the Pacific Northwest, which has become an intellectual center for software development and biotechnology—two areas in which the United States leads the rest of the world. The foundation of the information technology industry in my region and nationwide is its intellectual capital, and as such, intellectual property protection is critical to the continued growth and success of this industry. In 1975, Microsoft was founded on the ideas and hard work of a handful of people; in just over 20 years, it now has almost 20,000 employees. Hundreds of startup companies have been launched following Microsoft's success, further contributing to the thriving high-technology industry in the area. The software industry as a whole provides high-wage, high-skilled jobs for more than 500,000 American workers and currently enjoys 70 percent of the world market—a share that will rapidly diminish if intellectual property protection is minimized. As R&D spending continues to increase, and while product cycles are condensing into timeframes of 9 to 12 months, predictability and full disclosure of existing patent applications becomes

ever more critical. Due to the complexity of software patents, and a lack of prior art and expertise in the field, the average patent pendency for software is 36 months, double the PTO's average processing time. For this reason, an efficient PTO with highly trained and experienced examiners is becoming increasingly important.

Passage of the Rohrabacher substitute, H.R. 811, and a return to the previous system enabling the practice of submarine patents, also threatens the biotechnology industry which is thriving in the State of Washington. Patents are critical to the research of the biotechnology industry into cures and therapies for deadly and costly diseases like cancer, AIDS, Alzheimer's, cystic fibrosis, multiple selerosis, heart disease, and 5,000 genetic diseases. Any law which undermines the ability of biotechnology companies to secure patents with a full term undermines funding for research on deadly, disabling and costly diseases. Capital will not be invested in biotechnology companies if they are not able to secure intellectual property protection ensuring that they have a full term for a patent in which to recoup the substantial investments they must make in developing a product for market. Today, the United States remains preeminent in the field of biotechnology but has become a target of other country's industrial policies. Only by maintaining strong intellectual property protection, and preventing the gaming of the patent systems by foreign companies can the U.S. biotech industry continue to remain dominant.

I am convinced Mr. Chairman, that intellectual property is rapidly becoming the critical national resource of the next century's world economies, and I urge my colleagues to move forward with the improvements to our current patent system contained in the H.R. 400, which I have cosponsored, not backward with the substitute offered by Mr. ROHRABACHER. An efficient and predictable patent system encourages both job creation and the research and development activities that have made the United States the global leader in many high-technology sectors. This is precisely what H.R. 400 seeks to do.

Mr. HUNTER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I want to reiterate what I said at the start of this good, robust debate, and that is that I have great respect for the gentleman from Illinois [Mr. HYDE], the chairman of the full committee and my great friend, and the gentleman from North Carolina [Mr. COBLE], the chairman of the subcommittee, my other great friend. I want to thank both of them for all of the great work that they have done.

I think one thing that we have proved to the world over the last several hours is that this is a fairly complex subject. I think that the area that the gentlewoman from California [Ms. LOFGREN] just spoke to is a huge area. It is an area of great importance, because we keep getting up on our side and saying that there is publication after 18 months, that all of these inventors have their secrecy ripped away from them, and then people can come in and unscrupulously flood around them with patents, which the practice of flooding is used in Europe and Japan where that 18-month publication system exists, and then the other side gets up and says, no, we have fixed that, there is an exception for small inventors. They do not have to publish.

Let us walk through that. Right now you do not have to publish until some 20 years after you have applied for your patent, and that gives you a long time, especially if you have a very complex piece of technology, to go out and get the money, get the running room that these Nobel laureates who support the Rohrabacher bill apparently want to keep. They do not like the new bill. But under the new bill, you jerk that veil of privacy away from them after 18 months.

Now, they do have a choice under the committee bill, but the choice for small businesses is not to be published. They do not have that choice. They either have to publish after 18 months or get out. They have to get out of the patent system and give up their attempt to get a patent and give up forever the chance to get that very important protection.

Now, it is true, and I want to hold up this list of people, very bright people who do not want this protection that the committee wants to give them. The gentleman, Nobel laureate, Franco Modigliani who developed management systems; Kary Mullis, Nobel laureate, polymerase chain reactor; Gertrude Elion, Nobel laureate, transplant anti-rejection drugs; the guy who invented the neonatal respirator; the guy who invented the MRI machine. Lots of these very bright people do not want to be published early under the system that exists in Japan.

Now, this chart tells you maybe why they do not want to be published. Why are there so few Nobel laureates in the sciences in Japan? Only five. There are 175 in the United States. The reason is very clear. These people get their privacy ripped away after 18 months. That means they do not have the running room to go out and get capital, to get a start-up company, to go out and line up the support that it takes to get a technology into production.

In the United States we have a ton of Nobel laureates because we give them protection, we give them some running room. So let us get this straight once and for all. The committee bill says that after you have had two office actions in the Patent Office, that at least a third of the patents go way beyond two office actions, but after you have two office actions, you have 3 months to decide whether to publish to the world or get out of the patent system.

Now, let us go to submarine patents for just 1 minute. Submarine patents have been the subject of almost three-quarters of the argument time spent by the proponents of this bill. I am told by the testimony that I read, or the summary of the testimony, by the Patent Commissioner was that over the last 20 years of 2.3 million patents issued, 370 of those patents were submarine patents. That is less than one-tenth of 1 percent.

So a lot of these Nobel laureates would probably say, you know what we would go along with? We are not a bunch of phoney submariners, we have good stuff, we just want to protect it. What we would go along with is a provision from the bill that would say, if you do not use due diligence, then the Patent Office should publish you.

That will take care of that problem. That takes care of those 370 submariners. That is in the Rohrabacher bill. If you do not use due diligence, you get published. So the guy that hides for years and years and years gets brought out into the open and published.

I think one reason these Nobel laureates do not like this is they are saying why do you expose 2.3 million patent holders early, early in the game and let people take advantage of them because of what 370 guys did? It does not make sense.

So once again, I want to thank the chairman of the subcommittee, the gentleman from North Carolina [Mr. COBLE], and the full committee chairman, the gentleman from Illinois [Mr. HYDE], for bringing this very important bill forward, but I go back to the beginning of the debate when the gentleman from Florida [Mr. GOSS] said first do no harm. Folks, we are doing harm with this bill.

Mr. KENNEDY of Massachusetts. Mr. Chairman, I move to strike the requisite number of words.

First of all, I want to acknowledge the leadership that my good friend from California, [Mr. ROHRABACHER], has shown on this issue, and I think that the gentleman has taken up the interests of how we are going to be able to compete in the high-technology environment and in a global economy in a way that I was very supportive of in the last Congress. I commend the gentleman from California [Mr. ROHRABACHER] for the initiative that he has shown on this issue.

My feeling, after having listened to this debate and recognizing that I come from a district that represents universities such as Massachusetts Institute of Technology and Harvard University, I have more universities than any other Member of Congress, over 48 different universities come from the eighth district of Massachusetts. There is more research and development money spent in my congressional district than any other congressional district in the United States of America. I should not tell my colleagues all this because they will cut it all.

So anyway, I have to skip that part of the speech and get into the fact that what we have is an enormous concern over patent law and patent law deficiencies that have occurred during the course of the last few years. We have seen this most particularly with regard to the last few years in direct result of some of the GATT agreement that ended up as a result of a long negotiation providing protections for some of

our inventors and some of our patent applicants here in the United States, but only after a very difficult set of negotiations. As a result of my involvement in that issue, I was happy to support the efforts of the gentleman from California [Mr. ROHRABACHER] in the last Congress.

My understanding, and I would be open to hearing from the gentleman from California [Mr. ROHRABACHER], is that the gentleman from North Carolina [Mr. COBLE] has, in fact, tried to take up some of the concerns.

We just heard the gentleman from California [Mr. HUNTER] talk about the fact that there is an issue pertaining to the small businessman or the small inventor that comes up with a particular idea and the fact that, as I understand it, in the legislation of the gentleman from North Carolina [Mr. COBLE], there would be, in fact, an 18-month protection, that there would be an opt-in for a total trade secret protection.

Now, that might not be fully protective of all of the interests of the small inventor, because at some point someone might go around him and try to steal the patent and then he is into a big lawsuit with a larger company. But it does seem to me that the gentleman from North Carolina [Mr. COBLE] has tried to come up with a reasonable compromise for us to be able to support.

So I would like to entertain just a discussion with the gentleman from California [Mr. ROHRABACHER], who, as I say, I did support in the last Congress. My inclination was to support the gentleman from North Carolina [Mr. COBLE] today. So I would like to hear what the gentleman's concern is.

Mr. ROHRABACHER. Mr. Chairman, will the gentleman yield?

Mr. KENNEDY of Massachusetts. I yield to the gentleman from California.

Mr. ROHRABACHER. Mr. Chairman, no. I would say the efforts of the gentleman from North Carolina [Mr. COBLE] have not in any way met my concerns and, in fact, have raised more concerns the more I look into the legislation.

In fact, if the gentleman will notice from the universities that are in his district, none of them, none of them support H.R. 400. Had the gentleman from North Carolina [Mr. COBLE] actually gone and moved forward, trying to take those concerns that we all had last year into consideration, they would be here. Instead, the central issue, and the central issue which remains, as everyone can see, is whether or not our information that we have developed during a research and development process, so important to our colleges and universities, whether or not that information is going to be forcibly published so that everyone else in the world will be able to steal it.

Mr. KENNEDY of Massachusetts. Mr. Chairman, reclaiming my time briefly, I have been in touch with the universities of my district. While they are not perhaps as actively supportive as the gentleman from North Carolina [Mr. COBLE] would like, they do not oppose this amendment.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. KENNEDY of Massachusetts. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I would think we could state this very clearly. No, the universities are not supporting the committee bill, they are not supporting the bill of the gentleman from California. He is being unusually reticent. My friend from California is being unusually reticent in leaving his own bill out of this conversation. He is not ordinarily so modest about it.

I have worked with the universities, with Harvard, and MIT and some others. My understanding of their position is that while they were originally opposed to H.R. 400, the changes we have made have brought them to a position of neutrality as between the two bills. I do believe they want to see a bill passed, but the fact is it seems rather odd for the proponents of one bill to be citing the universities' neutrality when the universities are neutral as between the two bills.

Mr. CAMPBELL. Mr. Chairman, will the gentleman yield?

Mr. KENNEDY of Massachusetts. I yield to the gentleman from California.

Mr. CAMPBELL. Mr. Chairman, I think the correct point is that the universities have chosen to stay on the sidelines, and my colleague from Massachusetts, and I have both been in contact with them.

I believe this is very significant, because if one asks them, and this is my guess, I am not saying anyone told me precisely, though one actually did, they would prefer neither. They would prefer we do not mess with the system.

So the burden of proof should be on somebody who is proposing a major change in the patent bill. Research universities prefer no change, and that is what I think we should do.

The CHAIRMAN. The time of the gentleman from Massachusetts [Mr. KENNEDY] has expired.

(By unanimous consent, Mr. KENNEDY of Massachusetts was allowed to proceed for 2 additional minutes.)

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. KENNEDY of Massachusetts. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, that is the oddest invocation of the burden of proof I have heard. The burden of proof is somehow on those who would support one bill, but not on those who would support one equally important.

The gentleman said the burden of proof is on one. As a matter of fact, what is clear to me from working with the universities is this: They had some objections. We have improved the bill from their standpoint to the point where they do not now object to it. They are not choosing between the two bills. But I would differ. At least with the universities I have talked to, there are elements in this bill, including, for instance, blocking the diversion of patent fees from the Patent Office, which makes them want some bill, and there are others who believe that some action in light of what is going on internationally is important.

The key point is this: People who are the proponents of one position versus another should not come in and simply say, oh, the universities do not like your position, when they have a neutral position. I think some Members got the impression that they have taken sides.

Mr. KENNEDY of Massachusetts. Mr. Chairman, reclaiming my time, let me yield to the gentleman from California. If the Chairman would just let me know when I have about 30 seconds left so I might close.

Mr. CAMPBELL. Mr. Chairman, there were things in the bill, however, that the universities do not like, like the reexamination procedure. They think they have a patent and then suddenly under this bill it can be opened up for reexamination in ways and in processes not under existing law.

I agree with my colleague, the gentleman from Massachusetts [Mr. FRANK]. The burden of proof is on anyone who wants to change the status quo, and that is true of the gentleman from California [Mr. ROHRABACHER] and it is true of the gentleman from North Carolina [Mr. COBLE]. But if you ask the universities, their bottom line is leave it alone, and that is what we should do today.

Mr. KENNEDY of Massachusetts. Mr. Chairman, I would just like to close.

I have come into this debate with an open mind. My sense is that there has been, in fact, significant advancements made on where the Moorhead bill was 2 years ago to where the Coble bill is today.

My inclination, after having talked with the various universities and a lot of the small businesses, as well as other companies within my own district, that I think the gentleman from North Carolina [Mr. COBLE] is making a significant effort forward, and I look forward to supporting his bill.

□ 1545

Mr. PEASE. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, I just wish to follow up the comments of my colleague, the gentleman from Massachusetts [Mr. FRANK], who has been in personal conversation with a number of the universities in the Northeast. Our staff, at the request of the chairman, the gentleman from North Carolina [Mr. COBLE], together with his staff have spent a lot of time in conversation with associations which represent universities of all sizes, both public and private, across the country.

My assessment of those conversations is that the representation of the

gentleman from Massachusetts [Mr. FRANK] is in fact accurate; that while there were concerns about some portions of the initial legislation, those concerns have been addressed, and while no piece of legislation may be perfect, that what we have before us with the manager's amendment does meet the great majority of those concerns from what is a very diverse audience that includes public and private schools, small and large schools, individual professors working alone, and professors working together and in cooperation with major corporations.

I think it would be as difficult to get consensus in higher education on this subject as it would be in this body to get consensus. But my assessment of the view of the associations with which we have worked is that the bill that we will have before us, after the manager's amendment, does address their major concerns.

Mr. CAMPBELL. Mr. Chairman, will the gentleman yield?

Mr. PEASE. I yield to the gentleman from California.

Mr. CAMPBELL. I am grateful for the gentleman's yielding.

Mr. Chairman, it is my understanding that there are four universities who have expressed an opinion, and if this is wrong I am asking the gentleman to correct it.

It is my understanding that the State University of New York at Stony Brook supports Rohrabacher; that Louisiana State University supports Rohrabacher; that the University of Delaware supports Coble; that Rice University supports Coble; and that every other university has chosen not to take sides in this debate.

If that is incorrect, I would most welcome the correction. But if it is correct, I would suggest that the burden of my remarks that I made, that the universities would really prefer that we not mess with this system, is more accurate.

Mr. PEASE. Mr. Chairman, I cannot speak for the four universities individually to which the gentleman has made reference because we spoke only with associations, those who represent groups of universities, and not with individual universities. We did have conversations with individual universities, a number of them in the Midwest. In each case they referred us to the associations of which they were members.

Mr. CAMPBELL. If the gentleman will continue to yield, Mr. Chairman, does the gentleman know, since he has been in touch with the university associations, does any association of universities support either of these two bills, to the gentleman's knowledge?

Mr. PEASE. To my knowledge, none of the major associations has taken a position on either bill.

Mr. FRANK of Massachusetts. Mr. Chairman, will the gentleman yield?

Mr. PEASE. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Chairman, I think we may be back in the Subcommittee on the Constitution of the Committee on the Judiciary, apparently. It sounds like some of my friends are about to create a third house of Congress, which is the universities, and only if they vote positively can we pass a bill.

Mr. Chairman, I differ with the implicit imputation of great inarticulateness to the university sector. The gentleman from California says it is true they have said they do not support or oppose either bill. They do not oppose it. But the gentleman says that he infers from the fact that they do not support or oppose either bill the fact that they oppose any bill at all.

In my experience, universities are not reticent. When universities have positions, they tell us. The fact that the universities have not said they were opposed to this would lead me to the conclusion, perhaps it is going out on a limb, but when the universities tell me they are not opposed to a bill, I infer they are not opposed to a bill. Perhaps there are subtleties unbeknownst to me.

I worked with universities when they were opposed, and when they were they have said so. So we have made some changes, and they are not now opposed to this, they are neutral. It does not seem to me we have to absolutely do whatever they say, anyway. But neutrality is not opposition.

Mr. CAMPBELL. Mr. Chairman, if the gentleman will yield further, I believe that the gentleman from Massachusetts and I agree that there is a burden of proof in debate, there is a burden of proof in those who would change the status quo, and the university community is not a third house of Congress, nor have I set it up to be so.

But they are important. And they are not reticent in letting us know things they want, like major assistance with research, particularly in the times of a shrinking budget. That they have not done so is to me a very important point. That they have chosen to be silent regarding this bill is to me quite significant, if we start from the premise that there is a burden of proof on anyone who wants to change the status quo.

What we are left with, and I appreciate the gentleman's yielding, is that there are those who commercialize, like the Coble bill, those who invent, like the Rohrabacher bill, and universities have one foot in each camp, they both commercialize and invent, and it seems to me for that reason they are staying out.

Ms. KAPTUR. Mr. Chairman, I move to strike the requisite number of words.

(Ms. KAPTUR asked and was given permission to revise and extend her remarks.)

Ms. KAPTUR. Mr. Chairman, I rise in support of the Rohrabacher substitute and against H.R. 400. Mr. Chairman, I wanted to read into the RECORD some of the organizations that are opposing H.R. 400 and supporting the Rohrabacher substitute, organizations like the Alliance for American Innovation, the American College of Physician Inventors, the American Small Business Association, the National Association for the Self-employed, the National Association of Women Business Owners, the National Congress of Inventor Organizations, the National Patent Association, the National Small Business United. These are not insignificant organizations.

The Patent Office Professional Association, the Ohio State Bar Association, from my home State. This is a very small, partial list. The Small Business Legislative Council, the Small Business Technology Coalition, the Small Entity Patent Owners Association, United Inventors of America. One of the great scholars of our time, Franklin Modigliani at MIT, a Nobel laureate.

These are not insignificant organizations, nor individuals; inventors like Dr. Paul Burstein, the inventor of rocket motor inspection systems, or Gertrude Elion, the inventor of leukemia-fighting and transplant rejection drugs.

There are people here who recognize what is being proposed in the base bill is in fact a significant departure from current practice. They are not satisfied with the so-called changes that are being made actually every moment, from what I can tell from this position here, in order to accommodate the flaws that exist in the base bill.

So I would say to the Members, Mr. Chairman, that it is very important to recognize that we not tamper with a system that is working, that has worked for centuries, and certainly for the last several decades as the United States in this century became the preeminent industrial and agricultural leader of the world.

H.R. 400, in contrast to the substitute, is actually taking us back, not forward. Why we would want to subject our inventors to divulge the contents of their patent application before it is granted is beyond me. I do not know why we want to take that secret protection away and involve them in litigation. Why would we want to do that? Why would we want to do that domestically, and certainly why would we want to subject them to cases internationally, which are so expensive that most of the smaller inventors cannot even afford to defend their interests?

The average American knows it is hard for them to go to court and pay the court costs in this country. Can Members imagine what it is going to be like to deal with international infringements on their patent applications if they have to function under this proposed base bill?

Mr. ROHRABACHER. Mr. Chairman, will the gentlewoman yield?

Ms. KAPTUR. I yield to the gentleman from California.

Mr. ROHRABACHER. Mr. Chairman, this is, after all, the ultimate bipartisan issue that we have been discussing

today, and who supports the little guy. That is what we are trying to do with the Rohrabacher substitute.

Most people know there are a lot of conservative Republicans who have spoken today, and the gentlewoman has been here as well. Are there not many people on the gentlewoman's side of the aisle who are very concerned about this? Perhaps the gentlewoman would like to talk about some of the others who are supporting the Rohrabacher substitute, because I am proud to have many, many, liberal Democrats on our side protecting the little guy.

Ms. KAPTUR. Mr. Chairman, that is right. Actually, the gentlewoman from California, Ms. MAXINE WATERS, WAS DOWN HERE EARLIER AND HAD TO GO BACK TO A MARKUP. SHE IS SUPPORTING THIS LEGISLATION.

The gentleman from Missouri, Mr. DICK GEPHARDT, our minority leader, will be supporting the Rohrabacher substitute.

The gentleman from Michigan, Mr. DAVID BONIOR, on our side of the aisle will be supporting the substitute. So frankly, I think this issue goes down to the point of who has actually read the legislation and who has not, and most Members do not serve on the Subcommittee on Courts and Intellectual Property of the Committee on the Judiciary. Therefore, they have not had an opportunity to follow some of the machinations.

I respect the gentlewoman's work on this measure. I know how hard she has worked on it, I know she has been accommodating to many of the changes we have been trying to make.

Mr. Chairman, the bill is not where we would like it to be yet, and therefore I remain supporting the Rohrabacher substitute, but we have broad bipartisan support on our side of the issue, and I look forward to the vote.

Ms. LOFGREN. Mr. Chairman, will the gentlewoman yield?

Ms. KAPTUR. I yield to the gentlewoman from California.

Ms. LOFGREN. Mr. Chairman, I just wanted to point out that that leaves only right-wing Democrats such as the gentleman from Massachusetts [Mr. FRANK] and myself in support of the manager's amendment.

Mr. ROHRABACHER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, it seems that the debate on submarine patenting has calmed down a bit, seeing the fact that we have stated over and over and over again, and used the Congressional Research Service finding, to prove beyond anyone's reasonable doubt that we have taken care of any potential submarine patenting problem.

I have with me the Congressional Research Service report that says that our alternative, basically the Rohrabacher substitute, will end the practice of submarine patenting. So that is the only substantial argument that the other side has to say that we should fundamentally change our patent system. They are proposing, in the name of stopping submarine patenting, because it is the only way to stop it is to change the fundamental law that has protected American technology for 225 years.

No, I have an alternative. The alternative was found by an independent reading by the Congressional Research Service to end submarine patenting. So what do we have? We have a proposal here to gut fundamental protections for American inventors, giving our technology away in order to end the submarine patenting problem, which we say we found another way to solve.

No, we do not have to cut our leg off in order to cure a hangnail or an infected toe. We do not have to destroy all freedom of speech because someone wants to publish Hustler magazine. In this particular case, people are moving forward to change the fundamentals, the fundamentals in our system that have served our country well, that have made us the leader in technology and ensured our people the highest standard of living, ensured our country the security we have because we have had the technological edge.

We have had the technological edge because the fundamentals have been right. This bill would change those fundamentals. One fundamental is a guaranteed patent term of 17 years. Their bill would go along with the elimination of that which took place 3 years ago when someone, in an underhanded maneuver, snuck that change into the GATT implementation legislation, although it was not required by GATT; the most underhanded move that I have seen since I have been here in Congress. Our bill would restore that guaranteed 17-year patent term that has served America well for 225 years.

The second element that my substitute restores and guarantees, the confidentiality; the right of our citizens, that when they apply for a patent, that until that patent is issued it is going to be secret. We are not going to give away all the secrets to foreign multinational corporations to steal until the patent is issued.

What do we hear here? We have effectively exempted small business. We can put that argument to rest, too. What does ''effectively'' mean? We know what that means. That is a weasel word. The public knows what it means, too. It means that someone is trying to project that a change has happened and the change has not happened. That is what effectively means.

No, small business has not been exempt, individuals have not been exempt. As the gentleman from California, Mr. TOM CAMPBELL, brought out with his colloquy, no; they are not. They are still going to be published. The whole world will see every one of our secrets.

Please do not tell us that the Chinese Liberation Army is going to be deterred from using our secrets, going into manufacturing, making profit from those secrets, using those secrets in their technology against us, and then 5 years later or 10 years later, when the inventor is finally issued the patent, he gets to sue the Peoples Liberation Army?

They have taken care of the problem? That is a joke, and it is a sick joke that opens up all of our people to the worst kind of theft. Yes, the Chinese Army, I can hear them now, or Mitsubishi Corp: ''I am using your technology? So, sue me.'' Yes, great. That is going to really protect our people and protect our country. This is an escalator down for our leadership in American technology.

By the way, something else I have heard today, yes, we have heard today that they have taken the provision out that permits this new corporatized Patent Office, where the Patent Office is part of the Government, making it a corporate entity; but they did manage to take out that part that says this corporate organization can accept gifts.

Why? Because the gentleman from North Carolina [Mr. COBLE] has explained, because they were permitted to accept gifts anyway. But what was not explained was that yes, they are able to accept gifts like anybody else, but this bill waives restrictions, because now it is a corporate entity, and they will not have the same restrictions that other Government agencies have when they accept gifts.

□ 1600

The GSA, the Commerce Department are no longer going to be in control of how those gifts are used. So what we have got is a Patent Office that can accept foreign gifts, and the controls over how those gifts are used are being taken away.

The CHAIRMAN. The time of the gentleman from California [Mr. ROHRABACHER] has expired.

(By unanimous consent, Mr. ROHRABACHER was allowed to proceed for 2 additional minutes.)

Mr. ROHRABACHER. Mr. Chairman, the patent examiners who work so hard in this country, these are people who make decisions that are worth billions and billions of dollars and whether our country will enjoy them, who will benefit from them, these patent examiners work hard and they have been totally insulated from outside influences because they have been part of the U.S. Government. They are opposed to H.R. 400. They are pleading with us, do not do this to us, because they have no idea what outside influences will come to play. No one knows.

We change something so fundamentally as making it a corporate structure rather than part of our Government, who knows what pressures will be put on these stalwart Government employees who are trying to do their job.

Finally let me say, my substitute has taken everything that has been done

that is of benefit, that is a good thing for America out of the work of the gentleman from North Carolina [Mr. COBLE] and out of H.R. 400, and we have incorporated it into the substitute.

What we do not have is the publication that will make available to everyone to steal our technology after 18 months. We do not have the corporatization that will open up our patent examiners to outside influences, and what we do is we protect the fundamental system of American patent law that has made America the greatest country in the world. That is why we have so many Nobel laureates and all the Nobel laureates are on our side.

Do not be fooled with the idea that you to have cut your leg off to cure the hangnail of submarine patenting. We need to protect this American system that has done so much wonder for our people and created such a wondrous land. Those people in the small businesses, those Nobel laureates, those inventors, they are on our side. The big corporations are on the other side, and they put a lot of pressure on the universities and a lot of pressure on other people.

But we still have a democracy. The people still rule here. This bill protects the fundamental rights of Americans. That is why we do not want to harmonize with Japan. We do not want to harmonize with Europe. We want to have a better system where the individual rights of our citizens are protected.

The CHAIRMAN. The question is on the amendment offered by the gentleman from North Carolina [Mr. COBLE].

The amendment was agreed to.

AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MR. ROHRABACHER

Mr. ROHRABACHER. Mr. Speaker, I offer an amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. ROHRABACHER:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Patent Rights and Sovereignty Act of 1997''.

SEC. 2. FINDINGS.

The Congress finds that—

(1) the right of an inventor to secure a patent is assured through the authorization powers of the Congress contained in Article I, section 8 of the Constitution, has been consistently upheld by the Congress, and has been the stimulus to the unique technological innovativeness of the United States;

(2) the right must be assured for a guaranteed length of time in the term of the issued patent and be further secured by maintaining absolute confidentiality of all patent application data until the patent is granted if the applicant is timely prosecuting the patent;

(3) the quality of United States patents is also an essential stimulus for preserving the technological lead and economic well-being of the United States in the next century;

(4) the process of examining and issuing patents is an inherently governmental function that must be performed by Federal employees acting in their quasi-judicial roles under regular executive and legislative oversight; and

(5) the quality of United States patents is inextricably linked to the professionalism of patent examiners and the quality of the training of patent examiners as well as to the resources supplied to the Patent and Trademark Office in the way of adequate manpower, appropriately maintained search files, and other needed professional tools.

SEC. 3. SECURE PATENT EXAMINATION.

Section 3 of title 35, United States Code, is amended by adding at the end thereof the following:

''(f) All examination and search duties for the grant of United States patents are sovereign functions which shall be performed within the United States by United States citizens who are employees of the United States Government.''.

SEC. 4. MAINTENANCE OF EXAMINERS' SEARCH FILES.

Section 9 of title 35, United States Code, is amended—

(1) by striking ''may revise and maintain'' and inserting ''shall maintain and revise''; and

(2) by adding at the end thereof the following: ''United States patents, and all such other patents and printed publications shall be maintained in the examiners' search files under the United States Patent Classification System.''.

SEC. 5. PATENT EXAMINER TRAINING.

(a) IN GENERAL.—Chapter 1 of title 35, United States Code, is amended by adding at the end the following new section:

''§ 15. Patent examiner training

''(a) IN GENERAL.—All patent examiners shall spend at least 5 percent of their duty time per annum in training to maintain and develop the legal and technological skills useful for patent examination.

''(b) TRAINERS OF EXAMINERS.—The Patent and Trademark Office shall develop an incentive program to retain as employees patent examiners of the primary examiner grade or higher who are eligible for retirement, for the sole purpose of training patent examiners who have not achieved the grade of primary examiner.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 1 is amended by adding at the end the following:

''15. Patent examiner training.''

SEC. 6. ADMINISTRATIVE MATTERS.

(a) LIMITATIONS ON PERSONNEL.—Section 3(a) of title 35, United States Code, is amended by adding at the end thereof the following: ''The Office shall not be subject to any administratively or statutorily imposed limitation on positions or personnel, and no positions or personnel of the Office shall be taken into account for purposes of applying any such limitation.''.

(b) RETENTION OF FEES.—(1) Section 255(g)(1)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended by inserting after the item relating to the National Credit Union Administration, credit union share insurance fund, the following new item:

''Patent and Trademark Office''.

(2) Section 10101(b)(2)(B) of the Omnibus Budget Reconciliation Act of 1990 (35 U.S.C. 41 note) is amended by striking '', to the extent provided in appropriation Acts,'' and inserting ''without appropriation''.

(3) Section 42(c) of title 35, United States Code, is amended by striking the first sentence and inserting the following: ''Revenues from fees shall be available to the Commissioner to carry out the activities of the Patent and Trademark Office, in such allocations as are approved by Act of Congress. Such revenues shall not be made available for any purpose other than that authorized for the Patent and Trademark Office.''.

(c) USE OF FEES.—Section 42(c) of title 35, United States Code, is amended by adding at the end thereof the following: ''All patent application fees collected under paragraphs (1), (3)(A), (3)(B), and (4) through (8) of section 41(a), and all other fees collected under section 41 for services or the extension of services to be provided by patent examiners shall be used only for the pay and training of patent examiners.''.

(d) PUBLICATIONS.—Section 11 of title 35, United States Code, is amended by adding at the end thereof the following:

''(c) The Patent and Trademark Office shall make available for public inspection during regular business hours all solicitations issued by the Office for contracts for goods or services and all contracts for goods or services entered into by the Office.

''(d) Notice of a proposal to change United States patent law that will be made on behalf of the United States to a foreign country or international body shall be published in the Federal Register before, or at the same time as, the proposal is transmitted.''.

SEC. 7. GAO STUDY AND REPORT.

(a) IN GENERAL.—The Comptroller General shall conduct a study of—

(1) the total number of patents applied for, issued, abandoned, and pending in the period of the study;

(2) the classification of the applicants for patents in terms of the country they are a citizen of and whether they are an individual inventor, small entity, or other:

(3) the pendency time for applications for patents and such other time and tracking data as may indicate the effectiveness of the amendments made by this Act;

(4) the number of applicants for patents who also file for a patent in a foreign country, the number of foreign countries in which such filings occur and which publish data from patent applications in English and make it available to citizens of the United States through governmental or commercial sources;

(5) a summary of the fees collected by the Patent and Trademark Office for services related to patents and a comparison of such fees with the fully allocated costs of providing such services; and

(6) recommendations regarding—

(A) a revision of the organization of the Patent and Trademark Office with respect to its patent functions, and

(B) improved operating procedures in carrying out such functions,

and a cost analysis of the fees for such procedures and the impact of the fees.

(b) ADDITIONAL STUDY MATTER.—The Committees on Appropriations, Judiciary, and Small Business of the House of Representatives and the Senate may, no later than 12 months after the beginning of the study under subsection (a), direct the Comptroller General to include other matters relating to patents and the Patent and Trademark Office in the study conducted under subsection (a).

(c) REPORT.—Upon the expiration of 36 months after the beginning of the study under subsection (a), the Comptroller General shall report the results of the study to the Congress.

SEC. 8. PATENT TERMS.

(a) AMENDMENT OF TITLE.—Effective on the date of the enactment of this Act, section 154 of title 35, United States Code, as amended by the Uruguay Round Agreements Act, is amended—

(1) in paragraph (2) of subsection (a), by striking ''and ending'' and all that follows in that paragraph and inserting ''and ending—

''(A) 17 years from the date of the grant of the patent, or

''(B) 20 years from the date on which the application for the patent was filed in the United States, except that if the application contains a specific reference to an earlier filed application or applications under section 120, 121, or 365(c) of this title, 20 years from the date on which the earliest such patent application was filed,

whichever is later.''.

(2) in subsection (c)(1), by striking ''shall be the greater of the 20-year term as provided in subsection (a), or 17 years from grant'' and inserting ''shall be the term provided in subsection (a)''.

(b) TECHNICAL AMENDMENT.—Section 534(b) of the Uruguay Round Agreements Act is amended by striking paragraph (3).

SEC. 9. DEFINITION OF SPECIAL CIRCUMSTANCES TO PROTECT THE CONFIDENTIALITY STATUS OF APPLICATIONS.

Section 122 of title 35, United States Code, is amended by striking ''as may be determined by the Commissioner'' and inserting ''as in any of the following:

''(1) In the case of an application under section 111(a) for a patent for an invention for which the applicant intends to file or has filed an application for a patent in a foreign country, the Commissioner may publish, at the discretion of the Commissioner and by means determined suitable for the purpose, no more than that data from such application under section 111(a) which will be made or has been made public in such foreign country. Such a publication shall be made only after the date of the publication in such foreign country and shall be made only if the data is not available, or cannot be made readily available, in the English language through commercial services.

''(2)(A) If the Commissioner determines that a patent application which is filed after the date of the enactment of this paragraph—

''(i) has been pending more than 5 years from the effective filing date of the application,

''(ii) has not been previously published by the Patent and Trademark Office,

''(iii) is not under any appellate review by the Board of Patent Appeals and Interferences,

''(iv) is not under interference proceedings in accordance with section 135(a),

''(v) is not under any secrecy order pursuant to section 181,

''(vi) is not being diligently pursued by the applicant in accordance with this title, and

''(vii) is not in abandonment,

the Commissioner shall notify the applicant of such determination.

''(B) An applicant which received notice of a determination described in subparagraph (A) may, within 30 days of receiving such notice, petition the Commissioner to review the determination to verify that subclauses (i) through (vii) are all applicable to the applicant's application. If the applicant makes such a petition, the Commissioner shall not publish the applicant's application before the Commissioner's review of the petition is completed. If the applicant does not submit a petition, the Commissioner may publish the applicant's application no earlier than 90 days after giving such a notice.

''(3) If after the date of the enactment of this paragraph a continuing application has been filed more than 6 months after the date of the initial filing of an application, the Commissioner shall notify the applicant under such application. The Commissioner shall establish a procedure for an applicant which receives such a notice to demonstrate that the purpose of the continuing application was for reasons other than to achieve a delay in the time of publication of the application. If the Commissioner agrees with such a demonstration by the applicant, the Commissioner shall not publish the applicant's application. If the Commissioner does not agree with such a demonstration by the applicant or if the applicant does not make an attempt at such a demonstration within a reasonable period of time as determined by the Commissioner, the Commissioner shall publish the applicant's application.

The Commissioner shall ensure that publications under paragraph (1), (2), or (3) will not result in third-party pre-issuance oppositions which will delay or interfere with the issuance of the patents whose applications' data will be published.''.

SEC. 10. INVENTION DEVELOPMENT SERVICES.

(a) INVENTION DEVELOPMENT SERVICES.—Part I of title 35, United States Code, is amended by adding after chapter 4 the following new chapter:

''CHAPTER 5—INVENTION DEVELOPMENT SERVICES

''Sec.
''51. Definitions.
''52. Contracting requirements.
''53. Standard provisions for cover notice.
''54. Reports to customer required.
''55. Mandatory contract terms.
''56. Remedies.
''57. Records of complaints.
''58. Fraudulent representation by an invention developer.
''59. Rule of construction.

''§ 51. Definitions

''For purposes of this chapter—

''(1) the term 'contract for invention development services' means a contract by which an invention developer undertakes invention development services for a customer;

''(2) the term 'customer' means any person, firm, partnership, corporation, or other entity who is solicited by, seeks the services of, or enters into a contract with an invention promoter for invention promotion services;

''(3) the term 'invention promoter' means any person, firm, partnership, corporation, or other entity who offers to perform or performs for, or on behalf of, a customer any act described under paragraph (4), but does not include—

''(A) any department or agency of the Federal Government or of a State or local government;

''(B) any nonprofit, charitable, scientific, or educational organization, qualified under applicable State law or described under section 170(b)(1)(A) of the Internal Revenue Code of 1986; or

''(C) any person duly registered with, and in good standing before, the United States Patent and Trademark Office acting within the scope of that person's registration to practice before the Patent and Trademark Office; and

''(4) the term 'invention development services' means, with respect to an invention by a customer, any act involved in—

''(A) evaluating the invention to determine its protectability as some form of intellectual property, other than evaluation by a person licensed by a State to practice law who is acting solely within the scope of that person's professional license;

''(B) evaluating the invention to determine its commercial potential by any person for purposes other than providing venture capital; or

''(C) marketing, brokering, licensing, selling, or promoting the invention or a product or service in which the invention is incorporated or used, except that the display only of an invention at a trade show or exhibit shall not be considered to be invention development services.

''§ 52. Contracting requirements

''(a) IN GENERAL.—(1) Every contract for invention development services shall be in writing and shall be subject to the provisions of this chapter. A copy of the signed written contract shall be given to the customer at the time the customer enters into the contract.

''(2) If a contract is entered into for the benefit of a third party, such party shall be considered a customer for purposes of this chapter.

''(b) REQUIREMENTS OF INVENTION DEVELOPER.—The invention developer shall—

''(1) state in a written document, at the time a customer enters into a contract for invention development services, whether the usual business practice of the invention developer is to—

''(A) seek more than 1 contract in connection with an invention; or

''(B) seek to perform services in connection with an invention in 1 or more phases, with the performance of each phase covered in 1 or more subsequent contracts; and

''(2) supply to the customer a copy of the written document together with a written summary of the usual business practices of the invention developer, including—

''(A) the usual business terms of contracts; and

''(B) the approximate amount of the usual fees or other consideration that may be required from the customer for each of the services provided by the developer.

''(c) RIGHT OF CUSTOMER TO CANCEL CONTRACT.—(1) Notwithstanding any contractual provision to the contrary, a customer shall have the right to terminate a contract for invention development services by sending a written letter to the invention developer stating the customer's intent to cancel the contract. The letter of termination must be deposited with the United States Postal Service on or before 5 business days after the date upon which the customer or the invention developer executes the contract, whichever is later.

''(2) Delivery of a promissory note, check, bill of exchange, or negotiable instrument of any kind to the invention developer or to a third party for the benefit of the invention developer, without regard to the date or dates appearing in such instrument, shall be deemed payment received by the invention developer on the date received for purposes of this section.

''§ 53. Standard provisions for cover notice

''(a) CONTENTS.—Every contract for invention development services shall have a conspicuous and legible cover sheet attached with the following notice imprinted in boldface type of not less than 12-point size:

'''YOU HAVE THE RIGHT TO TERMINATE THIS CONTRACT. TO TERMINATE THIS CONTRACT, YOU MUST SEND A WRITTEN LETTER TO THE COMPANY STATING YOUR INTENT TO CANCEL THIS CONTRACT. THE LETTER OF TERMINATION MUST BE DEPOSITED WITH THE UNITED STATES POSTAL SERVICE ON OR BEFORE FIVE (5) BUSINESS DAYS AFTER THE DATE ON WHICH YOU OR THE COMPANY EXECUTE THE CONTRACT, WHICHEVER IS LATER.

'''THE TOTAL NUMBER OF INVENTIONS EVALUATED BY THE INVENTION DEVELOPER FOR COMMERCIAL POTENTIAL IN THE PAST FIVE (5) YEARS IS _____. OF THAT NUMBER, _____ RECEIVED POSITIVE EVALUATIONS AND _____ RECEIVED NEGATIVE EVALUATIONS.

"'IF YOU ASSIGN EVEN A PARTIAL INTEREST IN THE INVENTION TO THE INVENTION DEVELOPER, THE INVENTION DEVELOPER MAY HAVE THE RIGHT TO SELL OR DISPOSE OF THE INVENTION WITHOUT YOUR CONSENT AND MAY NOT HAVE TO SHARE THE PROFITS WITH YOU.

"'THE TOTAL NUMBER OF CUSTOMERS WHO HAVE CONTRACTED WITH THE INVENTION DEVELOPER IN THE PAST FIVE (5) YEARS IS _____. THE TOTAL NUMBER OF CUSTOMERS KNOWN BY THIS INVENTION DEVELOPER TO HAVE RECEIVED, BY VIRTUE OF THIS INVENTION DEVELOPER'S PERFORMANCE, AN AMOUNT OF MONEY IN EXCESS OF THE AMOUNT PAID BY THE CUSTOMER TO THIS INVENTION DEVELOPER IS _____.

"'THE OFFICERS OF THIS INVENTION DEVELOPER HAVE COLLECTIVELY OR INDIVIDUALLY BEEN AFFILIATED IN THE LAST TEN (10) YEARS WITH THE FOLLOWING INVENTION DEVELOPMENT COMPANIES: (LIST THE NAMES AND ADDRESSES OF ALL PREVIOUS INVENTION DEVELOPMENT COMPANIES WITH WHICH THE PRINCIPAL OFFICERS HAVE BEEN AFFILIATED AS OWNERS, AGENTS, OR EMPLOYEES). YOU ARE ENCOURAGED TO CHECK WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE, THE FEDERAL TRADE COMMISSION, YOUR STATE ATTORNEY GENERAL'S OFFICE, AND THE BETTER BUSINESS BUREAU FOR ANY COMPLAINTS FILED AGAINST ANY OF THESE COMPANIES.

"'YOU ARE ENCOURAGED TO CONSULT WITH AN ATTORNEY OF YOUR OWN CHOOSING BEFORE SIGNING THIS CONTRACT. BY PROCEEDING WITHOUT THE ADVICE OF AN ATTORNEY REGISTERED TO PRACTICE BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE, YOU COULD LOSE ANY RIGHTS YOU MIGHT HAVE IN YOUR IDEA OR INVENTION.'.

"(b) OTHER REQUIREMENTS FOR COVER NOTICE.—The cover notice shall contain the items required under subsection (a) and the name, primary office address, and local office address of the invention developer, and may contain no other matter.

"(c) DISCLOSURE OF CERTAIN CUSTOMERS NOT REQUIRED.—The requirement in the notice set forth in subsection (a) to include the 'TOTAL NUMBER OF CUSTOMERS WHO HAVE CONTRACTED WITH THE INVENTION DEVELOPER IN THE PAST FIVE (5) YEARS' need not include information with respect to customers who have purchased trade show services, research, advertising, or other nonmarketing services from the invention developer, nor with respect to customers who have defaulted in their payments to the invention developer.

"§ 54. Reports to customer required

"With respect to every contract for invention development services, the invention developer shall deliver to the customer at the address specified in the contract, at least once every 3 months throughout the term of the contract, a written report that identifies the contract and includes—

"(1) a full, clear, and concise description of the services performed to the date of the report and of the services yet to be performed and names of all persons who it is known will perform the services; and

"(2) the name and address of each person, firm, corporation, or other entity to whom the subject matter of the contract has been disclosed, the reason for each such disclosure, the nature of the disclosure, and complete and accurate summaries of all responses received as a result of those disclosures.

"§ 55. Mandatory contract terms

"(a) MANDATORY TERMS.—Each contract for invention development services shall include in boldface type of not less than 12-point size—

"(1) the terms and conditions of payment and contract termination rights required under section 52;

"(2) a statement that the customer may avoid entering into the contract by not making a payment to the invention developer;

"(3) a full, clear, and concise description of the specific acts or services that the invention developer undertakes to perform for the customer;

"(4) a statement as to whether the invention developer undertakes to construct, sell, or distribute one or more prototypes, models, or devices embodying the invention of the customer;

"(5) the full name and principal place of business of the invention developer and the name and principal place of business of any parent, subsidiary, agent, independent contractor, and any affiliated company or person who it is known will perform any of the services or acts that the invention developer undertakes to perform for the customer;

"(6) if any oral or written representation of estimated or projected customer earnings is given by the invention developer (or any agent, employee, officer, director, partner, or independent contractor of such invention developer), a statement of that estimation or projection and a description of the data upon which such representation is based;

"(7) the name and address of the custodian of all records and correspondence relating to the contracted for invention development services, and a statement that the invention developer is required to maintain all records and correspondence relating to performance of the invention development services for such customer for a period of not less than 2 years after expiration of the term of such contract; and

"(8) a statement setting forth a time schedule for performance of the invention development services, including an estimated date in which such performance is expected to be completed.

"(b) INVENTION DEVELOPER AS FIDUCIARY.—To the extent that the description of the specific acts or services affords discretion to the invention developer with respect to what specific acts or services shall be performed, the invention developer shall be deemed a fiduciary.

"(c) AVAILABILITY OF INFORMATION.—Records and correspondence described under subsection (a)(7) shall be made available after 7 days written notice to the customer or the representative of the customer to review and copy at a reasonable cost on the invention developer's premises during normal business hours.

"§ 56. Remedies

"(a) IN GENERAL.—

"(1) VOIDABLE CONTRACT.—Any contract for invention development services that does not comply with the applicable provisions of this chapter shall be voidable at the option of the customer.

"(2) RELIANCE ON FALSE, FRAUDULENT, OR MISLEADING INFORMATION.—Any contract for invention development services entered into in reliance upon any material false, fraudulent, or misleading information, representation, notice, or advertisement of the invention developer (or any agent, employee, officer, director, partner, or independent contractor of such invention developer) shall be voidable at the option of the customer.

"(3) WAIVER.—Any waiver by the customer of any provision of this chapter shall be deemed contrary to public policy and shall be void and unenforceable.

"(4) ACTION BY DEVELOPER.—Any contract for invention development services which provides for filing for and obtaining utility, design, or plant patent protection shall be voidable at the option of the customer unless the invention developer offers to perform or performs such act through a person duly registered to practice before, and in good standing with, the Patent and Trademark Office.

"(b) CIVIL ACTION.—

"(1) IN GENERAL.—Any customer who is injured by a violation of this chapter by an invention developer or by any material false or fraudulent statement or representation, or any omission of material fact, by an invention developer (or any agent, employee, director, officer, partner, or independent contractor of such invention developer) or by failure of an invention developer to make all the disclosures required under this chapter, may recover in a civil action against the invention developer (or the officers, directors, or partners of such invention developer) in addition to reasonable costs and attorneys' fees, the greater of—

"(A) $5,000; or

"(B) the amount of actual damages sustained by the customer.

"(2) DAMAGE INCREASE.—Notwithstanding paragraph (1), the court may increase damages to not more than 3 times the amount awarded.

"(c) REBUTTABLE PRESUMPTION OF INJURY.—For purposes of this section, substantial violation of any provision of this chapter by an invention developer or execution by the customer of a contract for invention development services in reliance on any material false or fraudulent statements or representations or omissions of material fact shall establish a rebuttable presumption of injury.

"§ 57. Records of complaints

"(a) RELEASE OF COMPLAINTS.—The Director shall make all complaints received by the United States Patent and Trademark Office involving invention developers publicly available, together with any response of the invention developers.

"(b) REQUEST FOR COMPLAINTS.—The Director may request complaints relating to invention development services from any Federal or State agency and include such complaints in the records maintained under subsection (a), together with any response of the invention developers.

"§ 58. Fraudulent representation by an invention developer

"Whoever, in providing invention development services, knowingly provides any false or misleading statement, representation, or omission of material fact to a customer or fails to make all the disclosures required under this chapter, shall be guilty of a misdemeanor and fined not more than $10,000 for each offense.

"§ 59. Rule of construction

"Except as expressly provided in this chapter, no provision of this chapter shall be construed to affect any obligation, right, or remedy provided under any other Federal or State law.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part I of title 35, United States Code, is amended by adding after the item relating to chapter 4 the following:

"5. Invention Development Services ... 51".

SEC. 11. PROVISIONAL APPLICATIONS, PLANT BREEDER'S RIGHTS, DIVISIONAL APPLICATIONS.

(a) ABANDONMENT.—Section 111(b)(5) of title 35, United States Code, is amended to read as follows:

"(5) ABANDONMENT.—Notwithstanding the absence of a claim, upon timely request and

as prescribed by the Director, a provisional application may be treated as an application filed under subsection (a). If no such request is made, the provisional application shall be regarded as abandoned 12 months after the filing date of such application and shall not be subject to revival thereafter.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies to any provisional application filed on or after June 8, 1995.

(c) INTERNATIONAL APPLICATIONS.—Section 119 of title 35, United States Code, is amended—

(1) in subsection (a), by inserting ''or in a WTO member country'' after ''the United States'' the first place it appears; and

(2) by adding at the end the following new subsections:

''(f) APPLICATIONS FOR PLANT BREEDER'S RIGHTS.—Applications for plant breeder's rights filed in a WTO member country (or in a UPOV Contracting Party) shall have the same effect for the purpose of the right of priority under subsections (a) through (c) of this section as applications for patents, subject to the same conditions and requirements of this section as apply to applications for patents.

''(g) DEFINITIONS.—As used in this section—

''(1) the term 'WTO member country' has the same meaning as the term is defined in section 104(b)(2) of this title; and

''(2) the term 'UPOV Contracting Party' means a member of the International Convention for the Protection of New Varieties of Plants.''.

(d) PLANT PATENTS.—

(1) TUBER PROPAGATED PLANTS.—Section 161 of title 35, United States Code, is amended by striking ''a tuber propagated plant or''.

(2) RIGHTS IN PLANT PATENTS.—The text of section 163 of title 35, United States Code, is amended to read as follows: ''In the case of a plant patent, the grant shall include the right to exclude others from asexually reproducing the plant, and from using, offering for sale, or selling the plant so reproduced, or any of its parts, throughout the United States, or from importing the plant so reproduced, or any parts thereof, into the United States.''.

(3) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply on the date of the enactment of this Act. The amendment made by paragraph (2) shall apply to any plant patent issued on or after the date of the enactment of this Act.

(e) ELECTRONIC FILING.—Section 22 of title 35, United States Code, is amended by striking ''printed or typewritten'' and inserting ''printed, typewritten, or on an electronic medium''.

(f) DIVISIONAL APPLICATIONS.—Section 121 of title 35, United States Code, is amended—

(1) in the first sentence by striking ''If'' and inserting ''(a) If''; and

(2) by adding at the end the following new subsections:

''(b) In a case in which restriction is required on the ground that two or more independent and distinct inventions are claimed in an application, the applicant shall be entitled to submit an examination fee and request examination for each independent and distinct invention in excess of one. The examination fee shall be equal to the filing fee, including excess claims fees, that would have applied had the claims corresponding to the asserted independent and distinct inventions been presented in a separate application for patent. For each of the independent and distinct inventions in excess of one for which the applicant pays an examination fee within two months after the requirement for restriction, the Director shall cause an examination to be made and a notification of rejection or written notice of allowance provided to the applicant within the time period specified in section 154(b)(1)(B)(i) of this title for the original application. Failure to meet this or any other time limit set forth in section 154(b)(1)(B) of this title shall be treated as an unusual administrative delay under section 154(b)(1)(A)(iv) of this title.

''(c) An applicant who requests reconsideration of a requirement for restriction under this section and submits examination fees pursuant to such requirement shall, if the requirement is determined to be improper, be entitled to a refund of any examination fees determined to have been paid pursuant to the requirement.''.

SEC. 12. PROVISIONAL RIGHTS.

Section 154 of title 35, United States Code, is amended—

(1) in the section caption by inserting ''; **provisional rights**'' after ''**patent**''; and

(2) by adding at the end the following new subsection:

''(d) PROVISIONAL RIGHTS.—

''(1) IN GENERAL.—In addition to other rights provided by this section, a patent shall include the right to obtain a reasonable royalty from any person who, during the period beginning on the date of publication of the application for such patent pursuant to the voluntary disclosure provisions of section 122 or the publication provisions of section 122(1) or 122(2) of this title, or in the case of an international application filed under the treaty defined in section 351(a) of this title designating the United States under Article 21(2)(a) of such treaty, the date of publication of the application, and ending on the date the patent is issued—

''(A)(i) makes, uses, offers for sale, or sells in the United States the invention as claimed in the published patent application or imports such an invention into the United States; or

''(ii) if the invention as claimed in the published patent application is a process, uses, offers for sale, or sells in the United States or imports into the United States products made by that process as claimed in the published patent application; and

''(B) had actual notice of the published patent application and, where the right arising under this paragraph is based upon an international application designating the United States that is published in a language other than English, a translation of the international application into the English language.

''(2) RIGHT BASED ON SUBSTANTIALLY IDENTICAL INVENTIONS.—The right under paragraph (1) to obtain a reasonable royalty shall not be available under this subsection unless the invention as claimed in the patent is substantially identical to the invention as claimed in the published patent application.

''(3) TIME LIMITATION ON OBTAINING A REASONABLE ROYALTY.—The right under paragraph (1) to obtain a reasonable royalty shall be available only in an action brought not later than 6 years after the patent is issued. The right under paragraph (1) to obtain a reasonable royalty shall not be affected by the duration of the period described in paragraph (1).

''(4) REQUIREMENTS FOR INTERNATIONAL APPLICATIONS.—The right under paragraph (1) to obtain a reasonable royalty based upon the publication under the treaty defined in section 351(a) of this title of an international application designating the United States shall commence from the date that the Patent and Trademark Office receives a copy of the publication under such treaty of the international application, or, if the publication under the treaty of the international application is in a language other than English, from the date that the Patent and Trademark Office receives a translation of the international application in the English language. The Director may require the applicant to provide a copy of the international publication of the international application and a translation thereof.''.

SEC. 13. EFFECTIVE DATE.

Except as otherwise provided, this Act and the amendments made by this Act shall take effect 60 days after the date of the enactment of this Act.

The CHAIRMAN. Under the previous unanimous consent agreement, the gentleman from California [Mr. ROHRABACHER] will be recognized for 1 hour, and a Member opposed will also be recognized for 1 hour.

Mr. COBLE. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from North Carolina [Mr. COBLE] will be recognized for 1 hour.

Mr. ROHRABACHER. Mr. Chairman, I yield 30 minutes to the gentlewoman from Ohio [Ms. KAPTUR], and I ask unanimous consent that she be allowed to control the time.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

The CHAIRMAN. The gentlewoman from Ohio [Ms. KAPTUR] will be recognized for 30 minutes.

Mr. COBLE. Mr. Chairman, I yield 30 minutes to the gentlewoman from California [Ms. LOFGREN], and I ask unanimous consent that she be allowed to control the time.

The CHAIRMAN. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

The CHAIRMAN. The gentlewoman from California [Ms. LOFGREN] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. ROHRABACHER].

Mr. ROHRABACHER. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, what the House is now considering is the Rohrabacher substitute. The Rohrabacher substitute has taken on many shapes and designs over these last few weeks, because we have tried our best to incorporate the very best aspects of H.R. 400 into our substitute. All of the good reforms that have been worked out by the gentleman from North Carolina [Mr. COBLE] and others on the committee have been incorporated into my substitute.

In fact, where we keep the fees of the Patent Office right there at the Patent Office so that people can make that Office more effective, we have done that. And we have made sure that all the hard work of this committee has not gone for naught.

In fact, I would like to compliment Mr. COBLE and I would like to say at this time that I have nothing but respect for the opposition here. Mr. COBLE and the gentleman from Virginia [Mr. GOODLATTE] and the gentleman from Illinois [Mr. HYDE] and others who, right now, we have such a heated debate going on, we have a great deal of mutual respect for one another. I have no doubt that their motives are good. It is just that we have

a really fundamental disagreement on this piece of legislation, and we will likely be the best of allies 1 week from now on another piece of legislation.

So with that said, let me go into the fundamentals of how we differ on this. It comes down to three or four basic points. Unfortunately, those basic points are right at the heart of what America's patent system is all about.

What has differentiated us from other patent systems of the world, why we have had some economic progress here, why has our military been secure and actually one step ahead of our adversaries when we went into conflicts? Because we have a strong patent system that nurtured the creative genius of our people.

The two elements of that patent system that differentiated us from the Japanese and from the Europeans was a guaranteed 17-year patent term, which means no matter how long it takes you to get your patent issued, you are going to have that 17 years of a guaranteed protection time to earn that money back and to make a profit from it. That is why we have so many people willing to invest here in the United States in the creation of new technology. Otherwise, the Government would have to do it because there would be no guaranteed time that we could have a return on our investment.

The second end of it, the second part of our system was that when someone applied for a patent, it was absolutely confidential, the right of confidentiality until that patent was issued. What that did is it prevented the big guys from stealing from the little guys.

In Japan, where they have the system that I am afraid H.R. 400 is trying to impose on us, that system has worked to create a class of economic shoguns that beat down the average person, that over in Japan, where it may be a democracy but it is not a free country like ours in the sense that people have a right to challenge the economic elite, the economic elite in those countries can beat down any inventor who wants to create something.

In Japan that system permits, where you have, after 18 months, you have publication, the reason why the economic powers that be have sufficient leverage, they come immediately into the process when they find out that someone is developing a new technology, something that will create new wealth, and they have what they call patent flooding. They will form a circle around the little inventor and the little guy, the small businessman, and beat him down until he has agreed to give up all of his rights.

That is what will happen right here if we change our law. They can come right over to our system and do exactly the same thing. What makes us think they will not do that? That is what has happened there.

In fact, that is one of probably the worst flaws of H.R. 400, because now we are publishing. What are the consequences of that publishing? Very wealthy and powerful interests will get involved in the process where they have not done it before to try to thwart the issuance of that person's patent until he would agree to give up certain rights.

This is not the formula for a strong America. This is an escalator clause for America going downhill. Twenty years from now Americans will not know what hit them. It is Pearl Harbor in slow motion.

I will say, I have a copy and I have held it up several times. The reason why we are pushing on this, and you have heard it in the debate, we have to be like those other countries, we should not be like other countries, but yet we signed an agreement, a subterranean agreement 5 years ago to harmonize our law with Japan. Now they are seeking to try to push it through the system like when they tried to sneak that change through in the GATT implementation legislation.

We are going to thwart this power grab. We are going to thwart it, and we are going to make sure in doing so we protect America's future. If we lose our technological edge, if the individual inventor loses his rights and becomes vulnerable to these outside influences, if our patent examiners become vulnerable to all sorts of interferences and outside influences, America will cease to be a great country in decades ahead, and they will never know what hit them. It will be Pearl Harbor in slow motion, and we are going to stop that.

Ms. KAPTUR. Mr. Chairman, I yield myself such time as I may consume.

(Ms. KAPTUR asked and was given permission to revise and extend her remarks.)

Ms. KAPTUR. Mr. Chairman, the base bill that this substitute would replace essentially, as Mr. ROHRABACHER, who has led such a good fight on this and so many Members who have supported him, calls for a massive change in the way that we protect the secrecy of those who file patents in our country.

Now, to me, to move from a system that basically says when you file a patent your ideas can be protected for up to 17 years, up to the point that that patent is granted, and if the review office takes longer than 2 years, if it takes 4 years or 5 years for whatever reason, that your ideas are protected, why would we want to take away the property rights of our inventors by saying after 18 months, and where did the 18-month magic come from anyway, that after that point their ideas could be made available to whomever might want them?

To go from 17 years to 18 months to me is a massive change in the way the current system functions. I have never had an inventor in my district come up to me and ask for this change, so I wonder who it is that is proposing the change that is in the base bill.

I want to compliment Mr. ROHRABACHER for helping to expose this issue in detail so that we can better protect our inventors' technologies in this country.

From the inventors I have talked to, they have some pretty big problems, once they involve themselves in this whole idea of patenting their inventions. Number one is the cost. The fact that a really small person does have to put a lot forward in the first place just to patent their idea.

If you are a big company, that does not affect you as much. You have great wholeness in the system. You have the ability to float. But for the small people that are out there in their garages and their basements where wonderful ideas have come from, it is much more difficult for them to do that even in the existing system.

Once they do, one of the challenges they have as an inventor is that big companies, if they try to commercialize the technology, often try to buy their idea out before it is even applied in the manufacturing sector, because an inventor does not control the manufacturing process. They are not into the commercialization side. Under the current system, it is even difficult for many of these inventors to get someone to buy their idea.

Also we have a situation under the current system where inventors find that their ideas are counterfeited. In fact, we have had dumping of computer terminals that have come over from China and other places.

I wish the committee would have given a little more attention to the real problems that inventors are having out there, trying to work in this current system. But they have never complained to me about the protections they receive in this country for their property rights. They have never complained about the time period.

They are complaining to me now. The Ohio State Bar Association is very aware of what this bill does and has made its views known to us. And many, many other inventors throughout the State of Ohio.

But I say to myself, what could have propelled this committee into proposing this kind of change? I looked down the list of multinational corporations that want this particular right. They already function on the international front. They are the very same firms that try to buy out these small inventors and do not permit them to commercialize their technology, if they do not have deep pockets. They are the very same interests that are able to float in their little boats in international waters when the average inventor is not. They are the very ones that have no problems with existing fees. And it just seems to me that they got the red carpet rolled out for them when they went before the respective institutions of this House.

On the other hand, the small inventors of my community have not been afforded the opportunity to come before the committee. The small inventors of my community have not been allowed to come before the Committee on Small Business.

I heard one of the Members, the gentleman from Maryland [Mr. BARTLETT], say that the hearings would be held next week. My friends, the horse is already out of the barn. Next week? This bill is being heard today. So it seems to me that we have a responsibility to represent the majority of inventors in this country, most of whom do not have deep pockets.

Our job is not just to represent the multinationals who have lots of good ideas and they have a great ability to float their boats, but they are not the only ones out there in the ocean.

I would certainly say to those who would want to bend over backwards to other countries who do not give us market access, we have a $50 to $60 billion trade deficit with Japan, a $40 billion trade deficit with China, and it is growing. The situation we have with Mexico is abominable post-NAFTA. A lot of these other countries are going to be advantaged through this agreement. Why?

□ 1615

Why are we doing this to our inventors when in fact our country has 10 times more intellectual property breakthrough technologies than any other country in the world? We protect these property rights. It is inherent in the Constitution of this Nation. Why would we want to do this to the people of our Nation?

Now, let us take a look at the burden of proof and the fact that people say here, well, they can sue. If people do not like this new bill, H.R. 400, and they fail to vote for the Rohrabacher substitute, well, gosh, we will give them a chance to go to court.

A lot of these inventors out there do not have the money. They worry about paying their maintenance fees under the existing system, under the existing system. So why force them into cases where the burden is on them to prove that what they are doing in OK? Under the current system, it is.

Why place that burden on them? Why force them to go into these reexamination procedures? Why would we want to do that to our own people?

Frankly, for a lot of these nations or companies that function offshore, my own view is unless they give us market access, why give them anything? Why give them any advantage into this Nation's most precious seed corn, which is our patented inventors' property rights?

The whole idea of corporatizing the patent office, it is interesting that the people who work over there do not want this to happen. They are civil servants. They objectively can review, regardless of what type of inventor comes in there with an invention.

None of us really understand the gentleman's proposal of what this guasi-government corporation or new entity, this PTO, what that is going to be. We have not had a chance to fully digest what that means down the road. How objective will these examiners be allowed to be? What will the CEO of that corporation, what rights will that individual have over those individual decisions? How objective and judiciallike will those decisions be able to be?

It seems to me there are a lot of issues in H.R. 400 that no Member here, including the people on the committee, can fully appreciate. Why do we not have an opportunity to clean this bill up? Let us adopt the Rohrabacher substitute, let us keep the system clean, the way it is, and then work through some of the issues that are of deep concern to Members here who want to represent not just those with deep pockets, but small inventors around our country who are really creating the future of us.

It was mentioned earlier there are some people concerned about jobs in our country and our trade policy who have engaged in this debate. Certainly we have, because we understand what it is like to negotiate against a country that uses every kind of barrier to disallow our product into their market.

But the inventions, the ideas, the intellectual property is the heart of our system. To allow them into the door when we have all sorts of other problems out there and we do not fully appreciate the long-term consequences of what is being proposed here, is a very dangerous position in which to place our country for the next century.

There is no question that patents are the primary source of job creation in this country. It goes to the heart of how we develop as an economy. When I see people like Nobel Laureates opposing the changes in H.R. 400, and I see the gentleman from California [Mr. ROHRABACHER] and our own minority leader, the gentleman from Missouri [Mr. GEPHARDT], and the gentleman from Maryland [Mr. HOYER], and others in this body, the gentleman from California [Mr. HUNTER], people on both sides of the aisle who have respect for members of the committee, but feel that we have not had our concerns solved, we have no choice but to wholeheartedly support the Rohrabacher substitute.

So I want to urge the membership, please, that if they have not read the bill, if they have not followed this debate, to support the Rohrabacher substitute. Do not fix a system that is not broken. Let us work hard, as this Congress progresses, in order to fix the current system if there are problems, but do not completely turn it upside down and take away the property rights of our inventors, especially the small inventors whose canoes are very small to row in the oceans of the international marketplace.

Mr. Chairman, I reserve the balance of my time.

Mr. COBLE. Mr. Chairman, I yield 7 minutes to the gentleman from Utah, [Mr. CANNON].

(Mr. CANNON asked and was given permission to revise and extend his remarks.)

Mr. CANNON. Mr. Chairman, I take the podium at the far right, the farthest right we can go here in the room as a Republican and a conservative.

And may I be the first Republican to welcome my colleague, the gentlewoman from California, [Ms. LOFGREN], and at her suggestion, also our colleague from Massachusetts, [Mr. FRANK], into the conservative wing of the party of the House.

Ms. LOFGREN. Mr. Chairman, will the gentleman yield?

Mr. CANNON. I yield to the gentlewoman from California.

Ms. LOFGREN. Mr. Chairman, I want to thank the gentleman for the compliment, and acknowledge that it was certainly made in jest. I had to do that for my district, to clarify that.

Mr. CANNON. Mr. Chairman, reclaiming my time, I say to the gentlewoman she is always welcome over here.

I do want to speak to those conservatives in the House, Mr. Chairman, about why I support H.R. 400. Before I do so, I want to establish my credentials on this issue.

I am a businessman and have invested in numerous companies, some large, mostly small. I have also funded several high-tech new ventures and my district is a high-tech center. We have biomedical companies, software companies, computer hardware companies and a host of innovative start-ups, start-ups based on innovative ideas, some of which have been patented, some which have not. Many of them have been commercial successes and many of those people who have been successful have, in fact, helped out in the commercialization of other technologies. But I do not know, in my district at least, of a distinction between commercializers and inventors.

The heart of my district, Utah County, has been compared to Silicon Valley, with Route 128 in Boston, with North Carolina's Research Triangle. The small town of Provo always shows up on these maps of where the technological centers in America are.

I am also a member of the Subcommittee on Courts and Intellectual Property. As many know, in the last Congress there was vigorous debate on patent reform, and as a new member, my staff and I took time carefully to review the arguments. After that review, I chose to cosponsor H.R. 400, and I want to detail why.

First, we conservatives support the use of a reasoned, thoughtful process of public policy. The development of H.R. 400 easily passes that test. Over the past couple of years the provisions of H.R. 400 have been subject to 8 full hearings over 10 days, involving 80 witnesses. The gentleman from California, [Mr. ROHRABACHER], has testified four times. Every side of every view has had the chance to be heard, not once but many times on this issue.

Second, conservatives, in particular Republican conservatives, hate bureaucracy. H.R. 400 takes the Patent Office out of the Commerce Department and gives it the flexibility to

serve those seeking patent and trademark protection.

Third, conservatives support property rights. H.R. 400 expands the scope of protection afforded patent seekers. H.R. 400 guarantees diligent patent owners at least, let me emphasize at least, 17 years of patent term. But that is not all. In many cases, under H.R. 400, patent owners will receive even more than 17 years of patent term, in many cases about 18½ years of patent protection. This is both more protection than is available currently and more than available under Mr. ROHRABACHER's alternative.

Fourth, conservatives oppose giving individuals, corporations or foreign interests the ability to play games with our legal system. We believe in a system of laws. H.R. 400 is the only bill that drives a stake in the heart of submarine patents, an expensive, manipulative patent-seeking technique. While there is some debate over the number of submarine patents, the evidence is clear that submarine patents hurt both American industry and consumers. Submarine patents deserve to be permanently sunk, and H.R. 400 does the job.

Fifth, conservatives want U.S. companies to have a level playing field with their foreign competitors. That brings me to one of the most controversial provisions of the bill, the concept of publication. Frankly, this is a provision that is little understood and is easily misunderstood.

Let me provide some context by talking about what happens today to U.S. inventors who seek patent protection around the world.

The three primary places most inventors seek protection are Japan, the United States and Europe. A U.S. inventor who files in all three areas is published in 18 months in Japan and in Europe in a variety of European languages and in Japanese. Of course, that makes it easy for U.S. inventors' foreign competitors to read the American inventors' patent application in their own language and in their own country.

The U.S. inventor lacks the same advantage. Because the United States does not publish patent applications, an American inventor must go to Japan or Europe to find out about the activities of his or her foreign competitors. This hurts small American businesses which cannot afford travel or translation. Publication in the United States simply helps our own people keep an eye on their oversees competitors.

Some have argued that publication is great for big U.S. companies, but it might hurt small U.S. inventors. That brings me to my sixth point. Conservatives should argue about real issues. The fact is, the current version of H.R. 400, based upon concerns previously raised by small inventors, effectively exempts small inventors from publication.

My last point is that conservatives should respect fellow conservatives. The driving forces behind this bill are conservatives, particularly the gentleman from North Carolina, [Mr. COBLE], and the gentleman from Illinois, [Mr. HYDE]. These are men of great integrity, great thoughtfulness and great judgment and should be accorded due deference.

Mr. Chairman, I encourage Members to pause before they vote today. I know patent law seems like a black art, but our decisions today are important. As a conservative, my considered opinion is that H.R. 400 is a balanced, rational package that strengthens our patent system, encourages high-tech innovation, and protects U.S. economic interests, including my favorite sector, the small business sector.

Ms. LOFGREN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, a number of the speakers, and especially the last speaker, have addressed important issues for Members examining this whole issue. But I do want to address the matter that has been raised by a number of speakers, and that is the position of employees of the Patent Office regarding the bill, H.R. 400, as well as the Rohrabacher substitute.

I have here in my hand, and I include for the RECORD, dated April 16, a letter from the National Treasury Employees Union.

THE NATIONAL TREASURY EMPLOYEES UNION,
Washington, DC, April 16, 1997.

Hon. ZOE LOFGREN,
U.S. House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE LOFGREN: As the full House of Representatives prepares to consider important intellectual property reform legislation later this week, I am writing to bring your attention to an issue of great importance to members of the National Treasury Employees Union.

H.R. 400, the ''21st Century Patent System Improvement Act'' is scheduled for floor consideration on April 17, 1997. It has come to my attention that Rep. Dana Rohrabacher (R-CA) is expected to offer H.R. 811 and H.R. 812—two patent bills introduced earlier this year—as a substitute to this legislation.

While H.R. 811 deals primarily with patent term and publication issues, H.R. 812 includes a number of provisions that would exclusively benefit the PTO's patent examiners. NTEU supports improving the training and benefits of all of the PTO's employees, and we therefore believe that it would be grossly unfair for such benefits to accrue only to patent examiners and not to their counterparts in the Trademark Office.

For this reason, I urge you to oppose the Rohrabacher substitute if it includes these provisions when intellectual property reform is considered by the full House.

H.R. 400 includes several important elements of H.R. 811 and H.R. 812, including a provision allowing for the above referenced training and benefits for patent examiners and trademark examiners. Although NTEU has remaining concerns about the labor-relations provisions in H.R. 400, and would prefer to see the labor-relations language approved last year by the House Judiciary Committee adopted as this issue goes forward, this bill is a better alternative to the proposed Rohrabacher substitute.

Sincerely,

ROBERT M. TOBIAS,
National President.

Mr. Chairman, I will not read it all, but I will say, and this is a quote, ''I urge you to oppose the Rohrabacher substitute.''

And the final paragraph says, and this is again from Mr. Robert Tobias, the national president of the National Treasury Employees Union, ''H.R. 400 includes several important elements. Although NTEU does have remaining concerns about the labor relations provisions in H.R. 400, and would prefer to see the labor relations language approved last year by the House Committee on the Judiciary adopted as this issue goes forward, this bill is a better alternative to the proposed Rohrabacher substitute.''

I think it is important to note, and perhaps the Chairman and ranking member can address the issue raised as to the remaining labor-management relations issue that the Treasury Employees Union wants addressed, and I, for one, would pledge to work with them on that issue, but it is important to note that even without that issue being resolved, the Treasury Union employees prefer H.R. 400 and they oppose the Rohrabacher substitute. I think that is an important issue for Members to know.

Second, I have heard a lot of discussion in this Chamber today, and people discussing it at large, about a variety of issues that have absolutely nothing to do with the issues before us. We have heard about GATT, we have heard about NAFTA, we have heard about the Red Chinese Army, we have heard about multinational businesses. That is not what this bill is about. It has nothing to do with the patent bill.

What this bill is about is not deferring foreign countries or conforming our law to theirs. What H.R. 400 is about is to advantage Americans who are presently being disadvantaged by our patent law.

I have heard people say, well, why would we want to dumb down our patent law? Why would we expect the rest of the world to change, to conform with us? My response is because they are taking advantage of us right now.

□ 1630

Why should they change when they are taking advantage of us? Why should we expect them to willingly give up the advantage that they currently have? It is up to this Congress to stand up for America by rejecting the Rohrabacher substitute and supporting H.R. 400.

Finally, I would like to thank the gentleman from Utah [Mr. CANNON] for his eloquent comments about why a conservative would support H.R. 400 and oppose the Rohrabacher amendment. I think it is also important to note that the high-techology sector has accounted for 40 percent of the growth in the gross domestic product in the last several years.

These companies are not all multinational corporations. Some of them

are. I am not opposed to that. In fact, I think Intel Corp. is a great citizen. They just made a decision to give stock options to every single employee in their company down to the janitor. They do a great business. They have many patents, they are innovative, they are successful, and they support H.R. 400. I am proud that they do.

But I would like to point out that the Biotechnology Industry Organization also supports H.R. 400, and also opposes the Rohrabacher substitute, and 95 percent of the membership of the Biotechnology Industry Organization is made up of companies with 500 employees or less.

Mr. Chairman, I reserve the balance of my time.

Mr. ROHRABACHER. Mr. Chairman, I yield 5 minutes to the gentleman from the Silicon Valley area of California [Mr. CAMPBELL].

(Mr. CAMPBELL asked and was given permission to revise and extend his remarks.)

Mr. CAMPBELL. Mr. Chairman, what is a compelling need to change the patent system of the United States that has served us so well? The case has not been made on the floor today.

I have one additional reason to suggest that H.R. 400 actually does more harm than has previously been brought forward in this debate, but before I do that I do wish to identify and draw some very clear focus on the fact that the only argument that has been made for the need to change is the submarine patent. That issue is taken off the table once we realize that the Rohrabacher bill also deals with the submarine patent. I believe that issue is no longer in debate. For those who are in doubt, those Members perhaps who are watching the debate, do check the Congressional Research Service, page 12 and 13, the quotation that I gave before. Both bills seek to curtail submarine patenting and would likely end the practice.

So what is the compelling need? Does it make sense that there is some benefit to be gained by those large firms who wish to have earlier and more ready access to information that would otherwise be patented? Yes, it is in their interest. But insofar as it enhances their interest, it takes from the inventor. The inventor cannot be substituted for. There can be commercializers, there can be developers. Japan of course is the key commercializer probably in the world of somebody else's ideas. But America is unique as being the key inventor. So in the absence of a compelling need, I would think the logic would be, let us let it be, let us not change this system that has worked so well.

But let me now draw attention to the one additional problem that I believe H.R. 400 introduces that is of great seriousness. Do my colleagues realize that under H.R. 400, but not under the Rohrabacher substitute, anybody who was using the subject matter that eventually gets patented, who is using that subject matter commercially, before the grant of the patent, is exempted. That such a person can continue commercialization of that idea without ever having to pay a royalty to the person who invented and filed, followed the rules, in other words, of our patent system? And this is not in the existing law.

So what H.R. 400 does is to say, ''Inventor, today you know that you have the right to your invention and if anybody else has been using it, they have got to pay you royalties.'' That is a whale of an incentive to go through the sweat and the hard work to invent. But after H.R. 400, if it becomes law, that right is substantially cut back. Any prior commercial user can continue that use, and not just in the scope of maybe a ma and pa who might have had one or two units made.

Let me read from the bill itself, from title 3:

> The defense, the prior commercial user defense, shall also extend to variations in the quantity or volume of use of the claimed subject matter.

This is remarkable. We have spent a lot of time on the floor this afternoon speaking about the requirement of early disclosure, but look what this does. Any prior commercial user can expand the use and utterly undermine the commercial value of the invention that was filed and that was patented. The harm is not even done there. Because if it is in the financial interest of this firm, this commercializer that has used the idea before the inventor patented it, if that commercializer wishes to sell it, well, so long as it is part of the sale of a general company, he or she may do so.

And I quote from the bill:

> The defense under this section may only be asserted by the person who performed the acts necessary to establish the defense . . . except in connection with the good faith assignment or transfer of the entire enterprise or line of business to which the defense relates.

So here is the situation. Today a person who does the hard work to get an idea has the protection of 17 years from the grant of that patent. After H.R. 400 it will not be 17 years from the grant of the patent. It will be something that could very well be less because it is 20 years from the date you applied. And if the Patent Office takes 3 years or longer, that is your risk, the time of your protection is less.

No. 2, today you are allowed to keep your idea as you are going toward a patent. After H.R. 400, you cannot, you have to disclose it, after 18 months.

No. 3, today if you are the first person to go into the patent system and to get your patent, no prior user can take that away from you. Under H.R. 400, it can be.

Ms. LOFGREN. Mr. Chairman, I yield myself such time as I may consume, just to simply say I do not want to address every single issue raised by the gentleman from California [Mr. CAMPBELL] because Members are getting restive. I just would point out that in H.R. 400, if the patent issuance is delayed through no fault of the applicant, the term is extended and added on to remainder of the 20-year term.

Mr. CAMPBELL. Mr. Chairman, will the gentlewoman yield?

Ms. LOFGREN. I yield to the gentleman from California.

Mr. CAMPBELL. I understand that, but the burden is to show by the patent applicant that the fault was the Patent Office's. If that burden has not been met, if things just chug along in their dear sweet time and it takes longer than 3 years, it is the patent applicant who suffers.

Ms. LOFGREN. Mr. Chairman, reclaiming my time, if the applicant does not take action to delay it, the term is extended and added on to the 20-year term.

Mr. CAMPBELL. And if the gentlewoman will continue to yield, but the burden of proving that is upon the applicant. So in order to get the benefit of the tacked-on time, I have to show that it was not my fault.

Ms. LOFGREN. You have to show that you did not continually amend your application.

Mr. CAMPBELL. Then our understanding is the same.

Ms. LOFGREN. Reclaiming my time, not an enormous burden, I might add.

Mr. Chairman, I reserve the balance of my time.

PARLIAMENTARY INQUIRY

Mr. COBLE. Mr. Chairman, I have a parliamentary inquiry.

The CHAIRMAN. The gentleman will state it.

Mr. COBLE. Mr. Chairman, am I correct in concluding that we have the right to close?

The CHAIRMAN. The gentleman from North Carolina is correct.

Mr. COBLE. Mr. Chairman, I yield myself such time as I may consume.

We have heard a lot of talk this afternoon about secrecy, how important secrecy is. Mr. Chairman, if I may paraphrase the Constitution, what the Constitution conveyed to all of us Americans and patent applicants in particular is this: You get a limited monopoly with protection in exchange for society being able to see your secret. Illumination, light on the subject. I am told, Mr. Chairman, that mushrooms thrive in dark cellars. Submariners thrive in high weeds and below the water.

We have been told today, the gentleman from Illinois [Mr. HYDE] mentioned as have others, and the answer was, oh, this is not about submarine patenting. Mr. Chairman, to say that is not unlike saying that war is not about killing. I was born in the morning, but not yesterday morning. You all sell that submarine story to somebody else.

Let me review that with my colleagues.

Under the Rohrabacher substitute, applications filed in the United States only may not be published sooner than 5 years after they are filed, and then

not if the application is under appellate review. One of the many ways a submariner delays its own application is to file spurious appeals.

In addition, and most importantly, under the Rohrabacher substitute, the director of the Patent and Trademark Office must find that the application is not being diligently pursued by an applicant before publication can occur.

As my colleagues can imagine, it is virtually impossible to identify maneuvers by patent lawyers to delay the processing of their applications. This is a sham provision that is impossible to enforce.

Can you imagine telling a judge that he or she can only allow the public to see court documents relating to a case when a finding was made as to whether the merits were diligently pursued?

All judges, including patent judges, must give the benefit of the doubt to the filers that they are proceeding in good faith and they are pursuing their claims legitimately or our whole system would collapse.

The Rohrabacher substitute demands a presumption of guilt in order to require publishing. This presumption probably could never be established. The Rohrabacher substitute further provides for publication of any amendment to an application, called a continuing application, which is filed more than 6 months after the application it amends, unless the applicant can demonstrate that the amendment was filed for any reason other than to achieve a delay in the time of publication.

What does this mean? Any lawyer wanting to delay can claim that the amendment is necessary to reflect the full richness of further developments of the invention in the application. While this may be totally spurious, it would be virtually impossible to prove. This is the way it works in real patent law practice.

Here is another way to gain the system under the Rohrabacher substitute: An applicant can file appeals to the Board of Patent Appeals, which, while unlikely to succeed, are not so frivolous as to draw sanctions. There are many ways to delay which simply cannot be uncovered.

Submarine patenting, my colleague, is serious. And the Rohrabacher substitute, in my opinion, goes out of its way to create smoking mirrors around this burgeoning business of litigation.

The real question is: Why does the Rohrabacher substitute go out of its way to protect submariners? I want someone to answer that question for me before the end of this session.

The claim of the gentleman from California [Mr. ROHRABACHER] that his bill puts a stop to the practice of submarining in the real world is false. Just ask one of the lawyers mentioned on the front page of the Wall Street Journal last week who are joining the new, currently legal, cottage industry of suing those who invest in our economy.

I ask my colleagues to vote no on the Rohrabacher substitute and to support the bipartisan Judiciary Committee bill, H.R. 400.

I reserve the balance of my time, Mr. Chairman.

Mr. ROHRABACHER. Mr. Chairman, I yield myself 5 minutes.

We knew we would hear a lot of talk about submarine patenting because there has to be some excuse that people would use in order to justify gutting the American patent system that has been in place for 225 years, there has to be some excuse for these fundamental changes.

What we got is what is called in debate school as the scarecrow argument. We just create a scarecrow there and we fill it full of hay and we claim that that is a real big threat.

Submarine patents, there is some problem. It is a minor problem I believe. The opposition claims it is a major problem.

In fact, however, my colleagues have not used one example of any submarine patent since the late 1970's. And I might add, in the 1970's, there was a system established in the Patent Office called the palm system; and it was established specifically to prevent people from delaying their patent intentionally, in other words, to deal with the submarine patent system issue.

Since that time there has not been any example, and that has been instituted already, there has not been one example of any submarine patent since the palm system was instituted in the Patent Office.

□ 1645

Now we are being told submarine patents are so bad that we have to destroy the current patent system, we have got to corporatize our patent office, taking patent examiners that are basically insulated from outside influences, and we got to corporatize that office, and who knows what type of outside influences are going to be brought to bear in this new system? We do not know. All we have got is the word of our friends. It does not say in our bill that they are going to be able to be any outside influences. Well, thanks. There are a lot of unintended consequences when one makes such radical changes as this. But, of course, the radical change is really necessary. It is the only way to deal with a submarine patent issue.

Well that is just not the case, my colleagues. The only way to deal with a hangnail is not to amputate the leg. The way to deal with magazines, obscene magazines, is not to destroy freedom of speech or freedom to publish and freedom of the press for everybody in the country. There are ways we deal with it legally that can bring the law to bear. My bill did that, and for 2 years I have been begging all of my colleagues and begging every organization that came to see me about patent law, give me the language of how we can stop submarine patenting and I will put it in my bill as long as it does not destroy the guaranteed patent term. And do my colleagues know what? We put the very strongest language we could.

Now we can read portions of anything and try to make it sound like it does not cover it, but the fact is we put in the strongest language we could. I in fact had the No. 1, one of the No. 1, legal minds in the House of Representatives, the gentleman from California [TOM CAMPBELL] who represents Silicon Valley, to consult with me and say, come up with the language that we can once and for all end submarine patenting but does not destroy the guaranteed patent term. We put that into my substitute, and guess what? It is not a sham. It may be a sham to the opposition who wants to destroy the patent system as we know it today, but it is not a sham to people who have an independent look at what we put in the substitute, the people independently who have no axe to grind who looked at my bill said that my bill and their bill would effectively end submarine patenting, say that Congressional Research Service has basically decided that that day they did their very best job to analyze it. They do not have an axe to grind. We are going to end submarine patenting.

Oh, no. Now we cannot accept that. That is just a sham. It is a sham when somebody who is independent makes that analysis. Why is that a sham? Because that is the only excuse people have for the radical changes that they are proposing for the Patent Office. They are proposing that we make fundamental changes in the technological legal system that protected technological development in the United States of America. In the past that system provided the United States of America with the highest standard of living, with a technological edge that kept us prosperous, kept us free, kept us secure, and of course these multinational corporations which they have lists of many, and many of them have been active out in hither and yon, trying to support proposition—H.R. 400 I should say—that these corporations do have an axe to grind as well. They are going to make a big profit if they can get all the secrets from the little guy after 18 months.

My job was to try to put together a bill that ended submarine patenting because I knew it would come up as an issue. We did our very best. TOM CAMPBELL and I did our very, very best. The Congressional Research Service said we succeeded. So that issue should be out of the way. So what excuse do my colleagues have of having this radical reform? What excuse do my colleagues have?

Mr. Chairman, what other excuse is there for exposing? As my colleagues know, it is very easy for the American people to understand what is happening here. As my colleagues know, the fog that comes off the Potomac may blind some of the Members who come here to vote on the floor of the House of Representatives but it certainly does not blind the people back at home. The

fundamental issue we are deciding today, I put all of the good stuff that is in H.R. 400, all the real reforms into my substitute, we have ended submarine patenting.

The real issue is what? There are two fundamenatal issues—publication, publication—and that issue is very easy for people to understand. The American people know that before—throughout our country's history, if someone applied for a patent, that Goddard from the Goddard Rocket Center who developed rocket fuel, that was secret, and the Germans then could not get ahold of it, see, because it was secret and our competitors cannot get ahold of things. People who hate America cannot get that information because it has been secret. They want to change that. They want our worst enemies to have all of our secrets and to be able to use them against us.

They say, ''Ah, but we have taken care so that if somebody does steal that, we'll show you a way to deal with that. We're going to let you sue them.'' My colleagues, 10 years later or 5 years later when the patent is issued, they now are given the right by this H.R. 400 to sue the People's Liberation Army in China if they decide to manufacture things and use them against us that violate our patent laws. Mitsubishi Corp., Sony, name it, all these huge corporations overseas, even our own corporations, do my colleagues think that really is going to deter anybody from stealing—any of these gangsters from stealing—our technology and using it against us?

This is an invitation, it is an invitation to steal American technology. I have heard nothing in this debate, nothing in this debate that has changed my mind, nor have I heard nothing in this debate that has convinced me that my rhetoric has been out of line, and I think the American people are listening really hard, and when they see these maneuvers like saying it virtually exempts small business, and then during colloquies understand that, well, no they really are not exempt, people understand that there is a power play going on in Washington, DC. It is a power play that will not work to the benefit of the people of the United States. It changes the fundamental rules and rights and freedoms that we have had for 225 years that have served us well.

The patent owners, the people who have—the inventors, the Nobel laureates, the great creators of our society, are against H.R. 400 and for the Rohrabacher substitute. There is a reason for that. The big corporations, the multinational corporations that use technology and also have all sorts of connections overseas, I might add; yes, they are opposed to the Rohrabacher substitute and support H.R. 400. There is a reason for that too.

So it comes down to corporatization; do we want to change the fundamental system that has been set up that makes these decisions as to who owns what, making our patent examiners, as my colleagues know, open to who knows what kind of pressures? And do we want to publish all of our secrets in exchange for the right of our citizens to sue some huge multinational corporation years later, years later once they get their patent? No, that is not a good deal. I do not think the American people think it is a good deal, and I do not think the American people are fooled by the argument that we got to cut our leg off in order to cure the submarine patent infected toe. They are not buying that, they are not buying that at all, and I would suggest that we have a system that served us well, we should not rush into these dramatic changes to harmonize our law with Japan.

What is pushing this all along is an agreement that was made with Japan, and I have held it up several times right here, to harmonize American patent law with Japan. We do not want to be like them. We want to have rights that are protected.

Ms. LOFGREN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I just want to make a couple of clarifications statements for those Members who are listening to this debate.

First, I think it is important to emphasize that any matter that is sensitive from a national security point of view that is a secure matter may be held confidentially under the past law before it was changed last year under current law, under H.R. 400 and under the Rohrabacher substitute. So there is no question that none of the alternatives would allow national security matters to be published, and I think that is important.

Second, I want to address the issue of the Congressional Research Service. Now I am a relatively new Member but I have found CRS to be a useful office here, and I from time to time get their publications and read them, and I do not know the author of the report that has been quoted here. I will say, however, that in my experience in reading through Congressional Research Service publications, they are not always the only person with a viewpoint nor are they always the most expert person in the world with a viewpoint. And I think it is worth pointing out that the intellectual property section of the American Bar Association, lawyers of whom represent both patent defenders and those who might attack patents who do not have—they are not for one side or the other. The intellectual property section of the California Bar Association where most of the high-tech industry in the country is located and most of the patents issued in the country I believe emanate from California, as well as the American Intellectual Property Law Association, as well as the Intellectual Property Owners Association, all oppose the Rohrabacher substitute, all support H.R. 400.

Mr. Chairman, I reserve the balance of my time.

Mr. CAMPBELL. Mr. Chairman, will the gentlewoman yield?

Ms. LOFGREN. I yield to the gentleman from California.

Mr. CAMPBELL. Mr. Chairman, I am so grateful to the gentlewoman.

I do just wish to clarify that whereas the CRS said that both Chairman COBLE and Congressman ROHRABACHER's bill reflected in fixing the submarine patent, the additional sources the gentlewoman cited did not speak to that issue. They favored Chairman COBLE's bill or she would not have been citing them, but they were not rebutting CRS's conclusion that—is that correct?

Ms. LOFGREN. Actually that is incorrect. In fact, the President of the American Intellectual Property Law Association, and I have spoken as recently as 2 days ago indicating it was his judgment the Rohrabacher substitute does not solve the submarine patent association, and, if I may conclude this, does not resolve the submarine patent issue, whereas H.R. 400 in his judgment would.

Mr. CAMPBELL. If the gentlewoman will yield further on that point, I would be very interested in having that reduced to writing so that I could look at it. I do have the CRS report reduced to writing.

Ms. LOFGREN. Reclaiming my time, I will see if I can get that done.

Mr. CAMPBELL. I have one additional point which I might put to the gentlewoman if she continues to yield.

Ms. LOFGREN. I will.

Mr. CAMPBELL. As to the lawyers' associations which support H.R. 400, could one not interpret that that is a natural response to the fact that the bill will create much more opportunity for their employment?

Ms. LOFGREN. I do not believe that is correct and the gentleman and I are both from California, we both taught law and we are both—I think the gentleman was formerly on the Committee on the Judiciary, and perhaps I am wrong on that. I am currently serving on the Subcommittee on Courts and Intellectual Property. Certainly people can have divergences of opinion. But I do not believe that and I doubt very much that that would be the motivation for the intellectual property section.

Mr. CAMPBELL. Would the gentlewoman find it shocking if a group of lawyers in finding a bill beneficial saw some opportunity for enhanced—call upon their own services. That is all.

Mr. GOODLATTE. Mr. Chairman, will the gentlewoman yield?

Ms. LOFGREN. I yield to the gentleman from Virginia.

Mr. GOODLATTE. The lawyers that the gentleman suggests will benefit by this work for the many, many, many American businesses who strongly support this legislation. And would the gentleman suggest, and I am sure the gentlewoman would not suggest, that those businesses are interested in legislation because it will give them the opportunity to pay more in legal fees? Of

course not. They are interested in this legislation because it stops submarine patenting where one lawyer, one lawyer got $150 million in contingent fees. And do my colleagues know where that money came from? It came from American business. And do my colleagues know what it gets paid for? American business passes their costs on to the consumers and taxpayers in this country, and that is what this legislation is all about. It is not to help lawyers.

Ms. LOFGREN. Reclaiming my time, I would concur with the gentleman's comments, noting that the National Association of Manufacturers, the Pharmaceutical Research and Manufacturers of America, the Semiconductor Industry Association, the Software Publishers Association and the like have rarely been in favor of more litigation.

Mr. Chairman, I reserve the balance of my time.

Mr. COBLE. Mr. Chairman, I yield 5 minutes to the gentleman from the Roanoke Valley in Virginia [Mr. GOODLATTE].

Mr. GOODLATTE. Mr. Chairman, I thank the gentleman for yielding this time to me, and I rise in strong opposition to the Rohrabacher substitute which would be a disastrous turn to take in American patent law.

First I want to address some of the comments being made by some of the supporters of this substitute and the opponents of the bill. The gentlewoman from Ohio [Ms. KAPTUR] said that we had not been fair and open in this process; and by the way, I will not yield to the gentlewoman because she refused to yield to me earlier, but I want to make this point.

This bill has been more carefully studied and worked in this Congress in very public open hearings than any other legislation considered in this Congress this year. Hearings have been held in the Committee on Science, hearings have been held in the Committee on Small Business, hearings have been held in the Committee on International Relations, and eight public hearings have been held in the Committee on the Judiciary on this legislation. So there is absolutely no possibility that this legislation is not something that has been very fairly and openly debated throughout the process.

□ 1700

Second, the gentlewoman made the point, which is totally inaccurate, that we were going from a 17-year protection for inventors down to 18 months. Well, that is hardly the case at all.

Under our bill, any inventor gets a minimum of 17 years' protection, provided that they themselves do not cause a delay in the issuance of the patent. So they are going to get an increase.

Ms. KAPTUR. Mr. Chairman, will the gentleman yield on that point?

Mr. GOODLATTE. Mr. Chairman, no, I will not yield.

Ms. KAPTUR. Just to clarify, Mr. Chairman.

Mr. GOODLATTE. Mr. Chairman, I would ask for order.

The CHAIRMAN. The House will be in order, and the gentleman from Virginia [Mr. GOODLATTE] may proceed.

Mr. GOODLATTE. I thank the Chairman.

The fact of the matter is the gentlewoman had 30 minutes of time, I have much less, and unfortunately, we have not had the opportunity to have that colloquy.

But the fact of the matter is, under our legislation, they have that same amount of time, they have that time under the new legislation, and they will have, in most cases, more time than they have under current law.

Furthermore, the average patent in this country today is issued after 19 months. This calls for publication after 18 months. So most patents are not going to experience any significant difference in how quickly they are published. But here is the important fact about this, and this is what is wrong about this entire debate by the opponents.

We are not talking about trade secrets here, we are talking about publication of patents. Patents have always been protected in this country by publication. That is how we say to the world that an American inventor has put forward an idea that is entitled to be protected under our laws.

We do not tell them to hide it under a rock. We do not tell them to lock it up in a safe. We tell them that the U.S. Government will publish their patent and say they were the first with that idea and they are entitled to 17-years-plus protection.

That is what they get under this bill as well, only they get it better, because now they are going to be published sooner. When they are published sooner the world knows sooner that they were the first with that idea, and the capitalists who wanted to invest in that small inventor's opportunity to bring that unique idea that is so uniquely American, as the opponents have pointed out, that we lead the world in developing ideas, but we do not lead the world in getting those ideas to market, and one of the reasons why is because we do not get the capital to the inventor quickly enough.

If we change the law so that we have the opportunity to publish after 18 months, and not yours published after 18 months, but anybody who might be competing with you, that is important, because if you do not know that somebody else is in the patent system with something hidden, something called a submarine patent, ready to surface up and take your claim and try to get royalties from you, what you wind up with is a system where the capitalist does not know when to put the money in until you get the patent.

Under this change in the law, which has worked so well in Europe and other places, the money gets to the inventor from the entrepreneurial investor sooner because they know sooner that that person has the idea, and that is the one that is going to have the protection for 17 years.

Now, the gentleman from California claims that submarine patents are eliminated by his substitute. Nothing could be further from the truth. While I have great respect for the CRS, they say both bills seek to curtail submarine patenting. But there is often ''many a slip twixt the wrist and the lip,'' and that is exactly what is true of the gentleman's substitute. It may seek to eliminate submarine patenting, but it certainly does not succeed, because it eliminates one form of delaying the patent process, and that is amending the application.

But there are hundreds of ways that a good patent lawyer, who under the current laws makes a very good living with abusing our current system, there are hundreds of ways that one can delay the processing of a patent application that will not be covered by the gentleman's substitute.

As a result, what we have is a situation where the only way to cure this very serious problem that costs American consumers and taxpayers hundreds of millions of dollars a year is to have publication, which, as I indicated earlier, is not bad, it is not detrimental to the small inventor, it is good for the small inventor, because publication is what tells the world that that small inventor was the first one out of the box.

We also protect them by giving patent pending, a protection that it does not have now. That small inventor who has that idea that he turns into a product and puts on the shelf in the store and says patent pending, under the new law, they can get protection during the time that the patent is pending. If somebody wants to steal it and rip it off, they can get royalties for the entire time. Under the current law, they get no royalties except for the time that the patent is actually issued.

The result of all of this is a vast improvement of our patent system. As we have on numerous occasions over the 200-plus years of our history, this committee and this Congress is what has created the wonderful patent system we have in this country, and no one should ever suggest that it has never been changed in the 200 years since we originally wrote our Constitution recognizing that patent system.

We have to constantly look at it and improve it. When you do not, that is when you fall behind. If you want to look for examples of people who have said in the past that we are the best in the world and we do not have to worry about anybody outside, go talk to the big-three automobile makers and ask them what they thought back in the 1960's and 1970's about their superiority over the Japanese. They learned very quickly that if they did not change the way they do things to keep up with the times, they would fall behind.

If you want to look for a place where there is strong, strong support for these patent reforms to protect American business, American jobs, and

American technology, go to the big-three automakers, because all three of them support H.R. 400 because they want to make sure that our patent system remains the best in the world, and that is what this legislation does.

Oppose Rohrabacher, support H.R. 400.

Mr. ROHRABACHER. Mr. Chairman, I yield myself 1 minute.

Just so my friend from Virginia, Mr. GOODLATTE, will understand, if I could quote from the report here, the Congressional Research Service, it says, yes, it does, as he stated, both bills seek, and it did, said seek to curtail, but you did not finish the sentence, and would likely end the practice.

So I mean this is very similar to what we have heard in other parts of the debate where something will effectively permit small business and the little guy to be exempted, but ''effectively'' is not really an accurate description.

The Congressional Research Service, which is an independent body, and people who do not have an ax to grind, have determined, and I have gone out of my way, and my colleague, the gentleman from California [Mr. CAMPBELL] has gone out of his way, to put the strongest language we could in, and an independent body is agreeing with us, that we would likely end the practice. We have done our very best. This fig leaf could not be used to justify radical changes in our system.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. The Chair would advise all Members that the gentleman from California [Mr. ROHRABACHER] has 10 minutes remaining; the gentleman from North Carolina [Mr. COBLE] has 12½ minutes remaining; the gentlewoman from Ohio [Ms. KAPTUR] has 20 minutes remaining; and the gentlewoman from California [Ms. LOFGREN] has 19 minutes remaining.

The Chair recognizes the gentlewoman from Ohio [Ms. KAPTUR].

Ms. KAPTUR. Mr. Chairman, I yield myself such time as I may consume. I will yield time to the gentleman from Maryland [Mr. HOYER] in just a second, but I wanted to answer the gentleman from Virginia [Mr. GOODLATTE], since he referenced me at least three times in his remarks.

Mr. Chairman, I see a big difference between 18 months, 17 years, and 20 years. Under the bill the gentleman supports, the gentleman requires that there be publishing of all patent applications 18 months after they have been filed, whether or not the patent has been issued. Eighteen months is less than 2 years.

The GAO says it takes at least 4 years, the Patent Office says it takes 2 years, average application time, but whatever the time is, some patents take 10 years, 12 years. The gentleman is saying 18 months. That information is made available under the gentleman's radical proposal. It is a radical departure from the current system which says that once a patent is issued, an inventor has protection for 17 years, almost 2 decades.

The gentleman said, oh, but I give you 20 years, 20 years is better than 17 years. No, your 20 years does not begin when the patent is issued, it begins when the patent is filed. I was courteous to the gentleman when he was talking to me. I would certainly appreciate a little eye contact here while I am talking to him.

So there is a big difference, numerical difference to the protection of the inventors of this country. I feel bad the gentleman from Virginia [Mr. GOODLATTE] did not yield to me, but I wanted to clarify for the RECORD, there is a whole lot at stake. Every single day of a patenter's life of his invention is important. They have a lot on the line. Some of them have their whole future on the line. For America, we have America's future on the line.

So the difference between 17 years of guaranteed covered and 18 months when you have to divulge the secrecy of your information is a pretty big difference.

Mr. Chairman, I yield 8 minutes to the distinguished gentleman from Maryland [Mr. HOYER].

Mr. HOYER. Mr. Chairman, I thank the gentlewoman for yielding me this time, and I thank my friend from California for letting me proceed.

I want to say that those of us who are not expert in the field of patents, and I dare say that is probably 100 percent of us, some of us know more than others, that is for sure, but I would presume, unless there is a patent lawyer among us, obviously Mr. CAMPBELL, a law professor, a distinguished law professor, has done a lot of work on this. I am a lawyer, but I want to have a disclaimer at the front that I do not know a lot about this issue from a technical standpoint.

So like most Members, I come from the standpoint of what is best for the people I represent? What is best for the country? What is best for competitiveness, both domestically and internationally, and what best protects the people that I represent?

Now, very frankly, I have heard from numerous people, individuals who are very concerned about this bill. I have read in The New York Times, for instance, articles of inventors, small business, associations who are very concerned at the exposure that this bill brings. The gentlewoman from Ohio [Ms. KAPTUR] referred to the time of 18 months or 17 years or 20 years or whatever the time frame might be.

I have heard the debate back and forth. I would say to my friends that, at the outset, I do accept the premise of the CRS report, that both bills not only seek, as has been pointed out, but do, in fact, accomplish the objective of getting at the problem, to the extent it exists, of the submarine patents.

The gentleman from California [Mr. HUNTER] who spoke earlier pointed out that there were some 300 submarine patents that could be described out of the millions of patents. So the percentage of submarine patents, if they exist, and obviously they do, is as the gentleman from California [Mr. HUNTER] pointed out, incredibly small.

In pursuit of that objective, we are placing at risk the 99.9 percent of inventors, innovators, entrepreneurs who have an idea that they want to protect so that they can justifiably profit in a free enterprise system from the integrity and protection of that idea.

It is for that reason, my friends, that I rise, convinced not of the technical merits one way or the other, because as I said at the outset, I am not an expert, but that there is so much concern in the small business community.

I believe this bill would harm small business and independent inventors. We must remember that small business, as all of us know, represents the fastest growing sector of the economy and are truly America's greatest source of job creation and technology development.

I am not opposed to everything in H.R. 400, as I am sure most are not. In fact, I know my friend [Mr. ROHRABACHER], the principal sponsor of the alternative, which I support, is not an opponent of all. I support the inventor protection electronic filing sections of the bill. However, despite the rhetoric surrounding the manager's amendment, the publication time still poses a threat to America's small business.

Too many small business organizations have voiced their concerns and opposition to H.R. 400. I am not going to go through the list, but my colleagues have seen, I think most of our colleagues have seen, the list of 2 or 3 pages, small-type, of small inventors, small investors, small businessmen and entrepreneurs who are concerned and have said, do not move on this bill.

□ 1715

In fact, the Chamber of Commerce itself has held itself aloof from this bill. The Chamber of Commerce itself has held itself aloof from this bill because they believe there is a risk.

Mr. Chairman, it is a strange alliance that we see on this floor on this bill, on both sides, perhaps because some come from a more involved process with this bill and some a less involved, and are, frankly, looking not so much at the technical aspects of this bill but at the risks that it will pose to the people from whom we are hearing.

Mr. Chairman, the U.S. Chamber of Commerce, as I said, has been conspicuously silent on this bill, and the National Association for the Self-Employed, an organization of 325,000 members, is not only silent, they are strongly opposed to H.R. 400, because they believe it places their small business people at risk. This is a very important issue. We must not rush to judgment. In fact, we are not rushing to judgment, as the gentleman from Alabama is pointing out to me.

The proponents of H.R. 400 claim that there are remedies and processes set up

to protect small business. If that is the case, why have the Chamber and the NFIB and small business and small inventors not come forward and said that they have achieved protection? They have not. In fact, they have done the opposite, as I said. Three hundred twenty-five thousand strong have said, we are strongly opposed to this bill.

We all know that small businesses have neither the attorneys nor the resources. The gentleman from California [Mr. CAMPBELL] has spoken to this, the gentleman from California [Mr. ROHRABACHER], the gentlewoman from Ohio [Ms. KAPTUR] have all spoken to it. It is fine to say, yes, if they learn your information very early on you get protection, because you were published. That is great.

That is great, and if you have $1 million or $5 million, like some of the egregious people, I understand, and let us not hoist on the petard of one or two or three multimillionaires who are gaming the system, thousands of folks who are not only not gaming the system but it is the only protection that they have.

Mr. Chairman, in closing, because my time is coming to a close, let me say that I am also concerned, as someone who is deeply involved in governmental organization issues, deeply involved in Federal employee issues, I understand that my friends in the NTU believe that H.R. 400, my good friend, the gentlewoman from California [Ms. LOFGREN] who has fought so fervently for this bill, she and I disagree on the substance, but she is an able advocate of this bill, and they have talked about the NTU.

Let me say, as so many have said on this floor, I am concerned about this critically important process, which must be insulated from outside influence, being altered in the way that H.R. 400 alters it; that it is not a Federal employee, insulated from outside pressure and influence and involvement, who will make decisions critical to the economic welfare not only of small business and inventors and innovators, but also of this country.

So I would ask my colleagues to vote for the amendment offered by the gentleman from California [Mr. ROHRABACHER], incorporating the amendment of the gentleman from California [Mr. HUNTER] as well, and to vote against H.R. 400.

Ms. LOFGREN. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would say there has been much discussion of the Congressional Research Service. I would like to note that the commissioner of patents and trademarks, who actually is an expert in this whole subject area, has noted that the Rohrabacher amendment, in his words, would allow the patent system to continue to be misused by those who are not interested in obtaining patent protection early, and goes on to further detail the submarine patent provisions that would remain.

Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. DOOLEY].

(Mr. DOOLEY of California asked and was given permission to revise and extend his remarks.)

Mr. DOOLEY of California. Mr. Chairman, like the gentleman from Maryland [Mr. HOYER], I do not come to the well of the House as an expert on patent law either. But unlike the gentleman from Maryland, I come to complete disagreement in terms of what is the proper policy that we should institute in order to create a fiscal and financial environment that is going to ensure that our economy and in fact small businesses will prosper.

When we look at what has happened in just the last decade when we have seen 40 percent of the growth in our economy has occurred primarily in the high-technology industry, we have to ask ourselves, how did that happen? It happened in a large way because we had a lot of small businesses that were able to attract capital, that were able to make the appropriate investments. That created jobs, it created products, it allowed us to become the leader in the information services and computer services and software services and the biotechnology industry throughout the world today.

The changes we are considering making in our patent laws I am convinced are even going to do more to enhance that regulatory environment to ensure that a lot of our inventors that are out seeking capital will have greater access to it, because we will be able to find the investment community, and they will be much more willing to take a risk, to make a gamble on investing on the person who has an idea or an invention, if they have greater assurances that there is not somebody that is holding back a secret patent that could create financial jeopardy down the road.

I guess that is where it comes to the fundamental disagreement in the discussion that we have had on the floor today, was whether or not the Rohrabacher amendment provides a level of protection on the submarine patents as does H.R. 400 offered by the gentleman from North Carolina [Mr. COBLE]. I have come to the conclusion that it does not.

Part of that is based just strictly on the language, in that you can have an extension of the publication of a patent, if the office of director of patents and trademarks does not make a determination that there was not an effort being engaged by the individual that could demonstrate that they were diligently pursuing the publication of their patent.

They furthermore go on to say that if you can have an amendment, and again, you have to have a determination made by the regulatory body that this amendment was not done so simply to prevent the publication of the patent. These are determinations that have to be made that are going to be very difficult.

I am concerned that with those provisions in, we will not deal with the fundamental issue of dealing with the submarine patents, and that is what is impeding, I think, the flow of capital which is so important to U.S. inventors, people that have a good idea that can build products in this country, that can create jobs and be such a benefit to our economy.

Mr. Chairman, I urge people to vote no on the Rohrabacher substitute, and support the bill offered by the gentleman from North Carolina [Mr. COBLE].

Mr. ROHRABACHER. Mr. Chairman, I yield 3 minutes to the gentleman from Maryland, Mr. ROSCOE BARTLETT, one of the only inventors in the U.S. Congress, who is also a professor, a technologist, who shares the Committee on Science with me.

Mr. BARTLETT of Maryland. Mr. Chairman, I would just like to speak to the Members for a few moments from the heart. I am not an expert in patents, but maybe I have some credibility. I hold 20 patents. I was in the academic world for 24 years, and during a part of that I was an inventor. I was a small business man with an R&D company, and my intellectual creations were the basis of that small business.

Mr. Chairman, there is just no reason, no defensible justification for publishing these patents 18 months after they are filed. The only possible reason could be to prevent submarine patents, but CRS has said, and we can see it here by me, both bills seek to curtail submarine patenting and would likely end the practice.

If the Rohrabacher bill is not perfect, let us make it perfect. But let us not undermine the protection that countless thousands of small inventors like myself have with the present system. We do not need to change this system.

I have had a lot of mail on this. I have not had a single telephone call, a single fax, or a single letter that said ''Support H.R. 400;'' not a one of them, and not all of these small people out there can be wrong. I had the notion when I came to Congress that maybe the great wisdom of the country was not inside the Beltway. The longer I am here, the surer I am that that is true. These people from outside the Beltway have called me and faxed me and written letters to me, and every one of them who have done it, and there have been a large number, have said, please do not vote for H.R. 400, vote for the Rohrabacher bill.

We do not need to bring down our patent system to the level of the Japanese, to harmonize under our GATT agreement. Let them come up to our level of excellence. If we pass H.R. 400, it will cost us jobs. It will cost us jobs because of the lack of protection that our entrepreneurs now have. We are the greatest economic force this world has seen. It is largely because of the protection of our entrepreneur system.

It is true that to at least some degree, America's future is on the line in

this vote. Please do the right thing for the little guy that I represented so many years out there. Do not vote to give away our secrets to every copycat around the world. Protect our entrepreneurs. Vote for the Rohrabacher amendment.

Ms. KAPTUR. Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas [Ms. JACKSON-LEE].

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I do not want to leave anyone behind on this issue. I, too, though a member of the Committee on the Judiciary, am not going to pretend to be a longstanding expert on this issue.

But I want to raise two points. I hope that maybe we will be able to respond to the concerns. First, this substitute addresses the question that I have heard throughout my district, and that is on small businesses, and how they are protected. I do not think we can go forward without acknowledging and responding to those concerns. We have the time.

Second, I would like to speak to the issue that now I am told is not outsourcing the patent staff, but corporatizing. I would simply say that the concern is that if you have had an independent civil body, then that civil body needs to be and remain independent. The substitute addresses that question.

I would imagine that even in spite of having just met with members of the European Commission who have asked that we have a patent system which they can relate to, even with trying to relate on the international system, there does not seem a reason why we cannot protect small businesses and why we cannot protect the civil servants who are part of the Patent Office who have for years been able to provide good service to our inventors, our scientists, those who have knowledge, and bring knowledge to this country.

This substitute responds to those concerns. If there is reason to repair the substitute and the larger bill, then I would offer to say that we should stand in support of small businesses and, of course, those longstanding civil servants who have done the job in the Patent Office for years and years and years.

Ms. LOFGREN. Mr. Chairman, I yield 2½ minutes to the distinguished gentlewoman from California [Mrs. TAUSCHER].

□ 1730

Mrs. TAUSCHER. Mr. Chairman, I rise today in strong support of H.R. 400, because I am the granddaughter of one of the little guys.

My mother, who I talked to on the phone just a few minutes ago, has been confused about the debate she has watched today. But I strongly support H.R. 400 because I also strongly support our Nation's businesses and the small and independent inventors. I believe this important and needed legislation will improve our competitiveness, reduce the loss of wasted and precious R&D dollars and eliminate the real and dangerous scourge of submarine patents.

Many have valid concerns about the publication of patent information 18 months after filing. But H.R. 400 contains an exemption for all small businesses and independent inventors, allowing them to withhold publication until 3 months after the second meritorious PTO action. Furthermore, upon publication, inventors receive the constitutional monopoly over their invention.

Others mention that the patent term will now be cut below the traditional 17-year term. Nothing could be further from the truth. The fact is that H.R. 400 allows a diligent patent applicant to receive extensions of term for many reasons, including appellate review, administrative delays caused by PTO actions or inactions, the imposition of a secrecy order, or in the case of interference from a competing claim or infringement. Many of these extensions are unlimited to ensure that inventors will not lose any patent term.

Mr. Chairman, nearly 45 percent of all patent applications filed with the PTO are from foreign companies and inventors who have manipulated our patent system to their advantage while U.S. inventors filing abroad are subjected to open examination. H.R. 400 levels the playing field in favor of U.S. businesses while providing additional protection for American inventors. I urge my colleagues to oppose the Rohrabacher amendment and support H.R. 400.

Mr. ROHRABACHER. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, these are my concluding remarks. I would like first of all to thank the gentleman from North Carolina [Mr. COBLE], the gentleman from Illinois [Mr. HYDE] and the other Members who have put up with me for the last months in my opposition, and I happen to have very strong beliefs about this. I appreciate the gentleman from Michigan [Mr. CONYERS] for putting up with me.

The bottom line is, when you have strong disagreements in this democratic body, sometimes people get mad at one another, but the fact is we are all friends. We will be working on other issues and working together, and we are all people of integrity.

Mr. Chairman, I also wanted to thank the gentlewoman from Ohio [Ms. KAPTUR] and the gentleman from Maryland [Mr. HOYER] and the gentleman from California [Mr. CAMPBELL], the gentleman from Maryland [Mr. BARTLETT], and of course, the gentleman from New York [Mr. FORBES], who has been so articulate as well.

A lot of Members have put a lot of time and effort into this because this is a really important issue. It is something that will make the difference in the future of our country. We all believe that. Twenty years from now America will be a different kind of place because of the decision we are making today.

We are trying today to make a decision as to whether or not we will fundamentally veer from the system that has protected the technological development of the United States of America for 225 years, a system that has assured the American people of the highest standard of living, the greatest degree of freedom and security for our country of any system in the world.

We do not want to be like the Japanese. We do not want to harmonize our law to a Japanese model. We do not want the European model. People came here because this is where people's individual rights were protected. Again, what has been our rights, our rights have been we can invent and it will be kept confidential, our patent application, until that patent is issued and we own that technology. It has protected us. That has been such an important part of the development of technology in our country. Now it is just being cast away saying, we will exchange it for a system where you can sue somebody if they steel it from you. That somebody may be a huge corporation in Japan or China, but then that will replace it with that system. That is no protection at all.

I ask my colleagues to support my substitute. We have included the good stuff and left out the bad stuff.

Ms. LOFGREN. Mr. Chairman, I yield myself such time as I may consume.

I wanted to make just a few remarks before the gentleman from Illinois [Mr. HYDE] concludes, I believe, the debate for today. As a relatively new Member, I have found this entire process to be a fascinating one, unfortunately, I think sometimes a confused one.

We have heard and I have heard debates, late-hour radio talk show discussions about patents for the first time in my life. We have heard about patents on talk shows, people thinking it had something to do with foreign governments or trade agreements or the Red Army. In fact, as Mr. HYDE knows, and the gentleman from Michigan, Mr. CONYERS, knows, it does not. And then people becoming concerned and alarmed and afraid and communicating to their Members of Congress, including myself, that they do not want the wrong thing for their country. Of course not. None of us do. None of us do.

Then we get here today with, unfortunately and not unusually, most people in the country, I would venture and it has been said here today, most Members of the House not being experts in patent law, not having had a chance to take the courses in patent law or to practice patent law and to really familiarize themselves with it and then doubt and concern.

Mr. Chairman, it is my hope that Members have found this debated useful so that they can sort through the conflicting and occasionally extravagant claims to do what is right for our

country because this is not a freebie vote. This is an enormously important vote for America. When I think about the companies and the inventors and the innovators in Silicon Valley and the role that they now play and will play in making sure our country advances technologically and has a wonderful quality of life, that we have high employment, that we have a bright future, that is dependent on this body going beyond its confusion and doing the right thing by defeating the Rohrabacher substitute and supporting H.R. 400. The bill that was crafted by Chairman HYDE and Ranking Member CONYERS, that was supported and nurtured by the gentleman from North Carolina, Mr. COBLE, the chairman, and the gentleman from Massachusetts, Mr. FRANK, the ranking member, these are unlikely allies who have come together in the best interest of the Nation on a bipartisan basis.

I will close simply by saying this. The White House conference on small business technology chairs have analyzed the debate, analyzed the talk show allegations and have found that the misinformation, they say misinformation, is part of an intense campaign of fear and xenophobia. They say the information being promulgated is simply wrong. They point out that legislation based on bad data is bad legislation. They urge defeat of the Rohrabacher amendment and they urge support of H.R. 400.

Mr. COBLE. Mr. Chairman, I want to express appreciation to all who participated in today's debate and to thank the Chair as well.

Mr. Chairman, I yield the balance of my time to the gentleman from Illinois [Mr. HYDE], chairman of the House Committee on the Judiciary.

Mr. HYDE. Mr. Chairman, I thank the gentleman for yielding me the time. I will not spend time congratulating everybody, but I do in a blanket way because everybody connected with this issue and this debate on both sides, even the gentleman from California [Mr. CAMPBELL], Professor CAMPBELL, I congratulate.

If my colleagues do not think submarine patenting is a serious problem, and it has been diminuendo by some on the other side, let me quote from a witness before the subcommittee of the gentleman from California [Mr. ROHRABACHER], a gentleman named Bill Budinger, an independent single inventor who had his own little company, Rodel Company, and here is what he said to Mr. ROHRABACHER's committee:

''I have heard people say there is no such thing as submarine patents, and to borrow a phrase from earlier, I think the folks that say that are either naive or disingenuous. Here is a list of 300 patents that were issued in the 2-year period before the law changed,'' that is 1994. ''Each of these patents will monopolize a segment of American technology for a period of 25 years or more. They are going to provide a minimum of 25-year monopolies and some of the monopolies here are 40 years. Every one of these patents is issued to and owned by a foreign corporation. So these folks learned how to game the system.''

Now, submarine patents are not the only reason we are here with this bill. Do you not understand that we need access to foreign inventors' ideas? They come over and register and file their applications in our Patent Office, and we do not get to read them. We do not get to see them in English. Whereas our patents, our applications are filed in Japan, filed in France, filed in Germany, and after 18 months, they are published there. So we ought to have parity with foreign inventors; 45 percent of the applications for patents are filed by foreigners in this country.

We saw a rather embarrassing list of Nobel Prize winners but they may not have the technologists. They have the inventors, 45 percent of them. Small business is protected. Small business can opt out. Small business cannot be published until after two office actions. That means you are going to get your patent. Then you have 3 more months when you are not published. That is a different treatment from a so-called big business.

Let us dispel the notion that publication is a betrayal of our secrets. Publication is protection.

There is an animal called provisional rights that arises as soon as your publication occurs. It is the same as though you had a patent and, once your idea has been published, it is yours. It is notice to the world, I thought of it. I thought of it first, do not tread on me. And not only that, but if anybody tries it, they are liable in damages for infringement. So there are provisional rights. Do not tread on me, and it also is an advertisement to investors who might say, hey, this guy has got an idea. I might want to invest in this.

Every patent commissioner except one who is working for the other side has come out for H.R. 400. The Nixon, Ford, Reagan, Bush have all signed a letter saying we like 400. The Clinton administration says, we like 400. And so if it is good enough for them, it ought to give us pause if we do not think we want to support it.

The gentleman from California, [Mr. ROHRABACHER], God love him, says his bill, and he has a CRS report. If I were the teacher, I would give that about a D minus because it misses the mark horribly, horribly. The gentleman from California, Mr. TOM CAMPBELL, a fine lawyer, I just want to ask if he really thinks this eliminates the submarine patent. Under the Rohrabacher amendment, you cannot publish for 5 years. Let me put the question this way: Have you ever spent 5 years in a submarine?

Mr. CAMPBELL. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from California.

Mr. CAMPBELL. Mr. Chairman, under the Rohrabacher amendment, you must publish, there is no 5-year delay if you are a gamester, if you are a submariner as determined and applied for a continuation. No 5-year delay.

Mr. HYDE. Mr. Chairman, the gentleman is asking that the patent examiner have an astrological gift to be able to tell whether or not what one is doing is gaming the system.

There is much more to say, I sense an impatience in the Chamber. And not wishing to dull my antennae any more than they are, I hope my colleagues will support 400. I hope my colleagues will tell the gentleman from California, [Mr. ROHRABACHER], he is a swell guy but has a lousy bill.

The CHAIRMAN. The question is on the amendment in the nature of a substitute offered by the gentleman from California [Mr. ROHRABACHER].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. ROHRABACHER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 178, noes 227, not voting 28, as follows:

[Roll No. 85]

AYES—178

Abercrombie
Bachus
Baldacci
Ballenger
Barcia
Barr
Barrett (WI)
Bartlett
Bereuter
Bilirakis
Bonilla
Bonior
Bono
Brown (OH)
Burton
Calvert
Campbell
Cardin
Chambliss
Chenoweth
Christensen
Clayton
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cox
Coyne
Cramer
Crapo
Cubin
Cunningham
Danner
Deal
DeFazio
Dellums
Diaz-Balart
Dixon
Doolittle
Doyle
Duncan
Emerson
English
Ensign
Everett
Filner
Foley
Forbes
Fowler
Gallegly
Gephardt
Gibbons
Gillmor
Goode
Goodling
Goss
Graham
Hansen
Hastings (WA)
Hayworth
Hefley
Herger
Hill
Hilleary
Hostettler
Hoyer
Hulshof
Hunter
Hutchinson
Istook
Jackson (IL)
Jackson-Lee (TX)
Jones
Kaptur
Kildee
Kim
King (NY)
Kingston
Kleczka
Klink
Kucinich
LaHood
Largent
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lipinski
Livingston
LoBiondo
Lucas
Maloney (CT)
Manzullo
Martinez
Mascara
McCarthy (NY)
McDade
McHugh
McInnis
McIntosh
McIntyre
McKeon
McKinney
McNulty
Menendez
Metcalf
Mica
Miller (CA)
Miller (FL)
Mink
Molinari
Moran (KS)
Murtha
Myrick
Neumann
Ney
Norwood
Oberstar
Obey
Olver
Ortiz
Pallone
Pappas
Parker
Pascrell
Paul
Payne
Petri
Pickering
Pombo
Poshard
Radanovich
Regula
Riggs
Riley
Rivers
Rohrabacher
Ros-Lehtinen
Royce
Ryun
Salmon
Sanders
Sanford
Saxton
Scarborough
Schaffer, Bob
Sessions
Shadegg
Sherman
Smith (MI)
Smith (NJ)
Smith, Linda
Snowbarger
Snyder
Solomon
Souder
Spence
Stearns
Strickland
Stump
Sununu
Talent
Taylor (NC)
Thomas

Thornberry
Thune
Tiahrt
Traficant
Walsh
Wamp
Waters
Watts (OK)
Weygand
Whitfield
Young (AK)

NOES—227

Ackerman
Aderholt
Allen
Archer
Armey
Baesler
Bass
Bateman
Becerra
Bentsen
Berman
Berry
Bilbray
Bishop
Blagojevich
Bliley
Blunt
Boehlert
Boehner
Boswell
Boucher
Boyd
Brady
Brown (CA)
Brown (FL)
Bryant
Burr
Buyer
Camp
Canady
Cannon
Capps
Carson
Castle
Chabot
Clement
Clyburn
Coble
Conyers
Cummings
Davis (FL)
Davis (IL)
Davis (VA)
Delahunt
DeLauro
DeLay
Deutsch
Dickey
Dingell
Doggett
Dooley
Edwards
Ehlers
Ehrlich
Engel
Eshoo
Evans
Ewing
Farr
Fattah
Fawell
Fazio
Ford
Fox
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Furse
Ganske
Gejdenson
Gekas
Gilchrest
Gilman
Gonzalez
Goodlatte
Gordon
Granger
Green
Greenwood
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hastert
Hastings (FL)
Hefner
Hilliard
Hinojosa
Hobson
Hoekstra
Holden
Hooley
Horn
Houghton
Hyde
Inglis
Jefferson
Jenkins
John
Johnson (CT)
Johnson (WI)
Johnson, E. B.
Kanjorski
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kilpatrick
Kind (WI)
Knollenberg
Kolbe
LaFalce
Lampson
Lantos
Latham
Levin
Lewis (GA)
Linder
Lofgren
Lowey
Luther
Maloney (NY)
Manton
Markey
Matsui
McCarthy (MO)
McCollum
McDermott
McGovern
McHale
Meehan
Meek
Minge
Moakley
Mollohan
Moran (VA)
Morella
Nadler
Neal
Nethercutt
Northup
Nussle
Owens
Oxley
Packard
Pastor
Paxon
Pease
Pelosi
Peterson (MN)
Peterson (PA)
Pickett
Pitts
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Quinn
Rahall
Ramstad
Rangel
Reyes
Rodriguez
Roemer
Rogan
Rogers
Rothman
Roukema
Roybal-Allard
Rush
Sabo
Sanchez
Sandlin
Sawyer
Schumer
Scott
Serrano
Shaw
Shays
Shimkus
Shuster
Sisisky
Skaggs
Skeen
Skelton
Slaughter
Smith (OR)
Smith (TX)
Smith, Adam
Spratt
Stabenow
Stark
Stenholm
Stokes
Stupak
Tanner
Tauscher
Tauzin
Taylor (MS)
Thompson
Thurman
Tierney
Torres
Turner
Upton
Velazquez
Vento
Visclosky
Watkins
Watt (NC)
Waxman
Weldon (FL)
Weldon (PA)
Weller
Wexler
White
Wicker
Wise
Wolf
Woolsey
Wynn
Yates
Young (FL)

NOT VOTING—28

Andrews
Baker
Barrett (NE)
Barton
Blumenauer
Borski
Bunning
Callahan
Clay
Costello
Crane
DeGette
Dicks
Dreier
Dunn
Etheridge
Flake
Foglietta
Harman
Hinchey
Johnson, Sam
Klug
McCrery
Millender-McDonald
Schaefer, Dan
Schiff
Sensenbrenner
Towns

□ 1804

The Clerk announced the following pair:

On this vote:

Mr. Dan Schaefer of Colorado, for with Ms. Dunn against.

Ms. EDDIE BERNICE JOHNSON of Texas and Messrs. DAVIS of Illinois, FAWELL, SERRANO, EDWARDS, and GUTIERREZ changed their vote from ''aye'' to ''no.''

Mr. PAYNE changed his vote from ''no'' to ''aye.''

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. BARRETT of Nebraska. Mr. Chairman, I was unable to be present for the vote on the Rohrabacher substitute amendment to H.R. 400. Had I been present, I would have voted ''no.''

Mr. COBLE. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly the Committee rose; and the Speaker pro tempore (Mr. UPTON) having assumed the chair, Mr. LAHOOD, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 400) to amend title 35, United States Code, with respect to patents, and for other purposes, had come to no resolution thereon.

RESIGNATION AS MEMBER OF COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on Government Reform and Oversight:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
April 17, 1997.

Hon. NEWT GINGRICH,
Speaker, U.S. House of Representatives, The Capitol, Washington, DC.

DEAR MR. SPEAKER: I hereby resign from the Committee on Government Reform and Oversight effective April 17, 1997.

Thank you very much for your consideration.

Sincerely,

TIM HOLDEN,
Member of Congress.

The SPEAKER pro tempore. Without objection, the resignation is accepted.

There was no objection.

RESIGNATION AS MEMBER OF COMMITTEE ON RESOURCES

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on Resources:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, April 17, 1997.

Hon. NEWT GINGRICH,
Speaker, U.S. House of Representatives, Capitol, Washington, DC.

DEAR MR. SPEAKER: I hereby resign from the Committee on Resources, effective April 17, 1997.

Sincerely,

NICK LAMPSON,
Member of Congress.

The SPEAKER pro tempore. Without objection, the resignation is accepted.

There was no objection.

RESIGNATION AS MEMBER OF COMMITTEE ON SCIENCE

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on Science:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
April 17, 1997.

Hon. NEWT GINGRICH,
Speaker of the House of Representatives, Washington, DC.

DEAR MR. SPEAKER, I hereby resign from the Committee on Science.

Sincerely,

LLOYD DOGGETT.

The SPEAKER pro tempore. Without objection, the resignation is accepted.

There was no objection.

CONCERNING PROMOTION OF PEACE, STABILITY, AND DEMOCRACY IN ZAIRE

Mr. ROYCE. Mr. Speaker, I ask unanimous consent that the Committee on International Relations be discharged from further consideration of the resolution (H. Res. 115) concerning the promotion of peace, stability, and democracy in Zaire, and ask for its immediate consideration.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

Mr. MENENDEZ. Mr. Speaker, reserving the right to object, and it is not my intention to object, I yield to the gentleman from California [Mr. ROYCE] the chairman of the Subcommittee on Africa to explain his unanimous-consent request.

Mr. ROYCE. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, this resolution has been cleared on both sides of the aisle and no recorded votes are anticipated.

Mr. Speaker, we have seen the headlines. Zaire is in crisis. Its government has collapsed, having lost much of its territory to rebel forces. There is humanitarian suffering throughout the country. This is a complex crisis.

Mr. Speaker, one of these forces has been a constant throughout this, and that has been the corrupt and despotic rule of President Mobutu. For more than 30 years, Mr. Mobutu has ruled Zaire with disdain for its people. Zaire is now politically collapsed. It is also economically collapsed. What should be a prosperous country is now one of the world's poorest.

Meanwhile, Mr. Mobutu is one of the world's wealthiest men. Simply put, Mobutu has bled Zaire. Repairing this economic damage will not be easy. Repairing the political damage of Mobutu will be a bigger challenge. The immediate task is to stop the fighting, develop a transitional government, and start on the path toward democracy.