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PROPOSED LEGISLATION RELATING TO PATENTS

Mr. O'MAHONEY. Mr. President, I desire to introduce for appropriate reference, two bills relating to patents. The bills are the result of prolonged hearings, through many years. The Patent Subcommittee of the Senate Committee on the Judiciary, of which I have the honor and pleasure to be chairman, held a round-table discussion last October with respect to means and methods of improving the patent system of the United States.

The first bill, which I now introduce—and I do it in this manner in order to give full public notice to all who may be interested—is a bill to establish a United States Court of Appeals for Patents. Under the present system, in patent cases appeals from decisions of the district court go, first, to the Court of Customs and Patent Appeals. It is our belief that it will greatly improve the patent system if a single Court of Patent Appeals should be established.

I shall request at the hearings which will be held, and notice of which will be given in due course, that those who come to testify consider the possibility of making this proposed court a court of last resort. This idea may be best explained by the fact that the late Justice Jackson, of the Supreme Court, once remarked, in substance, that the only valid patent in the United States was

one which the Supreme Court had not seen, because the record of the Court in overthrowing patents has been rather remarkable.

So, Mr. President, I send forward, first of all, the bill to establish a United States Court of Patent Appeals.

The PRESIDENT pro tempore. The bill will be received and appropriately referred.

The bill (S. 3744) to establish a United States Court of Appeals for Patents, and for other purposes, introduced by Mr. O'MAHONEY, was received, read twice by its title, and referred to the Committee on the Judiciary.

Mr. O'MAHONEY. I ask unanimous consent that a short release, prepared by me, relating to the bill, may be printed in the RECORD.

There being no objection, the release was ordered to be printed in the RECORD, as follows:

RELEASE BY SENATOR O'MAHONEY

For many years various groups, including the Science Advisory Board, and the United States National Patent Planning Commission, have endorsed the idea of a single court for patent appeals. At the subcommittee hearings held last October strong support was indicated for legislation which would promote the adoption of uniform standards of invention. Judge Learned Hand, one of America's foremost jurists and a man who has had broad experience in the trial of patent suits, expressed the view that a single court of patent appeals would be desirable if such a court were a rotating court with its bench drawn from the judges of the various courts of appeal rather than a court of technical experts.

Following these hearings, the staff and I formulated this bill designed to create a court which would receive and decide appeals from the Patent Office, as well as appeals from all of the district courts in patent cases. Its decisions would be effective throughout the entire United States. I shall request witnesses appearing at hearings on this proposed legislation to express their opinion on the advisability of making this new court of appeals a court of last resort.

There is a real need in the patent system for a more uniform standard of invention and greater consistency in judicial decisions relating to patents. The introduction of this bill is intended to direct attention to this need and to offer a means of solution. By introducing this bill I have not closed my mind to suggestions for improvements in this bill or for a new and different means by which this need can be met.

Mr. O'MAHONEY. The second bill is entitled "A bill to limit the life of a patent to a term commencing with the date of application."

At present there is a backlog of more than 200,000 patent applications pending in the Patent Office. Under the present law, the life of a patent is 17 years. The Constitution, of course, authorizes the Congress, in order to secure the progress of the useful arts—I am speaking now only of patents, not of copyrights—to grant an exclusive or a monopolistic right for a limited period. The present period is 17 years. It has varied from time to time.

The bill I am now introducing is so drawn that it will probably be called the 20-year bill, because it dates a patent from the filing of the application and seeks to reduce the long delays between the filing and the issuance of a patent, but probably will result in limiting the life of the patent by reducing the period of the patent, which extends for 17 years from its issuance, thereby including the long delay in the Patent Office.

The PRESIDENT pro tempore. The bill will be received and appropriately referred.

The bill (S. 3747) to limit the life of a patent to a term commencing with the date of the application, introduced by Mr. O'MAHONEY, was received, read twice by its title, and referred to the Committee on the Judiciary.

Mr. O'MAHONEY. I ask unanimous consent that a release, prepared by me, relating to the bill, may be printed in the RECORD.

There being no objection, the release was ordered to be printed in the RECORD, as follows:

RELEASE BY SENATOR O'MAHONEY

During the subcommittee hearings held in October, last year, and attended by inventors, patent lawyers, and judges, it was almost unanimously agreed that the patent system would be substantially strengthened by finding means to reduce the long delays between the filing of applications and the issuance of patents. These delays were attributable to a combination of circumstances including (a) insufficient personnel in the Patent Office due to inadequate funds, (b) the need for improvement in the Patent Office's classification system to speed up searches and to make prior art readily accessible, and (c) the failure of some applicants to prosecute their applications diligently in order to prolong the patent monopoly beyond the 17-year monopoly provided by the statute.

Some progress has been made toward increasing Patent Office personnel and improving the classification system. Subsequent to preliminary inquiries made by this subcommittee, the Patent Office prepared an 8-year program to reduce the backlog of pending patent applications from a present peak in excess of 220,000 to a manageable total of approximately 100,000. This would enable the Patent Office to act upon applications within 3 to 4 months, in contrast to delays today, in many instances, of over a year. Reflection of this 8-year plan is the budget for fiscal year 1957 which proposes $17 million for the Patent Office. The proposed plan contemplates considerable increase in the size of the Patent Office examining staff, and this entails recruiting engineering, physics, and chemistry graduates, a program which the Patent Office is now vigorously pursuing.

The bill introduced today is designed to speed up the prosecution of applications for patents and limit the period of life of a patent to a maximum term of 20 years from the date the application was filed or 17 years from the date of issuance, whichever is shorter. This bill is directed to eliminating stalling tactics indulged in by some applicants. Upon the passage of this bill, the burden will be upon applicants for a patent to have their patents issued as soon as possible so as not to have the life term of the patent curtailed. At the same time the bill contains safeguards preventing a curtailment of the term of the patent where the delays are not due to the fault of the applicant.

From time to time I will introduce other bills directed to improving the patent system. I solicit the comments of the patent bar and all interested persons upon these bills, and at a proper time there will be an opportunity given for a full hearing on them.