BILL *H.R. 4185*

DATE *3/17/65*

PAGE(S) *5117-5125*

ACTION: **Patent Fees:** By voice votes the House rejected a recommittal motion and passed H.R. 4185, to fix the fees payable to the Patent Office.

Rejected an amendment that would have increased by $25 the filing and issuance charges on patents and removed the provision for a patent maintenance fee system.

H. Res. 275, the rule under which the legislation was considered, had been adopted earlier by a voice vote.

**Pages 5117–5125**

## PATENT OFFICE FEES

Mr. O'NEILL of Massachusetts. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 275, and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 275

*Resolved,* That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4185) to fix the fees payable to the Patent Office, and for other purposes. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the bill shall be read for amendment under the five-minute rule. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

(Mr. O'NEILL of Massachusetts asked and was given permission to revise and extend his remarks.)

Mr. O'NEILL of Massachusetts. Mr. Speaker, at the conclusion of my remarks, I will yield 30 minutes to the gentleman from Illinois [Mr. ANDERSON].

Mr. Speaker, in my district, today is a holiday, back in Boston, the Cambridge-Somerville area. We honor the fact that back in Revolutionary times the Revolutionists drove the British out of Boston. It happened on a good St. Patrick's Day, so consequently we have an opportunity to have a holiday up there. There are those in my area who thoroughly believe it would be sacrilegious to work on good St. Patrick's Day.

I take note that the Speaker is using a shillelagh as the emblem of authority, and believe me, it is the emblem of order.

It is a common salutation of one neighbor to another in my area to say, "Top of the morning to you," and he replies, "The rest of the day to you." So I say that to all of you, "Top of the morning."

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. O'NEILL of Massachusetts. I yield to the gentleman from Iowa.

Mr. GROSS. It is to the credit of the Irish that they drove the British out of Boston, but they got right back into the U.S. Treasury with both feet.

Mr. O'NEILL of Massachussets. We have love in our heart for all today.

I am more than fortunate to have a high school group visiting me from the district which I represent here in the Congress of the United States. It is the sixth annual visit of a senior class from the Notre Dame High School of Cambridge, Mass. Headed by Sister Celine Helena, the principal, who is a dear and devoted nun, it is a privilege to meet with and to entertain such a splendid group of young Americans. They are exceptionally charming and courteous and I want the Congress to know how sincerely proud I am that they do me the honor to let me know when they are coming so that I may meet with them. I especially, at this time, would like noted in the records of the Congress my congratulations to the Notre Dame High School for their capturing the Catholic championships.

Notre Dame High School very kindly sent a card to me which arrived in the morning mail. I shall read it, and I voice the very same sentiment to all of you:

'Tis a time for great rejoicin'
For each lad and each colleen,
A time for makin' wishes,
And the wearin' o' the green,
So here's an Irish shamrock
For you to wear today,
And a wish that it will bring much joy
And Irish luck your way.

Rev. Marcel Lajoie, Sister Celine Helena, S.U.S.C., Sister Gabrielle Maria, S.U.S.C., Mr. Frank Abbott, Mrs. Joseph Paquet, Robert Frechette, David Gilreath, Donald Gilreath, John Keating, Raymond Leger, Paul Ouellette, Christopher Mullane, Kevin O'Grady, Paul Starek.

Celine Blais, Dianne Beauchemin, Janet Boucher, Ann Broussard, Jeanette Broussard, Helen Callahan, Norma Callahan, Alice Desrosiers, Mary Deveney.

Jacqueline Goulet, Aline Leger, Marcia Mahoney, Anne Marie Martin, Jean Messier, Linda Mikolaitis, Carol Lovely, Marie Morneault, Barbara Melanson.

Anne Nowlan, Marianne O'Neill, Ann Marie Robichaud, Joyce Wagner, Marie Wagner, Laurene Lawrence, Marie Pessotti.

Mr. Speaker, House Resolution 275 provides for consideration of H.R. 4185, a bill to fix the fees payable to the Patent Office, and for other purposes. The resolution provides an open rule with 2 hours of general debate.

The purpose of H.R. 4185 is to increase fees payable to the Patent Office so that a reasonable part of Patent Office costs may be recovered. In so doing, the bill also seeks to encourage better prosecution of applications, fix payments at more convenient times, and reduce the volume of unused patents.

The fees payable to the U.S. Patent Office are prescribed by statute and have not been overhauled in the past 33 years. In that period, the ratio of Patent Office income to Patent Office expenses has fallen drastically. Where once fee income substantially covered operating costs, it now recovers only about 30 percent of such costs.

In the last 20 years there has occurred an increasing divergence between income and operating costs, attributable primarily to the skyrocketing of costs in the past 15 years. Material submitted by the Patent Office in connection with recent hearings indicates that this problem is not peculiar to the United States. Using the average costs of 1930–39 as a base, the operating costs of our Patent Office have multiplied fivefold.

Other Government fees have increased, but those of the Patent Office remain pegged at the 1932 level. It is obvious that a substantial increase in Patent Office income is long overdue.

Mr. Speaker, I urge the adoption of House Resolution 275.

PATENT OFFICE FEES

Mr. O'NEILL of Massachusetts. Mr. Speaker, I move the previous question.

The previous question was ordered.

The SPEAKER. The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

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PATENT OFFICE FEES

Mr. WILLIS. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 4185) to fix the fees payable to the Patent Office, and for other purposes.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 4185 with Mr. NIX in the chair.

The Clerk read the title of the bill.

By unanimous consent the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule the gentleman from Louisiana [Mr. WILLIS] will be recognized for 1 hour and the gentleman from Ohio [Mr. MCCULLOCH] will be recognized for 1 hour.

The Chair recognizes the gentleman from Louisiana [Mr. WILLIS].

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

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

Mr. WILLIS. Mr. Chairman, the purpose of H.R. 4185 is to increase fees in the Patent Office so that a reasonable part of the Patent Office costs may be recovered. In so doing the bill also seeks to encourage better prosecution of applications, reducing the backlog and so on, and to fix payments at more convenient times.

Mr. Chairman, the fees payable to the Patent Office are prescribed by statute. They have not been overhauled in the past 33 years. In that period the ratio of Patent Office income to Patent Office expenses has fallen drastically. For instance, the Office used to be almost self-sufficient, but now the fees only bring in 30 percent of the cost involved in operating the office.

Mr. Chairman, enactment of this bill would ultimately permit the recovery through fees of approximately 75 percent of Patent Office costs.

As has been pointed out, this bill passed the House last year. It was reported out unanimously by the House Committee on the Judiciary. We now are going over the same ground again that we plowed last year. Incidentally, the amendment which it has been announced will be offered was offered last year and was defeated.

The need for this legislation is obvious. The present schedule of fees was put on the statute books 33 years ago. There have been no increases since. During the past 33 years, as we all know, the costs of all governmental services have gone up.

The price of the postage stamp has gone up, court costs have gone up, the cost of living has gone up and, incidentally, the fees of attorneys practicing before the Patent Office have probably tripled or quadrupled in the last 33 years.

Let me give you a few examples of what this bill does. The purpose of this bill is to raise funds for the Patent Office. The bill deals only in terms of figures, charges. There is no change in substantive law made in this bill. No rights under the patent law are increased or diminished under the bill. This is simply a patent office fee increase bill.

For example, the application fee under this bill is proposed to be increased from $30 to $50, the cost of copies of patents will be increased from 25 cents to 50 cents, recording assignments of patents will be increased to $20, and so on.

At the present time the various fees paid in processing a patent bring in about $9 million. Under this bill the total returns through fees will be something like $24 million, in round figures.

The bill proposed this year is the same bill that we acted upon last year with this principal change: As was pointed out a while ago, we propose this year to provide an alternative to the maintenance fee in the form of a $75 flat fee payable at the time of notice of allowance. The bill also provides, however, for the small patent owners, who are not sure whether their invention will bring any returns or money, and who prefer to rely on deferred payment.

Since we want to produce more income for the Patent Office, one of the increases is the maintenance fee approach. Thus, after a patent owner has had experience under his patent for 5 years, he can at that stage drop it, or to maintain it he can pay $50 more. Then after 9 years he must pay to maintain his patent $100 more. At the end of 13 years he must pay $150 more. This device, this system of raising more money for the Patent Office, resulted in some objections last year. We faced it, we debated the issue, and the House approved the maintenance fee approach. But in order to try to make the bill more acceptable to all this year we offer an alternative to the maintenance fee approach. Thus the bill therefore provides that instead of paying the maintenance fee over the life of the patent, if a patent owner is sure of himself, is sure of his patent, and he has the money, he can pay $75 upon notice of allowance, instead of paying the maintenance fee. That should remove objections that we heard last year. But I see some objections still not removed. So we will be called upon, as it has been announced, to vote on an amendment, the same amendment that we voted on last year, to delete the maintenance provision.

We did our best to remove objections, but we are again faced with that question this year. Last year, even without this alternative of paying in advance, even without that advantage, the House defeated the amendment to strike out the maintenance provision. It seems to me that with this option of paying the $75 initially, the House should again reject the proposed amendment.

In conclusion, I want to commend the Patent Subcommittee, for bringing this bill out. I assure you this bill is absolutely bipartisan.

This bill has been proposed for many, many years. It was approved by Patent Commissioner Watson under a Republican administration. It was advocated for several years by Patent Commissioner Ladd. This year again it is advocated by Patent Commissioner Brenner. So this is a bipartisan approach.

We have heard today again that a lot of people say, "We are for you, but." This is a "yes, but" bill. "We are for you, but" this, that, and the other. For instance, I have a "yes, but" letter here, from a very large, responsible firm in Washington. This is what they tell me. This is dated March 5:

> I have now had an opportunity to read the report on the administration's Patent Office fee bill. While I disagree with some of its conclusions, particularly those involving maintenance fees, I would like to congratulate you and your staff upon the general excellence of the presentation of a report.

So we are congratulated for having done a good job. It is admitted we ought to have an increase, and I am sorry that objections are still heard well, that is fine. We will meet them when the amendment is proposed. I do hope the amendment will be rejected.

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

Mr. POFF. Mr. Chairman, I yield myself such time as I may desire.

Mr. Chairman, as the distinguished gentleman from Louisiana has stated, this is a bipartisan bill. To me that means more than saying it is a nonpartisan bill. It is bipartisan because it has had the active, positive, affirmative efforts of all Members on both sides of the aisle not only in this year but in years past.

I am sure I could not enlarge substantively or otherwise improve upon the dissertation that my subcommittee chairman has made. I want to state very clearly that I do support the bill in its present form, and with all proper respect to my distinguished colleague, the gentleman from Illinois [Mr. ANDERSON], I will be constrained to oppose the amendment I understand he will offer.

It is perhaps best that in the operation of our Federal Government today the cost burden of its many activities which are deemed to be for the well-being of the general public must be paid for out of the broad base of Treasury revenue. However, I am of the opinion that when a Government agency provides special services to special identifiable beneficiaries, these beneficiaries should, when practical, pay at least a reasonable fee for those benefits in order that that agency might be self-supporting to the fullest extent possible. Our Patent Office is an excellent example of an agency which provides special benefits to identifiable recipients who should be required to pay a fair share of the maintenance of the system which protects their monetarily valuable interests. The present patent fee schedule was adopted during

the 72d Congress in 1932. At that time the income provided under this system equalled about 90 percent of the cost of maintaining the Patent Office, thus allowing the operation to be substantially self-supporting. Unfortunately, however, during the intervening years there has been a widening divergence between income and expenditures due to drastic increases in basic costs. With no increases in fees, the combined forces of decreasing purchasing power of the dollar and steady increases in wage and printing outlays have reduced the Patent Office cost recovery figure from 90 percent in 1932 to a mere 30 percent today—a financially irresponsible situation which should no longer be tolerated.

In addition to the fact that the bill will allow the Patent Office eventually to collect approximately 75 percent of its operating costs, H.R. 4185 will provide a fair and reasonable solution to other problems which exist in our patent system. The bill does not provide a mere across-the-board increase in fees. Rather, where possible, the fees are assessed in such a manner that those who use the patent system will be encouraged to make more efficient and considered use of it. At the same time, however, the fees are distributed in such a way that unproven patents are not subject to the same costs as those which are successful.

In reviewing some of the more important features of the bill, the changes in the filing fee are noteworthy. While the basic filing fee is increased from $30, to $50, and a fee of $2, is assessed on all claims in excess of 10, a new concept is introduced in the form of a $10 fee for each independent claim in excess of one. Without a doubt, independent claims which stand alone in defining an invention are generally far less comprehensible and far more costly to process than a dependent claim—which incorporates by reference the previous claim which it modifies. Certainly, the fee for this type of claim should reflect the increased burden on the Patent Office. Thus, by discouraging the use of unnecessary, prolix claims, as well as the cumbersome and nebulous independent claims, these provisions will help make interpretation and understanding of patent applications much easier not only for the examiners, but for our judges and members of the bar.

Item 2 of section 1 of the bill, while increasing the issue fee to $75, would set a charge of $2 for each sheet of drawing and $10 for each printed page of specification. While the latter fees will not create such a burden that essential specifications and drawings would be eliminated from applications, they will discourage unnecessary illustrations and verbiage. Thus, is addition to providing a more realistic printing cost recovery, this provision would remove the existing inequitable situation whereby an inventor who describes his invention in a short application is charged the same fee as one who files a so-called jumbo patent of several hundred pages in length.

The $20 fee, in part 10 of section 1, for the recording of assignments, is, quite frankly, an income-producing device rather than a mere effort to balance the fee for this service with the Patent Office's expense. However, it is important to observe that this charge provides income which would otherwise have to be derived through increases in initial fees charged to those who have not been able yet to determine whether their invention will even be deemed worthy enough to be assigned to another. It does not seem unreasonable, therefore, to shift a small portion of the composite expenses of the patent system to an assignee whose valuable interest in the successful invention will be protected through the facilities of the Patent Office.

Ideally, patents should issue promptly in order that disclosure of new technology can be made to the public as soon as possible. But, unfortunately, a long-standing problem which has confronted the Patent Office is the great time gap between the filing of the application and the issuance of the patent. Hopefully, this bill will do much to encourage better practice before the Patent Office and thereby further the progress already made in this direction.

One of the unnecessarily delaying aspects of our present law is seen in the provision that an applicant may take up to 6 months to decide whether his patent should issue or be abandoned. Section 4 of H.R. 4185, however, will specifically accelerate this period by providing that the patent will issue within 3 months after written notice of allowance of the application, providing the proper fees have been paid, or be regarded as abandoned. Thus, new information and products will be offered to the public sooner to provide not only a better way of life for all, but a stepping-stone to further advances in this Nation's technology and standard of living.

The bill's introduction of maintenance fees into the patent law is, no doubt, the most important as well as controversial feature of this legislation. In order to keep a patent in force after it issues, a patentee must pay a fee of $50 at the end of the 5th year, $100 at the end of the 9th year, and a final fee of $150, at the end of the 13th year of the life of the patent.

Although failure to pay the fee within the 6 months grace period after the due date will result in a lapsing of the patent, the bill provides that the inventor may request deferral of the fee if, prior to the due date, the patent has not earned value in an amount at least equal to the maintenance fee or fees which are then due. It is only at the end of the 13th year, when the inventor ought to have a good idea as to whether his patent is worth continuing, that a decision must be made either to pay the fees then due or to allow the patent to lapse.

In response to the objections raised against the maintenance fees, the committee, this year, has provided an option. If the applicant or assignee so elects at or before the time of payment of the issue fee, he may pay, in addition to the issue fee, another $75 which shall be deemed a complete satisfaction of the maintenance fee requirement over the entire life of the patent.

Maintenance fees should do much to encourage patentees to discard unused patents which clog the Patent Office, or those who are merely "defensive" in nature. Since the purpose of a defensive patent is accomplished upon its issuance, no harm would result if they were terminated upon nonpayment of a maintenance fee.

It is true that the maintenance fees place a greater part of the burden of sustaining the Patent Office on those patents which are successful. This, however, is certainly a valid policy to follow. For even if we were to disregard the public benefit to be derived by easing the financial requirements on the patentee of an untried invention—thereby providing the least possible burden so as not to weaken his incentive to invent—the maintenance fee system follows the sound theory that the beneficiary of a patent which has issued should bear a part of the cost of the system which made this benefit possible and which continues to safeguard his interest against all others.

This legislation will not only remove from the taxpayer the burden of subsidizing the specific beneficiaries of the patent system, but it will apportion the costs among those beneficiaris in a manner which will encourage and establish practical and efficient methods of procedure before the Patent Office without creating a prohibitive financial barrier to any part of the inventive capacity of the United States.

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

Mr. WILLIS. Mr. Chairman, I yield 3 minutes to the gentleman from Louisiana [Mr. WAGGONNER].

Mr. WAGGONNER. Mr. Chairman, I have asked for this time in order that I might ask the gentleman from Louisiana in charge of this bill today a question with regard to the legislation. The question is this. As the bill has been revised and is being presented today, is it not what might be considered a user tax for services which could be compared with a sales tax and which is made to be charged to those people who actually use the services of the Patent Office?

Mr. WILLIS. It is an effort to try to make the Patent Office a little bit more self-sufficient. This would still not bring in all the money that is required to run the Patent Office. We will still have to have appropriations for the Patent Office from the regular appropriating committees. A great deal of Government services are free, but you have to pay for some of the services. As a matter of fact, I do not suppose there is any agency that is self-sufficient, that brings in all the revenues they need except, perhaps, the Internal Revenue Department and even then we run in the red now and then.

Mr. WAGGONNER. I thank the gentleman.

Mr. WILLIS. Mr. Chairman, I yield 3 minutes to the gentleman from Connecticut [Mr. GIAIMO].

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

Mr. GIAIMO. Mr. Chairman, I would like to ask the chairman of the commit-

tee if in determining the increase in cost in order to make the Patent Office more self-sustaining whether or not you gave consideration to increasing the filing and the application costs rather than to initiate this new maintenance fee system?

Mr. WILLIS. Oh, yes. Those services, for filing and application costs, have been increased. But it was felt by the Patent Office over the years that even more money than that was needed. So we struck on the maintenance-fee provision with the alternate that I mentioned a while ago.

Mr. GIAIMO. Specifically, did your committee consider the suggestions in some of the bills that have been filed either in this body or in the other body to increase even more the existing filing fees and issuance fees rather than to initiate this new maintenance fee?

Mr. WILLIS. The original issue fee is increased under this bill from $30 to $75. Of course, we could make that $75 fee a $500 fee. But we honestly felt, and so did the Patent Office, that you would stir up a greater hornet's nest if we did that than to impose a maintenance fee for the life of the patent extending to the end of the use of the patent. We did consider that and this proposal has come down to us from the last four Commissioners. I am sorry I cannot remember the names of all the Commissioners, but I do remember Bob Watson and Mr. Ladd and Mr. Brenner. As I say, I am sorry I do not remember the names of all the Commissioners, but this has been recommended by the Patent Commissioners as the way to do it and it has been recommended all during these past years.

Mr. GIAIMO. I commend the chairman of the committee for bringing out this bill this year with the change as compared to last year in that there is an option not to pay the maintenance fee but to pay a flat $75 fee. I think this is an improvement over the bill last year. However, I do agree with the gentleman from Illinois [Mr. ANDERSON] in the feeling that this imposition of this new maintenance fee is a tax on the small inventors, the small inventive geniuses in our Nation who have helped us to bring forth new products and have helped to make our Nation the great and productive Nation that it is. I am not concerned about the fact that 75 percent apparently of patents are held by large corporations, if that is the figure I heard mentioned earlier. Of course, they can afford to pay such a fee and they will pay it. But my concern is that by the initiation and imposition of a new maintenance fee system, it will freeze out the small inventor and the poor inventor so that they are not going to have the kind of protection on their patents that we want them to have.

For that reason I feel I must support the amendment of the gentleman from Illinois, and hope the House will see fit to adopt it.

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

Mr. GIAIMO. I yield to the gentleman from Louisiana.

Mr. WILLIS. There is no compulsion. There is no imposition of anything, really, under this bill in the shape of the maintenance feature. One has an election. One can elect to maintain his patent. He is free to do that. Moreover, he will have an option to pay or to elect later on. There is no compulsory maintenance fee; it is elective.

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

Mr. GIAIMO. I am glad to yield to the gentleman from Texas.

Mr. CASEY. The gentleman appears to have studied the bill thoroughly. At first blush it looks to me like there will be some difficulty in determining when a patent has expired. It looks as though there will be a lot of bookkeeping and a lot of searching, under the postponement of the payment of a fee. Does the gentleman believe that will work a hardship, with respect to someone searching the records to find out whether a patent has expired or not?

Mr. GIAIMO. I believe there will be a great deal of hardship in searching the records. This has been brought out before, in the testimony. This is perhaps one of the reasons why the costs have been going up so much.

Mr. POFF. Mr. Chairman, I yield 5 minutes to the distinguished gentleman from New York [Mr. LINDSAY].

Mr. LINDSAY. Mr. Chairman, I thank the distinguished gentleman for yielding me time.

Nobody likes to come to the floor of the House to ask for additional fee payments for Government services, any more than anyone likes to come to the floor to ask for additional taxes. Yet, almost every Member of this body hastens to tell his constituents that the Government should put its housekeeping features on a near pay-as-you-go basis.

This legislation does not seek even to do that. This legislation falls far short of that, because this legislation recognizes many, many equities in favor of the patent owner and especially of the small patent owner which should not require him to pay for the full cost of services he receives.

I should like to suggest that if the Judiciary Committee were to adopt the suggestion of the distinguished gentleman from Connecticut and increase the filing and issue fees over what the Judiciary Committee suggests, then really a hornet's nest, as the gentleman from Louisiana put it, would be stirred up far beyond what has been the reaction to the suggestion about maintenance fees. An increase in filing and issue fees would be chiefly burdensome on the small patent owner rather than the larger patent owner.

Mr. Chairman, this legislation, which was recommended by the Secretary of Commerce, marks the latest in a long series of efforts to bring Patent Office fees into more reasonable relationship with the cost of administering the Patent Office.

Patent Office fees are fixed by statute. The last significant change in these fees was made in 1932. The 1932 fee increases brought the fee income of the Patent Office up to substantial parity with its operating costs. Since then, however, while fees have remained static, costs have risen tremendously. Today, the Patent Office recovers only about 30 percent of its costs. Enactment of H.R. 4185, as recommended by the Commissioner of Patents and the Secretary of Commerce, would bring recovery through fees up to about 75 percent of costs.

The bill would increase fee income of the Patent Office from $8.9 million to $24.1 million, a gain of aproximately $15 million. Against an estimated cost of operation for fiscal 1965 of $31.6 million, this would increase the percentage recovery from fees from 28.2 percent to 76.4 percent.

The principle underlying the bill as expressed by the Bureau of the Budget in connection with a measure proposed by the administration in the 87th Congress is as follows:

> In the conduct of their various activities many Federal agencies are required to provide certain services, supply products, or authorize the use of public resources which convey special benefits to identifiable recipients above and beyond those which accrue to the public at large. In fairness to the taxpayer, who carries the major burden of support of Federal activities, the Government has adopted the policy that the recipient of these special benefits should pay a reasonable charge for the service or product received or for the resource used.
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> The Congress gave statutory expression to this basic principle in title V of the Independent Offices Appropriation Act of 1952 (5 U.S.C. 140) which establishes as an objective that services rendered to special beneficiaries by Federal agencies should be self-sustaining to the fullest extent possible. It is our opinion that the patent system does provide such a special benefit to identifiable recipients—i.e., the inventors, applicants, and holders of patents—and that accordingly these beneficiaries should bear a fair share of the cost of the system's support. The monetary value of rights acquired through the patent system is often very large. A large subsidy to the system is not necessary to protect the public. In fact, the bill seeks only to restore the well-established principle that the patent system should be substantially self-supporting by providing for fees which are commensurate with current needs.

Fundamentally the bill does five things:

First. It increases patent and trademark fees generally.

Second. It favors simple, as against complex, formulation of claims.

Third. It changes the time payment of issue fees, reducing the period for their payment from 6 months to 3 months after allowance.

Fourth. It clarifies the validity of claims in dependent form, and

Fifth. It provides, through so-called maintenance fees, for deferred payment of a portion of the total fees.

The maintenance fee provision calls for payment of $50 after 5 years; $100 after 9 years; and $150 after 13 years. Payment of the first two installments may be deferred if the patent has not produced income to the inventor-owner—but all maintenance fees become finally payable after 13 years or the patent terminates. In a laudable effort to meet the objections to maintenance fees, the present bill, for the first time, per-

mits an applicant to pay $75 in lieu of all maintenance fees.

In the 87th Congress H.R. 10966 and S. 2225—similar bills—were reported favorably but did not reach the floor. In January 1964, H.R. 8190, 88th Congress passed the House but the measure died in the Senate.

Mr. Chairman, there is the broadest recognition of the need for fee increases of approximately the magnitude of those which this bill would provide. The subcommittee was aware of the fact that although the general principle supporting fee increases of this magnitude is widely accepted, there is some dissent with respect to some aspects of the measure.

For example, in past years there has been some objection on principle to the provisions for maintenance fees. In past years the subcommittee, while recognizing the sincerity with which these objections were raised, nevertheless approved the principle of maintenance fees because they enable the private inventor to defer a portion of the cost of obtaining the patent until a time when he would be better able to appraise the possibilities for exploiting the patent commercially. Moreover, the present bill, by affording an optional alternative flat fee of $75 in lieu of any maintenance fee has, in my opinion, met the objections to maintenance fees more than halfway.

Other objections are basically minor in nature and it would seem to be the best policy to permit the Patent Office to indicate the proportions in which the costs of its operation should be distributed among the different functions for which fees are charged. No one is better qualified to do this than the Patent Commissioner himself.

Mr. Chairman, on this problem of maintenance fees, which I will agree is one that has caused the most controversy, and I am sure there are two sides to it, the Judiciary committee felt it has no choice if it was to find an equitable solution to the problem of bringing the fee income into reasonable proportion of the costs of the office.

On the merits of the maintenance fee, it should be clear that the patent owner is protected. First, payment may be deferred if the patent has not produced income to the owner. It only becomes payable after 13 years, at which time it ought to be reasonably clear as to whether the patent will develop in such a way that it will be of financial benefit to its owners. Second, the owner has the option of paying $75 in lieu of any maintenance fee. This is $25 more than the increase in filing and have fees suggested by those members in opposition to the maintenance fee. There is not to much difference in the actual burden.

Mr. Chairman, our committee has wrestled with this problem. We do not like asking for any additional fees, but we do have a responsibility to the taxpayers and the public as a whole just as we have a responsibility to the inventors and the patent bar. We think we have weighed all of these competing claims very carefully and come up with a proposition that is about as evenly and fairly balanced as it is possible for legislators to do.

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

Mr. POFF. Mr. Chairman, calling attention to the fact that this is a committee composed of lawyers, and the majority side has consumed less than 15 minutes and the minority side less than 11 minutes, I should like to say that I have no further requests for time and yield back the balance of my time.

Mr. WILLIS. Mr. Chairman, I have no further requests for time.

The CHAIRMAN. There being no further requests for time, the Clerk will read.

The Clerk read as follows:

H.R. 4185

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the items numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, respectively, in subsection (a) of section 41, title 35, United States Code, are amended to read as follows:

"1. On filing each application for an original patent, except in design cases, $50; in addition, on filing or on presentation at any other time, $10 for each claim in independent form which is in excess of one, and $2 for each claim (whether independent or dependent) which is in excess of ten. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

"2. For issuing each original or reissue patent, except in design cases, $75; in addition, $10 for each page (or portion thereof) of specification as printed, and $2 for each sheet of drawing.

"3. In design cases:

"a. On filing each design application, $20.

"b. On issuing each design patent: For three years and six months, $10; for seven years, $20; and for fourteen years, $30.

"4. On filing each application for the reissue of a patent, $50; in addition, on filing or on presentation at any other time, $10 for each claim in independent form which is in excess of the number of independent claims of the original patent, and $2 for each claim (whether independent or dependent) which is in excess of ten and also in excess of the number of claims of the original patent. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

"5. On filing each disclaimer, $15.

"6. On appeal for the first time from the examiner to the Board of Appeals, $25; in addition, on filing a brief in support of the appeal, $50.

"7. On filing each petition for the revival of an abandoned application for a patent or for the delayed payment of the fee for issuing each patent, $15.

"8. For certificate under section 255 or under section 256 of this title, $15.

"9. As available and if in print: For uncertified printed copies of specifications and drawings of patents (except design patents), 50 cents per copy; for design patents, 20 cents per copy; the Commissioner may establish a charge not to exceed $1 per copy for patents in excess of twenty-five pages of drawings and specifications and for plant patents printed in color; special rates for libraries specified in section 13 of this title, $50 for patents issued in one year. The Commissioner may, without charge, provide applicants with copies of specifications and drawings of patents when referred to in a notice under section 132.

"10. For recording every assignment, agreement, or other paper relating to the property in a patent or application, $20; where the document relates to more than one patent or application, $3 for each additional item."

SEC. 2. Section 41 of title 35, United States Code, is further amended by adding the following subsection:

"(c) The fees prescribed by or under this section shall apply to any other Government department or agency, or officer thereof, except that the Commissioner may waive the payment of any fee for services or materials in cases of occasional or incidental requests by a Government department or agency, or officer thereof."

SEC. 3. Section 31 of the Act approved July 5, 1946 (ch. 540, 60 Stat. 427; U.S.C., title 15, sec. 1113), as amended, is amended to read as follows:

"(a) The following fees shall be paid to the Patent Office under this Act:

"1. On filing each original application for registration of a mark in each class, $35.

"2. On filing each application for renewal in each class, $25; and on filing each application for renewal in each class after expiration of the registration, an additional fee of $5.

"3. On filing an affidavit under section 8(a) or section 8(b) for each class, $10.

"4. On filing each petition for the revival of an abandoned application, $15.

"5. On filing opposition or application for cancellation for each class, $25.

"6. On appeal from the examiner in charge of the registration of marks to the Trademark Trial and Appeal Board for each class, $25.

"7. For issuance of a new certificate of registration following change of ownership of a mark or correction of a registrant's mistake, $15.

"8. For certificate of correction of registrant's mistake or amendment after registration, $15.

"9. For certifying in any case, $1.

"10. For filing each disclaimer after registration, $15.

"11. For printed copy of registered mark, 20 cents.

"12. For recording every assignment, agreement, or other paper relating to the property in a registration or application, $20; where the document relates to more than one application or registration, $3 for each additional item.

"13. On filing notice of claim of benefits of this Act for a mark to be published under section 12(c) hereof, $10.

"(b) The Commissioner may establish charges for copies of records, publications, or services furnished by the Patent Office, not specified above.

"(c) The Commissioner may refund any sum paid by mistake or in excess."

SEC. 4. Section 151 of title 35, United States Code, is amended to read as follows:

"§ 151. Issue of patent

"If it appears that applicant is entitled to a patent under the law, a written notice of allowance of the application shall be given or mailed to the applicant. The notice shall specify a sum, constituting the issue fee or a portion thereof, which shall be paid within three months thereafter.

"Upon payment of this sum the patent shall issue, but if payment is not timely made, the application shall be regarded as abandoned.

"Any remaining balance of the issue fee shall be paid within three months from the sending of a notice thereof and, if not paid, the patent shall lapse at the termination of this three-month period.

"If any payment required by this section is not timely made, but is submitted with the fee for delayed payment within three months after the due date and sufficient cause is shown for the late payment, it may be accepted by the Commissioner as though no abandonment or lapse had ever occurred."

SEC. 5. Section 154 of title 35, United States Code, is amended by inserting the words "subject to the payment of issue and maintenance fees as provided for in this title," after the words "seventeen years,".

SEC. 6. Title 35, United States Code, is amended by adding the following new section after section 154:

"§ 155. Maintenance fees

"(a) During the term of a patent, other than for a design, the following fees shall be due:

"(1) a first maintenance fee on or before the fifth anniversary of the issue date of the patent;

"(2) a second maintenance fee on or before the ninth anniversary of the issue date of the patent; and

"(3) a third maintenance fee on or before the thirteenth anniversary of the issue date of the patent.

In the case of a reissue patent the times specified herein shall run from the date of the original patent.

"(b) A grace period of six months will be allowed in which to pay any maintenance fee, provided it is accompanied by the fee prescribed for delayed payment. When a response is not received to the notice provided by subsection (e) of this section, a subsequent notice shall be sent approximately sixty days after the due date of any maintenance fee.

"(c) The first and second maintenance fees may be deferred in accordance with subsection (f) of this section.

"(d) A patent will terminate on the due date for any maintenance fee unless, as provided for in this section, the fee due (including any fees previously deferred) is paid or a statement in accordance with subsection (f) of this section requesting deferment is filed. Such termintaion or lapsing shall be without prejudice to rights existing under any other patent.

"(e) Notice of the requirement for the payment of the maintenance fees and the filing of statements in compliance with this section shall be attached to or be embodied in the patent. Approximately thirty days before a maintenance fee is due, the Commissioner shall send an initial notice thereof to the patentee and all other parties having an interest of record at the addresses last furnished to the Patent Office. Irrespective of any other provision of this section, a maintenance fee may be paid within thirty days after the date of such initial notice.

"(f) Any inventor to whom a patent issued (or his heirs) and who owns the patent may within six months of the fifth anniversary of the issue date of the patent by a statement to the Commissioner request deferment of the first maintenance fee if the gross benefit received by the inventor or any other party having or having had any interest in the subject matter of the patent, from, under, or by virtue of the patent or from the manufacture, use, or sale of the invention, was less in value than the amount of the fee, and the statement so specifies. The fee shall thereupon be deferred until the time the second maintenance fee is due and shall be paid in addition to the second maintenance fee.

"Any inventor to whom a patent issued (or his heirs) and who owns the patent may within six months of the ninth anniversary of the issue date of the patent by a statement to the Commissioner request deferment of the second maintenance fee (and further deferment of the first maintenance fee if such fee has been deferred) if the gross benefit received by the inventor or any other party having or having had any interest in the subject matter of the patent during the preceding four years, from, under, or by virtue of the patent or from the manufacture, use, or sale of the invention, was less in value than the amount of the second fee, and the statement so specifies. The second fee, or the first and second fees, as the case may be, shall thereupon be deferred until the time the third maintenance fee is due and shall be paid in addition to the third maintenance fee and with the same result if not paid. No deferment of any of the fees beyond the thirteenth anniversary of the issue date of the patent shall be permitted and the patent will terminate at the end of the thirteenth anniversary of the issue date unless all maintenance fees are paid in accordance with the provisions of this section.

"(g) An applicant or his assignee may elect, on or before the time of payment of the sum specified in the notice of allowance provided in section 151 of this chapter, to pay a fee of $75 and such payment shall constitute a complete satisfaction of the maintenance fees provided for in this section."

SEC. 7. The analysis of chapter 14 of title 35, United States Code, immediately preceding section 151, is amended to read as follows:

"151. Issue of patent.
"152. Issue of patent to assignee.
"153. How issued.
"154. Contents and term of patent.
"155. Maintenance of fees."

SEC. 8. Subsection (a) of section 41 of title 35, United States Code, is further amended by adding the following:

"12. For maintaining a patent (other than for a design) in force:

"a. beyond the fifth anniversary of the issue date of the patent, $50;

"b. beyond the ninth anniversary of the issue date of the patent, $100; and

"c. beyond the thirteenth anniversary of the issue date of the patent, $150.

"13. For delayed payment of maintenance fee, $25."

SEC. 9. (a) This Act shall take effect three months after its enactment.

(b) Items 1, 3, and 4 of section 41(a) of title 35, United States Code, as amended by section 1 of this Act, do not apply in further proceedings in applications filed prior to the effective date of this Act.

(c) Item 2 of section 41(a), as amended by section 1 of this Act, and sections 4, 6, and 8 of this Act do not apply in cases in which the notice of allowance of the application was sent, or in which a patent issued, prior to the effective date; and, in such cases, the fee due is the fee specified in this title prior to the effective date of this Act.

(d) Item 3 of section 31 of the Trademark Act, as amended by section 3 of this Act, applies only in the case of registrations issued and registrations published under the provisions of section 12(c) of the Trademark Act on or after the effective date of this Act.

SEC. 10. Section 266 of title 35, United States Code, is repealed.

The chapter analysis of chapter 27 of title 35, United States Code, is amended by striking out the following item:

"266. Issue of patents without fees to Government employees."

SEC. 11. Section 112 of title 35, United States Code, is amended by adding to the second paragraph thereof the following sentence: "A claim may be written in independent or dependent form, and if in dependent form, it shall be construed to include all the limitations of the claim incorporated by reference into the dependent claim."

SEC. 12. Section 282 of title 35, United States Code, is amended by deletion of the first paragraph thereof and substituting therefor the following paragraph:

"A patent shall be presumed valid. Each claim of a patent (whether in independent or dependent form) shall be presumed valid independently of the validity of other claims; dependent claims shall be presumed valid even though dependent upon an invalid claim. The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting it."

Mr. WILLIS (interrupting the reading of the bill). Mr. Chairman, I move that further reading of the bill be dispensed with and that the bill be open to amendment at any point.

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

There was no objection.

AMENDMENT OFFERED BY MR. ANDERSON OF ILLINOIS

Mr. ANDERSON of Illinois. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. ANDERSON of Illinois: In section 1, on page 1, line 7, strike out "$50" and in lieu thereof insert "$75"; and on page 2, line 4, strike out "$75" and in lieu thereof insert "$100".

In section 5, on page 6, line 16, strike out the words "and maintenance".

Beginning with line 18, on page 6, strike out all of section 6 through line 23 on page 9.

On page 10, strike out all of section 7.

On page 10, strike out all of section 8.

On page 10, line 15, renumber "SEC. 9" as "SEC. 6" and on page 11, line 1, of said section, strike out the words "sections 4, 6, and 8" and in lieu thereof insert the words "section 4".

(Renumber following sections accordingly.)

Mr. ANDERSON of Illinois. Mr. Chairman, I make no apology for disturbing the tranquillity of the debate this afternoon by rising to oppose at least in part what has been described as a bipartisan bill. For I note in the concluding paragraph of the committee's own report on this bill that they say the following:

> With respect to the precise detail and method by which increased Patent Office income should be augmented, there is, of course, room for diversity of opinion.

I bring to you that diversity of opinion with these amendments I have offered. I might say in simple summary for the benefit of the Members of the House who may have come in since I spoke earlier this afternoon under the rule that these amendments taken en bloc are identical with the bill that has already been introduced in the other body by the junior Senator from Maryland [Mr. TYDINGS].

The amendments would increase the original issue fee or application fee to $75; they would increase the final issuance fee to $100; and then they would strike out all the sections of the bill as they relate to maintenance fees.

Mr. Chairman, I repeat what I said earlier. I think that particularly under the Constitution of the United States this House of Representatives has a very peculiar responsibility, with respect to this entire matter of inventors and with respect to our patent system.

Mr. Chairman, I now read from the Constitution itself, article I, section 8, which states as follows: "To promote the Progress of Science and useful Arts, by security for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

Mr. Chairman, we ought to be very careful that we do not do something through the enactment of this legislation which would serve as a disincentive to those innumerable small inventors who down through the years have given of their genius and the product of their brainpower and who have helped to make this Nation the great industrial nation which it is.

Mr. Chairman, it has been pointed out and I now take it as an example, the invention of power steering. It laid dormant in the Patent Office of the United States for something like 30 years until finally it came out and was put into use.

Mr. Chairman, we do not want even a little skimpy $50 or $100 or $150 maintenance fee to discourage some inventor from maintaining a patent that could be a useful one.

Mr. Chairman, I do not feel that when I come to the well of the House, as has been alluded to by an earlier speaker, that I am coming to you insincerely and talking out of both sides of my mouth about economy in Government.

This amendment, which proposes to raise the original issue fee and application fees, if adopted, would raise as much as under the maintenance fee system. I think at the same time you are going to accomplish the purpose of putting the Patent Office on a sounder financial basis, and I wholly subscribe to that motive, without risking some of the other real inherent disadvantages that lie in the system of maintenance fees.

Mr. Chairman, it was mentioned earlier this afternoon, that under this bill the Patent Office on the 5th-year anniversary of a patent would send out a notice to the list of inventors who have patents on file which would otherwise lapse. Then at the end of the 9-year period, they would send additional notices and also at the end of the 13-year period.

Mr. Chairman, there is a provision in here for a grace period. There is a provision to the effect that if the patentee does not respond to the first notice he is to get another notice to pay the fee. We must, of course, bear in mind the further work, the bureaucracy and the mechanical work that is going to have to go on and which has to take place if we are going to set up this system of notifying people of these payments that are due during the course of this 13-year period.

Mr. Chairman, I doubt very much that by the time we have added up all the added costs involved in this bill we will save very much money and streamline and make more efficient the operation of the Patent Office.

Mr. Chairman, I wonder how many here have taken the time, as I have done, to read some of the testimony given on this bill at earlier hearings in prior years. Very much to my regret there were not any hearings on this bill this year; on a bill so important to the small inventors and the Patent Bar and the whole country at large, protecting the rights of small businessmen and small inventors.

Mr. Chairman, I hope very much when the time comes the members of the committee will join me and join the gentleman from Connecticut and others and will support this amendment to cut out maintenance fees and eliminate what I think would introduce a very new and novel and dangerous feature into our patent system.

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

Mr. ANDERSON of Illinois. I yield to the gentleman from Texas.

Mr. CASEY. Is not most of the expense and cost generated in filing a patent at the time of the original filing where provision is made in this bill to raise the fees?

Mr. ANDERSON of Illinois. Yes, I think there has been a lot of talk, or there was last year anyway, not so much this afternoon since we have all been blessedly brief in our comments, as to how this would eliminate deadwood in Patent Office files. However, a lapsed patent will remain in the files as a piece of paper which is, after all, the tangible evidence of a patent. A former Assistant Commissioner of the Patent Office has testified that very little would be accomplished in the way of "shaking-out" Patent Office files by adopting a system of maintenance fees.

Mr. WILLIS. Mr. Chairman, I rise in opposition to the amendment.

I have listened to the proponent of this amendment and very honestly, I cannot follow his reasoning.

Mr. Chairman, reference has been made to the small inventor, but this amendment is a big man's amendment. It is a lawyer's amendment. It is not an inventor's amendment. This amendment is against the interests of the small inventor.

The purpose of the bill in deferring the payment of part of the fees until after the patent is issued is to give the inventor an opportunity to know whether he can recoup his investment. This purpose would be frustrated by tacking on a large initial fee. The purpose is to give the little man a chance to pay the additional fees on a deferred basis.

What the amendment does is to impose a larger flat fee upon the issuance of the patent and in the initial stages. I repeat, I cannot help but look upon this amendment as a big man's amendment, as a lawyer's amendment. It is not a small inventor's amendment by any means. It penalizes him. It proposes payment of a large fee initially which would be a burden on the small patent inventor. The big corporations do not mind this amendment. They do not mind paying $100 for an issuing fee. But the small inventor often may not afford to pay this increased amount.

This amendment would impose an undue burden on the small inventor. It is a lawyer's, not an inventor's, amendment. It is a big man's amendment, not a small man's amendment.

We went through all of this last year, and I ask that this amendment again be defeated.

Mr. McCLORY. Mr. Chairman, I rise in support of the pending amendment.

Mr. Chairman, in addition to the statement that has been made by my colleague from Illinois [Mr. ANDERSON], I want to point out an additional fact or two. First, I want to join in what he has said to the committee. I should like to point out, in addition, that while the amount of the maintenance fees may not be so substantial, there will also be lawyers' fees, and service fees for recordkeeping, with which every inventor and the lawyer representing him must contend with. The recordkeeping expenses of today's taxation and government regulations constitute one of the great expenses of doing business.

I am informed by a responsible patent lawyer, whose opinion I respect, that the recordkeeping expenses of these maintenance fees will total more than the amount of the maintenance fees themselves. That is based on the experience we all have as taxpayers, as businessmen, and the experience which has been encountered in other countries where these maintenance fees are now in force.

Mr. Chairman, it is my understanding that the various Patent Law Associations have been practically unanimous in their opposition to establishment of "maintenance fees" or taxes as called for in the present bill, H.R. 4185. The maintenance fees are, in effect, taxes.

Insofar as the position of the Patent Office is concerned, there appears to be no justification for this additional assessment against the patentees. There is no action which the Patent Office must take in order to maintain patents in force. Once a patent is granted, the matter is beyond the jurisdiction of the Commissioner of Patents. The patent runs its normal 17-year life and then expires.

The present proposal is merely a device to pick up additional income. However, the additional income which will come to the Patent Office bears no relation to the expenses of the Patent Office in the prosecution of the patent application. If it is contended that Patent Office "searches" are rendered more expensive or more burdensome because of the numerous patents which lie relatively dormant in the Patent Office, it would seem appropriate to adjust the fees for such "searches" or to speed up the adoption of modern methods which can reduce the expense of this operation.

Mr. Chairman, the experience in other countries, where annual taxes and other periodic burdens are imposed, should be sufficient for us to reject this part of the bill and to act favorably on the amendment of the gentleman from Illinois, Mr. ANDERSON, in support of an increased filing fee. I am convinced that this amendment is in the best interests of the inventors—large and small, individual and corporate—whose valuable services in developing new articles and processes should be encouraged.

Mr. Chairman, I am very anxious to support this bill on final passage. However, I feel strongly that the amendment now under consideration should be adopted. It will make this a far better bill and help to serve the principal ends which the Patent Office desires and which the Judiciary Committee of this House is attempting to provide.

(Mr. ANDERSON of Illinois asked and was given permission to revise and extend his remarks.)

Mr. CASEY. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, it is a shame that we have so few Members on the floor on such a bill as this, which I think is very important. A lot of people today think that this is an argument between the little man and the big man on this. What you are fixing to do if you adopt this bill is to further complicate the Patent Office.

The distinguished chairman of the subcommittee said if we adopt the pending amendment we will squeeze out the little man. I do not think a $25 increase in the filing and issuance cost in lieu of a maintenance fee, is going to squeeze out any little man. If he has a meritorious idea he will be able to find that additional $25. They are trying to get the Patent Office out of the red by increasing the fees, but you are adding to the maintenance of the Office. If any of you have read this bill, there is a maintenance fee, but most of the work is already done when the patent is filed and when it is issued. Then they are going to charge you a maintenance fee. If someone does not want to pay that maintenance fee the first 5 years, he can give notice and postpone it until the 9th year. Then he will have to pay both. If he does not pay both, the patent is dropped and the Government receives nothing. The Patent Office will have to send him a notice and keep some one in the Office to send out the notice as to due dates of the fee. Why not simplify it instead of complicating it? If they need an additional $25, let us put the additional $25 on it in the beginning and then keep from hiring somebody to check on it through the years. Under the bill if a man fails to pay the maintenance fee on the date due, he has a 6-month period of grace in which to pay it. This sounds to me like it is going to complicate the little man's life, and it is going to complicate the big man's life, as it will be difficult to determine when a patent has truly expired. You are going to create a new section in the Patent Office to maintain records and notify him about the maintenance fee. This is no argument between big boys and little boys. If they have any kind of idea, they can find the additional $25.

I think the committee has been constructive and deserves commendation for bringing in a raise in fees. There is no question that they are necessary. But again, I say we should be more interested in simplifying governmental affairs rather than complicating them.

The gentleman has offered, in my opinion, a good amendment and should be commended for doing so. He was told awhile ago by the gentleman from New York [Mr. LINDSAY] that if he wanted to be constructive, he should include in his amendment an increase in the fees to take care of the maintenance cost. This, he did to show his good faith. Then, after the amendment being offered, the distinguished chairman of the subcommittee [Mr. WILLIS] jumps on him for increasing the fees, saying that he is going to squeeze out the little man. He is somewhat like the canary caught in the badminton game. He is being knocked back and forth by both sides. But I assure you that the increase proposed by the gentleman's amendment is not going to squeeze out anyone.

I think the gentleman has offered a good amendment, and it should be adopted by this House in the name of simplification of our Government, as well as meeting the need for the increased revenue.

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

Mr. POFF. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I join the distinguished gentleman from Louisiana in opposition to the amendment.

I want to compliment the gentleman from Illinois. He is most versatile and skilled in debate. When we were arguing the rule, I understood that the gentleman complained that the patentee would be put to a great deal of trouble, inconvenience, and expense in keeping books and hiring lawyers to remind himself to pay the maintenance fees timely. Then after we got into the Committee of the Whole House on the state of the Union, I notice the distinguished gentleman saw fit to complain about the additional costs that will be incurred by the Patent Office in giving notice of the maintenance fee. The gentleman from Illinois also called attention to the recordkeeping that might be required by this bill.

Mr. ANDERSON of Illinois. Mr. Chairman, will the gentleman yield?

Mr. POFF. I yield to the gentleman from Illinois.

Mr. ANDERSON of Illinois. The reason I mentioned the fact that additional legal expense might develop is that in Europe, where the maintenance fee system originated, there has been objection to it. The lawyers take care of notifying the client when the fee is due, and so forth, and naturally they charge a fee for their services. So the patentee will not only be paying a maintenance fee but paying a lawyer for his services.

Mr. POFF. It is not likely the patentee would hire a lawyer to write a check and sign his name to it under a power of attorney, when the patentee would be forwarded by Patent Office notice well in advance of the fee deadline.

To the gentleman from Illinois [Mr. MCCLORY] may I say I do not understand how additional recordkeeping of any consequence would be thrust upon the patentee when the bill, as I have said before, requires not one but several kinds of notices to be made to the patentee.

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

Mr. POFF. I am glad to yield to the gentleman.

Mr. MCCLORY. The point I am trying to make is twofold really. Recordkeeping is going to be involved not only on the part of the patentee but also in the Patent Office itself. As I understand it, at the present time when a patent is granted, there is no further recordkeeping that is required in the Patent Office. The patent is there and it remains on record and there is no further servicing. Under this legislation, if it is enacted without this amendment, there would have to be additional recordkeeping at the end of the 5-year period and at the end of the 9-year period and at the end of 13 years.

Also, the effect of this bill will be to require the patentee or his agent or attorney to keep records during that time. It is this combination of records that combines to add to the expense because there are service charges and additional expenses which are incurred in connection with the proposed maintenance fees or taxes.

Mr. POFF. I thank the gentleman, but I am afraid the gentleman in his response ignores the fact that when a new patent application requires a new search of the records, the search is more expensive to the Patent Office if there are many unexpired patents which, in fact, are not being used by the patentee or his licensee. If the effect of this legislation would be to reduce the number of such patents, then I think possibly we could look forward to substantial savings. I might also respond to the gentleman from Illinois [Mr. ANDERSON] who offered an amendment which would in the first instance increase the filing fee from $50 to $75. We must understand the filing fee is paid before the applicant has any assurance whatever that his patent is going to be granted. Therefore, he is being saddled with an extra burden at a time when he can afford it least. Then also the gentleman's amendment would increase the issuance fee from $75 to $100. Altogether this represents an increase of $50 which is only $25 less than the total amount that the applicant can pay by exercising the option granted him under section (g), page 9, of the bill.

For these reasons, Mr. Chairman, I must oppose the amendment.

The CHAIRMAN. The time of the gentleman has expired.

Mr. GIAIMO. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I rise in support of the amendment. We have heard statements made here today, Mr. Chairman, that we all want to economize on this bill. Everyone who has been working on the bill in committee wanted to economize on this bill. We want to make certain that the small inventor, the man who cannot afford to spend large sums of money on fees, is protected and see that he is not taken advantage of. All of this I am in agreement with. Certainly, I am in agreement with the concept, for example, of trying to make the Patent Office more self-sustaining. But the committee comes here to the floor of the House with a bill designed primarily to accomplish this purpose and they say that in order to accomplish this, we will increase the amount of the payment that must be paid now on existing charges on the application and on the issuance of the patent. But then they go one step further and they say that in order to do this, let us create a new type of fee, a maintenance fee. I suggest that when they do this—when they create this new type of fee which we call a maintenance fee and which has been in existence

in the countries of Europe, they are going beyond the mere attempt to increase existing fees—which fees have not been increased for many years—in the attempt to make the Patent Office more self-sufficient.

They are now saying that for the privilege of owning a patent or for the privilege of working a patent, we are going to charge the patent holder an indirect tax, if you will, and put the burden on the user. In order to soften this burden and in order to mitigate this—because we had difficulty with this last year—they have perfected their bill in my opinion as compared to the bill that was brought here last year, and they now have this optional provision whereby instead of paying the $50 in 5 years and the $100 in 9 years and the $150 in 13 years for maintenance, it is made a flat sum of $75. Or one can defer his payment until he derives monetary benefit from he patent.

By doing this, is it a simple attempt to raise existing fees, as the gentleman from Illinois suggested and as I have suggested, in order to make this Office more self-sustaining, or are we bringing something new into this; namely, an indirect user tax on the small inventors of America? The large inventors will pay whatever fees are created by law, but the small inventor is the man about whom we are concerned and about whom this country historically has been concerned.

Once having established the principle of maintenance fee, once enacting it into law, will we open the door in future years for increasing it, for opening it further, for eliminating the option? Then, instead of paying a small amount of increase, as suggested in the amendment of the gentleman from Illinois, $25 on filing and another $25 on issuance, or $50, will it be opened up wide?

Already we have writen into the law the optional sum of $75 minimum to $300 maximum, and even more than that, I am told by people in the field.

Therefore, I am quite concerned about establishing this new principle of a maintenance fee. I should like to see an attempt made to get started on trying to make the Office more self-sustaining by sticking to established existing law, which provides for the charges on application and issuance of patent. Let us see how that works. Let us see how much money that will bring in, and then determine whether there should be another modest increase in the existing fees, before we go into this new type of fee, which I claim is an indirect user tax.

Mr. ANDERSON of Illinois. Mr. Chairman, will the gentleman from Connecticut yield?

Mr. GIAIMO. I yield to the gentleman from Illinois.

Mr. ANDERSON of Illinois. I thank the gentleman for his statement and for supporting my amendment.

The gentleman asked the question of whether we are putting a user tax on the inventor. I recall the colloquy a few minutes ago between the gentleman from Louisiana [Mr. WAGGONNER] and the distinguished chairman of the subcommittee, the gentleman from Louisiana [Mr. WILLIS]. That question was answered in the affirmative. Yes, that is what the bill would do, unless we amend it. By passage of the bill we would put a user tax on the inventor.

Mr. GIAIMO. Yet they come in here to claim that this is simply a bill to increase the fees, to make the Office more self-sustaining; is that not so?

Mr. ANDERSON of Illinois. As the gentleman has pointed out, it is far more than that. It involves a principle which could be destructive of the patent system.

Mr. BOW. Mr. Chairman, I move to strike the requisite number of words.

I rise only to say I support the principle of this bill. I am not familiar with all the details of the amendment, but I support the overall principle of the bill.

This subject comes before my subcommittee of the Appropriations Committee. When I first went on the Appropriations Committee, the request of the Patent Office was approximately $7 million. Today the request of the Patent Office is $37 million. There has been no increase in fees during the period of time this great increase has occurred.

I believe it is time for Congress to face up to this fact, and we must raise these fees so that we can start to cut down on the great deficit we have.

Mr. ANDERSON of Illinois. Mr. Chairman, will the gentleman from Ohio yield?

Mr. BOW. I yield to the gentleman from Illinois.

Mr. ANDERSON of Illinois. I am anxious to point out to the Members now on the floor that I can support this bill if this amendment which I am proposing is adopted. It would raise the fees which would be collected by the Patent Office.

Because of the respect in which the gentleman from Ohio [Mr. Bow] is held on both sides of the aisle, because of his continuing concern that this Government of ours operate on a pay-as-you-go basis, I know Members will listen very carefully to the position he takes.

I assure the gentleman from Ohio that by voting "yea" on my amendment, by supporting, he will not in any way be subscribing to a position which could be characterized as financial irresponsibility.

The amendment would raise the fees of the Patent Office. It would put the Office on a far more self-sustaining basis than it is at the present time.

My quarrel is merely with the method in which it is sought to be done in the original bill, by the maintenance fee system rather than by merely increasing the application fee and the final issuance fee.

Mr. BOW. I thank the gentleman for his contribution.

Mr. Chairman, I yield back the remainder of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois [Mr. ANDERSON].

The question was taken; and on a division (demanded by Mr. ANDERSON of Illinois) there were—ayes 22, noes 36.

So the amendment was rejected.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker having resumed the chair, Mr. NIX, 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. 4185) to fix the fees payable to the Patent Office, and for other purposes, pursuant to House Resolution 275, he reported the bill back to the House.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT

Mr. ANDERSON of Illinois. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the bill?

Mr. ANDERSON of Illinois. I am.

The SPEAKER. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. ANDERSON of Illinois moves that the bill H.R. 4185 be recommitted to the Committee on the Judiciary.

Mr. WILLIS. Mr. Speaker, I move the previous question on the motion to recommit.

The previous question was ordered.

The SPEAKER. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER. The question is on the passage of the bill.

The bill was passed.

A motion to reconsider was laid on the table.