BILL H.R. 8190 | DATE Jan. 22, 1964 | PAGE(S)

ACTION: **Patent Fees:** By voice votes the House rejected a recommittal motion and passed H.R. 8190, to fix fees payable to the Patent Office.

An amendment to delete sections 5 and 6 of the bill providing for charging of certain patent maintenance fees was rejected.

H. Res. 593, the rule under which the legislation was considered, had been adopted earlier by voice vote.

Pages 881–896

PATENT OFFICE FEES

Mr. TRIMBLE. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 593 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

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. 8190) 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. TRIMBLE. Mr. Speaker, I yield 30 minutes to the gentleman from Kansas [Mr. AVERY]; and pending that such time as I may consume.

As the Members know from the reading of the resolution it makes in order the consideration of the bill H.R. 8190 which concerns fees payable to the Patent Office and for other purposes. The rule provides 2 hours of general debate. It is an open rule. I know of no opposition to the rule and I reserve the balance of my time.

Mr. AVERY. Mr. Speaker, it is my conclusion from the reading of the report accompanying this bill that there is agreement that patent fees should be increased in order that the income to the U.S. Patent Office may be restored to as nearly as possible the same level at which it has prevailed historically. Further it is my understanding there has been no increase in Patent Office fees since 1932. There is disagreement on the formula for increasing these fees.

It was anticipated originally when the Patent Office was first created that patent fees should not carry the full expense of the Office, but the income from them should approximate about 75 percent of the cost of operating the agency. At the present time the fees will defray only about 30 percent of the expense of the operation of the agency.

The members of the committee who have drafted this bill have concluded that with the passage of the bill the accumulation from the fees collected will restore the income of the agency to about 75 percent of the cost of its operation.

There have been bills introduced in almost every Congress since 1932 to increase the patent fees, but I think this is the first time that a bill has reached the floor of the House for formal consideration. So, Mr. Chairman, I urge the adoption of the rule.

Mr. TRIMBLE. Mr. Speaker, I move the previous question.

The previous question was ordered.

The SPEAKER pro tempore. The question is on the resolution.

The resolution was agreed to.

IN COMMITTEE OF THE WHOLE

Mr. CELLER. 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. 8190) to fix the fees payable to the Patent Office, and for other purposes.

The motion was agreed to.

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. 8190, with Mr. JOELSON in the Chair.

The Clerk read the title of the bill.

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

Mr. CELLER. Mr. Chairman, I yield myself 7 minutes.

I yield myself only a paucity of time because it is far better for the gentleman who presided over the destinies of this bill in the Judiciary Committee to give his explanation of it. I refer to the distinguished gentleman from Louisiana [Mr. WILLIS]. He will be here momentarily.

The purpose of this bill is to increase the fees payable to the U.S. Patent Office. Patent fees are prescribed by statute, and as indicated a few moments ago, they have not been overhauled in the last 30 years. In that period, of course, the value of the dollar has greatly changed. The time has come when we have to reappraise the fees presently charged by the Patent Office. Once the fee income of that Office substantially covered its costs. They now recover a little more than 30 percent of such costs.

H.R. 8190 is responsive to an executive communication from the Department of Commerce. It is the latest in a series of measures designed to restore a rational relationship between the Patent Office fees and the cost of administering the American Patent Office. The enactment of the bill will ultimately permit recovery of fees of approximately 75 percent of the cost.

The Bureau of the Budget very significantly stated with reference to these fees the following:

> 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.

The monetary value of rights acquired through the patent system is very large and very valuable. A large subsidy to the system is not necessary to protect the public. The bill would provide a fair degree of income to the Patent Office to defray the expenses thereof.

The bill also contains provisions of the fee structure, principally to serve two purposes:

First. To provide incentives to efficient and economical prosecution and examination of patent applications; and, second, to provide for deferment of payment of parts of the fees to times when the patent owner will be in a better position to judge the commercial value of his patent. This is also designed to encourage patentees to discard patents whose disclosures they do not expect to come into commercial use, and is expected to reduce the number of unused patents in force.

I am informed that the fees that are now charged by our Patent Office are the lowest of any fees charged by patent offices throughout the world. That is rather anomolous. A bill of this character has been introduced in the House year in and year out for several years, but we were never able to get to first base with it.

I hope this House will realize that there is a need for a change in these fees and that this bill will be overwhelmingly adopted.

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

Mr. CELLER. I yield to the gentleman from Iowa.

Mr. GROSS. Is there any increase in pay for employees of the Patent Office, any upgrading of employees, anything dealing with the compensation of personnel in any way involved in this bill?

Mr. CELLER. Nothing of that sort whatsoever in the bill.

Mr. GROSS. Nothing at all?

Mr. CELLER. Nothing at all.

Mr. GROSS. May I ask the gentleman, what about foreign companies and corporations? Do they pay fees to the U.S. Patent Office, or is there some form of reciprocity involved?

Mr. CELLER. It does not deal with that at all. It simply deals with an increase in patent fees. There is no reference to that at all.

Mr. GROSS. Your report says that more than 70 percent of the patents nowadays are assigned to American and foreign companies, and the U.S. Government. So we do have some foreign traffic here. My question is whether they pay fees to the United States or whether there is some reciprocity involved when we go to them for registration of a patent?

Mr. CELLER. Foreign entities pay the same fees as domestic entities, and they would have their fees increased, as would domestic entities, under this bill.

Mr. GROSS. I see; I thank the gentleman.

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

Mr. CELLER. I yield to the gentleman.

Mr. MEADER. I was interested to note that the first postwar bill on this subject was introduced by my predecessor in the House of Representatives, Hon. Earl Mitchener, who was chairman of the Committee on the Judiciary in the 80th Congress. But, apparently, he did not get any further with his bill than you have been getting with your bill subsequently, Mr. Chairman.

Mr. LINDSAY. Mr. Chairman, I yield myself such time as I may require.

Mr. Chairman and members of the Committee, first of all I think the members of the Committee ought to take note of title V of United States Code, section 140. That section was enacted in 1952 and reads as follows:

It is the sense of the Congress that any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency (including wholly owned Government corporations as defined in the Government Corporation Control Act of 1945) to or for any person (including groups, associations, organizations, partnerships, corporations, or businesses), except those engaged in the transaction of official business of the Government, shall be self-sustaining to the full extent possible, and the head of each Federal agency is authorized by regulation (which, in case of agencies in the executive branch, shall be as uniform as practicable and subject to such policies as the President may prescribe) to prescribe therefore; such fee, charge, or price, if any, as he shall determine, in case none exists, or redetermine, in case of an existing one, to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts, and any amount so determined or redetermined shall be collected and paid into the Treasury as miscellaneous receipts: *Provided,* That nothing contained in this section shall repeal or modify existing statutes prohibiting the collection, fixing the amount, or directing the disposition of any fee, charge or price: *Provided further,* That nothing contained in this section shall repeal or modify existing statutes prescribing bases for calculation of any fee, charge or price, but this proviso shall not restrict the redetermination or recalculation in accordance with the prescribed bases of the amount of such fee, charge or price. (Aug. 31, 1951, ch. 376, title V, 501, 65 Stat. 290.)

Mr. Chairman, I think it is important that all members of the committee who are interested in Government economy take into account the mathematics of this proposition. I do not care what anyone says to the contrary, the fact of the matter is that the Patent Office is supposed to be self-sustaining. During all the years of its early existence, possibly up to the 1920's, the Patent Office was self-sustaining to the extent of 90 percent. However, the fees charged by the Patent Office have not changed since 1932, while everything else in this world has been changed very substantially since 1932.

As has been pointed out, the Patent Office presently is self-sustaining only to the extent of approximately 30 percent. Some put the figure at the outside at 32 percent.

This bill is designed to rearrange the fee schedule in an eminently fair and reasonable way. This will recoup for the Patent Office sufficient funds which will put the Patent Office on a self-sustaining basis only to the extent of 75 percent; 25 percent will still have to be paid for by the appropriations process, from general revenues and from the taxpayers of this country.

One should take note of the European experience in this field. The European countries on the whole have been more attentive to private rights than has been the United States in both the copyright and patent area. Copyright and patent laws of European countries are stronger on behalf of private ownership and the monopoly right that is granted by governments to individuals, partnerships, or corporations, as the case may be, to own or to control patents. Yet, in Europe in the patent field, fees have been reorganized substantially in order to put the administering governmental agencies on a self-sustaining basis. For 32 years we have not been willing to do the same.

Members may wish to turn to the report of the committee on pages 13 and 14 and there in short form Members will find a chart indicating what the fee schedule is presently and what is proposed for the future. Members will note also that under the bill additional revenues are expected to be recouped to the extent of $13 million so that the revenue that comes into the Patent Office ultimately after all new fees go into effect will be approximately $20.5 million a year.

The cost of the Patent Office in 1961 was $23.6 million. That cost, as has been pointed out, is going up.

The routine fees will be adjusted as follows:

For filing, from $30 to $50.

For each claim in excess of 20 the present fee is $1. It is proposed to change this to $2 for each claim in excess of 10.

The issue fee is to be changed from $30 to $75. In addition to that, there is to be $10 for each page of specifications and $2 for each sheet of drawing.

The filing fee for reissue is to go from zero to $75.

The filing fee for a reissued patent is to go from $30 to $50.

So far as the hearings are concerned before the Board of Appeals, the present fee for an oral hearing is $25. It is proposed to change this fee from $25 to $100. For written submissions on appeal, without oral hearing, the fee would be changed from $25 to $50.

The recording of assignments fee is to be changed from $3 to $20.

There is a little adjustment in the field of trademark filings. That is to be changed from $25 to $35.

The renewal fee for trademarks is to be changed from zero to $5; filing an affidavit, from zero to $10.

The big issue of contention—and some Members have mentioned that they have received letters from patent attorneys at home on this—is chiefly in the area of what are called maintenance fees.

The maintenance fees are provided for, members of the committee will find, on page 6 of the bill, in section 155.

It is proposed, in substance, that there be a fee charged for the maintaining of a patent in the Patent Office, as follows: In the 5th year, $50; in the 9th year, $100; and in the 13th year, $150.

The argument is made that perhaps this is prejudicial to the little man, to the new inventor, to the fellow who does not have a large amount of capital, and so forth, and that he will be penalized by this provision. Some have objected to it on the grounds that it should not be necessary to have a carrying charge, as it were, in the Patent Office, for the privilege of merely maintaining a patent there.

Exactly the opposite is true with respect to the little man, and I will explain to Members why.

We should remember, first, that approximately 70 percent of all patents are issued to corporations and to the U.S. Government, but chiefly to corporations. It is estimated, roughly, that some 50 percent of the patents on file in the Patent Office are what are known as defensive patents, or patents which are not used. The application is filed and the patent is issued, and then nothing is done about it. It is a patent used for protective purposes, to hold a monopoly position, but the "gadget" or whatever it may be which is being protected is not put into the marketplace, and is not used by the public, and is not constructive.

The cost for carrying these patents on file is enormous, and one of the problems we face is the burden on the Patent Office of really carrying what some people call "deadwood." Each time a member of the public files for a patent, the Patent Office must go through an enormous examination and search to determine whether or not the issuing of the patent would infringe on the rights of some other prior owner. That includes this great backlog of roughly 50 percent of unused patents. In this day and age, as technology and science get more complicated, the effort and the cost to bring about this constant search and review becomes a great deal higher.

It is mainly the large corporations which keep these unused patents around, and this is where we find the heavy cost in the Patent Office. Therefore, we suggest that we hold down the filing and issue fees—the fees that the impecunious young inventor must pay—and impose a fee for the real area of cost. The hard fees are the first ones, and these we have been able to hold down because we have been able to build into the bill this provision for maintenance fees.

In addition to the foregoing, the Judiciary Committee has gone further and taken other steps to protect the new inventor. He is to be given a 6-month period of grace on the payment of maintenance fees. He can get that almost automatically.

Second—and this is noteworthy—he can defer the whole thing. He can defer the first $50 fee payable after 5 years; he can defer the second fee which is payable after 9 years; he can defer up to 13 years—because these maintenance fees, as I pointed out, are chargeable the 5th year, the 9th year and the 13th year in terms of $50, $100, and $150.

Mr. WILLIS. Mr. Chairman, will the gentleman yield at this point?

Mr. LINDSAY. Yes. I will be delighted to yield to the chairman of the subcommittee.

Mr. WILLIS. As a matter of fact, is it not so that the maintenance fees provision of the bill is really a device for the benefit of the small inventor?

Mr. LINDSAY. Absolutely.

Mr. WILLIS. Instead of having the small patent inventor pay everything originally and initially as the patent is issued, these payments are deferred over a number of years. Only in case his patent proves to be successful is he required to augment the amount. If we were not interested in the small patentee, we would impose it initially.

Mr. LINDSAY. The gentleman from Louisiana is absolutely correct on that. The small inventor or businessman who has a patent on file in effect has 13 years to make good. In other words, he has that time to discover whether his patent is going to earn anything. In 13 years he should know whether the patent is a useful one or not. Seventeen years is the life of the patent in any event. Here he is given 13 years during which he pays no maintenance fee provisions if he has not been able to earn an income on the patent at least equal to the fee due and he submits an affidavit asking for a deferral. In addition to revenue there is an incidental benefit from maintenance fees and that is, it is hoped, that some of the so-called deadwood can be cleaned out a little bit so that the cost of running this Patent Office, which goes up all the time, can be held down. If any owner or corporation has an unused patent and really wants to keep it on file for his protection in the Patent Office, he has the right to do so provided he pays this very modest fee. If the patent is not earning, he may submit an affidavit and there will be a deferment of payment for a period of up to 13 years.

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

Mr. LINDSAY. I will be delighted to yield to the gentleman from Connecticut.

Mr. GIAIMO. Mr. Chairman, one of the objections which I heard against the maintenance fee provision on the part of the bar association in my own State of Connecticut—and I understand there are many other bar associations which are opposed to this maintenance fee provision—is this:

Mr. LINDSAY. Mr. Chairman, I would like to correct the gentleman to say that there are not many bar associations but a very few bar associations and some few individual patent attorneys who oppose this bill.

Mr. GIAIMO. And some patent associations.

Mr. LINDSAY. There are some, but I would say it would be an overstatement to say that the patent bar is in solid opposition to it.

Mr. GIAIMO. Yes. I said there were some, and in my own State of Connecticut the opposition I have heard from the bar association is particularly directed to this problem of maintenance, because at the present time, as I understand it, there is no maintenance charge. Is that correct?

Mr. LINDSAY. That is correct.

Mr. GIAIMO. Under this bill there would be a maintenance charge which I am told could run to $300 in many instances.

Mr. LINDSAY. That is the total over the life of the patent.

Mr. GIAIMO. That would be the total amount. The theory of the opposition seems to be that this would be a burden on many of the smaller types of industries who would have to pay this charge in addition to the legal fees involved, which would mean that in order to protect their position in the area of the protection of patents and copyrights, they would have this new charge imposed on them which could come to $300 to $500, which they do not have now. Therefore, it puts smaller business in a much more disadvantageous position in relationship to large business, which is not concerned too much with fees in this area. Is that a fair comment?

Mr. LINDSAY. I appreciate the gentleman's comment, but I just cannot agree with the suggestion he is making. The fact of the matter is that small business and small industry are helped by this. It is the big corporations who flood the Patent Office with numerous defensive patents. These patents are not used constructively. They force out the little men because the competition is removed as long as that defensive patent is there. At the present time these defensive patents are getting a free ride. If these big corporations wish to keep these unused patents alive, it seems to me it is eminently fair and reasonable to suggest they pay over a period of 17 years time, which is in effect the length of the life of the patent, a reasonable charge for having it carried and maintained in the Patent Office. The patent attorneys, incidentally, I have not noticed have been bashful about raising their own lawyer fees since 1932 whereas the taxpayers of the country have been forced to subsidize the Patent Office because the fee schedule has not changed since 1932, as I pointed out. What we are attempting to do is to hold down the routine fees, the initial filing and issuance fees which the little man, the little company, has to pay. The maintenance fee is geared either to the successful patent or to the defensive patent. It will not affect the struggling patent. The defensive patent is largely held by the big corporation which tries to hold a piece of the economy in a noncompetitive status for protective purposes.

Mr. WILLIS. Mr. Chairman, will the gentleman yield further on the question of the maintenance fee?

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

Mr. WILLIS. Mr. Chairman, as I indicated a while ago, I agree completely with the gentleman on the idea behind this new approach of the maintenance fee provision. The Members will first have to make up their mind whether or not there should be additional revenues paid to the Patent Office in order to make that agency slightly more self-sufficient. I have been on this subcommittee for 15 years and chairman of it for 10 or more years, and I have been concerned, of course, about the small patent owner. And so in our search for some additional revenues for the Patent Office we considered the question of this maintenance fee. It was our idea that by this device of the maintenance fee we would be helping the small patent owner initially, the guy who cannot afford to pay too big a price to file an application or to have a patent issued to him without any assurance that his invention will be a success. And after he and he alone determined that it was a success he could maintain it by paying additional fees. These could have been imposed initially. The little guy, such as my friend has questioned the gentleman from New York about, can get a patent at a price as low as we have been able to devise initially and is given an opportunity to cut costs later unless he thinks his patent is paying out based on the returns of that patent. I am not sure at all that the so-called small-attic-type patentee is going to quarrel about this maintenance fee provision.

Mr. LINDSAY. Mr. Chairman, I think the gentleman from Louisiana has stated the argument clearly and succinctly and I am grateful to him for that. It should be emphasized once again that even with these adjustments—holding down the initial mandatory fees for the benefit of the little man and finding another device, the maintenance fee, for the successful patent or the defensive patent—even then we are only recouping 75 percent of the cost of the Patent Office.

I would like to say, too, that Members might be interested in taking a look at the statement made by the Honorable Robert C. Watson, former Commissioner of Patents, now in private practice, at page 170 of the hearings on the importance of these new fees. He does not see why the Patent Office should not be put more on a sustaining basis. He, of course, supports the maintenance fee provision.

Mr. GROSS. Mr. Chairman, will the gentleman yield for a question?

Mr. LINDSAY. I yield to the gentleman for a question.

Mr. GROSS. Help me with these figures on page 14 of the report—"Patent Maintenance." This first fee is a $50 fee and the second is a $100 fee. Would this be an additional $50, or would it be $100?

Mr. LINDSAY. It is $100, the second fee, which is payable 9 years after the patent has been issued, is $100. So far he has paid $150, unless he asks for deferral.

Mr. GROSS. The third fee is another $150?

Mr. LINDSAY. Yes.

Mr. GROSS. And there is a $25 penalty for delayed payment of any of these fees?

Mr. LINDSAY. Yes; and that is in the present law.

Mr. GROSS. Apropos of these remarks I wonder if we can provide a commensurate penalty to the delinquents in the United Nations?

Mr. LINDSAY. The gentleman's question is not germane.

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

Mr. LINDSAY. I yield to the gentleman from Michigan.

Mr. HUTCHINSON. Has there been a study at all as to what kind of administrative costs are going to be imposed upon the Patent Office in keeping track of all of these maintenance fees? What kind of costs are involved?

Mr. LINDSAY. I think the gentleman from Louisiana may be in a better position to comment on that than I. The Patent Office is economy minded, and has done a good job in that respect.

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

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

Mr. WILLIS. If I understood the question right, may I say I do not anticipate any additional cost to administer this provision. At least, the returns will overwhelmingly exceed the cost. The cost will be a minimal percentage of the returns derived from the bill.

Mr. LINDSAY. The experience in European countries that have prospered with the free enterprise system is that a maintenance fee charge has had the effect of ultimately weeding out approximately 50 percent of what is known as "deadwood," that is to say, patents which are not used, which are not developed, which the owners have no present intention of using or developing. The 50-percent figure I have given is a very rough approximation, but that has been the experience in European countries.

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

Mr. LINDSAY. I yield to the gentleman from Michigan.

Mr. HUTCHINSON. Suppose I as an inventor decided I wanted to defer the payment of these maintenance fees, and I kept deferring them until the end of the 13 years, then I decided it was not worth it. Do I pay anything at all?

Mr. LINDSAY. You do not pay anything, and the patent does what they call "lapse," which means it is ended. It has the same effect as the expiration of 17 years, which is the statutory end of any patent.

Mr. HUTCHINSON. Could a corporation do the same thing? Could they defer their so-called defensive patent maintenance fees for 13 years, then let it go?

Mr. LINDSAY. Yes, a corporation could elect to let its patent lapse by not paying a maintenance fee. But a corporation could not defer any payments of maintenance fees because it cannot be an inventor.

Mr. HUTCHINSON. So in effect this really carries the deadwood for 13 years instead of 17 years?

Mr. LINDSAY. That is correct. The right to ask for deferral is a right that goes to the inventor. In many cases there has been the assignment of a patent to a corporation by an individual inventor. That corporation will not have the right to ask for deferral—only the inventor.

Mr. HUTCHINSON. That places a different light on the matter. I thank the gentleman.

Mr. LINDSAY. Mr. Chairman, I yield 5 minutes to the gentleman from Maryland [Mr. MATHIAS].

Mr. MATHIAS. The Congress has a responsibility to the people of this country to constantly survey the effectiveness and appropriateness of existing laws and to make modifications where necessary. In the same manner, the legislation pertaining to the departments and agencies of our Government must be periodically remolded in order to reflect the most recent changes in, among other things, technology and economic conditions. Today we are considering H.R. 8190, a bill that presents a long overdue revision of the fee schedule for the U.S. Patent Office. This bill's effect, basically, will be twofold:

First, it will increase fees for the first time in over 30 years. Legislation enacted in 1932 enabled the Patent Office to be substantially self-supporting by collecting fee income which covered 90 percent or more of its costs of operation. However, increasing costs without proportionate fee increases have forced this figure down to a present recovery of 32 percent of revenues. The revision embodied in H.R. 8190 will permit the Patent Office to eventually collect fees—and I say eventually collect fees because it will not be an immediate recovery—of 75 percent of actual operating costs.

As noted in early 1962 by the Director of the Bureau of the Budget, many Federal agencies provide services or funds to "identifiable recipients," which give benefits greatly in excess of those which accrue to the public at large. In fairness to the taxpaying public, the recipients of these special benefits should pay a reasonable charge for the product or service received and, thereby, make the agency self-supporting to the greatest extent possible. Clearly, the patent system provides special benefits to identifiable recipients. The monetary value of the rights acquired by the inventors, applicants, and holders of patents certainly warrants their paying a fair share of the costs of maintaining the system.

It will be noted, however, we are not purporting by this bill to make the Patent Office completely self-supporting. We recognize that the public at large gains some benefit from the fact that a system by which inventors are encouraged to develop their products and to make them available to the entire public confers benefit upon the entire Nation. The public will continue, under this bill, to pay a portion—ultimately a share of approximately 25 percent—of the cost of maintaining the patent system.

A second and equally important result of this legislation ought to manifest itself as an incentive or encouragement to applicants and patentees to pursue more efficient practices in using the patent system.

In surveying the major provisions of H.R. 8190, you will note an increase in the filing fee from $30 to $50, with a payment of $2 on claims, whether dependent or independent, in excess of 10, and $10 for each independent claim in excess of 1. As you may know, an independent claim stands alone in defining an invention, while a dependent claim incorporates by reference a previous claim and modifies it by an additional specification. The shorter and more comprehensible dependent claims not only facilitate the examining process in the Patent Office, and thus reduce the cost of examination, but they also serve to make claim interpretation easier for our courts. This fee change will serve to cover the greater examination costs of independent claims and provide an incentive for more extensive use of dependent claims which will reduce the unnecessary multiplicity of claims contained in many patent applications.

Another change raises the issue fee to $75. Moreover, an additional charge of $10 is to be made for each page of specification as printed and $2 for each sheet of drawing. This innovation is intended to relieve the present discrepancy between the volume and complexity of the patent, and the fee charged under the present uniform fee system. Printing and examining costs are obviously greater for the larger patents, and it is certainly unjust to require inventors, who file brief and concise disclosures, to pay a large portion of the cost of processing these more lengthy and complex applications. The proposed fee schedule should relieve this inequity, and provide a more realistic operating cost recovery. In addition, it is hoped to encourage applicants to delete unnecessary drawings and extensive and repetitive descriptions. As a result, such practice will not only reduce the burden on patent examiners, but make analysis easier for the courts and the public as well.

Another change in the fee schedule is that filing and issue fees for a reissued patent are to be increased to the same level as those charged for an original patent. This revision reflects the fact that Patent Office costs are reported to be practically the same for both, and, therefore, uniform treatment is established for all patent applications.

One of the problems which has been of concern to both the Patent Office and the public is the great delay in time between the date the patent application is filed and the date of issuance. While under the present law this period can extend to 6 months, this bill would provide for issuance of the patent within 3 months after notice of allowance of the application, provided the proper fees have been paid.

Thus, new technology will be available and published at an early date, with the resulting stimulating effect on competitive product research and design.

I might say that at this point the committee was very careful in accelerating the time to preserve the inventor's control over the patent application and to

prevent his patented idea from being exposed without his consent. It assured that the applicant will be notified of any balance due on the issue fee arising from costs of reproduction of the patent.

I note the fact that the committee has attempted in this way to avoid so far as possible substantive changes of law which might have been incident to the increase in the patent fees.

A $20 fee for the recording of patent assignments is another of the revisions encompassed by the patent fee bill. Admittedly, this figure does not reflect the actual cost of recording, but it is utilized to provide income which would otherwise have to be obtained through increases in other fees taxed to those who have not yet had the opportunity to ascertain the worth of their inventions. Certainly, patent applications and registrations which are assigned must have value to the assignee, and this fee, covering a part of the overall expenses of the Patent Office, is not an unreasonable charge to the assignee when compared to the value of his interest which is protected through the privilege of assignment recording.

Also revised by this bill are the sections dealing with design patents and trademark fees. In both cases, the changes involve proportionate increases in the existing fee schedule with minor changes in the fee structure.

As proposed, the fee on appeal to the Board of Appeals will now be $100, with $50 returned if an oral hearing is not requested prior to consideration by the Board. In the event the appeal is withdrawn prior to consideration by the Board, all but $25 is returned. This change establishes a fee which, again, more nearly covers the expenses involved. Furthermore, it will provide an incentive to appeal on submission of briefs by charging a special and more realistic fee for each of the two types of actions. Encouragement to make timely withdrawal of appeals will help the court to maintain a more orderly case schedule, and will, also, reduce the extent of gross disrespect shown to the court by the frequent failure of parties to appear for scheduled oral hearings without having given prior notice.

Probably, the most important innovation presented by the bill is the establishment of maintenance fees. To maintain his patent rights after issue, the patentee would be required to pay fees of $50 at the end of the 5th year of the patent period, $100 at the end of the 9th, and $150 at the end of the 13th. A failure to pay the fee within 6 months of the due date results in a lapse of the patent. However, there is a provision for the deferment of these periodic fees by an inventor who has not received value, prior to the date the fee is due, at least equal to the amount of the fee. In short, an inventor may keep his patent in force for 13 years without payment of maintenance fees unless he has realized benefits at least equal to one or more of the three required fees.

One of the effects of this provision will be an encouragement to patentees to discard inactive and defensive patents which clutter the files of the Patent Office. In addition, it will allow deferment of payments until a time when the patentee is better able to both pay for and judge the worth of the patent on his invention. If, during the 13th year, he determines that the patent is without value, he may allow it to lapse, but if it warrants the expenditure he will pay the fee in support of the patent system which continues to protect his valuable interest. Thus, with the successful patentees sharing the greater burden of maintaining the Patent Office, it is possible to place the least possible cost on the individual filing his application for patent and, thereby, not stifle his incentive to invent.

Thus, I urge your support of this measure in order that our patent system might once again approach its earlier standard of being financially self-sustaining; a goal which can be achieved through H.R. 8190 without restricting the creative genius of this Nation.

Mr. WILLIS. Mr. Chairman, I yield myself 10 minutes.

Mr. Chairman, this bill would not cost any money. It will produce money—which is an odd situation these days. It will result in additional money coming into the Treasury of the United States by increasing the cost of processing a patent application.

For example, the initial cost of filing a patent would be increased. The cost of certified copies of documents would be increased. The cost of issuance of the patent itself would be increased, and so on.

Perhaps the starting point should be a few words about the constitutional basis for a patent and a few words about patent policy.

The Constitution itself says that Congress shall have the power to promote the progress of science and the useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

On the other hand, we are all familiar with the antitrust laws. Under the antitrust laws there has been provided a prevention of unfair competition and monopolies in restraint of trade. We created a Federal Trade Commission, which is to police trade practices and fair competition.

Now, pursuant to the Constitution, in order to encourage new discoveries and so on, by an act of Congress we have established a patent system which is really an exclusive right to make, use, or sell an invention, which means a limited monopoly. The patentee has a monopoly over the fruits of his discovery for a period of 17 years. That is the reward given to the patentee.

All of this is as it should be. I, for one, am in favor of a vigorous enforcement of the antitrust laws. I am also in favor of full protection of the rights of the patentees.

The Committee on the Judiciary, happily enough, has jurisdiction over both subjects which to a point, at least, seem to be conflicting. We have a balanced understanding of the meaning of a patent, which is a limited monopoly for 17 years, and also of the antitrust laws which prevent monopoly and restraint of trade.

Now, when a person files a lawsuit he has to pay the court costs. He has to make a deposit. So, when one goes to the Patent Office he has to make a deposit with his application for a patent.

How much should that deposit be? How much should other subsequent charges be? That is what the bill is all about. The bill deals with figures. It has nothing to do with substantive rights. The patentee is not to be given new rights and no old rights are to be taken away from him.

As I say, if Members will read the bill they will see that it deals with figures only. The figures on increases of costs of processing patents were worked out on the basis of experience.

Even under the bill, however, the Patent Office still will not be self-sustaining. It will still cost the Government some money to run the Patent Office, despite these additional fees. But that should not horrify anybody. Other agencies are in the same position.

The Department of Justice is not self-sufficient. Court costs are charged, and there are other charges for copies of documents and so on, but the court costs and other costs for filing and processing of lawsuits are not sufficient to pay for the salaries of Federal judges and the whole Department of Justice.

The same is true with respect to the Post Office Department. There is a charge for stamps and other things, but the Government still must spend some money to sustain the Department.

The truth of the business is that no Federal agency is self-sustaining, except perhaps the Internal Revenue Service, and in that case frequently and as a matter of pattern in the past few years we have operated on a deficit basis.

At the present time the Patent Office is 32 percent self-sustaining based on present charges. With the additional charges provided by the bill, our Patent Office will become only about 75 percent self-sustaining, but that will help. The bill will bring in about $12.8 million additional annual revenue. So really, the only question before us is this: Are these charges too high or too low? There are some who will contend they are too high and others who will contend they are too low, but I repeat that the figures in this bill were worked out by the Department itself on the basis of experience.

This is a bipartisan proposal. I have been with this particular committee for 15 years. In one form or another a Patent Office increase bill has been advocated by the Truman administration, under which I served, and by later administrations, namely, the Eisenhower administration and the Kennedy administration; and, if President Johnson has not said anything about it yet, you will hear that he will be for it, too. All of the Secretaries of Commerce since I have been here, under President Truman, President Eisenhower, and President Kennedy and now President Johnson, have favored a proposal of this kind. Every Commissioner of Patents has favored an increase in these charges.

Percentagewise the increase is high; the increase is steep. Some increases, as it has been pointed out, will run over 100 percent. For example, at present the basic filing fee, which is the fee you must pay with the application, is $30. Under this bill it will be $50. The basic issuance fee or the cost of the patent when it is handed to you is presently $30. Under this bill it will be $75. And so on. What has occurred to require these increases? Well, the present schedule of fees was established back in 1932, 32 years ago. Since that time we have had no increase in the schedule of fees applicable to the Patent Office. In the meantime, in these past 32 years the value of the dollar has decreased very substantially. The cost of living has increased, the cost of a loaf of bread has increased, and the cost of the operation of the Government has increased. Meanwhile we have seen the cost of Government rise, we have seen the prices rise, we have seen the cost of living go up, but we have been bound by the schedules of Patent Office fees established back there in 1932. That is why the increases in this bill have an appearance of being high, and they are.

You will hear that this bill will hit the little fellow. You will hear that it will hit the little guy who invents a patent at night under lamplight or now under an electric light in his attic.

Mr. CELLER. Mr. Chairman, will the gentleman yield to me at that point?

Mr. WILLIS. Yes. I am glad to yield to the chairman of the committee.

Mr. CELLER. It is very significant, in answer to that query, that the Commissioner of Patents before the Committee on the Judiciary had this to say, and I quote:

I will say this, however, that I have never seen an invention of importance fail to be patented because of the impoverishment of the inventor.

Another statement is:

I have never seen a good invention fail to be patented because of high Patent Office charges.

Mr. WILLIS. My good chairman is eminently right, and if we look upon this thing in light of the increased cost of everything else, this reference to the small inventor loses sight of the facts of life. For example, court costs have gone up because we, the Members of Congress, made it so, and court costs hit the little fellow, too. Since 1932 we have seen an increase in the cost of postage stamps, and that hits the little man. A stamp used to cost 2 cents, but it is now 5 cents. Back in 1932 it used to cost 1 cent to mail the poor man's letter. The postal card is how much now—4 cents? That is an increase of 300 percent. That hits the little guys, too. But we have to face these things. Of course, you will hear some lawyers come to the defense of the little, small attic inventor, but they do not tell you about the increase in their own fees. I am all for lawyers making a living. I happen to belong to that profession myself.

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

Mr. WILLIS. I certainly will.

Mr. CASEY. Mr. Chairman, may I say to the distinguished gentleman that the principal complaint I have received was the initiation of the maintenance fee. This is a new charge, as I understand it, and they consider it more of a tax than a fee for services rendered. I wonder if the gentleman could possibly enlighten me as to the necessity for this maintenance fee.

Mr. WILLIS. Yes; I am delighted to respond to the gentleman's question because, as my subcommittee visualized it, the maintenance fee or the deferral of payment of part of the total cost over a period of years was put in this bill in large measure as a protection to the little guy. In other words, instead of imposing a large amount initially, either when he applied for the patent or when the patent was issued to him, which to some small people might be a discouragement to the prosecution of the ingenious discovery—by deferring these payments until the small guy has made up his mind that his patent will pay off, until he gets a return from his patent, we do a favor to the small patent applicant. Thus, having paid only part of the cost originally, if after owning it for a certain number of years he finds that he cannot develop the patent and is not making any money out of it, he may let his patent lapse and does not owe the total amount. That, I say to the gentleman, in large measure is a device first to protect the small inventor. Secondly, patents that are acquired by the big shots, the fat cats, and are sat upon and are suppressed and are not developed, will lapse, too, unless their owner pays the cost. So there is a dual purpose for this provision.

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

Mr. WILLIS. I yield to the gentleman from New York.

Mr. LINDSAY. I thank the gentleman for yielding.

Mr. Chairman, I have noted that those lawyers who have contacted some Members in opposition to the maintenance fee schedule were, most of them, from larger firms that represent the big corporations and their opposition to this is because they want to perpetuate the practice which exists now under which a big corporation can get 50 to 60 employees on salary, inventors, who file patents all over the map, put them in the Patent Office and let them sit there as holding operations. They do not use or develop them or put them into the public domain. And this practice has gotten wider and wider. For this reason the little guy, the new inventor, the small company, finds himself blocked out when he goes into a new field, because the big corporations have occupied the field. All we are suggesting is that these larger corporations carry a little bit of the high cost of carrying these unused patents.

I want to repeat, most of the suggestions I have noticed that Members are getting at this time come from law firms that represent the big giants, not the little companies.

Mr. WILLIS. Mr. Chairman, let me say something in amplification of what my friend from New York has said. It is absolutely true that the bulk of the patents—and I imply no wrong, but under the present system and we are not changing it—find their way into the hands of the large corporations. Some of them—not all, but too many— may be using the hue and cry about the attic inventor to promote very important patent policies that affect themselves. In other words, sometimes we see the pitiful hand of Esau but we shut our ears to the soft voice of Jacob in this area of patents.

That is why, I will say to my friend from Texas, as I said to a dear friend of mine who preceded me as chairman of this sucommittee, a former Member and a friend from Texas, I am for the small guy too, but we have to look at this thing as it is.

Further might I point out, while I think of it, as a result of Government research programs the lot of the small inventor in discovering techniques and devices has been made much easier by Federal funds both for the benefit of the little and the big guy. So I say that all things considered, including this research program spending by the Government, make it easier to develop a patent. That certainly is a compensation to everyone for this comparatively small increase in the cost of getting the patents.

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

Mr. WILLIS. I yield to the gentleman from Texas.

Mr. CASEY. This is not a fee for any maintenance service. As the gentleman explained to me, this is a spreading out of the total cost as we find it for the issuance and filing of a patent?

Mr. WILLIS. That is the idea behind it. It is a deferral of a cost which we could impose initially or over a period of time.

Mr. CASEY. This maintenance fee idea is a term that you use to spread it out?

Mr. WILLIS. Yes.

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

Mr. WILLIS. I yield to the gentleman from Connecticut.

Mr. GIAIMO. In our effort to assist the small businessman, are we not increasing the amount he must pay for the filing fee and for issuance and in addition are we not adding a new charge, a maintenance fee?

Mr. WILLIS. There is no doubt about that, and the increase percentagewise is high. It is high because, as I said, we in Congress control what the price shall be, just as we control the cost of processing a Federal lawsuit, and just as we control the price of the postage stamp. In the case of court costs and postage stamps, however, we, the Members of Congress, have done something about that. But we have not done anything about Patent Office fees for 32 years so that now, percentagewise it is necessarily high.

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

Mr. WILLIS. I yield to the gentleman from New York.

Mr. LINDSAY. I should like to add to what the gentleman said, that this has multiplied five times since 1932, and the fee charge has only doubled when you add it all up. Now, would the gentleman from Connecticut prefer that you increase the initial fee that the young inventor has to pay, or would you like to see the present situation continue where only 30 percent of the cost of the patent fees are self-sustained? Would the gentleman like to see that continued, or would he like to see it self-sustained up to 75 percent?

Mr. DADDARIO. I appreciate the efforts to make patent fees more self-sustaining, but I am concerned about this: We seem to be increasing the cost to the small business people who have enough problems as it is.

I would like to point out that in the gentleman's explanation he has said the only issue here is whether the fee is a proper one, and that there is no attempt here to work against the substantive rights of patentholders. But in the explanation made by several Members here in support of this bill, it does seem that this maintenance fee can amount to a penalty. If this is aimed at the so-called defensive patents we should recognize that a fee in the form of a penalty is surely not the answer.

Mr. WILLIS. No, I would say to the gentleman that is related to dollars and cents.

The CHAIRMAN. The time of the gentleman has expired.

Mr. LINDSAY. Mr. Chairman, I yield 5 minutes to the gentleman from Illinois [Mr. ANDERSON].

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

Mr. ANDERSON. Mr. Chairman, I would not like the record of this debate this afternoon to close without showing there is some opposition and, I hope, energetic opposition to this bill here on the floor of the House.

If you will read carefully the record of the hearings that were conducted on this bill which was then known as H.R. 10966, you will note that there is some very significant opposition to the bill among the patent bar as well as by other organized groups and individuals throughout the country.

The debate thus far would almost make it seem that anyone who speaks against this legislation is necessarily for the so-called fat cat—for the big businessman—for the monopoly. But I would point out that the record contains some statements that are quite to the contrary by men, who I am sure have much more expertise in this field than I have.

For example, on page 163 of the record you have a very excellent statement by a member of the patent bar from the State of New York. He said and I quote:

> It makes very little difference to the large corporation whether filing fees, prosecution fees, and fees such as appeal fees are increased or whether the added patent costs come out of final fees and taxes on the patents. The small inventor, however, really cannot afford to pay increased filing fees and increased prosecution fees. He can only afford larger fees after he knows he is going to get a patent.

The gentleman from Louisiana began this afternoon by saying that this was an unusual bill in that it did not cost anybody anything. It is precisely because I am afraid it will cost somebody something; namely, the small inventor in this country and that it will serve to stifle the incentives he may otherwise have to produce and to add to the fruits of technology that we enjoy that I am opposed particularly to the maintenance fees that are set out in one section of this bill. We do not argue that all of these fees, as now scheduled, should never increase. I think you can certainly say that after 30 years the fee for an application and the fee for final issuance ought to be increased commensurate with other increasing costs of government. I would hope, however, that during this session when we get other bills affecting other departments of the Federal Government that we would find an equal zeal on the part of Members of this body to make sure that those departments are self-sustaining and self-supporting.

I wonder if, for example, the Department of Commerce or the Department of Labor, or any of the other numerous agencies that I could mention are ever going to be self-sustaining in the sense that gentlemen seem to be anxious in putting the Patent Office on a paying basis.

I think, and I have been told this many times by other Members of this body, that it is possible to indulge in false economy. It is possible to be penny wise and pound foolish. I would suggest that, if we adopt the schedule of maintenance fees, we are in great danger of doing the very opposite of that which we are enjoined by the language of the Constitution to do and that is we are told that we, in Congress, should support invention and that we should promote progress and the useful arts by a patent system. I think if we are going to install a system of fees or impose a schedule of fees that is going to be burdensome and onerous for the small businessman and for the small corporation and for the small inventor, I want to be on the other side of that proposition.

There has been a great deal of concern expressed here this afternoon about patents not being used and that this is the only way we can shake them out. I would remind the gentleman that not long ago I, myself, saw in the Smithsonian Institution a very interesting exhibit of what is known today as the power-steering mechanism which first began to be used in American automobiles, I think, around 1955. Do you know when that was first invented? It was back in 1920, more than 35 years before it was finally put to use.

I would suggest that there is a very real reason to believe that many of the small inventors and small businessmen may not be able to get the kind of financial backing they will need initially to prosecute a claim for a patent with the very expensive increases which would be called for in this bill.

Mr. Chairman, I hope that the House this afternoon, in its wisdom, will pay some attention to some of the arguments which have been made, and which were made in the hearings held on this bill.

I believe that the bill should be recommitted to the Committee on the Judiciary for further consideration before we take a step that may be truly false economy.

Mr. WILLIS. Mr. Chairman, I yield such time as he may consume 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 rise in opposition to this legislation because I am concerned that in our efforts to shake loose certain patents which many companies have maintained as protective devices we may well adversely affect the small business sector of our economy.

The Connecticut Bar Association has communicated with me in this regard. Other small business people in my State of Connecticut—which has many small businesses—are rightfully concerned, for they wish to protect themselves. There will be an increase in costs for filing and issuance fees and also for maintenance, which will add cost to their production and manufacture. This cost will unduly burden small businesses. It will put small businesses in a more disadvantageous position with their competitors; namely, the big business people and, in addition, I believe with those in foreign nations who are competing so strenuously with us.

During the past several months, I have received many communications concerning various aspects of H.R. 8190. As I said, the Connecticut Bar Association has strong feelings about the bill and has asked me to seek changes in it. The bar association has passed a resolution setting forth amendments to H.R. 8190 and proposing an alternative bill. I feel that the points made by the bar should be brought to the attention of this House.

Essentially, criticism of this bill stems from the provisions concerning filing and final fees, in other words, fees payable to the Patent Office upon the filing of a patent application and those payable upon the granting of a patent. In addition, strong criticism has been levied against the so-called maintenance fees.

The pointed criticsm against the filing fee "formula" is that it results in very high filing fees and it is an underlying substantive law change. In this latter connection it is argued that the payment of $10 for each independent claim over one will penalize the inventor who resorts to the use of more than one independent claim, notwithstanding the fact that dependent claims are not kindly interpreted by the courts during litigation.

The pointed criticism of the final fee formula in H.R. 8190, based upon the number of printed pages of specification and sheets of drawings is that it penalizes the inventor who makes a comprehensive and definitive disclosure to the public, notwithstanding the statutory requirement placed upon the inventor of making a full, clear, and concise disclosure. In addition, the H.R. 8190 final fee formula results in heavy final fees.

As to the maintenance fee schedule, the basic criticism against such an inno-

vation to our patent laws is that it places an additional $300 burden on the inventor over and above everything else. It also causes much uncertainty as to the status of a patent—whether it is enforcible or not—and results in endless surveillance of a patent by the Patent Office and the inventor.

It is felt that the net result is an adverse effect upon innovation and more importantly upon its legal protection. H.R. 8190 places additional obstacles in the path of obtaining legal protection for an invention, which ultimately results in less public disclosure of invention, less development of inventions, with the resultant harm to the industry and Nation as a whole.

A survey made by one medium-sized corporation and other surveys made by private practitioners indicate that under H.R. 8190, the average patent filing fee will jump from $35 under the present fee schedule to about $225. The average patent final fee will jump from about $30-odd to about $240 under H.R. 8190. These, coupled with maintenance fees of $300 per patent, will amount to an increase of from about $65 to $775.

Accordingly, the opponents to H.R. 8190 as it now stands, suggest alternatives which are in keeping with the subcommittee's objectives of raising the revenue received by the Patent Office to about the $20 million level. These alternatives are believed, by the proponents, to be realistic and at the same time devoid of the severe objections to those provisions of H.R. 8190 noted above.

I have requested permission to include the explanatory charts and proposed alternative in the Appendix.

The proposed change would amount to a reduction of the projected revenue under H.R. 8190 from $6,042,000 to $5,152,620 for patent filing fees; second, from $6,188,000 to $3,666,000 for patent final fees; third, from $822,500 to $705,000 for trademark filing fees; and fourth, deletion of the obnoxious maintenance fees.

In exchange; first, the patent copy recovery would be increased from $2,859,000 to $5,718,000; second, the trademark copy recovery would be increased from $30,800 to $61,600 and two new fees would be added; third, a trademark issue fee amounting to a recovery of $503,925 and; fourth, interference fees amounting to a recovery of $256,000.

These figures are based upon annual volume assumptions set forth in the attached schedule and computation comparing fee incomes under the present fee schedule, H.R. 8190, and the suggested alternative bill. A copy of the alternative bill is also attached.

But for the maintenance fee figures, this would result in essentially the same amount of net recovery of unamended H.R. 8190; namely, a little less than $20 million. This is a substantial recovery when compared to the net survey of slightly less than $9,200,000 under the present fee schedule currently in effect.

The current budget for the Patent Office is about $26 million, so that the recovery of slightly less than $20 million amounts to about 75 percent on an annual basis.

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

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

Mr. DADDARIO. I should like to add to that which my colleague from Connecticut has already put on the RECORD the fact that there is a great deal of question in my mind as to the effect of the argument, which refers to what will happen to defensive patents as they have been described in the course of this debate.

As the chairman of the Committee on the Judiciary [Mr. CELLER] has said, a good patent will not suffer because of the fees involved, and that is so. Neither will a good patent be allowed to lie dormant, because there are individuals and companies which have technical skills and abilities so that they can invent around a patent. That is what does happen. That is why we have progress in this country.

It is not possible for a person to get an idea, to put it on the shelf, and to allow it to lie dormant and go to waste. There are to many skills and abilities in our country to permit that to happen. It does not happen.

The attempt here, which appears to be to penalize, rather than to obtain additional fees, is supported by argument which in my opinion could do more harm than good.

I believe the legislation should be looked at carefully and the reasons and motivations behind these maintenance fees should be scrutinized not only with respect to the amounts of money they will bring into the Patent Office but also with an eye to the effects they will have on the patents system of this country.

Mr. WILLIS. Mr. Chairman, I yield 2 minutes to the gentleman from Texas [Mr. ROBERTS].

(Mr. ROBERTS of Texas asked and was given permission to revise and extend his remarks.)

Mr. ROBERTS of Texas. I thank the distinguished gentleman from Louisiana for yielding to me.

I rise in opposition to the bill strictly from the standpoint of the fact that it would raise more money for this agency and I should like for all Members to know some of the record as to exactly what the Patent Office has been doing with its money.

Is it not true, Mr. Chairman, that personnel of this organization comes under the rules of the Civil Service Commission?

I have in my hand a copy of the October 1963 issue of Sepia magazine. It commends very highly the Patent Office for the promotions made in that office. It lists some 7 people who were promoted in that period of a few months from grade 4 to grade 13 and from grade 5 to grade 14. Some of these employees had advanced on 2 to 4 grades from 1949 and then jumped to grade 13 or 14 in months.

Either some personnel man in this organization has been hiring some very good people at substandard grades, or he has not been abiding by the promotion rules now in effect. I suspect that they had some good people and they were not paying them what they were entitled to receive.

Certainly I believe it would be well for the committee to look into this situation. It strikes me as being just as bad to employ a man qualified for a grade 9 in a grade 3 job as it is to try to put a grade 3 man in a job with a grade of 13.

The magazine is very commendatory in kicking these people up 10 grades, one man from $3,700 a year to $16,000. Possibly he is entitled to it, but certainly we ought to make this agency follow the civil service rules.

Mr. LINDSAY. Mr. Chairman, I yield 2 minutes to the gentleman from New York [Mr. HORTON].

Mr. HORTON. Mr. Chairman, I thank the gentleman for yielding. I rise at this time in opposition to the bill. I subscribe to the remarks that were made earlier by the gentleman from Illinois [Mr. ANDERSON]. I think he very clearly and succinctly and in a very responsible manner articulated the opposition that there is to this bill. It is certainly the position I support. With reference to the proposed maintenance fees, I feel that we should take into consideration not only the larger corporations but the smaller corporations. I hold in my hand a letter I received from a corporation located in the 36th District of New York, which I represent, and one which is fairly well known. It is engaged in the nursery business and is a fairly modest corporation. It is known as Jackson & Perkins Co. They have some 383 plant patents. The statistics they give are quite interesting and bear on this question. I would like to read a part of the letter for the information of the Members of the House.

> To the present time, we have 383 plant patents. In many cases these patents are active in connection with further plant research but in themselves are no longer in commercial production; and, as a consequence, no direct income is derived therefrom. Our research expenditures, however, are a continuing proposition; and in striving for new improved plant varieties, we many times utilize these varieties in our hybridizing program, and if these are automatically lapsed, we would lose the protection of our own research development accumulated over the years.

As an example, in their letter Jackson & Perkins set forth the additional costs to this rather modest corporation as a result of this proposed bill. The additional cost of doing business due to the increased application and issue fees would be some $25,000. The proposed maintenance fees would amount to $20,000 at the end of 5 years, $38,000 at the end of 9 years, and over a 13-year period it would be some $57,000. For the 383 patents the total would amount to some $114,000. I think the House should be aware that this new maintenance fee is going to add an additional cost of doing business for the smaller businesses, which are the businesses we certainly want to encourage and keep going.

Mr. Chairman, I have also received several letters from members of the patent bar association in my district. They have been quite concerned about this bill and its provisions. In each case

they indicated they do not oppose a modest or reasonable raise in the application and issue fees. I received a letter from the president of the Rochester Patent Law Association in which he makes two good points. First of all he says:

Item 1 of the bill provides for a fee of "$10 for each claim in independent form which is in excess of 1, and $2 for each claim (whether independent or dependent) which is in excess of 10." Under the present law an applicant can include at least 20 claims without extra fee.

Then he goes on to say:

The harmful effect of the proposed change would be its tendency to cause inventors to claim their invention inadequately in an effort to save a few dollars.

He also objects to the feature in which the period of time is reduced from 6 months to 3 months for final filing and states:

Under present law the period is 6 months which is the time allowed for other responses to Patent Office actions. The full 6 months is normally needed for the careful handling of the various matters that must be attended to before the patent is allowed to issue. For one thing, inventors often need this full 6 months to protect their rights to obtain foreign patents. The difficulty is that if the United States patent issues before a foreign patent application is filed the inventor is barred from obtaining patents in most foreign countries. Three months after notice of allowance of the U.S. patent is not enough time for handling the foreign correspondence. Indeed, 6 months is often barely enough.

It seems to me these are valid objections in considering this legislation.

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

Mr. WILLIS. Mr. Chairman, I have no further requests for time, so I reserve the balance of my time.

Mr. LINDSAY. Mr. Chairman, I yield 5 minutes to the gentleman from Kansas, [Mr. ELLSWORTH].

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

[Mr. ELLSWORTH addressed the Committee. His remarks will appear hereafter in the Appendix.]

Mr. LINDSAY. Mr. Chairman, I yield 2 minutes to the gentleman from Ohio [Mr. MCCULLOCH].

Mr. MCCULLOCH. Mr. Chairman, I wish to join my colleagues, the chairman of the committee, the gentleman from New York [Mr. CELLER], my good friend, the gentleman from Louisiana [Mr. WILLIS], the gentleman from Maryland [Mr. MATHIAS], and the gentleman from New York each of whom has made such an excellent presentation of this legislation.

Similar legislation has been before us in one form or another on previous occasions. It is my studied judgment, Mr. Chairman, that it would be impossible to devise a fee schedule or a maintenance schedule that would meet the approval of each of the 435 Members of the House. The subcommittee did an excellent job. I should like to say this, to supplement what my good friend from Illinois has said about services, that the Congress fixes such fees for such services. That is a duty that falls upon us and almost every fee that we fix falls with a heavier hand on small business than it does on big business. I am sure all of us are aware that within the next 30 days there will be an increase in the parcel post fees of some 10 or 15 percent. That increase in fees, Mr. Chairman, is going to fall harder on small business than on big business.

Mr. Speaker, this is good legislation, it has long been needed, and I hope it will receive a favorable vote at the hands of the House today.

Mr. LINDSAY. Mr. Chairman, I yield such time as he may require to the gentleman from Maryland [Mr. MATHIAS].

(Mr. MATHIAS asked and was given permission to revise and extend his remarks previously made on the pending bill.)

Mr. LINDSAY. Mr. Chairman, I yield myself such time as I may require to conclude.

Mr. Chairman, I am not going to make an additional speech. I think the ground has been covered. In conclusion I wish to say that your Judiciary Committee has studied this question at great length. Hearings were carefully held. This matter has been pending before the House Judiciary Committee literally for 30 years. We have been up and down the mountain on the question. Your Judiciary Committee balanced this fee schedule out as carefully and as fairly as is possible. We did so keeping in mind the need for holding down the initial, mandatory fees in order to accommodate the new inventor and the small businessman.

I think we have done this, and it is noteworthy that those distinguished gentleman who have spoken in opposition to the bill have neither been able to suggest any alternative to what the committee has carefully come up with as a reasonable and fair balance, nor do they argue with the general proposition that we ought to put Government services of this kind on a pay-as-you-go basis insofar as that is possible.

Therefore, Mr. Chairman, I would like to end as I started, by reminding the committee once more that the Congress gave express statutory authority to the basic principle of title V of the Independent Offices Appropriation Act of 1952 when it said in plain language that an objective of the Congress and the U.S. Government, is that services rendered of this kind to special beneficiaries by Federal agencies should be self-sustaining to the fullest extent possible. This command is contained in plain statutory language in 5 United States Code 140, and your Committee on the Judiciary is living up to the mandate of that statute by presenting this bill today.

Mr. WILLIS. Mr. Chairman, I yield such time as he may desire to the gentleman from Texas [Mr. CASEY].

Mr. CASEY. Mr. Chairman, I support the committee in its recommendation about increasing fees. However, I am opposed to the maintenance fee provision.

The gentleman from Louisiana [Mr. WILLIS] stated a moment ago that the term "maintenance fee" was nothing more or less than a term used for spreading out the total cost of filing a patent.

I am well aware that the committee had a tremendous task in bringing about an upgrading and modernization of the fees in the issuance of patents and trademarks. But it should be the desire of this Congress not to further complicate the obtaining of a patent but more, to simplify or at least maintain the status quo.

It has been contended that the large corporation is the one opposed to this maintenance fee provision. But I think anyone who stops to think realizes that the large corporation is more able to pay the additional fees, and the large corporation is more in a position to keep track of the status of its patent so as to not have it forfeited for failure to pay the so-called maintenance fees at 5-, 9-, and 13-year intervals.

The present estimated revenue as pointed out in the committee's report is $7,700,000. The bill promises to increase these revenues to approximately $20,588,000, or an increase of $12,888,000. The maintenance fee portion of the bill is estimated to bring in $2,877,000 of the proposed increase, and I dare say that quite a bit of this would be used up in bookkeeping and notification as various patents became subject to the maintenance fees.

The maintenance fee provision is a wholly new concept, which I understand has been borrowed from Europe. It is a concept that I personally cannot buy, and I sincerely hope that this House will reject it should an amendment be offered to delete it.

As to the other increases and fees, they are indeed substantial, amounting to better than $10 million. They may be out of line in some areas, but I am not in any position to debate this point with the committee which saw fit to pass out this bill unanimously. But I can assure you that I am not in support of this bill unless the maintenance fee provision is stricken because I can see untold headaches for the small inventor and a complication of our patent system to which I do not wish to be a party. I do not feel the maintenance fee provision is a vital part of this bill.

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

Mr. WILLIS. Mr. Chairman, I yield myself the balance of the time on this side.

Mr. Chairman, I join with my friend from New York in reminding the members of the committee that this bill comes on the floor of the House as the result of long years of consideration. This is truly a bipartisan matter. The proposition in one form or another, I repeat; during my service in Congress, has had the direct recommendation of the administrations of President Truman, President Eisenhower, and the late President Kennedy, and is continued by the present administration of President Johnson. It has been requested by every Secretary of Commerce over those years, it has been requested by every Commissioner of Patents of all political parties during that time.

Every item of increase was defended and justified by testimony. To be sure,

as my friend from Ohio said, there could be disagreement as to whether one particular item of increase should be as stated or should perhaps be $2 more or less. But that is the way these things are worked out by expert testimony. We received that testimony and achieved bipartisan support. That has been brought out in our subcommittee many times, and in the full committee, with virtually no dissenting votes. There was only 1 dissenting vote this year in the committee of 35. In light of this and of the objectives to be achieved, I hope the House will support the bill by a very large vote. I may say that as far as I know the other body feels the same way about it.

The CHAIRMAN. If there are no further requests for time, the Clerk will read the bill for amendment.

Mr. GIAIMO. Mr. Chairman, I make the point of order that a quorum is not present.

The CHAIRMAN. The Chair will count. [After counting.] Seventy-four Members are present, not a quorum.

The Clerk will call the roll.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 15]

Ashbrook	Hansen	Philbin
Ashley	Harsha	Powell
Aspinall	Harvey, Mich.	Pucinski
Auchincloss	Hébert	Rivers, Alaska
Baring	Hoffman	Robison
Barry	Hosmer	Roosevelt
Bass	Jensen	Roybal
Blatnik	Johansen	Saylor
Cameron	Jones, Ala.	Schadeberg
Cederberg	Kee	Schneebeli
Clausen,	Kelly	Scott
Don H.	Kilburn	Sheppard
Davis, Tenn.	Langen	Smith, Calif.
Dawson	Lankford	Staebler
Denton	Leggett	Steed
Derwinski	McIntire	Tupper
Diggs	McMillan	Utt
Donohue	MacGregor	Vinson
Dowdy	Martin, Mass.	Watson
Frelinghuysen	Miller, Calif.	Watts
Fulton, Pa.	Milliken	Westland
Gary	Morris	Wickersham
Gill	Nelsen	Williams
Grant	O'Brien, Ill.	Wilson,
Green	O'Brien, N.Y.	Charles H.
Hanna	Pepper	

Accordingly, the Committee rose; and the Speaker having resumed the chair, Mr. JOELSON, 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. 8190, and finding itself without a quoroum, he had directed the roll to be called, when 354 Members responded to their names, a quorum, and he submitted herewith the names of the absentees to be spread upon the Journal.

The Committee resumed its sitting.

The CHAIRMAN. The Clerk will read.

The Clerk read as follows:

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.

"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.

"5. On filing each disclaimer, $15.

"6. On an appeal for the first time from the examiner to the Board of Appeals, $100. If an oral hearing is not requested prior to any consideration by the Board, $50 of the $100 fee will be refunded; or, alternatively, if the appeal is withdrawn prior to any consideration by the Board, all of the fee over $25 will be refunded.

"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), 25 cents per copy; for design patents, 10 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.

"10. For recording each assignment of an application or a patent, $20; for recording any other paper, $20."

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), $10.

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

"5. On filing notice of opposition or application for cancellation, $25.

"6. On appeal from an examiner in charge of the registration of marks to the Trademark Trial and Appeal Board, $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, 10 cents.

"12. For recording each assignment of a registration, $20; for recording any other paper, $20.

"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 after the date of the issue of the patent; 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.

"(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 termination 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 a separate 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 separate 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 under oath) request deferment of the first maintenance fee if the total 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 under oath) request deferment of the second maintenance fee (and further deferment of the first maintenance fee if such fee has been deferred) if the total 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 he issue date unless all maintenance fees are paid in accordance with the provisions of 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:

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

Mr. LINDSAY (interrupting reading of the bill). Mr. Chairman, I ask unanimous consent that the bill be considered as read and open to amendment at any point.

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

There was no objection.

The CHAIRMAN. The Clerk will report the first committee amendment.

The Clerk read as follows:

Committee amendment: Page 1, line 11, add the following:

"Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioners."

The committee amendment was agreed to.

The CHAIRMAN. The Clerk will report the next committee amendment.

The Clerk read as follows:

Committee amendment: On page 2, line 16, add the following:

"Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner."

The committee amendment was agreed to.

The CHAIRMAN. The Clerk will report the next committee amendment.

The Clerk read as follows:

Committee amendment: On page 5, line 24, substitute the following in lieu of the paragraph starting there and continuing through line 3 on page 6:

"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."

The committee amendment was agreed to.

AMENDMENT OFFERED BY MR. ANDERSON

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

The Clerk read as follows:

Amendment offered by Mr. ANDERSON: On page 6, beginning with line 14, strike out all of section 5 and section 6 through line 12, on page 9.

The CHAIRMAN. The gentleman from Illinois is recognized for 5 minutes in support of his amendment.

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

Mr. ANDERSON. Mr. Chairman, the purpose of this amendment is very simple. It would strike out those sections of the pending bill which would provide for an entirely new and novel set of so-called maintenance fees. In other words, for those of you who have examined the bill or who have listened to the debate that went on in the committee, you know under the language of sections 5 and 6, provision is made that the patentee shall pay a fee before the 50th anniversary of the date of issuance of the patent and then a second fee on or before the 9th anniversary and a third fee on or before the 13th anniversary.

This is something new, something we have never had before. We have had application fees and issuance fees, but nothing like this. I think, as I said when I spoke on this bill when we were in committee, this is going to place a burden on the small inventor and the small businessman. It is not going to be any effort for the big corporations to keep track of these matters and to pay these fees as they fall due. But I think it is going to b a real disincentive for the individual inventor.

I would like to point out that many people who appeared before the subcommittee in opposition to these maintenance fees and people who testified in opposition were not people who are totally opposed to any increases in fees of the Patent Office.

In that regard I would call the attention of the committee to the testimony of former Assistant Commissioner of Patents, Mrs. Daphne Leeds, as that testimony appears on page 129 and 130. She in her testimony was very strongly in favor of increasing some of the fees to the extent that the Office could operate at less of a loss to the taxpayers, but she also said at page 131:

The proposed after-issue maintenance fees—would not only be burdensome to the patentee, but they would be quite costly to administer.

Now I am told that something like 50,000, and in some years as many as 75,000 patents are issued by the Patent Office of the United States. Under the language of this bill, a notice is going to have to go out to every one of these individuals every 4 years and every 9 years and every 13 years to tell them that unless they pay this fee, their patent rights are going to expire.

That brings up another important point. An effort has been made here this afternoon to picture this entirely new system of fees as nothing more than a sort of deferred payment of the original application fee. But, I would point out that the bill is very specific in saying that unless the individual pays those user fees at specified times, he loses his right and he loses his right as a holder of the patent. So do not be mistaken and think this is just a system for deferring the payment of the application fee.

I shudder, frankly, to think what kind of bureaucracy we are going to have to build up to send out all of the notices and set up all of the elaborate bookkeeping to collect these fees from all of these peo-

ple every 4 years and every 9 years and every 13 years.

I think it is entirely possible that we may end up spending more money to collect these user fees than is ever lost by the Treasury of the United States.

I hope very much the House this afternoon will vote in favor of this amendment to eliminate from the bill this new and novel, and I think, wholly undesirable and unwarranted category of fees; namely, the maintenance fees as provided in section 5 and section 6.

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

Mr. ANDERSON. I yield to the gentleman.

Mr. GROSS. This in no wise affects the increases in filing fees?

Mr. ANDERSON. The gentleman is correct.

Mr. GROSS. This deals exclusively with maintenance fees; is that correct?

Mr. ANDERSON. It applies to the other sections of the bill dealing with increased application fees and with increased fees for claims and so on such as appeal fees. That is all left in the bill.

Mr. GROSS. I want to say to the gentleman, I support his amendment. I think it is an excellent amendment and compliment him for offering it.

Mr. ANDERSON. I thank the gentleman from Iowa.

The CHAIRMAN. The time of the gentleman has expired.

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

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

Mr. LINDSAY. Mr. Chairman, like a revenue-raising bill which comes from the Committee on Ways and Means, I suppose it would be impossible for any committee to present a money bill designed to increase revenue of the Government without hearing a lot of "squawks."

As I mentioned during the general debate, the balance of this fee schedule has been carefully considered by the Judiciary Committee and every point of view and every argument has been taken into account.

As I mentioned a moment ago, the committee was unanimous on this fee schedule with perhaps one exception, and in the view that if we are to put the Patent Office on anywhere near a self-sustaining basis the feels must be increased. All we do under this proposed fee schedule would be to put it on a 75 percent of self-sustaining basis. There was a time when it was 90 percent self-sustaining. It is supposed to be 100 percent self-sustaining.

In order to put the Patent Office on a 75 percent self-sustaining basis it has been necessary to make some adjustments in the fee schedule in effect at the Patent Office.

The attack now is on the maintenance fee.

I assure the gentleman from Illinois [Mr. ANDERSON]—who I believe is in favor of the Government being on a pay-as-you-go basis and in favor of economy in government—if we removed the maintenance fee we would have no other choice than to raise the initial fees; either that or we permit the Office to run at the giant deficit it is now maintaining. Every year, to the extent of 70 percent of the cost, the Appropriations Committees of the House and Senate must come up with the dollars, at the taxpayers' expense, to carry this load. If the filing and issuing fees should go up, which they must if we knock out the maintenance fee, who would be hurt? It would be the little man, the little inventor, the individual man or small fellow trying to test a new patent, because these fees are immediately payable, whether or not the patent has earned a dime.

That is the only alternative we would have. Otherwise we would have to leave it as it is, in complete derogation of title V of the United States Code, which specifically says that agencies of this kind, providing services of this kind, must be on a self-sustaining basis.

Let us have a clear understanding of the maintenance fee. When we talk of the maintenance fee we are talking ultimately about nearly 50 percent of the new revenue. Twelve million dollars of new revenue would be provided when all fees are in effect. It is estimated that eventually almost half of this will come from maintenance fees.

The maintenance fee is a fee to help pay the high cost of keeping patents on file in the Patent Office. After 5 years have gone by there is to be a charge of $50 for carrying that patent in the Office; after the 9th year, a charge of $100; and after the 13th year, a charge of $150.

The maximum life of a patent is 17 years. Any inventor who has not produced income from that patent would have a right to ask for deferment. He could ask for deferment of the first $50 fee, and he could ask for deferment of the next $100 after the ninth year, and the deferment would run for a total of 13 years.

Is it not reasonable that if after 13 years have gone by the patent has proved to be so worthless that it has produced no income at all, the man should be given an opportunity then to drop the whole thing, or be asked to pay a fee if he still wants to hold the patent monopoly?

If he elects to let the patent lapse no maintenance fee would be charged and the patent would then lapse. The patent would end automatically in any event 4 years later, at the expiration of 17 years. I do not know of anything more reasonable than that.

I should like to reiterate the point made earlier. The objection to the maintenance fee does not come from the little man or from the new or young inventor. The objection comes from the big corporations, which have a whole "stable full" of salaried inventors, who flood the Patent Office with patent applications which they have no present intention of using, which will not be developed, which will not be put to constructive use, and which will continue to be held as a private monopoly to the exclusion of other competition.

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

Mr. Chairman, I rise in support of the amendment. I believe that the maintenance provisions of the bill should be stricken.

What we are asked to do is to increase the cost to business people who must pay these patent fees and copyright fees; to increase the cost of the filing fee and the cost of the issuance fee—and now, for the first time, as I understand it, to add a new fee, a maintenance fee.

It has been said that these people will not have to pay any maintenance fee, which will amount to as much as $300 over the 13 years, until such time as they begin to derive benefits from the patent. The point is that we are talking about a new fee, which will be in the neighborhood of $300, something which they have not heretofore paid.

I believe that this is of extreme importance and interest to the small business people who must pay these fees in order to protect themselves in order to maintain the edge or know-how they have developed with respect to a certain item.

Members of the bar of other States have come out in opposition to it. In my State, where we have many small businesses, this will become a large added new item of cost in the protection of their know-how and of their skill. Therefore, it will be a new cost added to the product which they make. Big business can afford to pay these license fees. Big business will pay them in order to maintain protective patents or defensive patents, as they are called. However, this becomes a large item to a small company. When you add $300 plus the increased costs for filing and issuance of patents plus those which they will have to pay to skilled people such as patent attorneys and so on in order properly to present their claims and to prepare their papers, it is not a small matter.

We say we want to make the Patent Office a much more going concern moneywise. We say we want to make it self-sustaining. I am in accord with that, but we must not do it at the expense of the small companies who are struggling more and more every day in their efforts to compete with large industry and in their efforts to keep their share of the American economy. I think this will hurt them and this will penalize them. New ways can be explored by the committee by which to raise money to sustain the operation of the Patent Office. However, I submit that the maintenance fee method is not the way to do it and that it will hurt small industry. What will happen? Many small industries will forego patent protection rather than pay the cost, which means that they will lose that small advantage which is so important to them. Many inventors will not tie in with small companies but will go with large companies because they know there they will be protected. This adds additionally to the detriment which small business suffers increasingly in the United States today.

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

Mr. GIAIMO. I will be happy to yield to the gentleman.

Mr. HORTON. I would like to concur with the remarks that the gentleman just made and indicate my support of this amendment. I would like to point out earlier I gave some statistics with regard to a small nursery which happens to be in my district. They have some 383 patents, and this additional fee will cost at the end of 17 years some $114,000 and in the first year will cost some $20,000. It seems to me this is a terrific burden that we are placing on our small businesses across the country, and we should certainly eliminate this maintenance fee.

Mr. GIAIMO. Mr. Chairman, I thank the gentleman for his contribution.

In conclusion let me say, Mr. Chairman, I hope this amendment will be supported and that then we will be able to go on toward solving these problems which confront the Patent Office.

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

Mr. Chairman, the gentleman from Illinois, in offering the amendment, said that he felt the maintenance fees might be productive of a growth of bureaucracy within the Patent Office because it would be necessary to set up certain bookkeeping systems to keep track of the payment of the maintenance fees. I would suggest to the gentleman and to the committee that this system of maintenance fees may in fact be productive of a decrease of bureaucracy and bureaucratic methods in the Patent Office. The gentleman should recognize that there are today a large number of dormant patents on file in the Patent Office which are alive and valid and, as the gentleman from New York just pointed out, these constitute approximately 50 percent of the patents which are now outstanding. It is necessary for someone in the Patent Office to search through this enormous file of dormant patents, which is one of the causes for the skyrocketing of the expenses of the Patent Office. By a system of maintenance fees it should be possible to weed out and keep down the patents which are dormant and not going to be used or held only as a matter of neglect or inadvertence. Therefore, we should be able to decrease the amount of bureaucratic paper shuffling presently going on in the Patent Office, although this would be only a byproduct of the system.

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

Mr. MATHIAS. I yield to the gentleman from New York.

Mr. LINDSAY. I think the gentleman's point is absolutely valid and correct. In other words, every time a new inventor files for a patent and submits an application, the Patent Office has to search through this mountain of records and dormant patents that are left to find out if there is some kind of an infringement. The European experience has been—and as a practical matter Europeans are more protective in this matter than we are—the European experience has been that they have weeded out some of the dormant patents. The point should be made also the purpose of the bill is not to weed out. That is a fine thing that may occur and it is beneficial, but the purpose is to put this Office on reasonably near a self-sustaining basis.

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

Mr. MATHIAS. I yield to the gentleman.

Mr. ANDERSON. This particular point was discussed during the hearings by no less than the former Assistant Commissioner of Patents. She was asked by the gentleman from New York:

Do you think it is desirable to shake out the files?

The answer was:

I do not think it serves much purpose, really. I am really not convinced, I have never been convinced it would serve any real purpose.

She went on to make the point that the big corporations that the gentleman talks about who have all of these patents are going to pay the fees anyway. This is not going to shake out the files.

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

Mr. MATHIAS. I yield to the gentleman from New York.

Mr. LINDSAY. The lady to whom the gentleman from Illinois was referring is opposed to any fees. She thinks the Patent Office should not be on a self-sustaining basis. She thinks the whole load ought to be carried by the taxpayers on the basis of appropriations. I am sure the gentleman is not going to agree with that.

Mr. ANDERSON. No.

Mr. LINDSAY. I am sure the gentleman favors maintaining Government services on a self-sustaining basis so far as possible. She professed in the hearings—and I cross-examined her carefully—to be in favor of some fees, in favor of an increase, but philosophically she has stated many times—and I know the lady, she is a distinguished lady—she has stated many times that she does not agree with the proposition that the Patent Office ought to be on a self-sustaining basis. She thinks it ought to be carried by the taxpayers.

Now, the gentleman has always favored economy in Government and putting the Government on a self-sustaining basis, pay as you go. I am surprised to see the gentleman opposed to pay as you go in this area.

Mr. ANDERSON. Mr. Chairman, will the gentleman yield further?

Mr. MATHIAS. I will, after a moment.

Mr. Chairman, I would like to point out that on page 69 of the hearings on this bill there is a chart which illustrates very graphically the $6 million which would accrue to the Patent Office as a result of the maintenance fees. As a result of the gentleman's amendment if it were to be adopted we would simply wipe off the end of this chart and with it a large portion of the new revenue which could be obtained through the Patent Office.

Mr. ANDERSON. Mr. Chairman, will the gentleman yield further?

Mr. MATHIAS. I yield.

Mr. ANDERSON. Mr. Chairman, I would like to say in reply to the remarks made by the gentleman from New York that if he will assure me that during the balance of this session he will support with equal vigor any efforts made to put all the other departments of the Federal Government on a pay-as-you-go basis I would be willing to withdraw my amendment.

Mr. LINDSAY. I have no objection to that.

Mr. WHITENER. Mr. Chairman, I rise in support of the amendment.

Mr. Chairman, I had not anticipated this debate. When this bill was before our Committee on the Judiciary there was a great deal of discussion of the fee-raising which it would bring about. This maintenance fee, it seems to me, is designed to constitute a qualified restriction on the life of patents. The policy of our country is well established of giving to these patents a life of 17 years. This business of its being a burden to the Patent Office I think is not very well-founded because once a patent is granted I cannot see where some individual who has a little patent should have to pay $50 at the end of 5 years or lose his patent, or $100 later on, or $150 after that. If you are going to approach the matter this way, why not approach the cost on the original issuance of the patent rather than to do it in this way?

The argument which my friend from New York makes about saving money is somewhat inconsistent with his other argument that most of these patents are held by big corporations who are going to pay automatically this fee and renew them. How have you limited the work in the Office? I happen to come from an industrial area where many, many individuals, working as machinists in textile plants, seek patents. The great proportion of these patents are never very productive to the individual. Nevertheless, when he seeks his patent he thinks it is the greatest invention in the world and oftentimes because of lack of funds a patent is issued and it is more than 5 years before this little fellow is in a position to promote his patent.

It seems to me that we cannot justify a maintenance fee unless we are going to say we do not believe in the present law concerning the life of patents. So I hope that the amendment of the gentleman will be accepted.

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

Mr. WHITENER. I yield.

Mr. BELCHER. Mr. Chairman, does the gentleman know of any department of the U.S. Government that is self-sustaining—the Department of Agriculture with $5 or $6 billion, the Department of Defense with $50 billion, and even yesterday we upped a program from $7.5 million to $45 million. Unless I misunderstood, the gentleman from New York voted for that extra $37½ million. Now today he wants to take $6 million off of small business to make up for what he voted yesterday.

Mr. WHITENER. Mr. Chairman, I would not undertake to answer the gentleman's several questions but I would say this. I think the Patent Office more nearly falls in the same category as the Post Office Department.

Mr. BELCHER. While we appropriate for small business and keep small businesses all over the country in operation, we turn around and put a burden on small business so that we will again have to set up another Small Business Administration to help take care of them. It seems to me that we are traveling around in a circle.

Mr. WHITENER. I will say to the gentleman, speaking of the Defense Department, that some time ago I was told that a new aircraft that was now in development already had had some 840-odd new patents granted in connection with research and development on it.

I can see where this sort of thing would result in a great burden even to a big company that has many patents. It seems to me once the patent is granted it ought to be like the title to a piece of real estate which is registered in the courthouse of the hometown. You have title and there is no fee on maintenance. There are not any of us who do not come from a county where it costs the local taxpayers money to maintain the recording of deeds and other evidence of title. But we do not say to a man, you must go down to the courthouse every 5 years, or every 13 years, and pay a maintenance fee, otherwise you are going to lose title to your house.

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

Mr. Chairman, I stated in general debate that the present fees payable to the Patent Office were established by the Congress in 1932. Everything else, as far as I know, has been raised except the filing fees in that Office.

We, the Congress, raised the cost of litigation and the filing of lawsuits; we, the Congress, increased during that period of time the cost of the postage stamp from 2 cents to 5 cents; we, the Congress, increased the cost of mailing a postcard from 1 cent to 4 cents; but nothing has been done in Patent Office fees, and this is a long overdue measure to revise these fee schedules.

Let me say for the benefit of those who were not here during general debate that this is a bipartisan measure. It was advocated during my period of service on the Committee on the Judiciary by the administration of President Truman, it was advocated by the administration of President Eisenhower, it was advocated by the administration of President Kennedy, and now the administration of President Johnson.

Now, in addition to this maintenance fee provision having the virtues described by the gentleman from New York and the gentleman from Maryland, let me point out this is a deferred payment for the benefit of the little guys that you have been talking about. We increased the basic filing fee in the bill from $30 to $50. Do you want to increase it from $30 to $350? This is a revenue measure. This is to bring the Patent Office, not on a pay-as-you-go basis but on a 75 percent pay-as-you-go basis. We could have raised this original fee from $30 to $350. We did not do that. We provided from $30 to $50. Why? As an aid to the small patent owner they are talking about. They say the big guys do not object to this. I wonder if they would object if we put it at $350 to start with? But they are paying this at the end of the filing because it would compel these patents that are being sat on or suppressed and not developed to bear an additional amount or else to lapse.

The small patent owner initially would pay a $50 filing fee, and after 5 years if he thinks his patent is going to pay off, at that time only is he called upon to pay $50 more. Then on the 9th year of the patent if he thinks the fruits of his ingenious mind are paying off, and in that case only and at that point, $100 more is assessed, and on the 13th year $150 more is assessed, or a total of $350, which is part of the total cost of processing and maintaining the patent. If he does not want to pay that cost he can permit the patent to lapse. If the large corporations that are sitting on these patents want to permit them to lapse, let them do so.

Mr. Chairman, I hope this amendment which would very substantially cut the revenues under this bill will be defeated.

The CHAIRMAN. The time of the gentleman has expired.

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

Mr. Chairman, let us get to the heart of this. As the chairman says, they have not raised fees since 1932 and they need adjusting. The proposal under this bill is to raise the total fees approximately 169 percent. This amendment will cut out a small portion of that, but it will also stop the complicating of a system of maintaining a patent and paying a penalty in maintaining one.

Look at the report on pages 14 and 15. The estimated revenue from the new maintenance fees—and, mind you, the chairman during the debate stated that this was the best name they could think of for this additional charge—is $2,877,000. The total estimated revenue from the bill is $12,888,000. So you knock out an estimated $2,877,000 and are making the process of maintaining a patent much simpler.

The big corporations do not mind. They have bookkeepers and they have patent attorneys and they have clerks galore to keep up with this, but why complicate matters for a poor small businessman or small operator and compel him to pay this so-called maintenance fee in order to keep his patent alive? I am not going to quarrel with the chairman about whether these other fees are in line. I am not going to argue with him about that. But I say he is still left with an increase of 130 percent on present income if you adopt this amendment. So do not let anyone try to tell you that you are crippling the revenue on this because you are not.

Mr. Chairman, I urge the adoption of this amendment to keep this as simple as possible and still grant them what they want, to increase the revenue. I heartily urge each of you to vote for the amendment offered by the gentleman from Illinois.

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

Mr. CASEY. I yield to the gentleman.

Mr. GROSS. Does the gentleman know of any other place in Government or any other agency of Government where a direct tax is levied?

Mr. CASEY. Not in the U.S. Government. The gentleman from New York [Mr. LINDSAY] stated that this is a European plan. They are trying to put that in. This is a tax on patents. That is all this is—a tax.

Mr. GROSS. I am not surprised at that, but I do not know of any reason why we should adopt it simply because some European nations have such a plan, and I am sure the gentleman does not know of any reason why we should also adopt such a plan.

Mr. CASEY. No, sir, I will say to the gentleman.

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

Mr. CASEY. I yield to the gentleman.

Mr. WILLIS. In the interest of and in the name of the small patent processors, would the gentleman vote to increase the initial fee to $350 instead of the $50 you are speaking of?

Mr. CASEY. You are increasing the fees by 130 percent. That is what you have left—130 percent.

Mr. WILLIS. Then the total return on this maintenance provision is what percentage of the total revenue produced?

Mr. CASEY. What do you mean—under this amendment?

Mr. WILLIS. It is a considerable amount of the total revenues produced and it is strange to see that those opposing it primarily—and I am not talking of Members of Congress, but I am talking of those who appeared before the committee—are the so-called corporate inventors and not the small inventors for whose benefit we put the provision in.

Mr. CASEY. I have not heard a word from any of my big corporations. All I have heard from are the small practicing attorneys.

Mr. WILLIS. I wish to say I excluded the gentleman in my remarks. I have also received correspondence along the lines I have indicated.

Mr. CASEY. I appreciate the gentleman's statement.

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

Mr. CASEY. I yield to the gentleman.

Mr. WHITENER. Would not the gentleman say from his legislative experience that the same thing would apply to almost any hearing—that the unorganized small citizen does not have a lobbying group to appear and testify before the committees, and that there is no particular magic in the statement that my good friend just made.

Mr. CASEY. In other words, right now the estimated income is $7,700,000 and if you adopt this amendment you will still have an increase of $10 million or over $10 million which would be approximately, according to my arithmetic, a 130 percent increase.

Mr. Chairman, I urge the adoption of the amendment.

The CHAIRMAN. The time of the gentleman has expired.

Mr. DADDARIO. Mr. Chairman, I move to strike out the last word and rise in support of the amendment.

Mr. Chairman, I came to the floor of the House this afternoon purposely to listen to the debate on this legislation affecting the patent fee system. I have had an interest in the general subject of patent legislation through work as chairman of the Subcommittee on Patents and Scientific Inventions of the House Committee on Science and Astronautics.

I had believed that this debate would center on the one issue of fees and the amount of return to be so derived but as I listened to the debate it became quite clear that the small businessman, the small inventor, would be affected. It is obvious on its very face that it will be a prohibition against him to pay a $300 charge, even if it is spread over a period of time. The chairman of the subcommittee asked if one would like to have it as an initial fee rather than spread over a period of time as a maintenance fee. That remark indicates that it is too large a fee to pay in one instance.

I should like, however, to confine the remainder of my remarks to other points which are of fundamental importance.

If there is in this country a system through which there is an accumulation of patents so that they are hidden and remain unproductive something ought to be done about it. It stands to reason that we are a progressive nation and that we will not allow knowledge and information to be suppressed. It is a matter of record, I believe, that no invention can lie dormant. There are skills and abilities in our manufacturing concerns and among individual inventors so that any such attempt will be speedily circumvented. Our people have a great capability in inventing around existing patents.

But if there is a suppression or if there is a harmful accumulation, we should not use the subterfuge of a fee as a penalty. I believe we should look over the entire structure of Government patents and legislate across the board and the sooner the better. Such a step, properly taken, would lead to a better understanding of our patent system and is the way through which weaknesses should be corrected.

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

Mr. DADDARIO. I yield to the gentleman.

Mr. SIBAL. Is this maintenance provision a new patent tax concept in our law?

Mr. DADDARIO. As I have been able to review the situation, I have found no precedent for it in the patent system of this country. It is new and it is, as the gentleman from Texas [Mr. CASEY] pointed out, a takeoff on the European system, where it is more of a tax.

Mr. SIBAL. The gentleman's experience and contributions in this field are well known to all of us. I should like to ask the gentleman if he feels that our system, which is different from the traditional European system, has in any way inhibited the development of patents in the past.

Mr. DADDARIO. It is a matter of record, I believe, that we are the foremost nation in the world insofar as inventive genius is concerned. We have led by leaps and bounds over the course of the years.

I believe it is a fiction that patents can be suppressed. We all know that in every instance when an invention does come forth there are improvements on it time and time again, and these improvements come about because information is available and because Americans have the genius to invent around patents and inventions.

Mr. SIBAL. I thank the gentleman, and I join him in supporting the amendment.

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

Mr. DADDARIO. I yield.

Mr. LINDSAY. I take issue with the the gentleman, but not with the gentleman's statement.

No one wishes to copy the European system at all. What we would like to do is to see what will happen.

The fact is that in respect to both copyrights and patents most of the European nations, under the systems used there, are much more protective of private ownership in regard to patent rights and copyrights than the United States.

Mr. DADDARIO. I believe the gentleman is correct. This is a reason why I believe we should get on with those steps that would lead to overall patent legislation so that we could protect the private rights which exist in respect to patents.

If that is the situation, and I believe they are better protected, it is the fault of our own patent system. We should not try to overcome this by a fee or maintenance charge of this type. There are fundamental ways open to us to make necessary improvements and it would serve us well to move in that direction.

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

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

I rise in opposition to the amendment.

Mr. Chairman, we have heard some rather strange arguments here today. One was to the effect that we should not strive to put a department of Government on a nearly self-sustaining basis, which is the prime objective of the bill.

An argument was also advanced, in support of that argument, that only the other day the House considered a bill or bills which would not have placed a department on a self-sustaining basis and there was objection to that procedure.

We cannot have it both ways.

The Judiciary Committee has been striving to be fair to the inventor—to the small inventor, to the large inventor, to all inventors and all those who are under the label of "genius." We have striven to be fair to them.

On the other hand, we wish to be fair to the general public of the United States. Even a genius must pay his fair share.

We give to an inventor a monopoly, for 17 years. Generally we are opposed to monopoly, but when it comes to someone who devises something new and inventive we say, "Well and good; we will give you a special privilege." It is a special privilege. It is the exception we make, when we say that he or she shall have 17 years' exclusive use of that particular patent or the result of his inventiveness and ingenuity.

In addition, virtually no country in the world, has fees for patents that are as low as ours.

Now, I want to emphasize that this maintenance fee—and I say this in opposition to the amendment—is only a deferred payment. If you are going to wipe out the maintenance fee, you are going to incur the danger of increasing the initial fee. Almost all countries of Europe charge the maintenance fee, particularly Germany, Sweden, the Netherlands, Norway, Switzerland, and Great Britain. I have searched the records to find out whether any harm or disadvantage accrues to the inventors because of the maintenance fee, and I find no such record anywhere. I defy anyone in this House to point out to me one country where he will find a disadvantage to the inventor because there is charged a maintenance fee.

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

Mr. CELLER. Yes. I yield to the gentleman from Iowa, who is now objecting to a bill that would make a Department fairly self-sustaining. When he objects to such a bill, it goes counter to his frequently expressed philosophy. Why does he oppose this bill when it seeks to make this Department fairly self-sustaining? He has been arguing day in and day out against Government costs.

Mr. GROSS. Is the gentleman going to yield?

Mr. CELLER. Let the gentleman tell us about that, and then, if he answers that, I will answer his other questions. But let him answer that first.

Mr. GROSS. I will get my own time. I thank the gentleman.

Mr. CELLER. All right. Then, the gentleman may get his own time.

But, in any event, this maintenance cost is spread over a period of 13 years. If that is not aiding a young or impecunious or small or poor inventor, I do not know what is. He has 5 years before he pays the first maintenance fee. Then he has until 9 years before he pays the second maintenance fee, and he has 13 years before he pays a third maintenance fee. If you are not going to charge these maintenance fees, he is going to have to pay all of those fees in the initial stage, namely, at the time he files the patent initially.

(Mr. CELLER asked and was given permission to proceed for 3 additional minutes.)

Mr. CELLER. He will have to pay that before he knows whether or not his patent is going to be in any wise successful. I read the record again, and I am told that by means of these maintenance fees we will shake out, as it were, out of the Patent Office, many unused, sup-

pressed, and useless patents, and that will make it far less difficult to make the searches at the Patent Office. I am told that at the subcommittee hearings the then Commissioner of Patents indicated clearly the following:

The resulting simplification in the infringement searches and other investigations primarily concerned with patents still in force would be of considerable help to industry. In addition, new businesses would be far freer to utilize prior service in the development of their products and their processes.

That is what he said. His words are echoed by his predecessor, the former Commissioner of Patents, with reference to the so-called maintenance charges.

Now, the Committee on the Judiciary is composed of lawyers exclusively. We debated this bill very, very carefully. We went over it with a fine-tooth comb. We sought to find every conceivable defect in the bill. There was only one lone voice that expressed some opposition. That voice is stilled this afternoon. We do not hear from the gentleman. Therefore, I take it he has changed his views, and we have the virtually unanimous consensus of all the 35 members of the Committee on the Judiciary, all of whom are lawyers.

Enactment of the measure will be best for the Patent Office and also best for inventors and for the public in general.

For these reasons I hope that the amendment will be voted down.

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

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

Mr. GROSS. Mr. Chairman, I doubt that I could conjure up a philosophy that would be acceptable to the gentleman from New York. We are about as far apart as the poles and he has all the answers to all issues. At one time I nominated him for that new club, the famous 5–H Club. I undertsand he has become a charter member of the 5–H Club which means—"Hell, how he hates himself."

I do not think anything I could say would convince him, nor anything that he might say to me would be convincing.

I suggest that the gentleman from North Carolina made the best analogy of the afternoon in the discussion of this bill with respect to the maintenance fee.

I am not opposed to the other fees that are being increased and substantially. When you go from $30 to $50 for an original filing on a patent and collect additional fees in other provisions of the bill, I think you have done pretty well as a first bite in this agency. I want to see all the agencies of Government, and all the departments of Government, come as nearly as possible to balancing their budgets. But I will say to you that I do not know of a single agency or department, which charges a fee or an admission, that operates on a balanced budget. If you know of any tell me about it.

So I think we will be doing pretty well as a first step, as the first increase since 1932, without the maintenance fee.

The gentleman from North Carolina said that he knew of no municipality or county that levies a fee strictly for the maintenance of real estate records, or other records pertaining to property.

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

Mr. GROSS. I yield to the gentleman.

Mr. BELCHER. While we are talking about philosophy, I do not know of any philosophy that advocates wasting all afternoon talking about the loss of a little over $2 million of revenue and then turn around and vote for a $13 billion tax cut, vote for a $600 million cotton bill, a $45 million library bill, as we did on yesterday, and all of those put together did not take as much time and argument as has been taken on this question involving $2½ million.

Mr. GROSS. I thank my friend from Oklahoma for his observation.

The gentleman from New York [Mr. CELLER], talks about the levying of fees for this purpose in foreign countries. If they are doing so well levying and collecting fees for this purpose, the purpose of registering patents in foreign countries and for other purposes I wish he would tell the House why the foreigners have their hands so deep in our pockets.

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. GROSS) there were—ayes 53, nays 72.

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. JOELSON, 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. 8190) to fix the fees payable to the Patent Office, and for other purposes, pursuant to House Resolution 593, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

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

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER. 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.

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

The SPEAKER. Is the gentleman opposed to the bill?

Mr. ANDERSON. I am, Mr. Speaker.

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

The Clerk read as follows:

Mr. ANDERSON moves to recommit the bill, H.R. 8190, to the Committee on the Judiciary.

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, and a motion to reconsider was laid on the table.