years, have risked their lives in alliance with young Koreans.

I was reminded on that morning that freedom depends on courage and integrity; that honor, duty, country is not just a motto, it is a way of life. We in this House must live every day in that tradition. We have much to do to clean up our political and governmental processes. We have much to do to communicate with our citizens and with those around the world who believe in freedom and yearn for freedom. Everywhere I went recently, in Hong Kong, Beijing, Shanghai, Taipei, Seoul, and Tokyo, people talked about freedom of speech, free elections, the rule of law, an independent judiciary, the right to own private property, and the right to pursue happiness through free markets.

We in this House are role models. People all over the world watch us and study us. When we fall short, they lose hope. When we fail, they despair.

To the degree I have made mistakes, they have been errors of implementation but never of intent. This House is at the center of freedom, and it deserves from all of us a commitment to be worthy of that honor.

Today, I am doing what I can to personally live up to that calling and that standard. I hope my colleagues will join me in that quest.

May God bless this House, and may God bless America.

21ST CENTURY PATENT SYSTEM IMPROVEMENT ACT

Mr. MCINNIS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 116 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 116

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 400) to amend title 35, United States Code, with respect to patents, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill, modified as specified in section 2 of this resolution. The committee amendment in the nature of a substitute, as modified, shall be considered as read. All points of order against the committee amendment in the nature of a substitute, as modified, are waived. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 6 of rule XXIII. Amendments so printed shall be considered as read. The Chairman of the Committee of the Whole may: (1) postpone until a time during further consideration in the Committee of the Whole a request for a recorded vote on any amendment; and (2) reduce to five minutes the minimum time for electronic voting on any postponed question that follows another electronic vote without intervening business, provided that the minimum time for electronic voting on the first in any series of questions shall be fifteen minutes. At the conclusion of 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. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute, as modified. 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 with or without instructions.

SEC. 2. The amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in H.R. 400 is modified as follows:

(a) page 14, line 19, after ''at'' insert ''a rate not to exceed''; and

(b) page 46, line 15, strike ''activities'' and insert in lieu thereof ''activities, subject to the submission of a plan to the Committees on Appropriations of the House and Senate in accordance with the procedures set forth in section 605 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act 1997''.

☐ 1215

PARLIAMENTARY INQUIRY

Ms. JACKSON-LEE of Texas. Mr. Speaker, I have a parliamentary inquiry.

The SPEAKER pro tempore (Mr. LAHOOD). The gentlewoman from Texas will state her parliamentary inquiry.

Ms. JACKSON-LEE of Texas. Mr. Speaker, after the conciliatory remarks of the previous speaker, I have an inquiry to the Speaker as to his recollection: In the last 90 years of this House have we any time where this House has voted to censor a Member the entire day by rollcall vote?

I would appreciate a response on that inquiry, Mr. Speaker.

The SPEAKER pro tempore. The Chair would advise the gentlewoman from Texas [Ms. JACKSON-LEE] in the House Manual on page 322, the Chair responded on June 25, 1992, to parliamentary inquiries relating in a practical sense to the pending proceedings but did not respond to requests to place them in historical context.

The gentleman from Colorado [Mr. MCINNIS] is recognized for 1 hour.

Mr. MCINNIS. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts [Mr. MOAKLEY], pending which I yield myself such time as I might consume. During the consideration of this resolution all time is yielded for the purpose of debate only.

Mr. Speaker, House Resolution 116 is a noncontroversial resolution. The proposed rule is an open rule providing for 1 hour of general debate divided equally between the chairman and the ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the 5-minute rule.

Furthermore, it shall be in order to consider as an original bill for the purpose of amendment under the 5-minute rule the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill modified as specified in section 2 of House Resolution 1616. The resolution waives all points of order against the committee amendment in the nature of a substitute, as modified, and provides that it shall be considered as read.

Furthermore, Mr. Speaker, the resolution allows the Chair to accord priority recognition to Members who have preprinted their amendments in the CONGRESSIONAL RECORD, and the Chair may postpone votes in the Committee of the Whole and reduce votes to 5 minutes if those votes follow a 15-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.

Finally, Mr. Speaker, the rule provides one motion to recommit with or without instructions.

Mr. Speaker, this open rule was reported out of the Committee on Rules by a voice vote without any opposition. Under the proposed rule each Member has an opportunity to have their concerns addressed, debated and ultimately voted on, up or down, by this body.

I urge my colleagues to support the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. MOAKLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank my colleague, my friend from Colorado [Mr. MCINNIS], for yielding me the customary half hour.

Mr. Speaker, I think this is a day for celebration. We have finally gotten an open rule here on the floor. One of the 13 bills brought to the House by a rule this session, only 3 of them have been open. And as all my colleagues know, Mr. Speaker, we were promised more open rules, so I certainly hope that this is the beginning of a trend and not just a one-time occurrence.

I do find it ironic, Mr. Speaker, however, that just 2 days ago, just 2 days ago my colleagues on the Republican side of the aisle spent an entire afternoon trying to pass a constitutional amendment to require a two-thirds vote for any tax increase. Now they are bringing to the floor a bill that would pose new taxes. They can call them user fees, but I have got a letter from the gentleman from Texas [Mr. ARCHER], chairman of the Committee on Ways and Means, which says these are taxes, and they still increase costs to the American people.

Mr. Speaker, the goals of H.R. 400 are laudable, to strengthen our patent laws and patent process and to bring them into compliance with the standards utilized by the international community. The bill would also establish the U.S. Patent and Trademark Office as a separate Government agency to serve in a more efficient manner for those who utilize its services.

The United States, Mr. Speaker, is No. 1 in the world when it comes to the production of intellectual property. The development of a sound and effective policy for the protection of this property is critically important to our Nation's future dominance in this area.

But having said that, Mr. Speaker, this bill is not without its controversies. Some small inventors and others have some valid concerns with this legislation. But the time and place to address these problems is during the consideration of the bill itself. Under the open rule process, any amendment or substitute that is germane and does not violate any other House rules can be offered at that time.

Hopefully, these concerns will be thoroughly debated and addressed by the full House.

So, Mr. Speaker, I urge passage of this rule so that we may proceed to the consideration of the bill itself.

Mr. Speaker, I reserve the balance of my time.

Mr. MCINNIS. Mr. Speaker, I yield 5 minutes to the gentleman from California [Mr. ROHRABACHER].

Mr. ROHRABACHER. Mr. Speaker, the day has finally come, and I rise in support of the rule and in opposition to H.R. 400. I know a lot of people may vote in favor of my substitute to H.R. 400 just to shut me up and to keep me from giving all these special orders all the time, but the day has finally come when we will have a head-to-head discussion on the issue of what the patent law of the United States of America should be, and as I have pointed out on numerous occasions over the last few months, that the bill that was being crafted and, yes, the bill that finally went through the system is taking America in exactly the wrong direction.

Mr. Speaker, the United States of America has had essentially the same patent protections, the strongest patent system in the world up until this date, and if this vote passes today on H.R. 400, America's patent system will be gutted, that is gutted, and we will hear during this debate that they are doing it simply to get out a thing called the submarine patent.

Let me note this: That is very similar by saying the only way we are going to be able to handle Hustler magazine is to destroy all freedom of speech in the United States or the equivalent of saying, ''You have a hangnail that might be infected, and the only way to cure it is to cut off your leg,'' and that is not the case. The Congressional Research Service states that my substitute bill to H.R. 400 will eliminate the practice of submarine patenting. It never was necessary to cut one's leg off to handle the hangnail.

What we have here is an attempt to use a small problem which can be cured in other ways, the submarine patent problem, as an excuse to gut the strongest patent system in the world.

The essential ingredient, we have offered to compromise time and time again with those people who are supporting H.R. 400, but they came back and were unwilling to compromise on the essential point, which was our country believes that, until a patent is issued, that the patent applicant has a right of confidentiality. This bill as it is written, and it has not changed, they have not exempted any of the small business they claim to have exempted; this bill would mandate that all of our secrets, every one of our secrets that would be held confidential under the current system under what they are proposing is a system that will publish them after 18 months for the world to see. Everyone can understand that.

Mr. Speaker, that is why the American people have risen up and called their Member of Congress to say we do not want to make America's technology vulnerable to foreign theft and the theft from huge corporations domestically. This, after asking for compromise for 2 years, we have not been able to compromise on this point because that is what the purpose of this bill is.

H.R. 400, when it was introduced last session, was called the Patent Publication Act. So all of the other wonderful things that we hear about this bill we have accepted in the substitute. I will be offering in the substitute almost all the wonderful things that we will hear, but the disagreement, the fundamental disagreement, is, No. 1, should we basically gut the patent system by corporatizing the Patent Office and taking it out of the U.S. Government, making it a corporate entity, taking our patent examiners, making them vulnerable to outside influences, No. 1; and No. 2, should we publish the information about our inventors' patent applications even before the patent is granted? If we succeed today or if the other side succeeds today, foreign corporations, whether in China or Japan or elsewhere, will be able to steal this information, use it, go into production, but those proponents say: But we give them the right to sue once the patent is issued.

Mr. and Mrs. America has to decide on that. Is this really an option if the People's Liberation Army is manufacturing some technology developed here and 4 or 5 years later the patent is issued giving the person who owns the patent the right to sue the People's Liberation Army 5 years later? Is that really recourse?

This is setting up, this is a set up for the biggest ripoff of technology in the history of the United States. Our most important ideas will be stolen from us by our worst adversaries and used against us; and when the court action comes up, what is going to happen? When the court action comes up, they will be using the money for manufacturing with stolen technology to defeat our people in court.

I ask my colleagues to support the rule, I ask my colleagues to oppose H.R. 400, the Steal American Technologies Act, and to support the Rohrabacher substitute.

Mr. MOAKLEY. Mr. Speaker, I would like to inquire of my distinguished colleague from Colorado how many speakers he has left.

Mr. MCINNIS. To my good friend from Massachusetts, I have a number of speakers who have just now signed up, so I assume that I will take the entire 30 minutes.

Mr. MOAKLEY. The only speaker I have is myself to finish our side of the debate, so I will allow my dear friend from Colorado to go forward.

Mr. Speaker, I reserve the balance of my time.

Mr. MCINNIS. Mr. Speaker, I yield 5 minutes to the gentleman from North Carolina [Mr. COBLE].

Mr. COBLE. Mr. Speaker, I have been called a puppet of the Japanese industrial complex as a result of this bill. I resent it. I have been called worse than that. We have tried to keep this on an evenhanded course, but alas to no avail.

The patent law, Mr. Speaker, as my colleagues know, provides a forum whereby cute, sexy questions can be propounded, but because of the complexity of the subject matters, cute, sexy responses are not that easy to be forthcoming.

This is a good bill. In contrast to what our opponents would have my colleagues believe, H.R. 400 has received more process than any patent bill in history. It is developed over a 2-year period and was the subject of more than 50 negotiating sessions with interested parties and the administration. And incidently, Mr. Speaker, in addition to the Clinton administration, the Bush and Reagan administrations heartily endorsed this proposal. During this time over 80 witnesses testified at eight different hearings to help craft its contents. I have no pride of exclusive authorship in H.R. 400 since so many fingerprints cover the bill including those of independent inventors, small and big business, industry groups, universities and research laboratories.

□ 1230

Our bill is supported by 75 American companies responsible for 90 percent of the patents issued to American applicants in the United States. Twenty-one CEO's of our Nation's high-technology companies which employ 1.4 million men and women and which hold 55,000 U.S. patents endorse H.R. 400 and oppose the Rohrabacher substitute. Mr. Speaker, pardon my immodesty, but that hardly sounds like a puppet of the Japanese industrial complex.

Title I of H.R. 400 would transform the Patent and Trademark Office, or the PTO, into a Government corporation. It would remain a Federal agency subject to congressional oversight and protected by all of the benefits and safeguards afforded any agency and its employees under title V of the U.S. Code.

The whole point of title I is to allow the PTO to operate more efficiently on a day-to-day basis. To illustrate, the agency would no longer be required to solicit permission from the General Services Administration each time it wished to buy a box of pencils or note pads.

Furthermore, title I would permit the PTO to keep all its funding derived from user fees. Last year alone, $92 million were diverted from those funds, which are exclusively funded by users, and the intent at the time of collection is to use those fees to operate and maintain the Patent and Trademark Office.

First, H.R. 400 helps American inventors under title II who file for patent protection overseas. Since all other developed countries which have patent systems require publication after 18 months, American inventors have their applications published in the language of the relative host country at this time. In contrast, foreign companies which seek protection in the United States do not reveal their applications until the U.S. patent issues. This is unfair on its face, since foreign companies are therefore able to study our latest technological developments abroad but are not required to reveal their work to our inventors on these same terms here. Eighteen-month publication, therefore, levels the international playing field.

Second, the publication inhibits the practice of patent submarining. My colleagues will hear more about that as this debate develops. A submariner is a bad-faith inventor who attempts to game the existing patent system by indulging in dilatory tactics that prevent the expeditious review of the application. By biding his time, the submariner can eventually identify a company which has independently developed the same idea, then sue for royalties. Quite obviously, this constitutes bad public policy, since the submariner has no intention of using an invention to manufacture a product or create a new job. The motivation of the submariner is to subsist off the work of others, and they do real well at it. I refer my colleagues to a recent article that appeared in last week's Wall Street Journal.

Mr. MOAKLEY. Mr. Speaker, I yield 4 minutes to the gentleman from Michigan [Mr. CONYERS], the ranking member on the Committee on the Judiciary.

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

Mr. CONYERS. Mr. Speaker, I am here in my capacity as ranking member to urge that this rule be adopted. I understand that everybody that has spoken on the rule is supporting the rule, so very good. The only thing is that the first speaker, the gentleman from California [Mr. ROHRABACHER], in supporting the rule, said this was a bill that would gut the American patent process, if I heard him correctly. He is nodding, and apparently I did hear him correctly; that this bill, H.R. 400, would gut the U.S. patent process.

This is the same bill that has passed out of two Republican Congresses and two judiciary committees unanimously, and but for the tremendous acumen of the gentleman from California [Mr. ROHRABACHER] we would unwittingly have passed out last Congress and this Congress a bill that would gut the patent process of the United States of America.

We obviously owe this gentleman from California [Mr. ROHRABACHER] a huge debt. I mean our obligation must go up to the sky. I thank the gentleman from California [Mr. ROHRABACHER] for this great single feat of saving the American legal system from what would happen were it not for his substitute.

Fortunately, however, there is a remedy. The rule will call for the substitute, but until the debate occurs, could the gentleman help us keep the confusion level down to about its norm by refraining from these unsubstantiated statements so far in this debate. I know in the gentleman's mind the gentleman is pretty firm where he is coming from, but for those who may not be committed yet to this bill and who may not be on the substitute, could we have a debate that merely tries to describe what our humble Committee on the Judiciary and two Congresses have attempted to do on this, and if we could do that, I think it would win the approval of all of us in the Congress and it would help us a great deal.

Now, this bill is supported by five of the last six Commissioners of the Patent and Trademark Office. That means that the highest Government officials on this subject in the past have all signed off on this bill. There have been years of negotiation on this bill. We have finally reached, we thought, almost unanimity. It will stop cheating in the patent process by ending the prime delaying tactic, and on this, the gentleman from California [Mr. ROHRABACHER] and I agree, submarine patenting. It will end that process where lawyers now are coming forward representing people that are subverting the patent process.

This is the best thing that has ever happened for the small inventor, and I urge the support of the rule.

Mr. MCINNIS. Mr. Speaker, I yield 5 minutes to the gentleman from Florida [Mr. GOSS].

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

Mr. GOSS. Mr. Speaker, I thank the distinguished gentleman from Colorado for yielding me this time.

Mr. Speaker, I appreciate and I rise in strong support of this wide-open rule providing for consideration of H.R. 400. This open rule will allow for full debate on this very complex and controversial measure.

Mr. Speaker, the objective of this legislation is to promote greater efficiency in our patent system, and of course put us on an even footing overseas, at the same time balance this with fair protection for the independent inventor, and this is obviously a very delicate process.

My district is home to the Edison Inventors Association. We are very proud of that. They have directly and personally conveyed to me their very real concerns with the legislation as it is written, and I am sure the gentleman from California [Mr. ROHRABACHER] is going to speak to several of those issues as the day goes along. I have also spoken with proponents of H.R. 400, and they have made a compelling case for certain items in H.R. 400. So it seems we are getting most of the good issues out.

Among the inventors, there is a real concern that the 18-month publication period provision in this bill will pose a risk to the little guy, the independent inventor. We certainly do not want to inadvertently create a situation, unintended negative consequences, where these entrepreneurs are squeezed out in the courtroom by large corporations. This is a real concern, and I know it will be addressed today.

On the other hand, I think we all agree that the proposed diversion of fees paid to the Patent and Trademark Office in the Clinton budget is a very bad idea. There was unanimity on this issue yesterday, I believe, in the Committee on Rules, and I am gratified that H.R. 400 hits this right on. Our inventors need to know that these fees are not being diverted to fund other initiatives, but are helping to speed the patent process along.

Mr. Speaker, I am not certain that the promised benefits in H.R. 400 are not outweighed by the potential setbacks. I am waiting to be convinced by the debate. Whenever we consider sweeping reform we would be wise, in my view, to follow the model of the medical profession. First, do no harm. While I remain uncertain that H.R. 400 is truly a step forward, I am glad that we are going to be able to have vigorous debate on this floor where both sides can make their case, and I certainly appreciate the hard work and long efforts of the committee on this process.

What we have here today is deliberative democracy at work in the people's House. I urge support for this good rule for that reason, and I commend the gentleman from New York [Mr. SOLOMON] and the gentleman from Colorado [Mr. MCINNIS] for bringing this rule forward.

Mr. MOAKLEY. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, I really cannot pass this opportunity to mention one more time that this bill contains a revenue increase. This bill contains a tax increase.

The fee in question is clearly a revenue increase, under the Speaker's guidelines on jurisdictional concepts distinguishing user fees from taxes. The guidelines were announced again on opening day, January 7, 1997, page H32, CONGRESSIONAL RECORD. The proceeds will be used to benefit some who did not pay the charge, and thus cannot be construed as a user fee. There are substantive charges to the existing patent fee so as to make this charge a tax.

Mr. Speaker, I include for the RECORD at this time a letter from the gentleman from Texas [Mr. ARCHER], the chairman of the Committee on Ways and Means, making it very clear that this fee is a tax.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC, April 16, 1996.

Hon. HENRY J. HYDE,
Chairman, House Committee on Judiciary, Rayburn HOB, Washington, DC.

DEAR CHAIRMAN HYDE: As you know, H.R. 400, the ''21st Century Patent System Improvement Act,'' would make various changes regarding the Patent and Trademark Office. In particular, section 122 would extend permanently these patent and trademark fee surcharges. In addition, it would also permit the imposition and collection of new fees to recover the costs of publication of patent applications and reexamination proceedings.

In determining what is a revenue measure within the jurisdiction of the Committee on Ways and Means, the Committee relies upon the statement issued by Speaker Foley in January 1991 (and reiterated by Speaker Gingrich on January 7, 1997) regarding the jurisdiction of the House Committees with respect to fees and revenue measures. Pursuant to that statement, the Committee on Ways and Means generally will not assert jurisdiction over ''true'' regulatory fees that meet the following requirements:

(i) The fees are assessed and collected solely to cover the costs of specified regulatory activities (not including public information activities and other activities benefiting the public in general);

(ii) The fees are assessed and collected only in such manner as may reasonably be expected to result in an aggregate amount collected during any fiscal year which does not exceed the aggregate amount of the regulatory costs referred to in (i) above;

(iii) The only persons subject to the fees are those who directly avail themselves of, or are directly subject to, the regulatory activities referred to in (i) above; and

(iv) The amounts of the fees (a) are structured such that any person's liability for such fees is reasonably based on the proportion of the regulatory activities which relate to such person, and (b) are nondiscriminatory between foreign and domestic entities.

Additionally, pursuant to the Speaker's statement, the mere reauthorization of a preexisting fee that had not historically been considered a tax would not necessarily require a sequential referral to the Committee on Ways and Means. However, if such a preexisting fee were fundamentally changed, it properly should be referred to the Committee on Ways and Means.

On October 20, 1995, I wrote to you regarding a fee provision adopted by the Committee on Judiciary during its budget reconciliation recommendations. That provision would have extended the expiration date of certain patent and trademark fee surcharges for four years, until 2002. Although the Committee on Ways and Means did not assert any jurisdictional claim over the fee at that time, I expressed my strong interest in working with you to conform this provision as closely as possible to a true ''fee.'' With respect to similar ''fees'' that raise more revenue than is reasonable, the Committee on Ways and Means has worked with other committees on jurisdiction to design a means of reducing the ''fees'' over time so that the charges become true ''fees'' that are tied to the cost of the regulatory activity. I extended the same offer to work with you and the Appropriations Committee to reduce these charges over time so that they become true regulatory fees.

I understand that H.R. 400 is intended to make the current fees more closely resemble true ''fees.'' Since he surcharge was imposed by the Omnibus Budget Reconciliation Act of 1990, only a portion of the surcharge proceeds have been made available to the PTO. The balance of the proceeds have been diverted to finance other governmental activities. By making the PTO fully financed through fees, this excessive imposition of PTO fees should be substantially reduced.

Nonetheless, the surcharge and the reexamination fee (due to its 50% reduction for qualified small entities) do not meet all four requirements set forth above. To the extent that any fee is set at a level to recover completely an agency's costs associated with a particular entity, a surcharge, by definition, will be excessive and therefore cause the ''fees'' to exceed the agency's costs associated with the entity. Moreover, at least a portion of the activities of the PTO benefit the public generally and cannot be recovered through narrowly-based fees.

With respect to the reexamination fee, to the extent that it is based upon the size of the affected entity, rather than the costs associated with that entity, it would violate (iv) above. Accordingly, I have been advised that the bill in its present form would violate Rule XXI clause 5(b) to the Rules of the House, which provides that no bill carrying a tax or tariff measure shall be reported by any committee not having jurisdiction to report tax and tariff measures.

Although the amount of fees and the manner in which they are imposed do not conform to the criteria discussed above, the modifications made by the bill would make PTO fees generally less of a revenue measure than they are currently. I also understand that H.R. 400 reflects a carefully constructed balance of competing interests, and is shortly due to be considered on the House Floor. Accordingly, I will not seek a sequential referral, or object to consideration of H.R. 400 on the Floor at this time.

However, this is being done with the understanding that the Committee will be treated without prejudice in the future as to its jurisdictional prerogatives on this or similar provisions, and it should not be considered as precedent for consideration of matters of jurisdictional interest to the Committee on Ways and Means in the future. It is also being done with the understanding that you will contact me if the fees are modified on the House floor or in conference, in which case I reserve the right to seek to have Members of the Committee on Ways and Means named as additional conferees. Finally, I would appreciate your response to this letter, confirming this understanding with respect to H.R. 400.

Thank you for your cooperation in this matter. With best personal regards,

Sincerely,

BILL ARCHER,
Chariman.

Since it is a tax increase, Mr. Speaker, I am waiting to see if my colleagues who supported the constitutional amendment to seek to amend the rule to require two-thirds vote to increase taxes will come forward because this is an open rule. They can come forward and put an amendment in to increase the vote by two-thirds in order to pass this bill because it has a tax increase.

Mr. Speaker, I reserve the balance of my time.

Mr. MCINNIS. Mr. Speaker, I yield 3 minutes to the gentleman from California [Mr. HUNTER].

Mr. HUNTER. Mr. Speaker, I thank my friend for yielding this time to me. I thank all of the Members of this debate, because I think we are starting to frame the debate fairly effectively.

Let me say first that the gentleman from Illinois [Mr. HYDE], the chairman of the full committee, is one of the giants of this legislature, and I think we all recognize him as such on both sides of the aisle; the gentleman from North Carolina [Mr. COBLE], my good friend, who is the chairman of the subcommittee, one of my finest friends ever in the House of Representatives, and a superb legislator and a guy for whom I have a lot of respect. I know both gentlemen have worked long and hard on this bill.

Let me say that as we move along in this body, we begin to realize more and more how easy it is to get up and complain about something that is a work product that other folks have done a lot of work on, and we should not take that role or that opportunity frivolously.

Mr. Speaker, I thought one of the last things that the gentleman from Florida [Mr. GOSS] said was a very important thing. He said that the first rule of the physician is do no harm.

☐ 1245

While I think there are a lot of good things in H.R. 400, I think there are a few fatal defects that do some harm.

The other thing that I think we have to realize when we go into this debate is that this is an enormous debate because it has a great deal to do with our most important property rights, our intellectual property rights; the centerpiece of America, the idea, the creator of technology, the innovator. And this property is just as valuable as real property that we cherish, the right to have real property; this right of an inventor to go out, come up with an idea, and get paid for that idea. We have a system that accords certain rights and privileges to that inventor. We are changing those rights and privileges markedly in this bill.

There are two sides to this debate, I think that is something we need to establish early, two legitimate sides to the debate. I was just going through the list of people who oppose the bill.

Dr. Forrest Bird, inventor of the neonatal respirator; Dr. Paul Burstein, the inventor of rocket motor inspection system. Raymond Damadian, inventor of the MRI. He is opposed to the bill.

We have several Nobel laureates here: Gertrude Elion, the inventor of leukemia-fighting and transplant rejection drugs, Nobel laureate; the inventor of the Hovercraft, Charles Fletcher; Franco Modigliani, the inventor of the credit management system, Nobel laureate.

There are legitimate arguments on the other side of this bill. We are going to lay those out. The one thing that I am going to concentrate on is publication, because every inventor needs a period of secrecy, and there is no substitute for secrecy. I think that is what we are going to find out as this debate goes on. If we publish, if we expose this inventor's secrets 18 months after he has applied, it is going to kill him. I think we can lay that out clearly in the debate. I thank the gentleman for yielding me this time, and I like the rule.

Mr. MOAKLEY. Mr. Speaker, it gives me great pleasure to yield 4 minutes to the gentlewoman from California [Ms. LOFGREN].

Ms. LOFGREN. Mr. Speaker, I think there has been a great debate in the public that has unnecessarily and I think unduly alarmed Americans who are not immersed or totally familiar with the arcane details of patent law, and it has become very difficult for people to sort through the various arguments that are being made back and forth, and I am sure being made in good faith.

But I thought it would be helpful to this House to hear the comments made by the technology chairs of the White House Conference on Small Business, because much has been said that this might be a bill between the big guys and the little guys.

For those of us who have spent the past 2½ years sorting through this bill line by line so it would represent a good, solid, bipartisan effort to protect American industry, we were encouraged that the technology chairs of the White House Conference on Small Business were assigned by the other small business men and women of America to take a look at the bill and to examine the various claims being made.

It was very gracious of them to give the following report. I will not read their entire comments, but I would like to quote a few specific items. This is a direct quote: ''During the past year,'' all 10 chair persons say, ''Independent inventors and the small business community have been subjected to an intense campaign of fear, xenophobia, and misinformation. The White House Conference on Small Business researched many of the most emotional issues and found that much of the information being promulgated is simply wrong. Legislation based on bad data is bad legislation.''

And then they go through the issues. First, the 20-year system. They conclude that ''We believe most of the hysteria over the new 20-year term is based on misinformation.''

Regarding the publication of patent applications, they say, ''The vast majority of American patent applications are also filed in foreign countries where they are automatically published. Failure to publish these applications in the United States gives our foreign competitors a huge advantage. They can read our applications but we cannot read theirs. We need a level playing field with our foreign competitors.''

Finally, on the issue of stealing American inventions, the small business men and women said, ''It is misleading to suggest that the opportunity to copy U.S. inventions would be newly created by either of these bills.'' To that they refer to the predecessor bills to both H.R. 400 and the Rohrabacher amendment.

Mr. Speaker, the feared opportunity already exists. Foreigners are presently free to read and copy any U.S. patent. The publication provision of either of these bills will have no effect on this reality. ''Stealing'' is a false issue.

''The barrage of misinformation has caused great confusion and alarm,'' they say. ''Further attention has been diverted from the much-needed modernization of U.S. Patent Law.'' Then they go on to endorse the elements that are encompassed in H.R. 400.

Mr. Speaker, it is important for the many citizens and Congress Members who are watching this debate today to understand that it is easy to make wild allegations, but hard, to do the tough work done by the gentleman from Michigan [Mr. CONYERS] and the gentleman from Illinois [Mr. HYDE], by the gentleman from North Carolina [Mr. COBLE] and the gentleman from Massachusetts [Mr. FRANK]—to go through the bill that protects American inventions and fosters prosperity for this country.

Mr. MCINNIS. Mr. Speaker, I yield 1 minute to the gentleman from New York [Mr. FORBES].

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

Mr. FORBES. Mr. Speaker, I rise today in support of the rule and in vehement opposition to H.R. 400.

My dear friends, much has been made just a moment ago about small business. I could tell the Members that the Small Business Legislative Council, the Small Business Survival Caucus and Committee, and the Small Business Technological Committee and Coalition have all opposed H.R. 400 because they believe that it will be bad for small businesses and even more horrendous for entrepreneurs and the people out there who are working full-time jobs and spending extra hours at their garage or kitchen table coming up with a new invention. We are talking about Americans coming up with ideas that they will try to market here in America, not abroad.

I would just reference two wonderful books, which are two of many. If Members would remember, there are so many young children out there who go to the fourth grade or fifth grade, they go to the library and they take out books about Eli Whitney and books about Thomas Edison, and the great inventors of this Nation. They come home and they get energized about the greatness of America and that all things are possible.

H.R. 400 would kill that off, and it would make the entrepreneur extinct as far as the current patent situation as we know it today.

Mr. MCINNIS. Mr. Speaker, I yield 5 minutes to the gentleman from California [Mr. CAMPBELL].

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

Mr. CAMPBELL. Mr. Speaker, there are two very serious errors in H.R. 400. Let me just start with these and try to return to these frequently. They are these.

First of all, if you are an inventor, you should not have to publish what your invention is until you get the patent. You should not have to. The reason for that is that if you do not want to make it known to the world at large, you should not have to, because you might be able to market it to a company as a trade secret. The reward to inventors sometimes is not to get it patented but to apply a trade secret. That is what Coca-Cola has done for more than a century.

This bill, H.R. 400, requires that even if you have not gotten the patent, when 18 months have run from the time that you have applied, you have to publish. That is a mistake.

The second error is this: When there is a prior user, somebody else who has been using this idea in a commercial way, under existing law that person does not win over the person who invents, the person who files the patent. That person has the right to that invention. But H.R. 400 says no, if there is a prior commercial user, that prior commercial user can continue, and not only continue, he or she can expand. If they were making 10 products a month, they can go to a thousand, and then if they are seeking to be acquired by a company, what they can do is say, ''Look, here is the crown jewel. We have a prior commercial use as to this patent. Take over our company, and maybe we do not have the ability to go from 10 to 1 million units, but you do.''

On these two points there is a very serious taking away from the patent applicant in the United States law from the present system. Somebody who spends the time to invent right now has the right to go around and market their idea and say, you know, it is a patent pending right now. If we get the patent, I am willing to sell it to you. If we do not, I am going to find that out from the Patent Office and keep it secret and try to sell you a trade secret. That would now change.

These are very significant differences. I have to ask the question: For what purpose? The answer we most frequently get is because there are submarine patents out there, and this is the term of art we will hear very frequently. The submariner is somebody who is gaming the system. That person can be dealt with explicitly, with a laser beam instead of with a floodlight.

The individual who is attempting to game the system is somebody who files a patent application and then asks that it be continued, and asks that it be continued and then delayed and delayed, waiting for some other company to take the idea, turn it into a profitable enterprise, and then the submarine surfaces and fires its torpedoes.

The solution to that is to deal with the person who is gaming the system. In other words, let us just say that the publication requirement, which obviously defeats this strategy, ought to apply if you have filed applications to continue to delay, to postpone.

So I went to my good friend and colleague, the gentleman from California [Mr. ROHRABACHER], and asked if he could add that to his bill, because I thought that the high-tech companies had a good point, that there might be an occasional instance of this submarine strategy, and he graciously agreed to do so.

My colleague and dear friend, the gentleman from North Carolina, entertained the idea, but in the final event, he was not able to accept it. So in H.R. 400, what we have is a very, very broad solution to a very narrow problem, with the result that the inventor loses what he or she has under American law.

We have heard already that H.R. 400 is supposed to level the playing field. Let me assure my colleagues, the level playing field exists right now. If you file in Europe, whether you are European, Asian, African, or American, you have to disclose after 18 months. If you file in America, whether you are Asian, European, American, or African, you do not. So there are two systems in the world. They are fair to everybody in each system, but the systems are different.

I wish to conclude with a personal note of gratitude to the chairman, the gentleman from North Carolina, HOWARD COBLE. This man is not engaged with any intent to do harm to the American public or to do harm to our patent system, by his lights.

I have respectfully come to the conclusion that I cannot support his bill, but that does not diminish in the slightest my respect for him or the intentions that motivate him, which I believe are of the highest order. It is only my regret that after 2 months of good faith negotiations, we were not able to reach the accommodations in H.R. 400 that I was able to achieve with H.R. 811 and H.R. 812.

I support the rule because it allows the Rohrabacher alternative to be in order, and that, to me, is the preferable bill.

Mr. MOAKLEY. Mr. Speaker, in the spirit of comity, I yield 2 minutes to the gentleman from Indiana [Mr. PEASE], on the other side of the aisle.

Mr. PEASE. Mr. Speaker, I thank the gentleman for yielding time to me.

I had not intended that my first remark to this body would be without aid of a script prepared by my staff; however, the script prepared by my staff will be reserved for the later debate this afternoon.

Let me just say this. I bring, I hope, to this discussion a different perspective. As many of the Members know, I am fortunate to have come from higher education, and there, though I do not speak for higher education, I have spoken extensively with the higher education community on this subject. They bring to us a perspective that is reflective of the inventor's community.

We have solo practitioners, faculty members, and students who work on their own in the invention field, and we have those who work under contract with major international corporations.

□ 1300

So we come from the higher education community with the perspective that includes all of the players that one would hope would be protected in this legislation that is before us.

The higher education community has debated extensively about the proposals in H.R. 400, and we have stayed in contact with them throughout the time that I have been involved in this discussion as well. Though most of them have not taken a position in terms of opposition or support of the proposed legislation, I am convinced, particularly with the amendments that will be offered through the floor managers' work, that the concerns that have been raised on this floor today will be addressed in the amended bill and that it will protect both the small inventors and the major corporate inventors and be good for the country.

I urge Members' support of the rule and of the bill.

Mr. McINNIS. Mr. Speaker, I yield 3 minutes to the gentleman from Virginia [Mr. GOODLATTE].

Mr. GOODLATTE. Mr. Speaker, I thank the gentleman from Colorado for yielding me this time. I rise in support of the rule and in strong support of H.R. 400.

This is a very good bill and a very, very important bill to protect the competitiveness of American business and American inventors, large and small. Let me make that point very, very clear.

I commend the gentleman from North Carolina [Mr. COBLE], my good conservative friend, and the gentleman from Illinois, the chairman of the Committee on the Judiciary, for pushing this legislation forward. Mr. HYDE and Mr. COBLE know how important this legislation is for the American people.

We are not dealing with what the opponents would tell us is the Steal American Technologies Act. We are dealing with a situation where we have got to act and act now to protect American inventors from a situation where that technology is being stolen under current law.

Under current law, every single patent that is filed in the other major industrial countries around the world is published after 18-months, in Japanese, in German, in French, for those inventors and those countries to see. Forty-five percent of all the patents filed with the U.S. Patent Office are filed by foreign inventors, and U.S. inventors do not get to see that technology filed here in the United States.

This bill provides greater protection for the small inventor by improving the patent pending provisions of the law. This bill protects the small inventor in this country by giving them the opportunity to get capital behind those inventions much sooner than they get under current law.

The opponents would tell us that under the 18 month publication, they are going to have a gap between that publication, when they get the patent, and somebody is going to steal their ideas. That is not the experience they have had in Europe.

In Europe they get that capital sooner because the entrepreneurial investors in Europe know that that particular inventor is the lead inventor on that item because it has been published, published ahead of anybody else who might be in the system ahead of them. We have no way of knowing that in this country. So the capital does not come here until the patent is issued. In Europe that has changed.

This will help small inventors by giving them the opportunity to get that capital, get that product on the market sooner. It will give them the opportunity not to have to reinvent the wheel because they will know whether somebody else is already in the marketplace with that idea.

This is a good bill. It is a good bill for the little guy, and we should vote for the rule and vote for the bill and get this major improvement, major improvement to competitiveness in the United States against our foreign competition done.

Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. MOAKLEY. Mr. Speaker, I yield 3 minutes to the gentlewoman from Ohio [Ms. KAPTUR].

(Ms. KAPTUR asked and was given permission to revise and extend her remarks.)

Ms. KAPTUR. Mr. Speaker, I reluctantly rise in support of this rule because, once it is passed, Members like myself who oppose H.R. 400 are going to be given about 15 minutes out of the hour, only one-quarter of the time to present our views. That is typical of what has been happening on this extremely important bill.

I understand what the floor managers have to do here, but I truly object to the fact that we are not given equal time during debate to handle a bill of

this magnitude. There is absolutely no question that this bill concerns America's future. It concerns our jobs. It concerns who controls our technology.

To be muzzled on the floor when we consider a bill that has constitutional implications is beyond my wildest dreams. Why would they do this to us? We know the Committee on Small Business has not been able to hold hearings because small inventors have not been allowed to present their case to the Congress. Now on the floor we will also have our hands tied behind our backs and be allowed so little time to discuss the merits.

In view of that, I say to the Members who are listening to this debate and to the people of the country, how many complaints have you ever gotten from your inventors about the current patent system? The United States leads the world in patent filings. We have 10 times more intellectual property breakthroughs than any other Nation in the world. Why would we want to change our system?

I heard the prior speaker say, ''Japan or some other country.'' But, we lead the world. Why would we want to do anything to harm the system that has created the largest industrial and agricultural power on the face of the Earth? There is much at stake here, and there are many private interests that want to get their hands into what is happening at our Patent Office. We understand that well.

But there is more at stake here than just arcane rules that may be administered by a department that handles our patents.

I say to the membership, if they have not read this bill, if they do not understand its implications, vote no on H.R. 400 and vote for the substitute.

We will talk a lot about how the period is shortened for our inventors where, if you file a patent, in 18 months they will be able to get your blueprints. Your work will not be kept secret as it is today until the patent is issued. That is absolutely wrong. Why would we want to do that to the people who are creating our future in this country?

Why would we want to corporatize the Patent Office and take away the objectivity of its examiners? And why in heaven's name would you want to produce a bill, page 11, lines 15 through 17, which permits this Office, which will not have the same kind of control we have today, to accept monetary gifts or donations of services, of real estate, personal or mixed property in order to carry out the functions of the Office? We have seen all kinds of bribes in this city.

I hear from the chairman that may be out. Well, I will be really interested in what else is out of the bill because this truly is a work in progress. It is unfair to the membership. It is unfair to the people of this country who are creating our future to be muzzled here on this floor.

Mr. MOAKLEY. Mr. Speaker, I yield myself such time as I may consume.

As I said before, just a couple days ago there was a bill to amend the Constitution that required two-thirds to increase taxes. This bill increases taxes. And I was waiting to hear the amendment to the rule to require two-thirds vote for this bill to pass because it does raise taxes, but evidently it is not coming forward.

Mr. Speaker, I yield back the balance of my time.

Mr. MCINNIS. Mr. Speaker, I yield myself such time as I may consume.

I would like to clarify the comments just made by the gentlewoman from the State of Ohio. Her remarks were that she would be and, for some reason, Members that favor her position were being muzzled on the House floor. It is unfortunate that she was not in here for the previous conversations that we have had, but to assist her knowledge, I would suggest that she study an open rule. This is an open rule. No one is being muzzled here. An open rule allows open debate.

I notice that the gentlewoman on a number of occasions, at least two, during her comments used the word ''muzzled.'' I think it is that kind of rhetoric, frankly, that heats up the debate here unnecessarily. It is an open rule.

Mr. Speaker, I yield the balance of my time to the gentleman from Illinois [Mr. HYDE], distinguished chairman.

The SPEAKER pro tempore (Mr. HOBSON). The gentleman from Illinois [Mr. HYDE] is recognized for 2½ minutes.

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

Mr. HYDE. Mr. Speaker, I say to my dear friend from Toledo, it is too bad she did not come up to the Committee on Rules and ask to structure a rule that would give her all the time she wants. But she did not, and we got an hour's debate. And out of the goodness of our hearts, we are yielding 7½ minutes, I assume the gentleman from Michigan [Mr. CONYERS], out of the goodness of his heart, will yield 7½ minutes, and there is 15 minutes plus an open rule. I think that ought to be enough, at least that is my humble opinion.

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

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

Ms. KAPTUR. Out of an hour, then I understand, Mr. Speaker, we will receive 15 minutes?

Mr. HYDE. We each have a half hour. We have a half hour over here. We are going to give the gentlewoman 7½ minutes of it. She is against our bill, yes.

Ms. KAPTUR. So 15 over 60 is 25 percent. So we are not being given equal time.

Mr. HYDE. Mr. Speaker, the gentlewoman can talk to 6 p.m. or beyond this evening because we have an open rule. The gentleman from Massachusetts [Mr. MOAKLEY] wanted it open.

Ms. KAPTUR. Mr. Speaker, the rule is open to some, not all.

Mr. HYDE. Mr. Speaker, let me just suggest to my friends that H.R. 400 is a very good bill. We have heard about corporatizing the U.S. Patent Office, new word, ''corporatizing.'' There is more oversight over the corporate U.S. Patent Office than if we kept it as a bureau of the Department of Commerce. There will be an inspector general. There are reporting requirements to Congress. There are reporting requirements to the administration. The Government Cooperation Control Act has over 100 accountability provisions plus there is an advisory board, so that is a red herring.

What is really at stake in this issue, and I could not imagine patent law could be made exciting or interesting, but we have submarines floating around. I expect to see periscopes surfacing during this debate because that is what this is all about, protecting people who do not invent to make society a better place but to make a fast buck.

They file their applications and God forbid they should be published. They want to keep it below the surface so some poor guy who goes into business and is using a process and they find out about it, they surface, up periscope, and sue. And one person made $450 million doing that. His lawyer made $150 million, and they tell us submarine patenting is not a problem.

If you want to protect your invention, you have to file overseas. And when you file, it is published after 18 months. The whole patent system was set up to give you exclusivity for a term of years, hopefully 20 years, in exchange for sharing your deep, dark secret with the world and making this a better place to live. That is the tradeoff. If you do not want to have your secret published, do not file for a patent. Keep it as a trade secret.

Now, not publishing protects the submarine patent gamester who is out not to assist the economy but to fatten his personal treasury. It is, as I have said, the foreign patents. If you want protection overseas, you have got to file overseas in their language. They file here and it is not published. Nobody can find it. We want to play by the same rules overseas as we play here.

This is a good bill. I have a letter from the commissioners of patents under Nixon, Ford, Reagan, Bush; all say this is an excellent bill. And the Democratic administration presently, the President's administration supports it.

I say, pay attention, something is going on here. One of the handouts says, ''Don't be fooled.'' Those are good words. Do not be fooled. Do not protect the submarine patent gamesters who use the system not to assist society but to make a fast buck.

Mr. MCINNIS. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

□ 1314

The SPEAKER pro tempore (Mr. HOBSON). Pursuant to House Resolution 116 and rule XXIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 400.

The Chair designates the gentleman from Illinois [Mr. LAHOOD] as Chairman of the Committee of the Whole, and requests the gentleman from Michigan [Mr. CAMP] to assume the Chair temporarily.

□ 1315

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 400) to amend title 35, United States Code, with respect to patents, and for other purposes, with Mr. CAMP, Chairman pro tempore, in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from North Carolina [Mr. COBLE] and the gentleman from Michigan [Mr. CONYERS] each will control 30 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. COBLE].

Mr. COBLE. Mr. Chairman, I yield myself such time as I may consume and say, before I get into this, that I want to extend what the gentleman from Illinois [Mr. HYDE] said to the gentlewoman from Ohio earlier about being muzzled and having their hands tied.

We have, in the ultimate sense of fairness and comity, agreed to give 7½ minutes to the gentleman from California [Mr. ROHRABACHER] to manage as he sees fit, but that in no way binds the gentleman from Michigan [Mr. CONYERS]. That was an agreement on this side, and the gentleman from Michigan may do as he likes.

I just wanted to get that on the table, Mr. Chairman.

Mr. Chairman, I ask unanimous consent to yield 7½ minutes to the gentleman from California [Mr. ROHRABACHER] and that he be permitted to control that time.

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

There was no objection.

Mr. ROHRABACHER. Mr. Chairman, I yield myself such time as I may consume to thank the gentleman from North Carolina [Mr. COBLE] very much for the courtesy of being able to participate in this debate as it goes along.

Mr. Chairman, I reserve the balance of my time.

PARLIAMENTARY INQUIRIES

Mr. HYDE. Mr. Chairman, parliamentary inquiry.

The CHAIRMAN pro tempore. The gentleman will state his parliamentary inquiry.

Mr. HYDE. Mr. Chairman, it was our intention that the gentleman from California [Mr. ROHRABACHER] be given 7½ minutes from our side. We had hoped, and I had not had the opportunity to ask the gentleman from Michigan [Mr. CONYERS] to give him 7½ minutes. The purpose was so that he could go first and get his statements out and then we could proceed with the rest of the debate.

Evidently, Mr. Chairman, the gentleman wants to go last. So if the gentleman wishes to reserve his time and then go last, that is not in the contemplation of our agreement or our wish.

Mr. Chairman, I would ask the gentleman from Michigan if he is so inclined to give 7½ minutes to the gentleman from California?

Mr. CONYERS. Mr. Chairman, I hate to reveal my inclination at this time, but there has been nobody that has requested it.

Mr. ROHRABACHER. Mr. Chairman, the gentlewoman from Ohio [Ms. KAPTUR] was probably not informed of the agreement.

Mr. HYDE. Mr. Chairman, on my parliamentary inquiry, I yield to the gentleman from California.

The CHAIRMAN pro tempore. The gentleman may not yield on a parliamentary inquiry.

The Chair would state that three Members are in control of time and would ask which Member chooses to yield time.

Mr. ROHRABACHER. Point of information, Mr. Speaker.

The CHAIRMAN pro tempore. Does the gentleman wish to state a parliamentary inquiry?

Mr. ROHRABACHER. Yes, or point of information.

Mr. Chairman, when someone yields a 7½-minute segment during a debate like this, it is possible for us to have an interchange so that the whole 7½ minutes is not used up at one moment, is it not, so that we can actually have an exchange of ideas rather than just having one person express their point of view and having the rest of the time being used to refute those arguments?

The CHAIRMAN pro tempore. The gentleman controls his time and may reserve it.

Mr. COBLE. Point of inquiry, Mr. Chairman.

The CHAIRMAN pro tempore. The gentleman will state his parliamentary inquiry.

Mr. COBLE. Mr. Chairman, my point of inquiry is that I assume I have the right to close debate; is that correct?

The CHAIRMAN pro tempore. The gentleman from North Carolina is correct; he has the right to close debate.

Mr. ROHRABACHER. Mr. Chairman, I would ask permission from the gentleman from Michigan [Mr. CONYERS] if I can claim the 7½ minutes and yield it to the gentlewoman from Ohio [Ms. KAPTUR] if she does show up here for the debate.

Mr. CONYERS. Mr. Chairman, if the gentleman would yield, I have never yielded a Republican Democratic time in that large amount.

Mr. ROHRABACHER. So the gentlewoman from Ohio [Ms. KAPTUR], another Democrat, would have to come forward for that time to be yielded to.

I am told the gentlewoman is on the way, by the way.

The CHAIRMAN pro tempore. The Chair must insist on some Member using his time.

Mr. COBLE. Mr. Chairman, to alleviate the problem, I will do that with the understanding that our side has the right to close, which the Chairman just assured me of.

The CHAIRMAN pro tempore. The gentleman from North Carolina [Mr. COBLE] is recognized.

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

Rhetoric is conventionally defined as the art of speaking or writing effectively, but it may also be defined as speaking or writing redundantly, deceptively, misleadingly, inaccurately, or untruthfully. All these versions, Mr. Chairman, have surfaced during the debate that has surrounded H.R. 400.

Patent law is complex and arcane. It is not sexy or engaging when seriously discussed, especially on television or radio. And when the rhetoric pertaining to such a subject is clearly manipulated and twisted to distort the facts, the complexity of the issue is compounded, and utter confusion is the result.

Mr. Chairman, I am not a patent lawyer, but the members of the Subcommittee on Courts and Intellectual Property are not assigned the duty of litigating contested patent cases. Our responsibility is to draft and promote the enactment of responsible legislation as it applies to the patent and trademark community, including the PTO, the Patent and Trademark Office, inventors, small and large, those with limited means and others blessed with more generous resources. The ultimate beneficiary of our work is the American consumer.

One need not possess the intellect of a rocket scientist, and incidentally, neither am I a rocket scientist, to conclude that H.R. 400 is sound, fair legislation that will benefit American consumers and American inventors, contrary to some of the aforementioned rhetoric that has been widely disseminated on the subject at hand.

Mr. Chairman, title I of H.R. 400 consists of those changes needed to streamline the Patent and Trademark Office into a modern government agency subject to the oversight authority of Congress. Currently, patent filings have greatly increased, but the PTO, as a result of government restrictions may not hire, train, and retain with extra pay additional examiners. This regulatory burden only results in fewer patents being processed expeditiously, which hurts the users of the system who fund the agency.

Under H.R. 400, the agency will have the authority to earmark the necessary funds more quickly, to hire

more examiners. Another prominent feature of title I is that all application or user fees paid to the PTO will remain with the agency. Last year, $54 million of PTO money was spent elsewhere, and this next fiscal year, $92 million is proposed. This practice will cease under H.R. 400.

I should also emphasize that nothing in title I compromises the ability of the PTO employees to discharge their duties in a professional manner. All workers under the bill are protected by the full panoply of title 5 civil service safeguards.

Title II of H.R. 400 contains major improvements to our examining procedures for patents. The first of these will require, in most instances, the publication of a patent application after 18 months from the date of filing. Since the entire patent system is predicated on bringing new inventions into the public light for development, no inventor who seeks court-enforced patent protection can credibly assert his inventions should be kept secret based on a personal whim. If so, such an inventor may pursue protection provided by State trade secret and unfair competition statutes.

Most patents are granted within a 20- to 22-month timeframe, and all patents under the current system are published upon grant. Why make the change to 18 months?

First, it will enable small inventors to advertise or shop their ideas to perspective backers. This is important because small investors lack the necessary venture capital to commercialize an idea.

Second, it levels the playing field between our inventors and foreign corporations. Under present law, all other developed countries have an 18-month publication requirement. This means that an American inventor filing for protection abroad, and incidentally, Mr. Chairman, 75 to 78 percent of all patents filed in this country are filed abroad, this means the American inventor filing for protection abroad has his application published after 18 months in the language of the host country, enabling foreign companies to review the latest developments in American technology.

In contrast, however, a foreign corporation, filing in the United States, does not have its application published within the same time frame. This is unfair, since the practical effect is that they can study our technology overseas while our inventors are denied the same right to inspect their work in the United States.

The 18-month publication provision of H.R. 400 will, therefore, level this playing field between American inventors and their foreign counterparts.

Finally, publication at 18 months helps to deter an ongoing abuse in the current system, previously mentioned, ''patent submarining.'' Submarining is appropriately described as those efforts in which a patent filer games the existing system by indulging in dilatory practices.

I quoted the words of a country song yesterday entitled ''Playin' Possum and Layin' Low.'' That is precisely, Mr. Chairman, what a submarine patent applicant does. But to what end? Such an ill-intentioned inventor has no desire to help the Patent and Trademark Office process his or her application to secure a patent as quickly as possible.

Instead, the submariner waits to identify an unsuspecting inventor who has no knowledge of the unpublished application. Upon locating a company or inventor that has developed its idea independently and which has commercialized it through investment, manufacturing and the creation of jobs, the submariner surfaces and sues the company for infringement.

Mr. Chairman, this activity damages the American economy by promoting duplicative research, distorting financial decisionmaking and encouraging unnecessary litigation.

The 18-month publication requirement will place the good-faith company and inventor in this illustration on notice that a patent is pending on an invention it wishes to develop. The inventor may then decide how to devote or expend the financial resources to other endeavors.

Notwithstanding these benefits that accrue from the publication requirements of title II, a special provision has been inserted in H.R. 400 that will protect the independent inventors and small businesses who are genuinely unsure as to the patentability of an idea. The Manager's Amendment to H.R. 400, which we will discuss later, gives an independent inventor or small business who does not file abroad the option to withdraw his application up to 3 months prior to publication if the PTO has made two determinations that a patent will not issue. The inventor may then refine the application and try again, or seek protection under State trade secrecy law.

Most importantly, title II of the bill creates the presumption that any good-faith inventor who has diligently assisted the PTO in prosecuting his application is the victim of unusual administrative delay after 3 years of nonissuance, and at that point, the applicant is granted a day-for-day protection once the patent issues, in other words, a guarantee for a minimum of 17 years of term.

Finally, current law affords no protection against any third party which appropriates the subject of a patent and commercializes it before the patent is granted. H.R. 400 corrects this problem by establishing a new inventor entitlement, a provisional right to compensation, which addresses the problem the gentlewoman from Ohio mentioned. This would allow an inventor to receive fair compensation from any third party who commercializes his or her idea between the time of publication and the time the patent issues.

Title III of the bill addresses the issue of prior domestic commercial use of a patented technology.

I want to speed this up so I can give my chairman some time.

Title IV of H.R. 400 is designed to protect novice inventors from unscrupulous invention development firms which often charge unsuspecting clients thousands of dollars for little work that rarely results in a patent or a commercial use of the invention.

Title V makes needed but limited changes to PTO reexamination procedures. The existing system was intended to provide an efficient and inexpensive way for the PTO to consider whether an issued patent was violated in light of patents and printed materials which an examiner may have overlooked during the initial examination.

□ 1330

H.R. 400 amends the existing reexamination process to provide more due process for a third party.

Mr. Chairman, this concludes my general description of the contents of H.R. 400. The legislation will benefit members of the patent and trademark communities as well as the public at large.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I rise to announce that, as Chairman HYDE indicated, out of the goodness of my heart, I will yield to the gentlewoman from Ohio [Ms. KAPTUR], a dear friend of mine, 7½ minutes for her to dispense with as she chooses.

The CHAIRMAN pro tempore (Mr. CAMP). Without objection, the gentlewoman from Ohio [Ms. KAPTUR] will control 7½ minutes.

There was no objection.

Ms. KAPTUR. Mr. Chairman, I yield myself such time as I may consume. I thank the gentleman for yielding me the time. Though I hoped it would be more, we will take what we can get at this point, so I thank the gentleman very much.

Mr. Chairman, I rise in obvious strong opposition to H.R. 400. If this bill were so wonderful, then why are America's preeminent inventors opposed to it? Dr. Raymond Damadian, inventor of magnetic resonance scanning, Dr. Wilson Greatbatch, inventor of the cardiac pacemaker, Dr. Stephanie Kwolick, inventor of Kevlar, Dr. Jay Forrester, inventor of core memory, the first practical RAM. If this is such a great idea, then why are the people who have created America's future opposing it?

I have to say this bill is about a whole lot more than just arcane patent law. It is about what our Constitution guaranteed, and that is the property rights of our inventors. I hear all this concern about foreign countries and putting us on an equal footing with foreign countries. The facts are, we are the leader in the world.

Why should we want to dumb down our system or make it easier for others to tap into the inventions that our people produce? Why should we ask our inventors to have a greater burden of

proof? Why should we make them be forced to get into this reexamination system? Why should we do this to the people who have built the greatest industrial and agricultural power on the face of the Earth?

I say to the membership, how many complaints have my colleagues received from their small inventors except on this bill? The system works for them. The only complaint one might get is about the maintenance fees, how much they have to pay to maintain a patent, and truly that needs to be improved. But we have a wonderful system that says if you have an idea, you file it at our patent office, that that idea is yours, it is secret until that patent is issued. Why would we want to change that system?

Mr. HUNTER. Mr. Chairman, will the gentlewoman yield?

Ms. KAPTUR. I yield to the gentleman from California.

Mr. HUNTER. Mr. Speaker, I thank my friend for yielding.

The theme has been that we should be like Europe and Japan, but the fact is that high technology startups are something that is uniquely American. There are very few high technology startup companies in Europe and Japan. That is because they lose the one thing which is central to their success, and that is secrecy, because once they publish in 18 months, the big companies come in and sweep them off the map by patenting around them, which is called patent flooding. The gentlewoman is absolutely right.

Ms. KAPTUR. Mr. Speaker, reclaiming my time, I thank the gentleman for that comment. This whole question of submarine patents and so forth, there is less than 13/1000 percent of those that even affect this entire system, and even then we have to be about the task of protecting American inventors' rights. To the extent we can get other nations to conform their systems to ours, terrific, but why should we try to conform our system to theirs? Why should we make it more difficult for our inventors to pay the fees?

This office I am told has been changed as we are sitting here today. With this corporatization of the patent office, that now apparently is not going to be allowed to accept gifts and real estate, because of pressure from Members of Congress like myself, as it is in the base bill, when I read the amendment, and I really do not have a copy of it here, but it basically says you are going to require gift rules be drafted to ensure that gifts to this new office are not only legal but avoid any appearance of impropriety. Why should they be given those gifts in the first place? Why should that be happening under this bill? And why should we take away the objectivity of our patent examiners who are completely insulated from any kind of economic coercion by the current system?

I have to say that patents are the trade routes for the 21st century. America under H.R. 400 is throwing away our technological lead by publishing patent applications much earlier and taking away the secrecy that is inherent in our system to our inventors and making other radical changes which, by the way, to the membership, if anybody has a final copy of this bill I hope they will give it to me because somebody who has been as involved in this issue as any other Member, I cannot give my colleagues a bill that we will be asked to vote on here today that is accurate in terms of legislative language.

We have the choice here today to create prosperity for our Nation, to provide opportunities to our children, but if we change the patent system as H.R. 400 proposes, we will be throwing away the American dream of opportunity embedded in the Constitution of the United States. I guarantee my colleagues if this bill passes, there is going to be decades of litigation as the American people fight for the rights they were granted under our Constitution.

Our patent system is the heart of our economic strength because it creates new money, jobs, and new industries. I ask the membership to vote no on H.R. 400.

Mr. Chairman, I reserve the balance of my time.

Mr. ROHRABACHER. Mr. Chairman, I reserve the balance of my time.

Mr. COBLE. Mr. Chairman, I yield 6½ minutes to the gentleman from the Roanoke Valley of Virginia [Mr. GOODLATTE] who has been very helpful in the movement of this bill, H.R. 400.

Mr. GOODLATTE. Mr. Chairman, I rise in strong support of H.R. 400, the 21st Century Patent System Improvement Act. Just remember that title. That is what this is about, improving our patent system. I would like to thank the gentleman from North Carolina [Mr. COBLE], chairman, for his hard work and dedication on this important issue.

This legislation has been subject to a great deal of confusion in recent weeks, due largely to the blatant misrepresentations of its opponents. People who make their livings gaming our patent laws will stop at nothing in their effort to prevent meaningful and necessary reform of the system. Opponents of patent reform have engaged in a campaign of deliberate misrepresentation and confusion in the hopes that they might convince Members that H.R. 400 is an international sellout that will undermine the patent system created by our Founding Fathers. Nothing could be further from the truth.

H.R. 400 is one of the most thoroughly debated bills to come before the House this year. The provisions contained in this bill have been developed over the last 2 years and have been the subject of 10 full days of hearings with over 80 witnesses. Patent and trademark commissioners who dedicate themselves to the integrity of our patent system, from the Nixon, Ford, Reagan, Bush, and Clinton administrations support the major provisions of H.R. 400. These experts also oppose the major provisions of the Rohrabacher substitute, which was written on behalf of those who ignore the intent of our Founding Fathers by using subterfuge to destroy the integrity of the U.S. patent system. Taking the word of patent submariners on patent reform is like asking a fox for advice on how to guard the henhouse.

H.R. 400 is the unanimous product of the Committee on the Judiciary. Unanimous, 35 members of the committee. Not one voted against this, not one Democrat, not one Republican. Yet this issue has been demagogued by a very few. Through the legislative process, the committee has worked with independent inventors, small businesses, universities, industry groups, the White House Conference on Small Business, and the Senate. Over 75 U.S. companies, large and small alike, which employ 1.4 million American workers and hold 55,000 U.S. patents, support H.R. 400.

This legislation is critical to ensuring that America maintains our position as the world leader in intellectual property. H.R. 400 benefits independent inventors, small businesses, and other Americans who utilize our patent system in four key areas.

First, it guarantees diligent patent applicants at least 17 years of patent term and ensures that they will not lose their rights due to delays by the patent office. Second, the bill protects early domestic commercial inventors, including universities and researchers who use later patented technologies. Third, the legislation deters invention promoters from defrauding unsuspecting inventors. Finally, H.R. 400 gives all Americans a new property right while their patents are pending before the Patent Office.

Unfortunately, opponents of patent reform are unwilling to give up the loopholes through which they undermine the integrity of America's patent system. Their proposal, offered today by the gentleman from California [Mr. ROHRABACHER] as a substitute to H.R. 400, would encourage abuses of our patent system that currently cost American taxpayers and consumers hundreds of millions of dollars. Although they may argue otherwise, the Rohrabacher substitute is nothing more than a recipe for economic disaster.

Since opponents of meaningful patent reform allege that H.R. 400 is a huge corporate giveaway, I would like to respond by highlighting the ways in which H.R. 400 benefit small inventors. First, under H.R. 400, small inventors will be able to acquire venture capital to market their inventions more quickly and easily. This will put small inventors on a more level playing field with large multinational corporations, allowing individuals and small businesses to fully compete in the global marketplace.

Mr. Chairman, H.R. 400 also gives small inventors greater protection

against those who try to steal their ideas. Under current law, small inventors have no protection against would-be thieves that steal the subject of a patent and commercialize it before the patent is granted. These inventors are then helpless to stop the commercialization of their inventions or to share in the profits until the patents are granted.

I should also note that the Rohrabacher substitute does nothing to help small inventors with this problem.

H.R. 400, however, allows small inventors to receive fair compensation from any third party who commercializes their ideas between the time of publication and the time the patent issues. Every one of us has seen the words ''patent pending'' on a product, but in the current system, these words do not provide any legal protection.

Under H.R. 400, small inventors will be given a new property right while their patents are pending, so they can punish intellectual property thieves who try to steal their ideas.

Additionally, H.R. 400 gives small inventors longer patent protection than they receive under current law. Under the old system, which the Rohrabacher substitute seeks to resurrect, patent protection was only available for 17 years from the date a patent was granted.

H.R. 400, however, guarantees good-faith patent applicants a minimum of 17 years of patent protection, with most applicants receiving more. The bill also provides extended protection for up to 10 years in cases where the Patent Office fails to give applicants firm rulings on their applications in a timely manner.

Finally, H.R. 400 gives small inventors a special option to avoid publication of their patents. During the application process, some inventors may have second thoughts about publishing their applications, especially in cases where an initial Patent Office review is not favorable.

Under H.R. 400, inventors may withdraw their applications prior to publication and either refile them in the future or seek protection under State trade secrecy law.

Mr. Chairman, the Framers of our Constitution created a system in which the Government grants exclusive rights to inventors for a fixed period of time, in exchange for the prompt public disclosure of their inventions. This exchange allows all of American society to benefit from the creation of new ideas.

H.R. 400 is exactly what our Founding Fathers intended. It promotes invention by guaranteeing longer patent terms, prevents fraud and abuse by stopping patent submariners from swindling American taxpayers out of hundreds of millions of dollars, and protects small inventors by giving them new property rights in their pending patent applications.

I urge my colleagues to vote for H.R. 400 and against the misguided Rohrabacher substitute.

Mr. ROHRABACHER. Mr. Chairman, I yield 1 minute to the gentleman from Maryland [Mr. ROSCO BARTLETT], one Member of Congress who has 20 patents to his name and who can speak with expertise on the issue of patents.

Mr. BARTLETT of Maryland. Mr. Chairman, as the holder of 20 patents myself, I feel compelled to rise today in support of the Rohrabacher substitute. For over 200 years, the American patent system has empowered inventors to make this country the most innovative in the world.

If H.R. 400 becomes law, small businesses and inventors will be forced to publish their patents before receiving a patent. This opens the door for every copycat in the world to steal this information and begin manufacturing and marketing before the inventor has patent protection.

Ladies and gentlemen, our Founding Fathers had the wisdom to recognize the need for a patent system unlike anywhere else in the world that promoted the concept of entrepreneurship and protected ingenuity.

□ 1345

Their foresight has resulted in the greatest industrial power this world has ever seen. Let us not weaken this protection in the name of international harmonization.

Next week I will hold hearings in the Subcommittee on Government Programs of the Committee on Small Business on this issue. I look forward to continuing this dialog.

Mr. COBLE. Mr. Chairman, I have only one speaker remaining. As I have the right to close, I will reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 3½ minutes to the gentlewoman from California [Ms. LOFGREN], in whose district there are an incredible number of inventors and biotech people.

Ms. LOFGREN. Mr. Chairman, I rise in strong support of H.R. 400 and urge my colleagues to join me in voting for this important legislation.

As the gentleman from Michigan [Mr. CONYERS] has just indicated, I represent Silicon Valley in California. I know well the importance of ideas and the value of intellectual property. Our thriving economy back home is based on ideas and on technology.

It is worth pointing out to many Members who do not have exposure to high technology in their own districts the origin and history of our system of patent law. As my colleagues know, our Founding Fathers recognized the value of ideas in American ingenuity, and they put in our Constitution the authority of Congress to, ''promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.'' That is in section 8, article I of the Constitution. By sharing ideas, inventors would advance the body of human knowledge and they would avoid the duplication of other scientists and knowledgeable people, and in exchange for sharing their ideas to advance human knowledge the inventors would receive for a period of time the exclusive ownership of that idea; and that really is the gist of patent law then and now.

Obviously the patent system today is different than it was in the 19th century. The original patent reform legislation was in 1836. We had revisions again in 1952. And here we are at the dawn of the 21st century once again updating patent law for the information society. H.R. 400 does that very well, as many of the speakers have already indicated.

I do, however, want to talk about some of the comments that have been made in criticism of the bill because it is important that they be put in the context of what is actually part of the law.

First, I have heard today and elsewhere the issue of gifts. I think that is quite a stretch, but it has confused many Members of this House because H.R. 400 does not change the current law in any respect relative to gifts. In fact, the Patent Trademark Office presently enjoys the right to use the authority to accept gifts and bequests granted to the Secretary of Commerce, and they are not unique in that regard.

For example, the Library of Congress is able to accept gifts and bequests along with the Secretary of Agriculture for the national ag lobby. We have taken it out. Unfortunately we have taken it out in the manager's amendment only to deal with an issue that did not need to be dealt with in reality.

There has been a lot of discussion that all of the inventors and all of the innovators are opposed to H.R. 400. Nothing could be farther from the truth. I would like to tell my colleagues that of the really thousands and thousands of people who are immersed and employed in technology, the overwhelming thrust from Silicon Valley is in favor of this reform of our patent bill, and of the high-tech companies who have been in communication with me, I would say there have been none, none who have opposed H.R. 400. Hewlett-Packard, Intel, and the inventors at IBM all beg us to adopt H.R. 400. I must say also they are considerably confused by the controversy that has erupted over this and cannot understand any of the argument being made in opposition since those arguments bear so little relationship to the law, to the facts and to the need for this update.

Mr. ROHRABACHER. Mr. Chairman I yield myself 1 minute.

So we have heard the submarine patent, that is the reason why we have to change the fundamental patent law of the United States that has been in place, the protections have been in place since the founding of our country. This is the equivalent of saying

that because Hustler magazine is out, we have got to eliminate freedom of speech and totally restructure the civil liberties concerning freedom of speech in our country.

That is absolutely ridiculous. It is like saying, you got a hang nail, thus you got to amputate your whole leg in order to solve that problem.

No, the submarine patent issue is not the issue here. I put it into my substitute, I have been willing to end this problem all along. Congressional Research Service has found, has a finding, that my substitute ends the practice of submarine patenting. This is being used as a fig leaf to cover one of the most grotesque power grabs in the history of this country.

Little ROSCOE BARTLETT, the ROSCOE BARTLETT'S out there who discovered the wonderful things that change our lives, are being put at risk. It was very simple. We heard him say they are going to publish everything that he does so that everybody in the world can steal it and then say, ''Sue them,'' to get it back.

Ms. KAPTUR. Mr. Chairman, I yield 1¼ minutes to the gentleman from Cleveland, OH [Mr. KUCINICH], our esteemed colleague.

Mr. KUCINICH. Mr. Chairman, I rise in opposition to H.R. 400.

The essence of this bill is a hostile takeover of the American patent system by private interests. The American patent system is a public trust. It is operated by a responsible government organization for the benefit of the American people and individual inventors. It exists to enhance the capacity of our economy to cultivate and commercialize new technologies.

If H.R. 400 becomes law, the integrity and independence of the patent system will be undermined. H.R. 400 would convert the Patent and Trademark Office, now part of the Department of Commerce, into a ''corporate body not subject to direction or supervision by any department of the United States.''

Another disturbing aspect of H.R. 400 is the establishment of a management advisory committee composed of corporate and management executives who will oversee the policies, goals and performance, budget, and user fees of this new government corporation. Even though the director of the Patent and Trademark Office would be appointed by the President of the United States, the director would be compelled to consult with a private sector board on all major decisions. The transformation of the PTO into a corporate body combined with the influence of the management advisory committee places our Nation on a slippery slope to corporate domination of the patent system and the destructive undermining of the democratic tradition which has produced some of the greatest inventions in the world from the American people.

Mr. CONYERS. Mr. Chairman, I yield 3 minutes to the gentleman from Massachusetts [Mr. DELAHUNT].

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

Mr. DELAHUNT. Mr. Chairman, as a member of the committee and a cosponsor of House Resolution 400, I rise in support of the manager's amendment, and I want to commend our subcommittee chair, the gentleman from North Carolina [Mr. COBLE], for the fine work and for the patient and thoughtful way he has tried to reconcile all interests to perfect this legislation.

The critics have claimed that publication would enable foreign competitors to appropriate American ideas. The truth is that competitors who appropriate an invention after publication are liable for damages to the applicant, just as they would be once a patent is granted. The real issue is reciprocity.

The vast majority of American inventors seek patent protection not only at home but in foreign countries as well. To do so, they must publish their application in foreign countries 18 months after filing. But since America is the only industrialized Nation that does not have such a requirement, foreign companies seeking U.S. patent protection have no obligation to publish in the United States.

In other words Americans have to publish abroad while foreigners do not have to publish here. This puts U.S. inventors at a serious disadvantage which the bill would correct.

This bill is about protecting American inventors, American businesses and American workers, and I urge passage of House Resolution 400.

Mr. Chairman, as a member of the committee and a cosponsor of H.R. 400, I rise in support of the manager's amendment and in opposition to the amendment in the nature of a substitute which will be offered by the gentleman from California.

I want to commend our subcommittee chairman, Mr. COBLE, for the patient and thoughtful way in which he has worked with all interested parties to refine and perfect this legislation over the past 3 years. I also wish to thank the ranking member, Mr. FRANK, and the chairman and ranking member of the full committee, Mr. HYDE and Mr. CONYERS, for their efforts on behalf of this legislation.

As a new member of the Subcommittee on Courts and Intellectual Property, I can sympathize with those of my colleagues who may feel intimidated by this complex and arcane subject. Unfortunately, that feeling has been compounded by a well-orchestrated campaign waged by opponents of this legislation to convince independent inventors and small businesses that this bill would benefit large international corporations at their expense.

I am proud to have many independent scientists, inventors, and startup companies in my district, and was appalled at what I was hearing from some of them about this bill. If what they were saying was true, this was David against Goliath, and I was not about to side with the Philistine. Frankly, I was ready to get out my slingshot too, until I learned the facts.

And the facts told a different story. I listened carefully to the testimony and studied the language of the bill, and found that this legislation had been totally mischaracterized by its opponents. The truth is that this bill benefits not only the major corporations and universities in my region who enthusiastically support it. It benefits every inventor and developer of advanced technology, whether large or small—from software developers and biotechnology companies on the South Shore to marine biologists at Woods Hole.

H.R. 400 creates a level playing field between U.S. patent applicants and their international competitors. It modernizes the patent office and reduces administrative delays. It protects inventors even before a patent is granted through publication of patent applications, and creates a ''prior user'' defense against claims of infringement for those who have independently developed and used inventions that are subsequently patented. These reforms will help ensure that the U.S. patent system keeps pace with the demands of the 21st century.

But what will all this mean for the independent inventor? Critics of the bill have claimed that requiring patent applicants to publish their application 18 months after filing would enable others to rob them of their work. The truth is that by publishing the application, the inventor gains a form of provisional protection not available under current law. Today, an inventor has no protection against a third party who exploits the inventor's idea while the application is pending. The phrase ''patent pending'' announces to the world that an application has been filed but affords no legal protection. By publishing the application, the inventor stakes a claim that entitles him or her to compensation for infringement from any third party that makes use of the idea between the date of publication and the date the patent issues.

Perhaps even more important for a small business or an independent inventor is the fact that other applicants must publish, too. Under current law, an applicant has no way of knowing whether another has filed first until one of them receives a patent. By then, the losing party may have invested everything it has in an idea that belongs to someone else. Under H.R. 400, an applicant will know if a patent has already been applied for.

The critics have claimed that publication would enable foreign competitors to appropriate American ideas. The truth is that competitors who appropriate an invention after publication are liable for damages to the applicant, just as they would be once a patent is granted. The real issue is reciprocity: The vast majority of American inventors seek patent protection not only at home but in foreign countries as well. To do so, they must publish their application in the foreign country 18 months after filing. But since America is the only industrialized nation that does not have such a requirement, foreign companies seeking U.S. patent protection have no obligation to publish in the United States. In other words, Americans have to publish abroad, while foreigners do not have to publish here. This puts U.S. inventors at a serious disadvantage which the bill would correct.

But what about inventors who have no intention of applying for a patent overseas? The critics have claimed that they have no recourse. The truth is that the bill will allow inventors applying for a patent exclusively in the United States to delay publication until 3 months after the Patent and Trademark Office

has taken a second action with respect to the application. Since, in most cases, the second Office action is the issuance of the patent itself, this provision effectively exempts independent inventors and small businesses from the publication requirements. On the other hand, if the second Office action is a determination that a patent is unlikely to be issued, the applicant may withdraw the application and seek protection under the trade secret and unfair competition laws.

The other major claim made by critics of the bill is that the proposed term of 20 years from the date the application is filed would give inventors less protection than the current term of 17 years from the date the patent is granted. The truth is that those who apply in good faith and do not attempt to delay their applications are guaranteed a minimum of 17 years under the bill. Most applicants will receive more than 17 years of protection, since most applications are processed within less than 2 years. A diligent applicant who is forced to wait more than 3 years would be granted an extra day of patent protection for each day of delay.

I do not mean to suggest that all of the concerns that have been raised about this legislation are illegitimate. What I do believe is that the legitimate concerns raised by the gentleman from California and other critics of the legislation as originally drafted have been addressed. H.R. 400 includes numerous amendments that effectively respond to these and many other concerns raised over the 3 years that this legislation has been on the drawing board.

Those are the facts. It is unfortunate that the truth has been obscured by misinformation and demagoguery. But the loudest voices are not always right, and the constant repetition of a falsehood does not make it true. H.R. 400 is good for inventors, both large and small. It is good for our Nation as a whole. I urge my colleagues to reject the Rohrabacher amendment and pass the bill.

Mr. ROHRABACHER. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, it should be apparent by now that there are some fundamental issues at play here between two people over a disagreement, an honest disagreement. Let me note this: that everything that has been said that is good about H.R. 400 has been included in my alternative bill which will be offered as a substitute on the floor.

What we have now are several issues that differentiate us, and one is, of course, after 18 months all of our technological information will be made public to the world. Why is this? Why are they insisting on publication? They say it is to handle the submarine patent issue, although we have already solved that according to the Congressional Research Service. It is because there has been an agreement made with Japan that I have put in the CONGRESSIONAL RECORD, time and time again, to harmonize our law; in other words, make American law like Japan's.

Mr. Chairman, if our colleagues listen very carefully to the arguments we have heard today that is what is being said. We have got to have a law like they have in Japan and in Europe. How has it worked in Japan? The little guy gets kicked and smothered and beaten down. We do not want a system like that here.

Mr. COBLE. Mr. Chairman, as I said previously. I only have one speaker left, and I have the right to close.

Mr. Chairman. I reserve the balance of my time.

Mr. ROHRABACHER. Mr. Chairman, how much time is remaining?

The CHAIRMAN. The gentleman from California [Mr. ROHRABACHER] has 4½ minutes remaining, the gentleman from North Carolina [Mr. COBLE] has 5 minutes remaining, the gentleman from Michigan [Mr. CONYERS] has 16½ minutes remaining, and the gentlewoman from Ohio [Ms. KAPTUR] has 1¼ minutes remaining.

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

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

Mr. CONYERS. Mr. Chairman, we are gathered here under unique circumstances. We have a manager's amendment which I think will clear up many of the problems, I hope, that the gentleman from California [Mr. ROHRABACHER] has posed. I do not know if he is familiar with the manager's amendment. Apparently he is not.

Mr. ROHRABACHER. It would be very difficult because it did not come on the floor or was available to us until just a few hours ago.

Mr. CONYERS. Then the gentleman from California is not familiar with it.

Just a moment; I have not yielded.

Mr. ROHRABACHER. I thought the gentleman from Michigan was asking me a question. I am sorry.

Mr. CONYERS. No, I will handle this. The gentleman is not familiar with it, and it just came on the floor. It was brought forward at the Committee on Rules hearing yesterday that the gentleman attended with myself and the chairman of the Committee on the Judiciary.

Mr. ROHRABACHER. If the gentleman would yield, I am sorry I was not.

Mr. CONYERS. Mr. Chairman, I did not yield to the gentleman from California. Please. I know this is an anxious moment which the gentleman awaited a long time, and we have granted him time, but he cannot interrupt me.

□ 1400

Now, the manager's amendment might help bridge the difference between the unanimous conclusions of every Democrat and Republican on the Committee on the Judiciary and the distinguished gentleman from California. Manager's amendments have a way of coming up at Committee on Rules hearings. If it had been prepared earlier, we would have brought it out with the bill.

So I would propose that myself and the chairman of this committee make available to the gentleman from California [Mr. ROHRABACHER] the amendment, if the gentleman has not seen it, to see if it actually bridges any of the differences that we have, or if it fails, because if it does not, it limits what we are doing.

Now, according to the gentleman from California [Mr. ROHRABACHER] and the document the gentleman has held on the floor, the submarine issue is resolved. We resolved it, the gentleman resolved it, it is not in contention from the gentleman's position. The manager's amendment also might help resolve some more issues. I am just trying to reach some resolution here. So hopefully, that will happen.

Now, the vast majority of patents are filed both in the United States and abroad simultaneously, 80 percent of them. Abroad they are required to be published. So this requirement will not affect 80 percent of the patents. There is an exemption from the publications requirement for small businesses, and for the small inventor there is an exemption. This is relatively fundamental. It is in our bill.

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

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

Mr. HUNTER. Mr. Chairman, it is not in the bill, and I would like to ask a question about that. As I read the manager's amendment, there is the opportunity for a small business to opt, if they have had two office actions, to either opt out of the patent system or to delay publication for 3 months, but they still have the publication mandate after 18 months, from the way I read the manager's amendment, and I ran that by the inventors.

Mr. CONYERS. Mr. Chairman, as far as the Rohrabacher group goes then, we do not solve that.

Then let me try the prior-use doctrine. The prior-use doctrine here protects the first to invent, not the person who steals the intellectual property, and we are attempting to give that protection, which does not exist now, and that is why publication in the end, I say to my colleagues, is so important. It stops the process whereby foreign competitors can game our patent system process by filing incomplete patent applications and extend their legal monopoly rights up to 40 years.

Now, the Wall Street Journal is not for or against H.R. 400 or the Rohrabacher substitute, but they are writing about Americans who are gaming the system. That is what we are trying to stop. Hence, the bill.

So there is something missing here in this debate. After years of working with both sides, inventors, lawyers, former patent commissioners, the administration, we finally come to closure with a unanimous vote in this Congress, and the last, and now the gentleman is telling us that this thing really was not cured. And I am stunned to find the Wall Street Journal pointing out that these kinds of fellows are

the ones that we are trying to stop with this H.R. 400 and that we are not undermining the American patent process, we are really undergirding it and bringing the protection to small inventors.

That is why this Member supports the bill. I am not a shill for big corporations or any other kind of association, but the fact of the matter is, we are making this a better patent law by improving the defects that have existed for a considerable number of years. I urge Members to think of these arguments.

We will have the 5-minute rule in effect, and I hope that we can take care of every one of the reservations that my dear friend from Ohio [Ms. KAPTUR] has so articulately put forward in this debate, because that is what we are here for. We want to do the right thing, and I hope that my colleagues will move our debate along in that spirit.

Mr. Chairman, I reserve the balance of my time.

Mr. ROHRABACHER. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. CAMPBELL] who represents the Silicon Valley area.

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

Mr. CAMPBELL. Mr. Chairman, I wish to speak on the question of who is on which side. I think that is a useful way to analyze the factors in these bills.

The inventors want to keep the rights that they have when they invent and do not want to be forced to disclose. The commercializers want to have as much disclosure as possible so that they can make use of those inventions.

I am not condemning either side, but by identifying them, I think we see that if we can achieve the commercializers' legitimate interests without undercutting the inventors, then we have achieved something. That is what is in the Rohrabacher bill.

Some of my colleagues on the other side have spoken about the high-tech companies who support H.R. 400, and I agree they do. But it is very interesting to me that the university community has been silent and has not rushed to support H.R. 400. In fact, I have had extensive dealings with the university community and they are staying off, because they are worried about what this might do to the inventive process.

Mr. Chairman, I would conclude with one last observation, and that is that people speak of a level playing field with Europe. I say to my colleagues, I do not want a level playing field. We are better.

Mr. ROHRABACHER. Mr. Chairman, I yield 1 minute to the gentleman from New York [Mr. FORBES].

Mr. FORBES. Mr. Chairman, much has been made about previous administrations supporting this kind of initiative. Well, I have in my hand a Commerce Department news release which shows clearly what this is really about. It is not about submarines. It is about gaining access to foreign markets.

In this news release it says, quite specifically, that in exchange for loosening up U.S. patent protections that we will make concessions to other nations, and that clearly is what it is about, access to foreign markets. It is no secret why the political appointees want this for access to greater markets overseas, but let us talk about why we need to protect American ideas, American patents within America's borders. That is the key here.

Patent examiners, their association, oppose this bill. They find it horrendous. And it will hurt the small business people and the entrepreneurs, and if we care about small business and the entrepreneurs, the little guy, then my colleagues will support my amendment to this legislation.

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

Mr. Chairman, our hearings have revealed, and this is why we support the bill, it showed that 300 foreign companies were able to come into this country and game the process, so the previous speaker who says that this is all just about domestic, well, it is about foreign companies coming onto our turf, sir, and taking our patents. That is what we are trying to stop.

So to say that it does not involve foreign companies, it involves 300 foreign companies, according to our hearings. In one case, a British pharmaceutical company was so effective at the submarining game that the United States competitor had to relocate its operations abroad to be able to produce a competing project.

So we have our companies going out of the United States to come back in because of the submarine system, and some say this is just a domestic problem. It is not. It is a national, international problem.

Now, the submarine patents which we claim are now corrected on both sides, I would point out that there was one American, and this is not a foreign entrepreneur, was able to get $500 million in royalties. For doing what? For simply delaying for 35 years in some instances, the prosecution of a patent, and then suing other manufacturers who, in the meantime, not knowing about it, started using the process. Gilbert Hyatt submarined his patent for 20 years and extracted $70 million from Texas Instruments, who started using the same computer chip technology, totally unaware of Hyatt's submarine patent.

If the Rohrabacher bill cures it and the bill discussed by all of the members of the Committee on the Judiciary and two Congresses, what is wrong with H.R. 400? As a matter of fact, the gentleman from California [Mr. ROHRABACHER] came before the committee, and his ideas and discussion were taken into consideration, and we thought that we treated him very kindly.

So this is a big problem we are curing. It is not overturning the patent system; it is not undermining the American process which we have put together; it is really taking care of a problem that has to be addressed and is being addressed in the committee bill. Mr. Chairman, I urge its continued support.

Mr. Chairman, I reserve the balance of my time.

Mr. ROHRABACHER. Mr. Chairman, I yield 1½ minutes to the gentleman from California [Mr. HUNTER].

Mr. HUNTER. Mr. Chairman, I thank the gentleman for yielding.

We were told in some previous statements, I think the gentleman from Virginia [Mr. GOODLATTE] pointed to Japan and Europe and said, why can we not be like them? This poster shows the number of Noble Laureates in science and technology from the United States as opposed to the number from Japan. There are 175 from the United States, that is our broken system; and there are 5 from Japan, that is the good system.

Now, why are there so many from the United States and why are there so few from Japan? And I think my colleagues would see exactly the same numbers with Europe. Why are there almost no high-technology startup businesses in Japan and Europe and lots of them in the United States? Secrecy. Being able to keep one's idea under a cloak while one lines up the money and the power to get it into production.

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You can do that in the United States. You cannot do it in Japan, you cannot do it in Europe. There is no running room.

We want to give our innovators running room. Do Members know something? We give it to them. They have some secrecy. There is no substitute for that secrecy, because after two of these office actions, we still are going to publish under the main bill, we are going to publish those folks. That is what we have said. The Patent Office tell us that clearly, more than 30 percent of the patents that are ultimately issued go past two office actions. So that means those folks are going to be exposed.

Submarine patents, do Members know how many submarine patents there have been in the last 2.3 million patents that have been issued? Three hundred and seventy. We do not need to expose all of our people to cut out 370.

Mr. COBLE. Mr. Chairman, will the gentleman from Michigan [Mr. CONYERS] yield 2 minutes to me?

Mr. CONYERS. I yield 2 minutes to the gentleman from North Carolina [Mr. COBLE].

Mr. COBLE. Mr. Chairman, I had not planned to, but it is tough to remain silent here. As my friend, the gentleman from Michigan, said, there has probably been more excitement surrounding the law of patents than has happened in the last 15 years. But the gentleman from New York stood in the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PARLIAMENTARY INQUIRY

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

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

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

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

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

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

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

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

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

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

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

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

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

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