

UNITED STATES PATENT  
AND TRADE OFFICE,  
Washington, DC, July 30, 2002.

Hon. ORRIN HATCH,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR HATCH: In a few months, the United States Patent and Trademark Office (USPTO) will celebrate its 200th year in existence. During that time, we have been the only Federal agency charged with administering this Nation's patent laws and determining whether inventions are patentable. USPTO plays a critical role in promoting and protecting intellectual property and the work of our Agency helps to stimulate American innovation and investment.

At your request, USPTO is providing its views on the advisability of the changes in patent laws in S. 812, the Greater Access to Affordable Pharmaceuticals Act. This letter is intended to inform you of our objections to the current language in S. 812.

First, in some cases, S. 812 would forfeit unnecessarily the core right of patent holders—the right to exclude others from practicing the invention for the entire patent term. After years of research and development and significant investment, the patent right is extinguished for the mere failure to satisfy an administrative task or respond in a timely manner. For example, if a patent holder fails to list the patent with the Food and Drug Administration within a certain time period, the patent is invalidated. Furthermore, if a patent owner fails to bring an infringement action within 45 days of receiving notice (also known as 'Paragraph IV') from a drug manufacturer that the patent is invalid or not infringed by the generic drug, then the patent right is forfeited. In this circumstance, the patent owner is barred from ever bringing an infringement case in connection with the generic drug at issue.

Second, we are concerned with the bill's disparate treatment of patents depending on issue date. The Hatch-Waxman Act gives a patent holder an automatic 30-month stay to defend a challenge to the patent by a generic drug company. S. 812 would apply this 30-month stay only to patents that issue within 30 days of the new drug application approval. This limitation is arbitrary and unrealistic. The timing of issuance bears no relation to the importance of innovation. Moreover, the patent applicant often has no control over when a patent issues. Therefore, affording certain benefits to patents that issue only within a certain time frame would be unworkable and unjust.

Finally, USPTO believes it is vital to consider each patent rigorously and uniformly to determine whether the application satisfies the standards of patentability. All patent applications are examined with equal scrutiny and all patents must satisfy the same criteria of utility, novelty, and non-obviousness before they are issued. Each pharmaceutical patent, like all other patents, is entitled to a presumption of validity and should be judged accordingly.

USPTO does recognize that some changes to current law may be necessary to encourage appropriate access to generic substitutes and prevent abuses of the patent laws. But S. 812 clearly is not the answer. In fact, this bill would likely do the opposite of what its title suggests—by limiting access to cutting-edge drugs, decreasing innovation, and ultimately harming the quality of treatments available to patients.

Before considering any future legislative efforts, we should applaud the success of the time-tested Hatch-Waxman Act and respect the delicate industry balance it forged. In all cases, any changes should incorporate the expertise of the Committees on the Judiciary of Congress, in addition to the appro-

priate Government agencies. Only through a carefully conducted analysis can a result be reached that benefits consumers while promoting the progress of science and innovation.

I hope this information is helpful and I would welcome the opportunity for consultation on future endeavors.

Sincerely,

JAMES E. ROGAN,  
*Under Secretary and Director.*

### AMERICA MEMORIALIZES TWO MORE VIETNAM WAR HEROES

Mr. LOTT. Mr. President, I rise today in remembrance of a fellow Mississippian, Fred C. Cutrer Jr. and his navigator Leonard L. Kaster, who died serving their country during the Vietnam War. Captain Fred C. Cutrer Jr. was a pilot on a B57 Canberra Bomber, and during his service for his country, he became instantly known around his base as a loving husband and an immensely proud father of two sons. He would often be found showing pictures of his family to his friends and squadron. Fred was also courteous and friendly, exemplifying the character of a true southern gentleman. Jimmy Speed, a childhood buddy described his charming character by stating,

I use to call him good-humor man. He was a very smart man, and people liked him immediately. I always felt that if he had gotten to the ground alive, those people wouldn't have hurt him because he was so likeable and friendly that he would have fit into any crowd.

On August 6, 1964 Cutrer and 1Lt. Leonard L. Kaster, unknowingly flew the skies for their last time. They were flying over South Vietnam, North East of Tan Son Nhut, and according to Defense Intelligence data, their airplane came under heavy fire from Viet Cong forces, causing them to crash and explode near the Sang Dong Nai River in Long Khan Province. Both men were classified "Killed in Action, Body Not Recovered," and Cutrer was promoted to the rank of Major.

In the spring of 1997, the Department of Defense, with the help of a Vietnamese native, helped bring closure to Cutrer's family by finding Cutrer's dog tag and aircraft identification plate that had been buried one meter beneath the surface of a jungle bog. This discovery led to the declaration of these men's ceremonial burial for June 6, 2002, with full military honors. I am thankful to say that both of these men, nearly forty years following their patriotic death for their country, now lay buried in Arlington National Cemetery.

Both the Cutrer and Kaster families flew from Mississippi to attend the ceremony, and Air Force General Frank Faykes presented flags to the families of both men. Buried alongside Cutrer is his wife, Shirley, who was killed in an automobile accident four years ago. The children were pleased to see their father properly honored as a hero and their mother rightfully buried beside him.

American troops have a slogan stating, "We leave no man behind." I be-

lieve this manifests the pride and patriotism of our troops. Cutrer's sister, Lillie Cutrer Gould, promised her younger brother that if anything were to happen to him in Vietnam, then she would bring him back home. Not too many days ago, Mrs. Gould successfully achieved her promise to her brother, and America again exercised its duty and commitment to its soldiers.

I salute John C. Cutrer Jr. and Leonard L. Kaster for serving their country and helping make America a better and safer place to live. I am thankful that I reside in a country where we take pride in our soldiers, and we carry a strong commitment never to forget their courageous acts nor to leave anyone behind. I want to thank God for allowing John and Shirley Cutrer to eternally lay side-by-side in Arlington's National Cemetery, and I want to thank America for again making me proud of our citizens. I know my colleagues will join me in memorializing and commending the lives of John C. Cutrer Jr. and Leonard L. Kaster, two American heroes.

### REMEMBERING MR. JOHN M. McGEE

Mr. LOTT. Mr. President, I rise today to pay proper tribute to Mr. John M. McGee, a devoted husband, father, and grandfather as well as a memorable American patriot. John was born in Brookhaven, MS on September 16, 1933, and in February 23, 2002, John passed away as a result of a sudden heart attack. In his high-school years, John was blessed with speed and athleticism that contributed to his becoming an extraordinary football player and an excellent athlete. John's athleticism led him to set the state record in the 100-yard dash. John attended my alma mater, the University of Mississippi, where he played football for the Ole Miss Rebels. John's patriotism towards his country convinced him to interrupt his education at Ole Miss and enlist with the U.S. Navy where he served on the destroyer tender *Shenandoah* and the destroyer *Willard Keith*. During his duty in active service, John took part in the decisive Inchon invasion commanded by General Douglas MacArthur.

John went on to earn his bachelor's degree in engineering from the Armed Forces Institute. After an honorable discharge, he pursued his career in engineering until 1966 when he accepted a job with the Department of Defense where he conducted operations in Vietnam, Cambodia, Laos, and Thailand until 1969. During John's service in Vietnam, he discovered and exposed extensive corruption in American military operations. The Governmental Accounting Office confirmed these allegations, and John's discovery revealed the theft of 5.5 million gallons of fuel that had been originally intended for U.S. Military forces but had been penetrated and used by the enemy. John's inquiry helped save the lives of many

Americans. His discovery ultimately led to a Senate Sub-Committee chaired by the Honorable Senator William Proxmire of Wisconsin to investigate the scandal. This incident is memorialized in the U.S. CONGRESSIONAL RECORD and in the books *Report from Wasteland—America's Military Industrial Complex*, by Senator William Proxmire and *The Pentagonists*, by A. Earnest Fitzgerald.

Our hearts are saddened with the loss of such a precious man, but at the same time we are grateful for his contributions to our country, the state of Mississippi, and his family. I know my colleagues will join me in honoring and appreciating the remarkable life of Mr. John M. McGee.

#### ELIMINATION OF THE WEP AND GPO

Mr. KERRY. Mr. President, today I have asked Senator FEINSTEIN to add me as a cosponsor to her bill, S. 1523, which would amend the Social Security Act to permanently repeal the Government Pension Offset and the Windfall Elimination Provision. I am pleased to support my colleague Senator KENNEDY and others in their support of this bill.

Massachusetts is one of 15 states in which the Government Pension Offset and the Windfall Elimination Provision hits employees and retirees particularly hard, because it is one of the few remaining states where many state employees, such as teachers, do not pay into the Federal Social Security system. Rather, they pay into a state pension fund. For many workers, the formulas in the law that reduce Social Security benefits for these workers can have troubling and unintended consequences.

Listen to the testimonial of one educator from my state. This constituent writes:

I served 13 years in the military and am a wartime veteran. I did not receive a military pension; however, I did pay into Social Security. I am shocked to learn that I may receive virtually nothing from Social Security. My teaching pension in Massachusetts will be small if I retire at 60 with only 22 years of teaching service. I had previously thought that Social Security would help to make up for the smaller teaching pension. I feel that the Federal government is unfairly penalizing those who have embarked on second careers as teachers. They have created a disincentive that will work against filling projected teaching shortages. I feel especially cheated as I did sacrifice much during my military career. It is obvious that I would be much better off financially had I not served at all. I hope this is not the message that the government wants to send.

The government pension offset has a significant impact on the benefits of many retired public employees just like this one. For example, a disabled former school employee and widow who retired in 1986 receives \$403 a month from her school pension. That income results in the elimination of a \$216 monthly Social Security survivor's

benefit, to which she would otherwise be entitled. As a result, her total income is about 70 percent of the Federal poverty level. Another constituent, a retired widow who worked as a school cook, receives \$233 a month from her school pension. Her Social Security widow's benefit is reduced by \$155 because of the automatic offset. Her combined total income is about 76 percent of the Federal poverty level.

It is clear that the GPO and WEP, complex though they are, are causing pain and confusion. They also negatively impact teacher recruitment efforts, at a time where we sorely need teachers, yet the potential reduction in Social Security benefits makes it unlikely that people will turn to teaching for a few years at the tail end of their careers. Consider the irony: Individuals who have worked in other careers are less likely to want to become teachers if doing so will mean a loss of Social Security benefits they have earned, and yet our State and Federal policies are aimed at recruiting just those individuals to teaching as a second career. Retired teachers are also reluctant to return to teaching to help fill urgent needs because of the impact of the GPO and WEP. Finally, there is a fear that current teachers are likely to leave the profession to reduce the penalty they will incur upon retirement.

The reforms that led to the GPO and WEP are almost 20 years old, nearly a generation. They were passed before many of us were members of this body. Now that we are witnessing some of the impacts these 20-year old decisions are having on people's lives, we understandably want to help our constituents, and I support that effort. However, while I support the repeal of the GPO and WEP, I know that if we continue to address Social Security issues on a piecemeal basis, even expanding benefits as certain social needs dictate, without fixing the program's underlying imbalances and demographic challenges, we will make real reform more difficult when the time finally comes.

However, for the reasons outlined above, and the effect the provisions are having on my constituents, I believe it is essential that the GPO and WEP be repealed, preferably as part of an overall reform to Social Security, but by themselves if need be. My State, and others affected by the GPO and WEP, cannot afford to provide disincentives to be teachers or other public servants at this critical time.

#### LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred May 14, 1995 in Brooklyn, NY. A gay man was attacked by another man who used anti-gay slurs. The assailant, John McHenry, 25, was charged with second-degree assault, criminal possession of a weapon, and harassment in connection with the incident.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

#### ADDITIONAL STATEMENTS

##### TRIBUTE TO THE ARKANSAS MEMBERS OF THE MILITARY ORDER OF THE PURPLE HEART

• Mr. HUTCHINSON. Mr. President, it is my distinct privilege to recognize and pay tribute to the heroes of Arkansas who have been awarded the Purple Heart. This distinguished group of Americans are the recipient of our nation's earliest military decoration and the oldest in the world in present use. The Purple Heart is a combat decoration awarded in the name of the President of the United States to members of the armed forces who are wounded by an instrument of war in the hands of the enemy.

The Purple Heart was originated by General George Washington in 1782 to recognize "instances of unusual gallantry." Referred to then as the Badge of Military Merit, the decoration was awarded only three times during the Revolutionary War. The modern Purple Heart was brought into existence by Army Chief of Staff, General Douglas MacArthur. The medal was designed by Miss Elizabeth Will, in the Office of the Quartermaster General, and was introduced by the War Department on February 22, 1932, the bicentennial of George Washington's birth.

The Military Order of the Purple Heart provides a loud and clear voice on behalf of veterans and the issues that concern them. The crucial work that they do reminds us of just how precious freedom is, and that those who have unselfishly risked everything in freedom's name are worthy of every benefit a grateful nation can afford.

On behalf of the United States Senate, I thank the Arkansas members of the Military Order of the Purple Heart for the sacrifices that they have made in defense of this great nation. ●

##### HAPPY 275TH ANNIVERSARY BOW, NEW HAMPSHIRE

• Mr. SMITH of New Hampshire. Mr. President, I rise today to give my congratulations to the town of Bow, New Hampshire on their 275th anniversary.

Bow, New Hampshire is a quaint and inviting city and home to nearly 7,200