

March 21, 1980

TO: Senator *file*
FROM: Joe
RE: One-pager on Independent Patent and Trademark Office Act (S. 2079)
cc: Kevin, Mary, Linda, Tom, Eve, David B., Press, Bob, Ann M., Leg. (2),
Indiana Dept., Tim Minor

As you requested at last week's hearing, I have prepared a synopsis of the reasons for making the Patent and Trademark Office (PTO) independent.

The problem basically is that due to the neglect and outright opposition that the PTO has faced from the Commerce Department the Office is in a state of crisis. Approximately 2% to 28% of the patent files are missing in every subclass, the Office is trying to process an increasing number of patents and trademarks with less staff (the PTO is now spending 20% to 30% less time on each patent than 30 years ago). The Trademark Office has virtually shut down. From January 29, 1980, through March 11 the Trademark Office issued only 81 registrations -- this contrasts with the previous average of 750 per week. The pendency time for a registration according to the U.S. Trademark Association at the hearing will reach 7 years in the mid 1980's.

This uncertainty and confusion results in less and less American productivity and innovation at a time when this is critical if we are to reverse the inflation rate that is rapidly chewing up the dollar. This was recognized by President Carter's Domestic Policy Review on Innovation whose Subcommittee on Patents made as their number one recommendation a strengthening of the PTO. Yet, according to every recent PTO Commissioner this will be impossible as long as the Office remains under the Commerce Department.

The Department has steadily refused to heed the warnings of the Commissioners who have cited the constant underfunding of the PTO and the undue interference in its affairs by the Department as the root causes of the problems. This view was affirmed at the hearings that you chaired by the American Bar Association, the U.S. Trademark Association (which represents more than 400 of the Fortune 500 companies), the National Association of Small Businesses, the National Council of Patent Law Associations, and others. The Commerce Department is the only opposition to this change which is otherwise supported by all users of the PTO.

The cost of creating an independent PTO will be minimal (estimated at about \$150,000 according to former Commissioner Banner) and will go a long way to restoring confidence in the system. The reason cited by Commerce for keeping it is that they help in preparing the budget and give the PTO a "broader perspective" than it would otherwise have. This view was rejected by every other witness who was asked to respond to this assertion.

The bill is now before the Government Affairs Committee with a sequential referral to Judiciary. Rep. Railsback has introduced a companion bill in the House.