

To: Senator
From: (Joe) *file*
Re: Your Speech to the U.S. Trademark Assn

May 1, 1980

cc: Kevin, Mary, Linda, Tom, Eve, David B, Press, Bob, Ann M, Leg, Ind,

On Saturday you will be addressing the U.S. Trademark Association. This organization represents a Who's Who in American business. In addition to having members from 400 of the Fortune 500 the Association also represents many of the most influential small companies.

The Association is very supportive of your bill to make the Patent and Trademark Office independent. Louis Gibson, the president of the USTA, testified before your hearing on March 12 in favor of S. 2079. The Association also testified before Rep. Kastenmeier's Subcommittee on Courts, Civil Liberties, and the Administration of Justice last week on the bill.

The Association said that the Trademark Office has ground to a halt because of its constant underfunding. As you know you were told the same thing about the Patent Office. I have attached for your information a copy of Mr. Gibson's answers to your written questions which are very supportive of your position that if we are ever to restore confidence in the Office it must be made independent of the Commerce Department bureaucracy.

You might also be asked about the nomination of Margaret Laurence for Asst Patent and Trademark Commissioner which has been pending in the Judiciary Committee for about 4 or 5 months. You requested that she be put on the agenda for the next meeting and if there is a quorum there will be no problem getting her through the Committee. You have indicated to Mrs Laurence that you would assist her in being confirmed.

SPEECH
BY
SENATOR BIRCH BAYH
TO
THE UNITED STATES TRADEMARK ASSOCIATION
MAY 3, 1980

THANK YOU VERY MUCH FOR INVITING ME TO SPEAK WITH YOU TODAY.

I WOULD LIKE TO ADDRESS A PROBLEM THAT I AM SURE CONCERNS EVERYONE IN THIS ROOM -- THE AMERICAN ECONOMY WHICH HAS TRADITIONALLY LED THE WORLD IN INNOVATION AND PRODUCTIVITY IS NOW FALLING FARTHER AND FARTHER BEHIND ITS INTERNATIONAL COMPETITION. THE UNITED STATES IS NO LONGER THE NUMBER ONE EXPORTER OF MANUFACTURED GOODS IN THE WORLD -- WE LOST THAT DISTINCTION YEARS AGO TO THE MUCH SMALLER COUNTRY OF WEST GERMANY -- AND WE ARE NOW BEING SORELY PRESSED FOR SECOND PLACE BY JAPAN. OUR IMPORTATION OF MANUFACTURED GOODS IS THE SECOND LARGEST DRAIN ON OUR ECONOMY RIGHT BEHIND THE IMPORTATION OF FOREIGN OIL. OUR RATE OF PRODUCTIVITY IN THE 1970' WAS THE LOWEST OF ANY WESTERN INDUSTRIALIZED NATION EXCEPT SWEDEN. YEAR AFTER YEAR THE U.S. SUFFERS A TRADE DEFICIT WHILE SMALLER COUNTRIES WITH FEWER NATURAL RESOURCES ARE PAYING FOR THEIR OIL IMPORTS ON THE STRENGTH OF THEIR INNOVATIVE ECONOMIES. THESE TRENDS ARE AN OPEN ECONOMIC WOUND THAT CONTINUES TO BLEED DOLLARS AND JOBS ABROAD AND FANS THE INFLATION RATE. THIS SIMPLY CANNOT BE TOLERATED IF WE EXPECT TO RETAIN OUR ECONOMIC -- AND POLITICAL -- FREEDOMS!

- 2 -

THERE IS NO MAGIC SOLUTION TO THESE PROBLEMS. MANY STUDIES HAVE BEEN CONDUCTED TO DISCOVER THE CAUSES. STILL ONE CONTRIBUTING FACTOR THAT HAS BEEN IDENTIFIED IN EVERY STUDY I HAVE SEEN IS THE WEAKNESS IN OUR PATENT AND TRADEMARK SYSTEM. THE WEAKNESS AND UNRELIABILITY THAT NOW EXISTS UNDERMINES THE EFFORTS OF OUR INNOVATIVE COMPANIES TO TAKE THE CHANCES THAT RESULT IN NEW PRODUCTS. WITHOUT PATENTS AND TRADEMARKS THE ENORMOUS AMOUNTS OF MONEY NEEDED TO DEVELOP AND MARKET THESE PRODUCTS CANNOT BE PROTECTED. FOR TOO MANY YEARS THE CONNECTION OF PATENTS AND TRADEMARKS TO INNOVATION HAS BEEN IGNORED. WE CANNOT AFFORD TO CONTINUE DOWN THIS ROAD ANY LONGER! THE WARNING SIGNS ARE FLASHING AND MUST BE HEEDED. UNLESS WE CAN RESTORE CONFIDENCE IN AMERICAN PATENTS AND TRADEMARKS I AM CONVINCED THAT NO AMOUNT OF MANIPULATIONS WILL RESTORE THE HEALTH OF OUR CREATIVE GENIUS.

- 3 -

IT IS WELL TO REMEMBER THAT THE INCREDIBLE WEALTH THE AMERICAN ECONOMY HAS CREATED IN THE LAST HUNDRED YEARS HAS BEEN THE RESULT OF THE BRILLIANT DISCOVERIES OF A HANDFUL OF PEOPLE. ELI WHITNEY, FOR EXAMPLE, REVOLUTIONIZED THE ECONOMY OF THE NORTH AND THE SOUTH BY HIS DEVELOPMENT OF THE MODERN FACTORY AND THE COTTON GIN. ONE INVENTOR LIKE THOMAS EDISON REMOVED MOST OF THE WORLD FROM LITERAL DARKNESS WITH THE DISCOVERY OF THE LIGHTBULB. IF WE ARE TO CONTINUE TO ENJOY THE FRUITS OF GENIUS WE MUST MAKE SURE THAT THE WELL OF CREATIVITY IS NOT FOULED WITH UNNECESSARY RED TAPE AND NEGLECT.

- 4 -

I AM CONVINCED THAT IT IS NO ACCIDENT THAT THE DEMOCRATIC COUNTRIES ARE THE LEADERS IN INNOVATION AND CREATIVITY. GENIUS DOES NOT FARE WELL UNDER INTELLECTUAL REPRESSION. FREEDOM OF THOUGHT IS THE GREATEST SINGLE THREAT TO THE TOTALITARIAN SYSTEM. THE SOVIET LEADERSHIP LIVES IN CONSTANT FEAR OF ITS INTELLECTUALS. ADOLF HITLERS ALWAYS HAVE AND ALWAYS WILL BE FORCED TO GET RID OF ALBERT EINSTEINS.

STILL WE CANNOT AFFORD TO CONTINUE TO BE COMPLACENT ABOUT OUR ACCOMPLISHMENTS. THE GREATEST THREAT THAT WE FACE IS A TENDENCY TO TAKE IT FOR GRANTED THAT THE UNITED STATES WILL ALWAYS HAVE THE HIGHEST STANDARD OF LIVING IN THE WORLD AND THAT WE WILL ALWAYS WIN THE RACE TO DEVELOP NEW PRODUCTS AND INVENTIONS SIMPLY BY SHOWING UP. I KNOW THAT THE MEMBERSHIP OF THE UNITED STATES TRADEMARK ASSOCIATION SHARES THESE CONCERNS.

OUR FOUNDING FATHERS UNDERSTOOD THAT ONE OF OUR GREATEST FREEDOMS WAS THE RIGHT TO OWN INTELLECTUAL PROPERTY. THIS IS JUST AS IMPORTANT TO OUR POLITICAL SYSTEM AS THE RIGHT TO OWN PROPERTY OR TO EXERCISE FREE SPEECH. THE ABILITY OF OUR CITIZENS TO ENJOY THIS RIGHT WAS PLACED IN THE CONSTITUTION IN ARTICLE I, SECTION 8. YET, WE NOW FACE A CRISIS IN THE PATENT AND TRADEMARK SYSTEM THAT IS MAKING A MOCKERY OF THIS RIGHT. WHEN IT TAKES LONGER AND LONGER TO HAVE PATENT AND TRADEMARK APPLICATIONS PROCESSED AND THERE IS GROWING DOUBT ABOUT THE WORTH OF THESE GRANTS EVEN WHEN THEY ISSUE, THE WHOLE INNOVATIVE PROCESS IS DEGRADED. THE TRADEMARK AND PATENT PROFESSIONAL ASSOCIATIONS HAVE DONE A GREAT SERVICE TO THE COUNTRY BY CALLING ATTENTION TO THIS CRITICAL PROBLEM.

- 7 -

YOU DESERVE TO BE PROUD OF YOUR ROLE IN DEVELOPING NEW PRODUCTS. YOU WOULD BE EVEN MORE SUCCESSFUL IN THIS DIFFICULT TASK IF YOU RECEIVED THE HELP FROM THE GOVERNMENT THAT YOU DESPERATELY NEED. THE WEAK LINK IS THE PATENT AND TRADEMARK OFFICE ITSELF. NEGLECTED AND IGNORED FOR SO MANY YEARS WE NOW HAVE AN OFFICE NOT ONLY UNABLE TO FULFILL ITS MISSION BUT WHICH HAS ITSELF BECOME AN OBSTACLE TO INNOVATION. WE HAVE A TRADEMARK OFFICE THAT HAS VIRTUALLY GROUND TO A HALT AS A REDUCED STAFF TRIES TO PROCESS MORE AND MORE APPLICATIONS. TRADEMARK EXAMINERS NOW TRY TO HANDLE A 65% INCREASE IN APPLICATIONS WITHOUT AN INCREASE IN THE STAFF. PENDENCY TIMES ARE BALLOONING WHILE THE DEPENDABILITY OF THE FINAL PRODUCT PLUMMETS. I AM CONVINCED THAT MUCH OF THE BLAME FOR THE CURRENT SITUATION BELONGS SQUARELY ON THE SHOULDERS OF THE DEPARTMENT OF COMMERCE WHICH HAS JURISDICTION OVER THE OFFICE. THE EFFORTS OF MANY PATENT AND TRADEMARK COMMISSIONERS TO REVERSE THIS DETERIORATION HAVE BEEN RESISTED BY THE DEPARTMENT FOR MANY YEARS. THE CRISIS HAS BECOME SO ACUTE THAT IT COULD NO LONGER BE HIDDEN.

EVEN NOW THE EFFORTS OF CONGRESSIONAL FRIENDS OF THE OFFICE TO ASSIST IT ARE OPPOSED AND FRUSTRATED BY THE COMMERCE DEPARTMENT'S CONTINUED REFUSAL TO ALLOW DIRECT CONTACT WITH THE OFFICE ITSELF. I HAVE JUST COMPLETED A SIX-MONTH STRUGGLE TO RECEIVE FROM THE PATENT AND TRADEMARK OFFICE AN ESTIMATE OF WHAT ITS NEEDS ARE THAT HAD NOT FIRST BEEN CENSURED BY THE DEPARTMENT. THIS TYPE OF OBSTRUCTION MAKES IT IMPOSSIBLE FOR THE CONGRESS TO HELP RESTORE THE INTEGRITY OF THE PATENT AND TRADEMARK OFFICE.

IT BECAME APPARENT TO ME THAT THE ONLY SOLUTION WAS TO REMOVE THE OFFICE FROM THE DEPARTMENT OF COMMERCE AND SET IT UP AS AN INDEPENDENT AGENCY. THIS STEP WILL NOT BY ITSELF SOLVE ALL OF THE PROBLEMS OF THE OFFICE, BUT AT LEAST IT WILL ALLOW THE REAL EXPERTS IN THE PTO TO DIRECTLY CONSULT WITH THE CONGRESS AND WITH THE PRIVATE SECTOR SO THAT WE CAN SOLVE THE PROBLEMS THAT THE OFFICE FACES.

THEREFORE, I INTRODUCED S. 2079, THE INDEPENDENT PATENT AND TRADEMARK OFFICE ACT, TO ACCOMPLISH THIS GOAL WHILE GIVING THE COMMISSIONER A SIX-YEAR TERM OF OFFICE. THIS BILL WILL NOT CREATE ANY NEW BUREAUCRACY BUT WILL ALLOW THE OFFICE TO FUNCTION MORE EFFICIENTLY BY REMOVING AN UNNECESSARY LAYER OF BUREAUCRACY. DURING HEARINGS RECENTLY CONCLUDED ON THIS BILL EVERY FORMER COMMISSIONER WHO HAS SERVED IN THE LAST 25 YEARS ENDORSED THIS LEGISLATION AS THE ONLY PRACTICAL MEANS OF RESTORING CONFIDENCE IN THE OFFICE. DONALD BANNER WAS ONE OF THOSE WITNESSES AND WHEN SOMEONE OF HIS CALIBER SAYS THAT DRY ROT HAS SET IN THE OFFICE THROUGH YEARS OF NEGLECT I FOR ONE TAKE THAT VERY SERIOUSLY.

THE BILL WAS ALSO ENDORSED BY THE AMERICAN BAR ASSOCIATION, THE AMERICAN PATENT LAW ASSOCIATION, AND I AM PROUD TO SAY THE U.S. TRADEMARK ASSOCIATION.

YOUR PRESIDENT LOUIS GIBSON, TESTIFIED ON MARCH 12 ON THE BILL AND SAID:

"... THE SEARCH FACILITIES IN THE TRADEMARK OFFICE HAVE BEEN ALLOWED TO DETERIORATE TO SUCH A DEGREE THAT THE RESULTS OF A SEARCH OF THE RECORDS IS OF EXTREMELY DUBIOUS VALUE. THIS DETERIORATION OF THE SEARCH FACILITIES CAUSES UNNECESSARY UNCERTAINTY IN THE SELECTION OF A NEW TRADEMARK AND RESULTS IN THE FILING OF TRADEMARK APPLICATIONS THAT WOULD NOT OTHERWISE BE FILED. THIS IN TURN LEADS TO INCREASED LITIGATION WITH TRADEMARK OWNERS WHO HAVE ACQUIRED EARLIER RIGHTS."

MR. GIBSON WENT ON TO SAY:

"YET, IN A COUNTRY THAT IS THE WORLD'S LEADER IN COMPUTERS, MASSIVE DELAYS HAVE BEEN ENCOUNTERED IN THE EFFORTS TO COMPUTERIZE RECORDS BECAUSE OF THE APPARENT INABILITY OR UNWILLINGNESS OF THE DEPARTMENT OF COMMERCE TO LISTEN AND RESPOND."

- 11 -

SIMILIAR PROBLEMS WERE FOUND TO EXIST IN THE PATENT OFFICE. IN EFFECT
OUR BUSINESSES ARE FORCED TO COMPETE WITH INCREASINGLY SOPHISTICATED
INTERNATIONAL COMPETITION WHILE HAVING TO RELY ON A PATENT AND TRADEMARK
OFFICE THAT IS STILL OPERATING LIKE IT DID WHEN THOMAS JEFFERSON WAS PRESIDENT.
OUR COMPANIES ARE BEING SENT OUT TO BATTLE WITH THEIR FEET SECURELY TIED UP
IN RED TAPE ;

BECAUSE OF THE LACK OF COOPERATION AND OUTRIGHT HOSTILITY OF THE COMMERCE DEPARTMENT IT HAS TAKEN ME OVER TWO YEARS OF DIGGING JUST TO BEGIN TO DISCOVER WHAT THE CURRENT PROBLEMS ARE. LAST YEAR, FOR EXAMPLE, I WAS ABLE TO WRANGLE OUT OF THE DEPARTMENT AN ESTIMATE OF WHAT KIND OF FUNDING WAS NEEDED TO GET THE PTO BACK INTO SHAPE. THE ANSWER CAME BACK THAT \$14 MILLION IN ADDITIONAL FUNDING WAS NEEDED JUST TO BEGIN ADDRESSING THE CURRENT PROBLEMS. I OFFERED AN AMENDMENT TO PROVIDE THIS MONEY AND WAS AMAZED TO FIND THAT THE DEPARTMENT OF COMMERCE WAS NOW LEADING THE CHARGE AGAINST MY AMENDMENT BY ALLEGING THAT THE OFFICE HAD ALL THE MONEY THAT IT DESERVED. IT IS IRONICALLY AMUSING THAT AFTER THE FUROR CAUSED BY THE INTRODUCTION OF MY INDEPENDENT AGENCY LEGISLATION, THE DEPARTMENT SUDDENLY BECAME AWARE THAT THERE WERE INDEED PROBLEMS IN THE OFFICE THAT DESERVED ATTENTION.

THIS SORT OF GAME PLAYING WITH THE CONGRESS IS SIMPLY INEXCUSABLE. I REMAIN CONVINCED THAT THE ONLY PRACTICAL LONG TERM SOLUTION IS TO REMOVE THE OFFICE FROM UNDERNEATH THE COMMERCE DEPARTMENT.

MANY OF MY COLLEAGUES HAVE BEEN ASTOUNDED BY THE AMOUNT OF MAIL S. 2079 HAS GENERATED. MY OWN OFFICE IS RECEIVING OVER 40 LETTERS A WEEK SUPPORTING THE BILL FROM ATTORNEYS, INVENTORS, SMALL AND LARGE BUSINESSES, AND OTHERS WHO HAVE BEEN INVOLVED IN PATENTS AND TRADEMARKS. I HAVE YET TO RECEIVE ONE LETTER SUPPORTING THE COMMERCE DEPARTMENT'S CONTENTION THAT THE WHOLE PROBLEM IS CAUSED BY THE LACK OF PERSPECTIVE OF THE PATENT AND TRADEMARK COMMISSIONER. THIS KIND OF POSITIVE RESPONSE HAS ALERTED EVEN THOSE SENATORS WHO ARE NOT FAMILIAR WITH THE PROBLEM THAT SOMETHING IS SERIOUSLY AMISS. YOU WILL FIND THAT IF YOU ARE WILLING TO TAKE THE TIME AND EFFORT TO EXPLAIN THE PROBLEMS IN THE PATENT AND TRADEMARK OFFICE AND HOW THIS AFFECTS AMERICAN BUSINESS, YOUR CONGRESSIONAL REPRESENTATIVES REGARDLESS OF IDEOLOGY WILL RESPOND.

- 14 -

JUST RECENTLY THE SENATE PASSED TWO OF MY BILLS TO REVISE GOVERNMENT PATENT POLICY AND TO ALLOW THE PATENT OFFICE TO REEXAMINE ISSUED PATENTS BY OVERWHELMING MARGINS. THIS WOULD HAVE BEEN UNTHINKABLE JUST A FEW YEARS AGO, BUT BY SHOWING HOW THESE BILLS FIT INTO THE LARGER PICTURE OF INNOVATION WE WERE SUCCESSFUL. WITH THE CONTINUING SUPPORT OF ORGANIZATIONS LIKE THE U.S. TRADEMARK ASSOCIATION I AM WILLING TO PRESS AHEAD IN THE FIGHT TO MAKE THE PATENT AND TRADEMARK OFFICE INDEPENDENT SO THAT IT CAN ENJOY THE CONFIDENCE OF THOSE WHO MUST RELY ON ITS SERVICES.

WHAT WE ARE REALLY FIGHTING FOR IS THE CONTINUED RIGHT OF AMERICANS TO OWN INTELLECTUAL PROPERTY. THIS IS ONE OF THE LEAST UNDERSTOOD FOUNDATIONS OF OUR COUNTRY. THE PROBLEM IS ONE OF INDIFFERENCE MORE THAN MALICE. WE HAVE A RESPONSIBILITY TO LAY THIS PROBLEM BEFORE THE PUBLIC IN UNDERSTANDABLE TERMS. THIS WILL BE A LOT OF HARD WORK BUT THERE SIMPLY IS NO OTHER CHOICE. THE PROFESSIONALS IN THE U.S. TRADEMARK ASSOCIATION ALONG WITH YOUR COLLEAGUES IN THE PATENT BAR DESERVE THE THANKS OF ALL CITIZENS FOR YOUR LONG, LONELY STRUGGLE TO ALERT THE PUBLIC TO THIS GROWING DANGER. I HOPE THAT YOU WILL PRESS AHEAD WITH YOUR EFFORTS BECAUSE THERE IS A GROWING AWARENESS OF THE IMPORTANCE OF THESE PROBLEMS. I AM LOOKING FORWARD TO JOINING WITH YOU IN THIS EFFORT AND FEEL CONFIDENT THAT CONCRETE RESULTS WILL SOON BE FORTHCOMING TO REWARD THIS FIGHT.

THANK YOU FOR YOUR PAST HELP AND FOR YOUR FUTURE ASSISTANCE.