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21 May 1979

TO: ACPC Members

FROM: Homer O. Blair

SUBJECT: United States Court of Appeals for the Federal Circuit (Federal Appellate Court which would handle, among other things, all appeals from U.S. District Courts on patent cases)

Dear Fellow ACPC Member:

As you know, there is legislation pending in Congress which proposes to combine the Court of Customs and Patent Appeals and the United States Court of Claims to form a new court entitled The United States Court of Appeals for the Federal Circuit.

The new court would have exclusive appellate jurisdiction over all patent cases in the U.S. District Courts. It would also keep all the jurisdiction of the two existing courts, except for cases brought under the Federal Tort Claims Act and the trial function now performed by the commissioners of the Court of Claims. For more information, please see Attachment I, a one-page summary of the proposed legislation prepared by the Administration, and Attachment II, which is part of U.S. Senate Bill 677, including part of Title VII "United States Court of Appeals for the Federal Circuit" (pages 10-12) and Section 1295 relating to the jurisdiction of the proposed new court (pages 22-25).

On Monday, May 7, 1979, Harry Manbeck from G.E. and Dick Witte from Proctor and Gamble, both ACPC members, and I, testified with a number of others, before the Senate Judiciary Subcommittee responsible for this legislation. The three of us testified in favor of the legislation.

Others testifying included John Tramontine for the New York Patent Law Association; George Whitney; John P. Carroll for the Patent Committee of the Association of the Bar of New York; and Jim Wetzel of the Patent Law Association of Chicago. The latter people testified against it partly because "the creation of a Single Appellate Court with exclusive patent jurisdiction will result in undue concentration of power over the entire patent system in the hands but of a few judges in

Washington, DC" and "the geographical checks and balances that have been part of our patent system over the past two centuries due to the diverse contributions of the various courts of appeals will be lost".

On Tuesday, May 8, a meeting was held at the White House chaired by Steve Simmons, the Assistant Director of Domestic Policy, as well as Dan Meador, the Assistant Attorney General sponsoring this legislation, and Frank Cihlar of his staff. The invited attendees were nine ACPC members (Bob Benson, Allis-Chalmers; Harry Manbeck, G.E. (Phil Schlamp sat in for Harry); John Maurer, Monsanto; Bob Kline, DuPont; Eldon Luther, Combustion Engineering; John Glenn, Reynolds Aluminum; Dick Witte, Proctor and Gamble; Joe Kerwin, Continental Group; and myself).

During both the Judiciary Subcommittee and the White House meeting, it became apparent that most of the corporate patent people are in favor of the legislation while a significant number of the private patent litigators are against it. In effect, the purpose of the White House meeting was to bring us up to date on the current situation and to ask our support to encourage the Senate to proceed with the legislation and to encourage the House to start hearings on recently introduced legislation. The time schedule is such that the White House and the Department of Justice are somewhat concerned that if the House doesn't start hearings within the next few months, the time delay may be too big to overcome in this session.

Of course, ACPC does not, and in my opinion, should not, take positions on most matters. However, Roy Massengill, our president, had no objection if I wanted to write you a letter bringing you up to date and suggesting what you should do if you wish to support the legislation. Of course, if you are against the legislation, you could take the same action which I am suggesting also.

I would like to suggest that each of you write at least one member of the U.S. Senate Judiciary Subcommittee on Improvements in Judicial Machinery chaired by Senator Dennis DeConcini of Arizona. The entire membership of the Senate Judiciary Committee and this subcommittee are set forth in Attachment III. Also, I would suggest writing at least one member of the House Subcommittee involved chaired by Mr. Kastenmeier of Wisconsin. Members of the House Judiciary Committee and the House Subcommittee are also set forth in Attachment III. The two pending Bills in the Senate are S.677 and S.678 and the pending legislation in the House of Representatives is H.R.3806, Rodino.

In your letters to the Senate people, you might wish to encourage the subcommittee to proceed with the Bill and you might wish to recommend particularly the establishment of a

U.S. Court of Appeals for the Federal Circuit and what specific advantages you feel it might provide. As you know, Congress is very interested in specific situations that show advantages.

If you write a member of the House, you might wish to encourage them to have hearings in the reasonably near future and again, point out the advantages of the Bill from your viewpoint.

Also, you may wish to write or talk to some of your associates, both in the corporate field and in private litigation practice to tell them of your views.

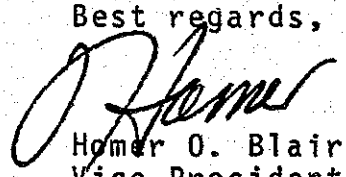
Some of us feel that if the private litigation practitioners more clearly understand the corporate viewpoint, they might modify some of their opinions, as possibly some are taking their stand because they feel it would be to our benefit, as their clients.

Finally, and for no extra charge, I am enclosing a copy of my statement filed with the Senate Judiciary Subcommittee as Attachment IV.

As a matter of interest, the Justice Department may favorably consider removing from the Bill the appeallate jurisdiction on trademark litigation appeals from the U.S. District Courts.

See you in Colorado Springs.

Best regards,



Homer O. Blair
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Enclosures
HOB:db