Statement
of
Roy H. Massengill
General Patent Counsel
Allied Corporation
before
The Subcommittee on Patents, Copyrights and Trade Marks
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INTRODUCTION

I am Roy H. Massengill, General Patent Counsel for Allied Corporation. I appreciate this opportunity to appear today and wish to thank Chairman Mathias, Senator Lautenburg and their co-sponsors for the introduction of S. 1543, a bill to provide protection for process patents against foreign infringement.

I would like to make three points:

First, process patents are critical to the advancement of technology in the United States;

Second, foreign producers are appropriating American technology through unauthorized use of our patented processes; and

Finally, this legislation, along with amendments to our trade laws, is necessary to protect American technology, American industrial growth and American jobs.

THE ROLE OF PROCESS PATENTS

The recent combination of Allied Corporation and the Signal Companies has created one of the largest high technology corporations in the world with annual expenditures for research, development and engineering of over a billion dollars in such diverse fields as strategic materials, aerospace, biotechnology, and electro-optics. We received nearly 600 U.S. patents in 1984. Worldwide, Allied-Signal has more than 35,000 patents granted or pending; and, nearly one-half are process patents.

Some of the most important technological breakthroughs in the chemical and drug industries have resulted from the discovery of new process technology. Process patents are also key to many other businesses. Process patents protect the development of new strategic materials, laser, fiber optics and computer technology. And process patents, in particular, protect the fledgling biotechnology industry. For example, naturally occurring materials such as insulin cannot be patented; however, one can patent processes for making such materials.

Process patents are being used to improve the economic efficiency of existing industries, and they will be the key to many of tomorrow's new products.

THE THREAT

Our foreign competitors are aware of the importance of process technology and the patents which protect them. They are also aware that if they make an unpatented product not protected by a patent in the U.S. and use one of our patented processes abroad, they can sell that product in the United States without violating our U.S. patent law.

I will relate our own experience. Allied Corpation developed a process for the manufacture of amorphous metal strip, a thin metal film having a random molecular structure more typical of glass than metal which exhibts extraordinary properties. Amorphous metals are harder, stronger and more corrosion resistant than stainless steel. They are more easily magnetized than any other known material. Applications for amorphous metals range from the substitution of gold in brazing jet engine components, thereby eliminating the need to use a precious metal, to the magnetic core materials of utility transformers, thereby reducing power losses up to seventy-five percent or more. Allied has spent over $75 million and thirteen years developing amorphous metals technology, and we believe it will be key to the establishment of an entire new industry in the United States. There are estimates that this technology will support a billion dollar business in the foreseeable future. A significant portion of this technology is process technology and it is protected by process patents.

Our basic process patent was applied for in the U.S. in 1976 and granted in 1980. We applied for corresponding process patents in Japan and Germany in 1977. The German patent was granted earlier this year, but it has been opposed by foreign competitors. In Japan, the patent is still pending in their patent office. While these patents have been delayed in their patent offices, Japanese and German companies have been using our process in Japan and Germany to manufacture amorphous metal strip and ship product into the United States.

Since there was no process patent protection under U.S. patent law, Allied initiated an action under Section 337 of the Trade Act before the International Trade Commission against these Japanese and German competitors in 1983. Ultimately, the ITC found that eleven companies had engaged in unfair trade practices as a result of their use of our patented process abroad. A general exclusion order was issued by the ITC and approved by the President.

We were very fortunate to obtain that exclusion order since one of the deficiencies of the Trade Act is that a U.S. company must show injury to an existing industry. Fortunately, we had sold product and were able to prove injury. However, a process patent will often be the basis for a business in its infancy - one which is in the tenuous first days of its life with little

or no sales. If its patented process technology is appropriated abroad, that new business may never develop in the United States. The domestic practice of high technology has been stifled in its inception and a clear disincentive to investment in high technology has been established. Senate Bill 1543 would remedy this deficiency since it contains no requirement of injury to an industry.

A second deficiency in the Trade Act is the inability of the Commission to award damages for the unauthorized use of patented process technology. Only injunctive relief preventing future activity is available under Section 337. No monetary damages are available. Thus, infringers are given a free ride until an exclusion order issues. That is because, even if they lose before the ITC, they are able to keep their profits while the litigation is pending. Those who argue that Section 337 is an adequate remedy do a gross disservice to American industry. Section 337 may let you win eventually; but there is no disincentive to foreign infringers in the meantime and this leads to a loss in domestic jobs and injury to the economy.

THE SOLUTION

Today, when we hear so much about the trade deficit and the loss of jobs to foreign competition, it seems to me the least

we can do is protect the fruits of our own research and development - the tools which produce greater efficiency and competitiveness.

We must provide our process patents protection essentially on a par with that offered by our major trading partners - Japan, West Germany, France and the United Kingdom.

The very least we can do is prevent foreign competition from using our patented processes without permission to make products for sale in the United States in competition with our own products. Allied-Signal urges the swift passage of S.1543.

And, although it is not within the jurisdiction of this Subcommittee, we would also urge each of you individually to support legislation which would amend the Trade Act as has been provided in S.1647, introduced by Senators Lautenberg and Roth. However, passage of S.1543, the subject of today's hearings, is essential regardless of whether or not the Congress amends the Trade Act.

Thank you Mr. Chairman. I would be pleased to answer any questions the Committee or its staff may have.