Finally, if fees must be changed, let us slightly increase the present ones, and apply the proceeds toward increasing the personnel of our badly undermanned Patent Office and toward paying its examiners salaries sufficiently large to retain plenty of good men at work so indispensable to the inventors and the industries of the country.

ANNUAL RENEWAL FEES FOR U. S. PATENTS

By Edwin A. Hill, U. S. Patent Office, Washington, D. C.

As a member of the Committee on Patent and Related Legislation I have been asked for an expression of my views on the subject of patent renewal fees.

These views I find are in accord with those of other officials of the Patent Office and of patent solicitors with whom I have conferred upon this matter, and are based upon my own twenty-four years of experience in the Patent Office as secretary to three different commissioners, and, for some years past, as an assistant examiner.

As a general proposition I think the burden of proof rests upon those who seek to change the existing laws. A tree is always judged by its fruits, and it is universally admitted that the fruits produced by our patent system far surpass those of any other system or country. Why then change what is good, and experiment with the more or less unknown? Certainly the reasons therefor should be convincing.

I do not think the principle of patent renewal fees a sound one for this country to adopt. Probably the best argument in its favor is that it would limit the number of patents necessary to be considered when capital is entering the field of industrial production, and must necessarily determine to what extent, if any, it will be dominated by existing patents.

On the other hand, the fundamental principles upon which our patent laws are based, and the trend of the modern court decisions expounding them, indicate the patent as a reward for the disclosure of and subsequent dedication of an invention to the public. We grant the patent as an inducement to the inventor, who, having conceived an idea and succeeded in reducing it to practical form, comes forward and in his application makes such a complete disclosure of it to the public that at the expiration of the limited grant of a 17-year monopoly, the public will have full knowledge of the invention, and be able to use and practice it without further instruction. Any change in the present system which removes, curtails, or otherwise nullifies either in whole or in part this inducement offered to bring about the desired disclosure to the public, is against the fundamental principles upon which our patent laws are based. A recent decision of the Commissioner has gone so far as to hold that in an interference proceeding, where the Office has determined the question of priority as between rival inventors, if the inventor to whom priority is awarded, having made no public disclosure of it, allows his application to become abandoned so that the public will never have the invention disclosed to them, the opposing inventor, though proved in the interference proceedings not to have been the first inventor, will nevertheless receive a patent, because his disclosure to the public is the consideration for the grant, and so when he makes the disclosure he thereby becomes entitled to the grant.

The question then stands about like this: Granting that renewal fees would eliminate some of the patents which might otherwise dominate a given line of manufacture, and which if not so eliminated might cause capital to hesitate about embarking in that enterprise, is it equitable or advisable to remove or diminish any of the inducements which the law now offers to the inventor to make it an object to him to disclose his ideas to the public? My answer to this is emphatically, "No, it is not advisable." The value of the inventions, which, under such circumstances, would never be disclosed, and ultimately dedicated to the public, would much more than offset any advantage which the public might gain by thus occasionally removing supposed obstacles to the investment of capital arising from the fear of possible suits for infringement.

In most cases if broad unexpired dominating patents were found apparently neglected and undeveloped, and upon which no large investment of manufacturing capital up to that time had been based, it would be possible to obtain working rights under such patents at prices far short of what would be prohibitive.

I do not therefore consider the principle of patent renewal fees a sound one and do not think it should be adopted.

The question of additional revenue to the Office derived from renewal fees cuts no figure whatever, for while the final decision to change the law should be based upon broad principles rather than upon the narrower view of increasing the Office fees, it is doubtful whether the income derived from such renewal fees would not be more than offset by the reduction in the number of applications filed, for in my judgment such renewal fees would tend to stifle and restrict inventive activity, and would be a serious handicap to the average inventor. One of the chief advantages of our system over that of other countries, as already indicated, is the reward offered to the inventor as compensation for his disclosure to the public. The practical result of this difference in laws may be measured by the number of patents already granted in this country, a number commensurate with those of all other countries of the world combined, and is also illustrated by the fact that in its manifestation of inventive genius this country stands upon a pedestal apart from all others. When the Japanese government, some years ago, investigated the patent systems of the entire world they attributed the wonderful growth and development of the United States primarily to our patent system, and so modeled their own upon ours.

Many poor and struggling inventors would hesitate long before applying for a patent if faced with a series of fees payable year after year perhaps in increasing amounts, and so would never apply, and thus would never disclose their valuable ideas to the public.

It should not be forgotten in this connection that very frequently inventors are often far ahead of their time so that their patents must be held many years before the time becomes ripe for making a proper commercial development of their inventions. In such cases the necessity of keeping the patent alive from year to year, by a burdensome system of renewal fees, would be a very serious handicap upon them and would in many cases postpone the time of filing of their application, leaving the inventor the chance of losing his rights to some later rival who was ready to assume the burden and come forward and take out the patent at once; or by the possible death of the inventor while waiting for a suitable season to arrive at which to obtain and develop his patent, the public would never receive the disclosure and so the valuable idea be lost forever to the world.

I can but think, then, that a renewal fee system would not only very seriously handicap these deserving citizens, but would in general tend to stifle and restrict the inventive activity of the country in a marked degree.

I do not think that the system would in any way tend to restrict or restrain wealthy corporations in the matter of so-called "blocking" or "protecting" patents, nor do I consider this matter as great an evil as it is by some considered. In almost all of these cases the disclosure to the public is fully worth the limited monopoly which it confers in exchange for same.

Would such fees tend to open up for development fields in fact, though not formally, abandoned by patentees? Probably not to any great extent, as, so far as I have observed, inventors never hesitate to apply for a patent on any improvement that may occur to them, regardless of the fact that the same is

dominated by and can only be used in connection with some patented machine or device. And so, likewise, I do not believe the question of whether a dominating basic patent is alive or dead will have any effect in either promoting or retarding applications for improvements to be used in connection therewith. If the improvements are meritorious they will be used whether there are dominating patents in existence or not, and patents for them will be applied for, without regard to whether such basic patents are alive or dead.

Would the added cost of patent maintenance through such a system be sufficiently great to deter corporations, large or small, from disclosing their inventions through patents? Probably not, as the question of expense is one of the last matters considered by such corporations and the expense to them is always a small matter. As they all maintain a patent department in charge of a skilled patent attorney, the government fees and a small compensation to the inventive employee are the chief items of expense.

On the whole, then, I emphatically do not favor renewal fees, but if we are to have them then there should certainly be a reasonable time given to the inventor before the first fee is payable, to enable him to dispose of his invention or determine its utility. Seven years is none too long; a longer term would be better.

As to the size of the fee, it should probably be nominal; five dollars a year would be sufficient, the idea being merely to require the owner, by the payment of the fee, to definitely put himself on record as not yet being willing to dedicate his invention to the public. Any considerable increase in the size of the fee would be merely playing into the hands of the great corporations who would wait to freeze out the small inventor and force him to dedicate his invention to the public, so that they could then use it free, whereas if they had to wait out the 17 years for his rights to expire, if a corporation really needed the use of the invention they would be ready at once to agree to pay the inventor a reasonable compensation for the use of his invention.

In conclusion I desire to call the attention of this Division of the AMERICAN CHEMICAL SOCIETY to three bills now pending before Congress relating to the Patent Office and which are receiving the active support of and have been already approved by the Research Council, the various Patent Bar Associations and Chambers of Commerce of the United States, and of scientific and technical societies and organizations in general, and to earnestly request this Division to endorse these bills by some such resolution as that with which I will close this article.

These bills have in view the following objects:

First—An increase of salaries to a point commensurate with the high cost of living which apparently is as high if not higher in the city of Washington than elsewhere.

Second—The organization of a Court of Patent Appeals in order to relieve the various Circuit Courts of Appeal from the consideration of cases requiring special training in patent law and applied science and so doing away with the conflict of decisions in the various independent circuits, there now being no last court of resort to which appeal therefrom can be taken to settle the law.

Third—The separation of the Patent Office from the Department of the Interior and its organization as an independent department responsible to the President direct.

Salaries in the Patent Office particularly in the case of the corps of examiners are notoriously inadequate to attract and retain in office a force having the necessary legal and technical training. For many months the lower grade of assistant examiner has been to some little extent filled by temporary appointees who have not passed the Civil Service Examination required by law, the Civil Service Commission having been wholly unable to fill the existing vacancies in the corps of examiners from those passing the necessary examinations. Even before the declaration of war with Germany the Patent Office had become a mere training school for young men who after a few years' service would resign to accept better positions with patent attorneys and manufacturing corporations; and with the greatly increased cost of living, matters have reached the point where unless relief is given the condition of affairs will go rapidly from bad to worse.

The fact that the office revenues are ample should also be considered. The Patent Office, however, has never been allowed to expend its own revenues; all fees are covered into the Treasury of the United States and the office can expend only such moneys as Congress cares to appropriate for that purpose. Up to the present time the Patent Office has turned into the Treasury of the United States about eight millions of dollars over and above all moneys which it has expended.

As to the desirability of the establishment of a Court of Patent Appeals to take final jurisdiction of all patent cases it is wholly unnecessary to advance any arguments; the desirability of such a court is so manifest as to be self-evident.

As to the separation of the Patent Office from the Department of the Interior, the matter is simply the question of cutting a little government red tape. At the present time practically all appointments in the office are made under Civil Service rules, but solely on the nomination of the Commissioner of Patents approved by the Secretary of the Interior. The Secretary cannot himself appoint. The proposed change should simply leave all matters where they belong—in the hands of the Commissioner, the legal head of the department.

Will some one of the members present kindly offer a resolution in some such form as the following:

Resolved, By the Division of Industrial Chemists and Chemical Engineers, the Pharmaceutical Division, and the Dye Section of the AMERICAN CHEMICAL SOCIETY now in session at Philadelphia, Pennsylvania, that we heartily endorse the three bills now pending before Congress looking to

First—An advance in the compensations of Patent Office Employees covered by the bill H. R. No. 7010.

Second—The establishment of a Court of Patent Appeals, covered by the bill H. R. 5013.

Third—The separation of the Patent Office from the Department of the Interior and its organization as an independent department, covered by the bill H. R. 5011.

And we earnestly urge upon the Congress of the United States that the same be passed at the present session.

Resolved, That a copy of this resolution be transmitted to the Clerks of the House of Representatives and the U. S. Senate at Washington, D. C.

PATENT RENEWAL FEES

By W. R. WHITNEY, General Electric Co., Schenectady, N. Y.

The object of this paper is to express opinions on the principle of patent renewal fees, not because I know all the facts necessary for executive action, but because I want to contribute in order to learn more of them. My first thought on reading Dr. Hesse's letter of June 4 was that he had made a good case for renewal fees. As his facts receded from the foreground of my memory, I saw as the most appealing point of argument, the fact that the "dead German patent, therefore, still lives and rules in the United States," but on looking at it from different angles, I am not sure that even this is an evil to counterweigh added burdens to American inventors. There might be simpler ways to kill a living dead German patent, if that were desirable, than strangling American inventors. Judging, superficially I admit, from the enormous activity of American inventors, which has become a national characteristic, I am led to ask "Why change?" I do not know that added fees would have serious effect, but as Dr. Hesse points out, we ought to inform ourselves by contributing discussions.

I do not think added fees would greatly stifle or restrict inventive activity, because most inventors are persistent fellows, delayed, but not stifled, by such matters. I think that those who are not well backed financially would be handicapped,