Mr. STEVENS. Mr. President, I certainly join with the majority leader in urging Members of the Senate to extend their personal respects to one of the greatest Americans of all time who is in the Capitol today. I hope that we will all accord him the courtesy that he is justly due.

ORDER FOR RECESS FOR 10 MINUTES

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the recess extend for 10 minutes.

There being no objection, the Senate, at 2:59 p.m., recessed until 3:00 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. SARBANES).

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS FOR 30 MINUTES

Mr. ROBERT C. BYRD. Mr. President, since an order has already been entered for the Senate to proceed to the consideration of H.R. 6933 for not to exceed 5 minutes, I ask unanimous consent that, upon the disposition of that measure, the Chair declare a recess for 30 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

PATENT AND TRADEMARK LAWS AMENDMENTS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be discharged of the bill (H.R. 6933) to amend the patent and trademark laws.

The Senate proceeded to consider the bill, S. 3036.

S. 3036

AMENDMENT NO. 1779

(Purpose: To add the University and Small Business Patent Procedures Act to the bill)

Mr. DOLE. I send to the desk on behalf of the distinguished Senator from Indiana (Mr. Bayh) and myself an amendment in the nature of a substitute and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

A bill (H.R. 6933) to amend the patent and trademark laws.

The Senate proceeded to consider the bill.

UP AMENDMENT NO. 1779

Mr. DOLE. I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

"That title 35 of the United States Code, entitled 'Patents', is amended by adding after section 41:

"Chapter 30—PRIOR ART CITATION TO OFFICE AND REEXAMINATION OF PATENTS

"Sec. 301. Citation of prior art.

"302. Request for reexamination.

"303. Determination of issue by Commissioner.

"304. Reexamination order by Commissioner.

"305. Conduct of reexamination proceedings.

"306. Appeal.

"307. Certification of patentability, unpatentability, and claim cancellation.

"§ 301. Citation of prior art

"(a) Any person at any time may file a request for reexamination by the Office of any claim of a patent on the basis of any prior art consisting of patents or printed publications which that person believes to have a bearing on the patentability of any claim of a particular patent. If the person explains in writing the pertinency and manner of applying such prior art to the patent, the citation of such prior art and the explanation thereof will become a part of the file of the Office. The written request of the person citing the prior art, his or her identity will be excluded from the patent file and kept confidential.

"(b) The request for reexamination may be accompanied by payment of a reexamination fee prescribed by the Commissioner of Patents pursuant to the provisions of section 303 of this title.

"§ 302. Request for reexamination

"(a) Any person at any time may file a request for reexamination by the Office of any claim of a patent on the basis of any prior art consisting of patents or printed publications which that person believes to have a bearing on the patentability of any claim of a particular patent. If the person explains in writing the pertinency and manner of applying such prior art to the patent, the citation of such prior art and the explanation thereof will become a part of the file of the Office. The written request of the person citing the prior art, his or her identity will be excluded from the patent file and kept confidential.

"(b) The request for reexamination may be accompanied by payment of a reexamination fee prescribed by the Commissioner of Patents pursuant to the provisions of section 303 of this title.

"§ 303. Determination of issue by Commissioner

"(a) Within three months following the filing of a request for reexamination under subsection (a) of this section, the Commissioner will determine whether a substantial new question of patentability affecting any claim of a proposed amended or new claim determined to be patentable and incorporated into a patent shall be patentable. Such determination shall be based on a review of the prior art and any time, the Commissioner may determine whether a substantial new question of patentability affecting any claim of a proposed amended or new claim determined to be patentable. Any proposed amended or new claim determined to be patentable and incorporated into a patent shall be patentable.

"(b) Any proposed amended or new claim determined to be patentable and incorporated into a patent shall be patentable.

"§ 304. Reexamination order by Commissioner

"If, in a determination made under the provisions of subsection (a) of this title, the Commissioner determines that a substantial new question of patentability affecting any claim of a patent is raised, the determination will include an order for reexamination of the patent for resolution of the question. The patent owner will be given 60 days after the date of the determination to file a statement on such question, including any amendment to his patent and new claim or claim cancellation which may be proposed and incorporated into the reexamination. If the patent owner files such a statement, he promptly will be issued a copy of it and any time, the Commissioner may refund a portion of the reexamination fee required under section 303 of this title. Within two months after the filing of the reexamination a reply to any statement filed by the patent owner. That person promptly will submit a copy of any reply filed.

§ 305. Conduct of reexamination proceedings

"(a) A reexamination proceeding under this chapter, when filed, is commenced upon the filing of a request for reexamination under the provisions of section 303 of this title. Upon the filing of a request for reexamination under the provisions of section 303 of this title, the Commissioner will determine whether a substantial new question of patentability affecting any claim of a proposed amended or new claim determined to be patentable and incorporated into a patent shall be patentable. Any proposed amended or new claim determined to be patentable and incorporated into a patent shall be patentable.

"(b) Any proposed amended or new claim determined to be patentable and incorporated into a patent shall be patentable.

"§ 306. Appeal.

"The patent owner involved in a reexamination proceeding under the provisions of section 302 of this title, may seek court review under the provisions of sections 141 to 145 of this title, with respect to any decision adverse to the patentability of any original or proposed amended or new claim of the patent.

"§ 307. Certification of patentability, unpatentability, and claim cancellation

"(a) In a reexamination proceeding under this chapter, when for filing a request for reexamination under the provisions of section 303 of this title, the Commissioner will determine whether a substantial new question of patentability affecting any claim of a proposed amended or new claim determined to be patentable and incorporated into a patent shall be patentable. Any proposed amended or new claim determined to be patentable and incorporated into a patent shall be patentable.

"(b) Any proposed amended or new claim determined to be patentable and incorporated into a patent shall be patentable.

"§ 308. Certification of patentability, unpatentability, and claim cancellation

"(a) In a reexamination proceeding under this chapter, when for filing a request for reexamination under the provisions of section 303 of this title, the Commissioner will determine whether a substantial new question of patentability affecting any claim of a proposed amended or new claim determined to be patentable and incorporated into a patent shall be patentable. Any proposed amended or new claim determined to be patentable and incorporated into a patent shall be patentable.

"(b) Any proposed amended or new claim determined to be patentable and incorporated into a patent shall be patentable.

Sect. 2. Section 41 of title 35, United States Code, is amended to read as follows:

"§ 41. Patent fees

"(a) The Commissioner of Patents will establish fees for the processing of an application for a patent, from filing through disposition by issuance or abandonment, for the processing of a patent and for maintaining a design patent in force.

"(b) By the first day of the first fiscal year beginning on or after one calendar year after enactment of this Act, fees for the
The Commissioner may require the Treasury of the United States, the Patent Office, or the Trademark Office to the extent provided in sections 205, 351, and 352 of title 35, United States Code, to provide any applicant issued a patent or trademark with a copy of any patent or trademark relating to that patent or trademark without payment of any fee for such service or the estimated average cost to the Office of such processing.

(c) By the fifteenth fiscal year following the enactment, amendment of this Act, fees for maintaining patents in force will recover 25 per cent of the estimated cost to the Office, for the year in which such maintenance fees are received, of the actual processing of all applications for patents, other than for design patents, from filing through disposition by issuance or abandonment. Fees for maintaining a patent in force will be due three years and six months, seven years and six months, and eleven years and six months after the grant of the patent. Unless payment of the maintenance fee is received by the Patent and Trademark Office on or before the date the fee is due within a grace period of six months thereafter, the payment will be considered due at the end of such grace period. The Commissioner may require the payment of a surcharge as a condition of accepting the late payment of a maintenance fee.

(g) No fee established by the Commissioner under this section will be adjusted more than once every three years. No fee established under this section will take effect until 90 days following notice in the Federal Register.

(h) The term 'practical application' means a commercial use of inventions; and to minimize the use of inventions made in the United States, by United States citizens, for the benefit of industry and labor; to protect the public against nonuse or unreasonable delays in the use of inventions; and to improve the ability of United States citizens to compete in the world market.

(j) The term 'invention' means any invention or discovery which is or may be patentable or otherwise protectable under this title.

(k) The term 'subject invention' means any invention of the contractor conceived or developed by the contractor to practice in the performance of work under a funding agreement.

(l) The term 'small business firm' means a small business concern as defined at section 201 of Public Law 88-565 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration.

(m) The term 'nonprofit organization' means universities and other institutions of higher education or an organization of the type described in section 501(a) or any nonprofit organization qualified under chapter 48 of title 26, United States Code.

(n) The term 'funding agreement' means a contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and an agency of the Government for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government. Such term includes any assignment, subassignment of a contract, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as herein defined.

(p) The term 'contractor' means any person, small business firm, or nonprofit organization that is a party to a funding agreement.

(q) The term 'invention' means any invention or discovery which is or may be patentable or otherwise protectable under this title.
(b) Any determination under (d) of paragraph (a) of this section shall be in writing and based on a written statement of facts justifying the determination. A copy of each such determination and justification shall be sent to the Congressional Record of the United States without the approval of the Federal agency, except where such assignment is required under any existing or future treaty or agreement.

(7) In the case of a nonprofit organization, (A) a prohibition upon the assignment of the rights to the United States or the State to the Federal agency; and (B) a prohibition against the granting of exclusive licenses under United States Patents or Patent Applications in a subject invention by the contractor to persons other than small business firms for a period in excess of the earlier of five years from first commercial sale or use of the invention or eight years from the date of the exclusive license excepting that time during which the contractor is required to retain patent rights in market clearance unless, on a case-by-case basis, the Federal agency approves a longer period. The licensees are granted, commercial use or sale in one field of use shall not be deemed commercial or sale as use to other fields of use, and a first sale shall not constitute a sale in competition with embodiments of the invention (provided that such assignee shall be subject to the same provisions as the contractor). (B) a prohibition against the granting of exclusive licenses under United States Patents or Patent Applications in a subject invention by the contractor to persons other than small business firms for a period in excess of the earlier of five years from first commercial sale or use of the invention or eight years from the date of the exclusive license excepting that time during which the contractor is required to retain patent rights in market clearance unless, on a case-by-case basis, the Federal agency approves a longer period. The licensees are granted, commercial use or sale in one field of use shall not be deemed commercial or sale as use to other fields of use, and a first sale shall not constitute a sale in competition with embodiments of the invention (provided that such assignee shall be subject to the same provisions as the contractor).

(8) Each funding agreement with a small business firm or nonprofit organization shall contain appropriate provisions to effectuate the following:

(A) A requirement that the contractor disclose each subject invention to the Federal agency within a reasonable time after it is made by or on behalf of the recipient. The obligation is limited to information in fact, and on other aspects of Government patent policies and practices with respect to federally funded inventions, be utilized for the support of small business or education.

(B) The requirements of sections 203 and 204 of this chapter.

(9) A contractor does not elect to retain title to a subject invention within a reasonable time after disclosure and that the Federal Government may receive title to any subject invention not reported to it within such time.

(10) A requirement that the contractor disclose each subject invention to the Federal agency within a reasonable time after it is made by or on behalf of the recipient. The obligation is limited to information in fact, and on other aspects of Government patent policies and practices with respect to federally funded inventions, be utilized for the support of small business or education.

(11) A contractor does not elect to retain title to a subject invention in cases subject to this section, the Federal agency may consider and after consultation with the contractor grant requests for retention of rights by the inventor subject to the provisions of this Act and regulations promulgated hereunder to require the contractor to assign its interest to the Federal agency, be utilized for the support of small business or education.

(12) A contractor does not elect to retain title to a subject invention in cases subject to this section, the Federal agency may consider and after consultation with the contractor grant requests for retention of rights by the inventor subject to the provisions of this Act and regulations promulgated hereunder to require the contractor to assign its interest to the Federal agency, be utilized for the support of small business or education.

(13) A requirement that a contractor electing rights file patent applications within reasonable time after disclosure and that the Federal Government may receive title to any subject invention in the United States or other countries in which the contractor has not filed a patent application on the subject invention within such time.

(14) With respect to any invention in which the contractor is engaged, the Federal agency shall have a nonexclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention throughout the world, and may, if provided in the funding agreement, have additional rights including sublicense any foreign government or international organization pursuant to any existing or future treaty or agreement.

(15) A Federal agency shall have a nonexclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention in the United States or any country in which the contractor has not filed a patent application on the subject invention within such time.

(16) An obligation on the part of the contractor, in the event a United States patent application is filed on its behalf or by any assignee of the contractor, to disclose within the specification of such application and any patent issuing thereon, a statement specifying that the invention was made with Government support and that the Government assumes all rights in such invention.

(17) A Federal agency shall have a nonexclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention in the United States or any country in which the contractor has not filed a patent application on the subject invention within such time.

(18) A Federal agency shall have a nonexclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any subject invention in the United States or any country in which the contractor has not filed a patent application on the subject invention within such time.
of Science and Technology Policy, may issue regulations which may be made applicable to Federal agencies implementing the provisions of section 2211 of title 10, and to such other agencies as the Administrator of Commerce may designate.

197. Domestic and foreign protection of federally owned inventions

"Each Federal agency is authorized to--

(1) grant a patent, exclusive, or partially exclusive license under any patent or other form of protection in the United States and in foreign countries on inventions in which the Federal Government owns a right, title, or interest;

(2) grant nonexclusive, exclusive, or partially exclusive licenses in Federally owned patented inventions to another Federal agency as commercial and economic development programs or to the people of a foreign country in any line of commerce to which the technology to be licensed relates, or to create or maintain other situations inconsistent with the antitrust laws.

198. Regulations governing Federal licensing

"The Administrator of General Services is authorized to promulgate regulations specifying the terms and conditions upon which any Federally owned invention may be licensed. The Tennessee Valley Authority, may be licensed on a nonexclusive, partially exclusive, or exclusive basis.

199. Restrictions on licensing of federally owned inventions

"(a) No Federal agency shall grant any license under a patent or patent application on a federally owned invention unless the person requesting the license has supplied the agency with a plan for the development and use of the invention, except that any such plan may be treated by the Federal agency as commercial and financial information from a person who is not privileged and confidential and not subject to disclosure under section 552 of the United States Code.

(b) A Federal agency shall normally grant the right to use or sell any federally owned invention in the United States only to a licensee that agrees that any products embodying the invention or produced through the use of the invention will be manufactured substantially in the United States.

(c) (1) Each Federal agency may grant exclusive or partially exclusive licenses in any invention covered by a federally owned domestic patent or patent application only if the agency determines that the assigning written objections, it is determined that--

(A) the interests of the Federal Government and the public will be best served by the proposed license, in view of the applicant's need and the significance of the invention to practical application or otherwise promote the invention's utilization by the public; and

(B) the desired practical application has not been achieved, or is not likely expeditiously to be achieved, under any nonexclusive license obtained on a substantially less competitive basis.

(2) exclusive or partially exclusive licenses in inventions in which the Federal Government owns a right, title, or interest; or

(3) the Federal agency determines appropriate for the protection of the interests of the Federal Government or to otherwise limit the authority of agencies to otherwise limit the authority of agencies to

200. Precedence of chapter

"(a) This chapter shall take precedence over any other Act which would require a
allow such persons to retain ownership of inventions. Any disposition of rights in inventions made in accordance with the Statement or implementing regulations is enforceable in any court and is subject to challenge before enactment of this section, are hereby authorized.

"(d) Nothing in this chapter shall be construed to impair the authority to disclose intelligence or to otherwise affect the authority granted to the Director of Central Intelligence by statute or Executive order for the protection of intelligence sources or methods."

§ 211. Relationship to antitrust laws

"Nothing in this chapter shall be construed to deny to any person immunity from civil or criminal liability, or to create any defenses to actions, under any antitrust laws.

(b) The table of chapters for title 35, United States Code, is amended by adding immediately after the item relating to chapter 37 the following:

"38. Patent rights in inventions made with Federal assistance."

Sec. 7. Amendments to Other Acts.—The following Acts are amended as follows:

(a) Section 156 of the Atomic Energy Act of 1954 (42 U.S.C. 2166; 68 Stat. 947) is amended by repealing the words "held by the Commission or"

(b) The National Aeronautics and Space Act of 1958 is amended by repealing paragraph (g) of section 305 (42 U.S.C. 2457(g); 72 Stat. 436).

(c) The Federal Nonnuclear Energy Research and Development Act of 1974 is amended by repealing paragraphs (g), (h), and (i) of section 9 (42 U.S.C. 30364; 96 Stat. 1989-1991).

Sec. 8. (a) Sections 2, 4, and 5 of this Act will take effect upon enactment. (b) The following paragraph, which will take effect on the first day of the seventh month beginning after enactment, shall be added after paragraph (d) of section 6 of this Act:

"(e) The Federal Nonnuclear Energy Research and Development Act of 1974 is amended by repealing paragraphs (g), (h), (i); 88 Stat. 1899-1901.

Sec. 9. (a) Amendments to the Patent and Trademark Act of 1952 (35 U.S.C. 101 et seq.) are made as follows:

(1) that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or

(2) that such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

Any exact copies prepared in accordance with the provisions of this section may be leased, sold, or otherwise transferred, along with the computer programs copies of which were prepared, only as part of the lease, sale, or other transfer of all rights in the program Adaptations of the program, and adaptations only with the authorization of the copyright owner."

"Amend the title so as to read: "A bill to amend the patent and trademark laws."

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and the third reading of the bill.

The amendment was ordered to be engrossed and the bill to be read a third time.

Mr. BAYH. Mr. President, there has been no more troubling issue before this Congress than the disturbing slump in American innovation and productivity. This trend strikes at the very heart of our economy and leads to a loss of jobs, a weakening of the dollar, and a poor balance of trade.

There are many complex reasons for this unhealthy trend, yet virtually every expert who has testified before the Congress has mentioned the weaknesses in our present patent laws as a significant contributor to the problem. The amendment that I am offering to the House-passed bill, H.R. 6933, represents an important step in solving this patent problem.

The amendment that I am offering represents in essence the patent policy incorporated in the Corporate Reorganization Act overwhelmingly passed by the Senate after being unanimously reported out of the Senate Judiciary Committee.

This new policy will make federally supported research, and development more productive by allowing the private sector to develop many inventions now left gathering dust on the shelves of Government agencies. This patent policy re-
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with this one minor addition in the legislative history. For the fee provision, I recommend that it be accepted. There should also be provisions made in the implementing regulations of the Patent and Trademark Office to extend the deadline for payment of fees that inadvertently miss payment through no fault of their own.

Few would argue that trademark fee adjustments are not needed. They have not kept pace with inflation for years. Rather than merely increasing fees, this bill ties them to recovering an established percentage of average estimated costs, without any feeling or control. Under this support, fees increase based on a percentage of cost recovery waned dramatically when the language creating a Patent and Trademark Office independent of the Department of Commerce, an action I actively sought, was deleted from this legislation. In any case, this open-ended structure should not be construed as a “blank check.”

While there is no provision in this legislation to prohibit the commingling of several tiers of processing, filing, and maintenance charges. My amendment will also authorize a 2-year study of the feasibility of computerizing many of the operations of the Patent and Trademark Office. The Judiciary Committee has been very concerned with reports it has received about missing patent files and the uncertainty of many issued U.S. patents. Computerization should significantly modernize the operations of the Office and this study will be very important in determining how best to proceed.

Finally, Mr. President, this amendment clarifies the 1976 Copyright Act as it is related to the ability to obtain copyrights on computer software. This language reflects that proposed by the Commission on New Technological Uses of Copyrighted Works and is supported by the Copyright Office.

This amendment represents a satisfactory factory compromise between the positions of the Senate and the House. This bill will be a significant step forward not only for the patent system, but for American innovation and productivity. I urge my colleagues to join with me in supporting this vitally important legislation.

Mr. SCHMITT: Mr. President, as most of my colleagues are undoubtedly aware, recent economic indicators suggest that the United States is experiencing an alarming decline in the rate of technological innovation and economic growth, and 85 percent of U.S. exports.

I believe the correct approach would allow all contractors, regardless of size or profit status, to acquire title to their inventions made under Federal contracts while retaining the structure, protection, and encouragement that is applicable to all contractors, regardless of size.

I view the legislation before us today as only the first small step in the process of providing incentives for technological innovation among all recipients of Federal R. & D. funds, and urge my colleagues to continue their efforts toward that end.

Mr. DOLE: Mr. President, the present patent policy generally encourages retention by the Government of rights to inventions it sponsors. This policy has resulted in a reluctance by universities and industry to invest the necessary funds for the development and marketing of inventions emanating from fed-
erally funded research. This is understandable in view of the fact that the development process is not only risky but expensive, and estimated to cost 10 times the cost of the initial research.

In order to encourage patent rights and innovations, the Government increases the factor of uncertainty in an already uncertain area, that of technology end result. Under the modicum of protection that the granting of patent rights for a limited period of time would afford, the Government removes the incentive that would stimulate the private sector to develop market inventions.

**IMPACT OF FEDERAL POLICY**

The effect of this policy is twofold, bearing on the consumer as well as on the economy in general. In both cases, the public is the victim. When large amounts of taxpayers' money are directed to the research field, the public expects and deserves to reap the benefit of its investment in the form of lower cost, better quality, and increased consumption. When this fails to materialize, it is obvious that the Government has reneged on its promise. This is evidenced by the fact that the inventions funded by the Government, only about 5 percent have been used.

The damaging impact of the Federal patent policy on the economy is dramatic. That we have lost our leadership role to Japan in the field of electronics and shipbuilding is no accident. Without short-term exclusive rights, small firms cannot take the risk of bringing innovations to the commercial market, but large foreign firms can and are doing so, with ideas gleaned from U.S.-funded research. That the richest nation on Earth has a trade deficit with Japan amounting to $13 billion leaves room for reflection, when one considers the fact that Japan has no natural resources on her mainland.

The almost adversarial relationship that now exists between business and Government must be replaced by a true and genuine partnership in which the Government will act as impresario in bringing industry and universities together with new fields of knowledge, and their practical implementation.

The amendment that I am cosponsoring represents the patent policy incorporated in S. 414, which was overwhelmingly passed by the Senate after being unanimously reported out of the Senate Judiciary Committee.

This new policy will result in an increase in productivity by allowing the private sector to develop many inventions left on the shelves of Government agencies. Small businesses and universities that conduct research and development for the Government will now have the incentive to develop and market the inventions that they create.

**THE PATENT TRADEMARK OFFICE**

An estimated 2 to 28 percent of the search files are missing in each patent subclass. Therefore, when patent examiners are searching these files, when seeking prior patents and relevant materials, in order to determine whether or not to grant a patent, some of the necessary materials are missing. The failure of the patent examiner to find all of the relevant materials and patents in his report can be used to challenge the patent's validity in court.

If the Patent and Trademark Office is to meet its responsibilities to the patent applicant for prompt issuance and still insure that all of the relevant materials have been considered, the PTO must be given the authority to reexamine patents.

**PATENT REEXAMINATION**

As drafted, H.R. 6933 allows a person who wanted to challenge an issued patent on the basis of prior publications or print-ed publications they would file a request with the PTO along with the fee and the evidence that is relevant to patent prosecution. A patent holder would be informed of the challenge and would receive a copy of any cited material being used to question his patent. Within 90 days of receipt of this request, the Commissioner of the PTO would issue an initial decision. The patent holder would have the right to appeal the Commissioner's decision if the patent was invalidated.

Under H.R. 6933 the courts would have the option of accepting patent validity cases. The other provisions of this amend-ment will result in an increase in patent and trademark fees. These fees have not been increased for 15 years.

Trademark fees have not been increased for years. This bill will tie the increase in fees to the recovery of an established percentage of average estimated cost, without any feeling of control.

Congress must exercise oversight of the implementing regulation since this increase in patent and trademark fees goes into effect to insure that it does not have a negative impact on independent inventors and small businesses.

Additionally, this amendment will clarify the 1976 Copyright Act as it pertained to the ability to obtain copyrights on computer software. This language reflects that proposed by the Commission on New Technological Uses of Copyrighted Works and is supported by the Copyright Office.

Mr. President, this amendment is an acceptable compromise between the versions offered by the Senate and the House. It is a hope to the Senator from Kansas that this legislation will be a significant step forward for American innovation and productivity. I urge my colleagues to support this necessary piece of legislation.

The PRESIDING OFFICER. The bill having been read the third time, the question is: Shall it pass?

The bill (H.R. 6933), as amended, was passed.

Mr. DOLE. Mr. President, I move to reconsider the vote by which the bill passed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

**RECESS FOR 30 MINUTES**

The PRESIDING OFFICER. Pursuant to the previous order, the Senate now stands in recess for 30 minutes.

Thereupon, at 3:06 p.m., the Senate recessed for 30 minutes; whereupon, at 3:36 p.m., it reassembled when called to order by the Presiding Officer (Mr. SANDERS).

Mr. RIEGLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, if the quorum call is necessary it will be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, what is the pending question before the Senate?

The PRESIDING OFFICER. The motion to proceed to the consideration of S. 1480.

**RECESS UNTIL 4:30 P.M.**

Mr. ROBERT C. BYRD. Mr. President, I am informed that the parties are still negotiating and need a little more time.

Therefore, I ask unanimous consent that}