

Patent Act—Trade Marks Act

Mr. Lambert (Edmonton West): May I ask the minister one question, Mr. Speaker. Take the case of a patent holder who is appearing before the commissioner to resist the application that has been made by the "copier"—and I put that in quotation marks. If the application fails, are costs awarded to the patent holder, or is this to be an ordinary expense of business to defend his patent against any and all comers? I do not think it would be fair that a man who has worked for something, who has a patent for it and has a proprietary right should be, shall we say, assaulted from all sides and have to bear the cost of defending his patent.

Mr. Basford: Subject to whatever advice I may receive, and I am not an expert on the particular matter that the hon. member raises, I point out that the Patent Act establishes private rights of ownership. It is the duty of the owner of those rights, to protect them at his cost. This is true of the Patent Act, the copyright Act and the Industrial Design Act. The government, or our society if you wish, provides the machinery for registering the ownership of patents, copyrights or industrial designs, and it is up to the owner to protect them at his cost.

The hon. member has a much greater knowledge of the Income Tax Act than I do, but I believe that the patent holder in such a case would be entitled to deduct that cost as an expense of doing business.

Mr. Lambert (Edmonton West): But at no point in any of our legislation do we extend an overt invitation to the public to attack a patent, as we do in the principle of these amendments.

Mr. Basford: The overt invitation that the hon. member speaks of has been in the act since 1923.

Mr. Lambert (Edmonton West): That is a lot of nonsense.

Mr. Ritchie: I would like to ask the minister how many compulsory licences for drugs have been refused?

Mr. Basford: Mr. Speaker, I think the hon. member asked that question during the committee hearings and received an answer. I forget the answer myself, as perhaps does the hon. member.

Mr. Rynard: As I understood the minister, he said that the Patent Commissioner can ask the Food and Drug Directorate for directions.

All we are seeking is that this be made statutory. Why would the minister object to that? I do not think there would be any difficulty with communications because they are all working here on Parliament Hill, and in any case a compulsory licence usually is not granted for months. What we are asking here is that what is done in principle be made statutory.

Mr. Basford: The amendment that I am introducing provides that the commissioner shall give notice to the Department of National Health and Welfare of an application for the granting of a compulsory licence. Therefore, if the Department of National Health and Welfare or its specific agency, the Food and Drug Directorate, feels it should make some observations, comments or arguments to the Commissioner of Patents, it has notice of the application and is free to make the arguments or comments it wishes.

Second, and I think this is the main reason, is the fact that the Food and Drug Directorate is concerned with the safety of drugs, all drugs whether they be patented or not. Therefore, this is where their jurisdiction is; it is over all drugs and the hon. member, who is a doctor, knows that there are all sorts of drugs on the market, some of which are patented and some of which are not patented, but both of which classes are within the full jurisdiction of the Food and Drug Directorate to assure the safety of the drugs and to assure the protection of the Canadian public. The Food and Drug Directorate should not be involved in the granting of patents. It should be involved, as at present, in the sale of those drugs, or in the importation of those drugs, and should be unrelated to the patenting thereof.

Mr. Rynard: Mr. Speaker, I will not press my point further except to say that I think it would be a little more definite if it were made statutory. Then, we would know that the Food and Drug Directorate would have to get in touch with the Patent Commissioner and there would be no slip up. That is all I am asking, but I am not going to press the point.

Mr. Deputy Speaker: Is it the pleasure of the house to adopt the said amendment? All those in favour will please say yea.

Some hon. Members: Yea.

Mr. Deputy Speaker: All those opposed will please say nay.

Some hon. Members: Nay.