

Statement of
Susan Biniarz
Attorney-Adviser, Office of the Assistant Legal Adviser
for Oceans, International Environmental and Scientific Affairs

Department of State

before the

Subcommittee on Space Science and Applications
Committee on Science, Space, and Technology
House of Representatives

Thank you for the opportunity to present the views of the Department of State concerning legislation to apply U.S. patent law to certain activities in outer space.

The Department of State supports the proposed legislation, which would codify the applicability of U.S. patent law to certain activities in outer space and provide appropriate flexibility for variations contained in international agreements. The proposed legislation, if enacted, will enable the United States to enter into force the Space Station Intergovernmental Agreement, which was signed by the United States, nine members of the European Space Agency, Japan, and Canada on September 29, 1988. The Space Station Agreement contains provisions on intellectual property that cannot fully be implemented by the United States without legislation such as H.R. 2946. Thus, State supports early enactment of the proposed legislation.

The Department of State supports the substitution of H.R. 2946 for H.R. 352. Specifically, State favors the clarification contained in H.R. 2946 to the effect that U.S. patent law will not apply to foreign-registered space objects unless the foreign state of registry so agrees.

Under the Outer Space Treaty and the Registration Convention, the state that registers a space object retains jurisdiction and control over it. We therefore want to ensure (as does the European Space Agency and Canada) that, in the absence of the agreement of the registering state, U.S. patent law does not apply to space objects registered by a foreign state, even if such space objects are "under the jurisdiction or control" of the United States.

Although H.R. 352, as we understand it, was never intended to make U.S. patent law apply to foreign-registered space objects, this was not indicated in the plain text of the bill. Thus, H.R. 2946 -- with its clear statement in this regard -- is very desirable from State's perspective. The amendment makes clear that the legislation will operate in a manner that is fully consistent with the Outer Space Treaty and the Registration Convention.

Finally, we also support the element of H.R. 2946 that provides additional flexibility to enable the United States and a foreign state to agree to the application of U.S. patent law to space objects registered by that foreign state, whether or not such objects are under the "jurisdiction or control" of the United States.

Thank you.