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This Week

- 132 Ancient Animal Sheds False Identity
- 132 Imaging shock waves via proton snapshots
- 133 Novel gene defect for colorectal cancer
- 133 Dioxin's fowl deed: Misshapen brains
- 134 Antitumor gene finds long-lost sibling
- 134 Endangered seals suffer massive die-off
- 134 Mammograms better when timed to cycles
- 135 Social links may counter health risks
- 135 Freeze! Insect proteins halt ice growth

Research Notes

- 141 Biology
- 141 Biomedicine
- 143 Earth Science
- 143 Materials Science

Articles

- 136 Paleopathological Puzzles

Cover: The arid conditions of Chile's Atacama Desert helped preserve this 1,000-year-old warrior. Paleopathologists are probing the ancient world for diseases that still stalk humans. (Photo: Marvin Allison)

- 138 Outside Influences

Departments

- 130 Books
- 131 Letters

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Letters

Fee hike taxes invention

Congress clearly has ulterior motives for wanting to raise fees in the Patent and Trademark Office (PTO) ("Patents, copyrights a bargain—for now," SN: 7/12/97, p. 31). The PTO has been fully funded by fees since 1991. According to the NATIONAL LAW JOURNAL, Congress has failed to appropriate the full surcharge amount back to the PTO since 1992, when \$8 million of PTO fee revenues went to the general treasury. Counting last year, Congress has diverted \$142 million in patent-fee surcharges.

This is essentially a tax on invention. If anything, PTO fees should be reduced, not increased. Your article neglected to discuss that the current fee structure, which does provide a low filing fee, also includes issue fees and maintenance fees, which must be paid to keep a patent in force 3, 7, and 11 years after issue. These maintenance fees rely on money-making patents to help keep

filing fees down, thus encouraging more patent filings.

Leonard Heyman
Rochester, N.Y.

The U.S. patent system was established to grant inventors and authors an exclusive right to their intellectual property. This right was designed to serve as an incentive for public disclosure of knowledge crucial to the growth of society and to offset the growing practice in the colonies of trade secrets and guilds.

The fundamental question is, Who benefits from the government protection of intellectual property—the inventors and authors or the general public? This question is answered in the U.S. Constitution, but people have been led to believe that the inventors and authors should pay for the government's services in carrying out this constitutional mandate.

In addition, there is a growing tendency for inventors and innovators (the owners of intellectual property) to seek government protec-

tion for their discoveries through trade secrets. This is a complete adulteration of the original intention, and insisting that the PTO pay for itself contributes to this tendency.

It also results in many patents being abandoned by inventors who cannot afford the maintenance fees. How many inventions in the "public domain" (resulting from abandoned patents) are being "innovated" by some of our international trading partners and embodied in imports?

Finally, over 80 percent of U.S. inventors are required to assign their intellectual property rights to their employers as a condition of employment. Patent office fees are of little concern to major patent owners (innovators), since these costs are tax-deductible.

If the application of this constitutional right must "pay for itself," where do other rights in the United States stand?

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