leading manufacturers of industrial stokers have taken out license on this

government. A differential pressure control is required to regulate the operation of the
boiler apparatus. He wishes us to propose descriptive specifications and a
license fee on a unit for this application, and if it seems satisfactory to him,
he will purchase two of the units immediately for use in his own test laboratory.
If he feels that he would use perform satisfactorily, he will write a specifi-
cation and recommend it to each licensee who, in turn, would each purchase
the improvements directly from Merco.

Now this patent owner, he didn't go out and try to make money
on the controls. Now, suppose we had approached him and taken a
license and said, "The only way you can get this thing is by buying
this control from us." That is the improper method which the Su-
preme Court in the Mercoide decisions objected to. That is what you
are repeating or changing in section 251 (d).

The letter I have just quoted from shows you that there are methods
for these owners of patents to license their patents. He is licensing his
property. He is recommending a control. He is not saying where
they must buy it. We will sell it in a perfectly safe way and even with
his permission. He needs that control for his purpose and we have to
design some specification and buy it from him.

Now, there is an approach, I think, that these people are forgetting
that, that the patents can go out and operate in a legal manner and
not get out and make his money on the unpatented articles. The Su-
preme Court decision was very definite on that—that you cannot go
out—and we have not operated that way.

Rather than take up more of your time, I would suggest you again
read the Mercoide decision.

I believe there was an error made by the Ninth Circuit in the Supreme
Court of Appeals case being a 5-to-4 decision on the question of contributory
infringement.

The disagreement of the Court was with respect to the subject of res
adjudicata, relating to misuse as a defense, on the grounds that the
defense should have been raised in an earlier suit but wasn't. As to the
misuse principle, the Court was unanimous in the Mercoide and Minne-
apolis-Honeywell cases. I believe you will find that there are
ways for these inventors to license their patents without conditioning
the same to obtain a monopoly on unpatented (or by them) material. We
are working with inventors right along. We are not trying to gain
a monopoly. This man found a way to meet a stoker invention and he
is doing it nicely and he is not infringing and isn't practicing the
patent improperly—or are we infringing the patent?

Mr. Birdseye. We will certainly re-read the Mercoide case.

As declared, we will leave the record open and those of you, even
those who have not appeared in person, who have pertinent suggestions
to make may submit them within this period.

Under those conditions the oral hearing has been concluded.

(Whereupon, at 4:20 p.m., the hearing was concluded.)
PATENT LAW CODIFICATION AND REVISION

out particular reference to a defense emergency and became effective a month
before the invasion of Korea, they have proved a valuable tool in organizing the
administration of the defense program. As the conditions change and new
problems arise, these reorganization plans will

As conditions change and new problems arise, these reorganization plans will
greatly facilitate the adaptation of departmental organization to the new
requirements. However, if the bills adopted by the Congress to enact titles of the
code into definite law vest the functions in subordinate officers, this possibility
will be obviated and the purpose of the reorganization plans achieved.

For reasons of which it is very important that new legislation, and especially
the existing functions of the code, adhere to the pattern established by the
recent reorganization plans of vesting functions in the heads of departments
rather than in bureau chiefs and other subordinate officers. This principle has
long been observed by the Congress in the case of certain departments, particularly
those administering research, education and agriculture, many of the
departments under the responsibility of the Secretary of Commerce, and
accordance with its operating programs.

Accordingly, I should urge that your committee revise H. R. 2870 to vest
the functions in the Secretary of Commerce rather than the Commissioner of
Patents.

Sincerely yours,

ELMER B. STELLE, Acting Director,

THE SECRETARY OF COMMERCE,
Washington, June 20, 1951.

Hon. Joseph R. Byrnes,
Chairman, Subcommittees No. 3 and Committee on Judiciary,
House of Representatives, Washington, D. C.

Dear Mr. Chairman: This letter is in further reply to your communication
of April 30, 1951, requesting the comments of the Department concerning H. R. 2870,
to revise and codify the laws relating to patents and the Patent
Office, and to enact into law title 35 of the United States Code entitled "Patents." The
Codified Patent Act, which was drafted with the help of the Patent Office,
and to enact title 35 of the United States Code into law, make certain revisions in existing
law. The Department of Commerce is fully in accord with the purpose of H. R. 2870 but
finds it necessary to object to the use of language inconsistent with the purposes
of Reorganization Plan No. 5 of 1950.

On March 24, 1950, the President transmitted to the Congress Reorganization
Plan No. 5 of 1950, which vested in the Secretary of Commerce the responsibility for
the reorganization of all offices of the Department and for the reorganization of
all agencies and employees (with exceptions not here relevant) of the
Department. This plan was not unfavorable to the plan failed to pass either House and
the plan became effective March 24, 1950.

In testimony before the Committee on Expenditures in the Executive Department
of the House of Representatives, the Secretary of Commerce stated that the
chief problem was to determine the size and shape of the Department in the
Congress. Without reservation, I am convinced sincerely that this plan is entirely
consistent with the principles of a new and practical organization.

In his testimony before the Congress, Mr. Kennedy stated at some length and went into considerable detail concerning the functions of the
Patent Office and the effect of the passage of the Reorganization plan and the location and
an organization of the Patent Office. He stated:

I have the impression of changing the present procedure or the present powers
of the Patent Commissioner or the Patent Office, and I have already expressed
my objection to vesting the functions of the Commissioner of Patents in the
Secretary of Commerce. The effect of the passage of the Reorganization plan on
the location and administration of the Patent Office and the effect of the passage of the
Reorganization plan on the location and administration of the Patent Office is

A departmental order carrying out this announced policy was promulgated immediately after the plan went into effect.

Repeal of H. R. 2870 in its present form without providing for the vesting of
the functions described therein in the Secretary of Commerce would effect a
partial repeal of Reorganization Plan No. 5 and we are opposed to any such
amendment. If it appears appropriate that provision be made in the proposed
codification for continuing the amendment made by this plan.

D. W. BENTZEL, Acting Secretary of Commerce.

THE NATIONAL EDITORIAL ASSOCIATION,
Washington, June 23, 1951.

Representative Joseph R. Byrnes,
House Office Building, Washington, D. C.

Mr. Chairman: It is our understanding that subcommittee No. 3, of which
you are chairman, has just completed a series of hearings with respect to H. R. 2870,
Repeal of the Trade and Tariff Act of 1930, and that you have made it your
business to determine the effect of the enactment of this bill on the
Commissioner of Patents additional control over advertising by patent attorneys or
agents.

The National Editorial Association is a trade organization representing
community newspapers and city dailies. It is the opinion of the Association that the
Commissioner of Patents additional control over advertising by patent attorneys or
agents.

The National Editorial Association is a trade organization representing
community newspapers and city dailies. It is the opinion of the Association that the
Commissioner of Patents additional control over advertising by patent attorneys or
agents.

Very truly yours,

E. P. ANDERSON,
Chairman, Executive Committee,
National Editorial Association.
A. PAUL CONSOR.
ATTORNEY AND COUNSELOR AT LAW,
Baltimore 11, Md., May 14, 1921.

To Patent advertising ethics.
Hon. J. R. Barton,
Member of Congress,
Washington, D. C.

Dear Sir: I suggest that you look into the following phase in patent matters. It seems that some patent attorneys expend some $5,000 a month in paid advertising in periodicals. The same attorneys go to the trouble to make up their applications, but get the full fee for the work, fancying the impression with the inventors that they are getting the personal service of the member mentioned in the title of the concern.

If requested, the Commissioner of Patents would be glad to furnish data on this phase of patent practice. It would seem consistent with good practice to limit the expenditure for paid commercial advertising by patent attorneys to $1,000 a month at normal rates (no discounts or rebates). And put this in the statute, so it will be enforceable.

Very truly yours,
A. PAUL CONSOR.

CHARLES J. ZINN, Esq.,
Law Revision Counsel, House Judiciary Committee,
House of Representatives, Washington, D. C.

Dear Mr. Zinn: In our brief conversation of yesterday, I gave you a reference to volume 61, page 941, of the Reports of the American Bar Association (1898), of title 35, section 11, of the United States Code, due to the words "by word, circular, letter, or advertising." An examination of that reference will further show that Mr. Zinn explained that the presence of those words in the statute had been construed "by analogy," as follows: "If an attorney apply for patent to his client, and, as the statute then and now stands, there is a question as to whether the client has the power to prohibit registered patent attorneys from advertising, except when done with misleading intent. From the report of the committee on codes and practices of the American Bar Association to the section of patent, trademark, and copyright law (1900), it is very clear that Conway C. Cox, when he was Committee on the construction of trademarks and copyright law (1910), interpreted the section as preventing him from advertising. The following is a quotation from that report:

"That substantially a conference was held at Chicago on February 19, 1899, at which it was agreed that the most desirable action would be some legislation in the nature of a rule prohibiting the practice but that, irrespective of how favorably disposed he might be, he would not take such action unless the present statute be clarified by amendment, as it is his view (but under it he does section 11 of the present act: or who shall with Intent to defraud, to mislead, or threaten any patent or prospective applicant or other person having immediate or prospective business before the Office by "ceiling authority" which the statute seems to be intent to authorize. It seems, too, to be the statute, and the authority. It has been this subject. The United States Code (title 35, section 11, et seq., on page 471). It appears that this section of the patent, trademark, and copyright law reported to the United States Senate in 1897, in the form of the bill of 1886, Section 3 of the United States Statute is not an act, as it is now written, a law. There is a provision of the law granting to inventors the exclusive right to make, use, or sell their inventions, for a limited time, and then to stop the same to the public for prosecution in the United States Patent Office. It is clear that we employed for this type of work were the original American statute. It has been employed for this purpose. It was employed for this purpose. It was employed for this purpose.

The Commissioner of Patents alone has power to discipline registrants who are not licensed, and it is asserted that the power given him by statute (R. S. 1847, U. S. C. 11) is insufficient to enable him to do all advertising because of the present statute, by mentioning advertising, impliedly authorized the Commissioner of Patents alone has power to discipline registrants who are not licensed. It is also asserted that on account of the first clause of the statute, which would omit from the law the words "or who shall, with the intent to defraud..."
Suggestion: That the Commissioner of Patents shall issue a certificate of authority to write patent specifications, claims, and amendments to anyone who shall present written proof from a registered patent attorney or agent that the person so authorized had been duly admitted to practice before the Patent Office for 3 years, or has been admitted to practice before the Patent Office for 5 years; and, if so qualified, shall issue the certificate of authority to write patent specifications, claims, or amendments, or all three, and if they are qualified to write the same for chemical, electrical, or mechanical inventions; that a charge of $10 shall be made for each certificate.

The above-mentioned provision does not in any way whatever suggest, approve or recommend that a person other than as now licensed be permitted to practice before the Patent Office. In fact, I would even make it a crime for the telephone directories to give out the names of those whose ads in the above section are patent attorneys. Some people still do this in spite of all the laws and the Patent Office well knows of the facts.

Another thing sir, is a large number of people are mislead about inventions and patents. Sometimes people are needlessly searched, and if there are no changes in the report they receive, they are satisfied with the work, and pay the attorney. On the other hand, where the attorney is not the only one to practice before the Patent Office, they can look at all the patents that have been made, and see if there are any patents required to show them. There are no restrictions as to how many patents are to be examined before doing so.

One other matter often overlooked is the fact there is practically no school in much of the country where one can go and take a course in patent law. I trust you will give serious consideration to the above matters and be able to make a form of amendment to that bill that will permit others like myself to continue to perform certain useful services to inventors and patent attorneys with limited funds. Sincerely, I respectfully request, not desired by us to be taken as the practice of patent law. I am sure that neither you or the Commissioner of Patents have any desire to force me out of work, yet, what can one do if your bill is passed? Patent attorneys here in the South do not by themselves have enough work to keep busy, and I for one cannot get a connection with a patent attorney in another city. No course in instruction in patent law.

A letter as to my ability in patent work given by a registered patent attorney and a letter as to the services of myself in the Patent Office is not taken as proof enough under the present law for me to be granted an agent's license, and I know of no other way to get such a license. This latter is not because I do not know everything, but because I am not up on the finer points of the subject. Trusting I may have the pleasure of hearing from you on this matter. Sincerely yours,

J. O. EVANS.
If an assistant should leave the employ of the laboratory or should by chance mention to a friend something about this development and this information is distributed to England, this publication would be beyond the control of the inventor. The inventor then processes as quickly as possible to file a provisional application to patent himself in England. Within the year he files in the United States the convention application, claiming the convention date. The uncontrolled publication of some of the information would invalidate his American application and patent as far as the disclosure is concerned due to this publication.

On the other hand, if his actual date of filing his application in the United States was allowed to be equivalent to or the same as the convention date, he would get his desired protection. Therefore, I recommend that the actual date of filing in the United States under a convention date should be the convention date as far as publications are concerned describing work done by the inventor himself. The present law does not protect an inventor in such situations where publication is beyond his control. On the other hand, an American inventor is protected abroad under similar situations. Therefore, it is unfair and in due time American inventors may lose valuable rights which foreign counsels could retaliate against this unfair situation here.

An out on page 5, paragraph 102, the present bill provides that the invention must not be published more than 12 months prior to the filing of the applications in the United States. This should be limited to state that it must not be published by others or as the discovery of others, other than the inventor. The inventor should have the right to patent protection providing he files his application within 12 months of his publication anywhere and then providing him an American application equivalent to such foreign application under the convention date.

I hope you will give this due consideration, as situations are constantly arising which are very unfair to inventors, especially those residing abroad.

Very truly yours,

Radio Patent Corp.,
WILLIAM DREW, President.

PATENT EQUITY ASSOCIATION, INC.
New York, N.Y., June 18, 1951.

Hon. PATENT COLLEGE,
House of Representatives,
Washington, D. C.

Dear Sir: As directed by the President of the Patent Equity Association, I am sending you herewith 10 copies of a resolution of the board in favor of the enactment of R. 3700, a section of the 1951 Congress, first session, for the use of the members of your committee.

Very truly yours,

T. IRVING FISHER, President.

RESOLUTION

Referring to R. 3700, Eighty-second Congress, first session, a bill to revise and codify the laws relating to patents, and so forth, the board of directors of Patent Equity Association, Inc., hereby resolves as follows:

1. The bill evidences much careful thought.
2. The innovations of the most modern, sound and constructive kind. In this section, defining what is patentable, suffers from some faults in draftsmanship, including use of words without antecedents, use of different words to designate the same concept, and an attempt to add art with definition, and a somewhat illogical and confusing arrangement.
3. I am sure that you are as deeply concerned as any of the many people more directly interested in the patent laws in having the recodifying state the law with great accuracy, and I consequently invite your most careful consideration of the following additions and changes, which are intended to be and are a substitute for the codification of existing law, with no change in effect from what was intended in section 102, and the immediately adjacent sections as introduced before the Congresses:

101. Definitions.—Add the following subparagraph:

(c) The word 'applicant' includes not only an inventor but also joint inventors and joint inventors in possession as assignees when entitled to take action in connection with applications for patents.

102. Inventions patentable.—In line 1, after "any," insert "invention which is.

103. Date of invention (new section to be inserted between 101 and 102):—

An invention shall be deemed to be made when conceived and by actually reduced to practice by or on behalf of the inventor or constructively reduced to practice by the filing of an application for patent, but provided that an applicant for a patent, prior invention or prior knowledge, use, or publication, may be overrode by good of reasonable diligence in adapting and perfecting the invention from the time just before the earliest activity of the rival inventor or the earliest date of knowledge use or publication, and continue until the reduction to practice.

For patentability: novelty and time of reduction to practice write the section as follows: If applicant shall not be entitled to a patent for an invention if the inventor or inventors named in the application for patent.
did not themselves invent it, nor if the invention has been abandoned, nor if any of the following prior art exists:
(a) the invention was known of or used by others in this country, or patent or described in any printed publication in this or any foreign country, before the invention was made by the named inventors; or
(b) the invention was patented or described in any printed publication in this or any foreign country or in public use or on sale in this country, more than 1 year before the date of the application for patent in the United States; or
(c) the invention was described by another in an application for patent filed in the United States before the invention was made by the named inventors, and issued as a patent; or
(d) the invention was first patented or caused to be patented by the applicant or his legal representatives or assigns in a foreign country before the date of the application for patent in this country on an application filed more than 6 months in design cases or 12 months in other cases before the date of the application in the United States; or
(e) the invention was, in fact, made in this country by another, who had not abandoned it, before it was made by the named inventors.
In conclusion, I wish to commend those who have devoted so many hours to work on this bill, for the excellent results, and to urge that it be approved with such corrections as may be needed to make it say exactly what it is intended to say.

Very truly yours,

Harold R. Metz
Patent Counsel.

Hon. Joseph R. Byrnes,
Member of Congress,
Washington, D.C.

Dear Mr. Byrnes: I am writing to you to give you my wholehearted support of H. R. 2760, a bill to codify the patent law of the United States. I have carefully studied this bill, and I sincerely believe that it is far better than the existing statutes. I note with particular interest section 102 which shows that the object of which subject matter is made the test of patentability, and I believe this definitely improves the situation. In my opinion, the Supreme Court has by its recent decisions taken a long step toward realizing our patent system, and I believe that this bill, if enacted into law, will aid in curing some of the judicial misconceptions about the purpose, scope, and beneficial results of our patent system.

While I do not know if it would be practical, it occurs to me if the bill could contain as a sort of preamble a statement of the sense of Congress to set forth the purpose of the act that this might have some beneficial effect on its construction by the Supreme Court. It is amazing indeed to all who are familiar with the subject how you know that, patents are treated so differently from copyright laws when both stem from the same source. If we could do the same thing I can think of is that while judges do not invent they do write books. It must be a beautiful reaction which might happen to the patent system and thereby to the economy so differently.

I extend my attention to the obvious error in the use of the word "of" instead of "or", section 242 (4). Other than this formal change, I have no suggestions to make. I am very cordially interested in seeing you do good work. Let us hope that the bill will pass because I for one sincerely believe that it will be the best interest of the country for this to become law.

Respectfully,

Jennings & Carter
By Hugo F. Carter.
Page 10, section 262, second paragraph, line 2, change "grant" to "filling."

Of course, the new claim developed for the release should have property right which it derives only from the grant of the release deed, to which date it was dated 1925 and 1926, and the patentee is under no clear of liability. Quite frequently a patentee notes that a later issued patent takes in a way, but the same constitutes a claim which is not properly made as a prior inventor. It is not the purpose of Congress to reward the second to operate under the property right awarded in the release. Filing date of original patents have the same status as continued (sec. 120) and subdivisions, and do not give interferent and all others, active prior to release new claim, a better patent status.

Otherwise, this H. R. 3700 is approved as desirable, and more so than the Nitride at H. R. 1933.

Respectfully,

GEORGE H. KINNE.

NORTHFIELD, ILLINOIS.

COMMITTEE ON THE JUDICIARY

House of Representaives, Washington, D. C.

GENTLEMEN: This is in reference to H. R. 3700, a bill to revise and codify the law relating to patents.

I wish to suggest the following modification be made in the bill by adding sections 60 and 62 to read as follows:

"A right of patentability shall be deemed to have been established when the device or the application achieves a new and useful result, which in no other words is an improvement capable of producing and which result grew beyond mere increase in excellence of workmanship."

"A right of patentability shall also be deemed to have been established when a new arrangement and relation of parts accomplishes an old result in a markedly more facile economical and efficient way than any previous arrangement in time or labor by the user results."

My reasons for urging this modification are as follows:

1. It is better, as proposed in the bill, leaves the grant of a patent too much to the whim of the Patent Office examiners. What one examiner would deem to be "obvious" another might deem to the dignity of patentability. It is highly desirable to have some positive rule rather than a negative one.

2. As a practical matter, if possible in any case, to avoid the grant or refusal of a patent to too much to the whim of the Patent Office examiners. What one examiner would deem to be "obvious" another might deem to the dignity of patentability. It is highly desirable to have some positive rule rather than a negative one.

Just as one should plant an orchard and prune and spray and cultivate the same through the early years of growth if Tom, Dick, and Harry could appropriate the fruit when the orchard came into bearing, so under the present system of patents, any device will go to the very great initial expense of putting a new device on the market, then building up a demand for it if it can be more easily made from his device, and sell its market to profits.

3. The present system of patents is a great waste of time and money. An unprecedented number of small businesses built up through the activities of the American inventor, and all these should be resolved in his own hands.

4. If the old and known devices are just as good as new, then let the infringer stick to them. If they are not as good, to the extent that the purchasing public consistently demands the new device, then that should be sufficient to show that the new device has been done.

5. I am not in a position to determine whether the present system makes us feel the patent examiner looks at patent applications.

With eyes instructed by the applicant's work, and the tendency is strong to disregard the work of the past that has been defeated in many days of work and experimentation and the expenditure of large sums of money, and the tendency that has been defeated in many days of work and experimentation and the expenditure of large sums of money, and the more learned and experienced the judge, the more likely he is to recognize that fact.


The eye that sees a thing already embodied in mechanical form gives little credit to a statement that one may say it in imagination, but the difference between what is common observation and what constitutes the act of every eye is a thing of inventive genius; the other of the hooker on after the facts."

International Tungsten Co. v. Richardson (40 Fed. 721).

"It is not difficult, after the facts, to show why the argument is simple, that the achievement was, and by aggravating all the failures of others to point out the plain and easy reason to succeed. This is the wisdom after the event that often forfeits invention, and leaves it to the plane of mere mechanical skill."
Be patent bill H. R. 3700.

Hon. Joseph R. Byrton,

Chairman and Members of House Judiciary Subcommittees Sec. 3,

House Office Building, Washington, D. C.

Dear Mr. Byrton: This bill contains some very troublesome clauses which ought to be well considered in their implications before the bill is enacted. In its present form, the bill represents the complete destruction of the patent system, if I understand the implications of the bill correctly.

I look upon this bill, with great regret, as a most unfortunate novelty which has driven many research organizations to continue the abandonment of the patent system and the institution of a policy of secrecy. This is a simple self-defense.

The paragraph 102a of the patent bill goes beyond this right of secrecy, permits every research organization to keep its inventions secret and then makes those inventions an anticipation for any similar patent granted to an inventor who is willing to publish his invention under the provisions of the patent law.

1. At present, inventions kept secret do not anticipate those which are made public under the patent system. This paragraph adds to the prior art every invention which has been secreted in all the research organizations and will destroy the patent system by making the secrets of such precocious nature as to be valuable.

2. The research organizations which contribute their funds to the development and well-being of the Nation are entitled to protection, but that protection should come from a just enforcement of patents against infringers.

Very truly yours,

John L. Seymure.

Chicago, May 26, 1935.

Be H. R. 3700 (Byrton) Patents.

House Judiciary Committee.

May 26, 1935.

Section 102 of the bill contains objectionable as tending further to confuse the question of what constitutes patentable invention. It is recommended that the section be (a) deleted; (b) amended to read as follows:

Sec. 101. Conditions of Patentability. A patent may be obtained only for an invention which is not identically described or claimed in a prior art publication in any country, or patented or described in the same country by the same inventor before the invention thereof, or described in a prior art publication in any country by another inventor before the invention, or patented or described in the same country by the same inventor before the invention, and which, by reason of such publication or patent, is available to the public before the same is made patentable.

Proposed section 102 purports to define (without clarifying) a theory of case law which is responsible for a great deal of confusion in the administration of the patent law, i.e., What is mechanical skill? What constitutes "mechanical skill" is a purely subjective question, and like "invention" is practically indeterminate and not susceptible of ultimate definition. As printed it would be a source of confusion.

Respectfully,

Callard Livingston.

June 26, 1935.

[Thomson, R. B., Chairman and Members of House Judiciary Subcommittees Sec. 3, House Office Building, Washington, D. C.

Note: This is written to answer certain questions which have arisen relative to testimony of the witness. Parenthetically let it be noted while witness expressed subjective test (now constituting Sec. 102) to contrast same with objective test, yet witness would let subjective test remain, but he would include objective test.

[The text continues with further discussion on patent law and its implications.]
The bar wire gives the affirmative of the application of the objective test. The court has established the principal conclusion of holding the bar at 90 degrees to the current, which is the invention bearing formed by two wraps of the wire of the bar was now. And the Supreme Court held the patent valid.

V. ADVANTAGES OF OBJECTIVE TEXT TO FOLLOWING
(1) Inventor: May know with far greater certainty whether his contribution is one to be awarded a patent and if a patent is allowed whether it will be sustainable in court, and this before he spends years of his life and great sums of money in its development and marketing. At present, he may be out with a court decision stating with no greater judicial basis, than "We think who invention is obvious to those in the art.
(2) Patent Office: The objective test affords no excellent criterion for a precise definition of a patentable invention that burden of Patent Office will be greatly lightened.
(3) Solicitor: Saves as a measure or criterion in advising as to patentable novelty also in his constructive work of preventing specification as set forth herein. Among patent applications.
A Judge of Federal court: Supplies a criterion derived from judicial authority to aid them to sound and consistent judgment in patent cases.
B. Public: Public in adopting machine or invention can know whether it is a right or not with far greater certainty. This means less litigation.
Application of the objective test has advantage of a two-volume text illustration, derivation, and application to adjudicated cases.

VI. OBJECTIONS TO SUBJECTIVE TEST, I. E., OBVIOUSNESS, WHICH IS THE TEST OF SECTION 103 AS PRESENTLY SET FORTH

Indubitably: What is obvious to one man is not obvious to another. After having taught how to solve a problem, of course it is "obvious." Absolutely, such is not a reliable criterion to test whether a contribution is patentable. Yet this is what the committee is asked to do as the only measure of patentability. Note well witness would accept section 103 remains as it would add the objective test.

Example: Inventor files patent application. Examiner replies rejecting claim thereof, stating "In view of prior art cited references, it is obvious to those skilled in the art to do what you propose." How is the examiner to answer on rational basis such contention which amounts to nothing more than "we think anyone skilled in the art could overcome the problems so faced." How can examiner know that--it is only opinion. All are entitled to opinions. Solicitor may reply "Patent you have cited are all old and no one member has solved the problem--has made a solution by applicant and so it could not be obvious after so many years." Assuming finally patent is allowed:
Applicant is happy and with it luminous friends to subscribe funds for development and marketing. After say eight years, a rival sees the inventor is making good and he infringes, and after expensive court contest of two or more years-court says "we believe the invention is obvious," or as sometimes stated, "is within the skill of the art" or "does not rise to the dignity of an invention" or "is only mechanical skill"--all subjective answers. Surely one thing has been led into losing years of his life and his own money. Some of his friends, cannot find much incentive in a patent system based upon such a test so lacking in judicial basis.

Specifications: In applying "obviousness" test, one speculates upon whether the relationship to obvious or not obvious to those skilled in the art--a double mental assumption or imagining.
First, one must imagine one possessed of the skill of those in a prior art, and then pretend, he must imagine whether such one would discover the obvious. He must reach the conclusion in his feelings (taking a subjective process) about obviousness after he has been taught the solution by the inventor whose contribution he is judging--meantime trying to keep such instruction out of his mind. Surely this adds up to a real mental gymnastic task.
All such indeterminacy and speculation is avoided by the objective test.
from careful analysis that the entire series of such cases may be satisfactorily explained and harmonised by the application of such a test. They were all decided within a period of 70 years, 1800-1920; and they serve to show how wise it is for judicial functionaries to adopt a consistent attitude in the way to obtain the same result, always bearing in mind that despite the great power of the Supreme Court to perform different functions or in a different way, or produce a substantially different result. (How well these words fit the syllogism given relative the bar wire fence and the box cutter decision, page 193.)

II. REMITTAL OF ALLEGATION THAT COURTS HAVE NOT APPLIED THE OBJECTIVE TEST—ON CONTRARY COURTS HAVE APPLIED NAME AND APPEARS IN TERMS OF FUNCTIONS AND SPECIFICALLY APPROVED GEORGE L. ROBERTS' STATEMENT OF THE OBJECTIVE TEST.

N. B.—How Court in these cases look at "duty" or "office" or "function" which the elements or factors perform in an invention and compare them with functions of factors of prior devices rather than ask, Is this "obvious"? (Useless are, unless otherwise indicated.)

"...Supreme Court in cases cited and extracted below has expressly analyzed the differences between subjects of various art and invention before the Court and used the term "functions" in so doing.

Moreover, the District Court in Submarine Signal Corp. v. General Radio Co. et al., (D. C. Mass., July 20, 1928) states that the test of invention is whether the device performs the functions performed by the prior art. The Court in that case, however, states that the Court in that case has observed the unpublished notes of George L. Roberts of the Suffolk bar. It is interesting to note parenthetically that in this case, the winning plaintiff was represented by the eminent law firm of which three distinguished members on the coordinating committee formulating the present bill are members or associates. The objective test was good law then and it is submitted it is good law now and should be included in the present bill. This Submarine Signal Corp. case will be quoted first, since it is not directly in point.

Submarine Signal Corp. v. General Radio Co. et al. (D. C. Mass., July 20, 1928) (44 F. 2d 178) (courts and other tribunals have adopted and cited this case with approval in many cases. The defendants rely principally upon the Berghoff device as showing an anticipation of the plaintiff's invention. There may, however, have been a test of invention, by contending that a person skilled in the art, having this device, on the one hand, could produce the plaintiff's apparatus by certain methods known to him. This contentions shows the unsuitability of the "skill of the ordinary mechanic" criterion of invention, under which the test is an objective one. The result of an idea in a machine or process involving a new function or an old function arrived at by new means, the embodiment of the idea in patentable. The test is not patentable combination, but an aggregation of elements. Not a new function or result is suggested by the combination in question.

Grinnell Washing Machine Co. v. Johnson Co. (214 U. S. 426, 433 (1911)).

Not only does the "false edible" clause in the performance of their several functions, and their reciprocal action, no part used in patent be a complete answer to the question of patentable novelty in the Supreme Court of the United States and from the earliest years to 1913. Mr. Roberts has shown the test above suggested is consistent with them all with three exceptions, which he regarded as anomalous.

The above speaks most clearly and positively in favor of the objective test. Since the objection to the test has thus been made a part of the law by judicial decision, why should it not be embodied in the statute?
than that therefore performed or produced by them is not patentable invention. And the improvement of one part of an old combination gives no right to claim that improvement in combination with other old parts which perform no new functions in the combination. Though the respondent so contends, the Court says that in the combination of the Butler patent, the headed napkin performs a new and useful and different function from that which it has heretofore performed in other combinations, in that, when the coupler is withdrawn from the napkin, at the end of the goniometer, the rounded head of the napkin "cocks" the jaws of the coupler for the next operation. + + * + * Moreover, the argument is unsound since the old art includes instances where the head of a napkin or fitting performs a similar function when the chuck is disengaged from it. 60 Corps Juris Secondum, section 85, p. 275, Copyright 1951, states that:

"A test sometimes resorted to in distinguishing between inventive and mere mechanical skill is whether some new result is brought about by new means or by a new arrangement of old ones (40). The latter is an objective test (41). Measured by it, invention is involved if the result of an old method or thing involving a new function (42) or an old function arrived at by a new method or thing.

The above exemplifies the use of the objective test in deciding with the functions of these 3 inventions even to determine whether the invention is not thinking subjectively.

But this Committee would not knowingly take away what basis we have for the applying of the objective test. By not including the proposed paragraph, the conclusion, in effect, it will be taken away from inventors the protection they now have in applying the subjective test. Even when new relations are established at present, the courts are under no obligation to hold patentable novelty exists. This is why the proposal includes the mandatory feature so that, after an inventor has spent years developing and marketing his patented invention, he will not have his rights lost to an infringer with the Court simply stating "we think the invention is within the skill of the art" or its equivalent.

X. CONCLUSION

With all humility and with all earnestness, the witness most sincerely petitions this Committee to include the objective test as set forth herein. It is the key to overcoming the confusion which now besets the patent system.

The National Patent Planning Commission, Charles F. Kettering, chairman, in its report, recommended [(iii)]

"that patentability be determined from the point of view of whether the invention is within the skill of the art and that the Court's decision should be based on the following test:

"A test sometimes resorted to in distinguishing between inventive and mere mechanical skill is whether some new result is brought about by new means or by a new arrangement of old ones (40). The latter is an objective test (41). Measured by it, invention is involved if the result of an old method or thing involving a new function (42) or an old function arrived at by a new method or thing.

This Judiciary Committee is the real national-defense committee, because you have in your power to recommend the test for patentable novelty which is a criterion derived from judicial authority, the only test which can be so determined. Our workmen need the best of machines to enable them to turn out a thousandfold more than we ever could in a time of our national life: our soldiers need equipment to make them safe from a thousandfold more danger than we are now able to face; our children need an educational system that will preserve our liberties. It is the test of Mr. Roberts' text which is recommended and not a legal article or commodity of commerce suitable for agricultural or insufficiency, but who has knowledge in or of who is said and competent material or apparatus to be used in a manner that will result in an improvement of such patent, shall be liable for infringement as a contributory infringer. 60 Corps Juris Secondum, section 85, p. 275, Copyright 1951, states that:

As a matter of irrefutable fact, it is submitted that the objective test should be included in the present bill. If any question relative to the above arises which the committee or any member of the committee desires to have answered, the witness will appreciate the opportunity of seeking the answers.

Most sincerely and respectfully submitted.

G. WRIGHT ARNOLD.


Sir: You will probably recall that I appeared before your committee last week as chairman of the patent committee of the Bar Association of the District of Columbia to express the approval of said association with respect to H. R. 790, as amended, particularly by the proposed amendments of the coordinating com-

mittee of the National Council of Patent Lawyers Associations, which amendments had been reported by the committee and dated May 22, 1903.

Having attended these hearings, I would like to suggest individually and on my own responsibility, as a member of the bar of the District of Columbia and as a practicing patent lawyer, several amendments which seem to me to be desirable and which probably may compose the difference between the present language of the bill and some points urged by several of the witnesses. These proposed amendments are as follows:

1. In section 100 of the bill, the section should state (a) The term 'invention' includes, but is not limited to, discoveries made in the useful arts.

2. In section 101 of the bill, the provision that "after discovering ... in the useful arts," the provision that: "My contribution in the above-revised sentences resides in the words in the "useful arts." This definition limits inventions and discoveries in the manner defined in section 5, clause 8 of the Constitution of the United States. Patents for inventions and discoveries, according to the balanced phraseology of this provision of the Constitution, are limited to the useful arts; and it is my contention that the implementing law should recite this fact. In accordance with this balanced wording, I suggest the word "invention" be replaced by the word "discovery" of patents the subject matter of copyrights, and no previous implementing law has been "incidental to the industries of such patentable subject matter. I should, therefore, as said above, be definitely stated in the present bill that the invention was the reason that is being urged.

3. I am in agreement with the statement made or given by your committee to Mr. G. Wright Arnold of Seattle, Wash., and, therefore, suggest that at the end of section 101 of the pending bill that the following paragraph be added for the reasons that he has urged:

"Whenever there is established a new functional relationship between any of the factors which are required for rendering an invention in the useful arts properly operative, patentable novelty shall be found."

4. With respect to the discussion before this committee concerning section 231, I have the following suggestions:

(a) I believe the following words should be inserted into the bill:

1. By Mr. Fugate of the Department of Justice, and Mr. R. I would like to suggest individually and on my own responsibility, as a member of the bar of the District of Columbia and as a practicing patent lawyer, several amendments which seem to me to be desirable and which probably may compose the difference between the present language of the bill and some points urged by several of the witnesses. These proposed amendments are as follows:

1. In section 100 of the bill, the section should state:

(a) The term 'invention' includes, but is not limited to, discoveries made in the useful arts.

2. In section 101 of the bill, the provision that:

"After discovering ... in the useful arts," the provision that:

My contribution in the above-revised sentences resides in the words in the "useful arts." This definitively limits inventions and discoveries in the manner defined in article 1, section 8, clause 8 of the Constitution of the United States. Patents for inventions and discoveries, according to the balanced phraseology of this provision of the Constitution, are limited to the useful arts; and it is my contention that the implementing law should recite this fact. In accordance with this balanced wording, I suggest the word "invention" be replaced by the word "discovery" in the case of patents the subject matter of copyrights, and no previous implementing law has been "incidental to the industries of such patentable subject matter. I should, therefore, as said above, be definitely stated in the present bill that the invention was the reason that is being urged.

3. I am in agreement with the statement made or given by your committee to Mr. G. Wright Arnold of Seattle, Wash., and, therefore, suggest that at the end of section 101 of the pending bill that the following paragraph be added for the reasons that he has urged:

"Whenever there is established a new functional relationship between any of the factors which are required for rendering an invention in the useful arts properly operative, patentable novelty shall be found."

4. With respect to the discussion before this committee concerning section 231, I have the following suggestions:

(a) I believe the following words should be inserted into the bill:

1. By Mr. Fugate of the Department of Justice, and Mr. R.
be steadily growing. In spite of the greatly increased expenditures by Govern- ment, the industry on research work the number of inventions made annually by the patents granted each year has steadily declined at an accelerating rate. I believe one of the causes of this decline can be attributed to the confusion and uncertainty of our patent laws as shown by the decisions of the Supreme Court in patent cases. As a result the inventors have been greatly dissuaded.

This statement that individual inventors working on their own have seriously declined so that as a result today most of the research and invention is done only by corporations and large research organizations. The businessman today hesitates very much to invest in an invention, both large and small, and we have been impressed by the remarkable unanimity of agreement of representatives and industrialists from all over the country in favor of this bill.

The principal purpose of this bill is to give an inventor an incentive, and it not in the patent itself, but has been suggested during the hearings to insert a provision for permitting the Patent Office to publish prompt notices of inventions, including applications, inventions, or disclosures of technical information without having the status of a patent. However, it was proposed to make such publication applicable only if the invention is effective as of their filing date. I regard this suggestion as being highly undesirable, and it may not be feasible to the applications in the Patent Office containing a great deal of speculative technical material which might carry refer to possible desired inventions or results without, having any technical or factual basis. Such applications could be kept pending for several years and in a published application so as to prevent a bona fide inventor from getting his patent because such publication would be effective not from its publication date but from its filing date in the Patent Office. During all this time the application was pending, it would not be available since the Patent Office processes all applications in secrecy. Such hidden disclosures are greatly counterproductive in the Patent Office. For years would bring pause and disaster upon bona fide inventors working on their own who might spend all their time and money in developing an invention without any likelihood of such hidden data and then suddenly be regarded as citizens of great experience because of their knowledge of getting a patent by a published application suddenly issued by the Patent Office having been going back perhaps by several years. Accordingly such a provision would be detrimental to inventors.

The only provision which would permit the Patent Office to publish the patent applications would be the one that it is established to grant patents and not to function as a publication office. Such a change is not necessarily due to any technical information which may be vague, uncooked, highly speculative, and never examined rigorously for necessary expense and reliability. Under the proposal the Patent Office would publish a great mass of technical data which has not been subjected to any critical examination and would thus give additional impetus to technical information which may be incorrect, misleading, and worthless. Certain inventors and the public welfare would not be benefited by such provision which in fact would operate for a vicious secret technical data which has not been published upon bona fide inventors by those who would deprive them of their hard-earned inventions.

We are badly in need of codification and clarification of our patent laws. We have had a much-needed step in the right direction in the complete organization of the patent bureau has been done since 1870. Our patent system operates only under the general supervision of the patent laws and the effective as our patent laws as well as the guiding principles in offering a powerful incentive to the inventors to make inventions and to the public to invest in inventions. In these inventions the public has obtained tremendous benefits which it would otherwise never have. So a remarkable technical advance never made previously in some human history. Our patent laws are not only upon the individual inventor and the business community to apply their brains in the mainling of our entire industrial development. It has spurred and stimulated us to give our technology and standard of living which are foremost in the world.

In recent years, however, there has been a serious decline in the number of inventions made in our country, although our population and economy has
methods. Therefore, as theory developed in physics and chemistry and penetrated into practice, so the degree of duplication and encouragement increased with it. And another, the inventor was bound to disappear. Today, the typical lone inventor may be found only in the eighteenth and nineteenth centuries. He is no more; in the eighteenth and nineteenth centuries caused the industrial research laboratory and development to develop engineering.

The second point is that the revolutionary advances in scientific thought and the development of new industries have rapidly almost all the great advances in industry until this century were made by men of the independent investigator type. These advances were made in the past 30 years. You yourself have just spoken of the starting advances in applied chemistry. Look at the electrical industry; the new way of advancing science, pure and applied, is far better that the old. Perhaps in 50 years it is to seem to have made the tremendous advances in the day of the amateur and the lone inventor.

There are numerous ways of conducting the business of the Patent Office that have been long over with the growing complexities of the business of the Patent Office. I believe that the best way to organize the continued and increased amount of work in the Patent Office is to have the Patent Office in a healthy state. If the improvement is not made to occur, we shall not be able to proceed at an adequate rate to maintain our technological superiority to ensure our survival over the foreign countries. Therefore, I suggest that your committee hold hearings to investigate the several subjects which will be listed as a result of this action:

1. Reform of Patent Office Procedure

An efficient Patent Office is one of the most efficient and oldest administrative agencies in our Government. It has done a remarkable job under the present statute and regulations. The present rules and regulations are complete and very complete. They are not sufficient to overcome the difficulties of the present Patent Office but are complete. The Patent Office has not done what it should. The Patent Office has not kept up with the new developments. The Patent Office has not kept up with the new developments. The Patent Office has not kept up with the new developments. The Patent Office has not kept up with the new developments. The Patent Office has not kept up with the new developments.

2. Patent Litigation Reform

Patent litigation is now becoming expensive and hazardous in the Federal courts. Most Federal judges frankly don't like to handle patent cases because they lack the necessary technical background. Justice Frankfurter has said, for example, "Judges must overcome their scientific ignorance if they are to be effective." Your committee should consider the establishment of special patent courts for adjudicating patent cases.

3. Stimulating Inventions

Congress should study the question of stimulating and fostering new inventions. Congress should study the question of stimulating and fostering new inventions. Congress should study the question of stimulating and fostering new inventions. Congress should study the question of stimulating and fostering new inventions. Congress should study the question of stimulating and fostering new inventions.

Consideration should also be given to the problems of small business investing in new inventions and how we can stimulate and encourage small business investing in new inventions and how we can stimulate and encourage small business investing in new inventions and how we can stimulate and encourage small business investing in new inventions. We should stimulate investment in new inventions and how we can stimulate and encourage small business investing in new inventions and how we can stimulate and encourage small business investing in new inventions. We should stimulate investment in new inventions and how we can stimulate and encourage small business investing in new inventions and how we can stimulate and encouragem
in a newspaper in a small town in the south, which was more or less isolated in the hill country. In this way it obtained publications which were quite effective, but which could be used to anticipate any patent which a competitor might obtain in fields which the company wished to hold. It was therefore a possible entry at a later date.

As you know, no research program is ever capable of even beginning to exhaust all of the possibilities in a field. The way to hold open that portion of the field which could not be immediately explored is to make all manner of effort in that direction, whether responsible or irresponsible, and obtain publication thereof in the hope that this will anticipate the other fellow's patent.

The difficulty, of course, is in obtaining publication, and particularly of material not supported by factual data. One method is that referred to above. Another method which has been resorted to is the taking out of a patent in the same country which employs the registration system, such as France. But in both instances, however, many patents are never issued because it was always difficult to get such publication under the nose of the examiner. Then too, there were laws of opposition, which had a very serious drawback in that there was a competitor with the current thinking of the company making the publication. If he could beat the competitor into the second paragraph of section 121 which is really made to order, there will be no more on the difficulty of getting the publication under the nose of the examiner for he will have been expelled from the system by the opposition. And there will no longer be any danger of getting one's competitor with one's own thinking, for the whole system is to be kept secret, and all profits to be made in three to five years or more by merely keeping the application pending in the Patent Office. No idea that someone is worth something if you do not seek or fail to require patents to maintain their dominance. Government defense agencies should if necessary be accorded a personal defense unavailable to general business.

Very respectfully,

Huso A. Keeman

SUBCOMMITTEE NO. 3, JUDICIARY COMMITTEE,
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

Patent codification bill. Proposes to publish patent applications reflect patent office and seek return of courts long discussed as unsolved to American economic philosophy. Original committee-print proposed that many matters be kept secret and individual groups. Proposals are inimical to individual inventors and small business. No idea that someone is worth something if you do not seek or fail to require patents to maintain their dominance. Government defense agencies should if necessary be accorded a personal defense unavailable to general business.

Very respectfully,

Macniss W. Leev

GOVERNMENT PATENTS BOARD
OFFICE OF THE CHAIRMAN
WASHINGTON, D.C.

Hon. Emadene Callen, Chairman
HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.

Dear Mr. Callen: In response to your request of May 24 for an expression of the Board's views as to the desirability of codifying patent law, the Board hereby submits the following statement as an indication of its views as Chairman of the Government Patents Board. If the legislative body determines to undertake codification, the Government Patents Board and this office were established by Executive Order 10,000, issued by the President on January 29, 1930, to provide for a union of the work of Congress and the Office of the President in the field of patents and to codify the law, and to coordinate the subject matter with the Board.

The Board has not undertaken to consider the principles of law involved in the case, but to codify the law of Congress, and to coordinate the subject matter with the Board.

December 29, 1930.

Sincerely yours, ARCHIE M. PALMER, Chairman.
Subject bill H. R. 3790.

Hon. Chauncey W. Harris,

House of Representatives,

Concord, House of the United States, Washington, D. C.,

DEAR MR. CHAIRMAN: I do hereby request your attention to the bill, H. R. 3790, which is referred to the Committee on Judiciary, House of Representatives.

In my opinion this bill brings up a controverted matter, which has been previously discussed.

Actually section 254, part B, and D, bound "infringing patents", brings up an issue which bears as a very serious factor to us. We are engaged in the manufacture of replacement parts for the maintenance of automobiles, trucks, and buses.

We did not wish to be bound by any number of suits brought since the 25th of March, 1914, which were not to belong to the point of appeal, in which the same issue of supply of unpatented parts, as you refer, deserves further consideration.

The Supreme Court refused to consider the question of the Supreme Court, as unconstitutional, this amounting to a successful appeal. If General Motors had sued in their appeal, it may have resulted in a suit for the car manufacturer.

World War II period, that it was emphatically demonstrated through the World War II period, that these large concerns were unable to supply the needed parts for cars, trucks, buses, farm implements, and so forth, and it was the smaller manufacturer that helped to supply these needs.

We believe the comments made by J. Carter Fort, of the Association of American Railroads, emphatically on the question of the Supreme Court, that in 254, parts B, C, and D on the maintenance of transportation equipment, in objection to bill H. R. 3790, as to the same law, that is the question of unpatented parts, resulting in an unreasonably high cost of vehicle maintenance.

We are at that stage of a stage that it was emphatically demonstrated through the World War II period, that these large concerns were unable to supply the needed part for cars, trucks, buses, farm implements, and so forth, and it was the smaller manufacturer that helped to supply these needs.

Actuarially, this bill may effect our business very much.

C. E. Niehoff,

DEPARTMENT OF JUSTICE,


To B. E. C. Co.

Chairman, Committee on the Judiciary,

House of Representatives, Washington, D. C.

DEAR MR. CHAIRMAN: I enclose an extension of the testimony of Mr. William F. Collin, Department, relative to H. R. 3790, a bill to revise and codify the patent laws.

The bill, as enacted, provides a provision in the form of a bill to revise and codify the patent laws.

The Department as now and then as is provided for in section 254 of the bill in the opinion of the Committee on the Judiciary, is a provision in the bill in the opinion of the Committee on the Judiciary, that the power of a patentees who have the power to overcome the power of the patentees who are subject to the patent laws.

Yours sincerely,

C. E. Niehoff,

Deputy Attorney General.
We have been advised by the Bureau of the Budget that there is no objection to the use of the enclosed paper in this report to your committee.

Sincerely yours,

JESSE LAMON, Administrator.

MINNEAPOLIS, MINN., May 14, 1911.

Hon. JOSEPH R. RETSON,

Bureau of Revision, Washington, D. C.

DEAR MR. RETSON: Thank you for your letter of May 24 telling me that hearings on H. R. 3750 will be held on June 12. I should like to testify very much to be heard, but this will be impossible and so I will write my impressions, and ask that you include them in the record of the hearings for whatever they may be worth. This bill makes no structural changes in existing law, and therefore requires no comment other than the rather general proposal that it might cause less confusion to let the present law stand in such respects, so that what judicial interpretation has already been of some sort will continue.

Cleveland, June 12, 1911.

P. A. WHITNEY.
to apply without raising any suggestion that Congress, by repealing a section and substituting another, had meant to give a slightly different

I think this applies pretty generally to sections 1 to 42, 104, 111, 113, 114, 117, 122, 134, 135, 142, 151, 152, 153, 161, 182, 219, 221, 245-250, 252, 301 to 304, 311 to 315.

Section 106 (b) that "process" includes "method." does not help alleviate the difficulty which now is experienced with "process" and "method" claims, because the practical interchangeability of these two words has been recognized for some time, while the main difficulty arises from the forms of attack on process or method of claims: (1) that they amount merely to reciting the function of an apparatus, and (2) that they refer to steps from several old processes.

The reference to a new use of a known process, etc., is believed, is somewhat erroneously included in this clause. Certainly process does not include the machine or combinations of matter. Also the words, "machine or manufacture," probably were meant to be separated by a comma, if it was meant to imply that a thing made on a machine is "manufactured" by way of making away the etymology of the word "manufacture," manifestly is

The first complete word in the third line should be "thereon," not "thereof." It seems to be merely restatement of R. 8. 4806, but broken down into six subheads.

Section 108: The last sentence of this section is very good and it was much needed, and will obviate one of the types of wild decisions already made. The first sentence, however, opens the door to a type of rejections in which the examiner takes an old patent which contains an invention of an application and insists it would have been obvious to anybody to use the changes which the applicant has made.

After many years of experience with patents, I have reached the conclusion that it is impossible to leave it to any examiner or any judge to determine how much change one can make without getting away from something one can call "obvious."

One can look at any of the now admitted important inventions and you can go back of any of them and find patents and disclosures of some parts of the same thing that always seems to happen, the disclosure is done in a way that it is done before. Hence, any invitation to the examining corps is that the invention is going to perpetuate the uncertainty which has so long characterized patent practice.

I fully agree that an invention should not be predicated on something which is really obvious, I feel it is going to write into the patent's

It may mean that an invention must be predicated on something which is really obvious, I feel it is going to write into the patent's

Section 108 would in a few instances, be beneficial.

How effective would Columbus' egg trick have been if he had first stood up on the ship, then asked the people whether it could be done? I would suggest some limitation, such as a provision to the effect that where a patent or other disclosure has been in existence for a substantial period of time without having made any particular claim to it, it is fair to apply, it should be treated as if it were available as a reference against a new invention merely by saying that no such changes in it would be made.

Section 112: The last paragraph should be very useful in obliterating purely technical objections on whether a claim is functional.

Section 113 apparently does not permit an applicant to insist on the facts. Possibly there is some general provision, but it strikes me as lacking. There is one other point which occasionally arises which might well be included in this section. In Ohio, the law permits the attorney preparing and filing certain papers in court to take the oath or acknowledgment of the party he represents.

This, of course, varies from the general rule that the attorney should not act in a case in which he is an officer or person.

It would seem, however, that little is gained in a patent application by insisting on taking the oath as notary. The applicant generally reads his specifications, looks at the claims and says, "These are too technical for me and sound like the same thing over again." I'll take your word for it, and signs it. I think this is a situation where a third person makes little difference. If the notary is an outsider, he doesn't understand the specifications or claims any better than the mechanic and if he has in the new environment, it is going to be the same as if the attorney himself, attested an notary, so the net result of following this procedure and, on the other hand, it being a good rule to have a notary whose say to find a notary when and where you want him.

It would seem like a very opportune time and place to provide that the at-

I believe, are a distinct step between as there have been instances in which the applicant requests for his attorney for people getting out of contact, particularly just at the end of a period which raises a statutory bar.

As to section 121, in general, this seems to be a useful section, but the reference to the patent or design patent, or any other patent, as a divisional case against another is a bit out of place, particularly in the matter of section 106. Would it not be better to specify clearly that neither a patent nor a divisional case can be used as a reference, and that the examiner cannot do this, when doing this would make it easier to find a patent which would be very useful indeed.

As to section 134, it seems at the present time that appeal to the Board of Appeals is a rather tough section. It is administratively a very difficult section and in that it gives the Patent Office Solicitor an opportunity to appeal to the Court of Customs or the Patent Appeals or to action under R. 8. 4805. It is even worse than this and in that it gives the Patent Office Solicitor an opportunity to appeal to the Court of Customs or the Patent Appeals or to action under R. 8. 4805. It is even worse than this and in that it gives the Patent Office Solicitor an opportunity to appeal to the Court of Customs or the Patent Appeals or to action under R. 8. 4805.
The first sentence seems to imply that in some degree, patents are not personal property. This is certainly contrary to the general conception and to the holdings of the courts up to this point. In fact, if they are not to be considered property, that fact should be clearly stated as it would furnish a basis for the refusal to return them on personal property tax returns. On the other hand, if we follow the present revision of the law, as a result, the patent should be revised so as not to cast any doubt upon the fact that it is property.

I think that section 212 would be a distinct advantage where two joint owners or assignees of a patent or application desire that they come to the parting of the ways. As to section 222, this seems calculated to create a new kind of long pending application evil. If the Government wants to keep something secret as a matter of defense, of course that should be allowed; but it should not be able to drag out applications by extending the time for 5 years—that is six times what the individual would be allowed on the same identical article—merely because the application belongs to the Government.

In my opinion, the patent acts implies that there is any need for keeping an application secret, merely that it is owned by the Government, and has something to do with defense or armament.

As a specific example of what I mean, I understand that the present 30-caliber carbine was designed by Winchester Repeating Arms Co. Had it been designed by the Ordnance Department of the Army, patent applications for them would have been drawn out for possibly 15 or 20 years under the provision of section 222; while, as it is, the corporation does not get this advantage but must show that it has invested a considerable sum of money and time, and that it has the proper knowledge to manufacture it, and every good patentman, judge or mate, or anybody else having to do with firearms, understands the mechanism thoroughly anyway. So, in fact, it seems to me that this provision is intended to apply only to such cases that are in the interest of defense and armament.

The provisions of section 231, indicating clearly that contributory infringement is infringement, and certainly there is nothing out of line with such a provision. Section 242 seems to be out of line with the preceding sections.

As to section 247, I think the second to last sentence should be revised to make it clear that this would apply only to a patentee manufacturing the article itself, not to one who is infringing property not owned by him. As it reads now, I believe it might be applied to a patentee who is already in business and has therefore been unable to manufacture the product until after the patent expires, with a notice and might be used in such an instance to let an infringer escape from the claim against him.

Section 249 does not distinguish between a claim of the patentee that has been abandoned or inadmissible and one to which he did not, which may subsequently be held invalid. In other words, it penalizes him for bringing an action after the first time on any claim which may be held invalid, and there certainly are plenty of such claims.

Section 251: It is refreshing to see some attempt to bring any violation of the patent to the criminal category. Certainly, one who steals another's intellectual property is as much a thief as one who steals his tangible property, and it is no less serious or even more serious when he often gets away with it or gets off with insignificant damages. While this little law does not apply to infringement, it might, at least, be an entering wedge toward providing some real punishment for the latter. We have seen in recent years a great increase in the number of patents which are abandoned.

I have come to some length in discussing details of the bill, not with the intention of boring you to death, but because I feel it really has much of merit in it, but needs a little tuning up in spots and I earnestly hope that it will get the necessary attention and will be favorably considered.

There certainly is need for something that will inspire people with confidence that their inventions are really going to be protected, as they surely do not feel that way now.

The number of patented inventions is still a long way below what it was 20 years ago, 56,743 in 1892—only 20,640 so far in 1912—and at least the number of patented ideas short of what should be available if we had maintained the constant increasing rate of development which had existed for nearly a hundred years prior to the early thirties.

It is impossible, of course, to guess what the missing million inventions would have meant in increased wealth and convenience they had been made, but you can be sure that it really would have been something.

Sincerely yours,

HARLEY R. HAYGOOD.

Mr. Robert C. Watson.
Washington, D. C.

WASHINGTON, D. C.

DEAR SIR: Thanks very much for your letter of June 21, 1911. I have not time to express my appreciation at this time, the way I would like to do so as I am just leaving for New York. However, I am sending you with this letter two papers and some following material which I am publishing as the result of a demand that I have been making for years, as a result of the pressure of the members of the APLA, and also the postal commission committee, which will be more convenient for you than to refer to my previous correspondence.

Sincerely yours,

C. A. SOANE.

(Mr. Soane's letter and the following material enclosed therewith is published at the request of the committee.)

Section 172 (a) (as now worded or as proposed to be amended by the laws and rules committee of the APLA).

This paragraph, as compared with paragraph 102 (c), creates a different standard of diligence as between the applicant and the defendant. The defendant's prior invention as a reference to issued patent is not to be a defense, either if he had abandoned the invention or suppressed it or concealed it. Also, he may use full diligence in putting it into use (presumably public use) or in otherwise making knowledge thereof available to the public. This is in accord with my ideas on the subject. In fact, I think that it includes some of my original language. However, when we come to the patentee, we find that the entirely different standard of conduct is used. All he has to do is to show that he has not abandoned the invention. In fact, the burden of proof is upon the defendant to show that the patentee has abandoned his patent. In both cases, the possible task in most cases, if the patentee has been sufficiently shrewd.

Under this section, the patentee has the status of first inventor, there is no way that he can lose that status, unless abandonment is proved. It makes no difference whether he is neglected or does nothing at all, because the public has the right to use the invention in secret for patent-commercially, and under this section as now worded, he can get his patent, provided that there is no public use or sale more than 12 months before his application. Then again, under the Gilman v. Strom doctrine, there is nothing to prevent this from being made a reconsideration, which, believing that the inventor has abandoned his patent application or it is unenforceable, or for any other reason, to decide against him and render it unenforceable.

I have gone to some length in discussing details of the bill, not with the intention of boring you to death, but because I feel it really has much of merit in it, but needs a little tuning up in spots and I earnestly hope that it will get the necessary attention and will be favorably considered.

There certainly is need for something that will inspire people with confidence that their inventions are really going to be protected, as they surely do not feel that way now.

The number of patented inventions is still a long way below what it was 20 years ago, 56,743 in 1892—only 20,640 so far in 1912—and at least the number of patented ideas short of what should be available if we had maintained the constant increasing rate of development which had existed for nearly a hundred years prior to the early thirties.

It is impossible, of course, to guess what the missing million inventions would have meant in increased wealth and convenience they had been made, but you can be sure that it really would have been something.

Sincerely yours,

HARLEY R. HAYGOOD.

Mr. Robert C. Watson.
Washington, D. C.

WASHINGTON, D. C.

DEAR SIR: Thanks very much for your letter of June 21, 1911. I have not time to express my appreciation at this time, the way I would like to do so as I am just leaving for New York. However, I am sending you with this letter two papers and some following material which I am publishing as the result of a demand that I have been making for years, as a result of the pressure of the members of the APLA, and also the postal commission committee, which will be more convenient for you than to refer to my previous correspondence.

Sincerely yours,

C. A. SOANE.

(Mr. Soane's letter and the following material enclosed therewith is published at the request of the committee.)
I feel justified in sending you this amended draft because I have spent a great deal of time on it. In the original section, and several other persons have worked on it with me.

As pointed out at the March meeting at the Shoreham, section 110 does not correspond with section 102, and the way it is written, it merely conveys false facts in the case of an applicant who, a few days before he files his application, discovers that somebody in a foreign country made the invention before the applicant did.

This section fails to establish any ground for the 1-year extension of the payment of the final fee. Under this section, it is not necessary to show any inadvertence or mistake. It seems to arbitrarily extend the 6-month payment period to a period of 1 year, and it is not of any benefit in lengthening the patent term by 12 years, if that is what is wanted.

It is my understanding that the old 2-year limitation for obtaining a patent was based upon the 2-year publication rule, and that when the statute was shortened from 2 years to 1 year, there was an interregnum in the publication period for obtaining a patent. This paragraph of the bill, therefore, is not in accordance with the existing law as I understand it.

Furthermore, if the unwritten 2-year rule is changed to a statutory 2-year rule, there may be an inference that diligence in applying for a patent is no longer necessary. The statute should be made clear in my opinion, whether the patent is to be narrowed or broadened by rejection, diligence should be required.

The second paragraph seems to me entirely too broad in that it says "the specific thing". It seems to me that the intent of the statute would be to make such changes in the "specific thing" as in the normal course of business would occur to a person skilled in the art.

In this section there is far too much emphasis placed upon the necessity of cession of the patent by the Commissioner. As pointed out at the Shoreham meeting, 96 percent of the cases arising under this section was cases of misinstructor, if e., where the patent contained names that, as well as the name of the inventor or inventors, or where some of the claims of the patent were joint inventions and other claims were single inventions.

What is the objection to permitting a court to ignore the extra name or names in the patent? What harm is done to any one so long as all of the patent is valid and is a single invention, which is the case in 95 percent of our cases. As pointed out in this section, as I understand it, court cannot merely ignore the misinstructor. The court must send it back to the Patent Office, at any rate, some positive act must be taken by the owner of the patent in order to enable him to maintain his patent. But suppose the case is suspended, the patent goes back to the Patent Office for correction, and when the trial is suspended, the patent is as corrected. What happens then if the court of appeals says that the district court made a mistake because they do not have and the evidence. In view of the prior art, it was a joint invention. Where does that get the owner out of the case? It seems to me that the only right in the owner's right and not that the Patent Office may correct it.

Here again the scales are heavily weighted against the small manufacturer, because the large manufacturer is able to do work on a large scale, and the small manufacturer is unable to do work on a large scale. Let us assume that the small manufacturer is a manufacturer and the large manufacturer is a manufacturer of the same size. Let us assume that the large manufacturer is able to do work on a large scale, and the small manufacturer is unable to do work on a large scale. Let us assume that the large manufacturer is able to do work on a large scale, and the small manufacturer is unable to do work on a large scale. Let us assume that the large manufacturer is able to do work on a large scale, and the small manufacturer is unable to do work on a large scale.

Let us assume that this small manufacturer has made a perfect inspection of all of the patent work he has done and that he is in a position to either that a certain patent is invalid or that it is not infringed by his machine. However, the owner of the patent has been looking over the patent with his competitors so far as the information is concerned. He cannot compete with this.

Further, if he is not infringing the local patent, then the claim is to be made that he is infringing the local patent. The only way for this to be proved is for the small manufacturer to pay a royalty to the large manufacturer.

I think that this is a very different situation which justifies a much more clear and formal procedure in particular in view of the fact that an oath is required.

The last two lines of this section are susceptible of two interpretations. Under one interpretation, a "license or assignment" can be made with an unavailing promise of the consent of the other coowner. Under the other interpretation, a license or assignment may not be made unless the conditions exist, i.e.,
Section 212: The language of this section, which prevents the use of a patent in a court of law as a reference against a defendant, appears to be too broad. It is, however, desirable to prevent the application for a new patent from being used to strengthen the position of the patentee. A requirement for obtaining a division of a patent should apply only against applicants for new patents, and not to all persons who apply for a new patent. A clear statement of the patent's invention is necessary for the establishment of its rights in the year following the invention's date.

Section 102: Any invention shall be patentable unless:

Section 213: While this section seems to follow the present law, there is serious doubt in my mind that a minimum recovery is proper. There is no minimum specified for ordinary patent infringement. The minimum recovery would be in a copyright case dependent upon the copyright provision in force, but not in any other case. Liability should be based on the copyright provision in force, and allowing unlimited copying would be forced to pay at least $200 even though no real damage was found.

Section 214: The invention cannot be practiced in the United States, if the same provisions are not made in the United States. The same provisions should be made in all countries, and the invention cannot be practiced in the United States.

Section 215: The phrase "infringement of a patent" is too broad. The phrase should be "infringement of a patent," and not "sufficiently infringe."
The 2-year term on broadened releases is unjust. The mere loss to the patentee of the right to hold a 2-year term on broadened releases was in no way calculated by the original statute when the patent was granted. The same danger that would result from granting a 2-year term on broadened releases would result from granting a 2-year term on broadened releases under present law. The additional equities against releases are protected as intervening rights.

Nevertheless, if the issue must be settled on a basis of equity, it cannot be accomplished by merely nullifying the second last paragraph of section 301 and instead adding to section 302 the following:

"In the case of any release patent entering the right of the claim of the original patent, especially if applied for more than 2 years after the grant of the release, the subject matter on which the release is set forth in the application may be extended to protect inventions of time or resources in the invention, patenting, or development, even without the permission specified in this paragraph."

New York, N.Y., June 30, 1931.

Joseph H. Ryan, M. D.

Hereafter I am residing, Washington, D.C.

Sub: 16 letter to your letter of some while ago asking for comments on this bill. I suggest the following amendments:

(1) Section 302, after "time limit of any patent," insert: "or for service not rendered." This is particularly aimed at the return of a Board of Appeals after which an applicant gets and does not and is not the amendment.

(2) Section 303, audit of first sentence, insert: "An applicant's own statement in his application may not be declaratory." The Board of Appeals after any application may not use the same rule, and particularly in the absence of any argument under the application should be extended to the courts.

(3) Section 312, after the sixth paragraph, insert: "But no claim shall be declared invalid for lack of distinctness or for undue breadth where the description clearly shows the subject matter of the claim and the claim is as broad as is reasonably possible without arbitrary limitations.

This is in line with the recommendation in the President of the United States (see 7691) that the patent system must be entirely harmless in all instances except when certainly known to the public and that the patent be substantially interpreted. If broad, it shall always express and the patent taken only to the public only the use of independently made later inventions and gives a person perfect knowledge of the breadth of the invention."

(4) Section 312 in next to the last time insert the sentence: "The applicant shall have the right to amend any claim as often as necessary, without reexamination."

Broad valid claims help not only the inventor but progress as a whole. Each patentee has the right to subsequent invention, and the duty or absolute duty to account to the other owners give power to the courts to render justice. For example: "with a duty to every man may soon invent."
PATENT LAW CODIFICATION AND REVISION

220

parapet the Supreme Court is capable of making a mistake I simply cannot
follow (see Justice Douglas dissent in Graver York v. Linde Air (208 C. O. G. 1),
decided May 20, 1930).

Your very truly,

P. F. JENKINS,

UNITED STATES COURT, EASTERN DISTRICT OF NEW YORK,
New York, N. Y., June 30, 1931.

Hon. R. M. COKER,
United States District Court for the District of Columbia.
Washington, D. C.

Dear Mr. Coker:

I am about to send you this bill in which I have been instructed by the
grantees of the patent for which I am your assignee. The claim in this bill
is essentially the same as the claim in the patent except that the words
"substance or subject matter" are replaced by "subject matter" in the
Claim 19. I have increased the number of claims from 20 to 21.

Sincerely yours,

C. F. JENKINS.

WASHINGTON, D. C.

Dear Mr. JENKINS:

I have long been interested in the problem of codification of patent law. I
have been studying the subject for some time and I am convinced that a
comprehensive code would be of great benefit to all concerned.

We have had a number of meetings of the Patent Law Association and the
subject has been discussed extensively. We believe that a code would
clarify and simplify the law. However, we have encountered some resist-
ance from various groups who have vested interests in the current system.

In making the foregoing observation as to the lack of unanimity, my impression
is that the precise wording has been more important to certain patent
lawyers who are directly affected by the legislation than to others who
may be indirectly affected. I believe that the legislation should be
worded in such a manner as to provide maximum protection to inventors
and to the public.

Very truly yours,

R. E. ZEIGLER.

BAR ASSOCIATION OF THE CITY OF NEW YORK—REPORT OF PATENT LAW COMMITTEE ON BRYANT BILL, H. R. 2700, CODIFICATION AND REVISION OF PATENT LAWS

This committee has studied the Bryant bill, H. R. 2700, and believes that it
promotes the interests of the nation.

This committee recognizes the difficulty of getting entire agreement among
interested groups, but it is certain that the bill would be of great benefit to
the public. We believe that if changes were made in the bill it would be
improved, but it should not be substantially altered.

Chapter 7, section 102, page 23: In line 5 strike out "shall" and substitute
"may". This change would have been made if the bill was not
submitted to Congress.

Chapter 8, section 121, third line in the first line to "the". This
change would have been made if the bill was not submitted to Congress.

The purpose of this is to avoid the subjective term and to emphasize
the object of the bill. The present term is subjective and may lead to
unnecessary litigation.

In the fifth line substitute "may" for "should have been".

For the reason this is to avoid the subjective form and to emphasize
the object of the bill. This change would have been made if the bill
was submitted to Congress.

Chapter 8, section 121, page 33: In the third line substitute a period for the
semicolons, and the word "it" for "and".

In the fourth line substitute "are" for "may be"; strike out the third and fifth
words and substitute solely to subject matter described and claimed in the
original application. In the same line substitute "it" for "A divisional
patent application shall contain a specification.

In line 5 substitute "they comply" for "it complies".

In line 11 insert a period after "title" and strike out "it".

Strike out all of lines 13 and 14.
In line 5 strike out "and claimed in the original application as filed." In the same line substitute "and the." In line 10, after "execution," insert: "of such divisional applications.

The committee finds the thirteenth line of the section ambiguous. This section was intended to prevent the citation of a patent as a reference where divisional applications were filed after the original application. It is unnecessary to substitute the original application for the second patent. The particular situation requires amendment, which is in the proposed language follows.

Chapter 3, section 223, second paragraph, page 13: In line 1 substitute "Any" for "No.

In line 2 insert "not after...may.

Strike out line 3 and substitute the following: "application makes a claim for substantially the same subject matter as made in such application prior to the issuance of said patent or within 1 year from the date on which said patent was granted."

The purpose of this provision is to make sure that the 1-year period will not prevent invention of something not previously discovered. As the language is originally drafted, there is less restriction on the same subject matter, making the claims even after such period. No such limitation was intended by the language, and it is drafted in the fifth line of the second paragraph, substitute "unless for "if", and at the end of the line, "would have been."" In line 6 strike out "does not infringe a valid claim of the assigned patent was in it." This is for clarification and to get rid of double negative.

This is to make it clear that the court may allow replies to be made of the specific things referred to in the second paragraph.

Chapter 3, section 221, page 21: In the first and second lines strike out "applicants' " and substitute "assignees'"

Chapter 3, section 223, page 22: Strike out entire paragraph and substitute the following:

"When two or more persons own a patent jointly, either by the invention of the other or by agreement of any of the assignors and assignee of interest in the patent or by reason of service in favor of such joint interest, such other owner, or owners, in the absence of an agreement to the contrary, shall be entitled to join, or in the absence of an agreement of any of the assignor, or of any of the assignees or assignor of said interest without accounting to the other owners, any other owners, or assignor or assignee of interest without accounting to the other owners, any other owners, or assignor or assignees, of interest without accounting to the other owners, any other owners, or assignor or assignees of interest in the patent shall be considered as one and the same person.

Chapter 3, section 221, page 23: In the second line of page 23 strike out "a contributor" and substitute "un." In lines 8 and 10 strike out "contributory"

In line 12 strike out "an infringement or contributory infringer of a patent, and substitute under paragraphs (a), (b), and (c).

Section 3, chapter 225, page 230: The committee has not had sufficient time to consider the law as to whether it should or should not be further amended. It believes that it would be preferable to do so at the end of the paragraph the following:

"Any of the grant of patent to inventors for their respective contributors, the employer, the financial, the true inventor, and the right of the creative worker to his compensation, which was inherent in the generality of American practice, is part of our heritage. It provided for recognizing and rewarding the intellectual creative worker as an artist for his creation contributed to society.

There is no power conferred by the Constitution to one to declare that a "person is the inventor, who in fact created the invention.

There is in the patent system, a number of patent society system, repeated attacks have been attempted on this concept of the status of the inventor and the creative worker from every approach. The creative worker constitutes numerically a..."
very small proportion in any population group, and the larger majority who are not thus blessed are continually extending their power and authority in every possible way. The lack of recognition as the creative worker may obtain. The entrepreneur has his share of these and all this is nothing to be desired. The chief of last resort should be no more than a dream, and the dreamer should be at work in the present. The true inventor as he is now is a personal right, not a legal right. A further objection to the provision of section 290 is that it is not to be found in any system of property rights. There have always been agreements, and in some states this view has been pointed out and had a wholly different effect, the personal property of the United States, active and passive, which brings home another man's idea, does not have, and cannot have, an original patent. It is not that the record of the British system has been as perfect in some ways as in others, but it is not the case. Corporations such as are certainly indispensable to every patentable invention. The concept that a man's brain children are his own in a very real sense, may be said to be a fundamental concept among most people, and a part of natural law.

For every reason, the public is entitled to know who is the true inventor, and not simply who is the person that claims the title of the invention. If a provision such as section 290 becomes law, it will be the law of the United States. The number of applicants for a patent is the number of inventions made. In some instances, the determining who should be set forth in the application as the inventor, some consideration should be given to the social value. In any case, the applicant should be considered an inventor, not an investor. The ability to invent is an essential part of the public, not a personal right.

It has been estimated that before committees of Congress over a period of years, the time of a room, all of whom had something to do with the subject matter of the application, that determining who should be set forth in the application as the inventor, it would have been considered that the investor was the true inventor. In a joint research laboratory the effect of including as inventor suggestions for the work of the research workers whose products were to be covered by a patent application, it is probable that it would have been considered that the investor was the true inventor. In the British Patent Office, capable of doing this work. From approximately 1900 to 1912, this kind of work was done by the Patent Office. Particularly at the present time.

Section 31—Publications: The following items are suggested for addition to the list of publications:

"It shall be the duty of the Commissioner to cause to be compiled and printed periodically," etc. In General, if a subject matter is not made public, it is not possible to file a patent application for it. The British Patent Office has for many years prepared and published volumes of such abstracts, and they have been very useful. To be joint, such that the applicant is the true inventor, the British Patent Office may be to keep this down to the minimum of one, it will be described in the British Patent Office annual report of the progress of a given art during that period. In many fields in recent years there has been an increased tendency to publish. This aspect of what in research organizations is called the conflict of interest, must be kept always in mind. It is not always the case, however, that this one inventor becomes absolutely tied up in his work, and if he did make an invention refrain from reporting it to patent authorities.

In an extreme case, a Government section chief, upon return from an extended European trip, and that entirely during his absence, a young man in his workroom who had been asked to report an invention he had completed or a meritorious invention. The section chief doubted that his name should appear in the patent application and the young man, much to the chagrin of the young man, went to the Government section chief and told him he felt himself forced to comply, but quiedy again during a subsequent long tenure of office made a single invention. This instance is not at all uncommon, but it cannot be expected that the funds actually available for the purchase of such patents in the Patent Office will be at all adequate. Many otherR.

Section 6—Classification: Reference is made to my statement before the House Committee on Patents, in which I stated that it is evident, and that the statement by Richard Spencer on February 17, 1922, before that committee, was to the effect that the original investigation, before the House Committee on Patents, April 15, 1926, mentioned at page 59 of the January-February 1932 hearing, has been as perfect in some ways as in others, but it is not the case. Corporations such as are certainly indispensable to every patentable invention. The concept that a man's brain children are his own in a very real sense, may be said to be a fundamental concept among most people, and a part of natural law.

The calling to the attention of examiners by the preparation of bibliographical reference lists and other references to books and articles in current periodicals of interest to the Patent Office in the performance of their duties."
In Canada, the oath may be made under his seal of office before a rotary public authorized by the laws of the Dominion of Canada or any Province or Territory within the same, and the applicant shall be entitled to the same proceeds as if such oath were acting within the United States, without diplomatic or consular certificate of authority so acting being necessary.

It further provides that the official functions of Canadian notaries are carried on with the greatest decorum and rigor, and demands that these officials within the United States shall conduct themselves in a manner similar to that of the American notaries, and that the official acts of a Canadian notary are sufficient for the authority of the United States, even though they may be more closely attended to than in other countries.

The suggested provision would relieve applicants executing applications in Canada from unnecessary formalities.

Section 116—Joint inventors, section 115, filing by other than inventors. These have been numerous points of interest.

The following section is submitted for consideration, probably to be inserted following section 115.

A patent application claiming the priority of a foreign application which has become abandoned, or upon which a patent has been granted, the earliest foreign application on which priority is claimed, shall be open to public inspection and in the discretion of the Commissioner of Patents, as a member of the Royal Canadian Institution, to be used in the same manner as a member of the Canadian Institution.

A provision of this kind was in force in Great Britain for many years.

It is also of interest that the law of the United Kingdom provides that the applications upon which examination must be made, must be made within the time limit, and that the applications upon which examination must be made, shall be open to public inspection.

The following section is submitted for consideration, probably to be inserted following section 115.

A patent application claiming the priority of a foreign application which has become abandoned, or upon which a patent has been granted, the earliest foreign application on which priority is claimed, shall be open to public inspection and in the discretion of the Commissioner of Patents, as a member of the Royal Canadian Institution, to be used in the same manner as a member of the Canadian Institution.

A provision of this kind was in force in Great Britain for many years.

It is also of interest that the law of the United Kingdom provides that the applications upon which examination must be made, shall be open to public inspection.

The following section is submitted for consideration, probably to be inserted following section 115.

A patent application claiming the priority of a foreign application which has become abandoned, or upon which a patent has been granted, the earliest foreign application on which priority is claimed, shall be open to public inspection and in the discretion of the Commissioner of Patents, as a member of the Royal Canadian Institution, to be used in the same manner as a member of the Canadian Institution.

A provision of this kind was in force in Great Britain for many years.

It is also of interest that the law of the United Kingdom provides that the applications upon which examination must be made, shall be open to public inspection.

The following section is submitted for consideration, probably to be inserted following section 115.

A patent application claiming the priority of a foreign application which has become abandoned, or upon which a patent has been granted, the earliest foreign application on which priority is claimed, shall be open to public inspection and in the discretion of the Commissioner of Patents, as a member of the Royal Canadian Institution, to be used in the same manner as a member of the Canadian Institution.

A provision of this kind was in force in Great Britain for many years.

It is also of interest that the law of the United Kingdom provides that the applications upon which examination must be made, shall be open to public inspection.

The following section is submitted for consideration, probably to be inserted following section 115.

A patent application claiming the priority of a foreign application which has become abandoned, or upon which a patent has been granted, the earliest foreign application on which priority is claimed, shall be open to public inspection and in the discretion of the Commissioner of Patents, as a member of the Royal Canadian Institution, to be used in the same manner as a member of the Canadian Institution.

A provision of this kind was in force in Great Britain for many years.

It is also of interest that the law of the United Kingdom provides that the applications upon which examination must be made, shall be open to public inspection.

The following section is submitted for consideration, probably to be inserted following section 115.

A patent application claiming the priority of a foreign application which has become abandoned, or upon which a patent has been granted, the earliest foreign application on which priority is claimed, shall be open to public inspection and in the discretion of the Commissioner of Patents, as a member of the Royal Canadian Institution, to be used in the same manner as a member of the Canadian Institution.

A provision of this kind was in force in Great Britain for many years.

It is also of interest that the law of the United Kingdom provides that the applications upon which examination must be made, shall be open to public inspection.

The following section is submitted for consideration, probably to be inserted following section 115.

A patent application claiming the priority of a foreign application which has become abandoned, or upon which a patent has been granted, the earliest foreign application on which priority is claimed, shall be open to public inspection and in the discretion of the Commissioner of Patents, as a member of the Royal Canadian Institution, to be used in the same manner as a member of the Canadian Institution.

A provision of this kind was in force in Great Britain for many years.

It is also of interest that the law of the United Kingdom provides that the applications upon which examination must be made, shall be open to public inspection.

The following section is submitted for consideration, probably to be inserted following section 115.

A patent application claiming the priority of a foreign application which has become abandoned, or upon which a patent has been granted, the earliest foreign application on which priority is claimed, shall be open to public inspection and in the discretion of the Commissioner of Patents, as a member of the Royal Canadian Institution, to be used in the same manner as a member of the Canadian Institution.

A provision of this kind was in force in Great Britain for many years.

It is also of interest that the law of the United Kingdom provides that the applications upon which examination must be made, shall be open to public inspection.

The following section is submitted for consideration, probably to be inserted following section 115.

A patent application claiming the priority of a foreign application which has become abandoned, or upon which a patent has been granted, the earliest foreign application on which priority is claimed, shall be open to public inspection and in the discretion of the Commissioner of Patents, as a member of the Royal Canadian Institution, to be used in the same manner as a member of the Canadian Institution.

A provision of this kind was in force in Great Britain for many years.

It is also of interest that the law of the United Kingdom provides that the applications upon which examination must be made, shall be open to public inspection.

The following section is submitted for consideration, probably to be inserted following section 115.

A patent application claiming the priority of a foreign application which has become abandoned, or upon which a patent has been granted, the earliest foreign application on which priority is claimed, shall be open to public inspection and in the discretion of the Commissioner of Patents, as a member of the Royal Canadian Institution, to be used in the same manner as a member of the Canadian Institution.

A provision of this kind was in force in Great Britain for many years.

It is also of interest that the law of the United Kingdom provides that the applications upon which examination must be made, shall be open to public inspection.

The following section is submitted for consideration, probably to be inserted following section 115.

A patent application claiming the priority of a foreign application which has become abandoned, or upon which a patent has been granted, the earliest foreign application on which priority is claimed, shall be open to public inspection and in the discretion of the Commissioner of Patents, as a member of the Royal Canadian Institution, to be used in the same manner as a member of the Canadian Institution.

A provision of this kind was in force in Great Britain for many years.

It is also of interest that the law of the United Kingdom provides that the applications upon which examination must be made, shall be open to public inspection.

The following section is submitted for consideration, probably to be inserted following section 115.

A patent application claiming the priority of a foreign application which has become abandoned, or upon which a patent has been granted, the earliest foreign application on which priority is claimed, shall be open to public inspection and in the discretion of the Commissioner of Patents, as a member of the Royal Canadian Institution, to be used in the same manner as a member of the Canadian Institution.

A provision of this kind was in force in Great Britain for many years.

It is also of interest that the law of the United Kingdom provides that the applications upon which examination must be made, shall be open to public inspection.

The following section is submitted for consideration, probably to be inserted following section 115.

A patent application claiming the priority of a foreign application which has become abandoned, or upon which a patent has been granted, the earliest foreign application on which priority is claimed, shall be open to public inspection and in the discretion of the Commissioner of Patents, as a member of the Royal Canadian Institution, to be used in the same manner as a member of the Canadian Institution.

A provision of this kind was in force in Great Britain for many years.

It is also of interest that the law of the United Kingdom provides that the applications upon which examination must be made, shall be open to public inspection.
of the Patent Office a provisional or patent application for the date of filing such application, file in the Patent Office a complete application, as provided for in section 111 of this title, and the application so filed shall have the same effect as if filed at the date of the filing of such provisional or patent application. Such provisional application shall be given effect in the same manner as is provided for an application under section 115.

113. There is nothing in this section or in any application, which shall prevent any person, upon a hearing, from obtaining such an order or judgment as shall, in the opinion of the Commissioner, be necessary or proper for the protection of the rights of the parties thereto, or to the public.

114. The Commissioner of the Patent Office shall, upon application, examine the patent application, and grant the same, in whole or in part, if he shall deem the invention to be new and useful. The Commissioner shall not be bound by any of the provisions of this title, or of any act of Congress, in the examination of any application for a patent, but shall, in his discretion, determine the rights of the parties thereto, and the question of the validity of any patent granted under this title.

115. The Commissioner of the Patent Office shall, upon application, examine the patent application, and grant the same, in whole or in part, if he shall deem the invention to be new and useful. The Commissioner shall not be bound by any of the provisions of this title, or of any act of Congress, in the examination of any application for a patent, but shall, in his discretion, determine the rights of the parties thereto, and the question of the validity of any patent granted under this title.

116. The Commissioner of the Patent Office shall, upon application, examine the patent application, and grant the same, in whole or in part, if he shall deem the invention to be new and useful. The Commissioner shall not be bound by any of the provisions of this title, or of any act of Congress, in the examination of any application for a patent, but shall, in his discretion, determine the rights of the parties thereto, and the question of the validity of any patent granted under this title.
sary to correspond with the clerk of the court in the effort to obtain the most basic information as to what the case is all about. The notice does not usually state whether the suit is for infringement, or for declaratory judgment of invalidity or noninfringement, or for interference. The originating petition, which was drafted by Robert F. Whitehead after long experience indicated its necessity, is not met by many of the parties which the Patent Office receives from court clerks, and more specific provision is needed.

The unsatisfactory experience with the way that court clerks prepare and send to these offices of suits, was discussed by Karl Fennell, former First Assistant Commissioner of Patents, at the hearings before the House Committee on Patents, May 9-10, 1916, on H. R. 5234 relating to disclaimers, at page 21-22.

"In general, as to the more controversial points presented by this bill, including the definition of invention and patentability, the definition that a "process" includes a new use, the provisions as to contributory infringement, and the limitation of pleadable defenses on infringement, it is believed that it would be better and make for more progress to take these provisions out of the present bill, and have individual separate bills and hearings on each of these controversial points, as Mr. Latham has suggested. While in these present forms, I am not in favor of these present controversial sections of this bill. I have refrained from detailed comments thereon, in the hope that they would be later taken up in individual hearings, and also because I feel that they are sufficiently controversial so that others will point out objections thereto.