

LADAS TO OPEN FORUMS

The first forum meeting of the year will be held on **Monday evening, November 19, 1962.** Albert C. Nolte, Jr., vice chairman of the Committee on Meetings and Forums, announced that **Dr. Stephen P. Ladas**, of the firm of Langner, Parry, Card and Langner, will be the speaker. Dr. Ladas, who is an authority in the field, will discuss **"Trademark Agreements in the Common Market."** The topic will include the antitrust aspects of Common Market trademark agreements.

Joseph D. Garon and Paul B. West are in charge of the meeting. As is now customary, the dinner will be held at **Hotel Piccadilly**, 227 West 45th Street. Cocktails will be served starting at 5:30 p.m. The dinner, costing \$4.50, will be at 6:30 p.m. Questions from the floor will be welcomed.

WHAT SHALL THE NAME BE?

At the June Meeting of the Association a motion was passed for the appointment of a committee "to consider a change of name of the Association to a name similar to 'The New York Patent, Trademark, and Copyright Law Association,' and that the Committee so appointed report to the Association the reasons for and against such change."

At the recent Board of Governors meeting President Hapgood appointed a committee comprising Henry R. Ashton, Norman N. Holland, Theodore S. Kenyon, John Schulman and Stewart L. Whitman, to consider the proposed change of name and to report at the next Annual Meeting.

NEW PUBLIC LIBRARY ANNEX

Facilities. The patent reading room, which is located on the first floor, adjacent to the newspaper reading room, is open from 9 a.m. to 5 p.m. on weekdays and from 9 a.m. to 1 p.m. on Saturday. Photocopy service is available in the Annex, as is a microfilm edition of Patent Office subject classification schedules, together with microfilm readers, so that searches may be made.

Location. The New York Public Library has completed the transfer of its patent collections from the Central Library Building to its **43rd Street Annex** which is located at **521 West 43rd Street**, between 10th and 11th Avenues. Adequate stack space, well lighted reading space, and air conditioned comfort are features of the new location.

CALENDAR

Nov. 19th	Common Market Trademark Meeting, Hotel Piccadilly. Cocktails at 5:30 and dinner at 6:30 p.m.
Dec. 7th	Annual Christmas Dinner-Dance, Hotel Pierre.

NYPLA PRESENTS SUMMER PATENT SEMINAR AT FAIRLEIGH DICKINSON UNIVERSITY

A "first" was recently scored by The New York Patent Law Association in presenting a three day seminar on patents at Fairleigh Dickinson University, Madison, New Jersey. The seminar, entitled *"Working With Patents In Industry"*, offered a concentrated review of patent fundamentals for the benefit of management representatives, scientists and engineers.

The program was given in response to a request from the University and was intended to fill the educational needs of those who do not require, or have time for, a full semester course. The enthusiastic response of those attending the course clearly justified such education efforts on the part of the Association, according to the committee chairmen in charge.

The Program. The seminar was organized and presented by the Association's Committee on Public Information and Education. The format comprised a lecture followed by discussion. With one exception each topic was presented by a team. The topic, speaker and person designated as assisting the speaker, were: *Introduction*—John A. Reilly and Hugh A. Chapin; *Patent Protection for Inventions*—William J. Barnes and Stuart A. White; *Patent Claims*—Lawrence B. Dodds and Edward A. Ruestow; *What the Patent Attorney Needs to Know*—Lorimer P. Brooks and John Thomas Cella; *Strategy in Protecting Industrial Property*—Russell G. Pelton and Donald Gillette; *Procuring the Patent*—Hon. William B. Penn, U. S. Patent Office; *Employer-Employee Relations*—David S. Kane and Haynes N. Johnson; *After a Patent Has Issued*—Morris Relson and Robert R. Keegan; *Patent Licenses and Antitrust Stumbling Blocks*—John F. Neary, Jr. and James N. Buckner; and *Government Contracts*—Richard Whiting and William E. Dampier.

Discussed on Radio. The seminar was co-ordinated by Alfred L. Haffner, Jr., chairman of the subcommittee's Speakers' Bureau and Courses on Industrial Property, and by Robert Osann, chairman of the subcommittee on Public Information and Education. They also participated, together with Dr. Saul Gordon, Seminar Director for the University, in an informal interview by commentator Bob Vesel over radio station WMTR, Morristown, during which the seminar and the patent system were discussed.

Those attending the seminar included vice presidents, research directors, laboratory technicians, patent attorneys and patent liaison men. Some came from as far away as Rochester, New York to attend. The program was so well received that the University has requested that it be repeated next June.

The enthusiasm for the program is illustrated by the comments of a vice president of a medium sized chemical corporation. Not only did he express a desire to tape the lectures from the original tape, but he offered to cover

Continued on page 2

Comments from Members

Editor, NYPLA BULLETIN:

As you and your readers know, the State of New York has recently joined the growing number of states (18 at last count) which are adopting the *Uniform Commercial Code with its statutory provision on warranty against infringement* (Sec. 2-312). But it may not be known that the NYPLA played an important role in formulating the present version of Sec. 2-312 of the revised 1957 Official Text.

The UCC, as first promulgated in 1952 and adopted in Pennsylvania in 1953, provided for a warranty against infringer as follows:

Unless otherwise agreed there is in a contract for sale a warranty by the seller that . . . the goods shall be delivered free . . . from any rightful claim of any third person by way of infringement or otherwise when the circumstances at the time of contracting place the risk of such claim upon the buyer."

Adoption of the UCC was considered in the State of New York in 1954-55, but the New York Law Revision Commission in a report to the Legislature recommended extensive changes, severely criticizing the above provision as incomplete, too broad in language and too burdensome on the seller. Particular dissatisfaction related to the absence of a limitation of the warranty to merchants regularly dealing in goods of the kind and the absence of a corresponding warranty on the part of the buyer where he gives the specifications for the goods.

The report of the New York Law Revision Commission was based on studies and reports of The New York Patent Law Association and, more particularly, its Committee on Patent Law and Practice, which was supported in its stand by the NAM, ABA, APLA and other patent law associations.

It was especially with an eye to the criticisms and suggestions of the New York Commission that the National Conference of Commissioners on Uniform State Laws published the revised 1957 Official Text and it is this text which is being adopted in the various states.

A comparison of Sec. 2-312 of the 1957 Official Text with that suggested by the NYPLA (cf. State of New York, Report of Law Revision Commission to the Legislature Relating to the Uniform Commercial Code, N.Y. Leg. Doc. No. 65(A), (1956)) shows that they are substantially identical. The text of Sec. 2-312 as recently enacted in New York (Chap. 553, Laws of 1962) was quoted in Vol. 1, No. 6, p. 3 of the NYPLA BULLETIN. The UCC will be effective in New York as of September 27, 1964.

This interesting background came to light when a study group of Curt Von Boetticher's 1961-1962 Subcommittee on Patent Contracts Other Than Government, including Andrew L. Gaboriault, Julius L. Tomaselli and the writer, as chairman, studied the problem of implied warranties against infringement.

—KARL F. JORDA

FIRST ROBERT C. WATSON AWARD

The American Patent Law Association is sponsoring an award in the amount of \$500 to the author of the best paper or article published in the United States between November 1, 1961, and October 30, 1962, on any aspect of the subject "*Patents and an Economy*." The citation must reach the Association before November 15, 1962.

BRIEFS FROM WASHINGTON

With the adjournment of the 87th Congress at the end of the second week in October, all bills that were left pending become dead. This included the Patent Office Fee bill (H. R. 10966) and the use of a declaration in lieu of an oath (H. R. 12773). However, it is believed that bills comparable with these two bills, in their amended form, will be introduced in the first session of the 88th Congress.

H. R. Res. 267 (Celler) was passed and became P. L. 87-668. This law provides an interim extension of the copyright term to December 31, 1965.

H. R. 11793, which was introduced as a re-draft of original bill H. R. 6354 (Cellar), became P. L. 87-773. It provides penalties for counterfeiting phonograph records.

H. R. 10 was passed and President Kennedy signed it late on October 10, 1962 (now P. L. 87-792). The Smathers-Keogh bill permits income tax deductions by self employed persons who establish private retirement funds.

H. R. 12513 was passed and became P. L. 87-831. A full text of the law appears in 135 USPQ II (No. 3). This law provides that no agreement in settlement of an Interference would be enforceable unless a copy is filed before termination of the Interference proceeding. In addition, upon request of the party filing, the filed copy would be kept separate and made available only to government agencies or upon a showing of good cause. An amendment added at the hearings further provides that failure to file a copy shall render any patent subsequently issued and the agreement or understanding between the parties permanently unenforceable. Under this law, the Commissioner of Patents is required to give advance notice of the necessity for filing such agreement.

H. R. 4333 (Lindsay) was signed into Law (P. L. 87-772) on October 9th. This is the so called trademark "housekeeping bill."

EMPLOYMENT COMMITTEE REQUESTS CURTAILMENT OF TELEPHONE CALLS

Don't Telephone if You Can Write. The Committee on Employment handles a great volume of work. This is evident from its annual report in the Association's YEARBOOK. Its services are provided without charge to either employee or employer.

The not inconsiderable burden carried by the Committee is cheerfully assumed. However, the Committee points out that its load will be lessened if the membership will carefully observe one request, and that is to hold the number of telephone calls to Committee members to a minimum. Such communications are likely to require written confirmation or further action in writing and the time spent on the telephone is frequently a duplication of effort which has assumed burdensome proportions.

That Artificial Age Barrier Again. The Committee continues to believe that the membership can and should be helpful in assisting to place registrants who are highly skilled, but are beyond the age which employers are accustomed to consider. There is reason to believe that in our profession the advantages of seasoned judgment sometimes may outweigh the organizational adaptability of youth.

ART OF ADVOCACY SUBJECT OF JOINT BAR MEETING

The Art of Advocacy was the topic of a meeting held on October 10th at The Association of the Bar of the City of New York, which was jointly sponsored by that organization and the Federal Bar Association of New York, New Jersey and Connecticut. The featured speakers, all of whom are eminent masters of this art, were the *Hon. Owen McGivern*, Justice of the Supreme Court of New York State, *Hon. John F. Dooling, Jr.*, Judge of the Eastern District, and *Leo T. Kissam* and *Harry A. Gair*, of the trial bar.

Careful Preparation Praised. All of the speakers offered specific recommendations for improving the art. Justice McGivern emphasized the necessity of careful preparation and the development of a central theme of the case. With the growth of extensive pretrial discovery, depositions should be thoroughly analyzed for use on cross-examination to point out previous inconsistencies in the statements of witnesses. He was critical of the current state of cross-examination and thought that to most lawyers it merely meant that a witness was to be examined crossly.

Cross-Examination. According to Mr. Kissam, the ultimate purpose of cross-examination is to test the witness for truthfulness, intelligence, memory, and bias. He thought that every act of the trial lawyer was instinctively criticized by a judge and jury and highly recommended the trial lawyer to be gentlemanly, courteous, orderly, and, above all, fair. The sympathy of the judge and jury is naturally with the witness who is alone in withstanding the onslaughts of the seasoned trial lawyer.

When discrediting is involved, a distinction should be made between discrediting a witness and discrediting his testimony. If the witness is completely untrustworthy, then he should be completely discredited, whereas if the opponent has only elicited part of a story from a witness, then the testimony can be partially discredited by bringing out the remaining related facts.

Although many facts could be brought out by testimony of other witnesses as opposed to bringing them out by cross-examination of an adverse witness, Mr. Kissam recommended, in general, the establishment of facts by cross-examination since it has a stronger ring of truthfulness. Cross-examination also eliminates the time lag which exists when recourse is made to testimony of other witnesses.

NYPLA Summer Seminar

Continued from page 1

the University's "entire cost of reproducing the seminar lectures in written form." Generally, the comment from all attending was one of praise for the speakers, the coordination and direction of the seminar, and for the lack of undue repetition.

Assistance from Members Solicited. The Committee on Public Information and Education states that it is hopeful of expanding its programs and activities in furtherance of the patent, trademark and copyright systems, and will welcome the participation of interested members who are prepared to offer their talents in speaking or writing in this field.

Anyone interested in speaking, either in a single lecture, series of lectures, or a full semester course, is invited to contact Alfred L. Haffner, Jr., chairman of the Speakers Bureau. Anyone interested in writing, is invited to contact William J. Navin, chairman of the Writers Bureau and Information Center.

Axioms for the Trial Lawyer. As to axioms that a trial lawyer should follow, Mr. Kissam offered the following:

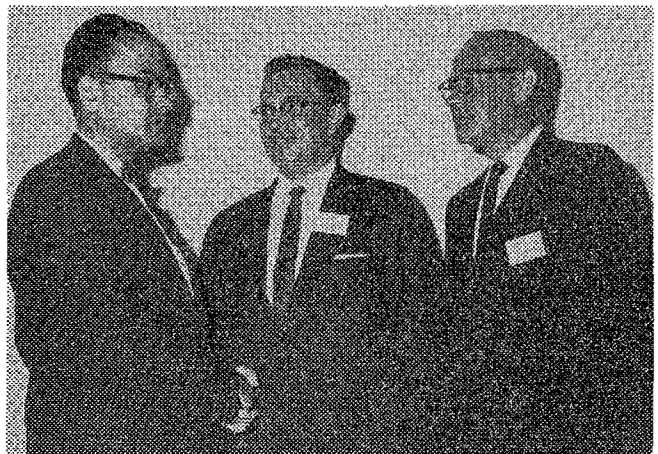
- Do not overdo a point and, particularly, quit when you are ahead. The extra question usually causes trouble.
- When the cross-examination is going your way, speed is essential. Smooth, speedy, uninterrupted cross-examination is achieved only by preparation.
- Preparation includes making exhibits for use in cross-examination.
- Do not ask a question unless you know the answer.

In closing, Mr. Kissam recommended that the advocate must have complete self-control and when receiving an adverse answer, he should not show any evidence of shock.

Aids for a Trial Lawyer. Judge Dooling introduced himself as an advocate who was benched. In reference to the very practical question of how to start an argument or presentation, he said that the first sentence should be written out and committed to memory. It should be so phrased as to describe as much of the case as possible. He should have notes—true notes—which may consist of large handwritten notations or typewritten outlines of points so that when the court says "Go on to the next point, counselor," he can actually go on. Judge Dooling recommended stating facts initially three times "in widening circles of particularity" so that the third judge, who might be somewhat slow, may grasp the facts during the third go-around.

Image and Theory of Case Compared. Harry Gair was the closing speaker. According to Mr. Gair, the purpose of the trial lawyer was summarized by Marc Anthony who characterized himself as a "plain, blunt man" but was going to tell his listener what he "already knows." The truth according to Mr. Gair, usually comes out on top, but the advocate starts with a conclusion; namely, his client's cause. He must find premises to support this cause.

He distinguished between the image of the case and the theory of the case. The image of the case is a constellation of factors which were intended to engender in the judge and the jury a sense of duty towards your client. This image must be the gospel of the case and it must be tied to a principle of law.



(Left to Right) Dr. Saul Gordon (University Seminar Director), Alfred L. Haffner, Jr., Robert Osann

PATENT OFFICE MANAGEMENT SURVEY IS DISCUSSED BY JOSEPH U. DAMICO

Joseph U. Damico spoke at the September meeting of the New Jersey Patent Law Association on the recent *Management Survey of the U. S. Patent Office*. Mr. Damico is a special assistant to the Commissioner of Patents.

Major Problem Areas. Mr. Damico stated that the Management Survey Report describes four major problem areas:

- **Personnel turnover.** 20 per cent of the Patent examining personnel leave the Patent Office each year. The survey points out that greater inducements are needed in order to encourage Patent Examining personnel to remain in the Office.

- **Obsolescence of organization practice, procedures, and management techniques.** Relatively little has been done over the years to keep pace with our expanding technology.

- **Poor management.** As an example, supervisory positions have been filled in the past primarily on the basis of seniority. As a result, in many cases persons with little aptitude for supervising others were selected for these key positions.

- **Lack of a sense of urgency on the part of the Patent Office and the Patent Bar.** The tendency over the years has been to preserve the status quo.

Commissioner Ladd has ordered that each of the 179 Management Survey recommendations be studied by the appropriate Patent Office officials in order to determine whether the recommendation should be accepted as is, modified, or rejected.

Recommendations Accepted. Mr. Damico stated that some of the recommendations which have been accepted, either as is, or in modified form, are as follows:

- A statement of Patent Office policies and objectives is being prepared.

- An office of Planning and Program Evaluation is being established for purposes of co-ordinating over-all Patent Office planning and to self-appraise Patent Office operations.

- In the field of personnel administration, criteria for filling supervisory positions has been developed which emphasizes merit as the primary consideration as opposed to seniority. Also, training courses in the art of supervision are being designed for supervisors. Further, a program designed to bring outstanding high school

graduates into the Office as patent technicians is under way.

- In an attempt to improve the status of Patent Office employees, travel is being authorized, when appropriate, for examiners to visit industrial establishments. The Office is paying for advanced "Office hours" education which is related to an employee's position. An attempt is being made to obtain air conditioners for each room in the Patent Office. Each examiner is being furnished a telephone. Examiners are being promoted as soon as they are capable of performing more difficult duties instead of requiring them to be in the Office for an arbitrarily fixed number of years before promotion.

- In order to promote uniformly high quality examination of applications, a training academy has been established. Also, studies have been made of a statistical sampling of cases ready for issue to determine whether there is uniformity of practices. Further, work is underway to better define standards of invention.

- In an attempt to streamline Patent Office organization, all art will be combined into four major groupings, e.g., chemical, electrical, general, and industrial and mechanical engineering. Thus far, the Electrical Operation has been established under Norman Evans. A new position of Superintendent of the Examining Corps has been established. Harold B. Whitmore has been named to this position. The superintendent will have staff assistants in his office who will be concerned with the academy, quality control, etc.

Mr. Harold B. Whitmore is expected to deliver a speech at the November meeting of the New Jersey Patent Law Association on the changes in practices and procedures, which will supplement Mr. Damico's report.

What Others Are Doing

The election of *David S. Kane* as president of the American Patent Law Association was announced at the annual meeting of that Association on October 18th. *W. Brown Morton, Jr.* was elected as first vice president. Both of these officers have been active for many years in our own Association.

INSIDE THE NYPLA

Following the resignation of Baldwin Guild, *W. Saxton Seward* has succeeded him as chairman of the Library Committee. *Edward S. Drake* is the new vice chairman.

BULLETIN

of The New York Patent Law Association

90 Broad Street, New York 4, New York

Volume 2.

November 1962

Number 2.

The BULLETIN is published monthly (except in July, August, and September) for the members of The New York Patent Law Association. Correspondence may be directed to The Editor, Room 1711, 135 East 42nd Street, New York 17, N. Y.

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