

## Annual Business Meeting

The Annual Business Meeting of the NYPLA will be held at the Hotel Commodore on Thursday, May 23, 1963. The business session will begin promptly at 5 p.m. with the usual presentation of the reports of the various committees and other business to be brought before the Association.

John F. Woog, General Counsel, Long Island Electronic Manufacturers Council, will address the Association following the dinner. His topic will be proprietary rights, including their relation to Government contracts in the light of current Government regulations.

The Committee on Meetings urges members and guests to arrive promptly in view of the full schedule, beginning with the business meeting at 5 p.m. followed by cocktails at 6:30 and dinner at 7:30. It is planned that the program will conclude by 9:30.

## EMPLOYMENT AGREEMENTS VALID?

In the April BULLETIN, Senator McClellan was quoted as asking the question: "Should steps be taken to restore the patent system, in at least some measure, to its traditional role of rewarding the inventor. . . ." As if in answer to this question Representative Brown of California has introduced a bill, H. R. 4932 which would amend title III of the Labor Management Relations Act 1947 (29 U. S. C. 185-187) to add at the end thereof:

### "RESTRICTIONS ON PATENT ASSIGNMENT"

"SEC. 306. It shall be unlawful for an employer to require as a condition of employment that any prospective employee of his or any of his employees agree to assign any patent or patentable invention to the employer or to maintain or enforce any agreement with any of his employees to assign any patent or patentable invention to the employer where such agreement was a condition of employment."

This proposed legislation will be followed with more than usual interest by those in management who are directing research. Its enactment would have the same effect as an atom bomb explosion in the middle of our traditional corporation research and development structure. Not only would it shatter the present operational pattern but it would leave a vacuum which could be filled by any one of the many systems being tried out in Europe today.

## CALENDAR

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| May 23  | Annual Business Meeting, Hotel Commodore. Meeting at 5 p.m. with dinner at 7:30.   |
| June 14 | 7th Annual Spring Outing and Dinner-Dance, Knollwood Country Club, Elmsford, N. Y. |

## THE INDUSTRIAL PROPERTY REVOLUTION IN THE COMMON MARKET AND THE UNITED STATES

In an address before the "Briefing Conference on Industrial Property Protection, Antitrust Laws and the European Economic Community" on April 1, 1963, Commissioner David L. Ladd spoke of the great revolution that has started among the members of the European economic community and the specific impact which this has had and will have on the field of industrial property. The principle underlying the proposed Draft European Patent Convention was expressed by Commissioner Ladd as follows:

"The history of the industrial growth of Europe and the United States indicates that the protection of property rights in inventions is one of the essential pre-conditions of rapid and spontaneous industrialization—at least in a free society. And I would note that this economic fact is appreciated even in countries like the Soviet Union."

There are three questions which are presented by the proposed European Patent Convention as it affects Americans and the protection of their property rights: first, the availability of the European patent; second, accession to the Convention and association with it; and, third, its general inspirational effect towards more international cooperation in the field of industrial property.



Hon. David L. Ladd

**Scope of the Draft Convention.** Commissioner Ladd mentioned that the draftees were unable to agree as to whether the European patent should be available to all or restricted to nationals of countries which are parties to the future Convention. Consequently, Article 5 contains two alternatives reflecting both sides of the disagreement.

Commissioner Ladd argued against the alternative restricting the European patent to contracting nations on the ground that national patent offices could never be eliminated since non-contracting nations could only proceed through national patent offices. Thus the maintenance of national patent offices *ad infinitum* appeared to be the very thing the Draft Convention is supposed to eliminate.

In referring to the Draft's general impact on international patent cooperation, Commissioner Ladd suggested that it might be a model or at least a beginning for providing a framework for international cooperation. This, in turn, may enable underdeveloped countries to set up their own form of patent system without incurring large expenditures for an effective patent office:

## INDUSTRIAL PROPERTY

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"Now, how can appropriate industrial property protection best be provided in the industrially less-developed countries? I suggest to you that this can best be done by pooling the resources and the talent of these countries, by trying to avoid as much duplication as possible; in a word, by way of international cooperation."

**New Frontier?** Commissioner Ladd appeared to regard the Draft Convention for a European Patent Law as being within the scope of the New Frontier (without using the latter term):

"Even though still only a draft, it has revolutionized modern thinking about the possibilities of such cooperation in the patent field. It is the boldest, the most imaginative proposal of its kind thus far. Most of the countries of the world are probably not yet ready to accept the advanced form of cooperation embodied in the Draft. But there is no doubt that it will set things in motion even outside the six countries which shared the toil and the glory of being its authors, for the significance of their work far transcends the borders of the European Common Market."

The Briefing Conference was sponsored by The Federal Bar Association, Villanova University, and Georgetown University in cooperation with the Bureau of National Affairs, Inc., The Philadelphia Bar Association, and The Philadelphia Patent Law Association, and was held at the Sheraton Hotel, Philadelphia, Pennsylvania.

### CLIENT SECURITY FUND RECEIVES OFFICIAL SUPPORT FROM THE NYPLA

The Board of Governors at its meeting on April 3rd heard a report from John A. Reilly on the Client Security Fund (see March BULLETIN). Following the report, which indicated that the fund now exceeds \$30,000, the Board passed the following resolution:

"RESOLVED: That the Board of Governors support the Client Security Fund established by the New York County Lawyers' Association; that the members of this Association be informed of the purpose of the Fund; and that the members be requested to contribute to the Fund."

It is understood that the NYPLA is the first of the New York law societies to back the County Bar on this project.

### NEW JERSEY PATENT LAW ASSOCIATION ELECTS NEW SLATE OF OFFICERS

Henry C. Dearborn, a member of the NYPLA, was elected President of the New Jersey Patent Law Association on March 21st.

Other officers who were elected at the same time are President Elect Charles S. Phelan, 1st Vice President J. J. Denzler, 2nd Vice President Daniel H. Bobis, Secretary I. Louis Wolk, and Treasurer Charles T. Jacobs.

### DR. BENTON A. BULL

Dr. Benton A. Bull died on March 11, 1963, while returning from a skiing vacation in Stowe, Vermont. Dr. Bull was Director of the Patent Division, Law Department, of Johnson & Johnson, New Brunswick, New Jersey, at the time of his death.

Dr. Bull graduated from Knox College, the University of Illinois, and De Paul College of Law, receiving four degrees, B.S., M.S., Ph.D., and J.D. Surviving are his wife, Rebecca Millicent, a daughter, Cynthia Ann, and a son, David Benton.

## RECENT CASES OF SPECIAL INTEREST

The notice requirement of the Copyright Law is met by the affixation of one copyright notice to each smallest commercial unit in which the protected article is normally sold, **H. M. Kolbe Co., Inc. v. Armigus Textile Co., Inc.**, 137 U. S. P. Q. 9 (2nd Cir. 1963). The copyrighted subject matter was a textile design comprising a checkerboard pattern of alternately inverted eight-inch floral squares with one copyright notice appearing in each sixteen-inch interval along the fabric selvage. The Court held that a group of eight squares, rather than a single square, made up the composite design, and that this composite was a single "work" to which a notice had to be affixed. Important considerations were that the eight block design was a basic pattern printed by a printing roller, and that the goods were sold in normal course in units of a yard.

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The filing of an opposition to an application for registration of a trademark under local law does not establish a claim adjudicable under the Declaratory Judgment Act, **Topp-Cola Company v. The Coca-Cola Company**, 136 U. S. P. Q. 610 (2nd Cir. 1963). Although one of the bases of the opposition was that the applicant's mark was confusingly similar to opposer's mark, the filing of an opposition in a local registration is not by itself a warning of a future charge of infringement. A declaratory judgment action can not be used to remove an opposition pending before local authorities to a federal court, at least where the proceedings are actual and not threatened.

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Applicants for United States trademark registrations who base their applications on foreign registrations must file specimens of the goods to which the mark is applied and a statement of the mode of using the goods, **In re Certain Incomplete Trademark Applications**, 137 U. S. P. Q. 69 (Comm'r 1963). Rule 2.39, as amended October 12, 1962, expressly permits only the omission of the allegations of use in commerce and dates of first use. It does not permit omission of specimens or of all allegations of use, as was accepted under former practice. The International Convention does not regulate the conditions and formalities for filing foreign applications in this country, nor does the Trademark Act allow such omissions. Foreign-based applications containing the described deficiencies will not be given serial numbers or filing dates by the Patent Office.

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A claim for breach of a contract vesting the right to commercial exploitation of one's name in another is a substantial and related claim to an action for infringement of a federally registered trademark comprising such name, **Hazel Bishop, Inc. v. Perfemme, Inc.**, 137 U. S. P. Q. 4 (2nd Cir. 1963). The contract in issue granted plaintiff the commercial exploitation rights in defendant's name "Hazel Bishop", and plaintiff also registered this name. The Court held that, even though there was no identity of proof required in the two claims, it would take a broad view of the doctrine of pendent jurisdiction, 28 U. S. C. Sec. 1338(b), so as to permit joinder of the claims since piecemeal litigation would thereby be prevented.

# TRADE SECRETS TOPIC OF BAR ASSOCIATION MEETING

"Trade Secrets" was the topic of a meeting at The Association of the Bar of the City of New York on March 19, 1963. Different phases of the subject were discussed by *Granville M. Brumbaugh* of the New York Bar, *Ray M. Harris* of the Ohio Bar (Legal Officer, NASA), and *R. C. Jeter* of the Ohio Bar (Vice President, General Counsel, and Secretary of the B. F. Goodrich Company). It was announced that these addresses will eventually be published either in THE BUSINESS LAWYER or in THE PRACTICAL LAWYER.

**General Subject Reviewed.** Mr. Brumbaugh, who spoke on the general subject of trade secrets, referred to the rule of liability as set forth in Section 757 of the Restatement of Torts:

"One who discloses or uses another's trade secret, without a privilege to do so, is liable to the other if (a) he discovered the secret by improper means, or (b) his disclosure or use constitutes a breach of confidence reposed in him by the other in disclosing the secret to him, or (c) he learned the secret from a third person with notice of the fact that it was a secret and that the third person discovered it by improper means or that the third person's disclosure of it was otherwise a breach of his duty to the other, or (d) he learned the secret with notice of the fact that it was a secret and that its disclosure was made to him by mistake."

He pointed out that to be a trade secret the information must be in continuous use in the operation of the business, i.e., it must not relate to a single event, such as the date on which something happened. It must be known to only a limited number of persons, though the employees of the business may be aware of it; others may be aware of it under a pledge of secrecy; and it can still be a trade secret even if it is independently known by outsiders, provided that they in turn keep it secret. It should be valuable to be a trade secret. He said that one factor in determining whether or not certain information was a trade secret was the ease with which the information could be independently acquired.

Mr. Brumbaugh mentioned the cases of *A. O. Smith Corporation v. Petroleum Iron Works Co. of Ohio*, 24 USPQ 183, 25 USPQ 29, and *Reynolds v. Skinner*, 72 USPQ 463, 76 USPQ 366, and 77 USPQ 676, as indicating what must be shown to substantiate a trade secret.

A trade secret, he said, must involve a basic idea which is sufficiently concrete and the details of which are sufficiently well worked out to give a mechanical or practical plan of operation.

**Basis of Liability.** Mr. Brumbaugh said that trade secrets cannot usually be obtained without some improper means being involved and that this is the basis of liability, the actions being for breach of contract, breach of faith, or unjust enrichment. A trade secret does not involve a property right with an exclusive right to bar others, as does a patent. Improper disclosure is an actionable wrong.

The law protects against unauthorized disclosure and/or use. A disclosure may be made, however, in expressed confidence or the fact that it was given in confidence may be implied, but it may not be disclosed in confidence to a person against the discloser's will and there must be a reasonable indication that it is actually disclosed in confidence. Mr. Brumbaugh said that almost any communication below ordinary commercial morality would be an improper means of discovery. The circumstances surrounding the disclosure may be such that the disclo-

see should reasonably understand that the disclosure is made in confidence.

The speaker said that if a person learns of a secret not knowing it to be secret and then learns that it is a trade secret, he is not liable for his actions *before* the notice. He is liable for his actions *after* the notice unless there was consideration or unless he had changed his position to his detriment as a result of the disclosure.

The remedies involve damages arising out of past transactions, injunctions against future use of the secret, accounting for past damages, and surrender of the goods made, etc.

Mr. Brumbaugh conceded that it is quite impractical for an attorney to advise his client not to deal with trade secrets, dangerous though they may be, since they can be of such great commercial advantage. He pointed out, however, that the client should understand that in dealing with trade secrets he is taking a calculated risk.

Mr. Brumbaugh mentioned particularly the case of *Carter Products v. Colgate* as being a gold mine of information on trade secrets and a case warranting very careful study. The full citations of this case are as follows: 104 USPQ 314; 108 USPQ 383; 111 USPQ 467; 113 USPQ 161, 317; 115 USPQ 426; 118 USPQ 208; 122 USPQ 175; and 136 USPQ 348. The first two decisions cited are of particular interest.

**Government v. Trade Secrets.** Mr. Harris opened his informal talk by saying that many an attorney and business man would say that the Government was not a gentleman. The Government, he pointed out, is a statutory person; and trade secrets, on the other hand, are governed by common law. The Government is not in a position to pay a person who feels he has been damaged as a result of a trade secret being disclosed merely because such payment would be moral or just. Moreover, the Government ordinarily cannot be sued, although it has been sued on express contract for disclosure of a trade secret turned over by a Government contractor. The Comptroller General has his own rules with respect to compensation where trade secrets have been disclosed.

Mr. Harris pointed out that the Government does not make agreements of a trade secret nature and that it does not place its employees under confidential agreement. The nearest thing to trade secrets in the usual defense contracts are the "data sections" where the contract says what can be done with the data furnished by the contractor. The Government, Mr. Harris said, may agree not to copy data furnished to it, but it will not agree not to use it. He referred to *18 USCA 1905* as a statute covering liability for divulging trade secrets, but he commented that it was not enforced and was "no good anyway."

Two common types of situations were mentioned, one where the Government buys a product and then reworks it and puts it out for bids. In this case the person selling the original product to the Government has no recourse. The second case is where a person sends in information or data voluntarily, with the idea of assisting the Government. If the Government uses it successfully, the person making the suggestion cannot get anything out of the Government. NASA, however, has its own regulation which permits it, as a matter of grace, to make awards under certain circumstances, but not in excess of \$100,000.

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## SENATE MONOPOLY SUBCOMMITTEE HEARINGS ON NASA PATENT POLICY

During March the Monopoly Subcommittee of the Senate Small Business Committee held hearings on proposed liberalization of the NASA patent policy which would bring them in line with present policies of the Defense Department. Senator Wayne Morse denounced the proposed changes as contrary to public interest and as a violation of the law. He indicated that he would introduce a series of bills to stop the proposed change in policy.

Senator Jacob Javits, on the other hand, spoke out in favor of the proposed policy change and indicated he would support the change if it resulted in an improved space program. Turning his attention to the proposal of a Senate debate by Senator Morse, Senator Javits said that this was a constructive suggestion and that if there is doubt concerning interpretation of the patent provisions of the Space Act Congress should clarify same.

**NASA Favors Changes.** James E. Webb, NASA Administrator, spoke in favor of the proposed changes on the basis that they are in the public interest and will help speed up the space program. He expressed the opinion that the proposed changes in the patent regulations are entirely proper and within the present law, which gives the Administrator of NASA broad discretion with respect to patent rights where the public interest is involved.

Dr. Jerome B. Weisner, head of the Office of Science and Technology, expressed the view that no absolute policy on title to patents should be promulgated but that title should be placed either in the Government or the contractor, depending upon the particular situation. On the one hand, he proposed that the Government should take title where the purpose of the contract is to create products for the civilian economy or in fields directly concerning public health and welfare or which are sponsored principally by Government funds. On the other hand, he allowed for retention of patent rights by contractors who have a commercial position in the subject field and have demonstrated technical competence before accepting the Government contract.

## LONG BILL WOULD CHANGE DEFENSE DEPARTMENT'S PATENT POLICY

On March 14, 1963, Senator Russell B. Long introduced a proposed amendment to the fiscal 1964 Armed Forces Appropriations Authorization Bill (S. 843) which would make the Defense Department's patent policy more stringent than the proposed NASA policy.

This bill has been introduced by Senator Long in the light of relatively widespread discussions in Washington by various congressional bodies concerning possible revisions in Government patent policy. Attention has been focused on federal patent policy by proposed changes in the patent policy of NASA which would make the NASA policy more like that of the Defense Department in which title to inventions arising out of Government sponsored research and development contracts ordinarily goes to the contractor and the Government retains a royalty-free license for its purposes. Senator Long has strongly opposed such changes in NASA patent policy.

**Title in Government.** In accordance with Senator Long's proposed changes in Defense Department patent policy, the Government would reserve title to all inventions which may be made by any person in consequence of the performance of obligations arising from a contract, lease, or grant by the Department of Defense or any military department thereof, which requires performance of any scientific or technological research, development, or exploration activity.

Under certain specific conditions the Secretary of Defense may waive proprietary rights in inventions. However, any such waiver would have to be given the studied approval of the Attorney General.

Hearings on the 1964 authorization bill were completed prior to receipt of Senator Long's proposed amendment. Persons who are interested in expressing their views concerning Senator Long's proposed amendment may wish to contact one or more members of the U. S. Senate Armed Services Committee in Washington. The Chairman of this committee is Senator Richard B. Russell of Georgia.

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## BUSINESS WEEK POINTS TREND TOWARD SPECIAL INVENTION COMPENSATION

In a recent article in BUSINESS WEEK, March 23, 1963, entitled "Employee-Inventor Gets His Cut" it was pointed out that many corporations now give employees additional rewards for doing exactly what they are hired to do—dream up inventions. "By such means more and more companies seek to secure innovations, the chief commodity of today's technological economy."

**Variety of Awards Offered.** One corporation offered a trip to Hawaii (and free baby sitting while the inventor and his wife were sunning in the Pacific); another corporation offered marble-based plaques and cash awards; in another company over 4000 employees were to receive checks of up to \$5000.

Other variations of the compensation scheme have included profit sharing, royalty sharing, and a bonus of \$100-\$500 per patent. One company, as part of the royalty sharing program, offered the employee a percentage of profits from a particular patented invention that was arranged as follows: 30 percent on the first \$1000, 25 percent on the second \$1000, and 20 percent after that.

There are, of course, pros and cons to the compensa-

tion schemes. One executive thought that when additional rewards are offered, employees skip their assigned work and direct their thoughts primarily to new inventions. Further, it may be argued that these plans tend to promote competition among individual employees and fosters secrecy of ideas until their disclosure to the Patent Department, which naturally reduces the effectiveness of group approaches.

**May Stimulate Invention.** On the other hand, companies in favor feel that such plans "stimulate greater inventive activity." They contend that the employee who provides an idea which ultimately saves the company money or contributes to profits should receive a reward, commensurate with the saving and profit to the company, on a more direct basis.

As time goes on and these compensation schemes proliferate, the "proof of the pudding" will become more evident. These schemes do, however, reflect one approach to the problem of returning the patent system to the inventor in greater measure, which is the subject of Senator McClellan's recent comments and Representative Brown's new bill.

## Comments from Members

Editor, NYPLA BULLETIN:

At the forthcoming annual business meeting, a committee capably chaired by Norman N. Holland, Esq., will report on a resolution passed at last year's annual meeting. This resolution was offered by the writer and seconded by Eric Offner, Esq. It reads:

"RESOLVED: A Committee be appointed by the President to consider a change of name of the Association and 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."

The resolution does not call for a change of name; it calls for consideration thereof, with the reasons for and against to be presented to the membership. Therefore, the following points should be considered:

1. The NYPLA is an association of lawyers and not one of non-lawyers who might be admitted to practice as patent "agents". (NYPLA Constitution, Article III, Sections 4 and 5, as amended May 7, 1958.)

2. The appropriateness of "Patent" in the name is then the question. "Patent" refers to a branch of, or specialty in, the law.

"Patent" may, or may not, encompass within its term and as a part thereof the practice identified by the words "trademark" and "copyright". There are some who assert that the word "patent" includes within its meaning such terms as "trademark" and "copyright", and if true, then our association's title is appropriate.

3. "Patent" and "copyright" terms are distinctly identified in the United States Constitution (Article I, Section 8). The term "trademark" is not. Trademark matters are before the U. S. Patent Office; copyright matters are not.

4. The NYPLA recognizes the existence of patent matters as such, but does it recognize trademark and copyright matters?

a. The NYPLA Constitution, Article II, specifically notes the "law of patents and trade-marks." The argument that this prohibits or denies separate recognition to "copyrights" is refuted by Article III, Section 4, 5, referring to interest "in patent, trade-mark or copyright law" (emphasis added) and Article VI (Standing Committees) Section 1, wherein there is "a Committee on Copyrights and Designs."

b. The actual practice of the NYPLA shows committees devoted to the practice and problems of patents, trademarks, and copyrights, as separate and distinct entities.

5. In the Metropolitan area, at least, it is possible to find an attorney specializing in trademark law as a member/associate of a *general practice* law firm, as well as to find his fellow specialists and members/associates of *patent* law firms. This indicates that a distinction in skills and aptitudes is accepted and that competence in trademark law is not equated with skill in patent matters. Copyright law is subject to like interpretation.

6. It is then a question whether the NYPLA is to be restricted to patent lawyers (and present agent members), who also may have an interest in the other fields; or whether the NYPLA is not to be so restricted but is to confine the others to an apparent subordinate position as illustrated by its title; or whether the association is to be for "any lawyer interested in patent, trade-mark or copyright law" as stated in the membership Article III.

## N. Y. PASSES NEW ATTORNEY REGISTRATION LAW WITH FEE

The recently concluded session of the New York State Legislature has enacted an attorney registration law as a revenue measure (*Sen. Int. 3710, Pr. 4414; Chap. 204, Laws of 1963*). The many provisions of this Act include the addition of the following new Section 467-a to the Judiciary Law:

"Section 467-a. *Registration of attorneys and counsellors-at-law. Every attorney and counsellor-at-law duly licensed and admitted to practice law in this state on the first day of September, nineteen hundred sixty-three, shall, on or before the first day of January, nineteen hundred sixty-four, file with the clerk of the Court of Appeals a certificate of registration upon a form which shall be furnished by the clerk, upon application therefor. A fee of fifteen dollars shall accompany the certificate of registration when it is transmitted to the clerk of the Court of Appeals for filing.*"

This new enactment will require all attorneys to file certificates of registration with the clerk of the Court of Appeals during the period from September 1, 1963, to January 1, 1964, and pay a registration fee of \$15.00. While the revenue that is expected to be derived from this registration fee has not been announced, it has been estimated as possibly exceeding a half million dollars.

The New York State Legislature enacted a law 65 years ago requiring every attorney then in practice to file a prescribed oath in the office of the clerk of the Court of Appeals (Chap. 165, Laws of 1898). A fee of 25¢ was imposed "to defray the necessary disbursements incurred." Today, all present members of the Bar of the State of New York have filed oaths or affirmations with the clerk of the Court of Appeals. The new law, therefore, requiring registration merely derives additional revenue for the state.

7. The difficulties in finding an appropriate title are not lessened by viewing the title given by the American Bar Association to the section concerned with "Patent, Trademark and Copyright Law." Such a title is, at least, long. The words presently associated with the three fields of law include "industrial property, intellectual property, and proprietary interests," and other words of varying interpretation and weaknesses. Seemingly, there is no short simple title that fits a co-equal division of skills.

8. The association title can be lengthy and reflect all fields; or it can be shorter and be subject to certain inaccuracies of interpretation; or it can be one for exploration. The present resolution purposely left this open.

9. There are specialized associations for specific practices such as the United States *Trademark* Association (which is not confined to attorneys) and the *Copyright* Society of the U. S. A. The New York *Patent* Law Association can be confined to patent lawyers and drop its invitation to membership to persons interested in, and its committees concerned with, trademark and copyright law; or it can consider "patent" as including the terms "trademark" and "copyright"; or it can consider a change in title to reflect its greatness.

—CAMERON K. WEHRINGER

# TRADE SECRETS TOPIC OF MEETING AT NEW YORK BAR ASSOCIATION

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**Government Must Protect Itself.** He mentioned another situation, where information is transmitted to the Government with a letter stating that the Government is not to use it without consent. In this case, Mr. Harris said, the transmitter can only claim implied contract. He pointed out that it was very difficult to place a market value on the benefits and said there was no good law on this kind of case at the present time. Mr. Harris pointed out that if the Government takes data under a contract and fails to put in the available standard clauses which would be necessary to protect the Government, then the Government is estopped from claiming that it is not obligated to pay for the benefits received.

Turning to the philosophy back of Government contracts, Mr. Harris distinguished research and development contracts from supply contracts. In the research and development contracts, the Government is entitled to enough information to reproduce the article through third parties by public bidding and the benefits do not go back to the original contractor. Under the supply contracts, the Government is not entitled to receive the full information necessary to reproduce the equipment, but is entitled to sufficient information so that it can repair the equipment for its own use. He conceded, however, that information received under supply contracts was sometimes inadvertently or intentionally given away by the Government.

Mr. Harris closed by pointing out that there was an outstanding conflict at the present time between the theory of free enterprise and the idea that progress can only be made through dissemination of knowledge, saying "we cannot operate under both theories; something has to give."

**Goodrich v. Latex.** Mr. Jeter limited his remarks to a single (unreported) case involving Goodrich, which he believes to be extremely important and which may be a precursor of other litigation. The case is now pending before the Court of Appeals of Ohio.

Goodrich has been the Government contractor on space suits and has developed and made all of the space suits for the space flights to date. Latex Corporation hired away from Goodrich Goodrich's Manager of Space Suit Engineering, Mr. W., a long-time employee. Latex there-

after bid on Government space suit contracts and was awarded the Apollo contract. Goodrich sued its former employee Mr. W. rather than Latex because Latex was not in the jurisdiction.

The court issued a temporary injunction against disclosure and use of any information belonging to Goodrich but refused a permanent injunction and dismissed the suit, stating that no evil intent was proved, indicating that this, in the mind of the court, was necessary for the issuance of a permanent injunction. Mr. Jeter said that a previous case involving Fairchild Engineering indicated to the contrary, that evil intent was not necessary for the issuance of a permanent injunction.

The court held that Goodrich had not proved that any of its trade secrets had been passed. Goodrich claimed that it was under a continuing threat that its trade secrets would be passed if they had not already been passed.

Mr. Jeter mentioned that Goodrich's employees are not under an agreement not to work for competitors. He also indicated that he did not think the absence of Latex from the suit should have been controlling even though the case would have been helped had Latex been a party. He closed with a question as to whether confidential disclosures to the Government under a Government research contract continue confidential until released.

## NEW MEMBERS ELECTED

At the Board of Governor's meeting on April third the following new members were elected to the Association: Edward M. Fink, Meyer A. Gross, Kenneth P. Robinson, Norman P. Rousseau, and Robert Scobey.

## YEARBOOK ADDRESS CHANGES

If there has been any change in your address, telephone number, or firm name, notify the Editor of the NYPLA YEARBOOK, Cameron K. Wehringer, Roe and Wehringer, 25 West 43rd Street, New York 36, N. Y., not later than June 1st, for inclusion in the membership lists in the 1963 YEARBOOK. A copy of such notification should be sent to the Association's Secretary, Frank W. Ford, Jr., Brumbaugh, Free, Graves & Donohue, 90 Broad Street, New York 4, N. Y. at the same time.

## BULLETIN

of The New York Patent Law Association

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### OFFICERS OF THE ASSOCIATION FOR 1962-63

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