

PATENT OFFICE FEES INCREASED

ASSOCIATION'S LETTER TO McCLELLAN COMMITTEE ON NATIONAL PATENT POLICY BILL

Dear Senator McClellan:

This letter is submitted in lieu of an appearance and testimony on behalf of The New York Patent Law Association. Our Association is very active and includes in its membership a majority of the lawyers in New York City, Western Connecticut and Northern New Jersey who specialize in patent and trademark matters. A Committee of our Association has, for a number of years, been assigned the sole task of reviewing proposed legislation and other writings relating to Government Patent Policy and guiding our Association's position with respect to this matter.

We first want to thank this Subcommittee for holding hearings and accepting statements on the pending bills on Government Patent Policy. Our Association strongly endorses the statement, made at the time S.1809 was introduced, that: "it is clearly the intent of Congress that the basic guidelines of government patent policy should be determined by the Congress" and "that the preferred method of accomplishing this objective is by the enactment of a comprehensive bill rather than by individual amendment to every bill authorizing government research programs."

We have studied the bills now before this Subcommittee designed to establish a uniform national policy concerning property rights in inventions made through the expenditure of public funds. *We favor the passage of S.1809 and recommend that it be enacted as soon as possible* for the following reasons:

1. S.1809 proposes a policy which recognizes the contributions of each of the parties.
2. S.1809 offers the best opportunity for the development of an effective and equitable government patent policy.
3. S.1809 will prevent further deterioration of the patent system by piecemeal amendments to legislation authorizing research and development.
4. S.1809 will provide a basis for incentives necessary to assure that technical advances resulting from federal programs are utilized in non-government areas

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CALENDAR

Oct. 27th—Address By The Commissioner of Patents
Roosevelt Hotel

Nov. — —Forum Meeting

Dec. 3rd—Annual Dinner Dance—Hotel Pierre

A Review

The Patent Office Fee Bill (Public Law 89-83; 79 Stat. 259) which began as H. R. 4185, became law on July 24, 1965, with its signing by President Johnson. The new law was the subject of much controversy and incurred many changes in its original form during its passage through Congress, a principal change being the deletion of maintenance fees. Although principally effecting an increase in Patent Office fees, the new law, when effective on October 25th, will amend the patent and trademark statutes in a number of other ways as well.

The subjects and amounts of the fee increases are tabulated elsewhere in this issue for ready reference.

The Purpose of the Bill. The Senate report on the new law indicates that two results were intended; an increase in the financial recovery of its costs by the Patent Office and the more efficient operation of the Office resulting in earlier availability of technology to the public.

Under the old fee scale, which had not been changed in 32 years, it was estimated that the Patent Office would recover 28.3% of its operating costs in fiscal 1965. For the same period and assuming the same number of filings, the new fee scales would increase Office revenues to approximately 74% of operating costs. This represents an expected increase of income from \$8.9 million to \$23.4 million, most of which would come from filing and issuance fees.

Increases in trademark fees were not commensurate with patent fee increases, since it was Congress' belief that trademark owners should not be made to bear the burden of the deficit principally caused by the number and complexity of patent applications.

Along with the increase in revenues, it is expected that the new fees will enhance operating efficiency of the Patent Office by (a) discouraging excessive claiming, (b) increasing the use of the dependent claims (which the Commissioner has computed reduces the time for analysis of claims by one half), (c) forcing more complex and therefore lengthier applications to bear a burden of operating costs more commensurate with the burden they place upon the Office, and (d) improving the operation of issuance fee payments.

New Fees. For the first time, fees will be charged for procedures and services previously provided without cost to the applicant. Thus, fees will now be levied for:

- printing of the patent;
- issuance of reissue patents;
- filing of a brief in support of appeal (in addition to the regular appeal fee);
- a certificate deleting name of misjoined inventor;
- filing of affidavits under §§ 8(a) or 8(b) in trademark cases.

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Patent Fees Reviewed

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Other changes in practice caused by the amendments are as follows:

Dependent Claiming. Section 112 of the patent statute has been amended to add an express adoption of dependent claims and to include in each dependent claim all the limitations of the claim incorporated by reference.

Section 282 has also been changed to add language specifically recognizing the presumption of validity of a dependent claim even though it is dependent upon an invalid claim.

Also added to Section 282 is the provision that each claim of a patent whether dependent or independent shall be presumed valid independently of the validity of all other claims. The statute previously referred only to the presumption of validity of "a patent."

Procedure for Issuance of Patents. Section 151 of the statute now provides that the Notice of Allowance sent to an applicant shall include the amount of the issuance fee (or a portion thereof) based upon the Patent Office's estimate of the number of sheets of specifications and drawings in the patent when printed. This sum must be paid within three months to avoid abandonment and upon its payment, the patent will issue.

If only a portion of the issuance fee is set forth in the Notice of Allowance, the amount of the remainder will be included in a notice sent to the patentee after the patent is printed and issues. If the balance is not paid within three months, the patent shall lapse.

There is also provision for late payments, for good cause, of both portions of the issuance fee, plus penalties, within three months of their original due date. Lapsed patents will be listed in the Official Gazette and annual patent index.

Although two payments and two notices are provided for, it is believed that only one will be necessary in the great majority of cases. The Patent Office will be able in most cases to estimate with accuracy the amount of the issue fee and printing charges. Where it errs by a small amount, the new statute allows the difference to be waived by the Patent Office. Thus, the need for a second payment notice, after the patent issues, usually will be avoided.

Government Patents. In the belief that the budget of each government department or agency should accurately reflect the cost of its patent acquisitions rather than such costs being absorbed by the Patent Office, all such departments, agencies, and their officers shall now pay the same fees as other applicants.

Effective Dates. Although the effective date of the act is October 25, 1965, the effect of some sections will not be felt for some time.

The new filing and claim fees for original and reissue applications will apply to all such applications filed on or after October 25, 1965.

The new issue fee and issuance procedures will apply only to those patents for which the Notice of Allowance is sent after October 25th.

In Design cases, both filing and issuance fees and procedures will apply only to those applications filed after October 25, 1965.

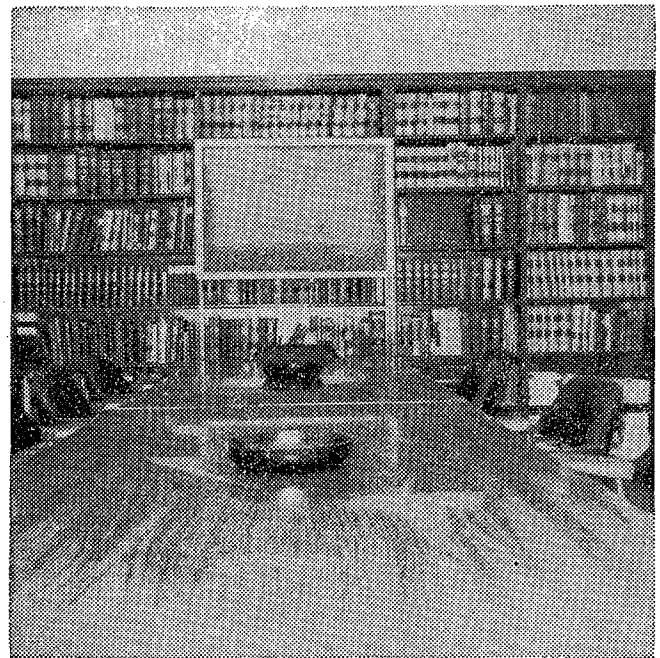
The filing fee for affidavits of use in trademark cases will apply only to those registrations issued or published after the effective date of the act. Thus these fees will not begin to come due for five years.

CONFERENCE ROOM AT COLUMBIA CLUB READY FOR COMMITTEE USE

As the fall committee season opens the Decorating Committee announces that the Association's Conference Room is now completed and ready for use. The room (No. 314) is located in the Columbia University Club at 4 West 43rd Street. Committee chairmen who plan to use it should check with Al. Haffner's office (WO 4-3090) to be sure that the room is free, and they should at the same time list their own meeting. The key can be picked up at the desk at the Club at meeting time.

Those who have used the room are enthusiastic in their comments on its attractiveness and conveniences, as well as its central location. It seems to be the answer to a long-felt need in our Association. Actually, it *should* bring forth just such a response because it was designed and furnished to meet the particular requirements of our own membership.

Suitable for Large and Small Meetings. The key feature of the room is a new conference table which will accommodate 14 arm chairs. There are two read-



ing chairs and a settee, with low tables, for small discussion groups. For larger groups comfortable stack chairs expand the seating space to a total of 32 seats. A portable blackboard is provided which hooks onto the bookcase at the head of the table. For drafting committees, the usual pads, pencils, paper clips and scissors are available. The room is well lighted and is, of course, air conditioned.

A fine old mahogany bookcase (the gift of Fish, Richardson & Neave) fills most of one wall and during the summer the last of the library books were shelved, although there is still some reorganizing and labelling to be done by the Library Committee.

Dining Facilities Available. Those committee chairmen who wish to arrange for a committee luncheon or dinner can make reservations ahead of time with the Club's Banquet Manager, James Hazell (PE 6-2900), for the use of a private dining room.

PATENT OFFICE FEE SCHEDULE*†

Effective Monday, October 25, 1965

APPLICATION FILING FEES

Patent Applications	
Basic fee (for 1 independent claim and 9 dependent claims)	\$ 65.00
Surcharge for excess claims (filed originally or during prosecution) per independent claim in excess of 1..	10.00
per independent or dependent claim in excess of 10	2.00
Design Applications	20.00
Reissue Applications	
Basic fee for same number of claims in original patent	65.00
Surcharge for excess claims (filed originally or during prosecution) per independent claim in excess of number of independent claims in original patent	10.00
per claim, independent or dependent, in excess of 10 and in excess of number of original patent claims	2.00
Trademark Registrations	
Original application, per class	35.00
Renewal application, per class	25.00
(after expiration, per class additional)	5.00
ISSUES FEES**	
Original and Reissue Patents	
Basic fee	100.00
Surcharge	
per full or part page of printed specification	10.00
per sheet of drawing	2.00
Design Patent	
3½ year term	10.00
7 year term	20.00
14 year term	30.00

* These are the statutory fees under 35 USC 41 and 15 USC 1113. Other patent and trademark fees are found in the Rules of Practice in Patent Cases and the Trademark Rules of Practice.

** Applicable to all applications except those in which Notice of Allowance was sent prior to October 25, 1965.

*** Applicable only in case of registrations issued or published under Sec. 12(c) after October 24, 1965.

THREE DAY PROGRAM MARKS CLOSE OF 175th ANNIVERSARY COMMEMORATION

On October 18, 1965, Secretary of Commerce Connor and Commissioner of Patents Brenner formally opened the final three days of activities commemorating the 175th Anniversary of the United States Patent System.

A series of seminars were held under the auspices of the 175th Anniversary Committee at the Sheraton Park Hotel October 18, 19 and 20. Distinguished leaders representing business, labor, industry, the patent and general law profession, the scientific and academic communities, and government and international organizations spoke at the public seminars.

The Commerce Secretary opened an exhibit—"Progress of Industry Through Patents" in the Lobby of the Department of Commerce at which thirty industrial companies exhibited recent product developments. In addition, a famed collection of Leonardo da Vinci's models were displayed.

OTHER PATENT FEES

Appeals	
First taking of appeal to Board	\$ 50.00
Filing of brief	50.00
Disclaimer	15.00
Petition to Revive	15.00
Petition for delayed payment of final fee ..	15.00
Certificate of Correction (35 USC 255) ...	15.00
Correction of misjoinder in patent (35 USC 256)	15.00
Recording assignments, etc., of single application or patent	20.00
for each additional application or patent in instrument	3.00
Soft copies	
Patents	0.50
Design Patents	0.20
"Jumbo" and color plant patents ...	up to 1.00

OTHER TRADEMARK FEES

Appeals to TM Trial and Appeal Board, per class	25.00
Disclaimer after registration	15.00
Petition to Revive	15.00
Opposition or application for cancellation, per class	25.00
Affidavit under Sec. 8(a) or 8(b),*** per class	10.00
Issuance of new certificate or change of ownership or correction of registrant's mistake	15.00
Certificate of correction or amendment after registration	15.00
For certifying in any case	1.00
Recording assignment, etc., of single application or registration	20.00
for each additional application or registration in instrument	3.00
Notice of claim of benefits for publication under Sec. 12(c)	10.00
Printed copy of registered mark	0.20

† Attention is directed to 818 O G 1207 (Sept. 28, 1965) for explanation of fee computation.

SPECIAL EXAMINATION PROCEDURE EXTENDED

The special examining procedure instituted by the Patent Office in March, 1965, 812 OG 953, has been continued with only minor changes for an indefinite period. The extension was announced in 817 OG 1241.

Under the procedure, an applicant may file a special request for the examination of his new patent application, as long as the application has no earlier United States filing date. Besides the special request, the applicant must state that he will not present more than ten claims in the case at any one time.

The seminars covered domestic and international aspects of different patent systems. Discussions included "Is Patent Litigation Good Business?"; "Role of Patents as an Incentive to Investment"; "Optimizing Patents as a Source of Scientific and Technical Information."

October 20 was designated International Day, and meetings were held in the West Auditorium of the State Department. A reception and banquet at the Sheraton Park Hotel on the evening of October 20 closed the ceremonies.

PRESIDENT'S COMMISSION NAMED

On July 23, 1965, President Johnson announced the names of his appointees to the Commission on the Patent System which was established by Executive Order on April 9, 1965 (BULLETIN, April, 1965). It is the task of the Commission to institute the first basic study of the patent system since it was created in its present form in 1836.

Members. The Commission consists of fourteen members who are listed below:

Dr. Harry Hunt Ransom (Chairman), Chancellor of the University of Texas

John Bardeen, University of Illinois

Howard W. Clement, Patent Attorney, Chicago

Sidney Neuman, Patent Attorney, Chicago

James Birkenstock, Vice President, IBM

Howard Nason, President, Monsanto Research Corp.

Bernard Oliver, Vice President, Hewlett Packard Corp.

Simon H. Rifkind, Attorney, New York City

Horton Guyford Steever, President, Carnegie Institute of Technology

Charles Thornton, President, Litton Industries

John T. Connor, Secretary of Commerce

Robert S. McNamara, Secretary of Defense

Eugene P. Foley, Administrator of Small Business Administration

Leland J. Haworth, Director of National Science Foundation

Additionally, the Secretary of State, Dean Rusk, and the Director of the Office of Science and Technology, Dr. Donald F. Hornig, may sit with the Commission as observers.

NYPLA PRESIDENT REQUESTS PROPOSALS ON CHANGES FOR OUR BASIC PATENT SYSTEM

In a letter dated August 18, 1965, to NYPLA President John N. Cooper, Harry Hunt Ransom, Chairman of the President's Commission on the Patent System requested the cooperation and support of our Association. Responsive to this request, the NYPLA Board of Governors on October 5, 1965, set up a special committee to coordinate activities between our Association and the President's Commission. W. Houston Kenyon, Jr., Vice Chairman of the special committee, will outline and direct its activities. Members of the committee are: Albert C. Johnston, Chairman, William J. Barnes, John T. Kelton, Allen G. Weise, Daniel P. Chernoff, C. Cornell Remsen, Jr., John R. Shipman and William R. Woodward.

Special Appeal to NYPLA Members. The Board of Governors and President John N. Cooper are most anxious that any member having suggestions for improvement to and constructive criticisms of the U. S. Patent System as it is today communicate directly with: W. Houston Kenyon, Jr., 165 Broadway, New York, New York 10006.

Last Fall, U. S. Senator McClellan wrote to all patent attorneys requesting that their individual views concerning the basic patent system be sent to him. It may be helpful to the NYPLA special committee if members who replied to Senator McClellan's request simply forward a copy of such reply to Mr. Kenyon.

RECENT CASES OF SPECIAL INTEREST

Patents-Reissue.—A patent application for a reissue patent enlarging the scope of claims of the original patent must be filed within two years from the grant of the original patent, and the factors of delay and diligence are not to be taken into account, **Ex parte Goodrich**, 146 USPQ 586 (P. O. Board of Appeals, 1965). The doctrine that delay or laches could bar the filing of a reissue application arose in the case of **Miller v. The Bridgeport Brass Co.**, 104 US 350, at a time when broadened reissues were not mentioned in the patent laws and the court found it necessary to protect intervening rights. Since the rights of intervening parties are now codified in 35 USC 252, and the two year period is applied specifically to broadened reissues in 35 USC 251, delay and diligence are no longer factors to be considered.

Trademark-Accounting.—One who infringes another's trademark can be held to an accounting of his profits gained through use of his mark, even if the parties are not in competition—a judgment limited to an injunction against future infringements is inadequate, **Monsanto Chemical Co. v. Perfect Fit Products Co.**, 146 USPQ 512 (2d Cir., 1965). Even where the trademark owner cannot prove actual damages, his trademark is to be considered a form of property, and another who uses it without his permission must account under principles of unjust enrichment. The Court overruled its prior decisions in **Admiral Corp. v. Penco, Inc.**, 97 USPQ 24, and **Triangle Publications, Inc. v. Rohrlieh**, 77 USPQ 196, which held that an accounting would be granted only if the parties were competitors.

Patent—Practice—An affidavit under Rule 131 to be effective must show possession of either the whole invention or something falling within the scope of the claims of the application, prior to the date of a reference applied under 35 USC 103, **In re Tanczyn**, 146 USPQ 298 (CCPA 1965). The fact that an affidavit shows that the applicant previously produced that which is disclosed by a reference may not be sufficient. For example, if the applicant only shows that he had invented, prior to the reference date, a part, some parts, or a combination of parts, used to create an embodiment of his claimed invention, where the parts are not within the scope of the claims being sought, the reference is not overcome. However, where the reference shows a species of the generic invention being claimed, the Rule 131 affidavit is sufficient if it shows that the applicant made that *species* before the date of the reference. To that extent, **In Stempel**, 113 USPQ 77, is reaffirmed.

Patents—Interference—Where the Board of Patent Interferences has declared an applicant for a patent to be the prior inventor over the owner of an existing and issued patent and the applicant thus successful has compelled the patentee to proceed by civil action, an injunction may issue against the Commissioner of Patents to prevent the patent from issuing while the civil action is pending, **Monsanto Co. v. Kamp**, 146 USPQ 431 (D. C. Cir. 1965). However, a patent may issue as between competing applications while a civil action is still pending.

COMMISSIONER REVIEWS OFFICE PERFORMANCE—NOTES PROCEDURAL IMPROVEMENTS.

Commissioner Brenner discussed the procedural accomplishments of the Patent Office for the fiscal year 1965 in a speech to the Patent Office Professional staff on July 29, 1965.

He noted that 102,000 patent applications were disposed of in 1965 which represented a 35% increase over last year; 53,000 patents were issued compared with 44,000 the previous year while approximately 89,000 patent applications were filed—a slight increase over the previous year. The backlog was reduced 13,000 and presently stands at 207,000. The average period for first actions is between one and one and a half years.

Appeals Increased. While the number of appeals increased to 23,600 from 10,600 in 1964, this increase is based in part upon the increase in number of final rejections which hit a peak of 8200 in October 1964 but have now leveled off at 2800 per month. Board of Appeals disposals, however, are currently running approximately 500 more than the number of appeals filed.

In 1965, 196 patent professionals either resigned or retired which compares with a loss of 169 in 1964 and 201 in 1963. The Patent Office goal is to maintain approximately the 1964 loss level.

Considerable activity is under way with respect to developing a system for correlating Patent Office operations throughout the world. The Patent Office is currently studying the possibility of adopting International Patent classifications, and a team has been in Europe reviewing the operations of the British, Dutch and German Patent offices. Classification of existing patents would be done on a cooperative basis with all of these Patent Offices.

Future Changes. Various types of Patent systems are being considered which might meet the goals expressed in the Presidential Proclamation establishing a Presidential Commission to study the U. S. Patent System. An optional deferred examination system was mentioned as a feasible approach. The following remarks by the Commissioner are of interest.

"For your information, when I refer to an optional type of deferred examination system, I mean a system in which a deferred examination system could be initiated for a time and to the extent that a determination was made by the Secretary of Commerce that this would be in the public interest. The determination of public interest would involve consideration of such factors as the backlog or period of pendency of patent applications in a given field, the ability to recruit a sufficient number of qualified examiners, and the interest of a particular industry in operating under deferred examination rather than full examination. Thus, the system would permit the use of deferred examination in those technical fields at such times as would appear to be in the public interest, yet retaining the flexibility of using full examination in those technical fields at such times as would appear to be in the public interest."

He concluded by suggesting that significant developments in the national and international patent and trademark picture will occur within the next five years and that the coming year "will be a most significant year in the history of the U. S. Patent Office."

THE BOARD OF GOVERNORS

The new Board of Governors held its first regular meeting on June 10th.

President Cooper announced that between 500 and 600 of the **questionnaires** asking for committee preferences had been completed and received. ••• At the request of the American Patent Law Association, the NYPLA voted a contribution toward the cost of placing **posters concerning patents** in all U. S. Post Offices. ••• Frederick Carver, Chairman of the Committee on Ethics and Grievances, was quoted as expressing serious concern over the Appellate Division's over-ruling of the **Miller case**; the court's decision means that anyone, whether an attorney or not, who is listed as a "Patent Attorney" on the rolls of the Patent Office may call himself such in the State of New York.

President Cooper and vice president Chapin attended the hearings on June 1st and 2nd in Washington on the McClellan, Saltonstall, Long, and Williams bills relating to **government ownership of patents** arising out of government contracted research and development work. It was the general view of the Board that the McClellan Bill (S.1809) was the best of the bills and also had the best chance of passing and that it should be supported. Mr. Chapin was designated as chairman of a special committee to prepare a letter to go to Senator McClellan indicating the Association's backing for his bill. (See the final letter dated July 6, 1965, elsewhere in this issue.)

There was a brief discussion as to whether the **annual Judges dinner** should be held at the Waldorf, where reservations have already been made for 1966, or transferred to the larger ballroom at the Americana. There was also a suggestion that some "high level" entertainment be substituted for the traditional speaker. ••• The proposal for the establishment of a paid post of **Executive Secretary of the Association** was also explored, but was put over for further consideration at a later date. ••• The President stated that the NYPLA had been asked to take part in a celebration of the issuance of the first U. S. patent at the **World's Fair** on July 31, 1965.

Changes in the Board of Governors

In case some of the members have forgotten who they voted for in the annual NYPLA election last May, this will remind you of the new faces on the Board this Fall. Hugh A. Chapin has joined the Board as 2nd Vice President. New Governors are John W. Brumbaugh, John Schulman and Leslie D. Taggart. Mark N. Donohue, Robert E. Isner, and Henry W. Koster completed three-year terms and retired from the Board as of the Annual Meeting on May 27th. Past President Harry R. Pugh, Jr. also retired as of that time.

BULLETIN STAFF CHANGES

Beginning with this issue, several changes in the BULLETIN's editorial staff are announced by Douglas M. Clarkson, Editor-in-Chief and Chairman of the Committee on Publications. Arthur S. Tenser succeeds Paul Blaustein as Editor while Stanley Lieberstein and Moonray Kojima have been named as new Associate Editors. Henry Sharpe and Joseph Bercovitz continue their valued association with the publication as Consulting Editors.

Letter to McClellan

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with consequent benefits to the public at large.

We oppose enactment of S.1899 because it provides for an inflexible government title-to-all-inventions policy; it fails to recognize the equities of the contractors; and it can only serve to stifle the incentive of the contractors on which the government must depend. We accordingly urge this Subcommittee to report legislation which will provide the flexibility necessary to varying government missions and the objectives sought by their research. Such legislation must, at the same time, recognize the equities of contractors and recipients of federal grants.

We are prepared to expand our statements in support of our endorsement of S.1809 and our opposition to S.1899. We have not submitted a more detailed review at this time because we have followed the statements submitted to date in support of S.1809 and believe they set forth adequate and compelling reasons for the passage of S.1809 rather than the inflexible and one-sided S. 1899.

We have drafted a limited number of minor amendments to S.1809 which we believe would clarify the language, strengthen the position of our Government and our industries vis-a-vis foreign governments and industries, and increase the prospect of utilization of the inventions in non-governmental fields.

Rather than extend this letter unduly, we will be pleased to present these suggested amendments at the request of the Chairman or any member of this Subcommittee to each of whom I am sending a copy of this letter.

Respectfully submitted,
THE NEW YORK PATENT LAW ASSOCIATION
John N. Cooper, President

P. E. MANGAN NOMINATED

The nomination of Philip E. Mangan to be an Examiner-in-Chief in the Patent Office was sent for confirmation to the Senate by President Johnson on September 21, 1965. Mr. Mangan presently is Director of the Chemical Examining Division.

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ABBREVIATURES DISCONTINUED

The Patent Office has announced in a notice dated August 25, 1965, 818 OG 791, that the practice of publishing portions of applications will be discontinued for lack of interest and use. It was stated that requests for publication of abbreviations will not be accepted after September 24.

The practice of publishing abbreviations has been in effect since July, 1964, and was similar to the publication of "abstracts" of patents which was terminated in 1953. The abbreviation usually consisted of a representative claim and a figure of the drawing. The application became open to the public when the abbreviation was published.

OLD NYPLA YEARBOOKS NEEDED

If anyone has a YEARBOOK for the years 1954, 1955, 1956 and 1959 that can be spared, please send to the Secretary, Alfred L. Haffner, Jr., 165 Broadway, N. Y. 10006.

NYPLA GOLFERS SCORE

At the annual Association outing on the 18th of June, the prized Governors Cup was awarded to Julian Tomaselli who was presented also with a gold plated putter as a personal memento. Carrying off the other prizes were M. Amster, W. Conner, R. Ball, E. Waters, R. B. Boal, C. McTiernan, Mrs. J. Buckner, Mary Walsh, W. Crowley and S. B. Smith, Jr. Mr. Waters captured the putting contest in addition to second prize Low Net-Handicap.

NEW ASSISTANT COMMISSIONERS NAMED

The presidential appointments of Gerald D. O'Brien and Richard A. Wahl as Assistant Commissioners of Patents were confirmed by the Senate on July 23, 1965. They replace Messrs. Fay and Glaser who recently resigned from these posts.