

## Forum Discusses Design and Copyright Bills

### EXAMINER TESTIFIES BEFORE FTC IN TETRACYCLINE PATENT CASE

According to the Wall Street Journal of September 13, 1966, Examiner-in-Chief H. J. Lidoff testified before the Federal Trade Commission and indicated that he would not have approved the allowance of claims to tetracycline if he had known that it was a by-product in the preparation of an earlier produced antibiotic.

The hearing followed the decision of the Court of Appeals, Sixth Circuit, *American Cyanamid Co. et al. v. Federal Trade Commission*, 150 USPQ 135 (1966), which vacated an earlier FTC decision ordering compulsory licensing of the tetracycline patent.

**Compulsory Licensing Ordered.** In 1963, the FTC found that the assignee, Pfizer, had misled Patent Office officials in obtaining its tetracycline patent. The allegation of misconduct involved Pfizer's submission of affidavits to convince the patent examiner, Mr. Lidoff, that the co-production of tetracycline in prior art antibiotic fermentation processes was insignificant and not clearly identifiable. The Commission found that Pfizer withheld pertinent information concerning this co-production, and made false and misleading statements regarding the affidavit tests.

The final order of the Commission concluded that a patent monopoly asserted under these circumstances gave rise to unlawful competition, and called for compulsory licensing of the tetracycline patent on a 2½% royalty basis. Several other companies were involved as alleged co-conspirators.

**Order Vacated on Appeal.** The Court of Appeals, Sixth Circuit, subsequently vacated the FTC order and remanded the proceedings. The court's action was based upon FTC Chairman P. R. Dixon's refusal to disqualify himself from participating in the Commission proceeding. Mr. Dixon formerly was Chief Counsel and Staff Director of the Kefauver committee which investigated many facets of the issues involved in the present proceedings.

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### Latman and Cary Speak at NYPLA Forum

On October 18, at the Hotel Picadilly, the New York Patent Law Forum was addressed by two speakers, each of whom discussed pending legislation of importance to the profession. At the opening of the meeting, Mr. Alan Latman, counsel for an interested industry group, discussed the Design Protection Bill. After dinner Mr. George Cary, Deputy Register of Copyrights, discussed the Copyright Revision Bill.

**Design Protection Bill.** The Design Protection Bill was passed by the Senate this year, but failed to get through the House Committee which was overburdened with work relating to copyright legislation. It is hoped that the bill will be enacted in the next session of Congress.

Mr. Latman explained that the Design Bill is intended to protect original designs for useful articles. The designs are protected if they possess a quantum of creativity which meets a standard similar to that necessary for copyright protection. The protection extends only to designs which are embodied in useful articles offered for sale or public exhibition.

**Other Provisions.** A summary of some of the other substantive provisions of the bill is as follows:

- Registration—Must be effected within six months after design is made public.
- Duration of Protection—Five years, renewable for an additional five years.
- Marking—Very flexible requirements.
- Scope of Protection—Active, direct copyist or direct importer may infringe; independent originator not liable as he is with design patent.
- Remedy—Injunction or monetary damages.
- Exclusion—Apparel designs; this exclusion is owing to the desire by some legislators to make apparel design the subject of a special bill.

**Copyright Revision.** The Copyright Revision Bill was passed by the House and was reported out of the Senate Subcommittee on October 12. The most striking modification of the copyright law which is effected by this bill is the change in duration of copyright from 56 years (if renewed) to a term expiring 50 years after the death of the author. Thus all copyrights of an individual author will expire on the same date, and the average duration of copyright will be about 70 years.

**New Technology.** The present bill attempts in many instances to make provision for coverage of some of the new technologies. Thus, for example, Community Antenna Television (CATV) broadcasts are not subject to the copyright laws where the signal is normally expected to reach an area but doesn't because of local obstructions.

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### CALENDAR

Nov. 15, 1966—Dinner meeting in honor of the Commissioner of Patents, Edward J. Brenner, Hotel Roosevelt, 5:30; dinner 6:30. Speaker: The Commissioner.

Dec. 2, 1966—Annual Dinner Dance  
Hotel Pierre

## ARBITRATION COMMITTEE MEETS

**Arbitration of Patent, Trademark, and Copyright Issues.** As directed by the president of the Association, the Committee on Arbitration is undertaking to determine whether there is a need for qualified persons to serve as arbitrators in the fields of patent, trademark, and copyright law.

Messrs. R. S. Grimshaw, H. N. Johnson, and R. J. St. Onge, of the committee, met with the chairman, C. K. Wehringer, on September 20th to resolve this question. The committee concluded that such a need exists and that the need should be implemented by the establishment of a panel of available arbitrators. The committee met again on October 17, 1966 with officials of The American Arbitration Association to discuss procedural details.

**Interest of Members to be Surveyed.** To ascertain whether such a panel can be set up the committee proposes to place in the hands of each member of the NYPLA a form asking whether the member would be interested in serving as an arbitrator in any one of the three fields of patents, trademarks, or copyrights.

Chairman Wehringer pointed out that the committee, by this proposed action, is not suggesting the increased use of arbitration, but is merely recognizing that arbitration exists and that it should have the benefit of additional capable people to act as arbitrators where needed.

## Presidential Commission Given Extension

According to a notice appearing in a recent issue of the Federal Register, the President's Commission on the Patent System has been given an additional two months (until December 8, 1966) in which to submit its report. Under present plans, the report will be submitted to the White House before being made public.

## NEW PATENT OFFICE APPOINTEE

Gerald J. Mossinghoff, formerly Chief of Infringement and Royalties Division in the Office of the General Counsel for the National Aeronautics and Space Administration, has been appointed Director of the Office of Legislative Planning in the United States Patent Office.

## EXAMINER TESTIFIES

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The court noted, for the assistance of the Commission on remand, that the FTC had jurisdiction to support its order, but that its findings with respect to the Patent Office proceedings were not supported by substantial evidence. The court also stated: "We see no reason why Examiner Lidoff could not have been subpoenaed as a witness to testify as to facts known only to him. . . ."

According to the Journal, Mr. Lidoff stated at the recent hearing that he would have denied patent protection for tetracycline if the applicant had clearly disclosed co-production with previously produced antibiotics, but he did not question the motives of the assignee since "They gave me what they understood I wanted." The Journal states that Commissioner Brenner permitted Mr. Lidoff to testify in view of the importance of the tetracycline case.

## NYPLA FORUM

Continued from page 1



George Cary



Alan Latman

Speakers at NYPLA Forum

However, copyright protection is provided for transmission of signals to areas which would not normally be reached and which can be provided with full network coverage. In areas which do not have full network coverage, provision is made for compulsory license.

Certain exemptions from copyright protection are provided for in the use of educational materials. Thus copyright does not extend to materials reproduced by a teacher in a classroom in the presence of students. Additionally, educational television beamed to a classroom is exempt as are television programs designed for the basic education of adults in the home.

**Other Provisions.** Among the other provisions of the bill are the following:

- Marking—Flexible provisions; failure to mark does not result in complete dedication.
- Computer Programs—No specific provision.
- Sound Recordings—Now included to discourage production of "bootleg records."
- Videotape Sportscasts—Specifically included.
- Juke Boxes—Now covered with compulsory license provision of 3¢ per record for each quarter, or \$19.00 per year for each machine.

The heavy number of questions addressed to each of the speakers attested to the informative and thought-provoking nature of their talks.

## TRADEMARK EXAMINERS MUST BE ATTORNEYS

According to an article appearing in the New York Law Journal for October 7, 1966, the Civil Service Commission has classified Patent Office Trademark Examiner posts as Attorney positions, requiring admission to the Bar. The article did not indicate when this requirement will go into effect, nor did it state what effect, if any, it will have on presently appointed Trademark Examiners who are not members of the Bar.

The report notes that the Civil Service Commission acted upon the recommendation of the Federal Bar Association.

## TRADEMARK FORM CHANGE

The Federal Register for October 22, 1966 (Vol. 31, No. 206) includes a form change relating to applications for renewal. The form has been re-published in its entirety to make clearer the acknowledgment requirement which raised some confusion when the form was first published in April, 1966.

## Comments from Members

Editor, NYPLA BULLETIN:

The recent decision of the CCPA (*in re: LaVerne*, 356 Fed. 2d 1003; 148 PQ 674) has significant overtones on the question of design patent infringement which go beyond the jurisdiction of this Court.

The CCPA was faced with a molded chair design by LaVerne of the "same general type" illustrated in a 1958 design patent (181,945) granted to Eero Saarinen. Saarinen was a renowned architect, among whose notable structures are the TWA terminal at Kennedy Airport, the main terminal at Dulles Airport, as well as the new CBS Building in New York. He was also a leading furniture designer, his molded chair concept setting a new style trend which has been widely copied.

In the opinion of the Board of Appeals, the LaVerne design represented "mere variations" of the Saarinen design rather than an essentially new design. In reversing the Board, the CCPA recognized that in the field of design, "analysis is not so easy", for how does one determine under Section 103 whether a design is an unobvious variation? The Court pointed out that the test is not whether the design is more than a "competent designer" might produce, but is inherently visual in nature. One must, according to the Court, gauge obviousness on the basis of the effect of the appearance of the design on an "ordinarily intelligent man".

While I take exception to the holding of the CCPA and believe that the LaVerne design is a "knock-off" of the Saarinen design from every visual standpoint, I agree with its legal reasoning. The Court noted that it is possible for two chairs to be part of the same style trend and still be "distinctly different designs within that style trend". The Court went on to say that a "design which initiates a new style does not automatically close the field to all other designs within the same style pattern".

Let us now consider the implications of this statement. Traditionally, patent attorneys have taken a dim view of the value of design patents, for to constitute an infringement, the over-all design must be substantially the same as the patented design, so that the ordinary observer would be deceived into taking one as the other. As a practical matter, one seeking to avoid infringing a design patent will introduce ornamental variations which affect the over-all impression made on the eye of the observer. Since courts tend to construe design patents strictly, it has not been too difficult to escape the charge of infringement.

If we accept the aesthetic judgment of the CCPA, the LaVerne design is not a mere variation of the Saarinen design, but represents a patentable innovation which nevertheless lies within the style pattern created by Saarinen. The LaVerne design would therefore, by the usual rigid test for design infringement, not give the same impression as that of Saarinen, for the "ordinarily intelligent man" would presumably have the ability to discriminate between a general style and an innovation within the style, just as the CCPA succeeded in doing.

It would not be fair, in my opinion, to permit a maker of the LaVerne design to escape infringement, for if Saarinen invented a new style, his patent should be permitted to dominate all innovations which lie within the pattern of his style. Just as a court will accord a pioneer industrial invention special consideration and construe

## BULLETIN STAFF CHANGES

Several changes in the staff of the NYPLA BULLETIN, effective the last issue, have been announced by Douglas M. Clarkson, Chairman of The Publications Committee and Editor-in-Chief. In the newly created post of Assistant Editor, Moonray Kojima will assume a greater share of the responsibility for publication. Arthur S. Tenser continues as Editor.

New Associate Editors Paul Heller and Geoffrey Lynfield join with veterans Paul Blaustein, Harold Einhorn, George Gottlieb, Stanley Lieberstein, J. Harold Nissen and Robert J. Sanders to round out the editorial staff. Bernard Olcott remains as Staff Photographer and Joseph Bercowitz and Henry Sharpe continue as Consulting Editors.

## ROBERT SAMUEL WATERS

Robert Samuel Waters died on October 13, 1966, in White Plains Hospital, at the age of 79.

Mr. Waters, who retired in 1955 as Senior Partner of Hazeltine Lake & Company, was a native of England and started with the firm in its London office. He became a partner in the New York branch in 1924 and Senior Partner in 1942.

In addition to The NYPLA, Mr. Waters was a member of the International Patent and Trademark Association and a Fellow of the Charter Institute of Patent Agents. He is survived by his widow, two children, and five grandchildren.

the patent claims very liberally, it would be in order to accord similar rights to pioneer design concepts which establish new style trends.

Though infringement is outside the jurisdiction of the CCPA, in drawing a useful distinction between the initiator of a new style and a designer working within that style, it has, I believe, laid the basis for a more sensitive and sensible test for infringement. The role of style innovators has generally been acknowledged in the art world, and the pioneering activity of such masters as Cezanne and Kandinsky in creating a new art style, has received recognition quite apart from their individual paintings. But in the applied arts which are the concern of design patents, the distinction between a newly created style and designs flowing therefrom has not heretofore come into play.

While I do not urge that courts abandon the customary "ordinary observer" test in deciding the question of infringement, what the court should first consider is the aesthetic and commercial impact of a design, that is, whether the patented design is a fundamental stylistic innovation, or within an existing style, before the observer is put to the visual test. If the patent is found to cover a new style, or a generic form, the observer should be called upon to determine whether the accused device visually follows the style, not whether it makes more or less the same impression.

In this way, design patents will acquire a value consistent with the growing importance of industrial design, rather than remaining a weak sister to whom one turns in desperation without any real hope that in a showdown the patent will be effective against an imitator who has carefully tampered with the impression made by his design, without, however, departing from a basis style.

—MICHAEL EBERT

## NEWS FROM ABROAD

**Holland.** A recently published report of the Dutch Patent Office contains statistics on the working of the deferred examination system in effect since January 1, 1964.

In 1964, a total of 15,250 applications were filed. Although applicants have seven years, during 1964 and 1965 as many as 5,500 requests for the novelty examination were made (35.4%).

In 1965, the number of applications had increased to over 17,000 and already 4,500 requests for the novelty search (27.7%) have been made.

Requests for continued examination (which can be made any time following the request for the novelty examination within 7 years from the date of filing) were made in respect of 44.2% of the applications examined for novelty in 1964. So far 1,500 (19.6%) such requests were made for applications which received novelty reports in 1965. This appears at the same or even higher rate than those applications examined for novelty in 1964 bearing in mind the much smaller lapse of time since the availability of the novelty reports.

The statistics are complicated by the fact that novelty reports and continued examination are also still being requested for more than 30,000 applications filed under the old Act. It has been projected that ultimately novelty reports will be requested on two-thirds of all filed applications and requests for continued examination will be made in respect of two-thirds of those cases which have been examined for novelty. However, as the number of applications filed continues to increase the Dutch Patent Office again expects to be faced with growing arrears and the necessity to recruit new Examiners.

**Germany.** A draft bill to amend the German patent and trademark laws has recently been published. The object of the law is to reduce the backlog in the Patent Office (more than 250,000 cases) by introducing deferred examination similar to the Dutch system. It is proposed that applications initially will only be examined formally and for novelty. They are then to be published and the thorough examination as to inventive height and advance in the art will only be resumed on making a special request which can be lodged within five years.

For Trade Marks the Bill provides for obligation to use. A registered Trade Mark will not be enforceable if not used within five years.

The bill has been approved by the Bundesrat (Federal Council) and is now before the Law Committee of the Bundestag (Parliament).

**Nordic Patent:** Bills are being brought in before the Danish, Finnish, Norwegian, and Swedish Parliaments harmonizing the Patent Laws of the four countries.

A special agreement among the four countries is to be concluded so that an application filed and allowed as a so-called Nordic application in any one of the countries shall be registered as a patent also in the three other countries. A patent thus granted will have its own individual status in each of the countries and the patent may be maintained in one country and allowed to lapse in the other countries. Infringement and invalidity suits must be conducted and decided upon in each country separately.

Annuities must be paid separately for each country.

## Japanese Patent Practice Described To NJPLA

Mr. Phillip Cooper, the head of RCA's foreign patent operations, spoke before the New Jersey Patent Law Association on September 22, 1966. His subject was the Japanese patent system.

The Japanese are still operating under the first patent law enacted in Japan, in 1887, albeit now substantially amended. The date on a Japanese patent is given in terms of the reign of the emperor. The present emperor, Showa, began his reign in our year 1925. Hence, to calculate the year in terms of our date, the Showa number should be added to 1925.

**No Interferences.** Mr. Cooper pointed out that there is no interference practice in Japan, but there is a system which might be referred to as forced arbitration. That is, where two applications are filed on the same day, the two applicants must agree on the one to whom the patent shall issue. Failure to agree will result in the patent not issuing to either of the applicants. However, where one of the two applicants filed on the same day for a utility model patent, and the other for a regular patent, the utility patent will be issued and the application for a regular patent denied.

Although in Japan a patent is not effective prior art as of its filing date, as is true in the United States under 35 USC 102(e), there is what is known as "prior right practice" in Japan. The first applicant can claim whatever he desires of his disclosure and the second applicant can then claim so much as has not been claimed by the first applicant.

Unlike U. S. practice, an applicant in Japan can amend after final rejection and, indeed, can amend before the Tokyo High Court.

**Opposition.** There are two months from the date of publication in which to oppose in Japan and in that vein, Mr. Cooper pointed out that an application which was expressly abandoned cannot be used for opposition purposes. Therefore, Mr. Cooper urged that applicants do not expressly abandon but simply let the application expire by failing to respond to the latest Japanese patent office action. In that manner, the application will remain useful for opposition purposes.

After a patent is issued in Japan and has remained outstanding for five years, it can thereafter be invalidated by citation of prior art only if that prior art was physically present in Japan within the five year period after issuance of the patent. Interestingly, a patentee can amend his claims during an opposition. However, there is no doctrine of equivalents in Japan.

Mr. Cooper enjoined the patent bar to use direct simple sentences in communicating with the Japanese patent office. The reason is that in translation much of the significance of complicated sentences is lost. For example, there is no plural noun in the Japanese language.

## COMMISSIONER BRENNER IN HUNGARY

Commissioner Brenner was the scheduled moderator of the East-West Industrial Symposium at Budapest, Hungary, on October 31 and November 1, 1966. One purpose of the Symposium was to inquire into the role of patent rights in East-West trade.

## CITY BAR HEARS TALK ON ANTITRUST AND PATENTS

Laurence I. Wood, Esq., Vice President of General Electric Co. and an authority on the subject of antitrust patent law, addressed the Association of the Bar of the City of New York on October 27, 1966. The title of his talk was "Antitrust v. Patents".

Mr. Wood believed that the Justice Department, spurred by the Assistant Attorney General, Donald Turner, Esq., will attempt to broaden the impact of antitrust law in areas which have been relatively dormant the last decade.

**Patent Interchanges.** Mr. Wood focused his remarks on patent interchanges which he believed to be a more accurate term than either patent pools or cross licenses.

Patent interchanges had, in general, been held to be legal because of sheer economic necessity. However, certain types of patent interchanges (1) can be considered illegal per se, (2) can be of questionable legality, (3) can be a factor in broader antitrust questions such as monopolization under Section 2 of the Sherman Act and (4) can be considered as an element in an illegal conspiracy.

Patent interchanges may take various forms such as the afore-mentioned patent pools or cross licenses, may include trustee held title to patents owned by more than one person, can include purchases, assignments and grant back of improvement types of licenses.

**The Classic Example.** The problems involved in this general field of law were traced with the classic example of two mutually obstructive monopolies, the patent to the electron tube by Fleming and the patent to the Triode electron tube by DeForest. In this case, both parties held basic patents and the industry based on the grid controlled electron tube could not develop without some type of patent interchange.

Where mutually obstructive patents are licensed and other persons have access to these patents at a reasonable royalty, the agreement avoids any proscription by the antitrust law. However, if the patent interchange involves dominant companies in a field and the interchange is intended to avoid further competition by others then the illegal motive will dominate the transaction.

**Interference Settlements.** Interference settlements illustrate the wide and varying purposes which are found in patent interchange agreements. The interference is essentially a litigation and there is a real risk and a loser will be foreclosed from the market, therefore any cross license poses many reasonable characteristics. However, if the interference settlement is arrived at to suppress patent invalidating facts then the illegal purpose may become the dominant purpose. A question was raised as to whether a simple interchange agreement giving non-exclusive cross licenses is illegal where no further licenses under the respective patents are to be granted to third parties. The question can only be answered by considering a multiplicity of facts under a basic rule-of-reason approach.

**Definition of Market.** The market is an antitrust term just like the word "claim" is a patent term. Usually the field defined by the claim is much larger and cannot be considered as a market with respect to the definition of antitrust law. However, in certain cases, the monopoly defined by the patent may become the monopolized segment of the market in which case the applicability of

## ABSTRACT CHIEF CHANGE IN NEW PATENT RULES

A number of revised rules in the Rules of Practice in Patent Cases were recently announced by the Patent Office, to take effect January 1, 1967 (831 O. G. No. 4, October 25, 1966).

The rule changes are all directed to the contents and format of the application. Several minor differences are noted with respect to claim format and arrangement of the application, but the major innovation is the requirement for an abstract of the technical disclosure of the specification to be inserted immediately following the title.

According to a notice appearing in the same issue of the Gazette, it is indicated that abstracts will be required in every application filed on and after January 1, 1967, and that abstracts will be requested by the Examiner in the first Action on those applications filed between November 1, 1966 and January 1, 1967. If the first Action is an allowance, no abstract will be requested.

**Purpose of abstract.** The purpose of the abstract is to provide a non-legal, technical statement of the contents of the disclosure and should be designed to serve as a searching tool for the scientist, engineer or researcher in the art.

A single paragraph of fifty to one hundred words is indicated as being sufficient. It is cautioned that the abstract must be separate and independent of the summary of the invention that should appear further on in the specification.

## ANTI-TRUST COSTS TO BE DEDUCTIBLE TO LOSER

The New York Times reported recently (October 13, 1966), that the Internal Revenue Service will now permit business men to deduct on income tax returns the costs they incur in defending themselves in anti-trust cases, even if they lose them.

The ruling was based on a recent Supreme Court case, in which the defendant, Walter S. Tellier, claimed as a business deduction the expenses incurred in defending himself on a securities fraud charge. In finding for the defendant, the Supreme Court said that the charges against Mr. Tellier had their source in his business activities and that the legal fees paid in his defense clearly qualified as expenses incurred in carrying on the trade or business, within the meaning of the tax laws.

On this basis, the Internal Revenue Service is allowing such deductions to unsuccessful defendants in cases under the Sherman Anti-Trust Act, the Clayton Act, and the Federal False Claims Act. In the past, it allowed the deductions in such actions only if the defendant won the case.

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antitrust law becomes pertinent and any illegal motive can permeate the entire situation.

In general, Mr. Wood felt that the patent law and the corollary investments induced by the patent law are great motivators of our economy and that patent interchange agreements serve a real economic need and are to be promoted with that purpose in mind. However, from a legal viewpoint, each interchange must be evaluated under the rule-of-reason approach to determine whether the terms of the agreement are essentially devised to promote competition or to eliminate competition.

# PATENT OFFICE HOLDS HEARING ON COMPUTER PROGRAMMING PATENTS

A public hearing on the Commissioner's proposed Guidelines to Examination of Programs (829 O.G. 441) was held at the Patent Office on Oct. 4, 1966. Approximately one hundred people attended the day-long hearing. All of the speakers opposed adoption of the proposed Guidelines; however, they were divided in their views on whether the Guidelines would or should authorize the issuance of patents on computer programs.

Assistant Commissioner Reynolds, who presided, closed the hearing with a call for specific proposals to amend the Guidelines, which apparently will be closely re-examined by the Patent Office. Mr. Reynolds indicated that comments will be received through November.

The views expressed by the speakers are summarized briefly below.

## Opposed to patents for programs.

- The computer is a useful tool because of its unparalleled speed in solving heretofore unmanageable equations. However, the solving of equations is intellectual activity which is not patentable.

- The general purpose computer is not a warehouse of unrelated parts; built-in restraints limit it to certain finite configurations. All uses of a computer are within its design and therefore are non-statutory inherent functions of the machine. The owner of a computer is entitled to operate it throughout the range of its capabilities.

- A novel algorithm is the real heart of the solution to computer programming problems. Any protection which did not cover the algorithm would be of limited value. Yet algorithms are non-statutory subject matter.

- Patents on computer programs should not be granted unless they are clearly within the statute. The emphasis in the Guidelines on the form of the claims may result in the allowance of patents on essentially mathematical advances or new algorithms.

- The prior art consists of millions of programs which are not available to the Patent Office. Furthermore it would be difficult to obtain examiners with programming backgrounds. These factors would make the examination of programs for unobviousness an impossible task.

- The computer manufacturers indemnify users for infringement under present practice and the issuance of

program patents would result in a shift of the burden to the user. Patents would also raise legal barriers to the shared use of computers, especially since the computer owner does not know the content of programs used.

## In favor of patents for programs.

- The machine processing of data is within the statutory classes of patentable subject matter; the specification should show the required apparatus and a method of operation. The definition of and segregation of algorithm processes, as opposed to utility processes, is by the Patent Office, and not mandated by case-law or statute. If an algorithm is unobvious, process claims should be allowed if physical steps are recited, for example, the generation of electrical signals.

- A new program plus a computer results in a new combination as the computer takes on an unobvious configuration. Likewise, programmed tapes should be patentable as a subcombination. In Great Britain patents are being granted on programmed computers and programmed tapes.

- The sense of *Cochrane v. Deener*, 94 U. S. 780 (1877), is to expand the definition of a statutory process, contrary to the approach to this decision in the Guidelines. The terminology of the statute, Section 35 USC 101, specifically provides for claims to new uses of known machines, such as digital computers; furthermore, section 112 provides for claims in terms of "means" clauses.

- The programming art and many small service organizations in this field require the incentive and protection of the patent system. Without the patent system good programs may be driven into secrecy. Doubt should be resolved in favor of patentability. An inventor should not be deprived of patent protection because of administrative difficulties the Patent Office might experience in handling computer programming cases.

## REMINDER TO RETIRED MEMBERS

NYPLA Secretary Alfred L. Haffner, Jr. requests that members retiring from active practice give him specific notice of their retirement so that the NYPLA may properly reduce their dues to \$5.00 per year in accordance with NYPLA Bylaws, Article III, Section 4.

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