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HISTORY OF UNITED STATES PATENTS AND PRESENT DAY NORM OF PATENTABLE INVENTIONS

BERNARD F. GARVEY*

The first patent on this Continent was granted, by the Massachusetts General Court, to Samuel Winslow in 1641 for a novel method of making salt. Five years later the first patent on machinery was granted by the same Court to Joseph Jenkes on a mill for manufacturing scythes. These patents were granted by special acts of the legislature as there were no general laws providing for the granting of patents. In those pre-Constitution days it was necessary for the inventor to file a request to the governing body of his colony or state to obtain a patent.

The delegates from the various states, when they met in Philadelphia in 1787 to frame the Constitution, dedicated themselves to the proposition, inter alia, of giving protection to inventors and authors. These delegates were conscious of the fear extant at that time of monopolies of the kind granted by European monarchs. The Statute of Monopoly had been passed in an effort to eliminate the odious practice growing up out of grants promiscuously and very frequently improvidently given by the Crown. The Statute of Monopolies was remedial to a degree and excepted from its inhibition patents, but still left the grant of patents to the whims and caprices of the Crown. Little opposition was raised to the principle of granting patents on inventions even though such grants were believed by some to fall into the category of limited monopolies. The consensus of opinion of the delegates seemed to be that patents could be granted with constitutional sanction which would be of great benefit to society, yet would afford some appreciable measure of protection to the individual inventor for a limited period of time. From this opinion evolved proposals by James Madison of Virginia and Charles Pinckney of South Carolina, which materialized in the clause of the Constitution which was to be the fountain source of our entire patent (and copyright) system. “The Congress shall have power . . . to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.”

President Washington, on January 8, 1790, at the 2d Session of the First Congress, meeting in New York City, urged the Representatives “to give effectual encouragement . . . to the exertion of skill and genius at home.” On April 10, 1790, the first Patent Act was passed under which the subject matter for a United States patent consisted of “any useful art, manufacture, engine, machine or device, or any improvement thereon not before known or used.” The application for patent consisted of a specification and draw-

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ing accompanied, wherever possible, with a model. Patents were granted by a so-called "Patent Board" composed of the Secretary of State (Thomas Jefferson), the Secretary of War (Henry Knox) and the Attorney General (Edmund Randolph). It was the prerogative of the Board members to issue patents for a period not to exceed fourteen (14) years "if they shall deem the invention or discovery sufficiently useful and important" and there was no appeal from the Board's decision. This first Patent Act is relatively unimportant at the present day in that little of it remains in our present patent laws. It is, however, the antecedent of the Ruggles Act (1836) and the Act of July 8, 1870, "An Act to revise, consolidate and amend the statutes relating to patents and copyrights" which, with the Amendments of March 3, 1897, May 23, 1930, and August 5, 1939, is our present enabling statute on patentable invention. ² The Amendment of May 3, 1897, to the Act of 1790 added the clause "before his invention or discovery thereof," where those words first appear, and inserted "or more than two years prior to his application" before "and not in public use or on sale." The Amendment of May 23, 1930, added "or who has invented or discovered and asexually reproduced any distinct and new variety of plant other than tuber-propagated plant." The Amendment of August 5, 1939, substituted "one year" for "two years" in two places and there have been no subsequent Amendments to Section 4886 R.S.

Chronology

The first patent granted by the United States was to Samuel Hopkins, July 31, 1790, on a method of "Making Pot and Pearl Ashes." Two other patents were granted during the same year and this was followed by thirty-three patents in the year 1791 and eleven patents in the year 1792. The first patent, of which there is a copy, (the fourth patent issued) was granted to Francis Bailey of Philadelphia. This patent, on "Methods for Forming Punches, by which to Impress on the Matrices of Printing Types," bears the signatures of George Washington, President, Thomas Jefferson, Secretary of State, and Edmund Randolph, Attorney General. During this period there was some dissatisfaction expressed with the rigidity of the "Patent Board" in granting patents, which culminated in the Act of 1793. Under the Act of 1793 a regulation system was substituted for examination for novelty and usefulness and the granting of patents was a clerical function and existed as such for more than forty years following. In 1836 the so-called Ruggles Act was passed, following a report filed by John Ruggles, Senator from Maine, showing patents (granted pursuant to the Act of 1793) to be almost valueless and the salutary objectives of the Constitution and patent laws in a great measure defeated. Under the Act of 1836 the Patent Office was established as a distinct and separate Bureau in the Department of State and the examination system, to determine the novelty and useful-

ness of the invention, was put into effect. The Act also provided for appointment of a Commissioner of Patents (at a salary of $3,000.00 per annum) appointed by the President by and with the approval of the Senate. To obtain a patent it was necessary to file a formal application consisting of a specification, drawing and model. The patent was granted for fourteen (14) years subject to an extension of seven (7) years upon approval of a Board, consisting of the Secretary of State, the Solicitor of the Treasury and the Commissioner of Patents. If the Examiner refused to grant a patent the applicant had the right of appeal to a Board of three disinterested persons appointed by the Secretary of State. Even at this early date the employees of the Patent Office were, under the provisions of the Act of 1836, forbidden to obtain a patent or acquire any interest therein except by inheritance or gift. The Commissioner of Patents appointed under this Act was Henry L. Ellsworth, son of a former Chief Justice of the United States Supreme Court, who remained in office until the year 1845. Patent No. 1, granted after passage of the Act of 1836, was issued to the author of the Act, John Ruggles, on July 13, 1836, on a Locomotive Steam Engine for Rail and Other Roads.

In December of 1836 the Patent Office was completely destroyed by fire and Congress promptly acted to appropriate sufficient money to replace the records. The Patent Office resumed functioning from the City Hall in the District of Columbia. In 1840 the Patent Office moved into its new home located at 8th and F Streets, Northwest, to which wings were added in 1852, 1856 and 1867, from which location the Patent Office operated for ninety-two years. It was also in 1840 that Samuel F. B. Morse received his patent, No. 1,647 for so-called Telegraph Signs, which invention was to play such an important part in the future of the United States.

In August of 1842 the first design patent statute was passed which afforded design patent coverage to "any person who by his own industry, genius, efforts and expense, has invented any new and original design." The term of the patent was for seven (7) years. (The present term of a patent is for selective terms of 3½, 7 and 14 years for any new, original and ornamental design of an article of manufacture.)

It is interesting, at this point, to call attention to a portion of the first Commissioner of Patents' annual report to Congress, shortly before the Commissioner left office to be succeeded by Mr. Edmund Burke. This report advised Congress that "the advancements of the arts, from year to year, taxes our credulity and seems to presage the arrival of that period when human improvement must end." This observation of the first Commissioner has been from time to time paraphrased to mean that everything worthwhile inventing had already been invented and that the doors of the Patent Office should be closed. At the time the statement was made, less than

4,000 patents had been granted and since that time there have been more than 2,500,000 patents granted including the greatest inventions known to mankind, many of which began new industries resulting in the employment of millions of persons in this and foreign countries. As examples we have the patents to William Otis on the Excavating Steam Shovel, No. 1089 (granted February 1839), Charles Goodyear, No. 3,633 for an “Improvement in the Manner of Preparing Fabrics of Caoutchouc or Indian Rubber” which was the inception of the vulcanization of rubber; patent No. 4,750 to Elias Howe, Jr., for an “Improvement in Sewing Machines”; the patent to Gatling, No. 36,836 on a “Machine Gun”; patent No. 88,929 to George Westinghouse, Jr., for “Air Brakes”; patent No. 105,338 to John W. Hyatt, Jr. and Isaiah S. Hyatt, the sires of the celluloid industry; patents Nos. 135,245 and 14,072 to Louis Pasteur of Paris, France, embodying the basic inventions on Pasteurizing; patent No. 138,405 to Eli H. Janney on the “Automatic Car Coupler”; patent No. 174,465 to Alexander Graham Bell on the Telephone; patent No. 200,521 to Thomas A. Edison on the Phonograph and 223, 898 also to Thomas A. Edison on the Electric Lamp; patent No. 347,140 to Thomson for Electric Welding; patent No. 382,280 to Nikola Tesla for Electric Transmission of Power; patent No. 400,665 to Charles M. Hall on the Manufacture of Aluminum; patent No. 436, 532 to Mergenthaler on the Linotype Machine; patent No. 495,341 to Ives for Half Tone Printing; patent No. 560,291 to Acheson on an Electric Furnace for the Production of Carborundum; patent No. 581,213 to Simon Lake on the Submarine; patent No. 586,193 to Marconi for Wireless Telegraphy; patent No. 608,845 to Diesel for an Oil Burning Internal Combustion Engine; patent No. 610,040 to Henry Ford for Gas Engine Carburetors; patent No. 621,195 to Zeppelin on Navigable Balloons; patent No. 686,046 to Henry Ford for Motor Vehicles; patent No. 766,768 to Owens for Glass Shaping Machines; patent No. 821,393 to Orville and Wilbur Wright for Flying Machines; patent No. 942,809 to Backeland for the product now known as “Bakelite”; and patent No. 922,709, January 11, 1910 to Gale and reissue No. 15,771, February 19, 1924 to Savage for so-called Sky-Writing inventions.

**MISCELLANEOUS INTERESTING PATENTS**

Among the many interesting patents granted, particularly to nationally and internationally known persons in various lines of endeavor we find a patent granted in 1849 to Abraham Lincoln, patent No. 6,569 on a Device for Buoying Vessels over Shoals. The model of this invention, asserted to be made personally by Lincoln, is on display at the National Museum in Washington, D.C. Not only was Lincoln an inventor but he also foresaw the potentialities of a great patent system. It was in the year 1859 that Lincoln, during the course of a lecture, made the oft quoted observation: “The patent system added the fuel to the fires of genius.” It was with Lincoln’s encouragement and under his guidance that John Ericsson built
the “Monitor,” the historic conqueror of the “Merrimac”; and it was the
same Lincoln who had the Army adopt the very successful Spencer repeating
rifle. The name of Mark Twain (Samuel Clemens) is also found among
the United States patentees, he having invented an improvement in Ad-
justable and Detachable Straps for Garments, patent No. 121,992. Twain
is also responsible for a statement made by his character “Sir Boss” in the
play “Connecticut Yankee at King Arthur’s Court,” that “a country without
a Patent Office and good patent laws is just a crab and can’t travel any way
but sideways and backways.” In this list of celebrated inventors we can also
find the name of the magician, Harry Houdini, who received patent No.
1,370,316 for a Diver’s Suit which could be removed while the wearer was
submerged, quickly enough to permit the wearer to safely escape and reach
the surface of the water.

At least as early as the year 1833 American ingenuity was active in an
endeavor to perfect “perpetual motion” as is apparent from the patent to
Spofford granted July 2, 1833, the patent to Block, No. 6,995 granted Jan-
uary 8, 1850, and the patent to Durham, No. 29,149 granted July 17, 1860.
The Patent Office has not for many years granted patents on inventions
directed to perpetual motion and where applications are filed for such
patents, the Patent Office will, within a pre-determined period, refund to
the applicant the Government filing fee.

THE ACT OF 1870

It was in the year 1870 that our most important Patent Act was passed,
entitled “An Act to Revise, Consolidate and Amend the Statutes Relating
to Patents and Copyrights.” This Act remains for the most part in force at
the present time. It completed the establishment and conduct of the
United States Patent Office5 including the authorization of the Commis-
ioner of Patents to publish the Rules of Practice.6 Initially the Patent
Office was under the jurisdiction of the Secretary of Interior but this was
later changed and the Patent Office is presently under the Secretary of
Commerce.7 Additionally, this statute defined who may obtain a patent,
the classes of invention and the mode of procedure required for the grant
of a patent and with exceptions already noted herein remains the law at this
writing.8

UNITED STATES CODE TITLE 35, SECTION 31

Section 4886 R.S. (U.S.C. Title 35, Sec. 31) of the Act of 1870 with
amendments to date provides that any person, immaterial of age, race, sex
or color, may obtain a patent on any new and useful article—art, in the
statutory sense, being a synonym for method or process;9 machine; manu-

8. Supra note 1.
facture; composition of matter; new and useful improvements thereof; and
distinct and new varieties of plant, other than a tuber-propagated plant.
This statute also makes it mandatory that the invention must not have been
known or used by others in this country before the invention or discovery
and must not have been patented or described in any printed publication
in this or any foreign country before and the invention must not have been
patented or described in any printed publication more than one year prior
to the application. The statute additionally requires that the invention
must not have been in public use or on sale in this country for more than
one year prior to the application for patent. Unless the invention has been
proved to have been abandoned the inventor may, upon payment of the
fees required by law and the filing of a formal application in the Patent
Office, obtain a patent upon a showing satisfactory to the Commissioner
of Patents that he, the applicant, has completed an inventive act and that
the invention is new and useful within the contemplation of the statute.
The word “discovered” is used disjunctively with the word “invented” in
the statute but the Supreme Court has construed the inventive act to include
discovery within statutory intendment.\(^1^\)

Art, method or process is usually defined to be a method of treatment
of certain materials to produce a particular result or product. The method
may consist partly or wholly in the employment of heat, light, electricity,
magnetism, chemical reaction, pneumatics, hydraulics or some other force
producing physical change. This does not include a system or method of
transacting business.\(^1^1\) However, a system of preparing business records or
means for giving effect to the system may be patentable.\(^1^2\) It is sometimes
difficult to determine whether the subject matter at issue is patentable as
a method, process or art which may be patentable or is a principle, function
of a machine, or system of doing business which is never patentable. Prin-
ciples, and processes or methods are alike in that they are intangible and
validity of a patent must be predicated on whether the subject matter at
issue is a process which may be on the affirmative side or a principle which
is always on the negative side. The Supreme Court in the early days of the
patent system drew a line of demarcation between a patentable process,
method or art and an unpatentable principle or function in a considerable
number of cases. Representative cases in the different arts are set out in the
footnotes.\(^1^3\)

In the final analysis, a patent for a process is usually defined as a com-
bined use of all laws of nature utilized by the process and a principle de-
defined as for only one of the laws of nature used in a process. A new process

\(^{10}\) Thompson v. Boisselier, 114 U.S. 1 (1885).
\(^{11}\) Guthrie v. Curlett, 10 F.2d 725 (2d. Cir. 1926); Conover v. Coe, 99 F.2d 377
(D.C. Cir. 1938); In re Rice, 132 F.2d 140 (C.C.P.A. 1942).
\(^{12}\) In re Hansen, 154 F.2d 684 (C.C.P.A. 1946).
\(^{13}\) McClurg v. Kingsland, 1 How. 202 (U.S. 1843); O'Reilly v. Morse, 15 How.
62 (U.S. 1853); Mowry v. Whitney, 14 Wall, 620 (U.S. 1871); Tilghman v. Proctor,
102 U.S. 707 (1880); Telephone Cases, 126 U.S., at 531 (1887).
is invented if it is performed in fewer steps. Chemical processes were always recognized as patentable in the United States but there was some question as to the validity of the mechanical processes until the Supreme Court decided this affirmatively.

Perhaps the most important class of inventions under R.S. 4886 is machine, in that most of the patents granted are under this classification. This includes every device by means of which energy can be utilized or useful operation performed. It also comprises all inventions simple and complex from a paper clip or corkscrew to a linotype machine, engine, electric motors and the like and includes such intermediate inventions as wearing apparel, furniture, etc. It is possible in a proper case to obtain a patent for a machine and a patent for a method and also in some cases the machine and method may be included in a single patent. The test which has been applied by the Courts to determine whether the apparatus and method may be included in one application for patent is "if the method performed by the apparatus may be performed by other apparatus or by hand." 

Manufacture under R.S. 4886, according to text writers, includes inventions not coming under the classification of arts, machines, composition of matter or designs, a classic illustration of which is a Mausoleum.

Composition of matter inventions granted under R.S. 4886 has been construed to cover all combinations of two or more ingredients or substances. It includes all composite articles, whether they be the result of chemical union, or mechanical mixture, or whether they are gases, fluids, powders or solids. All patented chemical substances, medicaments, dyes, pharmaceutical preparations come under this classification.

Plant Patents

By the Act of May 23, 1930, R.S. 4886 was amended to add "or who has invented or discovered and asexually reproduced any distinct or new variety of plant other than tuber-propagated plant," and the first plant patent was granted to Henry F. Bosenberg, August 18, 1931, on a climbing or trailing rose. At the present writing over a thousand patents have been granted under this provision of the statute. There has been much debate from time to time as to the exact significance of "tuber-propagated" and "asexually reproduced" but these requirements of the statute have now been interpreted with sufficient definiteness to permit a line of demarcation to be drawn with reasonable certainty between inventive and non-inventive plant patents. The general rules of patent practice prevail, as applied to applica-

18. Walker on Patents 52 et seq. (Deller's Ed.).
tions for patents under R.S. 4886, with the addition that the application for plant patent is filed in duplicate so that the experts in the Department of Agriculture may be provided with a copy. The Department of Agriculture, in collaboration with the Patent Office, passes upon whether or not the variety of plant submitted is new. The legislative history and background of plant patents has had comprehensive treatment by attorney Robert Starr Allyn of the New York Bar in his treatise *The First Plant Patents*, published in 1934.

**Patentable Invention**

There are many schools of thought on the question of what is a patentable invention, and it is perhaps easier at the present time to negatively rather than affirmatively define the term. In the much publicized concurring opinion of Mr. Justice Douglas in the case of *Great Atlantic & Pacific Tea Co. v. Supermarket Equipment Co.*\(^\text{20}\) we find the observation, "An invention need not be as startling as an atomic bomb to be patentable," but this is not a very helpful yardstick for measuring patentable invention or for determining what falls in the affirmative category of invention. It has been fundamental since almost the inception of our patent system that many negative classes exist which are not patentable including mechanical skill, excellence of workmanship, aggregation of unrelated elements, exhausted and unpatentable combinations, making parts adjustable, substitution of materials, etc. In the very early days of our patent system the Supreme Court held that it was not patentable to combine a lead-pencil and an eraser\(^\text{21}\) as this falls in the negative class, (aggregation) since there is no interdependence of function between the pencil and the eraser. The machine or device must produce a new result due to the joint and cooperating action of all the elements and which is not the mere adding together of separate contributions.\(^\text{22}\) Also in the early Supreme Court cases we find that it was not invention to duplicate one or more of the parts of a machine unless the duplication resulted in a new mode of operation or produced a new unitary result;\(^\text{23}\) it is not invention to omit one or more parts of a machine unless the omission results in a new mode of operation of the parts retained;\(^\text{24}\) and it furthermore was established many years ago by the Supreme Court that it is not invention to change a process, machine, manufacture or composition of matter by substituting an equivalent unless the new part not only performs the function of the part for which it was substituted, but also performs an additional function.\(^\text{25}\) It has been academic throughout the years, in the definition of invention, that the Constitution and statutes were satisfied by a so-called novel combination which is the

\(^{20}\) 71 Sup. Ct. 127 (1950).
\(^{21}\) Reckendorfer v. Faber, 92 U.S. 347 (1875).
\(^{22}\) Pickering v. McCullough, 104 U.S. 310 (1881).
\(^{23}\) Dunbar v. Myers, 94 U.S. 187 (1876).
\(^{24}\) McClain v. Ortmayer, 141 U.S. 419 (1891).
\(^{25}\) Crouch v. Roemer, 103 U.S. 797 (1880).
antithesis of aggregation. In other words, a new combination with a new mode of operation may be invention even if all parts thereof are old and even if the function of the combination is also old. The Supreme Court has so indicated in many decisions over the years.26 Without exception, it is believed that all courts and the United States Patent Office have used the norm of the Supreme Court, particularly as enunciated in Leeds & Catlin v. Victor Talking Machine Company.27 The Court of Customs and Patent Appeals has seen fit on a number of occasions to reverse the Patent Office where an effort was made to anticipate a novel combination by combining two or more prior art patents showing the elements of the combination.27

Does the pronouncement of the Supreme Court in the Great Atlantic & Pacific Tea Co. case,28 decided December 4, 1950 change the norm for patentable combination and does it establish a higher standard of invention? A few years ago when the Supreme Court gave birth to the classic "flash of genius,"29 many authorities and some of the Courts believed that a new and perhaps insuperable standard of invention was being established.30 Later decisions, however, of the Supreme Court did not follow up or explain the "flash of genius" pronouncement and in several cases, decided after the Cuno Engineering decision, found patentable invention where the margin of novelty was concededly narrow.31 However, even though the decision in the Atlantic & Pacific case was handed down only a few months ago, it has been used as a precedent and quoted from in a considerable number of cases.32 In addition, there have been many articles written in treatment of that case including four in the February 1951 issue of the Journal of the Patent Office Society.33 What the ultimate effect of this decision on the patent system will be, lies sealed in the vault of time. The initial trend seems to suggest the requirement for a higher standard of invention,34 special attention being directed to the decision of Judge Dobic in the Vapor Blast Mfg. Co. case.35

28. See note 20 supra.
34. JOURNAL OF THE PATENT OFFICE SOCIETY 567 (Aug. 1940), 83 (Feb. 1948), 72 (Apr. 1948), 118 (Feb. 1950), and 940 (Dec. 1950); supra note 30, at 49.
35. See note 32 supra.
CODIFICATION OF THE PATENT LAWS

For the past few years work has been done by the patent fraternity on a Proposed Revision and Codification of the Patent Laws. In the original draft of the codification as set out in H.R. 9133 (81st Congress, 2nd Session, introduced July 17, 1950), R.S. 4886 was revised to include, inter alia, a specific definition of patentable invention as follows:

Sec. 101. INVENTION PATENTABLE.
Any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor upon making application for a patent, subject to the conditions and requirements of this title.

An invention in the nature of a discovery as embodied in a new and useful art, machine, manufacture or composition of matter, or improvement thereof may be patented. The term "invention" when used in this title includes such discoveries. The term "art" when used in this title includes a new use of a known material.

Sec. 103. CONDITIONS FOR PATENTABILITY.

NON-OBlIGTV SUBJECT MATTER.
A patent may not be refused or declared invalid when the invention is not identically disclosed or described in the material specified in section 22 of this title, unless the differences between the subject matter patented or sought to be patented and said material are such that the subject matter as a whole would have been obvious, without experimentation or research, to a person having ordinary skill in the art at the time the invention was made.

Patentability shall be determined by the nature of the contribution to the art, and shall not be negatived by the manner in which such contribution may have been accomplished.

However, since the demise of the above Bill, much additional work has been done on a revised Bill about to be introduced in Congress with still further changes bearing on patentable invention. Whether or not the present proposed revision and codification will be enacted into law is for the future to determine. If it is enacted into law, will there be any change in the view of the Supreme Court, on patentable invention, as expressed in the A. & P. case, particularly if the norm or standard is as set out in the concurring opinions of Mr. Justice Douglas and Mr. Justice Black? Is this contemplated legislation sufficiently definitive of invention to determine between the negative pole, of so-called gadget patents of the concurring opinion, and the unknown zone of the positive pole—as startling as an atomic bomb to be patentable? What is the "standard of invention" which allegedly, in the concurring opinion, "has long been apparent in our cases"? What is "the constitutional standard" which the said concurring opinion states must be determined in every case? Certainly

35a. Introduced in the House of Representatives, April 18, 1950, H.R. 3760, 82d Cong.
36. See note 20 supra.
the list of cases appended to the concurring opinion are not helpful as a
guide in determining the issue of patentable invention. The cases cited begin
with the year 1850 and end in the year 1884 during the time when the
patent system was more or less in its formative period. The first patent
laws, as we know them today, did not come into existence until the year
1870.\(^{37}\) Of further importance is the fact that in some of the cases ap-
pended to the concurring opinion, the issue of the validity of the patent
was not before the Court. Only time will tell whether there is now defin-
itely a new doctrinal trend of invention such as was at first believed to fol-
low the *Cuno Engineering Co.* case.\(^{38}\) Will this decision\(^{39}\) be followed by
another series of decisions upholding the validity of patents, even on very
simple inventions, following the *post-Cuno Engineering* trend?\(^{40}\) Or will
the Chief Executive find it necessary to once more issue a directive to Amer-
ican genius for the promotion of inventions and discoveries\(^{41}\) This order,
inter alia, established a commission consisting of five members composed of
Charles F. Kettering, Chairman, Chester C. Davis, Francis P. Gaines, Ed-
ward F. McGrady and Owen D. Young, assisted by Mr. Andrey A. Potter
as Executive Secretary. The Commission was authorized, in conjunction
with the Department of Commerce, to conduct a comprehensive study and
survey of the American patent system to determine whether the system was
providing maximum service in *stimulating the inventive genius of our people
in evolving inventions* and in furthering their prompt utilization for the
public good; whether obstructions existed and, if so, how they could be
eliminated; to what extent the Government should go in *stimulating in-
ventive effort in normal times*; and what methods might be developed to
promote inventions and discoveries which increase commerce, provide em-
ployment and fully utilize expanded defense industrial facilities. In June
1943, the President transmitted to the Congress of the United States the
report of the National Planning Commission.\(^{42}\)

The Commission in its report noted that the patent system had con-
tributed to the growth and greatness of the nation, particularly in the fol-
lowing respects:

1. Encouraged and rewarded inventiveness and creativeness, pro-
ducing new products and processes which have placed the United
States far ahead of other countries in the field of scientific and tech-
nological endeavor; 2. stimulated American inventors to originate
a major portion of the important industrial and basic inventions of
the past 150 years; 3. facilitated the rapid development and general
application of new discoveries in the United States to an extent ex-
ceeding that of any other country; 4. contributed to the achieve-

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37. See note 8 supra.
38. See note 29 supra.
39. See note 20 supra.
40. See note 29 supra.
41. Executive Order establishing the National Patent Planning Commission (De-
   cember 12, 1941).
ment of the highest standard of living that any nation has ever enjoyed; (5) stimulated creation and development of products and processes necessary to arm the Nation and to wage successful war; (6) contributed to the improvement of the public health and the public safety; and (7) operated to protect the individual and small business concerns during the formative period of a new enterprise.

The Commission made a summary of findings and recommendations which, singularly enough, although emanating from the distinguished Commission appointed, have not been followed, particularly with respect to providing a “yardstick” to assure that the various courts of law and the Patent Office shall use the same standards. Perhaps the answer lies in the “proposed revision and codification of the patent laws” now in course of compilation.

CONCLUSION

It is conceded by our scientists, industrialists, manufacturers, educators, lawyers, etc., that inventions have a real meaning for every man, woman and child. Rights of inventors must continue to be preserved as an incentive to progress in the arts and sciences.

Beyond contributing to industrial growth of our nation, our patent system has contributed in large measure to the improvement of the standard of living of all of our people until today America enjoys, as we are all aware, the highest standard of living of any country on earth. At the present time we pause at the threshold of the Atomic Age and survey the height of development of science and technology. We can, I am sure, look forward to future growth in industrial development so long as the rights of inventors are preserved and present interest in scientific research is encouraged. It is increasingly important, therefore, that all of us appreciate the extent of the contribution of our patent system to the attainment of our present status and that we shall see to it that the crest we have reached does not ebb by neglect to protect and maintain that system.

The above quotation from an address by former Commissioner of Patents Kingsland, a specialist in patent law for forty years, is timely and significant. If “the rights of inventors” are not preserved, can we still “look forward to future growth in industrial development”; and how are the rights of inventors to be preserved? Some enlightenment comes from the report of the National Patent Planning Commission and the codification of the patent laws will no doubt further be helpful. However, unless it is recognized that the Constitution of the United States had in contemplation the promotion of the useful arts, as well as the progress of science, an insuperable standard of invention may unwittingly be established which could rapidly cause the deterioration of the greatest patent system in the world.

43. Id. at 9, 10 and 11.
44. A Seminar on What Inventions Can Mean to You (Manufacturers Association of Syracuse and the National Association of Manufacturers, November 17, 1948).
45. See note 42 supra.
46. See note 1 supra.