

47. To resolve any possible doubt, we think that a provision should be included in the equivalent of section 56 of the British Act of 1949, that the mere filing of a consent from an employee assignor to the assignee shall not constitute such an estoppel as will prevent the assignor seeking the decision of the Commissioner or the Court within a reasonable time under the equivalent of that section. It may well happen that, for the purposes of obtaining an early filing date for an application, the employee inventor may without sufficient consideration give his consent to the filing of the application in the name of the employer, and it is thought only fair to the employee that such act should not affect any right which he may have to claim some benefit from the invention.

48. It will be noted that provision is made by section 16 of the British Act of 1949 for the mention of the name of the actual inventor in the complete specification, the letters patent, and the Register of Patents. Provision to a similar effect was made in New Zealand in section 58 of the Patents, Designs, and Trade-marks Amendment Act, 1939, which corresponded with section 11A of the British Act of 1907.

### DATE OF PATENT

49. The British Act of 1949 has to a very great extent implemented the suggestions of the Swan Committee which are set out in paragraphs 29 to 43 of the final report. These suggestions have been accepted as a foundation for a basic change in the British Act of 1949 by the new conception of what is termed the "priority date." In our view the amendments in this regard overcome a large number of difficulties which existed under the previous Act, and which, in a number of cases, reacted to the disadvantage of the patentee.

50. Possibly one of the more important advantages of this change is in the case of convention applications. Previously the position was that if an invention claimed the priority date of the earliest basic application under the provisions of the International Convention, and it was proved to the satisfaction of the Court that the invention claimed in the British specification was different from or larger than that claimed or described in the basic specification, then the patent could be invalidated as offending against the provisions of the Act: see section 25, subsection (2) (a), of the British Patents and Designs Act, 1907 (corresponding to section 61 (1) of the New Zealand Amendment Act of 1939), which reads:—

A patent may be revoked upon any of the following grounds . . . .

(1) that the invention claimed in the complete specification is not the same as that contained in the provisional specification, and that the invention claimed, so far as it is not contained in the provisional specification was not new at the date when the complete specification was filed, or the true and first inventor was not the applicant, or one of the applicants, for the patent, or, in the case of an application made under section ninety-one of this Act, that the invention claimed in the complete specification is not the same as that for which protection has been applied for in the Convention country (regard being had to the provisions of subsection (2B) of that section).

51. The priority date of an application under the British Act of 1949 is defined in section 5 of that Act, which reads:—

5. (1) Every claim of a complete specification shall have effect from the date prescribed by this section in relation to that claim (in this Act referred to as the priority date); and a patent shall not be invalidated by reason only of the publication or use of the invention, so far as claimed in any claim of the complete specification, on or after the priority date of that claim, or by the grant of another patent upon a specification claiming the same invention in a claim of the same or later priority date.

(2) Where the complete specification is filed in pursuance of a single application accompanied by a provisional specification or by a specification which is treated by virtue of a direction under subsection (4) of section three of this Act as a provisional specification, and the claim is fairly based on the matter disclosed in that specification, the priority date of that claim shall be the date of filing of the application.

(3) Where the complete specification is filed or proceeded with in pursuance of two or more applications accompanied by such specifications as are mentioned in the last foregoing subsection, and the claim is fairly based on the matter disclosed in one of those specifications, the priority date of that claim shall be the date of filing of the application accompanied by that specification.