

In the case of Sweden in 1942. The court granted the compulsory license against a lump sum payment of 25 Swedish kron for both patents, on the ground PERSONALLY never had used these patents within the territory of Sweden.

April 6, 1945

A very similar decision had been reached by the Swedish courts during this war in regard to the very important neoprene patents of Dupont.

Mr. George Reynolds' discrimination against American interests following from the Department of Commerce license legislation is the following: The most important patents of I.G. Farben have been assigned in England to the Bayer Products, Ltd. in London and in the United States to Winthrop Chemical Co. Dear George: The shares of Bayer Products, Ltd. in London were 50% owned by I.G. Farben and 50% by Steadley. The trademarks which had to be used in the pending discussion on compulsory licensing of patents (in England called "licenses of right") the international relations of the United States should be stressed much more than actually is done. As a matter of fact, all countries, with the United States the only exception, have compulsory license statutes in one or another form. The effect of this situation is that American patents taken out abroad are almost subject to compulsory licenses while foreign patents taken out within the United States are not subject to such compulsory licenses. The Patent Commissioner once expressed the opinion that patents of Americans taken out abroad were protected against compulsory licenses by the existing international convention or by conventions between the United States and individual foreign countries. That is absolutely incorrect. There was a treaty between the United States and Germany which prohibited the grant of compulsory licenses on patents taken out in Germany by Americans, but only to the extent as the compulsory license is based on non-use. However, the grant of compulsory licenses on patents taken out by Americans is not restricted by any international agreement if on the basis of the grant is the protection of public welfare. United Nations are not subjected to such handicap because of their compulsory license provisions. The German Supreme Court repeatedly interpreted the treaty with the United States of February 23, 1909, which has been reenacted on May 8, 1922, as described here. I wish to call your attention to two important cases which arose during the war in Sweden. Aga-Baltic, a Swedish corporation, intended to use the Swedish patents of Sperry Gyroscope, especially the Swedish Patent No. 85,510 covering a device for temperature compensation, and the Swedish Patent No. 85,777, covering a method of air nozzle adjustment. Aga-Baltic, Stockholm, brought a suit against Sperry Gyroscope so that in case any improper use by Germans of the American patent system should again take place, the power to deal with it would have been reserved by agreement and could be put in effect by an act of Congress. Inasmuch as Germany has always had a similar reservation the effect of this part of the treaty is to bring the two countries on practically the same footing." (p. 119).

A compulsory license statute today would put the United States on the  
in the courts of Sweden in 1942. The court granted the compulsory license  
against a lump sum payment of 25 Swedish kron for both patents, on the ground  
that Sperry never had used these patents within the territory of Sweden.

Sincerely,

A very similar decision has been reached by the Swedish courts during this  
war in regard to the very important neoprene patents of Dupont.

HEINRICH ROSENSTEIN

Another case of discrimination against American interests following from  
the lack of compulsory license legislation is the following: The most im-  
portant pharmaceutical patents of I.G. Farben have been assigned in England  
to the Bayer Products, Ltd. in London and in the United States to Winthrop  
Chemical Company. The shares of Bayer Products, Ltd. in London were 50%  
owned by I.G. Farben and 50% by Sterling. The trademarks which had to be  
used to bring these patented products on the market were owned by the American  
Sterling firm. In the United States the shares of Winthrop were divided  
equally between General Aniline & Film Corp., an affiliate of I.G. Farben  
and Sterling, while under a provision of the by-laws of Winthrop included not  
too long before the war, Sterling had a voting control. Under the British  
compulsory license statute licenses on the patents have been granted to almost  
the entire English pharmaceutical industry. Under English law whenever patents  
are licensed on a compulsory license basis the corresponding trademarks can  
be licensed too. In accordance with this provision the English Comptroller  
of Patents permitted the English pharmaceutical producers to use the trade-  
marks owned by Sterling. Here we have not only a discrimination against  
Sterling but also a very substantial discrimination against the American  
public which does not have the benefit of using the German patents and trade-  
marks free, while the British industry has this benefit.

In a further letter I am going to show the very serious handicap which  
is going to arise for the United States and the Secretary of Commerce, en-  
trusted with the dissemination of German technology. The other United Nations  
are not subjected to such handicap because of their compulsory license pro-  
visions.

In this connection I would like to refer to a statement of Mr. Barnard  
Baruch. He represented the United States on the very important economic  
committee at the Peace Conference in Paris in 1919. This committee included  
in the treaty a provision that even after the war each of the Allied nations  
may issue rules of discriminatory character against German patents. In his  
book "The Making Of The Reparations And Economic Sections Of The Treaty",  
Baruch states: "Insofar as the United States is concerned it is important  
that the treaty makes this reservation and that it is accepted by Germany so  
that in case any improper use by Germans of the American patent system should  
again take place, the power to deal with it would have been reserved by agree-  
ment and could be put in effect by an act of Congress. Inasmuch as Germany  
has always had a similar reservation the effect of this part of the treaty  
is to bring the two countries on practically the same footing." (p. 119).

A compulsory license statute today would put the United States on the same basis as the other nations.

Sincerely,

April 4, 1943

HEINRICH KRONSTEIN

HK:km

Mr. George Reynolds  
Department of Commerce  
C.C. to Walton Hamilton

Dear George:

In the pending discussion on compulsory licensing of patents (so-called "licenses of right") the international relations of the United States should be stressed such were then actually in case. In fact, all countries, with the United States the only exception, have compulsory license statutes in one or another form. The effect of this situation is that American patents taken out abroad are subject to compulsory licenses while foreign patents taken out within the United States are not subject to such compulsory licenses. The Patent Commissioner once expressed the opinion that patents of American taken out abroad were protected against compulsory licenses by the existing international convention or by conventions between the United States and individual foreign countries. This is absolutely incorrect. There was a treaty between the United States and Germany which prohibited the grant of compulsory licenses on patents taken out in Germany by Americans, but only to the extent as the compulsory license is based on non-use. However, the grant of compulsory licenses on patents taken out by Americans is not restricted by any international agreement if the basis of the grant is the protection of public welfare.

The German Supreme Court repeatedly interpreted the treaty with the United States of February 29, 1939, which has been corrected on May 8, 1942, as described here:

I wish to call your attention to the important case which arose during the war in Sweden. Axa-Palms, a Swedish inventor, intended to use the Swedish patents of Sperry Gyroscope, especially the British Patent No. 45,410 covering a device for temperature compensation, and the Swedish Patent No. 55,774, covering a method of air speed adjustment. Axa-Palms, Stockholm, brought a suit against Sperry Gyroscope