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INDEPENDENT INVENTORS AND THE PATENT SYSTEM

STUDY OF
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[1] The late Hon. Thomas C. Hennings, Jr., while a member of this committee, died on Sept. 13, 1960.

FOREWORD

This study, "Independent Inventors and the Patent System," was prepared by C. D. Tuska for the Subcommittee on Patents, Trademarks, and Copyrights of the Senate Committee on the Judiciary, as part of its study of the U.S. patent system, conducted pursuant to Senate Resolution 240 of the 86th Congress. It is one of a series being prepared under the supervision of John C. Stedman, associate counsel of the subcommittee.

There is a serious lack of information on how the patent system works in fact. We know how many patents are issued and what they cover; we are familiar with patenting procedures and individual reported cases; and, of course, specific patent owners are aware of the impact of the patent system, with its attendant merits and shortcomings, upon their own activities. However, information as to the system's overall effect, whether upon individual inventors, small businesses, or large businesses, is strikingly scant, despite the fact that any accurate evaluation of the system, its workings and suggested improvements, depends upon acquiring such information. While some efforts are being made currently and belatedly to fill these gaps in our knowledge, thus far the surface has hardly been scratched.

Mr. Tuska's study presents a series of brief selected case histories showing in dollars-and-cents terms the rewards that have accrued to individual inventors, as well as the varied methods used (licensing, assignment, establishment of new businesses, etc.) for realizing these returns. As his introductory statement points out, his presentation is limited to the relatively formal and publicly available facts concerning income-producing arrangements. It does not attempt to explore the extent to which the patent system does or does not provide stimulus to invent or innovate, or the extent to which it is otherwise working satisfactorily or less than satisfactorily from the inventors' or the public's standpoint. It does, however, provide significant and hitherto unavailable information on the financial returns that may flow from the operation of the patent system. The data Mr. Tuska has collected demonstrate the substantial contribution, in terms of financial reward, that can accrue to the individual, independent inventor under the right circumstances.

Mr. Tuska, by virtue of his long experience as director of patent operations for the RCA Laboratories, his active participation in patent affairs, and his authorship of numerous treatises and articles dealing with patents, is eminently qualified to make the study here presented.

In publishing this study, it is important to state clearly its relation to the policies and views of this subcommittee. The views expressed by the author are entirely his own. While the subcommittee welcomes the study for consideration, its publication in no way signifies agreement with the statements contained in it. However, the subcommittee does believe that the study represents a valuable contribution to patent and related literature and that the public interest will be served by its publication.

Joseph C. O'Mahoney,
Chairman, Subcommittee on Patents, Trademarks and Copyrights, Committee on the Judiciary, U.S. Senate.

December 5, 1960.

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INDEPENDENT INVENTORS AND THE PATENT SYSTEM

By C. D. Tuska

A. INTRODUCTION AND SUMMARY

> * * * The most serious gap is the lack of factual information concerning the patent system and its operation, without which no responsible recommendations can be made.—Subcommittee on Patents, Trademarks, and Copyrights (S. Rept. 97, 86th Cong., 1st sess., 1959, p. 26).

With the foregoing in mind the following preliminary facts are submitted for the consideration of those concerned. The term "preliminary" is used to indicate that other facts can be ascertained to round out the inquiry. Serendipity played the principal part in unearthing the present facts, but, having the facts, it seemed only proper that they be placed at the disposal of others.

Every effort will be made to avoid conclusions. Thus the following cross section of the American patent system is presented on behalf of independent inventors and is based on publicly available facts. It is believed that all but one or two of the cases, from which the facts are gleaned, are the result of tax conflicts. Nevertheless no consistent effort has been made to report the decisions on tax matters: first, because the tax decisions are not important to the present inquiry and, second, because the tax problems are known to the cited independent inventors, the Internal Revenue Service, and the Congress. (See report of the Committee on Finance, U.S. Senate, S. Rept. 1622, 83d Cong., 2d sess., pp. 113, 114, 438–441.)

The facts are presented by individual cases, which are numbered consecutively herein. The decisions cover the period from January 1944 to April 1959. Thus by chance the period of the cases is almost the same as the life of a patent. No attempt has been made to select cases favorable to any particular view and conversely no case has been omitted because it was unfavorable to a predetermined theory. An extended search would probably disclose additional cases.

1. TAX AND PATENT LITIGATION

While tax questions are the primary issues, ancillary legal questions fairly well cover the gamut of patent actions in our courts. By way of example the cases include:

Infringement action—plaintiff successful.
Infringement action—patent owners lost.
Declaratory judgment—plaintiff prevailed.
Title to patent challenged.

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Action alleging that patent was fraudulently obtained.
Misuse doctrine applied.
Shop right successfully urged as defense.
Royalties too high with respect to profits.
Royalties higher than profits but justified on savings.
Patentees dealings with companies in which they held stock.

This breadth of coverage may indicate that the "sample"—however small when measured by statistical methodology—is representative of the whole field of independent inventors.

2. INDEPENDENT INVENTORS

In the majority of cases it seems clear that we are considering the inventions of independent inventors. Some of these independent patentees licensed manufacturers of substantial size. For example: Joseph Becker licensed the Koppers Co. (Case No. 9). Prof. Paul Karrer licensed Hoffman-La Roche, Inc. (Case No. 18). Prof. Arthur C. Ruge and his associate licensed the Baldwin Locomotive Works (Case No. 29). Prof. Arthur C. Cope licensed Sharp & Dohme (Case No. 46). Henri and Camille Dreyfus licensed the predecessor of Celanese Corp. of America (Case No. 82).

These licensees either offered the devices of the inventions for sale or put the inventions into industrial use. The extent of the use may be determined by calculating the yearly business; the returns to the patentee are given in the royalty payments. (See "Statistical Summary".) Thus one may actually measure in terms of dollars the immediate benefits to the public, to the patentee or licensor, and to the licensee.

Some of the patentees established their own business to market the invention or to license its manufacture, sale, and use. Examples are found in Carl W. Cherry's improved rivet (Case No. 1); Finn H. Magnus' plastic harmonicas (Case No. 3); Herbert C. Johnson's juice extractor (Case No. 6); Damiano Arras' improved hose clamp (Case No. 7); Walter E. Claus' motorized rotary soil tiller (Case No. 10), and Albert T. Mathews' ventilated awning (Case No. 24). Other examples are recited in the case notes.

3. IMPACT OF INVENTIONS MEASURED IN DOLLARS

One way to examine the total impact of the eighty-odd examples of invention is to examine the reported fixed and percentage royalty payments. The reported grand total is in excess of $10,334,000. Of this amount $3,629,000 represents fixed payments and $6,705,000 the percentage payment. These figures are less than the ultimate totals because, first, no figures were reported in at least 18 cases; second, no case appeared to include total payments extending over the life or lives of the patents; third, many of the cases involved alleged tax deficits or claims for tax refunds for periods of 1–3 years; and, fourth, many of the notes will show that the patentees entered into agreements for minimum payments that were probably made but were not necessarily involved in the tax accounting period.

Where the figures include the royalty rate as a percentage of sales and the royalty payments over a stated period, a simple calculation gives the equivalent yearly business. Such figures are stated in 30 of the 82 herein reported cases. The calculations (see "Statistical Summary") indicate that over $22,176,000 equivalent annual business grew out of the 30 licensed inventions. While the sample is small, it does indicate public or industrial acceptance of the inventions. This leads us to the fields or subject matter of the inventions.

4. SUBJECT MATTER OF INVENTIONS

The subject matter of the inventions is stated in the "Statistical Summary." A reading of the titles shows there is very little overlap and that is in oil well operations. The titles or subject matter in the majority of the inventions relate to industrial operations rather than direct public participation. In other words perhaps 20 to 25 percent of the inventions are offered for direct public acceptance, and the balance of the inventions are first used in industry to produce goods or services that ultimately reach the public. Examples of some, but not all, of the devices publicly marketed directly are: (1) plastic harmonicas, (2) juice extractors, (3) motorized rotary soil tillers, (4) marionettes, (5) stereoscopic viewers, (6) vitamins B_2 and E, (7) garbage disposals, (8) ventilated awnings, (9) swim suits, (10) tooth brushes, (11) indicator lights, (12) telescoping store basket carts, (13) barbiturics, (14) automatic firearms, (15) puncture healing inner tubes, (16) women's foundation garments, (17) artificial cloth, and (18) chain saws.

A few examples of primarily industrial uses of the inventions are: (1) the several oil well devices, (2) cross-over coking retort ovens, (3) rivets and rivet guns, (4) devices for distilling sea water, (5) traverse roll for winding machines, (6) automatic airflow carburetors, (7) process for coating paper, (8) process for preventing metal corrosion, (9) methods of shoe manufacture, (10) tuna fish canning, (11) fluid foil lifting surfaces, (12) metal spinning, (13) cable spinning devices, (14) automatic brake for electric motors, (15) railway type dump cars, (16) brake drums, (17) method of waterproofing materials, and (18) process of clarifying sugar solutions.

5. NUMBERS OF PATENTS

One may wonder how many patents issued to the inventors identified in the case notes. The top honors would go to Henri Dreyfus to whom nearly 600 U.S. letters patents issued from 1920 through 1949 (Case No. 82). These patents were too numerous to list here but the factual information is available in the "Index of Patents Issued From the United States Patent Office." Henri's brother, Camille Dreyfus, was granted over 250 patents in the same period. Thirty-odd of the listed cases apparently involved a single patent. However, a more extensive search may disclose that other patents issued to these inventors. Such additional patents may have or may not have been included in the license agreements of the cases considered herein.

It is shown by the case notes that both large numbers, intermediate numbers, and small numbers of patents form the quid pro quo of the agreements. No doubt in some of the cases more patents are attributed to the named inventors than were included in the agreements, and vice versa. An overstatement of the numbers of patents is due to the difficulty of identifying the patentees' inventions which may have been excluded from their license agreements. An understatement of numbers of patents is the result of licenses including future inventions, the patent applications, and the patents therefor which are only identified in general terms. Finally, no attempt has been made to totalize the number of patents included in the agreements for the reasons indicated immediately above and because a mere recitation of numbers would probably serve no useful purpose.

6. SEX OF PATENTEES

Since about 98½ percent of the patents issued by the U.S. Patent Office are to male inventors, it is perhaps surprising to find that our case notes include four female inventors. If we count the total number of patentees directly involved in the cases we arrive at 85 (Case No. 43 includes 2 and Case No. 74 includes 3). However, some of the cases include other patentees and some of the patents are based on joint inventions. No actual count has been made to find the exact number of patentees but a fair estimate might be upward of 100. Thus out of the estimated 100 we have 4 women inventors (Cases Nos. 15, 28, 33, and 79). A check sample of 5,900 patents granted in 1954 produced 86 granted to females (judging by their first names) or 1.45 percent. Here, our cases produced an estimated 4 percent—higher than the estimated average.

Not only is the number of women inventors surprisingly high but an examination of the reported yearly royalties shows that the average annual royalty for 62 license agreements of both men and women is nearly $34,000, against an average of over $50,000 per year for the cases (Cases Nos. 15, 33, and 79) in which only the women's royalties are reported.

7. FOREIGN VERSUS DOMESTIC INVENTORS

Our cases include inventions of foreign origin on which U.S. patents were granted (see Cases Nos. 18, 39, 43a, 43b, 51, 57, 62, 64, 74a, 74b, 74c, 78, and 82). The case involving Mrs. Rose Marie Reid's swim suits has been omitted because it is essentially an operation of a California concern (Case No. 28). Chemische Werker Marienfelde-Richard Bosche (Case No. 56) has also been omitted because it involved a trademark and a secret process. The 13 identified "foreign" cases produced fixed license payments of $2,141,500 and percentage royalty payments of $622,855.86. The percentage payments averaged $207,909 per year.

It may be helpful to proportion the total fixed payments between foreign and domestic, and similarly the percentage payments.

Fixed payments:	
Foreign	$2, 141, 500. 00
Domestic	1, 487, 665. 50
Total	3, 629, 165. 50
Fixed payments plus percentage payments:	
Foreign	2, 764, 355. 86
Domestic	7, 570, 710. 43
Total	10, 335, 066. 29

Percentage payments:	
Foreign	$622, 855. 86
Domestic	6, 083, 044. 93
Total	6, 705, 900. 79
Average yearly:	
Foreign	207, 909. 00
Domestic	1, 895, 722. 00
Total	2, 103, 631. 00

It is noted that Case No. 57 (Franz Lang—conversion to diesel-type motors) accounts for $1,943,000 of the rather large proportion of the fixed payments on foreign inventions. Furthermore the U.S. Government recaptured approximately $443,000 of the payments to the Lang organization (Lanova Corp.) in 1942, 1943, and 1944. Nevertheless, the foreign patentees license agreements took the lion's share of the fixed royalty payments. On the percentage payments the domestic agreements produced between 9 and 10 times the royalties generated by the foreign licenses.

Only scanty information is available in the case notes concerning royalty payments made by foreign licensees to domestic licensors. The Golconda Corp. (Case No. 13) reported $7,857.46 royalty for the fiscal year ending January 31, 1952, by its Canadian licensee. The Federal Laboratories, Inc. (Case No. 75) recites payments of $384,000 from British licensees. Although not directly involved it is noted that the benefits to domestic patent owners under section 1235 of the Revenue Code of 1954 for the sale or exchange of patents are not now available to nonresident aliens. (See S. Rept. 1622, 83d Cong., 2d sess., p. 441.)

8. PATENTS VERSUS SECRECY

Since many have wondered about the effectiveness of the American patent system compared with some different system or perhaps a system of no patent awards to inventors, it is fortunate that some factual information is found in our cases. Out of the 85 license situations recited in our case notes, 4 involve secret or proprietary information. These are: Franklin S. Speicher (Case No. 16), machines for making steel stamps; Reynold G. Nelson (Case No. 47), process for spinning sheet steel; A. Gusmer, Inc. (Case No. 56), German-owned secret process and trademark; and Carl Kastner (Case No. 71b), secret formula mixture for curing concrete. The arguments as to whether secrecy can be maintained and if proprietary information can be protected may be applied here. These arguments require no repetition. Moreover, we are interested in facts. How did these four nonpatentees fare compared with the average of those cases reporting actual royalty payments? We have the following facts in three out of the four cases:

Name	Percentage payment	Years	Yearly average
Speicher	$56,561.58	3	$18,854.00
Nelson	20,616.56	3	6,872.00
Gusmer	Not reported		(1)
Kastner	23,853.06	2	11,927.00
Yearly average totals of 54 cases excluding 3 above			2,065,978.00
The average of the yearly average royalties			38,259.00
The mean of 57 cases including 3 above			18,854.00

1 Tax deficit 1933–41, $13,363.88.

While the arithmetical desirability of taking an average of averages may be questioned, it does seem that the patentees did much better than even the most successful of the nonpatentees as far as dollar returns indicate. On the other hand, by chance, Speicher represents the arithmetical mean annual royalty. Nelson and Kastner elected secrecy but Kastner indicated that a competent chemist could determine the ingredients of the mixture. The opinion does not indicate the reasons for not patenting in the Speicher case or the Gusmer case.

9. PATENTEES' REWARDS

The cases and the statistical summary provide abundant facts as to the patentees' rewards. The three highest yearly average royalties were: (1) the Urquharts' firefighting equipment (Case No. 44), $159,775; (2) Mrs. Bertha E. Thomas' flexible couplings and emergency supports for flexible couplings (Case No. 33), $115,645; and (3) Henri Dreyfus' artificial fibers and cloth (Case No. 82) $106,636. The three lowest yearly average royalties were: (1) Carl Kastner, patented materials (Case No. 71a), $1,470; (2) Felix Meyer, manufacture and conversion of glass (Case No. 74a), $4,270; and (3) Mrs. Rose Hanskat, foundation garment (Case No. 79), $6,357. The mean annual royalty payment as indicated above is $18,854 and the average of the yearly average royalties is $38,259.

The fixed payment awards are more sizable but are even less susceptible of comparison than the annual royalties. However, it should not be overlooked that some of the patentees received both fixed and percentage royalties. On the whole, the rewards necessarily vary with the inventive contribution. The desirability of individual analysis of types of inventions versus the reward is indicated. By way of example, inventions offered directly to the public could be compared with industrial-use inventions.

10. PATENTS IN SMALL BUSINESS

As stated above many of the patentees organized companies to market or license their inventions. These companies might be classified as small business and to the extent that the patents were enforceable they protected the businesses.

We have two case histories in point. First, Case No. 14 involved the Oak Manufacturing Co. which owned three patents on radio tuners. The patents were alleged to be infringed by the U.S. Government. The Government had acquired $786,006.90 worth of the infringing radio frequency tuners. Oak lost that amount of business. Oak offered to settle for 2 percent royalty or $15,720.14, but finally accepted $10,000 and licensed the Government. The settlement was approved by the Comptroller General of the United States.

Second, Case No. 72 involved Nicholas W. Mathey who invented a shoe machine device and marketed the device under the name of Hamlin Machine Co. United Shoe Machinery infringed Mathey's patent. In due course Mathey brought suit and prevailed. In the accounting Mathey was awarded a total of $138,361.92. Thus the patent protected Mathey's business.

While the two foregoing cases were successful examples of patent protection, the opposite effect is shown by Case No. 44, involving the Urquharts who enjoyed substantial royalty returns from their patents on firefighting equipment. The Urquharts notified Pyrene Manufacturing Co. that its devices infringed and then sued American La France Foamite Corp., a Pyrene customer. Pyrene brought a declaratory judgment action against the Urquharts to have their patent declared invalid. Pyrene prevailed, the patent being declared invalid for want of invention. The Urquharts had spent $55,748.64 in 1942 for legal fees and expenses. Finally, the Urquharts' licensee, National Foam, brought suit and the Court of Appeals for the Third Circuit held the patents unenforceable because of misuse (96 USPQ 96).

11. CONCLUSION

The cross section of the patent system presented herewith is a preliminary study. Attention has been called to the possibility of a much deeper study in tax cases and patent infringement cases. An enlarged study will bring forth more facts and should be a better basis for recommending changes or no changes in the patent law. The present study appears to show that the American patent system continues to work for the independent inventor, relatively small business, and the public. Moreover, we have the means for measuring its operation. Finally, an enlarged view might be obtained by approved statistical methods applied to the available sample.

B. STATISTICAL SUMMARY

Case No.	Subject matter	Royalties		Percent payment	Years	Yearly average	Equivalent yearly business
		Fixed	Percent				
1	Rivets and rivet guns						
2	Hot-water tanks	$1,000.00		$23,773.84	3	$7,924	
3	Plastic harmonicas			30,075.98	2	15,038	
4	Hypodermic injectors and syringes	10,000.00 143,500.00		+[1]			
5	Oil well core samplers		7.5	260,000.00	3	86,667	$1,150,800
6	Juice extractors		6	38,886.10	3	12,962	216,000
7	Hose clamps		10	57,494.57	5	11,499	114,990
8	Sealing washer and fastener			19,572.43	3	6,524	
9	Cross-over coking retort oven	+[2]		70,427.78	1	70,427	
10	Motorized rotary soil tiller			12,340.66	1	12,340	
11	Scraper for interior of oil wells		5	103,409.28	2	51,705	1,024,100
12	Helicopters		2	208,742.90	3	69,581	3,645,700
13	Hand-operated saw filer		10	7,857.46	1	7,857	78,570
14	Radio preselector	10,000.00					
15	Simplified operation of marionettes	25,000.00+	5	95,675.91	3	31,892	637,840
16	Steel stamps		5	56,561.58	3	18,854	377,080
17	Stereoscopic viewer						
18	Synthetic vitamins B_2 and E			201,504.88	6	33,584	
19	Jarring device for removing oil well pipes		15				
20	Fishing tool for removing oil well pipes						
21	Wood cleated shipping container	3,600.00+					
22	Garbage disposal		1	75,561.40	2	37,780	3,778,000
23	Device for distilling sea water						
24	Ventilated awning			97,287.48	2	48,643	
25	Skin clamps and fasteners				2		
26	Traverse roll for winding machines			33,000.00 16,699.10	5 2	6,600 8,350	
27a	Rubbing machine, "Mity Midge"		20	111,807.53	7	15,972	79,860
27b	Rubbing machine, "Two Pad"		20	65,174.01	5	13,035	65,175
28	Swim suits	11,000.00	2				
29	Strain gages		5 2	67,413.19 36,197.98	2 2	33,706 18,099	674,120 904,950
30	Pump valves		10	81,729.74	1	81,730	817,300
31	Automatic airflow carburetor			88,000.60	7	12,570	
32	Blowout preventer rams		5	17,913.50	1	17,913	358,260
33	Flexible couplings			578,224.65	5	115,645	
34	Toothbrush						
35	Indicator light		10	78,930.59	2	39,965	399,650
36	Fluorescent lithography						
37	Process for coating paper						
38	Process for preventing metal corrosion						
39	Methods of shoe manufacture	[3] 33,000.00+		47,496.49	3	15,832	
40	Telescoping store basket cart			78,422.75	1	78,422	

[1] Also received royalty payments.
[2] Also received fixed payment.
[3] Paid Szerenyi.

Case No.	Subject matter	Royalties		Percent payment	Years	Yearly average	Equivalent yearly business
		Fixed	Percent				
41	Tuna-fish canning			$17,016.75	1	$17,016	
42	Aeronautical devices		5	45,000.00	3	15,000	$300,000
43a	Kneading machine			34,873.53	3	11,624	
43b	Receptacle for dental impressions			6,986.75	1	6,986	
44	Firefighting equipment			798,877.01	5	159,775	
45	Fluid-foil lifting surface						
46	Barbiturics		2.5	43,104.92	3	14,368	574,720
47	Metal spinning			20,616.56	3	6,872	
48	Mechanical clutches						
49	Cable spinning device		7				
50	Voltmeter			46,005.67	4	19.004	19,004
51	Temperature measuring device	$40,000.00+		20,334.80	3	6,778	
52	Pressure gages		5	22,762.54	1	22,762	455,240
53	Computers		5		3		
54	Automatic brake for electric motors		10	246,206.28	4⅚	51,000 49,241	510,000
55	Rope sole manufacture	44,062.28	7	66,093.41	3	22,031	314,500
56	Chemical process						
57	Conversion to diesel-type motors	1,943,000.00			17		
58	Trimetal bearing			39,983.86	2	19,992	
59	High pressure valves		5				
60	Railway-type dump cars			513,589.00	5	102,718	
61	Drinking fountains		5	100,220.44		100,220	2,004,400
62	Ship propellers			47,904.16	3⅓	14,040	
63	Chain saws		10	491,371.83	5	98,274	982,740
64	Motor vibration damper			208,081.08	6	34,683	
65	Oil filters		1 4		3 3		
66	Brake drums	50,000.00+		60,000.00	1		
67	Automatic firearms	234,001.46					
68	Wire and flat band tying	425,000.00		247,500.00	8¼	30,000	
69	Meters for liquids		8	113,946.92	12	9,490	111,830
70	Method of waterproofing materials		5	175,005.80	9	19,445	389,000
71a	Patented materials			2,940.35	2	1,470	
71b	Secret formula for curing concrete			23,853.06	2	11,927	
72	Shoe machine	138,361.92					
73	Lead- and rule-casting machine		10	1,234.00			
74a	Manufacture and conversion of glass	48,500.00		34,167.12	8	4,271	
74b	Do	60,000.00+					
74c	Machine for bottoming glass vials	17,000.00					
75	Cartridge starters for airplane motors	384,000.00		16,100.00	1½	10,700	
76	Puncture-healing inner tube						
77	Springs for auto cushions	8,139.84					
78	Process of clarifying sugar solutions			16,315.30	2	8,158	
79	Women's foundation garments			31,785.65	5	6,357	
80a	Cylinder grinder		10	4,881.35	1	4,881	48,810
80b	Do		10	19,016.74	4	4,754	47,540
80c	Pinhole grinder		10	191,913.25	5	38,383	383,383
80d	Crankshaft grinder		10	46,646.50	3	15,549	150,549
81	Rubber-covered flexible track		5	78,110.95	1	78,110	1,562,220
82	Artificial fibers and cloth			213,272.83	2	106,636	
	Total	3,629,165.50		6,705,900.79		2,103,631	22,176,311

C. CASE NOTES

CASE NO. 1. CARL W. CHERRY

Carl W. Cherry of Carmel, Calif., was issued U.S. Patent 2,183,543 on December 19, 1939, for his improved rivets and a machine or "gun" for applying the rivets. Cherry and Paul Flanders organized the Cherry Rivet Co. on March 8, 1940, and granted the company an exclusive license. Cherry and Flanders divided the royalties 75 percent and 25 percent, respectively. Flanders sued to recover income taxes paid on the ground that he was entitled to capital gains treatment. Granted tax refunds 1951, 1952, and 1953. The sum is not specified in the opinion.

Flanders v. *United States*, 122 USPQ 189, 172 F. Supp. 935 (N.D. Calif., April 20, 1959).

CASE NO. 2. MAUREL G. BURWELL

Maurel G. Burwell of Columbus, Ohio, was issued the following U.S. patents:

2,522,091, Sept. 12, 1950—liquid heating apparatus.
2,549,755, Apr. 24, 1951—burner bases for hot-water tanks.
2,559,110, July 3, 1951—water heaters and burner housings.
2,641,218, June 9, 1953—hot water tank and method of producing.
2,700,622, June 25, 1955—linings for inner wall surfaces of liquid holding receptacles.
2,700,622 was reissued as Re. 24187

Burwell assigned patents to Century Tank Manufacturing Co., but the company released Burwell for a consideration for expenses Century incurred in developing the patents and 50 percent of royalties from any third party licensee. Under this arrangement the Garfield Manufacturing Co. of Cleveland, Ohio, and the Coleman Co. of Wichita, Kans., were licensed. Burwell received the following as his share of the royalties: 1952, $5,400; 1953, $11,662.12; and 1954, $6,711.72. In 1957 Century sold two of the patents for $1,000 and terminated its operations because it found in 1953 that competitors were using the machinery and process without a license under *the patent applications*.

Century Tank Manufacturing Company v. *Commissioner of Internal Revenue*, 121 USPQ 355 (Tax Court, May 13, 1959).

CASE NO. 3. FINN H. MAGNUS

Finn H. Magnus of Glen Ridge, N.J., was the inventor of plastic reed plates and plastic reeds for harmonicas for which the following U.S. patents were issued:

2,339,790, Jan. 25, 1944	2,384,758, Sept. 11, 1945
2,340,333, Feb. 1, 1944	2,407,312, Sept. 10, 1946
2,348,830, May 16, 1944	2,416,451, Feb. 25, 1947
2,373,129, Apr. 10, 1945	

Magnus granted the Harmonic Reed Corp. an exclusive license on January 15, 1944. The license called for a royalty of 1 cent on each harmonica sold. The license was revoked on December 27, 1944, but the revocation was subsequently ignored.

Magnus and Peter Christian Christensen organized the International Plastic Harmonica Corp. on December 29, 1944. International agreed to employ Magnus and Christensen for 2 years each at $15,000 per annum plus royalties of one-half cent for each instrument sold at not over 50 cents.

Magnus reported as capital gains for 1951, $18,638.76 from Magnus Harmonica (formerly International) and $11,437.22 from Harmonic (as a settlement).

Magnus et al. v. *Commissioner of Internal Revenue,* 119 USPQ 223, 259 F. 2d 893 (3d Cir., Oct. 7, 1958). See also 114 USPQ 367.

CASE NO. 4. MARSHALL L. LOCKHART

Marshall L. Lockhart (deceased) of Detroit, Mich., made several inventions in the medical field for which he was issued U.S. patents:

- 2,099,938, Nov. 23, 1937—electrostethograph.
- 2,322,244, June 22, 1943—hypodermic injector, called "Hypospray."
- 2,322,245, June 22, 1943—hypodermic injector, called "Hyposeal."
- 2,380,534, July 31, 1945—hypodermic syringe, called "Twinpak."
- 2,408,323, Sept. 24, 1946—hypodermic syringe, called "Twinpak."
- 2,410,351, Oct. 10, 1946—hypodermic syringe, called "Twinpak."

Lockhart licensed Cambridge Instrument Co. for the electrostethograph in August 1934 and joined the company as a development engineer, remaining until April 1942. During this time he worked at home on a needleless hypodermic syringe for making subcutaneous injections by means of a high velocity spray, which he called "Hypospray." The Squibb Co. took an option but in 1942 turned its option over to Gelatin Products Co. Marshall Lockhart joined Gelatin in April 1942 and stayed until the end of 1943. He had no research agreement. Litigation between Lockhart and Gelatin developed over the ownership of Hyposeal. Gelatin released its claims and received an exclusive license, dated August 11, 1944. Lockhart was to receive minimum annual royalties of $10,000. According to the opinion he received $10,000 in 1946.

Lockhart was employed by Becton, Dickinson & Co. as a consulting engineer at an annual salary of $6,600 to develop Hyposeal. Lockhart assigned one-half interest in the patents to his wife Margaret and they granted Becton, Dickinson & Co. an exclusive license for Hyposeal. In 1946 he assigned Becton, Dickinson & Co. his "Twinpak" invention and patent for $8,500 and on June 9, 1947, he assigned the company his Hypospray invention and patent (subject to the Gelatin license) for $135,000 plus 50 percent of royalties payable to the company after it received $135,000.

Marshall Lockhart and Margaret Lockhart filed individual tax returns in 1946 and 1947 and joint returns for 1948 and 1949. Marshall died in 1954 and his executor, Robert W. Mathies, substituted for him in the income tax deficiency claim case in which the Commissioner determined the deficiencies as follows:

Margaret Lockhart: 1946, $2,639.92; 1947, $8,897.06.

Estate of Marshall L. Lockhart: 1946, $5,944.69; 1947, $70,861.98.

Estate of Marshall L. Lockhart and Margaret Lockhart: 1948, $2,775.34; 1949, $20,637.62.

Lockhart v. *Commissioner of Internal Revenue,* 119 USPQ 196, 258 F. 2d 343 (3d Cir., July 18, 1958).

CASE NO. 5. CLYDE E. BANNISTER

Clyde E. Bannister of Houston, Tex., invented a device for taking cores or samples from oil wells during the drilling process. He received U.S. Patent 1,955,166 on April 17, 1934, and licensed the Schlumberger Well Surveying Corp. on July 15, 1935. Bannister received $260,000 in the period 1949 to 1951, inclusive. The license was exclusive at 7½ percent royalty for 7 of the 20 patent claims. Bannister had the right to cancel the exclusive feature whereupon the royalty was to be reduced to 5 percent.

Bannister et al. v. *United States,* 118 USPQ 71, 262 F. 2d 175 (S.D. Tex., Feb. 28, 1958).

CASE NO. 6. HERBERT C. JOHNSON

Herbert C. Johnson of Wilmette, Ill., inventor of juice extracting devices, was issued the following U.S. patents therefor:

2,090,913, Aug. 24, 1937
2,131,440, Sept. 27, 1938
2,177,939, Oct. 31, 1939
Design 101,000, Aug. 25, 1936
Design 109,062, Mar. 29, 1938
Design 110,897, Aug. 16, 1938

Johnson assigned the patents (as of Oct. 1, 1947) to the National Die Casting Co. on the basis of 6 percent royalty on the selling prices of devices embodying one or more of the patents and 80 percent of the royalties received by National from sublicenses or recovered from infringement. It is noted that Johnson organized National and was its principal stockholder.

Johnson's royalty receipts from National were: 1951, $16,794.55; 1952, $10,238.20; and 1953, $11,853.35.

Johnson et al. v. *Commissioner of Internal Revenue,* 118 USPQ 42 (Tax Court, June 24, 1958).

CASE NO. 7. DAMIANO ARRAS

Damiano Arras of New Britain, Conn., was granted U.S. Patent 2,180,271 on November 14, 1939, for an improved hose clamp. The patent was assigned to Arras, Inc. The assignee licensed American Hardware Corp. on April 9, 1940. The license was amended several times, and several different royalty rates, ranging from a maximum of 10 percent to a minimum of 4 percent, were specified.

The following amounts were paid in accordance with the license agreement: 1949, $4,351.44; 1950, $7,868.81; 1951, $9,107.31; 1952, $11,678.10; and 1953, $24,488.91.

Arras et al. v. *United States,* 118 USPQ 10, 164 F. Supp. 150 (D. Conn., May 29, 1958).

CASE NO. 8. ROBERT L. HOLCOMB

Robert L. Holcomb of Fairfield, Conn., having invented a sealing washer usable separately or in conjunction with nails or other fastening devices, was granted U.S. Patent 2,439,516 on April 13, 1948.

On October 4, 1946, he licensed Gora-Lee Corp. at specified royalty rates which varied with gross selling prices of the washers. The license agreement, which was modified several times, provided for a minimum monthly sale of 50,000 washers.

The following receipts were reported: 1951, $11,593.21; 1952, $2,955.78; and 1953, $5,023.44.

Holcomb et al. v. *Commissioner of Internal Revenue,* 117 USPQ 368 (Tax Court, May 23, 1958).

CASE NO. 9. JOSEPH BECKER

Joseph Becker of Pittsburgh, Pa., was issued U.S. Patent 1,374,546 on April 12, 1921, for a "cross-over coking retort oven." He assigned the patent along with all of his inventions to the Koppers Co. It is noted that while Becker received a substantial and adequate salary from Koppers he had not previously been under a contract and was not employed as an inventor and therefore requested the company to make a suitable agreement for the assignment. The company agreed to pay Becker not less than $8,000 per year provided the net earnings of its engineering and construction business amounted to $500,000 per year and Becker continued in the company's employ.

Becker was also to receive 20 percent of any net profits from license fees from Becker's foreign patents. Under the foreign patents portion of the agreement, Becker received $70,427.78 in 1951. Becker also received the agreed upon $8,000 in each of the years 1945 through 1950.

Becker et al. v. *United States,* 117 USPQ 226, 161 F. Supp. 333 (W.D. Pa., April 18, 1958).

CASE NO. 10. WALTER E. CLAUS

Walter E. Claus of Milwaukee, Wis., invented a motorized rotary soil tiller for which he was granted U.S. Patents 2,491,892 on December 20, 1949, and 2,558,882 on July 3, 1951. Walter was assisted by his brother Curt A. Claus to whom Walter orally agreed to give 20 percent of whatever income was derived from the invention.

Walter, Curt, and Harvey F. Ludwig organized the Milwaukee Equipment Manufacturing Co., licensed the company and issued its stock to themselves in substantially equal proportions. In 1949 Walter did not withdraw his share of royalty and in 1950 both Walter and Curt forgave all royalty payments to conserve the company's capital. In 1953 Curt received $12,340.66 from the company as royalties. In 1953 the three stockholders agreed to sell to the Food Machinery & Chemical Corp. their stock, real estate, buildings, and to grant a nonexclusive license under the patents.

Claus (Curt A.) et al. v. *Commissioner of Internal Revenue,* 117 USPQ 203 (Tax Court, April 18, 1958).

CASE NO. 11. WILLIAM R. CRALL

William R. Crall (deceased) of Pampa, Tex., devised a scraper to prevent accumulation of paraffin on the interior of oil wells. After completing the invention and assembling a working unit, Crall died. U.S. Patent 2,453,199 issued on November 9, 1948. Crall's wife, Irma, inherited an undivided half interest in the estate and patent. Crall's daughter, Irma Jean, inherited the other half.

Mrs. Crall and A. E. Hickman, a friend of her late husband, as partners continued the business started by William Crall. Later their attorney, J. W. Gordon, Jr., joined the partnership. In accordance with an authorization as administratrix, Irma Crall on November 6, 1947, granted an exclusive license to Hickman under the patent for a royalty of 10 percent of one-half of the gross retail price of all products manufactured under the patent. Mrs. Crall also licensed Hickman under her individual one-half interest.

The partnership (Petroleum Specialty Co.) paid royalties and salaries as follows:

	Irma Jean Crall	Irma Crall and husband	A. E. Hickman
1921:			
Royalty	$14,950.43	$19,520.74	$19,520.74
Salary		9,300.00	15,200.00
Do		5,400.00	
1952:			
Royalty	12,765.89	18,325.74	18,325.74
Salary		13,350.00	15,200.00
Do		1,350.00	

Hickman et al. v. *Commissioner of Internal Revenue, and Morris et al.* v. *Same,* 116 USPQ 471 (Tax Court, Feb. 18, 1958).

CASE NO. 12. ARTHUR M. YOUNG

Arthur M. Young of Buffalo, N.Y., began developing inventions in the field of helicopter aviation in 1928. Among his U.S. patents on helicopters we note:

1,915,209, June 20, 1933
2,082,674, June 1, 1937
2,256,635, Sept. 23, 1941
2,256,918, Sept. 23, 1941
2,367,916, Jan. 23, 1945
2,368,698, Feb. 6, 1945
2,382,460, Aug. 14, 1945
2,384,516, Sept. 11, 1945
2,429,502, Oct. 21, 1947
2,433,641, Dec. 30, 1947
2,457,429, Dec. 28, 1948
2,510,006, May 30, 1950
2,589,316, Mar. 18, 1952
2,615,657, Oct. 28, 1952
2,633,924, Apr. 7, 1953
2,646,848, July 28, 1953
Design 150,186, July 6, 1948
Design 150,483, Aug. 3, 1948
Design 150,665, Aug. 17, 1948

On November 1, 1941, Young agreed to assign 4 of his patents, and his pending and future patents on helicopter inventions made during the term of the agreement, to the Bell Aircraft Corp. Bell agreed to pay Young a royalty of 2 percent of the selling price of the helicopters with a maximum of $200 per machine. The patents were duly assigned. The agreement was modified several times by substituting new agreements. In accordance with the agreements Young received:

Year	Gross receipts	Net receipts
1951	$32,069.70	$29,082.61
1952	69,483.07	64,966.67
1953	107,190.13	100,222.77

Young et al. v. *Commissioner of Internal Revenue,* 116 USPQ 463 (Tax Court, Feb. 17, 1958).

CASE NO. 13. JESSE E. WHETSTINE

Jesse E. Whetstine of Cedar Rapids, Iowa, was granted U.S. Patent 2,484,438 on October 11, 1949, and a corresponding Canadian Patent 462,265 on January 3, 1950, on a "hand-operated saw-filing device." He assigned the patents to Super-Cut, Inc., which owned the Golconda Corp. Super-Cut, which manufactured diamond wheels and products, developed the invention in its shop.

On February 1, 1951, Super-Cut granted George Anderson & Co., Ltd., of Canada, manufacturer and sellers of diamond saws, an exclusive license under the Canadian patent. Anderson agreed to pay a royalty of 10 percent of the selling price of its diamond saws with a minimum yearly royalty of $5,000. In accordance with the agreement, Anderson paid Super-Cut (Golconda) for the fiscal year ending January 31, 1952, $7,857.46.

Golconda Corporation v. *Commissioner of Internal Revenue,* 116 USPQ 22 (Tax Court, December 23, 1957).

CASE NO. 14. EDWARD J. MASTNEY AND ARTHUR C. TEN CATE

Edward J. Mastney of Berwyn, Ill., inventor of two radio preselector devices, was granted U.S. Patents 2,161,183 on June 6, 1939, and 2,179,748 on November 14, 1939, and Arthur C. Ten Cate of Chicago, Ill., inventor of a radio preselector device, was granted U.S. Patent 2,281,640 on May 5, 1942. They assigned their inventions and patents to the Oak Manufacturing Co.

The Oak Manufacturing Co. alleged that the U.S. Government infringed the patents in the manufacture of radio frequency tuners which had an aggregate value of $786,006.90. Oak agreed to settle their claim for $15,720.14 (2 percent royalty). Later, Oak agreed to settle and license the Government for a payment of $10,000. This was approved.

Opinion of the Comptroller General of the United States, 115 USPQ 151 (September 15, 1957).

CASE NO. 15. RAYE COPLAN

Raye Coplan of Jamaica, N.Y., was granted U.S. Patent 2,509,135 on May 23, 1950, for an invention which simplified the operation of marionettes. The patent was assigned to Peter Puppet Playthings, Inc. The company, organized April 21, 1947, by Leonard Coplan, Raye Coplan, Rene Schenker, and Lillian Schenker, paid Raye Coplan $25,000 and agreed to pay 5 percent royalty on net sales. The Coplans took five shares of the corporate stock for $50 per share and each of the Schenkers purchased five shares for $2,500.

Later, the Coplans paid the Schenkers $6,500 for their shares, whereupon each Coplan owned 50 percent of the corporate stock. The corporation made the following payments:

Year	Officer	Position	Salary	Royalty
1951	Leonard Coplan	President	$21,910.77	------------
1951	Raye Coplan	Treasurer	7,800.00	$29,668.00
1952	Leonard Coplan	President	25,563.52	------------
1952	Raye Coplan	Treasurer	10,600.00	37,926.17
1953	Leonard Coplan	President	15,200.00	------------
1953	Raye Coplan	Treasurer	7,600.00	28,081.74

Coplan et al. v. *Commissioner of Internal Revenue,* 115 USPQ 67 (Tax Court, September 20, 1957).

CASE NO. 16. FRANKLIN S. SPEICHER

Franklin S. Speicher of Pittsburgh, Pa., in 1923 invented a machine for making steel stamps. He did not obtain a patent. The invention was developed by three men who later acquired a controlling interest in the M. E. Cunningham Co. Speicher developed a new idea in 1939 and built an experimental machine in 1940–41. Thereafter, five machines were built and again no patents were obtained.

Speicher was paid a salary and a royalty on the basis of 5 percent on all sales of the steel stamps, provided profits permitted. In the following 3-year period the payments were:

Year	Royalty	Salary
1951	$16,506.55	$15,261.60
1952	18,707.07	15,243.40
1953	21,347.96	15,355.44

Speicher v. *Commissioner of Internal Revenue*, 114 USPQ 416 (Tax Court, July 31, 1957).

CASE NO. 17. WILHELM B. GRUBER

Wilhelm B. Gruber of Portland, Oreg., was granted U.S. Patent 2,189,285 on February 6, 1940, for a stereoscopic device for viewing photographic transparencies. Gruber and Harold Graves worked together to develop and market the device, which was called "View Master." "Public acceptance was both immediate and enthusiastic." While Gruber received a small advance on royalties, no formal agreement was made until 1942.

In 1942 Gruber granted the partnership (called Sawyer's) an undivided one-half interest in the patent to compensate the partnership for development cost. The foreign market was too large for Sawyer's, so the partners agreed with Western Photo to sell it Sawyer's half-interest at the book value of the patent and a license back to Sawyer's. Sawyer's agreed to pay royalties to Western Photo and Western Photo in turn agreed to pay Gruber royalties. The royalties to Gruber were in accordance with the Gruber-Sawyer's 1942 agreement which had been modified in 1944. No amounts are recited.

Gruber et al. v. *United States*, 114 USPQ 154, 158 F. Supp. 510 (D. Oreg., May 17, 1957).

CASE NO. 18. PAUL KARRER

Paul Karrer, professor of chemistry at the University of Zurich, Zurich, Switzerland, and winner of the Nobel Prize in 1937 for sympathetic vitamin structure, was granted U.S. patents for synthesis of vitamins B_2 and E as follows:

2,146,899, Feb. 14, 1939
2,155,555, Apr. 25, 1939
2,208,585, July 23, 1940
2,215,398, Sept. 17, 1940
2,231,125, Feb. 11, 1942
2,237,074, Apr. 1, 1942
2,245,480, June 10, 1942
2,287,106, June 23, 1942
2,287,107, June 23, 1942
2,309,598, Jan. 26, 1943—Karrer and O. Isler

Professor Karrer's research was backed by F. Hoffman-La Roche & Co., Ltd., of Basle, Switzerland. The company agreed to pay a portion of the net proceeds from sales of B_2. The company filed many patent applications for Karrer throughout the world. On January 15, 1941, Karrer and the company entered into a formal contract calling for royalties of 5 percent.

Karrer then began research to develop a synthetic vitamin E. This also led to an agreement based on 3 percent royalty payments. The company entered into an agreement on January 27, 1941, with Hoffman-La Roche, Inc., of Nutley, N.J., based upon a royalty of 4 percent of Hoffman-La Roche net from sales of B_2 and E. At the company's request Karrer assigned his patents and patent applications; Dr. Isler who worked with Professor Karrer on vitamin E, also assigned his inventions and patents to the Nutley concern.

In 1941–45 the Nutley concern withheld and paid U.S. income taxes of $92,978.22 on behalf of its payments to Karrer. Karrer in 1941–46 also filed and paid U.S. income taxes on the balance due of $108,526.66. Karrer then filed claims for refund of $201,504.88 and the court held Karrer was entitled to the refund with interest.

Karrer v. *United States*, 113 USPQ 345, 152 F. Supp. 66 (Court of Claims, May 8, 1957).

CASE NO. 19. LYNN W. STORM

Lynn W. Storm of Houston, Tex., invented a hydraulic jar device for removing stuck pipes from oil wells and was granted U.S. Patent 2,499,695 on March 7, 1950. He licensed the Bowen Co. for 15 percent of its net income and granted Bowen an option to purchase the patent.

The record does not show the royalties paid to Storm by Bowen. Storm sued to recover income taxes paid in 1949, 1950, and 1951 on the ground that he did not receive income but capital gains. Granted tax refunds for 1949, 1950, 1951, and 1952. Amounts not stated.

Storm et al. v. *United States*, 113 USPQ 305, 243 F. 2d 708 (5th Cir., May 1, 1957).

CASE NO. 20. RICHARD R. LAWRENCE

Richard R. Lawrence of Liberty, Tex., having invented a pulling or fishing tool for removing pipe and other obstructions from oil wells, was granted U.S. Patents 2,377,249 on May 29, 1945, and 2,537,413 on January 9, 1951. Lawrence granted the Dailey Oil Tools Corp. an exclusive license. The license provided for royalties based upon Dailey's use of the tool and the gross amount received by Dailey from leasing the tool to others.

Lawrence sued to recover income taxes paid on the ground that he was entitled to capital gains treatment. The amount involved is not mentioned in the opinion. Granted tax refunds for 1951, 1952, and 1953. Amounts not stated.

Lawrence et al. v. *United States*, 113 USPQ 29, 242 F. 2d 542 (5th Cir., March 21, 1957).

CASE NO. 21. JAMES R. WATKINS

James R. Watkins of Niles Center, Ill., made several inventions relating to wood cleated corrugated shipping containers. The following U.S. patents issued to him:

1,955,107, Apr. 17, 1934	2,141,497, Dec. 27, 1938
1,976,693, Oct. 9, 1934	2,159,642, May 13, 1938

Watkins granted Dillman Industries, Inc., a nonexclusive license. Subsequent negotiations between the officers of Dillman and Watkins led to the incorporation of Watkins Patents, Inc., and provided for the payment to Watkins of $3,600 cash, 20 percent of the capital stock of the corporation, and one-third of the net royalties received by the corporation from the licensing of the patents.

The amount of royalties is not indicated in the opinion in Watkins' suit for refund of income taxes paid in 1949, 1950, 1951, and 1952. Denied tax refunds for 1949, 1950, 1951, and 1952. Amounts not stated.

Watkins et al. v. *United States*, 112 USPQ 457, 149 F. Supp. 718 (D. Conn., March 12, 1957).

CASE NO. 22. HANS JORDAN

Hans Jordan of Los Angeles, Calif., invented a garbage disposal device, for which he was granted U.S. Patent 2,442,812 on June 8, 1948. Jordan assigned the patent to the Given Machinery Co. on August 22, 1945. He was to receive royalties of 1 percent of the net selling price. Given Machinery assigned its rights to Given Manufacturing Co.

The manufacturing company made the following royalty payments to Jordan: 1951, $43,309.53; 1952, $32,251.87.

Jordan et al. v. *Commissioner of Internal Revenue,* 111 USPQ 315 (Tax Court, October 31, 1956).

CASE NO. 23. ROBERT V. KLEINSCHMIDT

Robert V. Kleinschmidt of Stoneham, Mass., was granted U.S. Patent 2,185,595 on January 2, 1940, on a device for distilling sea water. He assigned the patent to Arthur D. Little, Inc. Little, Inc., licensed the U.S. Government and paid one-third of the royalties to Kleinschmidt. The amount paid the inventor is not stated in the opinion. Sued to recover income taxes paid. Complaint dismissed.

Kleinschmidt v. *United States,* 111 USPQ 221 146 F. Supp. 253 (D. Mass., Oct. 18, 1956).

CASE NO. 24. ALBERT T. MATHEWS

Albert T. Mathews of Silvertown, Ga., having invented a ventilated awning, was granted U.S. Patent 2,069,893 on February 9, 1937, and Reissue 21,053 on April 18, 1939. Mathews assigned a half interest to Thorton G. Graham. While the awning was popular and commercially successful, it was imitated and infringed. The partners were involved in patent litigation from 1940 to 1948.

One of the outcomes of the litigation was the organization of the National Ventilated Awning Corp. on January 10, 1945. The corporation was licensed and was given the right to license others, but not the right to make, use, and sell the product. Mathews and his wife were each given 40 of the 300 shares of the corporation's capital stock. Mathews assigned the reissue for 30 percent of the royalties collected by the corporation and 3¾ cents per square foot of awnings made, sold, or used by the corporation. At a later date Mathews and his wife each had 87 shares of the 1,477 then outstanding.

The patent litigation expenses and receipts were as follows:

Year	Legal expenses	Infringement receipts
1949	$59,872.67	$37,700.00
1950	27,629.81	17,282.47
1951	26,021.56	35,282.78
Total	113,524.04	90,265.25

Expenses exceeded receipts by $23,258.79.

The net income for 1950–51 was $97,287.48 which was divided as follows: Mathews, $48,643.75; Graham, $48,643.72.

Graham et al v. *Commissioner of Internal Revenue,* 110 USPQ 454 (Tax Court, June 29, 1956).

CASE NO. 25. DON H. FINKLE

Don H. Finkle of Los Angeles, Calif., prior to his death in 1951, was granted the following U.S. patents on clamps, skin clamps, and fasteners:

2,240,643, May 6, 1941	2,324,687, July 20, 1943
2,267,328, Dec. 23, 1941	2,350,550, June 6, 1944
2,280,403, Apr. 21, 1942	2,383,928, Aug. 28, 1945

On January 2, 1947, Finkle granted an exclusive license to the Wedgelock Co. which he organized in November 1946. Finkle owned 80 percent of the voting stock and his son the remainder. The license specified no minimum royalty payment in 1947; $500 monthly in 1948; and $600 monthly in 1949.

Gladys E. Finkle reported Wedgelock 1951 royalty payments as ordinary income and then filed a claim for refund on the ground that capital gains were involved rather than income. The Commissioner had treated the payments as ordinary income and determined a tax deficiency of $10,171.90.

Finkle et al. v. *Commissioner of Internal Revenue*, 110 USPQ 452 (Tax Court, June 28, 1956).

CASE NO. 26. FRANKLIN A. REECE

Franklin A. Reece of Chestnut Hill, Mass., was granted U.S. Patent 1,749,355 on March 4, 1930, for his invention of helical traverse double grooved roll for winding machines. Reece assigned the invention on February 20, 1929, to the Universal Winding Co. in return for $2,500 cash, $7,500 advance royalty in 1930, and a royalty of $1 for each spindle sold up to 10,000 spindles; 75 cents for each spindle over 10,000; and 50 cents for each spindle sold in the current year.

In 1935 Reece assigned to his wife his 1929 agreement with Universal. Mrs. Reece received $13,259.55 from Universal in 1947. In 1950 Mrs. Reece received $3,439.55.

Commissioner of Internal Revenue v. *Reece*, 110 USPQ 209, 233 F. 2d 30 (1st Cir., May 3, 1956). For Tax Court opinion, see 105 USPQ 385.

CASE NO. 27. ROY J. CHAMPAYNE

Roy J. Champayne of Rockford, Ill., a businessman and mechanic in the autobody repair business, was granted several U.S. patents for inventions related to his repair activities:

2,187,110, Jan. 16, 1940—pneumatic fender hammer.
2,224,140, Dec. 10, 1940—rubbing machine, "MightyMidget."
2,367,668, Jan 23, 1945—rubbing machine, "Mity Midget."
2,620,775, Dec. 9, 1952—rubbing machine, "Two Pad Sander."

Champayne, his wife and an engineer (Max E. Dayton) organized National Air Sander, Inc., and distributed its capital stock as follows: 1,500 shares to Roy, 750 shares to Roy's wife, and 750 shares to Max Dayton. The company was granted an exclusive right to make, use, or sell the "Mighty Midget" or the "Mity Midget" on the basis of the following royalty schedule: 1945, none; 1946, one-half of one percent; 1947, 1 percent; 1948, 2 percent; 1949, 3 percent; and 5 percent thereafter. The royalty rate on the "Mity Midget" was reduced for the first 5 years.

On December 20, 1946, National purchased Max Dayton's 750 shares for $163,750. National increased its capital stock and declared a stock dividend, whereupon Roy held 39,000 shares and his wife 19,500. Roy licensed National under the "Two Pad Sander" on January 25, 1945, on a 20 percent royalty basis. The sales and royalties were as follows:

Year	Dollar sales		Accounts accrued as payable to Champayne	
	Mity Midget	Two Pad	Mity Midget	Two Pad
1945				
1946	$1,073,098.95		$5,365.49	
1947	794,187.10		7,941.87	
1948	803,032.87	$19,037.75	16,060.66	$3,807.55
1949	399,701.04	46,957.48	11,991.03	8,391.50
1950	496,179.01	144,654.46	24,808.95	28,930.89
1951	458,671.77	96,715.48	22,933.59	15,433.95
1952	454,118.70	73,908.08	22,705.94	9,110.12

The Champaynes received the following dividends:

Roy:	
1951	$21,450
1952	21,450
Gladys:	
1951	10,725
1952	10,725

The Tax Court held that 5 percent royalties were reasonable, that 20 percent was an excessive royalty, and that 15 percent of the 20 percent represented a 15 percent dividend distribution.

Champayne et al. v. *Commissioner of Internal Revenue*, 110 USPQ 153 (Tax Court, June 22, 1956).

CASE NO. 28. ROSE MARIE REID

Rose Marie Reid of Los Angeles, Calif., began making women's swimsuits in Canada, where she obtained Canadian patents. She filed applications for U.S. patents and was granted:

2,372,855, April 3, 1945—brassiere.
Design 144,515, April 23, 1946—bathing suit.
2,418,987, April 15, 1947—garment.
2,431,505, November 25, 1947—bathing suit.
Design 151,714, November 9, 1948—bathing suit.
2,535,018, December 19, 1950—garment.

She licensed U.S. manufacture and received $11,000 royalties in 1938. She came to the United States and with a partner began operations. She encountered difficulties with her partner. These difficulties were resolved by an agreement to pay her, for her name, design, and other patents, 1 percent of the corporation's net sales for each year after September 1, 1948. Mrs. Reid was also to receive 2 percent of the corporation's net sales up to $1 million and 1½ percent of the net over $1 million for her services as designer. Mrs. Reid also owned stock in the Canadian and U.S. corporations.

Alleged tax deficit, 1949, 1959, and 1950: $34,451.83.

Reid v. *Commissioner of Internal Revenue*, 110 USPQ 145 (Tax Court, June 21, 1956).

CASE NO. 29. ARTHUR C. RUGE

Arthur C. Ruge of Cambridge, Mass., a research associate and professor of engineering seismology, formed a partnership with Alfred de Forest. The partnership licensed the Baldwin Locomotive Works on September 3, 1940, under inventions and patents pertaining to strain gages. The 1940 agreement was superseded by an agreement of June 14, 1944. Under the 1944 agreement the patents were assigned to Baldwin. Ruge's U.S. patents included the following:

- 2,316,975, April 20, 1943—gage.
- 2,318,102, May 4, 1943—Rossette type strain gage.
- 2,321,322, June 8, 1943—rheostat.
- 2,322,319, June 22, 1943—strain responsive apparatus.
- 2,334,843, November 23, 1943—strain gage with thermal current control.
- 2,340,146, January 25, 1944—strain gage.
- 2,344,173, March 14, 1944—switch.
- 2,344,642, March 21, 1944—temperature compensated strain gage.
- 2,350,972, June 6, 1944—strain gage.
- Re. 22,589, January 9, 1945—strain gage with thermal current control.
- 2,392,293, January 1, 1946—torque measuring apparatus.
- 2,400,467, May 14, 1946—fluid pressure responsive apparatus.
- 2,403,951, July 16, 1946—variable resistor.
- 2,403,952, July 16, 1946—torquemeter.
- 2,416,276, February 18, 1947—instantaneous recorder.
- 2,416,664, February 25, 1947—strain responsive apparatus.
- 2,423,620, July 8, 1947—condition responsive apparatus for rotary members.
- 2,434,438, January 13, 1948—condition responsive apparatus for rotary members.
- 2,439,146, April 6, 1948—load weighing device.
- 2,442,938, June 8, 1948—fluid pressure responsive apparatus.

Under the 1944 agreement, which provided for minimum royalties and also consulting engineering services, Ruge received the following royalties:

	At 5 percent	At 2 percent	Total
1951 royalties	$33,141.10	$16,305.30	$49,446.40
1952 royalties	34,272.09	19,892.68	54,164.77
Total			103,611.17

Ruge et al. v. *Commissioner of Internal Revenue,* 109 U.S.P.Q. 300 (Tax Court, Apr. 24, 1946).

CASE NO. 30. ALBERT R. STEIRLY

Albert R. Steirly of Houston, Tex., having invented a pump valve, was granted U.S. Patents 2,093,662 on September 21, 1937, and 2,516,927 on August 1, 1950. Steirly licensed the American Iron & Machine Works at a royalty of 10 percent of the net selling prices of the devices sold. Albert and his wife died and their daughters became possessed each of a half interest in the patent.

In the year 1951 each daughter (Elizabeth Steirly Roe and Lois Steirly Rozzell) received $40,864.87 which was reported as ordinary income. The daughters filed claims for refunds.

Roe et al.-Rozzell et al. v. *United States,* 109 USPQ 246, 133 F. Supp. 567 (S.D. Tex., Jan. 14, 1956).

CASE NO. 31. GUY E. BEARDSLEY, JR.

Guy E. Beardsley, Jr. of West Hartford, Conn., was employed by United Aircraft Corp. He invented an automatic airflow carburetor economizer. The corporation disclaimed ownership. Beardsley was accordingly granted U.S. Patents—

2,447,264, Aug. 17, 1948—carburetor.
2,447,265, Aug. 17, 1948—fuel control device.
2,477,266, Aug. 17, 1948—fuel control device.
2,456,042, Dec. 4, 1948—ignition tuning.

Beardsley licensed the Bendix Aviation Corp. on January 6, 1940. He received royalties of $16,196.79 from January 6, 1940, to December 31, 1945, inclusive. On February 16, 1946, he received $1,000. After a royalty adjustment agreement, Beardsley received in 1946 $70,803.81.

Beardsley et al. v. *United States,* 109 USPQ 27, 126 F. Supp. 775 (D. Conn., Jan. 14, 1956).

CASE NO. 32. WALTER E. KING

Walter E. King of Houston, Tex., was granted U.S. Patent 2,090,206 on August 17, 1937, for "blowout preventer rams." On January 19, 1949, King granted patent rights to W. D. Shaffer and by a supplemental agreement a license was also granted to Shaffer Tool Works. The license was exclusive with a right to sublicense. A royalty rate of 5 percent of the selling price was specified.

In 1951 King received from Shaffer royalties of $17,913.50.

King et al. v. *United States,* 108 USPQ 252, 138 F. Supp. 207 (S.D. Tex., Dec. 19, 1955).

CASE NO. 33. MRS. BERTHA E. THOMAS

Mrs. Bertha E. Thomas of Warren, Pa., invented a number of flexible coupling devices and was granted the following U.S. patents:

1,323,423, Dec. 2, 1919	2,182,711, Dec. 5, 1939
1,326,993, Jan. 6, 1920	2,251,722, Aug. 5, 1941

Mrs. Thomas assigned the first two patents as well as future improvements for 450 shares of the Thomas Flexible Coupling Co. and a royalty of 10 percent of the gross sales price. She assigned the last two patents for $3,500 plus royalties but retained certain rights in the automotive field. The patents were reassigned to Mrs. Thomas, when the royalty payments proved greater than had been contemplated. Thereupon she granted the company an exclusive license subject to maximum and minimum royalties as of July 1, 1943. Her royalties amounted to $170,833.16 in 1942; $236,323.73 in the first half and $4,000 in the second half of 1943; $80,000 in 1944; $17,978.35 in 1945; and $33,089.41 in 1946.

Commissioner of Internal Revenue v. *Thomas Flexible Coupling Co.,* 198 F. 2d 350 (3d Cir., Aug. 5, 1952). See also 158 F. 2d 828.

CASE NO. 34. HEREWARD LESTER COOKE

Hereward Lester Cooke (deceased), professor of physics, Princeton University, invented a toothbrush and a method of manufacturing the brush. He was granted U.S. Patents 2,066,068 on December 29, 1936, and 2,227,126 on December 31, 1940. He also was granted

Canadian Patent 359,372. Professor Cooke granted rights to the Pro-Phy-Lac-Tic Brush Co. and gave a 10 percent interest to E. Q. Moses, his patent attorney, and 10 percent (later 20 percent) to Donald T. Carlisle, who promoted the invention.

Professor Cooke received from the brush company one-third of a cent on each brush, and a minimum of $1,500 per quarter in 1944, 1945, and 1946. His executor claimed a tax refund for the foregoing years of $16,642.39 on the ground that capital gains rather than ordinary income was involved.

The First National Bank of Princeton v. *United States,* 108 USPQ 108, 136 F. Supp. 818 (D. New Jersey, Dec. 30, 1955).

CASE NO. 35. VINCENT A. MARCO

Vincent A. Marco, an attorney at law, of Beverley Hills, Calif., invented an indicator light known as "Press to Test." Marco was granted two U.S. patents and acquired a third on a light shutter and dimmer from Fred J. Aves, the patents being as follows: 2,424,573 on July 29, 1947; 2,424,574 on July 29, 1947; and 2,424,575 on July 29, 1947. Marco entered into an exclusive license agreement with the Signal Indicator Co. for territory east of the Mississippi River and with Searle Aero Industries for territory west of the Mississippi, both agreements at a royalty of 10 percent of the gross selling price. Searle defaulted and on December 28, 1949, Marco canceled the agreement and entered into a license agreement with Marco Industries at the same royalty rate.

Marco received from Marco Industries in 1951 royalties of $50,590.91 and from Dial Light (transferee of Signal) $28,339.68.

Marco et al. v. *Commissioner of Internal Revenue,* 108 USPQ 92 (Tax Court, Dec. 16, 1955).

CASE NO. 36. ROBERT C. SWITZER

Robert C. Switzer of Berkeley, Calif., was granted U.S. Patent 2,152,856 on April 4, 1939, for his invention relating to fluorescent lithographing ink. He granted a license on July 30, 1946, providing for a royalty of 10 percent of the gross sums invoiced by the licensee and a minimum royalty of $4,000 per quarter. Royalties from sublicensees were payable directly to Switzer. In an action involving the tax years 1949 and 1950, the Tax Court held against petitioners, denying income tax recovery. No dollar amounts were stated in the opinion.

Switzer et al. v. *Commissioner of Internal Revenue,* 107 USPQ 310, 226 F. 2d 329 (6th Cir., Oct. 8, 1955).

CASE NO. 37. PETER J. MASSEY

Peter J. Massey of River Forest, Ill., invented a process for coating paper at any particular stage in the papermaking process and for coating paper before it became overdried. He was granted U.S. Patents 1,921,368 and 1,921,369 on August 8, 1933. He had spent $150,000 in developing the inventions.

Massey sold the entire patent rights on December 1, 1933, to the Seamen Paper Co. (of which he was vice president) and on December 2, 1933, an agreement was executed providing that if Consolidated Water Power & Paper Co. purchased a coating machine for $100,000 and a half interest in the Massey patents, Seamen would (1) transfer to Massey 1,000 shares of the common stock of Munising Paper Co.

and (2) pay Massey one-fifth of all royalties received by Seamen and one-fifth of net proceeds from sale of Seamen's interest in the patents.

On December 2, 1933, Seamen licensed the Consolidated Co. on a royalty of 50 cents per ton of all paper coated in excess of 100,000 tons. Seamen assigned a one-half undivided interest in the Massey patents to Consolidated, and Consolidated agreed to pay Massey 10 cents per ton of paper coated according to the patented process. Granted tax refunds 1948, 1949, and 1950. No dollar royalty payments were specifically stated in the opinion.

Massey et al. v. *United States*, 107 USPQ 157, 226 F. 2d 724 (7th Cir., Oct. 21, 1955).

CASE NO. 38. JAMES H. GRAVELL AND GERALD C. ROMIG

James H. Gravell of Elkins Park, Pa., was granted U.S. Patent 1,805,982 on May 19, 1931, and Canadian Patent 305,575 (trademark "Kemick"), and Gerald C. Romig of Elkins Park, Pa., was granted U.S. Patent 2,121,574 on June 21, 1938, and Canadian Patent 389,413 (trademark "Lithoform"). Gravell's patent was for a method of and a material for preventing metal from corroding. Romig's patent pertained to the art of coating zinc. Both patents were assigned to American Chemical Paint Co. prior to their issuance. The company did research and the patents were apparently obtained to protect the products and processes (See Findings 2 and 3 in the decision).

On October 11, 1940, American Chemical Paint Co. of Ambler, Pa., exclusively licensed Parker Rust Proof Co. subject to certain reservations.

The present case involved the income and excess profits tax of the American Chemical's treatment of royalties received from Parker.

American Chemical Paint Company v. *Smith et al.* (*Collector of Internal Revenue*), 106 USPQ 361, 131 F. Supp. 734 (E.D. Penn., Apr. 22, 1955).

CASE NO. 39. HANS ROLLMAN, ERNST ROLLMAN, AND ANDREAS SZERENYI

The Rollmans, a partnership of eight people, acquired the following U.S. patents:

- 1,955,720, Apr. 17, 1934—Hans Rollman, boot and shoe.
- 2,129,106, Sept. 6, 1938—Andreas Szerenyi and Hans Rollman, footwear.
- 2,168,243, Aug. 1, 1939—Hans Rollman, method for production of shoes.
- 2,178,086, Oct. 31, 1939—Andreas Szerenyi, method for the manufacture of footwear.
- 2,357,360, Sept. 5, 1944—Ernst Rollman, process and apparatus for the manufacture of molded rubber footwear.

The Rollmans acquired the patent rights of Szerenyi who received $7,500 per year from 1936 through May 1940. The Rollmans licensed Wellco on December 19, 1940, and received the following payments: 1947, $9,417.77; 1948, $20,178.03; and 1949, $17,900.69. The shoes were known as "Paraflex," "Snow Boot," and "Rajeh." The negotiations with respect to several parties and several agreements are not of immediate interest. Most of the partners were former residents of Germany.

Rollman et al. v. *Commissioner of Internal Revenue*, 106 USPQ 233 (Tax Court, July 22, 1955).

CASE NO. 40. ORLA E. WATSON

Orla E. Watson of Kansas City, Mo., invented a store basket and carriage of the type that can be telescoped horizontally into one another. He was granted U.S. Patent 2,479,530 on August 16, 1949. He entered into a partnership with Fred E. Taylor, who advanced funds in exchange for a 49 percent undivided interest.

Watson, with the consent of Taylor, entered into an agreement with Oliver O'Donnel, trustee for Telescope Carts, Inc., granting Telescope Carts an exclusive license. In 1950 Watson received from Telescope $78,422.75, of which he paid Taylor $39,221.38.

Watson et al. v. *United States*, 105 USPQ 352, 222 F. 2d 689 (10th Cir., May 12, 1955).

CASE NO. 41. EBEN H. CARRUTHERS

Eben H. Carruthers of Ithaca, N.Y., was granted the following U.S. patents for his invention in the field of tuna fish canning:

2,434,607, Jan. 13, 1948	2,475,422, July 5, 1949
2,470,916, May 24, 1949	2,490,945, Dec. 13, 1949
2,470,917, May 24, 1949	

On May 13, 1950, Carruthers exclusively licensed the E. H. Carruthers Co., with the right to sublicense, in the tuna industry. He received from the company in 1950 royalties of $17,016.75 as a consideration for the assignment.

United States v. *Carruthers et al.*, 104 USPQ 283, 219 F. 2d 21 (9th Cir., Feb. 4, 1955).

CASE NO. 42. FRANK G. MANSON AND JAMES J. MASKEY

Frank G. Manson and James J. Maskey, both of Dayton, Ohio, at one time and later respectively of Cleveland, Ohio, and Detroit, Mich., were granted solely or jointly 46 U.S. patents in the years 1933 through 1948, inclusive. Most of these patents were for inventions in the field of aeronautics. Manson and Maskey granted an exclusive license to Edward A. Joyce. The license, which included the right to sublicense, specified a royalty of 5 percent of the net selling price and a payment of advance royalties of $45,000 at the rate of $15,000 per annum between December 15, 1942, and July 1, 1945.

Joyce reported the agreement to the board of directors of Airchox (of which he was the controlling stockholder) and offered a nonexclusive license at 7½ percent royalty on net sales, a license fee of $5,000 per year, and the assumption of the $45,000 liability to pay Manson and Maskey. On February 9, 1944, Joyce waived his right to the $5,000 annual license fee. None of the devices were manufactured or sold commercially and no royalties were paid to Joyce. Nevertheless Manson and Maskey were paid.

Airchox Company v. *Commissioner of Internal Revenue*, 100 USPQ 73 (Tax Court, Dec. 15, 1953).

CASE NO. 43. EMMANUEL DE TREY AND ROBERT FRANCOIS DOGE

Emmanuel de Trey of Zurich, Switzerland, was granted U.S. Patent 1,694,845 on December 11, 1928, for a kneading machine. Robert Francois Doge of Zurich, Switzerland, was granted U.S. Patent 1,776,491 on September 23, 1930, for a receptacle for dispatching dental impressions. The L. D. Caulk Co. was licensed and the company made the following payments to blocked accounts:

De Trey: $6,942.44, October 22, 1941; $12,517.50, March 9, 1942; $15,413.59, July 22, 1943.

Doge: $5,960.56, January 29, 1943; $1,026.19, July 27, 1943.

The licensee brought action to recover U.S. taxes paid.

The L. D. Caulk Company v. *United States*, 99 USPQ 391, 126 F. Supp. 693 (D. Del., Nov. 19, 1953).

CASE NO. 44. GEORGE, W. K. B., AND RADCLIFFE URQUHART

George, W. K. B., and Radcliffe Urquhart of Cynwyd, Pa., were in the business of inventing, experimenting, developing, and exploiting patents. George and Radcliffe were granted U.S. Patents 2,106,043 on January 18, 1938, and 2,198,585 on April 23, 1940, for firefighting equipment. The Urquharts licensed the National Foam System, Inc., in April 1941. National paid the Urquharts the following royalties: 1942, $201,349.12; 1943, $172,488.77; 1944, $105,581.37; 1945, $114,718.55; 1946, $204,739.20.

The Urquharts notified Pyrene Manufacturing Co. it was infringing and brought suit against Pyrene's customer, American La France Foamite Corp. That action was dismissed. Pyrene brought a declaratory judgment action against the Urquharts and prevailed. The Urquharts had expended $55,748.64 for legal fees and expenses in 1942.

Urquhart et al. v. *Commissioner of Internal Revenue*, 99 USPQ 30, 215 F. 2d 17 (Tax Court, Sept. 9, 1953). See also 102 USPQ 427.

CASE NO. 45. MAURICE R. GARBELL

Maurice R. Garbell of San Francisco, Calif., was employed from September 7, 1942, to October 15, 1945, by the Consolidated Vultee Aircraft Corp. During this employment he invented a fluid-foil lifting surface. Consolidated retained a shop right, but otherwise waived its patent right. Garbell was granted U.S. Patent 2,441,758 on May 18, 1948, for the invention. He assigned a three-quarter interest to Garbell Research Foundation.

The invention was used in Vultee Model 240 aircraft which Consolidated sold to American. Garbell sued, but Consolidated and American prevailed because of the former's shop right.

Consolidated Vultee Aircraft et al. v. *Maurice A. Garbell, Inc. et al.*, 98 USPQ 4, 94 F. Supp. 843 (9th Cir., June 9, 1953). See also 88 USPQ 59.

CASE NO. 46. ARTHUR C. COPE

Arthur C. Cope of Bryn Mawr, Pa., professor of organic chemistry and head of the Department of Chemistry of Massachusetts Institute of Technology in 1945, was the holder of the following U.S. patents in the field of barbiturics:

2,119,526,* June 7, 1938	2,187,703, Jan. 16, 1940
2,150,154, Mar. 14, 1939	2,188,874, Jan. 30, 1940
2,176,018,* Oct. 10, 1939	2,219,543, Oct. 29, 1940
2,187,701, Jan. 16, 1940	2,222,455, Nov. 19, 1940
2,187,702, Jan. 16, 1940	

Cope was employed as a consultant by Sharp & Dohme Co. The company agreed to pay Cope, in addition to a retainer, 2½ percent of the sales prices of specified barbituric acid products. Cope assigned

*Jointly with Walter H. Hartung and Frank Crosby.

the patents to Sharp & Dohme. Under the agreement Cope received the following payments:

Year	Total	Patent 2,176,018	"Delvinal"
1947	$6,366.58	$302.82	$6,063.76
1948	10,574.97	128.22	10,446.75
1949	26,163.37	37.68	26,125.69

Cope et al. v. *Commissioner of Internal Revenue*, 97 USPQ 498 (Tax Court, May 15, 1953).

CASE NO. 47. REYNOLD G. NELSON

Reynold G. Nelson, now deceased, by written agreement of September 15, 1942, assigned to his wife, Mrs. Alma M. Nelson, the right to receive all royalties on an unpatented, secret invention involving a process of spinning steel. The invention was used by the G. E. Nelson Co., a Michigan corporation. The company was operated by the son of Reynold and Alma Nelson. Mrs. Alma Nelson, by an agreement dated March 25, 1943, permitted the company to use the late husband's proprietary rights for a cash consideration of $500, plus $100 per week and 10 percent of the gross profits of the company.

The company paid Mrs. Nelson $7,960.32 in 1945, $7,347.90 in 1946, and $5,308.34 in 1947.

Nelson v. *Commissioner of Internal Revenue* (appeal from the Tax Court), 97 USPQ 51, 203 F. 2d 1 (6th Cir., Apr. 11, 1953).

CASE NO. 48. ERNEST E. WEMP

Ernest E. Wemp (deceased) of Evansville and Detroit, Mich., was granted the following patents relating to clutches:

1,485,319, Feb. 26, 1924	1,513,202, Oct. 28, 1924
1,510,123, Sept. 30, 1924	1,513,203, Oct. 28, 1924

Wemp granted an exclusive license to the Long Manufacturing Co. on September 15, 1921. Long was later acquired by Borg-Warner. The agreement with Long provided that Long pay Wemp a salary of $250 per month, plus an additional $250 per month for introducing the clutch to the market, and a royalty with a sliding scale. The monthly salary payments were to be suspended after the specified monthly total sales were reached. By April 1922 Long was manufacturing the clutches.

Wemp's executors, Lila A. Wemp and William O'Neill Kronner, sued to recover a portion of income taxes paid in 1943 through 1947, inclusive. Granted tax refund for 1943, 1944, 1945, 1946, and 1947. Amount not stated.

Kronner et al. v. *United States*, 96 USPQ 340, 110 F. Supp. 730 (Court of Claims, Mar. 3, 1953).

CASE NO. 49. DORY J. NEALE

Dory J. Neale of Topeka, Kans., invented a number of cable spinners and was granted the following U.S. patents:

2,295,749, Sept. 15, 1942	2,344, 051, Mar. 14, 1944
2,300,035, Oct. 27, 1942	2,479,635, Aug. 23, 1949

He was granted four additional patents for accessory devices between March 14, 1944, and December 5, 1950.

In 1940 Neale's wife, B. Ellen Neale, commenced to manufacture the cable spinners under an oral agreement, doing business as the Neale Manufacturing Co. In 1941 she formed a partnership with W. O. Meyers and the partnership continued the business. About a year later the name was changed to Cable Spinning Equipment Co. On August 6, 1945, Neale and the company entered into a license agreement at a royalty of 7 percent. The Neale-Meyers partnership was dissolved with Mrs. B. Ellen Neale continuing the business. A new license reduced the royalty to 6 percent.

Dory Neale brought suit to recover taxes paid in 1945, 1946, and 1947. Granted income tax refunds for 1946 and 1947. Amounts not stated. Denied income tax refund for 1945.

Broderick v. *Neale*, 96 USPQ 82, 210 F. 2d 621 (10th Cir., Jan. 2, 1953).

CASE NO. 50. ALFRED W. BARBER

Alfred W. Barber of Flushing, N.Y., holder of a substantial number of electronic and radio patents, invented a voltmeter. He was granted U.S. Patent 2,039,267 on April 28, 1936, and assigned the patent to Premier Crystal Laboratories, Inc. Premier never used the invention of the patent, which was reassigned to Barber on October 29, 1943.

About that time Barber began to manufacture and to sell the voltmeters with the following results:

Year	Gross sales	Gross income	Number of voltmeters made and sold
1943	$1,050.00	$52.42	7
1944	14,686.89	4,552.04	98
1945	55.886.17	40,304.86	372
1946	4,393.00	1,096.35	29

Barber et al. v. *Commissioner of Internal Revenue*, 96 USPQ 59 (Tax Court, Dec. 31, 1952).

CASE NO. 51. FRANZ GEORG BLOCK

Franz Georg Block of Dresden, Germany, invented a temperature measuring device for which he was granted U.S. Patent 1,970,219 on August 14, 1934. Block and his partners granted an exclusive license on April 29, 1935, to the Weston Electrical Instrument Corp. Weston agreed to pay $75,000 as follows: $40,000 at the time of execution of the agreement and royalties in stipulated amounts.

Block's share of the royalties came to the following gross: 1944, $5,718.02; 1945, $6,525.50; and 1946, $8,091.28. The withholding taxes reduced the amounts in the respective years by $1,715.40, $1,957.50, and $2,427.38, leaving Block a net of $4,002.62, $4,567.78, and $5,663.83.

Block v. *United States*, 95 USPQ 246, 102 F. Supp. 457, 200 F. 2d 63 (2d Cir., Nov. 21, 1952). See also 92 USPQ 66.

CASE NO. 52. HERBERT ALLEN

Herbert Allen of Houston, Tex., invented several pressure gages and was granted the following U.S. patents:

2,297,678, Oct. 6, 1942	2,361,915, Nov. 7, 1944
2,297,679, Oct. 6, 1942	2,369,650, Feb. 20, 1945

Allen assigned the patents to the Abercrombie Pump Co. for royalty payments of 5 percent. Allen was employed by Abercrombie, which had its work done by Cameron Iron Works, Inc. Cameron absorbed Abercrombie. In 1948, Cameron paid Allen royalties of $22,762.54.

Allen et al. v. *Commissioner of Internal Revenue,* 95 USPQ 231 (Tax Court, Nov. 12, 1952).

CASE NO. 53. LEWIS W. IMM

Lewis W. Imm of Glendale, Calif., made inventions in the field of computers and was granted the following U.S. patents:

2,179,822, Nov. 14, 1939	2,394,181, Feb. 5, 1946
2,373,566, Apr. 10, 1945	2,448,596, Sept. 7, 1948
2,394,180, Feb. 5, 1946	2,485,200, Oct. 18, 1949

Imm initially licensed the patents on a 5 percent royalty basis to Librascope. Later the license was converted into an assignment of the patents to International Projector Corp. In addition to royalties, Imm received payments in terms of sales of stock, cancellations of obligations, and proceeds from sale of patent rights. In 1943–44 Imm made payments of $13,000 and $2,000 "out of royalties" to clear the title to the patents. Imm received royalty payments in 1943, 1944, and 1947, but the amounts are not stated.

The Commissioner of Internal Revenue determined the following tax deficiencies for Lewis Imm and his wife, Wilma M. Imm:

Year	Wilma Imm	Lewis W. Imm
1943	$4,578.28	$4,537.01
1944	1,933.91	1,876.71
1945	540.19	521.19

The court held that the $15,000 paid by Imm to clear the title to his patents was a capital expense.

Imm v. *Commissioner of Internal Revenue,* 94 USPQ 92 (Tax Court, Mar. 24, 1952).

CASE NO. 54. ELMER C. KIEKHAEFER

Elmer C. Kiekhaefer of Milwaukee, Wis., invented an automatic brake for electric motors and was granted U.S. Patent 2,059,244 on November 3, 1936. Being employed by the Stearns Magnetic Manufacturing Co., he assigned the patent to the company.

Roswell H. Stearns and Roswell N. Stearns, father and son, owned the company. The Stearns had the company assign the patent to them as a dividend. They then licensed the company as of March 1, 1943, on a basis of 10 percent royalty on gross receipts.

The company at first made the appliance but later had the brakes made for it. The company sustained losses in 1938, 1939, and 1940, had a profit of $6,060 in 1941, and a profit of $29,701 in 1942. The Stearns' received royalty payments from the company as follows:

1943 (10 months)	$33, 853. 56
1944	49, 022. 98
1945	54, 083. 30
1946	55, 502. 62
1947	53, 743. 82

The Commissioner of Internal Revenue and the Tax Court of the United States held that the "royalty" payments were dividends. The Court of Appeals for the Seventh Circuit reversed and held that the royalty payments were legal and valid.

Stearns Magnetic Manufacturing Co. v. *Commissioner of Internal Revenue*, 93 USPQ 465 (Tax Court, May 29, 1952); same case, 100 USPQ 138, 208 F. 2d 849 (7th Cir., Jan. 7, 1954).

CASE NO. 55. JON GREGG

Jon Gregg of Trevose, Pa. (having previously lived in New Jersey), an editor, reporter, and feature writer, invented a method of making rope soles. He was granted U.S. Patent 2,361,938 on November 7, 1944, which he assigned to his wife, Lynne Gregg. On September 19, 1942, the Greggs exclusively licensed the Norwalk Tire & Rubber Co. The license called for a royalty of 7 percent of the net selling price, but not exceeding 3 cents per pair. The agreement provided for services and the payments were made in the ratio of 60 percent royalty and 40 percent services. By mutual consent the license was extended to the Panther-Panco Rubber Co.

Year	Company	Total payments	Jon Gregg, 40 percent	Lynne Gregg, 60 percent
1943	Norwalk	$34, 682. 77	$13, 873. 11	$20, 809. 66
1943	Panther	6, 649. 83	2, 659. 93	3, 989. 90
1944	Norwalk	24, 803. 39	9, 921. 36	14, 882. 03
1944	Panther	18, 337. 97	7, 335. 19	11, 002. 78
1945	Norwalk	2, 000. 00	800. 00	1, 200. 00
1945	Panther	23, 681. 73	9, 472. 69	14, 209. 04

Gregg et al. v. *Commissioner of Internal Revenue*, 93 USPQ 313 (Tax Court, May 13, 1952). See also 97 USPQ 192.

CASE NO. 56. CHEMISCHE WERKER MARIENFELDE-RICHARD BOSCHE

In this case a secret process and a trademark were involved and not a U.S. patent. A. Gusmer, Inc., paid Chemische Werker Marienfelde-Richard Bosche, a German corporation, $3,000 in 1933 and agreed to pay license fees based upon sales. This was done in 1933–41, but Gusmer, Inc., failed to withhold income taxes as required by statute (55 Stat. 60 (1940), as amended 26 U.S.C. §143 (1951)).

Remittances were discontinued in 1941 because of the wartime prohibition. The unremitted license fees to the alien's credit were vested in the Alien Property Custodian. The accrued fees were overpaid by Gusmer, Inc. In 1947, the Commissioner of Internal Revenue determined that Gusmer, Inc., owed $13,363.88 in income taxes for the years 1933–41, plus $3,340.98 penalties and $6,056.53 interest, or a total of $22,761.39.

A. Gusmer, Inc. v. *McGrath, Attorney General, successor to Alien Property Custodian*, 93 USPQ 189, 196 F. 2d 860 (D.C. Cir., Apr. 24, 1952).

CASE NO. 57. FRANZ LANG

Franz Lang of Munich, Germany, was formerly associated with Rudolph Diesel. Lang was granted some 18 U.S. patents between 1933 and 1938, inclusive. He also acquired rights to four U.S. patents of Fischer. Franz Lang and Albert Wielich organized the Lanova Corp. Lanova usually changed over conventional engines to Lanova or Diesel types with fuel injection. After successfully demonstrating the modified engines, they licensed the customer.

The opinion in the tax suit shows that from 1934 through 1940 Lanova licensed the Buda Co., Mach Manufacturing Co., Chrysler Corp., Atlas Thornbury Co., Stover Manufacturing Engine Co., and the Kohler Co. The total royalty received up to the middle of 1950 amounted to nearly $1,500,000, exclusive of royalties of $443,000 paid by the U.S. Government during 1943, 1944, and 1945.

Lanova Corporation v. *Commissioner of Internal Revenue*, 92 USPQ 153 (Tax Court, Jan. 16, 1952).

CASE NO. 58. ROBERT D. PIKE

Robert D. Pike, a consulting engineer, of Greenwich, Conn., invented a trimetal bearing. He licensed the Cleveland Graphite Bronze Co. on March 21, 1939. Pike's patent application became involved in an interference with an application of William H. Bagley, Jr. Pike, at the request of Cleveland, conceded to Bagley and U.S. Patent 2,316,119 was granted to the latter on April 6, 1943.

As a part of the concession agreement, Cleveland agreed to pay Pike "royalties" for the life of the patent issued to Bagley. Accordingly, Cleveland paid Pike $15,710.80 in 1943 and $24,273.06 in 1944. The opinion does not show how Bagley fared.

Pike v. *United States*, 92 USPQ 105, 101 F. Supp. 100 (D. Conn., Aug. 15, 1951).

CASE NO. 59. H. H. LAMAR

H. H. Lamar of Wilkinsburg, Pa., invented a valve for use in refrigeration, high pressure fluid containers, airplanes, and similar fields. He was granted U.S. Patent 2,217,842 on October 15, 1940, and Canadian Patent 405,411 on June 16, 1942. Lamar exclusively licensed the Henry Valve Co. Henry guaranteed minimum royalties of $1,500 per year and royalty payments at 5 percent of the net selling price of the valves.

On August 6, 1942, and January 19, 1943, Henry granted back to Lamar rights in certain fields for which Lamar agreed to pay Henry $1,000. Lamar then licensed the W. J. Schoenberger Co. (April 15, 1943). Schoenberger paid Henry $1,000 and agreed to pay royalties of 5 percent on the first $500,000 of sales, 4 percent on the next $250,000, and 3 percent on sales over $750,000. The licensee also agreed to pay $1,500 on account of royalties for each year the agreement remained in force.

The actual payments were not stated in the opinion.

Lamar v. *Granger*, 90 USPQ 58, 99 F. Supp. 17 (W. D. Penn., July 3, 1951).

CASE NO. 60. HENRY FORT FLOWERS

Henry Fort Flowers of Findlay, Ohio, made many inventions in the field of railway-type dump cars. He was granted 44 U.S. patents in the years 1924 to 1949. Flowers, a majority stockholder in the Differential Steel Car Co., licensed the company at the following royalties: $2,000 per electrolocomotive, $200 per mine car 100 cubic feet or larger, $1,000 per railway dump car, $150 per mine car less than 100 cubic feet, $25 per ton of capacity on all vehicles not included above, and 5 percent on the selling price of all repair parts and vehicles for rental use.

The company operations under the agreement were as follows:

Year	Gross sales	Royalties paid	Net profit	Dividends
1940	$627, 875. 61	$82, 696, 55	$1, 720. 27	$180. 95
1941	901, 800. 37	126, 548. 00	27, 162. 77	180. 95
1942	835, 319. 19	89, 094. 45	27, 917. 80	180. 95
1943	804, 347. 31	120, 000. 00	56, 489. 80	180. 95
1944	700, 790. 66	95, 250. 00	29, 498. 76	180. 95

The court rejected the view that the license from the principal stockholder to the corporation was improper, noting that the patented features made the cars worth at least as much more as the royalty that was paid thereon, and held that the respondent erred in disallowing the deductions.

Differential Steel Car Company v. *Commissioner of Internal Revenue*, 88 USPQ 451 (Tax Court, Feb. 23, 1951).

CASE NO. 61. HALSEY W. TAYLOR

Halsey W. Taylor of Warren, Ohio, the major stockholder in the Halsey W. Taylor Co., was granted 29 U.S. patents between 1921 and 1933 for inventions relating to drinking fountains and water cooling apparatus. On January 4, 1926, he licensed the company on a 5-percent royalty based upon net sales.

On February 7, 1945, he entered into an assignment agreement with the company and in return the company agreed to pay royalties during Taylor's lifetime. An assignment of 13 patents was made on May 22, 1945. Other assignments were made in due course.

Payments in 1947 to Taylor equaled $100,220.44.

Taylor v. *Commissioner of Internal Revenue*, 88 USPQ 446 (Tax Court, Feb. 19, 1951).

CASE NO. 62. LUDWIG KORT

Ludwig Kort of Hanover, Germany, was granted U.S. Patent 1,759,511 on May 20, 1930, and 2,030,375 on February 11, 1936, for ship propeller devices. The Dravo Corp. entered into a contract for the manufacture and sale of the devices subject to payment of royalties to Kort.

Dravo remitted to Kort royalties of $32,214.16 from January 1, 1939, to April 15, 1941, but failed to deduct income taxes. Royalties of $15,690 accrued from April 16, 1941, to June 4, 1942.

McGrath, Attorney General, Successor to Alien Property Custodian v. *Dravo Corporation*, 86 USPQ 286, 183 F. 2d 709 (3d Cir., July 16, 1950). See also 81 USPQ 70.

CASE NO. 63. ARTHUR N. BLUM

Arthur N. Blum of Philadelphia, Pa., entered into a series of agreements with Henry Disston & Sons, Inc. to develop a power chain saw. The earlier agreements provided for month-to-month employment at $500 per month, plus a commission of 2½ percent of net sales price of saws for a 5-year period or for the life of the patent if he secured one.

A later agreement provided for a downpayment, plus 3½ percent commission up to $17,000 and 3¼ percent above $17,000. The last agreement of March 28, 1941, provided for a 10 percent commission for 5 years or the life of the patents, whichever occurred first, with the proviso that it be reduced to 3½ percent if employment terminated during said commission period. Blum resigned December 31, 1941. Thereafter, he was granted the following U.S. patents:

2,279,773, April 14, 1942	2,351,737, June 20, 1944
2,294,240, September 22, 1942	2,351,738, June 20, 1944
2,296,241, September 22, 1942	2,351,739, June 20, 1944
2,318,456, May 4, 1943	2,351,740, June 20, 1944
2,355,141, November 23, 1943	

Disston made the following payments to Blum: 1941, $1,101.75; 1942, $11,821.75; 1943, $126,847.93; 1944, $188,284.79; 1945, $163,315.61.

Blum v. *Commissioner of Internal Revenue*, 86 USPQ 118, 183 F. 2d 281 (3d Cir., June 30, 1950).

CASE NO. 64. FRANCOIS M. M. B. SALOMON

Francois M. M. B. Salomon of Paris, France, made a number of inventions for the reduction of oscillation and dampening vibrations in motors. The Association Privee pour l'Industrie et le Commerce (Apic) induced 16 Frenchmen and 1 Brazilian to invest 500,000 francs in the Salomon inventions. On May 3, 1937, Salomon assigned to Apic his U.S. patents (then applications) as follows:

2,181,610, Nov. 28, 1941	2,387,775, Oct. 30, 1945
2,252,815, Aug. 19, 1941	2,387,776, Oct. 30, 1945
2,361,710, Oct. 31, 1944	2,449,087, Sept. 14, 1948
2,383,516, Aug. 28, 1945	2,451,513, Oct. 19, 1948

Apic licensed Wright Aeronautical Corp. in the aviation and hydroaviation fields at $30,000 down, plus royalties on engines produced. On July 8, 1937, Apic restored the patent rights to Salomon, who on February 12, 1938, organized the Societe Holding des Reducteurs Dynamiquis d'Oscillations et Volants-Filtres (called Redynam) and acquired 82 of its 250 shares. Wright and others agreed to pay Redynam. The Commissioner of Internal Revenue found the royalty payments as follows:

	1940	1941	1942	1943	1944	1945
Wright	$5,386.02	$28,535.33	$47,979.52	$35,576.72	$38,583.43	$31,015.62
Cummins Engine Co.		250.00	399.70	732.41	644.29	657.38
Fairbanks-Morse		32.37	20.17	3,282.82	7,696.54	5,538.76
General Machinery				375.00	250.00	250.00
Worthington Pump			125.00	250.00	250.00	250.00

The payments were made in account at the Irving Trust Co. There were complicated relationships between the various participants but since these relationships are not pertinent to this inquiry, discussion of them is omitted.

Hopag, S.A. Holding de Participation et de Geston de Brevets Industrials v. *Commissioner of Internal Revenue*, 84 USPQ 150 (Tax Court, Jan. 13, 1950).

CASE NO. 65. SOUTHWICK W. BRIGGS

Southwick W. Briggs, of Washington, D.C., invented an oil filter for which he was granted U.S. Patent 1,860,229 on May 24, 1932. He organized the Briggs Clarifier Co. in March 1933 and acquired 75 percent of its capital stock, plus $1,500 for his patent and for improvement inventions. Additional patents related to filters were granted to Briggs:

2,249,681, July 15, 1941	2,375,765, May 15, 1945
2,321,985, June 15, 1943	2,387,714, Oct. 30, 1945
2,374,976,* May 1, 1945	2,390,494,** Dec. 11, 1945

Four of the inventions were reduced to practice and were used by the company. Briggs' interest in the company became less than 2½ percent. On November 1, 1940, he entered into a new agreement exclusively licensing the company in return for a royalty of 1 percent on filter refills listing at $3.80 and a royalty of 4 percent on refills listing at $3.81 and upward. He also agreed to work for the company for 5 years.

In 1943, 1944, and 1945 Briggs paid taxes on royalties as ordinary income. He brought suit to recover income taxes paid, alleging successfully that he was entitled to capital gains. He was awarded $39,155.66, plus interest.

Briggs v. *Hofferbert*, 82 USPQ 405, 178 F. 2d 743 (D. Maryland, Aug. 5, 1949); sustained on appeal, 84 USPQ 36 (5th Cir.).

CASE NO. 66. EDWIN R. EVANS

Edwin R. Evans of Orchard Lake Village, Mich., a graduate of the Engineering School of the University of Illinois, held various positions in the automotive field from 1919 until 1934. He developed brake drum inventions outside of regular employment hours and was granted the following U.S. patents:

2,086,021, July 6, 1937	2,216,771, October 8, 1940
2,097,873, November 2, 1937	2,218,379, October 15, 1940
2,214,900, September 17, 1940	

On January 9, 1936, he sold the brake drum rights to Motor Wheel Corp. for $10,000 down and $2,500 every 3 months beginning March 25, 1936, and extending through December 25, 1940, plus a royalty of one-fourth cent for each brake drum sold by Motor Wheel in excess of 4 million, in the years 1936 to 1940 (inclusive). Evans received $50,000 under the agreement, plus royalties of $10,000 (received in 1936) accrued prior to the agreement.

Evans negotiated with Kelsey Hayes with respect to a license under his 4-wheel brake patents, but eventually sold the patents to Kelsey Hayes in consideration of the payment of $50,000 upon execution of the agreement, like amounts on January 1, 1938, and 1939, and $75,000 on January 1, 1940. He actually received lesser amounts because the patents became useless shortly after execution of the agreement and therefore actual transfer of title was not made.

Evans v. *Kavanagh*, 83 USPQ 199, 86 F. Supp. 535 (E.D. Mich., Oct. 19, 1949). See also 89 USPQ 350, 188 F. 2d 234.

*Jointly with W. C. Bauer and W. J. Ewbank.
**Jointly with W. C. Bauer.

CASE NO. 67. DAVID M. WILLIAMS

David M. Williams of Godwin, N.C., invented an automatic firearm device for which he was granted U.S. Patents 2,090,656 and 2,090,657 on August 24, 1937. He granted an exclusive license to Winchester Repeating Arms Co. in 1940. The license was on a royalty basis. On March 19, 1942, the parties agreed to liquidate the royalty provisions. Winchester agreed to pay Williams $234,001.46 in lieu of royalty payments.

Williams brought suit to recover part of the income taxes paid in 1943, amounting to $68,977.66.

Williams v. *United States*, 81 USPQ 536, 84 F. Supp. 362 (Court of Claims, June 6, 1949).

CASE NO. 68. LEO M. HARVEY

Leo M. Harvey of Los Angeles, Calif., has many inventions to his credit. Between 1928 and 1948, inclusive, he was granted 52 U.S. patents. Many of these patents related to tying mechanisms. From 1930 to March 21, 1938, Harvey licensed the Gerrard Co. to manufacture under his domestic and foreign patents on wire tying and flat band strapping and tying.

Gerrard paid Harvey $30,000 per year royalty. On March 21, 1938, Harvey sold his patents on tying machines for $425,000, payable as follows: $25,000 cash and 10 notes for $40,000, each maturing annually in sequence.

Harvey et al. v. *Commissioner of Internal Revenue*, 80 USPQ 87, 171 F. 2d 952 (9th Cir., Jan. 3, 1949).

CASE NO. 69. ALBERT J. GRANBERG

Albert J. Granberg of Oakland, Calif., an inventor with 40 U.S. patents granted between 1923 and 1949, inclusive, was president, general manager, and principal stockholder of the Granberg Motor Co. Inventions, including methods for controlling petroleum delivery, were assigned to the company and were later reassigned to Albert Granberg. Associated Supply Co., a subsidiary of Associated Oil Co., paid the Granberg Motor Co. a minimum of $25,000 per year for several years.

Granberg was employed by Ralph N. Brodie Co. from 1926 to 1936. On October 28, 1929, Granberg entered into an agreement to assign all patents acquired or applied for by him relating to liquid meters to the Brodie Co. The Brodie Co. agreed to pay royalties. The contract was modified on December 1, 1934. Granberg left Brodie in 1936. At first Brodie would not release Granberg but their differences were settled and Brodie paid Granberg the following royalties:

1936	$1,000.00	1940	$7,614.23	1944	$9,863.22
1937	5,860.02	1941	8,532.66	1945	10,719.36
1938	5,256.29	1942	8,857.90	1946	16,056.47
1939	13,524.77	1943	9,035.74	1947	17,626.26

On December 30, 1943, Granberg executed a license agreement providing for a royalty of 8 percent on the list price, with a minimum of $35,000 per year. Granberg retained 55.52 percent of the royalties and divided the balance among his stockholders. In the tax case it was held that the sums paid the stockholders in almost the same percentage as their stockholdings were really dividends, not royalties, and were not deductible as an ordinary and necessary business expense.

Granberg Equipment, Inc. v. *Commissioner of Internal Revenue*, 79 USPQ 242 (Tax Court, Oct. 18, 1948).

CASE NO. 70. CARL G. AND ANNIE DREYMANN

Carl G. Dreymann of Pittsburgh, Pa., was a consulting chemist and engineer, working in a laboratory in his home in 1931–32. The Grant Paper Box Co. supported Dreymann's work by paying him $200 per month. In return Dreymann agreed to grant the company an exclusive license for a royalty of 5 percent of the gross selling price. The agreement of April 1933 was superseded by an agreement of August 30, 1933, under which Carl and his daughter, Annie, were to receive equal royalty payments from Grant. Annie Dreymann helped her father in developing the waterproof material and the method of production. The resulting Patent 2,031,036 issued on February 18, 1936.

In accordance with the agreement, the Grant Paper Box Co. paid both Carl and Annie equal amounts as follows:

1936	$522.06	1942	$16,279.59
1937	6,526.76	1943	17,518.35
1938	6,948.67	1944	18,078.57
1939	5,061.79		
1940	5,730.60	Total to Carl	87,502.90
1941	10,836.51	Total to Annie	87,502.90

Dreymann v. *Commissioner of Internal Revenue,* 78 USPQ 302 (Tax Court, Aug. 9, 1948).

CASE NO. 71. CARL KASTNER

Carl Kastner devised a secret formula, a chemical mixture for curing concrete known as Klearcure. Carl Kastner, Robert Strange, and Kaye McMara owned, respectively, 30 percent, 60 percent, and 10 percent of the capital stock of Wall Products Co., a New Jersey corporation. The company was licensed under two patented products, "Plastorene" and "Morene," on January 31, 1933, subject to a royalty of 1 cent per pound of "Plastorene" and a royalty of 25 cents per gallon of "Morene."

On January 15, 1942, the company was licensed under the secret formula at a royalty of 9 cents per gallon payable as follows: 5 cents to Strange and 4 cents to Kastner. In accordance with the two agreements the following payments were made:

Year	Patent royalty	Secret formula royalty	To—
1942	$2,119.55	$10,685.90	Strange.
1942		8,548.72	Kastner.
1943	820.80	2,565.80	Strange.
1943		2,052.64	Kastner.

Wall Products, Inc. v. *Commissioner of Internal Revenue,* 78 USPQ 217 (Tax Court, July 20, 1948).

CASE NO. 72. NICHOLAS W. MATHEY

Nicholas W. Mathey, of Lynn, Mass., invented a device in the field of shoe machinery. He made and sold the device through his own company, the Hamlin Machine Co. U.S. Patent 1,807,996 was granted to him on June 2, 1931, for the invention.

The patent was infringed by the United Shoe Machinery Co. Mathey sued United and was awarded:

(a) Damages for patent infringement	$63, 355. 00
(b) Interest on item (a)	28, 020. 54
(c) Increase in award	45, 687. 77
(d) Loss of profit on foreign sales	688. 89
(e) Amount of judgment	137, 752. 20
(f) Interest on judgment to date of payment	609. 72
Total	138, 361. 92

Mathey v. *Commissioner of Internal Revenue*, 83 USPQ 193, 177 F. 2d 259 (1st Cir., Oct. 19, 1949), reviewing decision of the Tax Court, promulgated June 14, 1948.

CASE NO. 73. BENJAMIN S. ELROD AND W. HECTOR

Benjamin S. Elrod, of Omaha, Nebr., invented lead and rule casting machines and molds. He was granted U.S. Patents 1,438,951 on December 19, 1922, and 1,567,431 on December 29, 1925, and jointly with W. Hector U.S. Patent 1,567,363 on December 29, 1925. Elrod assigned his patents to a personal holding company.

Elrod and the Elrod Co. entered into a written contract with the Ludlow Typograph Co. on February 10, 1923, to assign Elrod's rights in patents, except for the United States and Canada, in Argentina, Australia, Belgium, Brazil, Denmark, France, Germany, Great Britain, Italy, Japan, New Zealand, Norway, Sweden, and Switzerland for a 10-percent royalty on the sale price of the machines until the aggregate royalties reached $50,000. Prices were set on the foreign patents in each of the countries and Ludlow had the right to sell the patents, paying Elrod one-fourth of the price against the royalty maximum.

Ludlow took over the manufacture of the machine. Except for $1,234 royalty paid in 1940 the opinion does not specify the actual payments to Elrod.

Elrod Slug Casting Machine Co. v. *Commissioner of Internal Revenue*, 77 USPQ 284 (Tax Court, Mar. 26, 1946).

CASE NO. 74. FELIX MEYER, JAKOB DECHTER, AND PIERRE A. FAVRE

(a) Felix Meyer of Aachen, Germany, was granted U.S. Patent 1,860,898 on May 31, 1932, for the manufacture and conversion of glass. On September 17, 1925, Meyer had granted sole rights under German Patent 415,280 and the corresponding U.S. patent application to the Kimble Glass Co. for the United States. Kimble agreed to pay Meyer $6,000 per year for 5 years, plus royalties. The yearly payments of $6,000 were made in the years 1925, 1927, 1928, 1929, and 1930. Royalty payments were made as follows: 1929, $156.42; 1930, $116.74; 1931, $1,616.67; 1932, $1,567.28; and 1933, $710.01.

On June 2, 1930, Kimble made a new agreement with Meyer agreeing to pay an annual retainer of $6,000 for 10 years, plus a royalty of 5 percent on the first $1 million of sales and 2½ percent on sales over $1 million. Retainers were paid from 1933 through 1941 as follows: $3,500, $5,500, $6,000, $6,000, $6,000, $6,000, $12,000, and $3,500. Royalties were paid but were not stated in the opinion.

(b) On April 27, 1934, Kimble entered into an agreement with Jakob Dechter of Berlin, Germany, for an exclusive license, with payment starting at $5,000 in 1934 and increasing at $1,000 per year until $10,000 per year was reached and thereafter continuing at $10,000 for the duration of the agreement. Kimble also agreed to pay a royalty of 5 percent on selling price. The following payments were made: 1934 through 1939, $5,000, $6,000, $7,000, $8,000, $9,000, $10,000; 1940, $5,000; and 1941, $10,000. Royalties on sales were paid but were not stated in the opinion.

(*c*) Kimble acquired an exclusive license from Pierre A. Favre of Crosne, France, under U.S. Patent 1,631,674, granted June 7, 1927, for annual payments of $2,000 per year from 1931 through 1939 plus one-third of the savings resulting from the use of the invention. The "one-third savings payments" were to be credited against the fixed annual payments. The license agreement also provided for a payment of $9,000 for the right to operate a machine for bottoming glass vials. Kimble secured a release from the agreement with Favre by paying him $9,000 in 1928; $4,000 in 1931; $2,000 in 1932; and $2,000 in 1933—a total of $17,000.

Kimble Glass Company v. *Commissioner of Internal Revenue*, 74 USPQ 319 (Tax Court, Aug. 14, 1947).

CASE NO. 75. ROSCOE A. COFFMAN

Roscoe A. Coffman of Las Vegas, Nev., and Fall Brook, Calif., having invented cartridge starters for airplane motors and other devices, was granted the following U.S. patents:

1,766,288, September 16, 1930	2,175,743, October 10, 1939
1,797,328, March 24, 1931	2,208,496, July 16, 1940
1,826,453, October 6, 1931	2,283,184, May 19, 1942
1,843,206, February 2, 1932	2,283,185, May 19, 1942
1,946,309, February 6, 1934	2,284,640, June 2, 1942
2,005,913, June 25, 1935	2,293,043, August 18, 1942
2,006,671, July 2, 1935	2,299,464, October 20, 1942
2,011,144, August 13, 1935	2,299,465, October 20, 1942
2,164,700, July 4, 1939	2,299,466, October 20, 1942

Coffman granted an exclusive license to Federal Laboratories, Inc., on December 8, 1932. The license recited U.S., French, Italian, Canadian, German, and British patents and provided for an annual royalty and salary minimum of $5,000, with a royalty of 6 percent of the retail selling price.

In March 1937 Breeze Corps., Inc. (a New Jersey corporation) acquired all the capital stock of Federal except 38 shares of the 3,570 shares outstanding. On July 3, 1937, Federal licensed Plessey Co., Ltd., for a limited territory under the Coffman patents at a royalty of 6 percent. Federal received from Plessey from July 3, 1937, to January 1, 1939, $16,100 in royalties and paid one-half of the royalty to Coffman.

Breeze Corp. of Great Britain was organized in 1936 and was owned equally by Plessey Co., Ltd., and Breeze of New Jersey. The Breeze Corp. of Great Britain and the Plessey Co., Ltd., entered into an agreement with Federal and Breeze of New Jersey calling for a payment of $384,000 by the British companies for the assignment of the United Kingdom (Canada excepted) Coffman patents and patents of J. J. Mascach of the New Jersey Breeze Corp. This agreement, consented to by Coffman, was dated June 19, 1940. By intercompany agreement, Federal received $100,000 of the $384,000 which was paid, and Federal gave $50,000 of the $100,000 to Coffman in accordance with the terms of the 1932 license as amended. Coffman also consented to the grant of a nonexclusive sublicense to Plessey and Breeze (Great Britain) for countries on the Continent of Europe. Finally Coffman waived accrued and continued royalties under his United Kingdom patents.

Federal Laboratories, Inc. v. *Commissioner of Internal Revenue,* 73 USPQ 453 (Tax Court, May 29, 1947).

CASE NO. 76. CONSTANTINE BRADLEY AND BENJAMIN C. SEATON

Constantine Bradley (deceased) of Nashville, Tenn., invented a puncture healing inner tube and was granted U.S. Patent 1,924,148 on August 29, 1933. Sears, Roebuck & Co. was granted an exclusive right to sell the tube for replacement purposes for 2 years. Sears had the tubes made by the Cupples Co. The Cupples Co. paid royalties to Andrews, trustee for the enterprise started by Bradley before his death.

On August 16, 1939, Benjamin C. Seaton alleged that he had been granted three U.S. patents for improved inner tubes and that he had employed Bradley and that he had a right to Bradley's royalties. Litigation resulted which cost $8,107.35 and which was finally settled.

Safety Tube Corporation v. *Commissioner of Internal Revenue,* 78 USPQ 312, 168 F. 2d 787 (6th Cir., June 1, 1948). See also 73 USPQ 71.

CASE NO. 77. FRED BURCH AND STACKHOUSE

Fred Burch (deceased) of Milford, Mich., was granted U.S. Patents 1,793,421 on February 17, 1931, and 1,924,022 on August 29, 1933, for improved methods of making seat and back spring auto cushions. The Supreme Court of Michigan held that Stackhouse, an employee of L.A. Young Spring & Wire Co., was the first inventor and that the first Burch patent (1,793,421) was obtained through a breach of trust and that the Young Co. was entitled to the patent for which substantial royalties had been collected from Young and General Motors.

The court also held that the evidence did not sustain the charge that the second Burch patent (1,924,022) had been wrongfully appropriated. Elizabeth Burch, trustee, sold the second Burch patent to the Great Lakes Spring Corp. for $8,139.84.

Falls v. *Commissioner of Internal Revenue,* 69 USPQ 557 (Tax Court, June 10, 1946).

CASE NO. 78. PEDRO SANCHEZ

Pedro Sanchez of Havana, Cuba, invented a process for clarifying sugar solutions by use of a reagent called "Sucro-Blanc." He was was granted a number of U.S. patents:

1,989,156, January 24, 1935	2,216,753,* October 8, 1938
2,075,913, April 6, 1937	2,216,754,* October 8, 1938
2,091,690, August 13, 1937	2,216,755, October 8, 1938
2,111,194, March 15, 1938	

In 1934, Sanchez granted Buffalo Electro Chemical Co. (Becco) a worldwide exclusive license on a royalty basis. Becco agreed to pay Sanchez 50 percent of the net profits with a minimum payment of $25,000 per year derived from the sale of Sucro-Blanc, or from licensing. Becco organized Sucro-Blanc, Inc., in 1936 and assigned to it the Sanchez agreement. Sanchez became a stockholder.

*Jointly with E. N. Ehrhart.

The original agreement with Sanchez was modified on July 1, 1936, to provide for a payment to Sanchez of $30 per short ton sold, plus 37½ percent from sale or licensing of Sanchez's patent rights. The minimum royalty was reduced to $12,000. A 1937 modification of the agreement substituted 10 percent of sales instead of $30 per short ton. On January 3, 1940, Sanchez received royalties of $7,642.60 earned in 1939 and $8,673.30 royalties received in 1940 for sales other than in the United States.

Sanchez v. *Commissioner of Internal Revenue,* 69 USPQ 449 (Tax Court, May 24, 1946); affirmed 74 USPQ 78, 162 F. 2d 58 (2d Cir., June 21, 1947).

CASE NO. 79. ROSE HANSKAT

Rose Hanskat of Chicago, Ill., invented a women's foundation garment and was granted U.S. Patent 1,601,856 on October 5, 1926. She obtained a trademark "Rose Hanskat's Stayform," registered April 27, 1926. Prior to June 22, 1927, Rose sold her garments from house to house. She then exchanged her business for 250 shares of the $100 par value capital stock of the Stayform Co.

She licensed the company to use the patented designs and name. When financial difficulties arose, G. R. Fouche, former sales manager of the company was prevailed upon to take it over. Rose Hanskat transferred her capital stock to Fouche, who gave her his note for $25,000 due in 5 years with 6 percent interest payable monthly. The company was given the exclusive right to use the trademark for 25 years.

On October 21, 1933, Fouche agreed to pay Mrs. Hanskat 10 cents per garment and guaranteed that the payments would be not less than $400 per month for 25 years. This agreement was modified in minor matters on November 9, 1933. During a period of 62 months, November 1, 1933, to December 31, 1938, Mrs. Hanskat was paid $25,877.60 (an average of $417.38 per month). During 1939 the company paid Mrs. Hanskat $5,908.05.

Fouche v. *Commissioner of Internal Revenue,* 68 USPQ 420 (Tax Court, Mar. 14, 1946).

CASE NO. 80. JOSEPH SUNNEN

Joseph Sunnen of Clayton, Mo., the principal stockholder in Sunnen Products Co., was granted the following U.S. patents for the inventions indicated:

1,913,689, on June 13, 1933—for pinhole grinder.
1,982,836, on December 4, 1934—for cylinder grinder.
2,240,527, on May 6, 1941—for crankshaft grinder.
2,309,615, on January 26, 1943—for crankshaft grinder.

The company was licensed January 10, 1928, December 5, 1934, and June 20, 1939, respectively, at a royalty of 10 percent. Sunnen assigned No. 2,309,615 and the license agreements to Mrs. Sunnen. The assignments were made as gifts and were duly reported for tax purposes. The royalty payments were made as follows:

Royalties paid on—	1937	1938	1939	1940	1941
A. Cylinder grinder	$4,881.35				
B. Cylinder grinder		$3,529.21	$3,713.83	$4,951.73	$6,821.97
C. Pinhole grinder	15,518.68	13,789.59	15,780.50	23,259.10	123,565.38
D. Crankshaft grinders			5,749.44	22,281.67	18,615.43

Sunnen v. *Commissioner of Internal Revenue*, 68 USPQ 415 (Tax Court, Mar. 11, 1946); modified 73 USPQ 243, 161 F. 2d 171 (8th Cir., Apr. 28, 1947); reversed and remanded 77 USPQ 29, 333 U.S. 591 (Apr. 5, 1948).

CASE NO. 81. EDWARD C. MYERS

Edward C. Myers of Wauwatosa, Wis., invented a rubber-covered flexible track with self-laying track members. He was granted U.S. Patent 2,025,999 on December 31, 1935. Myers had previously granted an exclusive license under the patent (then in application stage) on January 9, 1932, to the B. F. Goodrich Co. The license was subject to the following minimum royalty payments: 1933, $1,000; 1934, $2,500; 1935 and annually thereafter for the life of the agreement, $5,000. The royalty rate was initially 5 percent, but was reduced to 2½ percent on October 15, 1940.

In 1941 Myers received $78,110.95 royalties from Goodrich. The tax issue involved the now famous issue of whether an exclusive license, subject to royalty payments based upon extent of use, produced ordinary income or capital gain for tax purposes.

Myers v. *Commissioner of Internal Revenue*, 68 USPQ 346 (Tax Court, Feb. 26, 1946).

CASE NO. 82. HENRI AND CAMILLE DREYFUS

Henri Dreyfus of London, England, and Camille Dreyfus of New York, N.Y., were originally citizens of Switzerland. They worked in chemical fields such as artificial fibers and artificial cloth. Between 1920 and 1949 Henri Dreyfus had 589 U.S. patents, some joint but mostly sole, issued to him. Camille was granted 257 U.S. patents from 1924 through 1949, mostly sole patents.

On November 30, 1918, the Dreyfuses contracted with American Cellulose & Chemical Manufacturing Co., Ltd., granting the company exclusive patent rights in the United States, Mexico, Cuba, and South America. A contemporaneous contract provided for the employment of the Dreyfuses as managing directors for 15 years. The agreement provided for the delivery to the Dreyfuses of 150,000 shares of common stock and 3 percent to each brother of the net profits, in return for the assignment of patent rights. The contract was taken over by the successor company, Celanese Corp. of America. Celanese paid Henri Dreyfus $140,742.04 in 1937 and $72,530.79 in 1938. Payments to Camille were not involved in the tax case.

Commissioner of Internal Revenue v. *Celanese Corporation of America*, 61 USPQ 14, 140 F. 2d 339 (D.C. Cir., Jan. 17, 1944).

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