

US Alien Property Custodian patent documents: A legacy prior art collection from World War II – Part 1. History

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Abstract

In 1943, at the height of World War II, the US Patent Office, by the authorization of the Alien Property Custodian (APC), published 2964 pending patent applications that had been seized from nationals of enemy and enemy-occupied countries. This unusual act – only in 2001 did the USPTO begin routinely publishing some pending patent applications – was prompted by the APC's wartime mandate to make enemy technology available to American industry. During and after the war many of these applications were issued as patents assigned to the APC. However, up to 58% were abandoned, becoming, in effect, orphan documents. APC documents, although they resemble contemporary patents and are granted prior art status by the USPTO, are virtually unknown today, even among patent professionals. This two-part paper investigates the origins, history and profile of this unique collection of prior art documents. Part one reviews the wartime organization and activities of the Office of the Alien Property Custodian, the agency responsible for the creation of APC documents, the use of vesting orders to seize patents and the APC's patent portfolio. Part two describes applications published by the APC, their national and technological profiles, and snapshots of the inventors and companies who lost and, in some cases, regained their patent rights.

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1. Part 1: APC Organization, vesting orders and patent portfolio

1.1. Introduction

In the last decade, advances in computing technology and the widespread proliferation of the internet have rapidly, profoundly and positively changed public access to patent information. Since the US Patent and Trademark Office launched its first internet database of patent bibliographic information in 1995 [1], dozens of public web-based patent databases containing millions of patent documents have appeared. As fast and as comprehensive as the revolution in patent information has been, it would be a mistake to conclude that all historical patent documents that can be published on the internet have been or will be in a short

time. There are collections of historical patent documents that have not been captured electronically, either by scanning or transcription, which are at risk of being forgotten and lost, perhaps permanently [2]. One of these collections is a set of approximately 3000 US patent applications published by the US Patent Office in the spring of 1943. Known as “APC documents”, these applications were seized by the Office of the Alien Property Custodian, the government agency responsible for administering enemy and enemy-controlled American property during World War II.

1.2. APC history, organization and wartime activities

An in-depth discussion of the APC is beyond the scope of this paper. However, a brief overview of its origins, organization and wartime activities is necessary in order to understand the history of APC documents.

The Office of the APC was established in October 1917 under the provisions of the Trading with the Enemy Act,

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wartime legislation prompted by the entry of the US into World War I on the side of the Allies. The Act prohibited trade and other commercial activities with enemies of the US and permitted the federal government to seize enemy-owned businesses, financial assets and personal property, including patents and other forms of intellectual property. The Act was used principally to seize German-owned property, including 12,000 patents and a small number of patent applications, of which about 5000 covered various chemistry-related inventions such as synthetic dyes, pharmaceuticals, munitions and explosives [3]. When the US and Germany concluded peace in 1921, the US insisted on paying compensation rather than returning the seized patents to their former owners.

In the 1920s, the APC became embroiled in scandals involving bribery and fraud in the disposition of seized enemy property. The first scandal involved the sale of approximately 4800 formerly German-owned patents to the Chemical Foundation, a private research and educational organization established in 1919 to promote the US's fledgling organic chemical and dyestuff industry. The Foundation's secondary mission was to prevent German chemical companies from reestablishing their "Teutonic Chemical Monopoly" in the US market, which had suffered during the war from shortages of German-made dyes and pharmaceuticals. The two men at the center of the scandal were Francis P. Garvan and A. Mitchell Palmer, the first and second APCs appointed by President Wilson. Garvan, who was also the first president of the Chemical Foundation, and Palmer were accused of approving the sale of \$10,000,000 worth of patents to the Foundation for a mere \$250,000 [4]. The APC was in court again in 1926–1927 when Thomas W. Miller, APC from 1921–1925, was tried and convicted of defrauding the government for accepting a kickback for the return of \$7,000,000 of American Metal Company stock to its original German owner. In 1934, the APC was incorporated into the Department of Justice where it spent the rest of the decade quietly processing World War I claims.

The Japanese attack on Pearl Harbor on 7 December, 1941 pushed the APC back into the national spotlight. President Roosevelt, aware that control of enemy property would again be a sensitive political issue and wishing to avoid a repetition of the APC scandals of the 1920s, moved quickly to place the APC under his direct control. He was challenged by Henry Morgenthau, the Secretary of the Treasury, who moved in January to seize control of General Aniline & Film Corporation, a chemical company with German connections. On 11 March, 1942, after weeks of negotiation and political maneuvering with Morgenthau and Attorney General Francis Biddle, Roosevelt issued Executive Order 9095 establishing the APC as an independent agency within the Office of Emergency Management [5].

Two men served as APC during the war. The first was Leo T. Crowley, a Democratic Party politico and former banker from Wisconsin who served from 11 March, 1942 until 30 April, 1944. The president trusted Crowley's polit-

ical acumen and was so impressed with his administrative abilities that he also asked him to lead the Federal Deposit Insurance Corporation (FDIC) and Foreign Economic Administration (FEA). Upon Crowley's resignation in early 1944, presumably to focus on his FDIC and FEA responsibilities, his deputy, James E. Markham, was promoted and led the agency until October 1946.

The APC was organized into seven divisions located in Chicago, New York and Washington, DC: Comptroller; Business Operations; Chemicals, Pharmaceuticals and Special Services; Estates, Trusts, and Property; Investigation and Research; Liquidation; and Patent Administration [6]. APC headquarters was located in the National Press Building on 14th Street in downtown Washington, DC, a few blocks from the White House and Patent Office. APC field offices and representatives were established in Boston, Dallas, Honolulu, Los Angeles, Portland, San Francisco and Seattle.

The urgent and enormous task of identifying and vesting hundreds of millions of dollars of enemy property during the first year of the war required the APC to hire staff quickly. Total employees peaked in February 1943 at 1278 [6]. As the amount of unvested enemy property declined and as vested property was disposed of or, in the case of property vested from non-enemies, returned to its former owners, the need for staff and office space diminished. By early 1946 the APC had released approximately 500 employees and consolidated some of its Chicago-based operations in Washington and New York [7].

The Division of Patent Administration, which had offices in Chicago, New York and Washington, DC, was responsible for the administration of vested patents and patent applications, as well as copyrights, trademarks and patent holding companies. Its secondary role was to promote the use of vested patents for production and research purposes [8]. The Division's employees were organized into nine sections: War Production; Patent Use and Development; Licensing; Patent Review; Patent Application Prosecution; Corporate Owned Patents; Contract Renegotiation; Copyright Administration; and Trade-Mark Administration. The Division's staffing rose and fell in tandem with the rest of the agency. At the beginning of 1943 it had 150 staff, but by the end of 1945 only 76 remained.

In the spring of 1942, as Leo Crowley was settling into his new role as the president's hand-picked man on enemy property, Washington, DC was experiencing a wartime boom. Office space for thousands of new civilian workers and military personnel was in such short supply that many agencies deemed not critical to the war effort were forced to relocate. In January 1942, the US Patent Office moved 1160 of its 1360 employees from the Herbert J. Hoover Commerce Building to a converted tobacco warehouse in Richmond, Virginia. The 200 remaining staff stayed in Washington to keep the scientific library and patent search room open for patent attorneys and inventors. The war was not going well for the US and her allies, Great Britain

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