

FOR IMMEDIATE RELEASE

National Patent Council
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GARY, INDIANA, January 4, 1951 — The Board of Governors of National Patent Council by resolution here today requested Supreme Court Justice Douglas to issue promptly to the press a release correcting, as destructively misleading, statements of his individual opinion, supported only by Justice Black, appended to the seven-man majority decision of the Supreme Court rendered December 4th in the now highly publicized A. & P. grocery-counter merchandise handler patent case.

In this case the majority decision held invalid a patent under which the Great Atlantic & Pacific Tea Company was sued for infringement by the Supermarket Equipment Corporation. The patented device consists of an open-ended, three-sided, bottomless frame sliding on a rearward extension of the counter. Its purpose is to permit a customer approaching the cash register for service to deposit his merchandise within the frame while the cashier serves the customer ahead of him. The load of merchandise is then pushed ahead into position to be processed by the cashier, whereupon the open-ended, bottomless frame is slid back to its original position for reloading by the customer following. It is stated that the device adds about one third to the capacity of the cashier for serving customers.

The majority opinion of the Supreme Court was that the patent was invalid because to conceive the device did not constitute invention. The lower U.S. courts all had held the patent valid.

According to John W. Anderson, its president, "National Patent Council has taken no position with reference to the majority opinion of the Court. The Council's resolution of today reflects, on the part of its constituent manufacturer-members and patent lawyer advisory associates, responding to the Council's recent poll on the

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subject, more than 99% agreement that Justice Douglas in this action has performed perhaps his greatest disservice to the Patent System and to our incentive economy of which that System is the prime catalyst.

"Justice Douglas, in his repeated attacks upon our Patent System, which he has convinced many he would be happy to destroy, has demonstrated an unusual capacity for putting into pungent and quotable words, which appeal to reporters, adverse statements supported only by wishful thinking," Anderson continued.

The resolution the Council adopted today is addressed to Justice Douglas and reads: "You are respectfully requested to correct promptly, by statement to the press, at least the most unfortunate of the several completely erroneous and demoralizing impressions transmitted by the press and based upon your so-called concurring, but in significant fact gratuitously dissenting, opinion in the recent seven-man decision of the Supreme Court of the United States, in the case of the Great Atlantic and Pacific Tea Company versus Supermarket Equipment Corporation, which decision held to be invalid, for lack of invention, U.S. Patent No. 2,242,408 on a merchandise handler for use at counters of retail stores.

"The public press, based upon your statement appended to the above-mentioned decision, made widespread editorial and other erroneous representations to the effect that your said statements have the status of law supported by a decision of the U.S. Supreme Court holding that the Constitution of the United States does not authorize the issue by our Patent Office of patents upon anything but revolutionary inventions in purely scientific fields.

"Your statement that an invention, to justify a patent, must 'push back the frontiers of chemistry, physics, and the like; to make a distinctive contribution to scientific knowledge,' followed by your statement that the invention 'has to be of such quality and distinction that masters of the scientific field in which it falls will recognize it as an advance,' provides light in which must be broadly interpreted your statements that 'It is not enough that an article is new and use-

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ful. The Constitution never sanctioned the patenting of gadgets. Patents serve a higher end - the advancement of science.'

"Your statements have created widely, in the minds of those uninformed as to your minority status, the impression that our Patent System now has been in substance destroyed by decision of our U.S. Supreme Court and that piratical manufacturers may now proceed, without fear of penalty, to copy any mechanical invention that does not rise to the dignity of a revolutionary advancement in a basic science.

"Intensified activities of predatory manufacturers looking toward copying patented inventions were noted within forty-eight hours after your statements were reported by the press. Consternation spread by your statements within that vast army of inventors normally working diligently to provide, for the benefit of the public, inventions constituting useful improvements in one or another of the myriads of 'gadgets' upon which our citizens rely in seeking, from hour to hour in their daily lives, health, food, shelter, transportation, communication, education, and other advantages, presages a calamitous relaxation of that inventive effort, effort inspired by the inducements of our Patent System, which effort has been primarily responsible for the phenomenal industrial advancement of our Nation and for whatever security it still may command.

"Your statements have caused grave misgivings among manufacturers risking capital and effort to make available to the public, under promise of protection by patents, gadgets offering further advantages to the public. These misgivings are based primarily upon the prospects of arrogant raids by copyists encouraged by your position rather than upon any misconception that your statements were found acceptable by the seven-man majority of the Court assuming responsibility for the subject decision.

"We do not wish to imply any belief on our part that your knowledge of the practical workings of our economy toward advancement has been sufficient to make

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readily apparent to you the destructive potential of your attacks upon its prime catalyst, which is our Patent System. However, we do most respectfully request that you accept, from our position of more intimate daily contact with the realities within the sources of our strength as a Nation, our most sincere assurances that by correcting, through action above recommended, the destructive impressions you have so inadvertently created, you will have performed a distinguishing service to our citizens, who look upon your high office with traditional reverence and respect.

"All this you may accomplish by simply advising the press (a) that your statements were not sponsored by the seven-man majority of your Court in this instance and (b) that your statements have only a minority status and are not the law.

"If you care to add to your release, here suggested, some emphasis upon the fact that the Constitutional provision to which you have referred gives equal status to 'science' and to 'useful arts,' you may add materially to clarification of the destructive confusion so inadvertently created.

"You no doubt have been informed that this Council represents smaller manufacturers of the category responsible, in the aggregate, for the development of most of the inventions found useful by the public, and responsible for most employment in Industry.

"Because of the urgencies involved we are releasing this resolution to the press, to which we respectfully suggest that you direct any comment you may deem appropriate."

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