

(4) Where the complete specification is filed in pursuance of a convention application and the claim is fairly based on the matter disclosed in the application for protection in a convention country or, where the convention application is founded upon more than one such application for protection, in one of those applications, the priority date of that claim shall be the date of the relevant application for protection.

(5) Where, under the foregoing provisions of this section, any claim of a complete specification would, but for this provision, have two or more priority dates, the priority date of that claim shall be the earlier or earliest of those dates.

(6) In any case to which subsections (2) to (5) of this section do not apply, the priority date of a claim shall be the date of filing of the complete specification.

Briefly, the present position in Great Britain as a result of this section 5 is that even if one or more claims in the British specification cannot have the date of the basic application substantiated, such claims are not invalidated provided that at the actual date of filing they were not anticipated. In New Zealand the present position is that the effect of section 61 (1) of the Amendment Act of 1939 is to invalidate any claims which cannot maintain the date of the basic application. The same principles apply in regard to disconformity between a provisional and a complete specification.

52. We agree with the statement contained in paragraph 35 of the final report of the Swan Committee, and consider that the idea of the date of priority, not necessarily being the date of the patent, is one which has very considerable advantages, and we have no hesitation in recommending that it should be adopted in New Zealand. The "date of the patent" would then be the date of the filing of the complete specification in New Zealand, and from it the duration of the patent and the dates for payment of the renewal fees would run. We think that it would be desirable, for the sake of convenience both to the Patent Office and to patentees, to adopt the system of numbering prevailing in Great Britain and Australia, whereby each application receives a serial number at the time of filing, and later, on acceptance of the complete specification, there is allotted a final number under which the patent is granted.

53. It is convenient at this juncture to deal with a suggestion which was put forward during the course of the public hearings to the effect that the date of "conception" of the invention should be made the vital factor in New Zealand rather than the date of application, or—if the language of the British Act be adopted—the priority date. The date of conception is, of course, the vital factor in establishing—where the matter is in dispute—the right to a patent in the United States. We have given the matter our very careful consideration and are of the opinion that it would be a retrograde step to adopt the idea of a notional date of conception as the basis of patent rights in New Zealand.

54. The system of filing an application for a patent with a provisional specification is limited to certain countries in the British Commonwealth, particularly Great Britain, South Africa, Australia, and New Zealand, and it would seem that basically the object of permitting the filing of a provisional specification is substantially the same as that of permitting the establishment of a date of conception in the United States. Within the prescribed period after the filing of the provisional specification (which was until relatively recently nine months but is now a year) the inventor is expected to decide whether or not his invention is or is not worth exploiting on a commercial scale, it being considered that in the majority of cases this period should be sufficient for adequate investigation to be made.

55. Until the passing of the British Act of 1949 the maximum extension of time for the filing of the complete specification was only one month, but the proviso to subsection (2) of section 3 of that Act now extends this period as of right to three months, with the result that if, as recommended, a similar amendment is made in New Zealand, the applicant will have fifteen months from the date of filing his provisional specification before he has to file his complete specification.

56. Having regard to the fact that in New Zealand it is not easy to investigate the commercial possibilities of technical inventions so rapidly as in England, we would recommend that a further three months' extension of time for filing a complete after a