

provisional specification should be available to the applicant in those cases in which he can satisfy the Commissioner that such an extension is justified, but any such application should be made before the expiry of the period of fifteen months. In other words, we think that the applicant should have fifteen months as of right, within which to file his complete after provisional specification in New Zealand, but that, at the discretion of the Commissioner, he may have this period extended for a further period not exceeding a maximum of three months, making eighteen months in all.

57. Apart from the more liberal period for filing a complete after a provisional specification now afforded by the British 1949 Act, the extent to which an inventor may, even before filing an application for provisional protection, experimentally test the commercial possibilities of his invention has been widened and more clearly defined. Under the provisions of the British Act of 1949 the right of an inventor to engage in a certain amount of experimental use, even in public, to test the commercial merits of his invention even before applying for the provisional protection is more adequately recognized than heretofore. The sections in question are section 50, subsection (2), and section 51, subsection (3), which read :—

50. (2) Subject as hereinafter provided, an invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that the invention was published before the priority date of the relevant claim of the specification, if the patentee or applicant for the patent proves—

- (a) That the matter published was obtained from him or (where he is not himself the true and first inventor) from any person from whom he derives title, and was published without his consent or the consent of any such person; and
- (b) Where the patentee or applicant for the patent or any person from whom he derives title learned of the publication before the date of the application for the patent or (in the case of a convention application) before the date of the application for protection in a convention country, that the application, or the application in a convention country, as the case may be, was made as soon as reasonably practicable thereafter :

Provided that this subsection shall not apply if the invention was before the priority date of the claim commercially worked in the United Kingdom, otherwise than for the purpose of reasonable trial, either by the patentee or applicant for the patent or any person from whom he derives title or by any other person with the consent of the patentee or applicant for the patent or any person from whom he derives title.

51. (3) An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that, at any time within one year before the priority date of the relevant claim of the specification, the invention was publicly worked in the United Kingdom—

- (a) By the patentee or applicant for the patent or any person from whom he derives title; or
- (b) By any other person with the consent of the patentee or applicant for the patent or any person from whom he derives title.

if the working was effected for the purpose of reasonable trial only and if it was reasonably necessary having regard to the nature of the invention, that the working for that purpose should be effected in public.

58. The main difficulty, however, in adopting the date of conception in New Zealand would, in our opinion, be that in many cases it would be gravely detrimental to the interests of the inventor. Even if it were decided in New Zealand that the date of conception should be the effective date, a publication of the invention in New Zealand between the date of conception and the date of filing of the first application for letters patent might mean the loss of very valuable rights overseas. Under the provisions of the International Convention the date of conception as such is not recognized, and the effective date for the purposes of protection under the convention is the date of filing in the first convention country in which the application is lodged. If, therefore, there were a disclosure of the invention made by the inventor in New Zealand prior to filing an application, and details of that invention were communicated to countries overseas prior to any filing of an application by the inventor in a convention country, then his rights in those convention countries would be irretrievably lost because any applications filed in such convention countries, even based on the International Convention, would