

It has been suggested in other countries, but usually where the examining facilities in the particular Patent Office were either non-existent or very limited. With the examining staff at present at the Patent Office, if the procedure which we have hereinbefore set forth is adopted, we see no reason why it should be necessary to refer specifications to any other Government Department for consideration or examination.

93. It must be remembered that it has been a basic principle of both British and New Zealand patent law that an unaccepted specification is a secret document, and this still obtains in Great Britain : see section 79 of the Patents Act, 1949. It obtained in New Zealand until the passing of section 5 of the Patents, Designs, and Trade-marks Amendment Act of 1946. This section we shall later advise should be repealed, and we shall give our reasons therefor. If effect is given to our recommendation in this regard the position will then be as it was before 1946, that an unaccepted specification is a secret document and is not open for inspection by any one but the applicant, his attorney, or the Patent Office itself. The idea of submitting a secret document, which should be confidential to the Patent Office, to any other person, whether a member of a Government Department or not, is, in our view, repugnant to the whole intent and purpose of the Patents Act. It is a practice for which we see no necessity and should not be permitted. It may be mentioned that provisional specifications which have not been followed by complete specifications are still secret documents and are not open to public inspection : see section 120 of the Patents, Designs, and Trade-marks Act, 1921-22.

94. During the course of the public sittings some suggestions were made the effect of which would be that the Patent Office would be an advisory as well as an examining body. The Patent Office, through its executive officers, has always been recognized both in Great Britain and in New Zealand as combining judicial with administrative functions, and in our view it is quite impossible for the Patent Office to act otherwise than in a manner consonant with complete impartiality in this respect. For the Patent Office to advise applicants or other interested parties would, in our opinion, be quite improper, and would in many cases place the Commissioner and his executive officers in a position of very great difficulty and embarrassment.

95. We recommend that, apart from the Commissioner insisting upon an adequate disclaimer of the prior art in the specification, any interested member of the public should be able, on payment of a prescribed fee, to obtain full particulars of the prior art which has been cited against any application. We consider that the examiner's reports themselves should be treated as confidential, as is the case in England : see section 79 of the Patents Act, 1949.

96. Summarizing our proposals in this important aspect of our inquiry, we recommend : —

- (a) That section 10 of the Patents, Designs, and Trade-marks Act, 1921-22, be repealed.
- (b) That the Examination Sections of the British Act of 1949 (including section 15) should in substance be adopted in New Zealand subject to
  - (i) The inclusion of a further provision enabling the Commissioner to call for information as to the relevant prior art cited against substantially corresponding applications in Great Britain, Canada, the United States, and Australia ; and
  - (ii) The limited extension of the jurisdiction of the Patent Office to consider subject-matter as previously defined.
- (c) The repeal of Patents Regulation 13A.
- (d) The maintenance by the Patent Office of the secrecy of unaccepted applications.