IMPORTATION OF BRITISH INVENTIONS

TO THE UNITED STATES

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Introduction

There has been much ado recently in the United States as revealed by headlines in newspapers and magazines about the fact that U.S. technology is slipping and that foreign competitors are improving on U.S. technology. Patent requests by foreigners have leaped upward. Indeed, a high and increasing percentage of the patents issued by the U.S. Patent Office is of foreign origin: slightly more than 25% in 1970 and 1971 and about 30% in 1972 and 1973.

Interestingly enough, British subjects were in second place among foreign patentees in the U.S. in 1970 and 1971 with over 3000 and over 3500 U.S. patents respectively and in third place in 1972 and 1973 with over 3200 and over 2900 U.S. patents respectively. The topic of importation is bound to be of more than academic interest to a British audience in view of these statistics.

Discrimination Against Foreigners And Section 104

Any discussion of the topic of importation or introduction of British inventions, in particular, and foreign inventions, in general, logically begins with Section 104 of Title 35 of the U.S. Code. This Section which is entitled "Invention made abroad", stipulates that

> "In proceedings in the Patent Office and in the courts, an applicant for a patent or a patentee, may not establish a date of invention by reference to knowledge or use thereof, or other activity with respect thereto, in a foreign country..."

This provision in the U.S. patent law has been decried in Great Britain and elsewhere as particularly and manifestly unfair and discriminatory against foreign inventors, and in fact as the most flagrant of the features which give U.S. inventors an unfair advantage over foreign inventors. Section 104 affects not only the determination of priority between applicants but also all cases where prior invention has to be shown over relevant art.

Some of the other more notable discriminatory features of the U.S. patent law are the following:

1) Section 102(b) which makes it impossible for a foreigner to obtain a U.S. patent eighteen months after foreign filing where no U.S. application was filed under the Convention but other foreign counterparts were published. A U.S. competitor has a year of grace and can rely on his prior inventive work.

2) Section 102(d)(2) enables a U.S. applicant to establish defensive protection from his U.S. filing date which a foreign applicant cannot do as of his priority date.

3) Section 112 with its onerous disclosure requirements including, e.g., best mode, discriminates in practice.

4) Section 119 also discriminates in practice because it requires foreign applicants to write their foreign priority application as if it was a U.S. application for otherwise it is not treated as a constructive reduction to practice. This, it has been said, compounds the unfairness of Section 104.

In Patent Reform or Modernization Bills of recent years no efforts have been made to put foreign or domestic applicants on equal terms. In fact, as stated by J.C. Beton, (CIPA July 1974, pp. 339-342) with reference to the "Scott Bill", the proposed U.S. patent revision "maintains and increases discrimination against foreigners in a way which can be criticized as economic imperialism."

Back to Section 104 which has always been the law of the country with a minor exception. In spite of a categorical statement in the very first importation case, Thomas V. Reese, 1880 C.D. 12, to the effect that the "law is absolutely impartial as between foreign and domestic applicants" and an explanation in Monaco v. Hoffman, 127 USPQ 516, 522 (D.C.D.C. 1960), aff'd 130 USPQ 97 (C.A.D.C., 1961), to the effect that the statute does not distinguish between citizens of the United States and foreign countries but between inventions made in the United States and other countries, i.e., U.S. citizens residing abroad being also subject to Section 104 and foreigners living in the U.S. are not, Section 104 is discriminatory on its face. Judge Holtzoff hit the nail on the head by stating in the Monaco case

> "the present rule originated in the days when the only means of travel between continents was by sailing ships, and the sole means of communication was by slow mail. Conceivably, under those conditions an invention made abroad might have never become known in the United States. Today with modern means of travel and communication, information may be transmitted from Europe to the United States as rapidly as from the eastern seaboard to Honolulu and Alaska." Id. at 522.

He continued that it could be argued that with the "great increase in the volume of travel between countries, as well as the constant utilization of new means of communication", the reason for the rule no longer exists. The Presidential Commission on the Patent System came to the same conclusion in the mid 1960's and Section 104 had been left out in a patent revision bill a few years back but then promptly put back in under pressure from industry.

Importation in General

Fortunately, there are ways and means to neutralize Section 104 in a perfectly legitimate manner, namely by importation of foreign inventions. In a manner of speaking, importation is an exception to Section 104. The best known exception and the one expressly covered in Section 104 is, of course, reliance on a foreign Convention application under Section 119. Under this Section the foreign applicant, however, can go back only up to one year. Thus, reliance on Section 119 is in a sense a limited tool. With importation one can go further back in time much like a domestic inventor can.

When I speak of importation of foreign, and more particularly British inventions, to the United States I refer to situations where knowledge of an invention made in Great Britain is sent or brought to the United States by British subjects and divulged to somebody in the U.S. or is communicated to a U.S. resident in Great Britain who then takes it with him back to the United States. This is tantamount to conception in the U.S. on the day it is read and understood there by someone, or brought in by someone, capable of understanding it. Additionally, I refer to situations where also the physical object or embodiment of such an invention is sent or brought to the U.S. and is in somebody's possession there who fully understands its nature, its production and its use which is tantamount to reduction to practice in the U.S.

The need for knowledge of a foreign invention to be possessed by someone in the U.S. is, of course, grounded on the basic principle of U.S. patent law, reiterated in the Monaco case, supra, that there must be assurance that an invention will be rendered available to the American people.

There are a number of situations and circumstances where importation is indeed advisable and can be of concrete value. These are as follows:

1) When there is delay in filing a foreign priority application.

2) When the priority application is abandoned and refiled and a new priority year is started.

3) When a non-Convention application is filed.

4) When Convention filing is missed. (This happened, for example, in the case of Schmierer v. Newton, 158 USPQ 203 (CCPA, 1968), where the application was delayed in customs and was filed a few days too late. Incidentally, in this case the foreign applicant tried to argue - to no avail - that Section 104 did not apply because the application was executed before a U.S. Consul in Paris.
Query: How about execution in a U.S. embassy which enjoys extraterritoriality?)

5) When the required certified foreign priority application is not timely filed in the U.S. Patent Office.

6) When the foreign application has generally insufficient disclosure, e.g. of utility.

7) When, e.g., post-dating in Great Britain takes place and Section 119 precludes the right of priority as can be seen from the case In re Clamp, 151 USPQ 423 (Com. 1966).

All of these delays and problems can arise and have arisen. Under such circumstances, it is advantageous to fall back on importation if there was any.

But even if it is possible to rely on a foreign priority date, and the priority application is good, it can still be helpful to resort to earlier importation. In a priority conflict between two foreign applicants, the one with the later priority date will not get far in an interference unless he can allege earlier importation in his Preliminary Statement. The same is true in an interference between foreign and domestic applicants, where the foreign applicant's priority date is still not early enough to enable him to prevail over the domestic party.

In this context, it is interesting to note that in multi-national or international companies technology transfers take place on a grand scale and importation is taking place frequently though unwittingly. This can have ironic consequences: there is importation as a substantive matter but not provable as an adjective matter. In other words, there is importation de facto but not de jure. Research reports, models, samples or what-have-you come in from foreign subsidiaries, foreign parent companies or foreign research partners or licensors, and there are visits back and forth. However, unless proper procedures and safeguards are established, it is unlikely that importation can be proven as a legal or procedural matter. See Rochling et al. v. Burton et al., 178 USPQ 300 (Bd./Interf. 1971). But before I talk about certain procedures

that must be established and followed it will be helpful to review some importation cases to get a clearer understanding of and feeling for importation within the framework of U.S. priority of invention concepts, namely, conception, reduction to practice and diligence.

Importation of Descriptions of Foreign Inventions

The first recorded case (in 1880) was Thomas v. Reese, supra, in which the Commissioner of Patents, in commenting on the position of a foreign inventor, stated:

> "...If, having conceived it and reduced it to practice abroad, he communicates it to an agent in a foreign country and sends his agent to the United States to obtain letters patent or to introduce it to public use, he may, in an interference, fix the date of his invention on the day of his agent's arrival in the United States..."

In Gueniffett v. Wictorsohn, 1907 C.D. 379, aff'd 1908 C.D. 367, Gueniffet had reduced the invention, a machine for making mouthpieces for cigarettes, to practice in France, and the evidence indicated that one Jaros had been shown the machine, in operation, in France and its mechanism fully explained to him. He then went to New York carrying with him a number of cigarettes made with the machine. However, he did not disclose the invention to anyone in the U.S. until after Wictorsohn's filing date. The Commissioner held that mere knowledge of Jaros, uncommunicated to anyone in the U.S., was insufficient.

In Wilson et al. v. Sherts, 28 USPQ 379 (CCPA, 1936), in an interference proceeding between a U.S. inventor and British inventors, the British invention was disclosed by a collaborator, apparently not named in the patent application,

in the United States in October 1928. After this disclosure, the collaborator returned to England and the British inventors proceeded with their experimentation in England. They filed a British patent application in March 1929 and were entitled to this priority date under the international convention and under the U.S. patent law because they filed their U.S. application within one year.

Although the U.S. inventor did not file his U.S. patent application until November 1930, he was awarded a date of reduction to practice in the United States as of December 1928.

The court held, first, that the British inventors were entitled to an October 1928 date as their conception date in the United States. However, the court denied priority to the British inventors on the ground that their diligence in reducing the invention to practice in England between October 1928 and their priority date of March 1929 could not be considered. The court held that the English inventors could prevail only by showing diligence in the United States during the critical period between October 1928 and March 1929. The court noted that "it is conceded that there was nothing done (by the English inventors) in the United States, or by anyone in this country on their behalf, toward reducing the invention to practice" during that period. The court further stated that

> "The evidence clearly establishes that there were no activities by (the English inventors) in the United States toward reducing their invention to practice during the critical period. Had there been such activities in the United States, we express no opinion as to whether, under such circumstances, the activities of (the English inventors) could be considered on the question of whether they had shown the necessary diligence."

Another interesting situation is presented in General Talking Pictures Corp. v. American Tri-Ergon Corporation et al., 36 USPQ 428-439 (3d Cir. 1938). This was an interference proceeding in which the prevailing party first conceived his invention on shipboard. The inventor, a United States citizen, sailed from New York on October 6, 1918, aboard a ship of British registry. On October 12, 1918, while at sea, he had a conversation with his patent attorney, Samuel E. Darby, who was also on board the ship and reduced the conception of the invention to writing and later corroborated the story. In holding that the inventor was entitled to the date of his re-entry into the United States as his date of conception, the court stated as follows:

> "There is evidence to indicate that (the inventor) returned to the United States upon January 1, 1919, and this date the Board of Appeals held should be taken to be the date of his conception of the invention, since upon October 12, 1918, he was on the high seas upon a ship of British registry. Since it is the recognized practice in the United States Patent Office in cases of interference to allow a foreign inventor to claim as the date of his conception of an invention, the date

> upon which a letter sufficiently describing that invention is received in the United States, (the inventor) as a citizen of the United States certainly must be put in no worse position than a foreign inventor and we therefore hold that he is entitled to claim January 1, 1919, the first day of his re-entry into this country, as the date of his conception of the invention in question".

(Query: Would the situation be different if an inventor travels on an American ship?)

The last case to be discussed in this group of cases is Lassman v. Brossi et al., 159 USPQ 182 (Bd./Interf. 1967). In the two-count interference behind this case the British and Swiss applicants had filed their foreign applications on the same day. Lassman proved, however, that a letter and memorandum disclosing a process meeting the terms of count 2 had been sent to his attorney Pike in the United States several months prior to his British filing date and that Pike had read and understood this memorandum, endorsed this fact on the face of the memorandum and acknowledged receipt of it. Lassman was therefore awarded priority as to count 2. But as to count 1 which covered a derivative of the product made by the process of count 2 neither party was entitled to judgment of priority because neither party had established prior importation. See also Anderson et al. v. Natta et al., 178 USPQ 458 (CCPA, 1973).

Other decisions on this issue are: Harris v. Stern and Lotz, 1903 C.D. 207, Winter v. Latour, 1910 C.D. 408, DeKando v. Armstrong, 1911 C.D. 413, Minorski v. Thilo, 16 USPQ 401 (CCPA 1933),

Langevin v. Nicolson, 45 USPQ 92 (CCPA, 1940), Mortsell v. Laurila, 133 USPQ 380 (CCPA, 1962) and Justus v. Appenzeller, 177 USPQ 332 (Bd./Interf. 1971).

The rule that can be deduced from this line of cases is that the foreign or British inventor (and in fact a U.S. inventor making an invention abroad as well) may establish a U.S. priority or an early invention date by reference to activities in the U.S. by persons acting on his behalf. Such inventor is awarded conception as of the date when the invention is first disclosed to and understood or possessed by his representatives in the U.S. or brought back by a resident to whom the invention was disclosed abroad. The inventor himself does not have to go to the United States. Introduction of the knowledge or description of the invention is thus conception or tantamount to conception in the U.S. when it is read and understood by someone in the U.S. capable of doing so. The disclosure must, of course, be adequate and full.

Rule 217 and Form 45 of the Rules of Practice of the U.S. Patent Office which deal with Preliminary Statements in Interferences countenance importations of disclosures of foreign inventions to establish conception dates.

Importation of Embodiments of Foreign Inventions

While the law on importation of foreign inventions is thus quite clear on the issue of whether knowledge of a foreign invention is tantamount to conception in the U.S., it is not quite so clear on whether importation of an embodiment of a

foreign invention is tantamount to reduction to practice, especially with respect to chemical compounds and complex machinery and electronic gear. I submit it should be.

With respect to this issue, there are but a very few decisions. In Swan v. Thompson, 28 USPQ 77 (CCPA 1936), three interferences were involved. According to the court the facts were "not in serious dispute, but the conclusions to be drawn from them and the proper application of the law to them are matters of much controversy." Id at 79. Swan made the invention which related to safety razors and blades therefor in England. He took samples to the United States - later exhibits in court - and with intention to sell his invention showed them in the United States to Thompson of Gillette and others, some of whom shaved with them. Swan introduced testimony taken in England and in the U.S. to show, among other things, that when he took the razors and blades into the U.S. he was in complete possession of the invention. The court, overruling the Interference Examiner and the Board of Appeals, sided with Swan.

In French v. Colby et al., 64 USPQ 499 (D.C. Cir. 1945), cert. denied 326 U.S. 726 (1945), the opinion of the Court of Appeals is rather cryptic, and the opinions in the District Court and the Patent Office appear not to have been published. However, it does appear from the opinion that British inventors (French et al) sent from their office in England to their U.S. "affiliate" a letter dated January 27, 1939 describing the invention and enclosing a sample (integrally woven ladder web for ventian blinds). The letter was received in the New York

office of their U.S. affiliate by one Harris in "early February", who in turn took it "early in March 1939" to one Gibbons, the manager of their mill in Massachusetts who was capable of understanding the invention. The United States inventors' (Colby et al) "date of disclosure" was March 6, 1939.

The court in reversing the District Court held:

> "We agree with the Patent Office that French is entitled to a date early in February 1939, when his letter was received in New York. ... The letter specified the problem to be solved, described the solution, and enclosed a sample. The invention is sufficiently simple...to be understood even by a non-expert person. But in any event, it passes belkif that Gibbons, an admitted specialist, who had been working toward a solution of the same problem should have had the slightest difficulty in understanding the invention when the sample was shown to him prior to March 6, 1939."

It is interesting to note that Colby had argued - to no avail - that it was necessary to examine the specimen under a magnifying glass in order to understand it.

A third case was Kravig et al. v. Henderson, 150 USPQ 377 (CCPA, 1966), in which a machine for fabricating decorative bows was imported from Canada by the Canadian Henderson and installed and operated at Plattsburg, New York by others allegedly in 1955. The Board of Interferences had awarded all four counts to Henderson, even though he had to prove his case beyond a reasonable doubt. However, the CCPA on appeal awarded Henderson only two counts because the other two counts did not read on the imported machine. Two years later the CCPA had this case again before it

and took away those two counts also because new evidence had shown that the machine had not been imported as early as had been alleged. [157 USPQ 564, (CCPA 1968)].

Two Board of Interference decisions are also worth discussion. Andre v. Daito, 166 USPQ 92 (1969), manifestly was an importation case even though this is apparent not so much from the decision as from the file history. Andre, a U.S. business man, conceived a design of a desk lamp in the U.S. and went to Japan where he reduced it to practice. He took back a model and the day when he arrived in San Francisco with the model was the day of his reduction to practice. This was on September 4, 1966. Daito filed in Japan on September 12, 1966; he was senior party inasmuch as Andre had only filed on December 27, 1966. The holding was as follows:

> "In support of his case for priority Andre has presented well-documented evidence in the form of his own testimony, the testimony of two corroborating witnesses (in addition to statements on record by his attorney relating to the preparation of his involved application) and including some forty documentary exhibits and three physical exhibits.
>
> The above-noted evidence establishes conception of the invention in issue by Andre as early as June 16, 1966 and the presence of a model...in the United States in his custody in early September of 1966 prior to September 12, 1966 the date to which Daito is restricted.
>
> Such model...embodies the invention in issue and sustains a holding that Andre had both conceived and reduced the invention to practice prior to Daito." Id. at 93.

And in Weigand v. Hedgewick, 168 USPQ 535 (1970), the invention which related to safety caps or closures for containers of drugs or medicines, was independently made by two Canadians whose applications were respectfully filed on April 5, 1966 and June 27, 1966. The senior party Hedgewick took no testimony but Weigand introduced "a mass of testimony and exhibits" the bulk of which related to "activities occurring wholly in Canada leading up to the asserted introduction of the invention into the United States". However, the only evidence relating to the actual receipt in the United States of a sample and a pamphlet was by one Simmons, the Executive Secretary of the National Association of Retail Druggists, to whom Weigand wrote in an attempt to promote his invention in the U.S. Unfortunately, Simmons could only recall that he saw the sample and that there was some information that accompanied the sample. He remembered no details and the sample was lost. In holding against Weigand under these circumstances, the Board distinguished the Swan and Wilson decisions wherein it had been proven that the inventions supporting the counts were disclosed in the U.S. prior to the opposing parties' record dates.

A very interesting recent case was Rochling et al. v. Burton et al., 178 USPQ 300 (Bd./Interf. 1971). Shell synthesized compounds in Germany and sent them to California for testing but in an interference failed to prove priority vis-a-vis an earlier filed application of British origin. While Shell were able to establish herbicidal utility by virtue of the California

tests, they "failed to establish the identity of any of the compounds tested" or rather "the identification of the compounds in question (was) dependent entirely on information allegedly obtained from the (German) inventors".

Apparently, no other published decisions exist. But it is submitted that it is amply and manifestly clear even from the few cases which are on the books that in proper cases, properly proven, importation of the physical object or embodiment of an invention made abroad, accompanied by full and clear disclosure of its nature and its mode of production and use, is tantamount to reduction to practice in the U.S. No separate and independent actual reduction to practice in the U.S. by re-construction and retesting should be necessary.

Importation of Embodiments of Complex Inventions

Of course, in the case of a simple invention like a lamp design and a ladder web for venetian blinds and perhaps even a razor and a machine for making bows, mere visual inspection may reveal the nature of the invention and its mode of construction and use. However, complex electronic apparatus and chemical compounds defy visual identification, but that does not mean that therefore they cannot be imported as a legal matter without being reduced to practice in the U.S. all over again. It merely means that the burden of proof is different and more onerous. It is then indispensable, in order to establish the nature or identity of the invention, to submit evidence based on actual or stipulated testimony taken abroad

or in the U.S. in case the inventor and his representatives went there for the purpose. A whole chain of evidence may then have to be forged to demonstrate, for example in the case of a chemical compound, that the compound made was the compound analyzed, was the compound tested, was the compound shipped, was the compound received.

Alternatively, and as a desirable backstop, an independent analysis in the case of chemical compounds could be carried out in the U.S. so that one or more persons know of their own knowledge the identity of an imported compound. In most cases, however, it would be a tall order to make a complete analysis. Perhaps one reliable test, a so-called finger-print test, as for example, an X-ray determination, to at least corroborate the structure, is all that is needed. In this context, note that the record in the Rochling et al. v. Burton et al. case showed that the lab assistant who handled the imported compounds did not know the chemical nature of the compounds other than the code numbers and the compounds were not analyzed by anybody before they were placed in the test screens and there was no discussion of any specific compounds with one of the inventors while visiting in California.

It is perfectly clear that Section 104 does not ban, and never has banned, testimony relating to acts outside the United States where the testimony is used to show merely the identity of an invention introduced into the United States and is not designed to establish dates of invention abroad. See, for instance, Rebuffat v. Crawford, 20 USPQ 321 (CCPA 1936),

where Rebuffat took testimony in Italy, dealing with conversations he had with his agent, one Pomilio, about work he had done in Europe. Pomilio went to the United States and assertedly discussed the invention with Crawford. The Court held that Rebuffat had not proved introduction into the United States "beyond reasonable doubt." On the question of activity abroad the Court remarked that Rebuffat could not obtain any benefit for the work he did abroad but then added:

> "The nature of his work abroad might be important in determining the identity of the invention or whether he had any concept of it or not, but it is incumbent upon him to prove, in this case, that the invention was introduced into the United States prior to the filing date of the senior party..." Id. at 325.

In Interference No. 93,802 of record in the file of the U.S. Patent No. 3,454,554, numerous affidavits were filed to establish the identity of the compound received in this country from Switzerland. The opponents moved that all of these affidavits be stricken from the record as violative of Section 104 but the Board of Interferences held that the evidence would not be stricken particularly since the events abroad may be necessary for a complete understanding of what occurred in the U.S.

Note also that in Hedgewick v. Akers, 182 USPQ 167 (CCPA, 1974), it was held that the proscription in Section 104 against establishing a "date of invention" by reference to foreign activities (in Canada) did not preclude the use of

foreign activities to prove derivation, which has to do with the origin of the invention, not the date of the invention. In such originality contests there is a very similar rationale and no attempt to prove an invention date abroad.

Diligence

In addition to conception and reduction to practice or something tantamount to it, diligence may also be an issue. On the one hand, perhaps, diligence is the most serious problem if there is an importation of knowledge of an invention and nother further. On the other hand, no diligence problem need arise if a completed invention is imported including a model or sample or if a patent disclosure is sent to a U.S. attorney who works diligently with it towards U.S. filing, or a machine or compound is shipped to the U.S. for testing or use which is diligently carried out.

An interesting legal point here is whether on the diligence issue activities abroad can be relied on if coupled with activities in the U.S. Section 104 would seem to preclude it. Rivise & Caesar, Interference Law & Practice, Vol. I, Sec. 187, p. 585 (1940) indicate that it can be done citing Wilson et al. v. Sherts et al., supra. There the court stated that "activities abroad...unaccompanied by any activities in the United States may not be considered in establishing diligence..." citing Hall v. O'Connor,

Interference No. 51,743, an unpublished decision, where there were activities in the United States and Canada and the Board held that the Canadian activities could be relied on although the work done in the United States would have been sufficient. In Lorimer v. Erickson, 1916 CD 200 (App. D.C. 1916), evidence of diligence abroad was admissible.

There are apparently no other court decisions which expressly permit such coupling by way of an exception to Section 104. But in a recent and unusual case, Rosen et al. v. NASA, 152 USPQ 756 (Bd./Interf. 1966) involving a satellite communication system, the Patent Office recognized coupling (citing Wilson v. Sherts, supra) since the system necessarily extended outside the United States. It is granted that this is a special situation and while neither the Wilson nor the Hall case can be considered as sound precedents, coupling as a practical matter may be possible as is illustrated in Mortsell v. Laurila, supra. If the ball bounces back and forth so to speak as was the case there with respect to the preparation, review and execution of a patent application, perhaps it can be said that while the ball is abroad there is at least a reasonable explanation for the inactivity in the U.S. at the moment.

Conclusion

Although the foregoing discussion deals predominantly with interference practice, it should be kept in mind that

the subject of importation also has relevance in Rule 131 practice and validity studies as was mentioned at the outset. (It has applicability to Cip subject matter as well.) This is illustrated, for instance, in Ex parte Pavilanis et al., 166 USPQ 413 (Board of Appeals 1969) where a reference was sworn back of by virtue of importation from Canada of a patent application draft for the purpose of filing in the United States.

From the cases discussed above and the principles enunciated in them, an outline of a procedure for legally and procedurally adequate and effective importation can be put forth. Such a procedure would consist essentially of three steps:

1) It would involve as early as possible a full disclosure of the British invention in the United States, preferably in writing, including detailed information on the mode of preparation, the nature and constitution of the invention and its utility and accompanied, where feasible, by a model or sample or other embodiment of the invention.

2) These materials would be promptly and carefully studied and inspected upon receipt, preferably by two persons who are capable of understanding the invention. Each person would date and sign and annotate each page of disclosure as having been read and understood by him. Incidentally, also British priority applications can be handled in the same manner just in case something goes wrong with the Convention filing or claim of priority.

3) These materials, including any sample or sub-sample or other embodiment, would be carefully kept or preserved and good records would also have to exist in Great Britain pertaining to the production and testing and importation of the invention. Independent exploration of the nature of any embodiment of the invention, e.g., analytical structure corroboration in case of a chemical substance, would be a desirable backstop.

While foreign inventors more often have failed than prevailed in United States interference proceedings in the past either because they had not resorted to importation at all and were restricted to their foreign priority dates or they had imported their inventions as a substantive matter but were unable to prove it as a procedural matter, the author is confident that foreigners fully aware of the importation opportunities and heeding the above-outlined procedure, would fare much better in prority contests in the future.

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