

tions of such complaints. These complaints may involve unsupportable allegations. Responses to inquiries may be given in confidence. All actions attendant upon such an investigation should, in our opinion, be kept confidential, certainly during the development stage. In the event of an appeal from the Commissioner's final decision, which is made with the procedural safeguards of the Administrative Procedure Act (37 CFR 1.348), the court action involves additional considerations. These attorneys and agents are not "personnel" of the Office so as to come within the exceptions provided by subsection (c) (2) and (c) (6).

E. The Commissioner in his discharge of his general responsibility for the issuance of patents and the registration of trademarks and for the conduct of proceedings before the Patent Office (35 U.S.C. 6) has directed that complaints against examiners and other employees of the Office be communicated separately from papers relating to other business before the Office (37 CFR 1.3).

To assure orderly disposition of such complaints, and as a safeguard against the dissemination of unwarranted allegations, the present practice of maintaining such complaints and papers involved in the investigations of such complaints confidential should be continued.

F. Patent applications are ordinarily acted on by the Office in the order in which they are filed or amended. Under certain circumstances the examination of an application is advanced (37 CFR 102). One such exception involves a petition of a prospective manufacturer who, if the patent issues, plans to use or make the patented item. Certain business information such as how much money has been expended in the manufacture of the device, the number of the devices manufactured, and the extent to which manufacture has affected the employment of labor is provided the Office as a justification for the request for special treatment.

It is the practice of the Patent Office to preserve the confidential status of such information. Despite the statutory confidentiality of pending applications (35 U.S.C. 122), such information is not made of record in the case looking to the time when the patent may issue and the file become available for public examination.

G. Pending applications for trademark registrations are promptly indexed with all the important information including a reproduction of the mark, date of use and use in commerce, date of filing and class of goods on which used. This index is available to the public as promptly as it can be assembled, about 3 to 4 weeks after receipt of the application.

The entire application is available upon publication of the mark for opposition. Prior to such publication, which normally is made 5 or 6 months after receipt, the application is made available to examination upon written request (37 CFR 2.27). This latter technique is used as a matter of administrative convenience to minimize disruption of the files. These essential information is available in the index.

We believe the public right to know is satisfied by the index and the availability of the application upon written request prior to publication and the continuation of the requirement of a written request during this period is needed in the interest of orderliness.

MARITIME ADMINISTRATION COMMENTS ON H.R. 5012

For the following reasons we recommend against favorable consideration of the bill.

H.R. 5012 sets the limits of disclosure for beyond those necessary to realize a practical balance between the confidentiality of Government records and freedom of information to the public.

H.R. 5012 is also subject to other specific objections. Under the bill, the first step in resolving any dispute is to file a complaint in a Federal district court. No provision is made for an intermediate step or agency determination with the result that every close question will be brought immediately to the district court. In fact most denials of information would probably result in a lawsuit. This would add to the already crowded dockets and might embroil every agency in a deluge of litigation.

Enhancing the probability of litigation are the numerous ambiguous terms set out in the statute such as "memorandums or letters" contained in exemption No. 5. It is impossible to delineate with any accuracy the scope of such words. Do they include maps or plans? Are work papers or informal notes within the exception?