THE ANDERSON COMPANY
GARY, INDIANA, U.S.A.

OFFICE OF THE
PRESIDENT

April 20, 1945

Hon. George B. Schwabe
House Office Building
Washington, D. C.

Dear Sir:

The British apparently are moving to kick out of their patent laws all provision for compulsory licensing because, as one of their planning committees put it in a recent report, "it dulls the spur to invention".

Nevertheless, the sounding boards of propaganda in our United States are still shivering a bit under the impact of the subtle campaign of our would-be copyists to fasten compulsory licensing upon our industrial economy.

The postwar battle of our nation for continued economic growth it seems will be sufficiently competitive to justify extreme caution on the part of our legislators in their approach to any suggestion that we dilute or destroy incentive to create and produce.

The vitality of every known civilization has been measured by the stability of its obstructions to piracy. The basic catalyst of our incentive economy is our patent system and the inducement it offers to create new and better products.

As of possible interest, I am enclosing copies of my recent correspondence with Murphy Elevator Company, Louisville, Kentucky. It seems that Murphy -- possibly flush with its war profits -- is eager to help itself to the creations of its competitors.

Cordially,

President

John W. Anderson
vs

THE MURPHY ELEVATOR CO.
Incorporated
128 E. Main St.
Louisville 2, Kentucky

February 17, 1945

Senator James E. Murray
United States Senate
Washington, D. C.

Dear Senator:

This Company is very much interested in the work of the Senate Small Business Committee. One of the greatest detriments to all business in the United States is the working of the present Patent System, especially as concerns the restrictive licensing agreements indulged in by quite a number of large business enterprises thereby tending to create a monopoly and to restrict trade.

The Supreme Court in its opinion handed down on January 8, 1945 in the Glass Industry case was a first step in the right direction.

The report of the National Patent Planning Commission submitted in 1943 suggests the compulsory licensing of patents pertaining to national defense, public health and public safety. This is also just a start.

A compulsory licensing system on a fair and reasonable royalty basis would vastly stimulate both research and industry.

We have a Research Department and we are planning on increasing the same. We are convinced that any patent in the elevator and related field which we may secure should be licensed to any person or firm willing to pay a reasonable royalty. We are convinced this would be good business.

To restrict the use of a patent involving public progress or public necessity simply creates a monopoly to the disadvantage of the general public.

We trust your Committee will go into this matter with the thought of broadening the recommendation of the National Planning Commission to provide a compulsory licensing system. Should this prove to be too broad a program to secure passage at this time, then certainly there should be added to the recommendation of the Commission a fourth provision for compulsory licensing, namely, for patents affecting public progress.

Very truly yours,

THE MURPHY ELEVATOR COMPANY

BY

Executive Vice President and
General Counsel

WJG:kph
cc to -

Executive Director Andrey A. Potter
Purdue University, Lafayette, Ind.

Mr. H. Fred Willkie, % Joseph Seagrams', Inc.
Louisville, Kentucky

Hon. Maury Maverick, Chairman & General Manager
Smaller War Plants Corporation, Washington, D. C.

NAM News, % National Assn' of Manufacturers
14 W. 49th Street, New York 20, N. Y.

Senator Claude Pepper, Chairman
Senate Commission on Patents, Washington, D. C.

Hon. Frank Boykin, Chairman
House Committee on Patents, Washington, D. C.

Hon. Emmet O'Neal
Washington, D. C.

Mr. Conway P. Coe, Commissioner of Patents
Washington, D. C.

Mr. Geo. E. Folks, Patent Advisor
National Association of Manufacturers, New York, N. Y.

Mr. John W. Anderson, President
The Anderson Company, Gary, Indiana

THE ANDERSON COMPANY
Gary, Indiana

March 9, 1945

The Murphy Elevator Co.
128 East Main Street
Louisville 2, Kentucky

ATTENTION: Executive Vice President and
General Counsel

Dear Sir:

I have an unsigned carbon copy of your letter of February 17 addressed to Senator James E. Murray on the subject of patents.

I understand from your letter that you would welcome an opportunity to be permitted to use -- in competition with Otis and other well established manufacturers of elevators -- the creations, covered by patents, which they own or control.

That definite promise of unqualified ownership and control, recently confirmed by the Supreme Court in the Hartford Empire decision -- has provided the incentive which has induced the extraordinary and sustained effort and the risk of capital, which has resulted in the amazing refinement of those elevator mechanisms which have made our skyscrapers possible and which have contributed so much to facilitating manufacture and commerce in general.

I think your letter, proposing compulsory licensing of patents which you hope some day to produce as a trade for the privilege of pirating the refined achievements of those with whom you appear to be ambitious to compete is very much in line with the piratical character of the inspiration sustaining attacks upon our patent system.

We started our manufacturing business in 1918 -- against well entrenched competition. We won our present strong position against that competition by creating, patenting, manufacturing and distributing better merchandise providing for the public greater values. Had compulsory licensing been in effect we could not have achieved our present competitive position. In fact we would not have tried -- and the improvements we have made available to the public would likely never have been created. There was a time when we, too, carried a blank rating in Dun & Bradstreet. We have improved that rating -- under

the protection of the patent system -- and stand today a sound business enterprise providing consistent employment to hundreds of people -- employment which could not have been created except for the patent system.

May we commend to you a similar policy. It is the hard way. But the shorter piratical route would do such things to our industrial economy, we believe, as to greatly weaken our capacity as a nation for progress in peace and for defense in war.

I am sending copies of this letter to those to whom you sent copies of your letter as indicated on the second page thereof -- in the hope that it may have some slight influence in promoting the maintenance of these obstructions to piracy which have contributed so much to the development of inventive and productive muscle in this grand country of ours.

Cordially,

Sgd/ JOHN W. ANDERSON

President

John W. Anderson
vs

THE MURPHY ELEVATOR COMPANY Incorporated

128 East Main Street
Louisville 2, Kentucky

March 21, 1943

Mr. John W. Anderson, President
The Anderson Company
Gary, Indiana

Dear Sir:

Responding to your letter of the 9th instant it is quite disturbing to find the Do-Do bird type of thinking still fluttering feebly.

Whenever we recall how few years ago it was that the pirates of privilege -- the robber barons -- pirated against labor and against small business and the public and in favor of special privilege for themselves, it is truly disturbing to find at this late date the same blustering type of short-sighted persons calling names more aptly applying to themselves.

Your stated understanding is biased and obviously is in error. We are not more entitled to the use of the inventions of our competitors than they are entitled to the use of ours. We are convinced however, that the Patent Laws of the United States should not permit either us or our competitors, or any other group to enter into a strictly limited conspiracy of restrictive licensing agreements by which competition is suppressed, prices maintained at an unreasonably high level, progress and development blocked and competitive bidding prevented except by the members of this closely related and restricted combination.

Considering the personal reference in your fifth literal paragraph, you need not worry about our rating because we are moving forward rapidly. Ask any Louisville bank. B plus 1 is excellent also. Doubtless you too have received awards for excellence in the war effort.

May we commend to you a broader scale thinking. May we even suggest that all of us should endeavor to avoid thinking too much in terms of personalities and of our own individual best interest and think instead along the lines of what is best for America. Maximum production - jobs - and the public interest demand a change in the present antiquated Patent Laws. Here are some evils which definitely need correcting:

(1) Under the present Patent System the prosecution of an application for a patent can be delayed for many years during which the applicant is protected by having a patent pending. After the patent is finally issued a further period of seventeen years is granted. We are convinced that the expiration date of the patent should be fixed from the time the application is filed. The President's National Patent Planning Commission recommends the enactment of a twenty year bill in substantially the same form as presented in H. R. 3211 to the Seventy-Seventh Congress.

(2) Under the present System when a patent is about to expire a very trivial change can be made and a new patent applied for which again can be delayed for years and then when the new patent based on the trivial change is issued this lasts for an additional seventeen years. This procedure can be carried on indefinitely so that in effect the present system permits perpetual patents. Surely, no one can argue against the proposition that the law should be changed so as to provide a more definite and uniform standard as to what is a new invention especially when it is tacked on to a patent already in existence.

(3) Under the present Patent System the owner of a patent may store same away and never use it and never permit anyone else to use it. The patent may be or may cover some great new discovery in medicine or in a necessary industry, as for instance, a carburetor, or any other invention or discovery which is vital or necessary to the further growth and happiness of this grand country of ours. Under the present Patent System the owner of such an invention or any invention could absolutely sit tight and do nothing with that patent and could also prevent anyone else from doing anything with it and from securing one of a like or similar nature. Thus, the good of America, the creation of jobs and the forward progress of our people would be seriously impaired.

In the Hartford-Empire Company, Et Al, vs. United States case, 65 Supreme Court Reporter, 373, the opinion states as follows beginning at the bottom of the first column on page 395:

> "Paragraph 52 deals with the problem of suppressed or unworked patents. Much is said in the opinion below, and in the briefs, about the practice of the appellants in arranging for patents to "block off" or "fence in" competing inventions. In the cooperative efforts of certain of the appellants to obtain dominance in the field of patented glass-making machinery, many patents were applied for to prevent others from obtaining patents on improvements which might, to some extent, limit the return in the way of royalty on original or fundamental inventions."

Is it possible to contend that the protection of the United States Statutes should be given for such purposes? It seems plain that since the present Patent System permits such actions then the Patent System should be changed. The Supreme Court points out that such a change is legislative in character. We are convinced that the Congress should so change this part of the Patent Laws. Some provision should be put in the law covering the situation arising when no commercial use of a patent has been made for a limited and fixed number of years after the application has been filed.

(4) Under the present Patent Laws a system of restricted licensing has been employed to suppress competition. Most governmental agencies and many private industries and firms require bids on different types of work from more than one firm. Often the specifications are written in such a manner as to require the use of some patented device. In order to get around the requirements of more than one bidder, the owner of the patent issues a limited and restricted license to a selected group. Since the owner controls and restricts the license the bidding is necessarily on a restricted basis.

The Supreme Court stated it this way in the Hartford-Empire case on page 381:

> "The District Court found that inventions of glass-making machinery had been discouraged, that competition in the manufacture and sale or licensing of such machinery had been suppressed, and that the system of restricted licensing had been employed to suppress competition in the manufacture of unpatented glassware and to maintain prices of the manufactured product. The findings are full and adequate and are supported by evidence, much of it contemporary writings of corporate defendants or their officers and agents."

We believe that the Congress should so amend the Patent Laws as to prevent this type of restraint of trade and creation of monopoly. We suggest the amendment should provide that when the owner of a patent licenses any other person or corporation to use the patent, then, all persons and firms who are fully responsible and reliable and who are willing to pay the royalty fixed by the patent owner should have a right to secure from said owner the same privileges as granted in the original licensing agreement, provided that the original inventor or owner may license same exclusively to one manufacturer for the purpose of developing and commercializing it.

The present Patent Laws have permitted a situation to grow up in America which the Supreme Court condemns on page 384 as follows:

> "It is clear that, by cooperative arrangements and binding agreements, the appellant corporation, over a period of years, regulated and suppressed competition in the use of glassmaking machinery and employed their joint patent position to allocate fields of manufacture and to maintain prices of unpatented glassware."

From your letter of the 9th instant, you seem to approve of the Hartford-Empire decision which I take it must include your condemnation of the practice and law violation as set forth in said decision. Speaking of pirating, what would you call the conduct condemned in the Hartford case?

The opinion of Mr. Justice Black, dissenting in part, condemned the practice and it seems to me also condemns the present Patent System in the following language set forth on page 397:

> "The District Court found that these defendants started out in 1916 to acquire a monopoly on a large segment of the glass industry. Their efforts were rewarded by complete success. They have become absolute masters of that domain of our public economy. They achieved this result largely through the manipulation of patents and licensing agreements. They obtained patents for the express purpose of furthering their monopoly. They utilized various types of restrictions in connection with leasing those patents so as to retain their dominance in that industry. The history of this country has perhaps never witnessed a more completely successful economic tyranny over any field of industry than that accomplished by these appellants. They planned their monopolistic program on the basis of getting and keeping and using patents, which they dedicated to the destruction of free competition in the glass container industry. Their declared object was "To block the development of machines which might be constructed by others *** " and "To secure patents on possible improvements of competing machines, so as to 'fence in' those and prevent their reaching an improved state." These patents were the major weapons in the campaign to subjugate the industry; they were also the fruits of appellant's victory."

One naturally wonders whose protection you really had in mind when you said in your letter "under the protection of the patent system." It certainly protected Hartford-Empire Company and their group of co-conspirators from June 30, 1916, up to the decision in this case on January 8, 1945, a period of nearly thirty years.

Yes sir, Mr. Anderson, under the present Patent System a type of piracy which your letter certainly seems to approve was continued for nearly thirty years and in the opinion of Mr. Justice Rutledge, dissenting in part, is still continuing. Mr. Justice Rutledge states beginning on page 400:

> "The contrary view ignores the momentum inherent in such a combination. The power, and much of the property, now aggregated in the combination's hands and those of its principal participants, was gathered by unlawful methods, at the expense of the public and competitors. Presumably neither power nor property could have been accumulated by lawful means. Nor can they now together be transferred legally to another. The loosened restrictions of this Court's revision may be sufficient to prevent, for the future, further acts of the character and having the effects of the past violations. But the pool has acquired more than 800 patents, which control the industry, of which Hartford alone holds more than 600. Its members, including Hartford, are not compelled to disgorge any of these, or prohibited to acquire others. Many of the patents, and certainly the cherished "patent position", were secured only by virtue of the illegal conduct. Whatever benefits may flow from these patents and the patent position thus created are inevitably the consequences of that conduct. Merely to throw off the illegal practices, such as restricted and discriminatory licensing, cannot reach those consequences. Every dollar hereafter, as well as heretofore, secured from licenses on the patents illegally aggregated in the combination's hands is money to which the participants are not entitled by virtue of the patent laws or others. It is the immediate product of the conspiracy. To permit these patents to remain in the guilty hands, as sources of continuing lucrative revenue, not only does not deprive their owners of the fruit of their misconduct. Rather it secures to them its continued benefits. The pool may no longer utilize illegal methods. It, and the constituent members, will continue to enjoy the preferred competitive position which their conduct has given them and to use both that position and the illgotten patents, together with the patent position, to derive trade advantage over rivals and gain from the public

which the patent laws of themselves never contemplated and the anti-trust laws, in my opinion, forbid."

It must be clear to anyone who will consider the matter from an unbiased viewpoint that the present Patent Laws have many serious defects which should be corrected by the Congress. Clearly, the System tends to create monopoly and to foster restraint of trade. There can be no doubt that the System reduced competition, tends to keep prices up, restricts use and manufacture and reduces jobs. Certainly something ought to be done about it.

The present Patent System should be changed so as to prevent the abuses and restrictions which have grown up under it.

Do you still think that all of the suggestions for improving the Patent System spring from a piratical desire to pirate the refined achievements of others? Perhaps there could be the desire to protect one's self and the public from the piracy of those hiding behind the protection of the present defective Patent System.

Serious abuses have grown up under the present Patent System. Competition can be and is being suppressed under the protection of the present Law. Patents and licensing agreements are being used to restrain trade and to secure unfair advantages. The laws of the United States should not give protection to this kind of conduct. It is not a sufficient answer to claim that the present anti-trust laws prohibit it. They did not prohibit it for thirty years in the cited case. The defect is in the Patent Laws which are not sufficiently specific to prevent these abuses.

I am sending this copy to the same gentlemen with the same object as you mentioned except that I trust it may be helpful in securing the adoption of Amendments which will stop abuses and piracy.

Cordially,

Sgd/ W. J. GOODWIN

Executive Vice-President

THE ANDERSON COMPANY
Gary, Indiana

April 3, 1945

Mr. W. J. Goodwin, Executive Vice-President
The Murphy Elevator Company
128 East Main Street
Louisville 2, Kentucky

Dear Mr. Goodwin:

Your extended letter of March 21 -- which has more the appearance of a legal brief than of a layman's communication -- has served to reflect your quite obvious sincerity -- if not a very profound understanding of our patent system, its functions and its contributions to our national economy.

Your paragraph (2) on your page 2 is the clearest indication of your lack of understanding of the true character of a patent -- or its purpose. At the expiration of 17 years the invention -- embodying every disclosure made in the patent -- can be manufactured with impunity by anybody. At that time it becomes public property.

If an improvement covering "a very trivial change" is made and is patented in a new combination, to avoid infringement it is only necessary to avoid including that trivial improvement.

On the other hand what a competitor might like to designate as a trivial improvement often gives to the combination of features embodied in the invention vastly greater utility and capacity for service to the public. If the invention without the improvement has no value to a copyist, then it would seem that the improvement would have enough value to justify its recognition and to be worthy of patent protection.

There is no such thing as perpetuating a patent on a given invention by improving it. Only the use of the improvement must be avoided -- and then only for the brief period of 17 years fixed by law as the period of protection provided for the inventor as an inducement to him to consecrate his time, effort and money to the chance of serving the interests of the public so well as to have earned for himself a share of the benefits.

As to your paragraph (3) on page 2 -- there is no middle ground. There can be no compromise. Unless the inventor or patent owner is given an adequate period in which to control the invention absolutely, the inducement to invent will evaporate. One of the surest methods of making certain that an invention will not be withheld by the patent owner is to remove all inducement so that the effort necessary to produce the invention will never be expended.

You can't have your cake and eat it -- and the minute you turn every hungry manufacturer loose to eat the cake produced by the inventor there will be little more cake for anybody and a sad blow indeed will be dealt to the "further growth and happiness of this grand country of ours".

The super-literate thinkers and planners of Great Britain -- perhaps inspired by that type of manufacturer who finds it easier to copy than to create -- decided many years ago that patented inventions not used should be taxed and that licensing should be compulsory. A certain Rhodes scholar, quite prominent in Department of Justice circles, along with his numerous associates, has used that fact to support his contention that we should have compulsory licensing. In a meeting a couple of months ago, which I attended, the Rhodes scholar was confronted with a printed copy of a report of the group in Great Britain commissioned to seek out the weaknesses of their patent system and restore its incentives. That report recommended, without qualification, that both taxation of patents and compulsory licensing be discontinued because they had found that each "dulls the spur to invention".

I have no doubt that the British would be very happy indeed to see us adopt these disabling features of their present patent system -- at least until the British can recover from their very long period in which there has come out of Britain comparatively little in the way of really significant inventions.

Your paragraph (1) on page 2 presents what has been recognized as a problem. That problem, the extension of the period of protection by an unreasonable period of pendency of the patent application, has had serious consideration by the Patent Committee of the National Association of Manufacturers, and by many other bodies -- with the result that there has been introduced in Congress a bill providing that the patent shall expire not later than 20 years after the filing of the application -- in spite of the fact that in many instances the delay in the issue of the patent is in no way the fault of the owner of the application. I think you will find no substantial opposition to this 20-year period.

It is admitted that patents have been employed by some in their process of developing and maintaining monopolies in violation of Federal law. For such violations there is ample recourse under other Federal statutes. To argue that the incentives of our patent system should be diluted dangerously by compulsory licensing as a means of preventing such monopolies is about as reasonable as to argue that because one of your elevators might be used by an escaping criminal the manufacture and sale of elevators should be forbidden by law.

Has it not been your observation, Mr. Goodwin, that in the functioning of each human institution a measure of error is unavoidable. And have you not also observed that there is a type of human who -- perhaps to salve his ego against the realization that he himself is making no constructive contributions to human progress -- is inclined to seek and emphasize such "atrocities" as a justification for disabling or destroying the institution itself, no matter how productive that institution may have proven itself to be.

I disagree with you completely in your statement that the patent system reduces competition and tends to keep prices up. The patent system provides for the smaller manufacturer his best opportunity to attain a position against the entrenched competition of the large corporation. There are thousands of examples. The motor vehicles of today owe their perfection largely to smaller manufacturers and free lance inventors who have invented more than 70% of all their present functional components and to whom tribute is paid either in the form of royalty or in profits on components supplied for the assembly which the vehicle maker completes.

In many other industries, for further example radio, a majority of all the improvements come out of smaller laboratories and lofts, basements and bedrooms of free lance inventors.

How many of such improvements do you think, Mr. Goodwin, would ever be created without the assurance that the improvements could be patented and that the patents would give control of the invention for a period adequate to refine it, to provide facilities for its manufacture and to find and develop a market for it?

Except for the protection promised by our patent system, I can assure you that our fighting aircraft would have no serviceable windshield wiper equipment -- either for windshields or bombardier's windows. All of that equipment originating in America we make. Prior to the war we had spent years in developing it and it stood on our books deep in red ink. We incurred that loss only because we were assured that once we had produced the inventions necessary to make the equipment successful that equipment could not be copied until our patents

expired. The same has been true of other productions we have made and which have proven widely useful to our people. Without the promise of patent protection we could never have justified our gamble in time and effort and money -- and the same is substantially true throughout all our industry.

You appear to have found the other fellows creations an obstruction standing between you and profits you covet. You are not alone, Mr. Goodwin, in that respect. There is not a large manufacturing corporation in America but what stands constantly in dread of competition from patented inventions offering more attractive features and greater values to their customers. Our very largest corporations no doubt would rather rely entirely upon their mass of capital, facilities and personnel -- and their entrenched distribution -- rather than to any extent upon our patent system. If compulsory licensing could be effected, the little fellow would have, ordinarily, mighty small chance to grow into the caliber of his larger competitor.

Our most acute experiences proving that truth have come out of casual infringements of our patents by professional copyists whose policy it is to exhaust the possibilities of invading an established market with a deliberate infringement of the other fellow's product and then getting out when compelled through litigation to do so -- only to then infringe some other product and becloud some other market. Under compulsory licensing, that piratical fraternity would so promptly invade and murder established markets for superior patented products as to completely discourage not only inventors but investors and skilled managements from making any attempt to place within reach of the public better values in improved products. If we feel an obligation to competing foreign nations to so discourage American inventors, investors and producers as to sterilize American industry until it can be surpassed out of the greater natural resources at the command of some of those nations, then we should by all means have compulsory licensing, taxation of unused patents and every other device which has retarded invention and industry in other countries while ours has forged ahead.

You say patents and licensing agreements are being used to restrain trade and to secure unfair advantages. Any unlawful restraint of trade can be corrected by resort to the laws violated -- and without resort to mutilation of our patent system.

We do have a very fine country -- a little bit confused just now perhaps -- but nevertheless by far the best on earth.

The American Indian had at his feet and within his reach every natural resource we have employed. He did nothing with it. The population of this country otherwise has been contributed by countries and races who have never attained elsewhere anything like the industrial power which has enabled us to protect ourselves and civilization against the orgamized piracy of the Axis nations.

The difference is that our copyright, trademark and patent laws have erected such obstructions to piracy as to have encouraged our citizens to sacrificial efforts toward invention and production as an instrumentality for success within our institution of open competitive enterprise.

There is normally in America no limitation on invention and production -- except the will and the ability of the individual or the group.

So long as these incentives remain undiluted -- and competition remains open -- America will continue to progress and woe be to the nation that tries to enslave her.

Destroy her obstructions to piracy and her power to protect her liberty must vanish.

That you seem not fully conscious of the significance of these truths is no reflection. Entire nations have ignored them -- and perished. Were these truths obvious it would not have required the uncanny sagacity of our founding fathers to give them effect for us -- and our many admirable and articulate super-literates would not be so loudly proclaiming the fallacies which these truths belie.

Whatever understanding I may have of the significance of the long thoughts of Thomas Jefferson has come out of more than 40 years of consecration to the job of inventing and manufacturing -- and distributing -- better products to better serve our people -- products embodying patented inventions which our company could control.

I wish you more success than we have had -- with less effort -- but not at the expense of the other fellow's creations.

I am sorry you took umbrage at my letter. There could have been nothing personal in it because at the time I wrote you I had no knowledge of your company except through your letter and I did not even know your mame, Mr. Goodwin.

Cordially,

Sgd/ JOHN W. ANDERSON

President

John W. Anderson
vs.