

RIGHTS OF PRIORITY IN PATENT APPLICATIONS

*Exchange of notes at Washington February 12 and August 4 and 23,
1948*

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The Secretary of State to the Philippine Ambassador

The Secretary of State presents his compliments to His Excellency the Ambassador of the Philippines and has the honor to refer to the problem of the application to United States citizens of certain rights of priority in the filing of patent applications under the Philippine Patent Law.

The United States Patent Law, R.S. 4887 (title 15, [35], USC Sec. 32) contains a clause similar to one found in Section 15 of the Philippine Patent Law, Republic Act 165. In both cases the law provides that the right of priority is accorded to “. . . a foreign country which, by treaty, convention, or law, affords similar privileges . . .” It is felt that the presence of similar provisions in the patent laws of the United States and the Philippines satisfies the requirement of reciprocity. A statement by the appropriate Philippine officials to the effect that Section 15 of the Philippine Patent Law applies to United States citizens will be considered sufficient for the United States to recognize that Section 32 of the United States Patent Law is applicable to citizens of the Philippines.

Assuming that the procedure outlined above is satisfactory, the question of the war-caused delay in the use of the right of priority arises. Section 76 of the Philippine Patent Law extends the right of priority for the filing of patents which accrued during the war period on a reciprocal basis with countries according substantially the same privileges to citizens of the Philippines. The Boykin Act (United States Public Law 690, 79th Congress) contains substantially the same provisions and, upon a statement by the appropriate Philippine officials indicating that Section 76 of the Philippine Patent Law is applicable to citizens of the United States, the United States Patent Office could apply Section 1 of the Boykin Act to citizens of the Philippines. It should be noted, however, that the present expiration date of the extension of the right of priority under the Boykin Act is February 29,

1948. Unless a further extension of time is provided for by Congressional action, benefits of the Act will apply only to cases filed before February 29, 1948.

DEPARTMENT OF STATE

Washington, February 12, 1948

R.V.

The Secretary of State to the Philippine Ambassador

The Secretary of State presents his compliments to His Excellency the Ambassador of the Philippines and has the honor to refer to the Department's note of February 12, 1948 concerning the application to United States citizens of certain rights of priority in the filing of patent applications under the Philippine Patent Law.

This problem has again been brought to the attention of the Department of State by nationals of the United States seeking to obtain patents in the Philippines based upon original filings in the United States. In attempting to secure a filing date for the Philippine application equivalent to the United States filing date, these United States nationals have been informed that the right of priority in filing patent applications can be extended to them only when proof of reciprocity in the United States for Philippine nationals has been communicated to the Philippine Government.

As stated in the Department's note of February 12, the United States Patent Law, R. S. 4887 (title 15 [35], USC Sec. 32), contains a clause similar to one embodied in Section 15 of the Philippine Patent Law, Republic Act 165. In each instance the respective laws provide that the right of priority is accorded to ". . . a foreign country which, by treaty, convention, or law, affords similar privileges . . ." It is the view of this Government that the presence of similar provisions in the patent laws of the United States and the Philippines satisfies the requirement of reciprocity. A statement by the appropriate officer of the Philippines to the effect that Section 15 of the Philippine Patent Law applies to United States citizens will be considered sufficient to enable the United States to recognize that Section 32 of the United States Patent Law is applicable to citizens of the Philippines.

This Government is of the further view that the course of action suggested above will work to the mutual advantage of both nations by eliminating the burdensome requirement of proof of reciprocity in the case of each individual patent application. Accordingly, this Government trusts that the course of action suggested will meet with the approval of the Government of the Philippines.

DEPARTMENT OF STATE

Washington, August 4, 1948

R.P.T.

*The Philippine Ambassador to the Secretary of State*WASHINGTON
August 23, 1948

EXCELLENCY:

I have the honor to refer to the notes of the Department of State dated February 12 and August 4, 1948 concerning the application to United States citizens of certain rights of priority in the filing of patent applications under the Philippine Patent Law.

It is stated in the Department's note of February 12, 1948 and reiterated in its note of August 4, 1948, that the United States Patent Law, R.S. 4887 (title 15 [35], USC Sec. 32) contains a clause similar to one found in Section 15 of the Philippine Patent Law, Republic Act 165, that in both cases the law provides that the right of priority is accorded to "x x x a foreign country which, by treaty, convention, or law affords similar privileges x x x," and that it is felt that the presence of similar provisions in the patent laws of the United States and the Philippines satisfies the requirement of reciprocity.

It is further stated in the notes under reference that it is the view of the United States Government that a statement by the appropriate Philippine officials to the effect that Section 15 of the Philippine Patent Law applies to United States citizens would be considered sufficient for the United States to recognize that Section 32 of the United States Patent Law is applicable to the citizens of the Philippines.

I am pleased to inform Your Excellency that my Government has instructed me to convey to your Government that the following text of the 3rd indorsement of the Director of the Philippines Patent Office dated May 26, 1948 and concurred in by the Department of Commerce and Industry of my Government, represents the official position of the Philippine Government on the matter:

Respectfully returned, thru the Honorable, the Secretary of Commerce and Industry, to the Honorable, the Secretary of Foreign Affairs, Manila.

In view of the statement of the Honorable, the Secretary of State of the United States that, under the U.S. Patent Law, R. S. 4887 (Title 15, USC Sec. 32), the Government of the United States accords to citizens of the Philippines the same privileges as those which Section 15 of the Philippine Patent Law (Rep. Act No. 165, approved June 20, 1947) accords to foreigners, the Philippines Patent Office will consider the said Section 15 of the Philippine Patent Law applicable to citizens of the United States effective as of June 20, 1947.

In view of the statement of the Honorable, the Secretary of State of the United States that the U.S. Patent Office could consider the United States Boykin Act (which grants to foreigners substantially the same patent prior rights as those which Section 76 of the Philippine Patent Law accords to

foreigners) applicable to citizens of the Philippines up to February 29, 1948, the Philippines Patent Office will likewise regard Section 76 of the Philippine Patent Law (Rep. Act No. 165) applicable to citizens of the United States whose patent applications were received at the Philippines Patent Office between June 20, 1947 and February 29, 1948, both dates inclusive.

It is the understanding of my Government that the aforesaid note of February 12, 1948 of the Department of State, as reiterated by its note of August 4, 1948, and this note signifying my Government's assent thereto shall constitute an agreement between the Republic of the Philippines and the United States on patents.

Accept, Excellency, the renewed assurances of my most distinguished consideration.

J. M. ELIZALDE

His Excellency

GEORGE C. MARSHALL

Secretary of State