INTERVIEWEE: Edward John Brenner

INTERVIEWER: David G. McComb

November 19, 1968 10:45 a.m. Crystal Plaza, Washington

M: For the sake of the record I suppose I should start off by saying that this is an interview with Edward J. Brenner who is the U. S. Commissioner of Patents. The interview is in his office, in Crystal Plaza, on the eleventh floor of the third building. The date is November the 19th and the time is 10:45. Mr. Brenner, can you first of all tell me something about your background, where were you born and when?

B: Well, I was born in Wisconsin Rapids, Wisconsin, on June 26, 1923. [I] attended grade school and high school in Wisconsin Rapids, Wisconsin, attended the University of Wisconsin in Madison, Wisconsin, obtaining a Bachelor of Science degree in Chemical Engineering in 1947, a Master of Science degree in Chemical Engineering in 1948 and a Doctor of Law degree in 1950.

M: Were these all from the University of Wisconsin?

B: All three degrees were from the University of Wisconsin. I started at the University in 1941--left in 1944 to go into the Armed Forces--returned in 1946 to continue my education.

M: Then, did you practice as an attorney after that?

B: When I left college in 1950, I started to work for the Esso Standard Oil Company down in Baton Rouge, Louisiana. I started working in the field of refinery economics and worked in that field in Baton Rouge for three years and then transferred to an affiliated company, Esso Research and Engineering Company in 1953 and commenced in patent work. Worked as a patent attorney

and a contract and licensing attorney for about six or seven years. [I] also served one year as an acting assistant director of the company's Technical Information Division and then, around 1960, became assistant director of the patent division of Esso Research where I continued in this position until 1964 when I assumed my present position of Commissioner of Patents.

M: Well, your experience then was with patent law, is that correct?

B: Well, to a large extent, that's right. At least extending from 1953 to 1964, most of the time, with the exception of one year in technical information work, I was directly in patent work, or in work indirectly related to patent work.

M: This was patent work in regard to the Esso Company?

B: Yes.

M: The oil patents?

B: Yes, petroleum, petrochemical, chemical field.

M: This would involve work not only on patents you were taking out for the Esso Company but the use of equipment involving patent questions?

B: Well, this would involve the matter of obtaining patent protection on Esso's developments in their various fields--considering patents of competitors with regard to whether infringement questions were presented, whether it was necessary to take a license or not. [I was] involved the question of the sales of patent rights and technical information know-how to other companies as well as acquiring it by the Esso organization.

M: Well, how did you enter government service then? How did you happen to get into the job of Commissioner?

B: Well, in the summer of 1963 the then Commissioner of Patents, David Ladd, decided to--

M: Is that L-A-D-D?

B: L-A-D-D. Decided to leave the government, resign his position. And one day I was contacted by one of my friends who asked if I'd be interested in being considered as a candidate for the next Commissioner of Patents and I indicated that I thought I would be interested in being considered as a candidate.

M: Is this a Presidential appointment?

B: This is a Presidential appointment.

M: And they were gathering names for presidential--

B: Yes, what was going on was that Doctor Hollomon, J. Herbert Holloman, who was Assistant Secretary of Commerce for Science and Technology, had organized a group of three people from the private sector to develop a list of candidates and screen the various proposed candidates and make certain recommendations to him for further consideration by Doctor Hollomon and Secretary Hodges and the President.

M: Then how were you notified that you had been selected?

B: Well, it was a process that actually took-- I believe this started in about August, and I was not nominated until January. What happened was that I think in early September Bill Eaton, who was Doctor Hollomon's deputy, called me up and asked me to come down and talk with them. I came down talked with Bill Eaton and Herb Hollomon and, of course, at that time they were considering quite a few candidates. Then, I believe the next contact-- I got another call to come down sometime in November to talk about this matter further and found out that as far as Doctor Hollomon was concerned I was, apparently, their top choice at the moment, and then I had a chance to talk with Secretary Hodges who apparently agreed that I looked like a good candidate. And on that particular day, which was a Wednesday in November, I was tentatively scheduled to see President Kennedy, but it turned out later that this cancelled out, that he was too busy in getting off to Texas. And of course, it was on

Friday that he was assassinated. Then, there was a hiatus in here and the people in the White House,who were in touch with me with regard to my possible nomination, indicated that there would be a little delay here until things got organized. I think it was sometime around the middle of December that I got a call from the White House that asked me to come down and talk with them which ultimately resulted in a meeting with the President that day. I guess I was probably one of the first people he had an opportunity to nominate. I don't believe I was the first one, but I think one of the very early ones.

M: Did he have anything to say to you that day in particular?

B: Well, I remember that he started out by saying that-- Well, after I went in and he looked over my background papers he said that, "Well, you seem to have a very outstanding record. It says here, however, that you are a registered Republican, and that could create some complications."

So I tried to explain to him that I was middle-of-the-road on my politics and had been in Wisconsin, I think, an independent voter and a registered Republican, and in Louisiana I was a registered Democrat, and in New Jersey I was a registered Republican, and I was really pretty much middle-of-the-road, and, to a large extent, it depended upon how could you use your vote best. Obviously in Louisiana, to make your vote most effective, it would be good to be a registered Democrat, at that time, and in New Jersey, at the time, it was quite similar--at least in the area we lived--you could be more effective as a registered Republican.

M: Was he satisfied with that answer?

B: Well, I assume he was reasonably well satisfied.

M: Did he have anything to say to you about patent policy or the job in particular?

B: No, we didn't go into anything too specific. I think he did mention his feeling that it's necessary to have really good men in the various government

positions because there's an important job to be done in all areas including, for example, in patents. I think that emphasis was on trying to bring in good men to the government. I think this is one of the things that I have admired about the President as I think that he has tried to select good men not only as Presidential appointees but in the career positions--has emphasized this. Which I agree with because I think the government needs, oh, through its Presidential appointees and career people, the best people it can get because the job of government is enormous and gets more complicated and the requirements get more severe each year.

M: How long was that meeting that you had with the President--that first one?

B: It seems to me it maybe lasted 20 minutes, 25 minutes.

M: And then how soon after that did he announce your appointment?

B: Well it was-- He nominated me publicly announced I think it was on January 25th and then, of course, it was subject to confirmation by the Senate. And I think this came about around March 10th or so and I was sworn in I guess March 10th or March 11th, 1964.

M: So there was some delay between January and March--

B: Yes.

M: before you took over? Was there an acting head of the Patent Office at that time?

B: Yes, by law, if the Commissioner is away, or there isn't any Commissioner, the first assistant Commissioner becomes acting Commissioner.

M: Well then, you had to take over as Commissioner of Patents. Were there any initial problems that you had in taking over the office?

B: Well, there were quite a few problems. They ranged from kind of a difficult morale problem--the people were unhappy about many things in the office. I think some justified and some unjustified. There had been some accusations of racial discrimination. There were tremendous backlogs of patent applications

to be processed. There were quarters, I think, that were not the best for the efficiency of our operations or the morale of our people. There was a feeling that there were considerable problems internationally on patents and that some way or other we ought to start participating much more actively internationally. As a matter of fact, being the number one country in technology and economic growth and the biggest patent filer around the world, that why shouldn't we be leading the way rather than sitting on the sidelines.

M: To go back and pick up a few of these in more detail. What kind of a problem was it that you had with racial discrimination?

B: Well, like I say, there were a number of people who felt that they were being discriminated against on a racial basis.

M: These were Negroes within the office that felt that they had been--

B: Yes, primarily, we actually have between 35 percent to 40 percent Negro employees and, of course, this actually came up I think within the previous six months to a year. People in the office were working on this and I think had pretty well worked out satisfactory solutions to this but I think there still remained the feeling that things could be improved.

M: Was this mainly problem of promotion and salary increases and that sort of thing?

B: Yes, to a large extent promotion I think was basically involved.

M: Did they have good reason for complaint? Was there really discrimination?

B: Well, I would say this, I think. After investigating the various specific complaints--I think this appeared before I arrived--there was no determination that there was racial discrimination. Of course, I think there were many conferences and people were able to talk things out and resolve things. So I don't know if that would indicate one way or another whether there wasn't. I think the specific situations were worked out to everybody's satisfaction.

M: Now, the President, apparently, has stated that he wanted in the executive agencies more emphasis on the hiring of minority people and, also, the hiring of women. Did this directive come down to you and, if so, what impact has it had?

B: Well, the President certainly moved very forcefully in those areas which I think was very timely and I think it helped us out considerably in the office here with regard to our posture which reflected, of course, the department's posture which reflected the President's posture and I think that it came at a very good time.

Another somewhat separate factor that was in the picture was a fairly strong feeling in certain quarters that seniority was decisive. And my philosophy has been that seniority should definitely be taken into account but that we promote on merit around here. We have been operating that way, even though some people have not completely agreed with this, that they think that seniority should be decisive. I think that sort of interrelates a bit with the question of racial discrimination, or women, or what have you--some of these other areas. So I think the two neatly dove-tailed. I think, basically, we've not have any serious problems in the almost five years I've been here, I think as a result of what I call a positive approach to these matters.

M: Is the percentage of Negroes in your employment still around 35 to 40 percent?

B: Yes, it's about in that range now.

M: Was that the range it was when you first came in, or has it stayed about the same?

B: Yes. This has stayed pretty much the same.

M: What did you do about the poor housing for your offices? I notice that you have now moved.

B: Initially--well, I think everybody was in agreement, within the office and outside the office, that the Patent Office needed better facilities. We initially proceeded on the basis of trying to get a government-owned building designed especially for our needs, but this got us into quite a few complications. Generally speaking, the people in the office and outside would like to have that building right in the center of Washington. Well, this got us into the question of-- There are many, many agencies that also want a new building right in the center of Washington and got you into some sort of priority arrangement in which we found ourselves way down the list. So you could almost assume that any reasonable time you just wouldn't get a new building in Washington.

So then we proceeded on the basis of trying to get a new building a bit outside of Washington--like 25, 30 miles, or so outside of Washington, and the Congress did pass what was called a prospectus for a new building, which calls for this to be someplace outside of Washington. And then there was a question of appropriating money for planning such a building and this was defeated by the Congress as a result of opposition from inside the office and outside. [They] requested the Department of Commerce to take a new look at this situation.

Then, sometime later, these new facilities out here at Crystal Plaza became available and the GSA rented them and we moved into them. And we started moving into these in--I think early--time goes by so fast--in early 1967. We've been moving in stages as the buildings have been built here so we now have practically all of our operations out here. And the few remaining ones we have back in the Commerce Department and we hope to get out here in the not too distant future.

M: Does the distance from Washington hamper you in any way? I might ask you, how far are you from say--

B: I think we're only about 3 miles from the Department of Commerce. The reaction is a little bit different from different groups. I think the professional people, in general, are very happy with the facilities. They now have private offices for our examiners. The facilities are much cleaner, better lighting, better organized. I think our non-professional employees, basically, like the facilities very well, but they do have some objections to the commuting out here. This takes more time and it's more expensive, although I think once the Washington subway is built--and there's suppose to be an entrance right out in front of the building here--I think that that will basically solve this problem. The outside people that deal with us, primarily the patent attorneys from out of town--like this facility very much. They can land at National Airport, right next door here as you can see and conveniently come over here. It's very simple. Washington attorneys that have had their office in the center of Washington, I guess actually would prefer us to be back at theCommerce building but a number of them moved out here and they're happy and other people find that it's not that difficult in getting out here. So basically I would say that the move has veen very good and most people would agree with it.

M: Well, you have no problem in your dealings with the Department of Commerce--just because of your location?

B: No.

M: This brings up another point. Is your agency--administration--is it fairly independent within the Department of Commerce? Can you fairly well set policy for the running of your own office and for the application of patents?

B: I would say the answer would be basically, "yes." A question keeps coming up, particularly from some of the people in the private sector who feel that the patent office should be an independent agency of just what is the working

relationship. I would say that, basically, it has been very good. I haven't had any problem, I'm basically able to operate the way I feel I should and I get support from the Department and consultation. We've not had any basic differences of opinion that could not be worked out. Actually, we've not really had any major problems at all.

M: Do you get any kind of pressure put on you from congressmen? Do you have much dealing with Congress itself?

B: Well, of course, we have contact with them in connection with our proposals. We've had to modify the United States patent laws to try to meet the needs of the future. We have the usual yearly appropriations presentations before Congress. I don't know whether you are referring to that or to individual contacts of congressmen.

M: Well do you have individual contacts with congressmen?

B: We have quite a volume of mail, maybe a half-dozen letters a day from congressmen, asking for some information for their constituents and which we respond to very promptly. I have, on occasion, had a few telephone calls from specific congressmen on specific subjects.

M: Well in regard to patent law, is your main difficulty now dealing with international law?

B: Well, we have a number of major areas that are involved, one is-- Well, I would say basically we're trying to do two things in the patent area, one is to improve the effectiveness of the U.S. patent system--and secondly--

M: Is that domestically or throughout the world?

B: Well, first is to try to improve the operations of our own patent system. Secondly, we are trying to develop an international patent system, which involves the cooperation between the various countries of the world and their patent offices to make things simpler for the patent applicants to get patent coverage around the world as well as to make life simpler for the patent offices

by reducing the work load or harmonizing approaches.

M: Well, how well is an American inventor, who gets a U.S. patent--how well is he protected in other countries?

B: A U. S. patent gives you protection only in the United States and if you want protection in any other country you have to get a separate patent in each country.

The ultimate goal that people talk about is a situation some time in the future where you could file a single application and, if you got a patent, it would be a patent that would be effective basically in the world. But that will take quite a while to attain that. What we are now working on internationally--which resulted from a proposal by the United States--was to develop an international system of cooperation without having to go all the way to that ultimate which would involve complete unification of laws, probably a world patent court which at this stage of the game just aren't saleable. But to develop a treaty that would go a long way towards eliminating some of the problems that are involved. We introduced a resolution at the meeting of the international body that administers the Paris Convention which is a convention of 1883 of which there are about 79 countries that are members. Well, anyway, in the executive committee meeting of that body in 1966, we introduced a resolution calling upon the Secretariat to take steps immediately to propose a plan for the world to eliminate some of these many problems for patent applicants nd the patent offices. The result was a first draft of a proposed patent cooperation treaty in the spring of 1967 which was discussed by some 30--well no, some 23 member countries--the biggest, from a patent standpoint in the fall of 1967. The new draft was issued this summer 1968 and will be considered at a meeting in Geneva in December by all 79 member countries. If everything goes well at this meeting the plan would be to have a diplomatic conference in late 1969 or early 1970, we

would hope perhaps in Washington, to negotiate the treaty. We would hope that in the not too distant future thereafter that the treaty would come into operation.

M: Are there agreements abroad between countries to honor each others patents?

B: No, basically--

M: So every other country is in the same situation we are, is that right?

B: Every other country is in the same situation we are. And I might just go over a little bit some of the problems. The problems for the patent applicants particularly as world trade is increasing and no longer is the U.S. your market, but the world, and you need patent protection. Well, then you've got to file on a particular invention in more and more countries and this gets pretty expensive. Also the different countries have different formalities, different size paper, differences here and there which means that a lot of extra effort and time and expense just to follow all these different procedures.

M: Is there a difference also in the timing of when a patent takes affect? Such as--can you patent an idea or do you have to have an actual working model, or a working machine [or] whatever it is? Is there a question as to when a patent can actually be applied between countries?

B: Well basically throughout the world, I think the ground rules in regard to what is patentable are basically the same. This has got to be something more than just an idea. It doesn't have to be so complete that you have say a working model, like that one sitting over there in my office which is one of Edison's models, but nevertheless you have to be able to describe through the written word or drawings the invention in enough detail so a person skilled in the art could understand it completely, he could make the invention and he could use the invention. So basically that is not-- Bascially the ground rules are the same around the country, around the world

although there are slight variations from country to country.

M: So that would be no great problem, then?

B: That is not a major problem at this point, although as we work more and more down the world towards a single patent this will have to be unified completely. But another part of the problem, of course, is that for a given invention there are more and more applications filed on it around the world which means that the various patent offices of the world duplicate their effort of searching the prior art and examining the application. And, for the applicant, he has to do this before the U.S. office, the British office, the Dutch office, the German office, the Japanese office. So there's a tremendous duplication, multiplication of effort and the result has been the loads on patent offices have gotten so severe the system has just broken down from the delays and the backlogs. And part of the Patent Cooperation Treaty here is to try to eliminate this duplicative effort. To try to do the basic work once in accordance with international standards--single search and a single examination which will satisfy the other countries. And so the applicant only has to do the basic job once, and some government authority has to do it just once. So out of all this is possibilities of attaining a tremendous amount of the potential that could be gained under an international patent by harmonizing approaches. By eliminating this duplicative effort the patent offices and the applicants save maybe three-quarters of the ultimate potential that could be realized. And besides, once you have a system going like this with close cooperation among the countries it promotes a form, or machinery, or mechanism to make further changes down the road in the future, which you can't do just by having everybody sit back in their own office and operate in their own way.

M: Why could not this be a project of the United Nations?

B: Well, there is a very effective secretariat in the field of patent, trademarks, and copyrights which administers the various conventions. The Paris Convention, the basic convention covering patents and trademarks, the Berne Convention that covers copyrights. They're very knowledgeable in this area. They're very effective and we think the most progress can be made in working through that organization, which incidentally has in recent years developed contracts with the U.N., UNITO and UNESCO. We think it a more effective operation to have international secretariat of these patent, trade mark and copyright conventions to lead the developments needed for the future while maintaining close liaison with the United Nations. The United Nations are really not technical experts in this field.

M: Well, it would just seem natural that such a world organization might emcompass that sort of thing, too. It might help solve this problem. Is there any--is there the same kind of difficulty with trademarks as there are with patents?

B: To a certain extent there are some things that aresimilar, but--

M: Do you have to register a trademark in every country, too?

B: You have to register a trademark in every country. And there actually is in existence an international treaty for simplifying the filing of trademark applications around the world. One of the things we're looking at is the question of U. S. joining that particular agreement, although at the moment I think the feeling is that not <u>that</u> particular agreement but if certain modifications could be made in the agreement that it could be attractive to the United States and a number of other major countries that have not joined it, such as England, Canada, the Scandinavian countries, Japan and the like. So you've got the treaty in existence, but there's only some 15 or 20 member countries, and if it could be modified a bit you could probably get the world to join. But it would basically sort of simplify the application for trademarks. It probably will--maybe never come

about that you will have a single international trademark that will cover the world, because you'll find there are many trademarks that are used domestically. To try to find a single trademark that would apply around the world is a very difficult sort of thing to do. So if you had many international registrations that would automatically cover the whole world you would probably find out that this would cause some interference with local manufacturers.

M: The difficulty in applying trademarks is what, use of letters, symbols, and this sort of thing? This would mean different things to different people.

B: Yes, this is sort of another factor, whereas in patents you're talking about an invention and this is a fairly definite sort of thing. You can describe it in Japanese, or describe it in Russian, or in German, or in English, but it's still the same sort of thing. In trademarks its a little bit different. Trademarks relate to a particular manufacture. They actually identify to the public who is the manufacturer of this goods. So its a different situation than in patents, but nevertheless [I] feel that things could be simplified considerably in the application for trademarks.

M: Do copyrights fall into this same sort of difficulty?

B: Well, copyrights is not under our juristiction. It's under the Library of Congress, the Registrar of Copyrights.

M: Well sometimes they lump trademarks and copyrights together.

B: Yes, and in many countries these three are handled under the same administration. As a matter of fact, the international secretariat of the convention covers patents, trademarks and copyrights, so there are somewhat similar problems in the copyright area. In other words if you come up with a new musical composition how do you effectively obtain protection around the world and that's why you have this Berne Convention, for example, which incidentally the United States is not a member of. There happens to be a competing convention called the International Copyright Convention, of which the U.S. is a member, and I

think throughout the world they're going to try to bring these two conventions together in a single approach in the world which say the U. S. could join.

M: To clear up a point--what was the name of the other convention?

B: International Copyright Convention.

M: And the other one?

B: It's the Berne Convention.

M: Berne? How's that spelled?

B: B-E-R-N-E, I guess, that's the city--the diplomatic conference is held in Berne, Switzerland.

M: I see. (Our transcriber will want to know about that). Is the lifetime of a patent satisfactory to you?

B: At the present time in the United States, the life of a patent is 17 years from the date of grant. Under the proposed bills in Congress, in which there is a general agreement, the term would be changed to run 20 years from the date of filing the application.

M: This would include those items that are called "patent pending?"

B: Yes. You would not have any protection until your patent was granted, just like under the present law, but the term would be measured from the date of filing. Twenty years thereafter it would expire, whereas now it runs 17 years from the date of grant.

M: Well, what's the advantage of having it from the date of filing then?

B: Well, it eliminates any incentive for delaying tactics. You see, now if you had an invention that you thought might not get into the commercial picture for 5 years or more, there would be an incentive to delay the prosecution in the patent office for another five years or so, because then your grant would run 17 years from the date of grant. Or, let's put it this way, why would you be interested in moving along expeditiously in the patent office when in effect it would reduce your effective patent term. But as long as you measure

it from the date of filing then there is no incentive to delay and you should be agreeable to moving things along as quickly as you can. As a matter of fact it works to your advantage because the earlier you would get your patent the sooner would your patent protection run. So you have nothing to gain by delaying, and you have everything to gain by moving along quickly.

M: What is the length of time between filing and granting the patent?

B: Well, at the present time its an average 2½ years. This was one of the serious situations we faced when I came into the office. It was running around 3½ years. Projections were that the system was going bankrupt and that this would grow to five years [or] even longer, which was an impossible situation to comprehend. Basically we had the fairly sizable backlog of patents and the intake of applications was around 90,000 a year, yet we were only handling about 75,000. So you could see you're going in the red each year and the number of applications was increasing each year and <u>something</u> had to be done. This is just impossible to consider, so we--through what we call a streamlined examining program, and slightly higher budget--have been able to get our rate of handling cases up over 100,000 a year now at this point. So with the intake of around 90,000 we are reducing the backlog and we have cut the time from 3½ years to 2½ years. Our goal is a year and a half, which is, I think, a generally agreed upon a good period of time. In other words its enough time to allow the applicant and the patent office to give an effective examination of the application, yet not so long that it creates problems for patent applications, competitors delay in disclosing the technology and the like.

M: What was it you did, specifically, to speed up the process?

B: Well, we've done many, many things. There was not any single thing that could be done that would solve the whole problem. We did things like encourage the examiners to use the phone more. In other words if he could see that

something could be cleared up the attorney who was handling the case and talking it over with him, do that by all means rather than going to all the trouble of dictating a letter, having it typed up, sent out with a period of six months to reply. Another thing we did is saying that well, we're to try to dispose of each case on the second action as distinguished from going on to a third action, a fourth action, a fifth action, and just on and on and on.

M: Now you mean by an action what?

B: Well we mean a written statement from the patent officer in regard to our views on the patentability of the invention. Another thing we did is instead of having six months to respond to one of our actions, we cut this to three months. So we eliminated the necessity of going through a third action which could say, oh, 10-15-20 percent of your time that way. We're also getting cases back in the office much more quickly which was very important to us because we had nearly 20 percent turn-over of our examiners. So if this process proceeded through three actinns and there was six months to a year between actions, chances are that the examiner who handle the case initially was gone, and somebody else had to pick it up and study it all over again. Furthermore, even where you had the same examiner, he would see that case again in about three months and act on it. So it was fresh in his mind, whereas it wouldn't be under the previous procedure, which actually about a year and a half before he'd look at it again. By then he'd probably forgotten all about the case. So these were just some of the things we did. We've done many other things too, all of which added a little productivity here and there so the net result is we've increased our productivity 30 to 40 percent.

M: Is there any room for data processing in this area?

B: Yes, it's been recognized for at lease since the end of World War II that computers and similar data processing equipment should find a great

application in our operations which involves basically searching the world's technical literature. The patent office in the early 50's did start an effort of research on this and developed a few mechanized search systems. I think everybody will agree, in the long run, that this is what we're going to need as well as the scientific community in general to just handle this mass of technical information that's published each year. But it's going to be a very slow process, I think. In the early 1960's, under Commissioner Ladd, we did suggest the concept of some international cooperation in research among patent offices, on mechanized search systems. This was started, I think, around 1962. Very little progress has been made, in one sense, in having developed actually operating mechanized search systems, but I think a considerable amount of valuable work has been done in learning how to work with other countries, which is important to move internationally. Just next month we have a meeting in Geneva of this organization that we sort of established to re-assess our program, where we've come in the last six year? what are the present problems? what's the future? where are we going? And we've expanded the concept from not only mechanized search but to include the use of microform, patent printing, translations--everything that's involved in the handling of technical information.

M: If you can put some of your work into computers and data processing equipment will this speed up your process?

B: Well, it certainly should but there are problems. Part of it is the research really has not completely demonstrated what would be the makeup of these mechanized search systems so that you would get the right results, which is very important in our case. Another one of the problems of course is putting the information into the system, which at the moment about the only way you can get it in is to have a professional read through a document, and select certain key terms that then would be put in machine form. If

you figure there's perhaps 12 million patent documents in existence and the professionals can maybe analyze maybe a half-dozen or so documents a day, you can see the tremendous amount of investment that has to go into such a system. We hope within the next 6 months to start putting all of the information on our newly issuing patents into complete machine form, which will start creating a bank of all of the technical terms in machine form for future eventual searching by computer of the full text. Of course, it takes years and years to develop this bank, but in the meantime we can print the patents by what's called computer photocomposition and which reduce our printing costs while we're building this bank of technical information for the future.

Then, of course, there's devices known as optical scanners, which may be able to read the written word and put it into machine form. So these things are coming along but it's going to be a slow process over the next decade or two to really get to the point where say maybe 50 percent of your searching can be done by machines. There's some areas that probably never will be, partly because there's just not enough activity there--like in buggy whips. There's just not enough searchers to justify all the costs of putting all those documents in. Also, some areas may not be susceptible to describing something in words sufficiently that you could actually--search is something that involves sort of contours or this or that that you just can't describe effectively for a machine to search.

M: Well in the processing of a patent application, this 2½ year span, what is it that takes the most time? Is it the search that takes the time or the negotiations between lawyers, or what?

B: We probably spend only 15 or 20 hours on a given case. That's just how much time we spend. At the moment, the time is something like this, that it's aboout a year and a half on an average before we pick up your case, because of the backlog. We would like to cut this back to six months, which--or around six

to eight months or so. We need that sort of amount of time to allow us to accumulate all of the published information which is mailed to us around the world and processed into our search files. But at the moment--so we'd like to bend this back about a year, and that would cut us from 2½ years to basically the year and a half. At eighteen months you would get a first action, and about three months later you would get the response from the attorney. The examiner would pick it up in about a month and issue another action, which would be the final action in the case, to come back in about three months and then say the case would be allowed. Then the applicant has three months by law to pay his final fee and then it takes us about 2 months then to process it through our issue operations and the government printing office. All this addsu up to about 30 months. So where we want to cut things down is in this front end, and get to a first action in about 6 to 8 months and then the timetable comes out to be about 18 months.

M: Yes. That'd bring you to your goal of a year and a half then. What happens if a man wants to appeal your decision, can dh do that?

B: Yes if our examiners refuse a patent then the applicant has the right to appeal to the Board of Appeals, which is a separate organization within the patent office. If he disagrees with that decision he has the right to appeal to the Federal Courts through two avenues. One is to--and most of the appeals go to a special court called Court of Customs and Patent Appeals, but he also has his choice to appeal to the District Court of the District of Columbia, and appeal from that decision to the Court of Appeals. And he always has the right to see if the Supreme Court would take his case but this is practically never done. They would primarily only take cases in which there was a difference between the two routes of appeal. Incidentally within the last four years the Patent Office did petition the court to

hear a decision of the Court of Customs and Patents Appeal that we disagreed with, which represented a conflict with the holding in the other avenue of appeal and the Supreme Court did take the case and upheld the Patent Office.

M: I would assume that cases that are set on appeal are rather rare? Is that right?

B: Yes, this is right. Out of 100,000 cases a year that we process about 7 or 8 thousand are appealed to the Board of Appeals, and of those only about 250 or so are appealed to the courts, so it drops off quite rapidly.

M: I see. In your years as Commissioner, have you had much contact with the President?

B: Other than that initial contact with him they've been only with other groups of people. I was invited to a White House luncheon for the--I think it was the Premier of Turkey. I was over with the other secretarial officers and bureau heads just after the President announced his proposal to combine Commerce and Labor. [I] was over there with the President's Commission on the Patent's System that he had appointed, to go over their final report and for him to thank the members, particularly the members from the private sector, for their contributions for the studies that went into the report. Then, for example, at Secretary Smith's swearing in--

M: Have you had anything to do with any of the task forces studying special problems?

B: No, no direct contact.

M: Were you consulted about the idea of combining the Departments of Commerce and Labor?

B: No.

M: Has there been any complaint that you would have in the support of the President for your operation here?

B: No, no complaint. The President of course introduced a bill including most of the recommendations of the President's Commission on the Patent System for amending the law that was his own bill, and I think the support from the White House in regard to our international efforts has been there. I think on budgets, the Bureau of the Budget, speaking for the President, has received our requests quite favorably. We haven't gotten everything we'd like but basically I think they've been pretty darn reasonable and have included program increases as far as I recall in our various budgets, so I think support has been very good.

M: Good. I have one last point that I'd like your response to. In 1833 the Commissioner of the Patent Office commented that "the Patent Office ought to close down because everything of value had been invented!" This was in 1833. What kind of a reaction would you have to that today?

B: Well, I think that turned out to be not a very good prediction and that it's just the opposite. Each year we receive more and more applications and I don't think we're ever going to run out of inventions.

M: People are more inventive than ever then?

B: Yes, I think definitely so. So I think that was just a very poor prediction, and we certainly had 160 years to prove that was wrong, I think that all signals are that things are on the up and up.

M: Well, I thank you for the time for the interview.

B: You're welcome.

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By Edward J. Brenner

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