To conclude, appellant neither preserved his objections below in accordance with the FRCP nor attempted to rebut appellee's prima facie case of abandonment. He now asks us to put on blinders as we review the evidence on record. The equities of the case do not favor a party who has not only circumvented the FRCP, but also failed to present rebuttal evidence to carry his burden in the case. His appeal must fail. For the reasons stated above, I would affirm the board's decision that appellant's mark is abandoned. [End Text]

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TWO TRADE ASSOCIATIONS VOICE SUPPORT FOR LICENSE APPROACH IN GOVERNMENT PATENT POLICY

Now that advocates of a title approach in Government patent policy have had their say before Congress (see 358 PTCJ A-11, 360 PTCJ A-4, D-1), two major trade associations have asked that their contrary views he added to the record of hearings held before the Senate Subcommittee on Monopoly and Anticompetitive Activities. In statements submitted to subcommittee chairman Gaylord Nelson (D-Wis.), both the Aerospace Industries Association of America (AIA) and the National Security Industrial Association of America (NSIA) criticize the notion that the Government should take title to all inventions resulting from Government contracts. Instead, they argue, contractors should retain their inventions and grant a license to the Government.

In a statement submitted January 26th, AIA argues that "a title policy is not in the best interest of the public." To support its position, AIA directs the subcommittee's attention to a Colloquium held in January 1976 by the Energy Research and Development Administration (ERDA). See 316 PTCJ A-2. Most of the participants in the Colloquium spoke in opposition to the title policy imposed on ERDA by Congress.

NSIA, in a statement submitted January 31st, declares that a policy permitting the Government to take title "would defeat the inherent incentives of the U.S. patent system and the ultimate result would be detrimental to the public."

Both AIA and NSIA express strong support for the bill introduced by Representative Ray Thornton (D-Ark.), H.R. 6294 (see 324 PTCJ A-6, 325 PTCJ A-4, D-1), under which patent rights would presumptively belong to the contractor doing the federal research, subject to the Government's retention of "march-in" rights to order the licensing of a patent if it isn't being commercialized. Thornton's bill, says NSIA, "embodies an equitable sharing of patent rights between Government and industry." According to AIA, Thornton's bill adequately "protects the public should the contractor fail to satisfy public needs."

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PATENT INFRINGEMENT CLAIM WITHSTANDS SUMMARY DISMISSAL MOTION; UNFAIR COMPETITION CLAIM AXED

Because the record is barren as to the level of ordinary skill in the pertinent art, the U.S. District Court for Eastern Pennsylvania refuses to summarily dismiss a patent suit on obviousness grounds. However, the court does dismiss an additional charge of unfair competition because the patentees merely license their invention and do not sell or manufacture any product in direct competition with the defendant. (Sims v. Mack Trucks, Inc., 2/8/78)

Plaintiffs brought suit alleging infringement of a patent for a Forward Discharging Transit Concrete Mixer. A claim for unfair competition was also asserted. Defendant, Mack Trucks, moved pursuant to Fed.R.Civ.P. 56(b) for summary judgment as to each count. According to Mack, plaintiffs' patent is invalid for obviousness. Defendant also contended that plaintiffs' unfair competition count must fall for lack of standing to sue.