

Complaint

IN THE MATTER OF
THE RAYMOND LEE ORGANIZATION, INC., ET AL.

FINAL ORDER, OPINION, ETC., IN REGARD TO ALLEGED
VIOLATION OF THE FEDERAL TRADE COMMISSION ACT

Docket 9045. Complaint, July 15, 1977 — Final Order, Nov. 1, 1978

This order, among other things, requires a New York City idea promotion company and two individual parties to cease misrepresenting the nature and value of their services; their qualifications and ability to refine and successfully promote inventions, ideas, and products; and the probability of financial gain to their clients. Respondents are further required to include specified statements in promotional literature and contracts which cite the number of recent customers who achieved financial success through the firm's efforts; disclose that additional costs may be incurred; and advise potential purchasers that the company makes no evaluations as to the patentability and marketability of submissions. Additionally, the order requires respondents to provide purchasers with a ten-day cooling-off period in which to cancel their contracts and receive full refunds.

Appearances

For the Commission: *Harriet Guber Mulhern* and *Myer S. Tulkoff*.
For the respondents: *Malcolm I. Lewin* and *Edgar J. Royce*, *Lans, Feinberg & Cohen*, New York City for Raymond Lee Organization, Inc. and Raymond Lee and *Michael C. Devine*, *Schwenke & Devine*, New York City for Lawrence Peska.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that The Raymond Lee Organization, Inc., a corporation, Raymond Lee, individually and as an officer of said corporation, and Lawrence Peska, individually and as a former officer of said corporation, hereinafter sometimes referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating charges in that respect as follows:

PARAGRAPH 1. Respondent The Raymond Lee Organization, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office and place of business located at 230 Park Ave., New York, New York. Affiliated offices are located at 20 Providence St., Boston, Massachusetts; 230 Peachtree St., N.W., Atlanta, Georgia; 625 North Michigan

Ave., Chicago, Illinois; [2] 4601 Madison Ave., Kansas City, Missouri; 666 Sherman St., Denver, Colorado; 6060 North Central Expressway, Dallas, Texas; 1 Allen Center, Houston, Texas; 5455 Wilshire Boulevard, Los Angeles, California; One Embarcadero Center, San Francisco, California; One Place Ville Marie, Montreal 2, Ontario; and 700 West Georgia St., Vancouver 1, British Columbia.

Respondent Raymond Lee is an individual and is the principal owner and officer of the corporate respondent. He formulates, directs and controls the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth. His address is the same as that of the corporate respondent.

Respondent Lawrence Peska is an individual and a former officer of the corporate respondent and, while an officer, directed, formulated and controlled the acts and practices of the corporate respondent, including the acts and practices hereinafter set forth.

PAR. 2. Respondents are now, and for some time in the past, have been engaged in the advertising, solicitation, offering for sale, sale and distribution of services to inventors and prospective inventors and to other persons with ideas for products in connection with the purported development, advice, and research for patent application, alleged introduction to industry and the purported marketing, sale or licensing of said inventions or ideas.

In the course and conduct of their business, respondents, their employees, agents or representatives, perform preliminary patent searches, prepare patent applications on inventions for submission to the United States Patent Office and to foreign patent offices, and compile "Notices of Invention" for distribution to manufacturers.

COUNT 1

PAR. 3. The allegations of Paragraphs One and Two above are incorporated by reference in Count I as if fully set forth verbatim. [3]

PAR. 4. Respondents have contracted to sell and have sold such services to purchasers located throughout the United States and have caused, and are now causing their services to be advertised, offered for sale and sold by means of newspaper and magazine advertisements, flyers, brochures and other printed literature of interstate circulation as well as by direct personal contact with prospective purchasers through letters, contracts, payments of monies and by other documents and instruments which have been transmitted by means of the United States mail, from respondents' principal place of business in New York State to such prospective purchasers located in numerous other states. There has been present at all times mentioned herein a substantial course of trade in the

sale of respondents' services, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act. Respondents' volume of business in the sale of services to inventors and to other persons with ideas for products is and has been substantial.

PAR. 5. Respondents are now and at all times mentioned herein have been in substantial competition in or affecting commerce with other corporations, firms and individuals engaged in the advertising, offering for sale and sale of services of the same general kind and nature as those advertised, offered for sale and sold by respondents.

PAR. 6. In the course and conduct of their aforesaid business, and for the purpose of inducing the purchase of their services, respondents have made, and are now making, certain statements and representations in connection with the advertising, offering for sale, sale and distribution of said services. By means of advertisements in various publications of general circulation, other advertising and promotional material, letters mailed to prospective clients, contracts or oral or written sales presentations, respondents have made, and are now making statements and representations regarding respondents' business and professional qualifications and the nature and value of their services. [4]

PAR. 7. By and through the statements and representations alleged in Paragraph Six, herein, respondents have represented, and are now representing, directly or indirectly, that:

1. Respondent Raymond Lee is a registered patent attorney, a registered patent agent, or a licensed attorney.

2. Respondents are qualified or recognized by the United States Patent Office to prepare, file or prosecute applications for patents before said office on behalf of their customers.

3. Purchasers of respondents' services do not need to employ or pay extra fees for the services of outside patent counsel, or other outside specialists, after they have entered into a contract with respondents as respondents provide all the necessary services ranging from patent preparation and prosecution through ultimate marketing of the patented item.

4. Respondents substantially develop or technically refine inventions or ideas for new products submitted to them by their customers.

5. Respondents actively and successfully introduce, promote, and negotiate, on behalf of their customers, with manufacturers who have notified respondents of their interest in acquiring rights to inventions or ideas for new products in the area of the customers' inventions or ideas.

6. Respondents provide potential purchasers of their services

with a fair, adequate and thorough appraisal of the patentability of their inventions or the merit and marketability of their ideas for a new product, on which said potential purchasers can rely prior to contracting with respondents. [5]

7. Respondents act without unnecessary delay on behalf of their customers in an effort to gain patent protection for the customers' ideas or inventions.

PAR. 8. In truth and in fact:

1. Respondent Raymond Lee is not a registered patent attorney, a registered patent agent, or a licensed attorney.

2. Respondents are not qualified or recognized by the United States Patent Office to prepare, file or prosecute applications for patents before said office.

3. Purchasers of respondents' services do need to employ or pay extra fees for the services of outside patent counsel, or other outside specialists, after they have entered into a contract with respondents as respondents do not provide all the necessary services ranging from patent preparation and prosecution through ultimate marketing of the patented item.

4. Respondents, in a significant number of instances, do not substantially develop or technically refine inventions or ideas for new products submitted to them by their customers.

5. Respondents, in a significant number of instances, do not actively and successfully introduce, promote and negotiate, on behalf of their customers, with manufacturers who have notified respondents of their interest in acquiring rights to inventions or ideas for new products in the area of the customers' inventions or ideas.

6. Respondents, in a significant number of instances, do not provide potential purchasers of their services with a fair, adequate and thorough appraisal of the patentability of their inventions or the merit and marketability of their ideas for a new product, on which potential purchasers can rely, prior to contracting with respondents. [6]

7. Respondents, in a significant number of instances, do not act without unnecessary delay on behalf of their customers in an effort to gain patent protection for the customers' ideas or inventions.

Therefore, the statements, representations, acts and practices regarding respondents' qualifications and services as set forth in Paragraph Seven were, and are, false, misleading, deceptive and unfair.

PAR. 9. The use by respondents of the aforesaid false, misleading, deceptive and unfair statements, representatives, acts or practices, as herein alleged, has had, and now has, the tendency and capacity

to mislead and deceive members of the public into the erroneous and mistaken belief that such statements, representations, acts or practices were and are true and complete and into the purchase of respondents' products or services and the payment of respondents' fees by reason of said erroneous and mistaken belief.

PAR. 10. The aforesaid acts and practices of respondents, as herein alleged are to the prejudice and injury of the public, respondents' competitors, registered Patent Attorneys and Patent Agents and constitute unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT II

PAR. 11. The allegations of Paragraphs One through Ten above are incorporated by reference in Count II as if fully set forth verbatim.

PAR. 12. In the further course and conduct of their business, respondents have failed to disclose to potential purchasers of their services the following material facts:

1. That The Raymond Lee Organization, Inc., as the assignee of an interest in its clients' [7] inventions, and in the absence of any agreement to the contrary, may as a joint owner of any resulting patents, make, use or sell the patented invention or license other persons or firms to make, use or sell the patented invention without obtaining the consent of and without accounting to respondents' clients.

2. That respondents are not registered patent attorneys or patent agents and are therefore precluded from preparing, filing or prosecuting patent applications before the United States Patent Office.

PAR. 13. Knowledge of such facts would be of importance to potential purchasers in their evaluation of the nature and value of the services offered by respondents. Thus, respondents have failed to disclose material facts, which if known to potential purchasers, would be likely to affect their consideration of whether or not to enter into a contract with respondents.

PAR. 14. Respondents' failure to disclose material facts, as herein alleged, has had, and now has, the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that such statements, representations, acts or practices were and are true and complete and into the purchase of respondents' products or services and the payment of respondents' fees by reason of said erroneous and mistaken belief.

PAR. 15. The aforesaid acts and practices of respondents, as herein

alleged are to the prejudice and injury of the public, respondents' competitors, registered Patent Attorneys and Patent Agents and constitute unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT III

PAR. 16. The allegations of Paragraphs One through Fifteen above are incorporated by reference in Count III as if fully set forth verbatim. [8]

PAR. 17. In the further course and conduct of their business, respondents have utilized in various brochures, flyers and in other advertising materials, the names, photographs and quotations of public figures, including members of the United States Congress, a former Mayor of New York City, and other persons, without their knowledge, consent or authorization. In many such instances, general comments made by such persons in correspondence with respondents have been taken completely out of context in such fashion as to mislead prospective purchasers of respondents' services into the erroneous and mistaken belief that the persons so named, pictured or quoted have endorsed or utilized respondents' services or that they have used such services with complete satisfaction.

PAR. 18. The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts or practices, as herein alleged, has had, and now has, the tendency and capacity to mislead and deceive members of the public into the erroneous and mistaken belief that such statements, representations, acts or practices were and are true and complete and into the purchase of respondents' products or services and the payment of respondents' fees by reason of said erroneous and mistaken belief.

PAR. 19. The aforesaid acts and practices of respondents, as herein alleged are to the prejudice and injury of the public, respondents' competitors, registered Patent Attorneys and Patent Agents and public officials and constitute unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act.

COUNT IV

PAR. 20. The allegations of Paragraphs One through Nineteen hereof are incorporated by reference in Count IV as if fully set forth verbatim. [9]

PAR. 21. Respondents' aforesaid unfair or deceptive acts or

practices have induced and are now inducing persons to pay over to respondents substantial sums of money for contracts whose value to the said persons for services by respondents was and is of little or no value. Respondents have received said sums and have failed to offer to refund, and refuse to refund such money to such persons.

PAR. 22. The use by respondents of the aforesaid practices and their continued retention of the said sums, as aforesaid, is an unfair act or practice in or affecting commerce and a continuing violation of Section 5 of the Federal Trade Commission Act.

INITIAL DECISION BY ERNEST G. BARNES, ADMINISTRATIVE
LAW JUDGE

JULY 8, 1977

PRELIMINARY STATEMENT

On July 15, 1975, the Federal Trade Commission issued its complaint in this matter charging the respondents named therein with violation of Section 5 of the Federal Trade Commission Act. The respondents named in the complaint are Raymond Lee Organization, Inc., a corporation, Raymond Lee, an individual and an officer of Raymond Lee Organization, Inc., and Lawrence Peska, an individual and a former officer of Raymond Lee Organization, Inc. Respondents are alleged in the complaint to be engaged in the advertising, solicitation, offering for sale, sale and distribution of services to inventors and prospective inventors and to other persons with ideas for products in connection with the purported development, advice, and research for patent application, alleged introduction to industry and the purported marketing, sale or licensing of said inventions or ideas. In the course and conduct of their business, respondents, their employees, agents or representatives, perform preliminary patent searches, prepare patent applications on inventions for submission to the United States Patent and Trademark Office and to foreign patent offices, and compile and distribute to manufacturers informational brochures or notices concerning said inventions or ideas.

The complaint in Count I charges that respondents for the purpose of inducing the purchase of their services, have, by means of advertisements in various publications of general circulation, in other advertising and promotional materials, in letters and contracts mailed to potential clients, and in oral and written presentations, made statements and representations regarding respondents' business and professional qualifications and the nature and value of their services. By and through the statements and representations it

is alleged that respondents have represented, directly or indirectly that: [2]

(1) Respondent Raymond Lee is a registered patent attorney, a registered patent agent, or a licensed attorney;

(2) Respondents are qualified or recognized by the United States Patent and Trademark Office to prepare, file or prosecute applications for patents before said Office on behalf of their customers;

(3) Purchasers of respondents' services do not need to employ or pay extra fees for the services of outside patent counsel, or other outside specialists, after they have entered into a contract with respondents as respondents provide all the necessary services ranging from patent preparation and prosecution through ultimate marketing of the patented item;

(4) Respondents substantially develop or technically refine inventions or ideas for new products submitted to them by their customers;

(5) Respondents actively and successfully introduce, promote, and negotiate, on behalf of their customers, with manufacturers who have notified respondents of their interest in acquiring rights to inventions or ideas for new products in the area of the customers' inventions or ideas; [3]

(6) Respondents provide potential purchasers of their services with a fair, adequate and thorough appraisal of the patentability of their inventions or the merit and marketability of their ideas for a new product, on which said potential purchasers can rely prior to contracting with respondents; and

(7) Respondents act without unnecessary delay on behalf of their customers in an effort to gain patent protection for the customers' ideas or inventions.

In truth and in fact, it is alleged, the statements and representations were, and are, false, misleading, deceptive and unfair, and have the tendency and capacity to mislead and deceive members of the public into the purchase of respondents' products or services and the payment of respondents' fees.

Count II of the complaint alleges that respondents have failed to disclose to potential purchasers of their services the following material facts:

(1) That The Raymond Lee Organization, Inc., as the assignee of an interest in its clients' inventions, and in the absence of any agreement to the contrary, may as a joint owner of any resulting patents, make, use or sell the patented invention or license other

persons or firms to make, use or sell the patented invention without obtaining the consent of and without accounting to respondents' clients; and [4]

(2) That respondents are not registered patent attorneys or patent agents and are therefore precluded from preparing, filing or prosecuting patent applications before the United States Patent and Trademark Office.

Respondents' failure to disclose these material facts, it is alleged, has had the tendency and capacity to mislead and deceive members of the public into the purchase of respondents' products or services and the payment of respondents' fees by reason of said erroneous and mistaken belief.

Count III of the complaint alleges that respondents have utilized in various brochures and in other advertising materials, the names, photographs and quotations of public figures, including members of the United States Congress, a former Mayor of New York City, and other persons, without such persons' knowledge, consent or authorization. In many such instances, general comments made by such persons in correspondence with respondents have been taken completely out of context in such fashion as to mislead prospective purchasers of respondents' services into the erroneous and mistaken belief that the persons so named, pictured or quoted have endorsed or utilized respondents' services or that they have used such services with complete satisfaction.

The use by respondents of the aforesaid false, misleading and deceptive statements, representations, acts or practices, it is alleged, has had the tendency and capacity to mislead and deceive members of the public into the purchase of respondents' services and the payment of respondents' fees by reason of said erroneous and mistaken belief.

Count IV of the complaint alleges that respondents' unfair or deceptive acts or practices have induced persons to pay over to respondents substantial sums of money for contracts for services by respondents, which services were and are of little or no value to said persons, and respondents have failed to offer to refund, and refused to refund such money to such persons. The retention of such sums is alleged to be a continuing violation of Section 5 of the Federal Trade Commission Act. [5]

Respondents Raymond Lee Organization, Inc. (hereinafter "RLO") and Raymond Lee ("Lee") filed their answer to the complaint on October 7, 1975, and respondent Lawrence Peska (hereinafter "Peska") filed his answer on October 6, 1975.

In their answer, RLO and Lee admitted that the corporate respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, and that its principal place of business is located at 230 Park Ave., New York, New York 10017. It was further admitted that respondent Lee is an individual and an officer of RLO.

Respondents RLO and Lee further admitted in their answer that individual respondent Lee is not a registered patent attorney, is not a registered patent agent and is not a licensed attorney, and that respondents RLO and Lee are not qualified or recognized by the United States Patent and Trademark Office to prepare, file or prosecute applications for patents before said Office. Respondents RLO and Lee denied all the other charges in the complaint.

Respondent Peska admitted in his answer that he is an individual and a former officer of corporate respondent RLO, and that he was Vice President of RLO from approximately September, 1964 through November, 1972. Respondent Peska denied in his answer all other charges in the complaint, including allegations that he formulated and controlled the acts and practices of RLO during the period of his employment.

In their answer respondents RLO and Lee stated "The alleged practices complained of were the responsibility of respondent Lawrence Peska, whose employment and relationship with RLO was terminated at or about which time the alleged practices complained of ceased" (RLO Ans., p. 4).

Four pretrial conferences were held as follows: November 14, 1975 (PH. Tr. 1-50); February 20, 1976 (PH. Tr. 51-82); April 12, 1976 (PH. Tr. 83-121); and August 5, 1976 (PH. Tr. 122-182). [6]

During the prehearing procedures and the actual trial, several orders of significance were issued. At the prehearing conference held April 12, 1976, the undersigned ruled that complaint counsel must establish a *prima facie* violation of Section 5 by Peska in his capacity as an officer of RLO prior to November 1972, before evidence relating to the activities of Peska and Lawrence Peska Associates, Inc.,¹ (hereinafter "LPA") subsequent to November 1972 would be admitted into evidence (PH. Tr. 96-102). This order, orally made at the prehearing conference, was later reiterated in a written order dated August 20, 1976.² On October 7, 1976, the undersigned made a determination, and a ruling on the record at the October 7th

¹ Lawrence Peska Associates, Inc. is wholly owned by Lawrence Peska (CX 2607B; Peska, Tr. 4780, 4931-33, 7093, 7175-76).

² Order (1) Denying Respondents' ("RLO") Motion for Reconsideration of Motion for Extension of Time or Alternatively for Permission to Appeal to Commission and (2) Certifying to the Commission RLO's Motion for Joinder of Another Party, August 20, 1976, p. 5.

hearing, that a *prima facie* showing of a violation of Section 5 had been made by complaint counsel as to Peska (Tr. 2580-2584, 2620-2631, 2697-2701). Thereafter, complaint counsel was permitted to introduce evidence relating to the conduct, acts and practices of Peska and LPA subsequent to November 1972, for the sole purpose of demonstrating the need for an order applicable to Peska.

By motion filed August 16, 1976, RLO requested that LPA be joined as a respondent in this proceeding. Upon certification, the Commission determined not to joint LPA as a respondent. (Order Denying Motion for Joinder of Another Party, September 13, 1976).

On November 15, 1976, RLO and Lee filed a motion to withdraw this matter from adjudication for the purpose of considering a consent settlement (Motion To Settle Administrative Proceeding, November 15, 1976). Complaint counsel did not execute the proposed consent agreement and opposed the motion to settle the proceeding. After certification of the motion, the Commission determined there was not a likelihood of settlement and denied the motion (Order Denying Respondents Motion To Withdraw Matter From Adjudication, December 14, 1976). [7]

On December 17, 1976, RLO and Lee filed a motion for a mistrial because of complaint counsel's communications with the media during the hearings. Peska submitted a statement supporting the motion for a mistrial. These motions were certified to the Commission and, by order dated April 7, 1977, the Commission denied the motion.

Trial of this matter commenced September 20, 1976 and was completed February 3, 1977. During this period forty (40) days of hearings were held and a total of eighty-six (86) witnesses were heard.³ Approximately fifteen hundred (1500) exhibits were received in evidence, consisting of several thousand pages, and nearly nine thousand (9,000) pages of transcript are in the record.

Witnesses who testified in this proceeding included an official of the United States Patent and Trademark Office, several public figures, registered patent attorneys, licensing experts, new product officials from industry, consumers, former and current employees of respondents, and the individual respondents. Every opportunity was extended to all parties in this proceeding to present all relevant and material evidence. Respondent Peska's counsel did not elect to participate in all the hearings herein (See Tr. 2578-2583, 2630, for example).

³ Complaint counsel called fifty-two witnesses, three of whom were recalled for testimony in rebuttal. Respondents called a total of thirty-four witnesses, one of whom was recalled in surrebuttal. Witnesses Peska and Dicks were called by both complaint counsel and respondents.

This proceeding is now before the undersigned for decision based upon the allegations of the complaint, the answers, pleadings, evidence of record, and the proposed findings of fact, conclusions and legal authority submitted by all parties. All proposed findings of fact, conclusions, and arguments not specifically adopted or accepted herein, are rejected as either inappropriate or immaterial. All motions not previously ruled upon, either specifically or as a consequence of this initial decision, are hereby denied. The undersigned, having considered the entire record, makes the following findings of fact, conclusions and issues the order set out at the end hereof. [8]

The findings of fact made herein include references to the principal supporting evidentiary items in the record. Such references are intended to serve as convenient guides to the testimony and exhibits supporting the findings of fact, but do not necessarily represent complete summaries of the evidence considered in arriving at such findings.

References to the record are set forth in parentheses, and certain abbreviations, as hereinafter set forth, are used:

Tr. - Transcript, preceded by the name of the witness and followed by the page number.

CX - Commission's Exhibit, followed by number of exhibit being referenced.

RX - Respondent Lee and RLO's Exhibit, followed by number of exhibit being referenced.

RPX - Respondent Peska's Exhibit followed by number of exhibit being referenced.

RLO Ans.- Answer filed on behalf of respondents Lee and RLO.

Peska Ans. - Answer filed on behalf of respondent Peska.

CPF - Complaint Counsel's Proposed Findings.

RPF - Respondents Lee and RLO's Proposed Findings.

RRF - Respondents Lee and RLO's Reply to Complaint Counsel's Proposed Findings. [9]

FINDINGS OF FACT

I. THE RESPONDENTS AND THEIR BUSINESS

A. Identity of Respondents

1. Corporate respondent RLO is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its principal place of business located at 230 Park Ave., New York, New York 10017. RLO has affiliated offices located in Atlanta, Georgia; Chicago, Illinois; Denver, Colorado; Houston, Texas; Los Angeles and San Francisco, California; Montreal and Vancouver, Canada (RLO, Ans. § 1; Lee, Tr. 439, 445; CX 2805). Some of the RLO offices consisted of only telephone answering services (CX 2790-93, 2805; Lee, Tr. 471; Peska, Tr. 4824).

2. Corporate respondent RLO has affiliated corporations as follows:

Innovation Resources Corporation, 5455 Wilshire Boulevard, Los Angeles, California 90036, incorporated California 12/27/71;

International Technology Transfer, Ltd., Toronto-Dominion Centre, Toronto, Ontario M5H1A6, incorporated Ontario 12/13/71;

Napatco, Inc., 230 Park Ave., New York, New York 10017, incorporated New York 8/14/75;

Raymond Lee Organization of Colorado, Inc., 666 Sherman St., Denver, Colorado 80203, incorporated Colorado 12/4/72; [10]

Raymond Lee Organization of Texas, Inc., One Allen Center, Houston, Texas 77002, incorporated Texas 11/23/71;

Republic Industries, Inc., 230 Park Ave., New York, New York 10017, incorporated New York 3/5/68;

National Patent & Trademark Company, 898 National Press Building, Washington, D.C., incorporated Washington, D.C. 2/9/65 (CX 2606U, V, W).

Innovation Resources Corporation, International Technology Transfer, Ltd., Raymond Lee Organization of Colorado, Inc. and Raymond Lee Organization of Texas, Inc., are sales agents for RLO. Napatco, Inc. and National Patent Trademark Company offer patent

and trademark services for attorneys; and Republic Industries serves as an advertising agency for handling the advertising of RLO (CX 2606U, V and W; Lee, Tr. 431, 433-34).

3. Individual respondent Raymond Lee is now, and has been since its formation, President and sole stockholder and director of corporate respondent RLO (RLO Ans. § 1; Lee, Tr. 425, 427, 437; CX 2606). In his capacity as President, director and sole stockholder of RLO, Lee was instrumental in formulating, directing and controlling the acts and practices of RLO challenged in this proceeding (Lee, Tr. 444-45, 454-55, 462-65, 5020; Peska, Tr. 4791).

4. Individual respondent Lawrence Peska was, from approximately January 1967 through November 1972, Vice President of corporate respondent RLO and certain RLO subsidiaries and affiliates. From 1964 until RLO's incorporation in 1967, Peska was employed by Raymond Lee and National Patent and Trademark Company (which subsequently became an RLO affiliate corporation) (Peska Ans. ¶ 1, ¶ 3; Peska Affidavit attached to "Motion of Respondent Lawrence Peska for Summary Decision," dated October 31, 1975; CX 374B, 2601Q; Peska, Tr. 4780, 7100). The acts and practices instituted at RLO by Peska and challenged in this proceeding were not substantially changed after Peska's RLO employment terminated. [11] While an officer of RLO, Peska was instrumental in formulating, directing and controlling the acts and practices of RLO challenged in this proceeding (CX 377A-C, 2601Q, ¶ 15; Peska, Tr. 4829, 4846, 7100-01, 7302, 7306-07, 7667; Lee, Tr. 5079, 5085-88; Findings 221-225).

B. RLO's⁴ Business Operations

5. RLO has been, and is now, engaged in the business of providing patenting, development and marketing services to inventors and persons with ideas for new products (Lee, Tr. 431-34, 436; CX 2606U, V, W). From 1962 until 1967 Lee operated a sole proprietorship under the name Raymond Lee Organization, which provided services to inventors and persons with ideas for new products similar to those subsequently offered by RLO. RLO was incorporated in 1967 (Lee, Tr. 435-36).

6. RLO solicited clients through advertisements placed in newspapers, magazines, yellow pages of telephone directories, subway posters, brochures and flyers, and correspondence. Among the major newspapers and magazines utilized by RLO are *Popular Mechanics*,

⁴ "RLO" as used in subsequent findings detailing allegedly violative acts and practices occurring prior to November 1972 refers to respondents RLO, Lee and Peska collectively. "RLO" used in findings describing acts and practices occurring after November 1972 refers to respondents RLO and Lee.

Mechanics Illustrated, Popular Science, Field and Stream, TV Guide, New York Times, New York News, New York Post, Los Angeles Times, Dallas Times Herald, Chicago Tribune, and San Francisco Examiner (CX 2, 3, 7, 12, 13, 15, 20, 22, 24, 26-33; Lee, Tr. 549; Peska, Tr. 4893-94). Prior to 1972, some radio commercials were placed by RLO on local New York stations (Peska, Tr. 4892-93). RLO also conducted seminars in major U.S. cities for inventors for the purpose of acquainting inventors with the inventive process, including the development and marketing of new products, and soliciting clients for RLO (Lee Tr. 466-68). RLO's expenditures for advertising were substantial (CX 3035B, *in camera*).

7. In response to RLO advertisements, potential clients either telephoned an office of RLO or mailed in coupons asking for information, usually the free "Inventors Information Kit," which contained various RLO advertising and promotional materials and [12] a Record of Invention form. Some RLO clients from the New York City region initially contacted RLO by visiting the RLO office in New York City, or by visiting the office after a telephone call to RLO. Out-of-state clients were sent the Inventors Information Kit through the mail (Lee, Tr. 556; Coyle, Tr. 1544). Much of RLO's business is transacted through the mail and by telephone (Finding 24).

8. The Record of Invention form, when completed, constitutes a description of the potential client's invention or idea. A letter is included in the Inventors Information Kit urging an early return of the Record of Invention form to RLO (CX 116, 117, 119, 152, 174, 175). The Record of Invention form, when received at the RLO office, is forwarded to the Account Executive, who is essentially a salesman, responsible for the particular state in which the potential client resided (Coyle, Tr. 1545). If the Record of Invention form was not promptly returned, the Account Executive telephoned the potential client and urged a prompt response as "time is of the essence" (Duber, Tr. 4214). It was the function of the Account Executive to offer to the potential client the services of RLO in connection with his or her idea or invention as reflected on the Record of Invention form. CX 90 and 92 are completed Record of Invention forms.

9. RLO offered potential clients four different types of contracts: a Preliminary Product Research Agreement; a Development Contract; a Marketing Program; and a Canadian Patent and Marketing Program (Coyle, Tr. 1541-42). The usual sequence of events was:

- (1) the potential client contacted RLO in response to an advertisement;

(2) the potential client was mailed an Inventors Information Kit with a Record of Invention form enclosed; [13]

(3) the potential client completed and returned the Record of Invention form;

(4) the potential client was first offered the Preliminary Product Research Agreement which called for a search of the records of the United States Patent and Trademark Office to obtain a comparison with other developments in the area of the invention or idea and to provide information about some inventions which already had been developed in the field;

(5) after receipt of the results of the product research, the client was offered a development contract, which included the filing of a patent application and the offering of the invention or idea to industry as soon as patent pending status was obtained;

(6) concurrently with preparation of the United States patent application the client was offered the Canadian Patent and Marketing Program; and

(7) for potential clients who declined to enter into either the Preliminary Product Research Agreement or the development contract or who already had a patent status on the product or idea, a marketing program was offered which consisted of offering the product to industry. [14]

10. The Preliminary Product Research Agreement involves a search of prior patents in the United States Patent and Trademark Office ("Patent Office"). RLO's Preliminary Product Research Agreements are of three types and range in price from \$100 to \$300 (CX 2600B). A standard preliminary research service, in which a single researcher is assigned to research the records of prior patents in the Patent Office, is the usual contract which is sold to the clients and, in the past, this agreement cost the client \$100 (CX 189; Dicks, Tr. 855; Lee, Tr. 4987). The extended research agreement calls for two separate researchers independently searching the records of the Patent Office and presently costs the client \$195.00 (Lee, Tr. 4987; Dicks, Tr. 855). The expanded research agreement calls for three independent researchers and costs the client \$300 (Dicks, Tr. 855; Lee, Tr. 4987-91). The Preliminary Product Research Agreement is sent to the potential client accompanied by a letter from RLO "suggesting" that the preliminary product research be conducted "at once" (CX 96A, 131).

11. The researchers who conduct the preliminary patent searches are independent contractors located in Washington, D.C. and Virginia, and are paid by RLO approximately \$5.00 to \$8.00 on a per-

search basis, plus costs for copies, postage and photocopying (Dicks, Tr. 853; Lee, Tr. 4988; CX 2600). The method in which these researchers conduct a patent search for RLO is discussed at the time they are first retained by RLO rather than with reference to each search they conduct (Lee, Tr. 4992).

12. During 1974, approximately 3,819 persons entered into Preliminary Product Research Agreements with RLO, and in 1975 approximately 4,938 persons entered into such agreements (CX 2601D).

13. After the preliminary product research is completed, prior patents located as a result of this patent office search are forwarded to some clients along with a development contract in the form of a letter. Other clients are offered the development contract in person during a visit to RLO's offices. The letter contract enumerates the procedure to be followed by RLO for the development and introduction [15] of the client's idea or invention to industry (see CX 201, 204). The fee for the services outlined in the development contract has ranged from \$775 to \$2,000, plus an assignment by the client of a ten percent (10%) to thirty percent (30%) interest in the invention to RLO. The usual interest obtained is twenty percent (20%) (CX 100, 2600B). Account Executives follow through, usually by telephone, in an effort to insure that the development contract is executed by the client and returned to RLO.

14. The services to be rendered by RLO, as outlined in the development contract, include:

(a) RLO will first technically develop and/or refine the invention, if and to the extent necessary, for the preparation of suitable illustrations and description of the commercial features the client regards most important;

(b) RLO will retain a patent attorney on behalf of the joint venture (RLO twenty percent (20%) interest, client eighty percent (80%) interest) to prepare a patent application;

(c) After patent pending status is achieved, RLO will prepare and print a sales letter or prospectus to cover the general functions of the client's proposal;

(d) RLO will introduce the invention to industry by contacting a substantial number of prospective manufacturers to seek opportunities to negotiate for sale or licensing of the invention; [16]

(e) RLO will establish a campaign to publicize the invention for the purpose of stimulating commercial interest; and

(f) RLO will actively negotiate with manufacturers expressing an interest in acquiring rights to the invention.

The development contract further offers the client the right to repurchase RLO's interest in the invention (20%) for \$1,000 at any time within six months from the date of the agreement provided an arrangement for the sale or licensing of the invention has not been entered into or completed as of that time (CX 100).

15. The marketing program or Commission Sales Agreement is similar to the development contract except there is no patent application filed. Under the terms of this contract, RLO does not take an assignment of any interest in the invention. RLO's fee for simply introducing an invention to industry ranges from \$400 to \$600, plus 20% of any proceeds derived from the sale or licensing of the invention (CX 367E-F; Dicks, Tr. 825-26; CX 2600B).

16. A total of approximately 1,498 persons entered into development contracts with RLO in 1974. Approximately 1,585 entered into such contracts in 1975 (CX 2601E). The total number of clients who entered into marketing programs in 1974 was approximately 174; in 1975 the approximate number of clients who entered into this program was 160 (CX 2601E).

17. The Canadian Patent and Marketing Program is customarily offered to clients at or about the time the United States patent application is being prepared (CX 1218, 1543, 1544, 1555, 3084, 3087, Lean, Tr. 8227; Mullen Tr. 1834-35; Gorman, Tr. 2392-93). It is offered to clients on the rationale that it would enable the invention to be marked "U.S. FOREIGN PATENTS PENDING," which may be of added prestige and advantage when offering or publicizing the invention in the United States or Canada (Glass, Tr. 3870-3871; Peska, Tr. 4875-76; CX 3084). In recent years the cost of the Canadian program ranged from approximately \$500 to \$1,000 (CX 2600B). RLO also [17] retains a twenty percent (20%) interest in the Canadian patent (CX 2600B). The offer of the Canadian program was automatic to all clients who entered into a development contract, and approximately 10% to 15% of such clients purchased the Canadian program (Schwartz, Tr. 4006-07; Duber, Tr. 4222-23).

18. RLO also offered clients a Swiss patenting and marketing program, although the record evidence about this program is not extensive (Guerard, Tr. 3178-82; Peska, Tr. 4875-76).

19. To RLO's best knowledge, the total number of RLO clients who received United States patents on their inventions or ideas was 217 in 1974 and 271 in 1975 (CX 2601E). RLO clients have received a

total of approximately 700 patents since 1972 (Dicks, Tr. 7776-77; RX 659).

20. The total number of clients known to RLO whose ideas or inventions were sold or licensed to industry in 1974 where RLO was an active participant in negotiations for such sale, or where RLO had a financial interest in such idea or invention was zero; the total number of such clients in 1975 was two (CX 2601F-G). Individual respondent Peska testified that approximately "three to four" ideas or inventions of RLO clients were licensed to industry while he was employed there from 1963 through November 1972 (Peska, Tr. 4883-84). The total number of licensing agreements negotiated by RLO on behalf of its clients from 1968 through April 1976 is eight (8).⁵ Four of the eight licensing agreements negotiated by RLO covered the fireplace invention of Harold Hannebaum; one licensing agreement was negotiated on behalf of RLO client James Pecorella (Lee, Tr. 5117-19).

21. The total number of clients known to RLO whose total earnings from the sale or licensing of inventions or ideas resulting from marketing efforts by RLO, was zero in 1974. In 1975 one RLO client earned between \$1,000 and \$1,900 as a result of RLO's marketing efforts (CX 2601G-H).

22. RLO presently makes a disclosure to potential clients in the State of California pursuant to California State Law, Chapter 17 (commencing with Section 22370) to Division 8 of the [18] Business and Professions Code relating to invention development service contracts (CX 2599A-)). RLO's California disclosure document "Copyright 1976 Raymond Lee Organization, Inc." states:

... we have assisted approximately thirty thousand inventors, of which three directly involved us in transactions in which they received, as a result of our services, an amount of money in excess of the fee they paid to us. (CX 2600A)

⁵ CX 3037A-B, lists the eight licensing agreements RLO was able to locate in response to the subpoena served on them in this proceeding (Lee, Tr. 5117-19). These licensing agreements are dated August 1968 through April 1976. Complaint and respondents' counsel have both referred to nine licensing agreements but have not corrected CX 3037 to reflect this greater number. Therefore, relying on the official record, the correct number of licensing agreements entered by RLO on behalf of its clients is eight.

23. Total revenue received by RLO is:
- 1972 - \$1,396,264
 - 1973 - \$1,241,822
 - 1974 - \$1,115,354

1975 - Total revenue received by RLO for 1975 was received *in camera* (CX 2601, 3035; Lee, Tr. 5037).

C. Commerce

24. RLO, in the course and conduct of its business, has been and is engaged in interstate commerce. RLO makes substantial use of the United States mail by mailing brochures, contracts, drawings, correspondence, and other documents to its clients. RLO receives substantial mail from clients in the form of executed contracts, Record of Invention forms, payments for services, and other correspondence. RLO uses the mail to send requests for preliminary product searches and it receives the results of such searches in the mail. Additionally, long distance telephone calls are routinely placed by RLO Account Executives to clients throughout the entire United States. RLO mails prospectuses about clients' inventions to corporations and organizations throughout the United States. It publishes and mails to interested parties magazines containing information about clients' inventions. RLO places numerous advertisements in newspapers and magazines that circulate in interstate commerce. RLO also operates offices in several locations throughout the United States (Findings 1-23 *supra*). [19]

II. REPRESENTATIONS⁶ MADE BY RLO TO CLIENTS

A. Advertisements

25. Typical advertisements disseminated by RLO in newspapers, magazines and telephone directories invite the potential client to write or telephone for a free "Inventors Information Kit" and state that RLO will develop the inventor's idea, introduce it to industry and negotiate for a cash sale or royalty licensing. These advertisements also tell the reader about the Record of Invention form and about a brochure entitled "DIRECTORY of 500 CORPORATIONS Seeking New Products." Many of these ads refer to RLO as "the idea people" (CX 2-3, 7, 12-13, 15-16, 19-20, 22, 24-33, 40-42, 2588-92, 3108; Lee, Tr. 5101).

⁶ Specific representations challenged in this proceeding are dealt with in detail under separate sections, *infra*. Representations discussed in this section are intended to provide an overview of RLO's representations to potential clients.

26. Examples of advertisements disseminated by RLO state:

INVENTORS: Your ideas and inventions (patented: unpatented) expertly searched, developed for commercial appeal and cash/royalty sales to manufacturers by professional Invention Developer with excellent record of experience. (CX 2, 25)

If you have an idea for a new product or a way to make an old product better, contact us - "the idea people." If your invention is acceptable, we'll develop it for commercial appeal, negotiate for Cash Sale or Royalty Licensing. (CX 19)

[20] . . . professional invention developers with over a decade of experience, integrity and performance. YOUR INVENTIONS AND IDEAS DEVELOPED AND PREPARED FOR CASH/ROYALTY SALES. (CX 24)

DESIGN DRAWINGS PATENT
RESEARCH & MODELS
INVENTIONS
NEW PRODUCTS - NEW IDEAS
PATENTED - UNPATENTED
DEVELOPED & PREPARED for
COMMERCIAL APPEAL and SALES
MANUFACTURED - MARKETED

(CX 40; see also CX 41-42)

27. RLO advertisements frequently stress the qualifications of Raymond Lee as an "Invention Developer" and the founder of RLO (CX 2-3, 7, 24-25, 40) and include references to "success stories" of former RLO clients (CX 30, 32). Other advertisements point out that RLO has "offices throughout the U.S. and Canada" (CX 13, 15, 22, 26).

28. Representations contained in RLO advertisements successfully induced potential clients to contact RLO, either in person, by telephone or mail, and request further information as to RLO's services (Mullen, Tr. 1820).

B. The Inventors Information Kit

29. When a potential client either telephones, personally visits RLO offices or mails in a coupon from an RLO advertisement, he immediately is given or sent a free "Inventors Information Kit." This kit is a folio of various pieces of literature which describe the services rendered by RLO and includes a Record of Invention form on which the potential client may document his invention. The contents of the information kit has changed somewhat over the years (Lee, Tr. 557). If an out-of-state potential client requested such information, it would be mailed to him from RLO's [21] headquarters in New York City (Coyle, Tr. 1544). CX 2604A-K is a typical Inventors Information Kit (Lee, Tr. 560; see also CX 49A-D and CX 52A-F).

30. The outer cover of one RLO brochure included in the Inventors Information Kit states:

For many years, The Raymond Lee Organization has enjoyed the respect and esteem of the business community.

We are proud of our reputation and hope that you will soon join our long list of satisfied clients. (CX 47)

On the inside pages of this brochure, under the title "WORDS OF PRAISE FROM SOME OF OUR CLIENTS" photographs of 20 different persons are reproduced with quotations from said persons expressing their satisfaction with RLO's services. A minister and a nun are included among the photographs, as well as a photograph of Governor and Mrs. Kenneth M. Curtis of the State of Maine. The back panel of this brochure reproduces photographs and quotations of prominent public officials under the caption "A FEW WORDS FROM SOME PROMINENT NATIONAL LEADERS" (see Findings 169 to 184 for details of RLO's unauthorized use of public officials' names, photographs and quotations). An entire page of this brochure consists of a photograph and letter of praise from Judge Roy H. Adams, Bandera County, Texas (CX 47; see also CX 61). A letter used at one time to forward the Inventors Information Kit to prospective clients also included a quotation from Judge Adams' letter (CX 2898).

31. Brochures forwarded to potential clients in the Inventors Information Kit have emphasized the size and international character of RLO's business. For example, CX 68 and 2604, brochures entitled "NOW IT'S YOUR TURN to play the invention game!" state:

We're not just another invention development company. We're the largest organization of our kind with offices coast-to-coast in the United States and Canada.

[22] 32. The most detailed representations made to potential clients in the Inventors Information Kit of RLO's business and services are in the brochure entitled "THE CLIENT AND THE RAYMOND LEE ORGANIZATION" (CX 44). This brochure states:

Our objective, since the founding of The Raymond Lee Organization in 1962, has been personal attention to the needs of inventors and manufacturers. Helping to link these two groups is a staff of highly specialized knowledgeable personnel. . . .Your inquiry to any one of our offices is invited. It will be handled personally, promptly and in complete confidence. (CX 44C)

This brochure further represents:

You may contact an Account Executive. . .and immediately obtain information you require to initiate the development of a new product, idea or innovation. Seemingly

difficult questions and methods of procedure are instantly simplified and stripped of the confusion and complexity ordinarily surrounding them.

This efficiency, accuracy and simplicity requires knowledgeable, responsible, skillful people. We believe this characterizes the Raymond Lee Organization - the desire and ability to be of service. (CX 44E)

In amplifying on the expertise of RLO's staff, this brochure states:

They [Account Executives] are well-educated, highly-trained in their respective fields and have learned [23] their business well. . . . A large and able supporting organization has been built at Raymond Lee to serve your account executive. . . It consists of New Product and Invention Researchers, Commercial and Mechanical Draftsmen, Technical Writers, Public Relations and Publicity Representatives, Advertising Specialists, Market Analysts, Library and Industrial Directory Researchers, Licensing and Sales Negotiators and an extensive group of International Associates. . . the men and women of the Raymond Lee Organization, representing years of seasoned experience have a fresh outlook on the potentialities for tomorrow. (CX 44G)

33. A Record of Invention form is also enclosed in each Inventors Information Kit (CX 52). The inventor is asked to answer certain questions about his idea or invention and provide a written description and drawing thereof on the form. The Record of Invention form is filled out by a potential client prior to his execution of any contract or payment of any monies to RLO (Dicks, Tr. 775), and is to be mailed or brought in person to RLO. Said form contains the following on the front page:

INVENTOR'S STATEMENT AND AUTHORIZATION - I (We) hereby declare that I am (we are) over 21 years of age and declare to all whom it may concern, that the invention described in this document was invented by me (us), and that The RAYMOND LEE ORGANIZATION is hereby authorized to examine the invention described herein for the purpose of receiving its comments and suggestions for the international development and introduction of this invention to industry. (CX 52A).

34. Letters which accompany the Record of Invention form reiterate RLO's claimed expertise with statements such as: [24]

. . . As we are one of the largest companies in this field, our clients have the benefit of dealing directly with an internationally known organization that can provide those services needed for the effective development and sales promotion of their inventions.

You may be assured of the professional skill and integrity of our long established organization and those experts we retain as needed for special services, as well as the careful manner in which your invention will be treated. (CX 50)

. . . Please note the respected credentials of our organization which are among the highest in this industry. They are your assurance of our integrity, experience, and ability to serve you well. (CX 51)

35. In instances where the Record of Invention form is not

returned by a prospective client, RLO uses a CALL-TELEGRAM to spur return of the form. The form states, in part:

. . . Please give me an immediate call-collect. I have three general questions that will help you determine the merit of your idea. (CX 2813A)

36. Many RLO clients had little education (Hill, Tr. 2115), and quite a few barely spoke English. A former RLO Account Executive testified:

Q. Did you have any reason to believe anyone you dealt with had any difficulty reading the (RLO) brochures?

A. Quite a few people. [25]

Q. Did they ask you questions about it?

A. I dealt with many people who didn't have much of an education. Quite a few people who barely spoke English. (Schwartz, Tr. 4079-80; see also Bellavista, Tr. 2007)

37. The record is replete with testimony of RLO clients describing the highly favorable impressions they received from the Inventors Information Kit. Clients were very impressed with the documents which describe the background of Lee, the international aspect of RLO, the experience and expertise of RLO, the testimonials of prominent public figures, industrial organizations, governmental agencies, satisfied clients and with the success stories of inventors who have been assisted by RLO (Mullen Tr. 1887-88, 1890; Bellavista, Tr. 2010; Salemi, Tr. 2444; Lart, Tr. 2506; Brody, Tr. 3086; Guerard, Tr. 3152-53; Bucko, Tr. 4358-59, 4388-89; Hawriluk, Tr. 5752-53; Lean, Tr. 8188-89). The entire course of dealing between many RLO clients and RLO is through the mail and over the telephone (Brody, Tr. 3091-92). These brochures and letters therefore have special significance with such clients.

C. During Office Visits

38. Potential clients who visited RLO's offices received the Inventor Information Kit at the time of the visit. One client, Myron S. Shepard, testified regarding favorable impressions he received from the physical surroundings of RLO's offices as follows:

. . . I waited in the waiting room for awhile. Incidentally, before I even entered I was impressed because on the right-hand door, as I recall it, there was a list of five or six offices, branch offices in other cities. In the waiting room I saw, which was very nicely decorated, I saw testimonials, photographs of, I recall one in particular of what purported to be [26] Mr. Lee with former Mayor Lindsay giving him a citation, an award, something. I don't know. On the table in the waiting room there were many brochures, pamphlets of The Raymond Lee Organization with testimonials from

various people as to the services, satisfactory services that Lee had performed for them. . . . (Shephard, Tr. 1911; see also Bellavista, Tr. 2009; Hill, Tr. 2166-67)

D. The Preliminary Product Research

39. An RLO Account Executive receives the Record of Invention form when it is returned by a potential client. If the potential client is located out-of-town, a letter is mailed to the potential client suggesting that RLO be permitted to have preliminary product research performed prior to the client receiving RLO's further recommendations for the development of the invention (CX 96). If the potential client is located in the New York area, an Account Executive telephones the potential client and requests he visit RLO's office to discuss the invention (Traube, Tr. 5149).

40. One former RLO Account Executive testified that in selling the preliminary product research he used the following approach:

. . . Good morning, Mr. Jones, this is Bill Coyle from the Raymond Lee Organization. How are you today? Look I have your record of invention form in front of me. It looks like a very interesting idea. How did you happen to think of this? Then I would get an answer back. "Well, look, have you checked the market? Have you looked around in the various stores in your area? Have you seen anything similar to it?" Normally I would get a no. I would say, "Okay." Well, the first step in putting anything on the market is to obtain a search of the U.S. Patent Office. Now, that search would cost you \$100. Now, I have a search group [27] of papers going out in approximately five days. What I will do is I will send you copies of the search form and you sign them, send them back to me together with \$100 and I'll put that search in. And at the end of about six weeks you'll get the results of the search. Can I send those papers out to you right now, Mr. Jones? (Coyle, Tr. 1529-30)

41. The letter recommending the initiation of a preliminary patent search states that, having examined the inventor's Record of Invention form, RLO now has "an understanding of the objects and purposes of your invention" and suggests a patent search before any further steps to develop, manufacture, sell or license the invention are taken. Potential clients are informed that if a preliminary search is authorized they will receive the confidential results of the research including copies of the patents found as the result of such search as well as RLO's recommendations for development of the invention (CX 96).

E. The Development Contract

42. After the "preliminary product research" is completed, a "development contract" in the form of a letter is forwarded to the potential client along with copies of the prior patents located as the

result of the search (CX 100A-B). Introductory paragraphs of this letter state:

. . . to obtain serious consideration by companies in the field and to maximize the opportunity for success a well-planned program should be initiated.

. . . Since we are Invention Developers, we have assembled a staff and retain, as needed, qualified independent contractors, for carrying out many of the important steps for introducing an invention to industry. (CX 100A) [28]

43. After setting forth the steps RLO will undertake to develop the potential client's invention, RLO's letter contract states:

Your invention will be developed as set forth and outlined above, and we will proceed immediately upon receipt of your approval of these arrangements. Therefore, to have your invention processed at an early date, please promptly return the enclosed reference copies and a copy of this letter, which you are requested to sign below.

III. RLO REPRESENTS, BUT DOES NOT, ACTIVELY AND SUCCESSFULLY INTRODUCE, PROMOTE, AND NEGOTIATE WITH MANUFACTURERS REGARDING CLIENT'S IDEAS OR INVENTIONS.

44. Numerous brochures sent to potential RLO clients represent that RLO has special access to corporations who are actively seeking new products through RLO (CX 44, 45, 46, 67, 75, 76, 78, 80, 1082). Such representations are repeated throughout the brochure entitled "THE CLIENT AND THE RAYMOND LEE ORGANIZATION" which lists branch offices in several areas and states that:

. . . in a few short years this company has become known as one of the first and foremost in the field of International New Product Technology.⁷ . . .

. . . Each year we are able to handle inquiries from thousands of clients and prospective clients seeking one or more of our services, from Preliminary Product Research, Technical Development and programs that relate to the introduction of their products to industry, to [29] actively seeking new products on behalf of major corporations and assisting in the manufacture and marketing of new product concepts. (CX 44E)

Said brochure further states:

. . . The Raymond Lee Organization maintains its executive offices among the world's leading and most successful corporations. In modern, well-equipped and efficiently managed offices, the executives provide the services required by their clients throughout the world. . . . (CX 44F)

Under the heading "INTRODUCTIONS TO INDUSTRY" said brochure states:

⁷ In a letter, signed by Peska, sent to clients making initial inquiry of RLO, the client was told in 1970 that RLO [founded in 1962] was "internationally known," "long established," "steeped in the tradition of providing valuable service," and "has a history of experience and achievement." (CX 152)

We maintain continuous contact with leading companies in the U.S. and abroad, to which new product ideas are submitted on a regular basis. Thus, our Organization is in a position to introduce virtually any new product idea or concept to selected companies in its particular field for review and consideration. (CX 44-0)

Finally, under the heading "SERVICES TO MANAGEMENT CONSULTANTS, CORPORATIONS AND INSTITUTIONS" said brochure states:

New product services have made our name famous, and the financial strength and experience we developed, to serve both novice and professional inventors, have helped us to widen our areas of activity. . . . Our Company has wide experience in searching out new-product concepts. . . . We know what it takes to market a product. The research, development, marketing and distribution aspects are interrelated. The expertise gained during our years in this [30] dynamic and burgeoning industry helps us to select new product concepts of interest to progressive companies. We can supplement our clients' search for new product ideas, as well as enhance their existing product capabilities.

Our extensive contacts and our access to private and public sources of new product technology are available to you. We will welcome your inquiries and put skilled men to work in serving your new product needs. (CX 44Q; see also CX 45A-T, 46A-5, 260H).

It would be difficult to imagine a more glowing report of an organization's experience, knowledge, ability, efficiency, capability, integrity, and desire to serve inventors and major corporations seeking new products worldwide than that contained in this brochure.

45. CX 67, an RLO brochure entitled "IDEAS GO TO MARKET . . . THE RLO WAY," contains the photograph of Lee with his signed statement as President of RLO which states:

. . . Industry is now engaged in an international battle for survival. This is why manufacturers throughout the world are seeking new product ideas and inventions which will expand their product lines and areas of distribution.

The Raymond Lee Organization is proud of its participation in the introduction of new product opportunities to manufacturers, and extends to you our very best wishes for your success in the introduction of your invention to industry.

46. RLO's Inventors Information Kit also contained a brochure entitled "500 LEADING CORPORATIONS SEEKING NEW PRODUCTS THROUGH." This statement is in juxtaposition to "The RAYMOND LEE ORGANIZATION, INC.," so that the [31] brochure can be read as stating that 500 leading corporations are seeking new products *through* RLO (CX 78). Other versions of this brochure have eliminated the word "through" (CX 2604F). The brochure also states:

The Raymond Lee Organization has compiled this report to assist industry in its quest for new products and to establish a marketplace for the introduction of inventive and innovative concepts. This is only a partial listing of the many prominent manufactur-

ers who have specifically expressed to The Raymond Lee Organization their desire to consider products in their fields of interest. (CX 78B, 81, 2604)

47. CX 75 and 76 are brochures which set forth complete letters from corporations throughout the United States expressing interest in new products. Individual respondent Peska testified that the names of the corporations appearing in these brochures were obtained by contacting manufacturers and asking them if they were interested in receiving materials from RLO; corporations which responded affirmatively had their names and quotations from such correspondence placed in RLO's brochures (Tr. 4914-15; CX 75, 78, 2604). Many of the letters make it obvious RLO first contacted the corporations offering to provide information to the corporations.

48. CX 80, a brochure entitled "THE RAYMOND LEE ORGANIZATION Internationally Known," contains letters from corporations, clients, and copies of governmental and organizational citations. The cover page of this brochure shows letterheads of various corporations and organizations, including General Motors, Indiana State Bar Association, Massachusetts Institute of Technology, British Consulate General, The Austrian Trade Delegate in the United States, Consulate General of Switzerland, and the Federal Trade Commission. Respondent Lee testified that this montage of letterheads was the result of a compilation of letterheads from correspondence RLO had received and was used to "graphically illustrate the fact that we [RLO] were known internationally amongst various [32] types of organizations of international concept and to illustrate the statement in the copy" (Tr. 5097-99). Mr. Lee further testified that he did not believe RLO had ever licensed a client's invention to any of the organizations whose letterheads were reproduced in this brochure (Tr. 5099).

49. Inclusion of client success stories in RLO's promotional literature helped to reinforce potential client's impressions that RLO would successfully introduce and promote their inventions (Coburn, Tr. 5514). CX 51, a letter accompanying the Inventors Information Kit, states that RLO's credentials are "among the highest in this industry" and are your "assurance of our integrity, experience and ability to serve you well." This letter further states that the brochures included in the kit:

... describe some of the inventions with which we have been involved and how we participated in bringing them from an idea to reality.

50. In one RLO brochure, CX 67, under the headline "FIREPLACE INVENTION BRINGS FAME AND FORTUNE TO IDAHO INVENTOR," a photograph of RLO client Harold Hannebaum receiving a royalty

check is reproduced. The brochure contains a quote from Mr. Hannebaum stating:

Dear Mr. Lee:

Much of our success must be credited to your organization which, as a participant in this program, was so careful and precise in the development and processing of this invention. . . . (CX 67B)

51. CX 67 also contains the photograph of RLO client James Pecorella receiving a royalty check, and the reprint of a letter to RLO signed by Mr. Pecorella in which he states:

. . . The Agreement which you negotiated with Technifloor Products, Inc. is very favorable and guarantees to me a substantial income based upon a minimum annual royalty of \$7500. (CX 67F; see also CX 66)

[33] Mr. Pecorella did not earn a minimum annual royalty of \$7500 and did not compose the depicted letter, although he approved its contents (Pecorella, Tr. 5642, 5645-46, 5651-53; CX 2604B). Further, the company which took a license under Mr. Pecorella's invention was actually contacted by Mr. Pecorella, not RLO (Pecorella, Tr. 5657).

52. CX 64, a brochure which gives several case histories of clients RLO helped to achieve success, contains a two-page story headlined "RAYMOND LEE ORGANIZATION CLIENT RECEIVES \$4,000,000 IN STOCK SALE TO ESQUIRE. . ." A careful reading of the two page story reveals that Globe Book Company (the RLO client) received \$4,000,000 in Esquire, Inc. stock as a result of Esquire's acquisition of Globe. The brochure does not disclose how obtaining a patent on "programmed reading" by Globe with RLO's assistance relates to the \$4,000,000 merger transaction, but the reader is left with the obvious impression that the RLO services are responsible for the \$4,000,000 which Globe realized in the merger. The record reflects that RLO did not negotiate a license or sale of an invention for Globe.

53. Account Executives were anxious to sell the services of RLO because a substantial part of their income was based on commissions they received on sales of RLO services. Account Executives testified that more than fifty percent (50%) of their income at RLO was based on such sales (Duber, Tr. 4198-99; Pion, Tr. 8494; CX 639, 647, 655). On occasion, RLO conducted sales contests where Account Executives received bonuses or extra commission on sales during the contest periods (Coyle, Tr. 1519; Duber, Tr. 4198; RX 647). At sales meetings Account Executives' conversion rates were discussed — the percentage arrived at by comparing number of sales to number of clients contacted (Duber, Tr. 4257-60).

54. Former Account Executives confirmed that in order to make sales the impression of success was deliberately created: [34]

* * * * *

A. Basically there was always inferences of a hint of a mint. Otherwise we would never be able to sell the programs.

Q. A hint of mint?

A. A hint of mint.

Q. What does that mean?

A. That means to me that we had to infer that money would be made if they would allow us to handle their inventions. (Duber, Tr. 4293-94)

* * * * *

... You have to tell them there is an opportunity. They are not going to pay \$1,500. (Coyle, Tr. 1617)

* * * * *

I don't think any inventor would proceed if he didn't think that he had a chance of selling it, in his own mind. (Pion, Tr. 8498)

* * * * *

I would do everything I could to get the sale [of preliminary patent search] at least within whatever bounds I thought was ethical. . . . If they would say to me, . . . "There's no guarantee that I am going to make money out of this," I would say something like, "Well, you'll never know unless you try." If they would [35] say to me, "Well, money is very hard to come by," I would say something like, "Well, you are making an investment." I remember I used that quite a bit. I talked of this as an investment. "You are making an investment in your future. There is no guarantee it will pay off, but it certainly is an investment. It's not like you are spending the money away for a product and throwing your money out." It was those kinds of things. (Switkin, Tr. 1781-82)

55. Gerald Pion, an Account Executive currently employed by RLO, testified that he also discussed success stories of previous RLO clients with prospective clients "[o]nce in a while" (Tr. 6938).

56. Clients testified that they had been given no *guarantee* that their idea or inventions would be patented or successfully marketed, or that the client would make money (Gorman, Tr. 2412; Salemi, Tr. 2482; Brody, Tr. 3140-41; Guerard, Tr. 3214-15). Former Account Executives also generally confirmed that they gave no guarantees or assurances the idea or invention would be successful (Coyle, Tr. 1562-63; Glass, Tr. 3919-21; Schwartz, Tr. 4085-86; Duber, Tr. 4292). Most of this testimony, however, was elicited by questions specifical-

