

# 35, (I)

1925, Dec. 14

THE UNIVERSITY OF WISCONSIN  
COLLEGE OF AGRICULTURE

MADISON

H. L. RUSSELL  
DEAN AND DIRECTOR  
P. B. MORRISON  
ASST. DIR. EXPT. STA.  
K. L. HATCH  
ASST. DIR. AGR. EXTEN.  
J. A. JAMES  
ASSISTANT DEAN

December 14, 1925.

Dean H. L. Russell,  
c/o American Club,  
Shanghai, China.

Dear Dean Russell:

Under date of October 28th I wrote you at length with reference to the Wisconsin Research Corporation, the Steenbock patent, and a letter from Mr. Glover to you with reference to these matters. I sent this letter, inclosing the letter from Glover, to Peking, Hotel de Peking, but find from Eldon that it is doubtful whether you will get to Peking. I am, therefore, sending copies of this letter of October 28th to you at Shanghai and Manila.

I am sorry that I did not have any copies made of the Glover letter, but if this fails to reach you, I believe his position is sufficiently stated in my letter. If you have not received this correspondence when you get this letter, I believe it will be well for you to stop at this point and go over the copy of my letter of October 28th, as otherwise you will not understand the rest of this letter.

Delay on Patent Matters.

After writing you on October 28th, I did nothing further with reference to this matter, trusting that I would hear from you before any further developments occurred. I appreciated fully that my point of view, as well as the opinions of Hart and Hatch, to say nothing about those of Glover, were rather diametrically opposed to yours.

However, about November 19th Dean Slichter phoned that he wished to have a conference with Steenbock and myself at the University Club Monday noon, November 23rd, to discuss the contract to be drawn up between Steenbock and the Research Corporation, assigning his patent rights to the Corporation.

Up to this time I had not said anything to Steenbock about the letter from Glover, as I wanted to hear from you, if possible, before taking any such step. I knew, however, that it was now essential that Steenbock know the exact situation before this conference regarding the contract between himself and the Corporation.

Consequently, I had a conference with Hart and Steenbock at the end of the same week.

Farmers' and Homemakers' Week, February 1-5, Madison

YOU ARE INVITED

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|| When I was reviewing the events and mentioned the Glover letter and his reaction, I was surprised to have Steenbock become violently angry. Indeed he got up out of his chair, grabbed his hat, and said he would not stay a minute longer. I was entirely nonplussed, for I could see no reason why he should be angry.

He would not state what was the matter, but merely said he was leaving. Finally, I asked him as a personal favor to sit down again and let me ask him a couple of questions. (You know he is a fraternity brother of mine and consequently we are pretty good personal friends.) Steenbock finally subsided.

In a couple of minutes, I found out the trouble. His explosion was apparently due to his feeling that the matters with reference to the Corporation had been handled in the past with too little regard for him and consultation with him. In other words, he felt that he as inventor, should have been taken into conference and kept advised of the progress more than had been done.

Incidentally, he felt that I should have told him of the Glover letter as soon as it was received. I pointed out that I did not feel free to do this, but merely transmitted it to you with my own opinions concerning the matter.

After Steenbock cooled off we had a frank discussion on the various questions of policy in connection with this proposition. I was surprised to find that he agreed with Hart, Hatch and myself in believing that the primary reason for securing the patent on this irradiation process was so that license might be held from the oleo interests, to protect Wisconsin's dairy industry. I had supposed that Steenbock felt just as you did, that licenses should be granted on the royalty basis to manufacturers of oleomargarine.

Steenbock also was not in favor of assigning his patent rights without reservations to the Research Corporation, to be administered entirely independently of the University or himself.

At this conference Steenbock stated that at the conference Monday with Slichter I should tell him about the Glover letter and about our opinions concerning the various questions of policy. I told Steenbock that I disliked very much to do this, inasmuch as my views were rather contrary to yours. Steenbock, however, said that he felt I ought to do this and that he would insist on it.

#### Conference with Slichter.

The next Monday we ate lunch with Slichter at the University Club and had a very peaceful conference. Slichter stated that the Corporation had been formed and the trustees appointed, but no directors as yet selected. He then said

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that the next step was for Steenbock to draw up a contract assigning his patent rights to the Corporation.

He then went on to discuss the payments which should be made to Steenbock. You will recall this was a question I raised at the conference you, Slichter and I had just before you left. I felt that this matter would come up sometime during the year and that we might as well see what our ideas with reference to it were at that time. However, neither you nor Slichter wanted to give the matter any attention then, stating that there would be no profits to divide up before you returned.

Slichter went on to propose that a contract might be drawn up on the following basis: The first obligation would be to meet the expenses incurred in the Research Corporation. The next several thousand dollars should go to Steenbock exclusively. After this the profits up to a certain amount should go mainly to Steenbock, with a minimum to the Research Corporation. Then, as profits increased, the Corporation should get an increasingly larger proportion and Steenbock a smaller proportion.

In other words, Slichter proposed very liberal remuneration to Steenbock as inventor. Though he stated no exact figures, it sounded as though Steenbock's share would right at the start run up into many, many thousands of dollars.

I was sorry to see Slichter advance this idea, for I did not know quite how mercenary Steenbock might be. I, therefore, did not give him (Steenbock) a chance to accept this plan. I went on to state that I believed this plan would not be advisable.

I told Slichter that I felt that it was absolutely essential that a plan be prepared which would, as far as possible, free the College of Agriculture and Experiment Station from criticism, and also a plan under which Steenbock would retain the respect of his colleagues. I felt that under the plan Slichter proposed, whereby Steenbock got most of the profits at the start and for a considerable period, the College and Steenbock would both receive severe criticism and condemnation.

I stated that people were pretty well acquainted with the royalty basis as applied to books, and that there was little objection on the part of the public to professors receiving a royalty on books which they wrote. I asked whether this would not be a much better basis for compensating the inventor. Steenbock then sided right in with me and said that he would not want to have a contract drawn on any such basis as Slichter proposed.

I was afraid that Slichter would get angry at our opposing his idea, but he was very calm and seemed to see the point quickly and then agree with it.

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I may mention right at this time that Steenbock has since decided that he wants nothing stated in the contract as to any payment of royalty to him by the Research Corporation. He is entirely willing to leave this in the hands of the Corporation, believing they will treat him justly, should the patent prove profitable. This is certainly a fine point of view on the part of Steenbock, and one which will free him from criticism just as much as possible.

Steenbock then went on to say that in talking with me I had raised certain questions that seemed to him very important and asked me to present them to Slichter. I, of course, then had to go on and tell Slichter about the Glover letter, etc.

We then discussed the question of the irradiation of oleomargarine, and I was very much surprised to find that Slichter fully appreciated the seriousness of licensing such irradiation. He said that quite probably license should be withheld for such use. He stated that the only danger in withholding the license from oleomargarine manufacture was that perhaps the oleo interests would then try and break the patent and that if such was the case we might at some time in the future decide that it would be better to license oleo irradiation than to have the patent declared invalid. We did not discuss this matter, since both Steenbock and I felt that this chance was remote.

Steenbock pointed out that he felt it essential in going on with the administration of the patent to have the matter handled on a cooperative basis instead of a perfunctory business basis. Slichter intimated that he felt Steenbock should make whatever reservations he desired in the contract assigning his patent rights. I suggested that since Steenbock was the inventor, it would be entirely appropriate for him to put in the contract a reservation that any license granted under the patent must receive his approval. Slichter agreed that this would be a reasonable provision.

#### Steenbock address at Chicago.

I learned a few days later that Steenbock was to deliver an address on irradiation at the national association of creamerymen at Chicago during International week at Glover's request. I appreciated that Glover felt very strongly on this proposition, he believing that no patent should be secured on experiment station inventions. I was afraid that Glover and Steenbock might get into a "row" in connection with the matter, for when Glover believes a thing he believes it exceedingly fervently. Consequently, I suggested to Hatch that he and I and Steenbock go down to Fort Atkinson and talk the matter over with Glover. Hatch thought this a good idea.

I called up Steenbock and suggested it to him and he thought it would be a good thing for Hatch and myself to go down,

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but said it would be unnecessary for him to go along. Our idea in making the trip was to see whether we could not convert Glover to the point of view of considering it advisable to secure a patent on the process in order to protect the dairy industry.

#### Conference with Glover and Burchard.

Accordingly, the afternoon before Thanksgiving Hatch and I went down and had a two hour conference with Glover and Burchard. I thought in all probability Glover had talked the matter over with Burchard, and this was true. We did our utmost to convince Glover and Burchard that it was advisable and entirely moral and legal to secure a patent on this experiment station invention to protect the dairy industry. However, we failed absolutely. Glover had given very much thought to this matter and had talked it over not only with Burchard, but I believe also with Charlie Hill. His mind was very definitely made up and we got nowhere.

Early in the conference I mentioned to Glover that when you returned from Fort Atkinson you said that Glover had agreed with your point of view. Glover appeared surprised and went on to make statements about like the following: "Russell went on to say that we must 'follow where Truth leads'. This sounded good to me and he put up a very convincing argument along this line. Perhaps my mind works slowly, or maybe I was denser than usual, but I will have to confess that not until a day or two later did I realize that you fellows at the College were planning to take out a patent on this process and sell it on a royalty basis".

I believe if you had talked this matter over with Glover earlier so that he could have called you up on the phone when he recovered from the "trance" the situation might be different today. As it is his mind had a chance to "congeal".

After discussing various aspects of the proposition, Glover finally said that if the College persisted in going ahead and getting a patent on this process and selling licenses on a royalty basis, he and Hoard's Dairyman would have to fight the College and even attack our appropriations. He said this in an exceedingly serious manner and I knew he was sorry to say it. Burchard also said substantially the same. The conference was not at all heated, but very friendly.

#### Glover's Point of View.

You are doubtless wondering why Glover has taken this stand. It is merely because he feels that a state supported College of Agriculture and Experiment Station has no moral or legal right to take out a patent on a regular experiment station invention or discovery, this patent to be used as a revenue producer. He believes that the results of such investigation belong to the public.

I stressed the idea of using the patent to protect the dairy industry, but he stated that he was not afraid of the irradiation of oleomargarine, providing the patents were not secured. He went on to say that in his opinion if we had published this discovery merely as an ordinary scientific discovery and had left it free so that anyone could irradiate anything he wanted, the dairy industry would have nothing to fear.

He feels that if the patents are secured and certain concerns advertise irradiated products then the oleo interests may have an advantage if they adopt this process. Burchard stated definitely that if patents were secured, then he believed that we should withhold a license from any oleo manufacturer.

Glover went on to say that he would have felt that Babcock was absolutely dishonest if he had attempted to secure a patent on the Babcock Test and that the College would have been false to its trust if it had taken out patents and received revenue from them. I know you will not agree with Glover's point of view, but nevertheless you cannot criticise it too much.

Upon looking up what the College has said with reference to the Babcock Test I came across this statement of your own in your circular "The Coming of Age of the Babcock Test": "No patent was taken out on either the method or the apparatus, but in accordance with a code of ethics now more generally recognized than at that time the discoverer, because of his connection with the State Experiment Station, gave his invention freely to the world."

#### Exclusive Licenses.

Glover had told Burchard about the offer from the Quaker Oats Company, and Burchard asked us whether it was the plan to give exclusive right for any particular class of food stuffs or therapeutic agents to any one concern. I stated that the offer from the Quaker Oats Company was on this very distinct basis for exclusive rights on cereals, which might be modified to exclusive rights on breakfast foods. Burchard then went on to ask whether a state institution had any right to give an exclusive license to any concern.

He asked what defense we would have if a Wisconsin miller manufacturing oat meal, for example, asked for a license and we informed him that we had granted an exclusive license to a corporation like the Quaker Oats Company, which happens to be outside of Wisconsin. The Wisconsin miller would have contributed to the support of our institution through his taxes, and yet we would not permit him to irradiate his product since we had sold exclusive license to another concern.

Burchard maintained, and Glover agreed with him, that this would be an untenable position for a public supported

institution. I frankly told Burchard that this was a point which I had not thought of, but which had quite possibly received consideration by you and the others directly concerned in the organization of the Research Corporation.

Personally, I may state that it seems to me that this is a very important. A large amount of revenue can be produced only by granting exclusive patents, I believe. In other words, if all cereal manufacturers were to be licensed, none of them would pay very much for the patent rights.

On the other hand, a considerable expenditure must be made by any concern before it can use the irradiation process. It may not be an easy engineering matter to work out machinery and methods by which a food stuff like a cereal product can be irradiated cheaply to a sufficient extent to have any appreciable effect on the anti-rachitic property of the food. Unless a concern has an exclusive right for a certain period of time, they might not want to spend the money to develop the process.

#### Conference with Dean Slichter.

A week later Slichter talked with me at the University Club when we were both waiting for a meeting of the Committee on Honorary Degrees and said that we must hurry Steenbock along, for it had been already a week since we had had the conference with reference to his making out a contract covering the assignment of his patent rights. I thought this was a good opportunity to tell Slichter about the conference with Glover and Burchard and therefore reported to him on their points of view.

At that time Slichter said that he had been thinking himself about the criticism which might result from granting exclusive rights to various concerns for a certain product, and thought that in the case of the Quaker Oats Company it might be the best plan to give them an exclusive right for only a five year period. Of course, this would presumably reduce very greatly the amount they would be willing to pay.

About this time I understood through Slichter and also through Steenbock that the Quaker Oats Company wanted to send representatives up here again for a conference with reference to securing a license and going ahead with research work to develop the chemical engineering phase of the process. I had hoped that I might be able to hear from you before there would be any necessity of action in the matter, but with Slichter urging haste on the one side, and the Quaker Oats Company on the other, it was apparent that matters could not be long postponed.

Upon talking matters over with Steenbock, Hatch and Hart, independently, they all felt that it was essential that I

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advise President Frank of the situation, and especially of Glover's and Burchard's stand, i.e., that they would attack the College if we went ahead and secured patents and licensed the use of the process on a royalty basis.

Before doing this, I thought it wise to talk the matter over with a few of our other departmental heads whose judgment would be best on a matter such as this. I accordingly talked with Hastings, Humphrey, Hopkins and L. R. Jones. I thought that Glover, Burchard or Hill would be apt to discuss the matter in any event with Humphrey, Hopkins or Hastings at some time in the near future, and hence they ought to know about the matter, if they did not already. I had rather supposed that you had talked concerning the Research Corporation with most of these men, but found that Hastings and Humphrey knew nothing about it, apparently, except at second hand from talking with others. L. R. Jones and Hopkins knew more or less about the proposition from talks they had had with you, but had not given the matter much thought.

I talked with these men all independently, as the opportunity came up when they were in the office on other matters.

You will be interested in learning that all of them believe it is wise to patent this invention, primarily to protect the dairy industry. In other words, they would look with favor upon withholding any license for the irradiation of oleomargarine.

Their points of view with reference to the patenting of experiment station results differ somewhat, but I believe none of them feel that it is advisable to patent experiment station discoveries unless it is necessary to adopt this course as a protection against fraud or to protect Wisconsin industry. In other words, I do not believe they would look with favor upon a policy of patenting experiment station discoveries primarily as a source of revenue.

When I told these men of the stand taken by Burchard and Glover, they all expressed the opinion that it was a matter which must be taken up at once with President Frank. This agreed with my own view.

Conference with President Frank.

Accordingly, last Tuesday afternoon I had a talk with him. He said at the outset that you had given him a brief report on the proposition, but that he had not given it any particular attention inasmuch as he had considered that the matter was definitely settled before he came here.

Accordingly, I reviewed briefly the various stages in connection with the whole proposition, reading the action taken by the Regents in August.



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I gave him a copy of the letter I wrote you under date of October 28th and we discussed the various questions there raised. I then told him about our trip to Fort Atkinson to endeavor to convert Glover to our point of view, and our failure to accomplish this.

As soon as I told him about the declaration of Glover and Burchard that they would attack the College if the policy of the Research Corporation was adhered to in the Steenbock invention, he said frankly that this presented a serious situation. Apparently, someone has been telling him about the low enrollment in the College of Agriculture, for he remarked that with the problem of reduced enrollment we had enough to contend without having the dairy interests of the state attacking us.

Since I thought that possibly President Frank had not given any particular attention to this whole proposition, I had made out five questions of policy which I felt must receive consideration in connection with this matter. I left a copy of these five questions in his hands, telling him frankly that there were certain of them on which my own opinion was not very clear. (Copy of these questions is inclosed).

Frank stated that he would be unable to attend the meeting of the Executive Committee of the Board of Regents which was to be held the next day (Wednesday) since Phillips had not informed him of the date of the meeting and he had made arrangements to give an address at the annual Convention of the Equity Society at Shawano. He asked me to take this matter up with Kronshage, who would be here to attend the Executive Committee meeting. I told Frank that it was hardly my function to do this and stated that I felt that the whole proposition was not one in which haste was necessary, but it could rest until January, for there was no immediate need of Steenbock making out a contract, nor of completing any arrangements with the Quaker Oats Company.

However, Frank seemed to want to act quickly and got Kronshage on the line at once in Milwaukee and found that he was going to arrive in Madison at 9:00 o'clock the same evening. They arranged for a conference at the Loraine Hotel on the matter.

I rather expected that the subject might be discussed at the Executive Committee meeting when I was there in connection with other matters, but it was not mentioned. Afterwards Kronshage told me in the corridor that Frank had talked with him and Kronshage said we must see that Steenbock did not make any assignment of his patent rights until they had time to think things out. He remarked, "this oleo business, ugh!"

Steenbock confers with Glover.

I had suggested to both Steenbock here and Glover at Fort Atkinson that it would be a good plan for them to get together when they were at Chicago and discuss this matter over in private, for I thought that Steenbock might be able to change

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Glover's attitude while Hatch and I had failed to do so. They had not been able to get together on account of other appointments which Glover had, but Glover had urged Steenbock to come down to Fort Atkinson the next week.

Accordingly, Steenbock went down Thursday and had a long conference with Glover. He reports that Glover was adamant and held absolutely to his previous position. Steenbock did not talk with Burchard, but only with Glover.

Steenbock reported to me last week that the Quaker Oats people wanted to have a conference with Slichter, himself and myself last week Thursday, but it happened that I was scheduled to deliver two addresses at a special Farmers' Institute Jerry Riordan had arranged for at Mayville. Consequently, this was postponed. The Quaker Oats people then wanted to hold a conference here this week.

I make an appointment with President Frank for Saturday at 12:00 to report the results of Steenbock's conference with Glover and to get his reaction with reference to the Quaker Oats conference. Steenbock went over with me. Frank thought that the Quaker Oats conference should be postponed.

He, furthermore, told us that Kronshage and Olbrich stated that they had not given much consideration to these questions of policy which had been raised, especially by Glover's attitude.

President Frank is to have a conference with Dean Slichter concerning the whole matter Tuesday.

#### Status of Problem.

The whole matter is now up to Frank and the Board of Regents. I have felt that I could do nothing else but lay the cards on the table frankly. You may be highly incensed at what I have done, and feel that I have exceeded my authority.

However, you will recall from reading this that I delayed any action just as long as was possible. When further delay seemed unwise, I decided that it was better for me to act as I have done. It is unfortunate that my points of view do not coincide with yours on this matter. Seeing the "fat is in the fire" through no action of mine, I could not conscientiously fail to state my own opinions.

I believe that most of this trouble could have been avoided if there had been at the outset a more general discussion with important staff members and also with representatives of the dairy interests concerning the whole proposition. It seems to me that the questions of policy involved in this matter are exceedingly important to the state as well as to the College. Not a one of our staff members with whom I have talked takes the point of view that it would be advisable to patent experiment station inventions or discoveries primarily as a source of revenue. Such unanimity of opinion seems important.

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The question uppermost in my mind now <sup>is</sup> "What is going to be the outcome of this whole matter?" I would hesitate to make any prediction.

I doubt whether President Frank will consider it a wise policy for the irradiation of oleomargarine to be licensed, or whether he will approve the policy of giving an exclusive license to any concern for the irradiation of a particular class of food stuffs or therapeutic agents. He has not stated his final opinion, and of course should not until he has time to think the whole matter over fully and discuss it with whomever he wishes. Nevertheless, this seems to be the trend of his opinion at the present time.

I have told President Frank that in my opinion it is essential for the University to decide definitely on what seems best, and then to come right out and state its position frankly. If we attempt to "pussyfoot" on the matter, we will merely lay ourselves liable to attack.

Glover and Burchard feel very deeply on these matters of policy, and I am afraid no one can convince them that they are not right. This means that they will doubtless use their influence to fight the proposition, and we know that they have the ability to put up a good scrap.

If the University administration decides that it is wise to continue right on in the present policy of securing patents on the Steenbock process and assigning them to the Research Corporation, but yet decides that license should be withheld from the oleomargarine industry, as a protection to our dairy industry, then we might as well state what we are doing and why we are doing it. A frank statement that we are taking a certain course of action to protect the dairy industry would largely take away the force of any attack by Hoard's Dairyman and the State Dairymen's Association. (If Glover, Burchard and Hill are lined up on this proposition, it quite probably means that we will find the Dairymen's Association taking definite action in the same direction.)

I am sorry that you have to be bothered with this proposition on your foreign trip. It will probably be disagreeable to you, but I can assure you that the whole matter has been very disagreeable to me, finding myself in the midst of it without any choice in the matter.

I have not cabled you with reference to the proposition inasmuch as the situation could not be set forth in a cablegram at all adequately.

Yours sincerely,

FBM-ES

[F. B. Macintosh]