



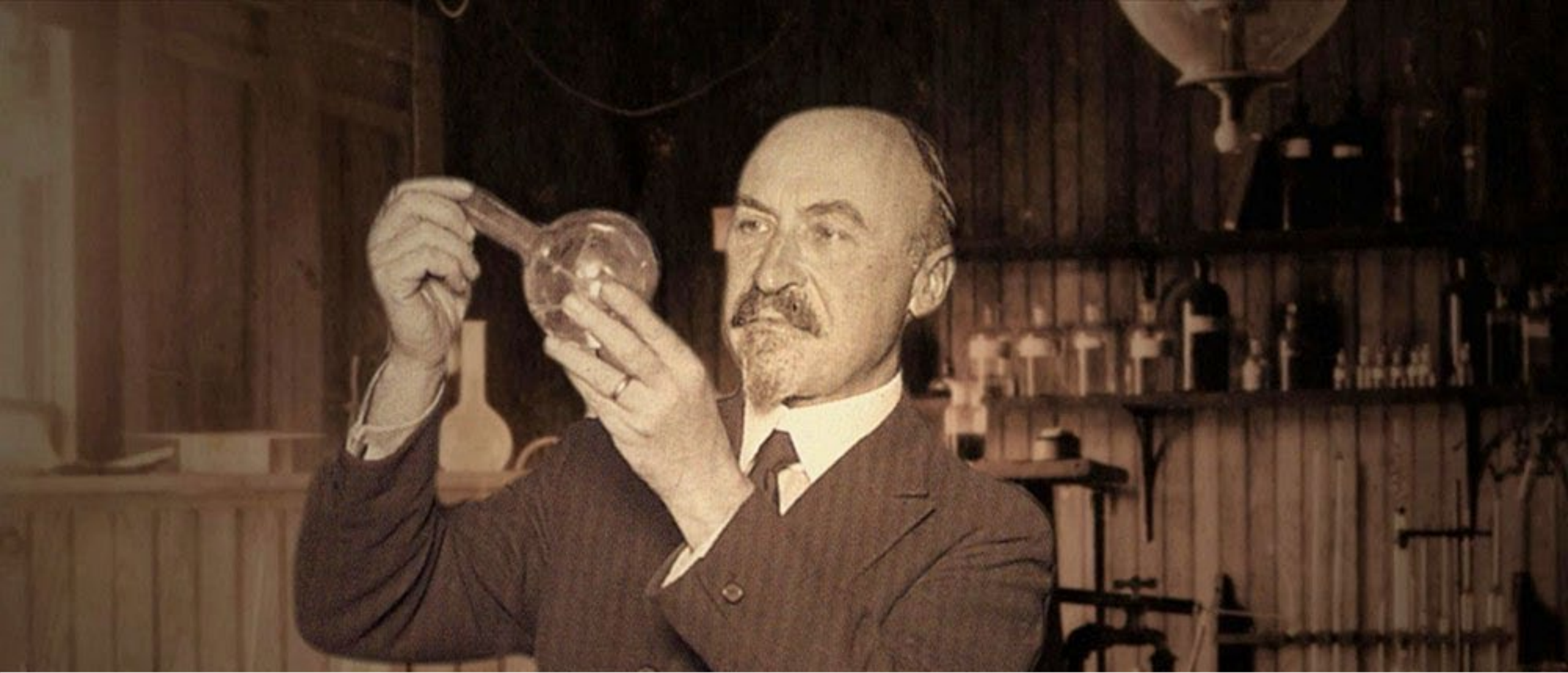
Where There's Smoke,
There's the ITC



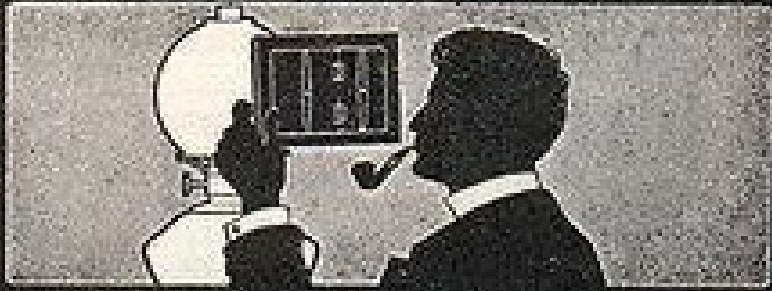
“I don't know half of you half as well as I should like;
and I like less than half of you half as well as you deserve.”

February 1909





Leo Baekeland



VELOX

Doubles the charm of amateur photography. Prints by any light; is simple to handle; requires no dark room and gives exquisitely soft black and white effects.

NEPERA CHEMICAL CO.

Division of the General Aristo Co.

For sale by

all dealers.

Nepera Park,

N. Y.

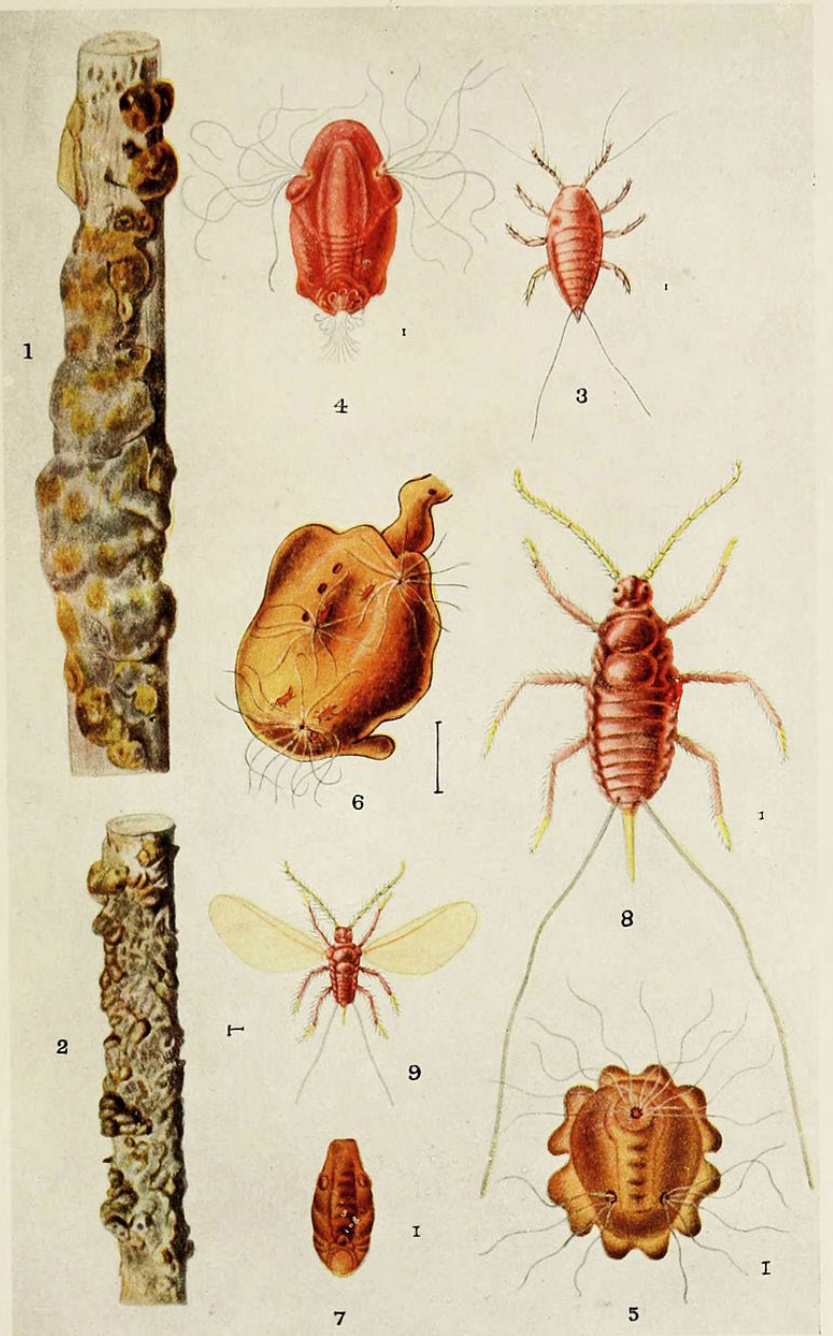


"Not a penny less
than \$25,000!"

SALE!
\$25



Displacing
10,000,000,000,000
workers



TACHARDIA LACCA

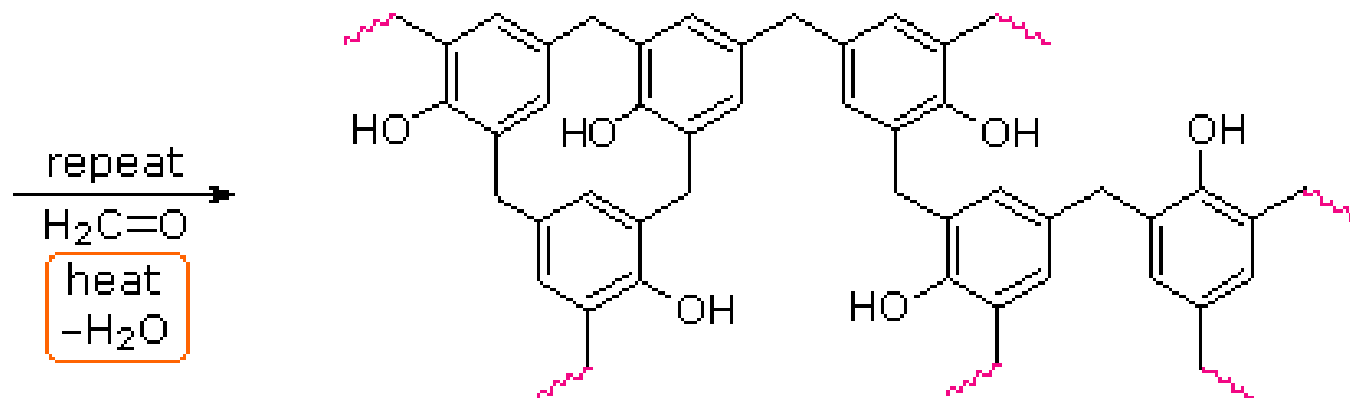
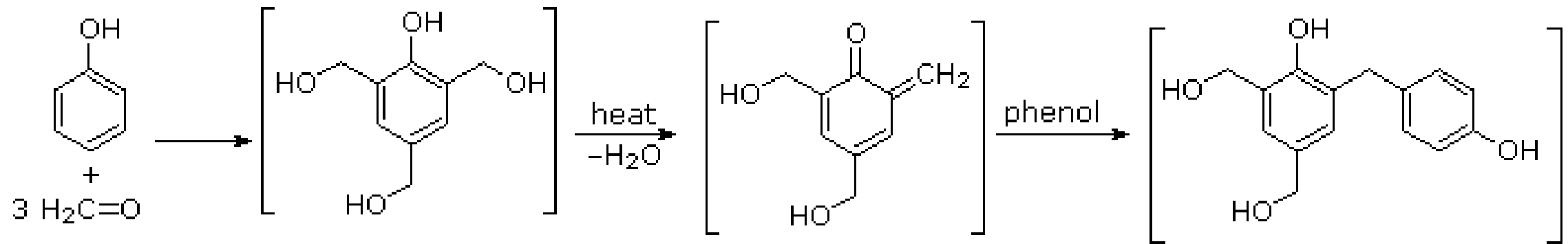
THE CALCUTTA PHOTO

“I was trying to make something really hard, but then I thought I should make something really soft instead, that could be molded into different shapes.”



polyoxybenzylmethyleneglycolanhydride

Phenol-Formaldehyde Resin



Bakelite (a cross-linked solid)

UNITED STATES PATENT OFFICE.

LEO H. BAEKELAND, OF YONKERS, NEW YORK.

CONDENSATION PRODUCT OF PHENOL AND FORMALDEHYDE AND METHOD OF MAKING THE SAME.

942,700.

Specification of Letters Patent.

Patented Dec. 7, 1909.

No Drawing.

Application filed December 4, 1907. Serial No. 405,021.

To all whom it may concern:

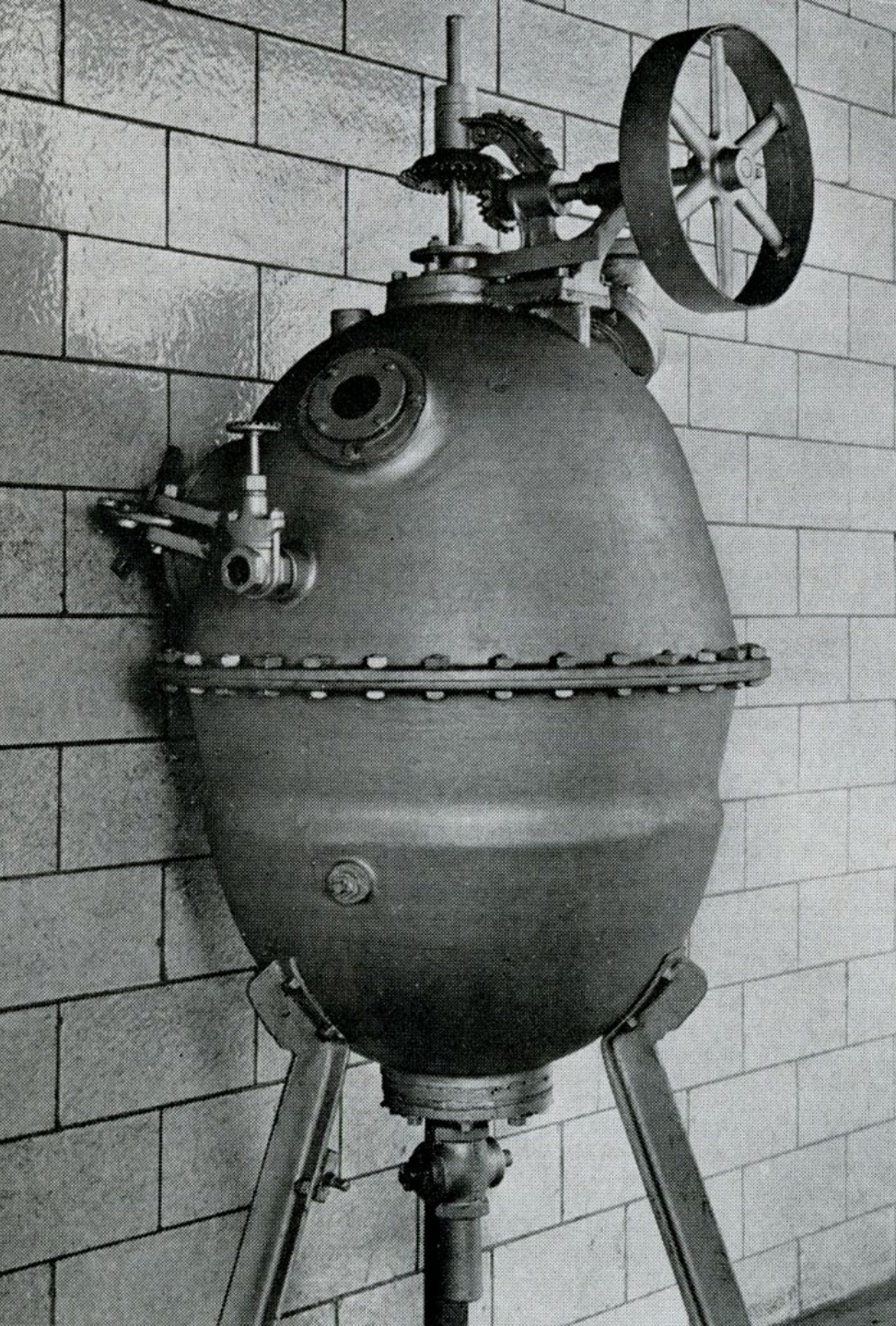
Be it known that I, LEO H. BAEKELAND, a citizen of the United States, residing at Yonkers, in the county of Westchester and State of New York, have invented certain new and useful Improvements in Condensation Products of Phenols and Formaldehyde and Methods of Making the Same, of which the following is a specification.

It is well known that phenol or its homologues and formaldehyde or its polymers are capable of reacting to yield a condensation product, and in my copending application, Ser. No. 383,684, filed July 13, 1907, I have described a method of producing a hard, infusible and insoluble product by reacting on a phenolic body with formaldehyde under conditions which yield an oily or viscous condensation product, and thereafter transforming this initial condensation product by application of heat and pressure into infusible and insoluble products or articles having any desired configuration, such products or articles consisting solely of the condensation product or of the same in admixture with other bodies.

The present invention relates to an improved method of preparing the above mentioned infusible and insoluble material, or articles consisting of or containing the same, and to a novel intermediate reaction prod-

character and contains the initial products of chemical condensation. The liquids are readily separated, and the aqueous solution may be rejected, or the water may be eliminated by evaporation. The oily or viscous liquid obtained as above described, and hereinafter referred to as the "initial condensation product," is found to be soluble in or miscible with alcohol, acetone, phenol, and other solvents, but is only partially and imperfectly soluble in benzol. This initial product sometimes assumes a pasty or half-solid state when cooled to a sufficient extent, or may even assume a solid and brittle state, but is again liquefied when heated, and this alternate solidification and liquefaction may be repeated so long as the product does not become transformed into the intermediate or into the final condensation products hereinafter described.

If the initial condensation product be heated in an open vessel at temperatures above 100° C., the mass will foam, emit vapors, and yield a hard, irregular and porous body, infusible by further heating and insoluble in alcohol, acetone and phenol. In order to avoid the production of a porous mass it has been proposed to harden the initial condensation product at temperatures below 100°, but such hardening is extremely slow and applicable only to relatively thin



The Bakelizer



"It's a WDC"
TRIANGLE
THE GENUINE
BAKELITE

Reg. U.S. Pat. Off.

A pipe of character—character that shows clearly on the surface and proves sincere on more intimate acquaintance. It's a Demuth seasoned French Briar with stem of Triangle Bakelite—all that any man can ask for in a pipe.
WM. DEMUTH & CO., NEW YORK

Frischer & Co. v. Bakelite Corporation, 39 F. 2d 247 (C.C.P.A. 1930)

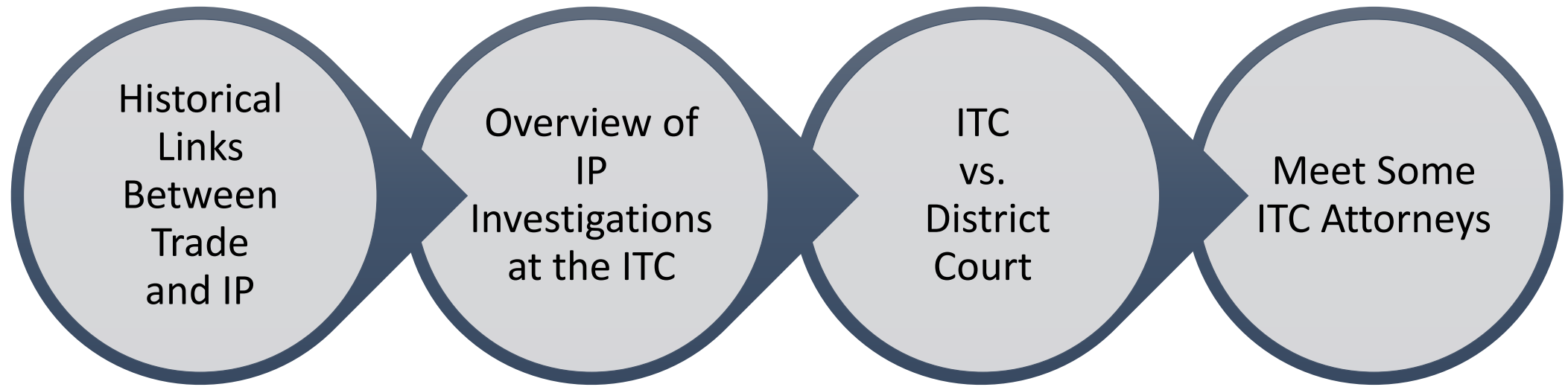


Pipe made by William Demuth Co.,
licensed by Bakelite Corp.



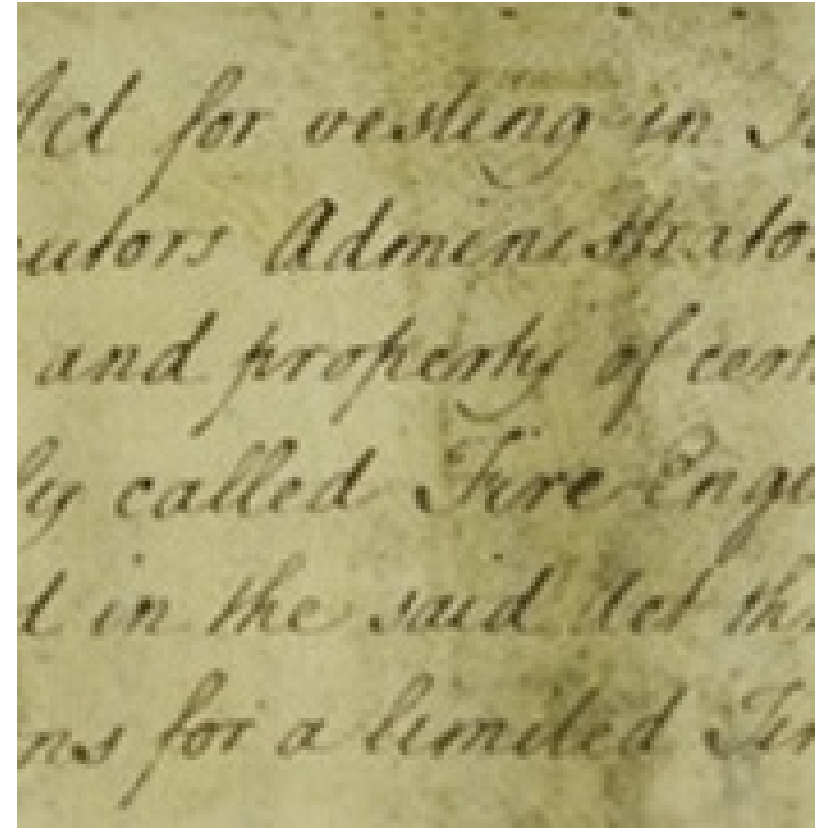
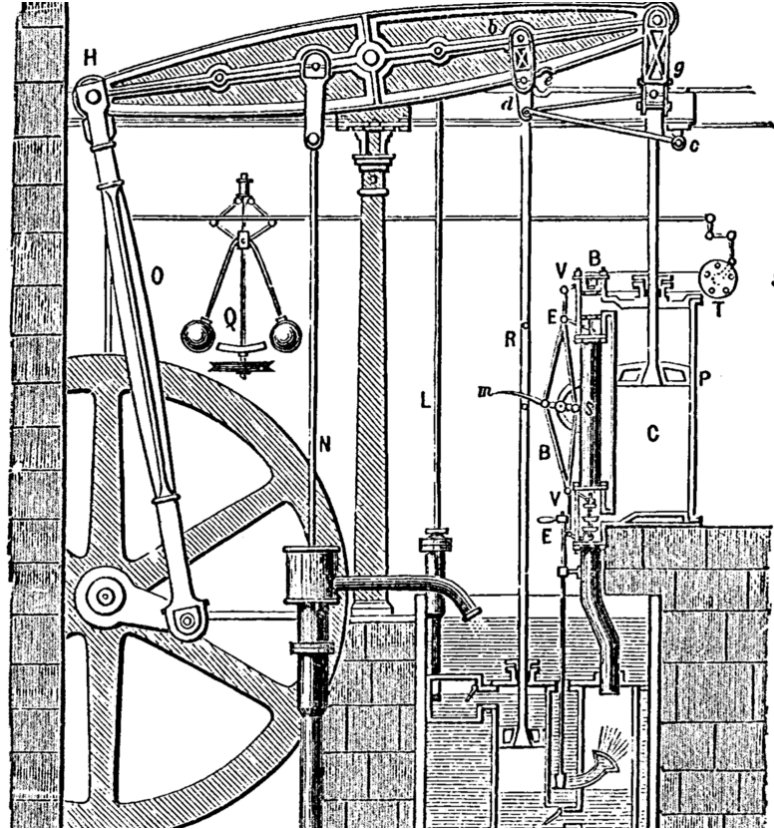
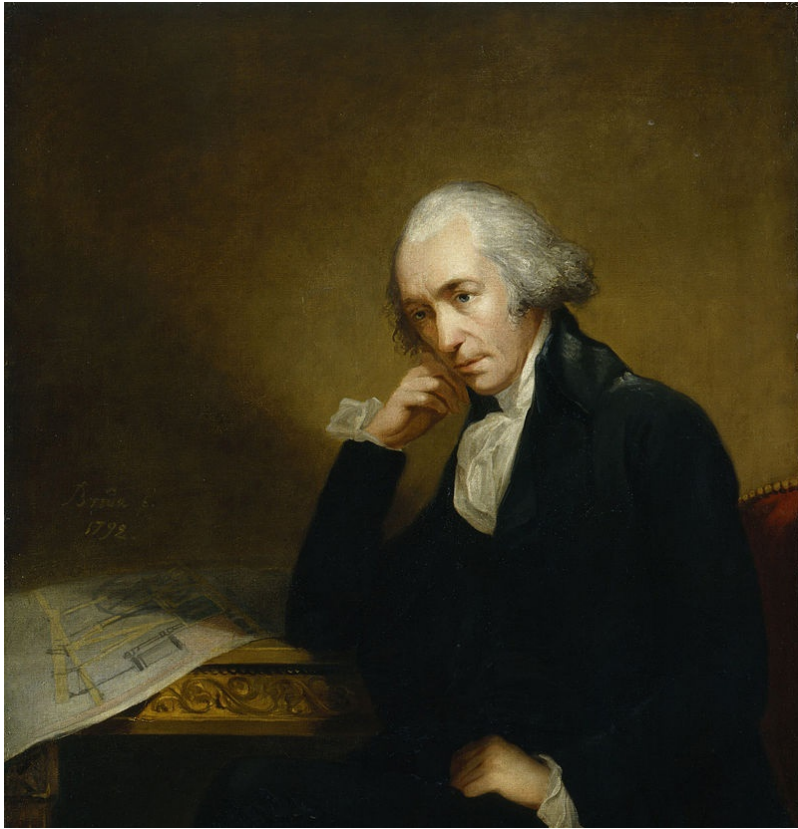
Cigarette holder imported by Frischer & Co.



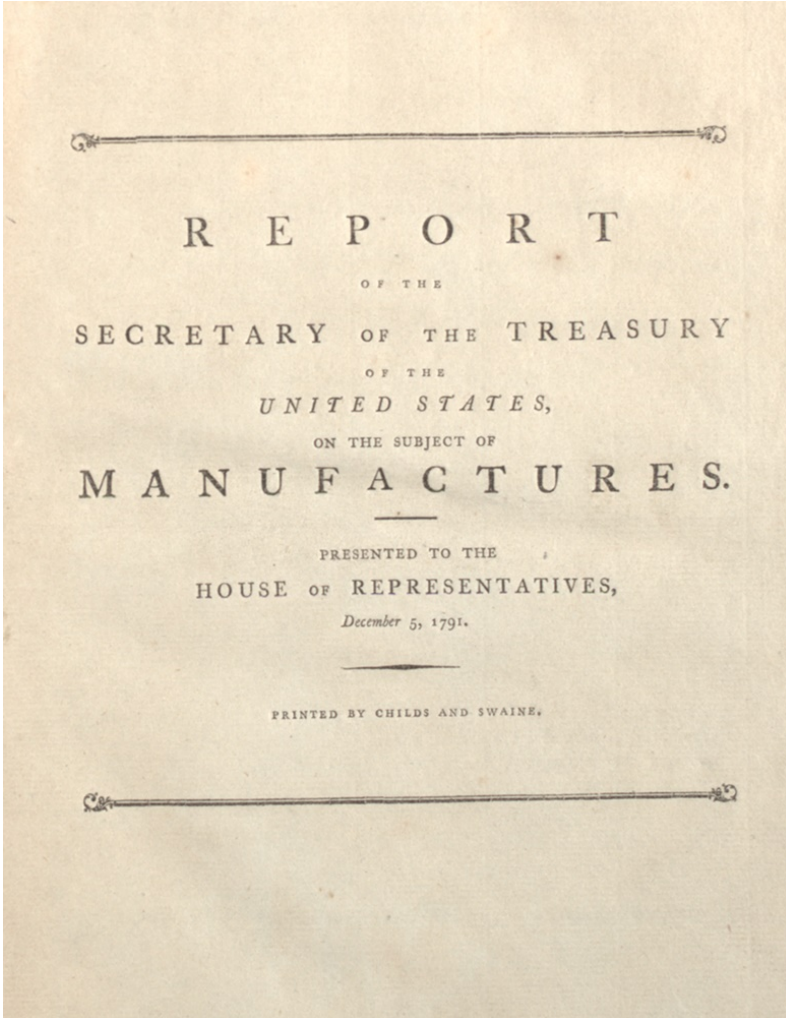




Historical Links Between Trade & IP



James Watt's Steam Engine
and Royal Patent – England, 1775

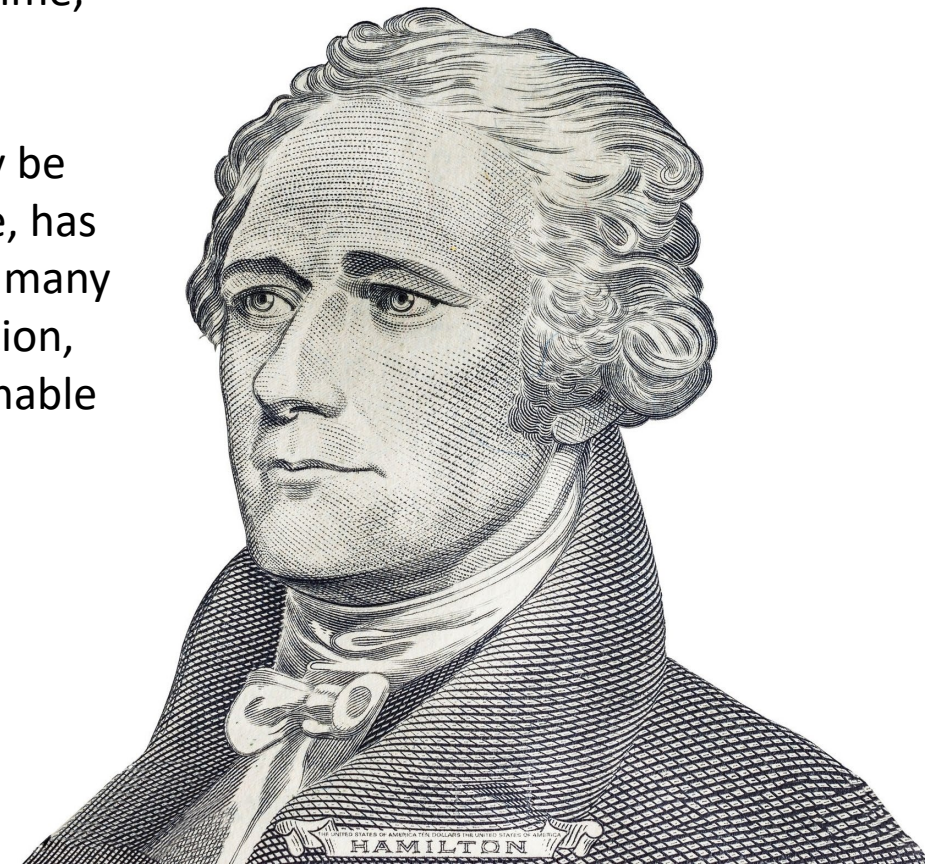


“The substitution of foreign for domestic manufactures is a transfer to foreign nations of the advantages accruing from the employment of Machinery.”

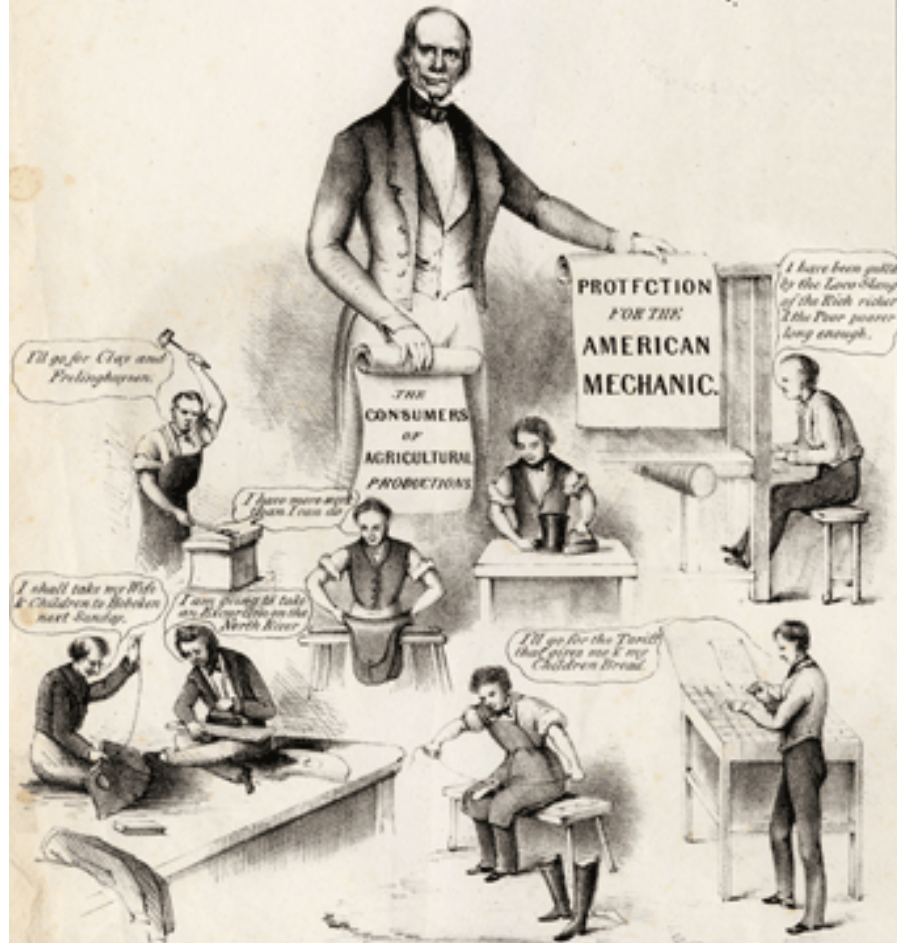
“The encouragement of new inventions and discoveries, at home...” may be accomplished by granting, “for a time, exclusive privileges.”

“Prohibitions of rival articles” may be appropriate “when a manufacture, has made such a progress and is in so many hands as to insure a due competition, and an adequate supply on reasonable terms”

Alexander Hamilton, 1791



THE EFFECTS OF THE TARIFF OF 1842.



TARIFF.

FREE TRADE OF 1840. Polk & Dallas Free Trade Auction Store, for the Sale of Foreign Goods only.



THE WHITE HOUSE
WASHINGTON

Personal.

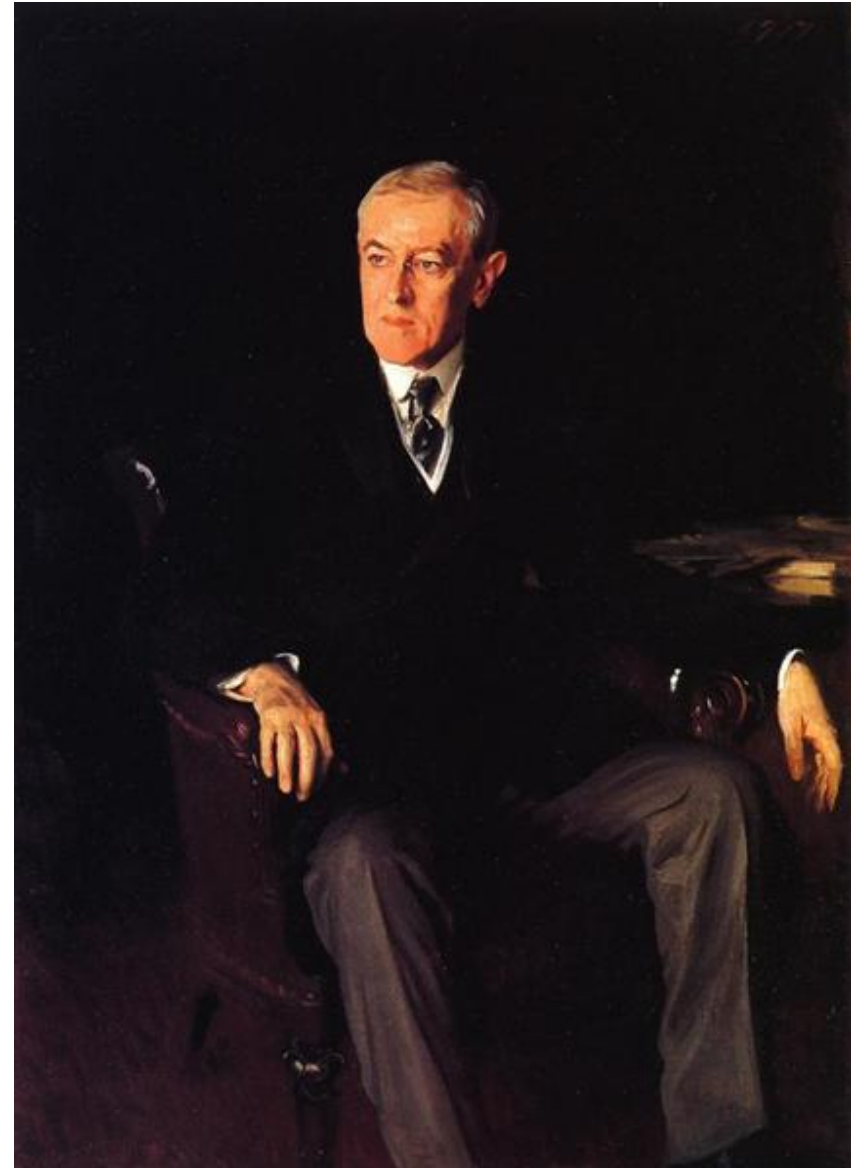
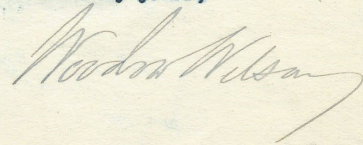
June 8, 1916

My dear Mr. McCulloch:

I was very much interested in the talk we had the other day about the additions you propose to the Rainey Bill providing for the creation of a Tariff Commission, and you were so frank and interesting about the whole matter that I wanted to see the merits of your proposals. I am sorry to say, however, that I have not been able to change the opinions I expressed to you at the time. I think that the simpler the legislation in this matter is, the better it will be and the more effective, and that it would be best not to lay down lines to guide the Commission beforehand for fear we might lay down the wrong lines. I think the freer it is to get at the facts and to draw such inferences as the facts demand, the better it will be for the whole country.

Cordially and sincerely yours,

Hon. Roscoe C. McCulloch,
House of Representatives.







Overview of ITC IP Investigations

“[T]he International Trade Commission (ITC), *an obscure federal agency* that typically deals with trade...suddenly is telecom central.”

Smoot-Hawley's Revenge
Aug. 23, 2006

THE WALL STREET JOURNAL.

Obscure?

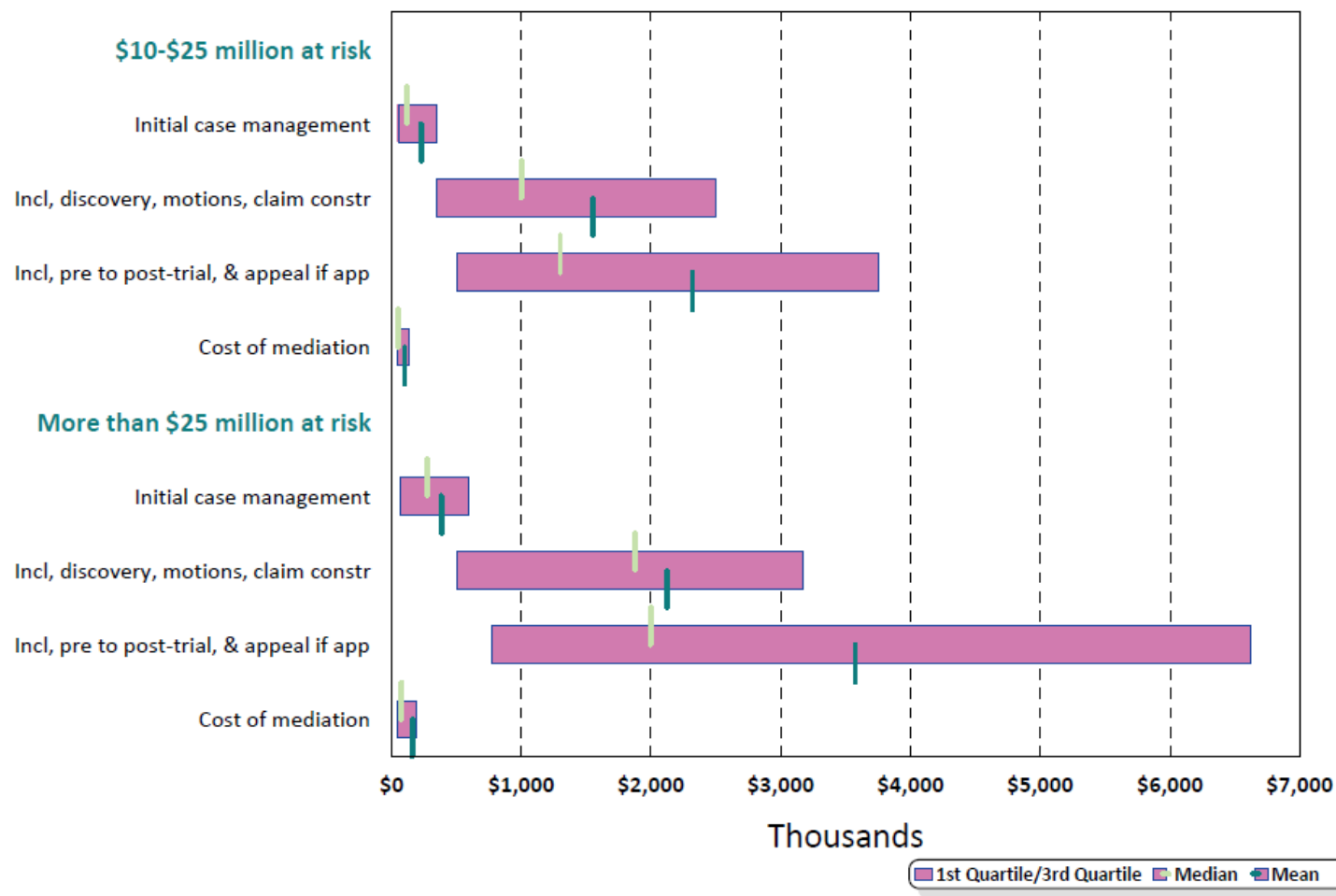
- Each year, 1 in 6 patent infringement trials is held at the ITC







- Half of ITC patent infringement trials have more than \$10M at risk
- 25% have more than \$25M at risk
- For these big cases, it is not unusual for each party to spend more than \$5M in legal fees





What Is the U.S. International Trade Commission?

- What it is
 - Independent, bipartisan, quasi-judicial agency with broad investigative responsibilities on trade matters
- What it is not
 - Not a policymaking body
 - Not a trade negotiator (that's the U.S. Trade Representative)

Section 337 of the Tariff Act of 1930

It is unlawful to import, sell for importation, or sell in the United States after importation an article if:

- the article infringes a valid and enforceable U.S. intellectual property right; AND
- a domestic industry exists or is in the process of being established.

19 U.S.C. § 1337(a)(1).

IP Litigation at the ITC



90% of section 337
investigations involve
allegations of patent
infringement



Copyright
Trademark
Trade dress
Trade secret
False advertising
Antitrust

Domestic Industry Requirement



Technical Prong

- Complainant must have a domestic industry relating to articles protected by IP laws
 - In patent cases, an infringement analysis is applied to complainant's own products



Economic Prong

- Significant investment in plant and equipment;
- Significant employment of labor or capital; or
- Substantial investment in exploitation of the IP, including engineering, research and development, or licensing.

Frischer & Co. v. Bakelite Corporation, 39 F. 2d 247 (C.C.P.A. 1930)



Pipe made by William Demuth Co.,
licensed by Bakelite Corp.



Cigarette holder imported by Frischer & Co.



Available Remedies

Limited exclusion order

Stops importation of products from the litigating parties

General exclusion order

Stops importation of products from all importers, not just litigants

Cease and desist order

Restricts domestic sale & distribution

Civil Penalties

Up to \$100,000 per day for violating orders

Public Interest
Factors
19 U.S.C.
§ 1337(d), (f))

ITC must consider the effect of a remedy on:

- The public health and welfare;
- Competitive conditions in the U.S. economy;
- The production of like or directly competitive articles in the United States; and
- United States consumers.

Who Decides Section 337 Matters?



Administrative Law Judge

- Conducts a full evidentiary hearing and issues an initial determination



Commission

- Reviews the initial determination (almost always on the papers) and issues a final determination



President

- USTR reviews any remedy ordered within 60 days and may disapprove the remedy for policy reasons



So Many Attorneys...

- ALJ Attorney Advisors
- Office of Unfair Import Investigations
- Office of the General Counsel
- Aides to Commissioners

Who Else Is Involved?



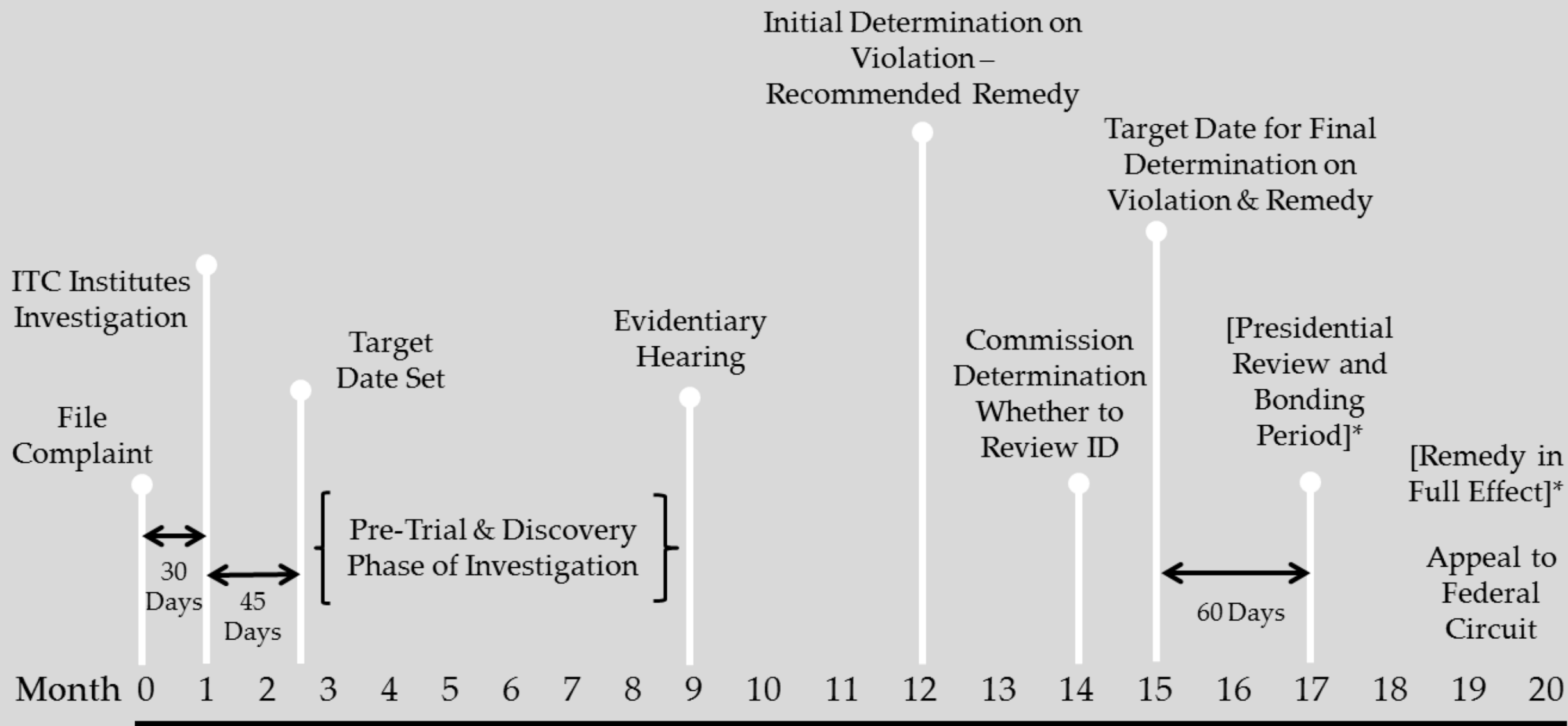
**U.S. Court of Appeals
for the Federal Circuit**



**U.S. Customs and
Border Protection**

Enforces the Commission's orders
at ports of entry

Based on a 15-month target date (typical range: 15-16 months)



* Only applies if a violation is found

ITC vs. District Court

ITC Features

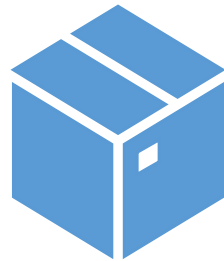


Speed

- Avg trial in 9 months
- Avg final determination in 15 months



Expertise in IP law



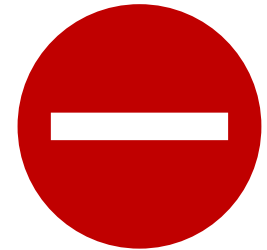
In rem jurisdiction



Pleading with specificity (claim charts)



Advisory & Re-design adjudication



Broad remedies

ITC Differs from District Court



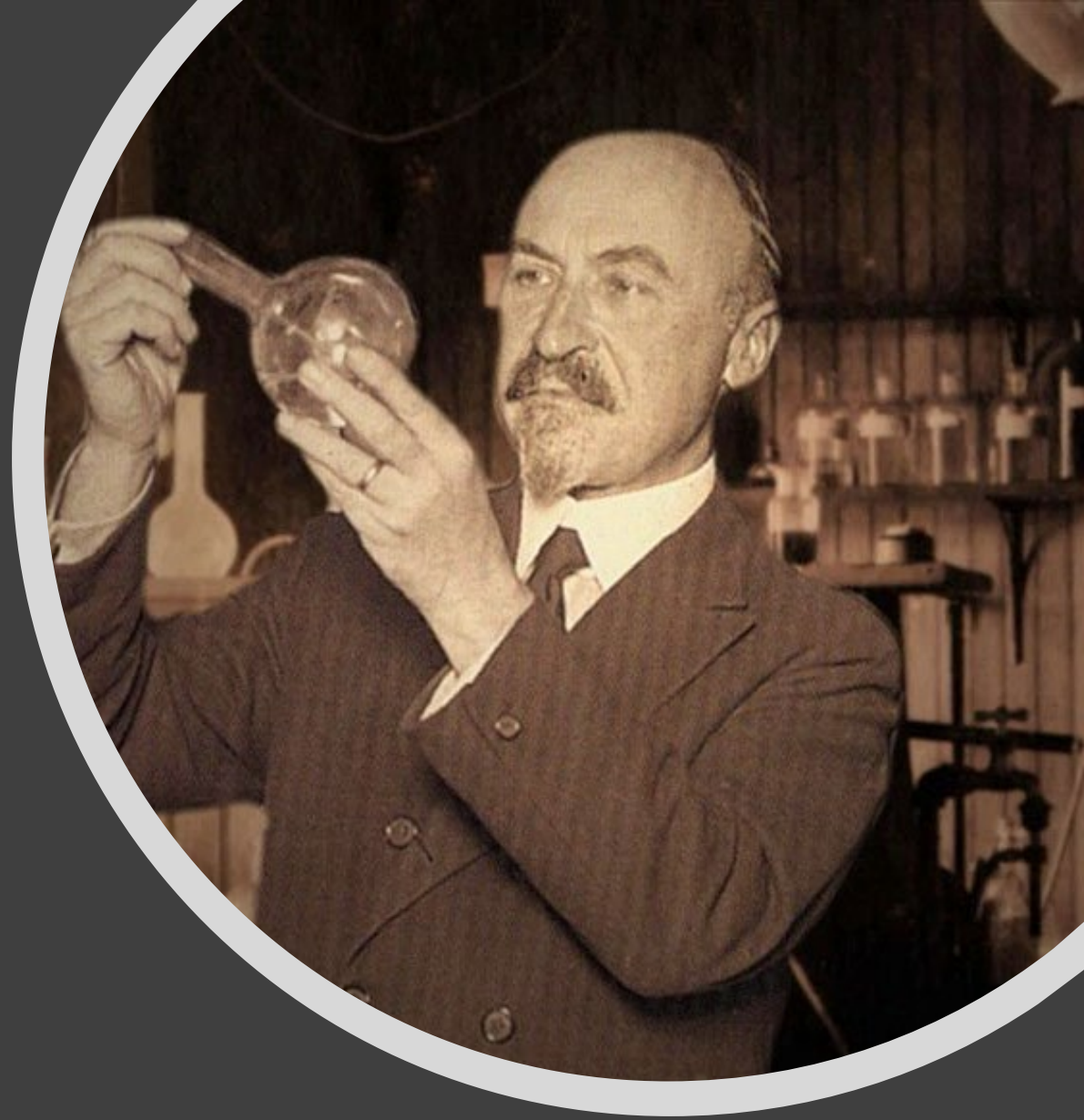
- No money damages
- No jury
- No equitable considerations with remedy



- Importation requirement
- Domestic industry requirement
- ITC Staff Can Be a Party
- Statutory Remedy

“I despair of the helter-skelter methods of our vaulted homo sapiens, misguided by his ignorance and his politicians...We need more. Science can help us.”

Leo Baekeland



Questions and Discussion
