

petitions for certiorari (see *Gaines v. Washington*, ante, p. 81), we think that the petitions should be denied. The trivial character of the questions presented illustrates again the wisdom of not granting, in cases involving the orders of administrative boards, a review as of right—with its attendant right to oral argument. It is true that each of these cases presents a question involving the Federal Constitution. But in both the controlling principle is well settled, and the question presented is simply whether on the particular facts it is applicable. Obviously such a question is of no general importance. The number of administrative boards, state and municipal, with like power to issue orders is now very large. Each board issues many orders. And each order may, by its application to varying facts, give rise to many distinct constitutional questions. *Dahnke-Walker Milling Co. v. Bondurant*, 257 U. S. 282.

HAMBURG-AMERICAN LINE TERMINAL & NAVIGATION COMPANY *v.* UNITED STATES.

SAME *v.* SAME.

ATLAS LINE STEAMSHIP COMPANY *v.* SAME.

APPEALS FROM THE COURT OF CLAIMS.

Nos. 3, 4, 5. Argued April 25, 1928.—Decided May 14, 1928.

1. Under the Trading With the Enemy Act of October 6, 1917, § 2, property in this country owned by a domestic corporation was non-enemy property even though an enemy owned all of its stock. P. 140.
2. Where property of a domestic corporation whose stock was enemy-owned was taken over during the war and the compensation fixed by the President was paid, interest on the sum paid is not recoverable from time of taking to time of payment, in the absence of anything showing that due allowance for the delay was not made in fixing the compensation. P. 141.

3. Petitions in these cases alleging taking and use of plaintiffs' property by the United States, state causes of action but should be made more definite and certain by amendment. P. 141.
59 Ct. Cls. 461; *Id.* 974, reversed.

APPEALS from judgments of the Court of Claims dismissing petitions based on the taking and use of plaintiffs' property during the war.

Mr. Charles H. Le Fevre for appellants.

Solicitor General Mitchell for the United States.

Congress has adopted the policy of determining the status of corporations as enemy or not without regard to the nationality of their stockholders, and the United States admits error in the decision of the Court of Claims in so far as it held that the property of New Jersey corporations was enemy-owned because all their stock was enemy-owned.

As the appellant in each case is to be dealt with as a citizen of the United States, notwithstanding its stock was enemy-owned, then upon the taking of the use of its property a contract to pay just compensation for that use was implied.

The claim for interest on the award of compensation for the taking of the title must fail because there is nothing on the face of the award or in the petition to indicate that any item of just compensation was omitted.

The United States concedes that the judgments should be reversed and compensation awarded for the value of the use.

MR. JUSTICE McREYNOLDS delivered the opinion of the Court.

These appeals were taken June 16, 1924, from judgments of the Court of Claims which sustained demurrers to the petitions. For the views of that Court see *Deutsch-Australische Dampfschiffs-Gesellschaft, Appellant, v. The*

United States, 59 Ct. Cls. 461. Appellants are incorporated under the laws of New Jersey and their entire capital stock has long been owned by the Hamburg-American Line, a German corporation.

In Cause No. 3 the appellant seeks to recover (1) compensation for the use of certain docks and piers, New York harbor, seized by the United States April 6, 1917, and used by them until June 28, 1918; and (2) interest on the sum awarded by the President (December 3, 1918) as compensation for the same property, from June 28, 1918, when title was taken thereto until January 5, 1919, the date of actual payment. In Cause No. 4 the claim is for the value of two tug-boats, launch, barge, and coal hoister requisitioned and taken by the United States April 6, 1917, at the port of New York; and in No. 5 judgment is asked because of three barges, likewise taken on the same day.

The court below evidently proceeded upon the view that the property of appellant corporations should be treated as owned by an enemy because their entire capital stock belonged to a German corporation. And as the property was seized during the war with Germany it held there could be no recovery. Without doubt Congress might have accepted and acted upon that theory. It was adopted in the *St. Tudno*, Lloyd's Reports of Prize Cases, Vol. V, p. 198, and the *Michigan*, Lloyd's Reports of Prize Cases, Vol. V, p. 421. But Congress did not do so; it definitely adopted the policy of disregarding stock ownership as a test of enemy character and permitted property of domestic corporations to be dealt with as non-enemy. The prescribed plan was to seize the shares of stock when enemy owned rather than to take over the corporate property.

The Trading With The Enemy Act, approved October 6, 1917 (c. 106, 40 Stat. 411), provides—

“Sec. 2. That the word ‘enemy,’ as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

“(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory. . . .”

In *Behn, Meyer & Co. v. Miller, Alien Property Custodian*, 266 U. S. 457, 472, we held the status of the corporation was not fixed by the stockholders' nationality, and said—

“Before its passage the original Trading with the Enemy Act was considered in the light of difficulties certain to follow disregard of corporate identity and efforts to fix the status of corporations as enemy or not according to the nationality of stockholders. These had been plainly indicated by the diverse opinions in *Daimler Co. v. Continental Tyre & Rubber Co.*, 2 A. C. (1916) 307.

“ . . . ”

The petition in No. 3 states a good cause of action for the use of the docks and piers from April 6, 1917, to June 28, 1918. As Congress might have directed forfeiture of all property beneficially owned by enemy subjects, it had power to provide for seizure followed by such compensation as the President might determine. Here such compensation was fixed and ultimately paid; and we find nothing to show that due allowance was not made for the delay in payment.

In No. 4 the petition fails clearly to show what action was taken by the United States. It does allege that the property was taken and used and to that extent discloses adequate ground for recovery. It ought to be made more certain by amendment.

If title to the vessels described in Cause No. 5 was actually taken, the United States became liable for their value. For any use of such vessels before acquisition of title the United States should pay. The allegations of the petition are not entirely clear and should be made more definite.

The judgments appealed from are reversed. The causes will be remanded to the Court of Claims for further proceedings in conformity with this opinion.

Reversed.

LONG, COMMISSIONER, *v.* ROCKWOOD.

SAME *v.* SAME.

CERTIORARI TO THE SUPERIOR COURT FOR THE COUNTY OF WORCESTER, MASSACHUSETTS.

Nos. 201 and 202. Argued January 20, 1928.—Decided May 14, 1928.

A State may not tax the income received by one of her citizens as royalties for the use of patents issued to him by the United States. P. 145.

257 Mass. 572, affirmed.

CERTIORARI, 274 U. S. 729, 730, to judgments of the Superior Court of Massachusetts abating taxes, entered on rescripts from the Supreme Judicial Court. The judgments were recovered by Rockwood in actions against Long, Commissioner of Corporations and Taxation of the Commonwealth.

Mr. F. Delano Putnam, Assistant Attorney General of Massachusetts, with whom *Messrs. Arthur K. Reading*, Attorney General, and *R. Ammi Cutter*, Assistant Attorney General, were on the brief, for petitioner.

All that a patentee obtains by his patent is the right to exclude others from the use, manufacture, or sale of the process patented. A patent once granted is merely