

THE JOURNAL OF  
THE HISTORICAL SOCIETY  
OF THE UNITED STATES  
DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MICHIGAN

# STEREOSCOPE



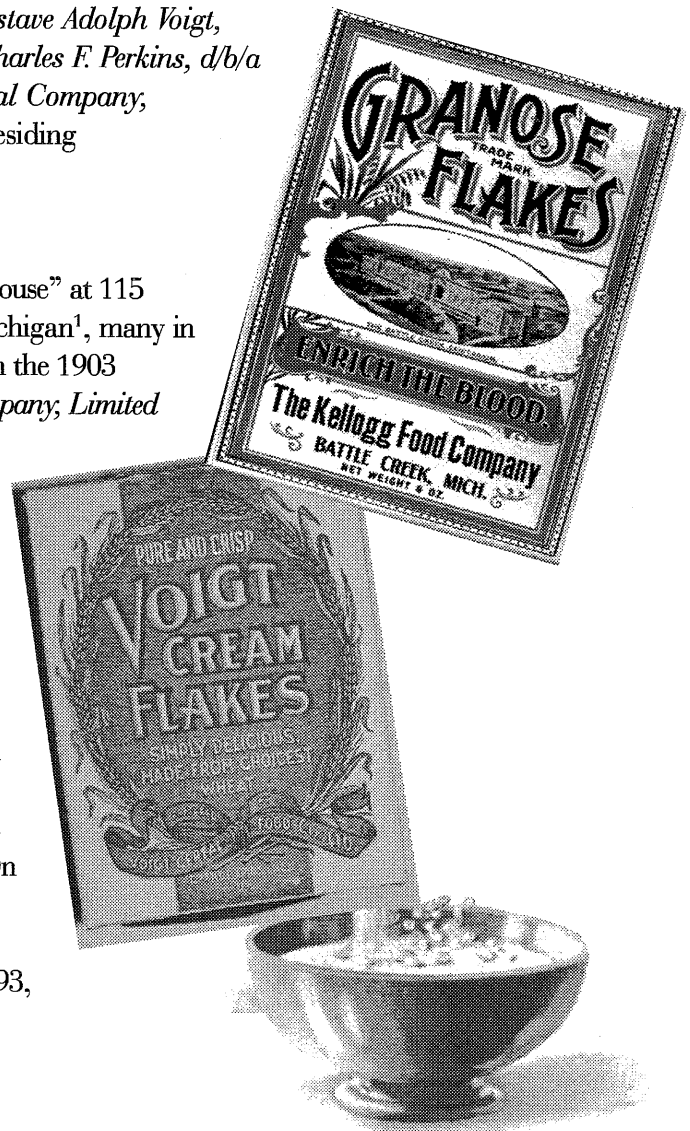
## A "FLAKEY" PATENT CASE

*Sanitas Nut Food Company, Limited v. Carl Gustave Adolph Voigt, Elizabeth Voigt, Frank A. Voigt, M.P. Hake and Charles F. Perkins, d/b/a The Voigt Milling Company and The Voigt Cereal Company,*  
Western District of Michigan 1903, Wanty, J. Presiding

### What is a Sanitas?

**T**hanks to preservation of the historic "Voigt House" at 115 College Avenue, S.E., in Grand Rapids, Michigan<sup>1</sup>, many in Western Michigan recognize the defendants in the 1903 patent infringement case of *Sanitas Nut Food Company, Limited v. Voigt Milling et al.* Some may correctly suspect that Judge Wanty, who presided in this case, was the patriarch of the Wantys still living in Grand Rapids. However, what in the world was the Sanitas Nut Food Company, Limited?

While you might not recognize the Sanitas name, you will recognize the names of the two brothers who owned and managed, respectively, the Sanitas Nut Food Company, Limited: Dr. John Harvey Kellogg, and his younger brother Will Keith Kellogg. In 1903, they were still friends. They were not very friendly, however, with the Voigt family. On March 14, 1903, the Sanitas Nut Food Company filed suit against the Voigts for infringement of Dr. John Harvey Kellogg's United States Patent 558,393, filed May 31, 1895, and issued April 14, 1896.



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## The Kelloggs And the Battle Creek Sanitarium

The Sanitas Nut Food Company had its roots in the Seventh Day Adventist movement. Founded in 1854 in Battle Creek, Michigan, the Seventh Day Adventist Church believes in the sanctity of body and soul, and advocates temperance and preventive medicine as a way of life. To support this belief, the Adventists opened the Western Health Reform Institute in Battle Creek in 1866.

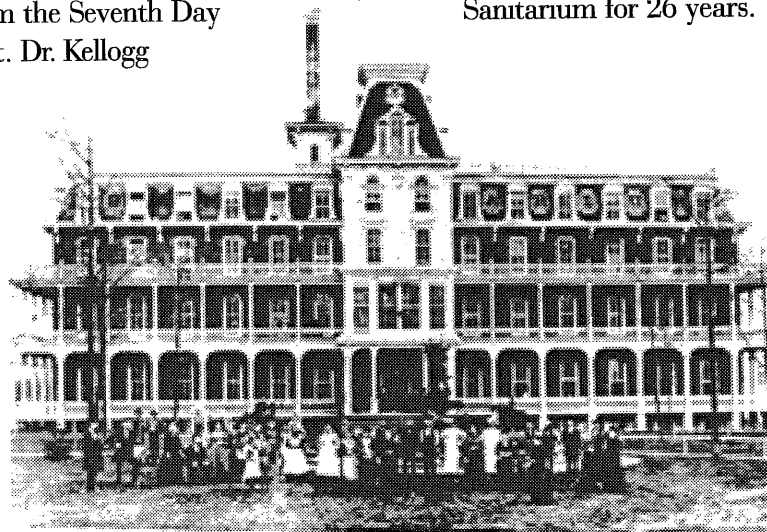
In 1876, Dr. John Harvey Kellogg became director of the Institute, and changed its name to the "Battle Creek Sanitarium." Dr. Kellogg coined the word "Sanitarium," to reflect his vision of a "sanitary" retreat for health restoration and training. The similar word "sanitorium" referred to a hospital for invalids or for the treatment of tuberculosis.

While Dr. Kellogg's treatment embraced all branches of medicine, he emphasized fresh air, sunshine, exercise, rest and diet. Meats, condiments, spices, alcohol, chocolate, coffee and tea were eliminated from the Seventh Day Adventist's diet. Dr. Kellogg invented some 80 grain and nut products, including granola and a "caramel cereal" coffee substitute beverage, to replace the offending

foods. (C.W. Post later introduced his version of the coffee substitute as "Postum.")

At 5'4", the diminutive Dr. John Harvey Kellogg was apparently something of a banty rooster. What he lacked in physical stature, he made up for in his extroverted and flamboyant way. Later in life, he wore completely white outfits, down to his shoes and up to his hat, that accentuated his white hair, moustache and goatee. Under his leadership, the Battle Creek Sanitarium, known affectionately as "the San," acquired an international reputation, and attracted the rich and famous from across the Nation and around the globe.

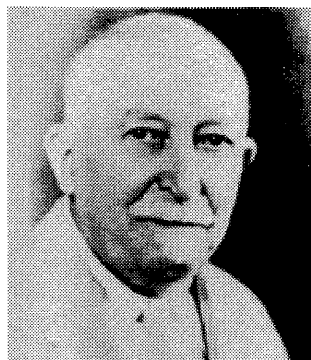
In 1880, Dr. Kellogg hired his younger brother, Will Keith Kellogg, to be the Battle Creek sanitarium's bookkeeper and business manager. Among his various duties, W.K. Kellogg assisted Dr. Kellogg in his food experiments. W.K. Kellogg, in contrast to his famous older brother, was taller (5'7½"), but was apparently unsmiling and introverted. He inconspicuously served his brother at the Sanitarium for 26 years.



Battle Creek Sanitarium -1878

## The Accidental Discovery (Maybe) Of Flaked Cereal

According to the official history of The Kellogg Company,<sup>2</sup> Dr. John Harvey Kellogg and W.K. Kellogg conducted a series of experiments to develop good tasting substitutes for the hard and tasteless bread on the San's menu. Wheat was cooked, forced through granola rollers, then rolled into long sheets of dough. One day in 1894, after cooking the wheat the men were called away. When they returned, the brothers decided to see what would happen when the tempered grain was forced through the rollers. Instead of the usual long sheets of dough, each wheat berry was flattened into a small, thin flake. When baked, the flakes tasted crisp and light.



*Dr. John Harvey Kellogg*

The Sanitarium patients enjoyed the wheat flakes and wanted to continue eating them at home. As a service to former patients, Dr. Kellogg started the Sanitas Nut Food Company on January 21, 1899. He held all of the shares of stock except for two, one of which he gave to younger brother Will K. Kellogg. He put Will in charge of the small business to produce the cereal for mail orders, and agreed to pay him one-fourth of the profits. The cereals were sold under the names "Granose Flakes" and "Toasted Wheat Flakes."

The Kellogg name never appeared on these products, with one exception. In 1903, the brothers agreed to put the phrase, "None genuine without the signature of Will K. Kellogg" on the products derived from nuts. Dr. John Harvey Kellogg insisted that *his* name should *not* be used on the products, lest his standing as a physician should be impaired.

### Kellogg Patent 558,393, April 14, 1896

While the official Kellogg Company history indicates that W.K. Kellogg was a joint inventor of flaked cereal with his older brother, it was Dr. John Harvey Kellogg who took the credit. Dr. John Harvey Kellogg appears as the sole inventor on United States Patent 558,393, filed May 31, 1895, and issued April 14, 1896.

The scope of protection afforded by a patent is determined by its "claims." Dr. Kellogg's '393 patent has

two claims, the first directed to a process for making flaked cereal, the second directed to the flaked cereal itself:



*W. K. Kellogg*

1. The process hereinbefore described for the manufacture of an improved alimentary product, which consists, first, in soaking the grain in water for some hours, whereby it is subjected to a preliminary digestion with its contained cereal in, and at temperature which prevents actual fermentation; second,

subjecting the previously-soaked grain to heat for a time sufficient to completely cook the starch; third, drying the grain; fourth rolling the grain between cold rollers; and fifth, baking the flakes until thoroughly dry and crisp, as specified.

2. The improved cooked alimentary product, from grain such as wheat, hereinbefore described, which exists in the form of large, attenuated, baked, crisp and slightly brown flakes of practically uniform thickness, the same being readily soluble and containing dextrin, as specified.

A patent is infringed if at least one claim of the patent is infringed. A claim is infringed if the infringer utilizes each and every element or step set forth in the claim.

### Everybody Wants To Get In On The Act

Again according to the official Kellogg Company history, "Entrepreneurs quickly profited from copying and retailing flaked wheat cereal. By 1902 more than 40 factories sprang up in the shadow of the San, taking advantage of its reputation to advertise their products as health foods."

One of the companies who sought to get in on the act was the Voigt Milling Company, a/k/a The Voigt Cereal Company.

The Voigt family history is well documented by The Voigt House Committee in an April 1977 commemorative booklet. Carl Gustav Adolph Voigt came to the United States in 1843, the eldest of five sons of German immigrants who settled in Michigan City, Indiana. When he was nineteen both his parents died. He

assumed the responsibility for his brothers and found work in a local grocery.

Two years later he became a clerk in a dry goods store and the following year he married. Unfortunately, his wife appears to have been suffering from "consumption" and died after only two years of marriage leaving him an infant son.

He continued to work in the dry goods store and in 1860 married Elizabeth Wurster also of Michigan City. Her widowed mother lived with them and was a vital part of their family until her death in 1890.

Carl and Elizabeth's first child, Franz (Frank) Adolph, was born the following year a few months after the Civil War began. Carl, who had become a U.S. citizen in 1859, was threatened by the draft until 1864 when he hired a substitute. Another son had been born and died in 1863 and yet another was born in July of 1864. He also died in infancy.

After the war, Carl and another young employee of the dry goods store, William Herpolsheimer, formed a partnership and opened their own store in Michigan City. The future looked promising but that same year, Carl's eldest son, the only surviving child from his first marriage, died of scarlet fever.

In 1870, William Herpolsheimer came to Grand Rapids to open another Voigt-Herpolsheimer store. Carl remained in Michigan City where his family now included three daughters, Clara, Emma and Amanda. However, in 1875 when the Voigt-Herpolsheimer Co. purchased the Star Flour Mill in Grand Rapids, Carl sold the store in Michigan City and moved to Grand Rapids.

The family settled on Court Street, not surprisingly in a predominantly German neighborhood. Carl's namesake, Carl Simon, had been born in Michigan City, but two other children were born in Grand Rapids. One, a daughter, died. The last was Ralph Arthur, born in 1882.

Both the dry goods store and the mill prospered as the city grew. In 1895 Voigt and Herpolsheimer purchased the Crescent Flour Mill. In that same year at the age of sixty-two, Carl Voigt built what he referred to as a "retirement home" at 115 College Avenue.

This home was to serve as a haven for his family for over seventy-five years. Only his oldest son, Frank, who had married in 1886, never lived in the house. Daughter Amanda, a leading Grand Rapids debutante, was married to Charles F. Perkins in the Voigt House in 1897. Both Carl Simon and Clara returned to live in the magnificent home

in the early 1900's and Emma and Ralph, neither of whom married, occupied the house for most of their lives.

In 1902 the Voigt-Herpolsheimer partnership was amicably dissolved with the Voigts keeping the mills, and the Herpolsheimers keeping the dry goods store. Frank Voigt participated with his mother and father in operating the milling empire, along with son-in-law Charles F. Perkins, and M.P. Hake, who apparently was a grandson, the son of Dr. William F. Hake and Clara Voigt. The Voigts aggressively expanded the market for their milled products, until it extended from Seattle to the Carolinas. Fortunately for the rich history of the United States District Court for the Western District of Michigan, one of the ways the Voigts sought to expand the business was to produce and sell flaked, baked wheat cereal.

### **The Issue Is Joined**

With some 40 possible defendants to choose from, one cannot help but wonder why the Voigt family was chosen. Perhaps the other competitors capitulated willingly to "cease and desist" letters, or perhaps they were just too small to be of concern. Clearly, Voigt Milling was a force to be reckoned with in 1903.

Suit was originally filed on March 14, 1903 against Carl A. Voigt, his son Frank A. Voigt, Louisa F. Mangold and Edward C. Mangold, as individuals and as co-partners doing business "under the firm name and style of The Voigt Milling Company and The Voigt Cereal Company." It is not clear who the Mangolds were, and their names are removed from the litigation by the time it reaches the Sixth Circuit Court of Appeals. Subsequently, named in the place of the Mangolds are Elizabeth Voigt, Carl's second wife, grandson M.P. Hake, and son-in-law Charles F. Perkins.

Suit was brought before Judge George Wanty, in the Circuit Court of the Western District of Michigan. Prior to 1911, each Federal judicial district had a District Court and a Circuit Court, not to be confused with the several Circuit Courts of Appeals. The District Courts handled criminal matters and matters involving less than \$500. The Circuit Courts in each district handled matters exceeding \$500 in value, and patent cases. In many districts, the two courts were combined, being served by a single judge. That appears to have been the case in the Western District of Michigan.

Judge Wanty was the third Judge appointed to the Western District of Michigan. The first was Solomon

Withey, appointed by Abraham Lincoln in 1862. Upon his death in 1886, President Grover Cleveland appointed Henry Severens of Kalamazoo to replace him. In 1900, President William McKinley elevated Henry Severens to the Court of Appeals for the Sixth Circuit, and appointed George Wanty to replace him in the Western District of Michigan.

George Wanty was born in Ann Arbor in 1856. He studied law at the University of Michigan, graduating in 1878. He began practice in Grand Rapids, eventually settling into a partnership with Niram A. Fletcher in 1883. The firm of Fletcher and Wanty was the predecessor firm to Uhl, Bryant, Wheeler & Upham (now Wheeler Upham, PC).

The Sanitas Nut Company was represented by Fred L. Chappell, with Taggart, Denison & Wilson being listed as "of counsel." Moses Taggart, born 1843, moved to Michigan in 1869 and established legal practice in Grand Rapids in 1870. He served as the Attorney General of Michigan from 1884-1888.

Eventually, Otis A. Earl became "of counsel" on the case. The firm of Chappell and Earl appears on many early 20<sup>th</sup> century United States patents, and is believed to be the first patent law firm practicing in the Western District of Michigan. Perhaps the Sanitas case brought the two together. Fred Chappell was apparently closely associated with Dr. John Harvey Kellogg, as he continued to represent Dr. Kellogg in subsequent litigation.

The Voigts were represented by Albert Crane and Mark Norris. Mark Norris was the son of Lyman Norris, one of the founders of the Grand Rapids Bar Association. Mark Norris graduated from the University of Michigan Law School in 1882, and began practicing in Grand Rapids in the firm of Norris & Uhl. Edwin Uhl, a well-connected Republican was appointed Ambassador to the Kingdom of Venice by President William McKinley, which probably led to the association of Mark Norris with Crane & Stevens. Upon Uhl's return to Grand Rapids, he associated with Bryant, Wheeler & Upham, as noted above. From 1906-1943, Mark Norris was the President of the Grand Rapids Law Library.

### Patent Validity Was The Principal Issue

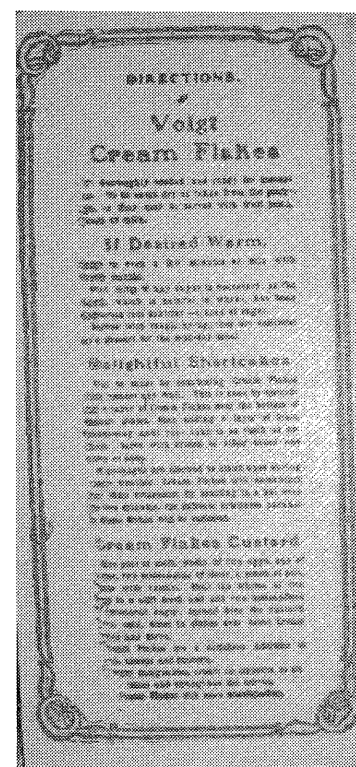
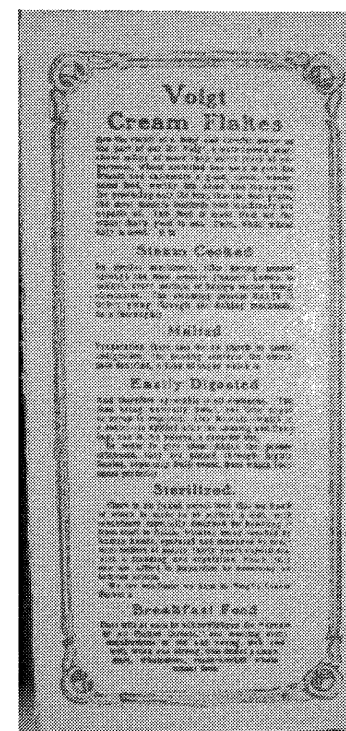
The case was tried to Judge Wanty, with non-deposition testimony being taken on September 27 and September 28, 1904. Then, as now, the plaintiff – patent owner had the burden of establishing that the patent was

infringed, i.e., that every element of at least one claim of the patent was being utilized by the defendant. The defendant had the opportunity to try to establish that, even if infringement existed, the patent claim infringed was invalid, and should not have been granted by the Patent Office in the first place.

In the *Sanitas v. Voigt* case, Judge Wanty found that the Voigts did not infringe the process claim of Dr. Kellogg's '393 patent. The Voigts did not subject the grain to a preliminary soaking in water, which is the first step set forth in claim 2 (the process claim) of the '393 patent. Instead, they proceeded directly to the second step of heating the grain to cook the starch. Thus, an element of process claim 1 was missing, and it was not infringed.

The Voigts' flakes, however, were "large, attenuated, baked, crisp and slightly brown flakes of practically uniform thickness, the same being readily soluble and containing dextrin . . . ." The conversion of cereal starch to dextrin is an inherent result of the baking process. Thus, claim 2, the "product claim," was infringed by the Voigts. The issue was whether or not the claim to a cooked brown flake was validly patented or not.

Prior to passage of the 1952 Patent Act, the grant and validity of



patents were governed by the Patent Act of 1793. The only statutory standard for patentability was that the discovery should be "new and useful." However in 1850, the United States Supreme Court wove a further requirement for patent validity into the fabric of the patent law. In *Hotchkiss v. Greenwood*, 11 HOW 248, the Supreme Court of the United States imposed a gloss upon the word "new," by requiring that "unless more ingenuity and skill in applying the old method" were necessary "than were possessed by an ordinary mechanic acquainted with the business, there was an absence of that degree of skill and ingenuity which constitute essential elements of every invention."

Thus, if "no other ingenuity or skill" be, "necessary . . ." to practice the claimed invention than that of an ordinary mechanic acquainted with the business, the patent is void." (Id) This was the test of patent validity applied by Judge Wanty in *Sanitas v. Voigt*.

The flaking of grain, cooked and uncooked, as a method of preparing grain for consumption, was disclosed in an 1885 United States patent to Gilman and Stern. This was well prior to Dr. Kellogg's work. However Kellogg's claim covered flakes which were "large, attenuated, baked, crisp and slightly brown, . . . of practically uniform thickness." Clearly such flakes were new, but were they "new" in a patentable sense, as required by the Supreme Court case of *Hotchkiss v. Greenwood*?

### Perkey's Revenge

Many attorneys think that patents and patent litigation are boring. They should have been there when Henry D. Perkey was called to the stand to testify on behalf of the Voigts. Admittedly, there was a great deal of droll, technical testimony given in the case about the conversion of starch to dextrin, the solubilizing of cereal starch to enhance digestibility, and the similarities of boiling grain to presoaking it - - all very fascinating to scientists and patent attorneys, but probably few others. However, the courtroom must have bristled with electricity when Henry D. Perkey was called to the stand.

In the winter of 1893-94, or early spring of 1894, Dr. Kellogg visited Henry D. Perkey in Denver, Colorado, and closely inquired into Perkey's "shredded biscuit." This visit occurred *prior* to the Kellogg's "accidental" discovery of flaked cereal. Perkey had developed a biscuit formed of long, thin, crisp and slightly brown filaments or shreds of

wheat. Perkey filed a patent on March 15, 1894. Perkey's shredded wheat biscuits were being made and sold in great quantities in the Denver area by the time Dr. Kellogg visited him.

One wonders if Henry Perkey may have harbored some resentment, regardless of whether appropriate or not, towards Dr. Kellogg. Perhaps he resented Dr. Kellogg having "picked his brain," only to subsequently file a patent in his

own name and successfully introduce his own pre-cooked cereal, without giving Perkey any credit. If so, he got his revenge when he testified in *Sanitas v. Voigt et al.*

An old patent litigator once said, "Through every patent case, there runs the silver thread of the son-of-a-bitch." Dr. Kellogg's visit to Perkey, *before* his "accidental discovery" of flaked cereal, may have been just that thread in the eyes of Judge Wanty. Judge Wanty concluded that Perkey's shreds of wheat were in every way identical to Dr. Kellogg's flakes, except for their shape.

Cereal flakes, *per se*, were also not new. Others had previously made cooked and uncooked cereal flakes, though not toasted crisp and brown like Perkey's shreds. Given that Perkey had baked cereal shreds to a crisp, brown, uniform consistency, and that others had made cooked and uncooked cereal flakes, Judge Wanty found that Dr. Kellogg had done nothing "new," as that term had been defined by the United States Supreme Court in *Hotchkiss v. Greenwood*, in baking cereal flakes to a crisp, brown, uniform texture.

The Sanitas Nut Food Company appealed Judge Wanty's decision to the Sixth Circuit Court of Appeals. Judge Severens, who had been Judge Wanty's predecessor on the Western District of Michigan bench, sat on the Sixth Circuit panel. After struggling for a page or so over the irrelevant issue of how a patent could have both process and product claims, the Sixth Circuit got down to

business and affirmed Judge Wanty's decision. This left the Voigts free to produce their toasted cereal flakes. Perhaps more significantly, this decision appears to have been the lynch pin to a cascading series of events unrelated to the Voigts, which made Battle Creek the "cereal capital" of the world.

### The Rest Of The Story

Much of the "rest of the story" can be found in *Kellogg v. Kellogg Toasted Corn Flake Co.*, 212 Michigan 95 (1920). In 1906, a year after the adverse decision in the *Voigt Milling* case, Will K. Kellogg evidently decided that he had lived in his brother's shadow long enough. In view of Will's desire to form his own business, Dr. John H. Kellogg proposed to transfer to a new corporation the secret formula and processes relative to, and the exclusive right to manufacture and sell, toasted corn flakes and toasted corn flake biscuits. Dr. Kellogg would receive almost two-thirds of the stock of the new company. On February 8, 1906, Will K. Kellogg and Chas D. Bolin accepted this proposal, and on February 19, 1906, formed the Battle Creek Toasted Corn Flake Company. Originally, the toasted corn flakes produced by the new company still carried the "Sanitas" name, but also carried the legend, "None genuine without the signature of W.K. Kellogg." In 1907, the Sanitas name was replaced with a conspicuously placed facsimile signature of "W.K. Kellogg."<sup>3</sup> From 1907 on, "Kellogg" or "Kellogg's" was continuously and extensively used as a designating name of Corn Flakes manufactured by the Battle Creek Toasted Corn Flake Company. United States Trademark Registration 147,458 for "KELLOGG'S" claims a date of first use of May 1, 1907, and United States Trademark Registration 105,018 for "W.K. KELLOGG" claims a date of first use of April 1, 1906.

Will K. was not only the first of the two brothers to use "Kellogg's" as a trademark for his cereal products, he was also the first to recognize the power of advertising. Upon the founding of the company in 1906, Will spent \$150 on a newspaper ad in Dayton, Ohio, one of the earliest applications of "test marketing products" in a single city before going national. After the success of the ad, Will committed a third of his working capital on a very expensive full-page advertisement in *Ladies Home Journal*. The ad told readers that 90% of them could not purchase Kellogg's Corn Flakes because most stores didn't carry it. The readers responded, and sales soared. By the

end of 1906, W.K. had spent \$90,000.00 on advertising and shipped 178,943 cases of Kellogg Corn Flakes, generating a profit of \$1.00 a case. By 1912, W.K.'s ad budget was one million dollars.

As a director and the largest shareholder of the Battle Creek Toasted Corn Flake Company, Dr. Kellogg was of course aware of the tremendous success which was being achieved under the "KELLOGG'S" trademark. In July of 1908, he decided to reverse his prior policy concerning use of his name, and transferred the assets of the Sanitas Nut Food Company to a new company he had formed under the name "Kellogg Food Company." Thereafter on May 16, 1909, the Battle Creek Toasted Corn Flake Company changed its name to "Kellogg Toasted Corn Flake Company."

The resulting confusion led Will Kellogg and the Kellogg Toasted Corn Flake Company to file suit against the Kellogg Food Company in 1910. Apparently, Dr. Kellogg by this time owned less than a 50% share of the Corn Flake Company, or he would surely have prevented this suit. It seems that between 1906 and 1910, Dr. Kellogg had been paying some of his Sanitarium employees with stock from the new company. W.K. discovered this, and when Dr. John was on vacation in Europe, W.K. purchased the stock from the Sanitarium employees. This gave W.K. control of the Battle Creek Toasted Corn Flakes Company.

This suit was settled with a contract on February 15, 1911 under which Dr. John Harvey Kellogg agreed that he would not use "Kellogg" as part of "the name or title designating words of any flaked cereal foods," including "biscuits made from flaked cereals." Under certain size and type style restrictions, it was agreed that on cartons or containers Dr. John Harvey Kellogg could continue to use the name "Kellogg Food Company," or the name "The Kellogg Toasted Rice Flake & Biscuit Company," as the manufacturer of such food. Similarly, the facsimile signature of John Harvey Kellogg, with certain size restrictions, could be placed on the carton.

Notwithstanding this settlement, friction between the two brothers and their companies continued. In 1917, Fred Chappell and Otis A. Earl, who had represented Sanitas in the *Voigt Milling* case, brought an opposition in the United States Trademark Office to applications filed by Will K. Kellogg to register "Kellogg's Toasted Rice Bubbles" and "Kellogg's DDDDD." While initially successful, the Court of Appeals for the District of

Columbia reversed the decisions of the Trademark Office, and ruled in favor of W.K. Kellogg, primarily on the basis of the 1911 Settlement Agreement.

Evidently still chafing, Dr. John Harvey Kellogg brought suit for trademark and trade name infringement against the Kellogg Toasted Corn Flake Company in 1920. Again, Dr. Kellogg was represented by Fred Chappell. Dr. Kellogg sought an injunction to restrain the defendants from the use of the name "Kellogg" in connection with any business other than the business in toasted corn flakes, and also sought to restrain any use of the name "Kellogg" as part of the corporate name of defendant's "W.K. Kellogg Cereal Company, The Kellogg Laboratories, Incorporated and The Kellogg Candy Company," such companies having been organized subsequent to the incorporation of the plaintiff "The Kellogg Food Company." Dr. Kellogg also sought to restrain the threatened use of his secret formulae and processes, and to recover profits from his brother.

Will K. Kellogg and his companies filed a cross claim, claiming exclusive ownership of the trademark "KELLOGG'S," through prior use, through Dr. Kellogg's participation in and profiting by the action of the Toasted Corn Flake Company in adopting the Kellogg's trademark (as a major shareholder and director of the Kellogg Toasted Corn Flake Company), and through the action of the Sanitas Nut Food Company in dropping the "Will K. Kellogg signature" in 1906.

Both the Calhoun County Circuit Court and the Michigan Supreme Court agreed with Will K. Kellogg. His rights in the "Kellogg" trademark and trade name were found to be superior. It was Dr. John Harvey Kellogg who was enjoined from any use of "Kellogg" beyond that permitted by the 1911 Settlement Agreement. It was Dr. John Harvey Kellogg who had to pay profits to Will K. Kellogg. One wonders if the brothers got together for Thanksgiving and Christmas that year.

It was the W.K. Kellogg Company that went on to become the 8.3 billion dollar per year success we know and love today. Dr. John Harvey Kellogg's company passed into the mists of memory.

So too, the Voigt Cereal Company and the Voigt Milling Company have been left behind, with only historic Voigt House remaining to remind us of their past brilliance. Perhaps the Voigts didn't want to take the type of advertising gamble that Will Kellogg pursued. At some point, the Voigt Cereal Company phased out of business,

and in 1955, the Voigt Mills were closed. Carl Gustav's son Carl died a few years later. Son Ralph continued to live alone in the Voigt house until his death in 1971, when he generously left the home to the Grand Rapids Foundation.

### Judge Wanty

Judge Wanty was a rising star when he adjudicated the *Sanitas v. Voigt* case in 1904. He had been a leading member of the Republican Party, and his legal and judicial prowess were of sufficient renown that his name was discussed as a candidate for the United States Supreme Court.

Unfortunately, Judge Wanty's brilliant career was cut short by his untimely death at age 50, during a summer vacation in London, England, on July 9, 1906. Although the precise cause of his death is not known, it was perhaps related to the illness that had confined him the winter before.

It is a measure of his preeminence, that Judge Wanty's memorial service was presided over by Justice Day of the Supreme Court of the United States. Justice Day, Judge Severance and Judge Swan of the United States Court of Appeals for the Sixth Circuit, and eight judges of the Michigan Supreme Court served as honorary pallbearers. Mr. Justice Day summed up Judge Wanty's outstanding life and career as follows:

"Judge Wanty was not merely devoted to his profession. He fulfilled the duties of citizenship at all times. He gave in full measure of time and service to church and State. His was a well rounded manhood, and his career and example to all. We sincerely mourned his loss. That we knew him and enjoyed his friendship is one of the pleasant experiences of our lives."

### History's "What Ifs"

What if Judge Wanty and the Sixth Circuit had ruled in Dr. Kellogg's favor? Flush with victory, and with a valid patent to enforce against others, would Dr. Kellogg have consented to the formation of the Battle Creek Toasted Corn Flake Company with Will at the helm? Faced with Dr. Kellogg's judicially reinforced patent, would C.W. Post have been able to found his company? Without the pressure resulting from Will's successful promotion of the Kellogg name, would Dr. Kellogg have ever consented to the commercial use of the Kellogg name? Would our kids be eating Sanitas Frosted Flakes

today? With Dr. Kellogg in the “driver’s seat,” would Sanitas have ever advertised the way Will did?

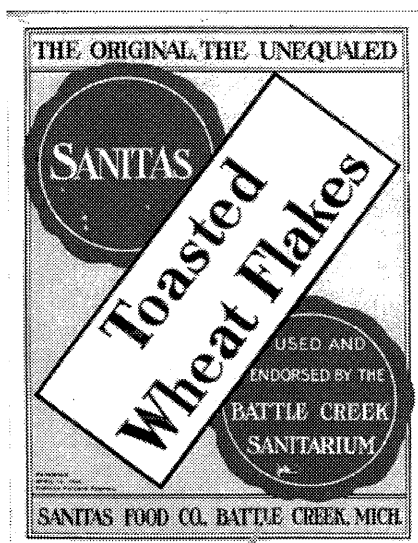
Even valid patents have a limited lifespan – seventeen years from issue at the time of Dr. Kellogg’s patent. After April 14, 1913, others would have been free to “get into the act.” Sanitas would eventually have had competition. Whether C.W. Post or Will Kellogg would still have had the fire to provide that competition, one can only speculate.

But of course, Judge Wanty found Dr. Kellogg’s patent invalid, not valid. It is probably fair to say that this little slice of history in our Western District of Michigan Court did at least contribute to Dr. Kellogg’s decision to let Will form his own company. In this curious way, Judge Wanty and our Court may have triggered the flow of events that have made Tony the Tiger roar, and Battle Creek the “cereal capital” of the World.

## Endnotes

- 1 The Voight House Victorian Museum is a showcase of Victorian life in Grand Rapids. It is open to the public daily. (616) 456-4600.
- 2 Available on the Kellogg Company web site.
- 3 This signature had appeared on the cartons sold by the company almost from the beginning, but was very inconspicuously located until 1907.

Photos of Granose Cereal, Battle Creek Sanitarium, DH & WK Kellogg, and Sanitas Toasted Wheat Flakes ad courtesy of the Hart-Dole-Inouye Federal Center in Battle Creek, and can be found at [www.dlis.dla.mil/FederalCenter/sanyears.asp](http://www.dlis.dla.mil/FederalCenter/sanyears.asp)



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U.S. Trademark Registration 105,018 for the mark “W. K. KELLOGG.”

U.S. Trademark Registration 1,411,563 for the mark “KELLOGG’S CORN FLAKES.”

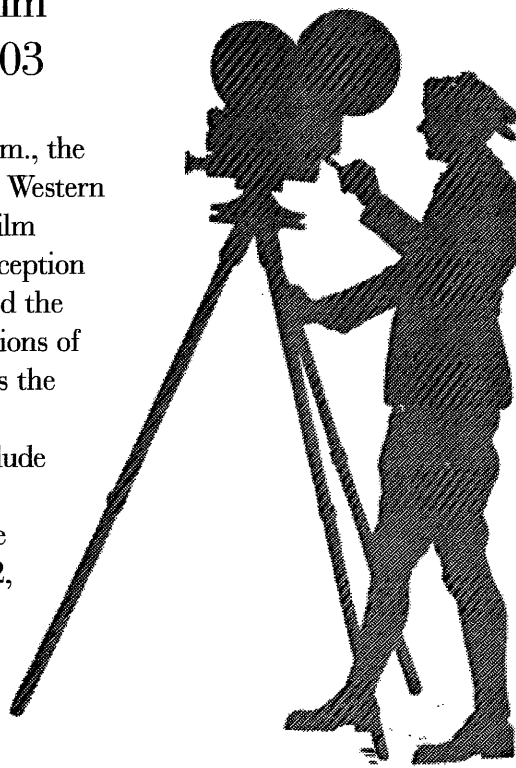
*Kellogg Toasted Corn Flake Co. v. Quaker Oats Co.*, 235 Fed. 657 (6<sup>th</sup> Cir. 1916).

IN MEMORIAM, GEORGE PROCTOR WANTY, July 1906.

## Society Schedules Inaugural Reception And Film Documentary Premiere For November 19, 2003

**O**n Wednesday, November 19, 2003, from 5:30 p.m. to 7:30 p.m., the Historical Society for the United States District Court for the Western District of Michigan will hold its Inaugural Reception and Film Documentary Premiere at The Grand Rapids Art Museum. This reception will feature a private viewing of "The American Spirit" Exhibit and the premiere showing of the Society's new documentary featuring portions of interviews with various district judges. This event will also serve as the Historical Society's Annual Meeting.

Tickets to this event required. Tickets are \$15.00 each and include admission to the Grand Rapids Art Museum. Tickets must be purchased by November 7<sup>th</sup> by sending a check and the names of the attendees to: Jan Kittel Mann, Varnum Riddering LLP, P.O. Box 352, Grand Rapids, Michigan 49501-0352. Please attend this historical and important soiree for the benefit of our Historical Society.



## Western District Historical Society Off and Running!

**I**n the last few months the Historical Society has begun one of its primary and most exciting missions, to capture and eventually showcase the history of the Western District of Michigan for lawyers and community members through oral histories of judges and lawyers. And what a history it is. The first video interviews with Senior Judge W. Miles and recently retired Judge D. Hillman are near completion. These are not ordinary interviews; they are truly extraordinary. The videos feature a bird's eye view of World War II, the struggles of the citizens of Michigan as depicted in the recollected lawsuits of seasoned litigators, and an inside glimpse of the Court itself – where it was, how it held sessions, why it moved, and who and what made it tick.

The anecdotes, the judgments, the firms that are no more, the character of the people that passed

before the bench and bar of the Western District (for better or for worse), this material forms the heart and soul of the oral histories that are now being professionally collected and preserved by the Historical Society. It is an astonishing journey into the richness of our past that will amaze and educate all that are privileged to view this work.

The work is just beginning to take shape under the direction of Court Historian Judge W. Miles. The plan calls for research into the early days of our Court – its judges, its bar, its cases – and the collection and archiving of contemporary and historical memorabilia and documents. Think photos of the interior and exterior of former courthouses, vintage gavels, desks, documents, drawings of infamous defendants, letters, and more. Only the imagination and efforts of its members limit the Historical Society's collection.

The membership will be invited to participate in this diverse and important venture in a number of areas – membership recruitment, fundraising, communication, research, and preservation of artifacts, information and documents.

The Historical Society is proud to invite you to become one of the first members of this fledgling organization – several levels of membership are offered including the opportunity to be recognized as a Founding Member. Don't delay, join this fun and important effort to discover, uncover, protect and preserve our local legal history. A membership application is available in this edition of *Stereoscope* and applications may also be obtained from the U.S. District Court Clerk's Offices in the Western District of Michigan (Grand Rapids, Kalamazoo, Lansing and Marquette).

# Western District Historical Society Membership Application

## 2003 Annual Membership Dues \*

Student \$15  
Individual \$100

## 2003 Founding Membership Categories \*\*

Pillar \$300  
Patron \$1000  
Grand Patron \$2500  
Benefactor \$5000

## Questionnaire

*Dear New Member:*

*Please let us know of your interests and skills and whether you would be willing to share those with the Historical Society. Help us by completing this short questionnaire.*

Special interests or experience in the field of history, local history or legal history:

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Suggestions for programs, projects, or activities for the Historical Society:

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Individual Member's Name

Founding Member's Name

Contact person if different from Founding Member name

Address

Email Address

Telephone Fax

Amount Enclosed

### Please make checks payable to:

"The Historical Society for the USDC, WD of MI"

Mail the application, check and completed questionnaire to:

The Historical Society for the USDC, WD of MI  
399 Gerald R. Ford Federal Bldg.  
110 Michigan Street, N.W.  
Grand Rapids, MI 49503-2313

Contributions are tax deductible within the limits of the law.  
Please indicate if this is a gift membership or if it is a special contribution.

Amount

(Name of donor, intended honoree, memoriam, etc.)

### Please check all of the following that interest you:

- ☐ Writing articles for the Historical Society newsletter
- ☐ Layout and/or production of a newsletter
- ☐ Annual Meeting (planning and production)
- ☐ Oral History Project
- ☐ Research in specific legal history areas
- ☐ Fund development
- ☐ Membership Drive
- ☐ Archival Collection and Preservation
- ☐ Legal Issues relating to archival and oral history collections (copyright, ownership, etc.)
- ☐ Exhibit Preparation
- ☐ Small Group Presentations to Adults
- ☐ Small Group Presentations in Schools
- ☐ Other (Please describe)

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