ability or infringement of patent rights and the preparation and prosecution of application for patents.[201]

The extent to which states may regulate contractors who furnish goods or services to the Federal Government is not as clearly established as is the states' right to tax such dealers. In 1943, a closely divided Court sustained the refusal of the Pennsylvania Milk Control Commission to renew the license of a milk dealer who, in violation of state law, had sold milk to the United States for consumption by troops at an army camp located on land belonging to the state, at prices below the minimum established by the Commission.[202] The majority was unable to find in congressional legislation, or in the Constitution, unaided by congressional enactment, any immunity from such price fixing regulations. On the same day, a different majority held that California could not penalize a milk dealer for selling milk to the War Department at less than the minimum price fixed by state law where the sales and deliveries were made in a territory which had been ceded to the Federal Government by the state and were subject to the exclusive jurisdiction of the former.[203] On the other hand, by virtue of its conflict with standards set forth in the Armed Services Procurement Act, 41 U.S.C. § 152, for determining the letting of contracts to responsible bidders, a state law licensing contractors cannot be enforced against one selected by federal authorities for work on an Air Force base.[204]

Most recently, the Court has done little to clarify the doctrinal difficulties.[205] The Court looked to a "functional" analysis of state regulations, much like the rule covering state taxation. "A state regulation is invalid only if it regulates the United States directly or discriminates against the Federal Government or those with whom it deals."[206] In determining whether a regulation discriminates against the Federal Government, "the entire regulatory system should be analyzed."[207]

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[201] Sperry v. Florida, 373 U.S. 379 (1963).

[202] Penn Dairies v. Milk Control Comm'n, 318 U.S. 261 (1943).

[203] Pacific Coast Dairy v. Department of Agriculture, 318 U.S. 285 (1943). *See also* Paul v. United States, 371 U.S. 245 (1963).

[204] Leslie Miller, Inc. v. Arkansas, 353 U.S. 187 (1956).

[205] North Dakota v. United States, 495 U.S. 423 (1990). The difficulty is that the case was five-to-four, with a single Justice concurring with a plurality of four to reach the result. Id. at 444. Presumably, the concurrence agreed with the rationale set forth here, disagreeing only in other respects.

[206] 495 U.S. at 435. Four dissenting Justices agreed with this principle, but they also would invalidate a state law that "actually and substantially interferes with specific federal programs." Id. at 448, 451–52.

[207] 495 U.S. at 435. That is, only when the overall effect, when balanced against other regulations applicable to similarly situated persons who do not deal with the government, imposes a discriminatory burden will they be invalidated. Justice Scalia, concurring, was doubtful of this standard. Id. at 444.