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THE STATUTE LAW

RELATING TO

PATENTS OF INVENTION

AND

REGISTRATION OF DESIGNS

WITH AN

INTRODUCTION AND SYNOPSIS

BY

J. W. GORDON

OF THE MIDDLE TEMPLE AND MIDLAND CIRCUIT, BARRISTER-AT-LAW

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PREFACE.

THIS compilation of the Statute Law relating to Patents for Inventions and Registered Designs is intended to supply, so far as may be from the sources drawn upon, a Code of the branch of Law with which it deals. In furtherance of this object the principal points of the Act of Parliament of last Session which are new in substance or importance are dealt with in an Introductory Chapter, and a Tabular Synopsis of the Act has been prepared for exhibiting its provisions in a systematic form.

Considered as a Code, this work is of necessity incomplete, for the Common Law and the Case Law relating to the subject are left out of view. The Common Law, having long been well settled, and being subject to no sudden changes, is readily available in many easily accessible books. To have included it in the present compilation would have been something of a work of supererogation. The Case Law, though mutable enough to call for the frequent revision of the text books, has grown, since the introduction of a system of law reporting by shorthand, too perplexed for systematic exhibition. The Rules are, at the moment of going to press, published only in part. Such as have appeared are

printed in a supplementary volume, and by means of full references in the present volume are made available to the reader. The Index (which has been prepared with an eye to the completeness of the systematic presentation of the law here attempted) incorporates, in a distinguishable form, an Index to those Rules.

A large measure of responsibility must be assumed by any writer who undertakes to discuss the provisions of the new Act with so little assistance from authority as is at present available. In advancing to such conclusions as are set out in the following pages I have largely, and with a lively sense of indebtedness, drawn upon the materials provided by Messrs. ROBERTS and MOULTON in their treatise upon the new Act.

J. W. GORDON.

11 KING'S BENCH WALK, TEMPLE, E.C.,
March, 1908.

CONTENTS.

PAGE

PREFACE v

CONTENTS vii

TABLE OF CASES CITED ix

EXPLANATION OF ABBREVIATIONS EMPLOYED . . . x

INTRODUCTION:

THE ACT OF 1907 1

Subject-Matter of Patents 3

"Manufacture" and Small Improvements . . . 4

RIGHTS CONFERRED BY THE ACT UPON—

The Public 7

The Inventor 11

The Patentee 12

The Owner of a Copyright Design 18

Trade Mark Owners 20

Patent Agents 21

DUTIES AND POWERS IMPOSED, OR CONFERRED, ON—

The Privy Council 21

The Judges of the High Court 21

The Treasury 22

The Admiralty and War Office 23

The Board of Trade 23

The Law Officers 24

The Comptroller-General and Patent Office . . 25

The Patentee 26

PENALTIES IMPOSED BY THE ACT—

To Secure the Regularity of Proceedings . . . 28

To Enforce the Public Duty of a Patentee . . . 28

To Assimilate Copyright to Patent Right . . . 34

HU-33262

INTRODUCTION (*continued*):

THE ACT OF 1907 (*continued*)—

MACHINERY AFFECTED BY THE ACT— PAGE

Simplification of Machinery 37
Cheapening of Litigation 39
Facilitating International Arrangements . . . 39
International Trade Marks 42
Patents of Addition 44

PROCEDURE—The Processes of Appeal 53

TABULAR SYNOPSIS OF THE NEW ACT (for detailed analysis see pages 55 to 58)—

Rights 58
Immunities 61
Duties 62
Penalties 63
Declarations of Law 65
Machinery 65
Procedure 73
Definitions and Explanations 79
Time Table 94

STATUTE OF MONOPOLIES 98

THE PATENTS AND DESIGNS ACT, 1907—

Epitome 103
Text 107

INTERNATIONAL CONVENTION—

Explanatory Note 179
Text 179

INDEX 189

TABLE OF CASES CITED.

	PAGE
Badische v. Thompson, 21 R. P. C. 478	20
Bott's Patent, *In Re*, 1 Moo. P. C. N. S. 61	13
Boulton v. Bull, 2 H. Bl. 482	4
Californian Fig Syrup Co.'s Trade Mark, 40 Ch. D. 627	20, 43
Carter Medicine Co.'s Trade Mark, *In Re*, [1892] 3 Ch. 472	20, 43
Clarke's Design, *Re*, [1896] 2 Ch. 44	88
Crane v. Price, 1 W. P. C. 411	6
Darcy v. Allin, Noy 182	6
Gilbert's Patent, 17 Ry. Fœd. 102	47
Hill v. Thompson, 3 Mer. 629	86
Household v. Neilson, 1 W. P. C. 718 note	86, 88
Hughes' Patent, *Re*, 15 R. P. C. 372	14
John Speede's Patent, 17 Ry. Fœd. 484	18
Kurtz v. Spence, 5 R. P. C. 180	88
Leather Cloth Co. v. Lorsont, L. R. 9 Eq. 354	32
Mansell's Patent, 1 W. P. C. 21	6
Moser v. Marsden, 13 R. P. C. 32	40
Philpott v. Hanbury, 2 R. P. C. 37	47
R. v. Arkwright, 1 W. P. C. 66	86
The Incandescent Gas Light Co., Limited v. Cantelo, 12 R. P. C. 264	33

EXPLANATION OF ABBREVIATIONS EMPLOYED.

C. D.	Law Reports (New Series) Chancery Division.
Ch.	Chancery (Appeal) Cases.
D. F.	Forms of the Designs Rules, 1908.
D. R.	Designs Rules, 1908.
H. Bl.	H. Blackstone's Reports.
L. O. R.	Law Officers' Rules of the 11th December, 1907.
L. R. Eq.	Law Reports, Equity Cases.
Mer.	Merivale's Reports.
Moo. P. C. N. S.	Moore's Reports P. C. (New Series).
Noy	Noy's Reports.
P. A. R.	Register of Patent Agents' Rules, 1908.
P. F.	Forms of the Patents Rules, 1908.
P. R.	Patents Rules, 1908.
R. P. C.	Reports of Patents, Designs, and Trade Mark Cases.
Ry. Fœd.	Rymer's "Fœdera."
W. P. C.	Webster's Reports of Patent Cases.

INTRODUCTION.

BY the Enactments of the year 1907 the Patent Law has been largely remodelled; the Law relating to Copyright in Designs has been, so far as possible, assimilated to the Law of Patents and the Law relating to Trade Marks has been modified in a material respect. These Enactments were originally contained in two Statutes—The Patents and Designs Amendment Act, 1907 (7 Edw. VII., Ch. 28), and The Patents and Designs Act, 1907 (7 Edw. VII., Ch. 29). The second of those Statutes, however, repealed the first and incorporated its provisions, with some modifications, so that the lawyer has only one Act to consider in this connexion. The Patent Law, so far as it rests upon Statute, is now comprised in two Acts of Parliament—the Statute of Monopolies (21 Jas. I., Ch. 3) and the second of the two Acts above mentioned. Of the Statute of Monopolies only ten sections out of the original fourteen remain unrepealed. Of these subsisting sections the seventh, thirteenth, and fourteenth of the original Act are thought to have spent their force, and for that reason are not reprinted in the present volume. But the remaining sections, together with the full text of the new Act and the authorised translation of the International Convention, are here placed before the reader as comprising in one sense a Code of the Statute Law relating to patent grants of manufacturing privileges. In the complete sense it is not a full Code, for large branches of the subject have been left by the Legislature to be dealt with by Rule; and as the Rules, when made, will have the force of an Act of Parliament, and as, moreover, the matters left to be determined by Rule are, with the exception of the Common Law rights protected by the Statute of Monopolies, incomparably more important

than those upon which the Legislature has expressly formulated its mind, a mere collection of Statutes, apart from these momentous Rules, cannot accurately be said to be a Code. At the present moment, however, it is not practicable to include the Rules in this collection, for the simple reason that some of the most important of them (that is to say, those which have to be framed by the Judges of the High Court), are, at the time of going to press, unmade. The Statutes contained in this work are, therefore, merely The Patents and Designs Act, 1907, and the operative Sections of the Statute of Monopolies, to which the International Convention is added by reason of its important bearing upon the Acts of Parliament.[1]

The subject-matter of these Enactments may conveniently be distributed, for the purposes of a synoptical view of them, under the following seven heads:—

1. Rights and Immunities.
2. Duties and Powers.
3. Penalties.
4. Machinery.
5. Procedure.
6. Declarations and Definitions.
7. Rules, Forms, and Regulations.

I.—RIGHTS AND IMMUNITIES.

These two heads of privilege may be conveniently discussed together, for it will be found that in most cases the immunities conferred by the Acts are qualifications of larger rights upon which the immunities are imposed as limitations: that is to say, the immunity of B sets a limit to the rights of A. It is not—like the official immunity of a Judge—itself a privilege. Yet the distinction between immunity in this relative sense and an absolute immunity is somewhat evanescent. This is

[1] The Rules at present published are printed in a Supplemental Volume to this book.

very apparent when it is considered that the rights conferred by Statute on a patentee are themselves immunities; immunities conferred by Section 6 of the Statute of Monopolies from the operation of its first section and of the Common Law. The Patent Acts, however, are not the source, except indirectly, of a patentee's rights of monopoly in respect of his patented invention. Those rights are conferred and defined by the terms of the patent granted to him, and, although all existing patents are in statutable form, the form of future grants is left to be regulated by Rules and settled from time to time by the Board of Trade. All that the Acts confer is immunity in respect of such grants, if made in accordance with the Statute Law, from the Common Law invalidating them. The Statute of Monopolies so exempts grants made by the Crown, and the Act of 1907 puts grants sealed by the Comptroller on the same footing in this respect as grants made by the Crown (Section 14 [1]).

Grants which are thus enforceable against the public and against the Crown itself (Section 29) must—with certain exceptions—satisfy Section 6 of the Statute of Monopolies. That section provides in substance as follows:—In respect of subject-matter, that it must be for a new manufacture which others do not use at the date from which the grant runs; in respect of the person privileged, that he must be the true and first inventor; and in respect of the duration of the grant, that the term of privilege must not extend for more than fourteen years from the date when the first grant in respect of that same subject-matter was made. But all these provisions are subject to serious modifications grafted on the Law by subsequent legislation or by established custom. Thus, the true and first inventor is only in a formal sense a necessary party to the grant. It may be, and frequently is, made to him and to his co-applicants, in which case his interest in the grant may be controlled or even reduced to a mere trusteeship by agreement with them. It may be, and invariably is, granted to him and his assigns so that he may, by conveying away his title, altogether disappear from the

transaction, which, nevertheless, holds good. In a large number of cases, in which the grant is made to a patent agent, the patentee is a bare trustee from the first and all through the period of his connexion with the grant. Thus, the condition that the grantee must himself be the true and first inventor is satisfied if his name is in the grant. It no longer imports that the benefit of the grant is to go to him. In like manner the term "manufacture" has been gradually extended until it has ceased to impose any clear limitation upon the subject-matter of the grant. To the mind of Sir Edward Coke it signified that the patented invention must be something strikingly new; not a mere improvement upon a thing already known. Commenting on this point, he says that in every such new manufacture which deserves a privilege there must be *urgens necessitas* and *evidens utilitas*, and he cites by way of illustration the dictum that Bircot's method of preparing and melting lead ore amounted only to putting a new button on an old coat,[1] and therefore was not patentable.

It was not until the year 1795 that the English Courts discovered that this word "manufacture" had been introduced into the definition of patentable subject-matter in order to preclude "all nice refinements."[2] But the discovery, once made, was so effectually applied that all nice refinements as to subject-matter have in fact disappeared from our Law. A manufacture now signifies that which is capable of being performed or produced by the hand of man. Things which are performed or produced by his head, as contradistinguished from his hand, are not patentable; but "manufacture," in Sir Edward Coke's magnificent sense of the word, is no longer the only, or the necessary, subject of a grant of patent right.

In the meantime a curious thing happened, which it is interesting to note in this connexion. The French Revolution having set in, the National Assembly in 1791 had enacted

[1] 3 Inst. 184.

[2] Boulton v. Bull, 2 H. Bl. 482.

a Patent Law—the original Patent Law of France—modelled upon the English system. But the Assembly, of course, did not attribute the grant, as the English lawyers did, to the bounty of the King. They lived in age when contract was supposed to be the theoretical ba of all political relations, and they naturally adopted a theory of Patent Law according to which the grant is the result of a contract between the State and the patentee. The patentee makes communication of his invention and places it at the service of the State in exchange for a monopoly of its use for a limited time. In this view of the matter the coat and button distinction seemed incongruous, and the Assembly provided, accordingly, that patents might be granted for improvements as well as for new manufactures in the larger sense. If the inventor had devised a new button let him have a patent for it, but if he wants to make a patented coat on which to fit his button he must arrange that with the tailor patentee. This arrangement did not, however, work satisfactorily. It gave rise, or was supposed to give rise, to the taking out of many blocking patents by parasitic inventors, who made it their business to anticipate the development of patented manufactures, and to divide with the original inventors the eventual profits of a perfected invention.

To meet this case the system of patents of addition was introduced by Napoleon's Patent Law of 1810. The right to obtain such grants, which would expire with the mother patent, was confined to the patentee, and could be exercised by him during the whole period of his term. The nature of patents of addition will fall to be discussed in another connexion. It suffices in this place to point out the source from which they spring, and to have traced their origin ultimately to the distinction, once important, now obsolete, in our Law between the coat and the button.

The remaining condition imposed by the Statute of Monopolies is that the grant shall not extend for more than fourteen years from the date of the first letters patent granted for the given invention: "grant of such privilege" is the phrase actually

employed. This is a purely statutable provision, for at Common Law, and before the passing of the Act, no definite term was fixed as the necessary limit of a patent grant. It must be for a reasonable time.[1] Moreover, at Common Law the existence of a prior grant furnished no objection to a later. Far from it, the former grant might actually be the ground of the later.[2] Under the provisions of this Statute, however, a second grant—since if made, as all patents issuing from the Patent Office are made, for fourteen years it must transgress the time limit—is invalidated by the former. In this sense, therefore, the original limitation still holds good, but it has in several particulars been broken in upon by subsequent legislation, and is no longer of general application. Thus, a patent granted under Section 18 of the new Act for a "further term" does not expire within the fourteen years, and the monopoly of manufacturing articles in the form of a registered design, conferred by the copyright clauses of the Act, may now be prolonged by successive extensions of the term to a total period of fifteen years.

It is thus by a somewhat intricate process that the subject-matter by Law recognised as properly comprised in a grant of manufacturing privilege must be ascertained, but, though greatly modified by construction and repeals, Section 6 of the Statute of Monopolies continues to afford the chief criteria by which the question must be tried.

The rights, as against the public, which a patent duly granted confers are not to be collected from the Statutes. The terms of the grant itself, interpreted in accordance with the overriding rules of Common Law, afford the only definition of those rights. Since the year 1852 those terms have been statutable, the form of the grant having been scheduled to the Patent Act of that year and to the later Statute which repealed it in 1883. By

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[1] Fuller arguendo in Darcy v. Allin, Noy 182, adopted by Tindal, C. J., in Crane v. Price, 1 W. P. C. 411.

[2] See Mansell's Patent, 1 W. P. C. 21.

the present Act, however, the settlement of the form in which the grant shall issue is confided to the Board of Trade (Section 14), and although it may with some confidence be anticipated that the existing precedent will be closely followed,[1] the form of future grants will have to be ascertained by perusal of the grants themselves.

There remain to be considered the lesser rights which the Acts do, in fact, confer. These accrue to the following classes of beneficiaries:—

1. The Public.
2. The Inventor.
3. The Applicant.
4. The Patentee.
5. The Proprietor of a Registrable Design.
6. The Registered Proprietor of a Design.
7. The Owner of a Foreign Registered Trade Mark.
8. Patent Agents.

A few words will suffice in this place to indicate the character of the rights so conferred. A more detailed list will be found in the Tabular Synopsis (see page 58).

1. *The Public.*—The most important right conferred upon the public is that of applying for a patent. It is often said that no man has by Law any right to an English patent grant, and this is theoretically maintainable. In theory the grant is an act of Royal bounty, and the Royal bounty acts unconstrainedly. But in substance the statement is incorrect, for officers are appointed to make grants of patent right under strictly defined conditions. Every person who satisfies the conditions is entitled to their assistance in obtaining a grant. With such assistance he can, in a proper case, help himself to the grant. It is, therefore, a purely academic point to deny the applicant's right

[1] The form of patent actually published in the newly issued Rules does not materially vary from the old statutable form (P. R., Sch. III. A.).

to what public officials are by Law and by their duty bound to give him if he asks for it. To put it clearly, a man's right to a patent stands on exactly the same footing as his right to the assistance of the police in defending his life and property. It is not a contractual right—there is no principal who can be sued for withholding or denying it—but it is a legal right, and there are agents bound by their duty to further his efforts to assert it. The right to apply for a patent is therefore effectively indistinguishable from the right to obtain one. Ancillary to the right to apply for a patent is the right conferred by the Act upon the personal representative of a deceased inventor to make an application for the benefit of the estate with which he is concerned (Section 43), and upon a mere volunteer to further the interest of an applicant (or of an applicant designate) under disability (Section 83 [2]).

In contrast with these rights and facilities for obtaining grants are others which enable the public to defend themselves against the encroachments of patentees. In these cases the rights themselves which have to be defended are conferred by Common Law and forcibly asserted by Section 1 of the Statute of Monopolies. Subsidiary rights or, to speak more accurately, remedies in furtherance of these rights are conferred, which give the right to oppose applications under the Act—for the grant (Section 11); for an extension of the term of an expiring patent (Section 18); for the restoration of a lapsed patent (Section 20); for leave to amend a defective specification (Section 21). These powers have all been enjoyed by the public under the pre-existing Law, and it is only the statutable form now given to them which is new. It does not, therefore, seem necessary to say more about them than that the power of opposing the sealing of a patent has been enlarged by the addition of a new ground of opposition—to wit, the ground of insufficient description in the specification; that the principles on which the opposition to extensions of the term must be conducted are to be sought in the reported hearings at the Judicial Committee of the Privy

Council; and that opposition to the restoration of a lapsed patent will no doubt be regulated in future by the system which has in the past received the sanction of Parliament.[1]

In addition to these facilities for resisting the forging of illegal fetters the public enjoy a limited right to apply for the revocation of invalid and mischievous patents (Sections 24, 25, 26, and 27), and for injunctions to restrain groundless threats of patent actions (Section 36) and copyright actions (Section 61). The facilities now given for applying to revoke mischievous patents are new and have been conceded in response to a strong popular demand for a change of the Law in that direction. About the mischief aimed at there can be no doubt, for it has been identified by loud and numerous complaints during many years past. It has suited a large class of patentees to use their patent rights not to augment but to diminish the British trade in their protected manufactures. Enhanced prices in some cases and the diversion of trade to more favoured markets in other cases have compensated them personally for the sacrifice of the profits which they might make by working their inventions for the benefit of British industry, while various motives have induced them to prefer those indirect modes of taking their own profit from their grants. The damage to British trade from such ill-regulated monopolies has in recent years been so serious that the discovery of a remedy had become imperative.

The remedy devised takes two forms: the first in point of time dates from the year 1883, when a clause was introduced into the Patent Act of that year to provide for the compulsory licensing of patent rights granted for inventions which are insufficiently exploited in this country. That system, amended by the Patents Act of 1902, is continued by the present Act and rendered more effective by the transfer to the High Court of the jurisdiction to order such compulsory licences. The second form of the remedy, introduced by the Act of 1902,

[1] Rules (P. R. 55 to 59) have been framed with this object.

but hitherto inoperative, is the more drastic form of proceedings for revocation. The power of revocation in such a case is conferred both upon the High Court and the Patent Office (Sections 24, 25, and 27), in the latter case with an appeal to a specially selected Judge of the High Court. It is, however, by no means clear that the power entrusted to the Comptroller-General is in all respects similar to that conferred upon the High Court by these sections of the Act. The power of revocation by the Court is alternative to the power to make an order for a compulsory licence, and is exercisable as the result of an enquiry as to whether the reasonable requirements of the public with respect to the patented invention have been duly satisfied by the patentee. But the Comptroller-General is not apparently required to undertake any similar enquiry. The only thing which he can call upon the applicant for a revocation order to show is that the patented article or process is manufactured or carried on exclusively or mainly outside the United Kingdom. Whether the reasonable requirements of the public are or are not satisfied by such manufacture is a matter outside the question thus presented for his determination. The class of manufactures which are patented in this country, but carried on mainly abroad, includes a large proportion of patents for metallurgical processes and other operations upon crude materials which must, of necessity, be carried on where the crude materials are found. It includes also a large proportion of patents for manufactures involving the use of water power or other natural forces which must be tapped in the favoured spots where they abound. From grants of this class, which have enabled British projectors to shape and develop their plans for reaping harvests in other regions than the British Isles, there has in the past accrued great benefit to British trade. It may be with some confidence expected that experienced and responsible men administering the Act will introduce some necessary exceptions to control the operations of the Rule adumbrated by the Statute and, happily, they have power

to do so for, with fortunate inconsistency, the section (27) provides that the patentee may meet the charge against him, not only by rebutting it but also by adducing satisfactory reasons to explain why it is true. It is evident that under these conditions the Act is not the Law. The Law will have to be made by those authorities who must lay down the Rule by which the satisfactoriness of a reason shall be tried. In due time the Rule may be expected to emerge from the discussion of the topic. As yet we have only a formula containing terms without meaning in the form of an enactment which delegates the law-making power to the Comptroller-General and to the Judge.

The remaining rights conferred upon the public, such as the right to bring an action to restrain groundless threats of legal proceedings, and the right to inspect the Register, the File, and the Library at the Patent Office, are all established rights which have long been enjoyed, are well understood, and need not be particularly noticed here.

Coming to private rights conferred by the Act we find the following classes of persons benefited:—

2. *The Inventor:* that is to say, the true and first inventor within the meaning of the Statute of Monopolies, who may apply to set aside an application made or patent granted in fraud of him (Sections 15 and 25);

The Communicator of an invention, to whom is given a right, limited in point of time, but very similar in character to the foregoing, by Sections 11 and 26 of the Act; and

The Exhibitor at an International Exhibition, who obtains, under Section 45, the right to give notice to the Patent Office of his intention to apply for a patent in respect of an invention which he intends to exhibit at such an Exhibition and thereafter to apply, in pursuance of his notice, at any time within six months of the opening of the Exhibition.

3. *The Applicant for a Patent*, who gets the benefit of the date when his application is made for all purposes of priority in

connexion with his application for the grant while that is pending, and in connexion with his patent right when the grant is made. But this priority is subject to latent rights of priority under the International Convention, by virtue of which a colonial or foreign patentee may claim the date of his original patent for an application in this country in respect of the same subject-matter, and thus, though later in point of time, may acquire priority in point of right. The International Convention has been so long in force and its effect is now so well understood that it does not seem necessary to pursue this subject in detail.

This right of priority is the main privilege expressly conferred by Statute upon the applicant for a patent, but, of course, it may in a sense be said that the entire machinery for the granting of patents has been created for his benefit and that at every stage of the proceedings leading up to a grant he has a right to the assistance of the officials appointed to administer the Act. These rights may be dismissed without more particular notice in this place. They will be found detailed in the Tabular Synopsis of the Act (pages 58 and 59).

There is one other right conferred upon the applicant for a patent which must be mentioned in this connexion. So soon as his complete specification has been accepted his patent right vests by virtue of Section 10 as if his patent had then been sealed. This informal patent right is, however, subject to a restriction as to the taking of legal proceedings, and is limited in point of time to the interval between the acceptance and the sealing of the grant. When the patent is eventually sealed this inchoate right disappears altogether and does not become a point of origin for the patent right itself, which then dates back for the moment of its vesting to the original application.

4. *The Patentee* obtains, as has been already stated, comparatively little of his privilege from the Patent Acts. His rights are grounded in the terms of his patent and constitute a portion of the prerogative of the Crown. Substantially the

only way in which these rights are deducible from the Act is through Section 14, which gives to the Seal of the Patent Office the same effect as that of the Great Seal of the United Kingdom, and enacts that a patent so sealed is to take effect in all parts of the United Kingdom.

But although the main substance of the patentee's rights is to be sought outside the Act, he does derive from it important subsidiary rights. Thus, Section 34 of the new Act confers what the Statute of Monopolies was apparently intended to take away from him for ever—the power of obtaining an injunction to enforce his patent right. The history of litigation shows that of all the privileges which a patent grant confers this is by far the most valuable to the patentee and the most formidable to the public. Of smaller account, but still of great value to the owner of the patent, are the powers of amendment which enable him to set right errors committed in the drafting of his specification and the power to apply for an extension of the term of his patent in a case in which adverse circumstances prevent him from realising during the term for which it was originally granted a fair return upon his labour and ingenuity bestowed in perfecting the invention and bringing it into use. The power to consider such last-mentioned applications has heretofore been lodged in the hands of the Judicial Committee of the Privy Council and has, for that reason, been ineffective. The Judicial Committee is a tribunal organised for the purpose of hearing appeals and but very ill equipped for the laborious task of hearing evidence and investigating details at first hand. The presentation of a patentee's case to such a tribunal was beset by almost insuperable difficulties. Their Lordships laid down for their own guidance the rule that "it is not too much to expect" that a patentee "should be prepared when the necessity arises to give the clearest evidence of everything which has been paid and received on account of a patent,"[1] and accordingly wherever the patentee's

[1] *In re* Bett's Patent, 1 Moo. P. C. N. S. 61.

accounts have been involved and have required minute and careful examination to render them fully intelligible this Court has refused to embark upon the enquiry and has dismissed the application.[1] Such a course, though inflicting great hardship and disappointment upon patentees, was not unreasonable, seeing that a Board consisting of half a dozen highly distinguished public servants could hardly be expected to devote hours, and perhaps days, to a detailed examination of figures from which only a private person, the applicant before them, could derive any advantage. The High Court, to which the jurisdiction is now transferred, will not be placed in any similar difficulty. It has the power to refer the examination of accounts to a staff of official referees. There is no apparent reason, therefore, why a meritorious patentee should not now receive a patient hearing, and it may be hoped that the High Court, which will probably receive with the jurisdiction the general principles on which it is to be exercised from the Judicial Committee, will in this respect moderate the harshness of a Rule which has derived all its justification hitherto from the limitations of a tribunal not well equipped to administer this particular Law.

Another subordinate right, and one now conferred for the first time upon patentees, is that in virtue of which they will acquire the power to revive, upon payment of an overdue renewal fee, a patent which has by inadvertent non-payment been allowed to lapse. Hitherto the application for a remedy in such a case has been to Parliament and the procedure by Private Bill. The jurisdiction is now conferred upon the Patent Office, which is charged with the duty of imposing terms upon the favoured patentee for the protection of persons who may have availed themselves of the subject-matter of the patent after the announcement in the Official Journal of its having lapsed. It may be presumed that the Office, in fixing such terms, will follow the precedent set in Parliament, and provide

[1] *Re* Hughes' Patent, 15 R. P. C. 372.

that no action shall be brought in respect of anything done during the period of invalidity or in respect of the subsequent use of anything *bonâ fide* made in reliance upon the invalidity of the patent during the time that it remained void, and that the Board of Trade shall have jurisdiction to assess damages in favour of any person who loses the benefit of time and money expended in the belief that the privilege had come finally to an end. A precedent embodying the rule of Parliament may be found: *e.g.* in Whitehead's and Pickle's Patent Act, 1892.[1]

Another valuable right conferred by the present Act upon the patentee is that of surrendering his patent. This may fairly be considered as newly conferred, for although it was enjoyed by patentees under the old Common Law system, who could always obtain in this way the cancellation of patents entered upon the Patent Roll, it fell away from later patentees when, in the confusion which arose after the passing of the Patent Law Amendment Act of 1852, the practice of enrolment was discontinued. Since that time the only way open to a patentee of relieving himself of a burdensome patent has been to allow it to lapse when the time for its renewal came round. It has not infrequently happened that in the interval he has been exposed to attacks which he did not even desire to repel and mulcted in the costs of a successful petition to revoke a patent which he was quite willing to surrender. In future a more direct and inexpensive course will be available in such a case.

A passing reference has above been made to the power of amendment conferred upon a patentee. There are one or two aspects of this subject which may properly receive a more particular notice, since the new Act gives enlarged powers and increased facilities in this respect. The authority of the

[1] 55 & 56 Vict., Ch. cxvi. The new Rules (P. R. 58 and 59) provide that such terms shall in all cases be imposed.

Comptroller-General, and on appeal from the Comptroller-General, of the Law Officer, to allow amendment when no litigation is pending is continued, and in one respect, to be presently mentioned, is enlarged by the present Act. But an important alteration is introduced into the Law relating to amendment pending an action. Hitherto the procedure has been for the patentee to obtain leave from the Court in which his suit is pending to apply at the Patent Office to disclaim and then, in virtue of leave so obtained, to carry through at the Patent Office the actual amendment of his specification. In future the Court is itself to consider the application to make the amendment instead of remitting it to the Patent Office for consideration and, although the amendment allowable in these circumstances will be limited, as heretofore, to amendment by way of disclaimer—correction and explanation being excluded—leave to amend will in future be granted instead of leave to apply to amend. This is a small point and touches only the procedure to obtain amendment.

A much more important change of the Law, and one which apparently confers what is in substance a new power of amendment, is that introduced by Section 19, which provides for the granting of "patents of addition." The origin of patents of addition has been briefly sketched above (page 5) and shown to be due to Napoleon's legislation in the year 1810. It has been shown also that the intention was to provide for the granting of patents for those mere improvements upon existing manufactures which Sir Edward Coke contemptuously describes as being of the order of magnitude illustrated by a new button on an old coat. It has also been seen that the old rule that such small inventions have no sufficient "urgency" or "utility" to be patentable has long since disappeared from our Law and therefore that patents of addition, in the original sense of the word, can no longer find a place in our system. There is, however, one gap in the scheme of amendment hitherto in force which such grants will usefully supply. It frequently happens that experience, and the more intimate knowledge which experience gives, reveal to a patentee

possibilities unseen by him at the time when his specification was prepared and filed. Say, for example, that he has invented a new dye, a red dye, let it be supposed, produced by a specified treatment applied to a known raw material. He finds subsequently that the treatment, slightly modified, as by variations from the time and temperature he has prescribed, yield a green dye. As matters stand at present he is in a difficulty. He is afraid to take a new patent for the new dye, which is chemically indistinguishable from the old and obtainable from the old raw material by a process changed so slightly from the original process that the modification cannot be said to involve invention. On the other hand, he dares not assert a claim under his old grant to the new dye, for in its original form the specification does not describe the treatment required to produce it. The defect would be cured by adding to the existing description some fuller directions for varying the prescribed treatment. But that cannot be done by any amendment in the nature of disclaimer, correction or explanation. What is required is an addition amplifying and supplementing the directions already given and, to the corresponding extent, enlarging the ambit of the patentee's claim. Such an amendment will, in future, be possible by means of the expedient of a patent of addition. As from the date of the subsidiary grant, the patentee's rights will be enlarged to cover the new subject-matter, and in effect, if not in form, an amendment by way of addition will have been effected in his specification.

That patents of addition will serve this purpose seems clear from their essential nature. But whether they will go beyond this scope and be granted for matters not inseparably connected with the original subject-matter does not at present appear. The form and incidents of a patent of addition are left to be settled by general rules,[1] while the facilities which patentees are

[1] The form of a patent of addition as settled by the Board of Trade throws no light upon these questions (P. R., Sch. III. B).

to enjoy for obtaining them will depend upon the practice adopted at the Patent Office. In the practice of various foreign countries the incidents of patents of addition have given rise to many knotty points of law. Questions have arisen, for example, as to whether they are separately assignable as independent grants or whether they pass as mere branches of the original patent right upon an assignment of the original grant. Questions have arisen also between a patentee under one of these grants and his licensees under the principal patent. Does a comprehensive licence carry with it the right to use and exercise the modified invention protected by a patent of addition, or is the patentee entitled to insist upon a fresh royalty on the footing of his fresh grant? These and many other such like questions have divided foreign jurists without giving occasion for any clear and convincing rule of general application. To discuss such points at the present time would be futile. Until the various equities to which they will give rise have been discussed and ascertained in the High Court it will be premature to dogmatise about them.

5 and 6. *The Owner of a Copyright Design*—unlike a patentee—obtains his copyright directly from the Act and by force of its terms (Section 60). Originally copyright, like other trading privileges, was conferred by patent. An example of such a copyright patent, granted to John Speede, is printed in Rymer's "Fœdera."[1] But the system of copyright patents never attained to the same degree of settled form and law as did the system of patents for manufactures and when it came eventually to be made a subject of legislation in a series of Statutes each branch of copyright was treated as a separate head of privilege and each head of privilege in its turn was treated as a pure creature of Statute. Thus Design Copyright rests entirely on the provisions of the Act and the rights of the copyright owner are defined and settled by its

[1] 17 Ry. Fœd., 484.

terms. In the present Act an attempt has been made to assimilate the system of grants of copyright to that of patent grants in many particulars as, for example, by extending the action for threats of legal proceedings to the assertion of a copyright (Section 61), and by making the use of a copyrighted design in manufactures carried on exclusively or mainly outside the United Kingdom a ground for the repeal of the privilege. An extension of the term of the privilege to ten years on request, and to fifteen years on allowance, has been provided for by the new Act (Section 53), and makes the duration of a copyright substantially equal to that of a patent. The rights, however, are essentially distinct and the distinction is well shown by the provision of a penalty (Section 60 [2]) as an alternative to damages and injunction for the infringement of the copyright. The penalty is intended to provide for a case in which the damage provable would be inconsiderably small, a case which commonly enough arises in practice, since the existence of the copyright in the copyright owner does not restrict his competitors' right to make the same article, to accomplish the same purpose, and to accomplish it in the same way, provided only that it has a different form. In all cases, therefore, in which utility rather than form is the feature to which a purchaser looks when selecting an article for purchase, there is great difficulty in proving the measure of the damage which an infringer inflicts. This is a consideration which in fact goes to the root of the distinction between the two classes of right. Patent right is of vital importance both to the great public and to the industrial public, closely affecting the very subject-matter of all manufactures. Copyright, though of great aggregate importance, is by comparison of small moment, and affects rather the arts of advertisement than those of manufacture. It is impossible, therefore, that the two kinds of right should stand upon an equal footing, and it is hardly to be supposed that any results of great consequence will flow from the new provisions which incorporate into the Law of Design Copyright the provisions, above alluded to, of the Law of Patents for manufactures.

7. *The Trade Mark Owner*, being the owner of a foreign trade mark, is provided for by Section 91 (3*b*), which enacts in terms that "any trade mark the registration of which has been duly applied for in the country of origin may be registered under The Trade Marks Act, 1905." This clause, if it were to be literally construed, would confer upon the owners of foreign trade marks an enormous advantage over the owners of British marks for the purposes of registration, and would lead in practice to a system of circuitous registration by way of applications made first abroad which would have the effect of abolishing the safeguards devised by Parliament for protecting the Register against improper marks. The clause is taken, with the addition of a reference to the Trade Marks Act of 1905, from the now repealed Act of 1883, and was in fact included in the new Act, to the proper subject-matter of which it is entirely foreign, simply for the purpose of supplying a gap occasioned in Trade Mark Law by the repeal of the 1883 Act. The clause in its original form occasioned great difficulty to the High Court. Quite definite and clear in its terms, it was so manifestly mischievous in its effect that it was considered that common sense required the administrator of the Law to adopt a strained interpretation, and it was in effect held by Mr. Justice North [1] to be impossible to assign any effective meaning to the clause. The difficulty of interpreting the clause in any intelligible sense was made apparent also in the judgment of Mr. Justice Stirling, delivered in the case of the California Fig Syrup Co.'s Trade Mark,[2] although in that case the Judge was able to cut the knot. It can hardly be said, however, that the construction of the clause has been settled by these somewhat inconclusive discussions, and it is impossible not to see that the right of a foreign trade mark owner to registration in accordance with the precise letter of the International Convention has become very arguable upon the language of the present Statute.[3]

[1] *In re* Carter Medicine Co.'s Trade Mark, [1892] 3 Ch. 472.

[2] 40 Ch. D. 627.

[3] For the further discussion of this subject see under the division "Machinery of the Act," page 43.

8. *Patent Agents* obtain under Sections 84 and 85 of the Act a statutable definition of their professional functions and recognition of their professional privileges. These are not, save in some minor points of detail, new, and need not therefore be particularly noticed in this place.

2.—DUTIES AND POWERS.

The Duties imposed by the Act are for the most part official duties and sufficiently indicated in the Tabular Synopsis. The officials so charged with the discharge of various offices are—

1. *The Privy Council*, which is empowered under Section 91 to apply the provisions of the Act for giving priority to foreign and colonial applicants for Patent Grants and Registration by means of an Order in Council, and under Sections 45 and 59 to assign to any Exhibition the status of an International or Industrial Exhibition.

2. *The Judges of the High Court*, one of whom is to be appointed under Section 92 to receive petitions referred or presented to the Court and to hear appeals from certain decisions of the Comptroller-General. This Judge receives power in almost all such cases to issue an unappealable decision, the power of appeal in petitions for revocation of patents being taken away in terms by one of the Definition Clauses (Section 92 [2]).[1] But here there are manifest indications of inadvertence on the draughtsman's part. The power of revocation on petition is a statutable power, and of necessity statutable by reason of its anomalous character. It is elementary law that a deed cannot be set aside in the absence of the parties or of either of them. It is therefore highly irregular that a patent should be revocable in a proceeding to which the Crown is no party. The jurisdiction to decide such matters under such conditions of hearing does not exist at Common Law, and could not have come into existence apart from Statute. It is in fact conferred by Section 25 of the new Act and, although this section only re-enacts with

[1] But see as to this the Corrigendum Note on page 54.

small changes the provisions of the Act of 1883 and so continues the Law which has been in force for five-and-twenty years, it is now the only source of this jurisdiction. The draughtsman probably overlooked this fact when he wrote "Where by virtue of this Act . . . . a petition may be . . . . presented to the Court . . . . the petition [shall be] presented to such Judge of the High Court as the Lord Chancellor may select for the purpose, and the decision of that Judge shall be final, except in the case of an appeal from a decision of the Comptroller revoking a patent on any ground on which the grant of such patent might have been opposed." The exception here affords an unmistakable indication that the clause was not intended to take away the security afforded by an appeal from the High Court Judge where a valuable patent right is involved and it follows that this clause, which in terms takes it away, is not happily expressed. Still, there it stands and, unless the Appeal Courts adopt an almost unprecedented freedom in construing the language of this Act, they will have to hold that in all cases, save that of the small exception just referred to, the Judge of First Instance on a petition to revoke a patent exercises—if he does order its revocation—a final and irrevocable jurisdiction.[1] If, on the other hand, he decides in favour of the patentee, his decision will only be irrevocable in the sense of putting an end to the particular petition. The same issue can be raised the next day by a defendant in an infringement action and, in that case, the decision of the Judge of First Instance, whatever it be, can be carried on appeal to the Court of Appeal and from thence to the House of Lords.

By implication several clauses of the Act confer upon the High Court power to make Rules for dealing with various matters arising out of the Statute.

3. *The Treasury* is empowered to settle the terms on which a patented invention is to be placed by the patentee at the

[1] But see as to this the Corrigendum Note on page 54.

service of the Crown (Section 20), and to approve certain of the Rules to be made by the Board of Trade for carrying out the provisions of the Act (Section 86 [1 *f*]).

4. *The Admiralty and War Office* are empowered to enter into arrangements with patentees for securing inventions for the public service, and in the public interest to forbid the publication of specifications descriptive of such inventions (Section 30).

5. *The Board of Trade* acquires powers under the Act to discharge a great variety of functions, and notably—

(*a*) To make Rules for giving effect to the Act (Sections 8 [4], 54 [2], 65, 86). The power to make Rules was conferred upon the Board by the Act of 1883, but the new Rules framed under the present Act deal with matters of much greater consequence, since they include the settlement of the forms in which patent grants must in future be made.

(*b*) To superintend the Comptroller-General in his administrative capacity and the routine work of the Patent Office, including the appointment of officers and their salaries (Sections 62 [2], [3]; 63 [1]; and 86 [1*h*]). In terms the power of superintendence conferred upon the Board of Trade is larger still, and extends to all the duties which the Comptroller is by the Act directed to discharge. In effect, however, this power of superintendence does not extend to the exercise by the Comptroller-General of the judicial functions with which he is entrusted so far as these relate to questions of vested right for, in these respects, he acts subject to an appeal either to the Law Officer or to the High Court—over whom the Board of Trade exercises no control. It is from these authorities, therefore, that the Comptroller-General must take directions in reference to such matters. A further

limitation upon the directorial powers of the Board of Trade is imposed by Section 74, which authorises the Comptroller-General in any case of doubt or difficulty arising in the administration of the Act to apply to the Law Officer for directions.

(*c*) To hear appeals from the Comptroller-General in relation to applications to register designs (Section 49 [3]).

(*d*) To receive petitions for compulsory licences and subject them to a preliminary examination before referring them to the High Court (Section 24 [2]).

(*e*) To register patent agents and exercise disciplinary powers over registered patent agents (Sections 84 [2]; 85, and 86 [1*g*]).

(*f*) To certify an Industrial or International Exhibition as such (Sections 45 and 59).

In addition to these certain minor powers of a miscellaneous character are conferred either expressly or by necessary implication, for the Board of Trade is the Department to which the general care of the interests mainly concerned is entrusted. See *e.g.* Sections 47 [2] and 87 [3].

6. *The Law Officers* are left by the new Act with the same jurisdiction which they exercised under the repealed Acts. This is, to a certain extent, an anomalous jurisdiction, on the one hand limiting the control exercised by the Board of Trade over the Patent Office and in another direction confining the jurisdiction of the High Court. In fact, it is reminiscent of the times before 1852, when the Attorney-General's Office was the Patent Office. Commissioners of Patents, constituted in effect of the Law Officers of the three Kingdoms, were appointed to administer the Act of 1852, and when in 1883 a Comptroller-General of Patents was appointed the Law Officers, although

relieved of the direct control of the Patent Office, retained an indirect control in the form of appellate jurisdiction and advisory authority. This jurisdiction and authority survive, but probably in virtue rather of the historical connexion than of any practical convenience at the present time resulting from their exercise.

7. *The Comptroller-General and Examining Staff of the Patent Office* derive all their powers from the Act, and in reference to them, therefore, its provisions are too numerous and too detailed for a full summary. In respect of the routine work of issuing patents and registering documents affecting patent rights the Law is not greatly changed by the new Act but the scope of the examination for anticipations has been somewhat enlarged and will hereafter extend to concurrent applications, while the Comptroller-General has received power in a case in which he finds a complete anticipation to refuse to issue a patent. So also the power of the public to oppose a grant has been extended by the introduction of a new ground of opposition: namely, the insufficiency of the specification (Section 11 [1*c*]), and a prolongation of the period within which opposition proceedings may be instituted to two years from the date of the patent (Section 26). These extended facilities for opposition are not to delay the sealing of the patent and, consequently, the opposition, if lodged after the expiry of two months from the date of publication of the complete specification, must take the form of an application to revoke the patent. A power of revocation to meet such a case is now lodged in the hands of the Comptroller-General, with an appeal to the Courts of Law.

There are two other cases in which the Comptroller-General receives, under the new Act, power to revoke a patent. These are (1) the case in which a patented invention is shown to be worked mainly or exclusively abroad, and (2) the case of a patent surrendered by its owner. The first of these cases will be more conveniently noticed under the head of Penalties than in this

place (see page 30); the latter has been already noticed under Rights (see page 15). Of the duties laid by the new Act upon the officials of the Patent Office this is not the place to speak in detail. They are enumerated in the Tabular Synopsis (see page 62).

8. *The Patentee.*—The applicant for a patent and the patentee are both laid under obligations to perform certain duties. Those which devolve upon the applicant are, however, of the nature of procedure for the purpose of obtaining his grant, and cannot well be epitomised. They may be found, so far as they are embodied in the Act, on reference to the Tabular Synopsis (see pages 62 and 73).

But to the patentee the Act brings home, and somewhat forcibly, the duty of using his privilege for the benefit of the British industrial community as well as for his own advantage. In principle there is nothing new in this obligation. It has from the earliest times been the tacit understanding upon which patent grants have been made and in the earliest of such grants it was often an express condition. But the power of revoking a grant which had been abused and had grown to be mischievous in its effects having been explicitly repudiated by the Court,[1] legislation became necessary to supply the deficient jurisdiction. The provisions of the present Act in this respect are both numerous and stringent. Section 27 gives power to the Comptroller-General, subject to appeal to the appointed Judge, to revoke a patent of four years old and upward, on the ground that the patented article or process is manufactured or carried on *exclusively or mainly outside the United Kingdom.* The Comptroller-General has power to grant the defaulting patentee a *locus pœnitentiæ.* Section 25 extends the power of revocation for this cause to the High Court, but, apparently, without conferring on the Judge any similar discretion to afford a *locus pœnitentiæ* to the patentee. By Section 24 the failure of the

[1] Badische v. Thompson, 21 R. P. C. 478.

patentee to satisfy the reasonable requirements of the public with respect to the patented invention is made a ground for the making of an order for a compulsory licence, and, in the alternative, a ground for the revocation of the patent. Section 38 avoids certain contracts of a kind by which it has, as a matter of experience, been found that patent rights can be easily turned to the purpose of oppression and makes the mere existence of such a contract a ground of defence to a third person charged with infringement.

It must be admitted that it is very difficult from these provisions, elaborate as they are, to deduce any view, which is capable of being formulated, of a patentee's duty under the Acts. Certain things he clearly must not do. For example, he must not enter into a contract of the kind which is made the subject of reprobation in Section 38. But it is impossible to believe that he can really be required to prevent the use of his patented process or the manufacture of his patented article in other lands to such an extent that these things shall not take place "mainly abroad." In the case of a patent of universal utility—such, for instance, as an improved printing process—the thing cannot be avoided and in the case already alluded to, of a metallurgical, or other, process which has to be carried out upon crude materials, it would be so manifestly absurd to complain that it was mainly carried on where the crude materials are to be found that it may, with some confidence, be expected that the authorities charged with the administration of the Law will apply by rule the qualification which is wanting in the Act. But the rule cannot be laid down in advance and for the present, therefore, the duties of a patentee must remain indeterminate. He can confidently be advised to be reasonable about granting licences and to look carefully to the terms of any that he reduces to writing. It is quite possible that he will find this the safe and simple rule and that if this is observed the Act will be found to have been satisfied in respect of all those provisions which are of practical importance from the patentee's point of view.

3.—PENALTIES.

By this Act penalties are imposed with a very liberal hand. In addition to such as naturally arise from the view that the obligations of the Patent Law are matters proper to be enforced by fine and imprisonment we have the scope of the Act enlarged to penalise the unauthorised use of the Royal Arms and the infringement by outsiders of the chartered privilege of patent agents to call themselves by that name. Leaving out of account these somewhat extraneous matters, the penalties which pertain to the Patent Law proper, as embodied in the new Act, may be distributed under four heads.

First, there are penalties imposed to secure the regular course of proceedings. Thus, forfeiture is the penalty which an applicant pays for failing to pursue his application by taking the prescribed steps within the prescribed times, and, when a patent has been granted, forfeiture is the penalty visited upon a patentee who fails to pay the fees by law prescribed for the renewal of his patent from time to time. These are all matters of detail, have long been familiar and are easily understood. The only thing that it is necessary to say about them is that the rigour of the penalty has, in many cases, been mitigated by the concession of extended times of payment under the condition of a fine. In other cases, as, for example, where the integrity of the Register is concerned, a wilful falsification is visited with the penalties of misdemeanour (Section 89), and special punishments are devised for such misdemeanours if committed in the Isle of Man (Section 96 [2]).

A second, and more important, head of penalties comprises such as are intended to enforce the public duty of a patentee to introduce into use within the Realm the patented manufacture of which he has received a monopoly. To enforce this obligation may indeed be fairly described as the principal motive for the new legislation. The other improvements effected are

subordinate matters both in substance and intention and for the most part accessory to this main object.

But, although it is clearly the main purpose of the Act—so far as its new provisions are concerned—to enforce this duty, it is by no means easy to read out of its provisions any clear statement setting forth that wherein the duty consists. This difficulty has been already alluded to in another connexion [1] and need not be emphasised. Suffice it to say that it arises chiefly from the circumstance that the penalties devised with this end in view have been so imposed that a patentee may incur them through force of circumstances over which he may have no control. These anomalies in the Act can and probably will be cured by the exercise of discretion on the part of the authorities who will make Rules under the Statute and administer the Law. It may therefore be a labour not altogether lost to endeavour to piece together such information as is at present available to throw light upon the intention of Parliament in sanctioning new and stringent provisions for keeping patentees to their duty.

First, there are the provisions of the various penal clauses directed to this end. Thus, Section 24 makes a patentee liable to proceedings for a compulsory licence order or alternatively for the revocation of his patent—

> "(*a*) If by reason of the default of the patentee to manufacture to an adequate extent and supply on reasonable terms the patented article, or any parts thereof which are necessary for its efficient working, or to carry on the patented process to an adequate extent or to grant licences on reasonable terms, any existing trade or industry, or the establishment of any new trade or industry in the United Kingdom is unfairly prejudiced, or the demand for the patented article or the article produced by the patented process is not reasonably met; or

[1] *See* page 26.

"(*b*) If any trade or industry in the United Kingdom is unfairly prejudiced by the conditions attached by the patentee before or after the passing of this Act to the purchase, hire, or use of the patented article or to the using or working of the patented process."

Section 27 provides that—

"At any time not less than four years after the date of a patent and not less than one year after the passing of this Act, any person may apply to the comptroller for the revocation of the patent on the ground that the patented article or process is manufactured or carried on exclusively or mainly outside the United Kingdom"

and gives the Comptroller-General power in his discretion to revoke the patent if the allegations made by the applicant for revocation are proved to his satisfaction.

Section 25 makes both the foregoing objections grounds for the revocation of the patent by the High Court, and in that case apparently without any discretion in the Court as to the substitution of a less drastic remedy.

The same Section (25) makes the same objections grounds of defence to a patent action, and Section 38 (4) gives a defendant in such an action the right also to defend on the ground, if he can establish it, that the patentee is imposing by some subsisting contract upon himself or, as the case may be, upon some stranger, a condition of licence to use the invention such as is by that Section declared to be null and void.

Lastly, Section 38 declares that—

"It shall not be lawful in any contract made after the passing of this Act in relation to the sale or lease of, or licence to use or work, any article or process protected by a patent to insert a condition the effect of which will be—

"(*a*) To prohibit or restrict the purchaser, lessee, or licensee from using any article or class of articles, whether patented or not, or any patented

process, supplied or owned by any person other than the seller, lessor, or licensor or his nominees; or

"(*b*) To require the purchaser, lessee, or licensee to acquire from the seller, lessor, or licensor, or his nominees, any article or class of articles not protected by the patent:"

and provides that any such condition shall be null and void as being in restraint of trade and contrary to public policy. Certain saving clauses are introduced for nullifying these provisions in case the offending contract has been freely entered into by the licensee, and provides him with specified facilities for liberating himself from its obligations and certain other clauses extend the approved form of relief to cases in which it forms no part of the original contract. But, subject to such limitations, these prohibited conditions are brought within the operation of the law relating to restraint of trade.

The drift and purpose of these provisions are obvious. They are intended to suppress by every means the mischief of unregulated monopoly. They are to give effect to what the President of the Board of Trade declared in Parliament to be the main object of the Bill: that is to say, "to prevent the Patent Laws from being used for the hindrance and suppression of British industrial development."[1] Moreover, it is clear that in devising the means of prevention Parliament has had regard to the forms which experience has shown that the mischief is most apt to take and has sought to adapt the remedy to every one of those forms of mischief in its turn, the mischief itself, under all its various forms, being that identified in Section 38: namely, restraint of trade.

Now restraint of trade is a well-known mischief in English Law. It signifies not all restraint of trade, but such restraint as is excessive and tends rather to diminish than to augment the facilities of trading enjoyed by the community. "The

[1] 171 Hansard, page 683.

principle," said Vice-Chancellor James, "is this—public policy requires that every man shall be at liberty to work for himself and shall not be at liberty to deprive himself or the State of his labour, skill, or talent by any contract that he enters into. On the other hand, public policy requires that when a man has by skill or by any other means obtained something which he wants to sell he should be at liberty to sell it in the most advantageous way in the market, and in order to enable him to sell it advantageously in the market it is necessary that he should be able to preclude himself from entering into competition with the purchaser."[1] Upon this view of the principle it is equally important that there should be power to establish restraint of a certain kind and power to repudiate restraint of another kind, this latter being such as is excessive and mischievous, and, accordingly, the question has always arisen when a covenant in restraint of trade has been the subject of an action to enforce it: "Is it reasonable? Is it properly limited by a due consideration of the substantial interests of the covenantee in respect of his protected business; or does it go beyond that point, and place in his hands a weapon enabling him to impose restrictions upon the trade of the covenantor at his mere caprice or in defence of his merely fancied interests?" In the latter case the contract has always been held void as contravening a recognised principle of public policy.

This principle, as applied to a case of patent right, probably imports the proposition that no contract can be made the effect of which is to extend the monopoly beyond the limits set by the grant itself. The grant has been likened to a contract between the Crown, representing the State, of the one part and the patentee of the other part, and it may be conceived under the analogy of a business arrangement by which the patentee acquires a trading advantage analogous to a goodwill and privileges which enable him to maintain this advantage against

[1] Leather Cloth Co. *v.* Lorsont, L. R. 9 Eq. 354.

all and sundry who may desire to invade his exclusive rights. Whatever is necessary in the way of restriction upon the trading liberties of other people to render his privilege effective may lawfully be secured to him and not less by agreement with his neighbours than by litigation. But on this view of the matter a concession that exceeds those limits and restricts the trading rights of other people in order to secure to him some unchartered advantage is clearly bad as being unnecessary for the purpose, which is alone legitimate, of making his patent right effective.

This view of the matter has been, however, repudiated in the most emphatic manner by the High Court,[1] and it may be taken to be manifest on the face of Section 38 that the present enactment has been called for to cure the mischief arising from that decision. If, then, by the light of this principle we generalise the provisions of the several sections above enumerated we arrive at the following result:—

Section 24 provides the machinery of a compulsory licence for rendering the privileges of an usurping patentee innocuous, with the alternative of power to abolish them if they cannot be rendered innocuous in the other way.

Sections 25 and 27 provide machinery of revocation additional to that already mentioned, and available in the case of a patent used to restrain British manufactures in the interest of manufactures carried on abroad.

Section 38 annuls and penalises contracts in restraint of trade framed so as unlawfully to extend the scope of a lawful patent grant.

There is here a complete system disclosed. Two sections—24 and 38—contain remedial provisions, the one dealing with the abuse of the patentee's privilege, the other with the abuse of his contractual rights. Privilege and the power of securing contractual advantages exhaust the patentee's legal rights as

[1] *See* The Incandescent Gas Light Co., Limited *v.* Cantelo, 12 R. P. C. 264.

patentee. If these are curbed by the doctrine that such rights must not be extended beyond the point necessary to make the grant itself effective, the Patent Law will be brought into harmony with the Common Law touching contracts in restraint of trade. That may perhaps be presumed to be a principle which the authorities will keep in mind in administering the Act, and if this hint, conveyed in Section 38, of the intention of the Legislature be adopted as a guide it will be the informing principle of all the Rules of Law and Practice which will be developed in the translation of the enactments into Case Law. Then, to complete the system, all four sections are penal, inasmuch as they provide for the revocation of a mischievous patent, or the suspension, even while such a patent stands, of the patentee's right to maintain an action upon it. But these penalties are in fact only extensions of the remedies already noticed. The remedies are of private application and protect only the individual who invokes them, the penalties are introduced for the protection of the public at large, whether subject or not to attack by the patentee. They do not, therefore, touch the principle of the enactment, and will probably not modify the attitude of the Court and of the Patent Office towards patentees farther than to this extent, that in inflicting penalties the authorities will no doubt be slower to act and more circumspect in action than when dispensing the less drastic relief provided by the remedial provisions.

Thirdly, in respect of penalties the case of the owner of a copyright in a design is wholly unlike that of a patentee. In many respects the new Act has assimilated the Law of Designs to that of Patents, but when all that is possible has been done in that direction the two systems remain widely unlike one another, and necessarily so, for copyright and patent right are very different in nature and even more unequal in respect of public importance. It is only in connexion with mere matter of procedure that they can really be assimilated at all. Section 58 of the Act, which applies to registered designs the

provisions of Section 27 relating to patented articles manufactured mainly or exclusively abroad, affords a striking illustration of the essential difference. Let the case, for example, of a gondola be considered as that of an article manufactured mainly abroad. It is quite reasonable to suppose that a British patent for a gondola would be revoked almost as a matter of course at the end of four years from the date of the patent if anybody chose to apply for its revocation. But it would be a strong thing to say that the same result would follow under the provisions of Section 58 in the corresponding case of a registered design. Suppose, for example, that some manufacturer of chinaware had registered the design of a gondola for application to ash trays. Could the objection that the design was mainly used for manufacture abroad—to wit, in the building of gondolas in the City of Venice—be objected to his registration? In terms the new section makes the objection fatal, but a result so anomalous will probably prove to be a sufficient reason for putting a limited and limiting construction on the Act. In that event the provision relating to designs, though couched in the same terms as those of Section 27, will bear a widely different meaning. It is indeed quite possible that the difficulty to which the language of Section 58 gives rise will be minimised by construing it as if it ran—

"At any time after the registration of a design any person may apply to the Comptroller for the cancellation of the registration on the ground that the design is used *for the purpose in connexion with which it is registered* in manufactures carried on exclusively or mainly outside the United Kingdom." That probably would give effect to the intention of the Legislature so far as that intention was present to the mind of the draughtsman of the clause. But on the other hand it would be so strangely at variance with the intention of Parliament in establishing a Design Copyright at all that it is impossible to say in advance that it will certainly commend itself to the authorities charged with administering the

Law. The following illustrative case may be put: A small manufacturer in England of silk fringe having only an English trade registers in this country, but not abroad, a design which, in the event, is highly successful. This design is copied, we may suppose, by a large French house manufacturing in Lyons and exporting largely to all parts of the world. The French factory turns out a quantity of the registered fringe greatly exceeding that which the small British manufacturer is able to produce. Is the French manufacturer to be able to deprive the English designer of the benefit of his registration by proving the above facts? If the section is read in any natural sense of the words, he will be able so to do unless, indeed, the Comptroller-General makes a very liberal use of his discretionary power to accept excuses by patentees. In that case the Law will have to be sought, not in the Statute, but in the Rules and practice of the authorities; and, upon the whole, it is probably safest not to attempt at the present time to expound the new penal law concerning copyright in designs.

Fourthly, in other respects the sections of the Act relating to copyright preserve the Law in pretty much the state to which it had been brought by earlier legislation. The penalties of infringement remain what they were, and in the main the results of issuing registered goods without the prescribed mark. But the stringency of the Rule relating to this latter point has been considerably relaxed in favour of a copyright-holder whose default is due to accident or other cause beyond his own control. He is exonerated and his right to recover a penalty or damages against an infringer is preserved if he shows that he took all proper steps to ensure the marking of the article in conformity with the requirements of the Law (Section 54 [1 *b*]).

4.—MACHINERY.

The machinery provided by the Bill comprises the whole establishment of the Patent Office and the appellate jurisdiction of the Law Officers, since by the repeal of the Act of 1883 the

new Act becomes the source of the authority which they respectively exercise. But this authority does not originate in the present Act, and is not to any material extent modified by the new legislation. For the most part, therefore, it may be taken to be already well known, and need not be particularised in this place. There are, however, one or two matters of detail to which, by reason of their novelty, attention may be drawn in this connexion.

Thus, the official search for anticipations will in future include specifications lodged under concurrent applications for patents, and such also as under the provisions of the International Convention will antedate British patents granted upon prior applications in this country. With this object an extended search is to be instituted after some date to be fixed by the Board of Trade (Section 8). This extended search will apparently be made after the sealing of a patent, so that when this provision of the Act takes effect references will apparently, within certain limits, be directed by the Office, even after the issue of the patents affected by them.

If—neglecting other minor changes in the machinery provided for carrying out the Law; changes such as are for the most part mentioned incidentally elsewhere in the discussion of the new rights, duties and penalties introduced by the Act—we consider the principal changes of this kind and the motives which have prompted them, we shall find that they are chiefly directed to three ends: that is to say—

(1) The simplification of machinery.

(2) The cheapening of procedure.

(3) The facilitating of International arrangements.

(1) The first of these objects is compassed by the transferring to the High Court of the jurisdiction, hitherto confided to the Privy Council, to authorise the extension of patents upon the expiry of the original terms (Section 18), and to hear and decide upon applications for compulsory licences (Section 24). So far as the

High Court itself is concerned, the scheme of the Act is carried out by the selection of a particular Judge to deal with petitions and to exercise the jurisdiction by the Act newly conferred upon the Court (Section 92 [2]), and by a provision which conditionally enables the defendant in a patent action to apply by way of counterclaim for the revocation of a patent under which he is sued. (Section 32.)

Only the last of these provisions requires any particular consideration, for in the other cases the meaning of the Act is plain upon the face of its enactments. But the right of a defendant to apply by counterclaim for the revocation of a patent is qualified by the words "if entitled to present a petition to the Court for the revocation of the patent." The right to present such a petition is a purely statutable right, and is defined by Section 25 of the Act. The result would seem to be that the procedure by way of counterclaim will be open to any defendant after the 1st January, 1908, if the alleged ground of revocation is that, the patent being upwards of four years old, the article or process patented is manufactured or carried on exclusively or mainly outside the United Kingdom and open also to any defendant who is authorised by the fiat of the Attorney-General to petition and to such defendants as can set up a personal claim to priority of invention or of use in respect of the patented manufacture. It is to be observed that this falls far short of a power in any defendant to retaliate upon a patentee who brings an action on his patent by proceedings to revoke the patent. The most usual grounds of revocation—that is to say, want of novelty or want of subject-matter in the patented invention—do not alone suffice to expose a patentee to this risk. No doubt a defendant, when once let in to counter-claim for revocation, will be entitled to rely on any ground of objection to the validity of the grant but it is no part of the policy of the Legislature in the passing of this Act to add to the perils of patentees who are diligently occupying themselves with the task of introducing their novelties into the manufacturing

industries of the United Kingdom. In their favour the old machinery of the Attorney-General's fiat is retained as a protection from vexatious attack upon their patents, and so tenaciously is this principle upheld that even the bringing of an action on a patent does not of itself involve the forfeiture of the protection. In the majority of cases, therefore, the Attorney-General's fiat will be as necessary as heretofore to enable a member of the public to bring into Court even a well-founded claim for the revocation of a patent grant.

(2) The second great change made in the machinery by which the law is administered is directed, as already stated, to the cheapening of litigious proceedings, and this the Legislature has sought to effect by cutting down the right of appeal. About this part of the Act it is, however, very difficult to write at the present time. Sub-section (2) of Section 92 contains the clause which is intended to give effect to this purpose, but it would seem to have been vitiated by a draughtsman's error in such a way that it can hardly be supposed to express, as it stands, the intention of Parliament. The source and consequences of this error have been pointed out with much care by Messrs. Roberts and Moulton in their notes upon the Act,[1] and while it is clearly necessary that the criticisms which they offer should be brought to the notice of those whom they concern, it does not seem at all necessary that they should be reiterated by every writer who attempts to illustrate the Act by a commentary.

(3) The facilitating of International arrangements. Section 27 of the Act, which authorises the Comptroller-General to revoke patents worked "mainly or exclusively" outside the United Kingdom, contains a curious proviso in the following terms:— "Provided that no such order shall be made which is at variance with any treaty, convention, arrangement, or engagement with any foreign country or British possession."

[1] Roberts and Moulton, "Patents and Designs Act, 1907," pages 61 and 62. As to this point see the Corrigendum Note on page 54.

The meaning of this clause appears to be that the Comptroller, or the Court, in administering the provisions of the Act comprised in this section shall have regard to the treaty engagements of the Crown and to the effect of any diplomatic arrangements made with our own Colonies so that in the exercise of their discretion these authorities shall refrain from making any order which would conflict with any such conventions. The Act does not say that any such order shall be void if made and, apart from an express enactment, it would seem that an order once made must be good and effective. Otherwise, if an order founded upon the express provisions of the Statute were held invalid because it contravened a treaty, we shall have in this case a revival of the dispensing power, since treaties are made by virtue of the prerogative alone—without the consent of Parliament. Now it is quite true that the Bill of Rights reserves to the Crown the right to dispense with a Statute Law in a case in which the dispensation is provided for in the Statute itself and if, therefore, the above clause were held to be not merely directory but also disabling, there would be no violation of the fundamental laws of the Realm involved in the exercise of regal authority in that particular way. But on the other hand a clause in very similar terms which stands as Sub-section (6) of Section 21, and defines the character of an allowable amendment, has been taken by the House of Lords to amount to a direction only and not to open up a ground of objection to the exercise of the jurisdiction restrained.[1]

A reason at least equally cogent with that which persuaded the House of Lords can be adduced for the conclusion that this clause also is directory and not disabling; and it is this, that it is quite impossible for the Comptroller, or for anybody else, to know when an order is and when it is not in conflict with the provisions of a treaty. Treaties are, many of them, secret documents, and even those which are made public are commonly

[1] Moser *v.* Marsden, 13 R. P. C. 32.

expressed in the French language and, moreover, do not find their way, as a rule, into the text books from which Judges and other officers of the administration take their Law. This difficulty about making the provisions of treaties available in the administration of justice under a constitution such as ours, where the Judicature is an independent body which takes no instructions from the political Ministers of the Crown, is an old and familiar difficulty to English legislators. It has arisen hundreds of times in our history, and was of very constant occurrence during the complicated international arrangements which attended the suppression of the slave trade. It has been dealt with in various ways. Sometimes the treaty to which effect was to be given was recited in the Statute which gave effect to it. In that way its provisions became known through the ordinary channels for the publication of the Law. But this method could clearly not be followed when the carrying into effect of treaties to be negotiated in the future was in contemplation. The regular mode of procedure in such a case is to entrust the Crown with power to legislate for the purpose contemplated by Order in Council. By this means the provisions of the treaty can be rendered into English and adapted to the state of our own Law and the procedure of our own Courts. In this way, also, the Crown obtains the assistance of a staff of officers skilled in the art of domestic legislation, in addition to that of the diplomatic corps, which is skilled in the art of negotiation with foreign powers. In this way, finally, the Law is published by a regular and known routine for the information and guidance of those whom it concerns. For some reason, which does not at all appear upon the face of the Statute, or from the nature of the case, these regular modes of giving effect to treaty engagements have been put aside in the preparation of this Act and the Comptroller-General, who is to be bound by the diplomatic acts of the Crown, is left to obtain as best he may a knowledge of secrets which it may be that the Foreign Office and the Colonial Office are guarding with jealous

care. It can hardly be supposed that Parliament intended to do more by this clause than to direct the officer charged with the execution of the Act to do his best to give effect to treaty engagements and to observe in his administration of the Law such of them as might be within his knowledge or be brought to his attention. If so, the clause is purely directory; it is satisfied when the Comptroller-General or the Judge has done his best to administer justice according to treaty and gives no remedy to any aggrieved party who may suffer by his inadvertency.

More important in the field of International Law is Section 91, which empowers the Crown to enter into those transactions with our own Colonies and Foreign States which have come to be known by the collective name of the International Convention. This section contains, however, little that is new and, as it has already taken effect in the instrument printed in the following collection of texts,[1] little need here be said about it. Its provisions can cause no embarrassment to the Court, for in this part of the Act the old rule is followed that the treaty made can take effect only as part of our Municipal Law when embodied in an Order in Council. It is, therefore, a public document and available for inspection by all who are concerned to know its terms. Moreover, its effect, so far as Patents and Designs Registration are concerned, has been well ascertained by the experience gained under the Act of 1883.

In the case of Trade Marks, however, a curious, and possibly momentous, change of the Law has been effected by what in appearance is a mere Consolidation Clause in the Act. Clause (*b*) of Sub-section (3) of Section 91 reads as follows:—

"*Provided that*—

"In the case of trade marks, any trade mark, the registration of which has been duly applied for in the country of origin, may be registered under The Trade Marks Act, 1905."

[1] *See* pages 179 to 188.

The history of this clause is very singular. In the Act of 1883 there was a clause in the same terms, in the form of a proviso to Sub-section (3) of Section 103 of that Act, which—like the present Clause 3 of Section 91—prescribed a mode of application to be adopted by foreign applicants for registration in this country. The circumstance that the clause took the form of a proviso had an important bearing upon its construction, for it was held that, being a proviso, it could not be supposed to give a new and independent right of registration to the foreign applicant. It was considered accordingly that a foreign trade mark, to be registrable in this country, must satisfy the definition of a registrable mark according to English Law. It followed, and was so held, that although the International Convention provides by Article VI. that "every trade mark duly registered in the country of origin shall be admitted for registration and protected in the form originally registered in all the other countries of the Union," the Act of 1883 did not afford the means of carrying out that Article, and therefore that the foreign application must be dealt with on its merits under English Law.[1]

This view of the matter was regularised and the provisions of the International Convention under this head were definitely set aside by The Trade Marks Act, 1905, which (by Section 65 of that Act) expressly provided that this clause in the principal Act should be "construed as applying to trade marks registrable under the 1905 Act." Thus, those overriding rights which the Crown had undertaken to secure for foreign trade mark owners within the Realm were denied them and mere priority, as against prior applicants for the same mark, was substituted, bringing the Law of Trade Marks thus into line with the Law relating to Patents.

The clause in the new Act now under discussion must apparently raise anew the old controversy, for the effect of repealing the Act of 1883 and re-enacting its provisions in the present Act is to

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[1] *In re* Californian Fig Syrup Co.'s Trade Mark, 40 Ch. D. 627. *In re* Carter Medicine Co.'s Trade Mark, [1892] 3 Ch. 476.

alter incidentally the effect of the Interpretation Clause of the Act of 1905. That clause related expressly to the provisions of the Acts of 1883 and 1885, which Acts could not, in the nature of things, confer any right of entry on the Register newly created by the Act of 1905. To meet this difficulty the Sixty-fifth Clause was added to the later Statute, and so expressed that it restricted the right of registration to marks satisfying the definition of that Act. But the new clause in terms provides for the entry of foreign trade marks in the Register set up in 1905, and thus the Sixty-fifth Section of that Act becomes superfluous and may probably be regarded as spent. The interpretation of the new clause must therefore rest upon the somewhat forced construction which two Courts of First Instance have placed upon the similar language of the Act of 1883 if the re-enacted clause is to be interpreted in the same sense as that which the original clause thus received. It is probable that this interpretation will be adopted, for although it fits the language of the clause with great difficulty, yet there are overwhelming reasons of good sense for setting aside the fanciful provisions of Article VI. of the International Convention. On the other hand it is difficult to believe that the draughtsman of the new Act really intended to perpetuate the very obscure and subtle expression of a simple rule which the clause, as thus interpreted, contains. Finally, it is very strange that this clause should be read in a sense which confessedly sets aside the provisions of the International Convention now that it stands in context with Sub-section (2) of Section 27, which, as has been above pointed out, makes the International engagements of the Crown in reference to the subject-matter of that clause paramount to the Law of the land. Here, again, it behoves the commentator to confess that only the Court can put a secure construction upon the provisions of the Act.

Passing from these provisions, which affect the administration of justice, we find the most important remaining change in the machinery of Patent Law to be that which results from the introduction of a system of patents of addition. This subject

has been discussed incidentally above[1] in connection with the power of amendment, but must be mentioned here in a more general view of it. A patent of addition is a patent granted for a distinct subject as an additional branch of an existing patent. It runs for a term equal to that of the residue of the term of the original patent, and it can remain in force no longer than its mother patent, so that if from any cause the principal patent comes to an end the patent of addition must fall with it. The patent of addition is not to carry any liability to renewal fees, and it seems doubtful upon the wording of the Act whether it can be impeached for want of novelty or subject-matter. The definition of the subject for which a patent of addition can be granted is "any improvement in or modification of the invention" (Section 19 [1]). Nothing is here said about the novelty of the improvement or modification. It is to be "any" such improvement or modification. Moreover, a change, which, unless it is an accident, must be considered significant, has been made in the language of this clause in the course of its transfer from the amending to the consolidating Act. As originally passed the phrase ran: "any improvement *on* or modification of the invention." An improvement *on* an invention suggests a different invention; an improvement *in* an invention implies that the invention remains the same. It is strange, and perhaps unfortunate, that anything of consequence should turn upon a mere iota in an Act of Parliament, but, whatever its significance, it seems impossible to shut it out of consideration in the present discussion.

It is, on the other hand, quite possible to argue that the phrase just quoted is not the definition but only a part of the definition of the subject-matter of a patent of addition. The whole clause reads thus: "Where . . . . the applicant or the patentee . . . . applies for a further patent in respect of any improvement," &c. It may fairly be contended that this application for a further patent imports patentable subject-matter for

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[1] *See* page 16.

the further grant by necessary implication and that the reference to an improvement in or modification of the original invention is only intended to restrict the subject-matter of patents of addition to a particular species of patentable subject-matter.[1] There is, obviously, much to be said for this view of the matter and it is a view particularly likely to commend itself to official sanction, if for no other reason, at least because it would involve no change in the form of application or other machinery for the obtaining of a patent and would render it a matter of no consequence, save from the point of view of the Chancellor of the Exchequer, whether a patent were granted as an original patent or as a patent of addition.

These, however, are subordinate considerations. The crucial test must be what construction of the section is necessary to give effect to its provisions in accordance with the intention of Parliament. In this connexion it would be extremely useful if some indication could be found of the purpose which this provision of the Act is intended to accomplish. But here the enquirer finds himself even strangely at a loss. The section may be vaguely traced, as has been above shown, to a point of origin in Napoleon's legislation, but it has evidently wandered very far from its starting point. If we enquire for a more immediate cause of its appearance in the legislation of the present time, we shall find ourselves embarked on a very difficult enquiry, for no popular demand has preceded and no official explanation has accompanied its presentation to the Legislature. Although a power of amendment by way of amplification has been advocated for many years past by Sir Lloyd Wise, this particular proposal seems to have been propounded *nemine poscente* and to have been passed *nemine contradicente*. General considerations, therefore, afford no help.

Equally little aid is to be obtained by considering other systems of Patent Law than our own. Reference has been already

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[1] This is the view taken of the section by Messrs. Roberts and Moulton in their work upon the new Act. See also Patents Form 1c, which seems to imply that the applicant (or one of the applicants) must be the true and first inventor.

made to Napoleon's Law, from which this type of grant, wherever we find it in the Patent Laws of the world, has been derived. That was designed, so far as it is possible to judge now of the intentions of legislators who lived a hundred years ago, to avoid the doctrine of our own common lawyers, that an invention to merit the protection of patent right must be urgently necessary and manifestly useful. But that doctrine has long since passed out of our own Patent Law, and no longer shapes either the form of the patent grant or the decisions of our Judges on questions of patent right. In a grant of King James I., made in the year 1618, we find a recital in these terms: "and whereas it is supposed that the said several engines . . . . are likely to prove of good an necessary use for the service and benefit of this our Realm,"[1] and this agrees exactly with the doctrine laid down about the same time by Sir Edward Coke and quoted above.[2] But neither the grant nor the Court in our days says anything about "necessary use," and the utility postulated for a valid patent grant has been judicially defined, not once only but on many recent occasions, as very small—"the slightest amount," was the expression used by Grove, J., in Philpott *v.* Hanbury.[3] It cannot have been thought necessary to bring in a patent grant of a new type merely to get over this no longer existent difficulty and, moreover, the term employed to describe it seems devised for the purpose of excluding the French precedent. The French do not speak of a *brevet d'addition* but of a *certificat d'addition* and, although the certificate is in fact a patent, its subordinate character is well expressed by the significant change of name. Thus the French *certificat* serves for the benefit of all the owners of the mother patent—if more than one—not for the benefit of the inventor alone; it passes, on assignment of the mother patent, as a part of it unless expressly excluded by the deed of transfer and it is included in a licence to work the principal invention unless the licence is

[1] Gilbert's Patent, printed in 17 Ry. Fœd. 102.
[2] *See* page 4.
[3] 2 R. P. C. 37.

qualified by an express limitation excluding improvements protected in this way. The French *certificat d'addition* may be approximately defined as an instrument for enabling the patentee to amend his original claim by way of addition and the subject-matter of a *certificat*, when obtained, becomes for all practical purposes, as from the date of the *certificat*, a branch of the original patent. The French, like ourselves, have no longer to deal with the old Common Law doctrine of urgent necessity and manifest utility. Anything which can, if applied for by a patentee, be made the subject of a *certificat d'addition* can also, on the application of a stranger, be the subject of a *brevet de perfectionnement*. But the *certificat* affords them a convenient method of allowing a kind of amendment not otherwise provided for by the French Patent Law and for which our own Law makes no provision at all. It is quite possible to contend that the Legislature has thought well to borrow from the French Law this useful contrivance, and to add to our own system an appliance which will enable a patentee in effect to amend his specification by way of adding a claim in a proper case. This view of the matter has been developed on a previous page.[1]

There is, indeed, in the provisions of the clause itself one which points very definitely in this direction. It is provided that the patent of addition shall remain in force so long as the patent for the original invention remains in force but no longer. This is quite a necessary provision if the patentee is to be allowed to obtain protection in this way for improvements and modifications which do not involve any patentable novelty as compared with the original invention. If, for example, the new specification supplies what is in substance a more sufficient description of the invention and contains a claim not materially different from that originally made, it is clear that it would be very embarrassing to the public if the right defined by that later grant were reserved to the patentee when the right conferred by the original grant

[1] *See* page 17.

had, by the lapse of the principal patent, become common property. If the two patents may overlap in that way, it is manifestly necessary that they should stand or fall together. In the words of the clause, the patent of addition ought, on that view of the matter, to remain in force "so long as the patent for the original invention remains in force but no longer." Since each patent right is, in those circumstances, necessary to the enjoyment of the other, it follows that when the one falls into the public domain the other must go too in order to make the public right effective.

If, however, our Courts adopt the German view, and hold that a patent of addition—like a Zusatz Patent in Germany—can only be granted for independently patentable subject-matter, then the new Law will become strangely involved and confused. The German system is consistent and logical. The mother patent and the patent of addition are not united by any indissoluble tie. The patent of addition does not of necessity remain in force so long as the mother patent. It may be revoked, and its revocation does not involve the fate of the mother patent. On the other hand, if the mother patent comes to an untimely end its fall does not of necessity involve the fall of the patent of addition, which may, on the contrary, be raised to the rank of an original patent for its own particular subject-matter, and be thereafter maintained in force by the payment of renewal fees as if it had been a self-sufficient patent from the first.

Now this, which is the alternative function of a patent of addition, reduces the question simply to a matter of fees. A patent of addition is a patent which, under certain restrictions as to subject-matter, is granted almost free of cost to the patentee. This, under the German scale of patent fees, is a matter of much greater importance than with ourselves, for the fees payable by German patentees are much heavier than those payable in this country. In the whole lifetime of a patent the German fees exceed the English by about £150, and this excess is proportionally heaviest in the first four years of the term—the period at which outlay is usually most burdensome to the

patentee. In Germany, therefore, the matter of patent fees is a matter of great consequence and the relief afforded by the system of patents of addition to inventors grappling with the difficulties of perfecting a new idea is very substantial. But in this country the conditions are entirely different and the relief afforded by a patent of addition cannot be of the same order of magnitude here as in Germany, for the simple reason that our renewal fees are not oppressive in the same way. Thus, taking the first four years of a patent's life, within that period a German patentee by taking a patent of addition escapes the payment of £14 in renewal fees. During the same period our English patentee saves nothing, for no renewal fee is chargeable to him until after the expiration of four years from the date of his patent, and the cost of obtaining the grant is apparently to be the same, whether the grant itself takes the form of an original patent or of a patent of addition. The system, therefore, as developed in our own new Act, effects nothing in the direction of easing the early struggles of an inventor. What it does effect in this direction is a remission of fees which will make it easier for him to entrench his position at small cost by keeping a large number of patents for trifling improvements on foot. This, although it may have been foreseen, can hardly have been contemplated by the Legislature in any other light than that of a necessary evil. To make it easy for inventors to obtain protection for a period of time sufficient to enable them to test the commercial value of their inventions is a policy which has received the clear sanction of Parliament, and to this end the patentee receives, when once his patent is granted, a period of grace of four years, during which the Chancellor of the Exchequer leaves him at peace. But Parliament does not favour the creation of numerous petty monopolies and to extinguish them has imposed a graduated scale of renewal fees, designed and serving to squeeze out the unsuccessful patentee who cannot make his invention commercially profitable. This policy is so manifestly sound that its reversal is almost inconceivable, and certainly there has been no serious

proposal to reverse it put forward from any quarter in the discussions which preceded and accompanied the amendment of the Patent Law. To leave the burden of the early years untouched and accord unasked relief to the patentee at the time when he is harvesting his gains would be so strange a scheme of policy as it is impossible to attribute to the Legislature, and for that reason, if for that alone, it seems necessary to look elsewhere for the motive of this section of the Act.

The whole question may be put thus: If regard be had to the matters of substance affected by the introduction of patents of addition into our patent system, it seems necessary to seek elsewhere than in the merely fiscal change for the motive, since the fiscal change gives no relief at the early stage, when relief would be a boon to inventors and gives an unasked benefit at a later stage when patents ought to be remunerative properties to their owners and are, if commercially unsuccessful, a public nuisance. A motive of the kind sought may be suggested if the new scheme be so developed as to provide what, in effect, will be an additional power of amendment enabling patentees to set right errors of omission in their original specifications. To give this effect to the section it is, however, necessary to assume that the subject-matter of a patent of addition may be substantially identical with the subject-matter of its mother patent and the difference between the two be found in some extension of the original idea not necessarily involving fresh invention. The question is: Can such a modification of the rule as to subject-matter be inferred from the language of Section 19?

The answer must be that it is very difficult to draw the inference. It is easy enough to read the clause as laying down no new rule as to what is patentable and prescribing only a sub-division of the class of patentable inventions which are to be patentable in this particular way. The difficulty in that view of the matter is not to construe the section but to render any intelligible account of the objects which it is intended to attain. It would be equally easy to say that the words "any improvement or modification"

define a new subject-matter which is thereby made sufficient subject-matter for a patent of addition were it not for the manifest inadequacy of the definition. The words "any improvement or modification," if literally interpreted and applied as a test of subject-matter, would authorise a patentee to appropriate such an improvement or modification, although invented and brought into use by another person and this cannot have been the intention of Parliament. Argument can hardly be required to show that any improvement to receive the protection of a patent grant—in whatever form—must be new, at least, as to the public use of it. But no condition of that sort is found in the clause, which, therefore, cannot be taken to contain a full definition of the subject-matter of a patent of addition.[1]

The conclusion of the whole matter seems to be that, apart from the facilities for amendment by way of amplification of the original specification to which the clause may be said to open a door, it is difficult to assign any useful purpose for a patent of addition in our system of Patent Law; but, on the other hand, that this purpose is so dimly adumbrated by the tenour of the enactment that there is great difficulty in identifying it as the object of the clause or even as having been an outcome of the Act present as such to the mind of the Legislature.

5.—PROCEDURE.

The division of Procedure, though quite distinct from that of Machinery, is not very broadly distinct from it, and requires but little separate treatment in this place. Indeed, of the remaining heads, both Procedure and Declarations and Definitions can be better dealt with in the Tabular Synopsis than by a more consecutive statement, and may therefore be dismissed here with the few words which seem called for in the way of a notice of the very intricate procedure of appeal in part created and in part perpetuated by the new Act.

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[1] *Such additional light on this subject as the Patents Rules afford must be* sought in the Application Form (P. F. 1c) and the Form of Patent (Sch. III. B.).

The Machinery of Appeal comprises—

1. The ordinary appellate tribunals—the Court of Appeal and the House of Lords;
2. The High Court of Justice in the person of a specially selected Judge who is invested by the Act with appellate jurisdiction;
3. The Law Officers of the Crown;
4. The Board of Trade;

and it has been one of the objects of the Legislature to minimise the use while retaining the complexity of this very elaborate machinery by assigning finality in many instances to the decisions of the Court of First Instance.

Subject to these limitations upon the right of appeal, and to one or two restrictions which would seem to be the result of mere accident, the procedure of appeal follows historical lines and is, therefore, familiar to those whom it concerns and in consequence much less complicated in practice than on paper it appears to be. The appeal to the Appellate Courts arises in all litigation except such as takes its rise in statutory rights; the appeal to the High Court arises out of the new jurisdiction conferred upon the Comptroller; the appeal to the Law Officers controls the exercise of those powers which were originally conferred upon the Comptroller-General by the Act of 1883 in reference to patents; and the appeal to the Board of Trade lies from the Comptroller's exercise of his powers relating to Design Registration and the recognition of Patent Agents.

So far the system can be clearly and simply stated, but Sub-section (2) of Section 92 creates a very subtle exception by the words,[1] "Where by virtue of this Act . . . . a petition may be referred or presented to the Court . . . . the decision . . . . shall be final, except in the case of an appeal from a decision of the Comptroller revoking a patent on any ground on which the grant of such patent might have been opposed."

[1] *See* Corrigendum Note on the next page.

The result of this provision is that matters of pure form become, for determining the right of appeal, incomparably more important than matters of substance. The right to apply for the revocation of a patent arises in six different forms, under the Act.—(1) Upon petition to the High Court under Section 25; (2) Upon petition to the Board of Trade if referred to the High Court under Section 24; (3) Upon application to the Comptroller under Section 26 (2); (4) Under Section 26 (3); (5) Under Section 27; and (6) Upon a counterclaim.

The right of appeal appears to be regulated as follows:—

In cases (1) and (2) no appeal, the decision of the Judge of First Instance being final. This takes away a right that has always existed to the present time, and exposes property in the shape of patents of proved value to the risk of destruction by an insufficiently considered judgment. It is a tremendous innovation and one due simply to the wording of a Consolidating Statute.[1]

In case (3), which deals with a comparatively small matter—a belated opposition to the sealing of a patent—there is a full appeal from the decision of the Comptroller-General by way of the High Court to the House of Lords.

In cases (4) and (5) there is an appeal to a specially selected High Court Judge, whose decision is to be final.

In case (6) there is a full appeal from the Judge of First Instance, in accordance with the established rule of the English Court.

Another complication in the procedure as to appeals is introduced by Section 8 of the Act, which gives to the Comptroller-General power to order a reference to a prior specification after the sealing of a patent, but in that case gives no appeal from his decision either to the Law Officer or to the High Court.

[1] While this work is passing through the press the Government has brought in a Bill (Patents and Designs, H.L. No. 8) to rectify this mistake and restore the right of appeal thus inadvertently taken away by the Act. If that Bill should pass in the form in which it has been introduced it would seem that the right of appeal from an order revoking a patent will be restored in the case numbered (1) in this enumeration.

TABULAR SYNOPSIS.

THE *following Synopsis comprises only the provisions of the* new Act, the original Patent Act (Statute of Monopolies) having been sufficiently summarised in the Introduction. Though never formally repealed, large parts of the Statute of Monopolies have fallen so completely into disuse that a Tabular Synopsis of that Statute would be apt to be misleading and could serve no useful purpose.

For other reasons the International Convention, although forming part of the text of the present collection, is omitted from the Synopsis: first, because the International Convention relates largely to Trade Marks, with which the present work is only incidentally concerned and, in the next place, and principally, because the provisions of the International Convention, except in so far as they have been incorporated in our Statute Law, are not recognised as binding by our Courts.[1]

The provisions of the Act are tabulated under the following heads:—

(1) RIGHTS.
(2) IMMUNITIES.
(3) DUTIES.
(4) PENALTIES.
(5) DECLARATIONS OF LAW.
(6) MACHINERY. (That is, the substance of the new machinery created by the Act.)
(7) PROCEDURE. (Being that part of the new machinery created by the Act which regulates the operations, as distinct from the constitution, of the organisation created by the Act.)
(8) DEFINITIONS AND EXPLANATIONS.
(9) TIME TABLE.

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[1] The effect of the Patents Rules (P. R.), Designs Rules (D. R.), and Law Officer's Rules (L. O. R.), which have appeared while this work has been in course of preparation, is duly noted in the Synopsis.

The following is a Tabulated List of the principal headings under which the now Law is distributed in the following Synopsis:—

RIGHTS—

Of the Applicant for a Patent.
Of the Applicant for a Copyright.
Of Joint Applicants.
Of the Communicator of an Invention.
Of the Inventor.
Of the Opponent.
Of the Patentee.
Of Joint Patentees.
Of Personal Representatives.
Of a Member of the Public.
Of the Registered Proprietor of a Patent.
Of the Proprietor of a Design.
Of the Registered Proprietor of a Design.
Of Patent Agent struck off for Misconduct.

IMMUNITIES *conferred on*—

Patent Office Examiners.
Foreign Ships.
Infringers.
Patentees.

DUTIES *imposed upon*—

The Applicant for a Patent.
The Board of Trade.
The High Court.
The Law Officer.
The Patent Office.
The Comptroller-General.
The Examiner.
The Registered Proprietor of a Copyright.

PENALTIES *imposed upon*—

The Applicant for a Patent.
The Patentee.
The Pretended Patent Agent.

PENALTIES *imposed upon (continued)*—

The Author of False Entry in the Register.
The Forger or Utterer of False Copy of the Register.
The Pretended Patentee.
The Pretended Copyright Owner.
The User of the Words "Patent Office."
The User of Royal Arms without Authority.
The Misdemeanant in the Isle of Man.
The Infringer of Copyright.
The Registered Proprietor of Copyright.

DECLARATIONS OF LAW *concerning*—

Amendment of Specification.
Certain Contracts in Restraint of Trade.
Communication to the Secretary of State or the Admiralty.
Disconformity of Complete to Provisional Specification.
Results of Official Searches.
Unwarranted Publication.

MACHINERY—

Aid to Disabled Persons.
Appeal.
Authority.
Comity.
Conveyance.
Discretion.
Evidence.
Jurisdiction.
Powers.
Prerogative.
Publication.
Seal.
Register.
Repeals.
Right of Action.
Short Title.

PROCEDURE—

To Obtain a Patent.
To Obtain a Patent of Addition.
To Obtain a Patent for an Extended Term.
To Revoke a Patent.
To Secure Copyright in a Design.
To Cancel Registration of a Design.
To Obtain Registration of a Trade Mark under the International Convention.
Under Penal Clauses of the Act in the Isle of Man.
For Privileging an International Exhibition.
To Obtain Production of an Examiner's Report.
To Enforce Penalty for Infringement.
On an Application for a Compulsory Licence.
To Amend a Specification.
On Appeal.
On Hearing by the Comptroller-General.
On Trial of an Infringement Action or on Hearing Petition for Revocation.

DEFINITIONS AND EXPLANATIONS.

These are given in Alphabetical Order.

RIGHTS.

Of whom.	Nature of Right.	Reference to the Act.
Of the applicant for a patent	To notice of acceptance	Section 3 (4).
	To publish and use invention under provisional protection.	Section 4.
	To extension of time	Section 5 (1), proviso.
	To be informed of anticipation ...	Section 7 (2).
	To amend specification	Sections 7 (2); 8 (2).

RIGHTS—*continued.*

Of whom.	Nature of Right.	Reference to the Act.
Of the applicant for a patent (*continued*)	To be heard on Examiner's objection ...	Section 7 (4).
	To patent rights and privileges after acceptance of complete specification.	Section 10.
	To oppose grant	Section 11 (1*b*), (1*d*).
	To apply for leave to amend specification.	Section 21 (1)
	To notice of opposition	Section 11 (2).
	To appeal from Comptroller	Sections 3 (3); 6 (4); 7 (5); 11 (3).
	To apply for patent of addition ...	Section 19 (1).
Of the applicant for a copyright	To inspect the Register	Section 56 (1), proviso.
	To appeal to the Board of Trade ...	Section 49 (3).
Of joint applicants	To joint grant	Section 12.
Of the communicator of an invention	To oppose grant	Section 11 (1*a*).
Of the inventor ...	To obtain patent notwithstanding fraud.	Section 15 (1), (2).
Of the opponent ...	To be heard in opposition to the sealing of a patent.	Section 11 (2).
	To be heard in opposition to the surrender of a patent.	Section 26 (3).
	To be made a party to petition for prolongation.	Section 18 (3).
	To be heard by the Law Officer on appeal on question of amendment of specification.[1]	Section 21 (5).

[1] Although the Act does not expressly confer on the opponent to an application to revive a lapsed patent the *right to be heard*, such a *right is conferred* by the Patents Rules. *See* Patent Rule (1908) 57.

Rights—*continued.*

Of whom.	Nature of Right.	Reference to the Act.
Of the patentee ...	To apply for leave to amend specification.	Section 21.
	To partition patent	Section 14 (1), proviso.
	To apply for prolongation	Section 18 (1).
	To apply for patent of addition ...	Section 10 (1).
	To apply for renewal of lapsed patent	Section 20 (1).
	To *disclaim during action*	Section 22.
	To surrender patent	Section 26 (3).
	As against the Crown	Section 29.
	To assign and grant licences	Section 71 (3). P. R. Sch. III.
Of joint patentees	To benefit of patent	Section 37.
Of personal representatives	To apply for patent	Section 43.
Of a member of the public	To apply for a patent	Section 1 (1).
	To inspect the complete specification	Section 9.
	To oppose grant of patent	Section 11 (1).
	To oppose prolongation of term ...	Section 18 (2).
	To oppose restoration of lapsed patent	Section 20 (3).
	To oppose amendment of a specification	Section 21 (2).
	To compulsory licence	Section 24.
	To petition to revoke patent	Section 25 (3).
	To apply to revoke patent	Sections 26 (1); 27 (1).
	To injunction to restrain threats ...	Sections 36; 61.
	To inspection of Registers	Section 67.
	To inspection (*sub modo*) of the Register of Designs.	Sections 56 (2); 67.
Of the registered proprietor of a patent	To assign and grant licences	Section 71 (3).
Of the proprietor of a design	To apply for registered copyright ...	Section 49 (1).
	To obtain a confidential order without sacrifice of proprietary rights.	Section 55.

RIGHTS—*continued.*

Of whom.	Nature of Right.	Reference to the Act.
Of the registered proprietor of a design	To register in more than one class ...	Section 50.
	To the copyright therein	Section 53 (1).
	To extension of term	Section 53 (2), (3).
	To authorise inspection of Register ...	Section 56 (1).
	To injunction to restrain piracy ...	Section 60 (2).
	To penalty from infringer	Section 60 (2).
	To assign and grant licences	Section 71 (3).
Of patent agent struck off for misconduct	To be heard by the Board of Trade ...	Section 85 (1). P. A. R. 21 to 27.

IMMUNITIES.

On whom Conferred.	Nature of Immunity.	Reference to the Act.
Patent Office Examiners	From liability in respect of investigation and report concerning specification.	Section 7 (6).
Foreign ships ...	From action for infringement ...	Section 48.
Infringers	From action—for infringement before sealing of patent.	Section 10.
	in respect of infringement before publication of complete specification.	Section 13.
	before grant of substituted patent	Section 15 (2), proviso.
	during dormancy of revived patent	Sections 17 (3); 20 (5).
	From damages—	
	in case of amended specification ...	Section 23.
	in case of innocent infringement...	Section 33.
Patentees	From liability for renewal fees in case of patent of addition.	Section 19 (3).
	From revocation proceedings in case of patent certified by a Secretary of State.	Section 30 (9).

DUTIES.

On whom Imposed.	Nature of Duty.	Reference to the Act.
Applicant for a patent	To furnish samples	Section 2 (5).
	To furnish a model	Section 47 (2).
Board of Trade ...	To consider petitions for compulsory licences.	Section 24 (2).
High Court ...	To consider petitions for prolongation	Section 18 (4).
Law Officer ...	To hear parties to application for leave to amend on appeal.	Section 21 (5).
Patent Office—Comptroller-General	To refer applications to Examiners ...	Section 3 (1).
	To refer specifications to Examiners...	Section 6 (1).
	To notify to the applicant—	
	Acceptance of his application ...	Section 3 (4).
	Opposition to sealing	Section 11 (2).
	To notify to the patentee—	
	Opposition to revival	Section 20 (4)
	Opposition to amendment	Section 21 (3).
	Application to revoke	Section 26 (2).
	To accept complete specification ...	Section 7 (3).
	To prescribe references to prior specifications.	Section 7 (4); 8 (2).
	To advertise—	
	Acceptance of complete specification.	Section 9.
	Application for the revival of lapsed patent.	Section 20 (3).
	To hear applicants	Section 73.
	To cause patent to be sealed	Section 12 (1).
	To hear and decide—	
	Oppositions to sealing	Section 11 (2).
	Applications for revival	Section 20 (5).
	Applications for leave to amend ...	Section 21 (3), (4).
	Applications for revocation ...	Sections 26 (2), (3); 27 (2).
	To grant a certificate of registration	Section 51 (1).
	To furnish names of registered proprietors.	Section 57.

DUTIES—*continued.*

On whom Imposed.	Nature of Duty.	Reference to the Act.
Patent Office—Comptroller-General (*continued*)	To register assignees and mortgagees	Section 71 (1), (2).
	To rectify the Register	Sections 94 (7); 95 (3).
	To refuse recognition to non-resident patent agent.	Section 85 (3).
	To issue periodical journal	Section 46 (1).
	To publish indexes, abridgments, &c.	Section 46 (3).
	To make an annual report	Section 70.
	To keep copies of journals and specifications on sale.	Section 46 (2).
Examiner ...	To examine—	
	Applications	Section 3 (1), (2).
	Complete specification—	
	For regularity	Section 6 (1), (2).
	For disconformity	Section 6 (3).
	For anticipation	Sections 7 (1); 8 (1).
	Amended specification	Section 7 (2).
Registered proprietor of a copyright	To furnish to the Comptroller copies of the registered design.	Section 54 (1*a*).
	To mark articles in prescribed manner	Section 54 (1*b*). D. R. 68.

PENALTIES.

On whom Imposed.	How Incurred. Nature of the Penalty.	Reference to the Act.
Applicant for patent	By failure to lodge a complete specification. Penalty, forfeiture of application.	Section 5 (2).
	By failure to secure acceptance of the complete specification. The same penalty.	Section 6 (5).
Patentee	By failure to pay renewal fee. Penalty, forfeiture of patent.	Section 17 (2).
	By failure to satisfy the reasonable requirements of the public. Penalty, *compulsory licence* or *revocation of* patent.	Section 24.

PENALTIES—*continued.*

On whom Imposed.	How Incurred. Nature of the Penalty.	Reference to the Act.
Patentee(*continued*)	By failure to manufacture or to carry on the patented process, as the case may be, within the United Kingdom. Penalty, revocation of patent.	Sections 25 (1); 27.
	By making contract in restraint of trade. Penalty, annulment of the contract and forfeiture of right to damages.	Section 38 (1 to 4).
Pretended patent agent	By his misnomer. Penalty, a fine not exceeding £20.	Section 84 (3).
Author of false entry in the Register Forger or utterer of false copy of Register	By the falsification of the Register or copy of evidence, as the case may be. Penalty of misdemeanour.	Section 89 (1).
Pretended patentee	By his false pretence. Penalty, a fine not exceeding £5.	Section 89 (2), (3).
Pretended copyright owner	By his false pretence. Penalty, a fine not exceeding £5.	Section 89 (2), (3), and (4).
User of the words "Patent Office"	By his false pretence. Penalty, a fine not exceeding £20.	Section 89 (5).
User of the Royal Arms without authority	By his purpresture. Penalty, a fine not exceeding £20.	Section 90 (2).
Misdemeanant in the Isle of Man	By falsification of Register or forgery of writing purporting to be a copy of the Register, or knowingly tendering false copy. Penalty, fine and imprisonment.	Section 96 (2).
Infringer of copyright	By his piracy. Penalty, £50 by way of penalty or damages.	Section 60 (2).
Registered proprietor of copyright	By failure to furnish copies to the Comptroller. Penalty, forfeiture of registration.	Section 54 (1*a*).
	By failure to mark articles. Penalty, contingent loss of right to penalty and damages.	Section 54 (1*b*).

DECLARATIONS OF LAW.

Concerning what Point.	Substance of the Declaration.	Reference to the Act.
Amendment of specification	Not to enlarge or substantially alter the claim.	Section 21 (6).
Certain contracts in restraint of trade	Invalid	Section 38 (1).
Communication to Secretary of State or Admiralty	Not to be publication ...	Section 30 (12).
Disconformity of complete to provisional specification	No ground of invalidity ...	Section 42.
Results of official searches ...	No guarantee of grant ...	Section 7 (6).
Unwarranted publication ...	Not to be deemed anticipation.	Section 41 (2).

MACHINERY.

In General.	In Particular.	Reference to the Act.
Aid to disabled persons	Power of guardian	Section 83 (1).
	Appointment of agent by the Court ...	Section 83 (1).
	Power to petition the Court to appoint an agent.	Section 83 (2).
Appeal	*See* "Procedure on Appeal."	
Authority: conferred on—	*See also* "Powers," "Discretion," *and* "Jurisdiction."	
All Government Departments	To use a patented invention	Section 29, proviso.
The High Court	To certify for the production or inspection of an Examiner's report.	Section 68.
	To *make* Rules—	
	As to petition for prolongation ...	Section 18 (1).
	As to counterclaim for revocation	Section 32.
	As to applications to rectify the Register.[1]	Section 72.

[1] The Court has implied authority to make Rules in many cases not expressly made subject to such regulation by the Act, *e.g.* on applications for leave to amend a specification pending action, on petitions for compulsory licences, and in all other cases in which its jurisdiction can be invoked. See those cases enumerated under the heading "Jurisdiction of the High Court."

MACHINERY—*continued.*

In General.	In Particular.	Reference to the Act.
Authority: conferred on— Treasury	To maintain the Patent Office ...	Section 62 (1).
	To sanction fees	Sections 11 (3); 65.
	To approve Rules	Section 80 (1*f*).
Board of Trade	To receive a petition for a compulsory licence.	Section 24 (1).
	To refer a petition for a compulsory licence to the High Court.	Section 24 (2).
	To superintend and give directions to the Comptroller-General.	Sections 62 (2); 86 (1*h*).
	To appoint a Deputy to the Comptroller-General.	Section 62 (3).
	To make general Rules...	Section 86 (1).
	To modify statutory requirements as to marking goods.	Section 54 (2).
Law Officer ...	To extend time for sealing a patent ...	Section 12 (2*b*).
	To call in expert assessor	Section 11 (3).
	To appear and be heard—	
	In revocation proceedings	Section 27 (4)
	In proceedings for compulsory licence	Section 24 (4)
Comptroller-General	To postdate an application for a patent	Section 3 (2)
	To extend time—	
	For lodging complete specification	Sections 5 (1), proviso; 6 (5), proviso.
	For payment of renewal fees ...	Section 17 (2).
	For introducing manufacture ...	Section 27 (3).
	To appear and be heard on proceedings for amendment of specification.	Section 22, proviso.
	To consolidate provisionally protected inventions.	Section 16 (1).
	To issue a duplicate patent	Section 44.
	To issue copy of certificate for registration.	Section 51 (2).
	To correct clerical errors	Section 70.
	To apply to Law Officer for directions	Section 74.
The licensee under a patent	To determine contract on terms ...	Section 38 (2), (3).

MACHINERY—*continued.*

In General.	In Particular.	Reference to the Act.
Comity	Saving of treaty rights in respect of patents worked outside the United Kingdom.	Section 27 (2), proviso.
	Reciprocated immunities of foreign vessels in British waters.	Section 48.
	Immunities of exhibitor at an International Exhibition.	Section 50 (2).
	Privileges of foreign applicants under the International Convention.	Section 91.
Conveyance ..	Automatic operation of order for compulsory licence.	Section 24 (6).
	Provisions as to the Register of Patents	Sections 28; 67.
	Provisions as to the Register of Designs	Sections 52; 56; 67.
	Trust interests not registerable ...	Section 60.
	Rectification of Register	Sections 70 (c); 72.
	Powers of registered proprietor ...	Section 71 (3).
	Registration of notice of interest ...	Section 71 (2).
	Acquisition of patented or unpatented invention by Secretary for War or Admiralty.	Section 30.
Discretion—	Copyright of registered owner ...	Section 53 (1).
Of High Court ...	In respect of the extension of a patent	Section 18 (5).
Of Law Officer ...	To extend the time of sealing	Section 12 (2*b*).
Of Comptroller-General	To direct a reference on the specification.	Sections 7 (4); 8 (2).
	To consolidate provisional specifications	Section 16 (1).
	To allow patent of addition	Section 19 (2), (4).
	To allow grace to a patentee in default	Section 27 (2*b*), (3).
	To refuse registration of a design ...	Sections 49 (3); 75.
	To refuse a patent	Section 75.
	To issue copy certificate of registration	Section 51 (2).
	In general, how to be exercised ...	Section 73. P. R. 102 to 105; D. R. 55 to 58.
Evidence before—		
The High Court	On appeal from the Comptroller ...	Section 77 (1).
The Law Officer	To be on oath	Section 40.

MACHINERY—*continued.*

In General.	In Particular.	Reference to the Act.
Evidence before—The Comptroller-General	To be by statutory declaration, or *viva voce.*	Section 77 (1), (2).
	Certificate of Comptroller-General to be evidence.	Sections 78; 79.
	Certificate of the Board of Trade to be conclusive evidence.	Section 87 (3).
	Register to be *prima facie* evidence ...	Sections 28 (3); 52 (3).
	See also "Power" *and* "Authority."	
Jurisdiction—Of the High Court	To consider petition for prolongation	Section 18.
	To adjudicate on petition for compulsory licence.	Section 24 (3), (6).
	To revoke a patent	Sections 25; 32.
	To *entertain appeal from the* Comptroller—	
	On application to restore a lapsed patent.	Section 20 (5).
	On application to revoke a patent	Sections 26 (4); 27 (4).
	To rectify Register	Section 72 (1).
Of Law Officer	To entertain appeal from Comptroller-General—	
	On refusal to accept an application	Section 3 (3).
	On refusal to accept complete specification.	Sections 3 (3); 6 (4); 7 (5).
	In case of opposition	Section 11 (3).
	On application to amend specification	Section 21 (5).
	N.B.—The short result of these sections regulating appeals to the Law Officer appears to be that the Comptroller-General's decision concerning the issue of patents and the direction of references is subject to appeal in all cases except when the reference directed is to a specification published after the date of the application. Such references may be directed under Section 8, when that section comes into effect.	
Of Board of Trade	To *entertain appeal from the* Comptroller-General.	Section 49 (3).
	To adjudicate on professional misconduct of a patent agent.	Section 85 (1).

MACHINERY—*continued.*

In General.	In Particular.	Reference to the Act.
Jurisdiction—		
Of Comptroller-General	To adjudicate on the form of the application and provisional specification.	Section 3.
	To accept complete specification ...	Sections 6 (4); 7 (3); 16 (1).
	To adjudicate on form of complete specification.	Sections 7 (4); 8 (2).
	To hear and determine opposition to grant.	Section 11 (2).
	To hear and determine application for revival of a lapsed patent.	Section 20 (5).
	To adjudicate on application for leave to amend.	Section 21 (3), (4).
	To revoke a patent	Sections 26 (2), (3); 27 (2).
	To accept surrender of a patent ...	Section 26 (3).
	To award costs	Section 39 (1).
	To order security for costs	Section 39 (2).
	To register a proprietor of a design ...	Section 49 (1).
	To cancel registration of a design ...	Sections 54 (1*a*); 58 (1); 70 (*b*). D. R. 70 to 75.
Of Supreme Court of Scotland	... ...	Section 94.
Of High Court of Ireland	... ...	Section 95.
Of Courts in the Isle of Man	... ...	Section 96.
Powers:		
conferred on—		
The Houses of Parliament	To annul Rules	Section 86 (3).
Privy Council	To enforce the International Convention	Section 91 (5).
	To recognise International Exhibition	Sections 45 (2); 59 (2).
Foreign Office	To make treaties for the mutual protection of inventions, designs, or trade marks.	Section 91 (1).
Colonial Office	To make arrangements for the mutual protection of inventions, designs, or trade marks.	Section 91 (5).

MACHINERY—*continued.*

In General.	In Particular.	Reference to the Act.
Powers: conferred on—	To take assignments of inventions and patents.	Section 30 (1).
	To authorise the keeping secret of a specification.	Section 30 (2), (8), and (10).
Secretary of State for War or the Admiralty	To authorise the opening of a sealed packet.	Section 30 (5), (6).
	To receive a sealed specification under an expired patent.	Section 30 (7).
	To waive the benefit of secrecy ...	Section 30 (11).
	To approve Rules for securing secrecy	Section 30 (13).
	To use a patented invention	Section 29, proviso.
Treasury ...	To settle terms between the patentee and the Crown.	Section 29, proviso.
	To maintain the Patent Office ...	Section 62.
	To approve appointments to the Patent Office.	Section 63 (1), (2).
	To approve a scale of fees	Section 65.
	To approve expenditure on presentation copies.	Section 86 (1*f*).
Board of Trade	To make Rules	Sections 65; 86 (1).
	To make Section 8 of the Act operative	Section 8 (4).
	To appoint an arbitrator between licensor and licensee.	Section 38 (2), (3).
	To regulate the marking of copyright articles.	Section 54 (2).
	To fix the cost of models	Section 47 (2).
	To appoint and remove officers and clerks of the Patent Office.	Section 63 (1), (2).
	To register patent agents	Sections 84 (2); 86 (1*g*).
Board of Education	To manage the Patent Museum [1] ...	Section 47 (1).
	To require a patentee to furnish a model	Section 47 (2).

[1] This appears to be a somewhat belated enactment, inasmuch as the Patent Museum ceased to exist in the year 1884, when the collection which had constituted it was handed over to the authorities of the South Kensington Museum, and incorporated in the Inventions and Mechanical Models Branch of that Institution.

MACHINERY—*continued.*

In General.	In Particular.	Reference to the Act.
Powers: conferred on— The High Court	To extend the term of a patent ...	Section 18 (5).
	To allow amendment of a specification pending action.	Section 22.
	To call in the aid of a specially qualified assessor.	Section 31 (1).
	To order an injunction, inspection, or account.	Section 34.
	To certify as to validity questioned ...	Section 35.
	To authorise inspection of the Design Register.	Section 50 (1).
	To certify for the production of an Examiner's report.	Section 68.
	To appoint a guardian, *ad hoc* ...	Section 83 (2).
	Finality in the Court of First Instance	Section 92 (2).
	To make Rules	Sections 18 (1); 98.
Law Officer ...	To open a sealed specification ...	Section 30 (5).
	To administer an oath	Section 40.
	To sit with assessor	Section 11 (3).
	To order costs	Section 40.
	To give directions to the Comptroller-General.	Section 74.
	To make Rules	Section 40.
Comptroller-General	To require drawings	Section 2 (3).
	To require samples	Section 2 (5). P. R. 36.
	To require amendment	Sections 3 (2); 6 (2); 7 (4).
	To cancel provisional specification ...	Section 6 (3*b*).
	To re-date specification	Section 6 (3), proviso. P. R. 28.
	To refuse patent	Sections 7 (4), proviso; 75.
	To correct errors	Section 70 (*a*), (*c*).
	To authorise inspection of Designs Register.	Section 56 (1).
	To refuse registration of a design ...	Sections 49 (3); 75.
	To cancel registration of a design ...	Sections 54 (*a*) 58; 70 (*b*).
Post Office ...	May be employed in communicating with the Patent Office.	Section 81.

MACHINERY—*continued.*

In General.	In Particular.	Reference to the Act.
Prerogative ...	Saving of the prerogative to grant patents under the Great Seal.	Section 97.
Publication ...	By advertisement of complete specification.	Section 9. P. R. 39.
	Of application for prolongation ...	Section 18 (1).
	Of application for revival of lapsed patent.	Section 20 (3). P. R. 55.
	Of application for leave to amend	Section 21 (2). P. R. 60.
	By registration in general	Section 67.
	Of design after copyright expired	Section 56 (2).
	By sale of prints	Section 46.
	By deposit of prints	Section 80 (1).
	By public exhibition	Sections 47 ; 59.
	By Patent Office File	Section 9.
	Of Rules when made	Section 86 (3).
Seal	Patent Office Seal to be judicially noticed and admitted in evidence.	Section 64.
	Seal of Patent Office equivalent to Great Seal of United Kingdom.	Section 14 (1).
Register— Of patents	To be kept at the Patent Office ...	Section 28 (1).
	Contents of	Sections 28 (1) ; 71 (1), (2).
	No trust to be registered	Section 66.
	Existing Register to be incorporated...	Section 28 (2).
	Primâ facie evidential value	Section 28 (3).
	Open to inspection	Section 67. P .R. 94, 110.
	How to be rectified	Section 72.
Of designs ...	To be kept at the Patent Office ...	Section 52 (1).
	Existing Register to be incorporated ..	Section 52 (2).
	Primâ facie evidential value	Section 52 (3).
	To be classified	Section 49 (2).
	Limitation on public right of inspecting the Register.	Section 56 (1). D. R. 69.
	No trust to be registered	Section 66.
	Open to inspection	Section 67. D. R. 61.

MACHINERY—*continued.*

In General.	In Particular.	Reference to the Act.
Register—		
Of designs (*continued*)	Contents of	Sections 52 (1); 71 (1), (2).
	How to be rectified	Section 72.
Of patent agents	Who may be registered	Section 84 (2). P. A. R. 6 to 9.
	Open to inspection	Section 67. P.A.R. 4.
Repeals	... ...	Section 98.
Right of action ...	Accrues from the date of sealing patent	Section 10.
	How modified by amendment of the specification.	Section 23.
	For revocation by way of counterclaim	Section 32.
	Against innocent infringer	Section 33.
	For groundless threats of legal proceedings.	Sections 30; 61.
	In respect of piracy of copyright in a design.	Section 60 (2).
Short title ...	... ...	Section 99.

PROCEDURE.

Nature of.	Steps of.	Reference to the Act.
To obtain a patent	Application—	
	By British subject, alien, single applicant, joint applicant.	Section 1 (1).
	By true and first inventor	Section 15 (1), (2).
	By legal personal representative ...	Sections 43; 93.
	By applicant under the International Convention.	Section 91. P. R. 15 to 18.
	By exhibitor at an International Exhibition.	Section 45 (1). P. R. 101.
	By applicant for patent of addition	Section 19.
	Mode of application—	
	By post or direct	Sections 1 (2); 81.

PROCEDURE—*continued.*

Nature of.	Steps of.	Reference to the Act.
To obtain a patent (*continued*)	*Form of application*—	
	By declaration and accompanying specification.	Section 1 (3).
	Declaration	Sections 1 (4); 77 (1), (2).
	Date of application	Sections 3 (2); 6 (3*b*). P. R. 28.
	Provisional specification—	
	Contents	Sections 2 (1); 3 (2).
	Illustration	Section 2 (3).
	Form	Section 2 (4).
	Complete specification—	
	Contents	Sections 2 (2); 3 (2); 6 (3).
	Illustration	Section 2 (3), (5).
	Form	Sections 2 (4); 6 (2).
	Disconformity	Sections 6 (3); 11 (1*d*); 16 (1); 42.
	Reference to prior specifications ...	Sections 7 (4); 8 (2). P.R. 32, 34.
	Acceptance of specification—	
	Power to refuse provisional specification.	Section 3 (2).
	Effect of acceptance of specification	Section 4.
	Power to refuse complete specification.	Section 6 (2).
	Effect of non-acceptance	Section 6 (5).
	Duty to accept complete specification.	Section 7 (3).
	Acceptance to be advertised ...	Section 9. P. R. 38.
	Effect of acceptance of complete specification.	Section 10.
	Appeal to Law Officer from Comptroller—	L. O. R. *passim*. P. F. 4.
	From refusal to accept specification	Section 3 (3).
	From refusal to accept complete specification.	Section 6 (4).

PROCEDURE—*continued.*

Nature of.	Steps of.	Reference to the Act.
To obtain a patent (*continued*)	Appeal to Law Officer from Comptroller (*continued*)—	
	From refusal to grant a patent ...	Section 7 (5).
	From decision in case of opposition	Section 11 (3).
	From decision on application for leave to amend.	Section 21 (5).
	Attendance of Comptroller-General on appeal.	Sections 3 (3); 6 (4); 21 (5).
	Notice—	
	Of acceptance	Sections 3 (4); 9.
	Of anticipation	Section 7 (2).
	Of opposition	Section 11 (2).
	For Times, *see* "Time Table," page 94.	
To obtain patent of addition	Contents of application	Section 19 (1). P. F. 1c.
To obtain patent for an extended term	Advertisement	Section 18 (1).
	Notice of objection	Section 18 (2).
	Parties to the petition	Section 18 (3).
	Appearance of Comptroller-General at the hearing of the petition.	Section 18 (3).
	Nature and merits of the invention and profit to the patentee accrued to be considered.	Section 18 (4)
	Term and conditions of extended grant.	Section 18 (5).
To revoke a patent	*See also* "Grounds of Revocation" *under the heading* MACHINERY.	
	By petition to the Court	Section 25.
	In Scotland	Section 94 (3).
	By whom to be presented	Section 25 (3).
	By way of counterclaim	Section 32.
	By application to the Comptroller-General—	
	On any ground of opposition to the grant, subject to proceedings in Court.	Section 26 (1). P. R. 75, 76.

PROCEDURE—*continued.*

Nature of.	Steps of.	Reference to the Act.
To revoke a patent (*continued*)	By application to the Comptroller-General (*continued*)—	
	Notice to patentee	Section 26 (2).
	Result of hearing (revocation, amendment, dismissal).	Section 26 (2).
	Appeal to the High Court ...	Section 26 (4).
	On the part of the patentee—	
	By offer to surrender	Section 26 (3). P. R. 77.
	Hearing	Section 26 (3).
	Appeal to the High Court ...	Section 26 (4).
	On the ground of working outside the United Kingdom—	
	After four years and not before 28th August, 1908.	Section 27 (1). P. R. 79 to 81.
	Application to be considered ...	Section 27 (2).
	Order to be made subject to treaties.	Section 27 (2), proviso.
	Extension of time of probation	Section 27 (3).
	Appeal to the High Court ...	Section 27 (4).
	Appearance of the Law Officer on appeal.	Section 27 (4).
To secure copyright in a design	Application to register	Sections 49 (1), (2); 50. D. R. 13 to 35.
	By the applicant for a foreign copyright.	Section 91 (1), (3).
	Classification of designs	Section 49 (2). D. R. 6.
	Grant of certificate of registration...	Section 51 (1).
	Registration of design	Section 52 (1).
	Effect of registration	Sections 53 (1); 60.
	Extension of term for five years on application.	Section 53 (2). D. R. 37, 38.
	Extension for a third term of five years on allowance.	Section 53 (3). D. R. 39 to 42.
To cancel registration of a design	On the ground of user outside the United Kingdom.	Section 58 (1). D. R. 70 to 75.
	By rectification of the Register ...	Sections 70; 72. D. R. 53, 54.

PROCEDURE—*continued.*

Nature of.	Steps of.	Reference to the Act.
To obtain registration of a trade mark by the applicant for a foreign trade mark under the International Convention	Applicant's right of priority	Section 91 (1), (3b).
	Time of application	Section 91 (1a).
	Manner of applying	Section 91 (3b).
	Order in Council to render the Convention operative.	Section 91 (4), (5).
Under the penal clauses of the Act in the Isle of Man	Procedure to be summary	Section 96 (3).
For privileging an International Exhibition	By certificate of the Board of Trade...	Sections 45 (1); 59 (1).
	By Order in Council	Sections 45 (2); 59 (2).
To obtain production of an Examiner's report	By certificate of Judge or officer ...	Section 68.
To enforce penalty against the infringer of a registered design	By action	Section 60 (2).
On an application for a compulsory licence	Parties to the proceedings	Section 24 (4).
	Any person interested may apply ...	Section 24 (1).
	Application by petition to the Board of Trade. ...	Section 24 (1). P. R. 68 to 72.
	Contents of the petition	Section 24 (1).
	Board of Trade to act as conciliator ...	Section 24 (2).
	Consideration of petition by the Board of Trade.	Section 24 (2). P. R. 72, 73.
	Reference of petition to the High Court.	Section 24 (2). P. R. 74.
	Consideration of the petition by the High Court.	Section 24 (3).
	Restriction on the power of revocation.	Section 24 (3).
	Effect of an order for a compulsory licence.	Section 24 (6).

PROCEDURE—*continued.*

Nature of.	Steps of.	Reference to the Act.
To amend a specification, &c.	By consent of the Comptroller-General or Law Officer—	
	In case of disconformity	Section 6 (3), proviso.
	In case of essential identity ..	Section 16 (1).
	By leave of the High Court pending litigation.	Sections 21 (8); 22.
	By leave of the Comptroller-General or Law Officer.	Section 21. P. R. 60 to 67.
	Without leave—	
	In case of anticipation	Section 7 (2).
	In case of competition[1]	Section 8 (2).
	On the demand of the Comptroller-General or Law Officer—	
	By the addition of drawings ...	Section 2 (3).
	By correction of the application, specification, or drawings.	Section 3 (2).
	By amplification of the title ...	Section 3 (2).
	By correction of the complete specification.	Sections 6 (3); 7 (4).
On appeal	From the Comptroller-General to the Law Officer—	L. O. R. *passim.* P. F. 4.
	On refusal to accept a complete specification—	
	For insufficiency	Section 3 (3).
	For disconformity	Section 6 (4).
	On order as to reference	Sections 7 (5); 11 (3)
	On refusal to seal a patent ...	Sections 7 (5); 11 (3)
	On decision as to an application for leave to amend a specification.	Section 21 (5).
	From the Comptroller-General to the High Court—	
	On decision as to restoring a lapsed patent.	Section 20 (5).
	On decision as to the revocation of a patent.	Sections 26 (4); 27 (4).

[1] After a date to be fixed by the Board of Trade.

PROCEDURE—*continued.*

Nature of.	Steps of.	Reference to the Act.
On appeal (*continued*)	From the Comptroller-General to the Board of Trade—	
	On refusal to register a design ...	Section 40 (3).
	Limitation on appeals from decisions of the High Court.	Section 92 (2).
	On the hearing of an appeal—	
	By the Court of Appeal:—Assistance of an assessor.	Section 31 (2).
	By the High Court:—Evidence ...	Section 77 (1).
	By the Board of Trade	Section 40 (3).
	By the Law Officer, with an assessor and generally.	Sections 11 (3); 40. L. O. R. 8 to 14.
On hearing by the Comptroller-General	Evidence by statutory declaration ...	Section 77. P.R.106, 107; D. R. 77, 78.
	Oral evidence	Section 77.
On trial of an infringement action or on hearing of a petition for revocation	Assistance of an assessor	Section 31 (1).
	Amendment of a specification ...	Section 22.
	Claim to damages after amendment...	Section 23.
	Qualification of the petitioner for revocation.	Section 25 (3).
	Demand of revocation by counter-claim.	Section 32.
	Discretion to certify as to validity questioned.	Section 35.

DEFINITIONS AND EXPLANATIONS.

Expression.	Definition or Explanation.	Authority.
Abridgments ...	Official publications giving in abridged form the substance of published specifications classified according to subject-matter.	—
Act of Sederunt ...	Rules of the High Court in Scotland	Statute of 1540 (Scots), Ch. 10.

DEFINITIONS AND EXPLANATIONS—*continued.*

Expression.	Definition or Explanation.	Authority.
Action of reduction	A proceeding in the Scottish Court of Session for the annulment of a written document.	Mackay's "Manual of Practice."
Admiralty... ...	The Commissioners for executing the office of Lord High Admiral of the United Kingdom.	Interpretation Act, 1889. 52&53 Vict. c. 63, s. 12 (4).
Annual report ...	The Comptroller-General's annual report upon the work of his office is published as a Blue Book.	Section 76.
Applicant	The applicant for a patent, if the sole applicant, must be some person —a British subject or other—who claims to be the true and first inventor of the invention in respect of which the patent is sought, or the legal personal representative of such a person. A joint applicant need not himself be the true and first inventor, but in that case his conjoint applicant, or one of his conjoint applicants, must be.	Sections 1; 43. P. F. 1A to 1D.
	The applicant for registration as the proprietor of a registered design must be a person claiming to be the proprietor of a new or original design not previously published in the United Kingdom.	Section 49. D.R. 19.
	The term includes the legal personal representative of a deceased applicant.	Section 93.
	The foregoing definitions apply to applicants privileged under the International Convention.	
Application ...	The Act provides for the making of various applications in various forms. Those to be made otherwise than by petitions are—	
	To the High Court—	
	(By way of request)	
	To try action with assessor ...	Section 31 (1).

DEFINITIONS AND EXPLANATIONS—*continued.*

Expression.	Definition or Explanation.	Authority.
Application (*continued*)	To the High Court (*continued*) —	
	(In the way prescribed by Rules of Court)	
	For an injunction	Section 34.
	Order for inspection ...	Section 34.
	Order for an account	Section 34.
	For rectification of Register ...	Section 72 (1).
	For allowance of an amendment of a specification.	Section 22.
	To the Board of Trade—	
	(By way of proof)	
	For registration as a patent agent	Section 84 (2). P. A. R. 6.
	To the Patent Office—	
	(By way of request)	
	For leave to amend a specification	Section 21 (1). P. R. 60.
	(In a way to be prescribed)	
	For a patent	Sections 1 (2); 43 (1); 91 (1), (2), (3). P. R. 11 to 18.
	To the Comptroller-General—	
	(By way of request)	
	For information whether a given design is registered or no.	Section 57. D. R. 59 and 60.
	For the correction of clerical errors.	Section 70 (*a*, *c*). P. R. 95.
	For the cancellation of registration (design).	Section 58 (1) 70(*b*). D.R.53,54,70to75.
	For registration of assignment (design).	Section 71 (1), (2). D. R. 43 to 49.
	(By way of offer)	
	To surrender patent	Section 26 (3). P. R. 75 to 77.
	(In a way to be prescribed)	
	For extension of time to renew patent.	Section 17 (2). P. R. 52.
	For restoration of a lapsed patent	Section 20 (1). P. R. 55 to 59.

DEFINITIONS AND EXPLANATIONS—*continued.*

Expression.	Definition or Explanation.	Authority.
Application (*continued*)	To the Comptroller-General—	
	(In a way to be prescribed)—*continued.*	
	For revocation of a patent ...	Sections 26 (1); 27 (1). P. R. 76 to 81.
	For registration of a design ...	Sections 49 (1); 51 (1), (2), (3). D. R. 13 to 30.
	For extension of period of copyright.	Section 53 (2), (3). D. R. 37 to 42.
	For cancellation of registration (design).	Section 58 (1). D. R. 70 to 75.
Article	A natural or artificial object, or an object partly natural and partly artificial, upon which a design is or may be imposed.	Section 93.
Board of Trade ...	The President or a Secretary or an Assistant Secretary of the Board of Trade.	Section 87 (1).
British Possession	Any British Possession except the Channel Islands and Isle of Man.	Section 93.
Claim	A distinct statement of the invention claimed inserted in the end of a complete specification.	Section 2 (4). P. R. 14.
Classification of designs—	The classification of designs for the purpose of registration is determined by Rules. The distribution at present observed is into sixteen classes, determined by reference to the goods to which the design is to be applied as under.	D. R., Sch. III.
Class 1 ...	Articles composed wholly of metal or in which metal predominates, not included in Class 2.	
Class 2 ...	Jewellery.	

DEFINITIONS AND EXPLANATIONS—*continued.*

Expression.	Definition or Explanation.	Authority.
Classification of designs (*continued*) — Class 3	Articles composed wholly of wood, bone, ivory, papier maché, or other solid substances not included in other classes, or of materials in which such substances predominate.	
Class 4 ...	Articles composed wholly of glass, earthenware, or porcelain, bricks, tiles, or cement, or in which such materials predominate.	
Class 5 ...	Articles composed wholly of paper (except paper hangings), card-board, mill-board, or straw-board, or in which such materials predominate.	
Class 6 ...	Articles composed wholly of leather, or in which leather predominates, and bookbinding of all materials.	
Class 7 ...	Paper hangings.	
Class 8 ...	Carpets and rugs in all materials, floorcloths, and oilcloths.	
Class 9 ...	Lace.	
Class 10 ...	Hosiery.	
Class 11 ...	Millinery and wearing apparel, including boots and shoes.	
Class 12 ...	Ornamental needlework on muslin or other textile fabrics.	
Class 13 ...	Printed or woven designs on textile piece goods (other than checks or stripes).	
Class 14 ...	Printed or woven designs on handkerchiefs and shawls (other than checks or stripes),	
Class 15 ...	Printed or woven designs (on textile piece goods or on handkerchiefs or shawls) being checks or stripes.	
Class 16 ...	Goods not included in other classes.	

DEFINITIONS AND EXPLANATIONS—*continued.*

Expression.	Definition or Explanation.	Authority.
Colonial arrangements	A diplomatic arrangement similar in effect to the International Convention exists between the Governments of Great Britain and the following Colonies :— Australian Commonwealth. Ceylon. New Zealand. Tasmania.	Index to Statutory Rules and Orders, 1906.
Comptroller-General	The officer appointed to exercise immediate control in the Patent Office. His full style is "The Comptroller-General of Patents, Designs, and Trade Marks."	Sections 62 (2); 63 (1).
Compulsory licence	A licence to use a patented invention granted by a patentee under an Order of the High Court made under the provisions of the Act.	Section 24.
Copyright	The exclusive right to apply a design.	Section 93.
Court	Generally, the High Court in England; but also, in certain parts of the Act, it means any Lord Ordinary of the Court of Scotland and the High Court in Ireland.	Sections 92 (1); 94 (5); 95 (2).
Declaration ...	*See* "Statutory Declaration."	
Default of the patentee	Failure on the part of a patentee to secure the manufacture and supply of a patented article or the use of a patented process on an adequate scale, the adequacy of scale being tested by criteria prescribed by Section 24 of the Act.	Section 24 (5*a*).
Design	A scheme of form, the word being used in the Act in a sufficiently comprehensive sense to include any design applicable to manufacture.	Section 93.

DEFINITIONS AND EXPLANATIONS—*continued.*

Expression.	Definition or Explanation.	Authority.
Examiner	An officer of the Patent Office to whom a specification is referred that it may be criticised and reported on confidentially.	Sections 3 (1), (2); 6 (1), (2), (3); 7 (1); 8 (1); 68.
Grounds of defence and revocation	All the grounds upon which a patent can be revoked are grounds of defence to an action of infringement, as also are the following grounds:—	
	Non-infringement, licence, cesser of the patent right by lapsing, effluxion of time or surrender, illegal contract by the patentee, and, possibly, the ground that the use of the invention is contrary to law or morality.	
	The grounds of revocation are—	
	Every ground on which a patent might have been revoked on proceedings by *scire facias* and the additional grounds of revocation introduced by the new Act.	Section 25 (2*a*, *b*).
	Stated more particularly, these comprise objections under four different heads—	
	1. That the Crown was deceived when making the grant and acted improvidently. (Case of Monopolies, 11 Rep. 86).	
	2. That the grant is *ultra vires*.	
	3. That the grant is contrary	
	(*a*) to Common Law	
	(*b*) to Statute.	
	4. That the grant is forfeit.	
	In detail—	
	(1) The invention is not useful ...	Recital in Patent.
	(2) Prior grant (at the suit of the prior grantee).	Com. Dig. Tit. Patent.

DEFINITIONS AND EXPLANATIONS—*continued.*

Expression.	Definition or Explanation.	Authority.
Grounds of defence and revocation (*continued*)	(3*a*) Prior publication ...	Household *v.* Neilson, 1 W. P. C. 718 note.
	Prior user	Case of Monopolies, 11 Rep. 87.
	(3*b*) Prior common knowledge ...	Statute of Monopolies, Section 6.
	Prior grant (at suit of third party if, as always happens, the term of the later grant extends beyond fourteen years from the date of the prior grant).	Statute of Monopolies, Section 6.
	Not true and first inventor ...	Statute of Monopolies, Section 6.
	Not a manufacture ...	Statute of Monopolies, Section 6.
	Mischievous and inconvenient grant.	Statute of Monopolies, Section 6.
	Insufficient specification	Section 2 (1), (2).
	Excessive claim	Hill *v.* Thompson, 3 Mer. 629.
	Misleading specification	R. *v.* Arkwright, 1 W. P. C. 66.
	Grounds (*a*), (*b*), and (*d*) of the grounds of opposition (*below*).	Sections 11 (1*a*), (1*b*), (1*d*); 25 (2*b*); 26 (1).
	(4) Forfeit for non-user	Section 27.
	For hurt of trade	Section 24 (3), (5*a*), (5*b*).
Ground of opposition to seal	Four grounds recognised by the Act— (*a*) Communication—the communicator being the opponent. (*b*) Prior grant. (*c*) Insufficient specification. (*d*) Disconformity—the opponent being a rival applicant for the patent.	Section 11.

NOTE.—Under the Act of 1852 a patent was sealed with a condition that a complete specification should be lodged within six months of the issue of the patent. If no such specification were lodged or if the specification lodged described an invention other than the invention patented the grant was forfeit as a consequence of the failure of the condition. Hence arose the objection of disconformity, which has been obsolete in Law, although continued in use by pleaders, since the passing of the Act of 1883. This ground of objection is now expressly abolished by Section 42 of the new Act.

DEFINITIONS AND EXPLANATIONS—*continued.*

Expression.	Definition or Explanation.	Authority.
Grounds of refusal of grant	The Comptroller-General is authorised to refuse to grant a patent -	
	(*a*) For an invention, the use of which would, in his opinion, be contrary to law or morality.	Section 75.
	(*b*) If the invention claimed has been wholly and specifically claimed in any specification to which the official search has extended.	Section 7 (4), proviso.
	(*c*) Possibly, if grounds of opposition to the sealing of the patent are made out.	Section 11 (2).
Guardian	A person empowered by law to act for another person under disability.	Section 83.
Illustrated journal	*See* Patent Office publications.	
Index	*See* Patent Office publications.	
International Convention	The text of the existing International Convention is given on page 170 *et seq.* The following countries are parties to it :—	Index to Statutory Rules and Orders, 1900.
	Belgium.	
	Brazil.	
	Cuba.	
	Denmark.	
	Dominican Republic.	
	France.	
	Germany.	
	Honduras.	
	Italy.	
	Japan.	
	Mexico.	
	Netherlands.	
	Norway.	
	Paraguay.	
	Portugal.	
	Servia.	
	Spain.	

DEFINITIONS AND EXPLANATIONS *continued*.

Expression.	Definition or Explanation.	Authority.
International Convention (*continued*)	Countries (*continued*)— Sweden, Switzerland, Tunis, United States of America, and *Uruguay*.	
	An arrangement in the sense of the International Convention so far as it relates to Designs and Trade Marks but not to Patents exists with— Ecuador, Greece, and Roumania.	
	See also under the head "Colonial Arrangements."	
Invention	Any manner of new manufacture within the Realm which others than the inventor do not use.	Section 93.
Inventor	The first person who discloses an invention to the public is considered the inventor. In Kurtz *v.* Spence (5 *R. P. C.* 180), it was *held* that mere discovery before communication to the public constituted the discoverer a prior inventor; but that decision stands apart, and is, perhaps, not reconcilable with precedent or principle.	Household *v.* Neilson, 1 W. P. C. 719.
Law Officer ...	Attorney-General or Solicitor-General for England.	Section 93.
Lords Ordinary ...	The five Junior Judges of the Scottish Bench.	50 Geo. III., 3 Ch. 112, s. 29.
New or original design	"It is not easy to determine what distinction (if any) is intended to be drawn between novelty and originality." (Lindley, L. J., in *re* Clarke's Design, [1896] 2 Ch. 44.)	Section 49 (1).

DEFINITIONS AND EXPLANATIONS—*continued.*

Expression.	Definition or Explanation.	Authority.
New or original design (*continued*)	It may be submitted with great respect that no distinction is intended. To be registrable a design should be new. But the strict *proof* of novelty is impossible, since it incurs the familiar difficulty of proving a negative. The most that a proprietor can be expected to prove strictly is the absolute originality of his design. Instead of saying that a design proved to be original may be deemed to be new, Parliament has said that a new or even an original design may be registered.	
Offences	The following are offences punishable under the Act:—	
	Making, or causing to be made, a false entry in any Register kept under the Act.	Section 89 (1).
	Making, or causing to be made, a writing falsely purporting to be a copy of an entry in any such Register.	Section 89 (1
	Producing or tendering in evidence, or causing to be produced or tendered in evidence, any such writing, knowing the entry or writing to be false.	Section 89 (1).
	Falsely representing any article sold by him to be a patented article.	Section 89 (2).
	Falsely describing any design applied to any article sold by him as registered.	Section 89 (2).
	Putting or causing to be put on any article the word "registered," or any word implying that there is a subsisting copyright in the design of the article, when the copyright has in fact expired.	Section 89 (4).

DEFINITIONS AND EXPLANATIONS—*continued.*

Expression.	Definition or Explanation.	Authority.
Offences (*continued*)	Offences under the Act (*continued*)—	
	Using on a place of business or on any document the words "Patent Office," or any other words suggesting that the user's place of business is or is officially connected with the Patent Office.	Section 80 (5).
	Using without authority of H.M. the Royal Arms, or Arms so nearly resembling them as to be calculated to deceive.	Section 80 (2).
	Using the description "Patent Agent," unless the user is registered as a Patent Agent under the provisions of the Act.	Section 84 (3).
Opponent ...	The Act provides for opposition to various applications which may be made under the Act as follows:—	
	Application—	
	For the sealing of a patent ...	Section 11.
	For the prolongation of a patent	Section 18 (2).
	For the revival of a lapsed patent	Section 20 (3).
	For leave to amend a specification	Section 21 (2).
Order in Council ..	An Order made by the Sovereign with the advice of the Privy Council.	
Patent	A document in the nature of letters patent for an invention sealed, not, however, with the Great Seal, but with the Seal of the Patent Office.	Section 14 (1); *but see* Section 93.
Patent agent ..	An agent for obtaining patents in the United Kingdom.	Section 84 (4).
Patentee	The person for the time being entitled to the benefit of a patent.	Section 93.
Patent Museum ..	A misnomer, the Museum having ceased to exist in 1884, when its contents were handed over to the Science and Art Department. They are now incorporated in the Machinery and Inventions Division of the South Kensington Museum.	Note to Catalogue of Machinery, Models, &c., in the Machinery and Inventions Division of the South Kensington Museum, 1897 Edition.

DEFINITIONS AND EXPLANATIONS—*continued.*

Expression.	Definition or Explanation.	Authority.
Patent of addition	A patent granted under Section 19. *See* pages 16 and 45.	Section 19.
Patent Office	A staff, comprising a Comptroller-General, Examiners, and other officers, provided by the Treasury, and furnished with all requisite buildings and conveniences for discharging certain duties imposed upon them by the Act.	Sections 62; 63.
Patent Office Publications	The following is a list of publications issued by the Patent Office:— 1. Patent Acts and Rules. 2. Specifications. 3. Indexes, comprising a Name Index and a Subject-matter Index, issued in yearly volumes and monthly parts. 4. Journals, of which there are two— 1. The Illustrated Official Journal relating to Patents 2. The Trade Marks Journal relating to Trade Marks. 4a. Reports of Patent Cases. These reports are issued as supplements to the Illustrated Official Journal, and are also sold separately. 5. A Catalogue of the Patent Office Library, in two volumes. Vol. I., Authors, dated 1898; Vol. II., Subjects, dated 1883. It will be observed that both these are now very antiquated. A new Subject Catalogue is in course of preparation.	Official "Instructions to Applicants for Patents."

DEFINITIONS AND EXPLANATIONS—*continued.*

Expression.	Definition or Explanation.	Authority.
Patent Office Publications (*continued*)	List of publications issued by Patent Office (*continued*)— 6a. Guides to the Patent Office Library, in seventeen sixpenny volumes, each treating of a particular subject such, for instance, as a Key to the German Patent Classification—Subject List of Heat Engines. 6. A Key to the Abridgment Classes and Index Headings to which inventions are assigned in the official publications of the Patent Office. 7. Abridgments of specifications filed at the Patent Office in 1,460 illustrated volumes, each covering the specifications included in one subject class and one selected period—usually a particular triennium (now appearing). In addition to the above-mentioned series of abridgments a considerable number of odd volumes—unillustrated—have been published, and are on sale.	
Possession of an invention	The word "possession" is used in a strange and obviously in a figurative sense in this expression. It probably signifies that the applicant possesses secret knowledge of the invention which he is able to impart or to withhold at his discretion.	Section 1 (3).
Prescribed ...	Prescribed by general Rules under the Act.	Section 93

DEFINITIONS AND EXPLANATIONS—*continued.*

Expression.	Definition or Explanation.	Authority.
Proprietor... ...	The proprietor of a patent or registered design is the person registered as such proprietor at the Patent Office. In him all proprietary rights in the given patent or design vest, subject only to such rights as appear from the Register itself to be vested in other persons. The proprietor of an unregistered design is defined with great precision by	Section 71. Section 93 (*a*), (*b*), (*c*).
Provisional protection	Protection from the consequences prejudicial to a patent of the use and publication of an invention before the sealing of the patent for the same, such protection being afforded between the date of application and the date of sealing.	Section 4.
Secretary for War	One of His Majesty's principal Secretaries of State, being the Parliamentary Head of the War Department.	26 & 27 Vict. c. 12.
Specification ...	A provisional specification must describe the nature of the invention to be patented. A complete specification must particularly describe and ascertain the nature of the invention and the manner in which the same is to be performed, and must end with a distinct statement of the invention claimed.	Section 2 (1), (2), (4).
Statutory declaration	A declaration made by virtue of The Statutory Declarations Act, 1835, being the form in which, in the absence of directions to the contrary, evidence is to be given in all proceedings before the Comptroller-General.	Section 77. P.R. 106, 107; D.R. 77, 78.

Definitions and Explanations—*continued.*

Expression.	Definition or Explanation.	Authority.
Summary Jurisdiction Acts	Certain Acts of Parliament regulating the exercise of a summary jurisdiction by Justices of the Peace. For a list and reprint of the Acts see	Paley on Summary Convictions.
Treasury ...	The Commissioners of His Majesty's Treasury.	Interpretation Act, 1889, 52 & 53 Vict. c. 63, s. 12 (2).

TIME TABLE.

Event.	Time or Period Allowed.	Reference in the Act.
Time for leaving complete specification.	Six months from date of application.	Section 5.
Extended time for leaving complete specification:	One month	Section 5.
for acceptance of complete specification.	Twelve (or fifteen) months from date of application.	Section 6 (5).
Date of application in case of disconformity.	Date of the lodging of the disconformable complete specification.	Section 6 (3).
Lapsing of application where no complete specification is lodged.	Six (or seven) months from date of application.	Section 5 (2).
Limit of search for anticipations.	Fifty years before date of application.	Section 7 (1).
Time for amending specification without leave.	Two months	Section 7 (2). P. R. 30.
Date of advertisement for complete specification.	On acceptance of the same	Section 9.
Period of inchoate patent right.	Between acceptance of complete specification and sealing of patent.	Section 10.
Time for opposition to the Seal.	Two months from advertisement of complete specification.	Section 11.

TIME TABLE—*continued.*

Event.	Time or Period Allowed.	Reference in the Act.
Period of provisional protection.	From the date of application to date of sealing.	Section 4.
Time for application, by way of delayed opposition, to revoke.	Two years from the date of the patent.	Section 20 (1).
Limit of date of prior grant as ground of opposition.	Fifty years before application	Section 11 (*b*).
Date of hearing opposition	On the expiration of two months after notice.	Section 11 (2).
Date of sealing	As soon as may be within fifteen months from date of application.	Section 12 (2).
Time for sealing where patent granted to legal representative of deceased applicant.	Within twelve months after the date of the death.	Section 12 (2*c*).
Extension of sealing time where time for complete specification has been extended.	Four months	Section 12 (2*a*).
Extension of time after appeal to the Law Officer.	Such time as the Law Officer may direct.	Section 12 (2*b*).
Extension of time for payment of sealing fee.	Not to exceed three months	Section 12 (2*d*). P. R. 48.
Time for appealing to the Law Officer.	Fourteen days	L. O. R. 1.
Time of commencement of patentee's rights against infringers.	Date of publication of complete specification.	Section 13.
Commencement of patentee's right under reissued patent.	Actual date of reissued grant.	Section 15 (2), proviso.
Date of patent for consolidated inventions.	Date of first application ...	Section 16 (2).
Term of patent	Fourteen years from its date	Section 17 (1).
Extension of time for payment of renewal fees.	Not to exceed three months	Section 17 (2).
Term of extended patent ...	Not to exceed seven years, or in exceptional cases fourteen years.	Section 18 (5).

TIME TABLE—*continued.*

Event.	Time or Period Allowed.	Reference in the Act.
Time for presenting petition for extension.	At least six months before expiration of patent.	Section 18 (1).
Term of patent of addition	Same as that of the original patent, or so much of that term as is unexpired.	Section 19 (1), (2), (3).
Time after which an order for revocation may be made as an alternative to a compulsory licence.	Three years from the date of the patent.	Section 24 (3), proviso.
Time for applying to revoke on grounds of opposition to grant.	Within two years from date of the patent.	Section 26 (1).
Time for application to revoke on the ground of user outside the United Kingdom.	Not less than four years after the date of the patent and not before the 28th August, 1905.	Section 27 (1).
Extended time for compliance with Comptroller's order under Section 27.	Not exceeding twelve months.	Section 27 (3).
Length of notice to revoke contract in restraint of trade.	Three months	Section 38 (1), proviso; (2), (3).
Limit of time for anticipation by prior specification.	Fifty years before application.	Section 41 (1).
Limit of time for applying for patent in respect of an invention exhibited at an Industrial or International Exhibition.	Six months from the date of the opening of the Exhibition.	Section 45 (1*b*).
Time for completion of application to register a design.	Twelve months	Section 49 (4). D. R. 35.
Term of copyright and registered design.	Five years from date of registration.	Section 53 (1).
Term for extension of copyright.	Five years from the expiration of original term of five years.	Section 53 (2).
Term for discretionary extension of copyright.	Five years from the expiration of the second period of five years.	Section 53 (3).

TIME TABLE—*continued.*

Event.	Time or Period Allowed.	Reference to the Act.
Close time for the Register of Designs.	Five years in Classes 13, 14, and 15. Two years in other Classes.	Section 50 (1); *see also* Section 50 (2). D. R. 60.
Period for making application for registration of a design exhibited at an Industrial or an International Exhibition.	Six months from the date of opening of the Exhibition.	Section 59 (1*b*).
Extension of time falling on an excluded day.	To the next following day not being an excluded day.	Section 82. P. R. 111; D. R. 65.
Date from which practitioner's title to be registered as a Patent Agent must be deduced.	24th December, 1888. ...	Section 84 (2).
Period within which either House of Parliament may annul the Rules made under the Act.	Within the next forty days after any such Rules have been laid before that House.	Section 86 (3).
Privileged date of application under the International Convention—		
For a patent	Twelve months	
For a design	Four months	
For a trade mark ...	Four months	Section 91 (1*a*).
Date at which the Act comes into operation.	1st January, 1908	Section 99.

THE STATUTE OF MONOPOLIES.

(21 JA. I., c. 3. A.D. 1623-4.)

An Act concerning Monopolies and Dispensations with penall Lawes and the Forfeyture thereof.

The King's declaration against monopolies and grants of penalties and dispensations.

FORASMUCH as your most excellent Majestie in your royall judgment and of your blessed disposicion to the weale and quiet of your subjects, did, in the yeare of our Lord God one thousand six hundred and ten, publish in print to the whole Realme and to all posteritie, that all graunts of monopolyes and of the benefitt of any penall lawes, or of power to dispence with the lawe, or to compound for the forfeiture, are contrary to your Majesties lawes, which your Majesties declaracion is truly consonant and agreeable to the auncient and fundamentall lawes of this your Realme: And whereas your Majestie was further graciously pleased expressely to commaund that noe suter should presume to move your Majestie for matters of that nature; yet nevertheles uppon misinformacions and untrue pretences of publique good, many such graunts have bene undulie obteyned and unlawfullie putt in execucion, to the greate greevance and inconvenience of your Majesties subjects, contrary to the lawes of this your Realme, and contrary to your Majesties royall and blessed intencion soe published as aforesaid: For avoyding whereof and preventinge of the like in tyme to come, may it please your most excellent Majestie at the humble suite of the lords spirituall and temporall and the commons in this present Parliament assembled, that it may be declared and enacted, and be it declared and enacted by the authoritie of this present Parliament, that all monopolyes and all commissions graunts licences charters and letters patents heretofore made or graunted, or hereafter to be made or graunted to any person

All monopolies, and grants, &c. thereof, or of dispensations and penalties, declared void.

or persons bodies politique or corporate whatsoever of or for the sole buyinge sellinge makinge workinge or usinge of any thinge within this Realme or the dominion of Wales, or of any other monopolies, or of power libertie or faeultie to dispence with any others, or to give licence or toleracion to doe use or exercise any thinge against the tenor or purport of any lawe or statute, or to give or make any warrant for any such dispensacion licence or toleracion to be had or made, or to agree or compound with any others for any penaltie or forfeitures lymitted by any statute, or of any graunt or promise of the benefitt profitt or commoditie of any forfeiture penaltie or somme of money that is or shalbe due by any statute before judgment thereuppon had, and all proclamacions inhibicions restraints warrants of assistance and all other matters and things whatsoever anyway tendinge to the institutinge erecting strengtheninge furtheringe or countenancinge of the same or any of them, are altogether contrary to the lawes of this Realme, and so are and shalbe utterlie void and of none effecte, and in noe wise to be putt in ure or execucion.

Validity of all monopolies, and of all such grants, &c. shall be tried by the common law.

II. And all monopolies and all such commissions graunts licences charters letters patents proclamacions inhibicions restraints warrants of assistance and all other matters and things tendinge as aforesaid, and the force and validitie of them and every of them ought to be, and shalbe for ever hereafter examyned heard tryed and determined by and accordinge to the common lawes of this Realme & not otherwise.

All persons disabled to use such grants, monopolies &c.

III. And all person and persons bodies politique and corporate whatsoever, which now are or hereafter shalbe, shall stand and be disabled and incapable to have use exercise or putt in ure any monopolie or any such commission graunt licence charters letters patents proclamacion inhibicion restraint warrant of assistance or other matter

or thinge tendinge as aforesaid or any libertie power or faeultie grounded or pretended to be grounded upon them or any of them.

Party aggrieved by any monopoly or grant, &c. shall recover treble damages by action in the Superior Courts with double costs.

IV. And if any person or persons at any tyme after the end of fortie dayes next after the end of this present session of Parliament shalbe hindred greeved disturbed or disquieted, or his or their goods or chattells any way seised attached distreyned taken carryed away or deteyned by occasion or pretext of any monopolie, or of any such commission graunt licence power libertie faeultie letters patents proclamacion inhibicion restraint warrant of assistance or other matter or thinge tendinge as aforesaid, and will sue to be releeved in or for any of the premisses, that then and in every such case the same person and persons shall and may have his and their remedie for the same at the common lawe, by any accion or accions to be grounded uppon this statute, the same accion and accions to be heard and determyned in the Courts of Kings Bench Common Pleas and Exchequer, or in any of them, against him or them by whome he or they shalbe so hindred greeved disturbed or disquieted, or against him or them by whome his or their goods or chattells shalbe soe seized attached distrayned taken carried away or deteyned, wherein all and every such person and persons which shalbe soe hindred greeved disturbed or disquieted, or whose goods or chattells shalbe soe seised attached distrayned taken or carryed away or detayned, shall recover three tymes soe much as the damages which he or they susteyned by means or occasion of beinge soe hindred greeved disturbed or disquieted, or by meanes of havinge his or their goodes or chattells seised attached distrayned taken carryed away or deteyned, in [1]

[1] The word "in" here is omitted from the copy of the Statute preserved in the Library of Trinity College, Cambridge.

double costs; and in such suits, or for the staying or delaying thereof, no essione protecсion wager of lawe aydeprayer privilelge injunecion or order of restraint shalbe in any wise prayed graunted admitted or allowed, nor any more than one imperlance; and if any person or persons shall, after notice given that the accion dependinge is grounded uppon this statute, cause or procure any accion at the common lawe grounded uppon this statute to be stayed or delayed before judgement, by colour or meanes of any order warrant power or authoritie, save onely of the Court wherein such accion as aforesaid shalbe brought and dependinge, or after judgement had uppon such accion, shall cause or procure the execution of or uppon any such judgement to be stayed or delayed by colour or meanes of any order warrant power or authoritie, save onelie by writt of error or attaint, that then the said person and persons soe offendinge shall incurre and sustaine the paines penalties and forfeitures ordeyned and provided by the Statute of provision and premunire made in the sixteenth yeare of the raigne of King Richarde the Second.

Penalty on unduly delaying any such action, &c., premunire under st. 16 Rich. 2, c. 5.

VI. Provided alsoe that any declaracion before mencioned shall not extend to any letters patents and graunts of privilege for the tearme of fowerteen yeares or under, hereafter to be made of the sole working or makinge of any manner of new manufactures within this Realme, to the true and first inventor and inventors of such manufactures, which others at the tyme of makinge such letters patents and graunts shall not use, so as alsoe they be not contrary to the lawe nor mischievous to the State, by raisinge prices of commodities at home, or hurt of trade, or generallie inconvenient; the said fourteene yeares to be (accomplished)[1] from the date of the first

Proviso for future patents for fourteen years or less, for new inventions.

[1] The copy of the Statute preserved in the Library of Trinity College, Cambridge, reads "accompted" here.

lotters patents or grant of such priviledge hereafter to be made, but that the same shall be of such force as they should be if this Act had never byn made, and of none other.

Proviso for warrants to Justices to compound penalties.

VIII. Provided alsoe, that this Act shall not extend to any warraunt or privie seale made or directed, or to be made or directed by his Majestie his heirs or successors, to the Justices of the Courts of the King's Bench or Common Pleas, and Barons of the Exchequer, Justices of assize, Justices of oyer and terminer, and goale deliverie Justices of the peace, and other justices for the tyme being, having power to hear and determyne offences done against any penall statute, to compound for the forfeitures of any penall statute depending in suite and question before them or any of them respectively, after plea pleaded by the partie defendant.

Proviso for charters of London and other corporations.

IX. Provided alsoe, that this Act or any thing therein contayned shall not in any wise extend or be prejudiciall unto the city of London, or to any cittie borough or towne corporate within this Realme, for or concerning any graunts charters or letters patents to them or any of them made or granted, or for or concerning any custome or customes used by or within them or any of them, or unto any corporacions companies or fellowshipps of any art trade occupacion or mistery, or to any companies or societies of merchants within this Realme, erected for the mayntenance enlargement or ordering of any trade of merchandize, but that the same charters customes corporacions companies fellowshipps and societies, and their liberties priviledges power and immunities, shalbe and continue of such force and effect as they were before the making of this Act, and of none other; Any thing before in this Act contayned to the contrary in any wise notwithstanding.

THE

PATENTS AND DESIGNS ACT, 1907.

(7 Edw. VII., Chapter 29.)

ARRANGEMENT OF SECTIONS.

Part I.- Patents.

Application for and Grant of Patent.

Section		Page
1.	Application	107
2.	Specifications	108
3.	Proceedings upon application	109
4.	Provisional protection	109
5.	Time for leaving complete specification	110
6.	Comparison of provisional and complete specification	110
7.	Investigation of previous specifications in United Kingdom on applications for patents	112
8.	Investigation of specifications published subsequently to application	113
9.	Advertisement on acceptance of complete specification	114
10.	Effect of acceptance of complete specification	114
11.	Opposition to grant of patent	115
12.	Grant and sealing of patent	116
13.	Date of patent	117
14.	Effect, extent, and form of patent	118
15.	Fraudulent applications for patents	118
16.	Single patent for cognate inventions	119

Term of Patent.

17.	Term of patent	119
18.	Extension of term of patent	120
19.	Patents of addition	121

Restoration of lapsed Patents.

20.	Restoration of lapsed patents	121

Amendment of Specification.

21.	Amendment of specification by comptroller	122
22.	Amendment of specification by the court	124
23.	Restriction on recovery of damages	125

Compulsory Licences and Revocation.

Section		Page
24.	Compulsory licences and revocation	125
25.	Revocation of patent	127
26.	Power of comptroller to revoke patents on certain grounds	128
27.	Revocation of patents worked outside the United Kingdom	129

Register of Patents.

28.	Register of patents	130

Crown.

29.	Patent to bind Crown	131
30.	Assignment to Secretary for War or the Admiralty of certain inventions	132

Legal Proceedings.

31.	Hearing with assessor	134
32.	Power to counterclaim for revocation in an action for infringement	135
33.	Exemption of innocent infringer from liability for damages	135
34.	Order for inspection, &c., in action	136
35.	Certificate of validity questioned and costs thereon	136
36.	Remedy in case of groundless threats of legal proceedings	136

Miscellaneous.

37.	Grant of patents to two or more persons	137
38.	Avoidance of certain conditions attached to the sale, &c., of patented articles	137
39.	Costs and security for costs	140
40.	Procedure on appeal to law officer	141
41.	Provisions as to anticipation	141
42.	Disconformity	142
43.	Patent on application of representative of deceased inventor	142
44.	Loss or destruction of patent	142
45.	Provisions as to exhibitions	142
46.	Publication of illustrated journal, indexes, &c.	143
47.	Patent Museum	144
48.	Foreign vessels in British waters	144

PART II.- DESIGNS.

Registration of Designs.

49.	Application for registration of designs	145
50.	Registration of designs in new classes	146
51.	Certificate of registration	146
52.	Register of designs	146

Copyright in registered Designs.

Section		Page
53.	Copyright on registration	147
54.	Requirements before delivery on sale	147
55.	Effect of disclosure on copyright	148
56.	Inspection of registered designs	149
57.	Information as to existence of copyright	150
58.	Cancellation of registration of designs used wholly or mainly abroad	150

Industrial and International Exhibitions.

59.	Provisions as to exhibitions	150

Legal Proceedings.

60.	Piracy of registered design	151
61.	Application of certain provisions of the Act as to patents to designs	152

PART III.—GENERAL.

Patent Office and Proceedings thereat.

62.	Patent Office	153
63.	Officers and clerks	153
64.	Seal of Patent Office	154

Fees.

65.	Fees	154

Provisions as to Registers and other Documents in Patent Office.

66.	Trust not to be entered in registers	154
67.	Inspection of and extracts from registers	154
68.	Privilege of reports of examiners	155
69.	Prohibition of publication of specification, drawings, &c., where application abandoned, &c.	155
70.	Power for comptroller to correct clerical errors	155
71.	Entry of assignments and transmissions in registers	156
72.	Rectification of registers by court	156

Powers and Duties of Comptroller.

73.	Exercise of discretionary power by comptroller	157
74.	Power of comptroller to take directions of law officers	158
75.	Refusal to grant patent, &c. in certain cases	158
76.	Annual reports of comptroller	158

Evidence.

Section		Page
77.	Evidence before comptroller	158
78.	Certificate of comptroller to be evidence	159
79.	Evidence of documents in Patent Office	159
80.	Transmission of certified printed copies of specifications, &c.	159
81.	Applications and notices by post	160
82.	Excluded days	160
83.	Declaration by infant, lunatic, &c.	160

Register of Patent Agents.

84.	Register of patent agents	161
85.	Agents for patents	161

Powers, &c. of Board of Trade.

86.	Power for Board of Trade to make general rules	162
87.	Proceedings of the Board of Trade	164
88.	Provision as to Order in Council	165

Offences.

89.	Offences	165
90.	Unauthorised assumption of Royal Arms	166

International and Colonial Arrangements.

91.	International and Colonial arrangements	167

Definitions.

92.	Provisions as to "the court"	169
93.	Definitions	170

Application to Scotland, Ireland, and the Isle of Man.

94.	Application to Scotland	172
95.	Application to Ireland	174
96.	Isle of Man	174

Repeal, Savings, and Short Title.

97.	Saving for prerogative	175
98.	Repeal and savings	175
99.	Short title and commencement	176
	First Schedule	177
	Second Schedule	177

THE

PATENTS AND DESIGNS ACT, 1907.[1]

(7 Edw. VII., Chapter 29.)

An Act to consolidate the enactments relating to Patents for Inventions and the Registration of Designs and certain enactments relating to Trade Marks.

[28th August, 1907.

BE IT ENACTED by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PATENTS.

Application for and Grant of Patent.

Application.

1. (1) An application for a patent may be made by any person who claims to be the true and first inventor of an invention, whether he is a British subject or not, and whether alone or jointly with any other person.

(2) The application must be made in the prescribed form, and must be left at, or sent by post to, the Patent Office in the prescribed manner. (P. R. 5 to 8, 10 to 26, and 97.)

(3) The application must contain a declaration to the effect that the applicant is in possession of an

[1] In this copy of the Act references have been inserted to the Patents Rules (P. R.), Designs Rules (D. R.), and Law Officers' Rules (L. O. R), 1907, made pursuant to the Act.

invention, whereof he, or in the case of a joint application one at least of the applicants, claims to be the true and first inventor, and for which he desires to obtain a patent, and must be accompanied by either a provisional or complete specification.

(4) The declaration required by this section may be either a statutory declaration or not, as may be prescribed. (P. R. 10.)

Specifications.

2. (1) A provisional specification must describe the nature of the invention.

(2) A complete specification must particularly describe and ascertain the nature of the invention and the manner in which the same is to be performed.

(3) In the case of any provisional or complete specification where the comptroller deems it desirable he may require that suitable drawings shall be supplied with the specification, or at any time before the acceptance of the same, and such drawings shall be deemed to form part of the said specification. (P. R. 19 to 26.)

(4) A specification, whether provisional or complete, must commence with the title, and in the case of a complete specification must end with a distinct statement of the invention claimed. (P. R. 14.)

(5) Where the invention in respect of which an application is made is a chemical invention, such typical samples and specimens as may be prescribed shall, if in any particular case the comptroller considers it desirable so to require, be furnished before the acceptance of the complete specification. (P. R. 36.)

Proceedings upon application.

3. (1) The Comptroller General of Patents, Designs, and Trade Marks (herein-after referred to as the comptroller) shall refer every application to an examiner.

(2) If the examiner reports that the nature of the invention is not fairly described, or that the application, specification, or drawings have not been prepared in the prescribed manner, or that the title does not sufficiently indicate the subject-matter of the invention, the comptroller may refuse to accept the application or require that the application, specification, or drawings be amended before he proceeds with the application; and in the latter case the application shall, if the comptroller so directs, bear date as from the time when the requirement is complied with.

(3) Where the comptroller refuses to accept an application or requires an amendment, the applicant may appeal from his decision to the law officer, who shall, if required, hear the applicant and the comptroller, and may make an order determining whether and subject to what conditions (if any) the application shall be accepted.

(4) The comptroller shall, when an application has been accepted, give notice thereof to the applicant. (P. R. 38.)

Provisional protection.

4. Where an application for a patent in respect of an invention has been accepted, the invention may during the period between the date of the application and the date of sealing such patent be used and published without prejudice to the patent

to be granted for the invention; and such protection from the consequences of use and publication is in this Act referred to as provisional protection.

Time for leaving complete specification.

5. (1) If the applicant does not leave a complete specification with his application, he may leave it at any subsequent time within six months from the date of the application.

Provided that where an application is made for an extension of the time for leaving a complete specification, the comptroller shall, on payment of the prescribed fee, grant an extension of time to the extent applied for but not exceeding one month. (P. R. 4 and 27, Sch. I. 6.)

(2) Unless a complete specification is so left the application shall be deemed to be abandoned.

Comparison of provisional and complete specification.

6. (1) Where a complete specification is left after a provisional specification, the comptroller shall refer both specifications to an examiner.

(2) If the examiner reports that the complete specification has not been prepared in the prescribed manner, the comptroller may refuse to accept the complete specification until it has been amended to his satisfaction.

(3) If the examiner reports that the invention particularly described in the complete specification is not substantially the same as that which is described in the provisional specification the comptroller may—

(a) refuse to accept the complete specification until it has been amended to his satisfaction; or

. . . . .

(*b*) (with the consent of the applicant) cancel the provisional specification and treat the application as having been made on the date at which the complete specification was left, and the application shall have effect as if made on that date:

Provided that where the complete specification includes an invention not included in the provisional specification, the comptroller may allow the original application to proceed so far as the invention included both in the provisional and in the complete specification is concerned, and treat the claim for the additional invention included in the complete specification as an application for that invention made on the date at which the complete specification was left.

(4) A refusal of the comptroller to accept a complete specification shall be subject to appeal to the law officer, who shall, if required, hear the applicant and the comptroller and may make an order determining whether and subject to what conditions (if any) the complete specification shall be accepted.

(5) Unless a complete specification is accepted within twelve months from the date of the application, the application shall (except where an appeal has been lodged) become void.

Provided that where an application is made for an extension of time for the acceptance of a complete specification, the comptroller shall, on payment of the prescribed fee, grant an extension of time to the extent applied for but not exceeding three months. (P. R. 4 and 37, Sch. I. 7.)

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Investigation of previous specifications in United Kingdom on applications for patents.

7. (1) Where an application for a patent has been made and a complete specification has been left, the examiner shall, in addition to the other inquiries which he is directed to make by this Act, make a further investigation for the purpose of ascertaining whether the invention claimed has been wholly or in part claimed or described in any specification (other than a provisional specification not followed by a complete specification) published before the date of the application, and left pursuant to any application for a patent made in the United Kingdom within fifty years next before the date of the application. (P. R. 28, 29, and 30.)

(2) If on investigation it appears that the invention has been wholly or in part claimed or described in any such specification, the applicant shall be informed thereof, and the applicant may, within such time as may be prescribed, amend his specification, and the amended specification shall be investigated in like manner as the original specification. (P. R. 30.)

(3) If the comptroller is satisfied that no objection exists to the specification on the ground that the invention claimed thereby has been wholly or in part claimed or described in a previous specification as before mentioned, he shall, in the absence of any other lawful ground of objection, accept the specification.

(4) If the comptroller is not so satisfied, he shall, after hearing the applicant, and unless the objection is removed by amending the specification to the satisfaction of the comptroller, determine whether

a reference to any, and, if so, what prior specifications ought to be made in the specification by way of notice to the public. (P. R. 31 and 32.)

Provided that the comptroller, if satisfied that the invention claimed has been wholly and specifically claimed in any specification to which the investigation has extended, may, in lieu of requiring references to be made in the applicant's specification as aforesaid, refuse to grant a patent.

(5) An appeal shall lie from the decision of the comptroller under this section to the law officer.

(6) The investigations and reports required by this section shall not be held in any way to guarantee the validity of any patent, and no liability shall be incurred by the Board of Trade or any officer thereof by reason of, or in connexion with, any such investigation or report, or any proceeding consequent thereon.

Investigation of specifications published subsequently to application.

8. (1) An investigation under the last preceding section shall extend to specifications published after the date of the application in respect of which the investigation is made, and being specifications which have been deposited pursuant to prior applications; and that section shall, subject to rules under this Act, have effect accordingly.

(2) Where, on such an extended investigation, it appears that the invention claimed in the specification deposited pursuant to an application is wholly or in part claimed in any published specification deposited pursuant to a prior application, the applicant shall, whether or not his specification has been accepted

or a patent granted to him, be afforded such facilities as may be prescribed for amending his specification, and in the event of his failing to do so the comptroller shall, in accordance with such procedure as may be prescribed, determine what reference, if any, to other specifications ought to be made in his specification by way of notice to the public. (P. R. 33, 34, and 35.)

(3) For the purposes of this section an application shall be deemed to be prior to another application if the patent applied for when granted would be of prior date to the patent granted pursuant to that other application.

(4) This section shall come into operation at such date as the Board of Trade may by order direct, and shall apply only to applications made after that date, and the order shall be laid before both Houses of Parliament.

Advertisement on acceptance of complete specification.

9. On the acceptance of the complete specification the comptroller shall advertise the acceptance; and the application and specifications with the drawings (if any) shall be open to public inspection. (P. R. 38 and 39.)

Effect of acceptance of complete specification.

10. After the acceptance of a complete specification and until the date of sealing a patent in respect thereof, or the expiration of the time for sealing, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the complete specification. Provided that an applicant shall not be entitled to institute any proceeding for infringement until a patent for the invention has been granted to him.

Opposition to grant of patent.

11. (1) Any person may at any time within two months from the date of the advertisement of the acceptance of a complete specification give notice at the Patent Office of opposition to the grant of the patent on any of the following grounds:—

(*a*) That the applicant obtained the invention from him, or from a person of whom he is the legal representative; or

(*b*) That the invention has been claimed in any complete specification for a British patent which is or will be of prior date to the patent the grant of which is opposed, other than a specification deposited pursuant to an application made more than fifty years before the date of the application for such last-mentioned patent; or

(*c*) That the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described and ascertained in the complete specification; or

(*d*) That the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention forms the subject of an application made by the opponent in the interval between the leaving of the provisional specification and the leaving of the complete specification,

but on no other ground. (P. R. 40 to 47.)

(2) Where such notice is given the comptroller shall give notice of the opposition to the applicant,

and shall, on the expiration of those two months, after hearing the applicant and the opponent, if desirous of being heard, decide on the case.

(3) The decision of the comptroller shall be subject to appeal to the law officer, who shall, if required, hear the applicant and the opponent, if the opponent is, in his opinion, a person entitled to be heard in opposition to the grant of the patent, and shall decide the case; and the law officer may, if he thinks fit, obtain the assistance of an expert, who shall be paid such remuneration as the law officer with the consent of the Treasury may determine.

Grant and sealing of patent.

12. (1) If there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, a patent shall, on payment of the prescribed fee, be granted to the applicant, or in the case of a joint application to the applicants jointly, and the comptroller shall cause the patent to be sealed with the seal of the Patent Office. (P. R. 48, Sch. I. 10.)

(2) A patent shall be sealed as soon as may be, and not after the expiration of fifteen months from the date of application, provided that—

(*a*) Where the comptroller has allowed an extension of the time within which a complete specification may be left or accepted, a further extension of four months after the said fifteen months shall be allowed for the sealing of the patent:

(*b*) Where the sealing is delayed by an appeal to the law officer, or by opposition to the grant of the patent, the patent may be sealed at such time as the law officer may direct:

(*c*) Where the patent is granted to the legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent, the patent may be sealed at any time within twelve months after the date of his death:

(*d*) Where in consequence of the neglect or failure of the applicant to pay any fee a patent cannot be sealed within the period allowed by this section, that period may, on payment of the prescribed fee and on compliance with the prescribed conditions, be extended to such an extent as may be prescribed, and this provision shall, in such cases as may be prescribed and subject to the prescribed conditions, apply where the period allowed for the sealing of the patent has expired before the commencement of this Act. (P. R. 48.)

Date of patent.

13. Except as otherwise expressly provided by this Act, a patent shall be dated and sealed as of the date of the application: Provided that no proceedings shall be taken in respect of an infringement committed before the publication of the complete specification.

Effect, extent, and form of patent.

14. (1) A patent sealed with the seal of the Patent Office shall have the same effect as if it were sealed with the Great Seal of the United Kingdom, and shall have effect throughout the United Kingdom and the Isle of Man.

Provided that a patentee may assign his patent for any place in or part of the United Kingdom, or Isle of Man, as effectually as if the patent were originally granted to extend to that place or part only.

(2) Every patent may be in the prescribed form and shall be granted for one invention only, but the specification may contain more than one claim; and it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention. (P. R. 49 to 51, Sch. III. A.)

Fraudulent applications for patents.

15. (1) A patent granted to the true and first inventor shall not be invalidated by an application in fraud of him, or by provisional protection obtained thereon, or by any use or publication of the invention subsequent to that fraudulent application during the period of provisional protection.

(2) Where a patent has been revoked on the ground of fraud, the comptroller may, on the application of the true inventor made in accordance with the provisions of this Act, grant to him a patent in lieu of and bearing the same date as the patent so revoked:

Provided that no action shall be brought for any infringement of the patent so granted committed before the actual date when such patent was granted.

Single patent for cognate inventions.

16. (1) Where the same applicant has put in two or more provisional specifications for inventions which are cognate or modifications one of the other, and has obtained thereby concurrent provisional protection for the same, and the comptroller is of opinion that the whole of such inventions are such as to constitute a single invention and may properly be included in one patent, he may accept one complete specification in respect of the whole of such applications and grant a single patent thereon.

(2) Such patent shall bear the date of the earliest of such applications, but in considering the validity of the same and for the purpose of the provisions of this Act with respect to oppositions to the grant of patents, the court or the comptroller, as the case may be, shall have regard to the respective dates of the provisional specifications relating to the several matters claimed therein.

Term of Patent.

Term of patent.

17. (1) The term limited in every patent for the duration thereof shall, save as otherwise expressly provided by this Act, be fourteen years from its date.

(2) A patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails to pay the prescribed fees within the prescribed times; provided that the comptroller, upon the application of the patentee, shall, on receipt of such additional fee, not exceeding ten pounds, as may be prescribed, enlarge the time to such an extent as may be applied for but not exceeding three months. (P. R. 52 to 54, Sch. I. 23.)

(3) If any proceeding is taken in respect of an infringement of the patent committed after a failure to pay any fee within the prescribed time, and before any enlargement thereof, the court before which the proceeding is proposed to be taken may, if it thinks fit, refuse to award any damages in respect of such infringement.

Extension of term of patent.

18. (1) A patentee may, after advertising in manner provided by rules of the Supreme Court his intention to do so, present a petition to the court praying that his patent may be extended for a further term, but such petition must be presented at least six months before the time limited for the expiration of the patent.

(2) Any person may give notice to the court of objection to the extension.

(3) On the hearing of any petition under this section the patentee and any person who has given such notice of objection shall be made parties to the proceeding, and the comptroller shall be entitled to appear and be heard, and shall appear if so directed by the court.

(4) The court, in considering its decision, shall have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.

(5) If it appears to the court that the patentee has been inadequately remunerated by his patent, the court may by order extend the term of the patent for a further term not exceeding seven, or, in exceptional cases, fourteen years, or may order the grant of a new patent

for such term as may be specified in the order and containing any restriction, conditions, and provisions the court may think fit.

Patents of addition.

19. (1) Where a patent for an invention has been applied for or granted, and the applicant or the patentee, as the case may be, applies for a further patent in respect of any improvement in or modification of the invention, he may, if he thinks fit, in his application for the further patent, request that the term limited in that patent for the duration thereof be the same as that of the original patent or so much of that term as is unexpired. (P. R. 50, Sch. III. B.)

(2) Where an application containing such a request is made, a patent (herein-after referred to as a patent of addition) may be granted for such term as aforesaid.

(3) A patent of addition shall remain in force so long as the patent for the original invention remains in force, but no longer, and in respect of a patent of addition no fees shall be payable for renewal.

(4) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for a patent of addition, and the validity of the patent shall not be questioned on the ground that the invention ought to have been the subject of an independent patent.

Restoration of lapsed Patents.

Restoration of lapsed patents.

20. (1) Where any patent has become void owing to the failure of the patentee to pay any prescribed fee within the prescribed time, the patentee may.

apply to the comptroller in the prescribed manner for an order for the restoration of the patent. (P. R. 55, Sch. I. 24.)

(2) Every such application shall contain a statement of the circumstances which have led to the omission of the payment of the prescribed fee.

(3) If it appears from such statement that the omission was unintentional and that no undue delay has occurred in the making of the application, the comptroller shall advertise the application in the prescribed manner, and within such time as may be prescribed any person may give notice of opposition at the Patent Office. (P. R. 55 to 58.)

(4) Where such notice is given the comptroller shall notify the applicant thereof.

(5) After the expiration of the prescribed period the comptroller shall hear the case and, subject to an appeal to the court, issue an order either restoring the patent or dismissing the application: Provided that in every order under this section restoring a patent such provisions as may be prescribed shall be inserted for the protection of persons who may have availed themselves of the subject-matter of the patent after the patent had been announced as void in the illustrated official journal. (P. R. 58 and 59.)

Amendment of Specification.

Amendment of specification by comptroller.

21. (1) An applicant or a patentee may at any time, by request in writing left at the Patent Office, seek leave to amend his specification, including drawings

forming part thereof, by way of disclaimer, correction, or explanation, stating the nature of, and the reasons for, the proposed amendment. (P. R. 60, 66, and 67.)

(2) The request and the nature of the proposed amendment shall be advertised in the prescribed manner, and at any time within one month from its first advertisement any person may give notice at the Patent Office of opposition to the amendment. (P. R. 60 to 65.)

(3) Where such a notice is given the comptroller shall give notice of the opposition to the person making the request, and shall hear and decide the case.

(4) Where no notice of opposition is given, or the person so giving notice of opposition does not appear, the comptroller shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(5) The decision of the comptroller in either case shall be subject to an appeal to the law officer, who shall, if required, hear the person making the request to amend and, where notice of opposition has been given, the person giving that notice, if he is, in the opinion of the law officer, entitled to be heard in opposition to the request, and, where there is no opposition, the comptroller, and may make an order determining whether and subject to what conditions (if any) the amendment ought to be allowed.

(6) No amendment shall be allowed that would make the specification, as amended, claim an invention

substantially larger than or substantially different from the invention claimed by the specification as it stood before amendment.

(7) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall be advertised in the prescribed manner, and shall in all courts and for all purposes be deemed to form part of the specification. (P. R. 67.)

(8) This section shall not apply when and so long as any action for infringement or proceeding before the court for the revocation of a patent is pending.

Amendment of specification by the court.

22. In any action for infringement of a patent or proceedings before a court for the revocation of a patent the court may by order allow the patentee to amend his specification by way of disclaimer in such manner, and subject to such terms as to costs advertisement or otherwise, as the court may think fit:

Provided that no amendment shall be so allowed that would make the specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the specification as it stood before the amendment, and where an application for such an order is made to the court notice of the application shall be given to the comptroller, and the comptroller shall have the right to appear and be heard, and shall appear if so directed by the court.

Restriction on recovery of damages.

23. Where an amendment of a specification by way of disclaimer, correction, or explanation, has been allowed under this Act, no damages shall be given in any action in respect of the use of the invention before the disclaimer, correction, or explanation, unless the patentee establishes to the satisfaction of the court that his original claim was framed in good faith and with reasonable skill and knowledge.

Compulsory Licences and Revocation.

Compulsory licences and revocation.

24. (1) Any person interested may present a petition to the Board of Trade alleging that the reasonable requirements of the public with respect to a patented invention have not been satisfied, and praying for the grant of a compulsory licence, or, in the alternative, for the revocation of the patent. (P. R. 68 to 74.)

(2) The Board of Trade shall consider the petition, and if the parties do not come to an arrangement between themselves the Board of Trade, if satisfied that a primâ facie case has been made out, shall refer the petition to the court, and, if the Board are not so satisfied, they may dismiss the petition.

(3) Where any such petition is referred by the Board of Trade to the court, and it is proved to the satisfaction of the court that the reasonable requirements of the public with reference to the patented invention have not been satisfied, the patentee may be ordered by the court to grant licences on such terms as the court may think just, or, if the court

is of opinion that the reasonable requirements of the public will not be satisfied by the grant of licences, the patent may be revoked by order of the court.

Provided that an order of revocation shall not be made before the expiration of three years from the date of the patent, or if the patentee gives satisfactory reasons for his default.

(4) On the hearing of any petition under this section the patentee and any person claiming an interest in the patent as exclusive licensee or otherwise, shall be made parties to the proceeding, and the law officer or such other counsel as he may appoint shall be entitled to appear and be heard.

(5) For the purposes of this section the reasonable requirements of the public shall not be deemed to have been satisfied—

(*a*) If by reason of the default of the patentee to manufacture to an adequate extent and supply on reasonable terms the patented article, or any parts thereof which are necessary for its efficient working, or to carry on the patented process to an adequate extent or to grant licences on reasonable terms, any existing trade or industry, or the establishment of any new trade or industry in the United Kingdom is unfairly prejudiced, or the demand for the patented article or the article produced by the patented process is not reasonably met; or

(*b*) If any trade or industry in the United Kingdom is unfairly prejudiced by the conditions attached by the patentee before or after the passing of this Act to the purchase, hire, or use of the patented article or to the using or working of the patented process.

(6) An order of the court directing the grant of any licence under this section shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a licence and made between the parties to the proceeding.

Revocation of patent.

25. (1) Revocation of a patent may be obtained on petition to the court.

(2) Every ground on which—

(*a*) A patent might, immediately before the first day of January, one thousand eight hundred and eighty-four, have been repealed by scire facias; or

(*b*) A patent may be revoked under this Act either by the comptroller or as an alternative to the grant of a compulsory licence;

shall be available by way of defence to an action of infringement and shall also be a ground of revocation under this section.

(3) A petition for revocation of a patent may be presented—

(*a*) By the Attorney-General or any person authorised by him; or

(*b*) By any person alleging—

(i) That the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims; or

(ii) That he, or any person under or through whom he claims, was the true inventor of any invention included in the claim of the patentee; or

(iii) That he, or any person under or through whom he claims an interest in any trade, business, or manufacture, had publicly manufactured, used, or sold, within this realm, before the date of the patent, anything claimed by the patentee as his invention.

Power of comptroller to revoke patents on certain grounds.

26. (1) Any person who would have been entitled to oppose the grant of a patent, or is the successor in interest of a person who was so entitled, may, within two years from the date of the patent, in the prescribed manner apply to the comptroller for an order revoking the patent on any one or more of the grounds on which the grant of the patent might have been opposed. (P. R. 75 and 76.)

Provided that when an action for infringement or proceedings for the revocation of the patent are pending in any court, an application under this section shall not be made except with the leave of the court.

(2) The comptroller shall give notice of the application to the patentee, and after hearing the parties, if

desirous of being heard, may make an order revoking the patent or requiring the specification relating thereto to be amended by disclaimer, correction, or explanation, or dismissing the application; but the comptroller shall not make an order revoking the patent unless the circumstances are such as would have justified him in refusing to grant the patent had the proceedings been proceedings in an opposition to the grant of a patent.

(3) A patentee may at any time by giving notice in the prescribed manner to the comptroller offer to surrender his patent, and the comptroller may, if after giving notice of the offer and hearing all parties who desire to be heard he thinks fit, accept the offer, and thereupon make an order for the revocation of the patent. (P. R. 77.)

(4) Any decision of the comptroller under this section shall be subject to appeal to the court.

Revocation of patents worked outside the United Kingdom.

27. (1) At any time not less than four years after the date of a patent and not less than one year after the passing of this Act, any person may apply to the comptroller for the revocation of the patent on the ground that the patented article or process is manufactured or carried on exclusively or mainly outside the United Kingdom. (P. R. 78 to 81.)

(2) The comptroller shall consider the application, and, if after enquiry he is satisfied that the allegations contained therein are correct, then, subject to the provisions of this section, and unless the patentee proves that the patented article or process is manufactured or carried on to an adequate extent in the United Kingdom,

or gives satisfactory reasons why the article or process is not so manufactured or carried on, the comptroller may make an order revoking the patent either—

(*a*) Forthwith; or

(*b*) After such reasonable interval as may be specified in the order, unless in the meantime it is shown to his satisfaction that the patented article or process is manufactured or carried on within the United Kingdom to an adequate extent:

Provided that no such order shall be made which is at variance with any treaty, convention, arrangement, or engagement with any foreign country or British possession.

(3) If within the time limited in the order the patented article or process is not manufactured or carried on within the United Kingdom to an adequate extent, but the patentee gives satisfactory reasons why it is not so manufactured or carried on, the comptroller may extend the period mentioned in the previous order for such period not exceeding twelve months as may be specified in the subsequent order.

(4) Any decision of the comptroller under this section shall be subject to appeal to the court, and on any such appeal the law officer or such other counsel as he may appoint shall be entitled to appear and be heard.

Register of Patents.

Register of patents.

28. (1) There shall be kept at the Patent Office a book called the register of patents, wherein shall be entered the names and addresses of grantees of patents,

notifications of assignments and of transmissions of patents, of licences under patents, and of amendments, extensions, and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may be prescribed. (P. R. 82 to 93.)

(2) The register of patents existing at the commencement of this Act shall be incorporated with and form part of the register of patents under this Act.

(3) The register of patents shall be primâ facie evidence of any matters by this Act directed or authorised to be inserted therein.

(4) Copies of deeds, licences, and any other documents affecting the proprietorship in any letters patent or in any licence thereunder, must be supplied to the comptroller in the prescribed manner for filing in the Patent Office. (P. R. 88 to 91.)

Crown.

Patent to bind Crown.

29. A patent shall have to all intents the like effect as against His Majesty the King as it has against a subject:

Provided that any Government department may, by themselves, their agents, contractors, or others, at any time after the application, use the invention for the services of the Crown on such terms as may, either before or after the use thereof, be agreed on, with the approval of the Treasury, between the department and the patentee, or, in default of agreement, as may be settled by the Treasury after hearing all parties interested.

Assignment to Secretary for War or the Admiralty of certain inventions.

30. (1) The inventor of any improvement in instruments or munitions of war may (either for or without valuable consideration) assign to the Secretary of State for War or the Admiralty on behalf of His Majesty all the benefit of the invention and of any patent obtained or to be obtained for the invention; and the Secretary of State or the Admiralty may be a party to the assignment.

(2) The assignment shall effectually vest the benefit of the invention and patent in the Secretary of State or the Admiralty on behalf of His Majesty, and all covenants and agreements therein contained for keeping the invention secret and otherwise shall be valid and effectual (notwithstanding any want of valuable consideration), and may be enforced accordingly by the Secretary of State or the Admiralty.

(3) Where any such assignment has been made, the Secretary of State or the Admiralty may at any time before the publication of the complete specification certify to the comptroller that, in the interest of the public service, the particulars of the invention and of the manner in which it is to be performed should be kept secret.

(4) If the Secretary of State or the Admiralty so certify the application and specifications, with the drawings (if any), and any amendment of the complete specification, and any copies of such documents and drawings shall, instead of being left in the ordinary manner at the Patent Office, be delivered to the comptroller in a packet sealed by authority of the Secretary of State or the Admiralty.

(5) The packet shall, until the expiration of the term during which a patent for the invention may be in force, be kept sealed by the comptroller, and shall not be opened save under the authority of an order of the Secretary of State or the Admiralty or of the law officer.

(6) The sealed packet shall be delivered at any time during the continuance of the patent to any person authorised by the Secretary of State or the Admiralty to receive it, and shall if returned to the comptroller be again kept sealed by him.

(7) On the expiration of the term of the patent, the sealed packet shall be delivered to the Secretary of State or the Admiralty.

(8) Where the Secretary of State or the Admiralty certify as aforesaid, after an application for a patent has been left at the Patent Office, but before the publication of the complete specification, the application and specifications, with the drawings (if any), shall be forthwith placed in a packet sealed by authority of the comptroller, and the packet shall be subject to the foregoing provisions respecting a packet sealed by authority of the Secretary of State or the Admiralty.

(9) No proceeding by petition or otherwise shall lie for revocation of a patent granted for an invention in relation to which a certificate has been given by the Secretary of State or the Admiralty as aforesaid.

(10) No copy of any specification or other document or drawing, by this section required to be placed in a sealed packet, shall in any manner whatever be

published or open to the inspection of the public, but, save as in this section otherwise directed, the provisions of this Act shall apply in respect of any such invention and patent as aforesaid.

(11) The Secretary of State or the Admiralty may at any time waive the benefit of this section with respect to any particular invention, and the specifications, documents, and drawings shall be thenceforth kept and dealt with in the ordinary way.

(12) The communication of any invention for any improvement in instruments or munitions of war to the Secretary of State or the Admiralty, or to any person or persons authorised by the Secretary of State or the Admiralty to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of such invention so as to prejudice the grant or validity of any patent for the same.

(13) Rules may be made under this Act, after consultation with the Secretary of State and the Admiralty, for the purpose of ensuring secrecy with respect to patents to which this section applies, and those rules may modify any of the provisions of this Act in their application to such patents as aforesaid so far as may appear necessary for the purpose aforesaid. (P. R. 97 to 99.)

Legal Proceedings.

Hearing with assessor.

31. (1) In an action or proceeding for infringement or revocation of a patent, the court may, if it think fit, and shall on the request of either of the

parties to the proceeding, call in the aid of an assessor specially qualified, and try the case wholly or partially with his assistance; the action shall be tried without a jury unless the court otherwise directs.

(2) The Court of Appeal may, if they think fit, in any proceeding before them call in the aid of an assessor as aforesaid.

(3) The remuneration, if any, to be paid to an assessor under this section shall be determined by the court or the Court of Appeal, as the case may be, and be paid as part of the expenses of the execution of this Act.

Power to counter-claim for revocation in an action for infringement.

32. A defendant in an action for infringement of a patent, if entitled to present a petition to the court for the revocation of the patent, may, without presenting such a petition, apply in accordance with the rules of the Supreme Court by way of counter-claim in the action for the revocation of the patent.

Exemption of innocent infringer from liability for damages.

33. A patentee shall not be entitled to recover any damages in respect of any infringement of a patent granted after the commencement of this Act from any defendant who proves that at the date of the infringement he was not aware, nor had reasonable means of making himself aware, of the existence of the patent, and the marking of an article with the word "patent," "patented," or any word or words expressing or implying that a patent has been obtained for the article, stamped, engraved, impressed on, or otherwise applied to the article, shall not be deemed to constitute

notice of the existence of the patent unless the word or words are accompanied by the year and number of the patent:

Provided that nothing in this section shall affect any proceedings for an injunction.

Order for inspection, &c., in action.

34. In an action for infringement of a patent, the court may on the application of either party make such order for an injunction inspection or account, and impose such terms and give such directions respecting the same and the proceedings thereon as the court may see fit.

Certificate of validity questioned and costs thereon.

35. In an action for infringement of a patent, the court may certify that the validity of the patent came in question; and, if the court so certifies, then in any subsequent action for infringement the plaintiff in that action on obtaining a final order or judgment in his favour shall, unless the court trying the action otherwise directs, have his full costs, charges, and expenses as between solicitor and client.

Remedy in case of groundless threats of legal proceedings.

36. Where any person claiming to be the patentee of an invention, by circulars, advertisements, or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the patent, any person aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as he has sustained thereby, if the alleged infringement to

which the threats related was not in fact an infringement of any legal rights of the person making such threats:

Provided that this section shall not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent.

Miscellaneous.

Grant of patents to two or more persons.

37. Where, after the commencement of this Act, a patent is granted to two or more persons jointly, they shall, unless otherwise specified in the patent, be treated for the purpose of the devolution of the legal interest therein as joint tenants, but, subject to any contract to the contrary, each of such persons shall be entitled to use the invention for his own profit without accounting to the others, but shall not be entitled to grant a licence without their consent, and, if any such person dies, his beneficial interest in the patent shall devolve on his personal representatives as part of his personal estate. (P. R. 51.)

Avoidance of certain conditions attached to *the sale*, &c. of patented articles.

38. (1) It shall not be lawful in any contract made after the passing of this Act in relation to the sale or lease of, or licence to use or work, any article or process protected by a patent to insert a condition the effect of which will be—

(*a*) To prohibit or restrict the purchaser, lessee, or licensee from using any article or class of articles, whether patented or not, or any patented process, supplied or owned by *any* person other than the seller, lessor, or licensor or his nominees; or

(*b*) To require the purchaser, lessee, or licensee to acquire from the seller, lessor, or licensor, or his nominees, any article or class of articles not protected by the patent;

and any such condition shall be null and void, as being in restraint of trade and contrary to public policy.

Provided that this subsection shall not apply if—

(i) The seller, lessor, or licensor proves that at the time the contract was entered into the purchaser, lessee, or licensee had the option of purchasing the article or obtaining a lease or licence on reasonable terms, without such conditions as aforesaid; and

(ii) The contract entitles the purchaser, lessee, or licensee to relieve himself of his liability to observe any such condition on giving the other party three months' notice in writing and on payment in compensation for such relief in the case of a purchase of such sum, or in the case of a lease or licence of such rent or royalty for the residue of the term of the contract, as may be fixed by an arbitrator appointed by the Board of Trade.

(2) Any contract relating to the lease of or licence to use or work any patented article or patented process, whether made before or after the passing of this Act, may at any time after the patent or all the patents by which the article or process was

protected at the time of the making of the contract has or have ceased to be in force, and notwithstanding anything in the same or in any other contract to the contrary, be determined by either party on giving three months' notice in writing to the other party; but where any such notice is given determining any contract made before the passing of this Act, the party giving the notice shall be liable to pay such compensation as failing agreement may be awarded by an arbitrator appointed by the Board of Trade.

(3) Any contract made before the passing of this Act relating to the lease of or licence to use or work any patented article or process and containing any condition which, had the contract been made after the passing of this Act, would by virtue of this section have been null and void may, at any time before the contract is determinable under the last preceding subsection, and notwithstanding anything in the same or any other contract to the contrary, be determined by either party on giving three months' notice in writing to the other party, but where any such notice is given the party giving the notice shall be liable to pay such compensation as, failing agreement, may be awarded by an arbitrator appointed by the Board of Trade.

(4) The insertion by the patentee in a contract made after the passing of this Act of any condition which by virtue of this section is null and void shall be available as a defence to an action for infringement of the patent to which the contract relates brought while that contract is in force.

(5) Nothing in this section shall—

(*a*) Affect any condition in a contract whereby a person is prohibited from selling any goods other than those of a particular person: or

(*b*) Be construed as validating any contract which would, apart from this section, be invalid; or

(*c*) Affect any right of determining a contract or condition in a contract exercisable independently of this section; or

(*d*) Affect any condition in a contract for the lease of or licence to use a patented article, whereby the lessor or licensor reserves to himself or his nominees the right to supply such new parts of the patented article as may be required to put or keep it in repair.

Costs and security for costs.

39. (1) The comptroller shall, in proceedings relating to an opposition to the grant of a patent or to an application for the amendment of a specification or the revocation of a patent, have power by order to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid, and any such order may be made a rule of the court.

(2) If a party giving notice of opposition to the grant of a patent or to the amendment of a specification, or applying to the comptroller for the revocation of a patent, or giving notice of appeal from any decision of the comptroller, neither resides nor carries on business in the United Kingdom or the Isle of Man

the comptroller, or, in case of appeal to the law officer, the law officer, may require such party to give security for costs of the proceedings or appeal, and in default of such security being given may treat the proceedings or appeal as abandoned.

Procedure on appeal to law officer.

40. The law officer may examine witnesses on oath and administer oaths for that purpose, and may make rules regulating references and appeals to the law officer and the practice and procedure before him under this Part of this Act; and in any proceeding before the law officer under this Part of this Act, the law officer may order costs to be paid by either party, and any such order may be made a rule of the court.[1]

Provisions as to anticipation.

41. (1) An invention covered by any patent applied for on or after the first day of January one thousand nine hundred and five shall not be deemed to have been anticipated by reason only of its publication in a specification left pursuant to an application made in the United Kingdom not less than fifty years before the date of the application for the patent, or of its publication in a provisional specification of any date not followed by a complete specification.

(2) A patent shall not be held to be invalid by reason only of the invention in respect of which the patent was granted, or any part thereof, having been published prior to the date of the patent, if the patentee proves to the satisfaction of the court that the publication was made without his knowledge and consent, and that the matter published was derived or obtained from him,

[1] See the L. O. R. for procedure on appeal to the Law Officer.

and, if he learnt of the publication before the date of his application for the patent, that he applied for and obtained protection for his invention with all reasonable diligence after learning of the publication.

Disconformity.

42. A patent shall not be held to be invalid on the ground that the complete specification claims a further or different invention to that contained in the provisional, if the invention therein claimed, so far as it is not contained in the provisional, was novel at the date when the complete specification was put in, and the applicant was the first and true inventor thereof.

Patent on application of representative of deceased inventor.

43. (1) If the person claiming to be inventor of an invention dies without making an application for a patent for the invention, application may be made by, and a patent for the invention granted to, his legal representative. (P. R. 11.)

(2) Every such application must contain a declaration by the legal representative that he believes him to be the true and first inventor of the invention.

Loss or destruction of patent.

44. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the comptroller, the comptroller may at any time seal a duplicate thereof. (P. R. 100).

Provisions as to exhibitions.

45. (1) The exhibition of an invention at an industrial or international exhibition, certified as such by the Board of Trade, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in the place where

the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere, without the privity or consent of the inventor, shall not prejudice the right of the inventor to apply for and obtain a patent in respect of the invention or the validity of any patent granted on the application, provided that—

(*a*) The exhibitor, before exhibiting the invention, gives the comptroller the prescribed notice of his intention to do so; and

(*b*) The application for a patent is made before or within six months from the date of the opening of the exhibition. (P. R. 101.)

(2) His Majesty may by Order in Council apply this section to any exhibition mentioned in the Order in like manner as if it were an industrial or international exhibition certified as such by the Board of Trade, and any such Order may provide that the exhibitor shall be relieved from the condition of giving notice to the comptroller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as may be stated in the Order.

Publication of illustrated journal, indexes, &c.

46. (1) The comptroller shall issue periodically an illustrated journal of patented inventions, as well as reports of patent cases decided by courts of law, and any other information that he may deem generally useful or important.

(2) Provision shall be made by the comptroller for keeping on sale copies of such journal, and also of all complete specifications of patents in force, with any accompanying drawings.

(3) The comptroller shall continue, in such form as he deems expedient, the indexes and abridgments of specifications hitherto published, and shall prepare and publish such other indexes, abridgments of specifications, catalogues, and other works relating to inventions, as he thinks fit.

Patent Museum.

47. (1) The control and management of the Patent Museum and its contents shall remain vested in the Board of Education, subject to such directions as His Majesty in Council may think fit to give.

(2) The Board of Education may at any time require a patentee to furnish them with a model of his invention on payment to the patentee of the cost of the manufacture of the model, the amount to be settled, in case of dispute, by the Board of Trade.

Foreign vessels in British waters.

48. (1) A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign vessel within the jurisdiction of any of His Majesty's Courts in the United Kingdom, or Isle of Man, or the use of an invention in a foreign vessel within that jurisdiction, provided it is not used therein for or in connection with the manufacture or preparation of anything intended to be sold in or exported from the United Kingdom or Isle of Man.

(2) This section shall not extend to vessels of any foreign state of which the laws do not confer corresponding rights with respect to the use of inventions in British vessels while in the ports of that state, or in the waters within the jurisdiction of its courts.

PART II.—DESIGNS.

Registration of Designs.

Application for registration of designs.

49. (1) The comptroller may, on the application made in the prescribed form and manner of any person claiming to be the proprietor of any new or original design not previously published in the United Kingdom, register the design under this Part of this Act. (D. R. 13 to 36 and 80 to 88.)

(2) The same design may be registered in more than one class, and, in case of doubt as to the class in which a design ought to be registered, the comptroller may decide the question. (D. R. 6, Sch. III.)

(3) The comptroller may, if he thinks fit, refuse to register any design presented to him for registration, but any person aggrieved by any such refusal may appeal to the Board of Trade, and the Board shall, after hearing the applicant and the comptroller, if so required, make an order determining whether, and subject to what conditions, if any, registration is to be permitted. (D. R. 89 to 94.)

(4) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within the prescribed time shall be deemed to be abandoned. (D. R. 35.)

(5) A design when registered shall be registered as of the date of the application for registration.

Registration of designs in new classes.

50. Where a design has been registered in one or more classes of goods the application of the proprietor of the design to register it in some one or more other classes shall not be refused, nor shall the registration thereof be invalidated—

(*a*) On the ground of the design not being a new and original design, by reason only that it was so previously registered; or

(*b*) On the ground of the design having been previously published in the United Kingdom, by reason only that it has been applied to goods of any class in which it was so previously registered.

Certificate of registration.

51. (1) The comptroller shall grant a certificate of registration to the proprietor of the design when registered.

(2) The comptroller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, furnish one or more copies of the certificate. (D. R. 67.)

Register of designs.

52. (1) There shall be kept at the Patent Office a book called the Register of Designs wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may be prescribed. (D. R. 69.)

(2) The register of designs existing at the commencement of this Act shall be incorporated with and form part of the register of designs under this Act.

(3) The register of designs shall be primâ facie evidence of any matters by this Act directed or authorised to be entered therein.

Copyright in registered Designs.

Copyright on registration.

53. (1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration.

(2) If within the prescribed time before the expiration of the said five years application for the extension of the period of copyright is made to the comptroller in the prescribed manner, the comptroller shall on payment of the prescribed fee extend the period of copyright for a second period of five years from the expiration of the original period of five years. (D. R. 37 and 38.)

(3) If within the prescribed time before the expiration of such second period of five years application for the extension of the period of copyright is made to the comptroller in the prescribed manner, the comptroller may, subject to any rules under this Act, on payment of the prescribed fee, extend the period of copyright for a third period of five years from the expiration of the second period of five years. (D. R. 39 to 42.)

Requirements before delivery on sale.

54. (1) Before delivery on sale of any articles to which a registered design has been applied, the proprietor shall—

(*a*) (If exact representations or specimens were not furnished on the application for registration), furnish to the comptroller the prescribed number of exact representations or specimens of the design; and if he fails

to do so, the comptroller may erase his name from the register, and thereupon the copyright in the design shall cease; and

(*b*) Cause each such article to be marked with the prescribed mark, or with the prescribed words or figures, denoting that the design is registered; and if he fails to do so the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design. (D. R. 20 to 30 and 68.)

(2) Where a representation is made to the Board of Trade by or on behalf of any trade or industry that in the interests of the trade or industry it is expedient to dispense with or modify as regards any class or description of articles any of the requirements of this section as to marking, the Board may, if they think fit, by rule under this Act dispense with or modify such requirements as regards any such class or description of articles to such extent and subject to such conditions as they think fit. (D. R. 68.)

Effect of disclosure on copyright.

55. The disclosure of a design by the proprietor to any other person, in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person other than the

proprietor of the design, and the acceptance of a first and confidential order for goods bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if registration thereof is obtained subsequently to the disclosure or acceptance.

Inspection of registered designs.

56. (1) During the existence of copyright in a design, or such shorter period not being less than two years from the registration of the design as may be prescribed, the design shall not be open to inspection except by the proprietor or a person authorised in writing by him, or a person authorised by the comptroller or by the court, and furnishing such information as may enable the comptroller to identify the design, and shall not be open to the inspection of any person except in the presence of the comptroller, or of an officer acting under him, and on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof:

Provided that where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.

(2) After the expiration of the copyright in a design, or such shorter period as aforesaid, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

(3) Different periods may be prescribed under this section for different classes of goods. (D. R. 61 and 69.)

Information as to existence of copyright.

57. On the request of any person furnishing such information as may enable the comptroller to identify the design, and on payment of the prescribed fee, the comptroller shall inform such person whether the registration still exists in respect of the design, and if so, in respect of what classes of goods, and shall state the date of registration, and the name and address of the registered proprietor. (D. R. 59 and 60.)

Cancellation of registration of designs used wholly or mainly abroad.

58. (1) At any time after the registration of a design any person may apply to the comptroller for the cancellation of the registration on the ground that the design is used for manufacture exclusively or mainly outside the United Kingdom, and where such an application is made the provisions of this Act with respect to the revocation of patents worked outside the United Kingdom (including those relating to costs) shall apply with the necessary modifications, except that there shall be no appeal from the decision of the comptroller. (D. R. 70 to 75.)

(2) Such ground as aforesaid shall be available by way of a defence to an action for infringement of the copyright in the design.

Industrial and International Exhibitions.

Provisions as to exhibitions.

59. (1) The exhibition at an industrial or international exhibition certified as such by the Board of Trade, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a

description of a design, shall not prevent the design from being registered, or invalidate the registration thereof: Provided that —

(*a*) The exhibitor, before exhibiting the design or article, or publishing a description of the design, gives the comptroller the prescribed notice of his intention to do so; and

(*b*) The application for registration is made before or within six months from the date of the opening of the exhibition. (D. R. 76.)

(2) His Majesty may, by Order in Council, apply this section to any exhibition mentioned in the Order in like manner as if it were an industrial or international exhibition certified as such by the Board of Trade, and any such Order may provide that the exhibitor shall be relieved from the condition of giving notice to the comptroller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as may be stated in the Order.

Legal Proceedings.

Piracy of registered design.

60. (1) During the existence of copyright in any design it shall not be lawful for any person—

(*a*) For the purposes of sale to apply or cause to be applied to any article in any class of goods in which the design is registered the design or any fraudulent or obvious imitation thereof, except with the licence or written consent of the registered

proprietor, or to do anything with a view to enable the design to be so applied; or

(*b*) Knowing that the design or any fraudulent or obvious imitation thereof has been applied to any article without the consent of the registered proprietor to publish or expose or cause to be published or exposed for sale that article.

(2) If any person acts in contravention of this section he shall be liable for every contravention to pay to the registered proprietor of the design a sum not exceeding fifty pounds, recoverable as a simple contract debt, or if the proprietor elects to bring an action for the recovery of damages for such contravention, and for an injunction against the repetition thereof, he shall be liable to pay such damages as may be awarded and to be restrained by injunction accordingly:

Provided that the total sum recoverable as a simple contract debt in respect of any one design shall not exceed one hundred pounds.

Application of certain provisions of the Act as to patents to designs.

61. The provisions of this Act with regard to certificates of the validity of a patent, and to the remedy in case of groundless threats of legal proceedings by a patentee shall apply in the case of registered designs in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for references to a patent, and of references to the proprietor of a design for references to the patentee, and of references to the design for references to the invention.

PART III.—GENERAL.

Patent Office and Proceedings thereat.

Patent Office. 5 Edw. 7. c. 15.

62. (1) The Treasury may continue to provide for the purposes of this Act and The Trade Marks Act, 1905, an office with all requisite buildings and conveniences, which shall be called, and is in this Act referred to as, the Patent Office.

(2) The Patent Office shall be under the immediate control of the comptroller, who shall act under the superintendence and direction of the Board of Trade.

(3) Any act or thing directed to be done by or to the comptroller may be done by or to any officer authorised by the Board of Trade.

(4) Rules under this Act may provide for the establishment of branch offices for designs at Manchester or elsewhere, and for any document or thing required by this Act to be sent to or done at the Patent Office being sent to or done at any branch office which may be established. (D. R. 80 to 88.)

Officers and clerks.

63. (1) There shall continue to be a comptroller-general of patents, designs, and trade marks, and the Board of Trade may, subject to the approval of the Treasury, appoint the comptroller, and so many examiners and other officers and clerks, with such designations and duties as the Board of Trade think fit, and may remove any of those officers and clerks.

(2) The salaries of those officers and clerks shall be appointed by the Board of Trade, with the concurrence of the Treasury, and those salaries and the

other expenses of the execution of this Act and The Trade Marks Act, 1905, shall continue to be paid out of money provided by Parliament.

Seal of Patent Office.

64. Impressions of the seal of the Patent Office shall be judicially noticed and admitted in evidence.

Fees.

Fees.

65. There shall be paid in respect of the grant of patents and the registration of designs, and applications therefor, and in respect of other matters with relation to patents and designs under this Act, such fees as may be, with the sanction of the Treasury, prescribed by the Board of Trade, so however that the fees prescribed in respect of the instruments and matters mentioned in the First Schedule to this Act shall not exceed those specified in that Schedule. (P. R. 4, Sch. I. D. R. 3, Sch. I.)

Provisions as to Registers and other Documents in Patent Office.

Trust not to be entered in registers.

66. There shall not be entered in any register kept under this Act, or be receivable by the comptroller, any notice of any trust expressed implied or constructive.

Inspection of and extracts from registers.

67. Every register kept under this Act shall at all convenient times be open to the inspection of the public, subject to the provisions of this Act and to such regulations as may be prescribed; and certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee. (P. R. 94. D. R. 61.)

Privilege of reports of examiners.

68. Reports of examiners made under this Act shall not in any case be published or be open to public inspection, and shall not be liable to production or inspection in any legal proceeding, unless the court or officer having power to order discovery in such legal proceeding certifies that such production or inspection is desirable in the interests of justice, and ought to be allowed.

Prohibition of publication of specification, drawings, &c., where application abandoned, &c.

69. (1) Where an application for a patent has been abandoned, or become void, the specifications and drawings (if any) accompanying or left in connexion with such application, shall not, save as otherwise expressly provided by this Act, at any time be open to public inspection or be published by the comptroller.

(2) Where an application for a design has been abandoned or refused the application and any drawings, photographs, tracings, representations, or specimens left in connexion with the application shall not at any time be open to public inspection or be published by the comptroller.

Power for comptroller to correct clerical errors.

70. The comptroller may, on request in writing accompanied by the prescribed fee,—

(*a*) Correct any clerical error in or in connexion with an application for a patent or in any patent or any specification (P. R. 95);

(*b*) Cancel the registration of a design either wholly or in respect of any particular goods in connexion with which the design is registered (D. R. 53 and 54);

(c) Correct any clerical error in the representation of a design or in the name or address of the proprietor of any patent or design, or in any other matter which is entered upon the register of patents or the register of designs. (P. R. 95, Sch. I. 43. D. R. 51, 52, Sch. I. 14.)

Entry of assignments and transmissions in registers.

71. (1) Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to the copyright in a registered design, the comptroller shall, on request and on proof of title to his satisfaction, register him as the proprietor of a patent or design. (P. R. 85 to 91. D. R. 43 to 49.)

(2) Where any person becomes entitled as mortgagee, licensee, or otherwise to any interest in a patent or design, the comptroller shall, on request and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register of patents or designs, as the case may be. (P. R. 90 and 91. D. R. 43 to 49.)

(3) The person registered as the proprietor of a patent or design shall, subject to the provisions of this Act and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise deal with, the patent or design and to give effectual receipts for any consideration for any such assignment, licence, or dealing: Provided that any equities in respect of the patent or design may be enforced in like manner as in respect of any other personal property.

Rectification of registers by court.

72. (1) The court may, on the application in the prescribed manner of any person aggrieved by the

non-insertion in or omission from the register of patents or designs of any entry, or by any entry made in either such register without sufficient cause, or by any entry wrongly remaining on either such register, or by an error or defect in any entry in either such register, make such order for making, expunging, or varying such entry as it may think fit.

(2) The court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connexion with the rectification of a register.

(3) The prescribed notice of any application under this section shall be given to the comptroller, who shall have the right to appear and be heard thereon, and shall appear if so directed by the court.

(4) Any order of the court rectifying a register shall direct that notice of the rectification be served on the comptroller in the prescribed manner, who shall upon the receipt of such notice rectify the register accordingly.

Powers and Duties of Comptroller.

Exercise of discretionary power by comptroller.

73. Where any discretionary power is by or under this Act given to the comptroller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification, or for registration of a design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard. (P. R. 102 to 105. D. R. 55 to 58.)

Power of comptroller to take directions of law officers.

74. The comptroller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act apply to a law officer for directions in the matter.

Refusal to grant patent &c. in certain cases.

75. The comptroller may refuse to grant a patent for an invention, or to register a design, of which the use would, in his opinion, be contrary to law or morality.

Annual reports of comptroller.

76. The comptroller shall, before the first day of June in every year, cause a report respecting the execution by or under him of this Act to be laid before both Houses of Parliament, and therein shall include for the year to which the report relates all general rules made in that year under or for the purposes of this Act, and an account of all fees, salaries, and allowances, and other money received and paid under this Act.

Evidence, &c.

Evidence before comptroller.

77. (1) Subject to rules under this Act in any proceeding under this Act before the comptroller the evidence shall be given by statutory declaration in the absence of directions to the contrary; but in any case in which the comptroller thinks it right so to do, he may take evidence vivâ voce in lieu of or in addition to evidence by declaration or allow any declarant to be cross-examined on his declaration. Any such statutory declaration may in the case of appeal be used before the court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit. (P. R. 106 and 107. D. R. 77 and 78.)

(2) In case any part of the evidence is taken viva voce, the comptroller shall, in respect of requiring the attendance of witnesses and taking evidence on oath, be in the same position in all respects as an official referee of the Supreme Court.

Certificate of comptroller to be evidence.

78. A certificate purporting to be under the hand of the comptroller as to any entry, matter, or thing which he is authorised by this Act, or any general rules made thereunder, to make or do, shall be primâ facie evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone. (P. R. 96. D. R. 67.)

Evidence of documents in Patent Office.

79. Printed or written copies or extracts, purporting to be certified by the comptroller and sealed with the seal of the Patent Office, of or from patents, specifications, and other documents in the Patent Office, and of or from registers and other books kept there, shall be admitted in evidence in all courts in His Majesty's dominions, and in all proceedings, without further proof or production of the originals.

Transmission of certified printed copies of specifications, &c.

80. (1) Copies of all specifications, drawings, and amendments left at the Patent Office after the commencement of this Act, printed for and sealed with the seal of the Patent Office, shall be transmitted to the Edinburgh Museum of Science and Art, and to the Enrolments Office of the Chancery Division in Ireland, and to the Rolls Office in the Isle of Man, within twenty-one days after they have been accepted or allowed at the Patent Office.

(2) Certified copies of or extracts from any such documents and of any documents so transmitted in pursuance of any enactment repealed by this Act shall be given to any person on payment of the prescribed fee; and any such copy or extract shall be admitted in evidence in all courts in Scotland and Ireland and in the Isle of Man without further proof or production of the originals.

Applications and notices by post.

81. Any application, notice, or other document authorised or required to be left, made, or given at the Patent Office or to the comptroller, or to any other person under this Act, may be sent by post. (P. R. 7. D. R. 9.)

Excluded days.

82. Where the last day fixed by this Act for doing anything under this Act falls on any day specified in rules under this Act as an excluded day, the rules may provide for the thing being done on the next following day not being an excluded day. (P. R. 110 and 111. D. R. 61, 65, and 66.)

Declaration by infant, lunatic, &c.

83. (1) If any person is, by reason of infancy, lunacy, or other disability, incapable of making any declaration or doing anything required or permitted by or under this Act, the guardian or committee (if any) of the person subject to the disability, or, if there be none, any person appointed by any court possessing jurisdiction in respect of his property, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of the person subject to the disability.

(2) An appointment may be made by the court for the purposes of this section upon the petition of any person acting on behalf of the person subject to the disability or of any other person interested in the making of the declaration or the doing of the thing.

Register of Patent Agents.

Register of patent agents.

84. (1) A person shall not be entitled to describe himself as a patent agent, whether by advertisement, by description on his place of business, by any document issued by him, or otherwise, unless he is registered as a patent agent in pursuance of this Act or an Act repealed by this Act.

(2) Every person who proves to the satisfaction of the Board of Trade that prior to the twenty-fourth day of December, one thousand eight hundred and eighty-eight, he had been bonâ fide practising as a patent agent shall be entitled to be registered as a patent agent in pursuance of this Act. (P. A. R. 6, 7.)

(3) If any person knowingly describes himself as a patent agent in contravention of this section he shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding twenty pounds.

(4) In this section "patent agent" means exclusively an agent for obtaining patents in the United Kingdom.

Agents for patents.

85. (1) Rules under this Act may authorise the comptroller to refuse to recognise as agent in

respect of any business under this Act any person whose name has been erased from the register of patent agents, or who is proved to the satisfaction of the Board of Trade, after being given an opportunity of being heard, to have been convicted of such an offence or to have been guilty of such misconduct as would have rendered him liable, if his name had been on the register of patent agents, to have his name erased therefrom, and may authorise the comptroller to refuse to recognise as agent in respect of any business under this Act any company which, if it had been an individual, the comptroller could refuse to recognise as such agent. (P. R. 9. D. R. 12.)

(2) Where a company or firm acts as agents, such rules as aforesaid may authorise the comptroller to refuse to recognise the company or firm as agent if any person whom the comptroller could refuse to recognise as an agent acts as director or manager of the company or is a partner in the firm.

(3) The comptroller shall refuse to recognise as agent in respect of any business under this Act any person who neither resides nor has a place of business in the United Kingdom or the Isle of Man.

Powers, &c. of Board of Trade.

Power for Board of Trade to make general rules.

86. (1) The Board of Trade may make such general rules and do such things as they think expedient, subject to the provisions of this Act—

(*a*) For regulating the practice of registration under this Act:

(*b*) For classifying goods for the purposes of designs:

(*c*) For making or requiring duplicates of specifications, drawings, and other documents:

(*d*) For securing and regulating the publishing and selling of copies, at such prices and in such manner as the Board of Trade think fit, of specifications, drawings, and other documents:

(*e*) For securing and regulating the making, printing, publishing, and selling of indexes to, and abridgments of, specifications and other documents in the Patent Office; and providing for the inspection of indexes and abridgments and other documents:

(*f*) For regulating (with the approval of the Treasury) the presentation of copies of Patent Office publications to patentees and to public authorities, bodies, and institutions at home and abroad:

(*g*) For regulating the keeping of the register of patent agents under this Act:

(*h*) Generally for regulating the business of the Patent Office, and all things by this Act placed under the direction or control of the comptroller, or of the Board of Trade.

(2) General rules shall whilst in force be of the same effect as if they were contained in this Act.

(3) Any rules made in pursuance of this section shall be advertised twice in the official journal to be issued by the comptroller, and shall be laid before both Houses of Parliament as soon as practicable after they are made, and if either House of Parliament, within the next forty days after any rules have been so laid before that House, resolves that the rules or any of them ought to be annulled, the rules or those to which the resolution applies shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under the rules or to the making of any new rules.

Proceedings of the Board of Trade.

87. (1) All things required or authorised under this Act to be done by, to, or before the Board of Trade, may be done by, to, or before the President or a secretary or an assistant secretary of the Board.

(2) All documents purporting to be orders made by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or by any person authorised in that behalf by the President of the Board, shall be received in evidence, and shall be deemed to be such orders without further proof, unless the contrary is shown.

(3) A certificate, signed by the President of the Board of Trade, that any order made or act done is the order or act of the Board, shall be conclusive evidence of the fact so certified.

Provision as to Order in Council.

88. An Order in Council under this Act shall, from a date to be mentioned for the purpose in the Order, take effect as if it had been contained in this Act; but may be revoked or varied by a subsequent Order.

Offences.

Offences.

89. (1) If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanor.

(2) If any person falsely represents that any article sold by him is a patented article, or falsely describes any design applied to any article sold by him as registered he shall be liable for every offence, on conviction under the Summary Jurisdiction Acts, to a fine not exceeding five pounds.

(3) If any person sells an article having stamped, engraved, or impressed thereon or otherwise applied thereto the word "patent," "patented," "registered," or any other word expressing or implying that the article is patented or that the design applied thereto is registered, he shall be deemed for the purposes of this section to represent that the article is a patented article or that the design applied thereto is a registered design.

(4) Any person who, after the copyright in a design has expired, puts or causes to be put on any article

to which the design has been applied the word "registered," or any word or words implying that there is a subsisting copyright in the design, shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds.

(5) If any person uses on his place of business, or on any document issued by him, or otherwise, the words "Patent Office," or any other words suggesting that his place of business is officially connected with, or is, the Patent Office, he shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding twenty pounds.

90. (1) The grant of a patent under this Act shall not be deemed to authorise the patentee to use the Royal Arms or to place the Royal Arms on any patented article.

Unauthorised assumption of Royal Arms.

(2) If any person, without the authority of His Majesty, uses in connection with any business, trade, calling, or profession the Royal Arms (or arms so nearly resembling them as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised to use the Royal Arms, he shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding twenty pounds.

Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing such arms to continue to use such trade mark.

International and Colonial Arrangements.

International and Colonial arrangements.

91. (1) If His Majesty is pleased to make any arrangement with the government of any foreign state for mutual protection of inventions, or designs, or trade marks, then any person who has applied for protection for any invention, design, or trade mark in that state shall be entitled to a patent for his invention or to registration of his design or trade mark under this Act or The Trade Marks Act, 1905, in priority to other applicants; and the patent or registration shall have the same date as the date of the application in the foreign state.

Provided that—

(*a*) The application is made, in the case of a patent within twelve months, and in the case of a design or trade mark within four months, from the application for protection in the foreign state; and

(*b*) Nothing in this section shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the actual date on which his complete specification is accepted, or his design or trade mark is registered, in this country. (P. R. 17, 18, and 83.)

(2) The patent granted for the invention or the registration of a design or trade mark shall not be invalidated—

(*a*) In the case of a patent, by reason only of the publication of a description of, or use of, the invention; or

(*b*) In the case of a design, by reason only of the exhibition or use of, or the publication of a description or representation of, the design; or

(*c*) In the case of a trade mark, by reason only of the use of the trade mark,

in the United Kingdom or the Isle of Man during the period specified in this section as that within which the application may be made.

(3) The application for the grant of a patent, or the registration of a design, or the registration of a trade mark under this section, must be made in the same manner as an ordinary application under this Act or The Trade Marks Act, 1905: Provided that—

(*a*) In the case of patents the application shall be accompanied by a complete specification, which, if it is not accepted within the twelve months from the application for protection in the foreign state, shall with the drawings (if any) be open to public inspection at the expiration of that period; and (P. R. 15 to 18.)

(*b*) In the case of trade marks, any trade mark the registration of which has been duly applied for in the country of origin may be registered under The Trade Marks Act, 1905.

(4) The provisions of this section shall apply only in the case of those foreign states with respect to which His Majesty by Order in Council declares them

to be applicable, and so long only in the case of each state as the Order in Council continues in force with respect to that state.

(5) Where it is made to appear to His Majesty that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, and trade marks, patented or registered in this country, it shall be lawful for His Majesty, by Order in Council, to apply the provisions of this section to that possession, with such variations or additions, if any, as may be stated in the Order.

Definitions.

Provisions as to "the court."

92. (1) In this Act, unless the context otherwise requires, "the court" means, subject to the provisions as to Scotland, Ireland, and the Isle of Man, the High Court in England.

(2) Where by virtue of this Act a decision of the comptroller is subject to an appeal to the court, or a petition may be referred or presented to the court, the appeal shall, subject to and in accordance with rules of the Supreme Court, be made and the petition referred or presented to such judge of the High Court as the Lord Chancellor may select for the purpose, and the decision of that judge shall be final,[1] except in the case of an appeal from a decision of the comptroller revoking a patent on any ground on which the grant of such patent might have been opposed.

[1] *See* Corrigendum Note on page 54.

Definitions. **93.** In this Act, unless the context otherwise requires,—

"Law officer" means the Attorney-General or Solicitor-General for England:

"Prescribed" means prescribed by general rules under this Act:

"British possession" does not include the Isle of Man or the Channel Islands:

"Patent" means letters patent for an invention:

"Patentee" means the person for the time being entitled to the benefit of a patent:

"Invention" means any manner of new manufacture the subject of letters patent and grant of privilege within section six of the Statute of Monopolies (that is, the Act of the twenty-first year of the reign of King James the First, chapter three, intituled "An Act concerning monopolies and dispensations with penal laws and the forfeiture thereof"), and includes an alleged invention:

"Inventor" and "applicant" shall, subject to the provisions of this Act, include the legal representative of a deceased inventor or applicant:

"Design" means any design (not being a design for a sculpture or other thing within the protection of The Sculpture Copyright Act, 1814) applicable to any article, whether

51 Geo. 3. c. 56.

the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined:

"Article" means (as respects designs) any article of manufacture and any substance artificial or natural, or partly artificial and partly natural:

"Copyright" means the exclusive right to apply a design to any article in any class in which the design is registered:

"Proprietor of a new and original design,"—

(*a*) Where the author of the design, for good consideration, executes the work for some other person, means the person for whom the design is so executed; and

(*b*) Where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means, in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired; and

(e) In any other case, means the author of the design;

and where the property in, or the right to apply, the design has devolved from the original proprietor upon any other person, includes that other person.

Application to Scotland, Ireland, and the Isle of Man.

Application to Scotland.

94. In the application of this Act to Scotland—

(1) In any action for infringement of a patent in Scotland the provisions of this Act with respect to calling in the aid of an assessor shall apply, and the action shall be tried without a jury, unless the court otherwise direct, but otherwise nothing shall affect the jurisdiction and forms of process of the courts in Scotland in such an action or in any action or proceeding respecting a patent hitherto competent to those courts; and for the purposes of the provisions so applied "court of appeal" shall mean any court to which such action is appealed:

(2) Any offence under this Act declared to be punishable on conviction under the Summary Jurisdiction Acts may be prosecuted in the sheriff court:

(3) Proceedings for revocation of a patent shall be in the form of an action of reduction at the instance of the Lord Advocate, or at the instance of a party having interest

with his concurrence, which concurrence may be given on just cause shown only, and service of all writs and summonses in that action shall be made according to the forms and practice existing at the commencement of this Act:

(4) The provisions of this Act conferring a special jurisdiction on the court as defined by this Act, shall not, except so far as the jurisdiction extends, affect the jurisdiction of any court in Scotland in any proceedings relating to patents or to designs; and with reference to any such proceedings, the term "the Court" shall mean any Lord Ordinary of the Court of Session, and the term "Court of Appeal" shall mean either Division of that Court:

(5) Notwithstanding anything in this Act, the expression "the court" shall, as respects petitions for compulsory licences on revocation which are referred by the Board of Trade to the Court in Scotland, mean any Lord Ordinary of the Court of Session, and shall in reference to proceedings in Scotland for the extension of the time of a patent mean such Lord Ordinary:

(6) The expression "Rules of the Supreme Court" shall, except in section ninety-two of this Act, mean act of sederunt:

(7) If any rectification of a register under this Act is required in pursuance of any

proceeding in a court, a copy of the order, decree, or other authority for the rectification, shall be served on the comptroller, and he shall rectify the register accordingly:

(8) The expression "injunction" means "interdict."

Application to Ireland.

95. In the application of this Act to Ireland—

(1) All parties shall, notwithstanding anything in this Act, have in Ireland their remedies under or in respect of a patent as if the same had been granted to extend to Ireland only:

(2) The provisions of this Act conferring a special jurisdiction on the court, as defined by this Act, shall not, except so far as the jurisdiction extends, affect the jurisdiction of any court in Ireland in any proceedings relating to patents or to designs; and with reference to any such proceedings the term "the Court" means the High Court in Ireland:

(3) If any rectification of a register under this Act is required in pursuance of any proceeding in a court, a copy of the order, decree, or other authority for the rectification shall be served on the comptroller, and he shall rectify the register accordingly.

Isle of Man.

96. This Act shall extend to the Isle of Man, subject to the following modifications:—

(1) Nothing in this Act shall affect the jurisdiction of the courts in the Isle of Man

in proceedings for infringement, or in any action or proceeding respecting a patent or design competent to those courts:

(2) The punishment for a misdemeanour under this Act in the Isle of Man shall be imprisonment for any term not exceeding two years, with or without hard labour, and with or without a fine not exceeding one hundred pounds, at the discretion of the court:

(3) Any offence under this Act committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered, at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted.

Repeal, Savings, and Short Title.

Saving for prerogative.

97. Nothing in this Act shall take away, abridge, or prejudicially affect the prerogative of the Crown in relation to the granting of any letters patent or to the withholding of a grant thereof.

Repeal and savings.

98. (1) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule—

(*a*) As respects the enactments mentioned in Part I. of that Schedule, as from the commencement of this Act;

(*b*) As respects the enactments mentioned in Part II. of that Schedule, as from the date when rules of the Supreme Court regulating the matters dealt with in those enactments come into operation;

(*c*) As respects the enactments mentioned in Part III. of that Schedule, as from the date when rules under this Act regulating the matters dealt with in those enactments come into operation;

and the enactments mentioned in Part II. and Part III. of that Schedule shall, until so repealed, have effect as if they formed part of this Act:

Provided that this repeal shall not affect any convention, Order in Council, rule, or table of fees having effect under any enactment so repealed, but any such convention, Order in Council, rule, or table of fees in force at the commencement of this Act shall continue in force, and may be repealed, altered or amended, as if it had been made under this Act.

(2) Except where otherwise expressly provided, this Act shall extend to all patents granted and all designs registered before the commencement of this Act, and to applications then pending, in substitution for such enactments as would have applied thereto if this Act had not been passed.

Short title and commencement.

99. This Act may be cited as The Patents and Designs Act, 1907, and shall, save as otherwise expressly provided, come into operation on the first day of January one thousand nine hundred and eight.

SCHEDULES.

Section 65.

FIRST SCHEDULE.

Fees on Instruments for Obtaining Patents and Renewal.

Note.—This Schedule is not reprinted, the Statutable Fees having been replaced by another Schedule issued by the Board of Trade. See the First Schedule to The Patents Rules, 1907.

SECOND SCHEDULE.

Section 68.

Enactments Repealed.

PART I.

Session and Chapter.	Short Title.	Extent of Repeal.
46 & 47 Vict. c. 57.	The Patents, Designs, and Trade Marks Act, 1883.	The whole Act, except subsections (5), (6), and (7) of section twenty-six, section twenty-nine, subsections (2) and (3) of section forty-seven, and section forty-eight.
48 & 49 Vict. c. 63.	The Patents, Designs, and Trade Marks (Amendment) Act, 1885.	The whole Act.
49 & 50 Vict. c. 37.	The Patents Act, 1886 ...	The whole Act.
51 & 52 Vict. c. 50.	The Patents, Designs, and Trade Marks Act, 1888.	The whole Act.
1 Edw. 7 c. 18.	The Patents Act, 1901 ...	The whole Act.
2 Edw. 7 c. 34.	The Patents Act, 1902 ...	The whole Act.
7 Edw. 7 c. 28.	The Patents and Designs (Amendment) Act, 1907.	The whole Act.

SECOND SCHEDULE—*continued.*

PART II.

Session and Chapter.	Short Title.	Extent of Repeal.
46 & 47 Vict. c. 57.	The Patents, Designs, and Trade Marks Act, 1883.	Subsections (5), (6) and (7) of section twenty-six, and section twenty-nine.

PART III.

Session and Chapter.	Short Title.	Extent of Repeal.
46 & 47 Vict. c. 57.	The Patents, Designs, and Trade Marks Act, 1883.	Subsections (2) and (3) of section forty-seven and section forty-eight.

INTERNATIONAL CONVENTION.

THE International Convention for the Protection of Industrial Property is comprised in three documents. These are:—

1. The Original Convention, signed at Paris on the 20th March, 1883.

2. The Final Protocol, executed at the same time, by which various clauses of the Original Convention were explained, and to a certain extent modified.

3. The Additional Act, signed at Brussels on the 14th December, 1900, by which several modifications were introduced into the terms of the Original Convention.

In the following reprint the three documents have been incorporated, formal parts being omitted. The original text, where repealed by the Additional Act, has been left out and replaced by the new provisions. Where the later documents serve only to explain the first, they are printed below the text in smaller type.

Great Britain acceded to the International Convention on the 17th March, 1884. The States adhering to it at the present time are enumerated under the heading International Convention in the Tabular Synopsis, page 87.

ARTICLE 1.

The Governments of Belgium, Brazil, Spain, France, Guatemala, Italy, Holland, Portugal, Salvador, Servia, and Switzerland constitute themselves into a Union for the protection of Industrial Property.

1. The words "Industrial Property" are to be understood in their broadest sense; they are not to apply simply to industrial products, properly so called, but also to agricultural products (wines, corn, fruits, cattle, &c.), and to mineral products employed in commerce (mineral waters, &c.).

ARTICLE II.

The subjects or citizens of each of the Contracting States shall, in all the other States of the Union, as regards patents, industrial designs or models, trade-marks and trade names, enjoy the advantages that their respective laws now grant, or shall hereafter grant, to their own subjects or citizens.

Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided they observe the formalities and conditions imposed on subjects or citizens by the internal legislation of each State.

2. Under the word "patents" are comprised the various kinds of industrial patents recognised by the legislation of each of the Contracting States, such as importation patents, improvement patents, &c.

3. The last paragraph of Article II. does not affect the legislation of each of the Contracting States as regards the procedure to be followed before the Tribunals, and the competence of those Tribunals.

The Final Protocol annexed to the International Convention of the 20th March, 1883, shall be completed by the addition of No. 3 bis in the following terms:—

"3 bis. The patent, in each country, shall not be liable to forfeiture on account of failure to utilize it, until after the expiration of at least three years from the date of the deposit of the application in the country concerned, and only provided the patentee cannot show reasonable cause for his inaction."

ARTICLE III.

1. Article III. of the Convention shall run as follows:—

Article III. The subjects or citizens of States which are not Parties to the Union shall be assimilated to the subjects or citizens of the Contracting States, provided that they are domiciled in or have industrial or commercial establishments, real and effective, in the territory of one of the States of the Union.

ARTICLE IV.

2. Article IV. shall run as follows:—

Article IV. Any person who shall have duly applied for a patent, industrial design, or model or trade-mark in one of the Contracting States, shall enjoy, in order to admit of such request being lodged in the other States, during the periods of time mentioned below, a right of priority, the rights of third parties being reserved.

Consequently, subsequent registration in one of the other States of the Union, before the expiration of such periods of time, shall not be invalidated by any acts accomplished in the interval—either, for instance, by another registration, by the publication of the invention, or by the working of it, by the sale of patterns of the design or model, or by the use of the trade-mark.

The above-mentioned periods of time during which priority is guaranteed shall be twelve months for patents with respect to inventions, and four months for patents for industrial designs or models, as well as for trade or merchandise marks.

3. There shall be inserted in the Convention an Article IV. bis, in the following terms:—

Article IV. bis. Patents applied for in the various Contracting States by persons admitted to the benefits of the Convention in the terms of Articles II. and III. shall be independent of the patents obtained for the same invention in the other States, whether such States be or be not parties to the Union.

This stipulation shall apply to patents already existing at the time when it shall come into effect.

The same stipulation shall apply, in the case of the accession of the new States, with regard to patents in existence, either on one side or the other, at the time of accession.

ARTICLE V.

The introduction by the patentee into the country where the patent has been granted of objects manufactured in any of the States of the Union shall not entail forfeiture.

Nevertheless, the patentee shall remain bound to work his patent in conformity with the laws of the country into which he introduces the patented objects.

ARTICLE VI.

Every trade-mark duly registered in the country of origin shall be admitted for registration, and protected in the form originally registered in all the other countries of the Union.

That country shall be deemed the country of origin where the applicant has his chief seat of business.

If this chief seat of business is not situated in one of the countries of the Union, the country to which the applicant belongs shall be deemed the country of origin.

Registration may be refused if the object for which it is solicited is considered contrary to morality or public order.

4. Paragraph 1 of Article VI. is to be understood as meaning that no trade-mark shall be excluded from protection in any State of the Union, from the fact alone that it does not satisfy, in regard to the signs composing it, the conditions of the legislation of that State; provided that on this point it comply with the legislation of the country of origin, and that it had been properly registered in said country of origin. With this exception, which relates only to the form of the mark, and under reserve of the provisions of the other Articles of the Convention, the internal legislation of each State remains in force.

To avoid misconstruction, it is agreed that the use of public armorial bearings and decorations may be considered as being contrary to public order in the sense of the last paragraph of Article VI.

ARTICLE VII.

The nature of the goods on which the trade-mark is to be used can, in no case, be an obstacle to the registration of the trade-mark.

ARTICLE VIII.

A trade name shall be protected in all the countries of the Union, without necessity of registration, whether it form part or not of a trade-mark.

ARTICLE IX.

All goods illegally bearing a trade-mark or trade name may be seized on importation into those States of the Union where this mark or name has a right to legal protection.

The seizure shall be effected at the request of either the proper Public Department or of the interested party, pursuant to the internal legislation of each country.

4. The two following paragraphs shall be added to Article IX.:—

In States the laws of which do not admit of seizure upon importation, prohibition of importation may take the place of such seizure.

The authorities shall not be compelled to effect the seizure in the case of goods in transit.

ARTICLE X.

5. Article X. shall run as follows:—

Article X. The stipulations of the preceding Article shall be applicable to every production which may falsely bear as indication of origin the name of a specified locality, when such indication shall be joined to a trading name of a fictitious character or used with intent to defraud.

Any producer, manufacturer, or trader engaged in the production, manufacture, or trade of such goods, and established either in the locality falsely designated as the place of origin, or in the district where the locality is situated, is to be deemed a party concerned.

6. There shall be inserted in the Convention an Article X. bis, in the terms following:—

Article X. bis. Persons resorting to the countries referred to in the Convention (Articles II. and III.) shall enjoy in all the States of the Union the protection accorded to nationals against dishonest competition.[1]

[1] The passage in the text is the official translation as it appears in Command Paper [Cd. 1084] of the Treaty Series, No. 15, 1902, but it is not authoritative, the French text being the authoritative text. This text reads as follows: "Article X. bis. Les ressortissants de la Convention (Articles II. et III.) jouiront, dans tous les États de l'Union, de la protection accordée aux nationaux contre la concurrence déloyale," and would, perhaps, be better translated thus—"Persons whose rights are founded in the Convention shall enjoy in all the States of the Union the protection accorded to nationals against unlawful competition."

ARTICLE XI.

7. Article XI. shall run as follows:—

Article XI. The High Contracting Parties shall, in conformity with the legislation of each country, accord temporary protection to inventions susceptible of being patented, and to industrial designs or models, as well as to trade-marks or merchandize marks, in respect of products which shall be exhibited at official or officially recognised International Exhibitions held in the territory of one of them.

ARTICLE XII.

Each of the High Contracting Parties agrees to establish a special Government Department for industrial property, and a central office for communication to the public of patents, industrial designs or models, and trade-marks.

5. The organization of the special Department for Industrial Property mentioned in Article XII. shall comprise, so far as possible, the publication in each State of a periodical official paper.

ARTICLE XIII.

An international office shall be organized under the name of "Bureau International de l'Union pour la Protection de la Propriété Industrielle" (International Office of the Union for the Protection of Industrial Property).

This office, the expense of which shall be defrayed by the Governments of all the Contracting States, shall be placed under the high authority of the Central Administration of the Swiss Confederation, and shall work under its supervision. Its functions shall be determined by agreement between the States of the Union.

6. The common expenses of the International Office, instituted by virtue of Article XIII., are in no case to exceed for a single year a total sum representing an average of 2,000 fr. for each Contracting State.

To determine the part which each State should contribute to this total of expenses, the Contracting States, and those which

may afterwards join the Union, shall be divided into six classes, each contributing in the proportion of a certain number of units, namely:—

1st class	... ...	25 units.
2nd class	... ...	20 ,,
3rd class	... ...	15 ,,
4th class	... ...	10 ,,
5th class	... ...	5 ,,
6th class	... ...	3 ,,

These co-efficients will be multiplied by the number of States in each class, and the sum of the result thus obtained will supply the number of units by which the total expense has to be divided. The quotient will give the amount of the unit of expense.

The Contracting States are classed as follows, with regard to the division of expense:—

1st class ...	France, Italy.
2nd class ...	Spain.
3rd class ...	Belgium, Brazil, Portugal, Switzerland.
4th class ...	Holland.
5th class ...	Servia.
6th class ...	Guatemala, Salvador.

The Swiss Government will superintend the expenses of the International Office, advance the necessary funds, and render an annual account, which will be communicated to all the other Administrations.

The International Office will centralise information of every kind relating to the protection of Industrial Property, and will bring it together in the form of a general statistical statement which will be distributed to all the Administrations. It will interest itself in all matters of common utility to the Union, and will edit, with the help of the documents supplied to it by the various Administrations. a periodical paper in the French language dealing with questions regarding the object of the Union.

The numbers of this paper, as well as all the documents published by the International Office, will be circulated among the Administrations of the States of the Union in the proportion of the number of contributing units as mentioned above. Such further copies as may be desired either by the said Administrations or by societies or private persons will be paid for separately.

The International Office shall at all times hold itself at the service of members of the Union, in order to supply them with any special information they may need on questions relating to the international system of Industrial Property.

The Administration of the country in which the next conference is to be held will make preparations for the transactions of that conference, with the assistance of the International Office.

The Director of the International Office will be present at the meetings of the conferences, and will take part in the discussions, but without the privilege of voting.

He will furnish an annual Report upon his administration of the Office, which shall be communicated to all the members of the Union.

The official language of the International Office will be French.

ARTICLE XIV.

8. Article XIV. shall run as follows:—

Article XIV. The present Convention shall be submitted to periodical revisions with a view to the introduction of amendments calculated to improve the system of the Union.

For this purpose, Conferences shall be held successively, in one of the Contracting States, between the Delegates of the said States.

ARTICLE XV.

It is agreed that the High Contracting Parties respectively reserve to themselves the right to make separately, as between themselves, special arrangements for the protection of Industrial Property, in so far as such arrangements do not contravene the provisions of the present Convention.

ARTICLE XVI.

9. Article XVI. shall run as follows:—

Article XVI. States which are not parties to the present Convention shall be allowed to accede to it upon their request.

The accession shall be notified through the diplomatic channel to the Government of the Swiss Confederation, and by the latter to all the other States.

It shall entail, as a matter of right, accession to all the clauses, as well as admission to all the advantages stipulated in the present Convention, and shall take effect one month after the dispatch of the notification by the Swiss Government to the other States of the Union, unless a subsequent date have been indicated by the acceding State.

ARTICLE XVII.

The execution of the reciprocal engagements contained in the present Convention is subordinated, in so far as necessary, to the observance of the formalities and rules established by the Constitutional laws of those of the High Contracting Parties who are bound to procure the application of the same, which they engage to do with as little delay as possible.

ARTICLE XVIII.

The present Convention shall come into operation one month after the exchange of ratifications, and shall remain in force for an unlimited time, till the expiry of one year from the date of its denunciation. This denunciation shall be addressed to the Government commissioned to receive adhesions. It shall only affect the denouncing State, the Convention remaining in operation as regards the other Contracting Parties.

ARTICLE XIX.

The present Convention shall be ratified, and the ratifications exchanged in Paris, within one year at the latest.

In witness whereof the respective Plenipotentiaries have signed the same, and have affixed thereto their seals.

Done at Paris the 20th March, 1883.

7. The present Final Protocol, which shall be ratified together with the Convention concluded this day shall be considered as forming an integral part of, and shall have the same force, validity, and duration as the said Convention.

In witness whereof the undersigned Plenipotentiaries have drawn up the present Protocol.

The present Additional Act shall have the same value and duration as the Convention of the 20th March, 1883.

It shall be ratified, and the ratifications shall be deposited at the Ministry for Foreign Affairs, Brussels, as soon as possible, and at the latest within a period of eighteen months from the date of signature.

It shall come into force three months after the Protocol of deposit shall have been closed.

In witness whereof the respective Plenipotentiaries have signed the present Additional Act.

Done at Brussels, in a single copy, the 14th December, 1900.

INDEX.

NOTE.—In this Index references are given within square brackets to the Rules and Forms contained in the Supplementary Volume. In those references the numbers in heavy type correspond, not to pages, but to the numbers attributed in the official publications to the Rules and Forms referred to. The several collections are cited by the following abbreviations:—L. O. R., Law Officers' Rules; P. R., Patents Rules; P. F., Patents Forms; D. R., Designs Rules; D. F., Designs Forms; and P. A. R., Patent Agents' Rules.

ABRIDGMENTS (*see* PATENT OFFICE PUBLICATIONS), 92, 144.

ACCEPTANCE
- Of application, 109.
- Of complete specification, 74, 110, 112.
- Of specification, 74, 109.
  - To be advertised, 74, 114. [P. R. 38.]

ACCOUNT: Power to order, 71, 136.

ACTION
- For infringement of copyright, 19, 152.
- For infringement of patent—
  - Defences to, 30, 85, 127, 139.
  - Hearing with assessor, 135.
- For injury by reason of a monopoly, 100.
- For threats, 9, 19, 100, 136, 152.
- *See* THREATS, ACTION FOR.

ACTION OF REDUCTION
- Authorised, 172.
- Defined, 80.

ACT OF SEDERUNT defined, 79, 173.

ADDITION: PATENT OF (*see* PATENT OF ADDITION), 4, 16, 45, 121.

ADDRESS FOR SERVICE. [P. R. 8; P. F. 26; D. R. 10, 11, 50 D, F. 6, 16.]

ADMIRALTY
May approve Rules, 70, 134. [P. R. 97 to 99.]
May open a sealed specification, 70, 133.
Power to —
Forbid publication of specification, 23, 70, 132.
Secure patents for the public service, 23, 70, 132.
Provisions of the Act summarised, 70.

AGENT (*see* PATENT AGENT).

AID TO DISABLED PERSONS, 65, 100. [P. R. 112; D. R. 62.]

AMENDMENT
Of application, 109. [P. R. 13.]
Of complete specification, 15, 109, 110, 112, 114.
By leave of Patent Office, 122. [P. R. 13, 33, 60; P. F. 17.]
By means of a patent of addition, 17, 45.
By way of amplification, 17, 48.
Effect of, on damages, 125.
Limitation on, 123.
Opposition to, 123. [P. R. 60 to 66; P. F. 18.]
Pending action, 16, 124.
Terms of, 123, 124.
Of documents in general. [P. R. 108; D. R. 63.]
Of specification in general, 109. [P. R. 13.]

ANNUAL REPORT of Comptroller-General, 80, 158.

ANTICIPATION, 37, 112. [P. R. 28 to 35.]
Examination for, limited to fifty years, 112, 141.
Extended to concurrent applications, 37, 113.

APPEAL
From the Comptroller-General—
To the Board of Trade, 24, 145. [D. R. 89 to 94; D. F. 25.]
To the High Court, 25, 129, 130.
To the Law Officer (see Law Officers' Rules in Supplementary Volume), 23, 25, 74, 109, 111, 113, 116, 123. [P. F. 4; D. F. 7.]
Procedure on. [L. O. R. 8 to 14.]
Heard with the assistance of an assessor, 116, 134, 135.
Machinery of, 53, 78.
The right restricted (see Corrigendum Note, page 54), 21, 39, 53, 169.

APPLICANT
Defined, 80, 170.
For a patent, 11, 58, 107.
For registration of a design, 145, 181. [D. R. 36.]
Of a trade mark, 20, 168, 181, 182.
Grant to joint applicants, 116, 137. [P. R. 51.]

APPLICANT—*continued*.
Hearing of, by the Comptroller. [P. R. 31, 33.]
Priority of exhibitor, 12, 143, 167.
Priority under the International Convention, 181.
Under disability, 8, 161.
Vesting of patent rights in, 12, 114.

APPLICATION:
Abandonment of—
Abandoned, not to be published, 155.
By personal representative, 80, 142. [P. R. 11.]
For a patent—
By whom, 73, 107, 118, 121, 142, 143, 170. [P. R. 6 to 26.]
Contents of, 108.
Date of, 109, 111.
Examination of, 28, 63, 110.
How made, 107, 160. [P. R. 10 to 12, 15 to 18; P. F. 1, 1A, 1B.]
For a patent of addition, 75, 121. [P. R. 10; P. F. 1c.]
Forfeiture of, 110.
For registration of a trade mark, 181, 182.
For registration of design, 82, 145, 167. [D. R. 7 to 9, 13 to 34, and 80 to 88; D. F. 2 to 5.]
Abandonment of, 145. [D. R. 35.]
Applications classified, 80.
By exhibitor at industrial exhibition, 151.
Prior, defined, 114.
Re-dated, 109. [P. R. 28.]
Under the International Convention, 20, 43, 167, 181. [P. R. 15 to 18.]

ARBITRATION
Between licensor and licensee, 139.
Between the Crown and a patentee, 131.

ARTICLE
Defined, 82, 171.
Set of Articles defined. [D. R. 5.]

ASSESSOR
To assist Court of Appeal, 135.
To assist in hearing infringement action, 135.
To assist Law Officer, 116.

ASSIGNMENT: Entry in Register, 131, 146, 156. [P. R. 85 to 90; P. F. 27, 28; D. R. 43 to 49; D. F. 11, 13 to 15.]

ATTORNEY-GENERAL (*see* LAW OFFICER).

AUTHORITY CONFERRED BY THE ACT, 65.

BOARD OF EDUCATION: Powers of, 141.

BOARD OF TRADE:
How constituted for the purposes of the Act, 82, 101.
Jurisdiction of, 68, 145, 162.
Powers of, 70.
To appoint arbitrator between licensor and licensee, 130.
To appoint deputy to Comptroller-General, 153.
To appoint officers to Patent Office, 153.
To assess damages, 15.
To certify exhibition, 24, 143, 151.
To enforce Section 8, 114.
To fix price of models, 144.
To hear appeals, 24, 145.
To make Rules, 23, 70, 162.
To receive and deal with petitions for compulsory licences, 24, 60, 125.
To register patent agents, 24, 161, 163.
To settle scale of fees, 154.
To superintend the Patent Office, 23, 60, 70, 153, 163.

BOOK OF BOUNTY, 98.

BRANCH (*see* PATENT OFFICE).

BRITISH POSSESSION defined, 82, 170.

CANCELLATION
Of provisional specification, 111.
Of registration of design, 150, 155, 157. [D. R. 53, 54; D. F. 18.]
For use abroad, 35, 150. [D. R. 70 to 75; D. F. 23.]

CERTIFICATE
By Comptroller-General is *prima facie* evidence, 159.
Procedure to obtain. [P. R. 96; P. F. 31; D. R. 67; D. F. 22.]
By President of Board of Trade is conclusive evidence, 164.
Certified copy of Register, 154. [P. R. 96.]
Of registration, 146. [D. R. 67; D. F. 22.]
Duplicate, 146. [D. F. 27.]
Of validity questioned, 136, 152.

CHARTERS (*see* CORPORATE PRIVILEGES), 102.

CLAIM
Defined, 82, 108.
More than one, may be made, 118.
To be clear and succinct. [P. R. 14.]

CLASSIFICATION OF DESIGNS explained, 82. [D. R. 6, Sch. III.]

Figures in heavy type refer to paragraphs, not to pages.

CLERICAL ERROR: Correction of, 155, 156. [P. R. 95; P. F. 30; D. R. 51, 52; D. F. 17.]

COLONIAL ARRANGEMENTS
Authorised, 169.
Enumerated, 84.

COMITY: International, 67.

COMMISSIONER OF PATENTS under the Act of 1852, 24.

COMMON LAW:
Successive patent grants at, 6.
Term of common law patent, 6.

COMMUNICATOR OF AN INVENTION: Rights of, against a fraudulent patentee, 11, 115, 118, 128.

COMPTROLLER-GENERAL
Evidence before, 158. [P. R. 112; D. R. 62, 79.]
Has status of an official referee, 150.
His deputy, 153.
His powers enumerated, 66, 67, 80, 71.
Judicial functions of, 25, 69.
Jurisdiction to revoke a mischievous patent, 10, 25, 129.
To allow amendment, 15, 122.
To revive a lapsed patent, 14, 121.
To revoke a patent on grounds of opposition, 25, 128.
To revoke a surrendered patent, 25, 120.
Power to consult Law Officers, 25, 158.
To *appear and be heard in the High Court*, 124, 157.
To authorise inspection of Design Register, 140.
To award costs, &c., 140.
To consult the Law Officer, 158.
To give information concerning registered design, 150.
To grant *locus penitentiæ* to a patentee in default, 26, 130.
To refuse a patent, 25, 113, 158.
To refuse to register design, 145, 158.
Source of his powers, 25.
To be continued, 153.
To be head of the Patent Office, 153.
To be heard on application to rectify the Register, 157.
To have notice of Order to rectify Register, 157.
To make an annual report, 158.

COMPULSORY LICENCES:
Grounds for, 27, 125.
History of, 9.
Jurisdiction to order, 9, 37, 125.

COMPULSORY LICENCES—*continued.*
Order to operate automatically, 127.
Parties to proceedings, 120.
Petition for, 24, 125. [P. R. 68.]
Form of. [P. F. 20.]
Power of Board of Trade, 60, 125.
Proceedings for, 77, 125. [P. R. 68 to 74; P. F. 19 to 21.]
Reference to High Court, 125. [P. R. 74.]

CONTRACT in restraint of trade, 30, 65, 137.
Answer to an action of infringement, 27, 130.
Declared illegal, 27, 30, 65, 138.

COPIES:
False copy of Register, 165.
Of deeds, &c., to be furnished for registration, 131. [P. R. 89.]
See also SEALED COPIES.

COPYRIGHT IN DESIGN
Assimilated to patent right, 19, 152.
Compared with patent right, 19, 34.
Conferred by the Act, 18.
Defined, 84, 171.
Extension of, 6, 19, 147. [D. R. 37 to 42; D. F. 8 to 10.]
Forfeited by user mainly abroad, 19, 35, 150.
Information concerning, 150. [D. R. 59, 60.]
Originally by patent, 18.
Owner's rights summarised, 61.
Penalty for infringement of, 19, 36, 64, 152.
Term of, 19, 147.
See REGISTRATION OF DESIGNS.

CORPORATE PRIVILEGES saved, 102.

COSTS
In patent action, 136.
Order for, made a Rule of Court, 141.
Power of Comptroller-General to award, 140.
Power of Law Officer to award, 141. [L. O. R. 11 to 14.]
Security for, power of Comptroller-General to order, 140.

COUNTERCLAIM: Revocation by, 38, 135.

COURT defined, 84, 169, 172 to 174.

CROWN:
Patent to prevail against, 131.
Prerogative saved, 72, 175.

DAMAGES
For infringement of patent—
After amendment of specification, 125.
Against innocent infringer, 135.
Before publication of the complete specification, 117.
In an action for threats, 136.
In an action on a copyright, 152.
In case of lapsed patent, 120, 122.

DECLARATIONS OF LAW, 65.
Amendment of specification, 123.
As to monopolies, &c., 99.
As to unwarranted publication, 141.
Certain contracts in restraint of trade, 138.
Communication to Secretary of State, 134.
Disconformity of complete to provisional specification, 142.
Result of official searches, 113.

DEFAULT OF PATENTEE, 20, 63.
To bring his invention into use, 120.
To pay renewal fees, 119.
To supply the reasonable requirements of the public, 120.

DEFENCE
To action for infringement of patent, 30, 85, 127, 130.
To action on copyright, 150.

DEFINITIONS, 70, 169.

DEPARTMENTS may use patented inventions, 131.

DESCRIPTION (*see* INSUFFICIENT DESCRIPTION).

DISABLED PERSONS: Aid to, 65, 160, 161. [P. R. 112.]

DESIGN
Defined, 84, 170.
What may be registered, 145, 167.
See also COPYRIGHT *and* REGISTRATION.

DISCONFORMITY
Examination for, 110.
A ground of opposition, 86, 115.
Not ground of invalidity, 65, 142.

DISCRETION
Of Comptroller-General, 67, 112, 114, 119, 121, 130, 145, 146, 158.
Exercise of, 157. [P. R. 102 to 105; D. R. 55 to 58.]
Of High Court, 67, 121.
Of Law Officer, 67, 117.

Figures in heavy type refer to paragraphs, not to pages.

DUTY
Enforced on applicant for a patent, 62, 108.
Board of Trade, 23, 62, 125.
Comptroller-General, 25, 62.
(For detailed references to the Act *see* page 62.)
Examiner, 63, 109, 112.
High Court, 21, 62, 120.
Law Officer, 62, 123.
Patentee, 26, 28, 144.
Registered proprietor of copyright, 63, 147.

ENROLMENT: Discontinuance of the practice, 15.

EVIDENCE
Before the High Court, 67, 158.
Comptroller-General, 68, 158. [P. R. 112; D. R. 62, 79.]
Law Officer, 67, 141. [L. O. R. 8 to 10, 13.]

EXAMINATION
For anticipations, 112. [P. R. 20.]
For competing applications, 25, 113. [P. R. 33.]
For disconformity, 110.
Of application for patent, 109.
Of complete specification, 109. [P. R. 28.]
Of provisional specification, 109.

EXAMINER:
Duties of, 63, 109, 112.
His report not to be published, 155.
Provisional report by. [P. R. 20.]
Source of his powers, 25.

EXCLUDED DAYS: Provisions concerning, 160. [P. R. 111; D. R. 65.]

EXHIBITION:
Industrial or International—
Publication at, 143, 151. [P. R. 101; P. F. 33; D. R. 76; D. F. 24.]

EXTENSION OF TERM
Of copyright, 6, 19, 147. [D. R. 37 to 42; D. F. 8 to 10.]
Of patent, 120.
See PROLONGATION.

EXTENSION OF TIME (*see* TIME TABLE), 94 to 97. [P. R. 109; P. F. 5 to 7; D. R. 64 to 66.]

FALSE ENTRY IN REGISTER, 89, 165.

FALSE REPRESENTATION as to patent or registered design, 89, 165.

FEES:
Power of the Board of Trade to settle, 154.
Scale of. [P. R. 4, Sch. I.; D. R. 3, Sch. I.]

FIAT OF THE ATTORNEY-GENERAL, when necessary, 38, 127.

FOREIGN SHIP: Immunity of, 61, 144.

FOREIGN USER a ground of revocation, 30, 35, 120, 150.

FORM of patent, 118. [P. R. Sch. III.]
(For various Forms prescribed *see* the Schedules to the Patents Rules and Designs Rules in the Supplementary Volume.)

FRANCE:
Law of, with respect to patents of addition, 47.
Origin of patents of addition in, 5.
Patent law of, 4.

GERMANY: Law of, with respect to patents of addition, 49.

GRANT OF THE PATENT:
Application for, 73. [P. R. **48**; P. F. **10** to **12**.]
(For steps in detail *see* the TABULAR SYNOPSIS, page 73 *et seq.*)
Completion of, 118.
Opposition to, 60, 115. [P. R. **40** to **47**; P. F. 8.]

GROUNDS of defence and revocation, 9, 85, 126, 127, 129.

GROUNDS of opposition to seal, 8, 86, 115.

GROUNDS of refusal of grant, 87, 113, 116, 158.

GUARDIAN:
Appointment of, 161.
Defined, 87.

HEARING BY COMPTROLLER-GENERAL
Of applicant for patent on Examiner's objection. [P. R. **31**, **33**.]
Of application to revoke a mischievous patent. [P. R. **81**.]
On objection to registration of a design. [D. R. **32** to **34**, **75**.]
Of opposition to the grant of patent. [P. R. **47**, **75**, **76**; P. F. **9**, **22**.]

HIGH COURT
Defined, 84, 169, 173, 174.
Jurisdiction of—
In action for threats, 136.
To revoke a patent, 10, 21, 26, 68, 126, 127, 135.
To order a compulsory licence, 9, 68, 125.
To prolong a patent, 13, 71, 120.

HIGH COURT—*continued*.
Power of—
To allow amendment of specification, 16, 71, 124.
To authorise inspection of Register, 71, 140.
To certify as to validity questioned, 71, 136.
To make Rules, 22, 71, 120, 170.
To order inspection, injunction, or account, 71, 136.
(For fuller details of the authority, jurisdiction, and powers conferred on the High Court *see* the TABULAR SYNOPSIS (title "Machinery") under these heads.)
Selected Judge of, 10, 169.
Jurisdiction and powers of, 21, 68, 120, 122, 125, 129, 130, 169.

ILLUSTRATED JOURNAL, 91.

IMMUNITY OF
Examiner, 61, 113.
Foreign ship, 61, 144.
Infringer, 61, 114, 117, 118, 120, 122, 125, 135.
Patentee, 61, 121, 133.

INDEX (*see* PATENT OFFICE PUBLICATIONS).

INFRINGEMENT
After amendment of specification, 125.
Before publication of complete specification, 117.
Innocent, 135.
Of copyright, 19, 36, 152.
Of lapsed patent, 120, 122.
Of re-issued patent, 118.
Of unsealed patent, 114.
See also ACTION.

INJUNCTION
In aid of patent right, 13, 136.
Of copyright, 152.

INSPECTION:
Jurisdiction to order, 136.
Of complete specification. [P. R. 39.]
Of Design Register, 149. [D. R. 61, 69.]
Of Register, 154. [P. R. 94.]

INSUFFICIENT DESCRIPTION
A ground of defence, 86, 138.
A ground of opposition to the grant of a patent, 8, 86, 115.

INTERNATIONAL ARRANGEMENTS, 39, 167.
List of subsisting treaties, 84, 87.
Text of the International Convention, 179.

INTERNATIONAL CONVENTION, 1.
Application under, 20, 43, 107, 181. [P. R. 15 to 18.]
Article VI. not effective in English law, 20, 43.
Authorised by the Act, 107.
Parties to it, 87, 170.
Priority under, 12, 42, 107, 181.
Revision of, 180.
Text of, 179.

INVENTIONS:
Cognate, 110. [P. R. 13 (2).]
Defined, 88, 170.
False criterion of unity of. [P. R. 13 (1).]

INVENTOR:
Deceased, 8, 142.
Defined, 88, 170.
Rights of true and first, 3, 11, 118, 128.

IRELAND: Application of the Act to, 174.

ISLE OF MAN: Application of the Act to, 174.

JOINT GRANT, 116, 137. [P. R. 51.]

JUDICIAL COMMITTEE of the Privy Council:
Its jurisdiction transferred to the High Court, 37, 120, 125.
Rule of, in relation to patentee's accounts, 13.

JURISDICTION
Of the Court of Appeal, 53, 135.
Board of Trade, 23, 68, 70, 145, 161.
Comptroller-General, 25, 69.
Courts of the Isle of Man, 174.
High Court, 14, 37, 53, 68, 120, 122, 125, 127, 129, 130, 135, 136, 156.
High Court of Ireland, 174.
Law Officer, 24, 68, 109, 111, 113, 116, 123.
Supreme Court of Scotland, 172.
(For detailed references *see* the headings "Authority," "Jurisdiction," and "Powers," under the title "Machinery," in the Tabular Synopsis.)

LAW OFFICER
Defined, 89, 170.
Fiat for petition to revoke a patent, 127.
Jurisdiction of, 16, 24, 68, 109, 111, 113, 116, 123.
May appear on appeal from the Comptroller-General, 130.
May open a sealed specification, 133.

LOCAL OFFICER—*continued.*
Power to administer oath, 141.
To award costs, 141.
To give directions to the Comptroller-General, 158.
To make Rules, 141.
(*See* Law Officers' Rules in Supplementary Volume.)

LEAVE TO AMEND SPECIFICATION
By the High Court, 124.
By the Patent Office, 122. [P. R. 13, 60; P. F. 18.]
To be conclusive, 124.

LICENCE UNDER A PATENT:
Entry in Register, 156. [P. R. 90.]
Restrictive, 30, 137.
To be granted on reasonable terms, 27, 120.
See also COMPULSORY LICENCE.

LONDON: Charters and customs of, saved, 102.

LORDS ORDINARY defined, 88, 173.

MACHINERY
Of appeal, 53, 78.
Provided by the Act, 36, 65 to 72.
Simplification of, 37.

MANCHESTER BRANCH (*see* PATENT OFFICE).

MANUFACTURE: New, 4, 101.

MARKING:
False, 165.
Goods of registered design, 36, 63, 148. [D. R. 68.]
Patented goods, 135.

MONOPOLIES:
Are void, 98.
Mischief of ill-regulated, 9, 28, 125.
To be tried by Common Law, 99.
See STATUTE OF MONOPOLIES.

MORTGAGE: Entry in Register, 156. [P. R. 90.]

"NEW OR ORIGINAL DESIGN"
May be registered, 145.
Meaning of, 88.

NOTICE OF APPEAL to the Law Officer:
Contents of. [L. O. R. 2; P. F. 4.]
Length of. [L. O. R. 1.]
Service of. [L. O. R. 6, 7.]

OFFENCES under the Patents and Designs Act, 28, 80, 161, 165, 166.

OPPOSITION
To amendment of specification, 50, 123. [P. R. 60 to 66.]
To prolongation of patent, 8, 50, 120.
To restoration of a lapsed patent, 8, 50, 122. [P. R. 55 to 57; P. F. 16.]
To surrender of a patent, 50, 120.
To the grant of a patent, 8, 25, 50, 115, 128. [P. R. 40 to 48, 75, 76; P. F. 8, 22.]

ORDER IN COUNCIL:
A regular way of incorporating a treaty in English Law, 41.
Defined, 90.
To give effect to the International Convention, 168.
To have the force of law, 165.

PARTITION of patent right, 118.

PATENT (*see also* PATENT OF ADDITION):
Contractual theory of, 5.
Date of, 117 to 119.
Defeasance of, 119. [P. R. Sch. III.]
Defined, 90, 118, 170.
Duplicate, 142. [P. R. 100; P. F. 32.]
Forfeiture of, 28.
Form of, 6, 118. [P. R. 49 to 51, Sch. III.]
Is the source of a patentee's privilege, 12.
Mansell's, 6.
Prolongation of, 13, 60, 120.
Restoration of lapsed, 14, 60, 121. [P. R. 55 to 59; P. F. 15.
"Secret," 23, 70, 132. [P. R. 97 to 99; P. F. 1D.]
Subject-matter of, 101.
Term of, 3, 5, 45, 95, 101, 119, 121.
To be effective against the Crown, 131.
To true and first inventor, 101, 115, 118, 128.
To whom to be granted, 101.
Under the Great Seal, 118.

PATENTEE
Defined, 90, 170.
Duty of, to bring invention into use, 26, 64, 127, 129.
To grant licences on reasonable terms, 27, 64, 126, 137.
To manufacture to an adequate extent, 27, 63, 125.
To supply on reasonable terms, 63, 126.
Fraudulent, 11, 128.
His power to amend, 60, 112, 114, 122, 124.
To apply to revive a lapsed patent, 14, 60, 121.
To surrender his grant, 15, 60, 129.

PATENTEE—*continued.*
His right to an injunction, 13, 136.
To apply for an extension of his term, 13, 60, 120.
Joint patentees, 60, 110, 137.
Source of his rights, 3, 6, 12.

PATENT AGENT
As patentee, 4.
Defined, 90, 101.
Disciplinary powers of Board of Trade, 24, 70, 162. [P. A. R. 19.]
Must reside in the United Kingdom, 162.
Qualification of, 101. [D. F. 1; P. A. R. 6 to 13.]
Recognition of, 21, 101. [P. R. 9; D. R. 12.]
Register of. [P. A. R. 2 to 4.]
Rectification of. [P. A. R. 11 to 27.]
Rules concerning (*see* Patent Agent's Rules in Supplementary Volume), 101, 103.
Use of the term restricted, 101, 102.

PATENT MUSEUM, 90, 144.

PATENT OF ADDITION, 4, 16, 44, 121.
Defined, 91.
Equivalent to an amendment by way of amplification, 16, 48, 52.
Form of. [P. R. Sch. III B.]
History of, 5.
In foreign countries, 18, 47.
Not liable to renewal fees, 45, 49, 61, 121.
Subject-matter of, 45, 49, 52, 121.
Term of, 45, 96, 121.

PATENT OFFICE:
Branch Patent Offices, 153.
Manchester Branch. [D. R. 80 to 88.]
Defined, 91, 153.
Hours of business. [P. R. 110.]
To be *provided*, 153.
See also COMPTROLLER-GENERAL *and* LAW OFFICER.

PATENT OFFICE PUBLICATIONS:
Abridgments, 144.
Enumerated, 91.
Illustrated Journal, 143.
Indexes, 144.
Reports of patent cases, 143.
Sale of, 143.

PATENT RIGHT
Compared with copyright, 10.
Date from which it runs, 95, 117, 119.
Inchoate, 95, 114, 117.
Partition of, 60, 118.
When it vests, 114.

PATENT ROLL, 15.

PATENTS AND DESIGNS ACT, 1907:
Application to Scotland, 172.
Ireland, 174.
Isle of Man, 174.
Date for its commencement, 176.
Date of its enactment, 107.
Epitome of, 103.
General view of, 1.
Short title of, 176.
Synopsis of, 55.
Text of, 107.

PENALTIES
For encroachment on privileges of patent agents, 28, 161
For infringement of copyright, 34, 152.
For unauthorised use of Royal Arms, 28, 166.
List of, 63.
To enforce a patentee's public duty, 28, 125, 127, 129, 138.
To secure regular course of proceedings, 28.

PERSONAL REPRESENTATIVE:
Applicant for a patent, 8, 60, 142.
Form of patent to. [P. R. 49, 51.]

PETITION
For a compulsory licence, 9, 24, 77, 125. [P. R. 68; P. F. 20.]
Dismissal by Board of Trade, 125. [P. R. 72.]
Parties to, 126.
Reference to the Court, 125. [P. R. 73, 74.]
For revocation of a patent, 33, 75, 127.
Grounds of revocation, 29, 85, 127.
Who may petition, 127.
For prolongation of a patent, 120.
See COUNTERCLAIM.

PIRACY (*see* INFRINGEMENT).

POSSESSION OF AN INVENTION, 107; Defined, 92.

POST OFFICE:
Application for patent by, order of. [P.R. 12.]
Transmission of documents by, 73, 107, 160. [L.O.R. 14; P.R. 7, 8; D.R. 9.]

POWERS
Of Houses of Parliament, 60.
Of Privy Council, 21.
Of the Admiralty, 23, 70.
Of the Board of Education, 70.
Of the Board of Trade, 23, 70.
Of the Colonial Office, 60.
Of the Foreign Office, 60.
Of the High Court, 21, 71.
Of the Law Officers, 24, 71.
Of the Patent Office, 25, 71.
Of the Treasury, 22, 70.
Of the War Office, 23, 70.
Synopsis of, 69 to 71.

PREJUDICIAL GRANT, 26, 29, 101, 125, 126.

PREMUNIRE: How incurred under the Statute of Monopolies, 101.

PREROGATIVE
Saved, 72, 131, 175.
Waived, 131.

"PRESCRIBED" defined, 92, 170.

PRIOR GRANT
A ground of opposition, 86, 115.
Effect of, 6, 85, 86, 101, 118.

PRIOR USER a ground of revocation, 86, 101, 128.

PRIVY COUNCIL:
Power to give effect to the International Convention, 21, 168.
To assign status of Industrial or International Exhibition, 21, 143, 151.
See also JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

PROCEDURE
In detail (synopsis), 73 to 79.
In general, 52 to 54.

PROLONGATION:
Comptroller-General may be heard on petition, 120.
Discretion of the High Court, 120.
Jurisdiction of the High Court, 14, 120.

PROLONGATION—*continued.*
Of term of patent, 13, 40, 120.
Opposition to, 8, 50, 120.
Rule of the Privy Council concerning, 13.

PROPRIETOR:
Application by, to register design, 30, 145. [D. R. 13 to 30, 80 to 88.]
Defined, 93, 156, 171.
Registered, powers of, 156.
Rights of, summarised, 60, 61.

PROTECTION (*see* PROVISIONAL PROTECTION), 93, 109.

PROVISIONAL PROTECTION
Defined, 93, 110.
Effect of, 93, 110.
Period of, 95, 109.

PUBLIC:
Reasonable requirements of, 16, 27, 29, 126.
Rights of, 7, 60.

PUBLICATION
At industrial exhibition, 143, 150. [P. R. 101.]
Forms of, enumerated, 72.
None by communicator to Secretary of State, 134.
None of abandoned specifications or designs, 155.
None of sealed specification, 133. [P. R. 97.]
Of acceptance of specification. [P. R. 38.]
Of amendment or reference in specification. [P. R. 35, 67.]
Of design, effect of, 148.
Of extension of copyright term. [D. R. 42.]
Of invention wrongly, 141.
Of order for rectification of the Register. [D. R. 97.]
Of Rules, 164.
See PATENT OFFICE PUBLICATIONS.

RECTIFICATION:
Appearance of Comptroller-General, 157.
Notice to the Comptroller-General. [P. R. 113; P. F. 34; D. R. 95 to 96; D. F. 26.]
Of Register, 156.

REFERENCE
Form of. [P. R. 32, 34.]
To prior specifications, 74, 113, 114.

REGISTER:
Existing, to be incorporated, 72, 131, 140.
Falsification of, 28, 80, 105.
Of Designs, 72, 146.
Contents of, 146, 156. [D. R. 38, 43, 49, 69, 90 to 93.]
Information concerning, 150. [D. R. 59, 60; D. F. 19 to 21.]
Inspection of, 149, 154. [D. R. 61, 69.]
Of Patent Agents, 24, 73, 154, 161. [P. A. R. 2 to 4, 11 to 27.]
Of Patents, 72, 130.
Contents of, 130, 156. [P. R. 82, 83, 90 to 93.]
Correction of. [P. R. 84 to 89; P. F. 25 to 30.]
Open to inspection, 154. [P. R. 94.]
Prima facie evidence, 72, 131, 147.
Rectification of, 156.
Trust not to be entered in, 72, 154.

REGISTERED PROPRIETOR: Rights of, 60, 61, 146, 147, 149, 152, 156.

REGISTRATION OF DESIGNS:
Application for, 76, 145, 146, 167, 168. [D. R. 13 to 30, 80 to 88.]
Certificate of, 146.
Date of, 145.
Effect of, 19, 147, 151.
Extension of, 6, 19, 147. [D. R. 37 to 42; D. F. 8 to 10.]
In various classes, 82, 145, 146. [D. R. 6, Sch. III.]
May be cancelled, 76, 150, 155. [D. R. 53, 54, 70 to 75; D. F. 18, 23.]
Term of, 96, 147.
See COPYRIGHT IN DESIGN.

RENEWAL FEES. [P. R. Sch. I.]
Forfeiture of patent for non-payment of, 28, 119.
Overdue, 14, 119, 121.
Payment of. [P. R. 52 to 54; P. F. 13, 14.]
Under German patents, 49.

REPEALS, 73, 175, 177.

REPORTS OF EXAMINERS (*see* EXAMINER), 155.

REPRESENTATIVE: Legal personal, of deceased inventor, 60, 142.

RESTORATION OF A LAPSED PATENT, 14, 60, 121. [P. R. 55; P. F. 15.]
Opposition to, 8, 59 note, 122. [P. R. 55 to 57; P. F. 16.]
Terms of, 15, 122. [P. R. 58, 59.]

RESTRAINT OF TRADE
A ground of revocation, 27, 30, 101, 125.
Cured by compulsory licence, 27, 29, 63, 125.
Defence to infringement action, 130.
Ground for avoidance of contract, 31, 64, 138.
Nature of, 31.

REVOCATION
Of a mischievous patent, 9, 26, 29, 126, 129. [P. R. 78 to 81; P. F. 24.]
Of a patent, 9.
Grounds of, 85, 127, 128, 129.
In counterclaim, 135.
None of "secret" patent, 133.
On grounds of opposition, 25, 127, 128. [P. R. 75, 76; P. F. 22.]
Six cases for, 54.
The power of, statutable, 21.
Of a surrendered patent, 129. [P. R. 77; P. F. 23.]

RIGHTS CONFERRED BY THE ACT
In general, 2.
On patent agents, 21, 61.
On the applicant for a patent, 11, 58.
On the inventor, 11, 59.
On the owner of a foreign trade mark, 20.
On the patentee, 12, 60.
On the proprietor of a design, 18, 59, 61.
On the public, 7, 60.
Synopsis of, 58 to 61.

ROYAL ARMS: Unauthorised use of, 28, 64, 166.

RULE OF COURT:
Comptroller General's order may be made a, 140.
Law Officer's order may be made a, 141.

RULES
As to Branch Patent Office, 153.
Designs Rules (*see* Supplementary Volume), 148, 149.
How to be published, 164.
Of Board of Trade, 23, 70, 134, 162.
Of Law Officers (*see* Supplementary Volume), 71, 141.
Of the High Court, 2, 22, 71, 120, 176.
Patent Agents' Rules (*see* Supplementary Volume), 163.
Patents Rules (*see* Supplementary Volume), 1, 15 note, 17.
To have the force of law, 163.

SCOTLAND: Application of the Act to, 172.

SEAL OF THE BOARD OF TRADE, 161.

SEAL OF THE PATENT OFFICE
Equivalent to Great Seal, 3, 13, 118.
Law of, summarised, 72.
Takes effect in all parts of United Kingdom, 13, 118.
To authenticate extracts, 150.
To be judicially noticed, 64, 154.

SEALED COPIES:
Certified copies of, to be evidence, 160.
To be admitted in evidence, 150.
To be lodged in Scotland, Ireland, and Isle of Man, 150.

SEALING of a patent (*see* GRANT), 116.

SEARCH:
Official, for anticipation, 37, 112.
Extended, 37, 113.
Of Design Register. [D. R. 59, 60.]

SECRETARY OF STATE FOR WAR
Defined, 93.
Powers of, 70, 131 to 134.
See also ADMIRALTY *and* TREASURY.

SECRET PATENTS, 23, 70, 132. [P. R. 97 to 99; P. F. 16.]

SELECTED JUDGE, 38, 53, 169.
Appellate jurisdiction of, 22, 68, 122, 129, 130, 169.
Exclusive jurisdiction of (first instance), 22, 120, 125, 127, 169.

SERVICE OF DOCUMENTS. [P. R. 7; D. R. 9.]

SPECIFICATION:
Acceptance of, 110, 112. [P. R. 37.]
Complete—
Amendment of, 109, 110, 112, 114, 122, 124. [P. R. 13, 33, 60.]
Contents of, 93, 108.
Examination of, 109, 110, 112, 113. [P. R. 28 to 35.]
Form of. [P. F. 3.]
Illustration of, 108. [P. R. 19 to 26, 36.]
Title of, 108.

Figures in heavy type refer to paragraphs, not to pages.

SPECIFICATION—*continued.*
Defined, 93, 108.
Lodgment of. [P. R. 7.]
Preparation of. [P. R. 6.]
Provisional—
Amendment of, 109.
Cancellation of, 111.
Consolidation of, 110.
Contents of, 93, 108.
Date of, 109, 110.
Examination of, 109.
Form of. [P. F. 2.]
Illustration of, 108. [P. R. 19 to 26.]
Title of, 108.
Sealed copy of, 150.
Secret, 23, 132.

STATUTE OF MONOPOLIES, 1, 55.
Section 1, 8.
Section 6, 3, 6.
Text of, 98.

STATUTORY DECLARATION
Defined, 93.
Form of. [P. R. 106, 107; D. R. 77, 78.]
May be used in the High Court, 158.
To be form of evidence before the Comptroller-General, 158.

SUBJECT-MATTER
Of patent grant, 3, 101.
Of patent of addition, 45 to 51, 121.

SUMMARY JURISDICTION ACTS
Applied to offences under the Act, 161, 165, 166, 172, 175.
Defined, 94.

SURRENDER of a patent, 15, 129. [P. R. 77; P. F. 23.]

TABULAR SYNOPSIS OF THE ACT. 55 to 97.

TERM
Of copyright in a design, 96, 147.
Extended term, 6, 96, 147.
Of patent, 5, 95, 101, 119.
Of prolonged patent, 95, 120.
Prolongation of, 120.
Of patent of addition, 96, 121.

THREATS :
Action for, under patents, 9, 100, 136.
Under copyright, 10, 152.

TIME TABLE, 94 to 97.

TRADE MARK :
Effect of the Act, 42.
Right to registration under Convention, 20, 168, 182.

TREASURY
Defined, 94.
Power to approve Rules, 23, 60, 103.
Power to settle terms between the Crown and patentees, 22, 70, 131.
To approve appointments to the Patent Office, 70, 153.
Scale of fees, 70, 154.
To provide a Patent Office, 70, 153.

TREATIES :
How incorporated in English Law, 41.
To be observed by the Comptroller-General, 33, 130.

TRUST not to be entered in Register, 154.

UTILITY in relation to the subject-matter of a patent, 47, 85.

VALIDITY OF PATENT :
Grounds of invalidity, 85.
Not guaranteed, 113.

WAR OFFICE (*see* SECRETARY OF STATE FOR WAR).

WITNESS : Compelling attendance of, 159. [L. O. R. 9, 10.]