THE

INVENTOR'S ADVISER

AND

MANUFACTURER'S HANDBOOK TO PATENTS, DESIGNS & TRADE MARKS.

BEING

An Instructional Guide to the Commercial Development of Inventions, their Protection by Patents at home and abroad, and the Valuation and Disposal of Patent Rights.

WITH A

TREATISE ON PATENT LAW AND PRACTICE IN GREAT BRITAIN

PRÉCIS OF FOREIGN PATENT LAWS, &c.,

AND CHAPTERS ON THE

NATURE AND REGISTRATION OF DESIGNS AND TRADE MARKS,

ALSO

APPENDICES OF FORMS FOR EVERY COUNTRY, AUTHORITIES, SIZES OF DRAWINGS, &c.

BY

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(Of the firm of Herbert Haddan & Co., Patent Agents, &c.).

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REGISTERED AGENTS FOR OBTAINING BRITISH, FOREIGN AND COLONIAL PATENTS, REGISTRATION OF DESIGNS, TRADE MARKS, AND COPYRIGHT.

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HERBERT JOHN HADDAN. REGINALD HADDAN, C.P.A.

PREFACE TO THE FOURTH EDITION.

ALTHOUGH the number of text books dealing with the Laws of Patents is very great, there is not, so far as the writer is aware, any text book dealing with Patents in their commercial aspect. This omission is the more striking, since the commercial question is of primary importance to the inventor and patentee. For this reason, although many books dealing with the Law of Patents give most valuable, necessary and correct information, that alone is not sufficient for those who require a hand-book to the subject in general. The fact that the pecuniary value of patent rights depends not merely on their legal validity, but also on a proper development of an invention on paying lines, on a choice of methods of patenting, and on considerations affecting the negociation and maintenance of the patent should be sufficiently obvious, but owing greatly to the absence of adequate treatment of this feature in text books, too little attention is given to the causes which render a patent a *valuable* monopoly, and consequently many essential points conducive to pecuniary success are overlooked until it is too late to remedy false steps. The writer's attention has been especially drawn to this part of the subject, owing to the frequent necessity of advising the Chief Official Receiver in Bankruptcy upon the commercial value of patents placed by him for report in the hands of the firm of which the writer is a member.

Part I of the present volume has therefore been devoted to the commercial aspect of Patent Law for the inventor and to questions affecting the obtaining, valuation, realization, negociation, or sale of Patent Rights, believed to be altogether new in

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text books on Patent Law, but nevertheless appearing to sum up those features of the subject to which every inventor must give attention if he wishes, on the one hand, to avoid losing time and money in following a commercially worthless idea, or, on the other, to get a patent of the *full* value to which he is entitled, and to afterwards deal with it to the best advantage.

Part II is confined to consideration and explanation of the legal questions in British Law which will arise in carrying out the policy outlined in the first part, special attention being given to the pitfalls into which the unwary usually stumble. The Law in all its aspects has been very fully treated in this part, which alone contains far more matter than will be found in books of twice the cost. Part III contains a full synopsis of all the Patent Laws of all foreign and colonial States, with methods of patenting, fees, etc.

To the above is added in Part IV chapters upon the Nature and Registration of Trade Marks in Great Britain, and details of the requirements for registration abroad, with similar information as to Patents for ornamental and other Designs, which, owing to inclusion in the same British Act of Parliament, are generally comprised in text books of this class.

The favourable reception given to this book since the issue of the first edition in 1894, and the steadily increasing demand for copies have been very gratifying to me, as it is an evidence that such a work was required and has indeed been found to supply the inventor with necessary information otherwise obtainable only from scattered sources or from experience.

In the four years that have elapsed since the first edition was published, several changes have become necessary in the text of Part II owing to various judicial decisions, of which note has been taken wherever necessary. Particularly in the foreign section, new legislation or rules will be found in *Austria*, *Denmark*, *Hungary*, *India*, *Japan*, *Mexico*, *Mysore*, *New South*

Wales, Norway, Sweden, Queensland, Rhodesia, Russia, South African Republic, United States of America, Portugal and Western Australia.

In the revision of Parts III and IV, I have been greatly indebted to the foreign correspondents and agents of my firm for valuable information and assistance.

Should changes occur before the issue of the next edition, they will be noted on slips inserted from time to time, so that whenever the book is purchased the information may be entirely up to date.

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18, Buckingham Street,
Strand, W.C., London.
1st May, 1898.

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THE INVENTOR'S ADVISER.

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Part I.—The Commercial Aspect of Inventions and Patents.

Chapter I.

THE NATURE AND POLICY OF PATENTS.

A Reward for Invention.—Whenever any person has, by his own ingenuity or by his own trouble and experiment made and developed a new invention, whether an actual article of sale or a method or process of manufacture, or any new and useful improvement on either of these, by the disclosure of which his fellow-citizens are more or less directly benefited, it may be recognised as fit and proper that that person should receive some reward for the good that he hath done to the realm.

The patent system may in a measure be said to rest on the foundation of this broad principle, but not so much because of its equitable nature as because it directly tends to be of great political and economic usefulness.

Whatever be the reward, it must and can only be given by the State which represents the interests of the whole community, for it is given on behalf of the community. Its character, therefore, must not be that of private benevolence simply, but principally of public policy the ultimate purpose of which is something entirely beyond the personal consideration of the inventor.

Reason for Reward.—If the inventor is not rewarded purely out of regard for his personal merit, why, then, is the reward given? The reward is offered to promote the disclosure of the invention solely in order that the public may have the benefit of it, to encourage the practical reduction of ideas or crude inventions by the offer of the reward for their actual disclosure, to attract the attention of possible inventors to the

development of ideas and to induce a train of inventive thought and emulation in individuals generally, not only by the offer of a definite kind of reward for whatever they may produce of new and useful commercially available knowledge, but by the general publicity which the rewards granted must necessarily attain and the public showing of the advantageous use of such rewards to their possessors.

Here, then, is a sufficient explanation of the value to the State as a whole of recognising some such system of rewarding those who benefit the State; it raises questions of wide political importance against which the personal consideration of the inventor in itself alone, and not as a means to an end, is but a feather-weight. The consideration of the inventor, who is but a unit among millions, must always remain secondary to the fulfilment of the political objects of the State.

This at once shows that, whoever desires to benefit by the system of reward which we shall afterwards explain, must obtain his personal advantage incidentally, so to speak, by fulfilling the more important political requirements without which he will fail in his more personal aspirations, as many have done who put the cart before the horse in this respect. Let us begin, then, with the general political aspects of Patent Law.

Benefit of Trade.—Patent Law had its origin principally in the desire to improve trade. Its entire development has been devoted to this object, and consequently its present foundation may be said to be entirely the benefit of trade.

Trade, in the widest sense of the term, that is, the whole art and science which lies in utilising the natural wealth of the land and the industry of the inhabitants to the best commercial advantage, is of paramount importance in the prosperity of a country.

In the existence of valuable minerals and the potentiality of vegetable production we have one factor, and in the capacity of labour to win and adapt such natural wealth for the uses of mankind we have another factor of prosperous trade; but these in themselves are inert,—it requires the vitality of the brain to adapt and control the process; for making use of known methods, a general business aptitude; for improving on these methods, inventive genius.

The commerce of nations is in its essence competitive. The requirements of individuals form the component parts of the demand by the supply of which commerce thrives, and in default of which the latter would cease to exist. To supply this demand, which education is always rendering more exacting, and to keep in the forefront of supply, continual

improvement is essential. To lead in improvement necessitates invention.

Benefit from Invention.—It is the policy of every trading nation to aspire to a leading position in commerce by encouraging inventive improvement, since clearly no nation can improve on its natural supply of raw materials, but only in the winning of these, in the arts and processes by which the natural advantages of raw materials are developed and brought into practical use, in mining, agriculture and manufacturing processes generally; these being done, in the distribution of the products to the consumers.

Improvement can be had by copying the arts and manufactures of other nations, but this presupposes a secondary position for the nation copying. A nation in the front rank in manufacture can lead the way only by devising improvement itself, by exercise of the inventive faculty of its people. The improvement in the arts and manufactures which are the basis of trade is essentially the function of invention, and every new invention, small or great, advances the knowledge of those engaged in the particular trade and enables them to better meet the demands of competition. There is no manufacture of any sort or kind which in its present state is not the result entirely of invention, in other words, of numberless small and great improvements which have gradually led up to the result as we have it. From the time the raw product is taken from the earth, even in matters of agriculture, from the time the surroundings are prepared for the natural phenomena of production, till the finished article is made, transported and furnished to the consumer, every step of the process is the result of a foregone invention of some person. Thus to stimulate the inventive faculty of its subjects, and so promote improvement, while a matter of policy with every trading nation, is one fundamentally essential to a leading nation.

Inducement for Invention.—There then arises the question how invention should be best developed, and it is noteworthy to observe that every nation of importance in modern civilisation has adopted substantially the same course, namely that of rewarding the inventor of a novelty or improvement with a monopoly of the advantages derivable from it for a definite term of years.

These monopolies or exclusive privileges are termed Patents, and the circumstances affecting their grant, duration, &c., are determined by laws and enactments in various countries known as Patent Laws.

In especial instances sums of money have been offered by Governments for solution of certain widely important and difficult problems, but in the present day the reward held out to all inventors of matters and processes useful to trade, is the monopoly of the respective invention for a limited time, so that only the inventor, or such others as he may authorise, may use the invention to his or their profit and advantage. Primarily the value of a patent is proportional to the value of the invention, and the realisation of this value is dependent on the energy shown by the inventor in bringing his invention quickly and effectively into public notice, so that he may obtain the fullest remuneration before the term of his exclusive monopoly expires. This form of reward is therefore pre-eminently a suitable one, since on the one hand it tends to make the inventor's profit proportional to the value of the invention to the State, operating, so to speak, automatically in this respect, and on the other induces the inventor to work his invention energetically, so that it is the sooner brought into public use.

It has been previously pointed out that the State, in giving monopolies to inventors, is not acting with a view to benefit individuals, but for the general welfare of the community. Inventions are protected not for the sake of simply rewarding inventors, but for obtaining the benefit of the improvements for the State. The monopoly of an invention is an inconvenience for the time to the State, and the only reasons for its existence are the ultimate and general benefits to the country which are derived from holding out this monopoly as an inducement to invent and improve.

Should Patents be Granted.—The propriety of granting protection for new inventions has always been a matter of much discussion, and although the law has remained practically the same, the prevailing fashions of different times in regarding patents sometimes as a benefit, at other times as the reverse, have left their mark in alternate laxity and strictness in construing the rights given by the patent in the past. Hindmarsh argued[1] that an inventor has no equitable right to an exclusive property in his invention, since it may occur equally to others. The Americans, however, base their laws on the recognition of such equitable right, and with the better reason, since a patentable invention is the practical form of an idea produced by specially directed thought of the individual. Nevertheless,

[1] Hindmarsh; Law of Patents.

whichever view be correct the State cannot afford to recognise an *unlimited* right. Very brief consideration would show the pass affairs would come to if patents lasted for ever. Broadly speaking, no inventor can retain any exclusive property in an invention unless he keep it secret or unless, after publishing it, such right is allowed him by the pleasure of the community as expressed in the law.

The only question then is, should such protection be granted? It may be taken as true that if no reward be given there would be no inducement to invent, or perhaps, more properly speaking, to reduce crude ideas into good working practice; thus, though crude ideas might be disclosed, there would be no practically useful inventions brought out. It is the experiments and personal endeavours of the individual that render the crude idea valuable to trade, and protection is clearly necessary as an inducement to such exertions. The State thus gains even by the temporary exclusion of public opportunity involved in the grant of the monopoly of an invention.

Suitability of Patent as Reward.—We have seen that no more suitable way of rewarding inventors can be devised than the grant to them of an exclusive right in their inventions for a certain length of time, since whatever the length of the term, the grant gives the inventor the opportunity of obtaining whatever value there may be in the invention during that term, and no more. The potentiality of remuneration is therefore exactly proportional to the value of the invention, while it rests with the inventor to obtain the whole value or such proportion as his personal exertions accord him. It will be seen that every invention receiving the same reward proportional to its value, is justly recompensed on the same scale; that all patents being of the same length in a country, there can be no favouritism, each inventor obtaining exactly the same conditions. Also, the recompense being dependent on the patentee's exertions in bringing his invention into notice and use, there is every incentive to carry out the invention in practice, so that it comes into general employment and benefits trade. Broadly, such a system is one of payment by results in its happiest working conditions, and that it meets with the inventor's approval on its broad lines, and acts as an incentive to improvement, is shown by the fact that no voice has ever been raised against its principle from the ranks of inventors. Its general suitability must therefore be taken to be beyond question.

As to the details, however, there may be differences of opinion. For instance, as to the length of the term for which protection should be granted, and the conditions to be imposed on the inventor, if any, for obtaining the patent or keeping it up to the full term.

Length of Term of Patent.—It is in the nature of the subject that a patent should be more valuable during the last part of the term than during the commencement; the invention becomes better known and appreciated, perhaps growing to be an absolute necessity. Not only does an invention require some time to make it pay in the beginning, when the profit obtained is for the most part used in pushing the invention, but in the later part of the term the balance is more than redressed by the extra income, "unearned increment," which flows in from the tribute known as "Royalties," paid by others who in making improvements are obliged to obtain the license of the original patentee to use such parts of the original invention as may be necessary to enable them to work and use their improvements. A year at the end of the term will often be worth as much as five or six years at the beginning; some patents indeed especially difficult to introduce into general use, but nevertheless valuable, do not commence to pay till the patent is near the end of its term. Thus, taking an instance at random, a patentee who made no profit during the first ten years of his patent obtained 7,000*l.* during the last four years of the term.[1] Now, as the patentee's profit is the tax that he levies on the public for the use of his invention, every year that the patentee's monopoly can be properly shortened will be productive of considerable direct gain to the public, the more so, as we have seen, that the last years of a patent are far the most valuable.

But, on the other hand, may there not be countervailing advantages to the public generally in granting patents for a long term? Is a long term an inducement to an inventor? Where the working of the Patent Law is very generally understood this no doubt should be so to a great extent, and we do find it to be so in the United States, where all patents (with few exceptions) endure for the whole of the term for which they are nominally granted, but in Great Britain and other countries where a patent, being subject to annual or other taxes, does not, as a rule, last to the end of its nominal term, but little attention is given by inventors to the length of term that can be obtained. As a fact, even if inventors recognised that every additional

[1] *Re* Ryder's Patent, Johns. 213.

year is practically worth two preceding ones, most of them here regard the question as too remote in interest to be of much practical consequence to them in the present. Therefore, whether the protection given is for 14 years, as in Great Britain and her colonies, or 15 years, as in France, Germany, and most foreign countries, or 17 years, as in the United States, or 20 years, as in Belgium and Spain, is a matter the practical interest of which appears to the inventor too remote. It is a noteworthy fact that Great Britain gives a shorter term than any other country of importance in the manufacturing sense, the countries which give a shorter term of maximum protection being few in number, and for the most part comparatively unimportant as commercial centres.

It does not, however, follow that the term of protection given by the State should be curtailed to any marked degree, for in the broader objects of Patent Law and the general inducement to invent, long terms of protection are valuable, in that they enable the inventor to make a greater personal success of his invention, which is the feature of the system most likely to attract the attention of outsiders, and induce them to attempt to do likewise. As we have seen, the concluding years of the term are those in which the substantial profit is made; if the maximum term is curtailed there is not so much opportunity of that profit, and though the public, as users of the respective invention, would gain in that respect, the State would lose the valuable object-lesson which the successful inventor offers. So on the general grounds of political expediency, the successful inventor is well worth his profit as an advertisement of the patent system, just as on the same ground the unsuccessful inventor, as a monument of failure, is an advertisement against the system. The term of a patent should, therefore, be long enough to enable every possessor of a valuable invention to obtain a substantial profit; if, under prevailing conditions, it were too short for this, cases of hardship would arise tending to defeat the very objects of the patent system. Though Great Britain in this respect is not so generous in the treatment of inventors as most other countries, the term of 14 years under the conditions prevailing here would appear to be sufficiently long to attain the required result, especially since in special cases of hardship provision is made for extension of the term of 14 years even to a further 14 years, where an inventor of a meritorious invention, having used his best endeavours to bring the invention into use, has not met with adequate remuneration.

Terms for keeping Patents in Force.—Another feature of the grant of patent which may be open to discussion is the nature of the terms, if any, imposed on the inventor as a price for keeping up his monopoly during the full extent of the maximum duration allowed by law. Here there is great diversity of treatment in different countries, some adopting one method, others another. The principal terms imposed on inventors are—working of the invention within a certain time; payment of certain annual or other taxes, usually termed renewal fees, to the Government during the existence of the patent.

On these three points—the length of term of the patent, the conditions as to compulsory working, if any, and the imposition of renewal fees, if any—each State adopts that policy which is presumably best suited to the idiosyncracies of its citizens, best suited to obtain for that State the most advantage that can be obtained from the development of invention. The details of the systems adopted must also always be subject to change as the inventive capacity of the people is found to be or not to be properly developed under the system in force. For an actual inventor, however, the details of renewal fees, &c., are not of much consequence; they alter but slightly the net value of a good patent.

Working.—There is a large class of inventors who, having taken out their patents, are content to do nothing with them, but let them lie fallow; whether they do this unwillingly or not is, as far as the State is concerned, a matter of indifference, the result is the same as affecting the public; the invention is not brought into use, so the public get no advantage from it, and as "shining examples" such inventors are a failure. A system which allows inventors to do nothing with their inventions for the full term of the patent is not in all respects a desirable one, and, as a rule, is avoided. Thus, in some countries, a patentee is required to bring his invention into public use within a definite time or abandon his monopoly. In some, also, having brought the invention into use, the inventor must not abandon the use of the invention for longer than some definite period at a stretch. As an example, in France the employment of the patented invention must be commenced within two years of the date of signature of the Letters Patent, and must not be abandoned for any period longer than two years or the patent is liable to be declared forfeited, unless the patentee justifies his inaction. Germany requires that the patentee shall have brought his invention into use within three

years of the date of the grant of the patent, or at least have done all in his power to so bring the invention into use within that time. Conditions of working in other foreign countries will be found under the respective headings, and general rules for the performance of working sufficient to satisfy the law will be found there and in the chapter on "Foreign Patents." Great Britain and most of the colonies, and the United States of America, are the only countries that have not made this compulsory working of patented inventions a part of their systems. The United States make no restrictions whatever in this direction, leaving the inventor to work his invention or not entirely at his own discretion, but in Great Britain, as a protection to the public, the Board of Trade is empowered to order a patentee to grant a license on such terms as the Board may think fit and reasonable, where it is shown that the legitimate wants of the public are not supplied and the patentee refuses a license to others to manufacture or use his invention.

Renewal Fees.—As to the other principal condition attached to the holding of a patent, the payment of certain taxes or renewal fees without which the patent will cease, this is, or should be, looked upon as an indirect means for causing patents which are useless to their owners to lapse and fall into the public domain, but it is unfortunately true that the temptation to regard these payments as a source of public revenue tends to make them larger than their ostensible purpose would require. The controversy over these fees and their amount never sleeps, but truly speaking the only question should lie in their effect in retarding invention. Primarily any repressive measures of this kind must tend to lessen the number of patents applied for, which is equivalent to the number of inventions given to the public, but in practice it is found that by removing them into the later part of the life of a patent their direct repressive effect is more than correspondingly lessened. We have seen this in Great Britain as the effect of the Act of 1883, by which the initial fees payable on obtaining a patent were reduced more than five-sixths, the total fees only about one-eighth, with the result that the number of applicants for patents was immediately trebled. Where these renewal fees are imposed, they should be sufficiently heavy to cause indolent patentees to abandon their patents rather than pay them, but at the same time not so heavy as to deter an inventor from taking a patent, or to be felt as a tax on meritorious inventors. If the renewal fees absorb an undue share of the inventor's profits they tend to prevent the

inventor from bringing his invention into use. On the whole, it seems advisable that the first fee should not fall due until ample time has been given for the invention, if properly pushed, to become profitable, and then the fee should be small enough not to be felt as an undue tax on such profit, though large enough to deter a patentee who does not see a likelihood of his invention becoming profitable from paying it. If the patentee is thereafter charged with further fees, it should be, so to speak, not with a view of taxing the patentee's industry, but as a continual weeding process to cancel those monopolies of which the patentees can make no practical use, so as to give the public enjoyment of the inventions for what they may be worth and free the way for more fortunate improvements.

These considerations have latterly met with increasing attention. Even so late as 1892 the renewal fees were materially reduced in Great Britain and a more equitable scale of payment provided.

Comparison of Renewal Fees, &c., in different Countries.—In most countries where renewal fees are imposed, these are annual and of successively increasing amount. In some, however, such as France, the tax is the same every year. Many countries do not commence to impose taxes until the third, fourth, or even seventh year of the patent, as may be seen on reference to the different foreign countries in Part III. Many countries which require the invention to be worked within a certain time do not require any future renewal fees.

A useful comparison may also be made between the effects noticeable in countries adopting different methods of practice in respect of payment or absence of payment of these renewal fees; thus in Great Britain it is found that under the scale of fees recently in force only about 30 per cent. of the patents granted are renewed when the first tax becomes due in the end of the fourth year, and only about 7 per cent. remain in force in the fourteenth year. Compare this with the large number of patents granted in the United States, about 23,000 a year, all of which with certain unimportant small percentage, remain in force for the whole term for which they were granted. We have in an average duration of patents say sixteen years, as against an average duration in Great Britain of about five years only. Whatever may be the value found in a patent at the end of its term, this value should therefore be easily discernible in United States patents, and indeed it is found [illegible] instances continually occur in which a patent

which has not been worked to any profit directly is nevertheless the cause of a large indirect profit afterwards when the principles first covered by that patent are improved upon by others and brought into practical use. In every art instances of this arise, as an example the history of sewing machine patents in the United States may be studied. In Great Britain there are at present but few examples and those the exception rather than the rule, owing to patentees preferring to drop their patents rather than pay heavy fees, while they remain without prospect of being remunerative. As to the effect which knowledge of these facts may have on the invention of a nation, it is difficult to trace with any exactness, but it is important to bear in mind that there are doubtless important effects in favour of the long term patents; the value of patents increasing towards the end of the term, the longer average termed patents will have an average greater value, be the more remunerative and consequently more productive of benefit to the State in encouraging invention. Owing to the recent reduction of the renewal fees in Great Britain the end-term value of patents due to above causes cannot fail to increase very greatly in future years.

CHAPTER II.

PATENTABLE INVENTIONS.

Benefit of Trade.—The Patent Law being in its objects entirely for the benefit of trade, the inventions which the law is designed to protect must naturally be such that they assist in the fulfilment of this purpose. It will be unnecessary here to recount in what manner those inventions which are patentable assist trade, since this has been sufficiently explained in the preceding chapter, suffice it to note that it is not every invention which confers an advantage upon trade, and consequently it is not every invention that can be patented. The question of benefit to trade, which is somewhat different to that of commercial value in the invention itself, is very important for inventors, because the various tests by which the patentability of an invention is determined are based upon this question and are intended to distinguish those inventions which practically conform to the desired answer from those that do not. It is of the utmost importance to every intending patentee to distinguish the exact features of his invention which are of value to trade, first in order to ascertain whether the invention is patentable at all (for the Patent Office gives no help in this respect), and secondly, so that the invention may be so described, that it may be equally apparent to others, principally judges and lawyers, that it contains such useful features, or in other words that it answers the various tests which the experience and legal acumen of centuries have found and laid down as necessary, applicable, and advisable for arriving at an accurate determination of the broader main question of trade benefit.

What is an Invention.—It is impossible to arrive at a base for the various tests of an invention until we have practically found what an invention itself is. The usual meaning attached to the word "invention" is an act or discovery of the mind or brain to which the previous knowledge of the inventor does not directly lead, it is of the nature of an idea suggested perhaps by some occurrence but essentially the

result of a train of reasoning of other than usual nature leading to the perception of a fact or facts recognised as wholly novel. So far this is the meaning attributed to the word invention in the Patent Laws of most countries, but in Great Britain a somewhat extended meaning is given to the word under the Patent Law, principally arising from its antiquity; it has been recognised, and judicially determined,[1] that the importation of an invention or manufacture previously known and practised abroad may still be considered an invention within the meaning of the Patent Law so long as it was unknown in this country previous to its importation. In this rendering of the word, the benefit to trade, which has the wider opportunities through this interpretation, accounts for the retention of what is generally considered an obsolete meaning. "Invention" is derived from the two Latin words, in—in, and venire—to come; and the wording of the older judicial decisions and the first Patent Act[2] show that the sense attached to the word was a matter or knowledge "brought in" or "caused to come in," not into a man's head, but into the kingdom—in other words, a new invention was a novelty introduced to the public by the "Inventor." The "Inventor" is not the person *to* whom the invention "comes in" or occurs, but *by* whom the invention becomes delivered to the rest of the subjects of the realm. The termination of the word inventor does not signify reception but causation. An invention is thus a piece of knowledge proceeding from or through the inventor, and having its origin in him so far as the remaining inhabitants of the realm are concerned.

Subject Matter.—The first test applied to an invention to ascertain if it is patentable relates to the nature of the invention itself, and concerns more particularly its subject matter. It has generally been found that in order that the invention may be useful to trade it must have something to do with production or manufacture. It must either concern some article or product capable of being bought and sold, or it must have to do with the method or manner of manufacturing such article or product. Trade depends upon production so far that without production there is nothing with which to trade. Patent Law has nothing to do with particular methods of trading or carrying on business, because it is presumed that each man is at liberty to adopt such methods as he may see fit, and that it is already

[1] Edgeberry *v.* Stevens, 1691, 1 *Web. P.C.*, 35.
[2] *See* Part II, chapter I, page 75.

within the capacity of a trader to adopt such methods or improve upon them so far as he may find it desirable in his business. Thus no patent can legally be held for any financial scheme, method of conducting business, method of keeping accounts, or for any proceedings of persons of whatever nature[1] so long as they are not directly concerned with the steps or stages of some manufacturing process. Similarly, there can be no right of patent in any new game, for the object of a game is not the production of a vendible material. The implements with which the game is to be played may, however, present patentable subject matter. A bare discovery of a new principle, theory, or law of nature previously unknown may be a discovery, but it is not sufficient to constitute a patentable invention, for so long as it remains in its abstract and unapplied state it is of no use to trade. To entitle the inventor to a patent for it he must reduce it to a practically useful form, he must embody it in a machine or implement or composition, or in a method or process of manufacture; in fact, he must show a definite commercial use for it in production, and how that use is to be made. An "idea" so long as it is not worked out is only in the state of an abstract principle, and consequently is not in a patentable condition. The patent is not for the idea, which is usually only an object to be attained, the patent is for the method or result of working out the idea. It will also be obvious that there can be no patent for an effect only. A person may discover useful qualities in a machine or in a composition or in a natural product, the existence of which qualities was previously unsuspected, but so long as the machine, composition, or natural product remains in itself exactly the same as it was before, he cannot legally possess a patent, because there is no new production or improvement in the article itself. A purpose alone cannot be patented, since to use an article for one purpose which was previously used for another purpose does not necessitate any instance of a new or improved production. The use of ether as an anæsthetic was a valuable discovery, but not a patentable invention. The inventor must clearly distinguish between the invention which results in a new or improved production and that which is simply a use of known material, for the first is patentable and the second not.

Novelty.—The second test of an invention is its novelty. When an invention occurs to anyone, it does not follow that

[1] Many foreign laws specially name such proceedings as not patentable.

that invention is necessarily new and previously unknown to others, yet it would be clearly unjust to the public generally to grant a monopoly to an individual for a matter of which the public already had sufficient knowledge. When Patent Law was still in an unsettled state, the grant of many obnoxious patents led to the determination that no patent could legally be granted which would or could have the effect of preventing any person from doing that which he had a perfect right and capacity to do before the grant of the patent. This is a perfectly true and equitable statement, since patents are only granted to inventors for the good they do to the realm in the disclosure of such information as was previously unknown and unattainable. The inventor receives his monopoly for a time in consideration of the public receiving new and useful information. If under pretence, or belief, of disclosing such new and useful information the inventor is only telling what was known or had been published before, he is giving nothing to the public. It is plain that the simple repetition of former disclosed information is of no such benefit to trade that it should entitle the rediscoverer to a monopoly for any length of time, so no justification exists for the grant of patents where the invention is found lacking in novelty. The methods of testing the novelty will be better reserved until the legal side of the patent system of Great Britain is considered at length in Part II, since we design here only to outline the law to show its general character for the purpose of inquiring into its actual commercial value for an inventor.

Utility.—The third test of an invention is its utility. As a requirement of the law this rests upon a foundation of less actual importance than the requirement of novelty, since if an invention is not useful the monopoly of its use will not be felt as a hindrance. Nevertheless, as it is not to the advantage of the patent system that patents should be granted for useless inventions, the possession of utility is imposed as a test. It has been stated that a reason for this requirement lies in the fact that the grant of a patent on a useless invention might have the effect of hindering the use of a similar but useful invention. Cases may be conceived in which inventors may carry out their ideas in practice in such a way that they cannot usefully be worked. They may be overloaded with unnecessary details, and in effect useless to the public, yet may serve for grounds for asking royalties from those who may afterwards be so fortunate as to bring out a simplified and really useful improvement. But Patent Law cannot measure the amount of

utility or draw a line between great and little utility; sufficient is it, therefore, if the invention shows any utility at all. Whatever utility the invention possesses must naturally be a utility for trade. Pecuniary success is not a proof of utility, nor the want of it the reverse. An invention need not be better commercially than others that have gone before, but it must show some utility in being capable of performing the purposes for which it is intended. The manner of applying the test of utility will be shown more fully in the chapter so headed in Part II.

Ingenuity.—A fourth test is sometimes applied to arrive at a final judgment on the question of patentability of an invention, and that is whether sufficient ingenuity has been shown in the actual novelty of the invention that it may be considered worthy of a patent. This question is apart from the actual value of the invention, and must be decided more or less solely on the evidence producible in each case of the difficulties to be overcome in bringing the invention into its completed state. The question is in truth subsidiary to that of novelty, and is principally an extension of the terms of the latter. An invention is not new if it has been previously disclosed in its entirety, but we may equally say that an invention loses its character of novelty if so much of it has been previously known that the completion of the result under question would have required only the ordinary skill of a workman in the respective art. If it was within such workman's ordinary capacity, as to which evidence can be produced, the patent would have the effect of preventing him using his professional skill in that direction, and consequently would prevent him doing what he could have done before without the assistance of the pretended inventor. Evidence of want of ingenuity is equally evidence of the previous capacity of members of the public, and proof of the one is proof of the other, so that the question of ingenuity really forms no further test, but only part of that necessary to decide novelty, for the importance of novelty makes it requisite to ascertain that there is *substantial* inventive novelty, and not mere colourable novelty in the patented invention.

Merit of Invention, and of Inventor.—We have thus ascertained what peculiarities an invention must possess in order to render it patentable; it must possess proper subject matter, utility, and novelty of a substantial character; in fact, it must be a meritorious invention. When it is said, therefore, that patents are granted as rewards to meritorious inventors,

it must be understood that the merit does not lie so much in the time, trouble, or expense, that the elaboration of the invention may have caused to its producer, for where the invention is not new that labour is but valueless for the public; it lies in the invented matter itself. The merit in the invention is the same whatever the actual difficulties of its production. Nevertheless, it is allowable in a sense to ascertain what those difficulties were, not because the inventor happened to experience them, but in order to show that such difficulties surrounded the attainment of the end, that the carrying out of the invention required a faculty of invention distinct from the ordinary application of expert knowledge which might have been predicated in those skilled in the relative art. Do not, then, let an inventor be misled into the supposition that the extent and difficulty of his trials will have much weight in obtaining a favourable verdict on the patentability of his invention, much less that the legal validity of his patent will be judged upon a consideration of his actual endeavours alone; his invention will be judged by considerations wholly regarding its own nature, and the capability of others performing it before the present inventor brought it on the scene.

Disclosure of Inventions.—It is obvious that so long as an inventor keeps the secret of his discovery locked up in his own breast, the public are none the wiser and none the better off for his invention. The whole object of the system of granting patents is to obtain the disclosure of new inventions, so that the knowledge of them may be of public use. So self-evident is this object of the Patent Law that the offer of the grant of a patent has been likened to an invitation to enter into a bargain, in which the patent is considered as a return for the disclosure of the invention, and the grant of a patent is a ratification of the bargain. As an analogy, this falls somewhat short of exact truth, just as does the theory which represents a patent as simply a reward for the disclosure of the invention, given entirely out of grace and favour, the inventor not having any absolute right to demand such recompense. Patent Law is, in truth, a compound of both these, and the State appears to rest on the one logical foundation or the other as best serves the turn of the moment. Thus, if a meritorious inventor happen to disclose his invention before he applies for a patent, it is said that the public, being thereby freely possessed of it, receive no further advantage on or by grant of the patent, for the latter must be for something absolutely new

and unknown to others at the time of its grant; on the contrary, should the invention not have been previously disclosed, but the actual inventor in this country have imparted it to another person who applies for the patent, even though he have the full consent and approbation of the inventor to this course, the patent is held invalid since the applicant is not entitled to the reward. The first instance upholds the bargain theory in the face of the equities of the reward theory, while the second, apparently showing all essentials of a good bargain, nullifies the practical qualities of the latter as a working theory, by recourse to the most abstract qualities of the reward theory so conveniently overlooked in the first case.

True and First Inventor.—The value of disclosure has a great influence on the meaning of the words "true and first inventor." Under the Statute of Monopolies of James I, a patent can be granted in Great Britain only to the true and first inventor of the "manufacture" or invention; nevertheless, it is obvious that no benefit results to trade by the simple discovery of the invention so long as it is kept secret, the benefit of trade commences only with the disclosure of the invention. To harmonise the theory with the practical advantages it is designed to produce, the true and first inventor is not presumed to become such in the eye of the law until he has made a disclosure of his invention, or, in other words, made the invention a part of the public stock of knowledge, and this view of the law is followed in nearly every country in which patents are granted, the United States of America being the only notable exception.

Applying for a patent is considered the same as imparting the invention to the public, because the latter is a necessary incident of the application, therefore the first applicant for patent is preferred to all subsequent applicants, even though in truth the later applicant may be the first actual discoverer of the invented matter. The same effect is produced by disclosure of the invention without applying for a patent, the disclosure is sufficient to prevent any subsequent applicant for patent from calling himself in law the "true and first inventor," whatever may have been the date on which the invention was already in his mind.

Time for Disclosure.—The importance of a full and early disclosure has been seen, but we must not jump to the conclusion that a too early disclosure will benefit the inventor, on the contrary, we have already incidentally referred to the fact that if the invention is disclosed to the public before the date

of the patent, the inventor loses his right to the latter, since the public are then already in possession of the invention. There is a time for all things, and this maxim has its force in Patent Law. In a system of such far-reaching importance great care must be exercised to avoid loopholes for abuse; to once allow that an inventor was entitled to a patent at any time after the invention has been given to the public would open the door to a great deal of fraud on the public. Inventors would wait and see if their inventions became appreciated by the public, that is, used by others, before they applied for patents. Anyone then using would have to cease, perhaps at great inconvenience and loss. Persons would claim to be inventors of matters already in public use, and few means would exist of testing the truth of their claims. Rival inventors would arrive and dispute priority. Some such results as these are seen in the United States, where an inventor is permitted to apply for a patent at any time after he has completed his invention so long as the invention has not been known more than two years preceding the date of his application. In some countries, India for example, the inventor is permitted to take a patent after the invention has become known or used, provided he applies within a certain mentioned time after the disclosure or the use occurred. There appears, however, to be little advantage in these special dispensations compared with their public disadvantages, and any advantage they may have for an inventor in enabling him to test his invention before taking a patent, are equally provided for in a different and more unobjectionable way in the "provisional protection" accorded under the British law, on which we shall have occasion to comment fully hereinafter.

Nature of Disclosure.—When a patent is offered to an inventor in return for a disclosure of what is presumed to be a secret unknown to others, it is upon the clear understanding that the disclosure is to be full and complete in every direction. The inventor should give such information that others having only an ordinary knowledge of the particular trade to which the invention relates may be able, from that information alone, to fully practise the new invention in as beneficial a manner and with as complete knowledge as the inventor himself possesses of all its peculiarities. This information, though complete in itself, must not be too discursive or overshadowed by unnecessary details, tending either to obscure the real points of the invention or to cause people to believe that the monopoly covers more than the inventor is entitled to claim, for the public are

not only justified in obtaining a description which shall contain full information on the invention, but also equally full instruction as to what the invention or novelty itself exactly embraces. Not only should the invention itself be pointed out, or, as the Act says, "its nature be particularly ascertained and described," but the disclosure must contain also a statement "particularly ascertaining and describing how it is to be performed." This information is distinct from the nature of the invention itself, and should, therefore, be held distinct in the description, though this is not absolutely necessary so long as the specification which the inventor is required to furnish contains both. In describing the manner of performing the invention every detail that may be necessary or advisable for a workman in the relative trade to know, should be carefully pointed out in unmistakable terms; where more than one method is known to the inventor each should be described, care being taken, however, to point out which is the best according to the inventor's experience, so that the public may have equally beneficial knowledge. The specification should not contain reference to needlessly expensive ingredients or time wasting or roundabout methods nor be in any respect misleading. It must be clear, candid, and sufficient.

CHAPTER III.

OPERATION OF THE PATENT SYSTEM.

Necessity of Safeguards.—We have now traced the nature and general policy of the patent system, distinguished those kinds of inventions which the system is intended to develop, and shown on what theory their production and disclosure are promoted, but we have yet to consider how these theories actually work in practice, and more especially that further most important aspect of the whole system, namely, the very necessary provisions for safeguarding existing rights which might be prejudicially affected by patents granted, and in general to prevent abuse of the opportunities afforded to individuals by the patent system to the detriment of the nation.

It must be considered what an immense power is placed in the hands of an inventor by absolutely securing to him the profits of the particular manufacture which he has invented, and expressly excluding everyone else within the country from practising the invention without his permission, how the slightest overstepping of the bounds of what is new in the invention may have incalculable effects if upheld. The patent may embrace ever so little of what was formerly known and practised, but the evil effect of that small encroachment on public property is magnified a thousand fold by the immense number of the population which it will affect. Such an occurrence would affect every citizen more or less directly, for while manufacturers would be precluded from making that particular article, its price would be raised to the public generally.

Equally evil effects would be caused by any uncertainty as to the nature or extent of the particular invention under protection of the patent, any error or inaccuracy of description or ambignity of terms likely to lead to misapprehension.

In all such cases it is not simply one or two who are prejudiced but the whole nation which suffers, consequently the imperative need of preventing any such state of things is obvious.

This circumstance also proves the necessity of the strictest possible application of any test that may be suitable.

The Origin of Safeguards will be best seen on reference more particularly to the English Patent Law.

Before the true equitable conditions under which patents should be granted had come to be generally understood, and while, in fact, the system was in its infancy, it was no unusual occurrence for patents to be granted vesting in individuals the monopoly of whole trades to the great injury of those who had up to that time obtained their living by them. Amongst such grants were patents for the sole right of importing sweet wines into the port of London. Patents for iron, vinegar, salt, sea coals, paper, and lead are amongst them, monopolies of necessaries of life.

In 1601 Parliament made strong remonstrance to the Crown and amendment was promised, only, however, to be soon forgotten in the grant of further privileges of equally intolerable nature.

Matters continued in this unsettled state until after the death of Elizabeth, when James I sought to pursue the same courses.

A successful stand was at last made in 1623 by the introduction and passing of the Statute of Monopolies which was in effect forced upon the King and received the Royal assent.

This Act is in part still in force and forms the basis of the present Patent Law in Great Britain.

According to this Act, monopolies in general were declared void, but Letters Patent for inventions were specially excepted under certain provisos which most effectually restrained the injustice which characterised the majority of patents before that date.

This is practically the first introduction into Statute Law of the grant of patents for invention, but it did not state any novelty, for the common law concerning patents had already been sufficiently clearly expressed by Judges in various patent causes. The Statute of Monopolies is, doubtless, an authoritative statement of the law, but it did not bring into force any new law beyond that it limited the duration of patents to fourteen years.

The Inventor and the State.—It is essential that the reader should recognise at the outset that the interests of the individual inventor and of the State are very different owing to the different utility the patent system has for each. In many points, indeed, the several interests are clearly antago-

nistic, since the inventor's profit being at the expense of the remainder of the inhabitants of the State, is no profit to the State, but, indeed, a loss, since the profit which the other subjects might have made if free to use the invention is lost. It is to the advantage of the State that the novel features of the invention should be distinctly valuable, and not that patents should be upheld for inventions in petty details which in truth required no inventive faculty. It is also the State's object that the invention should be clearly described, so that the public may be able to perform the invention when the monopoly expires, and that the novelties should be clearly distinguished, so that it may be easily seen what the monopoly covers. From the inventor's point of view, the patent should cover all that it can, so that the monopoly may be the broader and more valuable; vagueness of description being possibly an advantage as tending to widen the limits of the patent. The temptation to patent what was not really new would also lead to great abuse of the system if it were not sharply checked.

Monopolies of known Manufacturers.—It was already, and is now, a maxim of law, that no monopoly should be granted which would have the effect of preventing any person from doing that which he was lawfully entitled and able to do before the monopoly was given. It needs but very slight consideration to understand that such a maxim is not only equitable and just, but absolutely necessary for the development of trade generally.

Not only would it be wrong to deprive one man of his legitimate right of trade for the benefit of another, but it would be immeasurably worse to deprive a whole nation of such a right for the benefit of an individual.

This applies not only where the persons deprived are actually carrying on that trade at the time, but also, though perhaps in a less degree, to all the remainder who up to such time had both the opportunity of such trading and general indirect benefits therefrom as consumers or otherwise.

There is another reason against such monopolies, that is, that they are quite gratuitous and unwarranted by any benefit conferred by the individual on the community, for unless the trade monopolised be based on some novelty introduced, the public gain nothing.

Such invalid monopolies are thus doubly impolitic; they deprive others of exercise of their lawful rights, and they give nothing in return.

Where, however, the monopoly concerns a new invention,

the case is entirely altered, the very fact that the invention is new presupposes that others neither already use it, nor know of it, nor can know of it. No man is deprived of any rights which he had before, for there can be no right of use in what does not exist, and no right of knowledge where there is no source of information. On the other hand, the inventor presents to the State something new, some addition to the stock of common knowledge, and his patent is the reward therefor.

These maxims are just as applicable in the present day as they were in the beginning of the seventeenth century, but the inventor has the advantage that they are better understood and more logically followed.

Ambiguous Monopolies.—Equal public disadvantages can be urged against those monopolies the extent and limits of which are not exactly defined. Whenever a patent is granted it should be easily determinable what is and what is not within the patent, otherwise the public cannot be presumed to know either what the new knowledge is which the inventor pretends to disclose, or what, at the same time, he intends the public to be prevented from using.

It is discordant with public policy to compel obedience to a patent founded upon an indefinite or unintelligible specification, and it is equally contrary to the theory of the Patent Law to admit and uphold the patent where the patentee has not properly fulfilled his part of the bargain and disclosed his invention so that the public have a sufficient knowledge of what it comprises. Double ground therefore exists for declaring the invalidity of an ambiguous patent.

Uncertainty of Inventorship.—It is also impolitic to grant patents, even for new inventions, to others than those whose personal merits have entitled them to such monopoly. This is recognised under the British system so far as to be carried to a length which actual circumstances hardly justify. It requires little proof to show that a general sense of insecurity and injustice would be felt by inventors generally if the law were to uphold patents granted to persons who had become possessed of the invention of others by unworthy means. This circumstance alone in its repressive effect on the development of invention would be sufficient to secure disapproval of the policy of such a course, even though it may be urged that the public are *equally* affected whether the patent is in the hands of one person or another.

Great Britain in denying the existence of a personal right to receive a patent refuses to uphold a patent granted to any

other than the true and first inventor himself. Most other countries, on the contrary, allow the inventor to transfer to others his right or permission to apply for a patent, and will equally uphold a patent granted to such transferee, so long as the patentee has secured the inventor's permission.

Nature of Patent.—It will be gathered from the foregoing that when we say that a patent for an invention is a monopoly of that invention for a limited time, so that only the inventor or those to whom he has given permission can use the invention, this statement requires some qualification. The patent is more truly a deed issued by the government to the applicant as an evidence that the applicant has laid claim to be the inventor of the particular matter of which he has furnished a description, and that, presuming his statements to be true, he is entitled to the monopoly that the Patent Law gives in such cases. In no case is a patent an absolute assurance that the monopoly can be upheld, for reasons that will be more fully understood after further explanation. This fact, which is fundamentally necessary in all systems of patent law that have ever been devised, however they may approach perfection, must be always borne in mind by inventors and others dealing with patents. Questions concerning this point are said to refer to the validity of the patent.

Validity of Patents.—Thus, although the law only intends that there shall be certain patents, there are, in fact, many patents granted which are contrary to the law, either, perhaps, in the invention being unsuitable or wanting in novelty or utility, or in some fault in inventorship or otherwise. What is to be the policy of the State in dealing with this state of affairs?

It is clear that the simplest method is that adopted; those patents which satisfy the law are declared to be valid, and will be sustained, those which prove to be contrary to the law are held invalid and will not be enforced. Decision on the question of the validity of any point is left to the judiciary.

No country has yet been able to devise a system under which application for patents can be so perfectly sifted and adjudicated upon that all those granted shall be, *ipso facto*, valid, and at the same time all those rejected assuredly invalid; the conditions under which patents are upheld renders such a system practically impossible, for no body of persons, however learned and however well provided with sources of information, can absolutely pronounce on either the novelty of the invention, the sufficiency of description, or the truth of the allegation of

inventorship. There is no escape therefore from the liability to after decision of any such question adverse to the patent, for either the courts must have power to pronounce upon a patent when called upon to do so, or public rights must be liable to be quashed. The overwhelming importance of the community with regard to the individual precludes any attempt in the direction of the last alternative.

Enforcement of Patent.—As the certainty of validity of the patent does not depend on its grant or the questions arising at the grant, a patent, although usually worded in vigorous terms of admonition, cannot be summarily enforced. Should any party make use of the invention unauthorised by the patentee, and not desist on demand, the patentee's remedy lies only in an action before the competent tribunal (in England, the Chancery Division of the High Court of Justice) to obtain the order of the court for the appropriate relief—that is to say, for an injunction or interdict against the continuance of the infringement, and either for recovery of the amount of the damage the patentee may have sustained through such unauthorised use, or for an account of the profits made by the infringer for the purpose of handing over the sum to the patentee. The alleged infringer may, however, prove the invalidity of the patent, or that his acts are not an infringement, or not within the invention patented to the plaintiff, and in any such event the action cannot be supported.

Distinction between Executive and Judicial Functions.—Questions which in any way concern the right and authority of the inventor to hold and exercise his patent rights are, as we have shown, of great public importance, and require the most careful consideration for their judgment. The whole theory of patent practice in this country, and in nearly every other country granting patents, places all these questions without reserve in the hands of the Courts of Justice. Great distinction is usually placed between the functions of the executive and of the judiciary. The grant of a patent is simply an executive operation, and, consequently, the officers entrusted with the necessary duties have but to satisfy themselves that the official requirements are carried out; they are not intended to judge questions of law or fact, and consequently their acceptance of documents in no way renders those documents unassailable at law. To render a patent absolutely valid without appeal, simply because an examiner has passed the specification as sufficient, would lead to intolerable injustice to the public, especially where, as in Great Britain, the examiner has

no means of testing the novelty of the invention or the personal rights of the applicant for the patent. Very wisely then, in a certain sense are these duties not put on the shoulders of the examiners, for as we have seen that the only *absolute* necessity is a complete disclosure for the performance of the invention by the public; so long as this duty is performed the other questions may be left entirely to the Courts without any prolonce or assistance of previous decision in the Patent Office.

In some countries the executive and judicial features are to a certain extent confided to one and the same body. Thus, in Germany the Patent Office in the first instance judges not only if there is novelty in an invention, but whether the actual novelty shown is sufficient or of such a kind as to, in their opinion, be patentable in (German) law. There is no appeal from the Patent Office in this respect. Further, if any person disputes a German patent, the suit of nullity which he must bring is in the first instance decided by the Patent Office, though in this case there is an appeal to the High Court of Leipzig.

Opinion generally favours an independent tribunal for adjustment of such differences as rest upon matters of opinion or estimation rather than on ascertained and definite facts.

Policy in Grant of Patent.—It is a question of considerable importance whether the system of patents shall be, so to speak, allowed to run free, and all patents asked for be granted, relying on the simple declaration that those found invalid in law shall be inoperative, or whether steps shall be taken to prevent, or at least minimise, the granting of invalid and unsustainable patents.

Those in favour of the former method argue that the whole spirit of law and constitution of this country points unmistakably to regarding the grant of a patent as an executive act, they deprecate the mingling of judicial functions, and declare in favour of the absolute freedom of the individual to receive such patent as he may ask for without control or guarantee. Those in favour of the latter method point to the detrimental effect of such freedom of grant in the preparation of applications, in the uncertainty of the validity of patents granted, and in prejudicing the more important sociological and educative effect of the patent system which may be said to be its end and aim.

The present policy of Great Britain leans to the former method, but with a care for the public advantage in obtaining a full disclosure of the matter alleged to be invented.

Policy of British Patent Grants.—So long as the monopoly in any invention lasts it is important for the public to know the exact limits of that monopoly, but if there is no patent, or the patent is one which, for some reason or other, cannot be upheld, then information on this point is not required by the public since the public may use the whole. Whether the patent is good in law or not, however, the public are equally concerned that the disclosure of how the invention is to be performed shall be complete in every respect, because any deficiency in this respect is so much loss to the public when eventually the invention becomes public property. Disclosure of the means of performing the invention, and disclosure of the nature of the invention itself to distinguish new from old, thus stand on somewhat different footings; the first is absolutely necessary to the public whatever the validity of the patent, the second is only necessary so long as the patent is in force. If then it be made a condition that no patent shall be considered valid, unless it sufficiently distinguish new from old in the invention, the onus in this respect is shifted on to the shoulders of the inventor or patentee, and the latter may be allowed to fulfil the condition, or neglect to do so, without any loss to the public. A short consideration of this point, which is a very important one for the inventor, will show that it is even to the public interest, as opposed to that of the inventor, that the latter should not point out new from old, for in such case the public obtain the information as to how to practice the invention without the disadvantage of having to wait before using this knowledge until the patent is expired. Under such circumstances it is not to the public interest to see that the inventor does what is necessary for his protection; in this and other instances it is always presumed that the inventor will take sufficient care of his own interests. If he neglect to help himself, the State is not called upon to help him, much less when to do so would mean that the vast majority would be deprived of a benefit.

Examination.—From the previous paragraph it will be obvious that the only point that is of direct importance under any circumstances to the public in the disclosure is that the specification or description which the inventor is required to furnish shall contain sufficient information to enable the public to carry the invention into effect, because this information will be advantageous to the public when the patent has expired. Under the British law this is provided for by an examination at the Patent Office before the patent is granted. This examina-

tion is applied only to the specification filed and not to the inventor personally, so far therefore it cannot be in every respect complete because the examiner cannot go further than the papers before him. So far as those papers describe an invention the examiner may see that the information of the details is in his opinion, sufficient to enable the invention to be carried out in practice, but inasmuch as inventions cover a very wide field, and from their very nature are presumed to be novelties which the world at large is not acquainted with, a complete and sufficient examination cannot be in every case relied on. It should be observed that the examiner can only judge of the invention put before him, he cannot detect omissions in the principle of the invention, nor can he ascertain that the inventor has described his invention correctly. So much for the examination actually made or attempted, but no examination is made at all as to the novelty of the invention or its utility, nor as to the inventor distinguishing what is new from what is old, nor even so far as this may be within his knowledge. No examination is made as to whether the invention presents proper subject matter, nor whether the applicant is the true and first inventor in law, because all these matters concern the applicant alone and are not deemed absolutely necessary to the public benefit, yet they also must every one be correctly attended to by the inventor for his own benefit, or his patent will be of no force or validity.

Examination Abroad.—All countries are at one in considering certain classes of inventions as not being fit subjects for patents, for instance, those lacking subject matter—novelty and utility—terms previously explained; all also are agreed that a patent for an invention not properly described according to the law cannot be upheld, yet but few countries make any pretence of examination on those points before granting the patent, and in those countries where there is an examination it seldom extends in any adequate way to every point on which inquiry is needed. Of all government examinations that made in Germany is nominally the strictest, extending not only to novelty and proper presentation, but also to subject matter, utility, and merit of the invention, so that no patent is granted for an invention which does not fulfil all the conditions as clearly as these can be ascertained by the Germans. In the United States, where an examination as to the novelty and presentation of the invention is especially logical and strict, but little account would appear to be taken of the merit and utility of the invention or improvement. In Canada, Sweden,

and Austria, the examination extends more to the sufficient disclosure of the alleged invention than to its novelty and merits, though these latter are within the purview of the examination; in Victoria and Queensland examination is made as to novelty and sufficient disclosure, but not as to the accurate definition of the invention. The United States system of "claims," than which none other is logically more exact, is "anathema maranatha" in Victoria. In Great Britain the examination extends only to sufficient disclosure of the manner of performing the invention, and not to the merit, novelty, or utility of the invention or to its accurate definition. Most of the British Colonies follow Great Britain, or else do not make any examination at all. Russia examines the sufficiency of the specification, and to a certain extent the novelty and utility. Denmark, under a new law, following substantially the German law, will doubtless embody the German method of examination. Peru, Chili, Guatemala, and Hawaii nominally examine the novelty of the invention. Other important countries, for instance, France, Belgium, Italy, Spain, grant patents without any examination whatever.

There is a great diversity of practice in this as in every other particular of Patent Law.

Policy of Examination.—The diversity is due to a varying estimate of the general expediency of an examination. The examination made in Great Britain in what it includes and avoids rests, as we have seen, upon an easily explainable logical basis, namely, that the examination is only to avoid detriment to the public in any event, not to protect inventors; this very strict interpretation of the benefit of trade is nevertheless somewhat narrow and illiberal, and practice has shown that it fails in its object by being misunderstood by inventors.

Considering the subject under the broad objects of Patent Law, it must be remembered that while the effects of the patent system present themselves only as a general whole to the public from whom the ranks of inventors are recruited, every useless and non-productive patent not only goes to diminish the apparent usefulness of the system as a reward for invention, and so renders it less an object for public attention, but it does more than this: it tends to promote a want of confidence in the solidity of the ostensible benefits of the system. Patents may be unproductive from many causes, but these may be divided under two heads, viz., those referable to faults in the invention itself or to the inventor or patentee as such, and those referable simply to informality in patenting an otherwise valuable inven-

tion. For causes under the first head there is, of course, no direct remedy; no law can make a man discover a profitable invention or give him that business aptitude necessary to make an invention a good success, though its educative influence may even help in this direction by assisting an inventor to distinguish a good from a worthless invention, but for causes under the second head a remedy may easily be found. It is also patents under this latter head that are more pernicious in their general effects. Though every invalid patent is an advertisement against the patent system, those whose unproductiveness is evidently due to want of value are not responsible for the want of confidence in the honesty of the system which the existence of patents for good inventions held invalid on technical grounds induces. To produce confidence in the honesty of a system, the benefits which the system pretends to give to inventors should be universally and generally recognisable as realities; as more substantial than empty promises or assurance, as more certain than gifts presented as it were with one hand and withdrawn on some legal or technical pretext with the other. If it is good policy that an inventor should have an actual monopoly of his invention for a time as an encouragement to others, then the State should take all reasonable precautions that the monopolies granted should be capable of being upheld. If the State affirm the policy and neglect the precaution, the State acts in a way exactly contrary to its own policy.

Where an examination does not extend to all the points necessary to be determined to ascertain the validity of a patent, reliance can only logically be placed on the assumption of law that every person knows the law. If it were a fact that the knowledge of the theory and practice of Patent Law were universal, then an examination of all applications for patents would not be needed, since they would invariably be found to be correct in every particular. Even where the majority of the applications are correctly prepared the whole might not unreasonably be left to take care of itself, but when, instead of universal knowledge of Patent Law, we find almost universal ignorance, it would appear that the best cure is to be found in a strict examination.

Disadvantages of present British Patent Act.—It is well known to all those whose business leads them into intimate association with matters relating to patents for inventions in this country that the system pursued here in the grant of patents on the one hand more or less indirectly causes many persons to throw away their time and money in obtaining

patents for inventions which afterwards prove to be wanting in patentability, and, on the other hand, leads many persons having valuable inventions into losing their rights by inattention to some essential of the law the existence of which they are ignorant of. Of late years, since 1883, the effect has become vastly more noticeable, and its increase is directly attributable to the Act of 1883.

The avowed intention of the framers of the Patent Act of 1883 was, by simplifying the procedure and lowering the initial cost of a patent, to bring the advantages of the patent system within the reach of all. No doubt the attainment of these ends is a great advantage in itself, but such are not without minor disadvantages which the Act has done nothing to minimise. Thus the lowering of the initial cost of a patent naturally widens the field, not so much for bringing in the more valuable but rather the less valuable inventions which were formerly considered not worth the expense of a patent. This lowers the average value of inventions, and consequently tends to lower the average care taken in patenting them. The cheapening of a patent also lessens its apparent importance, in the minds of those who are apt to estimate the value of a thing by the time and cost necessary to obtain it, and in any case removes the incentive to careful consideration on the part of a prospective patentee which the necessity of disbursing heavy payments formerly afforded. The simplifying of the procedure necessary to obtain the grant of a patent has the same effect of lowering its apparent importance. There is but little true simplification, that is to say, it is more in outward show than in the fundamental necessities. It is no longer nominally necessary for such a high official as the Law Officer to the Crown to examine a provisional specification, nor is a special warrant now required before the patent can be sealed. The Letters Patent themselves, formerly a most portentous document upon a square yard of parchment, with an impression of the Great Seal of England in wax weighing about a pound attached, have from time to time been shorn of their glory, until they are now but a double sheet of type-printed paper with a red wafer in the corner. But just as much care is still required in wording the specifications, &c., and in all other steps pertaining to the obtaining of the patent.

It is not the writer's intention to cavil at this simplification of Patent Grants, or in any way to suggest that the old solemnities should be revived, but simply to show that, while the lowering of fees and simplification of procedure have the ill-

effects that have been mentioned, steps should be taken to counteract these tendencies which are so contrary to the general utility of the patent system. If the individual inventor were alone concerned there would not be this necessity, since it may be the policy of the State to drive a hard bargain with him, but as we have seen, the question concerns the whole public, indirectly as potential inventors interested in obtaining valuable monopolies, directly as users of patented matters desirous of certainty as to what may or what may not be used without permission, and as potential buyers or manufacturers of patents, &c. There cannot be a doubt that the existence of a host of invalid patents tends to annul general confidence in patents, to lead to litigation, and to rob a good patent of that self-evident value which an inventor has a right to expect.

Such invalid patents further greatly confuse the records, adding to the cost of proving or ascertaining the validity of any patent and to the cost of searching, usually requisite in preparing an application for a patent.

There may be several ways of preventing the grant of invalid patents, but the best in practice is undoubtedly an official examination of every application for patent. No method can be absolutely perfect, an examination however good cannot be absolutely complete, but if carefully and intelligently made, it approaches certainty more than any other method.

Examination of Validity.—The uncertainty as to the validity of a patent arises mainly from two considerations, namely, whether the invention is new and a proper subject for a patent; and what exactly the inventor intends to put forward as his invention, where the invention begins and where it stops. Now, although an examination on the first of these points may possibly fail to find some existing antecedent matter rendering the patent void, and therefore can only approach and never touch absolute certainty, there is no reason why a logical examination on the second point should not be made with success. Yet it is unfortunately true, and inventors should bear it in mind, that even this examination is not made, and in fact it is further off now than ever it was, for firstly the jurisdiction of the Comptroller of Patents to control the claims in which alone the invention can be accurately limited, was reduced to *nil* by the decision of the Solicitor-General in *re* Smith's Patent,[1] and secondly, even the claims themselves by which it was hoped that some more certainty would be forthcoming, have been

[1] *Griff. P.C.*, I, 268.

held to be not absolutely required by the law as defined by the Court of Appeal in Siddell *v.* Vickers[1] and affirmed in the House of Lords.[2]

The present examination made by the Patent Office extends only to ascertaining that the invention, or rather the manner of performing it, is *fairly* disclosed in the specification to enable others to carry it into practice, but it does not extend to ascertaining if the applicant has sufficiently protected his invention so as to exclude others from using it during his term. This is left entirely at the risk of the applicant; and the Patent Office, in Sect. 17 of the Patent Office Circular, especially disclaims the giving of any legal advice or opinions on any subject connected with the Patent Law.

Summary.—Patents or monopolies of new and useful inventions for a limited time are for the benefit of the trade of the nation, and the only inventions which can be protected are those useful in trade. The question of usefulness for trade has for convenience been split up into various minor tests for the better unanimity of decision. The inventor must possess certain characteristics and perform certain duties to entitle him to a patent.

The question of validity of any such patent when granted depends upon circumstances removed from the power of the Executive to decide and relegated to Courts of Law. Patents which are found to satisfy the law are upheld, while those that do not are left unsustained and are consequently useless.

The tests of validity are strict because the interests of the community, compared with those of the individual inventor, are of immeasurably superior importance.

As, however, the intention of the Patent Law is to promote a general development of inventive faculty, the more advanced nations in this particular have instituted examination to, as far as possible, stop the issue of invalid and ambiguous patents. Great Britain, however, prefers to leave each inventor entirely to his own resources to secure validity in his patent.

As all Patent Law is construed with relation to public policy, the inventor must conform to the latter to obtain its benefits.

[1] *R.P.C.* V, 432.
[2] *R.P.C.* VII, 292.

CHAPTER IV.

THE UTILITY OF THE PATENT SYSTEM FOR THE INVENTOR.

Absence of Commercial Text Books on Patent Law.—We can now pass to the opposite side of the question, and consider the utility of the patent system for the individual inventor, an aspect which may be presumed to be of more direct and personal importance to the reader.

It was necessary to commence with general policy of the Patent Law, and the intentions of the State, because the inventor cannot be in a position to judge of the system and employ it for his own advantage, without he is acquainted with the general purpose of the law, and the reasons which underlie its particular provisions. To say this is to bring forward no abstract theory, but simply to assert what may be daily proved by examples. That many fail when they attempt to use the patent system for their pecuniary advantage, is due to misunderstanding of its nature, for there is no need of such failure if only every intending applicant for a patent will carefully ascertain beforehand what it is that is necessary for success, and whether he and his invention answer the requirements; all these are ascertainable by those who will pursue the necessary investigations, all that is wanted being to set the enquirer on the right track, and point out the questions to which he must direct his attention. It is to be regretted that there are no authorities to which the inventor can refer upon the commercial aspect of the question of patenting inventions; admirable text books there are in great numbers explaining the Patent Law, but without any guide to its practical and commercial side. Patent agents' circulars are but a poor substitute, their small limits prevent adequate discussion, and the more rosy aspect of affairs is often dwelt on to the exclusion of the drawbacks.

The inventor requires to have fully put before him every *pro* and *con* which may affect a just estimation of the advisability of perfecting, patenting, and developing an invention. The ultimate decision on the advisability of procedure must rest with himself.

The Utility of the Patent Law to an Inventor may be summed up in its capacity to afford him the assurance of profitable recompense for his invention. So far as the inventor is concerned, the whole question simply resolves itself into how the greatest amount of profit may be derived from his invention, and the patent system enters into the calculation only as a means to an end. To answer the question fully, the manner in which the invention is best to be dealt with in trade must be determined, and its value deduced therefrom; the method of securing this value and retaining the profit of its use to the inventor merit equal consideration. These two questions are distinct, and the answer to one is not in any way an answer to the other. The invention must have value, or the exclusive monopoly of it will be profitless; and equally the monopoly must be secure, or the profit of the invention will slip into other hands.

As the valuation of the invention and patent rights depend greatly on an accurate knowledge of the effect of the Patent Law, this process, though strictly antecedent to procuring protection, must be reserved for a later chapter. For the present we will assume that the invention possesses a sufficient commercial value to overbear the expense of securing that value to the inventor.

Possibility of Secret Use.—There is, firstly, the choice of two courses open to an inventor, namely, to keep the invention secret from everyone, or allow it to become known to others.

Naturally, if an invention be kept secret other persons cannot employ it to their advantage, because they are ignorant of it; or if not in any particular case entirely ignorant of it, yet so far without knowledge of the way in which the invention is carried out as to prevent them from performing it. In such a case the problem to be solved will be how to work the invention to a profit without disclosing it to others, or allowing it to become known; for directly other persons become possessed of sufficent knowledge to practice the invention, the original inventor will be left without any advantage over his competitors in the trade, and consequently his invention will cease to be the source of especial profit to himself.

Brief reflection will show that there are very few inventions which are even of such a nature to admit of their being secretly employed to advantage, and even in cases where such secret use is possible, it is usually not advisable. Chemical processes, or methods of manufacture, can sometimes be carried on in secret, where the nature of their practice or of the result

afforded does not cause them to become known; the advantage lying, for instance, in the cheapening of the cost of manufacture, giving more profit, or in an improvement in the quality of the product causing it to be preferred on the markets, or fetch higher prices. Though there are in such cases considerable difficulties to contend with in keeping the invention secret, they are not necessarily insuperable; but a manufacturer using a secret process is always more or less at the mercy of his workpeople, while a number of competitors in trade will be continually on the alert to discover all he is or may be doing, more especially if there is anything noticeable in the product which may lead them to suppose that it is not produced altogether by the known methods. Failing their obtaining any information, directly or indirectly, from the user of the invention, they will naturally be led to experiment to produce the same result, and thus probably light on the same discovery; whereupon the first inventor's exclusive monopoly would vanish. The anxiety and, indeed, extra cost entailed in various ways by secrecy must also be taken into account.

The advantage to the original inventor would, therefore, be in all probability temporary only, and for that reason correspondingly small, while the expenses would be greater. Even though the inventor be ready to sell the secret, a price would not be easily obtained for it, considering the necessary absence of any reliable guarantee that the invention will not also be sold or imparted to others, the danger of others inventing the same thing, and the inability of the inventor to transfer his personal right of patent under the law in force.

Where Secret Use is Impossible.—By far the larger number of inventions, however, fall into that class in which there is no possibility of special commercial advantage from their secret use under any circumstances. In this class may be included all new machines, instruments, or articles of commerce considered as vendible commodities themselves, and distinguished from those used simply to manufacture the vendible commodities. It is obvious that no person can obtain any special advantage, for instance, from a domestic knife-cleaning machine, that he would not equally have if not kept secret, or a new inkstand, or a toy puzzle, or, in fact, anything not used by him as a special engine of advantage in his trade or profession. An inventor of anything in this category will at once discard all thought of keeping the invention secret, and recognising the necessity of its becoming known will look further and ascertain what other protection can be had for it.

No man has any exclusive right to the use of an invention, except so far as the laws in force of the various countries allow him such protection. So long as the use of an invention is maintained secret, the claim of inventorship is liable to be taken away by a subsequent discoverer of the invention being the first to disclose it to the public. The only alternative course, if any rights are to be retained in the invention, is to protect it by patent.

Value of Patent.—It is very important to understand in what the value of a patent consists.

The patent itself does not make a newly invented article more saleable than it otherwise may be, but it reserves the rights of sale, and therefore the profits, wholly to the inventor, and so enables him to make a pecuniary success of his invention if it be one capable of such success. All novelties require pushing, and considerable time and trouble must, in the majority of cases, be given in getting the invention introduced and well known to the public in order to induce business in the article. The patent helps but little in this; but when the invention once becomes known and in demand, then the value of the patent becomes apparent, and will be seen to be of the very greatest importance, for the following reasons: supposing that the invention has not been patented; after the inventor has been at the trouble and expense of creating a public demand, and has turned the corner, so to speak, and is beginning to make profits, competitors and imitators will arise and participate in the trade, cutting down the prices, which they can well afford to do, seeing they have had none of the initial expense of creating the business. The inventor will thus make but a slight profit, if any at all, to set off against his pecuniary outlay; but on the contrary, had the invention been properly patented, the inventor, after the public demand has been created, may defy competition, since he retains the sole monopoly of that trade by virtue of his patent, a monopoly not only of the whole supply, but of the fixing of remunerative prices. The difference in such case is very great, and practically means so much clear profit. Even if an invention take several years to introduce, the monopoly for the remainder of the 14 years of the patent, considering the extent of the territory covered and the number of the population, must be of sufficient value to far outweigh the expense of the introduction of a good invention, and to render the cost of the patent itself practically infinitesimal.

It is the millions of users, all directly or indirectly forced

customers of the patentee, which give such value to small but useful inventions in matters of everyday use, as shown by often repeated instances of fortunes to the inventors of *patented* pencil cases, toys, penny puzzles, and like articles of catchy novelty resulting from a happy idea. On the other hand, it is the breadth and importance of the interests effected which render the improvements in the more important manufacturing processes equally, if not more, remunerative to their inventors when properly secured by patents; for the patent is absolutely necessary to the defence of the inventor against appropriation of his ideas without his permission, and is therefore absolutely necessary for the security of his profit.

But the patenting of an invention alone does not cause a fortune to fall into the lap of the inventor; however good the invention may be it will not be remunerative without it is brought to the notice of the public or the manufacturers or of that class of persons, whoever they may be, who will find most advantage in taking it up.

For these reasons patents should be looked upon not so much as actual producers of wealth but as *investments* or *security* for the remunerative character of the business in the invention which it will then be to the advantage of the holder of the patent to quickly and widely develop. An unused patent will bring in nothing unless by luck some person notices it; and so long as it remains unused it remains unproductive; but once let the invention become known and in demand, the patent will prove the most valuable item of the business, and, in fact, the only security for retaining the sole business in the grasp of the owner of the patent.

Utility of Invention.—Of course, where the invention is worthless, that is, offers no actual commercial advantages, a patent for it will be equally worthless, for no patent can give value to an invention when the latter possesses none. A patent gives no value to an invention at all in one sense; it only *secures to the inventor* the value which the invention already possesses. Thus a great number of patents are unremunerative, the inventions on which they rest being useless, but this fact has no bearing on the value of those granted where the invention is useful. Every person who contemplates applying for a patent should therefore assure himself that his invention possesses a sufficient value, so that, setting off the cost of the patent and of the introduction of the invention into public notice against the profits likely to be thereafter gained, a balance be left in favour of the latter.

The same preliminary study should be made even when the inventor only intends to take a patent in order to sell the patent rights to others, for a patent will not be saleable unless the invention when protected by it promises a return sufficient to more than cover expenses.

Rough Valuation of Invention.—The first question which the inventor should settle in his mind is the likelihood of value in his invention. It may seem unnecessary to mention this, but experience has shown that inventors do not always pay attention to this fundamental feature so necessary to success. The inventor should inform himself of the advantages and cost of existing machinery, process, or what-not with which his invention would compete; he should ascertain, not necessarily minutely, but broadly, that whether in cheapness or advantages his invention presents valuable features over existing appliances or methods. He should estimate roughly the value of the predominance of his invention, taking into account on one side the vastness of the field which he can reserve exclusively to himself, not less, if he so desires and affords the outlay, than nearly the whole world, and on the other side the cost of perfecting and reducing the invention to practice, and diffusing knowledge of it to those who would be directly interested in using it. If the inventor, summing up these rough figures, estimates that the exclusive rights, without which he has no hold on his market, are valuable to him he should take the proper steps to protect himself under the Patent Laws wherever such advantage extends; leaving those countries where the advantages are slight, or not worth the comparatively small cost of the patent there. Many inventors fail to attain pecuniary success by omitting such preliminary balancing of the cost and profit; some have designed useful articles or machines only to find that the cost of manufacturing them was greater than other equally useful articles or machines for the same purpose. Others have considered to be advantages what have not proved to be such in practice. Some have lost profits by omitting to take out foreign patents, others have lost money by taking patents and setting up foreign establishments to work inventions not required there.

Temporary Protection while Value Ascertained.—Happily the English Patent Law, which we presume is of the greatest interest to the reader, embodies a useful feature which at a comparatively trifling cost enables an inventor, even before he has been at the expense of working out his "idea," to take what is usually termed a "provisional protection," and thus

save the priority of an option to receive full patent rights in Great Britain, and in any or all of those foreign countries which are parties with Great Britain to the Convention for the Protection of Industrial Proprietary Rights.

During this option, which lasts nine months in Great Britain and six months in the foreign countries,[1] the inventor has ample opportunity to test the full question of value above mentioned, to work out his invention and demonstrate its practicability.

If it is found a success he can proceed to take full patents, if not he need go to no further expense. It may be argued that the inventor can look into all these questions before taking patents, or in any way taking a protection, provisional or otherwise, under the law. True, he may do so, but with risks which the provisional protection was instituted to avoid; the reasons will be more fully understood from subsequent chapters, but briefly here they may be summarised as follows:—Whoever first applies for a patent or provisional protection gets the priority, so that delay may mean absolute exclusion in favour of a more speedy rival. Any disclosure of the invention to the public *before* applying for a patent or provisional protection destroys the validity of the patent afterwards granted. Such disclosure is often advantageous or necessary in getting estimates for manufacture, and often cannot be wholly avoided in testing and working out the invention, and, in short, in obtaining full answer to the main question, Will the invention pay? For these reasons it cannot be considered otherwise than running a wholly unnecessary and very dangerous risk to avoid taking advantage of the provision of the law allowing the inventor to obtain "provisional protection" by making an application for patent in the prescribed way. It may be thought that the probability of two or more inventors independently working on the same problem is not large enough to be taken into account, but the experience of those acquainted with the working of the system proves that it is not at all infrequent.

Nature of Provisional Protection.—By filing an application, accompanied by a provisional specification, the applicant retains a certain date, the day on which the application is filed, for the date of the patent which can eventually be had for the invention whose nature is described in the specification. This gives priority over any subsequent applicant, for the patent dates from the day of application; if the inventor, for

[1] The list of these countries is given on page 42.

instance, files his specification on the 1st of January, a similar application by any other person, say on the 2nd of January, will be of no avail if the former application is completed. The same priority of date protects the inventor against the direct consequences of any disclosure of the invention between the date of the application and the eventual completion of the patent; for such disclosure, where no protection is obtained, renders the patent afterwards obtained void. The opportunities for negotiation and for open experiment are both very beneficially furthered under a provisional specification.

A provisional protection does not give protection against infringement, since until the invention is fully worked out its nature is not rendered sufficiently certain to afford grounds for forbidding others to use similar contrivances Since, however, the complete specification, when accepted by the Patent Office and published, contains full details of the invention, protection against infringement may well be given, and is given, from the date of its publication. If a holder of a provisional protection finds that his invention is being infringed, he can at once complete the application for patent by filing a complete specification, on the acceptance of which, in about four to six weeks, the infringement would have to cease. Under these circumstances inventions covered by provisional protections only are very seldom infringed.

Option of Foreign Patents under Convention.—Another feature connected with an application for patent, and equally applicable to provisional protection, has been referred to. Under a Convention adopted in 1883, and to which Great Britain became a party on 26th June, 1884, certain foreign States—at present, Belgium, France, Italy, Norway, Portugal, Servia, Spain, Sweden, Switzerland, Tunis, Brazil, East Indian Colonies of the Netherlands, and the United States—entered into a reciprocal arrangement for mutual protection of inventions and trade marks, under which, amongst other provisions, any person who has applied for a patent in one of the countries obtains a certain period of time during which he may apply for patents in any of the other counties named, with the privilege that all such patents shall be accounted to give protection from the date on which the first application was made, thus antedating any patents for the same invention or any publication occurring in the interval. This period of time is nominally six months, but is extended to seven months for countries "beyond the sea." It is doubtful if Great Britain is to be considered "beyond the sea," so six months should be held the proper

form for this option to take foreign patents in the above countries when application is first made in Great Britain. As this option is practically exactly the same as a provisional protection in Great Britain, we may truly say that the applicant for a British patent or protection obtains *ipso facto* provisional protection for six months in all the above States as well as in those of the British colonies and dependencies, which, without being parties to the actual Convention, have made similar arrangements with Great Britain alone.

It may be observed that the existence of the time limit in the Convention does not exclude inventors who may not have applied within that limit from obtaining at any time foreign patents so long as they can fulfil the requirements of the various foreign laws.

Experimental Development.—Owing to the delays inseparable from experimenting to prove the best method of carrying the invention into effect, and to disclosure often necessary in the course of experiments, it is advisable to make application for "Provisional Protection" before experiments are undertaken, for so long as the principle or idea is recognised as capable of being rendered practical, that is all that is necessary at the time of protecting. The exact details of the practical application are left to be defined in the complete specification, and the nine months of provisional protection are principally intended for devising the best method of carrying the invention into effect. This must, however, not be misunderstood; the inventor is not intended simply to propose to himself an object to be attained and then have protection for nine months while he is making inventions to fulfil his object. He must start with an invention or principle recognised as effective for attaining the object in view, and use the nine months in bringing that particular principle into a practically and commercially workable form.

All through the progress of the nine months' protection he should keep an eye upon the wording of his provisional specification to see that he is working under it and not going beyond the principle described.

Many inventors when experimenting see reasons to change the whole principle of their inventions; as soon as the new and better principle is recognised a new protection for it should be taken. Do not confuse the purpose of the invention with its nature, if the latter is changed a new application should be made; for though, in describing the invention in the complete specification, modifications in working details are allowed, and even

desired if the alterations are advantageous, changes of nature or principle are inadmissible.

Abandonment and Renewal on Application.—If circumstances should render it impossible or inadvisable to proceed with the application for the complete patent before the expiry of the provisional protection, the latter can be abandoned and no further costs incurred.

In the event of a provisional protection being suffered to lapse without a complete specification of the invention being filed within the time appointed, the provisional specification filed remains unpublished, and to all intents and purposes it is as if no protection had ever been applied for or granted. It would therefore appear that a protection which has lapsed is no bar to the obtaining of a valid patent for the same invention on another application made during the time the protection was in force, or after it has expired. If the said protection had been "completed" then the patent eventually granted would have been dated the day of the application for the protection, and consequently would antedate any patent that could be obtained on a subsequent application, and render the latter invalid, but if the protection be not completed no patent is ever granted to invalidate a subsequent patent. So it appears that if an inventor from any cause does not desire to "complete" a provisional protection granted to him, he may at any time within the period of his protection, or subsequently, make another application for a patent with a provisional or complete specification as he may desire, but this latter application will be altogether independent of the first and stand on its own merits entirely. A provisional protection simply gives to the applicant during a certain time (nine months, or if extended, ten months) the right to obtain a patent having a certain date which will be prior to any patents granted to subsequent applicants, and should be prior also to any publication of the invention by the applicant or any other person. The inventor should always apply for provisional protection at the very earliest possible moment to secure this priority of date; or, if desirable to renew it, apply for the renewal without delay and without waiting for the expiry of the first protection.

Chapter V.

HOW TO PATENT AN INVENTION.

Commercial Aspect of Application for Patent or Protection.—As the various documents and the mode of application will be fully described in the second part, it will only be necessary here to consider the commercial aspect of the application. So far as the inventor is concerned, the method in which the application is to be made is just as much a commercial question as the taking of a patent at all. Speaking commercially, there are two ways in which the patent may be had, the one is to commence with a provisional protection, the other to take out a complete patent at once. Each has some special advantages. Under the provisional protection the inventor need only point out the nature or principle of his invention, and he obtains a respite of nine months' duration for his experiments and practical testing of the invention, before he is required to state exactly how the invention is to be carried into practice. These nine months are invaluable, not only for bringing the invention into the best commercial form, but for testing its value so that the advisability of taking a full patent may be judged. As the first applicant is preferred, the taking of a "provisional" secures priority of date over any subsequent applicant and also affords a security against possible ill-effects of public exposure of the invention which may be at any rate advisable, if not inseparable, from experimenting. On the other hand, the taking of a complete patent at once gives the fuller patent rights at an earlier date, for during the course of the provisional protection the applicant is not defended from infringement. This is, however, amply set off by the advantage of being able to add modifications of the original idea under the provisional method which is denied in the complete, and inasmuch as any infringer during the period of provisional protection would immediately have to cease when the complete specification is accepted, which the applicant can generally carry through in five or six weeks, the danger of infringement

before the invention is fully patented is practically so small that it may be neglected.

Nature of Application for Provisional Protection.—It is of advantage then to speedily take a provisional protection, but this should not be done without a sufficient study of the consequences of the step; because the application for provisional protection is in truth nothing else than the commencement of an application for patent, and although it may be abandoned if the invention is found to be of insufficient value, the steps then taken will govern the whole patent, if the latter is proceeded with. They may possibly detract from its value very materially if not performed and written entirely according to law and rule as will be hereinafter seen.

Thus the provisional specification which must accompany the application must describe "the nature of the invention." It may be thought that to do this, while the invention is, so to speak, but an idea, without the opportunity of correction by practical test would be a matter of difficulty, and indeed it is so, for the inventor is afterwards bound down to the "nature" therein expressed. To word the specification on the one hand sufficiently narrowly to show a legal invention, and on the other so widely that it will be found to embrace and cover the practically complete invention when afterwards worked out, is a matter requiring considerable skill for which long practice in such matters can alone be relied on with any certainty.

Strictness of Law.—Nevertheless the law renders it essential that this should be done exactly, for to err in either direction would entail loss of the patent.

The reason for this lies in the fact that the application for provisional protection gives the inventor priority over other later applicants and also over any public disclosures he may make, so that the law to fulfil its third object before stated requires to treat provisional specifications just as much as other matters the patentee is required to furnish, with strictness.

"Taking a Patent."—The question of "taking a Patent" is especially one in which the maxim holds good that "what is worth doing is worth doing well," and this for several reasons.

First of all, the protection of the inventor's monopoly is entirely dependent on the patent, so that a patent that does not properly cover the invention, or which for some informality or other cause cannot be sustained in a Court of Law, is perfectly worthless to the inventor. It must be remembered that the patent, if valid and sustainable, covers the invention *as described in the specification* or description, which must be filed at the

Patent Office. If this description does not, therefore, legally conform with the invention in its actual state, the latter is not protected by it. It may be supposed impossible that an inventor should describe any other than his actual invention, but experience proves the opposite, there are some inventors whose descriptions do not cover their actual inventions. There are also many more inventors who do not cover *all* their invention by their patent and so lose a great part of the value their patent would otherwise have given them.

Take, for example, a new machine, the inventor working on his plans and models produces a machine which works in a certain way and effects certain results, he then proceeds to patent this machine and, as required by law, writes a description of it on which his patent is to be based. Now, relying on his patent, he manufactures and offers the machine for sale, charging a considerably increased price in view of his monopoly. But now perhaps A starts to make a similar machine in competition, and, working on the inventor's original ideas, makes some alterations here and there. B, C, and D also do the same, making other alterations which perhaps embody all the useful results without copying the exact means of the original inventor. The latter tries to stop this competition of A, B, C, and D, by claiming that they are infringing his patent, but it is found that the *description* the inventor has given *does not cover these varieties of his original idea.* Consequently the competition cannot be stopped, the high prices must be cut down, the profits, such as they are, do not go all to the originator, and the patent loses the greater part of its value.

This is a very usual picture and to be avoided only by the exercise of the utmost skill, of almost prophetic nature, in drawing up the description of the invention in the first place so that it will be found to *legally* cover not only the actual machine or matter then produced, but all alterations, variations, imitations, substitutions, &c., which may hereafter be made on the same general principles or groundwork.

It is the greatest mistake to omit precautions in this respect, since errors of that kind cannot be afterwards corrected. This applies equally if the inventor intends to sell his patent instead of working it himself. Purchasers naturally look to obtain broadly covering patents, and take the opinion of experts as to the scope and novelty of any patent they think of purchasing before parting with their money, or even often before settling the price, since the actual value so much depends on the scope of the patent.

We have illustrated the description of the invention as exceedingly important, but in truth every step taken in protecting an invention under Patent Law is fraught with some danger or other, necessitating more than simply reasonable care and common sense, namely special technical and legal knowledge, the nature of which it is our object to point out in subsequent chapters.

Narrow and Broad Patents.—In the previous paragraph an instance was given of loss through failure of a patent to include modifications adopted by infringers. As this involves a point of the greatest consequence to patentees some explanation of the cause is needed. It is extremely difficult, apart from any definite example, to explain the difference between a "narrow" and a "broad" patent, since it lies almost wholly in the wording of the specification of the invention. Many inventors indeed are wholly ignorant of the difference that exists, many suppose that there can be but one protection, and that its extent is the same whatever the terms employed in the description. This is often a fatal error, for the extent of the patent rights will vary very much according to the description of the invention. Thus, if an inventor has made a machine, say, for making nails, he will have adopted certain means such as levers, wheels, acting in a certain manner to effect the various movements that he desires, and the resulting machine is the product of his invention. Now, if an exact description be made of that machine simply and the claims be devoted to the machine as a whole, there will be nothing in the description to cover any modification operating in the same way, but if on the contrary the writer of the description avoids mere superficial description of the parts and seeks for and shows the underlying principles on which the various elements of the machine co-act to produce the result intended, and describes the parts as components of the result in generic terms, it will be found that when a machine containing different elements, but working on the same principle, is attempted to be used in infringement, the description of the first machine will contain the second, in fact it will be also a description equally applicable to the second, and the latter will therefore come within the terms of the patent.

Thus a broad patent is one in which the description of the invention is drawn in generic terms and with absence of special detail, yet of course absolute in its expressions so that no ambiguity exists in its meaning, and sufficient in its description to enable others to produce the invention.

A broad description should avoid every qualifying word that is not essential, thus if an invention employs a vessel of iron, cubical shape, one yard every way, whereas neither the material, the shape, nor the size is important, it is simply necessary to refer to the same as "a vessel." If metal is necessary, say "a metal vessel," if of a certain capacity, say "a metal vessel of the capacity of . . ."

Each qualifying word so far narrows the patent by excluding from its scope the employment of all other articles in the same category to which that qualifying word will not apply, for a patent will only extend to the invention *described in the specification.*

The great loss of ground covered by a patent where the description is narrower than the novelty of the invention warranted, will be easily apparent, but at the same time if the specification be so wide as to include in the scope of the invention what is not new, the patent is invalid. The science of drawing up a specification for patent consists in skirting the edge of what is already public knowledge so as to obtain the broadest possible value for the patent without overstepping the line dividing new from old.

The Cost of Application for Protection or Patent.—As the taking of a patent is equivalent to the purchase of a security, the amount necessary to do the work properly should alone enter into consideration. The necessary papers for an application consist of a form of application which has to be stamped with an impressed stamp of 1*l.*, and either a provisional or a complete specification, according as a provisional protection or a complete patent at once is desired. The provisional specification bears no stamp, but the complete specification must bear a 3*l.* stamp. The patent depends entirely on these specifications so that the services of an expert in Patent Law is necessary for drawing them up. Charges for these services vary according to the length of the specification judged to be needful, and it is naturally a most false economy to cut down the necessary length to save expense. The usual charge for preparing a provisional specification is 2*l.* 2*s.*; or inclusive of all charges for filing, government stamp, 3*l.* 3*s.* to 4*l.* 4*s.* Some agents charge 5*l.* 5*s.* to 7*l.* 7*s.* for this work, but less charges than 3*l.* 3*s.* may be taken as evidence that the ability of the services rendered, on which of course everything depends, are not recognised as sufficient to command the usual professional fees. The usual charge for preparing a complete specification is 3*l.* 3*s.* to 7*l.* 7*s.*, or with filing and other charges, including the government

tax, 8*l.* 8*s.* to 13*l.* 13*s.*, but, of course, this is greatly dependent on length of description, and number and complexity of the drawings. When searches are desired to ascertain novelty, &c., the charges are according to the time employed. Unless such work is entrusted to absolutely competent men, it is often worse than useless. An opposition to the grant of a patent is so unusual that the cost of defending the application in such case may be neglected. No opposition is possible to a provisional application.

Patent Agents.—As the fact of the extreme dependence of the patent rights on the manner in which the invention is set forth is an argument for exercise of considerable care in choice of a professional adviser, a few words on the nature of patent agency may be advisable.

The patent agent should naturally be, first and last, an expert in the Patent Law, and especially legal decisions of the Courts, having all precedents at his fingers' ends. He should combine a mental capacity of broad grasp of detail with an automatically dissective and critical faculty of discerning underlying principles, should be a master of logic, and of the legal phraseology, hallowed by practice in Patent Law. To these qualities, which more strictly concern Patent Law, he should add a sufficiently complete acquaintance with mechanics and chemistry, and the manufactures which are based on one or the other, to be able to fully comprehend the inventions of his clients, and so far as may be, suggest natural impediments to, or improvements in, the details of their execution.

A patent agent conducts his clients' business with the Patent Office, or with foreign patent agents, prepares and advises on specifications, makes searches as to novelty, &c., gives conferences, and reports on the scope of patents and questions of infringement, collects and gives technical and expert evidence in cases of infringement, &c., and acts as arbitrator in patent matters.

A patent agent will also usually keep his client advised of taxes as they become due, thus preventing accidental loss of patent rights by omission to note some government requirement.

Registration of Patent Agents.—Always numerically few, patent agents in Great Britain were, till lately, in no way as a profession under any special authority; the sudden increase of business in 1883 and 1884, however, led to an increase of patent agents. In 1888 the general public importance of the duties of the profession, the ease with which unqualified

persons could set up business as patent agents, and the difficulties which inventors had in discriminating between the firms of genuine credit and ability and their irresponsible imitators, led the Government to pass an Act providing *inter alia* for the registration of patent agents.[1]

Any person on satisfying the Board of Trade that he was then practising as a patent agent was, on the Board certifying to this fact, to be admitted to the register without examination. The existence of a name on the register is, therefore, no guarantee of professional standing, nor are any such words as "Certified by the Board of Trade," which are simply misleading.

There are about 240 registered patent agents in the United Kingdom, of which the greater number are in London, where the Patent Office is situated. A London resident agent has the greater opportunity for personal explanation, often desirable, before the Patent Office examiners, attending hearings, performing work quickly when time presses, and making searches in the Patent Office Library and records.

On Choosing a Patent Agent.—Should the inventor be unable to hear of a patent agent through personal recommendation, the following may be useful to note. Excessively high prices should be avoided, since the cost of the work, especially of foreign patents, does not necessitate them. Very low prices, however, should be the very reverse of a recommendation, as proper work not only fairly asks reasonable prices, but cannot be had for less. Avoid free opinions advertised, free searches, &c. If the work is of value, it should be charged for. A busy and well employed man has no time for free opinions and conferences; he devotes his time to the interests of those who have already paid fees to retain him. His clerks answer ordinary inquiries. Direct solicitation of work by circulars addressed to inventors, above all, is discountenanced by all who may be considered in the higher ranks of the profession. See that your agent gives his personal attention to such of your affairs as require a patent agent's skill; some entrust such work to clerks, and though these are possibly well informed, the client would probably get better attention, and at a less cost, from an agent doing a smaller business more entirely under his personal control.

Attention should not be given to professed dealers or sellers of patents, the obtaining of a patent and the selling of it are

[1] The provisions are embodied in the Patents, &c., Amendment Act of 1888.

distinct businesses, requiring entirely different aptitudes. A lawyer does not act as a merchant, nor a consulting physician as a drug seller. The first point is to obtain a patent or protection, and if the inventor desires the best advice on that, he will avoid those who make a parade of selling inventions, since the best known agents do not profess to act as sale agents.

It naturally follows that the better the patent the more readily it is saleable. There is also a prejudice against the employment in obtaining a patent of any person who may possibly be financially interested in a rival invention.

Patents in Courts of Law.—The inventor should always keep this fact before his mind, that a patent is not indefeasible, that as his ultimate resort, should others infringe his rights, is to the Courts of Law, his patent must be one which the Courts will uphold. If it is not so, it is worth nothing, since if he cannot prevent others from using the invention as freely as they choose, his monopoly vanishes, is non-existent, and his rights are lost. It is true that a patent may never be fought in a Court of Law, but it should be strong enough that the holder will be successful if it is fought. A weak patent will be more readily infringed than a strong one, because infringers rely on the fact that the patentee will not venture to try and maintain his rights, having before his eyes the vision of double costs in an unsuccessful suit. A similar reason makes a person chary of infringing a "strong" patent, where it is probable that the result of a trial would be in favour of the patentee. The strong patents seldom need to come to the Courts to uphold them, an infringer will more readily pay the damages asked than contest the case in Court, and have heavy costs in addition.

If the result of lawsuits is pointed to as uncertain, the reason is given above; it is only the doubtful patents upon which the Courts are called to decide, the strong patents subsist unaided, while the weak are afraid of legal criticism.

Foreign Patents on any particular invention are of greater or less value according to the general state of commerce in that country, the particular circumstances of the industry to which the invention relates, the number and wealth of the population, and the presence or absence of high customs duties in relation to importation of the products of the invention. Each of these circumstances should be kept in view in deciding which, if any, foreign patents shall be taken. Particular note should be made of the existing state of the art there, as the invention will be more or less valuable according to the methods, &c., with which it will compete. Manufacturing countries

should be included, even if the goods are not intended for use there, so that the patentee may not have competitors in his exporting business to non-manufacturing, importing countries. Hostile customs tariffs are only effective to exclude a foreigner's goods when they can be freely manufactured by others in the particular country. Patents there will, in such cases, be necessary to prevent competition, which would prevent the patentee from recouping himself for the extra cost and difficulties of export to such countries.

In most countries the law requires a foreign inventor to appoint an agent in the country to represent him before the Patent Office, and so that any legal notices in respect of the patent may be served on a resident in the country. Such agent, naturally, need have nothing to do with the commercial development of the invention.

Obtaining Foreign Patents.—Some misapprehension appears to exist as to the cost and other matters incident to the obtaining of foreign patents. At least as much care must be exercised in obtaining each individual foreign patent as in obtaining the British patent. In every country, the specification, that is to say, the proper legal and logical definition of the invention, is the basis of the rights obtained, and just as the laws vary and the legal aspect of patents varies in different countries, so must the presentation of the invention vary if the inventor is to get a proper and adequate patent.

Mere translation of the specification drawn up for the English law is usually insufficient; the translation also, though but one feature of the work, must be thoroughly technical, *i.e.*, made by a translator thoroughly versed in technical terms, and well paid accordingly. For obtaining a reliable foreign patent, whatever the country, first a specification should be drawn up with special view to the law and general aspect of the patent system of that country; secondly, translated by a competent translator; and, thirdly, remitted to an agent in the country who should be capable of revising it, not only as an expert in the law of his country, but so far as possible, also as an expert in the particular art. The latter is important, since features which may add to the inventor's novelty in one country may not be new in the foreign country, and, conversely, there may be features which, not being new in Great Britain, cannot be, and are not claimed there, while if still unknown abroad they may add materially to the scope of the invention and value of the patent there.

As an inventor will seldom know even the names of any

foreign patent agents, he must more or less rely on an agent here to name the best, or those which he himself may work with. Charges are not conclusively a proof of competent foreign agency. The inventor will do best to consult any of the firms doing large agency business for other agents, Colonial, American, and others, since the comparative magnitude of their foreign business necessitates dealings with a much larger number of foreign patent agents, and better personal acquaintance with such agents, and the requirements of the foreign practice. Each case can be sent to the agent best qualified to deal with the particular subject matter of the invention, and saving in cost will often be obtainable without any loss of efficiency, owing to special arrangements as to terms, where large mutual business is done between agents.

The charges will usually amount to those mentioned in Part III at the end of the Précis of the law of each country, for inventions of ordinary complexity, including, say, 1,000 words of specification, and one sheet of drawings.

Attention should not be paid to circulars sent by a certain class of practitioners abroad, some even masquerading under the form of learned (?) societies, with offers of diplomas, medals, &c.

Value of Searches.—It is advisable, either before or after the filing of the provisional application, but at any rate before completing the patent, to make a search among the Patent Office records to ascertain the novelty of the invention.

This search should extend not only to previous British patents but to United States patents and other foreign patents, the specifications of which are all visible in the Library of the Patent Office. Technical works should also be consulted; in fact, search should be made in any and every place where an anticipation of the invention may possibly lurk.

As this is a somewhat lengthy matter it is, perhaps, not advisable to delay the filing of the "Provisional," but it should be done before money is spent in developing the invention or on full patent.

The value of a search is, of course, great in its information on the industry and in giving a sufficiently close approximation to certainty in the question of novelty, but a search is not solely intended to show whether an invention is new or old as a whole, it is also to show how much of the invention is new. The Patent Law requires an inventor not only to give a full description of his invention so that others may practice the whole when the patent expires, but to distinguish in the specification those features

which are new from those which are not, so that the public may know just what features or principles they must not infringe. To enable an inventor to state positively what points are new and claimed under the patent, he must know first all what is old, so that the novelties introduced by him may be clearly defined. The search is intended to afford this information. If the inventor claim too much the patent is void; if he claim too little he loses so much of his monopoly, and if he leave the novelty undefined he risks the loss of his patent for ambiguity.

The search has thus great value in preparing an application for patent, more especially the complete specification, which contains the "claims."

The general value of certainty of title is also considerable, since the patent is but the forerunner of an establishment of business whether by the inventor or others to whom he may sell or license the patent.

Even if a professional man does not make the search he should be consulted as to the legal effect of whatever to the searcher may seem similar or bordering on either the invention or its object.

The British Patent Office makes no search whatever before granting the protection or patent.

Application in the United States as a Substitute for Search.—In addition to the many special advantages of the United States patents for English and other foreign inventors, the application for patent in the United States possesses another and by no means unimportant advantage.

The examination made by the officials of the United States Patent Office before granting a patent is by far the most complete and satisfactory examination made by any Official Patent Office in any country, being, as we know from experience, far superior to that made in the other "examining" patent offices, the German, Austrian, or Swedish. The search extends to British, German, and other foreign patent specifications, as well as to the United States specifications, and to technical works relating to the respective industry, of which also each examiner has a most complete library.

This search is alone worth the money paid by the inventor for the patent, if the latter be applied for in time to be of use in preparing the specifications for other countries.

Although a British specification is not generally sufficiently formal to pass the United States Patent Office, a specification which has been allowed a patent there is an excellent specification on which to obtain a complete British patent, and where the

latter agrees in wording with an American patent to the same inventor it is not usual with purchasers, and, in fact, seldom necessary to inquire further into its novelty (pre-supposing that the patent in Great Britain has been applied for in time).

If a United States patent be applied for simultaneously with an English provisional protection, the former will probably be examined and the most similar antecedent inventions pointed out, enabling the application to be re-drawn and allowed before the nine months' time arrives for filing the English complete specification. The American specification can then be used for the English patent, with perhaps at most slight and unimportant alterations and much greater certainty will be had of the validity of the latter. The same agent should be chosen to prosecute the English and the American patents, so that the advantage of the examination and correspondence with the United States Office may be applicable when the agent prepares the English complete specification or those for English colonies or foreign patents if desired.

Chapter VI.

HOW TO DEVELOP OR NEGOTIATE PROPERTY IN PATENTS AND INVENTIONS.

Unprotected Inventions Unsaleable.—Apart from a patent, an invention itself has no saleable value (speaking now of those inventions which cannot be advantageously carried on in secret), and as the law recognises the grant of a patent as a personal reward to the inventor, and (in Great Britain at least) a person who is not the inventor cannot receive a valid patent, the inventor cannot sell to others the right to apply for patent. Thus unpatented inventions are not saleable because the purchaser cannot obtain the only form of protection which will give him a commercially valuable right.

The absolute necessity of any such provision of the law is not apparent, but since there are several practical reasons against any attempt to dispose of rights in an invention before it is protected, the refusal of the State to permit an inventor to assign his right of application for patent works for good.

Many inventors prefer to dispose of their inventions rather than retain them in their own hands to work: such inventors wish equally to spend no more than is needed to enable them to sell the invention to some manufacturer or capitalist.

Naturally the manufacturer or capitalist who is willing to purchase must first be found, and to do this it is necessary to publish the invention more or less fully. The more an invention can be made known the more likelihood is there of finding a purchaser and the better the price obtained, but it must be remembered that it is not the invention that is sold but the patent rights.

An inventor may very reasonably ask, Can I not first look for a purchaser, and when I have found one take out a patent as the inventor and sell him the patent? The answer is practically No, for the reason that to find a purchaser the invention must be more or less disclosed, since no man will buy a pig in

a poke. By such disclosure before protection the inventor runs the risk of others depriving him of his invention, not necessarily patenting it, though that is possible, but by employing it for their own ends; or by speaking of it to others who may do so, so that the inventor finds himself forestalled when he comes to apply for the patent; or else the invention by that time has become so far known that at the date of the application for the patent it has not that character of novelty which is essential to obtaining valid rights. These facts are well known to purchasers likely to be interested in patents, so that the very fact of finding an invention offered for sale in unprotected condition is sufficient to prevent a purchase, for the stability of the patent rights obtainable thereon is at once shaken; the invention may have been offered to fifty men before, it may have already become known sufficiently that you may say it is no longer new. A further consideration influences the mind of the possible purchaser. What faith can an inventor have in the alleged invention or in his own rights thereto if he is not willing to part with the comparatively small sum necessary for its *proper protection?*

Saleability of Provisional Protections.—A provisional protection is but that form of temporary protection given from the time the patent is applied for till the complete specification is filed and accepted and the fuller patent rights begin. In truth, therefore, a provisional protection does not in itself confer saleable rights, but inasmuch as it lies only with the applicant to take the proper steps to complete the patent, he can at any time undertake that he will hand over the patent when obtained to the purchaser and the latter may properly agree to the purchase on that understanding.

It will be usual for the applicant to give his undertaking to complete all the necessary steps to get a full patent, though he cannot absolutely undertake to obtain the patent, as he cannot control the Crown in the grant. A good part of the purchase-money would usually remain to be payable on the handing over of the Letters Patent.

As the provisional specification is intended to describe fully and properly the nature or principle of the invention, the purchaser already has a firm basis for the transaction and knows what he is getting for his money. Many, indeed, prefer to purchase before the complete specification is filed in order to get a voice in the preparation of the latter and opportunity of taking foreign patents, if so agreed, before the invention becomes published.

The best course then for an inventor to pursue who wishes to sell his patent rights is to cause application to be made for provisional protection, remembering that the invention should always be kept secret until the application has been filed at the Patent Office.

Various Methods of Disposal of Patent Rights.—The benefit of the privileges which the patentee receives may be transferred to others in two ways: the first is by absolute transfer of the patent rights by means of an assignment, the second by way of a permission to employ certain of the privileges by grant of a license. In the first case the patent, or a definite part of it, passes to the assignee, while in the second it remains wholly with the original patentee.

The assignment of a patent will usually be for a definite sum paid down, but it may be arranged that the purchase money be paid in instalments, or worked out in goods, or that the patentee be employed at a salary or in any other manner, as the parties may agree. The assignment may also refer only to a part of the invention instead of the whole, the part intended being, of course, some separately usable part and accurately defined in the deed of assignment. An assignment may also transfer the whole or part of the patented invention for a part of the country covered by the patent without extending to the remainder, suitable arrangements being made to avoid clashing of interests.

In all these arrangements the patent passes to the assignee just as if it originally extended only to the part of the invention transferred or to the special district to which the assignment is confined.

Under a license the patentee may extend an exclusive or non-exclusive permission to do any of the acts that his patent reserves to him. Thus to manufacture, to sell, to work, or to use the invention or a part of it, or to do that only within a certain place. The usual return received by the patentee is so much on each article, or certain number of articles dealt with by the licensee, or so much per annum during the continuance of the license. Sometimes a sum down is included or accepted in full.

Under an exclusive license, it is usual to stipulate that the royalties shall never be less than some definite sum per quarter.

The above are merely suggestions among the manifold methods in which parties may agree as to the use of the invention and the return therefor.

Patents may be mortgaged or sold on the hire system. Professional advice should always be sought in the arranging of terms and drawing up of formal deeds.

Proof of Satisfactory Title.—Every intending purchaser of a patent before closing the bargain should ascertain that the patent is valid. A patent agent will usually advise on the validity of a patent for a fee of 2*l.* 2*s.*, exclusive of any searches that may be necessary in proof of novelty. The various points to be considered need not be repeated here, as they have been already fully explained, but the purchaser should seek advice on the scope of the patent, and how far and what infringement could be stopped thereunder. The value of the patent will, to a great extent, govern the question of search as to novelty, since the expense of the latter is entirely dependent on how far it is to be carried. In some instances a search as to novelty will be unnecessary, but in most cases it is advisable, in order not only to see that the invention possesses novelty, but more particularly to ascertain the exact extent of its novelty, which will so greatly govern the value of the patent rights. The greater number of patents do not so sufficiently distinguish exactly what they are intended to include from what is outside their monopoly that their scope can be properly found merely by inspection of the specification.

To licensees the question is perhaps simpler; they do not need so much to ascertain the exact validity of the patent, for they are not buying the rights, they are merely hiring the use of the invention. A question equally important, however, to licensees as to assignees is, whether the actual invention can be used without infringement of other existing patents. Many patents are for improvements on some subsidiary invention also protected by patent. It will very materially govern the amount of profit derivable from the improvement, whether any royalty has to be first paid to some prior patent. A search among British patents for so much of the last 14 years as is prior to the date of British patent proposed to be sold or licensed will be sufficient to answer that question. The cost will depend upon the amount of patents looked through and the time necessary for comparison. Usually, 5*l.* 5*s.* to 10*l.* 10*s.* will be sufficient.

No reliance whatever can be placed on inventors' own searches, as, whatever their honesty of purpose, the task of comparison requires a legal knowledge of Patent Law such as they do not as a class possess.

If a report of a search is presented, its wording should be

carefully considered. Since no person however learned can guarantee any patent, the extent of the search upon which alone a professional man can properly give a report on the novelty of an invention should be exactly stated. As there are no generally recognised exact limits for a search, broad assertions, such as "a search has been made," or "I have searched and do not find," &c., are really without meaning.

The reports sometimes read in the prospectuses of companies for the purchase of patents are usually too vague to be of any true value.

Security of Transfer under Provisional Protection.—As no assignment can be properly made until the full patent is granted, it becomes necessary to find some means of insuring a purchaser of a provisional protection against any other dealings with it behind his back.

This can be done in Great Britain by filing at the Patent Office a form of request bearing a stamp of 1*l.* 10*s.* to amend the original application by adding the name of the purchaser as a co-applicant. This will be granted, and thenceforth the purchaser will join in the possession of the protection and ultimately of the patent.

The purchaser's name can only be added to the application, and not entered in substitution of the original applicant, for the inventor must always remain a partner in the application until the full patent is granted. If the purchaser is to be entitled to the full patent, the original applicant can, after the patent is granted, assign or release to the purchaser his remaining share.

On the applicant's side, however, it may not always be advisable to admit a purchaser as a partner in the application unless the terms of the purchase are definitely settled, and some money paid down, since it would be a difficult matter to oust any name once added to the application.

Rights of Joint Patentees.—The above, amongst other reasons, renders it advisable to consider carefully the respective rights and duties of joint applicants. English law permits joint inventors to apply jointly, and allows any inventor or joint inventors to add any other person or persons (not necessarily inventors) in the application, but the inventor or inventors must be included amongst the applicants. A limited company may be added under this part of the law, but not a trading firm other than by the names of its individual partners.

The individual rights of co-owners of a patent, in the absence of any agreement between them, have never been

really determined. In Mathers *v.* Green it was held by Lord Cranworth, where a patent had been granted to joint patentees, "each and every of them," that either patentee might use the invention without obtaining consent of the others, and that the user could not be called upon to pay any proportion of the profit to the others.

From this it is apparent that each patentee is at liberty to work the invention entirely on his own account unless it has been otherwise agreed between the joint owners of the patent. The decision has been since upheld.

As, however, this decision may be said to turn on the wording of the patent, it may be noted that the present form of patent to joint applicants does not mention the patentees separately, but that only "that the said patentees by themselves their agents, or licensees, and no others," may make, use, &c., and further on, that no persons are to use the invention, &c., "without the consent, license, or agreement of the said patentees in writing under their hands and seals."

It may be a matter for diverse opinions whether either patentee alone can now grant a license; it had been formerly held that he could do so, but whether in such case he would be liable to hand over a proportion of the royalties to the co-owners of the patent is also quite an open question; the point was left undecided in Mathers *v.* Green on appeal owing to absence of evidence of their having been any royalties to divide. In the Court below it had, however, been held that the royalties should be divided between the co-patentees.

As under the present form of Letters Patent, the intending licensee should always require that all owners of the patent join in the license, the question is not likely to arise. Of course, in no case can one of joint patentees acting for himself alone grant an *exclusive* license.

Agreements between Joint Applicants.—In view of the foregoing, joint applicants or patentees should in all cases enter into agreement defining in what way their respective rights are to be construed, and, in general, as to the working of the patent, finding capital, terms of licenses, &c., so as to avoid any disputes that might afterwards arise.

The Practical Negotiation of Patent Rights.—Having considered the rights and privileges attaching to provisional protections and patents and the various methods of assuring and transferring such rights to others, we may now profitably consider some of the practical points connected with the development of crude inventions, finding purchasers or licensees

for patents, and the like, on which information will often be of service to inventors.

It is unfortunately true that many inventors are led to suppose that on obtaining their protection or patent the hard work is practically over and they will at once reap the fruit.

This is seldom the case. All inventions, however good, require pushing; time must be allowed for the public to become acquainted with them, and exertions made to overcome the apathy with which all novelties are at first regarded. In no case should an immediate success be looked for, since it is contrary to reasonable expectation that the public, under which generic name those likely to be specially interested in the invention may be designated, will at once grasp the merits and details of an invention which even the inventor may have taken a considerable time to develop.

The taking up of an invention is in itself not to be hurriedly done; in many instances it will mean the discarding of old plant and provision of new, an alteration of business methods, a preparation for a different class of trade, all which require not only time to perfect, but careful consideration of ways and means and calculation of results.

Many inventors allow no time for manufacturers to consider if and how a novelty is to be made to pay, yet such is of equal importance to the likely purchaser or licensee as the original production of the finished invention was to the inventor. Estimates of expenses of manufacture, stock, travellers' salaries, advertising, and profit are amongst the necessary work of the person intending to deal commercially with the invention, the novel nature of which will in itself add proportionate difficulty to the estimate.

Valuation antecedent to Negotiation.—Whether the inventor intends to work his invention himself, or dispose of the patent to others, or grant licenses, it is advisable, indeed almost necessary, to arrive at a fair and correct valuation of the patent. A subject of too complex a nature to be dealt with in a paragraph, this valuation has been reserved for a separate chapter. Its utility consists in this; that on it will first depend if and what patents shall be taken, how they shall be taken, how the invention shall be developed, whether the inventor will obtain the greatest profit from working it himself, licensing it exclusively or otherwise, or selling it outright. What selling price, royalty, cash down, or equivalent, he shall ask for it, how he will best find purchasers for the novelty, licensees to manufacture it and work it, or buyers of the

patent. In fine, the valuation should determine the commercial dealings of the inventor for his best advantage.

It should also assist in effecting license or sale, by proving the correct value and affording a ready proof to lay before manufacturers or capitalists.

As this valuation is necessarily antecedent to a commercial working of the invention and will have most important bearings on the actual practical form given to the latter, it should be more or less always in view and in process of development as the invention itself gradually assumes form and grows to completion.

How to commercially develop a Patent.—The pecuniary and other circumstances of the inventor, the nature of the invention, and the general methods of the trade to which the invention most nearly relates will decide whether the inventor should work his invention himself or find others to do so. Decision on such point must naturally be left to the personal judgment of the inventor. Should the latter decide to retain the working in his own hands, the methods of working must also so far depend on the nature of the invention and of the trade that no rules can be stated. As the principal purposes are to create a public demand and to prevent competition, the various means of advertising would require more than usual attention on the one hand, and a careful eye kept on the patent on the other. The patent is of the nature of an absolute and exclusive goodwill of the invention, so care should be taken to avoid forgetting the renewal fees as they become due. It should be also borne in mind that as improvements may be brought out by others the use of which may require infringement of the patent in question, the new applications for patents should be carefully scanned, not necessarily solely to oppose the grant of similar patents but to obtain the royalties from patentees of improvements, which are a distinguishing and valuable feature of property in patents, and which tend to increase in value and amount as the life of the patent gradually moves to its expiry.

Patent Sale Agents.—There are no recognised "patent brokers," or persons who truly make a business of buying and selling patents, and a short examination will show the reasons for their absence. First of all, such business would require a diversity of knowledge and qualities seldom if ever met with in any individual, since the negotiating of a patent requires a very intimate knowledge of the practical side of the trade to which it particularly relates, and no one man can claim the

possession of such experience in every trade. Nor would the commission chargeable be a sufficient remuneration for the time such a study would require. A further reason lies in the inutility of such a profession, for every patentee can equally do for himself all that such a broker or sale agent could do for him, thus saving the commission. We must presume that every patentee at this stage has acquired a considerable knowledge of the practice of the trade to which his invention relates. The working out of his invention, the inquiries necessitated during its development and the like, will have brought him into touch with the trade, if he was not already connected with it, and given him a knowledge of its conditions probably superior to that of any so-called sale agent. The inventor does not need a sale agent as he needs a patent agent, for the latter business is more concerned with the *legal* side of the patent system, with which the patentee is not brought into personal contact, as he is with the practical side of the patent. It must indeed be assumed that if the patentee has not acquired a sufficient knowledge of the trade into which it is his object to introduce a new invention, and simply trusts to a sale agent, his efforts will be unsuccessful, for no man embarks on a direct business of which he knows nothing simply trusting to the trade knowledge of a manager, especially when he is unqualified to judge whether that manager has any such trade knowledge at all.

There is a class of practitioners who make a great pretence of negotiating patents. Such business is entirely foreign to the proper avocation of a patent agent, and it is to be feared that it is resorted to in many instances simply to attract business from inventors.

The principal patent agents do not hold themselves out as sale agents, though in their connection they will often number manufacturers interested in patents to whom they are not averse from introducing inventors with genuine novelties.

How to Sell or License a Patent.—To effect the sale of a patent the first consideration should be given to selecting the class of persons to whom the public use of the invention would be capable of bringing the most pecuniary profit. Such a class will most usually be the manufacturers of like goods, first, because they, as producers, are at the commencement of the chain of middlemen trading to the probable consumer of the particular article in question, and, secondly, because they will already have their staff of workpeople, travellers, and others by which the article may become made and delivered

to the retailer, and no great initial expense on that score will be laid against the introduction of the patent. The study of directories at the centres of such industry and inquiries in the locality will discover the best and most likely names, and in no case will any introduction from a third party be necessary to obtain courteous hearing from men of trade who are as interested in extending their range of paying manufactures as the patentees are in their particular inventions. The patentee should prepare himself with a reasoned account of the commercial value of the invention, showing the cost of manufacture, selling price, and estimated profit, so that business men may be provided with the material on which they may come to a judgment. He should provide samples or models, finished as far as possible, as the invention will be when put on sale, drawings should be neat and clean. A copy of specification should be taken, though if a provisional only it is not always advisable to disclose the exact terms of this document till negotiations are sufficiently advanced to point to a definite conclusion. If the patentee has a *written* report of a patent agent on the novelty, that will be of assistance, but verbal assurances on the patentee's part that the invention is new have but little weight. A previous valuation of the patent will show the patentee what amount he can reasonably ask either for an outright sale or a license upon royalty.

Cautions on Assignment.—To give the purchaser of a patent a *legal* title, the patentee requires to sign a deed of assignment, usually prepared at the expense of the purchaser, to be registered at the Patent Office. The patentee should be cautious in signing the deed put before him as the wording may commit him to guarantees which he did not intend. The seller should not be required to guarantee the validity of the patent, that the patent is valid should be taken as an admitted fact between the parties, and therefore placed in the commencement of the deed among the "recitals." The purchaser before closing the bargain should cause the register of patents to be examined at the Patent Office to ascertain that no previous assignment by the seller to anyone else has been registered. The purchaser should register the deed of assignment without delay. The costs of registration, stamp fees and revenue fees, if any, are usually borne by the purchaser, unless otherwise agreed.

Cautions on License.—The remarks as to assignments apply also to licenses, which may be "parole," but are best made by deed. All possibilities that may occur as to the patent,

or between the licensee and licensor, should be provided for and as these are much more complex than a simple sale, which is completed and finished then and there, the license presents considerable difficulties in drawing up, and innumerable pitfalls. On the drawing up of the deed a professional man should be consulted, and a knowledge of Patent Law and practice is essential for the proper practice of this difficult branch of conveyancing. The general terms of the license must, however, be settled beforehand by the parties, and it should be clearly ascertained who is to pay the renewal fees, &c., bring or defend suits against infringement, revocation, &c., how the royalties are to be computed, checked, and paid, what is the minimum of such payment, in what events the parties shall be at liberty to cancel the license, and what shall be the penalties for breach of any condition.

Sale to Companies, Syndicates, &c.— The "capitalist" whom the sale agent professes to have on hand is usually a myth of the imagination, but inventors will often be able to influence their friends and others to speculate comparatively small amounts by forming small companies or "syndicates" to purchase or work their inventions, or to form a larger company to do so. The value of the invention and the amount of capital required should be estimated, and the shares of the syndicate appropriately divided, thus if the inventor be content with a third share of the profits, and 600*l.* be sufficient working capital, he may find six men to take a 100*l.* share each in a syndicate of 900*l.* capital, he himself taking three shares as fully paid in return for his invention. Such syndicates are often formed to provide expenses for formation of a public company, in which advertising, brokerage, and expenses generally will often amount to from 500*l.* to 3,000*l.* or more, but from which perhaps ten times as much is expected for the invention, in such cases the patentee may retain more than half the shares of the syndicate, perhaps two-thirds, as may be agreed. The success of such companies depends greatly on the management; many have failed through proceeding to allotment on insufficient subscriptions, and then using up their modest capital in elaborate offices, &c. The prospectus of any company formed to purchase a patent should contain professional reports on the validity of the patent, and the wording of such reports should be closely noticed by intending investors.

Arbitration.—In view of the proverbial uncertainty of legal proceedings, and the comparatively high cost to the loser, recourse is often had to arbitration to settle disputed questions

of infringement. If a trustworthy arbitrator be chosen, whose opinion in questions combining the law of patents with considerations affecting the particular art to which the invention relates, is entitled to recognition, the cost of such an inquiry will be found to be materially reduced, perhaps to one-fifth or one-quarter, and a decision will be more speedily arrived at. The parties should agree to abide by the decision of the arbitrator.

General Advice.—Before instituting or threatening any suit of infringement, the patent should be carefully examined, with a view to ascertaining its validity in every particular, and the question of infringement should be submitted to a patent agent whose work eminently fits him to recognise the "points" of the infringement, as well as the construction of the specification of the patent. Many useless suits are brought which, if such opinion had been taken, would have been abandoned or compromised. A mere offhand opinion should not be taken, but a thorough examination, coupled with such search as may be considered necessary. Care in the original patenting will greatly do away with the necessity of risking a lawsuit, and will render the result of any suit more easily foretold. Especially in this connection a stitch in time saves nine.

CHAPTER VII.

THE COMMERCIAL VALUATION OF PATENTS AND PROVISIONAL PROTECTIONS.

Factors for Valuation.—Many inventors have very erroneous ideas as to the value of their patents, because judging the matter solely from the point of view of the value of the invention, they neglect to take into consideration the various modifying factors which the practical working of the patent system brings into operation to effect the result. They judge wholly from the invention, and not from the patent.

Commercial Value of Invention.—First it must be recognised that the value of the rights given under the patent is not necessarily determined by the commercial value of the invention, though the latter must always be a principal factor in the calculation. The estimated commercial value of the invention is the value of the superior efficacy of the invention over the best of its competitors, in each instance of its employment multiplied by the number of instances of its employment, or likely employment, and by the time during which it is likely to have pre-eminence. It is impossible to calculate beforehand an absolute commercial value for any invention, because though its value over competitors may be stated with exactness, commensurate with sufficiency of calculation, the number of instances of its employment, its rate of output of product, and the duration of its use, can only be matters of conjecture, more or less accurate, according to the practical experience of the calculator.

Commercial Pre-eminence.—Value of use is the advantage possessed by the invention over previously existing processes, methods, machines, &c., in use with the same object. It is capable of exact calculation and expression in terms of value, thus whether a machine or process, the advantage may be in decrease of initial cost of construction or installation, decrease of working expenses, improved number or quality of vendible

or usable product, in any or all these. The advantage in each case may be expressed as so much monetary saving.

Value of Production.—It is true that when the invented matter itself is the vendible product, or where it is for personal or domestic use, or for affording pleasure or instruction, or for any other purpose than commercial use, it is difficult to state a definite monetary value in its use for want of any commercial basis of comparison. In such case its estimated selling value, less the cost of its production, must be taken as the value of the invention as an article of trade. Inventions must, therefore, be first divided into two classes, according as to whether it is their use or their production which shows commercial value.

Instances of Use.—Having found the commercial value of the invention *per se*, the next point for consideration is the extent of its probable employment. For this, in every case statistics will be necessary, from which may be learned the volume of trade in or from the similar articles or methods which the invention is designed to supersede. If the invention is for use in production, an estimate should be made of the number of producers likely to be influenced to abandon the old for the new process (perhaps more or less dependent on the amount of profit in favour of the new invention, and the persuasiveness of the introducer). If the invention is itself an article for sale, the likely demand on the part of buyers of the articles which the invention supersedes should be considered.

Length of Time of Monopoly.—Presuming the invention patented, the calculator should take note of the length of the term of the patent, as the term (14 years in Great Britain) is that during which the patentee retains the control of the trade in the invention, and, consequently, the opportunity of the profit. Nevertheless, as an established trade will continue to be profitable for some time after the monopoly expires, a slight additional amount may be reckoned for value of establishment, especially where the inventor is his own salesman.

Cost of Introduction.—On the other hand, there must be deducted the cost of introduction, and that, again, is a matter in which exact computation cannot be had, as it will depend on the peculiarities of the respective trade. Cost of starting works, if they are necessary, or of fitting up machinery for manufacture, or of altering such already fitted, and similar charges incidental to production must be estimated. Next, the cost of diffusion of knowledge of the invention or product to the

ultimate buyers or consumers, offices, travellers' expenses, advertising, and salaries of officials enter into consideration, these being all necessary expenses of manufacture which must be borne by the selling price of the product, whether the inventor engages in the business personally or seeks others to do so under license from him.

Where, however, the invention consists in a method of manufacture, cost of introduction will reduce itself to the expenses of the personal time, journeys, and experiments of the inventor or his substitute for information and proof to manufacturers likely to be interested in taking up the invention.

Value of Patent.—The above simply concerns the value of the invention in commerce and the probable profit that the inventor could make out of it according to the method of working that he may adopt, and this, of course, *should* be the value of the patent rights after deduction of a sum equivalent to the value of the patentee's time occupied in working the invention and interest on the capital employed.

In valuing a patent, however, the question arises: Does the patent retain absolutely in the patentee's hands all the commercial value we have found to exist in the invention, or is not some of this value or even all of it lost to the patentee through a partial or total failure of the patent?

It must be remembered that as a monopoly for the inventor the invention in itself possesses only a potential value, to which the patent may or may not give full practical effect.

Now, the effect of the patent depends on the manner in which the necessary application papers are made out, so that the actual value which the patentee has been able to secure for himself out of the amount of potential value in his invention will depend on the amount of care employed in patenting the invention, and particularly in the specifications. Presuming that the patent well and truly covers all the patentable novelty that there is in an invention, then the full value of the invention is secured to the patentee and represented by the patent, but just in proportion as the invention is deficiently protected or features of novelty omitted or not fully developed in the statement of the invention, by so much will the patent be reduced in value, until, in such lamentable cases where the patenting has been so badly done that the patent cannot be upheld at all, it is clear that its value is absolutely nil. Although these last mentioned cases are rare, they are not by any means unknown, it may be estimated that they amount to perhaps 10 per cent. of

the total number of patents granted. A far greater number, however, fail to secure the full value of the invention, frequently falling short of the latter by a considerable quantity.

If there is a point which an inventor often misses it is usually this; nevertheless, it is, commercially speaking, for him perhaps the most important feature of the whole patent system. It rests entirely in the method of definition of the invention in the specifications.

This point has already been more fully explained in Chapter V.

Estimation of Value of Patent.—The principal difference between estimating the full value to commerce of a new invention and the value of a monopoly secured by patent, is that, in the first instance, the full value of the improvement is allowed for, while in the second the question first is to ascertain what the patent covers prior to calculating the value of that.

The question may be put in the following words: What exact acts does the patent prevent others from doing, and what is the commercial value of those acts? The answer, which ...ally varies greatly according to the specification of the ...ent, is the basis upon which the value of the patent rights can be judged. This, in fact, is the nett value of the monopoly over ordinary trading profits, and when followed by estimation on likely instances of user, during time of monopoly (14 years) and deduction of cost of introduction and of maintenance of patent, will give the estimated return from the patent during the term of the grant.

Present Value.—As to what sum would represent a fair price at the commencement of its term for a patent estimated to bring in during its term a certain sum, it is needless to say that property in patents has not a security equal to Consols, so that it must not be valued on the basis of such security. The present value of 14 years equal profits, say at 10 per cent., is about eight and a-half times one year's profit; 10 per cent. must, however, be considered as a somewhat small return for such a speculative investment, and, moreover, it is frequently found that the profits are less in the beginning than the end of the term. Probably four or five years' purchase would be a fair amount in average cases, but the amount must vary inversely with the probability of further improvements arising to oust the invention from commercially profitable use.

Infringement of prior Patents.—Amongst causes for deduction in estimate of value, it must not be forgotten that the employment of the invention may entail infringement of previously existing patent rights. The invention may be per-

fectly new and valuable so far as it goes, but it may not be possible to employ it without using also some other invention protected by a previous patent. In such a case it would be necessary to seek the leave of the former patentee to use his invention, or such part of it as may be needed. This he will doubtless be willing to do on satisfactory terms as to payment of royalty. Such amount or royalty must, of course, be deducted in estimating the value of the new patent.

Naturally this necessity of payment of royalties to former inventors only exists where the patents of the latter are valid and properly worded so that the new invention cannot be used without infringement of the patent rights of the former inventors. An inventor who aspires, therefore, to be some day in position to receive royalties himself from succeeding inventors, must be exceedingly careful in the wording of the specification for his patent.

Even presuming that the patent in itself is in every way valid, a search should always be made among the patents in force, if not by the inventor, certainly in any case by the intending purchaser to ascertain if the use of the patent is not in fact an infringement of existing rights of others.

Part II.—The British Law of Patents.

Chapter I.

HISTORICAL DEVELOPMENT OF THE PATENT LAW.

The Statute of Monopolies.—The first statutory definition of a patentable invention is found in the Statute of Monopolies, passed in 1623, in the 21st year of the reign of James I. Delivered against tho unjust and intolerable monopolies of common articles of merchandiso and necessaries of life issued to courtiers and others to swell the Crown rovenues, this Statute declared all such monopolies in general to be void and of no effect, but by Sect. 6 made exception in favour of patents for new inventions in the following words:—

"Provided that any declaration before mentioned shall not "extend to any Letters Patent and grants of privilege for the "term of fourteen years or under hereafter to be made of the "sole working or making of any manner of new manufactures "within this realm to the true and first inventor and inventors "of such manufactures, which others at the time of making "such Letters Patent and grants shall not use, so as also they "be not contrary to the law nor mischievous to the State, by "raising prices of commodities at home, or hurt of trade, or "generally inconvenient, the said fourteen years to be ac-"counted from tho date of tho first Letters Patent or grants "of such privilege hereafter to bo made, but that the same "shall be of such force as they should be if this Act had never "been made, and of none other."

As may be seen from the concluding words of this section, which is still in force, the Act introduced no new law, but left Letters Patent for inventions in the samo state as they were before, merely limiting their duration and distinguishing them

in terms from the monopolies declared to be illegal. The basis of the patent system is, therefore, the common law.

Nature of Illegal Monopoly.—An illegal monopoly, according to Sir Edward Coke, is "a grant or allowance from the King by his grant, commission, or otherwise, to any person or persons, bodies politic or corporate, of or for the sole buying or selling, making, working, or using of anything whereby any person or persons, bodies politic or corporate, are sought to be restrained of any freedom or liberty that they had before or hindered in their lawful trade." It cannot be said that any man is directly hindered in his lawful trade by the Crown granting a monopoly for a time of a new invention, which, under the very terms of the grant as now practised, being undisclosed at the time, could not have been known to any such individual; nor can such a monopoly deprive a manufacturer of any freedom or liberty that he had before, since such freedom or liberty necessarily implies a then existing knowledge on his part of the alleged invention, which would at once deprive the latter of its character of novelty, and the claimant of his title to pose as true and first inventor.

But, on the contrary, when the matter of the invention is new and not already within the lawful capacity of any other person to put in practice, that is to say, following the words of the judgment given in the previously decided case of Darcy *v.* Allin,[1] "where any man, by his own charge and industry, or by his own wit and invention, doth bring any new trade into the realm or any engine tending to the furtherance of a trade that never was used before, and that for the good of the realm, in such cases the King may grant to him a monopoly patent, for some reasonable time, until the subjects may learn the same in consideration of the good that he doth bring by his invention to the commonwealth, otherwise not."

That the original object of the grant of the patent was to encourage the setting up of a new manufacture, "so that the subjects may learn the same," is also clearly shown in *re* Clothworkers of Ipswich,[2] decided in 1615, where it is stated that the patent is granted to the inventor, "that he only shall use such a trade or traffic for a certain time because at first the people of the kingdom are ignorant and have not the knowledge or skill to use it."

Instruction of Public in Invention.—For the succeeding hundred years but little advance was made in Patent Law;

[1] 1 *Web. P.C.*, 6.
[2] *Godbolt's R.*, 252.

the provision was usually inserted in the Letters Patent that the patentee should keep and instruct one or more servants or apprentices in the use and practice of the invention, and in some instances the Letters Patent themselves contained a short though usually most inadequate account of the invention. It was not until the reign of Anne that the custom arose of requiring the inventor to deposit as a public record a description of his invention. The utility of this change in practice was soon so apparent that all patents granted thenceforth contained the proviso that the grant should be void if a specification particularly describing the nature and mode of practice of the invention was not enrolled within a certain time. This important stride in patent practice opened the field for a new series of questions requiring judicial determination. The specification of the patent always presented a vulnerable object for the attack of infringers, and the great public importance of the sufficiency of that document naturally led to a series of decisions requiring such perfection that in the absence of a definitely adopted scheme of draughting few were found to stand the tests successively imposed.

Amongst the reported cases may be found many references to the object of the specification; thus in Rex *v.* Arkwright, 1785,[1] it was stated that the specification is to put the public in possession of the secret in as ample and beneficial a manner as the patentee himself uses it. Seven years before, the absence of a direction as to the use of tallow to temper the steel used in making a patent truss was held to vitiate the patent.[2] If the patentee knew of a better way than that mentioned in his specification his patent was held bad,[3] even when the way described was itself perfectly operative.[4] Similarly, if the patentee described needlessly expensive materials,[5] or a needlessly protracted process, such as describing how to make materials necessary which could already be purchased in the trade,[6] or so wrote his specification that the public would be induced to make experiments which he knew must fail, as, for instance, where a patentee had claimed the use of a suitable cloth, but preferably a particular kind described, whereas in truth he had found that only that particular description of

[1] 1 *Web. P.C.*, 66.
[2] Liardet *v.* Johnson, 1 *Web. P.C.*, 53.
[3] Bovill *v.* Moore, 1816, *Dav. P.C.*, 400.
[4] Wood *v.* Zimmer, 1815, 1 *Web. P.C.*, 82.
[5] Turner *v.* Winter, 1787, 1 *Web. P.C.*, 81.
[6] Savory *v.* Price, 1823, 1 *Web. P.C.*, 83.

cloth would answer the purpose,[1] patents were held void. Everything described was held to be claimed unless it were specially disclaimed, therefore it became settled that if the invention resides in an improvement only, the specification should not include the whole apparatus as improved but only the improvement.[2] Nevertheless, the question was raised in Hornblower *v.* Boulton[3] whether such a description was sufficiently extensive. The practice thus arose of requiring the patentee to distinguish new from old,[4] and the nature of an invention began to be discerned as something apart from the performance.[5] It was already recognised that a patentee might claim too much,[6] and that such would render the patent void, whether done unintentionally or fraudulently.[7] It was also decided that if the invention comprises several things and one of those is wanting in patentability the whole patent is invalid;[8] the failure must, however, be in a material part.[9]

These decisions rendered it advisable to provide for the correction of specifications after they were filed, and by the Act of 1835 this and other reforms were instituted. This act of 5 and 6 William IV, c. 83, usually known as Lord Brougham's Act, enabled a patentee to disclaim any part of his specification or title of his invention to which he could not properly lay claim, made provision also for prolongation of a patent for a further term of seven years, where the patentee proved to the Privy Council that he had not received adequate remuneration, and also permitted patents in certain events to be confirmed and declared valid where doubt or adverse evidence existed proving anticipation.

This Act was amended in relation to the prosecution of petitions for prolongation in 1839 by Act of 2 and 3 Vict., c. 67, and again in 1844 by 7 and 8 Vict., c. 69, to permit of the prolongation of patents for any term not exceeding in ordinary cases seven, and in extraordinary cases fourteen years.

In 1849 the Act of 12 and 13 Vict., c. 109, named the Record

[1] Crompton *v.* Ibbotson, 1828, 1 *Web. P.C.*, 83.
[2] Williams *v.* Brodie, before 1785, cited *Dav. P.C.*, 96; Hill *v.* Thompson, 1818, 1 *Web. P.C.*, 247.
[3] 1799, 8 *T.R.*, 103.
[4] Manton *v.* Manton, 1815, *Dav. P.C.*, 349.
[5] Harmar *v.* Playne, 1809, *Dav. P.C.*, 316.
[6] R. *v.* Else, 1785, 1 *Web. P.C.*, 76; Huddart *v.* Grimshaw, 1803, *Dav. P.C.*, 279.
[7] Bovill *v.* Moore, 1816, *Dav. P.C.*, 414.
[8] Brunton *v.* Hawkes, 1821, 4 *B and Ald.*, 549.
[9] Hill *v.* Thompson, 1818, 1 *Web. P.C.*, 249.

Office of the Court of Chancery as the sole place for deposit of specifications.

In 1852 the procedure in the grant of patents was radically amended by the Patent Law Amendment Act, 15 and 16 Vict., c. 83, the fees were reduced, and provision was made by statute for the filing of a provisional specification with each application which was not accompanied at the time by the complete specification eventually necessary. In pursuance of a system inaugurated some few years before by the Law Officer, this rule was aimed at obtaining from the applicant such a description of his invention that it might afterwards be ascertained that the complete specification was the legitimate outcome of the invention in the mind of the applicant when the patent was applied for, whereas formerly the applicant obtained his patent simply on the title of the invention such as "Improvements in the manufacture of bricks," and did not specify what the improvement was till afterwards. This Act was amended in 1853 by the 16 and 17 Vict., c. 5 and 115, and certain minor improvements relating to protection of inventions for munitions of war and at exhibitions were made by the Acts of 1859, 22 Vict., c. 13; 1865, 28 and 29 Vict., c. 3; and 1870, 33 and 34 Vict., c. 27.

The Patents, &c., Act of 1883, which came into force on the 1st of January, 1884, repealed the above Acts with the exception of Sect. 6 of the Statute of Monopolies, and under certain savings as to patents then in force, again greatly changed the nature of the procedure. The fees payable on application and on complete specification were reduced to 1*l.* and 3*l.* respectively, the filing of the latter specification was made a condition precedent to the grant of the patent, the Patent Office was placed under a Comptroller of Patents assisted by a staff of examiners, and provision was made for ordering the grant of compulsory licenses by the Board of Trade. The condition formerly inserted in patents under the Act of 1852 that the patent should expire with any previously granted foreign patent was omitted, and many other changes were made which will be noticed at their proper places in the text.

The Act of 1883 as amended in some minor particulars in 1885, 1886, and 1888, together with Sect. 6 of the Statute of Monopolies, still unrepealed, are the only statutes at present in force in Great Britain in relation to patents for inventions.

CHAPTER II.

LETTERS PATENT: TERMS AND CONDITIONS OF GRANT.

Kinds of Patents.—There is but one kind of patent for invention contemplated by the British Patent Law, and it is granted equally whether the invention be wholly new, or only an improvement or addition to some foregoing invention. There are no patents of addition, as there are, for instance, in France, by means of which the patentee of an invention can add to his original patent from time to time such minor improvements of detail as come within the general scope of the manufacture of the original. All such improvements if to be specially protected must receive separate patents.

By Sect. 33 of the Act of 1883 a patent shall be granted for one invention only, but (the specification)[1] may contain more than one claim; it is not competent for any person in an action or other proceeding to take any objection to a patent on the ground that it comprises more than one invention. For Provisional Protection see Chapters IV and XIII; Protection at Exhibitions, Chapter XXIII.

Form of Patent.—The form in which patents are granted is as follows:—

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith: To all to whom these presents shall come greeting: WHEREAS John Smith, of 29, Perry Street, Birmingham, in the county of Warwick, engineer, hath represented unto us that he is in possession of an invention for "Improvements in Sewing Machines," that he is the true and first inventor thereof, and that the same is not in use by any other person to the best of his knowledge and belief; AND WHEREAS the said inventor hath humbly prayed that We would be graciously pleased to grant unto him (hereinafter together with his executors,

[1] These words were omitted from the Act, doubtless by error, since it is the specification and not the patent deed that includes the claim.

administrators, and assigns, or any of them, referred to as the said patentee) our Royal Letters Patent for the sole use and advantage of the said invention: AND WHEREAS the said inventor hath by and in his complete specification particularly described the nature of the said invention: AND WHEREAS We being willing to encourage all inventions which may be for the public good, are graciously pleased to condescend to his request:

KNOW YE, THEREFORE, that We, of our especial grace, certain knowledge, and mere motion, do, by these presents, for us, our heirs, and successors, give and grant unto the said patentee our especial licence, full power, sole privilege, and authority, that the said patentee, by himself, his agents, or licensees, and no others, may at all times hereafter during the term of years herein mentioned, make, use, exercise, and vend the said invention within our United Kingdom of Great Britain and Ireland, and Isle of Man, in such manner as to him or them may seem meet, and that the said patentee shall have and enjoy the whole profit and advantage from time to time accruing by reason of the said invention, during the term of fourteen years from the date hereunder written of these presents: AND to the end that the said patentee may have and enjoy the sole use and exercise and the full benefit of the said invention, We do by these presents for Us, our heirs and successors, strictly command all our subjects whatsoever within our United Kingdom of Great Britain and Ireland and the Isle of Man, that they do not at any time during the continuance of the said term of fourteen years, either directly or indirectly, make use of, or put in practice, the said invention, or any part of the same, nor in anywise imitate the same, nor make, or cause to be made, any addition thereto or subtraction therefrom, whereby to pretend themselves the inventors thereof, without the consent, license, or agreement of the said patentee in writing under his hand and seal, on pain of incurring such penalties as may be justly inflicted on such offenders for their contempt of this our Royal command, and of being answerable to the patentee according to law for his damages thereby occasioned: PROVIDED that these our Letters Patent are on this condition: that if at any time during the said term it be made to appear to Us, our heirs, or successors, or any six or more of our Privy Council, that this our grant is contrary to law or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention as to the public use and exercise thereof within our United Kingdom of Great Britain and Ireland and Isle of Man,

or that the said patentee is not the first and true inventor thereof within this realm as aforesaid, these our Letters Patent shall forthwith determine, and be void to all intents and purposes, notwithstanding anything hereinbefore contained: PROVIDED ALSO, that if the said patentee shall not pay all fees by law required to be paid in respect of the grant of these Letters Patent, or in respect of any matter relating thereto, at the time or times, and in manner for the time being by law provided; and also if the said patentee shall not supply or cause to be supplied, for our service all such articles of the said invention as may be required by the officers or commissioners administering any department of our service, in such manner, at such times, and at and upon such reasonable prices and terms as shall be settled in manner for the time being by law provided, then, and in any of the said cases, these our Letters Patent and all privileges and advantages whatever hereby granted shall determine and become void notwithstanding anything hereinbefore contained: PROVIDED ALSO, that nothing herein contained shall prevent the granting of licenses in such manner and for such considerations as they may by law be granted: AND lastly, we do by these presents for us, our heirs and successors, grant unto the said patentee, that these our Letters Patent shall be construed in the most beneficial sense for the advantage of the said patentee. IN WITNESS whereof We have caused these our Letters to be made Patent this day of , one thousand eight hundred and , and to be sealed as of the day of , one thousand eight hundred and .

Term of Patent.—By Sect. 17 of the Act of 1883 the term limited in every patent for the duration thereof shall be fourteen years from its date. By Sect. 13 every patent shall be dated and sealed as of the day of the application therefor. The term may be extended in exceptional cases. (*See* chapter on Prolongation of Patents.)

Territory covered by Patent.—Every patent when sealed shall have effect throughout the United Kingdom of England, Scotland, Ireland, and Wales and in the Isle of Man. It does not now extend to the Channel Islands or to the British colonies or dependencies.

Provisos for the Determination of Patent.—These contained in the deed are only two in number as shown in the above form of patent; the first of these is intended to comply with the concluding words of Sect. 6 of the Statute of Monopolies, and so far as the proviso intends anything more

than to ensure a means of revoking unlawful patents, for instance, with regard to patents that may prove to be "prejudicial or inconvenient to our subjects in general," it is sufficient to say that it has never been put in operation, for no one has yet applied to the Privy Council to revoke the patent on that ground. So far, however, as it concerns the revoking of patents contrary to law there are other means of securing the revocation of invalid patents, so that except *pro formâ* this proviso is useless. The second proviso concerns the payment of renewal fees and supply of invention for the service of the Crown.

Renewal Fees.—Sect. 17 provides that every patent shall, notwithstanding anything therein or in the Act, cease if the patentee fails to make the prescribed payments within the prescribed times. The renewal fees prescribed in the schedule of the Act have under Sect. 24 been reduced by the Board of Trade, with the consent of the Treasury, and since 30th September, 1892, have been and are as follows:—

									£	s.	d.
Before end of	4th	year,	and in	respect	of the	5th	year	..	5	0	0
,,	,,	5th	,,	,,	,,	6th	,,	..	6	0	0
,,	,,	6th	,,	,,	,,	7th	,,	..	7	0	0
,,	,,	7th	,,	,,	,,	8th	,,	..	8	0	0
,,	,,	8th	,,	,,	,,	9th	,,	..	9	0	0
,,	,,	9th	,,	,,	,,	10th	,,	..	10	0	0
,,	,,	10th	,,	,,	,,	11th	,,	..	11	0	0
,,	,,	11th	,,	,,	,,	12th	,,	..	12	0	0
,,	,,	12th	,,	,,	,,	13th	,,	..	13	0	0
,,	,,	13th	,,	,,	,,	14th	,,	..	14	0	0

Formerly the fees were 10*l.* per year for the 5th, 6th, 7th, and 8th years; 15*l.* per year for the 9th and 10th years, and 20*l.* per year for the 11th, 12th, 13th, and 14th years. Fees are the same for all inventions. The Comptroller has no power to remit or reduce the amount of any fee. Patent agents usually advise their clients of each fee shortly before it becomes due to avoid risk of loss of patent by oversight.

Extension of Time for Payment of Renewal Fees.—Fees are receivable at any time up to and including the anniversary of the date of the patent. If that day fall on a Saturday, Sunday, Christmas Day, Easter Friday, or any day observed as a holiday at the Bank of England,[1] or as a day of public feast or thanksgiving,[2] the payment may be made on the day next following such day or days.[3]

[1] These are, the day following Christmas Day, Easter Monday, Whit-Monday, and the first Monday in August.

[2] Usually only the Queen's Birthday.

[3] Patents Act, 1883, Sect. 98.

If, nevertheless, in any case, by accident, mistake, or inadvertence a patentee fails to make any prescribed payment within the prescribed time, he may apply to the Comptroller of Patents for an enlargement of time for making that payment, and thereupon the Comptroller shall, if satisfied that the failure has arisen from any of the above-mentioned causes, on receipt of the prescribed fee for enlargement, not exceeding ten pounds,[1] enlarge the time accordingly subject to the conditions that the time for making shall not be enlarged for more than three months, and in case of a suit of infringement the Court may, in its discretion, refuse damages for any infringement occurred between the usual due date of the fee and the date of the enlargement of the time for payment.[2]

If more than three months has elapsed since the fee became due, the patentee can only recover his patent by way of a private Act of Parliament.[3] If no extension is had, the patent is considered to have become non-existent on omission to pay the fee.[4]

User by the Crown.—The proviso that the patentee shall supply goods for the service of the Crown is controlled and rendered effectual by Sect. 27 of the Act of 1883. By this section patents dated since the beginning of 1884 have the same effect against the Crown as against private persons, but the authorities of any department of the service of the Crown may use an invention on terms to be agreed, either before or after such use. *In case of disagreement the Treasury shall settle the terms.*

Patents prior to 1884 are not subject to this clause, but, in accordance with law in force when they were granted, may be used by the Crown Authorities or their Agents without remuneration.[5]

But a contractor who has taken work from the Crown on his own responsibility may not use such invention without infringement.[6]

Compulsory License.—If any person on petition to the

[1] The present fees are 1*l.* for one month, 3*l.* for two months, and 5*l.* for three months. The respective fee is payable at the time the renewal fee is paid.

[2] Patents Act, 1883, Sect. 17, Sub-sect. 2–4.

[3] There have been several examples of such Acts; the expense, if unopposed, may be taken at from 600*l.* upwards.

[4] Hazlehurst *v.* Rylands, IX *R.P.C.*, 7.

[5] Feather *v.* The Queen, 2 *B and S.*, 257.

[6] Dixon *v.* London Small Arms Company, 1877, *L.R.*, 1 *App. C.*, 632.

Board of Trade [1] proves that by reason of the default of the patentee to grant licenses on reasonable terms either (*a*) the patent is not being worked in the United Kingdom; or (*b*) the reasonable requirements of the public with respect to the invention cannot be supplied; or (*c*) any person is prevented from working or using to the best advantage an invention of which he is possessed; the Board may order the patentee to grant licenses on such terms as to the amount of royalties, security for payments, or otherwise, as the Board, having regard to the nature of the invention and the circumstances of the case, may deem just.

The Patent Office rules specify the method of procedure, but from the infrequency of such cases, they will not be here repeated. There have not been many applications to the Board under this section, and the cases are not reported.

There is no appeal from the decision of the Board of Trade. The order may be enforced by mandamus.

Patents granted before the 1st January, 1884, or on any application then pending are not subject to this section relating to compulsory licenses.[2]

Working.—Apart from the right of Government interference to order the grant of a compulsory license, which is designed simply to prevent the patentee from acting the *rôle* of the dog-in-the-manger, which as a rule he is certainly not anxious to do, a patentee may proceed to work the invention or not as he pleases. There is no legal requirement to work the invention in Great Britain within any specified time, or indeed at all.

Expiry with Foreign Patents.—Patents dated before 1884, by provision of the Act of 1852, expire with any previously granted foreign patent, and were not relieved from the liability by the present Act; but patents dated on and after 1st January, 1884, are not liable to expire with any prior patent abroad, owing to the omission of such provision from the Act of 1883.

Models.—An applicant for patent does not need to file a model of his invention, nevertheless the Department of Science and Art *may* at any time require a patentee to furnish a model on payment to him of the cost of the manufacture; in case of dispute the amount to be settled by the Board of Trade.[3]

Foreign Ships.—A patent shall not prevent the use of an

[1] Patents Act, 1883, Sect. 22.
[2] Patents Act, 1883, Sect. 45 (2).
[3] Patents Act, 1883, Sect. 42.

invention for the purposes of navigation of a foreign vessel within the jurisdiction of any Court in the United Kingdom, or Isle of Man, or the use in a foreign vessel, provided such use is not connected with the manufacture or preparation of anything intended to be sold in or exported from the United Kingdom or Isle of Man,[1] but this section does not extend to the ships of any foreign country which refuses such license to British ships.[2]

[1] Patents Act, 1883, Sect. 43 (1).
[2] Patents Act, 1883, Sect. 43 (1).

CHAPTER III.

LETTERS PATENT: ENFORCEMENT DEPENDENT ON LEGAL VALIDITY.

Validity of Patent.—In addition to the provisions contained in the Letters Patent for rendering them void in certain events, the patent is ineffectual against infringers, and is liable to revocation, *ab initio*, if it is contrary to law, that is to say contrary to the Statute of Monopolies.

Invalid patents of this nature could be repealed before the Act of 1883 by proceeding by "*scire facias*," but although this proceeding was done away with by the Act of 1883, Sect..26, all the grounds of repeal were retained and made available, not only as grounds of revocation of the patent, but also by way of defence to action of infringement.

Whether revoked or not, a patent cannot be enforced so long as any ground of invalidity can be proved against it.

Grant of Patent no Proof of Validity.—An "invention," for which Letters Patent may be granted, is defined by Sect. 46 of the Act of 1883, to be "any manner of new manufacture the "subject of Letters Patent and grant of privilege within "Sect. 6 of the Statute of Monopolies and includes an *alleged* "invention."

Letters Patent may therefore be lawfully granted in respect of any matter, provided it be alleged to be an invention; the validity of the grant will, however, be dependent on the truth of the allegation. Thus, Letters Patent can be granted, and in fact are granted, without previous examination as to the alleged invention being one for which a valid patent can be given, and the grant or existence of a patent is no ground for concluding that the invention is a patentable one.

Grounds of Validity.—Referring to the Statute of Monopolies, it will be seen that a patent shall be granted only in respect of a "manner of new manufacture within this realm. . . . . "which others at the time of making such Letters Patent shall "not use," that is to say, only for manufactures new to the realm and not in use by others at the time.

Moreover, any such patent shall be granted only to the true and first inventor or inventors of such manufactures, and must not be "contrary to the law nor mischievous to the State by raising prices of commodities at home," nor to the "hurt of trade, or generally inconvenient."

The ideas formerly prevailing with monarchs as to the broad latitude of subjects for patents will provide a sufficient explanation for the concluding words which, though included in a somewhat similar proviso in each patent deed, are never raised severally against a patent. From them, as pointed out by Baron Parke in Morgan *v.* Seward, may be derived the dictum that an invention to be patentable must possess utility, which is certainly insisted upon in law, though not found in the first part of Sect. 6 of the Statute, which requires only that the invention be new and not in use by others.

The words "manner of manufacture" presume a certain class of "subject matter," which may be called patentable to the exclusion of other classes; and "new within the realm, and not in use by others," illustrate other attributes to be possessed by such invention, which may be treated under the head of "novelty." The attributes of the rightful applicant, entitled "true and first inventor," also need further elucidation. Separate chapters are devoted to these subjects.

"**Contrary to Law.**"—The Statute of Monopolies did not displace the common law, but merely gave form to the vaguer definitions previously advanced from time to time. To obtain a euphonistic formula for declaring void any patent once granted by the Crown, it was usually said that the patent must be held to be void as obtained by deceit upon the Crown.

Where the applicant was not the inventor, alone worthy of such reward, or where the invention was not new or not proper subject matter, the state of the law did not permit such facts in themselves to be grounds for voiding the patent, but only to serve as evidence that the Crown was deceived either to grant the patent to one not entitled in himself as inventor, or for an alleged invention which did not possess the value of novelty or otherwise imputed to it. It was already considered that patents were contrary to law if obtained by such so-called deceit, and one form of such deceit, namely, want of consideration for the grant was a convenient reason in itself, where the ground of the common law depended so much on the value of the invention to the State. Nevertheless, whether the invention is new and proper subject matter or not, the patent

must not be contrary to law in having been obtained by "deceit" on the Crown of any kind.

Deceit on the Crown is not necessary to be pleaded now, since the Statute of Monopolies has definitely stated requirements, of which non-performance may be pleaded in place of the broader ground, but one form of such plea, namely, want of—

Consideration for the Grant may be still desirable to retain under the present conditions. Before 1884, patents were granted before the complete specification was filed, under the proviso that if the specification "particularly ascertaining and describing the nature of the invention, and in what manner the same is to be performed," were not filed within a definite time the patent became void. If this specification, when filed, was afterwards proved to be in any way insufficient or misleading, the proviso was held not to have been properly complied with, and the patent was void. Under the Act of 1883, however, the grant of patent follows the filing and acceptance of the complete specification, and contains a recital that the latter has been filed. Under these circumstances, supposing the specification to be found in any way inadequate for its purpose, reliance must be placed on the ground of failure of consideration for the grant as a defence against the patent, being one of the grounds on which the patent might have been revoked by *scire facias*, which are retained in full by the present Act.[1]

Partial Failure of Consideration.—It has always been considered that if a part of the patent is bad in law the *whole* is invalid, and cannot be enforced, even for that part which is proved to be good in law. The invention, whatever it may be, which is disclosed and stated to be such, is accepted by the Crown as a whole, and becomes the consideration for the patent which the inventor receives in return. If there is no consideration, or if the consideration is valueless, which is in effect the same thing, the grant is void.[2] If, also, the inventor points to a whole as his invention, whereas it is only a part to which he can properly lay claim, this is called "false suggestion,"[3] and is in law a deceit on the Crown, principally because the consideration which the Crown actually receives is something different from that which the inventor has led the Crown to believe that he possesses. So also if a patent is taken out for several different things, the entire discovery of all these things

[1] Of 1883, Sect. 26 (8).
[2] R. v. Mussary, *Bull N.P.*, 76a; 1 *Web. P.C.*, 41.
[3] *Re* Jessop's Patent, 1 *Web. P.C.*, 42.

is the consideration upon which the patent is granted; and consequently, if any one of those things turns out to be no invention, the consideration fails as a whole, and the patent, being equally a whole, fails also.[1] This confirms a previous decision, that if any material part of the alleged discovery fail the patent is altogether void.[2] If part of what is claimed, for instance, is wanting, either in subject matter for a patent, or in novelty, the whole patent is void.[3] However, where a patentee had described a part as useful which afterwards proved useless, he not having claimed it as essential to his machine, the patent was upheld.[4] An inventor of railway signalling had failed to distinguish cases in which it would answer from those in which its use would be fraught with great danger from failure: the patent was held void.[5] A separate claim for a method of cutting nails proved to involve unnecessary waste, and consequently of no utility, was held to invalidate the whole patent.[6]

Even so late as 1893 a patent was held void on account of want of novelty of one of five claims, though the claim was for a practically unimportant part.[7]

Variance is another form in which the Crown may be deceived in relation to the consideration for the invention. Thus, when an inventor, commencing his application with a provisional specification, had stated his invention therein to be of a certain nature and had received his patent on that invention, under the proviso that within a specified time he should file a complete description of that invention, the description of a different invention or a further invention in the complete specification, was held to be a fraud on the Crown, which rendered the patent void. Cases showing the practical aspect of the question are referred to in the chapter relating to the "Complete Specification."

"Variance" under Act of 1883.—It has been supposed by many, taking but a superficial view, that under the Patents Act of 1883 the fatal effect of variance would be lost, since the procedure was altered to make the grant of the patent follow the filing and examination of the complete specification. It

[1] Brunton *v.* Hawkes, 4 *B. and Ald.*, 552.
[2] Hill *v.* Thompson, 2 *B. Moore*, 457; 1 *Web. P.C.*, 249.
[3] Kay *v.* Marshall, 5 *Bing N.C.*, 501; 7 *Scott*, 561.
[4] Lewis *v.* Marling, 1 *Web. P.C.*, 496.
[5] Easterbrook *v.* Great Western Railway, 1885, 20 *R.*, 210.
[6] United Horseshoe, &c., Company *v.* Swedish Horsenail Company, VI *R.P.C.*, 1.
[7] Murchland *v.* Nicholson and Gray, X *R.P.C.*, 428.

was argued that there could be no deceit on the Crown under these new conditions.

But "deceit on the Crown" is merely a formula really intending deceit on the public; and it is equally a deceit on the public, if the inventor, having obtained priority of date by filing a provisional specification, is to be allowed under a technical plea to "vary" his invention within the succeeding nine months so far as to include any other invention, in place of, or in addition to, that in his mind when he commenced his application. The door would be opened wide to fraud. Speculations, however, have been since set at rest, since variance as a ground of invalidity has been expressly decided in the House of Lords as still existing in full force.[1]

For amendment generally, to cure such of the defects in a patent as are thus curable, see the chapter on "Amendments."

[1] Vickers, Son and Company, Limited, *v.* Siddell, *R.P.C.* VII, 203.

CHAPTER IV.

NATURE AND EXTENT OF PATENT RIGHTS.

Right of Application.—Sect. 4, Sub-sect. 1 of the Patents, &c., Act of 1883, accords right of application to any person, whether a British subject or not. But such person must be the true and first inventor, as stated in the Statute of Monopolies, and explained in Chapter X. The British law, however, does not allow the true and first inventor to obtain the patent of right, since it is granted entirely by grace and favour, and not of right.[1] Consequently the inventor cannot assign to others his right of application which is entirely personal to himself.[2] The British law, furthermore, contains no provision for assigning the application when made, and before the patent issues; thus, a provisional protection cannot be legally assigned. The most that can be done is under the permission accorded by the Act[3] to the true and first inventor to associate any other person or persons, or a corporation, or limited company with himself in the application; either at the time of making the same, or by way of amendment, at any time up to the sealing of the patent.

A special exemption is made by Statute, where an inventor dies without having made application for patent; in such case an application can be made by and patent granted to the legal personal representative of such deceased inventor, provided the application be filed within six months of the inventor's death.[4]

Prerogative of Crown.—Sect. 116 provides that nothing in the Act of 1883 "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."

Rights Given by Patent.—The Letters Patent granted to the applicant invest him with "especial licence, full power,

[1] Feather *v.* The Queen, 6 *B. and S.*, 285.
[2] Marsden *v.* Saville Street Foundry, 1878, *L.R.*, 3 *Ex. D.*, 203.
[3] Patents Act, 1883, Sections 4 and 5.
[4] Patents Act, 1883, Sect. 34.

sole privilege, and authority" by himself, his agents, or licensees, and no others, to make, use, exercise, and vend the invention within the United Kingdom of Great Britain and Ireland and Isle of Man, in such manner as to him or them may seem meet, and assures to him or them "the whole profit and advantage from time to time accruing by reason of the said invention," so long as the patent remains in force; and, further, strictly commands all subjects whatsoever that they shall not "directly or indirectly make use of or put in practice the said invention, or any part of the same, nor in anywise imitate the same, nor make, or cause to be made, any addition thereto or subtraction therefrom, whereby to pretend themselves the inventors thereof, without the consent, license, or agreement of the patentee in writing under his hand and seal."

Any act performed in contravention of the above commands is termed an "infringement."

Commencement of Protection against Infringement.—Although the Act provides that the patent shall be dated and sealed as of the day of application, Sect. 13 provides, that no proceedings shall be taken in respect of any infringement committed before the publication of the complete specification. This occurs on the acceptance of the complete specification by the Comptroller after examination; and from that day forward, until the patent is actually sealed, the applicant obtains, under Sect. 15, the same rights as if the patent were already sealed, except that he may not institute any proceeding for infringement until the patent has been actually granted him. Protection from infringement thus occurs from the date of the publication of the acceptance of the complete specification, and anyone who has been infringing before that date will have to cease doing so. It has been held that an applicant whose complete specification has been accepted, may sue for an injunction against the continuance of the infringement, and such may be granted before the Letters Patent are actually issued.[1]

Provisional Protection.—According to Sect. 14 of the Act of 1883, 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 same; and such protection from the consequences of use and publication is referred to in the Act as provisional protection.

[1] Dowling *v.* Billington, 1890, *R.P.C.* VII, 191.

There is no difference in the procedure between obtaining provisional protection and full patent, the former is in every case given on acceptance of the application for a patent, as a matter of course; and this equally whether the application is accompanied by a provisional or complete specification in the first instance.

Duration of Provisional Protection.—This extends from the day of the application till the patent is sealed, and consequently the term varies according to the celerity with which the latter is accomplished. It may last from three months to fifteen or longer, but it has become the practice when speaking of a provisional protection to denote such as is obtained on filing a provisional specification with the application for patent, whereby the applicant obtains a respite of nine months to develop his invention and prepare and file the complete specification on the acceptance of which the fuller patent rights are obtained as before mentioned.

Nature of Provisional Protection.—The Statute of Monopolies requires an invention, the subject of a patent, to be new and not in use by others at the date of the making of the Letters Patent. To avoid the disadvantages to the applicant of having to keep his invention secret until the patent is actually sealed, the institution of provisional protection saves him from all consequences adverse to his patent arising from any publication or use before the actual sealing of the patent, and after application has been filed. The result is, therefore, to shift the determining date from the sealing to the date of application, so that the invention must be new, and not in use or known, at the date of application, to preserve the validity of the patent. The effect of an application for patent is therefore to give the applicant a defined date from which his priority over use and publication, and also over any other possible subsequent applicant, is assured. By Sect. 13 of the Act of 1883 the sealing of a patent on an application shall not prevent the subsequent sealing of a patent on an earlier application, so long as the latter is not abandoned, thus overruling cases[1] to the opposite effect decided prior to the Act.

Abandonment of Application.—It is provided that if the COMPLETE SPECIFICATION is not filed within nine months of the date of application,[2] or within ten months with the addition of a fine of 2*l*.,[3] the application shall be deemed to be abandoned.

[1] Bates v. Redgate, 1869, *L.R.*, 4 *Ch. D.*, 577, and others.
[2] Patents Act, 1883, Sect. 8.
[3] Patents Act, 1885, Sect. 3.

If, also, the complete specification, whenever filed, is not accepted within twelve months of the date of application, except in the case of an appeal having been lodged against the refusal to accept, the application shall become void.[1] The Comptroller has, however, power to extend this period, that is to say, will accept the complete specification, within an extended time, not exceeding three months, on payment of an additional fine of 2*l.* for one month; 4*l.* for two months; or 6*l.* for three months.[2]

It is a question of considerable importance to applicants how far the protection given under an abandoned application can be relied on. Before the Act of 1883 it was held that the abandonment of an application was not in itself an abandonment of the invention to the public,[3] and in the same case (on the reading of the Act of 1852 declaring that upon the acceptance of the application, "the invention therein referred to may during the term of six months from the date of the application be used and published without prejudice to *any* Letters Patent to be granted for the same"), it was held that the patent would be equally valid, if granted on a new application for the same invention, the first being abandoned. In a subsequent case,[4] this judgment was followed and extended by decision, that publication during the six months following on the abandoned application was no anticipation of the patent granted to the same person on a later application, filed just before the expiration of the six months. In view, however, of the different wording of the Act of 1883, which only saves the patent from the consequences of use or publication occurring between the date of application for patent and the date of sealing *such* patent, it is probable that any publication, &c., which may have occurred under a former abandoned application is no longer saved. As provisional specifications are now no longer published when the application is abandoned or rendered void[5] there can occur no dedication to the public thereby and the first part of the decision in Oxley *v.* Holden above referred to may be presumed to stand.

Right of Assignment.—That the patent rights are assignable is inferred from the terms of the patent which confers the rights upon the inventor, his executors, administrators, and assigns. The Act of 1883, Sect. 36, permits a

[1] Patents Act, 1883, Sect. 9 (4).
[2] Patents Act, 1885, Sect. 3.
[3] Oxley v. Holden, 30 *L.J., C.P.*, 68.
[4] Lister *v.* Norton, *R.P.C.* III, 206; *Griff. P.C.*, 153.
[5] Patents Act, 1885, Sect. 4.

patentee to assign his patent for any place in, or part of, the United Kingdom and Isle of Man, as if the patent were originally granted to extend to that place or that part only. The patentee may also grant by assignment a part or share of the patent,[1] usually referred to as an undivided share, or he may assign the whole interest in some distinct part of the patented invention.[2] The right of assignment only accrues on the sealing of the Letters Patent under which the assignment purports to be made; but an applicant, in expectation of receiving patent or having a right of application, can enter into an undertaking to assign if and when such patent is granted, and specific performance of such a contract will be decreed when the patent is granted.[3] A covenant in an assignment to secure any further improvements, &c., that the assignor may make is not contrary to public policy and may be enforced.[4]

Rights obtainable under Assignment.—The patent being a deed, assignment can only be made by deed, but a parole assignment may operate as an agreement to assign and be enforced accordingly. Under Sect. 87 where a person becomes entitled by assignment, transmission, or other operation of law, to a patent, the Comptroller shall, on request and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the patent in the register of patents. This course is desirable immediately upon assignment for the protection of the purchaser, since the person for the time being entered in the register of patents as proprietor "shall, subject "to the provisions of the Act and to any rights appearing from "such register to be vested in any other person, have power "absolutely to assign, grant licenses as to, or otherwise deal "with the same, and to give effectual receipts for any con- "sideration for such assignment, license, or dealing. Pro- "vided that any equities in respect of such patent may be "enforced in like manner as in respect of any other personal "property."[5]

An unregistered assignment is valid between assignor and assignee and also against subsequent licensors holding from the assignor after the date of and with notice of the unregistered assignment,[6] but is not effectual to enable the assignee to sue

[1] Walton *v.* Lavater, 8 *C.B., N.S.*, 162.
[2] Dunnicliff *v.* Mallet, 7 *C.B., N.S.*, 209.
[3] Cogent *v.* Gibson, 33 *Beav.*, 557.
[4] Printing, &c., Reg. Company *v.* Sampson, *L.R.*, 19 *Eq.*, 464.
[5] Patents Act, 1883, Sect. 87.
[6] Hassall *v.* Wright, *L.R.*, 10 *Eq.*, 510.

infringers until registered;[1] it being undecided, but probable, that the registration when effected will in this case confer rights relating back to the date of the assignment subject to any intermediately registered assignment or license without notice.

Right of License.—A license is a permission granted by the patentee to some other person or persons to use or deal with the patented invention, or part of it, generally or in some particular manner, either throughout the whole or part of the territory covered by the patent, which without such permission would be contrary to the terms of the patent. In effect it is a limited exemption from liability in respect of infringement. Since the patentee cannot bring a suit of infringement until the patent is granted,[2] a license before grant is unnecessary, and since no act is an infringement until the complete specification is accepted, the license if retrospective need not relate back to before that date.

Nevertheless it is competent to an inventor having only provisional protection to grant a license thereon, and such license is not void for want of consideration though the subsequent patent is not so broad as the provisional specification appeared to warrant.[3]

A license is exclusive or non-exclusive. An exclusive license is usually held to exclude also the patentee himself, as well as to prevent grant of licenses for the same matter and place to others,[4] but it is usual for the patentee to specially covenant not to use the invention or grant other licenses. An exclusive license practically vests the patent rights in the licensee for the time being, and *may* be construed as equal to, or containing a grant which will permit the licensee to sue infringers in his own name, but this is not necessarily so,[5] for an exclusive license is only an ordinary license, coupled with a contract by the patentee that no other license shall be granted or use made. The validity of any further license granted in contradiction of such contract would depend upon notice, and registration of the exclusive license would probably in such case be sufficient notice; but registration is not a sufficient notice to all the world in respect of use of the invention, so that a sole licensee for a district, who could not prove that persons using machines, obtained from the patentee

[1] Chollett *v.* Hoffmann, 7 *Ell and Black*, 686.
[2] Patents Act, 1883, Sect. 15.
[3] Otto *v.* Singer, *R.P.C.* VII, 7.
[4] Hindmarsh, Law of Patents, p. 241.
[5] Heap *v.* Hartley, 1889, *R.P.C.*, 495.

outside and brought into the district, had received notice of his exclusive license, was unable to sue such persons in his own name for infringement; it being the opinion of the Court that his was a license only, and contained no grant of the patent rights.[1]

A license should be under seal, and preferably delivered as a deed; but a parole license will be upheld.[2] Whether estopped by deed or not, so long as the relation of licensor and licensee subsists,[3] even under parole license,[4] the licensee cannot put in issue the invalidity of the patent as a ground for non-fulfilment of his covenants to pay royalties or otherwise; nor can he, unless otherwise provided for in the license, release himself, where the patent has already been declared void in action between the licensor and third parties, until he has terminated the license,[5] provided it be terminable, when he may raise the invalidity of the patent in opposition to any further call for royalties or suit of infringement. A license being a personal right or exemption, is not assignable unless stated so to be in the license; and since the assignees of a licensee are not in law bound to perform the personal covenants of the license, but only in equity, taking with notice, to observe such of them as attach to the patent rights themselves, or modify or limit the extent of user permitted, it is advisable to stipulate for the consent of the licensor to any assignment.

Subsequent assignees, taking with notice from first assignee holding under arrangement to pay a percentage of profits to the assignor, were held bound by such covenant.[6] A covenant for quiet enjoyment does not presume that the licensor will keep up the patent;[7] and where licensees had covenanted to pay an exact sum throughout the term of the patent, the lapsing of patent, through non-payment of a renewal fee, was held not to destroy the liability for subsequent payments under the covenant;[8] nor were the defendants in this action allowed to raise a defence of want of novelty, though it was expressly stipulated that the payments were to cease if the invention were not novel.[9]

[1] Heap *v.* Hartley, 1889, *R.P.C.*, 495.
[2] Crossley *v.* Dixon, 10 *H.L. Cas.*, 293.
[3] Smith *v.* Scott, 6 *C.B.*, 771.
[4] Crossley *v.* Dixon. *Supra.*
[5] Neilson *v.* Fothergill, 1 *Web.*, 290.
[6] Werderman *v.* Soc. Gen. D'Electricite, *L.R.*, 19 *Ch. D.*, 247, *C.A.*
[7] Mills *v.* Carson, *R.P.C.* IX, 338, *affirmed on appeal, R.P.C.* X, 9.
[8] Mills *v.* Carson, *R.P.C.* IX, 338, *affirmed on appeal, R.P.C.* X, 9.
[9] Mills *v.* Carson, *R.P.C.* IX, 338, *affirmed on appeal, R.P.C.* X, 9.

Licenses should be registered, to obtain the certainty of legal title against subsequent assignees or licensees.

If fraud is alleged to procure the annulment of a license, a very clear case must be proved.[1] An agreement for a license is equivalent to a formal deed of license.[2]

Rights of Joint Patentees.—Beyond the statement in Sect. 87, that the registered owner of a patent shall have absolute power to deal with it subject to the rights, appearing from the register to be vested in other persons, and to equities in respect of the property; the Act of 1883 contains no reference bearing on the respective rights of joint patentees. Such rights can only be ascertained by reference to the patent deed. In the case of Mathers *v.* Green,[3] question arose as to the relative rights of joint patentees who held a patent granting to "each and every of them" the usual privileges: it was then held that in the absence of any special agreement to the contrary, each patentee was at liberty to work the patent at his own risk, without being answerable for profits or having any right to call on his co-patentees to share losses. The question whether a patentee would be answerable to his co-patentees for moneys received on account of licenses granted by him, was left undecided on appeal, but decided in the affirmative in the Court below.

Under the present form of patent grant[4] to two or more persons the words are simply put in the plural, "each and every" being omitted. It would appear, therefore, that while each patentee may work for his own account separately, licenses can only effectively be granted by all the patentees together: for though each patentee may for himself assure a license, the licensee may still be open to suit of infringement from the co-patentees whose permission he has not obtained. The point has not been decided, and is not likely to arise, since an intending licensee will doubtless insist on all the patentees joining in the license. In any case, one of joint patentees is in no position to grant an *exclusive* license.

The case of Mathers *v.* Green was upheld in Steers *v.* Rogers,[5] carried to the House of Lords, where the principle was extended to assignees of part shares, on the ground that a patent right is not a right to manufacture, but a right to forbid others

[1] MacDougal *v.* Partington, 1890, VII *R.P.C.*, 223, *C.A.*
[2] Post Card Auto. Sup. Co. *v.* Samuel, 1889, VI *R.P.C.*, 560.
[3] *L.R.*, 1 *Ch.*, 29.
[4] *See* page 80.
[5] *R.P.C.* X, 245.

manufacturing, and the latter carries with it no obligation to account for profits to another having a similar right in respect of the same invention.

The holding of a patent by co-owners does not constitute a partnership.

One of joint patentees can assign his share in the patent subject to any agreement between the patentees, but the assignee will not necessarily be bound by any personal covenants which the assignor may have made with his co-patentees.

Agreements defining the relative positions and rights of the parties should, in view of above, always be made, and registered at the Patent Office.

Rights of Joint Applicants.—Joint Inventors.—Presumably one of two or more joint inventors is not entitled to claim a patent for the invention in his own name alone since he cannot truly describe himself as the true and first inventor. Thus, even with the permission of his co-inventors, his legal position would not be necessarily secure; if it has been agreed that he alone should hold the patent the safer course is for all parties to join in the application, and after grant assign their rights to the one of their number to whom the patent is to belong.

Where a joint application has been made it sometimes unfortunately occurs that the parties fall out before the patent is granted, and it is also possible that one of them may become obstructive, it may therefore be desirable to ascertain what can be done under such circumstances. A co-applicant wishing to retire can do so, the others being agreeable, by an amendment of the application to exclude his name, but if he is a joint inventor that course may not be advisable. If a co-applicant refuses to sign a complete specification and withdraws his authorization from the Patent Agent, the Comptroller will, nevertheless, accept the specificati signed by the other co-applicant or co-applicants alone, but the patent will still issue jointly to the co-applicants.

If co-applicants individually tender separate complete specifications the Comptroller will not take upon himself to decide between them, and having no power to accept more than one complete specification he will refuse them,[1] and unless the parties agree on a specification the application will have to be perforce abandoned.

It is obvious that a co-applicant is entitled to prevent the grant to himself of a patent of which he may disapprove, since he might render himself liable in case of an action of revocation.

[1] *Re* Apostoloff and another's application, 1897, XIII *R.P.C.*, 276.

CHAPTER V.

SUBJECT MATTER: MANUFACTURE AND IMPROVEMENT, COMBINATION OF PARTS.

Definition of Invention.—By Sect. 46, "invention" means any manner of new manufacture the subject of Letters Patent and grant of privilege within Sect. 6 of the Statute of Monopolies,[1] and includes an alleged invention. The difficulty of finding an exact definition of patentable subject matter—or rather of its converse, non-patentable subject matter—was referred to by Mr. Justice Grove in Bamlett *v.* Picksley.[2] In his own words, "No terms can be used which will so absolutely exclude any possible misconception as to lay down an abstract definition of what is not the subject matter of a patent, because it must involve something plus the mere terms used in the limited definition."

Nevertheless, from study and co-relation of various decisions given since, and some even before, the Statute of Monopolies, it seems possible to evolve a test or series of tests by which to try the question of subject matter, which without doubt is of considerable importance. That such decisions severally contain but little, if any, approach to full definition of patentable subject matter is natural, considering the diversity of inventions and the sole necessity of judging each upon its own merits without reference to other classes of invention.

Meaning of Manufacture.—In Darcy *v.* Allin[3] it was stated that any man "bringing a new trade into the realm, or any engine tending to the furtherance of a trade, that never was used before," might have a patent for it. Nevertheless, the custom seems to have arisen of considering only the tangible article or result as the subject of a patent; thus in Boulton *v.* Bull,[4] Mr. Justice Heath stated that a patent could only be for

[1] *See* page 75.
[2] 1 *Griff. P.C.*, 43.
[3] 1 *Web. P.C.*, 6.
[4] 1795, *Dav. P.C.*, 162.

a vendible matter, and that the "manufactures" intended by the Statute were divisible into two classes, namely, machinery, or substances made by chemical or other processes, where the vendible substance is the thing produced, and that which operates retains no permanent form.[1] In Hornblower *v.* Boulton,[2] Chief Justice Kenyon understood the word to mean something made by the hand of man. The idea that manufacture might include the art or process of making, apart from the means employed or result produced, does not seem to have been generally held, for in 1819 we find Chief Justice Abbott[3] stating that the word manufacture had generally been understood to denote either the thing made, which is useful for its own sake and vendible as such: or an engine or instrument, or some part of an engine or instrument, to be employed in the making of some previously known article or for some other useful purpose. He, however, was of opinion that the meaning might perhaps be extended also to a new process to be carried on by known implements or elements acting upon known substances, and ultimately producing some other known substance, but producing it in a cheaper or more expeditious manner, or of a better and more useful kind. More recently, in 1837, speaking of a machine, Baron Parke concluded that the word manufacture would apply either to the machine itself or to the mode of constructing it;[4] and in Bush *v.* Fox[5] it was stated that manufacture included process as well as result; eventually the question was settled in favour of the patentability of a process by opinions of the Judges in the House of Lords in Ralston *v.* Smith,[6] where it was held that a new manufacture comprehends not only a production, but a means of production, it includes a new machine, a new combination of machinery, a new process, or an improvement of an old process.

Combination of Parts.—That a combination of parts is a patentable manufacture was recognised before the case of Ralston *v.* Smith. Thus, in Boulton *v.* Bull[7] it was pointed by Buller, J., that mechanical and chemical discoveries all come within the description of manufactures, it being no objection to either of them that the articles of which they are

[1] 2 *H. Bl.*, 482.
[2] 1799, *Dav. P.C.*, 225.
[3] 1819, Rex *v.* Wheeler, 1 *Carp. P.C.*, 397.
[4] Morgan *v.* Seaward, 1 *Web. P.C.*, 193.
[5] 1854, *Macrory P.C.*, 176.
[6] 11 *H.L. Cas.*, 223.
[7] *Supra.*

composed were known and were in use before, provided the compound article which is the subject of the invention is new.[1] A combination of old materials may be patentable, if it produces a new effect,[2] even if the materials of which it is composed were already in use for the same purpose.[3] There may be a patent for a new or improved combination of mechanical parts, already known in combination;[4] and also for a new or improved arrangement of the constituent parts of a combination.[5]

The utility of considering a manufacture as a combination of parts for the purpose of testing its patentability will be afterwards further explained.

Improvement in Manufacture.—When we speak of a new manufacture, whether product or process, we do not necessarily mean that every part of the manufacture is new, but only that it is new as a whole. So far it may therefore only be an improved manufacture, but will nevertheless be equally patentable subject matter. It is obvious that a patent for an improved manufacture does not give any exclusive rights to practice such parts of the manufacture, as were old at the date of the patent, but only the whole manufacture consisting of those old parts combined with the improvement introduced by the inventor; in fact, the patent covers the combination of the new with the old.

We have also the authority of the House of Lords in Ralston *v.* Smith[6] that an improvement on an old process may be the subject matter of a patent; and this, indeed, might be easily assumed, since the effective gain to the public is only the improvement, whether claim be made for it alone, or in combination with the rest of the process. Nor is this reading really a widening of the patent right, as might at first be supposed, since an improvement assumes a basis on which it must be founded; and if it is not in itself a separate "manufacture," it must be an element in combination with other old elements to make up such manufacture. Whether an invention is described as an improved manufacture, or an improvement in a manufacture, is practically immaterial; but if a distinction is required, we may perhaps describe as improvements separable parts or stages, almost in themselves amounting to separate

[1] 2 *H.Bl.*, 487.
[2] Huddart *v.* Grimshaw, 1803, *Dav. P.C.*, 267.
[3] Hill *v.* Thompson, 1 *Web. P.C.*, 237.
[4] Carpenter *v.* Smith, 1841, 1 *Web. P.C.*, 538.
[5] Foxwell *v.* Bostock, 1864, 12 *W.R.*, 725.
[6] *Supra.*

manufactures, and applicable to more than one variety of the substratum process or article; reserving the title of an improved manufacture for cases where the improvement is in such intimate connection with the particular basis to which it is applied that it is not usable in other similar processes or machines; or where there is more than one minor improvement, not perhaps capable of being separately dignified as patentable inventions, but valuable in their collective entirety and in combination with the older elements to which they are applied.

Inventions as Combinations of Parts.—Whether the "manufacture" be wholly new, or whether, as in the great majority of cases, its novelty only lies in an improvement upon the pre-existing manufacture, it can equally be represented as a combination of parts. The value of this method exists principally in the fact that it takes note more particularly of the relationship which the parts bear to one another, and which gives to each manufacture its individual nature. That it is equally applicable, and has been applied to all manufactures, whether machines, processes, or products, is evident from decided cases.

Every manufacture, whether new or improved, is a compound of many details or parts, the total of which constitutes the manufacture. A machine is an aggregate of various mechanical parts; a process is a series of several distinct operations or manipulations; a product is a compound of materials. Each of these is best described according to the parts it possesses, and in distinguishing one from another notice is taken of the variation of certain of the parts. Nevertheless a manufacture is more than a mere unordered collection of parts, its nature depends not only on the parts themselves but on their mutual relationship. This relationship of the various parts is in fact more important than the actual nature of the parts themselves as a means of distinguishing one manufacture from another, for it may be unimportant whether one means takes the place of another, so long as it acts in the same way and produces the same result. It is the relative more than the individual qualities of the elements employed that give character to the combination as a whole.

Manufactures have often been considered as combinations of parts, for the reason of facility of comparison, and the value of this method of representation lies in the fact that it shows the common structure or type of all manufactures and facilitates the development and application of distinguishing tests of patentability. The parts are termed elements.

Variations of Combination.—As every manufacture is representable as a combination of parts, so every alteration that can be made in a manufacture may be presented as a variation of the combination. An alteration in a combination may occur in one of four ways: firstly, there may be the simple addition of a further element or elements to those already combined; secondly, there may be a simple subtraction of one or more elements; thirdly, there may be both addition of new elements and withdrawal of old, effecting a substitution of elements; and fourthly, there may be simply a rearrangement of the elements already combined without adding to or diminishing the number. This last class is in truth only a variety of the third class, for rearrangement implies a series of local substitutions.

Invention by Addition.—Broadly speaking, addition alone is not sufficient to support a patent;[1] nevertheless there *may* be good subject matter for a patent covering an addition,[2] if there is anything material and new which is an improvement of the trade,[3] or if the added matter is itself a novelty[4]; where the added matter is in itself not new, the addition must come under the rule laid down by Lord C. J. Denman in R. *v.* Cutler,[5] that where the inventor has no claim either to the mode of producing the article or to the mode of applying it for attaining the result desired by him, the addition is a mere application which is not patentable.

Invention by Subtraction.—Similarly with subtraction: a bare subtraction will not afford ground for a patent, nevertheless there may be invention solely resulting from, or evidenced by subtraction of a formerly used element from a manufacture. Thus, the omission of an interior mandrel, or former, previously supposed to be essential for the rolling of metal tubes, was held sufficient to constitute a patentable invention, the tubes made without the mandrel being cheaper and better than by the older process.[6] An invention relying solely on subtraction of an element used is very infrequent.

Invention by Substitution.—That is to say, by removal of an element or elements, and replacement by another or others is perhaps the most common form in which an invention manifests itself.

[1] Bircot's Case, 3 *Inst.*, 184; Bamlett *v.* Picksley, 1 *Griff.*, 40.
[2] Morris *v.* Branson, 1776, 1 *Web. P.C.*, 51.
[3] R. *v.* Arkwright, 1785, 1 *Web. P.C.*, 71.
[4] Boulton *v.* Bull, 1795, 2 *H.Bl.*, 489.
[5] *Macrory P.C.*, 124.
[6] Russell *v.* Cowley, 1835, 1 *Web. P.C.*, 463.

Nearly all inventions which consist in the alteration of an original machine, process, or article, for improving its working or purpose, are of this nature. Where the element added in substitution is itself new there can be no doubt that there is subject matter for a patent;[1] and where one element of the old combination is modified there may be subject matter.[2] Even where a known element is substituted for one in the original invention,[3] or where there is only rearrangement of the elements already existing in the invention,[4] invention may exist; but in every case it appears necessary that there must be either a new effect,[5] or a new result,[6] or a better effect than before.[7] The mere employment of mechanical equivalents does not constitute patentable invention, being in fact no invention at all, but only result of skill in handicraft,[8] and there is thus always a tendency to apply the test of ingenuity to the alleged invention;[9] but "where a slight alteration turns that which was practically useless before into that which is very useful and important, judges have considered that though the invention was small, yet the result was so great as fairly to be the subject of a patent."[10] In ninety-nine cases out of a hundred a useful novelty will have required inventive faculty, but there may, nevertheless, be instances of valuable novelties which have not required invention.[11]

Divisibility of Subject Matter.—As a combination is distinguished by the relative features of its parts, a combination can possess no *utility*, and, therefore, not be patentable unless it is complete in itself and operates to a complete result.[12] The mere collection of mechanical parts in a heap is no patentable combination, the collection must be such that it affords a definite result. Nor should redundant parts unnecessary to that result be included in the combination. It is unnecessary that the combination alone should produce the finished product or entire action of the invention, since it may set in action, or act

[1] Foxwell *v.* Bostock, 1864, 12 *W.R.*, 725.
[2] Edison and Swan Company *v.* Woodhouse and Rawson, IV *R.P.C.*, 79.
[3] Hinks *v.* Safety Lighting Company, 1876, 4 *Ch. D.*, 615.
[4] Foxwell *v.* Bostock. *Supra.*
[5] Huddart *v.* Grimshaw, 1803, *Dav. P.C.*, 267.
[6] Brunton *v.* Hawkes, 1821, 4 *B. and Ald.*, 550.
[7] Morton *v.* Middleton, 1863, and *Cr. S.*, 3*rd Sect.*, 721.
[8] Per V. C. Bacon, in Murray *v.* Clayton, 1872, doubted on appeal, but in the form stated in the text practically upheld in later decisions.
[9] Williams *v.* Nye, 1890, *C.A.*, *R.P.C.* VII, 67.
[10] Hinks *v.* Safety Lighting Company, 1876, 4 *Ch. D.*, 615.
[11] Hayward *v.* Hamilton, *C.A.*, 1881, *Griff.*, 121.
[12] Parkinson *v.* Simon, XI *R.P.C.*, 493.

conjointly with another, or perhaps several other combinations, to effect the ultimate result, but it must, nevertheless, produce a definite subsidiary action or result. Thus, in a steam engine the piston with its packing ring and cylinder may produce an operative combination being for the purpose of the air-tight movement of the piston in the cylinder. A valve for admission of steam may form of its parts another combination, the reversal gear a third, and so forth; but the elements enumerated in each must be sufficient to produce the desired effect of that combination.

It is in this manner that an invention may be split up into its component parts so that each component, presenting patentable subject matter and novelty, may be secured to the inventor, whether used with the other components or not.

CHAPTER VI.

SUBJECT MATTER: PATENTABLE INVENTION, APPLICATION AND PRINCIPLE.

Invention Needed.—In the older judicial decisions it was thought that if a new or improved result flowed from an alteration the latter must be *ipso facto* patentable, the benefit resulting was considered evidence that the manufacture must have been materially altered.

The question did not arise whether there had been invention shown in the alteration; this appears either to have been neglected as a test, or to have been considered proved by the fact that the beneficial change had not been made by others before. Lord Justice Brett pointed out in Hayward *v.* Hamilton[1], that the fact that invention was necessary could not be predicated as an absolute rule of law; and in the later cases of Blakey *v.* Latham,[2] and Williams *v.* Nye,[3] both in the Court of Appeal, it was stated that to sustain a patent there must always have been a distinct exercise of inventive faculty.

This throws the consideration of an invention more upon its own nature than on its effects, and gives greater importance to the actual change made by the inventor than to the commercial result of that change.

In considering the patentability of any variation of a combination we may approach the matter in two ways: we may either consider the nature of the alteration which the change has made in the combination and judge whether it is a material change needing inventive faculty for its production; or we may have regard to the origin or previous use of each new element in the position given it, and from that standpoint judge whether any invention was needed to recognise the suitability of that element for its position, or, having recognised its suitability, to adapt it to the purpose to which it is devoted.

[1] *Griff.*, 121.
[2] VI *R.P.C.*, 188.
[3] VI *R.P.C.*; 523.

As pointed out in the previous paragraph, the fact that a valuable result is obtained by the modification, and that others had not up till that time been able to effect that result, may be very strong evidence that the change introduced needed the faculty of invention, but this does not remove the necessity of considering whether the change made was not already within the competence of members of the public acquainted with such matters. The means of effecting the object desired must be such that they are not so obvious as to occur to any one contemplating the use of the particular materials used for the purpose.[1] But every case must stand on its own merits in judging this question of necessity of inventive talent for production of the result,[2] and herein, the matter being one of personal opinion principally, lies one of the greatest difficulties of Patent Law.

The question of origin of the introduced element will be again referred to, after discussion of the patentability of an application of known means to particular purposes.

Application to a Particular Purpose.—There can never be any patentable invention in the mere application of any article to a particular purpose, unless the application in itself constitutes a method or process of manufacture, or a stage or step in such a process, or unless the article enters into a combination with other articles to constitute a machine or a vendible product. Even then the application cannot be patentable unless it needed exercise of ingenuity.

Lord Chancellor Cottenham, in 1841, gave it as his opinion in Kay *v.* Marshall,[3] that, if a patentee has discovered any means of using a machine which the world had not known before the benefit of, he was entitled to a patent; but it will be seen that in the discovery of particular means of using the invention can hardly differ from a method or process into which the machine in question will enter only as an appliance.

In a later case (1847) Lord C. J. Denman pointed out that the mere application of a thing which existed before did not appear to be a subject for a patent, nor indeed the application to produce any particular result, "the party having no claim either to the mode of producing the article or to the mode of applying it for attaining that result."[4]

The dictum that a mere application is not a new manufacture

[1] Thomson *v.* Am. Braided Wire Company, *H.L.*, 1889, VI *R.P.C.*, 528.
[2] Clark *v.* Adie, *H.L.*, 1877, 2 *App. Cas.*, 335.
[3] 2 *Web. P.C.*, 82.
[4] Reg. *v.* Cutler, *Macrory P.C.*, 124.

and therefore not the subject of a patent, was also affirmed in Bush *v.* Fox,[1] carried up to the House of Lords.

The application of any existing matter to any particular purpose is no patentable invention, because if the public is possessed of any particular apparatus or thing the public may use it for any purpose to which it is suitable.[2]

Discovery of Unsuspected Quality.—Even if the inventor shall have discovered a latent or unsuspected quality in a machine or part of a machine, that does not give a right to a patent, for it is obvious that the machine or part can only act according to the particular qualities it already possesses, and the discovery of them is not a "new manufacture." This was clearly stated in Ralston *v.* Smith,[3] where, before the date of the patent, a smooth roller and bowl revolving at different velocities had been used to calender fabrics, also an embossed roller and bowl revolving with equal velocities had been used for embossing fabrics. The plaintiff's invention consisted in making a particular engraving of the pattern, enabling the same operation to cause both the calendering and the embossing.

Lord Cranworth said: "How is this possible to be called a new manufacture? I, as a manufacturer, have my roller which I am in the habit of rolling upon a bowl, the fabric passing between the two at equal velocities, then I can impress my pattern on it. I have my roller without any pattern engraved upon it. I can impress that at an unequal velocity and it will calender. But I do not do them both at the same time, because I suppose that in doing so I shall tear my fabric, and I rightly so suppose, until the plaintiff makes the discovery that there is one particular sort of pattern which may be produced without tearing the fabric. Now that is a very useful discovery, but it would be strange to say that that is a new manufacture, and that therefore I am to be deprived of the most useful way of using my roller. There is nothing new in the invention except that I now know what I did not know before, that by a particular use of it I shall obtain a result which I did not know before that I could obtain."

The bare fact therefore of recognising that something new can be done with a known "manufacture" is not patentable.

Application to Cognate Purpose.—Even if the application shows a new manufacture it will not necessarily be patentable,

[1] 1856, 5 *H.L. Cas.*, 707.
[2] Per Wightman, J., in Reg. *v.* Cutler, *supra.*
[3] 11 *H.L.*, 223, A.D., 1865.

since, if the original use of the matter applied be similar to the use to which the inventor puts it, so that the one naturally suggests the other, the invention is not patentable.

In Harwood *v.* The Great Northern Railway Company,[1] Lord Chief Justice Cockburn put forward the following rule for judging whether any application of an old thing to a new purpose is to be considered patentable: "Although the authorities establish the proposition that the same means, apparatus, or mechanical contrivance cannot be applied to the same purpose, or to purposes so nearly cognate and similar, that the application of it in the one case naturally leads to the application of it when required in some other, still the question in every case is one of degree, whether the said amount of affinity or similarity which exists between the two purposes is such that they are substantially the same, and that determines whether the invention is sufficiently meritorious to be deserving of a patent."

This case was carried up to the House of Lords, where opinions were unanimous to the same effect.

The above was quoted and agreed to in Penn *v.* Bibby[2] by the Lord Chancellor, who added: "In every case of this description one main consideration seems to be whether the new application lies so much out of the track of the former use as not naturally to suggest itself to a person turning his mind to the subject, but to require some application of thought and study."

The following examples of decided cases will assist in judging what applications are patentable; nevertheless, as might be supposed, the earlier decisions are more lenient than the later.

Application of known Materials.—The following were held patentable inventions:—

Application of indiarubber in state of solution between two fabrics to manufacture waterproof material, though other substances and indiarubber in other states had been similarly employed before.[3]

Application of indiarubber as a substitute for leather in the manufacture of "cards" for the carding of wool, &c.[4]

Application of sheets of a certain alloy of metals for the sheathing of ships' bottoms, with a view to provide a coating

[1] Referred to in Penn *v.* Bibby, *L.R.*, 2 *Ch.*, 127; 35 *L.J.*, *Q.B.*, 33–36.
[2] *L.R.*, 2 *Ch.*, 127.
[3] Macintosh *v.* Everington, 6 *Rep. Arts.*, *N.S.*, 317.
[4] Walton *v.* Potter, 1841, 1 *Web. P.C.*, 597.

which would oxidise sufficiently to prevent adherence of impurities, yet not wear away too quickly; though the alloy in itself for other purposes was not new.[1]

Use of wood as actual bearing surface of the propeller shafts of vessels, water being allowed to flow freely between the shaft and metal outer bearing.[2]

Mohair and silk combined in a specified way to imitate sealskin, though same materials had already been combined in manufacture of glacé goods.[3]

The following were held not patentable:—

Substitution of iron for wood in construction of floating docks.[4]

Use of watch-spring steel in place of whalebone, &c., for crinolines.[5]

Use of animal fibre such as Russian wool in the manufacture of artificial hair.[6]

Application of cardboard to the construction of window blinds.[7]

Use of solid napthaline in place of other forms for enriching gas.[8]

Application of known Machinery adjudged patentable:—

The employment of two drums moving at unequal speeds for testing wire, such drums having been used before for straining and unkinking wire.[9]

The use of a flat rotating disk in place of a long band as "music sheet" in mechanical musical instruments, though a similar disk had been used to replace a similarly operating band in figure looms.[10]

The following were not considered patentable:—

The application of tubes of a particular construction to boilers in place of such tubes as were formerly used, the construction of the tubes being not new.[11]

Application of a caisson already used with compressed air

[1] Muntz *v.* Foster, 1844, 2 *Web. P.C.*, 103.
[2] Penn *v.* Bibby, 1866, *L.R.*, 2 *Ch.*, 127.
[3] Lister *v.* Norton, 1886, III *R.P.C.*, 199.
[4] Mackelcan *v.* Rennie, 1862, 13 *Com. B., N.S.*, 52.
[5] Thompson *v.* James, 1863, 32 *Beav.*, 570.
[6] Rushton *v.* Crawley, 1870, *L.R.*, 10 *Eq.*, 522.
[7] Sharp *v.* Brauer, 1886, III *R.P.C.*, 193.
[8] Albo Carbon Light Company *v.* Kidd, 1887, IV *R.P.C.*, 535.
[9] Johnson *v.* Rylands, 1873, *Griff.*, 138.
[10] Ehrlich *v.* Ihlee, *C.A.*, 1888, V *R.P.C.*, 437.
[11] R. *v.* Cutler, 1847, *Macrory P.C.*, 124.

for excavations on land, to the excavation of foundations of structures under water.[1]

Employment of a mandrel shaped like a bottle for making straw envelopes for bottles, a mandrel being a common appliance for forming a basis of shape.[2]

Application to treatment of wool and hair of burnishers formerly used for a similar purpose for linen and cotton.[3]

The use of a guide in a frilling machine for the purpose of keeping down the work, similar guides being employed in many other machines.[4]

Use of springs under the fore part of a carriage, similar to some formerly used only under the hind part.[5]

Application to bottles of a special barrel cock similar to cocks previously applied to tea urns.[6]

Application of known Methods or Processes.—Held patentable:—

The application of a combination of chains and cross beams to compress and retain fodder in its compressed state for the manufacture of ensilage.[7]

The use of anthracite coal with a hot blast in place of bituminous coal in the same connection in view of the benefit resulting from the invention.[8] Though the decision has since been often called in question, the invention may be said to lie on the very verge of patentable subject matter.

The combined use of heat to soften umbrella handles for bending, and a clamping frame to hold them till cold, though it was common to soften wood by heat for bending.[9]

The application to gasometers of certain methods of construction formerly applied to pontoons and floating docks was held subject matter, in view of practical difficulties to overcome which were not obvious to persons of ordinary skill acquainted with gasometers.[10]

[1] Bush *v.* Fox, 1852-6, *Macrory P.C.*, 166; affirmed in H.L., 5 *H.L. Cas.*, 707.

[2] Patent Bottle Envelope Company *v.* Seymer, 1858, 28 *L.J., C.P.*, 22.

[3] Brook *v.* Aston, 1859, 28 *L.J., Q.B.*, 175.

[4] Hill *v.* Tombs, 1881, *John*, 82.

[5] Morgan *v.* Windover, *H.L.*, 1890, VII *R.P.C.*, 131.

[6] Hazlehurst *v.* Rylands, IX *R.P.C.*, 1.

[7] Reynolds *v.* Amos, 1886, III *R.P.C.*, 219.

[8] Crane *v.* Price, 1842, 1 *Web. P.C.*, 393.

[9] Dangerfield *v.* Jones, 1865, 13 *L.T. Rep., N.S.*, 142.

[10] Gadd *v.* Mayor, &c., of Manchester, 1892, IX *R.P.C.*, 516.

Held not patentable:—

The employment for joining the rails of railways of a method already employed in joining up girders of bridges.[1]

The casting in a whole piece of a boiler formerly made in cast sections.[2]

Holding strips of leather on metallic rollers by the use of spiked bars.[3]

Fastening hooks to a frame by first securing them to a bar and the latter to the frame, though better and cheaper than direct fixing to the frame formerly employed.[4]

Making sheet metal signs by pressing between a hard die and a yielding matrix, such method having been previously used for embossing wall paper, leather, &c.[5]

Treating cotton seed by hypochlorite of soda, in view of prior use of same substance in a similar manner on analogous materials.[6]

Mechanical Equivalent.—When in judging the amount of invention involved in the substitution of an element in a combination by another, attention is directed to the similarity of the element discarded with that by which it is replaced, it may often be found that the action of the new element is so similar to that of the discarded element that the replacement does not alter in any way the general character of the combination. The elements are then said to be mechanical or chemical equivalents of each other as the case may be. There will seldom be any invention needed in the substitution of one mechanical equivalent for another, for as a rule the equivalent will be well known and within the competence of any person skilled in the particular trade. For this reason, also in addition to the fact that there is no substantial change in the manufacture, the substitution of mechanical equivalents cannot be the subject of a patent.

Nevertheless, there may be several roads to the same place, and the fact that one set of means is known for arriving at a given result will not prevent grant of a patent for another set of means for attaining an identical result.[7] Such a set of means

[1] Harwood *v.* G.N.R. Company, 1860-65, 35 *L.J., Q.B.*, 38.
[2] Ormson *v.* Clarke, 32 *L.J., C.P.*, 8.
[3] Oddy *v.* Smith, 1888, V *R.P.C.*, 503.
[4] Longbottom *v.* Shaw, *C.A.*, 1889, VI *R.P.C.*, 510.
[5] Embossed Metal Plate Company, Limited, *v.* Sawpe and Busch, 1891, VIII *R.P.C.*, 355.
[6] Wilson *v.* Union Oil Mills Company, 1892, IX *R.P.C.*, 57.
[7] Walton *v.* Potter, 1 *Web. P.C.*, 590.

is in truth a mechanical equivalent, but the latter words are intended more properly to be confined to the individual members which in a combination make up the whole manufacture.

Abstract Principle.—Abstract discoveries, such as the recognition of the existence of principles heretofore unknown in themselves, cannot be protected by patent because, except in the concrete form of their application, they do not exhibit the essential features of a "manufacture."

In the case of Boulton *v.* Bull [1] (1795), brought to defend the patent of James Watt for a steam engine, Justice Heath put forward the following proposition: "The Marquis of Worcester discovered in the last century the expansive force of steam and first applied it to machinery. As the original inventor he was clearly entitled to a patent. Would the patent have been good applied to all machinery or to the machines which he had discovered? The patent decides the question. It must be for the vendible matter and not for the principle" (that is to say, a bare theoretical principle).

In Jupe *v.* Pratt in 1837 [2] it was laid down by Baron Alderson that "You cannot take out a patent for a principle; you may take out a patent for a principle coupled with the mode of carrying the principle into effect, provided you have not only discovered the principle but invented some mode of carrying it into effect."

Again in 1841 in Neilson *v.* Harford [3] the same judge said: "I take the distinction between a patent for a principle and a patent which can be supported, is, that you must have an embodiment of the principle in some practical mode described in the specification of carrying the principle into actual effect, and then you take out your patent, not for the principle but for the mode of carrying the principle into effect."

In our own times, 1889, in the Automatic Weighing Machine Company *v.* Knight, Lord Justice Cotton while affirming that a patent could not be taken for a principle alone, but only for a principle coupled with the mode of carrying it into effect, added, "Where there is a principle first applied in a machine capable of carrying it into effect, the Court looks more narrowly at those who carry out the same principle and say they do it by a different mode, and looks to see whether in effect, although the mode is not exactly the same, it is only a colourable difference." [4]

[1] *Dav. P.C.*, 102.
[2] 1 *Web. P.C.*, 146.
[3] 1 *Web. P.C.*, 342.
[4] VI *R P.C.*, 304.

And in Thomson *v.* Moore,[1] 1889, in the Court of Appeal (affirmed afterwards by the House of Lords), per Pallas, L.C.B.: "Although a principle, as distinct from the machine by which it is proposed to be applied, cannot be the subject of a patent, the consideration of the principle sought to be so applied may be material in determining the essence of that invention."

Principle.—It is natural, and indeed logically essential, that a principle should underlie every invention, there cannot be any invention which does not embody some principle; the principle must first occur to the mind before the practical application can be made. The test of the invention is its principle.[2] Thus, taking the case of an invention of a machine, it may consist of a collection of wheels, levers, springs, framings, &c., but there is no invention in simply bringing these together, but in the way in which they are arranged and combined together to work in a given way according to the intention of the inventor. It is the recognition of the principle of action desired that guides the intention of the inventor in contriving the machine. It may well be that the same principle of action could be arrived at by other means than those actually employed by the inventor, chains may take the place of cords, weights replace springs, &c., but the principle remains the same, and, therefore, the invention also. The putting together of a machine or the working out of a manufacturing process is the concrete embodiment of a principle. There may be invention in the principle alone, but there is no *patentable* invention without such concrete embodiment of the principle, for the Patent Law does not recognise bare principles, but only matters useful in trade which may be included under the general term "manufactures." Thus it will be seen at once that principles which cannot receive embodiment in a "*manufacture*" *cannot be protected under the* Patent Law. Combinations and operations of commerce, finance and credit, methods of advertising, methods of amusement, games of chance or skill and all such *personal* proceedings not connected with a manufacture are, therefore, excluded. But principles underlying manufactures, although not separately, and, therefore, *per se* patentable, can be protected or covered by the patent, if their concrete embodiment, which the inventor is bound to make, is described and claimed in the terms of the principle on which it is based.

In plainer language, this amounts to saying that a group of mechanical elements, for example, should be described not so

[1] VI *R.P.C.*, 450.
[2] Thomson *v.* Moore, quoted in text.

much with regard to the shape and constitution of its individual parts, as to the manner in which these parts act together to produce the mechanical action intended, that is the principle of the combination of those elements. In a process or method of manufacture stress should not be laid so much on the actual appliances that are used as upon the qualities to be possessed by these appliances to cause the process to proceed as intended, that is the principle of a process. In effect, the principle is the "nature of the invention," the concrete embodiment is the "manner in which it is to be performed." The complete specification required from the inventor is expressly intended to state "the nature of the invention and the manner in which it is to be performed," and to describe and ascertain this particularly; that is to say, by way of particulars, in detail. Thus both are required from the inventor, but it is best to keep the nature of the invention and its performance distinct from one another.

Principle of Result.—The principle of the invention must not be confounded with the principle of the result obtained by the invention, or of the purpose to which the finished invention is to be put.

Beyond the fact that all inventions to be patentable must be suitable for fulfilling some useful purpose, the purpose of the invention has nothing at all to do with the invention itself, nor, therefore, any principle that may lie in the purpose of the invention. The manufacture, whether machine or process, is made up of different factors, generally each in itself old, and the invention consists in bringing together these factors into a certain order or interdependence, and it is the principle of this order or interdependence that constitutes the essence of the invention.

Even where a patentee has produced a new result, and also invented and specified one way of producing that result, he cannot claim every way of producing such result, but only such methods as do not colourably differ from the method he has himself specified.[1]

[1] Nobels Explosive Co., Ltd., *v.* Anderson, XI *R.P.C.*, 527.

CHAPTER VII.

NOVELTY: PRIOR PUBLICATION.

Novelty Generally.—Presuming that the invention is one which appears to be proper subject matter for a patent, the question of its patentability is, nevertheless, still undecided, since it must also satisfy the required conditions of novelty.

The Statute of Monopolies requires that an invention shall be "new within the realm," and one "which at the time of making such Letters Patent and grants others should not use," otherwise it is not patentable.

Broadly speaking, there are but very few inventions which can be called entirely new, and as knowledge progresses the number is likely to become fewer and fewer. The great majority depend on some known basis, being practically improvements on preceding inventions. It thus becomes the question, not so much as to whether the "manufacture" as a whole possesses novelty at all, but how much novelty it shows, and in considering its patentability from this point of view; it is the novelty or novelties only which are to be judged in the light of subject matter. It may be that the amount of novelty is so slight, or has so little utility, that there cannot be said to be subject matter for a patent at all.

Date of Determination of Novelty.—As to the time when the presence or absence of novelty is to be determined this is said to be at "the making of such Letters Patent or grants."[1] As a matter of fact, under present practice patents are not actually granted until the necessary steps to obtain them have been completed and a certain time is allowed, from the date of the application for patent, for carrying out these steps, the total period not usually exceeding fifteen months,[2] and depending mainly on the manner in which the inventor chooses to prosecute his application.[3] By Sect. 14 of the Act

[1] Statute of Monopolies, *see* page 75.
[2] Act of 1883, Sect. 12 (3).
[3] *See* Chapter XIII.

of 1883, however, any publication or use of the invention subsequent to the date of application is not held to be any bar to the patent to be granted on said application, so that the date at which novelty is determined is now the date of application for the patent. If at this exact date the invention was novel the patent will be so far valid, if not novel the patent will not be valid.

Novelty Lost.—An invention has not the character of novelty if, previous to the date of application for a patent, it was publicly known or used, or published so that it was or might have been known or used by the public in this realm.

Novelty is therefore lost by either prior publication or prior user in this realm, but not, so far as Great Britain is concerned, by anything occurring abroad.

In respect of publication it is immaterial in what form it is, written or printed, or even verbal, in a book, or in a previous patent specification, in a newspaper or in a technical work in English or foreign language. The test being, the amount of discovery given in the respective publication, whether it is sufficient to enable a person skilled in the art to construct or perform the invention without additional invention being required of him.

In respect of prior user; it may be by the inventor or others, by the public, or in public, it must not have been merely experimental or abandoned as experimental; the test being that the public did or could have operated the invention from, or by reason of, the user, had by, or among, them.

Inasmuch, also, as the first applicant is preferred and taken to be the "true and first inventor," a previous patent applied for by another person for the same invention, even if not published at the time of the subsequent application for a patent, will, if granted, be a bar to the validity of the subsequent patent.

Prior Publication Abroad or use in Foreign Countries does not invalidate a British patent, as it was principally for the introduction into Great Britain of manufactures previously known abroad, that the British patent system was instituted, as shown in many old reported cases, notably in *re* Hastings' Patent,[1] 1567; Darcy *v.* Allin,[2] 1602; and Edgeberry *v.* Stevens,[3] the latter being accepted as having definitely settled the question of the patentability of an "imported

[1] 1 *Web. P.C.*, 6.
[2] 1 *Web. P.C.*, 6.
[3] 1 *Web. P.C.*, 35.

invention." As respects publication or use in the British Colonies it has been held that publication, &c., in Natal, a British colony with an independent legislature and patent laws of its own, does not invalidate a British patent subsequently applied for.[1] British Colonies possessing independent governments in this respect may therefore be considered on a par with foreign countries. It may be presumed also that even colonies or possessions having no independent legislatures may be placed in the same category so far as they are not covered by the British patent.

The British patent covers England, Wales, Scotland, Ireland, and the Isle of Man, so that presumably any prior publication or use outside these countries has no effect on the patent. Formerly the Channel Isles were included in the grant, but since the Act of 1883 this portion of British territory is omitted.

Anticipation by Publication.—A book printed and published in England prior to the patent was held to invalidate the same in The King *v.* Arkwright.[2] Even a single copy of a French work deposited in the library of the British Museum, and thus attainable by the public, was an anticipation, although nobody was proved to have read it,[3] but later decisions go to prove that the simple existence of such a previous source of information is not alone sufficient to invalidate a patent. Thus in Plimpton *v.* Malcomson,[4] 1876, Jessel, M.R., upheld the decision in Stead *v.* Anderson,[5] to the effect that in the case of a "book," it must be made public to such an extent as to be known among persons "practising in such matters." Thus if the evidence went to show that the public knew no more about the book, than seeing the back of the book in a bookseller's window, and that none had been sold,-though exposed for sale, that is not a sufficient publication.[6] This appears to contradict the older decision of Lang *v.* Gisborne,[7] where it was held that the bare fact of publication in a book was a dedication to the public, sufficient to invalidate a subsequent patent, and that it was not necessary to prove sale of even one copy. The latter decision appears to have been acted upon in Plimpton *v.* Spiller,

[1] Rolls *v.* Isaacs, 1881, 19 *Ch. D.*, 268.
[2] 1785, 1 *Web. P.C.*, 72.
[3] *Re* Heurteloup's Patent, 1836, 1 *Web. P.C.*, 553.
[4] *L.R.*, 3 *Ch. D.*, 553.
[5] 2 *Web. P.C.*, 149.
[6] *L.R.*, 3 *Ch. D.*, 562.
[7] 31 *L.J., Ch.*, 770.

in the Court of Appeal.[1] It was proved that a copy of an American book containing a brief description of the patented invention, roller skates (but not sufficient for manufacturing the skates), and also a copy of the United States Gazette containing drawings and claims of the patent, had been received and placed on the shelves of the Patent Office Free Library before the date of the patent; the Gazette was not indexed. The patent was upheld, the fact of publication not being judged sufficiently proved; per James, L. J.: "As a matter of fact, it is impossible to say that this American book ever was in the library in any sense in which it could be construed to be accessible to the public, or that portion of the public which consists of persons conversant with this particular subject;" per Brett, L.J.: "The real question to be decided by the Court is whether the invention was before the patent in question known to the public, not known to all the public, but known to a sufficient number so that you may properly say it was known in England. In order to prove or disprove that fundamental proposition, you may show by way of evidence that there has been a prior invention, and that it has become, as a fact, although it has never been written, known to the people in the trade. That is what Baron Parke says in Stead *v.* Anderson,[2] that it has become generally known in the sense that it has become known to the people in the trade. This is only one form of evidence which may be given in proof of the fundamental proposition. Another mode of proving the fundamental proposition is to show that a description of the invention has been published. But then to show that, it is not sufficient merely to show, that it has been published in one sheet or book. As Baron Parke himself says:—'Published means offered or dedicated to the public.' He then goes on to say that the question with regard to this is, was this invention published or offered to the public to such an extent that it was generally known among engineers or persons interested in the matter? The mere fact of its being dedicated, the mere fact of its being published is not sufficient, it must be so far published that you may fairly say it is known to a sufficient number of the public."[3] It will be noticed that this case did not turn at all upon the fact of the disclosure of the invention being full enough or not in the alleged anticipations. Also in the United Telephone Company *v.* Harris and Others,[4] a copy of

[1] *L.R.*, 6 *Ch. D.*, 412.
[2] *Supra.*
[3] *L.R.*, 6 *Ch. D.*, 434.
[4] 1882, 21 *Ch. D.*, 720.

a German paper, the "Zeitschrift," of the German-Austrian Telegraph Union, was on the file in the free library of the Patent Office in London, and another copy in the library of the Institute of Civil Engineers, not catalogued under telephones or telegraphs. Evidence was given by a telegraphic engineer, that before the date of the patent he had seen the description in the "Zeitschrift," alleged to be an anticipation relied on, and although ignorant of German, had been able to understand the substance of the invention from the technical terms and plates. It was held that this was evidence sufficient to prove that the description in the journal must be considered to have been within the knowledge of persons skilled in such matters in this country. As a matter of fact, however, the matter contained in the description was held not to be the same as the particular invention in question.

Also in Otto *v.* Steele,[1] the proof of existence of a book in French in the British Museum was held insufficient as proving prior publication, the existence of the book there having been previously unknown.

In Harris *v.* Rothwell, 1887, in the Court of Appeal, Lord Justice Lindley said: "*Primâ facie*, a patentee is not the first inventor of his patented invention if it be proved that before the date of his patent an intelligible description of his invention, either in English, or in any other language commonly known in this country, was known to exist in this country, either in the Patent Office, or in any other library to which the public are admitted, and to which persons in search of information on the subject to which the patent relates would naturally go for information. But if it be proved that the foreign publication, although in a public library, was not in fact known to be there, the unknown existence of the publication is not fatal to the patent."[2] In this case the invention was held to have been anticipated by previous arrival of German Patent Specifications in the Patent Office Library.

In Patterson *v.* The Gas Light and Coke Company[3] per Lord Blackburn: "The consideration for a patent is the communication to the public of a process that is new. In Hindmarsh on Patents it is laid down that 'if the public once become possessed of an invention by any means whatever, no subsequent patent for it can be granted either to the true or first inventor himself or any other person, for the public cannot be deprived of the right to use the invention, and a

[1] 1886, 31 *Ch. D.*, 241; III *R.P.C.*, 109.
[2] 35 *Ch. D.*, 431.
[3] *H.L.*, 1877; *L.R.*, 3 *App. Cas.*, 244.

patentee of the invention could not give any consideration to the public for the grant, the public already possessing every-thing he could give.' This is, in my opinion, a correct statement of the law." It is not necessary that the invention should be used by the public as well as known to the public. If the invention and the mode in which it can be used have been made known to the public by a description in a work which has been publicly circulated,[1] or in a specification duly enrolled,[2] it avoids the patent, though it is not shown that it ever was actually put in use.

Amount of Publication.—As to the fulness or otherwise of the publication it should be sufficient to enable any person skilled in the trade to which the invention relates to perform the invention patented,[3] or even those only who are most skilled in the trade.[4]

A specification may so insufficiently describe the process in the machine patented, or may be so encumbered with useless matter as to render the patent therefor invalid. It may, nevertheless, contain sufficient description to disclose or publish the invention so as to prevent its being validly patented on a subsequent application[5] (and this is a most important point for inventors to note), but it is not sufficient to have simply disclosed the object to be attained unless the mode of attaining it is clearly pointed out.[6]

Even a drawing of a machine alone, if any machinist could understand it sufficiently to make a machine from it, is a sufficient publication.[7]

Form of Publication.—From the foregoing cases it will be seen that the actual nature of the book, print, or writing in which the publication is found is immaterial. There may be sufficient publication contained only in a previous provisional specification.[8]

An official report to the Board of Trade, being a document drawn up for the public benefit, may be an anticipation.[9]

[1] Stead *v.* Williams, 7 *M. and G.*, 842.
[2] Bush *v.* Fox, 5 *H.L. Cas.*, 707; Betts *v.* Menzies, 10 *H.L. Cas.*, 117.
[3] Hills *v.* Evans, *Ch.*, 1862, 31 *L.J.*, 463.
[4] Philpot *v.* Hanbury, II *R.P.C.*, 43.
[5] King, Brown and Company *v.* Anglo-American Brush Company, 1889, VI *R.P.C.*, 414; also Kaye *v.* Chubb, *H.L.*, 1888, V *R.P.C.*, 641; Pooley *v.* Pointon, 1885, II *R.P.C.*, 171.
[6] Neilson *v.* Betts, *H.L.*, 1871; 5 *H.L.*, 2.
[7] Herburger Schwander and Cie. *v.* Squire, 1889, VI *R.P.C.*, 194.
[8] Lawrence *v.* Perry, 1885, II *R.P.C.*, 187.
[9] Patterson *v.* Gas Light and Coke Company, *L.R.*, 3 *App. Cas.*, 239.

Published Matter.—It is not necessary, in order to anticipate a patent, that the old things should be exact and identical with the patent. Would the effect of the patent, if held valid, be to stop the public from using them? If it would, and they had been used before, then the patent is bad, because a patentee has no right to stop the public who used such things before.[1]

Therefore, any matter, the use of which subsequent to a patent would be held to be an infringement of the patent, will, if published or used before the date of the patent, be an anticipation sufficient to invalidate the latter, and the test of a previous publication is whether it is infringement of the terms of the patent.

Novelty is lost if the public be already possessed of the invention, publication is an anticipation only as evidence of public possession.

Viva Voce Publication.—It is, of course, possible also to disclose an invention so that it loses its character of patentable novelty, by verbal communication to others. An invention may be communicated in confidence to another, or possibly to several persons, so long as secrecy is imposed as a condition; and, apart from the danger of disclosing the invention before the patent is applied for, as pointed out in Part I, this information will not affect the legal force of the patent afterwards asked for. But a disclosure to any other person without requiring secrecy is fatal to the validity of the patent, much more also any such disclosure as a lecture, whether delivered actually in public before any who care to attend or only before a select circle of interested persons.

[1] Young *v.* Rosenthal, 1914, I *R.P.C.*, 20.

Chapter VIII.

NOVELTY: PRIOR USER.

Anticipation by Prior User.—Where there has been a general use of any supposed invention by the public, or any considerable section of the public, the invention and the way of performing it cannot be considered otherwise than part of the stock of common knowledge; and inasmuch as there is no addition to this general fund of knowledge by the disclosure or publication of the details, by one or another, even though that person may *bonâ fide* have discovered it for himself, there can be no patent for such invention. It is, therefore, always open to any interested party to dispute a patent on the ground that the invention had been previously used, that is: used in such a way that the alleged invention might fairly be said to be already known to the public. Such prior user upsets the patent, because it is evidence of want of novelty in the invention as regards the public generally. It operates in exactly the same way as a prior printed or other record does;[1] publication—*i.e.*, public knowledge—of the latter must be proved, otherwise it is no anticipation; equally so public knowledge of the invention through the user must be established if prior user is relied on. The test of prior user is therefore whether it was or was not sufficient to disclose the invention publicly, so that others could reproduce it.[2]

Anticipation by Public User.—Of course, where there has been a general use of the particular alleged invention by the public before the date of the patent the public must *ipso facto* have knowledge of the invention. The inventor might not have been aware of such previous or existing use by the public or some of the public, but inasmuch as he gives nothing to the public which they had not before, there is no consideration for the grant and the patent is void.

Public use, however, does not necessarily mean use by the

[1] Croysdale *v.* Fisher, 1884, I *R.P.C.*, 17; 1 *Griff.*, 73.
[2] Hancock *v.* Somervell, 1851, Newton's *L.J.*, 89, page 158.

public, it signifies use in public;[1] nevertheless, it must be such a use that the public were virtually put in possession of the invention by that use. If the public have used *with knowledge* of the invention the patent is void, but if the use by the public, as, for instance, of a lock on a gate, is not such as to disclose, and has not in fact disclosed, the invention, it would appear that the subsequent patent may be upheld.[2] A use without any concealment is a public use.[3] It is immaterial how many persons have publicly used the alleged invention; the use of a piece of wood pavement laid in a special way in the courtyard of a house, though one to which the public had not right of access, was held a sufficient use to invalidate a patent.[4] An invention for an improved mode of driving tricycles was held anticipated by the previous employment of mechanism on the same principle on a tricycle used by one person, and well known in his neighbourhood.[5] A single proved instance of prior user is sufficient to destroy the patent.[6]

But it is not essential that the previous use shall be still continued at the date of the patent in question, provided the art has not been altogether lost,[7] and the anticipation itself was complete.[8]

Prior Publication or Use by Inventor.—Although the Statute of Monopolies speaks only of such inventions which others do not use, prior use by the inventor is equally fatal to the patent, for, so long as the invention becomes publicly known, the source of the knowledge is clearly immaterial.

This prior public use by the inventor, if sufficient to disclose the invention to the public, will cause the invention to lose its character of novelty.

As a rule such use as the inventor may be inclined to make will be either a use for profit or a use for experiment. Reserving the effect of experimental user for treatment later, we may here state that use for profit has been clearly condemned,[9] on the ground that to allow such use for profit before the commencement of the 14 years' patent rights, would be in effect to permit a lengthening of the term of the monopoly.[10]

[1] Croysdale *v.* Fisher, *supra*; Carpenter *v.* Smith, 1 *Web. P.C.*, 540.
[2] Hancock *v.* Somervell, *supra.*
[3] Heath *v.* Smith, 1854, 2 *Web. P.C.*, 268.
[4] Stead *v.* Anderson, 1846, 2 *Web. P.C.*, 149.
[5] Brereton *v.* Richardson, 1884, 1 *R.P.C.*, 174.
[6] Westley Richards and Co. *v.* Perkes, 1893, X *R.P.C.*, 181.
[7] Household Company *v.* Neilson, *H.L.*, 1843, 1 *Web. P.C.*, 710.
[8] Morgan *v.* Windover, *C.A.*, 1888, V *R.P.C.*, 296.
[9] Wood *v.* Zimmer, 1815, 1 *Web. P.C.*, 44.
[10] Betts *v.* Menzies, 1859, 28 *L.J.*, *Q B.*, 365.

The use by the inventor of a new staging for the construction of a pier, not being experimental but for profitable employment in carrying out a contract, was held to invalidate the patent afterwards asked for.[1]

Even if the use of the invention be only known to persons sworn to secrecy it nevertheless vitiates the patent if it was in any sense an actual commercial or useful employment of the invention as distinguished from an experimental use.[2]

In case of sale also, the sale of one single article would be sufficient to invalidate the patent,[3] or even offer for sale when no sale is effected,[4] it also appears that if the sale were simply for export,[5] and the manufacturer was sworn to secrecy [6] the result would be the same.

The use of an invention by the servants or agents of an inventor by his authority would naturally be the same as if made by himself.

Experimental User.—It has often been stated in the Courts that where the prior user is only experimental it will not defeat a patent subsequently taken out. So far as this refers to user by others than the inventor, it is not strictly true without some reservation. Thus in Jones *v.* Pearce,[7] the presiding judge in speaking of an alleged anticipation of a wheel by a Mr. Strutt, said to the jury: "If you are of opinion that Mr. Strutt's was an experiment and that he found that it did not answer, and ceased to use it altogether, and abandoned it as useless, and nobody else followed it up, and that the plaintiff's invention which came afterwards was his own invention, and remedied the defects, if I may so say, although he knew nothing of Mr. Strutt's wheel, there is no reason for saying the plaintiff's patent is not good." And in Galloway *v.* Bleaden [8] it was said that "a mere experiment, or a mere course of experiments, for the purpose of producing a result which was not brought to completion, but begins and ends in uncertain experiments," is not an anticipation. Experiment itself is, therefore, not a sure test; it is simply a practice of saying that there has not been a substantial use of the invention,[9] in other words, it is equivalent to an insufficient user.

[1] Adamson's Patent, 1856, 25 *L.J., Ch.*, 456.
[2] Saxby *v.* Gloucester Wagon Company, *H.L.*, 1883, 2 *Griff.*, 51.
[3] Losh *v.* Hague, 1838, 1 *Web. P.C.*, 205.
[4] Oxley *v.* Holden, 1860, 8 *C.B., N.S.*, 666.
[6] Carpenter *v.* Smith, 1841, 1 *Web. P.C.*, 536.
[6] Morgan *v.* Seaward, 1837, 1 *Web. P.C.*, 187.
[7] 1832, 1 *Web. P.C.*, 122.
[8] 1839, 1 *Web. P.C.*, 525.
[9] 1860, Hills *v.* London Gaslight Company, 29 *L.J., Ex.*, 409.

The experiment might have actually reached the stage of completion, but so long as it is only an experiment it is no anticipation.[1] It would be analogous to a complete printed statement in, say, a book, of which the publication could not be proved.

Greater latitude appears to have been given to experiments made by the patentee before taking the patent; these, so long as they are truly and solely experimental, have been held to be permissible, even when accompanied by necessary and unavoidable disclosure of the invention to others.[2] But inasmuch as provisional protection now gives the inventor a wider power of protecting himself during experiments reliance had better not be placed on such decisions. In any case a *demonstration* of the invention before patenting cannot be called an *experimental use*, it is usually intended, or desired to be, for profit. Whether an alleged experiment is or is not an anticipation depends on the merits of each case.

Secret Use.—It may be considered questionable whether a secret use of an invention by others is sufficient to prevent a patent being afterwards legally held by a *bonâ fide* inventor. On the one side there is the Statute of Monopolies, which distinctly states that only such new inventions shall be patentable "which others at the time of making such Letters Patent shall not use," and the general dictum of Sir Edward Coke, that no patent could be granted the effect of which would be to prevent any other person from doing that which they were doing, or capable of doing, before the date of the patent. On the other side there is the fact that the inventor introduces to the general public what, to them at least, is new and otherwise undiscoverable without invention; so no failure of consideration can be urged against the grant.

So far as abandoned secret user is concerned, it should be noticed that the statute only speaks of use "at the time of making the Letters Patent." Abandoned secret use will seldom be other than experimental, and there are cases which clearly show that the rediscoverer's claim to be considered the "true and first inventor" is not vitiated by such abandoned and publicly unknown use or knowledge.[3]

But of secret user proved to be in practice at the date of the patent there appears to be no case more recent than 1802,[4]

[1] Bovill *v.* Goodier, 1866, 2 *Griff.*, 48.
[2] Newall *v.* Elliot, 1858, 4 *C.B., N.S.*, 269.
[3] Dollond's Case, referred to in Chapter 10.
[4] Tennant's Patent, 1 *Web. P.C.*, 125.

where a patent was held void on account of two grounds, one being that a certain dyer had used the same method in his business for five years, though in secret, only his partners and two workmen sworn to secrecy knowing it. Later, in 1857, the question was put to the jury in Smith *v.* Davidson whether the defendant, who had also invented the same machine independently of the plaintiff, had used his machine in his trade before the date of the plaintiff's patent; on the answer being in the negative the patent was upheld.[1]

This case shows the importance to inventors of making up their minds quickly whether they will take a patent or not, since delay may allow a more energetic rival to slip in and oust the original inventor from the use of his own invention.

Recently, in the absence of corroborative evidence which should have been forthcoming without much difficulty, a patent was held not to be anticipated by the alleged previous use of the invention in secret by the defendants.[2]

[1] Smith *v.* Davidson, 1857, 19 *C.B.*, 697.
[2] Dick *v.* Tullis & Son, 1897, XIII *R.P.C.* 149.

Chapter IX.

UTILITY.

Importance of Utility.—The question of utility, though important, is not so important as that of novelty. In judging utility of an invention it must be remembered that it is that portion which is new and proper subject matter for a patent which requires to be useful.

Mischievous to the State.—As expressed in the Statute of Monopolies the invention must not be "contrary to law or mischievous to the State by raising the prices of commodities at home or hurt of trade," nor "generally inconvenient." As to contrary to law and mischievous to the State, the Comptroller of Patents is empowered[1] to refuse the grant of a patent for an invention the use of which would be contrary to law or morality, under which power an application for a patent for apparatus connected with lotteries was refused.

It is difficult to conceive an invention which would raise the price of any commodity, except perhaps raw materials required in performing the invention, of which there may be only a limited supply.

If such materials had been or were at the time used in other industries, the latter might suffer from the raising of price. An invention, however, to so raise the price of a raw material, must necessarily be of considerable importance; the raising of the price would depend on the demand, and the latter on the extent to which the invention was employed. Such an invention would, from the fact of its extensive use, be probably exceedingly useful, and its use would far outweigh the minor disadvantages of the raising of price in the raw material. So far as the writer knows, such a point has never been raised against any patent, nor could it be reasonably admitted as a proof of want of utility. By the present form of Letters Patent the Privy Council are at liberty to revoke the patent in event of its being shown to be inconvenient, or in

[1] Act of 1883, Sect. 86.

hurt of trade, but as a matter of fact this process of revoking a patent is never exercised, the only method being by recourse to the Court of Chancery.

Amount of Utility.—It has always been admitted by patent lawyers that an invention must be useful, otherwise it is not patentable, and this is generally explained by inferring that a patent for a useless invention would stand in the way of the just enjoyment of patents for possible future improvements of utility. Such a patent would be to the "hurt of trade," and in this sense utility is necessary, as laid down in Morgan *v.* Seaward.[1] It is clear, also, that if the invention be useless, there is no valuable consideration received by the State for the grant of the patent, so that the latter is therefore void in law;[2] but the amount of utility necessary to support a patent is very small, and provided that there *is* utility its amount is not essential to the consideration of the question of validity.[3]

Continuance of Utility.—It appears that a patented invention must be useful, not only at the time of the grant of the patent, but throughout the term of the latter;[4] nevertheless, an objection to a patent founded on the allegation that it was not commercially useful, owing to its being immediately superseded by simpler constructions, was not admitted in proof of absence of patentable utility.[5]

Nature of Utility.—To what quality then does the term utility refer? In Young *v.* Rosenthal, a comparatively recent case, it was laid down that in law utility indicates that the invention is better than preceding knowledge of the trade, it does not mean abstract utility. Thus in reference to any particular article, to say that an invention relating thereto has utility, does not mean that the said article is useful, but that the improvements made whereby the article differs from similar articles, used or known before, render the article more useful than it was before. However, in the case of a machine it was stated that it is not necessary that it should be so useful as to cut out every other such machine, but it is quite sufficient if on any occasion it is useful.[6]

Evidence of Utility.—It is considered a good proof of

[1] 1 *Web. P.C.*, 197.
[2] Turner *v.* Winter, 1 *Web. P.C.*, 77.
[3] Philpot *v.* Hunbury, 1884, II *R.P.C.*, 37.
[4] Simpson *v.* Halliday, 1864, 20 New Loud. Jour., N.S., 120.
[5] United Telephone Company *v.* Bassano, 1886, III *R.P.C.*, 295.
[6] I *R.P.C.*, 29, *Griff.*, 249, 1883–4.

utility if the invention meets with a large sale,[1] or if the defendant in a suit of infringement is proved to have adopted the invention,[2] but it is not absolutely necessary to prove commercial success.[3]

A patent may be held void when the effect intended to be, or said to be, produced is not properly produced by the invention;[4] or where, from the vagueness of definitions given, the invention may be carried out in various ways, some of which have no utility in respect of producing the effect intended.[5]

Inutility of Part.—In respect of part of an invention being found to be wanting in utility it will depend whether such is or is not held out to be a material part, or not distinguished as being immaterial.[6] Unless it is so distinguished or seen to be immaterial the patent is void for want of utility. It is bad on the ground of deception.[7] Utility is a question of fact rather than of law.[8]

[1] Tetley *v.* Easton, 1852, *Macr. P.C.*, 63.
[2] Cole *v.* Saqui, V *R.P.C.*, 495.
[3] Lucas *v.* Miller, II *R.P.C*, 155.
[4] Badische Anilin, &c. *v.* Levinstein, *H.L.*, 1887, 12 *App. Cas.*, 710.
[5] Easterbrook *v.* Great Western Railway Company, 1885, III *R.P.C.*, 94.
[6] Bailey *v.* Robertson, *H.L.*, 1878, 3 *App. Cas.*, 1078.
[7] Lewis *v.* Marling, 1829, 1 *Web. P.C.*, 496.
[8] Hill *v.* Thompson, 1817, 1 *Web. P.C.*, 237.

Chapter X.

THE INVENTOR OR APPLICANT FOR PATENT.

Who may apply for a Patent.—Under the Patents, Designs, and Trade Marks Act of 1883, Sect. 4, "Any person, whether a British subject or not, may make an application for a patent. Two or more persons may make a joint application for a patent, and a patent may be granted to them jointly."

Although under Sect. 4, above mentioned, "any person" or persons may apply for a patent, under Sect. 5 the application must contain a declaration to the effect, amongst others, that the applicant, or in the case of a joint application, one or more of the applicants claims to be true and first inventor of the invention for which the patent is asked. Therefore the applicant, or if more than one, then at least one of the applicants must be the "true and first inventor," or what the law considers as such.

The Act of 1883 gives no special definition of the word "inventor," nor do any of the subsequent amending Acts in 1885, 1886, or 1888; the word "invention" is defined in Sect. 46, as "any manner of new manufacture the subject of Letters Patent and grant of privilege within Sect. 6 of the Statute of Monopolies," and so the word "inventor" must be taken to refer to the same source. Its meaning will depend on the construction given to the word in that statute by the Courts of law.

Merit of Inventor.—A reference to the Statute of Monopolies will show that not only must the "invention" be a new one, so far as this realm is concerned, but that even in this case the patent can only be granted to the "true and first inventor" of the respective invention.

Thus, in the case of Cornish *v.* Keene,[1] Tindal, C.J., in summing up, said: "Sometimes it is a material question to determine whether the party who got the patent was the real and original inventor or not, because these patents are granted

[1] 1835, 1 *Web. P.C.*, 507.

as a reward, not only for the benefit that is conferred on the public by the discovery, but also to the ingenuity of the first inventor; and although it is proved that it is a new discovery so far as the world is concerned, yet if anybody is able to show that the party who got the patent was not the man whose ingenuity first discovered it, that he had borrowed it from A. or B., or taken it from a book that was printed in England, and which was open to all the world, then, although the public had the benefit of it, it would become an important question whether he was the first and original inventor of it."

If a patent were solely, as some have said, a matter of contract or bargain, in which the State assures to an individual certain exclusive rights for a limited time, as an equivalent for the disclosure of an invention, then there would appear to be little object in confining that peculiar method of bargaining to one small set of persons, namely, those who fulfil the qualifications of "true and first inventors." It would appear immaterial who should disclose the secret of a new invention so long as it is disclosed by someone. A reason is, however, to be seen in the fact evidenced by the above decision, that the grant of a patent was looked upon more as a reward for valuable service than as a price to be paid for the disclosure of a secret. A patent for practising a new invention was itself a rare matter even among the total number of patents granted in the commencement of such things, which were not very numerous, being most of them for monopolies of manufactures already known. All of these were, ostensibly at least, granted as rewards for services; although as respects the greater number, as the Statute of Monopolies declares, illegally. Sir Edward Coke, in his "Institutes," states that an inventor receives a patent "on account of the good that he doth bring to the realm," not as a price for revealing a secret.

"Though the matter may not have been used, the party is not entitled to his patent unless he is the first and true inventor; therefore, if the subject matter of the patent has been discovered . . . . though it has not been reduced into practice, if a man merely adopts it, the merit is so small that his patent for it would be worth nothing."[1]

It is curious to note that about the time this Statute of Monopolies was passed and for some time afterwards, it was not the practice to grant patents solely to the inventors. Thus, in Mansel's patent for making glass, several other persons were

[1] Walton *v.* Potter, 1 *Web. P.C.*, 502.

associated with the inventor. It was reserved for later times to construe the words in strictness as applicable to the inventor alone, and to no other person with him. The amendment made in the practice in this particular, by the Act of 1883, under which the inventor may now associate others with himself in the application is, therefore, in effect, a return to an ancient usage.

Right of Application not Transferable.—The method of considering patents as a reward, presupposes in the inventor a moral claim to a recompense for his exertions, of which others are not possessed. It may be termed a right of application strictly personal to the inventor. It must be borne in mind that it is a moral right of application only, and in no case a legal or enforcable claim to receive a patent. As it is clearly within the discretion of the State to grant or refuse a patent, so it must equally be within the discretion of the State to draw the distinction between persons fit and not fit to receive patents.

In most foreign countries, whose laws on patents are not of the antiquity of the English patent system, and where the more commercial aspect of the grant of a patent is given prominence, this right of application, which the English law considers to be personal to the inventor as a deserving person, is looked upon as a transferable right; so that any person who may have obtained the invention together with the right to apply for the patent from the true inventor, may apply for the patent in his own name and hold the same validly when granted to himself. It is not incompatible with the "reward" theory, as it may be termed, to allow that an inventor may assign his right of application; but at the same time the bare fact that it is not incompatible is not a sufficient reason in itself that such course should therefore be allowed by the English law. There may be other reasons against the practice; it may well be that the public disadvantages which might arise if the true inventor of any patented invention were kept in the background or liable to be so, may be rightly supposed to outweigh the possible private advantage (in any case a very problematical one) which the inventor might obtain by recognition of a right to transfer or sell his invention before patenting it.

The present Patent Law in Great Britain does not, moreover, afford any provision for enabling an inventor to request that a patent may be granted to his nominee or assignee, either at the time of making the application or at any time thereafter. He can amend his application to associate another person with

him in the application at any time before the patent is sealed and issued, but cannot totally eliminate his own holding in the application, as he may do in the United States, Queensland, Victoria, &c.

Application by a Person not the Inventor.—Let us suppose that "any person," not being the "true and first inventor," applies in this country for a patent on an invention; should he fail to subscribe to the declaration, contained in the form of application, that he is the true and first inventor, or should he designate some other person not associated with him in the application, as inventor, the patent would be refused since the papers necessary to the application are, on the face of them, incorrect or insufficient in law, as would be obvious to the examiner to whom the application is referred under Sect. 6 (1883). If, on the other hand, the applicant, not being truly the inventor in law, signs the declaration that he is so, the patent will be granted, since the Patent Office has no means of testing the truth of the declaration, but it will, nevertheless, have no value, since not only is it revocable at any time on proof that the applicant was not the "true and first inventor," but the same proof is also a sufficient defence to an action of infringement, under Sect. 26 (as indeed are all other grounds for revocation), so that the patent will always be inoperative, even if not revoked. Apart from the statutory grounds above mentioned, such patent is bad at common law on the ground that it was obtained by deceit.

Special attention should be given by or on behalf of the applicants to this point, since it appears to be one of those defects in a patent for which there is no remedy. No method at present exists by which the name of a grantee can be changed. Therefore, when once the patent is sealed it will stand or fall as the grantee was, or was not, the "true and first inventor." It is perfectly useless for the inventor to have authorised the grantee to apply in his own name, quite useless also for the latter to assign the patent when granted to the inventor after it is granted, either of these, or both may occur: but the patent will remain invalid and consequently useless.

Although the fault cannot be remedied after sealing of the Letters Patent, it may be corrected during the course of the application by the leave of the Comptroller of Patents, under the general powers vested in him for permitting under such terms as he may impose the correction of documents as to which no special provisions exist in the Acts or rules. (*See* Amendment of application on page 227.)

True and First Inventor.—In general parlance, an inventor is one who, by thought or experiment, finds out or produces something new, and to a certain extent this is a true definition; but in British law the term inventor intends something beyond the above definition.

The term inventor primarily intended an importer, as we should now call it, one who caused the invention to become known in this realm. The etymology of the word supports this view. It is derived from two Latin words, *in*—in or into, and *venire*—to come. As we speak of an inventor of a manufacture, we must imply that the word inventor is used in a transitive sense, that causation is implied in the suffix, *or*. The meaning will be, "he who causes the invention to come in." The same causation implied in such words as "grantor," "assignor," "lessor," &c., each meaning the person who causes the act, and from whom it proceeds, thus proving that the above is the correct definition. The popular notion more nearly coincides with a person *to* whom an invention occurs, one to whom ideas come, such a person would more correctly be termed an "inventee." Stress must be laid on the causation implied in the word inventor, since on this view only is its legal meaning at all understandable and reconcilable with the judicial decisions to which we shall presently refer, and with the present state of the law on the subject.

In the time of Queen Anne we find the first record of an importer's right to a valid patent called in question. It was settled in favour of the validity of the patent in Edgebury *v.* Stevens,[1] in which it was held that provided an invention be new in this realm, a patent may be upheld, even if the invention had been already known and used abroad; it being immaterial whether the inventor has learnt the invention by travel or by study. This dictum has been upheld ever since and regarded as good law. Thus in Walton *v.* Bateman[2] it was distinctly affirmed that the party obtaining the patent must be the true and first inventor *in this country*. If he import from a foreign country that which others at the time of the making of such Letters Patents and grants did not use, it will suffice; and again in Nickels *v.* Ross,[3] a party who simply avails himself of information from abroad may be the true and first inventor. It is under this reading that residents in Great Britain may obtain patents in their own names, on inventions communicated to

[1] 1 *Web. P.C.*, 35.
[2] 1 *Web. P.C.*, 615.
[3] 8 *C.B.*, 679.

them from abroad, which we shall have occasion again to touch upon.

Allowing that the inventor is the person who causes the invention to come in, it will be seen that the definition is practically incomplete until we find the destination into which the invention is to come. The very existence of the definition given implies also the existence of a place or places from which the invention may come, a place or places where it may have existed before, and where it is, therefore, no longer a novelty. The Statute of Monopolies itself gives the geographical definition of the place into which the invention is to come, viz., "this realm," it may, therefore, have had a previous existence in places outside the realm. In those days the realm consisted of England and Wales only, now it includes also Scotland and Ireland and the Isle of Man. The Channel Islands, which were included in the territory covered by the patents granted under the Act of 1852, up to the end of 1883, were not included in the Act of 1883 now in force. The term "realm," therefore, now covers what we know as the United Kingdom of Great Britain, Ireland, and the Isle of Man.

"First" Inventor.—It is a cardinal feature of the policy of the British Patent Law that the disclosure of an invention is to be encouraged; in fact the reward of a patent is not granted so much for bringing the knowledge of an invention into existence, or into the United Kingdom, which is the same thing, as for disclosing the knowledge so brought that others may learn the same. Now the patenting of an invention is synonymous with a disclosure of the invention, since it is but an exclusive right granted in lieu of the exclusive property of the knowledge of an undisclosed invention. As it was presumed that an inventor would naturally prefer to disclose his invention under protection of a patent, we find that it was decided that the first to patent an invention was held to have the prior right, even though not actually the first in point of time to have invented the matter. Thus, in Forsyth *v.* Riviere,[1] it was held that "of two simultaneous inventors he who first communicates the invention to the public under the protection of Letters Patent, is the true and first inventor." The wording is slightly inaccurate, but the intention is clearly to make the date of disclosure of the invention a determining factor, at any rate, in cases where the inventions are simultaneous. Thus, where there were two concurrent applications for Letters Patent for the same invention, he who obtained the Letters Patent first,

[1] 1819, 1 *Web. P.C.*, 97.

by getting quickest through the various stages, was held to have the sole right in law;[1] not only so, but the grant of such patent was held sufficient and valid to prevent the grant of another patent on an application which in point of time was the first filed.[2] This clearly shows that the date of inventorship was not considered at all, the date of communicating the invention to the public under the protection of the patent being the only point of which notice was taken. Although it is no longer possible under the Act of 1883 for a later applicant to obtain a patent which shall prevent grant of another patent to a prior applicant, the rights of the first applicant in this respect being now saved under Sect. 13, yet this very saving clause enforces the reading of the law which makes the first applicant for patent the inventor as against any subsequent applicant.

Thus we see that an inventor is not one in law, unless and until he shall have disclosed his invention; by being the first to do this by way of making an application for patent he will become possessed of a patent, valid so far as this point is concerned; by being the first to disclose the invention otherwise than by an application for patent, he will still become "the true and first inventor," and will for that reason prevent any other person from thereafter truthfully claiming such title; but he himself will then lose his right to the patent because by already having disclosed the invention to the public the latter have become possessed of the knowledge of the invention which is the sole consideration for the grant of the patent; the invention being then no longer a *new* invention.

Inventorship by Disclosure.—From this, it follows that if any person become possessed of an invention and does not disclose it, he is not an inventor within the meaning of the law. Proof of this is afforded by Dollond's case;[3] Dollond received a patent for a new method of making the object glasses of telescopes. It was proved that before the date of the patent Dr. Hall had made object glasses in precisely the same way, and had used them in his observatory, but as he had not published his discovery the patent was upheld. And again, in Lewis *v.* Marling,[4] if any person makes a discovery and is enabled to produce an effect from his own experiments, judgment, and skill, it is no objection (to his patent) that another made a similar discovery unless it has become public. Also in

[1] In *re* Dyer's Patent, 1812, *Holroyd*, 59.
[2] Bates *v.* Redgate, 1869, *L.R.*, 4 *Ch.*, 577.
[3] *Dav. P.C.*, 170, 199; 1 *Web. P.C.*, 43.
[4] 1829, 1 *Web. P.C.*, 493.

Stead *v.* Williams,[1] if a person has had a scheme in his head and has carried it out, but after trial has thrown it aside, and the thing is forgotten and gone by; then another person reintroducing it may, within the meaning of the Act, be the inventor and the first user of it, so as to justify a patent. It is true that in an earlier case,[2] where a patent was disputed on the ground, amongst others, that the invention had been practised about five or six years by another person, although in secret, this was held a sufficient ground for holding the patent void; but this is referable more particularly to the question of novelty of the invention, and may be considered overruled by the later cases given above, and especially by the case of Smith *v.* Davidson,[3] previously referred to, in which the user of the same invention by another person in secret was also not held to invalidate the subsequent patent to the applicant.

A disclosure of the invention, or its equivalent an application for patent, which is a privileged disclosure, must occur before any person can claim the title of "true and first inventor" in the Patent Law sense. An inventor is therefore in law "one who, having obtained the invention by his own mental efforts or by instruction or knowledge obtained abroad, is the first to disclose the invention in the United Kingdom."

Inventions originated in the Realm. It will be noticed from the definition of the true and first inventor above given, that as far as concerns discovery originating in the United Kingdom, and not imported from abroad, the "inventor" must by his own mental skill have found out the invention; that is to say, an inventor of a discovery originating in the realm conforms to the popular definition of the word. Even if there be no fraud in obtaining the invention, but the latter be voluntarily imparted to another person by the inventor, or the secret sold to him by the inventor *in this country*, that other person cannot receive a valid patent on an application in his own name; a communication from one to another in this country not being recognised as a communication from abroad is recognised.[4] Such person could not moreover truthfully state that he was the true and first inventor in this country, as he is required to do in the application form, since, although he is the first to disclose the invention, he has not the attribute of independent inventorship in this realm.

[1] 1843, 2 *Web. P.C.*, 135.
[2] Tennant's Patent, *Dav. P.C.*, 429.
[3] 19 *C.S.*, 691.
[4] Marsden *v.* Saville Street Foundry Company, *C.A.*, *L.R.*, 3 *Ex. D.*, 203.

Inventions resulting from Joint Discussion, &c.—An invention may apparently be the result of discussion between different persons without invalidating the right of the inventor who afterwards developed the practical result. Thus in Winby *v.* The Manchester, &c., Steam Tramways Company[1], a patent for tram points came in question; Bristowe, V.C., in summing up said: "Is the plaintiff the first and true inventor of the invention he claims? . . . The true conclusion from this part of the case, I think is, that the subject was a matter of constant and common discussion in Mr. N.'s office, and that some method of remedying the evils of the old dummy and drop-off points was often discussed. But I do not find myself able to come to the distinct conclusion that the particular thing described in the plaintiff's Letters Patent was ever exactly foreshadowed or put into shape, though some sketches of such a thing may have been made and discussion thereupon may have taken place. Upon this issue therefore, the plaintiff's evidence being clear and affirmative, and the defendant's not so definite, and open to the observation that no sketch, drawing, or writing has been put in evidence in support of their view, I come to the conclusion, that, apart from any anticipation the plaintiff was the first inventor, . . . but this conclusion is arrived at subject to the question of anticipation, which I now proceed to deal with."

But where it appeared that an invention was partly the work of one inventor, and partly the work of another, namely, a master and his foreman, it was held that the patent should only be granted on terms that it should be vested in trustees for the master and foreman.[2] One of joint inventors is not entitled to the patent so as to exclude the other, at least, it is to be presumed so, since in various cases of opposition to the grant of patent in which the opponent has proved his joint inventorship, either a joint patent has been granted, or separate patents of the same date have been granted one to each, which is in effect the same thing.[3] These were, however, cases in which the grant of a patent was opposed by the aggrieved party; there would appear to be no reported case in which a patent once granted to one of two joint inventors has been found void on that account alone. If it can be shown that the grantee of a patent was not the inventor of a material part of

[1] VIII *R.P.C.*, 65.
[2] *Re* Russell's Patent, 2 *De G. and J.*, 130.
[3] Evans and Otway's Patent, *Griff.*, 279; Garthwaite's Patent, *Griff.*, 284.

the invention claimed, then the patent is void; but where it is impossible to distinguish between what was invented by one and what by the other, both of such joint inventors would appear to have just claim to the title of inventor; just as if they were rival and independent inventors. Therefore, if the person aggrieved has acquiesced in the grant by failing to oppose, the patent should be held valid. In the Lifeboat Company, Ltd., *v.* Chambers Brothers and Co.,[1] the defendants sought to upset the patent on the ground amongst others, that they were joint inventors with Robert Chambers, one of the petitioners' grantees. In the lower Court it was held that it was enough to dispose of this contention that the respondents allowed the petitioners to obtain their patent, being all along aware of the proceedings of their brother Robert, and taking no steps to assert their own rights for a year after the first patent had obtained; that they also admitted that the original idea was that of their brother Robert; and that although they claimed to have a share in the invention by taking part in repeated discussions with him during the construction of the model, they could point to no one particular or improvement which any of them was the first to suggest. On appeal to the Court of Session this point was not decided, the patent being held void on other grounds.

An inventor discovering the principle of an invention may employ skilled assistance in working out the details, and any details suggested by the person so employed in working out the idea may be embodied in the patent without rendering the latter void.[2] Such suggestions become the property of the employer, and the servant cannot take out a patent for them.[3] It is, however, difficult to define how far the suggestions of a workman, employed in the construction of a machine, are to be considered as distinct inventions by him; each case must depend on its own merits.[4]

In Healey's Application, 1872, a warrant was granted to servants for patents on inventions, the result of experiments paid for by their employers, the opponents, on condition that the specifications should be submitted to the opponents, and the portions struck out that might be objected to by them.[5]

[1] VIII *R.P.C.*, 420.
[2] Bloxam *v.* Elsie, 1825, 1 *Web. P.C.*, 132.
[3] David and Woodley's Application, 2 *Griff.*, 26; *Re* Healey's Application, *John*, 165.
[4] Allen *v.* Rawson, 1845, 1 *C.B.*, 574.
[5] *John*, 165.

If a person is pursuing an inquiry as a servant of the Government, he cannot take a patent on any invention the result of information produced by such inquiry, the information being already the property of the State.[1]

Inventions obtained by Fraud.—Where it is proved that the invention has been obtained by fraud, the patent will of course be invalid as a deceit on the Crown. A petition for revocation can be presented under Sect. 26 of the Act of 1883 by any person alleging that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims. Where a patent has been revoked on the ground of fraud, the Comptroller of Patents *may*, on the application of the true inventor, grant to him a patent in lieu of and bearing the same date as the date of revocation of the patent so revoked, but the patent so granted shall cease on the expiration of the term for which the revoked patent was granted.[2] It is difficult to see how such a patent to the true inventor can be valid, since by Sect. 35 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.* Now, as the period of provisional protection extends only from the date of the application to the date of sealing under Sect. 14, and revocation cannot take place, nor even a petition be presented for that purpose, until the patent is already granted, there will be a period previous to the grant of the new patent to the rightful person during which publication will presumably occur which will disadvantageously affect the new patent. Before a patent is granted the application passes through a stage in which it is open to opposition; this stage commences on the date of the Patent Office Journal advertising the "acceptance" of the complete specification, and its duration is two months. During this time a defrauded inventor may oppose the grant, but no power is given to the Comptoller to grant a patent to the opponent, even though he is successful in his opposition; unless he, the opponent, has filed an application himself, which will be dealt with in the usual way. With regard to Sections 26 and 35, any inventor who is defrauded should not only oppose the sealing of a patent to the person who has defrauded him,

[1] Patterson *v.* Gas Light and Coke Company, *H.L.*, 1876–7, 2 *App. Cas.*, 251.

[2] Patents Act, 1883, Sect. 26 (8).

but he should also, to save his own rights, file an application for himself before the sealing of the first application is refused. It is presumed that this would be sufficient to save the rights of the defrauded inventor, but whether this is so or not may still be a matter for dispute, having regard to the decision of the Court of Appeal in Humpherson *v.* Syer, in which the patent of the plaintiff, in an action of infringement, was held void by reason of prior user by the defendant under a provisional protection, and, according to Lord Justice Fry, "On the further ground that it was a fair conclusion from the evidence that some English people under no obligation of secrecy, arising from confidence or good faith towards the patentee, knew of the invention at the date of the patent."[1] Looking to the expense and uncertainty of ousting a prior applicant by proving fraud, coupled with the further uncertainty that the true inventor will possess a valid patent himself; the latter intending to apply for a patent, will best consult his own interests by lodging his application at the earliest moment, and before disclosing his invention to possible rivals.

Firms, Partnerships, and other collections of persons, other than bodies corporate,[2] cannot as such apply for patent either alone or in conjunction with an inventor. Members of firms cannot, therefore, apply in the name of the firm, but only as so many individual persons of which at least one must be the true and first inventor. If the patent is to become a partnership asset, this must be done by assignment after the patent is granted.

Infants and Married Women.—An infant may be a grantee,[3] and a married woman may hold a patent independently of her husband.[4]

Death of Inventor.—In the case of the death of an inventor without making application for a patent, a patent may be applied for by and granted to his legal representative, provided the application is filed within six months of the death of the inventor.[5] It is presumed also that when an inventor dies during the progress of an application, the application can be amended so that the patent may issue to the legal personal representative of the deceased applicant. Certified copy of probate will be asked for.

[1] IV *R.P.C.*, 24.
[2] *See* page 153.
[3] Chearin *v.* Walker, *L.R.*, 5 *Ch. D.*, 858.
[4] Married Women's Property Act, 1882.
[5] Patents Act, 1883, Sect. 34.

CHAPTER XI.

THE INVENTOR OR APPLICANT FOR PATENT; FOREIGN INVENTIONS.

Fraud Abroad.—As to alleged fraud in obtaining an invention abroad, there is great doubt if the policy of the British Patent Law can admit that there can be fraud unless the fraud can be said to have been committed in this country. Thus A., a citizen of the United States, instructed an agent in the States to obtain a British patent; the agent forwarded the patent to one L., who applied for and obtained a patent in his own name, having added certain novel features of his own invention. The fact of communication was not stated. A. petitioned first by power of attorney, and afterwards in his own name, that the patent might be revoked on the ground that it had been obtained in fraud of his rights. Petition refused, but without prejudice to any further petition that A. might be advised to file under Sect. 26, Sub-sect. 4 (d); relying on the ground that he was the inventor of any invention included in the claim of the patentee.[1] No further petition is reported to have been brought.

An opposition to the grant of a patent, based on the allegation that the invention had been obtained by fraud was held to fail in *re* Edmund's Patent,[2] per Webster, A.G.: "Prior to the passing of the Act of 1883, the law was well settled that a person importing into the realm an invention was the true and first inventor within the meaning of the Statute of James, and it mattered not under what circumstances he had obtained the invention abroad. In my judgment the Act of 1883 has made no alteration in the law in this respect. In the case of an imported invention the merit of the invention is in the importation—the communication to the public in the United Kingdom and the Isle of Man; and I think the Comptroller has no jurisdiction to enquire into the circumstances under

[1] *Re* Avery's Patent, IV *R.P.C.*, 152, 322.
[2] 1886, *Griff.*, 281.

which the invention was obtained by the importer. Of course, there may be cases in which the relations between the parties may be such that the person who has first imported the invention may be guilty of some breach of contract, or breach of duty, towards the person from whom he has obtained the invention abroad, and the importer may be liable to proceedings in respect of the breach of any such contract or duty, but in my opinion those are matters which the Comptroller and the Law Officer cannot enquire into, but must form the subject of independent proceedings either in this country or abroad, as the case may be."

It would appear, therefore, that an importer cannot be assumed guilty of any fraud on the rights of a foreign inventor. The latter may, perhaps, get the patent revoked on the ground that he was the true inventor,[1] though this is doubtful, but even if it should be revoked, it is not clear that the true inventor could get a new patent under Sect. 35, as there is no legal fraud.

Imported Inventions: Communications from Abroad.—The very clear exposition of the law given in the decision just quoted shows that there is an assumption of merit in the mere importation of an invention. As we have seen from other cases cited, there may have been, and doubtless was, a very considerable amount of merit in the importer, if trouble and expense indicate merit; but in modern days there is but little other than the merit inseparable from the discovery of the invention itself, and due to the foreigner who originated the invention. It cannot be said that the merit of the origination passes on to the importer, it is a matter personal to the original inventor as such and cannot so pass, for neither here, nor in any case, must the merit of the invention be mistaken for that of the inventor, the two being very distinct. The reason that so little merit now entitles an importer to hold a patent, is probably to be found in the very gradual stages by which the degree of difficulty connected with the importation has diminished, until it is at present almost zero. A very instructive judgment in this sense was given by Jessel, M.R., in Marsden *v.* The Saville Street Foundry previously referred to.[2] "It is difficult to say, *à priori*, on what principle a person who did not invent anything, but who merely imported from abroad into this realm the invention of another, was treated by the judges as being the first and true inventor. . . . It has never been

[1] *See* previous page.
[2] 39 *L.T. Rep., N.S.*, 100.

declared by any judge or authority that there is such a principle, and, not being able to find one, all I can say is that I look upon it as a sort of anomalous decision which has obtained by time and recognition the force of law."

Indeed, before the passing of the Act of 1883 there were very serious thoughts of totally abandoning the practice of granting patents to English residents on inventions communicated from abroad, and it was only after strong representations as to the usefulness of the practice that its continuance was tacitly allowed, for be it observed it is nowhere expressly stated as allowable by the Act; the only approach to recognition being the inclusion among the body of forms prescribed to be used under the Act of a special form of application to be used in such cases. We have seen that the grant of a patent is no proof of its validity, and from the decision in Avery's case before noted, there is at least a possibility that the foreign true inventor might be able to upset the patent on proving that he was the true inventor of the invention included in the claim of the patentee. We do not say that there is a probability, but only a remote possibility sufficient to say that the matter cannot be said to be definitely settled in favour of the importer, when the latter takes the form of a resident in the realm "who has not invented anything," and who simply receives a communication from abroad. The question may some day arise whether a person resident here, who himself has done nothing to bring the particular invention of which he becomes patentee, into the realm, but has merely received a postal communication forwarded and caused to be sent him by some other person abroad, can be called an "importer" or inventor at all within the meaning of the Statute of Monopolies.

It would rather appear that the sender is in such case the active agent to cause the invention to come into Great Britain. This question has never been put or answered, the saying of Jessel, M.R., above quoted was *obiter dicta*, not essential to the decision of the case in which it was spoken. Patents granted on communicated inventions have from time to time come before the Courts on various issues, but since the days of Beard *v.* Egerton (1846) none has been challenged on this issue, although that patent case only proved that the grant was valid, although, in fact, the patent was taken out and held in trust for a foreigner, the subject of a State in amity with this country.[1] It is right to say that there may be valid patents

[1] 3 *C.B.*, 97.

for communicated inventions, right also to any that such may be held in trust for residents abroad, but the applicant for patent must still in any event be the "importer" and apart from the "custom" that has gradually sprung up there would appear to be no warranty for considering such a person as before defined, an importer within the meaning of the law.

Although we find that an "importer" may possess merit, the merit of importation, this merit is not so great as that of an original inventor. The merit of either is sufficient to sustain a patent, but should an extension of the patent be sought beyond the legal term of 14 years, the Privy Council, being extremely jealous not to prolong other than exceptionally meritorious patents, will only advise the grant of an extension, after satisfying themselves of the merit of the inventor that he is worthy of such reward. "The merit of an importer is less than that of an inventor; we are now sitting judicially, and it is an argument against the patent that it was imported and not invented."[1] It is for this reason probably that the fact of communication must be stated when the invention has been communicated from abroad. Thus a patent taken out as for an original invention, when in truth communicated from an Englishman resident abroad, was held void,[2] since to conceal any material fact voids a patent as a deceit on the Crown. If only part of the invention has been communicated from abroad it will be preferable to state the fact, in view of remarks made in the decision on Avery's patent;[3] but the "importer" may add improvements to the original apparently without needing to state that the invention is only partly a communication from abroad.[4]

A person resident abroad may take a British patent on an invention communicated to him by another resident abroad. This was decided in *re* Wirth's Patent,[5] where the fact of communication was stated. The decision, however, loses its importance in view of the fact that since 1883 there has been no means for doing this, there being no form by which it may be done, stating the fact of communication. As any person, discoverer or not, if resident abroad, may still be the "true and first inventor" as far as this realm is concerned, and all importers are in that respect of equal merit; it follows that any

[1] *In re* Soames' Patent, *P.C.*, 1843, 1 *Web. P.C.*, 733.
[2] Milligan *v.* Marsh, 1856, 2 *Jur., N.S.*, 1,083.
[3] *See* page 145.
[4] Moser *v.* Marsden, *C.A.*, 1893, X *R.P.C.*, 350.
[5] *L.R.*, 12 *Ch. D.*, 303.

person resident abroad may still take out a British patent without stating the fact of communication.

Although a patent may be held in trust for persons resident abroad (Beard *v.* Egerton, *supra*), it does not necessarily follow that all patents for communicated inventions are held in trust for the communicators; they may be held in trust for others than the communicators named, or they may not be held in trust at all. The naming of the communicators is not evidence of a trust for them, but is done to avoid deceit in obtaining grant. It should be noticed that the words in the Letters Patent do not speak of any trust; the grant is to the inventor named in right of his inventorship. The true inventor abroad, should he choose this mode of obtaining an English patent, will, therefore, do well to so word his instructions that no question can afterwards arise to frustrate his intention of retaining the property in his own invention.

Residents Abroad.—The point has been mooted that no person resident abroad can receive a valid British patent granted to him in his own name, but this assertion lacks logical foundation on the law and facts.

Previous to 1870 aliens were legally under disabilities as regards the holding of property in Great Britain, but this was principally the case with regard to land. Aliens could not purchase or inherit land. "If an alien friend purchase a copyhold in the name of A. in trust for him and his heirs, the king shall have the trust."[1] An alien friend might take an estate for years in a house for his habitation; but not meadows, &c., nor if he is an enemy or not a merchant. If he died or left the realm his leases went to the king. By Statute 1, Richard II,[2] no alien might purchase a benefice within this realm without the license of the king; and by Statute 12 and 13, William III, chapter 2, no person other than born in England, Scotland, or Ireland, or of English parents, even though naturalised or made a denizen, could have any grant from the Crown of lands to himself or in trust for him. But patents are not real estate, but incorporeal personal chattels, so they are not subject to these disabilities. If they were so, they could not have been granted so as to be held in trust for aliens as we have seen from Beard *v.* Egerton was the case. Aliens might hold personal property; thus we find that aliens might dispose of personal property by will.[3] Patents being franchises, more nearly resembling bene-

[1] 21 *Rol.*, 194, 135.
[2] *Comyn's Digest*, 1792, *Vol. IV, page* 271.
[3] 2 *Rol.*, 94; 1 *And.*, 25.

fees, which may be held by leave of the king; if the Crown then grant a patent to an alien, it is presumed it would be valid as it is held by leave of the Crown.

We must also bear in mind that a patent is for something vendible, and in encouragement of commerce; little difference being made between subjects and aliens. Chapter 30 of Magna Charta grants safe pass to all merchants. By a statute passed in the ninth year of the reign of Edward III, "It is ordained and established that all merchants, aliens and denizens, and all other and every of them of what estate or condition soever they be, that will buy or sell corn, wine, goods, flesh, fish, and all other provisions and victuals, wools, cloths, wares, merchandises and all other things vendible, from whencesoever they come, by foreigners or by denizens at wheresoever it be, city, borough, town, fort of the sea, fair, market, or elsewhere within the said realm within franchise or without, may freely and without interruption sell them to what persons it shall please them, as well to foreigners as to denizens, except the enemies of our Lord the King and of his realm." Further statutes of the fourteenth and twenty-fifth years of the same king confirm and emphasise the above. A statute in the second year of Richard II also recites the above statute of Edward III, and grievances of not conforming to it. "The Lord the King considering clearly the coming merchants, strangers within the realm, to be very profitable from many causes to all the said realm," it was permitted by this statute to all merchants alien to safely enter and abide . . . . sell all victuals, &c., in gross or by parcels, but only sell sweet wines in gross within franchised cities, &c., "other great wares" (piece goods) by the piece and not by retail; but the latter might be sold in markets and fairs in the country either in gross or in retail. Another statute in the eleventh year of the same reign again confirms the previous laws, reiteration being in those days considered necessary to emphasise the law. With the liberties thus seen to be granted to alien merchants, it is difficult to see that it is beyond the prerogative of the Crown to grant patents for vendible inventions to aliens.

It must be noticed in respect of the Statute of Monopolies, that, before this law was passed and for a considerable time afterwards, there were no inventions other than those brought from beyond the seas, and called inventions because they were previously unknown in England. The persons who brought the knowledge of these inventions into the realm were in most cases, though not in all, English subjects who, after having at

some risk and trouble travelled abroad, returned to the realm to practise the new manufactures which they had learnt, and patents were granted them because of the good they brought to the commonwealth by the introduction of such new manufactures. In many cases it was obligatory on the patentee to work the invention and take apprentices so that the subjects might learn to practise the inventions. In the reign of Anne, when it was ordered "that a specification particularly describing and ascertaining the invention" should be enrolled in Chancery, that is to say, put on public record, it became no longer necessary to teach apprentices. It will thus be seen that the whole policy of the law was to take notice of the inventor only as a person introducing into England and diffusing there the knowledge of a manufacture, previously unknown there. Before the enrolment of a specification there would appear to have been no practical means by which a resident abroad could bring an invention into England, apart from personally entering the realm with his knowledge in his own head. Therefore foreigners resident and remaining abroad were *de facto* excluded from obtaining patents by reason of the absence of machinery whereby they could forward their inventions into the realm and diffuse the knowledge of them there, but it does not follow that *de jure* they were so excluded even before the reign of Anne. When applicants were allowed to deposit specifications on public record such proceeding became a means for introducing inventions into the realm, and parties resident abroad could by that means give the public full information of their inventions without coming personally into the realm to do so. Therefore this latter condition, "personal presence," which neither the Statute of Monopolies nor any other official or non-official statement of the law has ever laid down as essential, but which circumstances alone had up to that time rendered necessary, no longer existed as a necessary step for obtaining the patent.

In the case of Darcy *v.* Allin,[1] often referred to, a patent was granted for importing playing cards into England. There was no question of manufacturing in England, but the patentee was, by himself, his agents, or others, allowed to buy such cards abroad and import them into England. This patent was held void, not on account of the patentee going abroad out of the allegiance of the king; but because it sought to prevent others from manufacturing in England that which they had already the knowledge and right to manufacture.

[1] *1 Web. P.C.*, 1.

Whether an alien might, or might not, have held a valid patent here, has no direct bearing on the question at present, since, by the Naturalisation Act of 1870, any alien may hold real or other estate in the same manner as a British subject, that this extends to Letters Patent requires no further demonstration. An indirect proof lies in the fact that the Patent Act of 1883 specially states that "any person, whether a British subject or not," may apply for a patent, presuming therefore that foreign nationality is not a bar to the grant.[1]

The only remaining question, therefore, is whether the fact that an English resident has been held in the Courts to be rightly entitled the true and first inventor of a communicated invention, proves that a foreigner cannot claim the same title. This can only be answered in the affirmative, by presuming that a person may become qualified with the attributes of true and first inventor of some invention to the exclusion of any other person from also fulfilling the same *rôle*. We have seen that apart from disclosing the invention, this is not the case according to the precedents given. In Dollond's case, it was held that an independent inventor had a right to a patent, although the invention had been previously and separately discovered and used privately by another person, who, however, had not published his knowledge. The latter, therefore, had had all rights to receive a patent, but by reason of failure to ask for one, forfeited his priority. We see that the first and true inventor in law is not necessarily the man who first becomes possessed of an invention, but he who, having become possessed of the invention, first discloses it or applies for a patent. This doctrine is upheld in Forsyth *v.* Riviere,[2] and has not been disputed since.

We may therefore presume that when a communication is made to a resident in this country such person is not thereby made solely and to the exclusion of every other person the true and first inventor; but such person is merely placed in a position that he may apply for the patent as the true and first inventor; but if he does not so apply, there is no objection to any other person applying, if the latter is also possessed of the invention. The fact that some foreign inventions are patented by persons resident here, "as communications from abroad," does not of itself prevent other foreign inventions from being patented by other persons not resident in the realm.

[1] Patents Act, Sect. 4.
[2] 1 *Web. P.C.*, 97.

But it is further argued that the fact of the inventor being abroad precludes him from satisfying the requirement of bringing the invention into the realm, but as regards this point nothing in any law can be construed to necessitate this personal bringing of the invention into the realm. It is true that there are words in the deed of Letters Patent which at first sight show that the inventor should be personally in the realm, these are:—"Provided that it be made to appear to us . . . that the said invention is not a new invention as to the public use and exercise thereof within our kingdom of Great Britain, Ireland, and the Isle of Man, or that the said patentee is not the first and true inventor thereof within this realm as aforesaid . . . these our Letters Patent shall forthwith determine and be void." It is more reasonable to read the above so that the words "within this realm" qualify the words "true and first" than to say that the inventor must be personally within this realm when, his foreign address being given in the same deed, the deed would thus involve an absurd contradiction on the face of it.

The Crown (having notice of the foreign domicile) continues to grant patents to residents abroad, and grants that such shall be construed in the most beneficial sense for the advantage of the patentees; so that until the Crown discontinues the practice it would appear that foreigners run no risk in applying in their own names. Even if in the last resort such grants are found to be based on no principle in law, they may be held valid on the grounds of expediency, and since the practice, in the words of Jessel, M.R., "has acquired by time and recognition the force of law."[1]

Corporate Bodies as Applicants.—We have seen that any person may apply for a patent who fulfils the requirements of true and first inventor, and that two or more persons may apply for a patent provided at least one of them is the true and first inventor. Under Sect. 117, sub-sect. 1, unless the context otherwise requires, a person includes a body corporate, so that not only persons individual, but bodies corporate can in certain cases apply for patent, that is to say, provided they fulfil the requirements of true and first inventors, or are associated with a person or other body corporate fulfilling the said requirements. It is obvious that a body corporate cannot be an inventor in the ordinary acceptance of the term, but it can apparently be the inventor in law of an invention communicated from abroad.

[1] Marsden *v.* Saville Street Foundry, *supra*.

A body corporate can in all cases be joint applicant with the inventor.

Application under International Convention.—For special arrangements and procedure *see* page 165.

It may, however, be mentioned here, that under Sect. 103 of the Act of 1883, any person who has applied in certain countries abroad may, within seven months of his application abroad, apply for patent here, and shall then be entitled to a valid patent in priority over previous applicants, during that period. Such applications here under convention are optional, but it must be observed that the *same applicant who has applied abroad must apply here*, the patent cannot be taken out as a communication. As any person importing an invention from abroad may be the true and first inventor so far as this realm is concerned, the question of inventorship does not arise in connection with these applications.

Chapter XII.

THE PATENT OFFICE: REGISTER OF PATENTS, OFFICIAL PUBLICATIONS.

The Patent Office is situated at 25, Southampton Buildings, London, W.C., and is under the control of an officer called the Comptroller-General of Patents, Designs, and Trade Marks, who acts under the superintendence and direction of the Board of Trade.[1] The appointment of the Comptroller, examiners, and other *employés* of the Patent Office is in the hands of the Board of Trade, subject to the approval of the Treasury.[2] The Patent Office is the only place at which applications for patents can be received, but same may be sent by post[3] if the documents are already provided with *impressed* stamps to the value of the government fees payable. The Patent Office is not empowered to impress these stamps; the stamped forms are, however, procurable at the principal post offices throughout the kingdom on prepayment of the value of the stamp. Documents sent by post in this manner are deemed to be filed at the time when the letter containing the same would be delivered in the ordinary course of post.[4]

In the Patent Office is also a valuable free library in which technical journals and books may be seen, and also copies of the specifications not only of British patents, but of United States, German, French and others sent by the respective foreign governments. The library is open free of charge to the public from 10 a.m. to 10 p.m.

Rules.—The Patent Rules, which govern minor points of proceeding relating to patents, are made by authority of the Board of Trade under Sect. 101, but the Board have no authority to levy fees.[5] Any rules so made must be laid before

[1] Patents Act, 1883, Sect. 82.
[2] Sect. 83.
[3] Sect. 97.
[4] Sect. 97.
[5] Chartered Institute *v.* Lockwood, X *R.P.C.*, 167.

both Houses of Parliament when in session, and must be advertised twice in the Official Journal of Patents.[1] Either House may within forty days signify disapproval of the rules.[2] The rules at present in force may be had from the Patent Office Sales Branch at cost of 9*d*.

Powers of the Comptroller.—When an examiner has reported against an application, the Comptroller may refuse to accept it, or may require it to be amended,[3] and in the latter case may, if he sees fit, direct that the application bear date as from the time when the requirement is complied with.[4] The Comptroller may also refuse to accept a complete specification if the examiner reports against it.[5]

If an amendment is filed, the Comptroller shall also refuse it, if in his opinion it enlarges the scope of the patent.[6] Inventions contrary to law or morality may also be refused.[7]

In all these cases where a discretionary power is given to the Comptroller he shall not exercise it adversely to the applicant without giving the latter an opportunity of being heard personally or by his agent.[8]

In case of opposition to a patent, the Comptroller shall hear the parties and determine the matter.[9]

From a refusal to accept an application, specification or amendment, and from a decision in a case of opposition, appeal may be made to the Law Officer of the Crown, who may examine witnesses on oath and give costs[10]; powers denied the Comptroller.

Register of Patents.—Sect. 23 provides for the keeping at the Patent Office of a book, called the Register of Patents, wherein shall be entered the names and addresses of grantees of patents, notifications of assignments and transmission of patents, of licenses under patents, and amendments, extensions and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may from time to time be prescribed.

Entry of Assignments and transmissions in Registers.—Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to copyright in a registered design, or to a registered trade mark; the Comptroller shall on request, and on proof of title to his satisfaction,

[1] Sect. 101 (4).
[2] Sect. 101 (5).
[3] Sect. 7.
[4] Act 1888, Sect. 2.
[5] Act 1883, Sect. 9.
[6] Act 1883, Sect. 18 (8).
[7] Act 1883, Sect. 86.
[8] Act 1883, Sect. 94.
[9] Act 1883, Sect. 11.
[10] Act 1883, Sect. 38.

cause the name of such person to be entered as proprietor of the patent, copyright in the design, or trade mark; in the register of patents, designs, or trade marks, as the case may be. The person for the time being entered in the register of patents, designs, or trade marks as proprietor of a patent, copyright in a design, or trade mark as the case may be, shall, subject to the provisions of the Act and to any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with the same, and to give effectual receipts for any consideration for such assignment, license, or dealing. Provided that any equities in respect of such patent, design, or trade mark may be enforced in like manner as in respect of any other personal property.[1]

The register of patents shall be *primâ facie* evidence of any matters directed or authorised to be inserted therein.[2] Attested copies of deeds, licenses, or any other documents affecting the proprietorship in any Letters Patent, or in any license thereunder, must be supplied to the Comptroller in the prescribed manner for filing in the Patent Office.[3] The original documents must be forwarded but will be returned after verification with notification of the registration stamped on them, in about four clear days. A form of request for registration bearing a 10*s.* stamp must accompany the papers, which themselves must also be stamped with revenue stamps according to the Stamp Acts.

There shall not be entered in any register kept under the Act, or be receivable by the Comptroller, any notice of any trust expressed, implied, or constructive.[4] Only documents that confer a legal interest ought to be inserted in the register.[5] An incomplete agreement cannot be entered.[6]

Inspection of Register.—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

[1] Act 1883, Sect. 87.
[2] Act 1883, Sect. 23 (2).
[3] Rule 72.
[4] Act 1883, Sect. 85.
[5] Haslett *v.* Hutchinson, 1891, VIII *R.P.C.*, 463.
[6] *Re* Fletcher's Patent, 1893, X *R.P.C.*, 255.

payment of the prescribed fee.[1] A fee of 1s. is charged for inspection.

Certified Copies.—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, disclaimers, 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 Her Majesty's dominions, and in all proceedings, without further proof or production of the originals.[2]

Rectification of Register.—An alteration of the register can only be made by authority of the Court. By Sect. 90, sub-sect. 1, the Court may on the application of any person aggrieved by the omission, without sufficient cause, of the name of any person or of any other particulars from any register kept under this Act; or by entry made without sufficient cause in any such register, make such order for making, expunging, or varying the entry, as the Court thinks fit; or the Court may refuse the application; and in either case may make such order with respect to the costs of the proceedings as the Court thinks fit.

The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

Any order of the Court rectifying a register shall direct that due notice of the rectification be given to the Comptroller. The Court may order the whole entry to be expunged.[3]

False Entry.—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.[4]

Correspondence.—All communications with the Patent Office must be in writing, but personal interviews are permitted for explanation in certain cases with examiners and are sometimes necessary or advisable to elucidate a complex in-

[1] Act of 1883, Sect. 88.
[2] Act of 1883, Sect. 89.
[3] Haslett *v.* Hutchinson, *supra.*
[4] Act of 1883, Sect. 93.

vention or save time of correspondence. All documents for filing must be written or printed in an indelible ink upon paper 13 inches deep by 8 inches wide, and on one side only, leaving a 2-inch clear margin down the left-hand side. Official stamped forms may be used, or the documents after preparation may be presented for stamping at Somerset House or at the Royal Courts of Justice in London. The agent employed must be duly authorised to the satisfaction of the Comptroller. A suitable form is given in Appendix II (Form 2).

Legal Assistance, &c., to Applicants. — The British Patent Office disclaims all ability to reduce or remit any government fee, or to explain the law or assist applicants in the preparation of any documents. A similar neutral position is taken up by every other Government Patent Office. Rule 17 of the United States Patent Office further advises that: "As the value of patents depends largely upon the careful preparation of the specification and claims, the assistance of competent agents will in most cases be of advantage to the applicant, but the value of their services will be proportional to their skill and honesty, and too much care cannot be exercised in their selection. The Office cannot assume responsibility for the acts of attorneys, nor can it assist applicants in making selections. It will, however, be unsafe to trust those who pretend to the possession of any facilities except capacity and diligence for procuring patents in a shorter time or with broader claims than others." Also: "All solicitors, agents, or attorneys who in circulars, advertisements, or otherwise refer to the Commissioner of Patents or to any other official of the Patent Office, for evidence of their professional standing, do so without authority." Other Government Patent Offices adopt similar rules.

Publications of the Patent Office.—In the Illustrated Official Journal of the Patent Office, published weekly, price 6*d*., appears a list of applications for patents with names of inventors and titles of the inventions during the week, together with other lists of applications which have passed various stages; of patents on which renewal fees have been paid; and of those lapsed through non-payment. No details can be learnt respecting any invention until after the complete specification has been advertised in this journal as accepted. In this journal appear also in due course abstracts of all patented inventions in the order of their numbers and dates, but owing to the necessity of preserving the order of compilation, these abstracts are 17 months behind the nominal dates of the patents.

Various indices are published to these journals and specifications.

Full printed copies of each complete specification, with its drawings and previous provisional specification (if any), are usually placed on sale three weeks after the publication of the acceptance of the complete specification, at a uniform price of 8*d.* per copy.

Abstracts of the specifications of all patents are being gradually prepared in separate volumes, and divided into 110 convenient classes for publication. Some of these are illustrated. Of these the volumes containing the patents from 1617 to 1876, of which there may be more than one in each class, are priced at 2*s.* each. The later volumes, covering five to six years each, are issued at 1*s.* each.

Chapter XIII.

METHODS OF APPLICATION FOR PATENT OR "PROVISIONAL PROTECTION."

Alternative Modes of Application.—The form of application for patent (*see* Appendix II, Form No. 1), bearing 1*l.* stamp, must be accompanied by an authorisation of agent (Form 2) and either a provisional or a complete specification.[1] The specification must be in duplicate, signed by the applicant or his patent agent. Drawings, if any, must also be in duplicate (*see* page 166) and signed by applicant or agent.

A provisional specification bears no stamp; the complete specification a 3*l.* stamp on the original copy. Where applicant files a provisional specification with the application, he must file the complete specification within the period of nine calendar months next ensuing, or the application will be deemed to be abandoned. Nevertheless, the applicant, if he has omitted to file the complete specification within the nine months, may yet do so within a further month by filing a form of request for this extended time, bearing a 2*l.* stamp. This form may be filed at the same time as the complete specification, as the request is invariably allowed. No further extension than this one month can be had under any circumstances.

In respect of the conditions governing the choice between the alternative methods, the reader will do well to consult Part I, and more especially pages 35 to 56.

Provisional Protection is, in truth, only a form of protection given during the progress of an application, and its duration is from the day the application is filed until the Letters Patent are actually sealed and delivered; for further explanation, *see* Chapter IV. Nevertheless, in ordinarily speaking of provisional protection the inventor means the nine months' respite consequent on filing a provisional specification. Provisional protection, therefore, does not require a

[1] For forms and preparation of these documents *see* Chapters XIV and XV.

distinct form of application, but is obtained by applying for a patent and filing a provisional specification. It is entirely optional to the applicant whether he will afterwards "complete" the patent by filing the complete specification, or suffer the application to lapse.

Deposit of Application.—The aforesaid papers when stamped are deposited at the Patent Office in London, and an official receipt is given for them bearing a number equivalent to the number of the application, and showing the date of deposit. This number and date will eventually be those of the patent when granted. A new series of numbers is commenced on 1st January of each year.

Progress of Application.—The application is referred by the Comptroller of Patents to an examiner to ascertain and report whether the nature of the invention has been fairly described, and the application, specification, and drawings (if any) have been prepared in the prescribed manner, and the title sufficiently indicates the subject matter of the invention.[1]

This examination must necessarily be very incomplete since the examiner can only judge of the invention as described in the specification, and has no certain means of knowing whether it is sufficient and correct or not. No examination is made as to novelty or patentable presentation of the invention and, whether the specification is a complete or a provisional one, the examiner has only to see whether its nature has been "fairly described." Applicants should, however, place no reliance in this examination, as it is made not in their interests but in the public interest.

After this examination, which may take from two to six weeks, or more or less according to the state of work in the examining division, the application is usually accepted, and a notification of acceptance sent to the applicant's agent, but if the application does not pass the examination, "the Comptroller may refuse to accept the application, or require that the application, specification, or drawings be amended before he proceeds with the application,[2] and in the latter case the application shall, if the Comptroller so directs, bear date from the time when the requirement is complied with."[3] A badly prepared application is therefore liable to lose its original date, which will often present disastrous consequences for the validity of the patent.

[1] Patents Act, 1883, Sect. 6.
[2] Patents Act, Sect. 7.
[3] Patents Act, 1888, Sect. 2.

The applicant may, however, within 14 days,[1] appeal to the Law Officer, who may make an order determining whether, and subject to what conditions (if any), the application shall be accepted.[2]

Where a complete specification is filed after a provisional specification, it must be marked with the same number and date. Both specifications are then referred to an examiner to report whether the complete specification has been prepared in the prescribed manner, and whether the invention particularly described in the complete specification is substantially the same as that described in the provisional specification.[3] If not, it is returned for amendment, refusal being also subject to appeal to the Law Officer.[4]

Appeals to Law Officer.—One Invention.—On an appeal to the Law Officer against the Comptroller's decision requiring division of an application as containing more than one invention, Herschell, S.G., decided that various modifications of an invention could be inserted in the same application for patent so long as each was for carrying into effect the general object of the invention and the alternative devices for that purpose were of an analogous nature.[5] It has also been decided on appeal by Davey, S.G., in *re* Hearson's Patent,[6] that the application of part of an invention only to a further purpose constitutes a further invention which cannot be included in the same patent. Similarly if a party has invented a device such as a telegraphic apparatus, and claims and describes same as such, he cannot in the same patent lay claim to the broad use in electrical apparatus in general of the particular principle of utilising induced electrical currents, which he has employed in the telegraphic apparatus.[7]

Appeal to Law Officer.—Title.—The Comptroller refused an application until the title should be made wider to cover the invention, or latter narrowed to be within the title. Webster, A.G., while holding that there was some doubt as to the invention being entirely within the title, allowed the appeal, on the ground that the applicant might choose his own title so long as the rules and statute were not infringed, and that the

[1] Patent Rules, *Appeal to L.O.*, 1.
[2] Patents Act, 1883, Sect. 7 (30).
[3] Patents Act, 1883, Sect. 9.
[4] Patents Act, 1883, Sect. 9 (2).
[5] Jones' Patent, *Griff.*, 265.
[6] *Griff.*, 266.
[7] Robinson's Patent, *Griff.*, 267.

risk of his patent being limited by a narrower title solely concerned himself.

Joint Application.—Signature of complete Specification.—Where two joint applicants have filed their application for a patent it is not essential that both should sign the complete specification, for if the latter be filed signed by one of the applicants only it may be accepted.[2]

Jurisdiction of Comptroller over Claims.—The following judgment, which has a very important bearing for applicants for patents, was delivered by Herschell, S.G., in *re* Smith's Patent.[3]

"Provided the specification ends with a statement of the invention claimed distinct from the description of the invention contained in the specification, Sub-sect. 5 of Sect. 5 (*see* page 187) is complied with, and there is no power in the Patent Office to examine into the conformity of the claims put forward by the patentee with the description of the invention which he has given. I should only guard myself by saying this, that if the statement of the invention claimed were such as 'I claim the invention described in the specification,' that would be regarded as a mere colourable compliance with the terms of the statute, and not as a distinct statement of the invention claimed, because it would merely refer back to the previous description. Therefore, I think there must be a real statement of the invention claimed, but if there is such a statement I do not think it is competent to the Patent Office to enquire whether it goes beyond or is in conformity with the description of the invention. There is no doubt a claim of a particular machine in saying, 'I claim the improved bicycle substantially as described,' or 'I claim the improved incandescent light,' or anything which clearly points to what the invention is. But merely to say, 'I claim the invention described in the previous specification,' is a case in which, although it has the form of a distinct claim, I should think it was not a distinct statement of the invention claimed."

Acceptance of complete Specification.—In any case, whether filed in the beginning or at any time within nine months, the complete specification must be accepted within 12 months of the date of the application[4] (save in event of an appeal having been filed against refusal to accept). The

[1] Brown's Patent, 1887, 2 *Griff.*, 1.
[2] Grenfell and McEvoy's Patent, VII *R.P.C.*, 151.
[3] 1 *Griff.*, 268.
[4] Sect. 9 (4).

Comptroller may, on request and payment of the prescribed fee, enlarge this time not longer than three months.[1] These fees have been recently reduced to 2*l.* for one month, 3*l.* for two months, and 5*l.* for three months; they are payable on again presenting the rejected and amended specification for acceptance during thirteenth, fourteenth, and fifteenth months respectively. For rights obtained on acceptance of complete specification, *see* Chapter IV.

Publication for Opposition.—Upon the acceptance of the complete specification the fact is advertised in the official journal, and during the two months next following the date of the advertisement anyone may oppose the grant on certain grounds (*see* Chapter XVII).

Issue of Letters Patent.—If no opposition is filed, the patent is sealed and issued in about seven days after the expiration of the period for opposition. It does not contain any copy of the specification or drawings. It is dated and numbered the same as the original application, and runs for 14 years from that date, subject to the payment of the renewal fees.

The grant of a patent on a later application shall not prevent grant of patent on an earlier application.[2]

Application under International Convention.—Persons who have made application in any of the countries mentioned below, if they desire, may have their application in Great Britain dated back to the date of their application in the said country or to the first of such applications if there be more than one, and so obtain in Great Britain the priority of that date, provided they apply in Great Britain within seven months of the date of application in said country or of the first of said applications respectively.

Such patents can be applied for *only in the name of the applicant for the foreign patent or patents* (*i.e.*, cannot be taken as communications), the following additional documents being required:—

(*a*) The application form (known as Form A[2]) in place of the usual form (*see* Appendix II, Form 3).

(*b*) *A certified copy* of the specification and drawings *filed* with the said foreign application (or the first of them) as filed and stated to be such (not as allowed but as *applied for*).

(*c*) In case also this certified specification is in a foreign

[1] Act of 1885, Sect. 3.
[2] Act of 1883, Sect. 13.

language, a sworn translation must be added (this can be made by British patent agent).

(*d*) *A statutory declaration* (made, if abroad, before a notary or British consul) that the invention in respect of which the application in Great Britain is made is identical with that in respect of which the said foreign application was made. No particular form. (This can also be made by the British agent.)

These three requirements are in addition to the usual specification (which may differ in wording, or cover a smaller invention than the certified copy of the foreign specification), and necessary drawings for deposit and appointment of agent.

The use of the convention is optional, and is only likely to be required by foreigners when home patents are issued to them within five or six months of their application and it is desired to antedate patents in England to avoid the effect of publication or of previous applications which may have occurred there in the meantime. It should be noted that applications antedated can only be given the date of the day of application for the home patent, and no other date subsequent thereto, and that term of seven months during which applicants may avail themselves of the privilege of antedating, commences to run from the day of *application* for the home patent, not from its grant or issue.[1]

The privilege is permitted by Sections 103 and 104 of the Act of 1883, and is extended by Great Britain not only in respect of applications made in the countries that have adhered to the Convention (for a list of which see page 360), but also by Order in Council from time to time it may be brought into force for any country with which Her Majesty is pleased to make similar arrangements, or any colony giving reciprocal privileges in this respect.

Orders in Council under these sections have been issued in respect of:—

Mexico	Tasmania	Western
Paraguay	Uruguay	Australia.

And for designs and Trade Marks only:—

Equador	Greece	Roumania.

Drawings for Specifications.—Rule 28. The provisional or complete specification need not be accompanied by drawings

[1] Even where, as in the United States, the patent is not dated the day of application, it is the application date which governs the British patent and to which the latter will be antedated, if advantage be taken of the Convention.

if the specification sufficiently describes the invention without them, but, if furnished, they should accompany the provisional or complete specification to which they refer. No drawing or sketch such as requires a special engraving for letterpress should appear in the specification itself. If drawings are filed with the provisional specification and the complete specification does not necessitate any change in them, the applicant may adopt the drawings lodged with his provisional specifications as the drawings for his complete specification, but he should then refer to them in the latter document as those "left with the provisional specification." For sizes, &c., of drawings, *see* Appendix III.

CHAPTER XIV.

METHOD OF APPLICATION FOR PATENT, &c.: THE IMPORTANCE OF THE TITLE.

Past Importance of Title.—The Act of 1883, Sect. 5 (5), says "A specification, whether provisional or complete, must commence with the title."

This title is intended to be a short and succinct *résumé* of the invention and has always been considered in the Courts of Law as a very important and material part of the patent. It is the link which connects the invention with the patent.

Why such importance should have been given to the title is easily understood when the former method of granting patents is considered. It was the fashion to grant a patent simply upon the title given by the inventor and without any previous disclosure of the invention. The Act of 1852 first required a provisional specification to accompany the application for patent, but up to 1884 it was the rule to grant the patent in such case before the complete specification was filed. The title was recited in the patent and a proviso added that if the patentee failed to file a complete specification of the invention within a certain time the grant should be void. If, therefore, the title described one thing and the complete specification something else the patentee was held to have obtained the patent by fraud on the Crown for representing his invention in the title to be something else than it really was.[1] The grant would also have been void for non-fulfilment of the proviso above-mentioned, since the patentee has not filed a complete specification of that invention which he had previously in the title represented himself as possessing.

These were the technical reasons for voiding patents given in a series of decisions of the Courts and universally upheld.

The Practice under the Act of 1883 is, however, different; the patent is not now granted until after the com-

[1] Brunton *v.* Hawkes, Morgan *v.* Steward, 1 *Web. P.C.*, 196.

plete specification has been filed, but the patent still recites the title only, while declaring that the invention has been specified, &c., in the complete specification.

Some writers have deduced from this circumstance that there is no longer any importance in the title, there can be no deceit on the Crown when the patent is only granted after the specification has been filed and accepted; the former proviso also is naturally omitted and consequences of its non-performance fall with it.

The reasoning is correct, so far as it shows that the logical grounds mentioned in the older decisions are no longer available for judgment of the title. But the deduction is illusory, for grounds given for decisions are often only convenient pegs to hang the decisions on. The true reason is not that the Crown is deceived, but that the public are inconvenienced and the door opened to fraud, and that is equally the case at the present day, if the importance of a correct title be negatived.

The Object of the Title is, in reality, to afford a proper and convenient *resumé* for the purpose of indexing and for accurate summary of the contents; it is of the nature of a *précis* for the convenience of the public, so that they, by reading it, may see to what the invention relates, and it is thus intimately connected with the policy of the law, whose head and front are that the invention be properly disclosed for the public convenience. The title of the patent is intended to disclose the object of the invention.[1]

Present Importance of Title.—The argument that the title is still of importance is upheld by the Act of 1883 itself, and is the only view consistent with the sole decision reported in connection with the title since that Act came into force.[2]

It was clearly a ground of revocation before the Act of 1883 that the title was at variance with the specification,[3] whatever the reasons given for that ground. The Act of 1883, however, in Sect. 26 specially states that "Every ground on which a patent might, at the commencement of this Act, be repealed by *scire facias* shall be available by way of defence to an action of infringement, and shall also be a ground of revocation," so that the ground has equal force to-day.

In Dowling *v.* Billington [2] objection to the title was made and decided in favour of the patent on the merits, both in first instances by the Vice-Chancellor, and on appeal by the Lord

[1] Household Company *v.* Neilson, 1 *Web. P.C.*, 678.
[2] Dowling *v.* Billington, High Court (Ireland), *Ch.*, VII *R.P.C.*, 191.
[3] Cook *v.* Pearce, 1844, *S.Q.B.*, 1061.

Chancellor, Lord Ashbourne, and Lord Chief Justice O'Brien, *no reference being made to illegality of the objection.*

From these it may be deduced that attention must equally now be given to the title as was the case before 1883.

Variance between Title and Specification.—The title must not describe or include what is not in the specification, or in fact more than the invention is capable of, so far as the specification shows.

An inventor, claiming to produce new notes by his invention in a flageolet, lost his patent when it only appeared that one *new* note was produced.[1]

Brushes stated to be tapering, when in truth only the bristles of each tuft were of different lengths, were held to be wrongly entitled.[2] A well known case is often cited,[3] "A new and improved method of drying and preparing malt," was the title given to an invention, the novelty of which consisted in submitting malt, made in the ordinary way, subsequently to high temperature, with the view of producing a material suitable for giving colour to beer. The patent was held void, for though in the ordinary way the purpose to which an invention is to be put need not be cited in the title, yet when it is necessary for a proper understanding of the title it should be stated. The title would more obviously have led people to suppose that the making of malt was intended. A title for "*A machine for an expeditious and correct mode of giving a* fine edge to knives, razors, scissors and other cutting instruments" was held to make the patent void when the invention was proved to be inapplicable to scissors.[4]

Ambiguity of Title.—Nevertheless a certain amount of ambiguity in the title is allowable. An inventor who entitled his invention "A new *or* improved method," &c., leaving it uncertain whether the invention claimed were altogether or only partly new, was held to be justified in so doing.[5] A patent was also upheld when the title described improvements, &c., while only one improvement was in fact produced.[6] A broadly worded title may also pass, such as "Improvements in steam engines," when it relates actually to a steam engine, no further description of the improvement being given in the title. Never-

[1] Bainbridge *v.* Wigley, 1 *Carp P.C.*, 270.
[2] R. *v.* Metcalf, 1 *Web. P.C.*, 141.
[3] R. *v.* Wheeler, 2 *B. and Ald.*, 345.
[4] Felton *v.* Greaves, 3 *C. and P.*, 611.
[5] Beard *v.* Egerton, 3 *C.B.*, 97.
[6] Nickels *v.* Haslam, 13 *L.J., C.P.*, 146.

theless such improvements must be in proper connection with a steam engine. An improved steam gauge or whistle would not come under that title. An improved street lamp described in the title as "a method or methods of more completely lighting cities and towns and villages" was held to be wrongly entitled.[1]

Space need not be occupied by further quotations from reported cases, since enough has been said to show that the title must accurately contain the invention and afford such guide to persons reading it that they may understand at least what kind of an invention is embodied in the specification. If the title does not afford such indications to a reader it is bad in law and the patent cannot be sustained.

Too Narrow Title.—The title must cover the whole invention, and every part of it, otherwise the patentee will not be able to sustain his monopoly for the part not covered by the title. An invention, entitled "Improvements in the doors and sashes of carriages," was stated in the specification to be applicable in any position where windows and doors were subject to jar and vibration. Nevertheless the patent was not held to include any windows and doors but those of carriages.[2] Compared with this may, however, be quoted a later decision (1870), where the title of "Improvements in the manufacture of frills or ruffles, and in the machinery or apparatus employed therein," was held sufficiently descriptive of an invention extended in the complete specification to the manufacture of frills and ruffles and trimmings, since the latter were all things *ejusdem generis*, *i.e.*, in the same category, and were, moreover, but products of the improved machinery.[3]

Fancy Titles.—The title in Patent Law is not in any way equivalent to a fancy name. Inventors may name their inventions as they please, such as the "Demon rat trap." "The pulsometer pump," "Excelsior wire netting," but such fancy names need not be mentioned in the application for the patent, and certainly not in the "title," with which the specification is to commence. Where a fancy name is novel and not descriptive of the article in any way, it may be protected as a trade mark, but it has nothing whatever to do with the patent.

Examination.—The examiner, to whom the application is referred at the Patent Office, is to ascertain if "the title

[1] Cochrane *v.* Smethurst, *Dav. P.C.*, 354.
[2] Oxley *v.* Holden, 8 *C.B., N.S.*, 707.
[3] Wright *v.* Hitchcock, *L.R.*, 5 *Ex.*, 37.

sufficiently indicates the subject matter of the application,[1] but too much reliance must not be placed by inventors on such official examination.

Amendment of Title.—As the title forms in effect part of the specification, and is generally so regarded, it is probable that it may be amended in the same way as the specification itself under Sect. 18 of the Act of 1883, that is to say, by way of disclaimer, correction, or explanation; but it is the universal rule of these amendments that nothing shall make the patent wider or cover more, or a different invention in any way from what was included in its original scope. A narrow title can, therefore, under no circumstances be amended to make it broader, nor can a title at variance with the specification. As any amendment is open to opposition, and during an action can only be made by leave of a judge, it is best by care in first instance to avoid the necessity.

Publication of the Title.—Directly an application for patent is filed, the title with the inventor's name and address are published in the official journal of patents and this is all the information relating to the invention published by the Patent Office, until after the complete specification has been filed and accepted. As the public can thus learn nothing, beyond what the title informs them, as to the invention in which the applicant thus obtains priority, the importance of a true and accurate title may be reasonably inferred also from this fact.

[1] Patents Act, 1883, Sect. 6.

Chapter XV.

METHOD OF APPLICATION FOR PATENT, &c.: THE PROVISIONAL SPECIFICATION.

Purpose of Provisional Specification.—This specification; for the form of which *see* Appendix II, is intended to describe "the nature of the invention,"[1] and has no other purpose. It differs from the complete specification which will eventually replace it, in so far that the purpose of the latter is both "to particularly describe and ascertain the nature of the invention and in what manner the same is to be performed."[2] The former has therefore only to fulfil a part of what the complete specification will eventually describe; but that part is not in the nature of a skeleton outline, but is a definite and separate part. The nature of the invention, and the manner of performing it, are two entirely distinct and separate things, and they differ not only in kind but in purpose. The first is intended to describe just what the "invention" itself is; to describe in fact its character and nature for the purpose of showing what the inventor wishes to retain for himself; the second is for the public benefit being in the nature of full directions for putting the invention into practice. Too much stress must also not be laid on the fact that the description in the complete must completely ascertain and describe the nature of the invention, while the provisional need only "describe" it, because whatever the description given, it must naturally be a full and proper one, and therefore complete and "particular" in its nature, otherwise it is in truth no description at all.

Wherever any person has made an invention, it must be presumed that a proper and sufficient description of its nature can be given; for the reason is obvious, that what cannot be described has not been invented. It may be politic to wait and allow the inventor to experiment to find out exactly the best way to carry the invention into practice, as there may be many ways of doing the same thing, and it is advisable that the

[1] Patents Act, 1883, Sect. 5 (3).
[2] Patents Act, 1883, Sect. 5 (4).

public shall be actually informed of the best; but as the inventor obtains priority over others from the date of his application, it is reasonable to be assured, that the invention itself has actually been made by him, of which of course the wording of the specification is the only proof.

The Nature of an Invention.—It is not sufficient for any person to simply propose an object to be attained; that is not an invention, it may have been the aim of many. The invention lies in the way in which the proposed object is to be attained, and until the applicant can describe the nature of the way in which he proposes to effect the desired object, he has made no invention. But he does not need to wait until he can actually give every detail, it is sufficient if he be in possession of a definite principle on which to construct his machinery or carry out his intended process.

The nature of an invention is not then in its details, but in the principle which underlies it, and this is what is required to be described in the provisional specification, as well as also in the complete specification.

As an applicant for patent is presumed in law to be already in possession of an invention, and obviously therefore able to define its nature at the outset, the delay of nine months given him for filing the complete specification is only intended to afford time to experimentally determine the best practical mode of carrying the invention into effect, not to allow him to add to or alter his invention itself; that is to say, the definite principles which he has discovered, and to which he intends to give practical, in place of theoretical, shape.

Importance of the Nature of the Invention.—So far as the patentee is concerned, the nature of the invention is the most important part, because its description gives accurate limits to the scope of the invention, and therefore of the monopoly given by the patent. It defines what the public may not freely employ and consequently the *extent* of the patent rights depend wholly on it. The description of the way of performing the invention is more directly important to the public than to the patentee, since the latter description does not define how far the monopoly actually extends, but only gives directions for the use of the invention.

Relative Importance of both Specifications.—It has been customary to describe the complete specification as in every case the most important, and inasmuch as it is the more extensive and subject to direct attack in patent litigation it is perhaps so in various senses, but in a question of properly

patenting an invention, so as to secure its value for the patentee, I am more disposed to consider the provisional specification, where one is filed, as of the greater importance since the subject of which it particularly treats and to which it first gives shape in words is the more important part of the total information required from the inventor, and one in which mistakes can seldom, if at all, be rectified. Where the nature of the invention has been adequately described in the provisional specification, it is generally sufficient to simply copy it into the complete, previous to describing the mode of performing the invention.

Origin of the Provisional Specification.—Before 1850, patents were simply granted upon the titles of the inventions given by the applicants, and no further information was required of them until six months had elapsed and the complete specification had to be filed. This lax method of procedure caused great inconvenience and presented great opportunity for abuse, until in the above year the Attorney-General, whose warrant was necessary before a patent could be sealed, issued an order that a general outline of the invention should be furnished when the application was filed.

The requirement was embodied in the Act of 1852 and adopted also in 1883. Its object was stated in Newall *v.* Elliott,[1] to be in order "to ascertain the identity of the invention and make it certain that the patentee shall ultimately obtain his patent for that invention which he presented in the first instance." It has also been clearly laid down that the provisional and complete specifications of a patent ought not so to differ that the nature of the invention as described in the one, shall be materially different from its nature as described in the other.[2] In the opinion of Lord Chancellor Chelmsford "the office of the provisional specification is to describe the nature of the invention, not with minute particularity, but with sufficient precision and accuracy to inform the Law Officer what is to be the subject matter of the patent. . . . . It clearly appears that the complete specification is in a sense supplemental to the provisional specification not going beyond or varying from it, as to the nature of the invention, but conveying additional information which may have been acquired during the currency of the provisional specification as to the manner in which the invention is to be performed.[3]

[1] 1864, 10 *Jur., N.S.*, 955.
[2] Foxwell *v.* Bostock, 1864, 10 *L.T. Rep., N.S.*, 144.
[3] 1866, Penn *v.* Bibby, *L.R.*, 2 *Ch.*, 132.

Method of Performance unnecessary.—The provisional specification was never intended to contain such a description as to enable a workman of ordinary skill to make the invention,[1] and so long as the nature of the invention is described, the inventor need not describe any way of carrying it out.[2] Nevertheless such a description of the method of performance, though unnecessary, will not, if inserted, necessarily harm the specification; and if the inventor discovers a better way of performing the invention before the complete specification is filed he not only *may*, but *ought* to describe it in the latter.[3] With due deference to the Court of Appeal, it is, however, generally inadvisable to insert in the provisional specification any method of carrying an invention into effect, since it is apt to be confused with the nature of the invention, and lead to allegations of variance if a different method be shown in the complete specification.

Claims unnecessary.—No claims should be added to the provisional specifications, for it is not the function of this specification to claim anything.[4] The specification is in itself a claim, as it should cover only the essentials of the invention.

Permanent Nature of Provisional Specification.—Although in a sense, this specification itself is of a "provisional" and temporary character, being afterwards replaced by the complete specification; its contents are the very reverse of temporary, they are in their essence of the greatest permanency. The nature of an invention cannot alter. An invention is entirely distinguished by its nature, and any change in its nature argues a change in the invention. If, therefore, an inventor describes the nature of his invention to be such and such in the provisional specification, it cannot be permitted, and is not permitted, by law to alter that nature, or describe it as otherwise in the complete specification. If there appears to be any material difference between the "nature" as described in, or ascertainable from, the complete specification and that in the provisional specification, this is termed "variance," and the patent is void. It is for this reason that the provisional is printed with the complete specification after the latter is filed and accepted, for purposes of comparison; and the permanent character of this specification as a record is thus apparent.

[1] Stoner *v.* Todd, 1876, 4 *Ch. D.*, 59.
[2] Woodward *v.* Sansum, *C.A.*, 1887, IV *R.P.C.*, 166.
[3] Siddell *v.* Vickers, *C.A.*, 39 *Ch. D.*, 92.
[4] Lucas *v.* Miller, 1885, II *R.P.C.*, 155.

Chapter XVI.

METHOD OF APPLICATION FOR PATENT: THE COMPLETE SPECIFICATION.

Importance of Complete Specification. — The complete specification[1] is by far the most important and difficult matter connected with the patent, it is in fact the very foundation of the patent. As a limiting factor it governs the whole extent of the patent rights. The latter may be broad and far-reaching or narrow and practically valueless, according simply to the wording of this specification.

On the wording of this document alone will depend whether the invention shall be fully covered and protected in all its extent, and its full value thus obtained and preserved; or whether only a part of this full value will be had; or whether the whole of the invention, so far as legal protection of it goes, shall be in effect utterly thrown away.

Importance to Public.—If we consider for a moment the function and object of a complete specification, the reason for its extreme importance will be at once manifest. It is important to the State, because it is the only equivalent which the latter receives for the patent right. The disclosure of the secret of the invention is the price which an inventor pays for his monopoly; it must be full and exact and put into the logical form, which legal experience has shown to be the best suited to the various ends and purposes in view.

Importance to Inventor.—It is important to the inventor, because in describing and setting forth his invention, he is limiting or showing the bounds and extent of the exclusive rights that he seeks, so that others shall not use what he claims as within his invention. A closer examination will show that in this the specification bears a somewhat different aspect to the inventor and to the State; for the State requires simply that the invention shall be fully described so that the stock of public knowledge may be increased, and trade thus benefited.

[1] For the form of this specification *see* Appendix II.

The disclosure of the invention is not necessarily synonymous with its protection, therefore the inventor should so disclose his invention that he retains the right of protection for it, that is to say by disclosing it in a particular way. Thus taking a simple example, an inventor of a machine may describe the machine as a whole with great minuteness and care, and thus produce a description from which any competent person can make such a machine, but he has not thereby disclosed an "invention." A Court can only presume that the machine as a whole is the matter set forth, giving but poor protection, since it is seldom necessary for an infringer to exactly copy a machine, he more frequently adapts and varies the original construction and design.

Preparation for Complete Specification.—Not only the actual drawing up of this specification but the preparation and arrangement of materials for it have to be carried out with care and skill. Patience and time are almost essential to the proper ascertaining and marshalling of facts bearing upon or tending to modify the scope of the invention and its practical embodiment. It is for this reason that the inventor, as a general rule, will find it best to protect his idea or crude invention by means of a Provisional Protection, so as to obtain time for the work necessary to develop the invention and present a complete specification in the best form.

Distinction between "Nature" and "Performance."—The difference between the disclosure of an invention for the purpose of the public obtaining information for the performance of it, and the disclosure necessary to protect the rights of the inventor is brought forward in the very opening of the specification itself. Thus in the words of the form [1] and of the Act of 1883,[2] the complete specification shall particularly describe and ascertain the nature of the invention and in what manner it is to be performed. The distinction is clearly put in the judgment given in Philpot *v.* Hanbury.[3] "The nature of the invention and the method of performing the same, are two different things. The object of requiring the nature of the invention to be stated in the specification is that persons reading it may know with reasonable clearness and facility what they are prohibited from using, the object of requiring the patentee to particularly describe and ascertain the means of

[1] For the form of this specification *see* Appendix II.
[2] Section 5 (4).
[3] 1885, II *R.P.C.*, 38.

performing the same is to prevent him from extending his monopoly by keeping secret the mode in which he did it." Also in the Court of Appeal in Edison and Swan *v.* Holland and others:[1] "The two conditions in order to sustain a patent are distinct, and compliance with one is not necessarily compliance with the other. The first is that the patentee must state in clear and intelligible language what the invention really is, so that others may know what addition the patentee has made to what was known before, and what they are not at liberty to do without his consent. The second condition is that he must state in clear and intelligible language how the patented invention is to be performed, so that others may learn from it how practically to avail themselves of it."

To whom Addressed.—To be able to give what will prove to be a full and sufficient description of an invention to enable others to work it at the expiration of the term of the patent it is preferable to enquire at the outset as to what class of persons the specification may be presumed to be addressed. In Newberry *v.* James,[2] Lord Eldon held that "the specification should be so clear as to enable all the world to use the invention as soon as the term for which the patent had been granted was at an end." More exactly stated in Galloway *v.* Bleaden,[3] the specification must contain "such a fair and clear statement that a person with a competent degree of knowledge upon the subject matter to which the patent relates would be able to make that which the plaintiff enjoys the exclusive privilege of"; and in Bickford *v.* Skewes,[4] the specification is addressed not to persons entirely ignorant of the subject matter, but to artists of competent skill in that branch of manufacture to which it relates.

In Plimpton *v.* Malcolmson,[5] Jessel, M.R., said: "It is plain that the specification of a patent is not addressed to people who are ignorant of the subject matter. It is addressed to people who know something about it. If it is a mechanical invention, as this is, you have first of all scientific mechanicians of the first class, eminent engineers; then you have scientific mechanicians of the second class, managers of great manufactories, great employers of labour, persons who have studied mechanics—not to the same extent as the first class, the scientific engineers, but

[1] 1889, VI *R.P.C.*, 243.
[2] 1817, 2 *Mer.*, 451.
[3] 1839, 1 *Web. P.C.*, 524.
[4] 1841, 1 *Q.B.*, 938.
[5] 1876, *L.R.*, 3 *Ch. D.*, 568.

still to a great extent—for the purpose of conducting manufactories of complicated and unusual machines, and who, therefore, must have made the subject a matter of considerable study; and in this class I should include foremen, being men of superior intelligence, who like their masters, would be capable of invention, and like the scientific engineers, would be able to find out what was meant even from slight hints; and still more from imperfect descriptions, and would be able to supplement so as to succeed even from a defective description, and even more than that, would be able to correct an erroneous description. That is what I would say of the two first classes, which I will call the scientific classes. The other class consists of the ordinary workman, using that amount of skill and intelligence which is fairly to be expected from him—not a careless man, but a careful man, though not possessing that great scientific knowledge or power of invention which would enable him by himself, unaided, to supplement a defective description or correct an erroneous description. Now, as I understand, to be a good specification, it must be intelligible to the third class I have mentioned, and that is the result of the law."

The persons to whom a specification must be presumed to be addressed must more or less depend upon the nature of the invention, thus in Badische Anilin and Soda Fabric *v.* Levinstein,[1] a specification relating to the manufacture of dyes was held by the nature of the subject to be addressed to specialists in chemistry, such as are very generally employed in connection with dye works. In relation to a patent for manufacturing incandescent electric lamps, the subject being then entirely new, it was stated that the specification should be sufficient to enable an intelligent working man to make an incandescent lamp without having to try experiments.[2]

Actual Sufficiency of Description.—It should be borne in mind that it is always a question of fact, whether the invention has been so described, that the persons, workmen, mechanics, artists, &c., as they are variously termed in different decisions, will understand the invention sufficiently.[3] It will be well, therefore, to so explain the invention, that much expert assistance will not be perhaps required, to render the subject or gist of the invention intelligible to the jury, or to the judge

[1] 1887, *H L.*, 12 *App. C.*, 710, IV *R.P.C.*, 449.
[2] 1889, Edison and Swan Company *v.* Holland and others, *L.T. Rep.*, IV, 386.
[3] Hill *v.* Thompson, 1887, Walton *v.* Bateman, 1842, Wallington *v.* Dale, 1852, Parkes *v.* Stevens, 1869.

sitting without a jury, it being often the result of the explanation of experts brought up by the plaintiff and defendant to contradict each other, that the matter is made more unintelligible than before to minds unacquainted with the practical side of the art.

"The construction (meaning) of the specification is for the Court to determine, like the construction of any other written instrument, the Court placing itself in the position of some person acquainted with the surrounding circumstances as to the state of art and manufacture at the time and making itself acquainted with the technical meaning in art or manufacture which any particular word or words may have. When the nature of the invention is thus ascertained by the Court as a matter of construction, the Court has then to inquire whether the manner in which the same is to be performed is sufficiently described in the specification to the comprehension of any workman of ordinary skill in the particular art or manufacture; and this the Court can best do by the evidence of workmen of that description, and by evidence of what workmen of that description have actually done under the patent."[1]

If the specification is in point of fact sufficient to guide a competent workman, the specification must be held to be sufficient in point of law. It is for defendants to prove that the information given in the specification is not sufficient.[2]

Bona Fides.—It is incumbent on the inventor to reveal everything so that others may be able to use the invention in as ample and beneficial a way as the patentee himself uses it.[3]

A patentee who has invented a machine useful to the public, and can construct it in one way more extensive in its benefit than in another, and states in his specification only that mode which would be least beneficial, reserving to himself the more beneficial mode of practising it, although he will have so far answered the Patent Law as to describe in his specification a machine to which the patent extends; yet he will not have satisfied the law by communicating to the public the most beneficial mode he was then possessed of for exercising the privilege granted to him. . . . . If at the time when he obtained his patent he was apprised of this more beneficial mode of working, and did not by his specification communicate this more beneficial mode of working to the public; that will

[1] British Dynamite Company *v.* Krebs, *H.L.*, per Lord Chancellor Cairns, 1 *Good. P.C.*, 91.

[2] Edison *v.* Woodhouse, *2nd act*, *C.A.*, 1887, 1 *Web. P.C.*, 66.

[3] R. *v.* Arkwright, 1785, 1 *Web. P.C.*, 66.

have been a fraudulent concealment from the public, and will render his patent void."[1]

Misleading Description.—The specification must not be misleading. A patentee gave three recipes for preparing substances which when mixed were to produce seidlitz powder. These recipes were known and the materials made by them could be purchased.

Abbot, C.J., in delivering judgment,[2] said: "It is the duty of anyone to whom a patent is granted to point out in his specification the plainest and most easy way of producing that for which he claims a monopoly, and to make the public acquainted with the mode which he himself adopts. If a person, on reading the specification, would be lead to suppose a laborious process necessary to the production of any one of the ingredients, when in fact he might go to a chemist's shop and buy the same thing as a separate simple part of the compound, the public are misled. If the results of the recipes, or any of them, may be bought in shops this specification, tending to make people believe an elaborate process essential to the invention, cannot be supported."

In Sturtz *v.* De la Rue,[3] patent was held void because sufficient information as to procuring a substance to be used, "the finest and purest chemical white lead," was not given. It appeared that the best procurable in London would not answer, that a particular quality procurable on the Continent was the only material suitable. "The patentee ought to have directed the attention of the public to that circumstance."

In a patent for drying and finishing paper the specification required the use of cloth "which cloth may be made of any suitable material, but I prefer it to be made of linen warp and woollen weft." As a fact the inventor had tried other cloths but only that "preferred" by him was found suitable, the patent was held invalid as the specification tended to mislead the public and to induce other persons to make experiments which the patentee knew must fail.[4]

Intention Immaterial if Specification Misleading.—It is not essential that the patentee should have intended to mislead, it is sufficient even if his specification would have that effect.[5]

[1] Bovill *v.* Moore, 1816, *Dav. P.C.*, 400.
[2] Savory *v.* Price, 1822, 1 *Ry. and Mo.*
[3] 1828, 1 *Web. P.C.*, 83.
[4] Crompton *v.* Ibbotson, 1828, 1 *Web. P.C.*, 83.
Simpson *v.* Holliday, 1864, 20 *Newt. Lond. Jour., N.S.*, 108.

If the statement made is obviously impossible to realise, and in fact does not deceive, it would appear to be insufficient to invalidate the patent. In Thomson *v.* Batty[1] a claim for the employment in compasses of a large bowl *filled or partially filled* with a viscous fluid was held not to invalidate the patent, although partial filling was necessary to secure complete effect, "filling" would answer only to a limited extent.

Limits of Invention must be Defined.—A person ought to be warned by the specification against the use of the particular invention. Therefore in the specification of a patent for an improved instrument it is essential to point out precisely what is new and what is old, and it is not sufficient to give a general description of the construction of the instrument without making such distinction.[2]

Where a patented machine or apparatus is entirely new, the patentee is not bound to describe and distinguish the different parts, but where the invention consists of a machine, which is only an improvement upon an old machine, he must distinguish and describe all the parts which he claims as new.[3] If this be not done it will be considered that the whole machine and also its different essential parts are claimed as new, in fact everything described.[4]

"Combination" Patents.—But if the invention is expressed as consisting of a combination or special arrangement of parts this will not constitute a claim to the parts individually.[5] When a claim is made for a combination of parts, the combination itself is therefore the invention, the novelty lies in that, and it is not necessary to specially disclaim the separate parts or state same to be old.[6] This case being decided in the House of Lords must be considered a leading case. The law as it governs the construction of a "Combination" Patent cannot be better stated than in the words of Lord Hatherley in Clark *v.* Adie:[7] "The case of Foxwell *v.* Bostock (4 De G.J. and S., 298) decides this, that where you take a well-known machine, an instrument which was well known before the date of the patent, you may, if you think

[1] 1888, VI *R.P.C.*, 84.
[2] Macfarlane *v.* Price, 1886, 1 *Web. P.C.*, 74.
[3] Dangerfield *v.* Jones, 1865, 13 *L.T. Rep., N.S.*, 144.
[4] Carpenter *v.* Smith, 1841, 1 *Web. P.C.*, 532; Tetley *v.* Enston, 1853, *Macr. P.C.*, 82.
[5] Lister *v.* Leather, 1858, 27 *L.J., Q.B.*, 295.
[6] Harrison *v.* Anderson Foundry Company, 1876, *L.R.*, 1 *App. Cas.*, 577.
[7] *H.L.*, 1877, 2 *App. Cas.* 328.

fit, improve all the various parts of that machine by introducing into two or three of its definite parts, if there are so many, that which is new either by way of combination, or by way of discovery, and you may claim for each of those parts into which you have so introduced something new, the privilege of protection, just as if you had taken out Letters Patent for each of those new things separately—and you may claim for those parts A, B, and C, which, considered as separate things, are in themselves deserving of a patent—you may claim for them, when united, a beneficial result which may entitle you to a patent for the whole machine. But I apprehend, my lords, you must in some way or other inform those whom you are dealing with—by which I mean the general public—whom you wish to exclude for a certain number of years from using your invention; you must inform them, in some mode or other, whether you have subdivided, if I may use the term, your machine into those separate parts, and claim for each part the merit of novelty, or whether you are simply making a combination of things *per se* old, but which have never been used before in combination and which make up, as you say, your machine, for which you claim protection as a novel and useful machine, and which machine must not be made by anybody but yourself. If you claim protection also for a portion of the machine you must make it plain, I do not say necessarily by words or by any particular mode, but in some definite mode or other you must point out what is the combination of parts which you ask to have protected, and what are the subordinate parts which also you ask singly and respectively in themselves to have protected."

Complete after Provisional.—A complete specification filed after a provisional in no way differs from one filed at the time of the application, but in drawing it up care must be taken not to exceed the terms of the provisional so far as to constitute legal variance which would render the patent invalid. The difficulty in judging variance lies more in the application of the principle of the law than in the principle itself.

According to Lord Blackburn, in Baily *v.* Robertson, H.L.:[1] "When the nature of an invention has been described in the provisional specification in the way which has been mentioned, if something were found out during the six months to make the invention work better, or with respect to the mode in which the operation may be performed—a thing which is very likely

[1] 1878, 3 *App. Cas.*, 1073.

to happen when in carrying out his invention, the inventor finds some particular bit will not work so smoothly as he expected, and it is necessary to add a little supplement to it. Still the nature of his invention remains the same, and it is no objection that in the complete specification, which comes afterwards, the invention or application is described more particularly and in more detail; or even if it be shown that there has been more discovery made, and so as to make the invention which he has described in the provisional specification really workable. If nothing more is done than that, I think it is good, but as soon as it comes to be more than that, and the patentee says, in the provisional specification, I describe my invention as A, and in the complete specification he says, I hereby describe A, and also B, then, as far as regards B, it is void, because the Letters Patent were granted for the invention that was described in the provisional specification, and do not cover the invention that is described in the other."

In this case the inventors had described in the provisional specification a mixture of bisulphide of lime, with a certain quantity of gelatine, as a preservative for fresh meat, &c., but in the complete specification had made a claim for bisulphide of lime alone. This was held to be a further invention involving a fatal variance.

In Horrocks *v.* Stubbs [1] the inventors had described means for arresting a machine for doubling, twisting, and winding threads in event of the breaking of any thread, adding in the complete a prop for holding up the oscillating frame which caused the arrest until the broken thread was again joined. This was held a further invention and fatal variance. A claim in the complete specification for something different from that which is contained in, or foreshadowed by, or fairly results from the provisional specification renders the patent void.[2]

Improvements in the arrangement of the mechanism, in the relative position and adaptation of the different parts with a view of producing the same results, the substitution of mechanical equivalents and modifications and developments within the scope of the invention set out in the provisional specification, cannot be held to invalidate a patent on the ground of disconformity between the provisional and complete specifications.[3]

It would appear also that where a combination of parts

[1] 1886, III *R.P.C.*, 232.
[2] 1886, III *R.P.C.*, 233.
[3] Per Lopes, L.J., in Woodward *v.* Sansom, IV *R.P.C.*, 166.

is visible in the provisional specification the complete may comprise more than the method of combining or arranging them.[1]

Nevertheless, if an improvement is made between the filing of the provisional and the complete specifications, and is within the terms of the provisional specification, it not only *may* but *ought* to be described. In Woodward *v.* Sansum,[2] a patentee in his provisional specification described a mode of carrying his invention into effect which was different from that which he stated in the complete specification :—*Held*, that as both modes were really within the same invention, which was described in general terms in the provisional specification, the patent was not bad.

This judgment was quoted with approval in Siddell *v.* Vickers,[3] where, moreover, it was pointed out that the complete specification might also give a fuller and better description of the nature of the invention, and should do so if the provisional was in that respect at all defective. The provisional may be read in the light of the complete to ascertain if its meaning is doubtful.[4]

The determining factor in this question of the varying of methods described in a provisional, would appear to be whether the variation is still within the nature or principle of the invention.

Omission of Part of Invention.—If an applicant has included in his provisional specification more than can be sustained from want of novelty or otherwise, he may omit part in the complete specification, confining the latter to what can be validly held.

If the patentee were to introduce into his complete specification everything which was warranted by the terms of the provisional specification, and afterwards found that a part of that which he had claimed would invalidate his patent for want of novelty or for any other reason, he might afterwards cure the objection by a disclaimer. Now if he would be allowed to disclaim in such a case, which is matter of indulgence, he must have a right to waive his claim to any portion of the grant which the allowance of the provisional specification entitled him to demand.[5]

[1] Watling *v.* Stevens, III *R.P.C.*, 41.
[2] IV *R.P.C.*, 166.
[3] 39 *Ch. D.*, 92.
[4] V *R.P.C.*, 81.
[5] Lord Chancellor Chelmsford in Penn *v.* Bibby, *L.R.*, 2 *Ch.*, 134.

But the remainder must not be altered by the omission.[1]

Where an inventor had originally stated his invention to lie in the employment of wood in the construction of bearings for propeller shafts, &c., in his provisional specification; while describing the method of employment in the complete, his claim for the method "as therein described" was not held such variation as to invalidate the patent.[2] But where a provisional specification described a particular process for treating oils and fats, while the complete did not treat the process as an essential part of the invention, it was held a fatal variance.[3]

A patent for a tap that differed from certain others, only in the employment of a gauze strainer mentioned in the complete specification, was held invalid on account of disconformity, since this strainer was not mentioned in the provisional specification.[4]

According to the Court of Appeal in Gadd *v.* Mayor, &c., of Manchester,[5] for deciding a question of variance, only two questions have to be considered, viz.: (1) What is the nature of the invention for which the patentee has obtained provisional protection? and (2) Is what is described in the complete specification an invention of a different nature from the former?

For further information applicable to the preparing of this specification *see* Chapter XIX on Construction of Specification.

Claims.—Each complete specification must end with a distinct statement of the invention claimed.[6] This has been interpreted by the Law Officer to mean that the statement referred to must be "distinct" from the specification,[7] though it may refer to the specification, and not that the statement must necessarily be distinct in itself in the sense of clear and unambiguous.

Nevertheless this statement, which is called the "claim," should naturally be in clear words so that there may be no mistake as to what the applicant wishes to reserve for himself.

Until the Act of 1883 was passed there was no statutory requirement that a claim should be inserted in the specification, though as a matter of convenience it was usual for those draughting specifications to sum up the heads of novelty which

[1] Thomas *v.* Welch, *L.R.*, 1 *C.P.*, 192.
[2] Penn *v.* Bibby, *L.R.*, 2 *Ch.*, 127.
[3] Hutchinson *v.* Pattullo, V *R.P.C.*, 351.
[4] Nuttall *v.* Hargreaves, VIII *R.P.C.*, 150.
[5] IX *R.P.C.*, 526.
[6] Patents Act, 1883, Sect. 5 (5).
[7] *Re* Smith's Patent, 1 *Griff.*, 268 (*see* page 164).

the patentee desired to hold for himself. Nor, under the present Act is a claim an absolute necessity, since it has been held by the House of Lords,[1] holding the same opinion as to the word "distinct," that *so long as the limits of the invention claimed are clearly discernible in the specification*, the absence of a clear claim at the end is not vital. As this means simply that the whole specification in such case should be the "claim," the inventor cannot, on the strength of that decision, avoid considering the meaning of claims.

The claim is in effect a disclaimer,[2] since, in pointing out exactly what the inventor wishes to reserve monopoly of; it, by inference, points out also what the patent does not cover. Where a claim is made, everything not claimed is held to be disclaimed; and everything described in a specification is held to be claimed unless disclaimed, either by a special disclaiming clause or by non-inclusion in the claiming clause; therefore the absence of a claim would, in ordinary cases, as a matter of fact, cause the loss of the patent owing to want of other distinction between what is new and what is old.

The value of a claim for a patentee, is that it enables him readily to fulfil the duty the law requires of distinguishing new from old. As the patentee is entitled to every point of novel and useful subject matter, that may be included in his specification; his claims should state, in the fewest possible words, what those points are. This must be done with due regard to Patent Law, so that it may not be said that what the patentee has claimed is not proper subject matter within the Patent Law; it must not be too wide, that want of novelty can be alleged against it, nor too narrow that the patentee should lose a part of his rights. It must, moreover, be certain and clear so that the patent may not be held void for ambiguity.

From the above it will be apparent that the claim is the most important part of the specification. Every word in it (or them, for more than one claim may be made) must be carefully weighed, for any one word will usually materially vary the scope of the claim, consequently the extent of the monopoly and the value of the patent. For further explanation on the latter head *see* Part I, especially pages 46 to 49.

Under the above decision,[3] that so long as the claim is distinct—apart—from the specification it fulfils the requirements of the Act; the examiners no longer see that the

[1] Siddell *v.* Vickers, VII *R.P.C.*, 292.
[2] Lucas *v.* Miller, II *R.P.C.*, 155.
[3] *Re* Smith's Patent, 1 *Griff.*, 268.

claims cover the invention properly, for their duties (*see* pages 28 to 34, and 162) do not extend to that point. This throws the whole onus on the applicant or his patent agent, and in view of the great importance of logical accuracy in the claims too much care cannot be given to their consideration.

Claims are not intended to be made for the *advantages*, &c., of the invention but for the subject matter of the invention itself.

CHAPTER XVII.

OPPOSITION TO THE GRANT OF LETTERS PATENT.

Time for Opposition.—When the complete specification of the invention has been "accepted" by the Comptroller of Patents, this fact is notified to the public in the next weekly issue of the "Illustrated Official Journal of Patents."

The notice of "acceptance" is not accompanied by any illustration or details of the invention, but the original specification and drawings may then be seen at the Patent Office on payment of 1*s.* fee; and about three weeks after the "acceptance," the printed specifications with drawings are issued at the uniform price of 8*d.* per copy. Within two calendar months of the date of the official journal in which the fact of acceptance is notified, any person may file a form (*see* Appendix II) of opposition to the grant of the patent, on one of the three following grounds,[1] but no others:—

Grounds for Opposition.—The sole grounds for opposition are (*a*) that the applicant for patent has obtained the invention from the opponent, or from a person of whom he is the legal representative; (*b*) that the invention has been patented in this country on an application of prior date; and (*c*) 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.

The above are the only grounds on which the grant of a patent may be opposed, although there are other grounds on which the patent might be revoked, or held inoperative, after the grant.[2]

First Ground of Opposition: Fraud on Opponent.—This ground, namely, that the invention was obtained from the

[1] Patents Act, 1883, Sect. 11, sub-sect. 1, as amended by the Act of 1888, Sect. 4.

[2] *See* Chapters XX and XXIII.

opponent, or from a person of whom the opponent is the legal representative, will usually be based more or less on an allegation of fraud, since the free communication of an invention from one to another for the purpose of taking a patent, in the name of that other, is not countenanced by the British Patent Law.

Thus, where an opposition was filed alleging that the invention had been obtained from the opponent, it was successful, though the opponent had accompanied the applicant to instruct the patent agent, and had himself suggested that it should be applied for in the name of the applicant.[1] Decision in a case of fraud always presents considerable difficulty, owing to the diversity usually found between the declarations of fact on the side of the applicant and opponent respectively. Since the Comptroller has no power of examining witnesses on oath, declarants cannot be subjected to cross-examination before him; so that, unless a very clear case is proved, it will usually be hopeless to stop the grant of the patent. Where the documentary evidence presented is of a very contradictory nature, instances are at hand in which the parties have agreed to accept judgment from the Comptroller, allowing the patent to proceed, in order that the case may be fought out on appeal before the Law Officer who can administer oaths.[2]

Usually, in oppositions of this kind, it is found that the invention as patented is somewhat different from that which the applicant is alleged to have obtained; thus, in *re* Eadie's Patent,[3] it was held proved that E. had received from B. the idea of a particular kind of traveller used in spinning machinery, with a straight part for the thread to take two or more turns. E.'s application for patent covered a traveller having two such straight parts. It was decided by the Comptroller to grant a joint patent to B. and E.

In Evans and Otway's Patent,[4] opposed by C., who had been jointly experimenting with Evans, and claimed to be the inventor, the evidence was so contradictory that the Law Officer decided to grant the patent, provided a half-share was assigned to C., the latter having also applied for a patent, to assign a half-share of that to E. Otway, however, a capitalist, added to the application, whose signature was necessary to the assignment, could not be found, so the order was varied to the

[1] *Re* Marshall's Application, 1888, V *R.P.C.*, 661.
[2] *Re* Luke's Patent, *re* Evans and Otway's Patent, *infra*.
[3] *Griff.*, 279.
[4] *Griff.*, 279.

effect that E. and O.'s application be refused provided C. assigned half his application to E. A similar decision was given by the Comptroller in *re* Garthwaite's Patent,[1] opposed by K., who had also filed an application for patent for a similar invention.

In *re* Luke's Patent,[2] opposition was filed by T. on the ground that L. had obtained the invention from him whilst in his employ and confidence; the usual conflict of evidence arose, and the Comptroller, on the request of the parties, permitted the patent to proceed with a view of the rights of the parties being determined on appeal. The Law Officer held that L. had not obtained the whole of the invention from T., but that a part at least of the merits of the invention was due to T., and the parties were required to enter into an agreement to secure a half share of the patent to T. To secure the carrying out of this arrangement, refusal of T. to enter such agreement was to entail grant of patent, refusal of L. loss of patent.

In Paterson's patent,[3] the opponent D. sought to show that P. had seen and heard of an invention in the Cork Butter Market, for which he, D., had applied for a patent, and that P. had embodied the invention so learnt in the complete specification filed to complete a prior application of his own, previous to D.'s application. The opposition was successful in spite of a cross opposition of P. to grant D.'s patent. This case occurred before the third ground of opposition, as at present worded, was permitted to be put forward, and may be held to show that an invention may be proved to be obtained indirectly from the opponent.

The Law Officer will take a lawyer's view of the evidence, and be guided as much by the absence of direct evidence, as by the direct statement of the interested parties. Thus in a case where the applicant had declared and maintained that he had received the invention as a communication from a person resident in America, but produced no instructions of any kind or any papers, letters, &c., in support of his statement, the patent was refused on the opposition of the true inventor, who had from time to time communicated to a board of a limited company of which the applicant was a director, certain formulæ on which the specification appeared to have been founded, these formulæ having been entered by the opponent in a

[1] *Griff.*, 284.
[2] *Griff.*, 295.
[3] *Griff.*, 296.

memorandum book used by her and put in evidence in the case.[1]

Fraud abroad.—In respect of inventions acquired abroad it is held that neither the Comptroller nor the Law Officer has any jurisdiction to enquire into any circumstances under which an applicant may have acquired an invention out of this realm.

The words in the section of the Act referring to opposition made by a person, alleging that the invention has been obtained from him, are only intended to apply to communications in this country, and not to communications from abroad;[2] for it is settled law that the person importing the invention into the realm is the true and first inventor;[3] and for the purposes of the application it matters not under what circumstances he obtained the invention abroad. The "importer" may be liable to the person from whom he has obtained the invention abroad in respect of the breach of some contract or duty, but those are matters into which neither the Law Officer nor the Comptroller can inquire.[4] This decision was followed in *re* Lake's Patent.[5]

It would appear therefore from the cases above cited that in respect of foreign inventions fraud cannot be proved as a bar to the patent, especially when the application is made by a resident in Great Britain, by way of communication from abroad.

Master and servant.—It is settled law, that where an inventor employs others to work out the details of the invention, the modifications, &c., that they may suggest are the property of the employer. In David and Woodley's Application[6] this principle was applied to the refusal of a patent to the *employé* on the opposition of the employer.

In Homan's Patent,[7] the opposition of the *employé* to the grant of the patent to the applicant failed, although the *employé* had registered the invention as a "design," it being held that it was the applicant, who alone could claim originality in the particular invention.

Opponent as Legal Representative of Defrauded Person.—In respect of obtaining an invention from a person

[1] VI *R.P.C.*, 296.
[2] Edmund's Patent, *Griff.*, 284.
[3] Edgeberry *v.* Stevens, *see* Chapter VII.
[4] Per Webster, A.G., in Edmund's Patent.
[5] V *R.P.C.*, 415.
[6] 2 *Griff.*, 26.
[7] VI *R.P.C.*, 104.

of whom the opponent alleges that he is the legal representative, it has not been determined exactly who may or may not be considered the legal representative. In Edmund's Application it was supposed that this term meant the administrator of a deceased person, and not the holder of a power of attorney, but it was not necessary then to decide the point. In Macfarlane's Application,[1] under the old law, a company successfully opposed the grant of a patent, on the ground that the invention had been obtained from their engineer and chemist.

In the matter of Spiel's Application,[2] however, the opponents, as assignees of the patents and inventions of Johannes Spiel with all improvements thereon, failed to prevent grant of a patent to the applicant, Adolph Spiel, brother of the former; firstly, because the Comptroller held that he had no jurisdiction to enquire into the matter of fraud, the applicant and alleged *communicator* being resident abroad; and secondly, on appeal, because even if the fraud were proved, they had no *locus standi* to oppose, not being the legal representatives of Johannes Spiel.

Application for Patent by Opponent.—It would appear that to place himself in order, the opponent, who alleges that he is the first inventor and that the invention has been taken from him, should himself make an application for patent in the usual way, since the patent he opposes cannot be granted to himself in lieu of the applicant.

This application should be filed at the earliest possible moment, so as to antedate disclosure of the invention. Sect. 35 of the Act of 1883 provides that a patent 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 *during the period of provisional protection.*

Second Ground of Opposition: Prior Patent.— No patent will be granted if the opponent proves that the invention was patented before *in this country*, even though the validity of the prior patent is disputed;[3] nor may the applicant attack the validity of former patents relied on by the opponent.[4] It is, however, allowable to the applicant to produce other prior patents, or otherwise prove the state of the art at the

[1] *John*, 168.
[2] 1888, V *R.P.C.*, 281.
[3] *Re* Manceaux's Patent, 1870, *L.R.*, 2 *Ch.*, 272.
[4] *Re* Jones' Patent, 11 *Griff.*, 34.

time of the opponent's patents for the purpose of showing the true extent of the patents brought up in opposition to the applicant's.[1] It is immaterial whether the prior patent relied on is still in force or has expired.[2] Before the passing of the Act of 1883, when patents were granted before the complete specification was filed, it was held to be questionable whether any objection could be made to the grant of patent on the ground of the invention having been previously patented, where no complete specification of the invention had been filed.[3] Subsequently, however, to the passing of the Act of 1883 it has been decided,[4] that the words "Patented in this country" do not include inventions which have received provisional protection only, so that uncompleted provisional protections, even when published (they are not published at the present time) cannot be quoted in opposition to the grant of a patent. Opposition can, however, be filed on the ground of a previous patent when the complete specification of that patent has been "accepted," although the Letters Patent have not yet been actually granted.[5] It has been held that, to be successful in opposition, the prior patent relied on must not only describe the invention but absolutely claim it, otherwise it is not considered "patented."[6]

But question cannot be raised whether the patents quoted by the opponent in opposition were really entitled to claim the invention in question, so long as it is found to be actually claimed, *i.e.*, patented therein. Thus the applicant cannot resist on the ground that in that respect the complete specification of the prior patent goes beyond the provisional.[7]

As respects matter described in the applicant's specification but not included in his claims, the applicant may be ordered either to omit the matter, or file disclaimer to show more clearly that he does not intend to claim such matter,[8] and where the applicant has described matter in his provisional specification, to which he has omitted all reference in the complete, he may be ordered to insert in the latter a specific disclaimer of

[1] *Re* Jones' Patent, 11 *Griff.*, 34.
[2] *Re* Lancaster's Patent, 1 *Griff.*, 293.
[3] *Re* Scott and Young's Patent, 1871, 18 *W.R.*, 425.
[4] *Re* Bailey's Patent, 1886, 1 *Griff.*, 270.
[5] L'Oiseau and Pierrard's Application, 1887, 2 *Griff.*, 38.
[6] *Re* Von Buch's Patent, 2 *Griff.*, 42.
[7] *Re* Green's Patent, 1 *Griff.*, 286 (*see*, however, third ground of opposition.
[8] *Re* Teague's Patent, 1 *Griff.*, 299.

such matter in case the provisional might be read to explain the complete.[1]

In order to refuse the grant of a patent there must be more than a slight difference; the alleged invention must be identical with the prior patent.[2]

It has always been considered preferable, where there is any doubt, to grant a patent rather than refuse one, for there is no remedy to the applicant if a patent be refused, while if it be granted it can at any time be revoked if sufficient cause be shown.[3] This is always upheld and acted upon, so that unless exact similarity is shown throughout between the invention sought to be patented, or some separately claimed part of it, and such previous inventions as are relied on, the patent will be sealed.

Insertion of Reference to previous Patent.—It is, however, usually ordered, where there is room for any doubt,[4] that the applicant should insert in his specification a disclaiming clause to the effect that he does not intend to cover the previous inventions referred to. It is supposed that this disclaimer is intended to protect the public so that the specification should not appear to claim more than the applicant is really entitled to;[5] and so far as this goes no applicant should object to entering a disclaiming clause if it is necessary for this purpose, as otherwise his patent would be bad by reason of false suggestion.

If a specification is properly drawn up, it should not need any disclaiming clause to make its meaning clearer; nevertheless, if a disclaiming clause is necessary, it is preferable from the applicant's point of view that it should be in general terms and avoid mention of any special previous patent by number and date, since dealings with the patent may be prejudiced, owing to a natural public belief that such a reference is evidence that the second patent is subsidiary to the first, and cannot be used without infringement. On opposition, questions of infringement cannot be in any way considered, so that the effect of these personal references to opponent's specification is to give, without just cause, a misleading idea which is much to the prejudice of the applicant's patent.

In Anderson and McKinnell's application[6] the Solicitor-

[1] *Re* Hookham's Patent, 2 *Griff.*, 32.
[2] *Re* Stubbs' Patent, 1 *Griff.*, 298; Jones' Patent, 2 *Griff.*, 34.
[3] *Re* Russell's Patent, 1857, 2 *De G. and J.*, 130.
[4] *Re* Welch's Patent, 1 *Griff.*, 302.
[5] *Re* Lorrain's Application, V *R.P.C.*, 142.
[6] 2 *Griff.*, 25.

General said: "Of all ways of protecting pre-existing arrangements in matters of this kind, the one I should be least willing to adopt, would be the mention in one specification of the fact of another patent being in existence." The question would naturally be whether the disclaimer inserted is sufficient to protect the rights of the opponent; it was held that a disclaiming clause naming the actual matter found to be embodied in the former patent was quite sufficient to protect the former patentee without naming his patent by number and date.[1]

In *re* Guest and Barrow's Patent[2] it was held that a prior patentee has no right to be specially named unless the applicants are willing to name him and unless it is clear that there is no other publication except the one that is mentioned. A general disclaimer as to state of knowledge was here held sufficient. The onus is on the opponent to show that a disclaimer is necessary to protect him.[3] The Attorney-General in *re* Sielaff's Patent[4] upheld a requirement for a general disclaimer, quoting, with approval, the decision above mentioned in Anderson *v.* McKinnell's Patent.

The matter cannot, however, be considered placed on a satisfactory footing until the case of Stell's Patent,[5] opposed by Farrar. In Attorney-General Sir Richard Webster's own words:—

"The principles upon which the Law Officers have acted now for some years in allowing disclaiming clauses are, first, if it appears clear that upon the invention claimed by the prior patentee there will be a repetition of the claim to the earlier invention in the later patent; and, secondly, if it is clear that the public would be misled by the later specification without disclaimer. . . . I am far from saying that that claim (Farrar's) cannot be infringed by the substitution of a mechanical equivalent. That is a matter which will have to be decided if ever the case comes to be tried, but the Law Officer has nothing to do with the question of infringement in deciding upon the propriety or impropriety of inserting a disclaimer. When, however, we see the combination which is the subject of Stell's claim in form it is different. It may be mechanically equivalent and it may be an infringement. But on what ground could Mr. Goodeve's client ask for a special disclaimer and reference? It seems to me it must be upon the ground that the matter is

[1] *Re* Cooper and Ford's Patent, 1 *Griff.*, 275.
[2] V *R.P.C.*, 312.
[3] *Re* Stell's Patent, VIII *R.P.C.*, 237.
[4] V *R.P.C.*, 484.
[5] *Supra.*

so clear that the Law Officer must decide that the reading of the claim of Stell's specification will be a repetition of Farrar's claim. I am not prepared to go as far as that. I repeat that I do not express any opinion whether it is an infringement or not, but I am not prepared to say that it can be nothing more than a repetition of Farrar's claim. There is another reason which I have had occasion lately several times to enunciate why I cannot allow a disclaiming clause in this case; I can well conceive that, assuming Stell's invention not to be an infringement of Farrar's invention, injury might be done to any owner of Stell's patent. The disclaimer asked for is a disclaimer with special reference to Farrar's specification, No. 16,752 of 1887. It is quite clear that the Law Officer is not in a position to be satisfied that he has the whole knowledge before him. I do not know whether, if this matter comes to be investigated, there may not be other specifications covering some part of the ground as near to Stell as Farrar's or, at any rate, indicating that a disclaimer should be in wider terms or should have reference to other existing arrangements besides those which are covered by Farrar's specification. It is obvious that a disclaimer which has reference solely to Farrar's specification might be construed as not being sufficiently wide to include a correct description of the antecedent state of knowledge. Therefore, I cannot see that any injury will be done to Farrar by the granting of a patent to Stell, and I cannot, in the face of the very particular claim properly so framed of Farrar in his specification No. 16,752 of 1887, construe the claim proposed to be put in Stell's specification as being a repetition of that claim, and that claim only, especially having regard to the alteration of the claim which is required by the Comptroller to limit the claim to the combination as distinguished from the subordinate parts of the combination. I think that the onus lies upon a prior patentee who asks for a disclaimer to show that it is necessary. Many years ago Lord Cairns pointed out that these rival disclaimers were of no value to the prior patentee except for the purpose of preventing the public being misled, or of preventing unfair dealing by means of patents which might be subsequently granted. I think that a prior patentee who asks for a disclaimer must satisfy the Comptroller, or the Law Officer on appeal, that it is necessary for his protection, and in this case, whether I regard the special language of Farrar's specification or whether I regard the state of knowledge which is before me, I am satisfied that there is no special injury to the owner

of Farrar's patent requiring that a disclaimer should be inserted."

An opponent may appeal to get a reference to his patent inserted, although he does not appeal against the allowance of the patent.[1]

The antedating of an application filed under International Convention does not give a right to oppose an application made in the meantime, although the patent on the latter may be invalidated by such antedated patent.[2]

It is, of course, within the competence of the Comptroller to require an amendment of the specification, or claims of the applicant, or the omission of any claim, if he is satisfied that that part covers an invention already patented, and he may allow the patent subject to such amendment. The Law Officers have also at times suggested that amendment is required, and have permitted the applicant to suggest and embody an amendment so long as it does not widen the invention.[3]

The Third Ground of Opposition was substituted by the amending Act of 1888 for a previous wording by which the report of an examiner that two pending applications were similar inventions was made a ground for opposition. These reports having been found of questionable utility were abandoned. In the only reported case since the amended Act in which this ground was relied on,[4] the opponents failed to prove that the applicants' complete specification, which admittedly included the opponents' invention, was in this respect at variance with, or went beyond, the provisional specification. If the opponents had been able to show that the applicants had in any way obtained the invention from them, then, according to the Attorney-General, there should be no hesitation in striking out the claims and description from the specification, but this not being proved, it is necessary to examine as to whether the invention particularly described in the complete specification is or is not substantially the same as that described in the provisional specification, and if there is not sufficient material to say that there is disconformity, then the patent should be allowed without any amendment of the complete specification.

This decision emphasises the fact that it is necessary to show all the invention sufficiently fully and accurately in the

[1] *Re* Brownhill's Patent, VI *R.P.C.*, 105.
[2] *Re* Everitt's Patent, 2 *Griff.*, 29.
[3] *Re* Fletcher's Patent, 2 *Griff.*, 31.
[4] *Re* Anderson and Anderson's Patent, VII *R.P.C.*, 323.

provisional specification, that this disconformity will not arise when the invention is fully described in the complete specification.

Filing Opposition.—The Form of Opposition (*see* Appendix II) must be signed by the opponent in person, and state his address for service in the United Kingdom.[1]

Where the ground of opposition is that the invention has been patented on an application or applications of previous date, each patent so relied on must be stated in above form by its number, date, and title.[2] Where an opponent had omitted to give the title of the patent, the Law Officer allowed the form to be amended at the hearing,[3] but where a patent which might have been relied on had been omitted amendment of form was refused,[4] thus excluding the omitted patent from consideration. The Comptroller has a general power to permit amendment of the opposition form.[5]

Where a patent agent had filled in his own name as opponent and signed the form with his own name, adding "Agent for opponent," the true opponent was permitted to substitute his own name.[6]

Practice in Opposition: Evidence in Support.—Where a notice of opposition is filed, a copy is sent by the Patent Office to the applicant or his agent.

Whatever may be the date when the form of opposition was filed, the opponent has 14 days after the expiration of the two months from the date of the advertisement in the journal of the acceptance of the complete specification, within which to file at the Patent Office sworn declarations by himself or others substantiating the grounds of his opposition, and to deliver a list of these declarations to the applicant or his agent.[7] Within 14 days from the receipt of this list, the applicant having meanwhile obtained, at his order and expense, copies of the declarations from the Patent Office, may answer these by sworn declarations, made by himself or others, stating the grounds on which he relies in support of his application, and must deliver a list thereof to the opponent.[8] The latter is

[1] Rule 32.
[2] Rule 34.
[3] *Re* Airey's Patent, V *R.P.C.*, 348.
[4] *Re* Bailey's Patent, 1 *Griff.*, 270.
[5] *Re* Daniel's Patent, V *R.P.C.*, 413.
[6] *Re* Lake's Patent, 2 *Griff.*, 35.
[7] Rule 35.
[8] Rule 36.

allowed a further seven days from receipt of this list to file further declarations in answer to the last, and deliver a list thereof to the applicant; but these declarations must be confined strictly to matters in reply.[1] No further evidence can afterwards be given by either party without special leave of the Comptroller of Patents.[2] In case of necessity, any of these times for filing declarations may be extended by order of the Comptroller on the special application of either party. It is customary to accompany the request for extension of time by the consent of the opposite party to such an extension, this consent being usually readily given.

Hearing before Comptroller.—The filing of declarations being completed, or the time for filing having passed, the Comptroller of Patents may fix a day for hearing the parties, or he may await the request of either party to be heard, made upon a form bearing a 1*l.* stamp. The other party, if also desirous of being heard, must send in a similar stamped form. The applicant and opponent, by themselves or their agents, are on payment by each of above fee entitled to be heard at the time and place[3] appointed for that purpose by the Comptroller, who, after argument before him, will usually reserve his judgment and communicate the same in writing to the applicant and opponent respectively.

Appeal to Law Officer.—If either party is dissatisfied with the judgment of the Comptroller or any part of it he may appeal to the Law Officer from the whole or part; but in such case he must within 14 days from the date of the decision of the Comptroller file in the Patent Office a notice of his intention to appeal, stating the nature of the decision appealed against, whether the appeal is from the whole or part only, and if so, what part of such decision.

The Comptroller may in special cases extend the period of 14 days for filing the appeal.

Where the Comptroller's decision requires an amendment of the specification, such as the introduction of a disclaiming clause, leaving to the applicant to suggest the exact words for such amendment as will answer the decision, the time during which appeal can be filed will run from the day the Comptroller notifies that he has accepted such and such amendment.[4]

[1] Rule 37.
[2] Rule 39.
[3] The Comptroller is now provided with a Court for this purpose at the Patent Office.
[4] *Re* Chandler's Patent, 1 *Griff.*, 273.

For the Form of Appeal, which must be signed by appellant in person, *see* Appendix II.

A copy must be sent to the Law Officer's clerk, and another to the other party.

Procedure on Appeal.—No further evidence can be filed, except as to matters which have come to the knowledge of either party, subsequent to the date of the Comptroller's decision, without special leave of the Law Officer given upon application for that purpose. The Law Officer will appoint a day for hearing, may examine witnesses on oath, which the Comptroller cannot do, and it is also within the power of the Law Officer to award costs to the successful party.[1]

Who may Oppose.—Under Sect. 11, sub-sect. 1 of the Act of 1883, "any person" may oppose the grant of a patent, but by sub-sect. 3 it is provided in the case of a notice being given of appeal from the decision of the Comptroller that "the Law Officer shall, if required, hear the applicant and any person so giving notice, *and being in the opinion of the Law Officer entitled to be heard in opposition to the grant*, and shall determine whether the grant ought or ought not to be made." Under this sub-section the Law Officer has at different times refused to hear opponents, with the result in all cases that the opposition has failed; whether in direct consequence of the refusal to hear the opponent or not, does not appear. It would seem that if "any person" may oppose before the Comptroller he should be allowed to be heard on appeal, and that the words of the section "entitled to be heard in opposition to the grant" should rather be held to refer to the conduct of the opposition up to that point. The Law Officers have, however, in all cases decided that no person is entitled to be heard unless he was, or is, in their opinion sufficiently and properly a party interested in the refusal of the patent. The necessary corollary of this is that in such case the Law Officer, refusing to hear one side, is not in a position to determine that the grant of patent should not be made, and refusing to hear a person on the ground that such person was not entitled to oppose, is tantamount to refusing to consider the opposition as of any effect; for if it was intended to deprive the Law Officer of the advantage of hearing the opponent in event of his want of personal right to oppose, it was naturally intended that the opposition should be accounted null and of no effect in such a case, so the patent should proceed. Either, therefore, the concluding words of sub-sect. 3

[1] Patents Act, 1883, Sect. 33.

are in such cases rendered of no effect, or else the proceeding of judging of the propriety of the grant is to be needlessly prejudiced by the arbitrary and needless silencing of one of the parties.

Persons Entitled to be Heard.—A party is not entitled to be heard in opposition on appeal, so apparently not entitled to oppose, if he merely opposes as one of the public,[1] following the precedent established in *re* Globbop's Patent,[2] where the Solicitor-General, previous to considering the decision of the Comptroller allowing the patent, satisfied himself that the opponent was entitled to be heard, as being a manufacturer of the invention included in the previous patent as assignee thereof, although the patent had expired. A person who has no interest in prior patents except that he has manufactured under one of them is not entitled to be heard,[3] nor is a person intending to work inventions disclosed by previous patents entitled to be heard on the ground of such patents existing.[4] A patent agent cannot be heard on an opposition in his own name, though on behalf of a client,[5] but may represent and be heard on behalf of a client who has a right to oppose.

[1] Hookham's Patent, 2 *Griff.*, 32.
[2] 1 *Griff.*, 285.
[3] McEvoy's Application, V *R.P.C.*, 295.
[4] Bairstow's Application, V *R.P.C.*, 286.
[5] Heath and Frost's Patent, 1 *Griff.*, 283.

Chapter XVIII.

ENFORCEMENT OF PATENT: THREATS.

Enforcement by Civil Process.—The State, in giving to an inventor an exclusive monopoly of his alleged invention under the form of a patent, does not directly guarantee him against infringement of his rights by others; that is to say, the patentee cannot proceed summarily to stop an infringement, but must apply to the High Court for an injunction against the continuance of the alleged infringement, and for such relief as the case merits, unless the infringer desists on request and affords satisfaction for any injury the patentee may have sustained.

Although the infringer acts in direct contravention of the Letters Patent, which forbid use of the invention by any others than the patentee and those sanctioned by him, this infraction is not a case for public prosecution, since the Crown has never guaranteed that the patent is one that can be upheld. As the patent is given solely at the risk of the applicant, it is for the latter to show that it is a monopoly which, in his particular case, satisfies the law and should be enforced.

Presumption is, of course, in favour of the grant of patent being valid, but is not carried so far as to permit the Court to impose any fine or penalty for non-observance of the patent, even if the result of a suit of infringement should be to show the validity of the patent beyond question; but after a patent has been once victorious in the Courts the patentee obtains the privilege, that he may receive a certificate to the effect that the validity of the patent came in question; and in any future suit of infringement that he may require to bring on that patent, and brings with success, this certificate will enable him to obtain his full costs as between solicitor and client, unless the Court or judge trying the action certifies that he ought not to have the same.[1]

Punishment may be inflicted upon an infringer who breaks

[1] Patents Act, 1883, Sect. 31.

an injunction delivered against him by the Court, because the breach is a contempt of the order of the Court; not because it is a contempt of the wording of the patent.

Remedy for Infringement.—The patentee may sue for an injunction (in Scotland, an interdict) against the infringement, and may also either obtain from the infringer damages equivalent to the loss caused to him by the infringement, or an account of the profits that the infringer himself has made by such infringement, and an order for those profits to be handed to the patentee. A patentee cannot have damages as well as an account of profits, he must choose which he will sue for.[1]

By Sect. 30 of the Act of 1883, in an action for infringement of a patent, the Court or a judge 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 or judge may see fit.

Injunction.—If a patentee has reasonable ground to apprehend that a man will infringe his right, he can come to the Court and obtain an injunction to restraim him from carrying out his intention.

According to Sir George Jessel in the case of Frearson *v.* Loe:[2] "The mischief done by the threatened infringement of a patent may be very great; and I see no reason why a patentee should not be entitled to the same protection as every other person is entitled to claim from the Court from threatened injury, where that threatened injury would be very serious. It seems to me that where there is a deliberate intention expressed and about to be carried into execution, to infringe certain Letters Patent under the claim of a right to use the invention patented, the plaintiff is entitled to come to this Court to restrain that threatened injury. Of course it must be plain that what is threatened to be done is an infringement."[3]

An injunction will not be granted where the infringement has ceased for a considerable time and there is no evidence that the defendant has any intention of recommencing.[4] Where a person has done a wrongful act in infringing a patent, the probability will generally be that he will continue it, unless there is anything which prevents that probability from arising. The Court should consider all the circumstances of the case, so

[1] De Vitre *v.* Betts, 1873, *L.R.*, 6 *H.L.*, 319.
[2] *L.R.*, 9 *Ch. D.*, 48.
[3] Quoted and followed in Dowling *v.* Billington, VII *R.P.C.*, 201.
[4] Proctor *v.* Bailey, VI *R.P.C.*, 538.

as to draw an inference that there is a likelihood of the infringement.[1] The mere promise of the defendant not to continue infringement is not sufficient, if the Court infers from continuance of the infringement, that there is probability of its recurrence.[2]

Interlocutory Injunction.—Since a considerable time may often elapse before a case comes on for hearing, the Court will in some instances grant an injunction till the trial of the action, subject always, however, to the plaintiff entering into an undertaking in damages in case he should fail in the action. The question whether such an injunction should be granted or not depends upon the balance of convenience; thus where a defendant's company with small capital had just started a business and would probably not have the wherewithal to pay damages if the infringement continued, an injunction was granted.[2] As a rule, however, such an interim injunction is refused on the ground that if the patent is successful the measure of damage from the infringement continuing in the meantime is easily ascertained, while if the defendant be prevented from issuing the invention and the patent is afterwards found unsustainable, the measure of damage sustained by the defendant is most difficult to determine.[3] Interim injunctions are seldom granted unless the patent is of some age,[4] or unless there is some show that the use complained of is actually an infringement.[5] Wherever the injunction is refused the defendant will be required to keep an account for the purpose of ascertaining his profits in case the patent should be successful.[6] But where infringement is not made out an interim injunction will be refused though the defendant refuses to keep an account.[7]

Account of Profits.—The Court can only order an account of profit to be kept in such cases in which an injunction could be granted;[8] nevertheless the account can be ordered even when no injunction is asked for, if a *primâ facie* case of infringement appears.[9] Such order should only go to sales about to be made; account of sales made before the action is

[1] Millington *v.* Fox, 3 *Myl. and Cr.*, 338; Losh *v.* Hague, 1 *Web.*, 201.
[2] Bracher *v.* Bracher Dean and Company, VII *R.P.C.*, 420.
[3] Thomson *v.* Hughes, VII *R.P.C.*, 76.
[4] Briggs *v.* Lardeur, 1 *R.P.C.*, 126.
[5] Frearson *v.* Loe, *supra* in text.
[6] Jackson *v.* Needle, 1 *R.P.C.*, 174.
[7] British Tanning Company *v.* Groth, VII *R.P.C.*, 1.
[8] Smith *v.* London and South Western Railway, 1854, *Kay*, 408.
[9] Vidi *v.* Smith, 1854, 23 *L.J.*, *Q.B.*, 342.

brought should only be delivered after final judgment.[1] An account of profits will not be ordered if it is clear that no profits have been made.

The amount of profits made by infringing a patent is recoverable by the patentee not as damages, but as money had and received to his use, and the patentee may therefore prove in the bankruptcy of the infringer for these profits.[2] Where an inquiry into profits is ordered the defendant cannot refuse to allow inspection of his books on the ground that he is about to appeal.[3] The inquiry may extend to the profits made by the defendants prior to their employment of the patented invention for the purposes of comparison.[4]

Damages.—The damages recoverable are according to the measure of the loss that the patentee can prove to have sustained through the wrongful acts of the infringers. It is the usual custom to refer an inquiry as to amount of damages to a referee or arbitrator. Where an infringing article has been made and sold to others, damages can be had from the users, even when an account of profits has been had from the manufacturer;[5] but where damages in full have been obtained from some of the users, the manufacturer cannot be called upon to pay damages also in respect of sales to those users;[6] and also if the manufacturer has paid a sum equivalent to damages in full no further damages are recoverable from users who have delivered up the infringing machines.[7] Damages are not measured by the profit made by the infringers, but by the profit lost to the patentee, a fair deduction may be made in respect of sales due to the particular exertions of the infringers;[8] and where the patentee himself has had to sell at a lower price to compete with the infringer the latter is also liable for the difference lost to the patentee on the latter's own sales;[9] except in cases where the reduction was necessary to meet other competitors and was not actually caused by the defendant's acts.[10]

[1] Bergmann *v.* McMillan, 1881, 17 *Ch. D.*, 423.
[2] Watson *v.* Holliday, 1882, 20 *Ch. D.*, 780.
[3] Saxby *v.* Easterbrook, 1872, *L.R.*, 7 *Ex.*, 207.
[4] Siddell *v.* Vickers, 1889, VI *R.P.C.*, 464.
[5] Penn *v.* Bibby, 1866, *L.R.*, 3 *Eq.*, 308.
[6] Penn *v.* Jack, 1867, *L.R.*, 5 *Eq.*, 81.
[7] United Telephone Company *v.* Walker, 1886, IV *R.P.C.*, 63.
[8] United Horseshoe and Nail Company *v.* Stewart, *H.L.*, 1888, 13 *App. C.*, 401.
[9] American Braided Wire Company *v.* Thomson, 1890, *C.A.*, 44 *Ch. D.*, 274.
[10] United Horseshoe and Nail Company *v.* Stewart, *supra.*

By Sect. 17, sub-sect. 4, of the Act of 1883, if any proceeding shall be taken in respect of an infringement of the patent committed after a failure to make any payment within the prescribed time and before the enlargement thereof, the Court before which the proceeding is proposed to be taken may, if it shall think fit, refuse to award or give any damages in respect of such infringement.

By Sect. 20, where an amendment 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.

Inspection.—Where the plaintiff can make out a *primâ facie* case of infringement, he has right to claim an order to permit him to inspect the alleged infringer's manufacture at his works. Thus, if the invention be for a machine, and it is alleged that the product sold by the defendant can only be produced by a similar machine, the conjecture may be set at rest by an order empowering the plaintiff to see the defendant's machine at work.[1] Not only may the plaintiff's witnesses inspect the defendant's machinery, but it is reasonable that the defendant's witnesses should inspect the plaintiff's machinery for purposes of comparison.[2] The allegation that defendant's is a secret process will not prevent order for inspection, the witnesses being warned that the knowledge so gained is not to be used otherwise than for purposes of evidence in the suit;[3] but an instance is to hand in which the plaintiff himself was excluded from inspection allowed to scientific men, on the ground that the plaintiff and defendant were competitors in trade.[4] And in another case the Court appointed an analyst to sample and report, and the perusal of the report was confined to the judge and leading counsel, the process being secret to the defendant.[5]

Inspection will not be allowed unless it is really required to prove the plaintiff's case.[6] The order may extend to taking

[1] Bovill *v.* Moore, 1815, 2 *Coop. C.C.*, 56.
[2] Russell *v.* Cowley, 1832, 1 *Web. P.C.*, 458; Germ Milling Company *v.* Robinson, 1885, III *R.P.C.*, 11.
[3] Russell *v.* Crichton, 1837, 15 *D. Ct. Sess.*, 1270.
[4] Flower *v.* Lloyd, 1876, *W.N.*, 1876, 169-230.
[5] The Plating Company *v.* Farquharson, 1879, 1 *Griff.*, 187.
[6] Meadows *v.* Kirkman, 1860, 19 *L.T. Rep., N.S.*, 46; Piggott *v.* Anglo-American Telegraph Company, 19 *L.T. Rep., N.S.*, 46.

samples.[1] Where the defendant uses more than one process inspection will only be allowed of that process as to which *primâ facie* case of infringement is made out.[2]

When samples are given by the defendant the plaintiff will seldom be able to show that inspection is necessary.[3] The giving of an order for inspection is always subject to the discretion of the Court.[4]

Intention of Infringer.—It is no answer to say that the infringement was done through ignorance,[5] or without intention to injure the patentee,[6] so long as the latter suffers through the act of infringement he has his remedy against the infringer. Infringement depends on the acts, not on the intentions of the infringer.[7]

Costs.—As a rule the losing party to the case has to pay the costs, but on taxation of costs regard shall be had to the particulars delivered by the plaintiff and by the defendant; and they shall not be allowed any costs in respect of any particular delivered by them, unless the same is certified by the Court or a judge to have been proven to have been reasonable and proper, without regard to the general costs of the case.[8] Where a patent has once been successfully upheld in a Court, the patentee may recover in any subsequent action full costs as between solicitor and client.[9]

Threats.—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 manufacture, use, sale, or purchase of the invention, any person or persons 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) sustained thereby, if the alleged manufacture, use, sale, or purchase to which the threats related was not in fact an infringement of any legal rights of the person making such threats. This, however, does not apply where the person threatening "with due diligence

[1] Davenport *v.* Jepson, 1862, 1 *N.R.*, 307.
[2] Cheetham *v.* Oldham, 1888, V *R.P.C.*, 617.
[3] Sidebottom *v.* Fielden, VIII *R.P.C.*, 267.
[4] McDougall *v.* Partington, VII *R.P.C.*, 357.
[5] Curtis *v.* Platt, 1864, 11 *L.T. Rep., N.S.*, 245.
[6] Heath *v.* Unwin, 1855, *H.L.*, 25 *L.J., C.P.*, 19.
[7] Stead *v.* Anderson, 1847, 2 *Web. P.C.*, 156.
[8] Patents Act, 1883, Sect. 29 (6).
[9] Patents Act, 1883, Sect. 31.

commences and prosecutes an action for infringement of his patent."[1]

It is absolutely necessary for the plaintiff in such action to prove that he is not infringing; but even then the question is one of the balance of convenience and inconvenience, and the Court will use its discretion in deciding whether more harm will be done by granting or refusing the injunction.[2] Where the defendant ceases his threats and undertakes to begin a suit of infringement with due diligence an injunction will not issue.[3] A circular may be a threat though addressed to no one in particular.[4]

[1] Patents Act, 1883, Sect. 32.
[2] Walker *v.* Clarke, 1887, IV *R.P.C.*, 111.
[3] Mackie *v.* Laundry Supply Company, IX *R.P.C.*, 465.
[4] Johnson *v.* Edge, IX *R.P.C.*, 142.

CHAPTER XIX.

CONSTRUCTION OF SPECIFICATION.

Construction of the Specification.—In a suit in which the patent is called in question, especially suits of revocation or infringement, the issue will often turn upon the exact extent of the patent with reference to the particular invention covered by it. To ascertain the exact nature and limits of the patented invention, the patent, that is to say, the title and the specification supporting the patent, must be construed together to find the true ambit of the patent.

This question is naturally very important for the patentee, since, on the legal meaning of his specification, the patent may or may not cover the whole of his actual invention. A review of the rules adopted for the construction of the patent of the specification may therefore not be out of place.

Benevolent Construction.—It has been often said that the specification must be construed benevolently for the patentee, and some confusion has arisen in the meaning to be given to the word benevolently. In a comparatively recent case Lord Justice Lindley said: "I do not like the expression 'benevolent' interpretation, I do not believe in it. The question is whether a given construction is the true construction; but of course, if any patent is capable of more constructions than one, the general rule would be applied that you would put upon it that construction which makes it a valid patent, rather than a construction which renders it invalid."[1] A former judgment of Chief Baron Pollock[2] clearly expresses the neutrality with which the specification is to be considered: "I take the rule to be, that, you are not to intend anything in favour of a specification or patent, and certainly not to intend anything against it; you are to deal with it just as you find it; you are to put the true and right and fair construction upon

[1] Needham *v.* Johnson, *C.A.*, 1884, 1 *R.P.C.*, 58; also Automatic Weighing Machine Company *v.* Knight, *C.A.*, 1889, VI *R.P.C.*, 307.

[2] Stevens *v.* Keating, 1848, 2 *Web., P.C.*, 187.

every allegation and every fact connected with it, and you are to find what is the true and fair and just result."

Rules for Construction.—Although the finding of the true meaning of the specification is a question of law, and consequently is left to the judge, when words or sentences of doubtful meaning occur it becomes a question of fact as to their intention and the sense to be put upon them.[1] Words in a specification should always be construed according to their ordinary meaning unless the context requires otherwise.[2] However, if a wrong word is used in the specification it is immaterial so long as there can be no doubt what the correct word should be.[3] The Court should consider to whom the specification is principally addressed, and endeavour to ascertain the meaning it would bear to such persons. In the House of Lords Lord Westbury, in giving judgment in Simpson *v.* Holliday,[4] said: "With respect to the rules that govern the construction of specifications, they are the ordinary rules for the interpretation of written instruments, having regard especially to the fact that the specification must clearly fulfil the obligation imposed on the patentee by the proviso contained in all Letters Patent, viz., that the grant shall be void if the patentee shall not particularly describe and ascertain the nature of the invention and in what manner the same is to be performed. It is, therefore, made a settled rule that the specification must be so expressed as to be perfectly intelligible to a workman of ordinary knowledge, and it must follow that if there be any obscurity or ambiguity in the specification which is likely to mislead, this defect ought not to be helped by any refined or secondary interpretation of the language. . . . When it is stated that an error in a specification which any workman of ordinary skill and experience would perceive and correct will not vitiate a patent, it must be understood of errors which appear on the face of the specification or the drawings it refers to, or which would be at once discovered and corrected in following out the instructions given for any process or manufacture, and the reason is because such errors cannot possibly mislead. But the proposition is not a correct statement of the law if applied to errors which are discoverable only by experiment and further inquiry. Neither is the proposition true of an erroneous statement in a specification amounting to

[1] Derosne *v.* Fairie, 1 *Web. P.C.*, 156; Neilson *v.* Harford, 1 *Web. P.C.*, 372.
[2] Elliott *v.* Turner, 2 *C.B.*, 446.
[3] Derosne *v.* Fairie, *supra*; and Minton *v.* Mower, 1 *Web. P.C.*, 141.
[4] 1868, 12 *L.T. Rep., N.S.*, 99.

a false suggestion, even though the error would be at once observed by a workman possessed of ordinary knowledge of the subject."

Evidence of Meaning of Specification.—There may be a question how far evidence may be allowed with a view of explaining the specification. Evidence may be called to explain technical words or to show the extent of public knowledge at the time the specification was written, and specifications of previous patents may also be referred to show this state of public knowledge,[1] but only if the specification is not clear so far that this prior knowledge may be required for properly ascertaining the meaning of words used in the specification.[2] Previous specifications or other evidence on behalf of the patentee cannot be considered if intended to show that the proper and natural reading of the specification must be avoided in favour of a less obvious reading which would prevent the patent being declared invalid;[3] that is to say, evidence of the prior state of the art is unnecessary and inadmissible for the construction of a *clear* specification.[4] If the specification is misleading, no evidence can be brought tending to show what the patentee had intended to claim as his invention.[5]

Construction a Question of Law.—It will be seen from these decisions that to the judge alone is left the duty of ascertaining the meaning of the specification, after the meaning of doubtful phrases, if any, has been explained in evidence, and the definite intention of the patentee in using those phrases has been ascertained. Evidence is only admissible to explain points on which the judge may be in legal doubt, and cannot be used by the patentee to explain away matters which on the usual meaning of words present no such doubt.

Apparent ambiguity of the specification is thus seen to be provocative of considerable expense in view of the testimony that must be produced to prove its clearness. There is also the further disadvantage that the judge may declare that the specification bears a meaning which perhaps the patentee did not actually intend, and which, consequently, may seriously jeopardise not only the chances of success when the question of actual infringement is considered but the validity of the patent itself.

[1] Hocking *v.* Hocking, *H.L.*, 1886, III *R.P.C.*, 291.
[2] Hocking *v.* Hocking, *H.L.*, 1886, III *R.P.C.*, 291.
[3] Clark *v.* Adie, *H.L.*, 1877, 2 *App. Cas.*, 423.
[4] Clark *v.* Adie, *H.L.*, 1877, 2 *App. Cas.*, 430.
[5] Brooks *v.* Ripley, 1831, 2 *Lond. Jour.*, *C.S.*, 35.

CHAPTER XX.

NATURE OF AND REMEDIES FOR INFRINGEMENT.

Infringement dependent on Scope of Patent.—The question as to whether any individual act is or is not an infringement falls naturally into one or other of two classes according as it concerns the extent of the particular invention or the extent of the rights given by patents generally.

For the first of these questions it is, of course, necessary, as pointed out in the last chapter, that the proper "construction" of the specification be first ascertained, for the result will be modified in a great measure according to the construction put upon the specification by the Court, and the greater or less breadth of the invention which the Court thus declares to be included in the scope of the patent. This question also deals with the particular subject matter of the infringement and rules might be laid down for ascertaining its subject matter just as for finding the subject matter of the patented invention, evidence being brought to bear for this end so far as may be necessary. When the subject matter of the act of infringement has thus been discerned, it becomes merely a question of comparison whether it is the same or included within the subject matter of the patented invention

Infringement generally.—Amongst decided cases it has been laid down that where there is a substantial resemblance to the patented invention in particulars covered by the exclusive rights given by the patent, infringement may be proved.[1]

"If a portion of a patent for a new arrangement of machinery is in itself new and useful, and another person for the purpose of producing the same effect, uses that portion of the arrangement and substitutes for the other matters combined with it another mechanical equivalent that would be an infringement of the patent."[2]

[1] Stead *v.* Anderson, 1847, 2 *Web. P.C.*, 155.
[2] Per Pollock, C.B., in Sellers *v.* Dickinson, 1850, 5 *Ex.*, 326.

"Where a patent is for a combination of two or more old inventions, a user of any of them would not be an infringement of the patent; but, where there is an invention consisting of several parts, the imitation or pirating of any part of the invention is an infringement of the patent."[1]

Infringement of a Process.—A use of a material part of a process is an infringement, even if all the parts of the process as specified are not used.[2] A valid patent for an entire combination for a process gives protection to each part thereof that is new and material for that process without any express claim of particular parts and notwithstanding that parts of the combination are old.[3] Nevertheless this decision must be confined to such cases where the patentee may be inferred to claim such parts separately from the whole; and the inference would only be likely to arise, when no specific claim is made in the specification; it will not apply when the specification is construed as claiming the general combination only.[4]

"The infringement of any part of a patent process is actionable, if that part of itself is new and useful so that it might be the subject of a patent, and is used by the infringer to affect the object or part of the object proposed by the patentee."[5]

Infringement of a Combination.—"If it is clear that a patent is for a combination, and nothing but a combination, there is no infringement unless the whole combination is used, and it is in that way immaterial whether any, or which, of the parts are new."[6] "There may, however, be cases in which, though the patent is for an entire combination of numerous parts, a collusive imitation of that invention may be effected though some detail of the combination is omitted or changed."[7] The decision of the House of Lords in Clark *v.* Adie in 1877 is to the same effect. A subordinate part of a combination is only infringed if it is specially and separately claimed by the patentee.[8]

Infringement by colourable Imitation.—"Where a party

[1] Per Campbell, C.J., in Smith *v.* London and North Western Railway. 2 *Ell. and B.*, 76.

[2] Bovill *v.* Keyworth, 1857, 7 *Ell. and B.*, 737.

[3] Lister *v.* Leather, 1858, 8 *Ell. and B.*, 1004.

[4] Harrison *v.* Anderston Foundry Company, *H.L.*, 1876, 1 *App.*, 578.

[5] Patent Bottle Envelope Company *v.* Seymour, 1858, 5 *C.B., N.S.*, 172.

[6] Per Lord Cairns in Harrison *v.* Anderston Foundry Company, *supra.*

[7] Per Lord Penzance in Harrison *v.* Anderston Foundry Company, *supra.* 593.

[8] *L.R.*, 2 *App. Cas.*, 315.

has obtained a patent for a new invention, it is not in the power of any person simply by varying in form or in immaterial circumstances the nature or subject matter of that discovery to obtain either a patent for it for himself, or to use it without the leave of the patentee, because that would be in effect and in substance an invasion of the right."[1]

The use of the plaintiff's invention with slight immaterial variations to make a colourable difference is an infringement of the patent.[2]

The words "colourable imitation" are not happily chosen, but in effect their meaning is that where a defendant simply dresses up an invention so that it is "colourably" different, while underlying all there has been a taking of the invention of the plaintiff, it is an infringement.[3]

An alteration was held to be simply a colourable variation when an active part of a combination was made to act directly instead of indirectly.[4]

Substitution of a weight for a spring is a colourable alteration, the effect being the same.[5]

Use of the Mechanical Equivalents.—The question of mechanical equivalents is in effect the same as that of a colourable imitation. "The question would be simply whether the defendant's machine was only colourably different, that is whether it differed merely in the substitution of what are called mechanical equivalents for the contrivances which are resorted to by the patentee."[6]

If a defendant substitutes for a part of a plaintiff's invention some well-known equivalent, whether chemical or mechanical, he would probably be considered as only making a colourable variation.[7]

The substitution of mechanical equivalents is equally an infringement, even though the means employed might be better than those mentioned in the patent.[8]

Nevertheless it is not every mechanical equivalent which is necessarily an infringement, the question is whether the particular alteration is a mechanical equivalent in the sense in

[1] Walton *v.* Potter, 1841, 1 *Web. P.C.*, 586.
[2] Stead *v.* Anderson, 1847, 2 *Web. P.C.*, 156.
[3] Dudgeon *v.* Thomson, *H.L.*, 1877, 3 *App. Cas.*, 45.
[4] Kaye *v.* Chubb, *H.L.*, 1888, V *R.P.C.*, 641.
[5] Winby *v.* Manchester Tramways, 1889, VI *R.P.C.*, 959.
[6] Morgan *v.* Seaward, 1831, 1 *Web. P.C.*, 171.
[7] Heath *v.* Unwin, 1845, 2 *Web. P.C.*, 227.
[8] Bateman *v.* Gray, 1853, *Mac. P.C.*, 102.

which that expression is used in Patent Law, and this is a question for the judge to decide.[1]

Use of Chemical Equivalents.—The use of chemical equivalents introduces a question which with regard to mechanical equivalents has never arisen. The discovery of new chemical substances, and consequently of their actions, renders it necessary to clearly ascertain whether the use of a new substance not known at the date of the patent, and therefore not then possible to be considered a known equivalent is in fact an infringement. The question has been decided, though somewhat doubtfully, in the negative.

Thus, in the House of Lords, in Unwin *v.* Heath,[2] a patent was considered in which the invention was stated as the "use of carburet of manganese, in any process whereby iron is converted into cast iron," the method described consisted in adding carburet of manganese to the fuzed mass of metal. The infringement complained of consisted in adding oxide of manganese and carbonaceous matter, and it was proved in evidence that these two substances combined to form the carburet, producing the same effect but at a cheaper rate. A majority of the judges declared against infringement, though apparently on different grounds. Two being of opinion that this variation of the process being unknown could not be held to be included in the invention patented or claimed in the invention by the patentee. The patent, however, did not appear to claim any principle but only the use of the particular substance named.

The principle was followed in Badische Anilin Fabrik, &c., *v.* Levinstein, that the use of chemical equivalents not taken to be such at date of the patent is no infringement.[3]

Infringement coupled with Improvement.—Letters Patent may be infringed by a method which is an improvement upon the patentee's invention, provided the two methods are, in a material part, the same;[4] nor is the fact of making improvements any answer to the allegation of infringement.[5]

Infringement of Part.—Although it is necessary to show that all the improvements claimed are new, it is not necessary to show that they have been all infringed, it will be sufficient

[1] Thorn *v.* Worthing Skating Rink Company, 1876, *L.R.*, 6 *Ch. D.*, 417.
[2] 5 *H.L. Cas.*, 505.
[3] II *R.P.C.*, 90.
[4] Russell *v.* Ledsam, 14 *M. and W.*, 580.
[5] Ehrlich *v.* Ihlee, *C.A.*, 1888, V *R.P.C.*, 437.

to support an action if any one of them has been infringed.[1] The part, if only part is infringed, must, however, in any case be new in itself or in its effects not merely in its application, consequently a material improvement, otherwise there is no infringement,[2] and it must be a part clearly seen to be claimed by the patentee, otherwise it is not included in his monopoly.[3]

That there is no infringement of a combination by anything short of using the whole combination of the same elements or mechanical equivalents of them is also fully proved by several decisions, notably Harrison *v.* Anderston Foundry Company.[4]

Infringement of Principle.—Throughout all the decisions touching the principle of an invention a broad liberality is noticeable, and is probably the result of the sure ground on which judges have felt themselves to stand when dealing with the principle. It does not seem to have been recognised that every invention must rest upon a novel principle because it has not been the fashion to so describe the invention. It may be argued that if the inventor has not recognised the principle the Court is not called upon to give that broad effect to the patent which the inventor could equally not have contemplated. But where the inventor has made the principle on which his invention rests a salient and recognisable feature of his monopoly, the Court has generally seized upon the principle and supported it. Thus it has been decided that "the specification must tell the public for what it is the patentee claims protection. If it be for a principle, then if that be good, it will apply to every mode in which that principle can be carried into operation. If for a machine for a particular mode of carrying into effect an old principle, that does not go beyond the machine."[5] It was also the opinion of Williams, J.,[6] that "If a patent is taken out for the application of a principle coupled with a mode of carrying the principle into effect, the patentee is entitled to protection from all other modes of doing so whether known or not known at the time of the specification. A more recent judgment[7] clearly shows that where the specifica-

[1] Gillet *v.* Wilbey, 1839, 9 *Car. and P.*, 336.
[2] Lister *v.* Leather, *Ex. Ch.*, 9 *Ell. and B.*, 1033.
[3] Parkes *v.* Stevens, *L.R.*, 8 *Eq.*, 366.
[4] *H.L.*, 1 *App. Cas.*, 581.
[5] Neilson *v.* Thompson, 1 *Web. P.C.*, 283.
[6] Unwin *v.* Heath, *H.L.*, *supra.*
[7] Easterbrook *v.* Great Western Railway Company, 1886, II *R.P.C.*, 201, III *R.P.C.*, 94.

tion disclosing a principle shows a method by which it may be carried out, and does not limit the claim of the patentee any apparatus which by different mechanical means carries out the same principle is an infringement, and this even though the purpose to which the principle is applied is different from those embodied in the specification.

Manner of Infringement.—Enough has been said on the matter of the infringement to show what form infringement generally takes; reference may now be made to the second question, namely, the manner in which a patent may be infringed and the nature of the personal acts of infringer. The patent expressly forbids anyone in any way using or putting in practice the invention or a part of it; but as the deed reserves the sole rights of making and vending also to the patentee, it may be presumed that the public are also forbidden to make or vend.

Infringement by Making.—The prohibition against making naturally only extends to the producing of an article included under the protection of the patent. It has been held that making is an infringement unless the article is made simply for amusement or as a model[1] or by way of experiment;[2] for "if a man makes things merely by way of *bonâ fide* experiment, and not with the intention of selling and making use of the thing so made for the purpose of which a patent has been granted, but with the view of improving upon the invention, or of seeing whether an improvement can be made or not, that is not an invasion of the exclusive rights granted by the patent."[3] There is no infringement in making a part of a patented machine, where such part is not separately claimed,[4] nor in supplying or selling such a part alone or any ingredient to be used in the infringement of a patent,[5] though the purchaser may of course be guilty of an infringement in its use if such use is contrary to the patent.

By Use or Exercise.—These almost synonymous terms refer to the use of the invention (process or method) or of the article, machine, or thing patented. Use follows substantially the same rules as "making," and consequently "experimental use," as distinguished from commercial use, is not an infringement. Wherever the use is for the purpose of advantage it is

[1] Jones *v.* Pearce, 1832, 1 *Web. P.C.*, 125.
[2] Muntz *v.* Foster, 1844, 2 *Web. P.C.*, 101.
[3] Per Jessel, M.R., in Frearson *v.* Loe, 1879, *L.R.*, 9 *Ch. D.*, 66.
[4] McCormick *v.* Gray, 1861, 31 *L.J.*, *Ex.*, 42.
[5] Townsend *v.* Haworth, M.R. and C.A., 1875, *Higgins D.P.C.*, 166.

an infringement. The use in Great Britain for purposes of instruction of telephones bought abroad was held an infringement.[1] The use of an invention for a different purpose may still be an infringement.[2]

By Vending.—By vending is understood in this connection the sale of a vendible article or thing which is the result or product obtained by an act of putting the invention into practice. It has been noticed that, although the Statute of Monopolies reserves to the patentee the sole rights of making and working the invention, it does not specially mention "sale" as an act of infringement. This does not prove that an act of sale may not be an infringement, but only that it is not necessarily so. The question appears to be whether or not the particular act of sale is not in truth a putting in practice of the invention. Sale is an act of infringement whenever it is in effect a user of the invention to the detriment and without the permission of the patentee. That such sale is a user of the invention we have the authority of several decided cases.[3] But where the patentee himself is the maker of the invention and has sold the product, or where it has been made by his licensees, he cannot prevent subsequent sale or dealings with or use of that particular product.[4] Where the article sold has been imported from abroad, and thus has not been actually made within the country covered by the patent, the sale may be equally considered a user of the invention and consequently an infringement since the patentee is thus defrauded of the profit which it is the intention of the patent system to reserve to him;[5] and even where the patent is only for the process of manufacture, an importation and sale of the product, made by the same process abroad, is also an infringement;[6] but the onus of proof that the product has been made according to the patented process lies on the patentee.[7] It is questionable whether the mere exposure for sale without any sale actually being made is an infringement,[8] but manufacture for purpose of sale is an

[1] United Telephone Company *v.* Sharples, 1885, 29 *Ch. D.*, 164.
[2] Edison and Swan Company *v.* Holland, V *R.P.C.*, 483.
[3] Gibson *v.* Brand, 1841, 1 *Web. P.C.*, 630; Walton *v.* Lavater, 1860, 29 *L.J., C.P.*, 279; Wright *v.* Hitchcock, 1870, 39 *L.J., Ex.*, 103.
[4] Thomas *v.* Hunt, 1864, 17 *C.B., N.S.*, 183; Betts *v.* Wilmot, 1871, *L.R.*, 6 *Ch. D.*, 239.
[5] Walton *v.* Lavater, *supra.*
[6] Elmslie *v.* Boursier, 1869, 39 *L.J.*, 328.
[7] Cartsburn Company *v.* Sharpe, 1884, 1 *R.P.C.*, 181.
[8] Minter *v.* Williams, 1 *Web. P.C.*, 135.

infringement though no sale is made [1] The sale of ingredients to another party, even with knowledge that the purchaser intends to use them in infringement of a patent, is in itself no infringement.[2] Manufacture here for sale abroad is also an infringement, since it is a making or putting in practice of the invention here.

By Possession.—There is no infringement in actual possession of an infringing article, but injunction may be obtained against its use or employment.[3] The Court will not at all times order the delivering up of infringing articles to the patentee, or their destruction, though in most cases such order may be had.

By Importation.—That there may be infringement by importation of the article, or a product of the process, is shown by the cases quoted on previous page (Footnotes [5], [6], and [7]); but it would appear that the importation must be connected with a purpose of trade, or else there must be some sort of user of the invention whether passive or active. Thus the temporary presence of certain capsuled bottles in a British port for transhipment was held a passive use of the invention here sufficient to constitute an infringement of that method of capsuling.[4] Sect. 43 of the Act of 1883, however, provides that inventions in use in foreign vessels temporarily within British waters are no infringement provided they are not used in connection with manufacture here, and that a similar treatment is accorded to British vessels by the respective foreign States.

[1] Oxley *v.* Holden, 8 *C.B., N.S.*, 666.
[2] Sykes *v.* Howarth, 1879, *L.R.*, 12 *Ch. D.*, 833.
[3] United Telephone Company *v.* London and Globe Telegraph Company, I *R.P.C.*, 117.
[4] Betts *v.* Neilson, *H.L.*, 1865, 71, 3 *De G. J. and S.*, 87.

CHAPTER XXI.

NECESSITY AND METHODS OF AMENDMENT.

Origin of Amendments.—In former times, when once the specification had been filed, it was impossible to make any alteration in its wording, and as the patent is dependent for its validity upon the specification, great hardship arose, more especially when only a part of the specification was objectionable. This was especially the case, since the great expense of patents and the laxity of procedure led inventors to include several inventions in one patent, and consequently the risk of loss through one of the inventions proving disentitled to protection, was increased.

It was principally to remedy this hardship that, by the Act of 5 and 6 William IV, c. 83, patentees were allowed to disclaim from their specification such parts as were not sustainable under their patents. Special claims were then but seldom made, the Court being left to distinguish the nature or principles of the invention from the specification of its construction or working. Everything described was held to be claimed unless it were disclaimed, so that correction would usually take the form of excision of words or paragraphs.

Substantially the same procedure was followed under the Patent Law Amendment Act of 1852, only that the nature of an allowable amendment appears to have become widened with the gradually broadened notion of Patent Law which began to distinguish between the nature of the invention and its actual embodiment.

The Act of 1883, which first required a special claim or claims to be added to summarise exactly what the inventor desired to cover and include in the scope of the patent, has also further widened the possibility of amendment which may now consist of either a disclaimer, a correction, or an explanation,[1] always provided that "no amendment shall be allowed

[1] Patents Act, 1883, Sect. 18 (1).

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."[1] The drawings may be amended in the same way so far as their nature admits.

Possible Amendments.—Bearing in mind that a patent may be invalid either by covering more than was new at the time, or something wanting in utility, or from ambiguity or insufficient explanation, it will be seen that this process of amendment provides for the remedying of these faults, but

Impossible Amendments are all such as would widen the patent. No amendment can be made where the inventor has claimed too little or has stated his invention to reside in this or that particular, whereas it should be in some other particular of his description, no amendment can also be made if the patentee was not actually the "true and first inventor,"[2] or if there is *variance* between the provisional and complete specification other than mere addition in the latter. Naturally also if the *whole* invention be wanting in patentability amendment would be in any case useless.

Nature of Amendment.—It was formerly held that disclaimers could only be filed when they related to small and insignificant parts of the patent which nevertheless would invalidate the whole;[3] for if a material part of the patent was excised, it was held that a grant previously a nullity was converted into a valid right, and the public was entitled to be protected from such subsequent deprivation of the right of user. It was also decided that where the patentee had made a broad claim afterwards found unsustainable he could not limit it to a particular construction not specially claimed in the first instance. Thus a patentee who claimed broadly the employment of engraved rollers was not permitted to confine his claim to rollers with circular grooves when it was found that only these particular rollers would answer the purpose.[4] This decision has been followed since 1883, thus a patentee described a blasting cartridge, in which the explosive, preferably dynamite, was enclosed in an inner case within an outer case containing water, stating also that where dynamite was used the inner case might be omitted. An amendment intended to confine the patent to cartridges in which the inner case was omitted was

[1] Patents Act, 1883, Sect. 18 (8).
[2] *See* Chapters X and XI.
[3] R. *v.* Wheeler, 1850, 10 *C.B.*, 395; R. *v.* Mill, 1851, 14 *Beav.*, 313.
[4] Ralston *v.* Smith, *H.L.*, 1865, 11 *H.L. Cas.*, 223.

refused.[1] An application to insert the adjective "adjustable" to qualify a mechanism previously claimed broadly was refused.[2] It has been expressly stated that it is not the intention of the Act of 1883 to enable a patentee to strike out a broad claim and insert a new claim to a subordinate part.[3] From these cases it will be seen that the extent of relief offered by an amendment is very limited, and that in effect it consists in striking out without addition or substitution. Care should be taken that in patenting an invention, every patentable subordinate part or combination be separately claimed, in addition to the broad claims which may be made. The patentee is not limited to any particular number of claims, some specifications, notably from America, where patent law is better understood than it is here, contain as many as a hundred or more claims.

Explanation and Correction.—An explanation would appear to be allowable only when the specification is ambiguous. If it is capable of more than one construction, the applicant may explain so that it no longer remains doubtful what he intends to claim;[4] an explanation of the principles or reasons for an invention which more nearly touch its nature and consequently the scope of the patent will not be admitted;[5] and it has been distinctly stated that a specification originally insufficient cannot be cured by disclaimer or correction.[6]

Procedure on Application for Amendment.—The form of application (*see* Appendix II) must state the nature of the amendment and the reasons for making the same. It must be signed by the applicant or patentee personally. The stamp duty is 1*l.* 10*s.* if the application be made before the patent is sealed; 3*l.* if after the sealing. Among the reasons usually given are that "the patentee is advised that parts of the specification are wanting in novelty" or utility, or are ambiguous or misleading. This form is to be accompanied by a *certified* printed copy of the specification and drawings on which the amendments are shown written in red ink. The amendment is then advertised *in extenso* in the official journal, and notice is to be inserted in such newspapers as the Comptroller may direct (at applicant's expense). Papers usually chosen are the "Times," *one or two local papers* and one or two trade journals

[1] Heath and Frost's Patent, *Griff.*, 310.
[2] Walker's Patent, 2 *Griff.*, 22.
[3] Terrell's Patent, VI *R.P.C.*, 103.
[4] Ryland's Patent, 1888, V *R.P.C.*, 668.
[5] Nordenfeldt's Patent, 1887, 2 *Griff.*, 18.
[6] Johnson's Patent, 1896, XIII *R.P.C.*, 659.

with which the invention is connected. Opposition must be filed within one month of the first of these public notices. Where no notice of opposition is filed the Comptroller will determine whether, and subject to what conditions, if any, the amendment ought to be allowed. If any variation is made, or sought to be made, in the wording of the amendment the Comptroller may order the application to be advertised again, especially if the difference is substantial. The Comptroller's decision is subject to appeal to the Law Office, who may also impose such terms as he considers proper, or may refuse the amendment. Where any legal proceeding with regard to a patent is pending a request for amendment can only be applied for by leave of the Court or a judge,[1] a verified or official copy of the order being left at the Patent Office with the request.[2] The amendment when allowed shall be advertised in the official journal and such other papers as the Comptroller may direct.

Opposition to Amendment.—When a request for amendment is advertised it may be opposed within one month of the date of that advertisement. The form of opposition (*see* Appendix II), bearing a 10*s.* stamp, must be signed by the opponent in person, and must state the grounds of opposition. The subsequent proceedings by way of declarations in support of the opposition, and in reply follow exactly the same rules as in opposition to the grant of the patent (*see* Chapter XI). Appeal may also be made to the Law Office from the decision of the Comptroller of Patents in the same manner.

Terms on which Amendments may be allowed.—It should be noticed that both the Comptroller and the Law Officer (on appeal) can impose such terms as they may see fit in return for allowance of amendment. It has not been customary to impose any terms, unless an opposition has been filed, when the terms will naturally vary according to the nature and propriety of the opposition. Amongst the terms that have been imposed are that no action shall be brought in respect of any infringement that occurred before the date of the amendment,[3] or which would result in the future from the use of materials made before the amendment was allowed.[4] It has also been ordered that where certain manufacturers had commenced to work an invention on the strength of the invalidity of the patent, they should be permitted to continue

[1] Patents Act, 1883, Sect. 8; 1888, Sect. 5.
[2] Rule 58.
[3] *Re* Harrison's Patent, *Macr. P.C.*, 32.
[4] Westinghouse's Patent, *Griff.*, 315.

the manufacture.[1] A patentee may refuse to accept an amendment on the terms imposed, as the patentee did by way of protest in the last mentioned case. In a more recent case, reported since the Act of 1883 came into force, the Law Officer refused to impose terms because the Court being now competent to allow or refuse remedy for infringement occurring before an amendment under Sect. 20, he did not consider himself justified in forestalling any judgment that the Court might make under that section.

Terms imposed by the Court.—Whenever an action is pending in respect of a patent, amendment of the specification can only be made by leave of the Court upon such terms as the judge may impose. These terms are invariably that the costs of the action up to the amendment shall be borne by the patentee in any event, and in most cases that past infringement of the patent should be condoned.[2]

Even where an amendment has been made before any action is brought, or perhaps thought of, the Court may not give remedy for any infringement occurring before the date of the amendment unless satisfied that the original claims were drawn "in good faith and with reasonable knowledge and skill."[3]

Amendment of Provisional Specification does not appear to be contemplated by the law. The provisional specification is not read in constructing the rights given by the patent, when the latter is granted, the complete specification alone does that; so it would be unnecessary to make any amendment in the provisional specification. The latter is kept on record as proof that the invention patented is substantially the same as that which the inventor had in his mind at the date of his application, and so it would be of course unadvisable to allow any amendment or alteration in it after the patent is once granted. Even before the complete specification is filed it appears impossible to amend the provisional specification. To add, would of course not be allowed, to strike out is unnecessary, since if this specification includes more than afterwards found to be justified, that part need not be included in the complete specification. Explanation might be allowed if it could be shown that the specification without it is unintelligible and should not have been accepted.

[1] Medlock's Patent, *Newton's L.J., N.S.*, 22, *page* 69.

[2] For examples of terms: Singer *v.* Stassen and Company, I *R.P.C.*, 121; Bray *v.* Gardiner, 34 *Ch. D.*, 668; Haslem Foundry Company *v.* Goodfellow, 37 *Ch. D.*, 118; Fusee Vesta Company *v.* Bryant and May, V *R.P.C.*, 189.

[3] *Patents Act*, 1883, *Sect.* 20.

Amendment of Complete Specification.—The whole of the first part of this chapter concerns only the complete specification, and the process of amendment is the same before or after the actual grant or sealing of the patent, though the stamp duties vary as before mentioned. Until the time the complete specification is "accepted," amendments might be made without advertisement since the specification itself only becomes published on the acceptance. It is uncertain whether the sealing should be delayed until the amendment is disposed of; perhaps it is immaterial, but it is safer to ask that the sealing may be delayed until the specification is amended, to ensure formal correctness in grant of the patent on the perfected specification.

Amendment of Application. — Under the general rule that any paper, for amendment of which no special provisions are made, may be amended by leave of the Comptroller on such terms as he may allow, the form of application may be amended. This is often made available for adding the name of a co-applicant, and has even been used for substituting one applicant for another, where it appears that the first applicant was not entitled to apply. No amendment of this nature can be made after the patent is issued. Where incurable faults are found in the papers of the application, before the complete specification is filed, it is the usual practice for inventors to abandon the application and begin another. The original priority of date is of course lost. It is doubtful if disclosure of the invention between the dates of the first and second applications will invalidate the latter, looking to the decision in Oxley *v.* Holden, though it is probable that it would be held to do so, on the broad ground that the invention was known to others before the date of the patent.[1]

Amendment of Documents generally.—Any document for the amendment of which no special rules exist, may be amended during the progress of an application for patent, on such terms as the Comptroller of Patents may impose.

Effect of Amendment.—Until an invalid patent is amended it remains unenforcable, and consequently affords no remedy against infringement. Where an amendment has been allowed the Patent Act provides that the judge shall refuse to give damages for any infringement previous to such allowance, unless he is convinced that the inventor's "original claim was framed in good faith and with reasonable skill and know-

[1] Humpherson *v.* Syer, IV *R.P.C.*, 407.

ledge."[1] As to what should be considered "reasonable skill and knowledge," there may be doubts; an inventor acting in ignorance of patent law cannot be said to possess them. Lord Lyndhurst once said that a man must be said to act with wilful ignorance, if he was ignorant of matters which he could have learnt if he made the inquiries which it was incumbent on him to make.[2] The public are presumed to be acquainted with the patent records, so that ignorance of pre-existing specifications on public view must be held a wilful ignorance.

Enlargement by Amendment.—If an amendment allowed is afterwards held to widen the patent, it is doubtful whether the patent becomes invalid or the amendment is simply void. In *re* Goulard and Gibbs' Patent,[3] it was held that the complete specification *as amended* went beyond the provisional, thus avoiding the patent. In the Court of Appeal,[4] it had been held that the amendment had widened the patent, and that this was also a ground for holding the patent void; but the House of Lords, holding that in fact the invention formerly set forth in the complete specification had not been widened by the amendment, gave on decision on this point of law.

In Van Gelder's Patent,[5] it was sought to prohibit the Law Officer from allowing a certain amendment on the ground that the invention would be widened. The Court of Appeal refused to issue a prohibition on the ground that the Law Officer was final judge in such matters, but were of opinion that if the amendment were afterwards held to widen the patent it would have no validity.[6] It has however since been declared in the House of Lords that an amendment once allowed by the Comptroller General or the Law Officer cannot be questioned in any court.[7]

Clerical Errors in the specification may be amended on permission of the Comptroller. Government fee, 5*s*.

[1] Patents Act, Sect. 20.
[2] *Re* Honiball's Patent, 2 *Web. P.C.*, 201.
[3] *H.L.*, VII *R.P.C.*, 388.
[4] *C.A.*, VI *R.P.C.*, 225.
[5] VI *R.P.C.*, 22.
[6] Dudgeon *v* Thompson, *L.R.*, 3 *App. C.*, 34; *re* Moore's Patent, *Mac. P.C.*, 116.
[7] Moser *v.* Marsden, *H.L.*, 1893, XIII *R.P.C.*, 24.

Chapter XXII.

EXTENSION OR PROLONGATION OF TERM OF PATENT.

Petition for Extension.—A patentee who alleges that he has not been sufficiently remunerated by his patent may petition Her Majesty in Council for an extension of the term.

Repealed Acts.—By the Statute of Monopolies it was declared illegal to grant patents for longer terms than 14 years, but owing to the hardship sometimes experienced by inventors of seeing the period of their protection nearly approaching its end just as the invention has become remunerative, power was given to the Crown in the year 1835 to extend the term of 14 years in meritorious cases. By the Act of 5 and 6 Will. IV, 1835, c. 83, Sect. 4, a patentee might, after advertising in the prescribed manner, petition His Majesty in Council for an extension of the term of his patent. The Privy Council, after hearing the petitioner and any opponents who had filed caveats and after "inquiring of the whole matter," advised the Crown if and what extension, not exceeding seven years, should be granted. The procedure was amended by the Act of 2 and 3 Vict., c. 67 (1839), and again by 7 and 8 Vict., c. 69 (1844), the maximum term of extension was fixed at 14 years.

These three Acts were repealed by the Act of 1883, 46 and 47 Vict., c. 57, but Sect. 113 of the last Act was held to reserve the operation of the repealed Acts in respect of patents granted before 1884, so that in effect their operation extended to the end of 1897.

Under these Acts a considerable body of important decisions have been given, and inasmuch as the majority of these appear to be as applicable under the new practice as under the old, it is to be presumed that in effect the treatment of petitions for extension will remain the same.

Legislation in Force.—With the commencement of the

year 1898. Section 25 of the Patents, etc., Act of 1883 enters into active operation. This section is as follows :—

(1.) A patentee may, after advertising in manner directed by any rules made under this section his intention to do so, present a petition to Her Majesty in Council, 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 enter a caveat, addressed to the Registrar of the Council at the Council Office, against the extension.

(3.) If Her Majesty shall be pleased to refer any such petition to the Judicial Committee of the Privy Council, the said Committee shall proceed to consider the same, and the petitioner and any person who has entered a caveat shall be entitled to be heard by himself or by counsel on the petition.

(4.) The Judicial Committee shall, in considering their decision, 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 the Judicial Committee report that the patentee has been inadequately remunerated by his patent, it shall be lawful for Her Majesty in Council to extend the term of the patent for a further term not exceeding seven, or in exceptional cases fourteen, years; or to order the grant of a new patent for the term therein mentioned, and containing any restrictions, conditions, and provisions that the Judicial Committee may think fit.

(6.) It shall be lawful for Her Majesty in Council to make from time to time, rules of procedure and practice for regulating proceedings on such petitions, and subject thereto such proceedings shall be regulated according to the existing procedure and practice in patent matters of the Judicial Committee.

(7.) The costs of all parties of and incident to such proceedings shall be in the discretion of the Judicial Committee; and the orders of the Committee respecting costs shall be enforceable as if they were orders of a division of the High Court of Justice.

The Rules to be observed in proceedings before the Judicial Committee of the Privy Council under the Patents Designs and Trade Marks Act 1883, Section 25, are as follows :—

RULE I.— A party intending to apply by petition under Sect. 25 of the Act shall give public notice by advertising three times in the "London Gazette" and once at least in each of three London newspapers. If the applicant's principal place of business is situated in the United Kingdom at a distance of 15

miles or more from Charing Cross he shall also advertise once at least in some local newspaper published or circulating in the town or district where such place of business is situated. If the applicant has no place of business, then, if he carries on the manufacture of anything made under his specification at a distance of 15 miles or more from Charing Cross, he shall advertise once at least in some local newspaper published or circulating in the town or district where he carries on such manufacture. If he has no place of business and carries on no such manufacture, then, if he resides at a distance of 50 miles or more from Charing Cross, he shall advertise once at least in some newspaper published or circulating in the town or district where he resides. The applicant shall in his advertisements state the object of his petition and shall give notice of the day on which he intends to apply for a time to be fixed for hearing the matter thereof, which day shall not be less than four weeks from the date of the publication of the last of the advertisements to be inserted in the "London Gazette." He shall also give notice that caveats must be entered at the Council Office on or before such day so named in the said advertisements.

RULE II.—A petition under Sect. 25 of the Act must be presented within one week from the publication of the last of the advertisements required to be published in the "London Gazette." The petition must be accompanied with an affidavit or affidavits of advertisements having been published according to the requirements of the 1st of these Rules. The statements contained in such affidavit or affidavits may be disputed upon the hearing. The petitioner shall apply to the Lords of the Committee to fix a time for hearing the petition, and when such time is fixed the petitioner shall forthwith give public notice of the same by advertising once at least in the "London Gazette" and in two London newspapers.

RULE III.—A party presenting a petition under Sect. 25 of the Act must lodge at the Council Office eight printed copies of the specification: but if the specification has not been printed and if the expense of making eight copies of any drawing therein contained or referred to would be considerable the lodging of two copies only shall be deemed sufficient. The petitioner shall also lodge at the Council Office eight copies of the balance sheet of expenditure and receipts relating to the patent in question which accounts are to be proved on oath before the Lords of the Committee at the hearing. He shall also furnish three copies of the said balance sheet for the use of the Solicitor to the Treasury, and shall, upon receiving two days' notice, give

the Solicitor to the Treasury or any person deputed by him for the purpose reasonable facilities for inspecting and taking extracts from the books of account by reference to which he proposes to verify the said balance sheet at the hearing or from which the materials for making up the said balance sheet have been derived.

All copies mentioned in this Rule must be lodged and furnished not less than fourteen days before the day fixed for the hearing

RULE IV.—A party intending to oppose a petition under Section 25 of the Act must enter a caveat at the Council Office before the day on which the petitioner applies for a time to be fixed for hearing the matter thereof, and having entered such caveat shall be entitled to have from the petitioner four weeks' notice of the time appointed for the hearing. The petitioner shall serve copies of his petition on all parties entering caveats in accordance with this Rule, and no application to fix a time for hearing shall be made without affidavit of such service. All parties intending to oppose a petition shall within three weeks after such copies are served on them respectively, lodge at the Council Office eight printed copies of the grounds of their objections to the granting of the prayer of the petition.

RULE V.—Parties shall be entitled to have copies of all papers lodged in respect of any petition under Sect. 25 of the Act at their own expense. All such petitions and all statements of grounds of objection shall be printed in the form prescribed by the rules which apply to proceedings before the Judicial Committee of the Privy Council. Balance sheets of expenditure and receipts shall be printed in a form convenient for binding along with such petitions.

RULE VI.—Costs incurred in the matter of any petition under Sect. 25 of the Act shall be taxed by the Registrar of the Privy Council, or other officer deputed by the Lords of the Judicial Committee of the Privy Council to tax the costs in the matter of any petition, and the Registrar or such other officer shall have authority to allow or disallow in his discretion all payments made to persons of science or skill examined as witnesses.

RULE VII.—The Lords of the Committee may excuse petitioners and opponents from compliance with any of the requirements of these Rules, and may give such directions in matters of procedure and practice under Sect. 25 of the Act as they shall consider to be just and expedient.

RULE VIII.—The Lords of the Committee will hear the Attorney-General or other Counsel on behalf of the Crown on the question of granting the prayer of any petition under

Sect. 25 of the Act. The Attorney-General is not required to give notice of the grounds of any objection he may think fit to take or of any evidence which he may think fit to place before the Lords of the Committee.

General Requirements.—Even though there is no opposition, the petitioner will be required to fully show a good case for the exercise of the power of the Crown. The petitioner will require to be represented by Counsel at the hearing before the Judicial Committee of the Privy Council. The prayer of the petitioner is not granted unless due grounds for extension are shown, nor unless the merits of the invention are great, the accounts relating to it have been well kept, and the remuneration obtained under the patent has been inadequate.

The Attorney-General, or Counsel instructed on his behalf, usually appears on behalf of the Crown.

Advertisements—are stated in the Rules above given. The three insertions in the "London Gazette" should be in consecutive issues; the advertisements should of course be in the same words in the "Gazette" (three times), in three different London papers (once in each), and in the country papers where such are required. If manufacture is carried on in different towns this advertisement should appear in respect of each such town.

The advertisement must be signed by the petitioner's solicitor. When the patentee resides abroad and the manufacture is carried on under licenses, the advertisement should be inserted in the place or places where the manufacture is actually carried on.[1]

The cost of advertisement in the "London Gazette" (three times) and, say, in the "Times" "Telegraph" and "Standard" (once), and in a country paper, will usually amount to 15*l.*

The names of all parties petitioning must be given in the advertisements.[2]

Petition.—The petition must be in print, and be filed within one week of the insertion of the last advertisement in the "London Gazette."[3] An affidavit of insertion of advertisement must accompany the petition.

The petition should state every material fact relating to the patent. As the recommendation to the Crown to extend the patent is entirely a matter of discretion for the Judical Committee, it is imperatively necessary that the petition should

[1] Derosne's Patent, 1844, 2 *Web. P.C.*, 2.
[2] Noble's Patent, 1850, 7 *Moo. PC.*, 191.
[3] Rule II.

state fully and fairly everything relating to the patent, omission to do so is fatal to the petition.[1]

The Petitioner. — The petition may be presented by assignees of a patent and extension granted to them,[2] the grantee may, however, join in the petition,[3] but the new Letters Patent must be granted to the party or parties in whom the original patent is legally vested.[4] By the custom of granting extension to assignees it is considered that the original patentee is indirectly benefited, since otherwise his interest would be damnified by diminishing his chance of making an advantageous conveyance to the assignee.[5] So extension may be granted to an assignee, for instance a public company, when the patentee has ceased to have any connection with the working of the patent.[6] It must be understood that the assignee's title must be strictly proved,[7] even though the title be not disputed.[8] Extension may be granted to the executor of a surviving assignee.[9] An equitable assignee may appear in support of the petition, in company with the legal assignees, his name must, however, appear in the advertisements.[10] An "importer" of an invention may apply for extension, but the Judicial Committee will look with jealousy into the merits of the invention "imported."[11] A petitioner who has in truth obtained Letters Patent as agent and trustee for a foreign inventor may receive extension.[12] A mortgagee as legal owner should be a party to the petition,[13] but omission in this particular was not held fatal.[14] It is, however, not infrequently the case that hearings have been postponed to enable petitions to be amended in important particulars where the omission was not fatal.[15] The postponement of a hearing may, however, possibly prevent an application for extension from being "prosecuted with effect" before the patent expires, this consideration should be

[1] Pitman's Patent, 1871, 8 *Moo. P.C.C., N.S.*, 393.
[2] Russell *v.* Ledsam, 1845, 1 *H.L. Cas.*, 687.
[3] Pettit Smith's Patent, 1850, 7 *Moo. P.C.C.*, 133.
[4] Southworth's Patent, 1837, 1 *Web. P.C.*, 187.
[5] Morgan's Patent, 1843, 1 *Web. P.C.*, 737.
[6] Napier's Patent, 1861, 13 *Moo. P.C.C.*, 543.
[7] Galloway's Patent, 1843, 1 *Web. P.C.*, 725.
[8] Wright's Patent, 1837, 1 *Web. P.C.*, 561.
[9] Bodmer's Patent, 1849, 6 *Moo. P.C.C.*, 469.
[10] Noble's Patent, 1850, 7 *Moo. P.C.C.*, 191.
[11] Claridge's Patent, 1851.
[12] Newton's Patent, 1861, 14 *Moo. P.C.C.*, 156.
[13] Church's Patent, III *R.P.C.*, 95.
[14] Church's Patent, III *R.P.C.*, 95.
[15] Hutchinson's Patent, 1861, 14 *Moo. P.C.C.*, 364.

taken into account in timing the insertion of advertisements, the filing of the petition, and other matters connected with the case.

A petition was filed by the son of a deceased patentee who had acquired an interest in the patent from L., who had worked the patent under a verbal agreement with the patentee till his death. Held that the personal representative of the deceased patentee and L. ought to be made parties.[1]

Grounds for Extension.—It must be recognised that extension is not given as a matter of course, but that very special grounds must be shown for the exercise of the extraordinary jurisdiction conferred on the Judicial Committee in this matter.[2] The novelty, merit, and utility of the invention must be proved, and it must be shown that all reasonable means have been used in order to make the invention productive, but that in spite of such exertions the remuneration obtained by the inventor has either failed, or has been quite disproportionate to his merits and to the benefit conferred upon the public.[3] Even when there is no opposition and the Attorney General, representing the Crown, does not object, extension will not be granted as a matter of course.[4] "The petitioner is bound to prove three points: first, the merits of the invention; secondly, that the party interested has done all in his power to bring out the invention and to turn it to advantage; and thirdly, that owing to circumstances beyond his control he has been unable to obtain an adequate remuneration.[5] Opposition of existing interests to the introduction of the invention will be considered in favour of extension.[6] Absence of remuneration due to litigation is favourably considered.[7] Where delay has occurred in introducing the invention, the delay must be justified, want of funds may, in some cases, be a good ground for delay.[8] Difficulty in introducing an invention owing to its nature (construction of captains' bridges as life rafts), coupled

[1] Willacy's Patent, 1888, V *R.P.C.*, 690.
[2] Jones' Patent, 1840, 1 *Web. P.C.*, 579.
[3] Honiball's Patent, 1855, *supra*.
[4] Perkin's Patent, 1845, 2 *Web. P.C.*, 18; Cardwell's Patent, 1856, 10 *Moo. P.C.C.*, 490.
[5] Markwick's Patent, 1860, 13 *Moo. P.C.C.*, 313.
[6] Stafford's Patent, 1838, 1 *Web. P.C.*, 563; Robert's Patent, 1839, 1 *Web. P.C.*, 573.
[7] Pettit Smith's Patent, *supra*; Heath's Patent, 1853, 8 *Moo. P.C.C.*, 217.
[8] Norton's Patent, 1863, 1 *Moo. P.C.C., N.S.*, 343.

with illness of patentee, has been held to justify extension for seven years.[1]

Merit of Inventor.—In considering the question of prolongation the merit of the inventor must be taken into account. The extension is, firstly, a reward to the inventor for the peculiar ability and industry he has exercised in making the discovery.[2] This may be a matter of degree "It may have been the successful result of long and patient labour and of great and unaided ingenuity without which for all that appears the public would never have had the benefit of the discovery; or it may have been but a happy accident or a fortunate guess; or it may have been very closely led up to by earlier, and in a true sense more meritorious but still incomplete experiments. Different degrees of merit must surely be attributed to an inventor under these circumstances."[3]

A company buying a patent for a commercial purpose, although incidentally encouraging inventors, does not stand in as favourably a position as an inventor himself.[4] The merit of an "importer" is also less than that of an inventor.[5]

Merit of Invention.—The question of "merit" extends not only to the inventor but also to the invention itself as affecting the public. An invention of great benefit to the public may involve small merit in point of discovery.[6] Its simplicity may be an element of value.[7] Merit will principally lie in the utility in the practical working of the invention.[8]

"Utility," as construed by the Privy Council on petitions for extension, is not necessarily utility required to support a patent, but is more nearly expressed by the word "merit."[9] The sale of patent articles in large numbers at a high price is a strong evidence of utility;[10] while the non-user of the invention is presumptive proof of want of utility,[11] which requires to be rebutted by very strong evidence of utility to obtain prolongation.[12] The fact of an invention having a very limited market

[1] Roper's Patent, 1887, IV *R.P.C.*, 201.
[2] Norton's Patent, *supra.*
[3] Hill's Patent, 1 *Moo. P.C.C., N.S.*, 265.
[4] Electric Telegraph Company's Patent cited in Norton's Case, *supra*; Siller's Patent, 1882, I *Good.*, 581.
[5] Soames' Patent, 1843, 1 *Web. P.C.*, 733.
[6] Derosne's Patent, *supra.*
[7] Muntz's Patent, 1846, 2 *Web. P.C.*, 119.
[8] Bett's Patent, 1862, 1 *Moo. P.C.C.*, 49.
[9] Saxby's Patent, 1870, 7 *Moo. P.C.C.. N.S.*, 84.
[10] Downton's Patent, 1889, 1 *Web. P.C.*, 505.
[11] Wright's Patent, *supra.*
[12] Allan's Patent, 1857, 4 *Moo. P.C.C., N.S.*, 443; Jones' patent, *supra.*

may be considered in evidence of utility in spite of non-user.[1] Where utility is only apparent in a part of the invention, presumably a separable part, extension may be granted in respect of that part only.[2] The accounts, &c., should deal specifically with the useful part of such invention.[3]

Remuneration.—Money spent in experiments to perfect the invention,[4] also in taking out and defending the patent,[5] the expense of bringing the invention into use and manufacturers' fair profit,[6] apparently also a charge for loss of time in endeavouring to bring the invention into general use,[7] and commission paid for effecting sales,[8] may and should be deducted in estimating the profits. As to manufacturers' fair profit no rule can be given as to what deduction should be made on this score, but a deduction of two-thirds of the profit was considered unreasonable.[9] An estimated deduction of 400*l.* in respect of personal service and of a further sum as salesman's profits, neither of which amounts appeared in the accounts or in the petition, could not be taken into consideration.[10] It is also a question whether manufacturers' profits can be distinguished from patentees' profits when the patentee has obtained remuneration during the existence of the patent.[11]

Profits arising from exportation of patented articles must be added.[12] In *re* Poole's Patent it was held that a patentee residing in America need not state profits obtained in America, but only "what profits were made and what benefits were sustained by the introduction of the invention into this country;[13] but in *re* Johnson's Patent, James, L.J., said, in reference to Poole's case: "Their Lordships desire it to be understood that that case is not to be considered as laying down any general rule of law. Where the question to be considered is whether an invention has been sufficiently remunerated or not, their Lordships

[1] Herbert's Patent, 1867, 4 *Moo. P.C.C., N.S.*, 300.
[2] Lee's Patent, 1856, 10 *Moo. P.C.C.*, 226; in *re* Napier's Patent, 1881, 6 *App. C.*, 174.
[3] Willacy's Patent, 1888, V *R.P.C.*, 690.
[4] Bates' Patent, 1836, 1 *Web. P.C.*, 739.
[5] Robert's Patent, 1839, 1 *Web. P.C.*, 575.
[6] Galloway's Patent, 1843, *supra.*
[7] Newton's Patent, *supra*; Carr's Patent, 1873, 9 *Moo. P.C.C.*, 379.
[8] Poole's Patent, 1867, 4 *Moo. P.C.C., N.S.*, 452.
[9] Hill's Patent, 1863, 1 *Moo. P.C.C., N.S.*, 258; Duncan and Wilson's Patent, 1884, 1 *R.P.C.*, 257.
[10] Bailey's Patent, 1884, 1 *R.P.C.*, 1.
[11] Muntz's Patent, 1846, 2 *Web. P.C.*, 121.
[12] Hardy's Patent, 1849, 6 *Moo. P.C.C.*, 411.
[13] 4 *Moo. P.C.C., N.S.*, 456.

must have regard to the remuneration which the invention has brought in to the patentee, or the person who claims the right of the patentee, whether it be in one country or another.[1] Thus, when the patentee has obtained foreign patents they should be stated with the profit made thereof.[2]

Insufficient remuneration is perhaps best shown when the patent only commences to be profitable during the last few years: an even and regular profit throughout the whole term is liable to tell against extension.[3] But where the remuneration has been sufficient, it is no ground for extension that the whole profit has been made in the last few years of the term.[4]

The remuneration must be taken upon the whole patent: where sufficient profit has been made on part of an invention, the unremunerated condition of other parts is not a ground for extension.[5] The profits obtained by licensees, just the same as of assignees, must be given, to estimate the total profit derived in respect of the invention.[6]

Accounts.—As the case mainly depends on the amount of remuneration the patentee has obtained, the accounts must be of the clearest and most unreserved nature,[7] and contain everything paid or received on account of the invention or patent.[8] It is not for the Committee to dissect the accounts or to re-cast them in a better form, they must be all ready to satisfy the Committee.[9] Especially must they be of the fullest when the profit made is very large.[10]

If the accounts are defective no prolongation will be granted,[11] nor will any adjournment be granted to enable accounts to be put in better shape.[12]

In accounts for presentation to the Committee the profits of the patent and general business should be kept quite distinct,[13] but the profits of general business should also be shown,

[1] 1871, 8 *Moo. P.C.C., N.S.*, 291.
[2] Aduir's Patent, 1881, 6 *App. Cas.*, 176.
[3] Downton's Patent, 1839, 1 *Web. P.C.*, 565.
[4] Ryder's Patent, *John*, 213.
[5] Perkin's Patent, 1845, 2 *Web. P.C.*, 9.
[6] Johnson's Patent, 1871, 8 *Moo. P.C.C., N.S.*, 291.
[7] Hill's Patent, 1863, 1 *Moo. P.C.C., N.S.*, 258.
[8] Adair's Patent, 1881, 6 *App. Cas.*, 176.
[9] Saxby's Patent, 1870, 7 *Moo. P.C.C., N.S.*, 82.
[10] Thomas' Patent, 1892, 9 *R.P.C.*, 368.
[11] Clark's Patent, 1870, 7 *Moo. P.C.C., N.S.*, 255; Wield's Patent, 1871, 8 *Moo. P.C.C., N.S.*, 300.
[12] Yates and Kellett's Patent, 1887, 4 *R.P.C.*, 150.
[13] Betts' Patent, 1862, *supra*; Duncan and Wilson's Patent, 1884, 1 *R.P.C.*, 257.

more especially if the general business has benefited indirectly from the existence of the patent.[1] Assignees' profits must be shown as well as original inventor's profits,[2] and it appears also that licensee's profits must be stated as far as possible.[3]

Where books of account have been lost the Committee will accept a statement of the profits of the patentee to the best of his recollection,[4] but not unless thoroughly satisfied with the reason given for non-production of the books.[5]

[1] Johnson's Patent, 1871, 8 *Moo. P.C.C., N.S.*, 291.
[2] Deacon's Patent, 1887, IV *R.P.C.*, 122.
[3] Trotman's Patent, 1866.
[4] Hutchinson's Patent, 1861, 14, *Moo. P.C.C.*, 364.
[5] Lawrence's Patent, 1892, IX *R.P.C.*, 85.

CHAPTER XXIII.

SUNDRY PROVISIONS: REVOCATION. EXHIBITION OF INVENTION. MUNITIONS OF WAR. OFFENCES. PATENT AGENTS. JURISDICTION IN SCOTLAND, IRELAND, ISLE OF MAN. TIME FOR PAYING FEES, &c.

Revocation.—Where a patent is invalid from any cause it may be revoked on petition to the Court under Sect. 26 of the Act of 1883.

A petition for revocation of a patent may be presented by the Attorney-General in England or Ireland, or the Lord Advocate in Scotland; any person authorised by the Attorney-General in England or Ireland, or the Lord Advocate in Scotland; any person alleging that the patent was obtained in fraud of his rights, or the rights of any person under or through whom he claims; any person alleging 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 any person alleging 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.

The plaintiff must deliver with his petition particulars of the objections on which he means to rely, and no evidence shall, except by leave of the Court or a Judge be admitted in proof of any objection of which particulars are not so delivered. Particulars delivered may be from time to time amended by leave of the Court or a judge. The defendant shall be entitled to begin and give evidence in support of the patent, and if the plaintiff gives evidence impeaching the validity of the patent, the defendant shall be entitled to reply.

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 date of revocation of the patent so revoked, but the patent so granted shall cease on the expiration of the term for which the revoked patent was granted.[1]

So long as the person bringing the petition is qualified under any of the above headings he may rely on any legal ground for revocation.[2] In case the patent is revoked the costs will fall upon the patentee.[3]

As an invalid patent is not enforceable owing to the provision that every ground of invalidity is available by way of defence to an action of infringement, revocation suits need seldom be brought.

Protection during Exhibition of Invention, previous to applying for patent, is permitted in certain cases by the Act after previous formalities, but for various reasons applicants cannot be advised to avail themselves of the facility.

The permission referred to is contained in the following Sect. 39 of the Act of 1883: "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 or his legal personal representative to apply for and obtain provisional protection and a patent in respect of the invention or the validity of any patent granted on the application, provided that both the following conditions are complied with, namely:—

"(*a*) The exhibitor must, before exhibiting the invention, give the Comptroller the prescribed notice of his intention to do so; and

"(*b*) The application for a patent must be made before or within six months from the date of the opening of the exhibition."

The Patents, &c., Act, 1886, extended this provision to foreign exhibitions certified by Order in Council, the preliminary notice to the Comptroller being in such case not required.

It will be observed that the notice to the Comptroller must

[1] Sect. 26, sub-sects. 4–8.
[2] *Re* Morgan's Patent, 1888, V *R.P.C.*, 186.
[3] Edmund's Patent, VI *R.P.C.*, 358.

bear a 10s. stamp, and be accompanied by a specification of the invention. Its cost will thus be about equivalent to provisional protection. It will also be observed that the section quoted says nothing with regard to possible application for patent by another person in the meantime, and does not save the inventor at the exhibition from the consequences of such act of another inventor. Fraud would probably have to be proved, a matter of expense and uncertainty, even in the most obvious cases. On the whole, therefore, the inventor is advised to secure a provisional protection before exhibiting.

Such notices are seldom employed, their number fell to seven in 1891, and has since then been further reduced.

Inventions for Munitions of War.—Any inventor of instruments or munitions of war may assign the invention or patent, whether obtained or not, to the Secretary of State for War either for or without valuable consideration, and such assignment made with the consent of the Secretary of State shall be valid and effectual, and any covenants as to secrecy or otherwise may be enforced notwithstanding any want of valuable consideration.

The Secretary of State may, if he thinks fit, require the invention to be kept secret, in which case the specification is delivered sealed up to the Comptroller, possibly for safe custody, and remains sealed, and may not be opened without authority of the Secretary of State or of the Law Officers. No petition will lie to revoke such a patent, and even after expiry of the term of the patent the specification must be returned sealed to the Secretary of State.

The Secretary of State may at any time waive the benefit of these provisions, and in such case the specifications, &c., shall be kept and dealt with in the ordinary way.

It is specially provided that the communication of the invention to the Secretary of State, or to any person or persons authorised by him to investigate the merits, &c., and any use of the invention for purposes of such investigation, are not such publication or use as would invalidate a patent afterwards applied for.[1]

Offences.—Under Sect. 105 of the Act of 1883: "Any person who represents that any article sold by him is a patented article, when no patent has been granted for the same, or describes any design or trade mark applied to any article sold by him as registered, which is not so, shall be liable for every

[1] Patents Act, 1883, Sect. 44.

offence, on summary conviction, to a fine not exceeding five pounds.

"A person shall be deemed, for the purposes of this enactment, to represent that an article is patented or a design or a trade mark is registered, if he sells the article with the word 'patent,' 'patented,' 'registered,' or any word or words expressing or implying that a patent or registration has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to the article."

Fines have been imposed under this section when parties possessing only provisional protections have held out their inventions as patented.[1]

Under Sect. 106: "Any person who, without the authority of Her Majesty, or any of the Royal Family, or of any Government department, assumes or uses in connection with any trade, business, calling, or profession, the Royal arms, or arms so nearly resembling the same as to be calculated to deceive, in such a manner as to be calculated to lead other persons to believe that he is carrying on his trade, business, calling, or profession by or under such authority as aforesaid, shall be liable, on summary conviction, to a fine not exceeding twenty pounds."

Patent Agents.—The Act of 1888 imposed for the first time certain restrictions:—

By Sect. 1: "After the first day of July, one thousand eight hundred and eighty-nine, 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.

"The Board of Trade shall, as soon as may be after the passing of this Act, and may from time to time make such general rules as are in the opinion of the Board required for giving effect to this section, and the provisions of Section one hundred and one of the principal Act shall apply to all rules so made as if they were made in pursuance of that section.

"Provided that every person who proves to the satisfaction of the Board of Trade that prior to the passing of this Act 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.

"If any person knowingly describes himself as a patent

[1] R. *v.* Wallis, III *R.P.C.*, 1; R. *v.* Crampton, III *R.P.C.*, 367.

agent in contravention of this section he shall be liable, on summary conviction, to a fine not exceeding twenty pounds.

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

It will be noted that no man is forbidden to *act* as a patent agent so long as he does not *describe* himself as one.[1]

Jurisdiction in Scotland, Ireland, and the Isle of Man.—By Sections 107 to 112: "In any action for infringement of a patent in Scotland the provisions of the 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 shall 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.

"For the purposes of this section 'Court of Appeal' shall mean any Court to which such action is appealed.

"In Scotland any offence under this Act declared to be punishable on summary conviction may be prosecuted in the Sheriff Court.

"Proceedings in Scotland 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.

"Service of all writs and summonses in that action shall be made according to the forms and practice existing at the commencement of the Act.

"All parties shall, notwithstanding anything in the 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.

"The provisions of the 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 or Ireland in any proceedings relating to patents or to designs or to trade marks; and with reference to any such proceedings in Scotland, 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 the said Court; and with reference to any such proceedings in Ireland, the terms 'the Court' and 'the Court of Appeal' respectively mean the High Court of Justice in Ireland and Her Majesty's Court of Appeal in Ireland.

[1] Graham *v.* Fanta, IX *R.P.C.*, 164.

"If any rectification of a register under the Act is required in pursuance of any proceeding in a Court in Scotland or Ireland, 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.

"The Act shall extend to the Isle of Man, and—

"Nothing in the 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, design, or trade mark competent to those Courts.

"The punishment for a misdemeanor under the 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.

"Any offence under the 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."

Time for Paying Fees, Leaving Documents, &c.—The Patent Office opens at 10 a.m. and closes at 4 p.m.

By Sect. 98: "Whenever the last day fixed by this Act, or by any rule for the time being in force, for leaving any document or paying any fee at the Patent Office shall fall on Christmas Day, Good Friday, or on a Saturday or Sunday, or any day observed as a holiday at the Bank of England, or any day observed as a day of public fast or thanksgiving, herein referred to as excluded days, it shall be lawful to leave such document or to pay such fee on the day next following such excluded day or days if two or more of them occur consecutively."

Loss of Patent.—If the patent document is lost or destroyed, a duplicate can be obtained. Government stamp fee, 2*l.*

Part III.—Foreign Patents.

INTRODUCTORY EXPLANATION.

For convenience of reference the principal features of the various foreign Patent Laws have been arranged for each country under headings indicative of their contents. A short explanation of the contents of these headings may here be given to avoid reiteration.

The headings are as follows :—

Date of Law.—The date and name of the law are given for facilitating reference to the text, if needed, and as evidence of the source and time of the information. Full text of the laws may be seen for the most part in the Patent Office Library, and for reliable translations Carpmael's "Patent Laws of the World," and the Supplement thereto prepared by the Institute of Patent Agents in 1889 may be consulted. The Official Journal of the United States Patent Office from time to time contains the English text of foreign Patent Laws. The Author is indebted to all these sources, and to his correspondents and agents for more recent Acts. Very short intervals pass without some alteration occurring, especially in the British Colonies, where Patent Law appears to receive a considerable amount of legislative attention.

Patentable Inventions, as a rule, will require but little remark, since the general features by which the patentable nature of an invention are distinguished are much the same in every country. Subject matter is generally the same, also utility. Novelty is judged in much the same way, though there is variety in the particular limits within which novelty is required. The differences from the English practice where such occur are pointed out.

Kinds of Patents.—The privileges which inventors may obtain abroad are not always called Patents for Inventions, but

apart from mere name, they are not always exactly the same in effect.

Apart from mere translation of the word "Patent" (Patente, Brevet, Privilegio, &c.), the privileges are of three principal kinds:—

(*a*) Patents of Invention, synonymous with the same term as understood in England and America.

(*b*) Patents of Importation. This is practically the same in every respect as a Patent for Invention, but denotes that the particular invention, the subject of the patent, has been previously patented in some other country, and, usually, that the Patent of Importation will expire with that previous patent. It does not solely confer right to "import" an invention, as its name might imply; in all practical respects its legal force is the same as that of a Patent of Invention.

It is usually immaterial in law whether the inventor asks for a Patent of Invention or Importation when he has already a foreign patent. The cost is exactly the same, and it has been held in France and Belgium that, where a foreign patent exists, a Patent of Invention will expire with it exactly as if it were called a Patent of Importation.

(*c*) Patents of Addition or Improvement. These, when granted, are only obtainable by the patentee of a Patent of Invention or Importation, for an improvement or addition to the invention covered by the principal patent. It is usual that Patents of Addition are subject to no yearly or other taxes. They generally fall with the principal patent, and serve a great convenience in permitting a patentee from time to time to protect any minor improvement he may make at less expense than for a new patent.

No one can obtain a Patent of Addition without the "addition" is in proper connection with an invention previously patented to himself. No addition can be filed to another man's patent unless by his assignee properly possessed of the principal patent.

Who may Apply: that is, who is legally entitled to be an applicant for Patent of Invention according to statute or common practice of the country.

Mode of Application is intended to inform intending applicants of the work necessary, its nature and extent; of the method of prosecuting the application, and the official examination or requirements which will have to be met. As no application can be properly conducted otherwise than through an agent in the country, many laws containing a provision to that

effect, the full text of all those forms which the foreign agent can prepare and sign is omitted as superfluous. All those forms to which the signature of the applicant himself is necessary are given in Appendix II. The time and nature of opposition, if any, and any special features which may modify the result of the application or its cost are noted.

Term of Patent.—The length of term granted, its commencing date, date of priority, extension of term of patent, and like information concerning its duration, will be found under this heading, where not given under the heading "Kinds of Patents."

Renewal Fees.—The exact amount of the renewal fees is given, and of the Government fees for extension of time where same can be had. Where fees are paid by patent agents for their clients, an additional charge is made for their services. Patent agents usually remind their own clients of the renewal fees shortly before they become due, thus obviating chance of irrevocable loss through patentee's forgetfulness. In firms of large practice this work is usually allotted to a special department in charge of the necessary registers.

Working.—Where the foreign law requires every patent to be worked within a stated time, particulars are given under this heading. Agents can generally effect a sufficient "working" to satisfy the law, if desired by patentees who have not had time or opportunity of selling or licensing their patent in the foreign country, or of working it there themselves. Working is more fully treated under "France," "Belgium," and "Germany."

Validity of Patent.—Any specially noteworthy provisions affecting the validity or scope of a patent will be noted under this heading; silence inferring that the usual causes of invalidity, insufficiency of specification, want of novelty, &c., may be relied on.

Infringement.—The various remedies against infringement are noted. In many countries infringement knowingly committed is a penal offence.

Amendment.—Wherever the law affords means for amending a faulty patent the nature of the means is pointed out; absence of the heading implies that the law provides no remedy.

Publications.—The method of publishing copies of specifications in print or otherwise, registering same, cost of copies, and information of similar character, is included in this heading.

Assignments and Licenses.—Provisions respecting these documents, their preparation and registration.

General Provisions are such as are necessary to mention but do not come under any of above headings, such as marking goods, use of inventions on ships, use by Crown, &c.

Average Cost of Foreign Patents.—The cost is made up of several factors. These are principally the Government fees, and stamp duties, the foreign agency fee, and the cost of preparing and translating the documents, and of prosecuting the application. Of these, the first is fixed in amount although the stamp duties sometimes vary with the length of the specification, &c.; the second will vary somewhat with the standing of the foreign agent who must necessarily be employed and, with cost of prosecution, may range from 2*l.* to 10*l.* in most countries; the third should depend on the nature and complexity of the invention, and would differ according to the number of patents applied for. Allowance must be made for the great care required in every detail, consequently the following will be reasonable prices, where such care is properly taken. Drafting specifications 2*l.* 2*s.* per 1,000; translation 25*s.* or 30*s.*; engrossing copies, each 5*s.* per 1,000; powers, legalizing 15*s.* to 30*s.* In some cases the same specification and translation may serve for applications in different countries, and when suitable drawings are once prepared, copies will naturally cost comparatively little. The custom of giving a list of fixed inclusive prices for foreign patents intended to be adhered to, whatever the complexity of the invention or the number of patents taken, does not, therefore, lead in all cases to a just charge. The amount named in the following pages at the end of the description of the law of each country must, therefore, be taken for general guidance only, and certainly not as a fixed sum applicable in every case. To enable a proper estimate to be made of the total cost for any group of patent applications, details of the invention should always be furnished.

ALGERIA.

A colony of France and covered by French patent.

ANTIGUA.

(*See* Leeward Islands.)

ARGENTINE REPUBLIC.

Date of Law—11th October, 1864; of Rules—9th November, 1866.

Patentable Inventions.—New inventions or discoveries in any branch of industry, whether made in the country or abroad, that is to say, new products of industry or new means or the new application of known means for obtaining an industrial result or product. An invention is not considered new if previous to the application for patent in Argentina it has already received sufficient publicity in works, pamphlets, or periodicals in Argentina or abroad to be worked. Pharmaceutical preparations, financial schemes, and inventions contrary to law or morality are not patentable.

Kinds of Patents.—Patents for new inventions are granted for 5, 10, or 15 years, at the option of the applicant, but where a previous foreign patent exists the Argentine patent, while limited to a maximum of 10 years, expires with the foreign patent.

Provisional patents or caveats (*patentes precaucionales*) are granted also for a term of one year, and are renewable yearly, their effect being that if during their term application for patent is made by any other party for a similar invention the holder of the provisional patent is notified of the fact and may oppose the grant within three months of the notification. Unless an agreement is made between the parties no patent will be granted to either party. Patents of addition are also granted for improvements on patented inventions, provided they do not

last for more than 10 years, or the life of the head patent if less than 10 years; but if the term of the head patent is half expired, or if the improvement lessens by one half the cost of production, time, risk, or danger, or for any like reason, the Commissioner *may fix a longer term.*

Who may Apply.—The inventor or his assigns.

Application for Patent in Spanish is directed to the Commissioner of Patents, and is accompanied by a specification and drawings in duplicate; these may be signed by the attorney. Where the invention is previously patented abroad a certified and legalised copy of the foreign patent, or any one of several foreign patents, must be sent. Where the invention is not already patented a declaration of the applicant (Form 73), authenticated by a notary and legalised by the Argentine Consul, must be substituted. The power of attorney (Form 20) must be legalised in the same way. The duration of term asked for must be mentioned in the petition, and half the government fees for that term must be paid at the time of filing. A receipt is given on request and cost of applicant. Where the term does not exceed 10 years the Commissioner will decide as to the patentability of the invention, subject to applicant's right to appeal to the Minister within 10 days. If the term exceeds 10 years the application is referred direct to the Minister of the Interior, from whom there is no appeal. The law permits the payment of the remaining half of the fees by equal annual instalments, but as the applicant is required to give security for the payment, it is practically necessary for a foreigner to pay the whole fee before the grant of the patent. If the patent is refused half the fee is returned. The fees are 80 pesos fuertes for 5 years, 200 for 10 years, or 350 for 15 years for a patent of invention; 50 pesos for a provisional patent or caveat of one year. For a patent of addition if taken by the holder of the original patent a fourth of the fee, if taken by any other party half of the fee. The duplicate of the description is affixed to the patent.

Renewal Fees.—None.

Working is to be done within two years of the date of issue of the patent, and not interrupted for longer than two years at a time, except owing to circumstances beyond control or accident, duly certified as such by the Patent Office.

Infringement is punishable by fine of from 50 to 500 pesos, or imprisonment of from one to six months, and forfeiture of infringing articles. For a second offence within five years, the penalty is doubled. Participation in infringement by selling,

exhibiting, importing, or communicating, knowingly committed, is subject to the same penalties. These penalties are without prejudice to the patentee's right to damages.

Publication, Registration; &c.—Quarterly lists of patents granted or refused are compiled for publication. Yearly volumes of patents granted with descriptions and drawings are also deposited for free public inspection at the Patent Office and chief provincial Post Offices. Written copies of the specifications filed (other than caveats) may be had on payment of stamp duty on the paper used.

Assignments must be by Notarial Act, properly legalised, if made outside Argentina by the Argentine Consul. Assignments must be registered at the Patent Office to acquire operative force against third parties.

The cost of obtaining patent is about 40*l.* for 5 years, 65*l.* for 10 years, 100*l.* for 15 years.

AUSTRALIA, &c.

Separate patents are necessary in Victoria, New South Wales, Queensland, South Australia, Western Australia, on the continent of Australia, and in Tasmania. New Zealand, Borneo, Fiji, Hawaii, among the adjacent and other islands of the Pacific Ocean.

AUSTRIA-HUNGARY.

Patents in Austria and Hungary.—The Patent Law of 15th August, 1852 (*see* Austria), covered the whole Empire. In 1867 Hungary obtained a separate government, but although thenceforward each country issued a separate Patent deed, the two patents were in effect considered one and indivisible. Neither could be obtained, prolonged, annulled, &c., without the other. The fees were increased 25 per cent. This dual system was abolished from 1st January, 1894, but patents issued or applied for before that date are still subject to its provisions and the raised fees. Thenceforth, as regards patents, the two countries became entirely distinct. Each country adopted separately the Act of 1852. The fees reverted to the original

scale. The dissociation Act of 1894, however, granted to an applicant in either country a delay of 90 days for retaining priority for his application in the other country. New laws have since been passed in each country (which *see*).

AUSTRIA.

(Including Bohemia, Cisleithania, Lichtenstein, Herzegowina, and Bosnia.)

Law of 15th August, 1852.*

Patentable Inventions.—New discoveries, inventions or improvements, having for their object a new product or means or method of production. Preparations of food, beverage, or medicine, are not patentable. Novelty is not effected by previous user or publication outside the Austro-Hungarian Empire. Foreign Patent Office specifications invalidate when introduced into the empire. German specifications are not considered publications until three months have elapsed since their issue. When an invention is already patented abroad the Austrian patent lapses therewith, or if more than one with that which the applicant has indicated as the basis for the Austrian patent. Valid patent cannot be had if a foreign patent has previously lapsed

Who may Apply.—Any person, but if a foreign patent exists then only the patentee, his heirs or assigns.

Application for Patent is made by petition signed by the Attorney, who must be resident in Austria, and be appointed by legalized power (Form 16). The examination of the specification, on which the stamp duties vary according to the length, does not extend to question of novelty. A request may be made that the invention be kept secret. The patent dates from the day of issue. Longest term 15 years.

* This law remains in force for present patents and applications until the new law, *see* page 256, comes into operation, the date of which is not yet fixed.

Renewal Fees.—On Austro-Hungarian patents granted or applied for before 1st January, 1894, with stamp duties :--

	Florins.		Florins.
1st year ..	.. 26·25	9th year ..	.. 59.06
2nd „ ..	.. 26·25	10th „ ..	.. 65·63
3rd „ ..	.. 26·25	11th „ ..	.. 78·75
4th „ ..	.. 26·25	12th „ ..	.. 91·98
5th „ ..	.. 26·25	13th „ ..	.. 105·00
6th „ ..	.. 39·38	14th „ ..	.. 118·13
7th „ ..	.. 45·94	15th „ ..	.. 131·25
8th „ ..	.. 52·50		

On each separate patent, subsequent to 1st January, 1894, with stamp duties:—

	Florins.		Florins.
1st year ..	.. 21·65	9th year ..	.. 47·75
2nd „ ..	.. 21·65	10th „ ..	.. 55·00
3rd „ ..	.. 21·65	11th „ ..	.. 63·50
4th „ ..	.. 21·65	12th „ ..	.. 74·00
5th „ ..	.. 21·65	13th „ ..	.. 84·50
6th „ ..	.. 32·00	14th „ ..	.. 95·00
7th „ ..	.. 37·25	15th „ ..	.. 105·50
8th „ ..	.. 42·50		

There is no extension of time for payment of renewal fees.

Working must be begun within one year of the grant of patent, and not interrupted for more than two years at a time. Proof of working must be afforded to the ministry.

Importation by the patentee is permitted.

Infringement.—Counterfeiting, selling, importing, offering or storing for sale, is an infringement punishable by fine of 25 fl. to 100 fl., or in default imprisonment 5 to 200 days. Where the specification has been kept secret by the desire of the patentee, fines are only inflicted on repetition of offence. Actions affecting the validity of patents are brought before the Ministry of Commerce; actions for infringements before the District Courts, with appeal to Higher District Courts, and further appeal to the Ministry of Commerce.

Assignments must be registered and accompanied by power of Attorney from the assignee to a resident agent to file the assignment and represent the assignee in the empire. Partial assignments, or for limited areas, cannot be registered under the law. The Letters Patent must be produced.

Law of 11th January, 1897.*

Patentable Inventions.—In addition to foods, beverages, and medicines; chemical products, means of disinfection, and inventions, the use of which would be contrary to State monopolies, are also declared not patentable. Processes for production of food, chemical products, &c., are, however, patentable.

Novelty.—The invention must not have been published *in print* anywhere, or used in Austria. Provision is made to enable the Authorities to declare certain foreign specifications not to be publications in the sense of this Act for a period not exceeding six months.

Who may Apply.—The actual inventor or his legal representatives.

Application for Patent is to be examined for novelty, somewhat as in Germany, to which practice that authorized by this Act is in nearly every respect exactly similar. The patent is to date from the day on which the application (after passing first examination) is published for opposition, which may be filed within two months. Application fee, 10 fl.

Renewal Fees.—On patents granted under Act of 1897 the renewal fees will be:—

	Florins.		Florins.
1st year	20	9th year	120
2nd „	25	10th „	140
3rd „	30	11th „	180
4th „	40	12th „	220
5th „	50	13th „	260
6th „	60	14th „	300
7th „	80	15th „	340
8th „	100		

Three months' extension of time for tax payment, 5 fl.

Working.—A patent granted under Act of 1897 is liable to be revoked after three years from commencement of patent term if the patentee has not worked it in Austria, or done his best to do so, or if he works only to a small extent and satisfies the greater part of the demand by importation.

Patents of Addition.—The law of 1897 provides for grant of same, tax on application 10 fl., on grant 25 fl., no renewal fees.

Sundry Provisions of the law of 1897. This law provides for the establishment of a Patent Court to which appeals can be carried from the Patent Office in suits of nullity only.

* *See* note to page 254.

There is no appeal from a final Patent Office decision to refuse a patent. Where the invention has been obtained from the papers, &c., of another, the latter may within three years obtain the revocation of the patent and its grant to himself. Provision is made for grant of compulsory licences to patentees of improvements.

It is also open to any person to ask for a declaration from the Patent Office as to whether any contemplated process or article is an infringement or not of any patent specified by him. The law of 1897 does not extend to any patent granted, or application made, before it comes into force; but any such application or patent granted may be converted into an application or patent under this law.

Infringement committed knowingly is subject to a fine of 500 fl. to 2,000 fl., or imprisonment of 3 to 12 months or to both, as well as damages, and destruction or delivery of the infringing articles or tools.

Assignments (*see* law of 1852).—Partial assignments, or for limited areas, are recognized by the law of 1897.

Cost of obtaining patent is usually 8*l.* to 20*l.* (*see* page 250).

BAHAMA ISLANDS.

Date of Law.—52 Vict., cap. 23, An Act relating to the Law of Patents (assented to 23rd May, 1889).

Patents are granted for seven years, renewable for further period of seven years and again for a like period, or 21 years in all, for any art, process, or manner of producing, preparing, or making an article, and also any article prepared or produced by manufacture and any improvement thereon, not publicly known or used in the islands.

Who may Apply.—The true and first inventor or importer into the islands of an invention unknown there.

Mode of Application.—Every person, who desires to obtain exclusive privilege in respect to any invention, must file, by an attorney in the city of Nassau, a complete specification, with a copy of same, and in the case of persons residing abroad, a copy certified and stamped of any Letters Patent which may have been issued to such person with respect to the invention of which the specification is filed, fee 3*l.* Ten days after filing specification, a petition is presented to the Governor, accompanied by a copy of specification and a declaration praying for grant of Letters Patent. The Governor may refuse the patent

if he is of opinion that the alleged invention is not patentable in law or it appears to him that the invention is already in the possession of the public with the consent or allowance of the inventor, or that there is no novelty in the invention, or that the invention has been described in a book or other printed publication before the date of the application, or is otherwise in the possession of the public; or when it appears that the invention has already been patented in the colony. Form 26 may be used.

Renewal Fees.—For second period of seven years, 10*l.*; for third period of seven years, 10*l.*

Working.—When the invention is not brought into operation within a period of three years after filing the specification, the exclusive right granted shall be forfeited and cease to exist.

Infringement.—Such remedy against any person who makes, uses, &c., without consent of the grantee, may be had in the Courts of the Islands, as the grantee of any Letters Patent would be entitled to in the like case by the law of England. Defendant can plead any such matter in defence as may be pleaded in any [illegible] of High Court of Justice in England.

Assignments, Registration.—A Register of Proprietors is kept and copies of entries obtainable. Patents are assignable, and assignments must be registered in the Office of the Registrar of Records.

The cost of patent is usually 35*l.*

BARBADOS.

Territory covered.—The Island of Barbados.

Date of Law.—Act of 12th December, 1883.

Patent Rights or Exclusive Privileges in respect of an invention are obtainable for a term of 7 years, renewable for a further 7 years, and again for a further 7 years, or 21 years in all, but cannot be validly held and maintained if at the time of filing the specification of the invention the latter is not a new invention as to the public use and exercise thereof within the Island of Barbados, or if the applicant is not the true and first inventor within the island, or if the invention was both well known elsewhere and also known to some persons or person

within the island other than the person filing the specification.

Who may Apply.—The "true and first inventor within the island," which includes, as in British law, the true and first importer.

Application for Patent is made by filing in the office of the Colonial Secretary a complete specification of the invention with a copy thereof. A fee of 3*l.* 6*s.* 8*d.* is payable therewith. There is no examination, and by the act of deposit applicant acquires patent rights without further deed than the certificate of deposit. The term of the patent commences with the day of filing the specification. Form 26 may be used.

Renewal Fees are 10*l.* preliminary to first renewal of seven years; 20*l.* preliminary to second renewal for the same period.

Working.—Exclusive rights are forfeited and cease to exist if the invention is not brought into operation within three years.

Infringement and Revocation.—In either of these matters the law provides that remedies shall be had in exactly the same way as by British law.

Publication.—Specifications are not printed, but open to inspection. Notice of the filing of a specification is to be published three times in the Government Gazette.

The cost of obtaining patent is about 25*l.*

BELGIUM.

Date of Law.—Principal Act, 24th May, 1854; Amending Act, 27th March, 1857; Act approving the International Convention of 1883, 5th July, 1884; Royal Decrees (Rules), 24th May, 1854, 12th September, 1861, 23rd June, 1877, and 21st October, 1884.

General Remarks.—The very full treatment given to the Jurisprudence under the heading of *France* will render it unnecessary to afford elaborate explanation of the provisions of the Belgian patent system which in all fundamentals is substantially the same; only a few leading references will, therefore, be given.

Patents are granted under three names, viz., patents of invention, of importation, and of improvement. The term of a

patent of invention is 20 years; a patent of importation is exactly the same as a patent of invention, only it is intended to be granted in lieu of the former, when a prior foreign patent for the same invention exists; it lapses with the foreign patent. Patents of improvement are the same as are usually called patents of addition; they are granted to original patentees for alterations, additions, or improvements on the principal invention, they expire with the head patent, and are not subject to renewal fees.

A decision[1] may be noticed from which it appears to be immaterial whether a foreign patentee asks for a patent of invention or of importation; a patent of invention is not invalidated if a prior foreign patent be found to have been taken, it however lapses with that foreign patent. It will be noticed that where more than one prior foreign patent exists the Belgium patent will lapse with that having the longest, not the shortest term.[2] Also that if the foreign patent prove to be unsustainable in law the Belgian does not fall for that reason.[3]

Who may Apply.—Inventor or his assignee, or administrator, executor, or heir of these.

Application for Patent is made by depositing in a sealed packet a duplicate specification and drawings to metric scale.[4] One set must be on stamped paper.[5] A receipt for payment of the first year's tax of 10 fr. must be presented. The deposit is made at the registry of one of the provincial governments or at the office of a district Commissary. A memorandum of the day and hour of deposit is made in the register, signed by applicant or his attorney, and a copy thereof given to applicant. The date so obtained is the commencement of the term of the patent which is granted in about a month's time without examination.[6] Power of attorney need not be legalised. Form 14 may be used.

Validity of Patent.—A patent may be declared void by the tribunals (*a*), if the invention had already been commercially worked in Belgium at the date of the patent; (*b*) if the invention is not fully or properly disclosed; (*c*) if the complete description and exact drawings of the patented article were

[1] Brussels, 31st December, 1857, E. Picard, "Traité des Brevets d'Invention," page 824.
[2] Art. 14.
[3] Antwerp, 22nd November, 1862, *B.J.* XXI, page 1162.
[4] Art. 17.
[5] Rule 1, 1861.
[6] Art. 2.

brought out in a printed[1] and published work or collection before the date of the patent, unless as regards a patent of importation that publication may be the result of a legal requirement.[2] Patents granted to others than the patentee of a prior foreign patent, or his assignees, are also void if the invention has been previously patented abroad.[3] It will be noticed that the publication above mentioned is not confined to Belgian territory,[4] but it must be full and complete enough to enable others to execute the invention.[5] Publication in foreign patent specifications falls under the exceptions given in condition (*c*) so long as it is done by imperative law, and does not depend only on the will of the patentee.[6] A judgment concerning British complete specifications filed after provisionals may be interesting, it being held that where the former goes beyond the limits of the latter (variance) the publication of the new matter inserted is not covered by this exception in the Belgian law.[7]

Renewal Fees.—These are 20 fr. for the second year, 30 for the third year, and so on, adding 10 fr. per year. They are payable before the anniversary of the date of deposit of the application, but a month's grace is given without extra payment, or six months' grace in all, on addition of a fine of 10 fr.

Working.—The Belgian law requires that the invention shall be worked in Belgium within one year of the commencement of working abroad,[8] and that it shall not cease for longer than a year at any time after that. Nevertheless, on petition, the Government *may* by Royal Decree stating reasons grant a delay of not longer than one year for the *commencement* of the working. Where working has not been performed, or has been abandoned, the Government may decree that the patent is revoked. A petition to this effect may be filed at the Ministry by any person interested, and the Government will call upon the patentee to produce proofs of the working within a certain time or otherwise oppose the petition before the issue of the decree. The Courts are not concerned with the working, the Ministry being sole judges of the sufficiency, &c., thereof.

Infringement.—The patentee has civil remedy for damages

[1] Or otherwise mechanically reproduced.
[2] Art. 24.
[3] Art. 25.
[4] Cass., 17th May, 1850, *B.J.* VIII, page 886.
[5] Picard and Olin, page 221.
[6] Picard and Olin, page 249.
[7] Brussels, 30th March, 1871, *B.J.* XXIX, page 981.
[8] Art. 23.

sustained, and may claim an injunction against the continuance of the infringement. Where the persons prosecuted have acted knowingly, confiscation of the infringing articles may be ordered, as well as of the tools, &c., for making same.

Publication of Specifications.—According to Act 19 the specifications of patents are not published until three months have elapsed from the grant of the patent, they are then published in print, either in full or by extract, as the Administration may judge desirable. The public are charged for copies at the rate of 75 cents the page of 25 lines, drawings 2 fr. the hour.

Assignment may be by simple deed under hand and seal, but to render it opposable to third parties there must be evidence of its date, it is advisable, therefore, to have it made before a notary and legalised before the Belgian Consul. Rule 19 of 24th May, 1854, requires an assignment or license, whether whole or partial, to be notified to the Ministry, for which purpose the assignee will have to appoint an agent in Belgium by power of attorney to make the notification. A certified duplicate of the assignment deed for filing must accompany the power of attorney. A tax of 14 fr. is imposed on registration.

The cost of obtaining patent, whether of invention, importation, or addition, is usually from 3*l.* to 12*l.* (*see* page 250).

BOLIVIA.

Date of Law.—8th May, 1858.

Patents may be granted for new inventions or improvements, other than for mere modifications of shape or ornament, or for medicinal remedies. The duration shall be not less than 10 or more than 15 years. Imported inventions already known abroad, but not previously known in Bolivia, may be patented for terms according to the estimated outlay necessary to set up the manufacture, namely, if 25,000 dols., 3 years; if 50,000 dols., 6 years; if 100,000 dols. or more, 10 years, and the patent is restricted to the locality in which the invention is worked, or to the territory necessary to secure its benefits.

Term of Patent commences from the date of decree granting the patent.

Application of two or more independent applicants—the first to apply for patent is preferred.

Applicant is to file a petition with description of the invention, drawings, or models, and samples of the product. The

application is referred to a special commission of experts and others sworn to secrecy, and within three months of the receipt of their report the patent shall issue. (Form 20 legalised may be used for the power of attorney.)

The specification, &c., is kept secret during the duration of the patent, and is published when the latter expires or lapses and deposited in the public library of the capital.

Improvements, &c., necessitating amendments of the original documents before or after grant should be notified.

Validity of Patent.—Patents lapse if the specification is misleading or not fully descriptive of the invention, if the invention has been already described and published in print within or outside Bolivia, or if the patentee contravenes the obligations attached to the use of the privileges as to working or otherwise.

Taxes.—There are no renewal taxes.

Working.—The inventor must put his invention into complete practice within a year and a day, counting from the date of grant of the privilege, under penalty of the lapsing of the patent if he cannot justify his omission according to law.

Infringement.—A patentee on giving security for costs, may sue for confiscation of infringing articles and for damages. If the action fails the patentee is liable to damages for wrongful seizure, and to fine equivalent to the damages which had otherwise been recoverable had he succeeded.

Registration.—A register of patents granted is kept in the Office of the Secretary of the Interior, forming part of the collection of laws and decrees, Grants are published in the Official Journal and communicated officially to the heads of districts.

Assignment must be by public, or notarial, act, on pain of forfeiture of the patent.

The cost of obtaining patent is about 100*l*.

BORNEO (BRITISH NORTH).

Patents Proclamation, 1887.

The Ordinance XII of 1871 of the Legislative Council of the Straits Settlement (which *see*) was adopted *in toto*, with such substitution of names of places, &c., as might be necessary. Its operation in Borneo commenced 1st April, 1887.

Cost of patent 40*l*.

BRAZIL.

Date of Law.—14th October, 1882.

Patentable Inventions.—New industrial products, new processes, new applications of known processes and improvements are patentable, if at the date of the application they have not been used either in Brazil or elsewhere, and have not been published so that they could be used. Inventions contrary to law, morality, public security, or health, and those which do not offer practical industrial results, are not patentable. Where an invention, however, is patented abroad, and application is filed in Brazil within seven months of the date of the foreign application, the former will not be invalidated by any publication, use, or petition by another in the meantime.

Kinds of Patents.—Of invention for 15 years, and of addition, the latter being granted to holders of the original patent and expiring therewith. The right of priority for an improvement on a patented invention is reserved to the holder of the latter during the first year. The law also provides that provisional patents may be granted where the inventor wishes to experiment in public or exhibit in an officially recognised exhibition; the term is not mentioned by law, and such protections are practically useless to foreigners. Patents lapse with previous foreign patents on the same invention.

Who may Apply.—The author or inventor, or co-inventors.

Mode of Application.—The petition in Portuguese (signed by agent) must be accompanied by a legalised power of attorney appointing an agent resident in Brazil (Form 21), and the specification in the same language in duplicate with the drawings or samples. No examination is made unless the invention refers to alimentary, chemical, or pharmaceutical products, in which case also samples must be deposited for Government analysis. This examination is at the expense of the applicant, and costs usually 4*l.* to 5*l.* The specification must also be advertised at patentee's cost *in extenso* in the *Diario Official* upon the grant of the patent.

Renewal Fees.—20 dols. for the first year, 30 dols. for the second, and so on yearly, adding 10 dols. each year. Tax for Patents of Addition is to be the same as the amount of the next annuity falling due on the principal patent, no other separate annuities being payable on the Patent of Addition.

Working.—The patent will lapse if the patentee does not

make effective use of the invention within three years, and if thereafter he suspends the use for more than one year except by reason of *force majeure*.

Infringement is punished by a fine of from 500 dols. to 50,000 dols. for the benefit of the Treasury, and for the benefit of the patentee from 10 to 50 per cent. of the damage caused, and delivery to him of all infringing instruments or products. The patentee may in addition recover damages by civil process.

Assignments, &c., are ineffectual until registered in the Office of Agriculture, Commerce, and Public Works.

The cost of Brazilian patent is about 40*l.* when the specification does not exceed 1,000 words; for each 100 words additional the cost of translation, advertising, &c., amounts to 1*l.*

Patents of Addition 30*l.*, with same additional charges above 1,000 words, the amount of next annuity to be added.

BRITISH GUIANA.

Date of Law.—Ordinance No. 13 of 1861.

Patents for Inventions are granted for 14 years, provided the invention is new within the colony and not previously published there. However, where a foreign patent already exists on the same invention the colonial patent will expire therewith; or if there are more than one such existing foreign patent, with the first which expires. A valid patent cannot be obtained if a foreign patent on the same invention has already expired.

Who may Apply.—The "true and first" inventor which, as in Great Britain, is interpreted to mean the true and first person to cause knowledge of the invention to come into the colony.

Mode of Application follows in its nature the proceedings formerly in vogue in Great Britain under the Act of 1852 but now abandoned. The petition (Form 69) must be accompanied by an affidavit of inventorship (Form 70), both these documents being signed by the applicant, and certified, for instance, by a British Consul. Either a provisional or complete specification (Form 71) must accompany the petition, the latter specification being also certified. The petition and specification are referred to the Attorney-General for report; and the Letters Patent must be applied for within three months of the

delivery of his report, and will issue in due course, but may not, except in certain special cases, be delayed for more than 12 months from the date of petition. If not previously done, the complete specification (certified) must be filed within six months of the delivery of the Letters Patent. The Letters Patent must be also registered within 10 days of grant at the Registrar's Office in Demerara and Essequebo. Among the Government fees are examination of provisional, 25 dols.; notice to proceed, 25 dols.; stamp duty thereon, 5 dols.; sealing, 20 dols.; recording patent, 5 dols.; complete specification, 15 dols. The patent dates from the filing of the petition.

Renewal Fees.—Before end of seventh year 100 dols., which must be stamped on the original Letters Patent or duplicate thereof.

Working.—There is no official requirement as to working the invention in the colony. Importation does not invalidate the patent.

Prolongation.—The Governor, on proper proceedings commenced at least six months before expiry of patent (Sect. 23), may, if so advised, grant extension for a further period not exceeding seven years. Stamp duties, 150 dols.

Amendments may be made by way of disclaimer, provided they do not enlarge the scope of the patent.

Registration, &c.—A Register of Patents is kept containing specifications and all information. An inspection fee of 48 cents is charged. Copies at the rate of 25 cents per page, drawings by agreement. There are no printed copies of specifications.

Infringement is subject to usual remedies by way of injunction or claim for damages as in Great Britain. The cost of provisional patent in British Guiana is usually about 30*l*. Full patent 70*l*.

BRITISH HONDURAS.

Date of Law.—26 Vict., cap. 11, 10th September, 1862.

Patents for Inventions are granted for 14 years. They expire with any previously granted foreign patent, and cannot validly be taken after such foreign patent has expired. The invention must be new "within the colony."

Who may Apply.—The true and first inventor or importer.

Application is substantially the same as for British

Guiana, except that the forms are slightly altered and the Letters Patent must issue within six months of the date of petition. Only the power (Form 26) and affidavit, or declaration (Form 72) need be signed by the inventor and legalised. The fees are—on petition 4 rls.; notice to proceed 2 rls.; filing specification 4 rls.; sealing 30 dols.; Attorney-General 10 dols.

Renewal Fees.—Before third year 52 dols., before seventh year 103 dols.

Working.—There is no legal requirement as to working the invention nor is importation forbidden.

Infringement.—Remedy is afforded as in Great Britain.

Extension may, in meritorious cases, be had for a further period not exceeding 14 years.

Registers of patents and of proprietors are kept in the Colonial Secretary's Office. Inspection fee 2 rls.; copies 2 rls. per 90 words. No printed copies.

The cost of patent in Honduras is about 55*l.*

CANADA.

Date of Law.—The Patent Act, Rev. Statutes, 1886, cap. 61; as amended by 55–56 Vict., cap. 24 (1892).

Patentable Inventions.—Any invention, such as is usually considered patentable, may be patented in Canada, provided it was not known or used by others before the date of invention and has not been in use or on sale with the allowance of the inventor for more than one year previous to the application for patent in Canada. Up to 9th May, 1892, no person was entitled to a Canadian patent if a patent for the same invention had been in existence for more than 12 months in any other country; but under the amending Act of 1892 it may be considered questionable if this is now the case since the section was amended to read "Any inventor who elects to obtain a patent for his invention in a foreign country before obtaining a patent for the same invention in Canada, may obtain a patent in Canada, if the same be applied for within one year from the date of the issue of the first foreign patent for each invention." As this permission would appear to be necessary solely to avoid the effect of public knowledge in the meantime, it appears likely that so long as the invention remains undisclosed in Canada

the patent may still be taken after the expiration of the 12 months referred to. Nevertheless, pending any judicial decision on the subject, inventors may be advised to apply within the 12 months.

"Under any circumstances, if a foreign patent exists, the Canadian patent shall expire at the earliest date on which any foreign patent for the same invention expires."

Patents; Duration.—Patents granted prior to 9th July, 1892, were granted for 5, 10, or 15 years. Fees 20, 40, and 60 dols. Patents usually taken for the shortest term of 5 years are extended to 10 years and thence to 15 years on payment of fees of 20 dollars for each extension.

Patents granted since 9th July, 1892, are for terms of 6, 12, or 18 years respectively, fees and extensions (for six year periods) remaining the same.

Patents lapse with previously granted foreign patents.

Who may Apply.—The actual inventor or his assigns, or in case of death, any person to whom the inventor has bequeathed the right, or in default of such, the legal representatives of the deceased inventor.

Mode of Application.—The papers necessary for application are: (*a*) a petition stating the name and title of the invention, and stating a place of domicile in Canada (Form 55), signed by the applicant. (*b*) A power of attorney to the patent agent (Form 56), signed by the applicant before a witness. (*c*) A specification in duplicate, each copy being signed by the *inventor* (Form 58) before two witnesses. (*d*) An oath (Form 57), legalised in the proper way, by the *inventor*. (*e*) Where the applicant is an assignee of the inventor the assignment with a copy must also be forwarded for record; and (*c*) and (*d*) must be signed by the *inventor*, not by the applicant, unless the inventor is dead. Drawings may be signed by the attorney, but the other papers referred to cannot be signed by him. The Commissioner of Patents may require the applicant to furnish a model or samples of ingredients; the model must be less than twelve inches in any direction, and show properly every part of the invention claimed and its mode of working.

The Commissioner may refuse a patent, if the invention does not appear patentable or novel, or is already in the possession of the public through a printed publication or otherwise, or has been patented before in Canada or elsewhere, unless it is doubtful whether the patentee or the applicant was actually the first inventor. Applicant may file an answer

to any objection, and in event of refusal may appeal to the Governor in Council within six months of the date of the decision. Every application must be completed and perfected within two years of the filing of the petition.

Where conflicting applications are made arbitration is employed to ascertain the rights of the parties. Each party chooses an arbitrator and the Commissioner chooses a third. The parties pay the fees each of their own arbitrator, or by agreement.

Renewal Fees.—There are no renewal fees other than the fees for extension of 5 (6) or 10 (12) year patents to 10 (12) or 15 (18) years, for each 5 (6) years of extension 20 dols. is the Government fee. A special request for certificate of extension is to be forwarded, *together with the original Letters Patent.* No shorter extension than 5 (6) years can be obtained.

Working.—The patent rights cease if the invention is not worked in Canada within two years of the date of the patent, or such further time as the patentee may by petition obtain, and is thenceforth continuously worked in Canada, "in such a manner that any person desiring to use it may obtain it, or cause it to be made for him at a reasonable price at some manufactory or establishment for making or constructing it in Canada."

Importation.—After twelve months have elapsed from the date of the patent the patentee, assignee, &c., may not import the invention under penalty of forfeiture so far as his personal interests in the patent are concerned. Twelve months' extension of this term may be granted on cause shown.

Validity of the Patent.—A patent is void if any material fact in the petition or declaration is untrue, or if the specification and drawings contain more or less than is necessary for purpose of misleading; but, contrary to English law, if the omission or addition was an involuntary error the Court *may* in any suit give effect to the patent so far as it is sustainable.

Infringement may be restrained by injunction, and damages may be recovered.

Disclaimer and Re-issue.—Provision is made for amendment of a specification by disclaimer of such parts as are not tenable; a copy of the disclaimer is attached to the Letters Patent. The disclaimer, in special form, signed by the patentee before two witnesses, must be forwarned in duplicate with the original Letters Patent and a fee of 2 dols. Where, however, the errors are such that disclaimer alone would be insufficient

to amend them, the patent can be *re-issued*; for instance, if the specification is defective or inoperative from insufficient description. The original patent is surrendered by writing under seal on the patent, and returned to the Patent Office with a new petition for re-issue, oath in support, specifications with drawings, and fee of 4 dols.

Caveats may be filed where the invention is not complete, and may be held somewhat analogous to provisional specifications, though drawings should be added. They are evidence of inventorship and operate for one year, to cause the inventor to receive notice of any similar application by another person, so that he may take steps to claim his prior rights by making his application for patent if so disposed. The fee is 5 dols. The caveat must be supported by a declaration of inventorship properly legalised.

Assignments and Licenses must be registered at the Patent Office in Canada (fee 2 dols.), including those between joint applicants for patents. An assignment is null and void against any subsequent assignment if the latter is registered first. Copies must be forwarded with the assignments, the latter being returned after record.

Publications.—Specifications are not at present printed for sale separately, but written copies can be had, expense varying with length and drawings.

Marking Patented Goods.—Every patentee must mark the goods with the word "Patent" followed by the year of the grant, as "Patent, 1892," under penalty of fine not exceeding 100 dols., or in default two months' imprisonment.

Persons other than the patentee or authorised by him marking goods with any such indication are liable to fine not exceeding 200 dols., or three months' imprisonment, or to both.

The cost of patent, including tax for six years, is about 15*l*.

CAPE OF GOOD HOPE.

(Including British Bechuanaland.)

Date of Law.—Act No. 17 of 1860.

Patents for Inventions are granted for 14 years for "inventions" considered to be such "under the British Act of 1852," that is to say, new within the realm, and probably meaning new within the colony of Good Hope. Where a prior

patent exists in "parts out of the Cape of Good Hope" the patent will lapse therewith, or with the first to expire if there be more than one. Patent cannot be validly obtained after expiry of any such foreign patent.

Who may Apply.—The true and first inventor, which term, under the meaning assigned to invention, would include the first "importer" of the knowledge of the invention into the colony.

Mode of Application.—The applicant must appoint an attorney (Form 26), to deposit a complete specification (*see* Form 94) at the Office of the Colonial Secretary, and in due time to give notice at the office of the Attorney-General that the application is to be proceeded with. The Attorney-General then issues a somewhat lengthy notice of appointment of a date for hearing, which the applicant is required to publish in certain newspapers as notice for opposition. At the hearing opponents, if any, who have entered opposition will be heard, or the Attorney-General may call in expert evidence (very rare) at the applicant's expense, and generally decide the question of whether a warrant for grant of patent shall issue. Upon issue of warrant, same must be deposited within three months at the Colonial Secretary's Office for issue of patent, provided that the latter must issue within six months of the date of filing the specification, which date the patent will bear. In case of accidental delay patent may be sealed within seven months; in case of death of applicant patent may be sealed to heirs within three months of death, notwithstanding expiration of the six months statutory term. Among the fees are depositing specification 2*l.* 10*s.*, Attorney-General's "Appointment" 2*l.* 4*s.* 6*d.*, Letters Patent 2*l.* 10*s.*

Renewal Fees.—Before expiration of the third year 10*l.*, seventh year 20*l.*

Working.—There are no legal conditions as to working the invention in the colony. Importation is not forbidden.

Amendments may be made by way of disclaimer, provided the scope of the patent is not extended.

Infringement is subject to the same remedies as in Great Britain.

Extensions and Confirmation.—Petitions for extension must be filed at least six months before expiry of patent, the Governor may refer the petition to Commissioners to advise as to term to which the patent may be further extended. In like manner if a patent be found legally invalid the Governor may on petition confirm the patent so that it may be upheld.

Registers and Indexes are kept and open to inspection (1*s.*). Copies may be had at the rate of 1*s.* per 72 words; there are at present no printed copies of patents. Assignments and licenses should be registered. Filing fee, 10*s.* Certificate of registration, 10*s.*

The cost of Cape patent is usually 25*l.* to 35*l.* (*see* page 250).

CEYLON.

Date of Law.—Ordinance No. 16 of 1892, taking effect from 1st July, 1893.

This new law is precisely on the same lines as the Indian Act of 1888 (*see* India), with the exception that "the inventor of a new manufacture or two or more persons, some or one of whom only are or is the true and first inventors or inventor of a new manufacture, may petition the Governor for leave to file a specification thereof," and the fees and taxes charged by Government are of precisely the same amount and payable in the same order as under the Indian law. The working of patent is not compulsory. When applicant resides out of Ceylon all documents may be signed by agent under power of attorney (Form 26). The official referee's fee is R. 52.50 in every case.

The cost of patent is usually 25*l.* to 30*l.*

CHILI.

Date of Law.—9th September, 1840, amended 25th July, 1872.

Patents for Invention, that is to say, for novel arts, manufactures, machines or instruments, preparation of materials or any improvement thereof, may be had for a term not exceeding 10 years, and for the whole or part of the Republic. Novelty is not defined by the Act, but it is presumed that the invention should not have been previously published anywhere since the section allowing patents to the introducers of arts known elsewhere, but still unknown in Chili, was repealed in 1872.

Who may Apply.—The Act mentions only the "author or inventor."

Mode of Application.—Petition to the Minister of Interior must be accompanied by a full description with drawings,

samples or models, as the case may require, so that same may be referred to a commission of experts empowered to examine the novelty of the invention and sworn to secrecy and faithful judgment. A specification signed by the members of the commission, with a fee of 50 dols., must be entered in the National Museum, and receipt therefor obtained and presented before the patent will be issued. Arbitration shall decide claims of rival inventors. Form 20 legalised by Chilian Consul is sufficient to enable agent to apply for patent.

Renewal Fees.—There are none.

Working.—The Government may decide upon a term within which the invention must be worked, such term being mentioned in each patent. After that the working must not be abandoned at any time for longer than a year.

Infringement is punishable by fine of 100 dols. to 1,000 dols., and confiscation of infringing articles, the value of which is divided between the Government and the patentee, who has also civil action for damages.

Assignments must be registered and reasonable assurance given of the genuineness of the assignment.

Registration and Publication.—A register of patents is kept at the Ministry of Interior, but the specification deposited at the National Museum is kept under seal until the patent has expired.

The cost of patent in Chili is usually 70*l.*

COLUMBIA (BRITISH).

(*See* Canada, of which Dominion above forms a part.)

UNITED STATES OF COLUMBIA.

(Formerly Granadian Confederation.)

Date of Law.—No. 35, May 13th, 1869.

Patents are granted for any term, not less than 5 nor more than 20 years, at the option of the applicant, but expire with any prior foreign patent. New mechanical contrivances, combinations of materials, and processes useful to industry, arts,

or sciences, are considered patentable. If an invention has already been patented abroad, the patentee can hold a valid Columbian patent, provided the invention has not been already introduced into public use. Such patent expires with the foreign patent.

Who may Apply.—The inventor only, Columbian or foreign.

Mode of Application.—Power of attorney, Form 20, must be signed before Columbian Consul. The petition must be accompanied by a clear description of the invention, and if the patent is granted, drawings or models or samples must be furnished within 40 days or the patent will not issue. 10 dols. is payable on application, and is not refunded if the patent is refused; from 5 dols. to 10 dols. for each year of the term must be paid at the time of receiving the patent, the aforesaid 10 dols. being counted in part payment. No examination is made, but the application is open for opposition 30 days before grant.

Renewal Fees.—There are none, nor is extension obtainable.

Working.—If the invention is not practised for a whole year the patent will be void, unless special circumstances prevent the use.

The cost of patent for 5 years is usually 50*l.*, 20 years 65*l.* to 80*l.*

CONGO FREE STATE.

Date of Law.—29th October, 1886; decree, 30th October, 1886.

Patents are granted in all respects as in Belgium, except that there are no renewal fees or legal obligation to work the invention within any stated time.

A Government tax of 100 francs is charged on each patent of invention or patent of importation. There is no tax on a patent of addition.

Powers of Attorney (Form 14) must be legalised by the Belgian Consul.

The cost of patent in the Congo Free State is usually 25*l.*

COSTA RICA.

The power of granting patents is confined to Congress by Article XX of the Constitution. Patents of invention must therefore be solicited from the Constitutional Congress.

DENMARK.

Law.—13th April, 1894; entering into force 1st July, 1894.

Patents are granted for 15 years from their issue date, but having priority from date of filing application. They are independent of the life of prior foreign Patents, but cannot be validly obtained if the invention has been published in a generally accessible print (presumably anywhere), or used in Denmark. Patents of Addition are granted during the life of the Head Patent and expire therewith. Inventions for production of articles of food are not patentable.

Who may Apply.—Inventor or his assignee (proof of assignment being necessary).

Mode of Application.—Foreigners must appoint a resident attorney (Form 23, no legalizing required). Duplicate Danish Specifications and Drawings prepared as for Germany; fee 20 crowns. Examination as to novelty is made, and, if satisfactory, application is published; any person may lodge objection during the next two months, while the Patent Commission may also continue their examination. After expiration of the two months and within a further two months the Patent Commission will decide on the application. In case of refusal, applicant may apply within six weeks for reconsideration, and, if unsuccessful, may appeal within four weeks to a Special Commission, fee 100 crowns, returnable if successful. Issue fee on Patent 10 crowns; first year's fee 25 crowns.

Renewal Fees.—Payable yearly, 2nd and 3rd years, 25 crowns; 4th, 5th, and 6th years, 50 crowns; 7th, 8th, and 9th years, 100 crowns; 10th, 11th, and 12th years, 280 crowns; 13th, 14th, and 15th years, 300 crowns. For extension of three months, add $\frac{1}{8}$th of the renewal fee.

Working.—Within three years of issue of Patent, and thereafter yearly. The Patent Commission may, by favour, extend these times for good reasons.

Infringement punishable by damages, confiscation to patentee of infringing articles and, if knowingly committed, fine not exceeding 2,000 crowns, or on repetition 4,000 crowns. These are not recoverable unless action brought within three

years of the commission of the offence, and within one year of its coming to the knowledge of the patentee. Importation by others of articles, &c., made by a process patented in Denmark is an infringement.

The cost of Danish Patent is usually 7*l.* to 18*l.* (*see* page 250).

ECUADOR.

The law of 18th October, 1880, follows substantially that of 1858 in Bolivia, except that the Commission's Report is referred to Congress for approval, and foreigners must subscribe a declaration of submission to the laws of the country in all matters that may arise in respect of the patent and renounce all right to diplomatic intervention.

EGYPT.

Patents may be registered in the Courts at Cairo. It is advisable also to register at Alexandria and Mansourah. A certified copy of the patent is required, and a legalized power (Form 26 suitably varied), both certified by the Foreign Office of the Country or origin.

The cost varies and may be stated at about 30*l.*

FIJI.

Under Ordinance No. 3 of 1879 patents are granted for 14 years to the inventor, his heirs, administrators or assigns. A petition accompanied by specification in duplicate and declaration is referred to the Attorney General who may give a certificate of protection. Within two months notice must be given, and advertised in the "Royal Gazette" and another Fijian newspaper. Three months are allowed for opposition, and a further three months for sealing. Government Fees, 5*l.* 5*s.* on petition, 3*l.* 3*s.* on certificate, 10*l.* 10*s.* on patent, 5*s.* on registration of patent. Applicant should sign Form 26. There are no renewal fees or "working" conditions.

The cost of Fijian patent is usually 45*l.*

FINLAND.

(Part of Russia, but not covered by the Russian patent.)

Date of Law.—Decree of 30th March, 1876.

Patents are granted for new inventions or improvements in manufacture or art, but not for medicines or inventions contrary to law or morality. The duration of the patent may be from 3 years to 12, according to the importance of the discovery. Patents lapse with prior foreign patents.

Applicant.—None but the inventor may apply for the patent.

Application.—A petition to the Finance Department of the Senate of Finland, with specification especially setting forth the novelties and stating if a foreign patent has been obtained thereon, and in such event, a certified copy is desired. Foreign residents must appoint an agent resident in Finland; the power (Form 14 may be used) should be legalised by Russian Consul. The specification, if not filed at the time of petition, must be sent in within 30 days. After examination and approval the patent will issue, and the whole specification and patent must be published by the applicant *in extenso* in the official Swedish and Finnish newspapers three times.

Renewal Fees.—None.

Working must be performed within two years in the country, and not be abandoned for more than one year at a time.

Infringement is punishable by fine, of which half goes to the patentee and half to the poor box in addition to damages.

The cost of Finnish patent varies according to the length of the specification, as the advertising constitutes a large item; with 1,000 words in the specification it will cost about 50*l*., adding 2*l*. for each 100 words over 1,000.

FRANCE.

Date of Law.—The law governing patents is dated 5th July, 1844, and as amended by the law of 31st May, 1856, in some minor particulars relating to the forfeiture of patent rights is now in force. A supplementary Act passed 23rd May, 1868, provides for the protection of inventions shown at exhibitions. The International Convention of 1883, to

which France is a party, has also the force of law, and where its provisions are contrary to the existing law appears to override the latter.

Patentable Inventions must be either the invention of new industrial products or the invention of new means or the new appliance of means already known for obtaining an industrial result or product.[1] Pharmaceutical compounds or remedies and financial plans and schemes are specially declared not patentable;[2] bare principles, &c., and inventions having no "industrial results," are also not patentable. An invention is not considered "new" if sufficient publicity has been given to the invention, either in France or abroad, to enable the invention to be worked, before the date of application for the French patent.

Patents.—The duration of a patent shall be 5, 10, or 15 years, as the applicant may elect; but inasmuch as the initial cost is the same and the yearly fees the same whatever the term of the patent, the patent for 15 years is invariably asked for. The term of a patent cannot be extended except by Act of Parliament.[3] The term commences from the date of the deposit of the documents constituting the application for the patent.[4]

Foreign Patents.—A patent may be obtained in France for an invention or discovery already patented (*breveté*) in any other country, but the duration of the French patent cannot exceed that of the previous foreign patent.[5] It will be noticed that the patent granted in this case is subject to exactly the same conditions as other patents so that it may be void for want of novelty. Thus, where a patent has been received in a foreign country in which the grant of patent is accompanied or preceded by a publication of the specification, no valid French patent can be had.[6] This has been confirmed in respect of a previous English patent,[7] and also of an United States patent[8] and of a German patent, the publication consisting in the placing of the specification on view for opposition.[9] There have been

[1] Art. 2.
[2] Art. 3.
[3] Art. 15.
[4] Art. 8.
[5] Art. 29.
[6] Paris, 1st August, 1861, Gougy, *Pataille*, 63, 263.
[7] Rej. 7th July, 1860, Lister, *Pataille*, 61, 44.
[8] Paris, 20th May, 1857, Journaux Lebloid, *Pataille*, 59, 103.
[9] Rej. 9th March, Soltsam, *Pataille*, 83, 11.

qualifying decisions tending to show that the publication must have been an effective one, *i.e.*, actually known, but in view of above direct decisions on the point little reliance should be placed on the latter. The foreign publication must be a *sufficient* one to enable the invention to be worked. Foreign patent specifications are, of course, considered to be sufficient publications in this respect.

A valid French patent can, therefore, only be taken so long as, when previous foreign patents exist, no publication of the invention has been made by or under them, but the existence itself of a foreign patent is sufficient to make the duration of the French patent dependent thereon.

An uncompleted English provisional protection at a time when these were published has been held to be a "patent" in this connection.[1] This, however, was when the grant of Letters Patent preceded the filing of a complete specification in Great Britain; it is doubtful whether it would apply now under the procedure of the English Act of 1883. The determination of the date at which the foreign patent should be said to have been taken is to be determined by the French Court on their information of the respective foreign law,[2] and is determined to be the date of the term of the patent, although full patent rights may not have been obtained at that date.

The French patent falls with the previous foreign patent, from whatever cause the latter may cease to exist.[3] The right to obtain the French patent is personal to the patentee of the foreign patent or his legal personal representatives; the fact of a previous foreign patent existing need not be stated by the applicant for the French patent.[4]

The Applicant should be the "author of the invention, as by Art. 1" a new discovery or invention in any department of industry confers on its author under the conditions and for the periods hereinafter fixed the exclusive right of working the said discovery or invention for his own benefit. Art. 30 declares a patent to be void in certain cases, but the fact of the applicant not being the inventor is not amongst the grounds given; it is probable, therefore, that a patent applied for by an assignee will not be revoked. It is the opinion of French lawyers that an assignee may have a valid patent granted

[1] Paris 30th May, 1879. Rej. 28th June, 1881, Paterson, *Pataille*, 21, 209.
[2] Rej. 29th November, 1864, Bossi. *Gaz. Trib.*, 30th November, 1864.
[3] Cass., 14th January, Rebours (2), *Pataille*, 63, 81.
[4] Brunfaut *v.* Soc. Denain. Rej. 1860.

him.[1] Heirs may apply when the inventor is dead.[2] A limited company or corporation having a recognised civil status or legal separate existence may be considered an inventor.[3] A workman employed to carry out an invention cannot apply.[4]

The Application.—By Articles 5, 6, and 7 to constitute an application for patent there must be deposited in a sealed packet at the Office of the Secretary of the Prefecture of the Department in which the applicant (or his attorney) is domiciled, (*a*) an application for patent limited to a single principal object with the details constituting it and the application or purposes thereof, giving a title which shall be a precise summary or designation of the object of the invention, and mentioning the term (usually 15 years) of the patent desired; (*b*) a specification (in duplicate) in the French language without alterations or erasures, and drawings in ink or samples, also in duplicate, any suitable size and material, preferably tracing cloth being used for the drawings, and all measures and weights indicated, being according to the metric scale; (*c*) a list of the documents deposited; and (*d*) where the applicant proceeds through an agent (as he must do if absent from the country), a power of attorney in French, Form 14, signed by the applicant, which need not be legalised. In the latter case this is the only paper that the applicant need sign in person.

The documents will not be received unless the receipt for the payment of the first year's tax, 100 fr., is produced.[5]

A receipt for the sealed packet is given on request and payment of the stamp duty of 25 centimes.[6]

The patent is issued about four months after application, but the term of the patent commences from the day on which the application was filed.

Examination.—There is no examination as to novelty or patentability or as to the right of the applicant, nor is the Government empowered to refuse the application for patent for any cause except in event of the formalities of the application not being observed, or if more than one invention is sought to be protected by one patent. When a patent is refused in this manner half the government fee is returned to the applicant,

[1] V. Renouard, No. 83.
[2] Picard and Olin, No. 27.
[3] V. Renouard, No. 86.
[4] Huard and Pelletier, page 247.
[5] Art. 7.
[6] Art. 7 (3).

but the latter is at liberty to renew his application within three months from the date of the notice of rejection without forfeit of fee.[1] By Art. 11 patents applied for in due form shall be granted without previous examination at the applicant's own risk and without guarantee as to either the novelty or merit of the invention or the accuracy of the description. There is no way of amending a French patent after grant.

Renewal Fees.—The duration of the patent is dependent on the payment in due time of an annual fee of 100 fr. due and payable in each year before the anniversary of the date of application for the patent. If the last day for payment falls on a Sunday or public holiday payment must be made not later than the day previous. No extension of time can be had for the payment of renewal fees. It has been held that the payment is legally effective if made at any time on the day of anniversary of the date of the application,[2] but it is preferable[3] that the payment be made before the same hour on which the application was filed (the time of day being always noted on the filing receipt). A tax paid late will be received, but will only operate to keep up the patent if the applicants prove that by *force majeure* he was prevented from paying the tax in time. Sickness or insanity of patentee is no excuse.[4] Where an applicant had forwarded money to his resident agent to pay an annuity, and by reason of the absence of the agent the annuity was not paid in time, the patent was held not to have lapsed,[5] it being held that the intention of the law is to penalise only the negligence or bad faith of the patentee.[6]

Working.—The patent will lapse if the invention be not worked in France within two years of the date of the signature of the patent (found at the foot of the patent), or if it has ceased to be worked for two consecutive years unless in either case the patentee shows good cause for not so working it.[7]

It is necessary that the working should be real, and not simply formal, the object being that the invention should be commercially introduced or placed in such a form that it is capable of being commercially used.[8] It is sufficient if the patentee manufactures and puts on sale, whether an actual sale

[1] Art. 12.
[2] Cass., Vimont *v.* Sykes et Collier, 10th January, 1863.
[3] Cass., Blondel et Cie. *v.* Antrailles, 1st September, 1855.
[4] Cass., Wild *v.* Parent and Schaken, 16th March, 1864.
[5] Trib. Sanit., Claude Michaud, 1st July, 1854.
[6] Eug. Pouillet, page 473.
[7] Art. 32.
[8] Eug. Pouillet, page 492.

has been effected or not, provided the patentee has used his best endeavours to introduce his invention into commerce.[1] It is not necessary to take into consideration the duration of the patentee's efforts to introduce his invention.[2] As the law only requires the invention to be put into operation, in the question of a machine it is sufficient for the inventor to have worked same himself without selling or delivering machines to the public, it being presumed that the public obtain a benefit in the placing on sale of the products of the machine.[3] A public exhibition or experiment of the invention by or before parties having a possible interest in adopting the same has been held sufficient.[4] Placing a machine on view in a public exhibition, coupled with the sale of a single machine, was held sufficient.[5]

On the contrary, a single isolated act of manufacture has been held not sufficient;[6] nor is working proved by *procés verbaux* (certificates of a notary) drawn up every two years at the request of the inventor when the fact of manufacture was contradicted by the defective state and impractical installation of the machines.[7]

As to partial carrying out of the invention, it has generally been held that where a patent covers more than one process or modification it is not essential to work more than one.[8] Also where a patent of addition or improvement has been taken it is not necessary to work more than the latter only,[9] but not if the patent of addition is for a substantially distinct invention.[10] A patentee, however, having omitted to "work" a certain distinct part of his patent, in this case a particular tool, was held to have forfeited his patent right in that particular part only.[11] But where a patent for distilling apparatus claimed to be applicable to the treatment of various different matters (beet-root, wine, &c.) it was held unnecessary to work the machine in relation to all the matters mentioned in the patent.[12]

If the invention as "worked" be different from that as

[1] Trib. civ. Seine, 23rd July, 1846, *re* Porret.
[2] Trib. civ. Seine, 26th December, 1859, Thomas and Laurens.
[3] Colmar, 7th December, 1864, Klotz, *Pataille*, 65, 215.
[4] Paris, 10th August, 1876, Alexis, *Pataille*, 79, 133.
[5] Paris, 11th May, 1836. Rej. 13th June, 1837, Griollet.
[6] Paris, 23rd March, 1870, Wilcox, *Sirey*, 70, 248.
[7] Douai, 20th July, 1859, Lister, *Pataille*, 61, 44.
[8] Rej., 30th March, 1860, Lotz, *Dall.*, 61, 5, 48.
[9] Paris, 9th February, 1865, Poitevin, *Pataille*, 65, 190.
[10] Paris, 5th July, 1884, Fernand Martin, *Pataille*, 85, 289.
[11] Paris, 13th May, 1865, Chapellier, *Pataille*, 66, 88.
[12] Grenoble, 19th June, 1857, Villard (2), *Pataille*, 57, 448.

patented the question of the legal validity of the working will depend on whether the differences are essential or non-essential.

It is to be noted that the "working" is to be done in France, and that it may be done by a representative of the patentee or, presumably, by licensees; but in case of infringement the "working" of the patent by the infringer is not to be accounted a legal working.

From the above it will be seen that no fixed rule can be laid down as to what is a sufficient working to satisfy the law.

Patentees who have not been able to get their inventions taken up within the two years must be guided more or less by the commercial nature and value of their invention as to whether they shall have actual working performed, and to what extent, or whether they shall attempt to get working done by others so that if their attempts prove unsuccessful they may be able to prove justification for absence of actual working and so save their patent under the latter part of Art. 32.

What will be accepted as a sufficient justification may be best understood from actual cases which have occurred. Nevertheless, in applying these cases to the invention under consideration it must not be forgotten that decided cases have not such force with the Courts in France, or indeed anywhere in Europe, as they have in Great Britain. A French judge in no way considers himself bound to follow a precedent, cases are decided on their merits entirely.

Amongst accepted excuses for absence of working are the following:—Want of capital, natural result of the commercial crisis in France in 1848;[1] want of capital, especially when the invention concerns a small class (such as railways) who may desire to obstruct the patent so that it may lapse:[2] want of working due to the obstructive action of a infringer who afterwards sues the repeal of the patent;[3] want of means, coupled with the fact that the commercial working is restrained by State monopoly (telegraphic apparatus).[4]

Where a patent cannot be worked without infringement of a previous existing patent of other parties it has been held that the working of the second patent stands excused until the first patent has lapsed.[5] But it would appear that it is uncertain

[1] Paris, 30th March, 1855, Frezou and Meissonnier, *Pataille*, 55, 110.
[2] Rej. 23rd November, 1859, de Costa, *Soi*, 61, 1, 179.
[3] Amiens, 16th March, 1882, Abriany (1), *Pataille*, 83, 182.
[4] Amiens, 29th May, 1884, Mimault, *Pataille*, 85, 324.
[5] Cass., 6th March, 1858, Grassal, *Dute*, 58, 1, 342.

whether this is so or not, if it be shown that the second patentee has taken no steps to obtain the permission of the previous patentee.[1]

It is difficult to apply any rule for patentees not residing in France, but the following may be suggested:—That where a patent concerns simple articles of commerce which may be made for sale without special machinery, that a number be made and placed on sale and proof of the facts obtained; where the invention, however, concerns manufacturing processes or requires special and costly machinery to produce it, that circulars be addressed to leading manufacturers in France, the more the better, offering licenses, same being *bonâ fide*, and that advertisements be inserted to the same effect in likely papers. These may have useful commercial result, but if not they may be shown as proof that the patentee has done all in his power to introduce the invention. The extent of the working or attempts should be somewhat commensurate with the value of the invention. Sworn proofs are advisable for the protection of the patentee in possible future suits. Absolute certainty cannot, of course, be assured by anything less than a full commercial working, but the above suggestions embody the opinions of the leading French patent agents and jurists.

Validity of Patent is destroyed under Art. 30 (*a*) if the invention was not new; (*b*) if same was not patentable under Art. 3 (medicines and financial schemes); (*c*) if same was for a bare principle, &c.; (*d*) if contrary to public order, safety, or morals; (*e*) if the title given fraudulently indicates any but the real object of the invention; (*f*) if the specification, &c., is not sufficient for the working of the invention or does not completely and fairly indicate the real means employed by the inventor; (*g*) if the patent was obtained contrary to Art. 18, by which, if any person files a patent application for an improvement on a previous patent during the first year of the term of the latter, except the said previous patentee himself or those entitled through him, the application is to be kept sealed up until the year has expired, and then be patented only if the previous patentee or a person entitled through him has not in the meantime made an application for patent for the like improvement, in which case the previous patentee would obtain the preference.

Introduction of the Patented Article from abroad by the patentee is forbidden (except so far as is allowed by the

[1] Douai, 20th July, 1859, Lister, *Pataille*, 61, 44.

Convention to citizens of the contracting States) under penalty of forfeiture of the patent.

The object being that French labour should be employed the bare fact of introduction of patented articles into France is not sufficient in itself to avoid the patent. Thus articles may be brought into France to be repaired or improved and again exported,[1] or may pass through France to their destination in other countries,[2] or may be brought in as patterns or samples not for actual use or sale.[3] The prohibition does not extend to articles necessary to be used in carrying out a patented process.[4] The patentee is not responsible for the introduction by others without his knowledge or consent.[5]

Infringement is punishable by fine of from 100 to 200 fr.,[6] enforceable by the Public Prosecutor at the public expense at the instance of the patentee,[7] but not of a licensee.[8] The fines are not cumulative.[9] A repetition of the offence, within 5 years of a condemnation, is punishable with imprisonment, from 1 to 6 months. The patentee may also bring an action for damages, and demand the confiscation of infringing articles, even when the defendant is acquitted.[10] Both actions are barred if no steps be taken within 3 years of the commission of the offence, or the last of such offences.[11] The applicant for an order of confiscation may be ordered to give security for costs, and if a foreigner, such security is obligatory.[12]

An infringer may successfully demur on the ground of nullity or forfeiture of the patent, or in connection with the ownership of the patent.[13]

Scope of Patent.—The French patent system gives a large scope to the patent independent of the wording of the specification; a patent for a product covers same even if made by different means to those specified.[14] The product need not be

[1] Paris, 12th June, 1870, Hayemaine *v.* Voisin and Lonvel.
[2] Havre, 26th March, 1880, Larmanjet *v.* Huet et autres.
[3] Douai, 11th July, 1846, Warlech *v.* Pecquet de Beaurepaire.
[4] Douai, 11th July, 1846, Warlech *v.* Pecquet de Beaurepaire.
[5] Semie, 24th April, 1855, Goodyear *v.* Aubert and Girard.
[6] Art. 40.
[7] Art. 45.
[8] Cass., 27th April, 1859.
[9] Art. 42.
[10] Art. 49.
[11] Crim. Code, Art. 638.
[12] Art. 47.
[13] Art. 46.
[14] Demar *v.* Montaguac, C. Paris, 1856.

identical.[1] The question if the essential character of the product is reproduced decides.[2] A patent for a process is infringed by similar process giving same results but by different means.[3] In a chemical process there is infringement if the same substance is produced by analogous means;[4] and the substitution for producing a result of one chemical substance for another, even if not analogous is an infringement.[5] But where the product is old and the patent claims only use of certain substances to produce it, there is no infringement by use of a chemical equivalent of one of those substances, or other essential difference.[6] Unessential differences in a machine do not destroy character of infringement.[7] Fundamental analogy is proof of infringement.[8] Also reproduction of same principle by different means,[9] even where other essential differences are present.[10] A combination of known elements with a definite purpose is infringed where the same principle or purpose of that combination is obtained.[11] Reproduction of an essential part of the patented invention is an infringement.[12] A machine designed to make a new fabric may not be used without infringement for making a known material.[13] The making of known machine parts is an infringement, if same are intended to be put together to infringe a patented combination.[14] Where a combination is patented, use of one element thereof may be an infringement if used with same object.[15]

An infringing machine may be different, but must show the characteristics of the patented machine.[16] The combination of

[1] Marchall *v.* Ch. de d'Orleans, Cass., 1855.
[2] Fournier *v.* Piet, Tr. Seine, 1829.
[3] Favier *v.* Massieux, Tr. Seine, 1863; Lawrence *v.* Ploncard, C. Paris, 1878.
[4] Dutertre Fr. *v.* divers, C. Paris, 1859.
[5] Renard *v.* Gerber Keller, Tr. Seine, 1862.
[6] Brossette *v.* Depron, C. Paris, 1860; Dhaisne *v.* Surrebouse d'Audeville, C. Paris, 1875,
[7] Gache *v.* Gerin, C. Lyon, 1856; Delamet *v.* Descoubert, Cass., 1873.
[8] Daubet *v.* Montagnat, C. Lyon, 1859; Mre. Carret et autres, C. Paris, 1873.
[9] Porret-Blanchard *v.* Nicolo et autres, Tr. Seine, 1846; Meunier *v.* Senac, Cass., 1878.
[10] Brunfaut Fr. *v.* Chagot et Cie., C. Paris, 1862.
[11] Redier *v.* Redus, C. Paris, 1862.
[12] Godard, Desmaretz *v.* de l'Isle, Cass., 1864; also Cass., 24th March, 1875.
[13] Gevre *v.* Auclair, C. Lyon, 1860.
[14] Motte *v.* Lawrence et Cotel, Cass., 1855.
[15] Danois *v.* Balin, Cass., 1879.
[16] Boulogne *v.* Delamotte et Failli, Cass., 1872.

the same elements is not an infringement where the form and arrangement are different.[1] A patent for means for producing a product is not infringed by use of other means for producing an identical product.[2] Those who knowingly receive, sell, or expose for sale, or introduce infringing articles are subject to the same penalties as infringers.[3] A purchaser with knowledge of infringement is an accomplice.[4] As to objects simply passing through France it has been held that they are not within the terms of Art. 41,[5] but there are other decisions to the contrary.[6] An action for damages will lie whether the infringement be knowingly committed or not.[7]

Revocation.—Actions of annulment or forfeiture may be brought by any person interested.[8] The Public Procurator may intervene,[9] and in such case all registered owners of the patent shall be cited.[10] The annulment of a patent renders it void *ab initio*. An action for damages may be brought by the patentee against a losing plaintiff in a suit of revocation.

Patents of Addition are granted to the holders of an original patent for any improvements, modifications, or alterations they may desire to make in their original inventions. Patents of addition lapse with the head patent, they are subject to no renewal fees, and their working is in effect covered by the working of the invention which is necessary to keep up the patent (*see* Working). The same documents are required as for a principal patent; except that usually no new power of attorney is necessary. The tax is 20 fr.

If a head patent is declared void for any cause the patent of addition falls with it,[11] even though the latter might have constituted a valid patent by itself.[12] Patents of addition have been upheld for extending the application of the head invention.[13] They may be validly held either for changes, improvements, or additions to the head invention.[14]

[1] Jeautet-David *v.* Raphanel, C. Besancon, 1870.
[2] Caly-Cazalet v. Soc. Acieries, Cass., 1869.
[3] Art. 41.
[4] Vachon *v.* Baroche, C. Dijon, 1851.
[5] Lepee *v.* Bolireller, Trib. Civ. Seine, 1860.
[6] Debain *v.* Fab. Musique, Trib. Corr. Seine, 1861.
[7] Guerineau, Aubry *v.* Dupuis, Trib. Civ. Seine, 1860.
[8] Art. 34.
[9] Art. 37.
[10] Art. 38.
[11] Art. 16.
[12] Raab and Cie. *v.* Neuvezel, C. Lyon, 1865.
[13] Lemaire-Daime *v.* Canonilli, Cass., 1867.
[14] Agnelle Fr. *v.* Murray, Makintosh et autres, C. Paris, 1870.

There is reserved to the principal patentee a priority of right to patent improvements on his patented invention during the first year.[1] This year dates from the day of signature of the patent.[2] The Courts are competent to decide as to whether such a priority can be sustained, *i.e.*, if the novelty is in truth an improvement on the original invention.[3] It would appear that a previous disclosure of the improvement before taking the patent of addition has no adverse effect thereon provided it did not occur before taking the principal patent.[4]

Publications. — A list of patents granted is published weekly in the "Bulletin Officiel"; there is no list of patents applied for. Separate printed copies of the specifications of patents are not published, but manuscript copies can be had on payment of cost at the Ministry of Agriculture and Commerce. The specifications of those patents on which the fee for the second year has been paid are printed and published in volumes. The original specifications are deposited at the Conservatoire des Arts et Metiers after the patents have expired.

Marking Patented Articles.—The law requires all articles made under patent to be marked "Breveté sans Garantie du Gouvernement," but in practice this is reduced to "Breveté S. G. D. G."

Assignments and Licenses.—To render an assignment valid the law requires (*a*) that it shall be made by notarial act, (*b*) that before it is made the taxes for the remainder of the term of the patent shall be paid up in full, (*c*) that the assignment shall be registered at the Secretary of the Prefecture of the Department in which it is made.

In respect of patentees resident out of France it has always been usual, though possibly it may not be essential, to operate the assignment by means of power of attorney on French soil. Thus the patentee and the proposed assignee give power to A and B respectively to appear together before a notary in France, there to effect the sale. It is necessary to produce the receipt for the remaining renewal fees on the patent. The assignment is afterwards registered. As the transfer itself must be by notarial act, the powers of attorney of the assignor and assignee must likewise be notarial, and properly legalised by the French Consul.

Where permissible the expense of transfer may be avoided

[1] Art. 18.
[2] Clement *v.* Charbonnier, Trib. Corr. d'Epernay, 1860.
[3] Frezon *v* Meissonnier. Rej. 1855.
[4] Storm *v.* Derival et autres, C. Douai, 1864.

by foreigners by taking the patent in the name of the assignee instead of the inventor.

Recommendations have been made that to avoid expense of paying up the remainder of the renewal fees, an exclusive irrevocable license be given instead of an assignment. The idea is ingenious but not practicable, since it has been long ago decided that such a license is in truth an assignment.[1] Any *exclusive* license for a locality is a cession or assignment within the meaning of the Act.[2]

Ordinary *non-exclusive* licenses are not subject to above rules as to registration or payment of renewal fees. They may follow by simple agreement. Nevertheless they may be registered, if desired, without the previous payment of the renewal fees.[3]

The cost of obtaining a French patent may vary from 8*l.* to 20*l.* (see page 250).

GERMAN EMPIRE.

Date of Law.—The present law is dated 7th April, 1891, and came into force 1st October, 1891, in substitution for the previous Act of 1877, which in its main features it resembles very closely. Prior to 1877 there was no patent law for the whole of Germany, but separate patents could be had in Prussia, Saxony, Bavaria, Hanover, and Wurtemburg. An Act of 1st June, 1891, provides for the protection of "useful models."

Kinds of Patents.—Patents of Invention for 15 years, dating from the day next following the day of application; and Patents of Addition granted to the holders of Patents of Invention, for improvements in direct connection therewith, and expiring with the head patent if the latter is suffered to lapse. Nevertheless, if a Patent of Invention is revoked, the Patent of Addition does not necessarily fall with it, but becomes a principal patent, and can thenceforth be kept alive to the end of the term for which the head patent would have lived by payment of annuities; the *date* of payment being accounted from the date of the head patent, but the *amount* from the date

[1] *Re* Pecquirieux. Rej. 8th March, 1852.
[2] *Re* Curbonnier, Trib. Corr. Rouen, 1866.
[3] Pouillet, "Traité des Br. d'Invention," page 271.

of application for the Patent of Addition.[1] Thus, if a patent be granted 1st January, 1893, an addition applied for 1st June, 1895, and the head patent revoked 1st December, 1898, an annuity becomes payable on the Patent of Addition before 1st January, 1899, and the amount is that of the fee for the fifth year. The Patent of Addition would expire 1st January, 1908.

"Useful models" are such inventions of a minor kind which have not required the exercise of that inventive talent which is necessary in Germany to uphold a Patent of Invention. Patents for useful models last six years.

Patentable Invention.—All new inventions which permit of industrial use are patentable unless incompatible with law or morality, and with the exception of articles of food, drinks, medicines, and chemical products, in so far as the invention does not relate to a distinct process for manufacturing such articles.[2] Nevertheless, it has been held that a patent for a process covers also the product when made by that process, and that importation of the product from abroad will be an infringement of the patent, if it can be proved to have been made by the patented process.[3] Principles are not patentable; but if a principle be known a patent may still be given for a particular mode of reducing the principle to practice.[4] It is no ground for refusal that the practical application of the principle is a matter of simplicity,[5] but no patent will be granted when the carrying out of the invention or solution of the problem is already within the ordinary capacity or skill in handicraft of a worker in the trade.[6] It is recognised that the problem which an inventor sets himself may be in itself new, and in such case there may be patentable invention even when the solution of the problem is easy.[7] A new combination,[8] or choice of new means,[9] for performing an old purpose, may be patentable. The patenting of one set of means for a purpose does not prevent patenting another set of means for the same purpose.[10] The use of known process or means for a new purpose is patentable if it brings

[1] Sect. 7 of Act of 1891.
[2] Sect. 1.
[3] Circular by Chancellor, *Gar.* VI, 23; R.G., 14th March, 1888, *Gar.* VI, 165.
[4] P.A., 15th April, 1880, *Gar.* II, 1.
[5] P.A., 15th November, 1888, *Gar.* VI, 2.
[6] R.G., 23rd October, 1880, *Gar.* II, 97.
[7] R.G., 15th May, 1889, *Gar.* VII, 4.
[8] R.G., 24th June, 1881, *Gar.* III, 26; Hartig P.B., 13, 1882.
[9] R.G., 5th April, 1881, *Gar.* II, 141.
[10] R.G., 4th May, 1889, *Gar.* VII, 17.

with it a new technical effect,[1] or if its use entails great difficulties which the inventor has overcome.[2] The same remarks apply to the use of elements of a combination.[3] The Patent Law requires that the invention shall be capable of industrial use,[4] but it is not necessary to prove actual use or commercial advantage, or that it attains its purpose, but only possibility of its use.[5]

Novelty.—The Patent Law states that an invention shall not be considered new if at the date of the application it has already been described in a public print *anywhere*, provided that the publication has occurred within the last century; or if it has been so publicly employed in the country that its use by other persons skilled in the art appears possible.[6] As to publication in print abroad, it should be observed that it is not necessary that it should have reached Germany, though it should be of such a nature that it can eventually come to the knowledge of the German public.[7] Foreign patent specifications must, from the nature of the subject, be considered sufficient,[8] and are equally bars to applications by the foreign patentees themselves;[9] but the mere exposure of specification for opposition is not a publication in the eye of the law, since the latter speaks of publications *in print* only.[10] The sending out of circulars to a small circle of people is not a publication,[11] nor the sending of drawings to a few persons in a private way;[12] but sending out full descriptive circulars broadcast is a publication.[13] As to the amount of publication, it must be sufficient to enable those who understand the art to work the invention without further invention,[14] but such information may be contained in a drawing alone.[15] Public use to defeat a patent must be sufficiently open that persons conversant with the art are able to operate the

[1] R.G., 11th March, 1889, *Gar.* VII, 47.
[2] R.G., 8th January, 1890, *Gar.* VII, 65.
[3] R.G., 22nd May, 1880, *Gar.* II, 40.
[4] Sect. 1.
[5] P.A., 30th September, 1880, *Gar.* II, 6.
[6] Sect. 2.
[7] P.A., 12th January, 1882, *Gar.* III, 138.
[8] R.G., 22nd May, 1880, *Gar.* II, 40.
[9] P.A., 15th April, 1880, *P. Bl.*, 43, 1880.
[10] R.G., 20th May, 1881, *Gar.* III, 90.
[11] P.A., 13th October, 1881, *Gar.* III, 99.
[12] P.A., 15th April, 1880, *Gar.* II, 1.
[13] P.A., 2nd November, 1882, *Gar.* IV, 21.
[14] R.G., 3rd July, 1880, *Gar.* II, 85.
[15] R.G., 5th April, 1881, *Gar.* II, 141.

invention.[1] If the knowledge is confined to a small circle of persons it is insufficient.[2] Trials and experiments for the production of a machine are not equivalent to public use,[3] but an exhibition of working before experts and interested persons may be.[4] Exhibition abroad is not a publication.[5] Under the Law of 1891 the Chancellor may, by a notice in the "Reichsanzeiger" (Gazette), declare that the officially-published specifications of those foreign States which grant reciprocity in this respect to Germany shall not be considered publications according to German law until three months have elapsed from the actual date of their public appearance. At present this provision has only been applied to Austria-Hungary, but there appears to be no reason why it should not be extended to the United States. Claim cannot be made, however, to the benefits of the section until the notice appears.

Who may Apply.—Whoever first applies for a patent is entitled to the grant,[6] but the patent will be void if it is shown that the invention was taken without permission from the papers or apparatus of another person.[7] It does not matter whether that other person is the inventor or not.[8] The writers on German Law generally recognise a right of application inherent in the inventor;[9] this right will pass to assignees or heirs of the inventor.[10] If an application is refused, abandoned, or not prosecuted, the priority of date is lost.[11]

Mode of Application.—Where the applicant does not reside in Germany, a resident agent must be appointed to represent the inventor and receive notices on his behalf as long as the patent remains in force. The power (Form 16), which need not be legalised, must accompany the application, and a duplicate specification of the invention in the German language with drawings, if any, these latter papers being signed by the resident agent.

The application is submitted to one of the four subdivisions of the Application Department of the Patent Office, where the

[1] R.G., 1st February, 1881, *Gar.* II, 235.
[2] R.G., 27th October, 1880, *Gar.* II, 151.
[3] P.A., 19th August, 1880, *P. Bl.*, 1881, 3.
[4] R.G., 23rd October, 1880, *Gar.* II, 97.
[5] P.A., 9th June, 1881, *Gar.* III, 130.
[6] Sect. 3.
[7] Sect. 10.
[8] R.G., 23rd October, 1880, *Gar.* II, 97.
[9] *Gareis. Kommentar.*
[10] Sect. 6.
[11] P.A., 13th October, 1881, *Gar.* III, 99.

novelty and patentability of the invention are examined. If informality is found, or if novelty or patentable subject matter is wanting, or if the invention is not sufficiently distinguished from prior patents or other published descriptions, a "*Vorbescheid*" (preliminary decision) calling attention to the defects and prior matter referred to, is forwarded to the applicant or his agent, requiring him to amend or answer within a stated time, usually two months. The time will be extended on request being filed to that effect. If no answer be returned to the Patent Office within the time, or extended time, allowed, the application shall be deemed to be withdrawn.[1] If answer is duly filed the Department will decide upon the application, or may issue further *Vorbescheids* until satisfied that the material is sufficient for judgment. When the application is brought into due form decision will issue; if in favour of the grant the papers will be laid open for opposition; if against the grant the applicant has one month to appeal to the Appeal Department (fee 20 M.); this time cannot be extended, but where the appeal is entered, a further time may be had to file the argument by which the appeal is supported. The appeal is taken by one or other of the two divisions of the Appeal Department, whose members are distinct from those of the Application Department. The judgment of the Appeal Department is final in matters affecting applications for patents.

When the application is allowed and ready for publication the fact is notified to the applicant, and an advertisement is inserted in the "Reichsanzeiger." The invention acquires provisional protection, and is open for opposition for two months. Within this time the first year's tax, 30 M., must be paid. When the two months are expired the application is again examined and passed and an allowance sent to the inventor. The patent is next inserted in the Register and receives its distinctive number; and lastly, in about two to three months the document containing a printed copy of the specification and drawings is issued.

If opposition is filed, it must be supported by an argument, and copies are forwarded to the applicant or his agent, who will be invited to answer. Decision will be given by the Patent Office, and is subject to appeal as above. Witnesses may be heard and costs awarded.

Amendments in the application or specification can be made at any time up to the publication for opposition.

[1] Sect. 21.

The publication can also be delayed, on the request of applicant, for a period not exceeding six months, the Patent Office being not empowered to refuse less than three months' delay in such case.[1]

Application for Useful Model is not subject to examination as to novelty or patentability. Since the German Patent Office is very strict in requiring that the matter sought to be patented shall show exercise of inventive talent, and patents are refused if the invention differs only slightly from known constructions, or in such a way only that the differences made are held to be within the competence of those conversant with the art; applicants whose inventions do not present any distinctly novel principle may be well advised to file with the application for patent an application for model patent. If the former is refused they can then still obtain patent rights, though for the shorter term of six years. Form 17 and a second set of papers similar to those for application for patent are required. The applications should be simultaneous to avoid the consequences of either antedating the other.

Renewal Fees.—For the second year 50 M.; third year 100 M., and so on, adding 50 M. yearly. These taxes are due before the anniversary of the date of the patent, but may be paid within the ensuing six weeks without fine, or within a further six weeks on adding a fine of 10 M. Power is reserved to the Chancellor to reduce these fees under the new Act of 1891. This power is not exercised in individual cases. A patentee in necessitous circumstances, on proof of that fact, can be granted a respite for payment of the first and second years' taxes until the third year, being exempted from payment if the patent lapses in the third year.

The only renewal fee on a useful model patent is 60 M. before end of third year.

Working.—A patent can be revoked after the lapse of three years, counting from the day on which the patent is advertised as granted,[2] (*a*) if the patentee neglects to work his invention in the German empire to an adequate extent, or to do all that was required for securing the said working; (*b*) if the grant of licenses would be to the public interest, and the patentee refuses such license when suitable compensation and good security are offered.

[1] Sect. 23.

[2] Act of 1891, Sect. 11. For Patents before the Act the three years is computed in the same way under decision of the *Patentamt* of 23rd July, 1885, *Gar.* V, 210.

In respect of working; it has been held that the provision of the law is intended for the benefit of German trade and manufactures generally; so that importation will not serve instead.[1] Even when articles are made in the country, but the majority sold there are imported, the working will not be held sufficient;[2] but it is open to the patentee to prove that the importation is without harm to the interests of home industries.[3] Thus, if it is the *use* of an invented matter (machine), rather than its manufacture which is of value to the trade, importation of the machine appears to be no ground for revocation of patent.[4] If the manufacture is not within the competence of German factories (a special kind of Bohemian glass reflector) the patentee was held justified in manufacturing solely abroad (Bohemia).[5] The grant of licenses is not necessarily a sufficient working,[6] though *genuine* offers of license which nobody has accepted may amount to a sufficient attempt to get the invention worked.[7] When working is done, it need not be identical with the patent so long as it contains the essentials of the patented invention.[8] Where a patent of addition has been filed, the invention added becomes one with the invention covered by the head patent,[9] consequently a working of the improvement covered by the patent of addition, which is presumed so far to supersede the head patent, will answer the requirements of the law without working the details of the head patent.[10] Useful models do not need to be worked.

Scope and Effect of the Patent.—The patent forbids others than the patentee or those authorised by him to employ the invention professionally, or in the way of commerce (*gewerbsmässig*);[11] or to trade in or offer the invented matter for sale. Where a patent is granted for a process it extends to the direct products of the process.[11] A patent has no effect against any person who, at the date of application for the patent, has already employed the invention in Germany, or made the necessary arrangements for doing so;[12] such person

[1] P.A., 11th October, 1888, *Gar.* VI, 288.
[2] R.G., 8th June, 1889, *Gar.* VII, 232.
[3] R.G., 11th December, 1886, *Gar.* VI, 247.
[4] P.A., 15th May, 1884, *Gar.* V, 219.
[5] R.G., 11th May, 1889, *Gar.* VII, 258.
[6] P.A., 20th January, 1881, *Gar.* III, 200.
[7] P.A., 19th October, 1882, *Gar.* IV, 165.
[8] R.G., 12th November, 1883, *Gar.* IV, 193.
[9] R.G., 10th May, 1881, *Gar.* III, 213.
[10] P.A., 4th October, 1888, *Gar* VI, 294.
[11] Sect. 4.
[12] Sect. 5.

may continue to use the invention in his own or other workshops according to the requirements of his business, and this exemption will pass with the respective business.[1] Patents also do not apply to vehicles or ships, other than German ships,[2] temporarily within jurisdiction.[1]

The Government may also appropriate inventions for use in the army or navy, or for the public welfare, but subject to compensation to the patentee; which, in event of dispute as to amount, will be settled by the Courts of Law.[1]

The logical basis of the German patent system, though it limits the number of patents which can be granted, makes those which are granted more valuable, as it gives to them a very extended scope. Recognising, as the Germans do, the principle or spirit of the invention as more important than any form of words, the Courts do not scruple to go beyond the logical wording of the claim, and consider the invention itself, as set forth in the specification, with a view of finding the general idea or meaning of the invention.[3] The Patent Office will not permit claims to be drawn for separate combinations within the whole invention, since the inventor is only required to point out and describe what is new and of his invention, and this must constitute an integral whole, or else there is more than one invention comprised in his demand and division will be necessary. Though the claims may thus appear narrow, it is for the Courts to give full effect to the invention, and the inquiry therefore usually turns, not on the claim, but on the meaning of the specification as a whole and the general conditions of the art at the time the invention was made.[3] It has been repeatedly held that where an invention consists in a combination of parts, it must be considered not according to the separate parts but according to the way they co-act, and the claim should consequently show the relative action of the parts rather than their construction.[4] A new combination to be patentable must rest on a new idea.[5]

Annulment and Revocation.—A patent may be annulled on any one of three grounds,[6] viz.: (*a*) that the invention was not patentable or not new, but under the new Act this ground

[1] Sect. 5.
[2] R.G., 20th October, 1887, *Gar.* VI, 205.
[3] R.G., 15th May, 1889, *Gar.* VII, 9.
[4] P.A., 25th November, 1880, *Gar.* III, 52; R.G., 24th June, 1881, *Gar.* III, 26.
[5] R.G., 4th May, 1880, *Gar.* VII, 41.
[6] Sect. 10.

will no longer be accepted after five years have elapsed since the grant of patent was published;[1] (*b*) that the invention had been patented to a prior applicant, a ground which remains always open and may be brought forward by any person; and (*c*) if the essential contents of the application were abstracted from the specification, process, &c., of another person, in which case annulment will only be given on petition of that person.[2] A patent may, however, be revoked, (*a*) if at the end of three years "working" has not been done as above said, or (*b*) if after the same time it appears conducive to the public interest that permission to use the invention be granted to others, and the patentee refuses to grant such permission on reasonable terms and good security.

Suits of revocation or annulment are brought, in the first instance, before the Annulment Department of the Patent Office. Appeal against decision of the Annulment Department lies to the Appeal Department, and thence, within six weeks, further appeal may be made to the *Reichsgericht* (Supreme Court) at Leipzig. Revocation or annulment can be pronounced in respect of a part of the patent.[3]

Infringement, knowingly committed, is punishable by fine up to 5,000 M., or imprisonment not exceeding one year, and the judgment may be advertised at the expense of the condemned party.[4] The patentee may also demand damages or a fine in lieu of damages not exceeding 10,000 M., and where the fine is ordered no further suit for damages can be brought.[5] A suit of infringement cannot be brought except in respect of acts occurred during the previous three years.[6]

Improper Use of word Patent. — Marking packages, articles, &c., with false indications leading to belief that they are protected under Patent Law; or use of such words or marks on any advertisement or otherwise is liable to a fine not exceeding 1,000 M.

Publication of Specifications.—These are printed separately and placed on sale shortly after the patent is allowed, at the price of 1 M. each. Applicants may order in advance within fourteen days of the allowance of patent not less than 20 copies at cost of ½ M. each, or may deposit a sum not less

[1] Sect. 27.
[2] P.A., 12th January, 1882, *Gar.* III, 138.
[3] Sect. 35.
[4] Sect. 36.
[5] Sect. 37.
[6] Sect. 38.

than 20 M., or a multiple thereof, and be supplied with all subsequent specifications appearing in that class at the rate of ½ M. apiece, until the deposit is exhausted.

Assignments, &c.—Any alteration made in the ownership or representative of owner of the patent must be recorded at the Patent Office and published in the "Reichsanzeiger." With the assignment, the new owner, if resident out of Germany, must give a new appointment of agent, so that the legal representation in Germany may not cease. Assignment should be in duplicate.

Cost of German patent is usually from 8*l.* to 20*l.* (*see* page 250).

Cost of German model patent is usually from 6*l.* to 18*l.* (*see* page 250).

GUATEMALA.

Date of Law.—21st May, 1886.

Patents are granted for inventions or improvements for terms varying from 5 to 15 years. The invention, if foreign, must not previously have been published in Guatemala. Where a previous foreign patent exists, the patent expires therewith, provided the maximum term of 15 years shall not be exceeded.

Application for Patent shall be accompanied by a clear description of the invention and within 40 days of the grant of the patent, full drawings, &c., shall be filed, together with samples, to be preserved as proofs in case of litigation. Patents are granted without examination, at the risk of the applicant. They are subject to an annual tax of from $5 to $50. Form 20, legalised by the Guatemalan Consul, is sufficient to enable an agent to make application for patent.

Working.—The invention must be put in practice within a year of the grant, and not abandoned at any time for longer than a year.

Infringement is a penal offence.

Publication.— Each application is published four times, and grant of patent twice, in the "Official Gazette." Specifications are only visible after lapsing of the patent.

Grants in Favour of Enterprises, either of money or by loan of buildings or land, remission of customs or other duties, and other exemptions, may be made in favour of applicants

who obtain concessions promising great advantage to the State.

The cost of application for patent is usually 80*l*.

HAWAII.

Date of Law.—Civil Code, Secs. 255, 256, Act of Aug. 29th, 1884.

Pat nts are granted for 10 years for inventions not previously known in the country, or described in any printed publication. Also for the unexpired term (not exceeding 10 years) of any previous foreign patent, provided the invention has not been in use for more than one year in Hawaii.

Who may Apply.—The inventor only.

Application (Form 66) is directed to the Minister of the Interior, and contains a petition, oath, description, and drawings; if for a composition of matter samples of ingredients must be added. Models to be furnished if asked for. The application is referred to the Commissioner of Patents for examination and report. and if in favour of the grant the patent is issued by the Minister of the Interior, a copy of the specification and drawings being attached to it

Caveats operative for one year may be filed by any person desiring further time to mature an invention.

The government fees are:—On application for patent 5 dols; for examination 20 dols; issue 5 dols., each caveat 5 dols.

Record of patents and specifications is kept in the Office of the Interior Department.

The cost of application for Hawaiian patent is usually 15*l*.

HONG KONG.

Date of Law.—Ord. No. 2 of 1892, effective from 1st Apr., 1892.

Kinds of Patent.—Letters patent are granted for inventions already patented in Great Britain, but not otherwise. They expire with the British Patent.

Applicant.—The inventor, or assignee.

Application.—The petition, specification, and declaration signed by agent under power (Form 26) are filed at the Colonial Secretary's Office. Notice is given twice in the Hong Kong Govt. Gazette of the date on which the petition will be considered by the Executive Council and such other advertisement made as the Governor may direct.

Renewal Fees.—None.

Working.—There is no legal necessity to work the invention

The cost of Letters Patent is usually 30*l.*

HUNGARY.

Date of Law.—7th July, 1895. In force 1st Jan., 1896.

Patents for 15 years from date of application are granted for inventions other than articles of nourishment and chemical products. Inventions for war purposes are subject to refusal if opposed by the Minister of Commerce. The Law as to novelty is the same as in Germany. Patents of Addition can be had and prior right to an improvement on a patented invention is reserved to the patentee for one year from date of original application.

Who may apply.—The inventor or his successors (the latter having to exhibit proof of title).

Mode of Application.—Foreigners must appoint a local agent by legalized power (Form 19). The mode of application is subject to Ordinance of the Minister of Commerce, and is modelled on that prevailing in Germany (which see) except that no examination is made as to novelty. Fees on application 20 Kr. 1st year's tax 40 Kr.

Renewal Fees for 2nd year 50 Kr.; 3rd, 60 Kr.; 4th, 70 Kr.; 5th, 80 Kr.; 6th, 100 Kr.; 7th, 120 Kr.; 8th, 140 Kr.; 9th, 160 Kr.; 10th, 200 Kr.; 11th, 250 Kr.; 12th, 300 Kr.; 13th, 350 Kr.; 14th, 400 Kr.; and 15th, 500 Kr. Extension of time 30 days free; further 30 days, 20 Kr. (*see below*).

Working.—Within three years and should not be abandoned without justification (*see below*).

Patents dated before 1896 are subject to the provisions of the old law as to taxes, working, etc. (*see* Austria).

The cost of Patent of invention or addition is usually 7*l.* to 18*l.*

INDIA.

Date and Title of Law.—The Inventions and Designs Act, 1888, in force from 1st July, 1888; Acts of 1859 and of 1883 repealed, saving past operation of, and rights, &c., acquired under these Acts.

Patents are validly granted only in respect of useful inventions possessing the character of novelty under the Act, but where the same invention has already been patented in any country other than the United Kingdom or India, a valid patent can only be had in any case if application is made in India within one year from the date of the acquisition of such foreign patent.

An invention is not considered new if it has already been known or published in India, or in the United Kingdom, with the following exceptions:—(*a*) Public use or knowledge obtained in fraud of the inventor and not acquiesced in by him, will not be considered to invalidate the patent if the application be made within six months of the commencement of such use; (*b*) public use by the inventor or his servant or agent, or by any person with his authority for not exceeding one year previous to application is permitted; (*c*) where the inventor has obtained a British patent, any previous use or publication in British India between the date of the application for the British patent and the application for like privileges in India will not be held to invalidate the Indian patent if the latter is applied for within one year from the date of the actual sealing of the British patent; (*d*) where an invention has been exhibited at an industrial or international exhibition certified as such by the Governor-General in Council it does not lose its character of patentable novelty thereby, if the application be made within six months of the date of admission into the exhibition. Patents in India expire with previously granted patents abroad.

Who may Apply.—The actual inventor, or his executors, administrators, or assignees. The term "inventor" does not include the importer into British India unless he is the actual inventor. Where two or more inventors apply on the same day each may obtain a privilege or patent; where the applications are made on different days the first to file the application is preferred.

Application for Patent.—The patent rights are obtained by the act of filing specifications of the invention after leave to do so has been obtained by petition to the Governor-General in Council. The application in proper form must be signed by the applicant or his agent duly appointed by legalised power of attorney (Form 26). "It must state the name, occupation, and address of the applicant, and where a patent has been obtained in the United Kingdom the date of this patent, and the date of the actual sealing thereof; and must describe with reasonable precision and detail the nature of the invention, and of the particular novelty whereof it consists, and be supplemented by such further particulars relating to the invention, and by such drawings or photographs illustrative thereof as the Governor-General in Council may see fit to require from the applicant." A model must be furnished if asked for. The Government fee on petition is R. 10.

The application may be referred to an expert for inquiries and report after deposit of a stated fee previously required of the applicant, but this is very unusual; or the Governor-General may make such further enquiry as he may think fit before granting leave to file the specification.

The specifications (at present seven copies are required, including one incorporated with the petition) (Government fee R. 30) must be filed within six months of the date of the order giving permission to file. Three months' extension may be had (Government fee R. 20). Upon the filing of the specifications, for which a receipt is given, the applicant obtains by law, without special deed being given, patent rights for 14 years counting from the day of filing the specification subject to the payment of renewal fees.

Renewal Fees.—Each year, before the expiration of the 4th, 5th, 6th, 7th, and 8th year, R. 50. Before the 9th, 10th, 11th, 12th, and 13th years, R. 100. Extension of time can be had for any of these payments, Government fees for one month, R. 10; two months, R. 25; three months, R. 50.

Working.—None.

Publication.—Registers are kept of all inventions patented and of the addresses, &c., of the patentees, assignees, &c., open to inspection; the specifications filed are also open to inspection (fee R. 1), but are not printed.

Extension of Patents.—Provision is made for extension of patent where the inventor has been inadequately remunerated. The petition must be filed not more than one year or less than six months before the expiration of the patent. The Governor-

General may refer the petition to the High Court. Extended patents are subject to renewal fees of R. 100 yearly, the limit of extension is 7 years, or in exceptional cases 14 years.

Amendments may be made to specifications filed, in an analogous manner to the practice in Great Britain. The Government tax on amendment is R. 20.

Infringement.—Invalidity of the patent cannot be set up in answer to a suit of infringement; if the patent is invalid, it can only be declared void on special application to the High Court, security for costs being given. If the patent is revoked on the ground of fraud the true inventor may receive a patent in lieu thereof, and the fraudulent patentee may be condemned to pay to the rightful inventor the whole or a portion of the profits, as determined by the Court, on consideration of the diligence of the true inventor and general merits of the case.

Compulsory Licenses may be granted, as in Great Britain, on petition to the Governor-General in Council.

The cost of Indian patent varies with the rate of exchange, at present it is usually 16*l.* to 20*l.*

ITALY.

Date of Law.—31st January, 1864, extending and amending the Sardinian Law of 30th October, 1859.

Patents are granted for inventions, as usually understood, other than medicines, provided the invention be new, or not formerly known in sufficient detail to enable it to be put in practice. As in France, publication abroad is held to invalidate a subsequent Italian patent;[1] but any publication made in pursuance of foreign Patent Laws is not a bar to obtaining a valid Italian patent, provided the latter be applied for during the currency of the foreign patent and before others have imported the invention or worked it in Italy.[2] Patents taken under this latter clause are called patents of importation, but a recent decision[3] of the Court of Appeal of Milan, in opposition to a prior decision[4] to the contrary effect, has affirmed that it is

[1] Loc. Tel. Lombarde *v.* Soc. Tel. Zurich, Turin Cass., 20th January, 1890.
[2] Art. 4.
[3] 26th March, 1890.
[4] 14th December, 1888.

immaterial whether the applicant asks for and receives a patent of importation or a patent of invention, the effect of each being exactly the same. Where the original patentee or his assignee make improvements and modifications in the patented invention, these may be protected by patents of addition, expiring with the original patent and not subject to renewal fees. Six months of priority are reserved to the original patentee at the beginning of the term of the patent for filing any patents of addition he may make within that time. If the invention is connected with beverages or eatables, patents will only be granted on advice of the Board of Health.

Who may Apply.—The law reserves the right to the author of the invention but it is customary to consider that an assignee may apply. Patents of addition can only be applied for by the grantees of the head patents to which they respectively refer.

Application must be accompanied by a specification in Italian or French, and drawings in triplicate, if any, a certified and legalised copy of the original foreign patent, if there is one, a certified and legalised power of attorney (Form 14 may be used), a receipt for the tax, and a memorandum of the documents deposited. The application must state the number of years (not above 15) for which the patent is desired. The papers must be upon officially-stamped paper, and, with exception of the Power, all may be signed by the agent. The tax varies with the duration of the patent applied for and is called the proportional tax. It amounts to 10 lire for each year of the patent. The first annuity (40 lire) is also payable at the time of application.

Prolongation.—A patent granted for any term less than the maximum may be prolonged for any further period up to the maximum, and this as often as necessary till the maximum is reached. The cost of prolongation is, however, an extra charge, to be added to the proportional tax for the extended period and the annuity then due at the time of applying for prolongation. No prolongation can be made unless applied for before the term originally expires. The original letters patent and the last certificate of prolongation must be produced.

Annuities.—Each patent, whatever its length of term, prolonged or otherwise, is subject to the following scale of annuities during its life, default in payment entailing forfeiture of the patent:—Each year for the first three years, 40 lire; 4th, 5th, and 6th years, 65 lire; 7th, 8th, and 9th years, 90 lire; 10th, 11th, and 12th years, 115 lire; and 13th, 14th, and 15th

years, 140 lire each year. The patent need not be produced for payment of annuities alone, but only if prolongation is sought. There are no annuities on patents of addition.

Examination.—Other than the report of the Board of Health on beverages, &c., mentioned before, there is no examination of patents before grant.

Duration of Patents.—The patent is operative against third parties from the day it is applied for; but its nominal term commences with the last day of March, June, September, or December next following the day on which it was applied for. Its maximum term is 15 years and minimum term one year. The minimum of prolongation is also one year. Prolongation of a patent includes patents of addition thereto. Where a prior foreign patent exists the Italian patent expires therewith, but if more than one prior foreign patent exists on the same invention it expires with that having the *longest* term, and not the shortest as is usual in such cases.

Working.—Where a patent is originally granted for five years or less, working must be performed within the first year and not interrupted for more than a year at a time. Where, however, the patent was originally granted for more than five years the working must be begun within two years and not interrupted for more than two years.

Amendment may only be made within the first six months of the term of the patent, and is effected by filing a specification of the amendment in triplicate, with drawings also if needed. A tax of 40 lire is charged thereon. A certificate of reduction is given, and is in the nature of a disclaimer; it is thus the converse of a patent of addition which latter may be had at any time.

Assignments must be registered at the Ministry, and published in the Official Gazette at the cost of the applicant. The assignment must be notarial. Art. 49 provides that in case of a partial assignment, the deed cannot be registered until the annuities due throughout the term of the patent have been all paid up.

Infringement, fraudulently committed, is subject to fine not exceeding 500 lire, and in a civil action to damages and confiscation of infringing objects, tools, &c.

Publication.—No person is allowed to inspect the specifications and drawings filed until three months have elapsed from the delivery of the patent. Copies may then be taken. Extracts of registers must, however, be on stamped paper and in pursuance of stamped request. Quarterly lists of patents granted, and

half yearly publications containing the specifications and drawings of the preceding six months *in extenso* or extract, are also ordered to be made under the law, and copies sent to each provincial office and Chamber of Commerce for public inspection.

The cost of Italian patent varies with the length of term applied for in the first instance, from 9*l.* to 30*l.* (*see* also page 250).

JAMAICA.

Date of Law.—Patent Law Amendment Act, 1857, cap. 30; Amendment Law of 27th May, 1891.

Patents of Invention are granted for 14 years for inventions new within the colony of Jamaica, it being also competent to the Governor in Executive Committee to insert a proviso extending the patent for a further seven years. Patentable subject matter, utility, &c., are the same as in Great Britain, but the novelty need be confined to Jamaica only. If a prior foreign patent exists the Jamaica patent will lapse therewith, or with the first of them to expire, if more than one. A valid Jamaica patent cannot be had after a foreign patent has expired. Patents of addition are also granted, the procedure being the same as for an original application, and the original patent filed for the addition to be appended.

Who may Apply.—The true and first inventor only, the term being construed also to mean the true and first importer into Jamaica. Nevertheless, where a foreign patent exists, the owner thereof may apply in Jamaica even if he is the assignee only of the foreign patent; but in the latter case he must file the assignment under which he claims, and an affidavit setting forth the date of the foreign patent, that the article is not in public use in the colony, and that he is assignee for good consideration.

Mode of Application.—Petition to the Governor, accompanied by specification in duplicate, with duplicate drawings if necessary, and a solemn declaration of inventorship; these, when the inventor is absent from the colony, being signed by his attorney there, and a deposit of 3*l.* The papers are referred for report to the Attorney-General, who may call to his aid an expert assessor at the applicant's expense, not exceeding 5*l.* Before patent will issue, the applicant will be required to adver-

tise the application in the "Jamaica Gazette" and another newspaper. Applicant should sign Forms 91 to 93. Patents usually date from day of application.

Renewal Fees.—None.

Working.—Within two years of date of patent.

Disclaimer may be filed as in Great Britain; additions may also be made upon petition for re-issue of patent.

Assignments.—Record in Office of Island Secretary.

Cost of Jamaica patent is usually 50*l.*

JAPAN.

Date of Law.—18th November, 1888.

Patents for Inventions are granted for five, ten, or fifteen years to natives of Japan or to subjects of nations having treaty rights to this effect with Japan. Such treaties were made in January, 1897, with Germany, England, and United States of America.

No patent is granted for articles of food; for medicaments or processes of producing the same; or for articles in general use (except such use was for purposes of trial, and has not exceeded two years).

Who may Apply.—The inventor or his heir.

Application is made to the Japanese Patent Office; all documents to be translated into Japanese. A foreigner or foreign firm (subject or citizen of one of above States) must appoint a resident agent, and provide a certificate of nationality (Form 53 or 54) legalized by notary and Japanese Consul, specification with claims, and drawing, *see* Appendix III. The application is subject to examination as to novelty, &c. Rejection can be met by amendment and request for re-consideration.

Renewal Fees.—None. Terms of patent not being extensible.

Working.—Within three years and not to cease for three years.

Sundry Provisions.—Infringement is punishable by fine or imprisonment if knowingly committed. Recovery of damages limited to three years preceding action. No damages recoverable unless patented goods marked as such.

Amendments can be made by way of disclaimer or re-issue. Revocation suits are decided by the Patent Office, from whose decision no appeal lies.

Assignment must be registered in Japanese Patent Office.

The cost of patent is usually 40*l.* to 45*l.*, according to length of term (*see* also page 250).

LEEWARD ISLANDS.

(Antigua, Montserrat, St. Christopher, Dominica and Virgin Isle.)

Date of Law.—Act No. 12 of 1870 and No. 16 of 1878.

Patents for 14 years for invention new within the colony; if a prior foreign patent exists, the colonial patent lapses therewith, or with that which lapses first. Subject matter and utility are judged as in Great Britain.

Mode of Application.—Application may be accompanied by provisional or complete specification. Notice to proceed must be given in time to obtain sealing within the six months of protection, &c. Opposition may be filed. The patent dates from the day of application. The applicant should sign Forms 26 and 72.

The application must be advertised in, and a copy of the complete specification be filed at the Registrar's Office of each Presidency, as also copies of disclaimer when filed.

Renewal Fees.—Before expiration of third year, 10*l.*; seventh year, 20*l.* The patent must be forwarded.

Working.—None.

Infringement, Revocation, Confirmation, and Extension follow in all respects the analogous provisions in force prior to 1883 in Great Britain. Specifications are printed; patentee may receive 25 copies free of charge. Assignments and Licenses must be registered at the Office of the Commissioners of Patents, Antigua.

The cost of patent is usually 70*l.* if unopposed.

REPUBLIC OF LIBERIA.

Date of Law.—Act of 23rd December, 1864.

Patents, not exceeding 20 years, for inventions not known or used by others, or described in a book or other publication in the Republic. An alien may apply provided he is the legal owner of the invention, and shows by a certificate signed and sealed by the Mayor, or Governor of the city or State in which he resides, or by a notary public that he is the original discoverer, or that he has purchased the right to the invention, so far as Liberia is concerned.

Mode of Application.—The patent is obtained by petition, accompanied by specification, drawings if any, and the aforesaid certificate. Fee from aliens is $50. The novelty is examined by or on behalf of the Secretary of State before the patent is granted. (Form 67 should be used.)

Renewal Fees.—There are none.

Working.—Aliens are considered to abandon their patents unless they put the invention in active operation in Liberia within three years of the date of the patent.

Infringement.—Remedies at law and equity are obtainable in the usual way from the Supreme Court of Liberia.

Assignments must be recorded within one year of their execution.

Registers, &c., are kept by the Secretary of State, and specifications, &c., entered therein are open to inspection. Certified written copies may be had.

The cost of patent in Liberia is usually 65*l*.

LUXEMBOURG.

Date of Law.—30th June, 1880.

Patentable Inventions are such as have not been already described in a printed publication anywhere, or publicly worked either in Luxembourg or in Germany, with which country Luxembourg has a Customs Union. Articles of food or for consumption, pharmaceutical substances, and the products of chemical processes, are not patentable, but chemical processes are.

Kinds of Patents.—Patents of Invention 15 years. Patents of Addition lasting for the remainder of the term of the head patent.

Who may Apply.—The inventor or assignee, preference being given to first applicant. The right of application passes to heirs.

Mode of Application.—Foreign inventors must appoint a resident in the Duchy as agent, the power (Form 14) need not be legalised. The papers requisite for application are—a declaration of inventorship, duplicate specification in French or German, and duplicate drawings, all signed by the agent. Patents are delivered without examination at the risk of the applicant, the duplicates of specification and drawing being

appended to the patent. . The latter dates from the day of application.

Renewal Fees.—Second year 20 fr., third year 30 fr., and so on, adding 10 fr. per year; they must be paid within three months of becoming due.

Working.—Must be performed within three years as in Germany.

Dependent on German Patent.—If a patent is not applied for within three months in Germany, or if so applied for is refused, or if granted, lapses, or is withdrawn, annulled, or otherwise terminated, the Luxembourg patent lapses.

Infringement is punishable in the usual way by civil process, and also by fine of 100 to 2,000 fr.

Assignments must be registered to obtain legal force.

General Provisions are somewhat similar to provisions of German and Belgian laws.

The cost of Patent of Invention or of Addition, 15*l.*

MALTA AND GOZO.

Date of Law.—Ordinance No. 5 of 1893, and No. 1 of 1894.

Patents are granted for 14 years for inventions, so long as same are not publicly known in the islands.

Persons who have applied for patents in Great Britain, or in any foreign state or British possession to which Sect. 103 of the British Act of 1883 has been extended, may obtain patents if their application is filed within seven months.

Who may Apply.—The true and first inventor or his authorised agent.

Mode of Application.—The application to the Governor must be accompanied by a duplicate "First Specification," containing (*a*) a declaration that the applicant himself is, or that he is the authorised agent of, the true and first inventor; (*b*) a description with necessary drawings; (*c*) the particular parts or combinations claimed as new. 1*l.* deposit fee must be paid on filing the application. The applicant should sign Form 26. Fee on grant, 2*l.*

The applicant may ask for this specification to be kept secret, and may file, within a year of filing the first, a second specification modifying the first, and setting out improvements of details tending to the perfection of the original invention

without altering its nature and without adding to the claims made in the first specification.

Renewal Fees.—Before end of fourth year, 4*l.*; fifth, sixth and seventh years, 5*l.* each; eighth and ninth years, 7*l.* 10*s.* each; tenth year, 10*l.*; eleventh, twelfth, and thirteenth years, 10*l.* each.

Working.—If the invention is not worked within a year, or if the working ceases for a like period, the patentee may be required to assign his patent, or grant license on such terms as to remuneration as the Civil Courts may decide.

Specifications may be seen at the Office of the Colonial Secretary.

Cost of patent, usually 30*l.*

MAURITIUS.

Date of Law.—Ordinance No. 6 of 1875.

Patents are granted for 14 years, with power to the Governor of extension for a further 14 years, for inventions, so long as they have not been published or used in the United Kingdom of Great Britain, Ireland, and Isle of Man, or in Mauritius. Nevertheless, public use by the applicant or his servants during one year prior to the date of application is not deemed a public use; nor also, public use, on knowledge surreptitiously obtained in fraud of the inventor during six months prior to application. Also where the inventor has obtained a British patent he may obtain a valid Mauritius patent if applied for within twelve months of the date of the British patent, in spite of any public use, &c., in Mauritius in the interval.

Who may Apply.—The inventor or his heirs, executors, administrators, or assigns, but the "importer" into Mauritius is not deemed an inventor unless he is the actual discoverer of the invention. Where there are joint inventors the application must be in their joint names.

Mode of Application.—Where the inventor is absent from the colony he must appoint a resident agent (Form 26) to sign petition, declaration, and specification in writing, with drawings where the invention admits of them. These papers are referred to the Procureur-General, who, if he approves, may issue a certificate granting protection. Fee on certificate, 10*l.* An appeal lies from the Procureur-General to the Governor in

Executive Council. Within two months of the issue of certificate the applicant must cause the application to be advertised in the Government Gazette, whereupon it is open one month for opposition. If no opposition is filed, or when the opposition is heard and rejected, the patent may issue. Fee, 2*l*. The applicant must previously, however, deposit a *printed* copy of the petition and specification in the Office of the Colonial Secretary for record.

Renewal Fees.—None.

Working.—None.

Infringement.—The only defences open are denial of infringement, denial of novelty, or allegation of prior inventorship on the part of infringer. Insufficiency of specification and other usual pleas cannot be adduced, but may be relied on to obtain revocation of patent, the latter action having, therefore, to be brought before infringement is made.

The cost of patent is usually 40*l*. where unopposed.

MEXICO.

Date of Law.—7th June, 1890, modified 1st July, 1896.

Patents are granted for 20 years. Inventions are considered new if they have not at the time of the application already acquired either in Mexico or elsewhere a publicity sufficient to enable them to be practised. Publication by foreign patent offices or at exhibitions is not considered such within the meaning of the law. Where foreign patents already exist, the Mexican patent will expire at the same time as the foreign patent which was *granted* first in point of time. The Mexican patent does not, therefore, lapse with the foreign patent which *falls* first.

Who may Apply.—The inventor only, or, in case of inventions already patented abroad, the applicant for the foreign patent or his lawful representative.

Mode of Application.—A non-resident must appoint a resident agent by notarial power legalised by Mexican Consul (Form 20). This power must be presented for verification of the Consul's signature at the Foreign Office in Mexico, and then brought before a Court of First Instance on a motion for an order of record, whereupon the Court will grant an order for a resident notary to register it, and it thus becomes valid for presentation at the Patent Office. The power with petition and duplicate Spanish specifications, with drawings, are then deposited, and the application must be advertised three times in

the "Diario Official," and remain open two months for opposition. There is no examination before grant of patent, which latter dates from the actual date of grant. Government fees, $100 in bonds and $10 in cash.

Renewal Fees.—5th year, $50; 10th year, $75; 15th year, $100.

Working.—Since 1st July, 1896, it has not been necessary to prove working. This applies also to patents granted before 1st July, 1896.

Assignments must be notarial and certified by the Mexican Consul prior to being sent to Mexico for record.

Extension.—The Government is empowered to extend 20-year patents for a further five years in exceptional circumstances.

The cost of patent is usually 40*l.* to 45*l.*

MYSORE.

Patents can be had in this Native State under Regulations of 1894, the forms and provisions are the same as in India, but the cost is somewhat higher.

NATAL.

Date of Law.—Patent Law No 4 of 1870, amended by Law No. 32 of 1884.

Patents are granted for 14 years for inventions, as the term is understood in Great Britain, provided they are new as regards Natal. If a foreign patent already exists the Natal patent will lapse therewith, but if such foreign patent shall have already expired no valid patent can be had in Natal.

Who may Apply.—The true and first inventor or "importer" into Natal.

Mode of Application is substantially the same as in Great Britain under the Law of 1852. The applicant should sign Forms 26 and 95. The application may be accompanied by a provisional or complete specification filed in the office of the Attorney-General. Notice to proceed must be given, whereupon the Attorney-General will appoint a day for hearing of opposition not less than one month ahead, and the applicant must advertise the fact once in the Government Gazette, once in a Pietermaritzburg newspaper, and twice in the place where he resides. At the hearing the Attorney-General may call in an expert at the cost of applicant but seldom does so, and will issue

a warrant for sealing Letters Patent, and same must be presented within three months and not after the expiration of six months from the day of application, for the patent to be issued. The latter will be dated the day of application. The following fees are payable:—On deposit of provisional, 1*l.* 1*s.*; notice to proceed, 5*s.*; appointment, 1*l.* 10*s.*; warrant, 1*l.* 1*s.*; complete specification, 1*l.* 1*s.*; sealing, 1*l.* 10*s.*

Renewal Fees.—Before end of third year, 5*l.*; seventh year, 10*l.* The patent must be forwarded.

Working.—None.

Amendment may be made by way of disclaimer, by leave of Attorney-General, after advertisement for opposition and appointment as above described for application for patent. If amendment of the title is alone desired appointment and advertisement may be dispensed with.

Infringement.—In an action for infringement the defendant cannot raise pleas of insufficiency of the specification, nor that plaintiff was not the inventor, nor that the invention was not new, unless, in the second case, the defendant alleges that he is the true inventor or derives claims from the true inventor, and, in the third case, that the defendant had used the invention in Natal before the date of the patent.

Confirmation or Extension of Patent may be petitioned for, but the petition will usually be referred to the Supreme Court for report. No greater extension than a further 14 years can be granted.

Assignments must be registered to obtain legal validity, and in every case the patent must be sent with an endorsement of the assignment on it.

British Patents.—The Amending Act of 1887 after reciting parts of Sections 103 and 104 of the British Patents Act of 1883 enacts that "from and after the promulgation in this colony of the Order in Council referred to in Sect. 104 of the 'Patents, Designs, and Trade Marks Act, 1883,' all Letters Patent granted in the United Kingdom and Ireland shall be deemed and taken to be granted under the provisions of Law No. 4, 1870, and may be dealt with accordingly. Provided that this law shall only apply to patents granted for inventions in the said United Kingdom, and not to designs or trade marks.

"This law shall come into operation from and after the date of the promulgation in the Natal Government Gazette of the Order in Council referred to in Sect. 1 hereof, and shall be read and construed together with Law 4, 1870, as one law."

The cost of Natal patent is usually 28*l.*

NEWFOUNDLAND.

Law.—Title XV, Cap. LIV, Sect. 1, of the Consolidated Statutes.

Patents are granted for 14 years for inventions which have not been in use or published in the colony, but if a prior patent exists abroad for the same invention, the Newfoundland patent expires therewith, or with that which first expires if more than one. A Newfoundland patent cannot be validly obtained after a foreign patent has expired.

Who may Apply.—The inventor only; except where a foreign patent is already granted, when the assignee of the owner of the latter may apply, he reciting the number and date of the foreign patent, forwarding the assignment on which he relies, and an affidavit that he is assignee for good consideration.

Mode of Application.—Petition, oath, and specification, the latter signed by the inventor before two witnesses, and the oath if made in the colony before a Justice of the Supreme Court, Stipendiary Magistrate, or Commissioner of Affidavit; if made in Great Britain, before a Mayor of a city or borough; if made in a foreign country, before a British Consul or Vice-Consul (Form 68). In case of a machine, a model must be furnished; but where the expense would be very great and the applicant's poverty prevents, the Governor may grant a special dispensation in respect of the model. The application is referred to the Attorney-General, and if he makes no objection within 14 days the patent will issue.

Renewal Fees.—None.

Working.—Letters Patent become void unless the invention is brought into operation within two years of the date of the patent.

Infringement is punishable by the forfeit to the patentee of a sum equivalent to *three* times the damage sustained by the patentee. The defendant may raise usual defences as in Great Britain.

Amendment by disclaimer may be made; however, a patent will not fail in a suit if it covers more than the inventor is entitled to, unless he has unreasonably delayed incurring same by disclaimer; but costs will not be given when the patent is too wide.

Improvements may be added to the original patent, but inasmuch as the mode and cost of application is the same as

for an original application, and there are no renewal fees to be saved; there appears to be no special benefit over taking a separate patent, which latter would last its full term.

Assignment may be made after grant, and must be filed in the Office of the Colonial Secretary.

Cost of patent is usually 40*l*.

NEW SOUTH WALES.

Date of Law.—The laws in force are part of the Act of 6th December, 1852; an Act relating to Protection of Inventions at Exhibitions of 19th June, 1879; and an Act of 8th July, 1887, on which the present procedure is for the most part based. Regulations thereunder, 21st December, 1887. Also Act of 16th November, 1896; Regulations 2nd March, 1897.

Patentable Inventions.—The Acts do not state what shall be considered as a patentable invention; but inasmuch as the system is founded upon the British law, the explanation given by the latter applies. The invention must be new to the realm —that is to say, new probably as regards New South Wales. This view is upheld by the "Regulations."

Who may Apply.—The inventor or his assignee, or the importer of any invention, or any of these jointly. A company may apply in its corporate capacity.

Mode of Application.—The applicant may file with his petition (Form 28) either a provisional specification or a complete specification. In the former instance the applicant obtains provisional protection for 12 months; but the complete specification must be filed within 10 months, to enable the patent to issue within the 12 months. The petition should state the full name and address and occupation of the applicant and in what capacity he applies, whether as inventor, assignee, &c., together with other formal matter, as will be seen in the form in the Appendix. A petition should accompany the application to convert a provisional protection into a full patent. The provisional specification need not be in duplicate. The applicant should also sign Form 26.

The petition is referred to an Examiner of Patents, who reports to the Minister of Justice, who reports to the Governor whether the petition should be granted. Protests may be filed against the grant of either protection or patent.

The patent, when issued, dates from the day of application. The term is 14 years.

The provisional protection may be assigned, contrary to the usage in this respect in other colonies and in Great Britain.

Renewal Fees.—There are none.

Working.—There are no conditions as to compulsory working in the colony.

Infringement.—The remedies against infringement are the same as in Great Britain; protection against infringement dates from the filing of the complete specification.

Amendments.—By petition to Minister of Justice, procedure similar to that in Great Britain.

Assignments of provisional protections or patents or licenses are void, unless registered in the colony within the following respective periods from the date of their execution:—Within the colony, 14 days; within any other Australasian colony, 30 days; within any other place, 90 days. The Government fees on registering an assignment are 10*s.* per patent; license, 7*s.* 6*d.*; stamp duty, 1*l.*, if the consideration mentioned in the deed is nominal; 10*s.* per 100*l.* if real, must also be added, Assignments of inventions prior to application for patent are not subject to stamp duty unless the consideration is mentioned in the deed. The original deed must be accompanied by a copy.

Registration and Publication.—Registers are kept at the Patent Office, Sydney, and specifications, &c., are open to inspection there for a small fee. Provisional specifications are not open to inspection until the patent is completed, and if abandoned are destroyed without publication.

The cost of provisional protection varies from 5*l.* to 9*l.*, of complete patent from 7*l.* 10*s.* to 19*l.* (*see* page 250).

NEW ZEALAND.

Date of Law.—The Patents, Designs, and Trade Marks Act of 1889, by which the Acts of 1883 and 1885 were revoked, is itself, in every essential particular, an exact transcript of the British Act of 1883 as amended in 1885 and 1886.

Patentable Inventions are the same as are considered such in Great Britain, that is to say, they must be new in the colony.

Where, however, a British patent is applied for, any use and publication of the invention in New Zealand between the dates of application in Great Britain and in New Zealand respectively, shall not invalidate the latter patent; if it has been applied for within one year of the application for the British patent. The same provisions apply to such foreign countries as by Order in Council in Great Britain, Sections 103 and 104 of the British Act of 1883 shall have been declared applicable (*see* International Convention). The patent runs for 14 years from the day of acceptance of the application.

Who may Apply.—The true and first inventor, or his assignee or nominee, or the same in conjunction with another or others not inventors, or the heirs, &c., of a deceased inventor, if application be made within six months of his death. The term does not include the unauthorised importer as in Great Britain.

Mode of Application.—By methods in every respect the same as in Great Britain. The Act does not, however, limit the grounds to opposition which may be relied on. Fees are—10*s.* on provisional; 10*s.* on complete; 2*l.* on sealing; 6*l.* on extension of one month to file complete. The application form (Form 31) must be signed by the applicant personally, who, if he is the assignee, must also sign a declaration (Form 32), and produce the assignment (Form 33). The agent in New Zealand may apply in his own name only if he is the *bonâ fide* nominee of the inventor or of the assignee with respect to the patent and provided with Form 35. A company can apply if an officer of the company signs Form 34. The patent is dated and sealed as of the day of the acceptance of the application.

Renewal Fees.—Before end of fourth year, 5*l.*, before end of seventh year 10*l.*

Working.—There are no provisions under the present law.

Infringement and Revocation.—The proceedings are the same as in Great Britain.

Assignments and Licenses must be registered to obtain legal effect, and must for that purpose be forwarded with a request for registration. *Compulsory Licenses*: the law contains provisions analogous to those in Great Britain.

The cost of provisional protection varies from 4*l.* to 8*l.*, of complete patent from 7*l.* 10*s.* to 18*l.* (*see* page 250).

NICARAGUA.

Commissioner of Patents' Journal, 8th July, 1873.
(Extract from Report.)

The Spanish Cortes in Nicaragua, in resolutions which obtained until the 15th September, 1821, and have been declared in force in this Republic, assure and regulate the right of property of inventors, establishing also the term of its duration. Decree XLIII declares as to this right to consider as proprietor of his work, him who should invent, import, or introduce. By above resolutions the Government, by means of the proper Minister, shall issue to the said proprietor a certificate, in which will appear his name as inventor, improver, or introducer of the invention, a description of it and the duration of the exclusive right. This certificate will serve as a sufficient title. To obtain it the petitioner is directed to address the prefect of the department or the municipality, giving an account of the invention, describing it with the greatest exactness possible in conformity with the model which the same law renders necessary. The said authorities in their turn shall be obliged to give to the petitioner testimony of everything which may serve for the information of the Minister of the Department. The inventor shall have 10 years of exclusive property, the improver 7, and the introducer 5. These terms may be extended by the head of the State on the proposal of the Government to 15, 10, and 7 years respectively. The inventor, improver, or introducer, apart from the aforesaid terms, will cease to be considered as sole proprietor, first, if he cedes his right for the public good; secondly, if six months pass without his taking up the certificate; thirdly, if two years pass without execution of the invention or improvement.

Cost usually varies from 80*l.* to 120*l.*

NORWAY.

Date of Law.—16th June, 1885.

Patentable Inventions.—Inventions are not considered patentable if the invention before the date of application was already so far publicly known that it could be carried into practice by experts. But publication in print or by public exhibition during the six months anterior to the application is

not a bar to the grant of valid patent, and where an inventor has received a patent in a State giving reciprocity in this respect to Norway, the right of priority will date back to the day of application in that State, if the Norwegian application is filed within 210 days

Kinds of Patents.—Patents of invention for a term of 15 years from the day of application. Of addition expiring with the original patent.

Who may Apply.—The actual inventor only or his assignee, who must forward legalized assignment papers.

Mode of Application.—Foreign applicants must appoint an agent resident in the country, unlegalized power (Form 23), and this power must accompany the petition, specification in duplicate in the Norwegian language, drawings in duplicate, and a list of these papers. Application fee Kr. 30. These papers are judged by the Patent Commission of five experts and a president qualified in law appointed by the King for five years. The commission may reject inventions clearly wanting in novelty, and may call for revision, or further explanation, stating a term for compliance, and may extend the term. Applications when in proper form are laid open for public inspection for eight weeks. An applicant paying an additional fee of Kr. 20 may at the time of his application request that this publication be delayed for a time not exceeding four months from the acceptance of the papers by the commission. This delay is sometimes useful when other foreign patents are in view. During the eight weeks' publication opposition in writing may be filed, and within a further eight weeks the commission shall decide, after, if necessary, further information from the applicant or consulting experts. Where the decision is against the applicant he may within six weeks ask for reconsideration, and if again against him he may within four weeks appeal to a Superior Patent Commission of seven members nominated for the occasion by the King. Fee on appeal Kr. 150.

The patent dates from the day of application.

Renewal Fees.—Before second year Kr. 10, third year Kr. 15, and so on, increasing Kr. 5 per year. Three months' delay may be taken for paying any renewal fee by adding one-fifth of the amount of the fee to the payment when made.

Working must be performed and articles placed on sale within three years of the date of the patent, and must not be discontinued for a year at any time thereafter. Where, however, the discontinuance has been caused by accidental occurrence, the Patent Commission may, on petition, grant an extension.

In special cases the commission may on application, and as an exception, make special regulations as to what will be considered a sufficient working or offering for sale in the kingdom.

Infringement, knowingly committed, is punishable by fine of 50 to 1,000 Kr., or on repetition 2,000 Kr.; besides in any case damages to the injured party. Prosecution must be at the instance of the injured party. No damages can be had for infringement committed more than two years before action brought, or if the plaintiff has been aware of the infringement for more than one year.

Revocation.—The patent may be declared void if granted contrary to law, or for more than was new, or if working is omitted; and a suit of infriugement may be held pending until such a suit of revocation is decided. That the patent is invalid is not available by way of defence to action of infringement, unless it has been declared void or repealed by the Court on such suit of revocation.

Assignment must be duly legalised and recorded at the Patent Office. The assignee must also by legalised power appoint an agent to be his legal representative in the country since the patent becomes void as soon as no representative exists on whom to serve notices, &c.

Specifications are printed and may be had separately.
The cost of patent is usually 6*l.* to 16*l.* (*see* page 250).

ORANGE FREE STATE.

Date of Law.—Ordinance No. 10 of 1888.

Patents are granted for inventions so long as they are new within the Republic of the Orange Free State. The term is 14 years, but if a prior foreign patent exists, the Orange Free State patent will lapse therewith, or with that which lapses first, if more than one.

Who may Apply.—The true and first inventor or importer.

Mode of Application.—The power of attorney (Form 24) must be legalised. The petition (Form 77) is accompanied by specifications in duplicate (Form 78) and drawings also. All these should be in Dutch, and signed by the applicant. The application is referred to the State Attorney, who upon notice

to proceed being given by applicant, appoints a time for deciding upon the grant of warrant, and this time has to be advertised, as in the South African Republic. The patent must issue within six months of the day of application. The fee on application is within the discretion of the President of the Republic to fix at between 10*l*. and 50*l*., but assurance has, it is understood, been given that 10*l*. will be the fee imposed in every case.

Renewal Fees.—Before end of third year 5*l*., before end of seventh year 10*l*. The patent must be produced.

Working.—*There are no conditions, but provision is made* that compulsory licenses shall be granted under the same circumstances and conditions as in Great Britain.

Amendment may be made by disclaimer, but nothing added which would widen the patent.

Extension.—The President has power to extend a patent, application must be filed six months before expiry.

Assignment should be formally executed and attested. It need not be endorsed on the patent, but the latter must be forwarded, together with the assignment, for registration.

The cost of patent is usually 50*l*.

PERU.

Date of Law.—28th January, 1869.

Patents are granted for new industrial products or new methods, or the new application of those already known for obtaining an industrial result or product. An invention is not considered new if previous to the date of application, it had received, either in Peru or abroad, sufficient publicity to be put in practice.

Applicant may be the inventor or his assignees.

Foreigners must subscribe to a declaration renouncing diplomatic intervention and submitting to the laws of the Republic of Peru.

The Application, in Spanish, is to be accompanied by a specification with drawings or models, and an explanation of what security is offered for the realisation of the project. The Prefect of the Department in which the application is filed is empowered to ascertain the opinions of the Municipality, of the Fiscal, and other officials and experts, and at the cost of the

applicant remit the case to the proper Ministry, who shall take the opinion of the Fiscal of the Supreme Court or others, if necessary, and on such reports grant or refuse the patent. Form 20 legalized may be used, adding the above-mentioned declaration.

Duration of the Patent is limited to 10 years. Extension can be had by legislative Act.

Renewal Fees.—Annuities of 100 dols. yearly, payable in advance.

Working to be performed within two years, or other period mentioned in the Letters Patent, unless patentee can justify delay.

Importation of Patented Art'cles is forbidden; but models of machinery may be admitted on permission previously obtained of the Government.

Infringement is punishable by fine and confiscation of infringing articles, plant, &c.

Unauthorised Use of the Word Patent is subject to fine of from 50 to 1,000 dols.

The cost of patent is usually 80*l.*

PORTUGAL.

Date of Law.—15th December, 1894.

Territory covered by Portuguese patent; kingdom of Portugal, and adjacent islands, viz.: the Azores and Madeira.

Patents *are granted* for new inventions and discoveries of commercial utility, useful improvements, &c., other than chemical products and medicaments.

Inventions are not considered new if they have been previously published within the last 100 years in Portugal or abroad sufficiently to be worked. Mere alterations devoid of utility are not patentable. The duration is the term paid for, but this can be from time to time prolonged to a maximum total of 15 years.

Holders of patents may at their option protect improve-

ments on their original invention by means of new patents or patents of addition; the latter lapse with the principal patent. The patent dates from day of issue.

Who may Apply.—The inventor or inventors only.

Application by foreigners must be made through an agent duly authorised by legalised power of attorney (Form 21).

Application is accompanied by duplicate specifications and drawings in black ink. The taxes for the full term asked for are payable before the patent issues; these taxes are 3 dols. for each year of the term. It should be specially noted that the drawings are to be made to a metric scale marked thereon, and that the *place of birth* of the applicant must be stated. The application is subject to examination as to novelty, sufficiency of description and formalities. If satisfactory it is published for opposition for three months before the patent is sealed, during which period provisional protection is granted. Refusal of patent or of opposition may be appealed against within three months to the Tribunal of Commerce. No new papers are required for asking for prolongation, unless this is done by another agent requiring a new power of attorney. Papers for patent of addition are the same as for patent of invention, except that usually no new power of attorney is required, unless there is change of agency.

Renewal Fees.—There are no further taxes payable during the term for which the patent is granted, but each prolongation of the term is subject to above taxes, according to its length. The patent must be produced.

Working must be performed within two years of date of signature of the patent, and not left interrupted at any time for longer than two years, unless legal justification can be shown. Importation is not forbidden.

Assignments of patents must be notarial, and legalised by the Portuguese Consul. The patent must be produced when assignment is recorded.

Colonial Patents.—The Portuguese patent does not now cover the Colonies, which are: Cape Verde, Guinea, St. Thomas and Prince, Angola, Mozambique, Portuguese Indies, Macao, and Timor. Each is covered by a separate patent (*see* Portuguese colonies).

The cost of a Portuguese patent is from about 13*l.* for one year to 25*l.* for 15 years, according to length of term.

PORTUGUESE COLONIES.

Separate patents for each, namely: Cape Verde, Guinea, St. Thomas and Prince, Angola, Mozambique, Portuguese Indies, and Macao and Timor.

Date of Law.—Decree of 21st May, 1892.

Patents are granted for 20 years maximum to the original inventors or their assigns, but to the "importer," who need not possess any right to the invention as such, patents of 12 years maximum are granted and are effectual "without prejudice to the inventor's rights."

Patents are obtained on the same proceedings and on payment of the same fees as Portuguese home patents, the applications being directed to the Ministry of Marine and Colonies.

Prolongation and patents of addition are granted also on exactly the same terms.

The cost of patent in any one of the above colonies is the same as for Portugal (q. v.), but can be reduced when patents are taken at the same time as the Portuguese home patent.

QUEENSLAND.

Date of Law.—Act of 1884, 48 Vic., No. 13; Act of 1886, 50 Vic., No. 5; and Act of 1890, 54 Vic., No. 8.

These Acts are, with few exceptions, reproductions of the British Acts of 1883-88, with necessary changes of names and places. The rules are dated 1896 and 1897.

Patentable Inventions are such as are at the time of application unknown and unused in Queensland. Patents are granted for 14 years dating from the day of application, and do not expire with previous foreign patents. In cases where, under Sections 103 and 104 of the British Act, Orders in Council have been made in respect of foreign countries or colonies, so long as the orders are in force, Queensland will permit applicants in Great Britain or such countries to apply for patents in Queensland within one year of their application at home, without any publication, &c., in Queensland in the

meantime having any effect on the patent; for list of these countries *see* International Convention.

Who may Apply.—The true and first inventor or inventors; who may join with himself or themselves others not inventors, as in Great Britain. Where the inventor resides out of the colony the application may be made by an assignee alone, or if only part is assigned, then in conjunction with the inventor; but the assignment must be forwarded with the application of the party or parties. Patents are not granted to residents for "communications from abroad."

Mode of Application is substantially the same as in Great Britain, by way of provisional protection for nine months or complete at first, as desired. The examination as to novelty in Queensland is, however, made with more or less strictness, and four months are allowed for opposition instead of two, as in Great Britain. The opposer may, moreover, rely generally on absence of novelty, owing to prior use or publication of any kind in Queensland. The applicant must sign Statement of Address Form 27 and one of the Application Forms 38 to 41. Assignee must forward the assignment.

Three months' extension of time can be had for filing complete specification and six months for its acceptance. The fees for extension of time for filing are 10*s.* for one month, 1*l.* for two months, 1*l.* 10*s.* for three months. For accepting, 10*s.* for one month, 1*l.* for two months, and 1*l.* 10*s.* for six months. Other fees are: application 2*l.*, complete 3*l.* The patent dates from the day of application, but where the Registrar has rejected the papers for informalities he has the power to postdate the application to the date when his requirements are met.

Renewal Fees.—Either before end of 4th year, 5*l.*, and 8th year, 10*l.*; or in lieu thereof, 4th, 5th, 6th, and 7th years, 1*l.* per year; 8th and 9th years, 1*l.* 10*s.*; 10th, 11th, 12th, and 13th years, 2*l.* per year. Extension of time for paying any renewal fee, one month, 10*s.*; two months, 15*s.*; three months, 1*l.*

Working.—There are no conditions, but compulsory licenses may be ordered by the Governor in Council, under the same circumstances and terms as in Great Britain.

Infringement, Revocation, Threats, Disclaimers.—The law and procedure is in every respect the same as in Great Britain.

Assignments must be registered, and, besides registration fee of 10*s.*, are subject to stamp duty on the consideration named in the deed, at the rate of 7*s.* 6*d.* for 50*l.* or 15*s.* for 100*l.*,

and 15*s.* for every 100*l.* or fractional part thereof after the first 100*l.* A copy of the assignment must accompany the deed, and be verified by statutory declaration. A request for registration and declaration of attorney, witness, or witnesses must also be sent. The patent must be forwarded for endorsement. No stamp duty is payable on assignments made before and for the purpose of application for patent.

The cost of provisional protection is from 6*l.* to 9*l.*, of complete patent from 7*l.* to 19*l.* (*see* page 250).

RHODESIA.

(Including Mashonaland and Matebeleland, and in general the Territories of the British South African Company.)

The law and practice are similar in all respects to that under the Cape of Good Hope Patent Act No. 17 of 1860. The cost of obtaining patent is, however, somewhat higher than in the Cape Colony. Forms 26 and 97 should be signed.

RUSSIA.

Date of Law.—20th May, 1896, entering into force 1st July, 1896.

(Territory covered :—European Russia, Poland, Transcaucasia, Siberia, but not including Finland.)

Patents for inventions or improvements are granted to inventors or their assignees for the term of 15 years, dating from day of grant. Patents of addition are also granted, expiring with the head patent.

The following are not patentable:—(*a*) abstract theories; (*b*) inventions contrary to good manners, laws or customs; (*c*) inventions previously invented in Russia, or used there, or published in print so that they could be used; (*d*) those already known abroad, and *not* patented there, or patented by some other person than the applicant for Russian patent, unless the right of application has been assigned to the applicant; (*e*) inventions showing no substantial novelty but only slight

alterations; and (*f*) processes or apparatus for producing chemicals, food, beverages or pharmaceutical products. Patents for inventions already patented abroad expire with the latter or with the patent which expires first.

Who may Apply.—The inventor or his assignee, or where a foreign patent exists, the foreign patentee or his assignee (assignments being produced and recorded). The first applicant is preferred.

Mode of Application.—The application must be in Russian, and be accompanied by duplicate specifications in the same language and a power of Attorney (Form 25), legalized by a notary and Russian Consul. When the specification is translated from a foreign tongue, a copy of the specification, from which it is translated, must be also filed. For drawings *see* Appendix III. Where the invention has been already patented abroad, a certified and legalized copy of the foreign patent (or if more than one, of the first to expire), with its specification and drawings, must be filed. If in another name an assignment of the Russian rights (any form) duly attested and legalized by the Russian Consulate must be added. Fees on filing: petition, 1.60 roubles; examination fee, 30 roubles; stamp duties in specification, 80 roubles for every 700 words of original specification. On deposit of these papers a protection certificate is granted giving protection against infringement. The application is published and may be opposed by any person on the ground of want of novelty, or fraud. The application is referred to a committee of experts for examination, and if rejected an appeal may be filed (fee, 15 roubles) and the matter is referred to another committee of experts. Within three months of the allowance of the patent the first year's tax of 15·00 roubles must be paid or the patent is withheld. The progress of application up to allowance may be expected to take fully one year.

Renewal Fees are:—2nd year, 20 roubles; 3rd year, 25 roubles; 4th year, 30 roubles; 5th year, 40 roubles; 6th year, 50 roubles; 7th year, 75 roubles; 8th year, 100 roubles; 9th year, 125 roubles; 10th year, 150 roubles; 11th year, 200 roubles; 12th year, 250 roubles; 13th year, 300 roubles; 14th year, 350 roubles; 15th year, 400 roubles.

These fees are payable in advance each year, dating from date of signature of the patent. No extensions of time are granted.

Working must be performed within five years of the date of signature of the patent, and must be an actual working,

and verified by the certificate of a local authority, filed at the Ministry.

Assignments.—A pending application may be assigned, and the patent issue to the assignee. An assignment should be made according to the laws of the country in which the parties reside, and legalized by the Russian Consul. It requires to be notarily translated, and *viséd* in Russia before filing.

Revocation.—After a patent has existed for two years it cannot be annulled by civil proceedings, but only by a Criminal Court; it would thus appear to be practically indefeasible except fraud be proved.

Amendments can be made provided they do not materially enlarge the scope of the invention within three months after the application is filed. Patents of addition can also be had.

The cost of a Russian patent is usually 30*l*. (*see* page 250).

ST. CHRISTOPHER.

(*See* Leeward Islands.)

ST. HELENA.

Date of Law.—Ordinance No. 3 of 1872.

Patents are only granted where the inventions have been previously patented in Great Britain, and expire with the British patents. They may be taken at any time so long as the British patents on which they rest are still in force.

The grantee of the British Letters Patent, or his executors, administrators, or assigns must file in the Registry of the Supreme Court in St. Helena an officially certified copy of the Letters Patent and specification, and same shall be thenceforth open to public inspection.

There are no renewal fees nor necessity to work the invention within the colony.

The cost of such registration of patent is usually 25*l*.

SAN SALVADOR.

(From United States Gazette, 7th October, 1873.)

There is no law governing the mode of grant of patent but the Constitution gives power to the executive to award and concède privileges to the authors of useful inventions, and in the few cases which have occurred the spirit of this constitutional disposition has been followed in accordance with the practice of civilised governments.

The cost varies, but generally exceeds 100*l*.

SOUTH AFRICAN REPUBLIC (TRANSVAAL).

Law.—No. 12 of 1897; in force 15th October, 1897.

Patents are granted for new inventions. The term is 14 years from date of application, but if previously patented in any other country the term of the S. A. patent shall not exceed the term of the foreign patent or the shortest of them.

Who may Apply.—The true and first inventor, or on his death, his legal representative, within 12 months.

Mode of Application.—The legalized power (Form 24) and application (Form 77) must be in Dutch, and signed by applicant. The specification, whether provisional or complete (Form 78), must be *in the language of the applicant*, and signed by him. A sworn translation into Dutch has to be made. Complete after provisional must be filed within four months, and notice to proceed given in time to get sealing in 12 months. After notice the application has to be advertized in due form at applicant's expense, once in the Staatscourant, once in a Pretoria newspaper, and twice in a newspaper published where the applicant resides. The commissioner may fix the period, not being less than one month, for lodging objection, and may extend it six months. Applicant must give security for costs of possible successful objectors. Foreign objectors must also give security. Fees, 1*l*. 1*s*. on application; notice, 1*l*. 10*s*.; issue of notice, 2*l*. 2*s*.; Certificate, 1*l*. 1*s*.; sealing, 5*l*.; examination before registration, 1*s*., after registration, 5*s*.

Renewal Fees.—Act 19 states: "every patent will become void after the terms of 3 and 7 years respectively, unless within the said terms the respective sums of money given in Schedule K be paid, &c." Schedule K reads:—Before 3rd year, 20*l*.;

"before or at the expiration of the term of from 5 to 8 years," 100*l.*; before or at the expiration of the term of from 8 to 11 years, 150*l.*; before or at the expiration of the term of from 11 to 14 years, 200*l.* Three months' extension for payment, 10*l.*

Working.—There are no conditions, but compulsory licenses can be ordered under the same circumstances as in Great Britain.

Amendments of the nature of disclaimers may be made after publication of notice as in an application for patent.

The cost of provisional protection is from 15*l.* to 30*l.* Of complete patent from 30*l.* to 60*l.*

SOUTH AUSTRALIA.

Date of Law.—Patent Act No. 78 of 21st December, 1877. Amending Acts No. 101, 22nd October, 1878; No. 201, 28th September, 1881; and No. 421, 9th December, 1887. Regulations in force, 16th January, 1878; 21st March, 1888.

Patents are granted for 14 years, with an option to the Governor of extension for a further seven years, for inventions not already publicly used or offered for sale in the Province of South Australia, but are void if found wanting in novelty or if the patentee was not the inventor or his assignee, &c., as below mentioned. Where a foreign patent already exists, the South Australian patent shall lapse therewith, or with the first to lapse if more than one, and moreover shall be void if taken after such foreign patent has already expired. Provisional protection may be granted for 12 months, and caveats may be filed for a similar period. The mere fact of an inventor having exhibited or tested his invention, publicly or privately, does not invalidate the patent provided application be made for the latter within six months.

Who may Apply.—The inventor, or his assignee or legatee, or the executor or administrator of a deceased inventor.

Mode of Application.—For obtaining provisional protection, an appointment of agent (Form 27) and a petition (Form 42), signed by the applicant, must be filed, accompanied by specification, of which one copy only is at present required. The copy of drawings, if any, should be filed. For obtaining patent: an appointment of agent (Form 27), and a petition (Form 43), with a declaration (Form 45) of the applicant and specification (Form 44) in duplicate. A receipt is given for the papers, and if found insufficient the Commissioner may

within six months require them to be amended. Notice of application is published in the Gazette, and by the applicant within a week, three times in two daily newspapers published in Adelaide. Objections may be filed within one month, and in such case the Commissioner may appoint a hearing, summon witnesses, decide the matter, and award costs. Whether opposition be filed or not, the Commissioner is empowered to refer the petition to an expert at the applicant's expense, not being more than 5*l.* 5*s.* When the Commissioner determines that sealing may be made, the applicant must pay the fee within ten days; and in no case must sealing be delayed beyond six months from the day of application, except accident shall have delayed, when one month extension can be had, or opposition has been filed when the Commissioner may seal at any time. The patent dates from the filing of the petition for *patent*, and equally so whether there has been a provisional protection granted or not. The nature of provisional protection is the same as in Great Britain, but its duration is 12 months, and it becomes void if petition for patent with the above recited documents are not filed within the 12 months. Fees are—provisional protection, 1*l.*; patent, 2*l.*; petition, 2*l.* 10*s.*; caveat, 1*l.*; power of attorney when used, 1*l.*

It should be observed that where the patent does not date back to the date of the application for provisional protection, the latter only appears to avoid the consequences of publication, and does not seem to be effectual to prevent grant of valid patent to another during its currency. It is, therefore, advisable either to file a complete application for patent in the first instance, or if application for provisional protection be desired, to also file a caveat at the same time.

Renewal Fees.—Before end of third year, 2*l.* 10*s.*; seventh year, 2*l.* 10*s.* The patent must be forwarded for endorsement. No extension of time can be had.

Working.—The Governor may, on petition of an interested party, revoke the patent if it appears that "neither the patentee nor his assignee or licensee has before the time of such application used the patented invention to a reasonable extent for the public benefit," but the Governor has absolute discretion to refuse any such application upon such terms and conditions as he may see fit. So far as is known no such application has ever been made, and agents and experts in South Australia do not consider it probable that any patent would be revoked on this ground before further opportunity were given to the patentee to work the invention.

Amendment.—Where by accident, mistake, or inadvertence, the specification is insufficient, or too wide in scope, the patentee may file an amended specification and surrender the patent, and a new patent may be granted for the remainder unexpired of the term of the patent surrendered. Where the amendment is a disclaimer only, the disclaimer may be attached to the original and endorsed on the patent; but no amendment can be made which would extend the scope of the patent. The Letters Patent must be forwarded. Amendment must be advertised before being passed.

Infringement, Revocation, call for no special remark. The latter is by *scire facias*. The effect is the same as in British law.

Confirmation of Patents.—The law embodies similar provisions to those formerly prevailing in Great Britain before 1883, but these, so far as is known, are never employed.

Assignments must be registered, and are, moreover, subject to stamp duty *ad valorem* of 5*s*. for each 100*l*. or part thereof, of the consideration money. The correct consideration should be set forth in the deed. Stamp duty is equally payable on assignments before application.

The cost of provisional protection is usually 5*l*. to 9*l*.; complete patent, 9*l*. to 18*l*. (*see* page 250).

SPAIN.

Date of Law.—30th July, 1878.

Patentable Inventions.—Machinery, apparatus, instruments, processes, chemical or mechanical operations which are wholly or partly new, and the invention of the applicant and those which, without fulfilling these conditions, have not been established or executed in the Spanish dominions, are said by the law to be patentable; also new industrial products, but the patent shall not prevent others from attaining the same products or results by different means. Inventions are not considered new if they are already known or have been executed abroad or in the Spanish dominions. Medical preparations are not patentable.

Kinds of Patents.—When the invention is new in the sense given above, patent for 20 years may be had, but if is not new the patent shall only last five years, with the exception that

if the patentee has already obtained a patent abroad and applies in Spain within two years of obtaining such foreign patent, the Spanish patent will run for ten years. Patents of addition are also granted for the remainder unexpired of the head patent.

Who may Apply.—The inventor or any other person, though the inventor stands in a somewhat better position. Patents may be granted to one person or several, or to companies, whether natives or foreigners.

Mode of Application.—Patent is obtained by petition to the Ministry of Commerce, with power of attorney (Form 20) (not legalised) attached, accompanied by duplicate specifications in Spanish and drawings, if any, a receipt for first year's tax of 10 pesetas, and a list of the papers. A receipt naming the day, hour, and minute, is given for the application, and this time governs priority. Within five days the application is forwarded to the Director of the Conservatory of Arts for examination as to its completeness. Two months is given to fulfil any requirements that may be found necessary, and this time cannot be prolonged. When the application is allowed one month is given to apply for sealed patent and pay stamp duty thereon. Patents date from the actual day of sealing. The proceedings are the same in obtaining patents of addition. Tax 25 pesetas.

Renewal Fees.—20 pesetas for the second year; 30 pesetas for the third, and so on, adding 10 pesetas each year, payable in advance, counting from the date of signature of the patent. No extension of time can be had for payment.

Working.—The patent will be annulled if patentee does not prove to the satisfaction of the Director of the Conservatory of Arts within a term of two years from the date of the patent, that the invention has been put into practice on Spanish territory. The director will appoint a practical engineer to view the working and certify thereto at the expense of the patentee. Patents of addition must be worked in the same way within two years of their date. The working must not cease for a year and a day.

Infringement knowingly committed is punishable by fine of 200 to 2,000 pesetas, and on second offence 2,001 to 4,000 pesetas. If the infringer has been convicted of the same offence within the previous five years it is a second offence. For complicity in infringement the fine is 50 to 200, second offence 201 to 2,000 pesetas. Products, &c., of infringement shall be handed over to the patentee, and the infringer is also liable in damages.

Annulment may be pronounced if the patent is contrary

to law, or if the working has not been performed according to law.

Assignments (when patentees reside abroad) are made in Spain by notaries appointed by legalized powers, the one to sell, signed by the seller, the other to buy signed by the purchaser. 3 per cent. *ad valorem* duty is paid on the amount of the consideration, which is usually stated at 100 francs. The assignment must be accompanied by an official certificate that the taxes have been paid up to date, and be deposited with the Secretary of the Civil Government of the Province where the original deposit was made.

The cost of patent is usually 8*l.* to 18*l.* (*see* page 250).

STRAITS SETTLEMENTS.

Date of Law.—Inventions Ordinance, No. 12 of 1871.

Patents are granted for 14 years for inventions so long as they have not been publicly used in the colony, or in the United Kingdom, or in any British possession, use in public by the inventor or his servants, or by his leave not being deemed a "public use." Use by others who have obtained the knowledge surreptitiously in fraud of the inventor is also not deemed a public use if the inventor applies within six months of the commencement of such use.

If a patent has been granted in Great Britain, or in any British possession, the grantee may apply at any time for extension of the same to the Straits Settlements, but the latter patent will then lapse with the British or other patent.

Who may Apply.—The actual inventor, or the "importer," or the heirs, executors, administrators, or assigns of either of these.

Mode of Application.—A petition to the Governor for leave to file a specification stating the condition of the applicant (whether *inventor*, *assignee*, &c.), and whether a British or British colonial patent has been granted for the invention, stating its date and term, and including a complete specification, must be filed, accompanied by drawings and a declaration, at the Office of the Colonial Secretary. The petition may be referred to an expert for examination at the applicant's expense. Before issue of allowance the application is advertised with opportunity for opposition. Within six months of the date of the order permitting the deposit of the specification, the formal specification signed by the applicant may be deposited accompanied by another declaration, and Letters Patent will thereupon issue

for 14 years from the date of filing the said formal specification. The stamp on petition is 50 dols. The applicant must sign power (Form 26).

Renewal Fees.—There are none.

Working.—No conditions.

Amendment may be made by disclaimer or amendment so long as the patent is not widened or enlarged. The proceedings are exactly similar to those on application for patent, the proposed amendment taking the place of the specification.

Register of Patents is kept at the Colonial Secretary's Office, and contains the usual particulars. Fee for inspection 1 dol. Specifications are similarly open to inspection. Copies may be had at the expense of making same. A register is also kept of addresses for service, and it is incumbent on every patentee to state such address for service in the settlement.

Infringement and Revocation.—Insufficiency of specification, or that the applicant was not entitled to apply cannot be raised in defence, but are grounds for suit of revocation. Actual prior use by the defendant or any person through whom he claims, is, however, a valid defence to the action of infringement. An inventor who can prove that the applicant has defrauded him can recover the patent for himself and any profits the wrongful holder may have made, if action is brought by the true inventor within two years of the date of the petition.

Extension.—The Governor may extend the patent a further 14 years or less at his discretion, on petition filed not less than 6 months or more than 12 before the expiry of the patent.

Cost of patent is usually 34*l.*

SWEDEN.

Date of Law.—16th May, 1884. As Amended by Act of 14th April, 1893, and Act of 26th May, 1897.

Patentable Inventions.—Patents are granted for industrial productions or special methods of manufacturing such productions, so long as the working of same is not contrary to law or morality; patents may be granted for methods of producing provisions or medicines, but not for products themselves.

"An invention shall not be considered as new, if it has,

prior to filing the application for a patent with the patent authorities, been described in a printed publication, or is so openly worked that any person conversant with the subject may, guided by the information thus gained, work the invention, or if the object of the invention does not essentially differ from products or methods of manufacture which have before become known in such a way."

The exhibition of an invention in any international exhibition or publication, or use consequent upon such exhibition, shall not be an obstacle to grant of patent provided the application is filed within six months of exhibition.

Where reciprocal privileges are given by foreign States in respect of inventions patented in Sweden, a decree may be issued allowing delay for applications in Sweden not exceeding seven months from the day of application in the foreign State, or three months from the publication of the granting of protection, without loss of rights by publication or other applications in the meantime.

Kinds of Patents.—Patents for invention last for 15 years from the date of application. Patents of addition may be had by the holders of patents of invention for improvements in connection therewith, and these expire with the head patent and are not subject to annuities.

Who may Apply.—Only the true inventors, Swedish or foreign, or the legal representatives of inventors are entitled to obtain patents.

Mode of Application.—The inventor, if resident out of Sweden, must appoint a resident in Sweden to represent him in law throughout the life of the patent (Form 22). The patent is obtained by petition, accompanied by duplicate specification in Swedish and duplicate drawings, if any. The fee on patent has been reduced (to take effect 1st January, 1894) from Kr. 50 to Kr. 20, and is not returnable if patent is rejected. The application is examined, and if not satisfactory amendment is asked for. Residents in Sweden have one month to answer, in Europe two months, out of Europe three months. A prolongation of one month can be had, and in the case of first rejection only a further prolongation of one month. Appeal lies to the King within 60 days. When found satisfactory the application is advertised and papers placed for public inspection. Anyone may enter a protest against the grant within the ensuing two months. The application is then finally adjudicated. Appeal lies to the King within 60 days. The patent dates from day of application.

Renewal Fees.—Before the end of the first, second, third,

and fourth years Kr. 25 each year; fifth, sixth, seventh, eighth, and ninth years 50 Kr. each year; tenth, eleventh, twelfth, thirteenth, and fourteenth years Kr. 75 each year. Any of these fees may be paid within 90 days of becoming due, on adding one-fifth of the amount of the fee by way of fine.

Working.—"It shall be the duty of the patentee, within three years from the date at which the patent was granted, to have the invention worked within the country to an adequate extent. But the patent authorities may allow at the time the patent is granted or afterwards, should it be requested, and having regard to the character and extent of the invention, a prolongation of the period up to four years. They may also determine in exceptional cases what measures, taken by the patentee, shall be considered to have complied with the conditions of working the invention."

"If the patentee has within the period prescribed failed to comply with the conditions required for working the invention, or if the working of the invention is subsequently abandoned, and not afterwards resumed within a year, the patent shall be forfeited."

Infringement.—"Any person who, without the permission of the patentee, manufactures goods in the country with an intent to sell, or for such manufacture employs a method of which he knows another person to be the lawful patentee; or who sells in the country or imports into the country for sale, goods patented here or made according to methods of manufacturing which he knows to be patented here, which methods he appropriates without permission of the patentee; is liable to a fine varying from 20 to 2,000 crowns, and all damages."

"Goods unlawfully manufactured or unlawfully imported into the country shall, when the complainant so demands, be delivered up to him against compensation for the value, or against deduction therefor from the damages due to the complainant. Implements exclusively applicable for the unlawful manufacture may be destroyed."

The patent is not valid against any person who had already worked the invention or made extensive preparations for doing so, before the patent was applied for.

Revocation.—Suit may be brought by anyone alleging that the patent was obtained contrary to law or has not been worked as the law directs. The tribunal competent to try the case is the Court of the City of Stockholm.

Use by Crown.—The Crown may appropriate the patent, if

desirable, on granting full compensation to the patentee, amount to be fixed by a jury if not agreed upon.

Assignments must be registered, and accompanied by a new appointment of agent by the assignee.

Specifications are printed, and may be had at a small price per copy.

The cost of patent of invention, or addition, is usually 8*l.* to 18*l.* (*see* page 250).

SWITZERLAND.

Date of Law.—Federal Act of June 29th, 1888, in force from 15th November, 1888, and Amending Act in force from 1st August, 1893.

Patents are granted for a term of 15 years from the day of application for inventions applicable to industry and capable of being represented by models. The patent is called "provisional" unless proof is afforded at the time of application that the invention is already constructed, or a model of it is in existence, in which latter case it is "complete." Where a patent is only "provisional," proof of the existence of the construction or model must be given within three years [1] or the patent will lapse. On such being given the patent becomes "complete."

Patents of addition are also granted to the holders of patents of invention, they expire with the latter, and are not subject to annuities.

Patentable Inventions.—Since an invention is only patentable which can be represented by a model, processes as such would appear excluded. The recent date of the law and absence of judicial decisions leave the point in possible doubt how far models represent inventions, but the general concensus of Swiss experts is to the effect stated above.[2] Inventions are considered not new if already known sufficiently in Switzerland to enable them to be carried into practice by persons skilled in the trade.

Who may Apply.—The applicant must be either the true and first inventor or inventors or the person or persons, &c., deriving legal title from the inventor, such persons having to give proof of title with the application.

[1] Substituted for *two* years under Act of 1888.
[2] Schw. Pat. and Ind. Schutz, by J. Baur, page 3.

Mode of Application.—The application (tax, 40 fr.) must be accompanied by specification in duplicate, and drawings also. The language may be either German, or French, or Italian. Proof of model may or may not accompany the application. The application is examined and may be returned for amendment if the specification is thought defective, or the drawings do not answer to the somewhat fastidious regulations of the Office. Two months is given to answer any such requirements, and prolongation can be had, but in no case for beyond six months from the date of the original application. In case of refusal, appeal lies within four weeks for reconsideration, and further appeal to the Federal Council. Where patent is refused 20 fr. of the tax are returned. There is no opposition, and patents are granted at applicant's risk.

If the applicant relies on the Convention the number and date of the prior patent must be set forth. Application for patent of addition follows the same process, but proof of existence of the "model" of the addition must be afforded with the application. In every case applicants, if not resident in Switzerland, must appoint an agent there to represent them before the Patent Office. Form 14 is all that the inventor or assignee need sign, no legalising required; assignee furnishing also the assignment.

Proof of Model.—The only proof of model allowed is the deposit of the model itself, or photographs of it, or of the installation of the invention which should show in as many views as necessary all the parts patented. *Models* themselves must be furnished where the invention concerns *watches*, *portable fire-arms*, and *combinations of substances*. Where models cannot be furnished and it is impossible to photograph, early application must be made stating full circumstances to the Swiss Patent Office for an order as to what proof shall be given, to enable same to be prepared and filed in time. Proof of model must be furnished within three years of the date of application or the patent lapses.

Renewal Fees.—Before commencement of second year, 30 fr., third year, 40 fr., and so on, adding 10 fr. each year. These fees may be paid within three months after they become due without extra payment, but no further extension is possible.

Working.—The Swiss law provides that the patent will lapse if the invention has not received any application by the expiration of the third year from the date of the application. It is the present opinion of some that this working need not

necessarily take place *in Switzerland*, but such opinion based on strict wording of the law is clearly against the probable spirit of the enactment as read in most other European laws.

Infringement.—Protection against infringement dates from the filing of proof of model.

Infringers may be proceeded against civilly or criminally. Damages may be awarded. Courts have power of confiscating or destroying infringing instruments, of impounding alleged infringing articles or instruments of infringement. In criminal cases fines of 30 to 2,000 fr., or imprisonment of 3 to 365 days. Double upon repetition of offence. Action must be brought within two years of date of last offence.

Obligations and Penalties.—Articles patented or made under patent are to be marked with the Federal Cross followed by the number of the patent. If the nature of the article does not permit the marking, the packages or wrappers shall be so marked. No action for infringement shall succeed if such marking be omitted.

Improper use of the word Patent, or of any mark, &c., leading persons to believe that the trade, &c., is carried under any patent when it is not so, is liable to a fine of from 30 to 500 fr., or imprisonment of from three days to three months, or to both these penalties.

Licenses may be granted. The proprietor of a patent requiring to use some substratum invention patented to another, may demand a license on equitable terms after three years have elapsed from the date of the previous patent. When such is granted the first patentee may likewise demand a license from the second patentee. Licenses should be registered.

Assignments may be granted, total or partial. To be opposible to third parties assignments must be registered.

The cost of patent is usually 7*l.* to 16*l.* (*see* page 250).

TASMANIA.

Date of Law.—Act No. 22 of 5th November, 1858, as amended in 1883, and Act No. 2 of October 20th, 1884, have been repealed by Act No. 6 of 29th September, 1893, entering into force January 1st, 1894, and very similar in its provisions to the British Acts of 1883–1888.

Patents are granted for 14 years from the date of acceptance of the application. The invention should be new within

Tasmania, but persons who have applied for patents either in Great Britain or in any British possession or foreign State in respect of which an Order in Council has issued under Sect. 103 of the British Act of 1883 may apply in Tasmania within 12 months of their application in Great Britain or such possession or State without detriment from any publication that may have occurred in Tasmania in the meantime.

Who may Apply—The inventor alone or in conjunction with others, the inventor's agent or assignee, or the representative of a deceased inventor within six months of his death.

Application by a person not resident in the Colony must be made by or through a duly appointed agent in the colony (Form 27). The applicant may file either a provisional (Form 87) or complete specification (Form 88) with his application (Form 86). In the former case the complete specification must be filed within nine months; one month's extension can be had on payment of fees of 6*l*. The application, &c., is subjected to examination as in Great Britain. Opposition may be filed within two months of the acceptance of the complete specification, which fact has by law to be advertised at the applicant's expense in the Government Gazette, and twice in another newspaper published in Hobart and Launceston, Tasmania. Sect. 20 of the Act is as follows: "On the expiration of two months from the date of the acceptance of an application if there is no opposition, or in case of opposition if the determination is in favour of the grant of a patent as soon as the decision is made or given, a patent may be granted; and at any time thereafter before the expiration of the term of provisional protection, on application in writing by the applicant or his agent, with payment of the fee thereon, the Registrar shall cause a patent to be prepared for such invention, and the Governor may direct such patent to be sealed with the seal of the colony." Under Sect. 21 the patent is to be sealed as soon as may be, and in any case within 15 months, unless it is delayed by the Court, or by accident through no fault of the applicant, it having been applied for within the term of provisional protection, or unless the applicant dies. Under Sect. 29 provisional protection extends from the day of acceptance of the application to the day of sealing. To reconcile these three sections has probably puzzled the Registrar, who in Sect. 16 of his "Instructions" says:—"Application for a grant of Letters Patent, together with fee (2*l*.) and copies of papers containing the necessary advertisements must be forwarded during the time of provisional protection at the expiration of two months from the date of acceptance of application, provided there is no

objection lodged, or in case of opposition as soon as the decision is given favourable to the issue of grant." From this it would appear that where a provisional specification is filed the patent must be applied for at the end of two months, though the complete specification need not be filed for nine months. The point may be considered doubtful. Appeal lies from the Registrar to a Judge in Chambers.

Renewal Fees are 15*l.* before the end of the third year, 20*l.* before end of seventh year. Extension of time can be had at the discretion of the Registrar for a period not exceeding three months; fee 4*l.*

Working.—There are no conditions.

Amendments may be made substantially as in Great Britain, the advertisements being at expense of applicant.

Revocation, Infringement.—The law is the same as in Great Britain.

Assignments must be registered, and are subject to revenue duty on the consideration at the rate of 5*s.* on the first 100*l.*, and 5*s.* for each 50*l.* after.

The cost of provisional protection is usually 4*l.* to 8*l.*; of complete patent, 9*l.* to 18*l.*

TRINIDAD.

Date of Law.—No. 25, 2nd September, 1867.

Patents are granted for 14 years to the true and first inventor on application to the Registrar-General, accompanied by a declaration and specification, which latter may be filed open or closed, and in the latter case shall remain sealed up for six months prior to its registration. Patent dates from day of application. Fee on leaving application, 10*s.* There are no renewal fees or conditions as to working. Applicants should sign Form 26.

Disclaimers may be entered at any time, but where entered no claim can be made in respect of infringement occurred before the date of the disclaimer.

The cost of patent is usually 40*l.*

TUNIS.

The law in this French colony resembles in all substantial effects the law in France.

The cost of patent is usually 22*l*.

TURKEY AND EGYPT.

Date of Law.—18th February, 1880.

(Territory covered.—All possessions of the Ottoman Empire, including Turkey in Europe, in Asia, Syria, Palestine, and Egypt.)

Patents.—The Turkish law is very similar in conditions to the French law on which it is founded. Patents are granted without previous examination (except for munitions of war) at the risk of the applicant, for 5, 10, or 15 years at the election of the applicant, 15 years being the usual term chosen. The patent, whatever its term, will lapse if the annuities are not paid within the prescribed times. Inventions are not considered "new" if, before the date of application for Turkish patent, they have already been sufficiently published anywhere to enable them to be worked. Patents for munitions of war are only granted after examination by the Turkish War Office or Admiralty as to their utility. If found useful the patents are then purchased by the Government. At present, however, the Turkish Exchequer would appear to be unequal to such expenditure, so that the utility of such inventions is usually denied. Pharmaceutical preparations and schemes of credit are specially declared to be unpatentable. Patents for inventions previously patented abroad expire with foreign patents. It is preferable to record the grant of patent in Egypt at an early date.

Who may Apply.—The author of the invention or his assigns; in practice, however, any person may apply.

Application is to be made directly to the Ministry of Commerce and Agriculture or to the local authority, who will remit it within five days to the Ministry. The application, in Turkish, is to be accompanied by duplicate description and drawings on stout paper, and a receipt for the first year's tax of £T2. The power of attorney (Form 14) appointing an agent in Turkey is all that the applicant need sign; it must be legalised. The "berat" or patent is issued in about 8 to 10

weeks and dates from the day of application. The Government is empowered to grant medals to meritorious inventors whether subjects or aliens.

Renewal Fees.—Each patent is subject to a tax of £T2 per annum, payable before the commencement of each year of the term; by recent decision of the Treasurer of the Patent Office (1892) annuities may still be paid up to 12th March next following, as the Turkish financial year ends on that day. Nevertheless, this decision is at any time liable to be revoked without notice.

Working.—Is to be performed within two years of the date of the patent; there is doubt whether the application or issue date is intended; former practice regarded the application date, later practice the issue date. The difference in time is, however, small, and greater certainty will result from working within two years of the application date. The working is not to be interrupted for more than two years at any time. The patentee may justify his non-working or interruption, as the case may be, as in France.

Patents of Addition are granted to holders of patents for improvements, &c., and during the first year of the life of the principal patent any Patent of Addition will take precedence of applications for patents made by others. Patents of Addition lapse with the principal patent, and are not subject to taxes. The Government fee on a Patent of Addition is £T1.

Assignments must be notarial, and to be operative against third parties, recorded in Constantinople at the Ministry of Commerce and Agriculture.

Publication and Registration.—Annual index of patents and *précis* of patents on which the second annuity has been paid are to be published under Sect. 30. The originals of patents in force are open to inspection at the Ministry of Commerce. On expiry of patent they are removed to the Conservatory of Arts and Sciences.

The cost of a Turkish patent is usually about 30*l.*

UNITED STATES OF AMERICA.

Date of Law.—The Patent Act of 1870, as amended in 1871 and 1897.

Patentable Inventions.—According to the law of the United States any person, whether citizen or alien, may obtain

patent for any new and useful art, machine, manufacture, or composition of matter invented or discovered by him, or any new and useful improvement thereof, provided that at the date he invented or discovered it it was not known or used by others in the United States, and not patented or described in any printed publication either in the United States or any other country, and provided at the time of his application for United States patent, the invention has not been in public use or on sale for more than two years in the United States (unless such use or sale has been abandoned) and, in respect of all applications subsequent to 1st January, 1898; provided also that he makes such application within two years after any printed publication of the invention by himself or others in the United States or elsewhere, and within two years of the grant of any patent there or elsewhere to others unconnected with him, and in the majority of cases within seven months of any application for patent in any country, filed by himself or his legal representatives or assigns.

The possession of a foreign patent granted to or applied for by the applicant himself for the same invention was, prior to 1898, no bar to application in the States, but after 1st January, 1898, the United States patent cannot be granted if before its issue the applicant or his representative has received a patent elsewhere, which he applied for more than seven months before the date of his application in the United States. As it requires some time to obtain the United States patent all applicants ought to file within the seven months.

United States patents granted on applications dated 1898, and subsequently do not expire with previously granted foreign patents.

Patents.—There is only one form of patent granted for an invention of above nature, and that is granted for 17 years from the date of issue; but if a foreign patent already exists for the same subject at the date the United States patent is issued, the latter, if applied for before 1898, will expire with the term of the foreign patent, or if there is more than one, with that having the shortest term. The exact meaning of the law in this particular had for long been a cause of anxiety to many American patentees, and it is only recently that the question has been finally decided in the Supreme Court. This Court of Final Appeal has decided that the United States patent does not necessarily expire with that previous foreign patent which expires first, but that it will remain in force for the whole residue of the term for which the foreign patent was granted without taking account of the lapsing of the latter

for failure to perform any condition attaching to its life.[1] Moreover, where, as in Canada, Austria, Italy, Portugal, a patent is originally granted for a short term, but with uncontrolled option to the patentee to extend it from time to time to a definite extreme limit, and the patentee has exercised that option and procured extension, the United States patent has been held to remain in force throughout the extended term.[2] It is doubtful whether the United States patent would, in the last-mentioned case, have been held to be still in force if the patentee had not exercised the option of extending the term of the foreign patent.

A United States patent cannot validly be issued after a foreign patent for the same invention has expired.[3]

Who may Apply.—The true and first inventor only, not necessarily the first applicant, or in case of the death of inventor, his legal personal representative. The patent may, however, *issue* to an assignee alone or in conjunction with the inventor, and an assignment with request to that effect may be filed with the application, or at any time thereafter before the issue fee is paid after allowance of the patent.

Preparation of Application.—A petition (Form 60) must be filed signed by the applicant; an oath of inventorship (Form 62) signed by the inventor before either a consular officer of the United States, or a notary, who affixes also his signature and seal, and a specification signed by the inventor (Form 61) before two witnesses. In the preamble of the specification and in the oath must be inserted a list of the patents in other countries granted to the applicant or to others with his knowledge and consent, with the numbers and dates of all such patents. Fee payable on application is 15 dols.

Progress of Application.—Where the invention can be illustrated by drawings, a drawing of prescribed size, &c., *must* be filed; it may be signed by the applicant's agent before two witnesses. A receipt is given for the papers, bearing the serial number of the application; this is not the number hereafter given to the patent. If the drawing is informal this will be noted on the receipt; it will be used for examination, but before allowance of patent a new one will have to be filed.

The application is handed to one of the examining divisions and will be taken up in its order. The examination as to literal exactness and as to novelty is in both respects very strict and

[1] Pohl *v.* Anchor Brewing Company, 134 *U.S.*, 385.
[2] Bate Refrigerating Company *v.* Hammond, 129 *U.S.*, 151.
[3] Huber and others *v.* Nelson, 27th March, 1893.

as perfect as possible, to which cause indeed the value and comparative certainty of American patent may be principally attributed. Notice is given to the applicant or his agent of any existing anticipatory patent or publication covering the invention as presented, and the applicant may amend or reply thereto. The applicant has a similar right to amend or reply each time a new reference of anticipatory matter is given by the Examiner. If no reply is filed by the applicant to any such notice of the office within one year of the notice, the application is deemed abandoned, and can only then be further prosecuted on an entirely new application. If the applicant deems the Examiner's rejection not to be justified, he may file an argument stating his reasons and asking for reconsideration. If decision should be again against him he may appeal to the Examiners-in-Chief and ask for a hearing if he desires. Further appeal lies to the Commissioner of Patents, and lastly, to the Supreme Court.

Previous to 1st January, 1898, the time for reply to an official objection was legally two years, and this would apparently be one of the 'rights" saved by Section 8 of the new Act for applications filed up to 31st December, 1897.

The preparation and conduct of an application in the United States Patent Office are of a highly technical nature, and the efficiency of the patent system there is immeasurably enhanced thereby; although the inventor is, therefore, perhaps put to greater expense, as the *best* skilled assistance is essential; his patent will be of the greater commercial value.

When it is found that the claims made on behalf of the applicant are allowable, the application will be allowed, and notice forwarded to the applicant. The issue fee of 20 dols., if not previously sent, must now be paid at the Patent Office within *six months* of the date of the notice, and the patent will issue and bear date the Tuesday following the third Thursday after the fee is paid, or after the date of allowance if the fee was previously paid.

The patent contains a printed copy of the specification and drawings, and dates from day of issue.

Renewal Fees.—None.

Working.—There are no conditions.

Amendment.—" Where a mistake is incurred through the fault of the office, a certificate, stating the fact, will be endorsed without charge upon the Letters Patent, and recorded in the records of patents, and a printed copy thereof attached to each printed copy of the specification and drawing. If the mistake

constitutes a sufficient legal ground for re-issue, such re-issue will be made, for the correction of such mistake only, without charge of office fees, at the request of the patentee.

"Mistakes not incurred through the fault of the office, and not affording legal grounds for re-issues, will not be corrected after the delivery of the Letters Patent to the patentee or his agent."

"Whenever through inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, a patentee has claimed as his invention or discovery more than he had a right to claim as new, his patent shall be valid for all that part which is truly and justly his own, provided the same is a material or substantial part of the thing patented; and any such patentee may on payment of the fee required by law make disclaimer of such parts of the thing patented as he or they shall not choose to claim by virtue of the patent or assignment, stating therein the extent of his interest in such patent. Such disclaimer must be in writing, attested by one or more witnesses, and recorded in the Patent Office; and it shall thereafter be considered as part of the original specification to the extent of the interest possessed by the claimant and by those claiming under him after the record thereof. But no such disclaimer affects any action pending at the time of filing the same, except as to the question of unreasonable neglect or delay in filing it."

Interference.—"An interference is a proceeding instituted for the purpose of determining the question of invention between two or more parties claiming substantially the same patentable invention. The fact that one of the parties has already obtained a patent will not prevent an interference, for, although the Commissioner has no power to cancel a patent, he may grant another patent for the same invention to a person who proves to be the prior inventor."

Interferences will be declared: (*a*) when all the parties claim substantially the same patentable invention; (*b*) between two or more original applications containing conflicting claims; or (*c*) between an original application and an unexpired patent containing conflicting claims, when the applicant, having been rejected on the patent, shall file an affidavit that he made the invention before the patentee's application was filed; and (*d*) in certain cases where patents are reissued. Before the declaration of interference all preliminary questions must be settled; the invention which is to form the subject of the controversy must be decided to be patentable, and the claims of the respective parties must be put in such condition that they will not require

alteration after the interference shall have been finally decided, when, however, a party, who is required to put his application in a condition proper for an interference, fails to do so within a reasonable time specified, the declaration of interference will not be delayed. Each party to the interference will be required to file a concise preliminary statement, under oath, on or before a date to be fixed by the office, showing the following facts:—

(1) The date of original conception of the invention in the declaration of interference.
(2) The date upon which a drawing of the invention was made.
(3) The date upon which a model of the invention was made.
(4) The date upon which the invention was first disclosed to others.
(5) The date of the reduction to practice of the invention.
(6) A statement showing the extent of use of the invention.

If a drawing or model has not been made, or if the invention has not been reduced to practice or disclosed to others, or used to any extent, the statement must specifically disclose these facts.

When the invention was made abroad the statement should set forth:—

(1) That applicant made the invention set forth in the declaration of interference.
(2) Whether or not the invention was ever patented; if so, when and where, giving the date and number of each patent.
(3) Whether or not the invention was ever described in a printed publication: if so, when and where, giving the title, place, and date of such publication.
(4) Whether or not the invention was ever introduced into the United States; if so, giving the circumstances, with the dates connected therewith, which are relied upon to establish the fact.

The preliminary statements should be carefully prepared, as the parties will be strictly held to the dates given. The statement must be sealed up before filing (to be opened only by the examiner of interferences), and a party in default in filing his preliminary statement shall not have access to the preliminary statement of his opponent until he has either filed his statement

or waived his right thereto, and agreed to stand upon his record date. Times will be assigned in which the junior applicant shall complete his testimony in chief, and in which the other party shall complete the testimony on his side, and a further time in which the junior applicant may take rebutting testimony: but he shall take no other testimony. After the interference is finally declared, it will not, except as herein otherwise provided, be considered determined until judgment of priority is given, founded either upon the testimony, or upon a written concession of priority by one of the parties, signed by the inventor himself (and by the assignee, if any), or upon a written declaration of abandonment of the invention.

Re-issue.—"A re-issue is granted to the original patentee, his legal representatives, or the assignees of the entire interest, when the original patent is inoperative or invalid by reason of a defective or insufficient specification, or by reason of the patentee claiming as his invention or discovery more than he had a right to claim as new, provided the error has arisen through inadvertence, accident, or mistake, and without any fraudulent or deceptive intention."

"Re-issue applications must be made and the specifications sworn to by the inventors, if they be living."

"The petition for a re-issue must be accompanied by a certified copy of the abstract title, giving the names of all assignees owning any undivided interest in the patent. In case the application be made by the inventor it must be accompanied by the written assent of such assignees. New matter is not allowed to be introduced into the re-issue specification, nor in the case of a machine can the model or drawings be amended except each by the other."

"An original claim, if reproduced in the re-issue specification is subject to re-examination, and the entire application will be revised and restricted in the same manner as original applications."

"The application for a re-issue must be accompanied by a surrender of the original patent, or, if that be lost, by an affidavit to that effect, and a certified copy of the patent; but if a re-issue be refused, the original patent will, upon request, be returned to the applicant."

"Matter shown and described in an unexpired patent, and which might have been lawfully claimed therein, but which was not claimed by reason of a defect or insufficiency in the specification, arising from inadvertence, accident, or mistake, and without fraud or deceptive intent, cannot be subsequently

claimed by the patentee in a separate patent, but only in a re-issue of the original patent."

Extension of Patent can only be had by Act of Congress.

Assignments.—"All assignments, grants, or conveyances of patents will be void as against any subsequent purchaser or mortgagee for a valuable consideration without notice, unless recorded in the Patent Office within three months from the date thereof."

"No instrument will be recorded which does not, in the judgment of the Commissioner, amount to an assignment, grant, mortgage, lien, incumbrance, or license, or which does not affect the title of the patent or invention to which it relates. Such instrument should identify the patent by date and number; or, if the invention be unpatented, the name of the inventor, the serial number, and date of the application should be stated."

"Assignments which are made conditional on the performance of certain stipulations, as the payment of money, if recorded in the office, are regarded as absolute assignments, until cancelled with the written consent of both parties, or by the decree of a competent Court The office has no means for determining whether such conditions have been fulfilled."

"In every case where it is desired that the patent shall issue to an assignee, the assignment must be recorded in the Patent Office at a date not later than the day on which the final fee is paid. The date of the record is the date of the receipt of the assignment at the office"

"The receipt of assignments is generally acknowledged by the office. They are recorded in regular order as promptly as possible, and then transmitted to the persons entitled to them."

Caveats can only be filed by citizens of the United States, or persons who have resided there for one year and have taken oath of their intention to become citizens.

Official Publications.—The Official Gazette, a weekly publication which has been issued since 1872, takes the place of the old Patent Office Report. It contains the claims of all patents issued, including re-issues, with portions of the drawings selected to illustrate the inventions claimed. It also contains decisions rendered by the Courts in patent cases and by the Commissioner of Patents, and other special matters of interest to inventors.

The Gazette is furnished to subscribers at the rate of 5 dols. per annum. When sent abroad an additional charge of 2 dols. is made for the payment of postage. Single copies 10 cents each.

An index is published annually, which is sent to all subscribers and designated libraries without additional cost.

Printed volumes are issued monthly, containing the entire specifications and drawings of all patents issued during the previous month. The specifications with their drawings are also printed and sold separately at 5 cents each.

The cost of application for United States patent is usually 8*l.* to 20*l.*, exclusive of issue fee.

URUGUAY.

Date of Law.—November 12th, 1885.

Patents are granted for new industrial products, new means, and the new application of known means for obtaining an industrial result or product, but not for financial schemes, inventions already well known in the country or abroad, purely theoretical inventions, pharmaceutical preparations, nor inventions contrary to law or morality. Inventors or their assigns having foreign patents, can receive a valid Uruguayan patent if it is applied for within the first year of the term of the foreign patent. Patents of improvement or addition are also granted to the original patentee or others. Duration of patents, three, six, or nine years, at the option of the applicant.

Application.—The patent is granted without examination, and at the risk of the applicant. Inaccurate or incomplete description voids the patent. Form 20 should be signed by the applicant and legalised.

Renewal Fees.—Tax 25 dols. per year, payable within the first ten days of each year. For patents of improvement the tax is reduced to one-third if taken by the original patentee.

Working.—The executive fix in each case a term within which the patentee must work the invention and give information thereof to the Patent Office, under penalty of forfeiture of the patent. An extension of time on account of *force majeure* may be applied for if made at least three months before the time expires.

If the working is abandoned for more than a year, the patent will also be declared forfeited unless within the next succeeding month the patentee justifies his inaction.

Infringement is punishable by fine of 100 to 500 dols., or imprisonment from one to six months. Repetition of the offence within five years of conviction entails double penalty.

Publication.—A duplicate of the specification and drawings is attached to the patent deed. Copies can be had at the cost of the patentee on his order during the lifetime of the patent, afterwards by anyone.

The law directs the publication of all patents with their specifications and drawings, in a volume every two years.

Assignments must be by public or notarial deed, and registered at the Uruguayan Patent Office.

The cost of patent is usually 80*l.*

VENEZUELA.

Date of Law.—25th May, 1883.

Patents are granted for inventions, discoveries, or improvements, not already known or used in the country by others, nor described in a printed publication in the country or abroad, nor already on public sale for more than two years prior to the application, unless the same has been abandoned. Medicines and inventions contrary to law or morality are declared not patentable. Patents of addition are also granted.

The duration of patent is five, ten, or fifteen years at the option of applicant. Where patents already exist abroad, the patentee can obtain Venezuelan patent expiring therewith.

Application is made by petition, accompanied by specification and drawings or specimens, also an oath of inventorship. The tax for half the total years of the patent must be paid with the application. The patent is granted without examination at the risk of the applicant. The applicant should sign Form 20, which should be legalised.

The Tax is 80 bolivars (francs) for each year for a patent for invention or discovery, and 60 bolivars for each year for a patent of improvement. The Executive may grant exemption from taxes where the invention is of great merit.

Working.—5-year patents must be worked within six months; 10-year patents within one year; and 15-year patents within two years of the date of grant. The working must not be abandoned for more than one year. Unless *force majeure* can be pleaded in justification of non-working the patent is considered forfeited.

Publication.—Every application is advertised in the Official Gazette; specifications, &c., are published in full when the patent expires.

Infringement.—The patentee's remedy is by civil action in the Federal Courts.

The cost of patent is 55*l.* for 5 years, 70*l.* for 10 years, and 85*l.* for 15 years.

COLONY OF VICTORIA.

Date of Law.—The present law governing the grant of patents in this, the most important of the Australian Colonies of Great Britain is dated 10th July, 1890, and entered into operation on the 1st August of the same year, in substitution for a previous Act of 1889, repealed. The Act of 1889 repealed prior Acts of 1881, 1872, and 1865. Previous Acts of 1854 and 1857 were repealed by the Act of 1865. Under the saving clause of the Act of 1890 this Act extends to all patents then in force saving past operation, &c., of repealed Acts, but is not to interfere, *inter alia*, with institution of an action or proceeding, civil or criminal, under previous Act allowed, nor does it affect any Order in Council previously made in respect of priority to inventors in other colonies or in Great Britain, or other countries under convention to grant reciprocal treatment in that respect to Victoria. The rules in force are those of 1890.

Patentable Inventions are described by Sect. 3 of the Act as "any manner of new manufacture which might be in England and Wales the subject of Letters Patent and grant of privilege within Sect. 6 of the Statute of Monopolies," a somewhat vague definition depending somewhat on the construction given by the British Courts to the Statute, but probably intended to mean that the invention must be new in Victoria since other portions of the Act uphold this view. Nevertheless, under Sect. 56, where an invention which has not originated in Victoria has been patented in any other country than Victoria, a patent in the latter colony may be validly taken, even though the invention may have become published or used in Victoria in the meantime, provided it is granted within one year of the grant of the foreign patent or first of them, and provided (Sect. 56) the inventor has not been a consenting party to such publication or use. The date of grant of the Victorian Patent is held to be the date of the warrant for the patent, consequently application must be made early enough in

Victoria to enable the application to pass through its various stages in due time. Not less than four months should in all cases be allowed, but in case the examination may disclose some objection needing amendment and possibly reference back to the applicant for personal instructions, it may be desirable to allow a longer time. Publications by foreign patent offices are not held to be publications with the inventor's consent.

Who may Apply.—Under Sect. 7 application may be made either by: (1) The actual inventor; (2) his assigns; (3) the actual inventor jointly with the assigns of a part interest; (4) the legal representatives of a deceased actual inventor or his assigns; or (5) any person to whom the invention has been communicated by the actual inventor or his legal representative or assigns when the latter are not resident in Victoria. Under Sect. 58 the representatives of a deceased inventor must apply within 12 months of his death. A person importing an invention into Victoria without the authority of the actual inventor, or his assigns, may not legally apply for a patent (Sect. 3).

Application for Patent.—The Victorian Act adopts in its main features the methods of the British Patent System. The applicant may commence with a provisional specification or a complete specification, but in the former case the application will be considered abandoned unless the complete specification be filed within nine months. The applicant must sign the form of application, since this contains a declaration as to inventorship or ownership which must be sworn to under the proper law in the country where the applicant resides, and properly attested. The appropriate Form 48 to 51, together with Form 47, must be signed by the applicant. Where the applicant is not resident in British territory the signature of the person before whom the oath is taken should be legalised by the British Consul. All other forms may be signed by an agent duly appointed, and resident in the colony.

The appointment of agent and statement of address within the colony at which notices may be served must also be signed by the applicant, Form 47 (Rule 4). Where the applicant is the *assignee*, the duly-executed and attested original assignment, together with a copy thereof, must be lodged with the application (Rule 6). *Executors or administrators* must lodge copies or extracts of the Probate or Letters of Administration (Rule 7). If also a foreign resident inventor or assignee prefers that his application shall be made in the name of the

resident agent in Victoria as a *communication* from himself, the resident agent must be provided with a special authorisation to that effect, signed by the inventor or assignee for production at the patent office. Where an applicant already possesses a *patent abroad*, and applies under the section allowing 12 months for making the application in Victoria, a certified copy of the Letters Patent granted abroad must be lodged with the application, this should probably include a certified copy of the specification and drawings of the foreign patent referred to. It should be observed that it is only necessary to apply under this section when the invention has become known in the meantime in Victoria.

The specifications for Victoria and drawings may be prepared exactly as for Great Britain. Where drawings have been filed with a provisional specification they may be referred to in the complete without filing new ones unless the applicant desires otherwise.

Where the Commissioner requires an application to be divided as covering more than one invention, the part removed may be made the subject of a new application of the same date as the original (Rules 26 and 27).

If the applicant desires a delay for filing a complete specification the nine months may be extended to ten, but application on proper form stating reasons (Form 82) must be filed seven clear days at least before the expiry of the nine months (Government fee 1*l.*), and also a statutory declaration in support thereof.

The *examination* made by the Patent Office prior to accepting the application is the same as in Great Britain, with the addition that the examiner is to report "to the best of his knowledge" whether the invention is new or already in the possession of the public with the consent of the inventor. The Commissioner, as well as the Law Officer, may call to his aid expert assistance at the cost of the applicant. From the Commissioner's decision appeal may be made to the Law Officer, but it must be made within 14 days. A further appeal lies from the Law Officer to the High Court.

The time of extension for acceptance of complete specification beyond the 12 months allowed by law is limited to two months. Application must be made seven days in advance (Rule 34) and be signed by applicant (Form 82), and a statutory declaration forwarded in support. Government fee 1*l.* per month. Opposition may be filed within two months of the advertisement of the acceptance of a complete specification upon the

three same grounds as in Great Britain (*see* chapter on Opposition, Part II); and also on the further grounds of want of novelty generally, prior publication or public use, or that the communicator resident abroad was not the actual inventor or his assigns. The Commissioner as well as Law Officer may examine witnesses on oath.

Patent.—The duration of the patent is 14 years, commencing with the day of application. Protection against infringement dates from the acceptance of the complete specifications. The validity of the patent is subject to the same considerations as in Great Britain.

Renewal Fees are 2*l.* 10*s.* before the end of the third year, and 2*l.* 10*s.* before the end of the seventh year, receipts for which are given and endorsed on the Letters Patent, which must, therefore, be produced at the time of payment. Where the patentee has failed to pay a renewal fee through "accident, mistake, or inadvertence," he may apply to the Commissioner for an enlargement of time not exceeding six months, which may be granted him if the Commissioner is "satisfied that the failure has arisen through any of the above-mentioned causes." The fee for enlargement under the present rules is 15*s.* per month, an additional fee of 10*s.* being also payable since the petition for enlargement is made after expiration of the term sought to be enlarged. A statutory declaration must support the application for enlargement (Rule 34), for which also a special form (Form 81) must be signed by the patentee.

Working.—There are no conditions as to compulsory working of the invention.

Confirmation of an Invalid Patent.—The Act reserves to the Governor the right to confirm a patent found to be invalid from prior use by others, so long as the inventor believed himself to be the true and first inventor and the invention had not already come into public or general use. Confirmation is granted on petition after certain advertisements, hearing, and consideration.

Amendment of Specification may be made by disclaimer, correction, or alteration, provided the scope of the patent is not extended. The proposed amendment must be first advertised for opposition for a month, after which the Commissioner may decide if or on what conditions it is to be allowed. Government fee on petition for amendment 1*l.* Advertisements may be ordered at cost of patentee.

Clerical errors may be amended. Government fee 5*s.*

Infringement and Revocation of Patent.—The remedies are the same as in Great Britain.

Use of word "Patent," when no patent has been obtained, or by an infringer without the permission of the true patentee, or use of the name of a patentee without his leave in writing, is a misdemeanour subject to penalty not exceeding 100*l.* or imprisonment not exceeding six months.

Registration and Publication.—A Register of Patents is kept at the Patent Office, Melbourne, containing the usual particulars. Copies 6*d.* per law folio.

Assignments and Licenses must be registered, for which purpose the original deed must be sent, together with an examined and attested copy and a form of request signed by the assignee or by the agent through whom the patent was taken. There is no *ad valorem* stamp duty, so the full consideration may be stated in the assignment. Government stamp 10*s.* per patent.

The cost of provisional protection varies from 4*l.* to 8*l.*, of complete patent from 8*l.* to 16*l.* Where the application is opposed or rejected by the examiner the cost may be increased.

WESTERN AUSTRALIA.

Date of Law.—Patents Act 26th November, 1888, as amended by Acts of 18th March, 1892, and 10th October, 1894.

Patents for Inventions.—The law being in all material respects a copy of the British Act of 1883, patents are granted for 14 years in substantially the same manner as in Great Britain. The invention must be new within the colony, but where by order in Council reciprocal arrangements have been sanctioned with other States or Colonies, applications may be made in West Australia within seven months of that in Great Britain or other such State or Colony.

Who may Apply.—The inventor, or his assigns or the "importer" provided he has authority from the inventor. In case of the death of the inventor his legal representatives may apply within six months of his death.

Mode of Application.—By way of provisional subsequently completed, or by complete at first in the same way as in Great Britain. The provisions for examination, opposition, and appeal are all substantially the same as in Great Britain, but the fees

are different, being 1*l.* 10*s.* on provisional application, 4*l.* on complete specification. One month extension to file complete, 5*s.* The applicant, if abroad, is required to state an address for services in Perth, W. Australia. The applicant should sign Forms 52 and 27.

Renewal Fees.—Before end of fourth year, 4*l.*; seventh year 4*l.*

Working.—There are no conditions, but compulsory licenses may be ordered by the Governor in Council under the same conditions as in Great Britain.

Amendment, Revocation, Extension, Registers, and Infringement—In all these cases the law is almost identical with the *British*.

The cost of provisional protection is usually 4*l.* 10*s.* to 8*l.* 10*s.*, of complete patent 9*l.* to 17*l.*

ZULULAND.

Patents are granted in this country under a law similar to that in Natal. Forms 26 and 96 should be signed. The cost is somewhat higher than in Natal.

INTERNATIONAL CONVENTION.

For the Protection of Industrial Property.

An International Convention for the protection of industrial property exists between the following States:—

Belgium, Brazil, Curacoa and Surinam, Denmark, Great Britain Italy. Netherlands, New Zealand, Norway, Servia. Spain. Sweden, Switzerland, Tunis, East Indian Colonies of the Netherlands, France, Portugal, Queensland, Santo Domingo, United States.

Sweden and Norway joined 1st July, 1885.
United States of America joined 30th May, 1887.
The following have retired:—
Salvador retired 17th August, 1887.
Ecuador joined 21st December, 1883, retired 26th December, 1886.
Dominica joined 20th October, 1884, retired 15th March, 1888, and joined again 11th July, 1890.

Nature of Convention.—The general object of the Convention is to secure to the owners their industrial property in the broadest sense, and principally inventions, patents, designs, or models, trade marks and trade names. The Convention is subject to revision from time to time and was revised at Rome 29th April, 1886; at Madrid 2nd April, 1890; and at Brussels in 1893.

Art. 2 declares that foreigners, the subjects of any of the contracting States, shall enjoy equal rights in above matters with natives in the individual States.

By Art. 3 persons having industrial or commercial establishments in any of the States are treated on the same footing.

Art. 5 provides that importation by the patentee from any State of the Union of things patented in the State into which they are imported shall not entail forfeiture of the patent, but the patentee is not thereby relieved of the necessity of following the respective law of the country as to working.

Art. 4 gives priority to inventors under the following circumstances:—Any person who has duly lodged an application for a patent, an industrial design or model, or a trade or commercial mark in one of the contracting States, shall enjoy for lodging the application in the other States, and reserving the rights of third parties, a right of priority during the terms hereinafter stated.

Consequently a subsequent application in any of the other States of the Union before the expiration of these periods shall not be invalidated through any Acts accomplished in the interval, either, for instance, by another application, by publication of the invention, or by the working of it by a third party, by the sale of copies of the design or model, or by the use of the mark.

The above-mentioned terms of priority shall be six months for patents, and three months for industrial designs and models and for trade and commercial marks. The terms will be increased by a month for countries beyond the sea.

Great Britain is not considered by Europe "a country beyond the sea." It should be noticed that at present *Servia* and *Holland* have no patent laws.

Articles 6 to 10 bear upon trade marks and trade names, and are substantially as follows:—"Every trade or commercial mark duly deposited in the country of its origin shall be admitted for registration, and protected in like manner in all the other countries of the Union. The country where the applicant has his chief establishment shall be deemed the country of origin. If this chief establishment 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. The deposit may be refused if the object for which it is solicited is considered contrary to morality or public order.

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

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

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

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

"The provisions of the preceding Article shall apply to all goods falsely bearing the name of any locality as indication of their place of origin, when such indication is associated with a trade name either fictitious or assumed with fraudulent intent.

"Any manufacturer or merchant engaged in the manufacture or sale of such goods, established in the locality falsely designated as the place of origin, shall be deemed an interested party.

It has been held in Great Britain[1] that if a mark is of such a nature that it cannot be registered under British Law, Art. 6 does not compel its registration.

Further information will be found on pages 42 and 165.

[1] Carter Medicine Company's T.M., IX *R.P.C.*, 401.

Part IV.—Trade Marks and Designs.

Chapter I.

TRADE MARKS: THEIR NATURE AND REGISTRATION IN GREAT BRITAIN.

Statutes, &c.—Although trade marks have no proper connection with patents for inventions, their protection by registration is embodied in the same British Act which now governs patents for inventions and designs and is carried out through the medium of a department of the Patent Office.

Use of Trade Mark.—A trade mark is intended to designate the goods of a particular merchant or manufacturer so that they may be distinguished from those of others. Trade marks may not only be owned by actual manufacturers, but by persons selling, whether wholesale or retail, goods manufactured by others, and simply traded in by the owners of the trade mark. A trade mark is not intended to distinguish goods in any other manner than as connected with the manufacture or trade of a particular individual or firm. In no way is it to show the difference between one particular kind of merchandise and another, imitation marble, for instance. from real marble; but only that made, imported, or traded in by A, from that similarly dealt in by B. Thus by registration of a trade mark an individual cannot claim to exclude others from dealing with the same kind of article under another trade mark, nor by choosing a word for the name of the article itself, can others be prevented from selling it under the same name by which the public have become accustomed to know it.

Thus directly a mark becomes descriptive of the article rather than the maker it ceases to be a distinctive trade mark. "Native guano," being a name given to the product of a patented process, was held to be usable by any one with the

article itself when the patent expired.[1] "Gem," as applied to air-guns, was held no trade mark on account of having come to denote a particular style or make of gun.[2]

If a trade mark has been so used that it does not clearly distinguish the owners it cannot be registered. The previous application by the registered proprietor of the word "Eton" to boxes of cigarettes made by other persons in conjunction with the names of those persons was held to destroy his exclusive right to the word as a trade mark for his own goods.[3]

What is a Trade Mark.—A trade mark must have such features that it is recognisable as such, and may be actually or mentally connected with the business of its owner. Its purpose is to enable the public to easily distinguish the goods to which it is applied from other goods like them, and for this reason one of its principal characteristics must be distinctiveness.

Formerly it was the custom to allow wide latitude in the choice of a trade mark, but as the number appropriated increased, greater caution had to be exercised to ensure distinctness between different marks. At present only those trade marks can be registered which fulfil the following requirements:—

First, a trade mark must be composed of or contain at least one of the following "essential particulars":—[4]

(*a*) A name of an individual or firm, printed, impressed, or woven in some particular and distinctive manner.

(*b*) A written signature or copy of a written signature of the individual or firm applying for registration as a trade mark.

(*c*) A *distinctive* device, mark, brand, heading, label, or ticket.

(*d*) An invented word or invented words.

(*e*) A word or words having no reference to the character and quality of the goods and not being a geographical name.[5]

The trade mark may contain other matter, words, &c., in addition to any of the above, but exclusive rights in any such additional matter alone must be expressly renounced by the applicant.

Secondly, the trade mark fulfilling the first requirement

[1] Native Guano Company *v.* Sewage Manure Company, VIII *R.P.C.*, 125.

[2] Arbenz's Application, IV *R.P.C.*, 143.

[3] Wood *v.* Butler, III *R.P.C.*, 81.

[4] Act of 1883, Sect. 63.

[5] These two last particulars, (*d*) and (*e*), were substituted by the Act of 1888 for "a fancy word or words."

must also bear no such resemblance to any trade mark already on the register in respect of the same goods or description of goods as to be calculated to deceive.

These two conditions taken together render it a matter of considerable difficulty to obtain a distinctive trade mark, and as time progresses and registration of marks proceeds the difficulty will increase.

The following words have been held distinctive:—

"Baffle"	.. ..	as applied to safes.
"Osman"	.. ..	as applied to towels.
"Oomoo"	.. ..	as applied to wine (in the face of "Emu," already registered).

The following have been held not distinctive; as being descriptive:—

Electric	.. ..	Velveteen.
Selfwasher	.. ..	Soap.
Riversi	.. ..	Game where counters are reversed.
Pain Killer	.. ..	Medicine.
Washerine	.. ..	Laundry preparation.
Satinine	.. ..	do.
Electroid	.. ..	Anti-fouling composition.
Bokol	.. ..	Beer, being Swedish name therefor.
Manor	.. ..	Articles made at "Manor" Works.
Monobrut	.. ..	Champagne.
Emollio	.. ..	Preparations for the skin.
Desiccated	.. ..	Soup.
Beatrice	.. ..	Shoes, held to denote special shape.
Little Liver	.. ..	Pills.
John Bull	.. ..	Beer.
Carnival	.. ..	Cigarettes.

As being geographical:—

Stone	.. ..	Ales made at Stone.
Brymbo	.. ..	Tin plates made at Brymbo.
Melrose	.. ..	Hair Restorer.
Britannia	.. ..	Soap.

As being already common to the trade; *i.e.*, used by three or more persons:—

Tower	.. ..	Tea.
Parchment Bank	..	Paper.

As being like previous registered marks:—

Demotic	.. ..	Tennis racquets, in face of "demon."
A Buffalo	.. ..	Mustard, in face of "bull's head."
Fruit Salt	.. ..	In face of Eno's Fruit Salt.

The name of an owner followed by 's and the name of the goods, such as "Gianacli's Cigarettes," is not considered capable of registration.

In comparing a mark with one already registered, when the latter is used in a different form from that registered, comparison must be made with the mark as registered, not as used.[1] But, nevertheless, the effect of the mark when in use must be considered, for the method of employing marks may considerably affect their distinctive character.[2] Whether two marks are calculated to deceive depends upon the way in which they would be used in the ordinary course of trade.[3]

Where a trade mark has become known by a name such as the "Dairy Maid" brand, the use and registration of that word by another will not be allowed for the same goods.[4]

Fraudulent use by others prior to the registration will not deprive the true owner of a trade mark of his right to register.[5]

An applicant cannot register a part of a mark as if it were the whole. A trade mark, "Diamond Cast Steel," was erased in proof that it had never been used otherwise than in conjunction with a device and name.[6]

Old Marks.—Where a mark has been used prior to August, 1875, it may be registered, although not conforming exactly to the present legal definition of a trade mark.

In such case the mark must be registered in the exact form in which it was used before above date,[7] and it appears also that there must have been substantially continuous and uninterrupted use up to the date of registration. Whether a short period of interruption will be held to prevent claim to the mark as an "old mark" is doubtful; it is submitted that any interruption up to five years should not be so held. An

[1] Lyndon's Trade Mark, III *R.P.C.*, 102.
[2] Christianson's Trade Mark, III *R.P.C.*, 54.
[3] Speer's Trade Mark, IV *R.P.C.*, 521; Hames, Batchelor and Company's Trade Mark.
[4] Anglo-Swiss Company *v.* Metcalf, III *R P.C.*, 28.
[5] Arbenz's Application, III *R.P.C.*, 348.
[6] Spencer's Trade Mark, III *R.P.C.*, 73.
[7] Meen's Application, VIII *R.P.C.*, 25.

interruption of eleven years, 1870–81, was held fatal to mark registered in 1887.[1]

Necessity for Registration. — No proceedings can be instituted to prevent, or recover damages for infringement of a trade mark unless it has been registered, or unless, in case of a mark in use before August 13th, 1875, registration has been applied for and refused.[2] It will thus be seen that registration is essential for obtaining the exclusive property in the mark.

It is also enacted[3] that the registration of a person as proprietor of a trade mark shall be *primâ facie* evidence of his right to its exclusive use, and after five years' registration shall be *conclusive* evidence of such right.

It will thus be seen that owners of trade marks who fail to register them may even become excluded from the use of their own marks by others after five years of registration have elapsed; and even if the fact of such registration comes to their knowledge within the first five years, their only remedy lies in a suit in the Court of Chancery to rectify the register on disproof of the registered owner's *primâ facie* title to exclusive ownership.

Effect of Registration. — The registration, which when granted dates back to the day of application, gives exclusive rights to use the particular trade mark as registered in connection with the particular goods or kinds of goods specified in the form of application for the term of 14 years. This term may be renewed at the expiry of each 14 years for a further like term. Nevertheless, if the goodwill of the business with which that mark is connected ceases, the mark also falls.[4]

As colour is not considered a distinctive feature of a trade mark, a mark may be used in the colour in which it was registered, or any other colour.[5] A trade mark simply distinguished by colour alone cannot be registered.[6]

Classification of Goods.—All goods are divided into 50 classes, and each registration may extend to a whole class or be confined to some only of the goods included in that class. The registration of a trade mark in one class will not prevent registration of the same or of a similar trade mark in any

[1] Grossmith's Trade Mark, VI *R.P.C.*, 180.
[2] Act of 1883, Sect. 77.
[3] Act of 1883, Sect. 76.
[4] Act of 1883, Sect. 70.
[5] Act of 1883, Sect. 67.
[6] Hanson's Trade Mark, V *R.P.C.*, 130.

other class by the same or another owner. And if a mark be registered only for certain goods in a class, it only covers those goods and no others in the class,[1] and a subsequent registration may be made by another person in respect of other goods in the same class so long as they are not of a similar description. Thus a mark registered in the food class for chocolate might be also registered by another for haddocks, but not for cocoa.

If a mark has been registered for the whole class, but is clearly, from its wording or otherwise, inappropriate to some goods included in the class, it cannot be enforced in respect of those goods.[2]

It has generally been supposed that an applicant is only entitled to register his mark for those goods on which he actually uses it, but as under Sect. 76 of the Act of 1883, as amended in 1888, "application for registration of a trade mark shall be deemed to be equivalent to public use of the trade mark," this should doubtless extend to considering the use of a mark co-extensive with the specification of goods in the application form.

Entirely exclusive use has been attained by registration in all the 50 classes.

The following is the classification adopted by the British Patent Office:—

I. Chemical substances used in manufactures or philosophical research and anti-corrosives.
II. Chemical substances used for agricultural, horticultural, veterinary, and sanitary purposes.
III. Chemical substances prepared for use in medicine and pharmacy.
IV. Raw, or partly prepared, vegetable, animal, and mineral substances used in manufactures, not included in other classes.
V. Unwrought and partly-wrought metals used in manufacture.
VI. Machinery of all kinds and parts of machinery, except agricultural and horticultural machines included in Class 7.
VII. Agricultural and horticultural machinery and parts of such machinery.
VIII. Philosophical instruments, scientific instruments, and apparatus for useful purposes. Instruments and apparatus for teaching.

[1] Jay *v.* Ladler, VI *R.P.C.*, 136.
[2] Hargreave *v.* Freeman, VI *R.P.C.*, 237.

IX. Musical instruments.
X. Horological instruments.
XI. Instruments, apparatus, and contrivances, not medicated, for surgical or curative purposes, or in relation to the health of men or animals.
XII. Cutlery and edge tools.
XIII. Metal goods not included in other classes.
XIV. Goods of precious metals (including aluminium, nickel, Britannia metal, &c., and imitations of such goods) and jewellery.
XV. Glass.
XVI. Porcelain and earthenware.
XVII. Manufactures from mineral and other substances for building or decoration.
XVIII. Engineering, architectural, and building contrivances.
XIX. Arms, ammunition, and stores, not included in Class 20.
XX. Explosive substances.
XXI. Naval architectural contrivances and naval equipments not included in Classes 19 and 20.
XXII. Carriages.
XXIII. Cotton yarn and thread.
XXIV. Cotton piece goods of all kinds.
XXV. Cotton goods not included in Classes 23, 24, or 38.
XXVI. Linen and hemp yarn and thread.
XXVII. Linen and hemp piece goods.
XXVIII. Linen and hemp goods not included in Classes 26, 27, and 50.
XXIX. Jute yarns and tissues and other articles made of jute, not included in Class 50.
XXX. Silk, spun, thrown, or sewing.
XXXI. Silk piece goods.
XXXII. Silk goods, not included in Classes 30 and 31.
XXXIII. Yarns of wool, worsted, or hair.
XXXIV. Cloths and stuffs of wool, worsted, or hair.
XXXV. Woollen, worsted, and hair goods, not included in Classes 33 and 34.
XXXVI. Carpets, floor-cloth, and oil-cloth.
XXXVII. Leather, skins, unwrought and wrought, and articles made of leather, not included in other classes.
XXXVIII. Articles of clothing.

XXXIX. Paper (except paper hangings), stationery, and book-binding.
XL. Goods manufactured from india-rubber and gutta-percha, not included in other classes.
XLI. Furniture and upholstery.
XLII. Substances used as food or as ingredients in food.
XLIII. Fermented liquors and spirits.
XLIV. Mineral and aerated waters, natural and artificial, including ginger beer.
XLV. Tobacco, whether manufactured or unmanufactured.
XLVI. Seeds for agricultural and horticultural purposes.
XLVII. Candles, common soap, detergents; illuminating, heating, or lubricating oils; matches; and starch, blue, and other preparations for laundry purposes.
XLVIII. Perfumery (including toilet articles, preparations for the teeth and hair, and perfumed soap).
XLIX. Games of all kinds and sporting articles not included in other classes.
L. Buttons, brushes, small wares of ivory, bone, jet, and other articles not included in other classes.

Necessaries for Registration.—A separate application form is necessary for each class and must bear an impression of the mark, and an exact statement of the essential features claimed, and disclaimer of exclusive rights to the remainder. The exact list of goods to be covered within the boundaries of the class must be added to the former, and if any foreign *language* appears on the mark a *translation* must be given, also a phonetic rendering of any Chinese, Turkish, Arabic, or similar characters. For either of Classes 1 to 22 or 36 to 50 two additional copies of the mark, mounted on separate forms, must accompany the application; in Classes 23 to 25 *four* additional copies; and for Classes 26 to 35 *three* additional copies are required. Parties resident abroad, or others, need only send their registration agent say *six* copies of the mark and an authorisation in Form No. 9, given in Appendix II.

Registration of Series of Marks.—When a person claiming to be the proprietor of several trade marks which, while resembling each other in the material particulars thereof, yet differ in respect of (*a*) the statement of the goods for which they are respectively used or proposed to be used, or (*b*), statements of numbers, or (*c*), statements of price, or (*d*), statements of quality, or (*e*), statements of names of places, seeks to register

such trade marks, they may be registered as a series in one registration. A series of trade marks shall be assignable and transmissible only as a whole, but for all other purposes each of the trade marks composing a series shall be deemed and treated as registered separately.[1]

Examination.—The application will be taken up in its order, and if nothing be found in the registers of that class to which the mark would bear a deceptive resemblance, it is allowed. If any are found, the applicant is informed of them and may be heard in answer.

Blocks.—When the application is allowed the applicant is required to furnish a printing block or electrotype for illustration of advertisement in the Official Journal. If the block is larger than two inches square extra charges for advertisement are incurred at the rate of 2*s.* for each additional inch in width or in depth.

The block must exactly conform to the trade mark applied for, but may be on a smaller scale so long as its details are quite clear. No blocks are required for Classes 24 and 25.

Advertisement.—When the block is furnished the mark will in its turn, when space admits, be advertised in the "Illustrated Trade Marks Journal," and if no opposition is filed within one month a notice calling for the registration fee will be sent to the applicant or his agent, and on payment thereof (1*l.*) the certificate of registration will be made out and forwarded.

Opposition.—Notice of opposition to the registration of a trade mark must be filed within one month (or such further time, not exceeding three months, as the Comptroller may allow) from the date of advertisement in the "Trade Marks Journal."

The applicant's counter-statement must be filed within one month from the date of receipt of the opponent's notice of opposition.

The opponent's evidence, in support of the opposition, must be filed within two months after the expiration of one month (or such further time, not exceeding three months, as the Comptroller may allow) from the date of advertisement of the mark in the "Trade Marks Journal," and a copy forthwith sent to the applicant.

The applicant's evidence must be filed within one month from the delivery of the opponent's evidence, and a copy forthwith sent to the opponent.

[1] Act of 1883, Sect. 66.

The opponent's evidence in reply must be filed within seven days from the delivery of the applicant's evidence, and a copy forthwith sent to the applicant.

On the completion of the evidence either party may apply for the case to be heard by the Comptroller.

Appeal to Board of Trade.—The Comptroller may, if he thinks fit, refuse to register a trade mark, but any such refusal is subject to appeal to the Board of Trade, who shall, if required, hear the applicant and the Comptroller, and may make an order determining whether and subject to what conditions, if any, registration is to be permitted.

The Board of Trade may, however, if it appears expedient, refer the appeal to the Court, and in that event the Court shall have jurisdiction to hear and determine the appeal, and may make such order as aforesaid.[1] Where the Comptroller refuses a mark the applicant cannot go direct to the Court.[2] The appeal must be filed within one month of the refusal or decision appealed against, but the Comptroller may extend the time for appeal.[3]

Duration of Registration is 14 years from the day of application. It may be renewed at the end of each period of 14 years.

Infringement of Trade Mark may be restrained by injunction, and damages may be had against the infringing party.

Use of mark must be use on the article itself, use in price lists is not an infringement.[4]

If a registered mark contains fraudulent misrepresentations it will not be upheld by the Court when infringed.[5]

Even if the trade mark itself is not sustainable persons may be restrained from imitating it, or the general get up of the goods, if by their action the public is deceived into believing that the goods are those of the plaintiff.[6]

Rectification of Register.—The Court may on the application of any person aggrieved by the omission without sufficient cause of the name of any person from any register kept under this Act, or by any entry made without sufficient cause in any such register, make such order for making, expunging, or varying the entry, as the Court thinks fit, or the Court may

[1] Act of 1883, Sect. 62.
[2] Normal Company's Trade Mark, IV *R.P.C.*, 123.
[3] Rule 25.
[4] Talbot *v.* Webley, III *R.P.C.*, 276.
[5] Newman *v.* Pinto, IV *R.P.C.*, 508.
[6] Montgomery *v.* Thompson, VIII *R.P.C.*, 361.

refuse the application; and in either case may make such order with respect to the costs of the proceedings as the Court thinks fit.

The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.[1]

Alteration of Trade Mark when registered can only be made by order of a Court.

The registered proprietor of any registered trade mark may apply to the Court for leave to add to or alter such mark in any particular, not being an essential particular within the meaning of this Act, and the Court may refuse or grant leave on such terms as it may think fit.

Notice of any intended application to the Court under this section shall be given to the Comptroller by the applicant; and the Comptroller shall be entitled to be heard on the application.

If the Court grants leave, the Comptroller shall, on proof thereof and on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.[2]

The addition of "limited" to a signature is an alteration to which the Court would readily accede.[3] In the case of "old marks" alterations are not readily allowed, especially if they materially alter the character of the mark.[4]

Application under Convention, *see* page 359.

Cost of Registration of a mark in one class is usually 3*l.* 3*s.* if the mark is unobjected to, this sum (as also the prices quoted in the next chapter) not including the cost of the block, when necessary, from which the mark is printed.

[1] Act of 1883, Sect. 90.
[2] Act of 1883, Sect. 92.
[3] Guinness's Trade Mark, V *R.P.C.*, 316.
[4] Henry Clay and Bock and Company's Trade Mark, IX *R.P.C.*, 449.

CHAPTER II.

REGISTRATION OF TRADE MARKS ABROAD.

In the following pages are given the special requisites for registering trade marks abroad. In every case the full name of the firm desiring registration should be given; also the full names of each partner, full address, and occupation. The essential features of the mark should be pointed out and a list of the goods to which the trade mark is applied, with a statement of the manner in which it is applied, should also be furnished.

The cost quoted does not include the making of copies of the mark nor of blocks, &c., needed for printing same, or for furnishing to foreign governments. Original blocks will cost from 10*s.* to several pounds or more according to the engraving; electrotypes may then be taken at the cost of a few shillings each. Parties resident abroad must legalise the forms (when necessary) before forwarding them, as the legalising can only be effected in the country where the applicant resides.

EUROPE.

AUSTRIA-HUNGARY.

Date of Law.—6th January, 1890.

Duration.—Ten years, renewable for like periods.

Requirements for Registration.—Foreigners must register in Vienna and in Budapesth, and to effect this two powers of attorney (Form 18) legalised by Austrian Consul. Twelve copies of mark same size and same colour as intended to be used on the goods; two *clichés* of mark, not larger than 7¾ inches long by 5⅛ inches deep. Certificate legulised by

Austrian Consul attesting that mark is registered in the country of the applicant.

Remarks.—In the case of trade marks for "materials," such as metal, terra-cotta, glass, and similar materials, six specimens of said materials having printed on them the trade mark in its original size are required.

In the case of trade marks comprising a likeness of the Emperor or of a member of the Imperial family, or a reward such as exhibition medals and the like, the Imperial eagle, public arms of States, provinces, or towns, or the emblem of the Society of the Red Cross, a legalised certificate attesting the right to use said emblems must be furnished. Priority dates from day of application.

Cost, including legalisations, 5*l.* 15*s.* for one mark, 5*l.* 5*s.* for each other.

BELGIUM.

Date of Law.—1st April, 1879.

Duration.—For ever.

Requirements for Registration.—Power of attorney (Form 15) not legalised, a separate power being required for each mark registered. One wood block or electro. Four copies of mark not exceeding $3\frac{1}{8}$ inches high by 4 inches broad.

Average Cost.—4*l.* 10*s.* for one mark, 4*l.* for each other.

BULGARIA.

Date of Law.—Decree No. 16, 1893.

Duration.—Ten years; renewable for like periods.

Requirements for Registration.—Petition, statement of goods covered, signed by agent; four copies of mark; power, legalised (Form 15).

Remarks.—The first applicant is preferred. Mark is refused if similar to one already on the register applied to goods of the same nature. Entry of goods will be refused at the customs, if bearing marks registered by Bulgarian subjects.

Average Cost.—12*l.* for one mark, 10*l.* for each other.

DENMARK.

Date of Law.—11th April, 1890.

Duration.—Ten years, and may be extended for another 10 years before expiration, and so on. It expires with foreign registration.

Requirements for Registration.—Full name and address of proprietor of mark; a description of mark and of articles for which it is used and manner of employing it; two wood blocks or electros of mark; five copies of mark not exceeding 5⅞ inches long and 4 inches broad. Certificate (official extract of register) showing that mark is registered in his native country and sole property of petitioner attested by Danish Consul. Power of attorney (Form 23) legalised by notary and Danish Consul. A declaration to the effect that the applicant will submit to jurisdiction of the Maritime and Commercial Tribunal of Copenhagen (may be combined with power or space left for its insertion) attested as above.

Remarks.—The following cannot be registered:—Trade marks consisting exclusively of numbers, letters, or words not of peculiarly distinctive form; public coats of arms; marks similar to previous mark registered. Refusal can be appealed against within two months to Home Secretary.

Average Cost, including legalisations, 7*l.* 10*s.* for one mark, 6*l.* 10*s.* for each other.

FINLAND.

Date of Law.—1st May, 1889.

Term.—Ten years, renewable.

Requirements.—Legalized power (Form 22). Legalized certificate of home registration, six copies of mark and two blocks.

The cost is usually 15*l.*

FRANCE.

Date of Law.—23rd June, 1857; amended 9th May, 1890.

Duration.—Fifteen years, which may be extended for like periods.

Requirements for Registration.—Power of attorney (Form 15), signed before a notary and legalised by French Consul, the one power being sufficient for any number of marks filed at the same time; four copies of the mark not exceeding 4¾ inches square in size; description of goods for which it is to be used; one electro or block of the mark.

Average Cost, including legalising, 4*l.* 10*s.* for one mark and 3*l.* 10*s.* for each other.

GERMANY.

Date of Law.—12th May, 1894.

Duration.—Ten years, renewable from time to time.

Requirements.—Power (Form 18) not legalized, statement of applicant's name, calling, residence and nationality, description of trade mark, synopsis of goods, five copies of mark not exceeding 33 by 21 centimetres; 1 electrotype not exceeding 6.5 centimetres square and two prints therefrom, certificate of registration of mark in the home country legalized by German Consul.

Remarks.—Where the office considers that a mark applied for is identical with a registered mark, the owner of the latter is so informed; should he not oppose within one month the mark is registered. Trade Marks can be transferred only with the business to which they belong. Marks registered under the Law of 1874, lose protection unless registered under the present law before 1st October, 1898.

Average Cost.—6*l.* to 8*l.* each mark.

GREECE.

Date of Law.—10th–22nd February, 1893, and Decree of 18th–30th December, 1893.

Duration.—Ten years, renewable for a like period, but in case of foreign marks expiring with the expiry of prior registration in the country in which the foreigner is domiciled, or on determination of treaty with said country.

Requirements for Registration.—A power of attorney appointing an agent in Athens, legalised by Greek Consul; a legalised certificate of registration in home country. Four copies of the mark, a statement of how the mark is used, and in what size, and the goods in which it is used; a declaration that the applicant will submit to the jurisdiction of the Court at Athens. (Form 15 may be used with addition of said declaration.)

Remarks.—Foreigners and Greeks abroad can only register if the country in which they are domiciled gives similar protection, and if a reciprocity treaty has been concluded whereby Greek marks may obtain protection. Foreigners must appoint a Greek agent to register at the Court of First Instance at Athens. The rights obtained by foreigners on the registration of their marks in Greece shall in no case exceed such rights as they possess in the country where they are domiciled.

The cost of registration will usually amount to 10*l.*

HOLLAND.

Date of Law.—The law of 25th May, 1880, amended on 22nd July, 1885, so as to agree with the conditions of the Convention, has been superseded by the law of 30th Septembe 1893, entering into force 1st December, 1893.

Duration.—Twenty years, may be renewed before the expiration of 20 years for a similar term upon payment of the prescribed renewal fees.

Requirements for Registration. — Power of attorney (Form 24) on stamped paper; signature written with Christian and surnames in full. Legalisation not necessary. For foreign trade marks the power may be on unstamped paper, on which the stamp may subsequently be affixed. Six specimens or copies of the trade mark; a block not less than $\frac{5}{8}$ inch or more than 4 inches wide or deep; a statement as to the classes of goods in respect of which the trade mark is employed, the manner in which the same is used, and whether in various colours and sizes; particulars of the calling or profession, together with full address of applicant.

Remarks.—The registration is completed within three days of application, and the mark is advertised in the "Staats-courant" on the 1st of the following month. If the mark is found similar to a registered mark registration may be refused. From such refusal the applicant may appeal within one month to the Court of the "Arr. Rechtbank" at the Hague. A separate application must be made, accompanied by the proper fees and documents in respect of each trade mark, but the same trade mark may cover different classes of goods in one registration.

Marking Goods with fraudulent marks or imitations of trade marks is punishable by fine or imprisonment, and indemnity of which the judge determines the amount.

Average Cost of registration of mark 7*l.* for one mark; for each other.

ITALY.

Date of Law.—30th August, 1868.

Duration.—For ever.

Requirements for Registration. — Power of attorney (Form 15), legalised by Italian Consul; five copies of the mark

or block. Certificate of registration in home country legalised by Italian Consul. A description of the goods for which the mark is used and the manner of employing it.

Average Cost, including legalising, 6*l.* 5*s.* for one mark, and 5*l.* 10*s.* for each other.

LUXEMBOURG.

Date of Law.—28th March, 1883.

Duration.—Ten years.

Requirements for Registration.—Three copies of mark, not exceeding 3⅛ inches high by 4 inches broad; one *cliché* or block not larger than above dimensions. Description of the goods and of the manner in which the mark is to be applied thereto. Power of attorney (Form 15).

This power should be legalised by Belgian Consul, but at present powers are received though not legalised.

The cost is usually 3*l.* 3*s.* for each mark.

NORWAY.

Date of Law.—26th May, 1884.

Duration.—Ten years; before the expiration of which it can be extended another ten years, and so on.

Requirements for Registration.—Full name and address of proprietor of mark. A description of mark and of articles for which it is used and manner of employing it. Two wood blocks or electros of mark; five copies of mark. Certificate of registration in home country attested by Norwegian Consul. Power of attorney (Form 23a) legalised by Norwegian Consul.

Average Cost, including legalisations, 6*l.* 1*s.* for each mark.

PORTUGAL.

Date of Law.—15th December, 1894.

Duration.—10 years, renewable every ten years.

Requirements.—Power (Form 21) legalised by Portuguese Consul; 12 examples of the mark not exceeding 15 centimetres square, description, a legalised certificate showing title to use medals &c., if shown on the mark. Indication of the metric scale to which the mark is executed. Goods are divided into

91 classes. A separate registration fee is required for each class, but the same papers will serve for registration in more than one class. The application is open three months for opposition and three further months will also elapse before it is definitely registered. In case of rejection or opposition appeal lies to the Tribunal of Commerce. On renewing registration five more copies of the mark are required.

Average Cost is 6*l.* for one class, 4*l.* for each other class.

ROUMANIA.

Date of Law.—28th May, 1879.

Duration.—Fifteen years, renewable for like term.

Requirements for Registration.—Power of attorney legalised by Roumanian Consul (Form 15 may be used); three copies of mark, not above 7 inches square.

Remarks.—The mark must be distinctive. Foreigners may only obtain registration if reciprocity is secured by treaty with the country in which the foreigner is domiciled. Treaty with Great Britain was ratified 3rd June, 1892, and the following colonies have since adhered: India, Natal, Cape, Queensland, Newfoundland, Western Australia.

Cost of Registration.—12*l.* for one mark; 8*l.* for each other.

RUSSIA.

Date of Law.—26th February, 1896.

Duration.—One to ten years according to term paid for in first instance, renewable from time to time for further terms not exceeding ten years at each renewal.

Requirements.—Power (Form 15) and certificate of registration in home country, both legalised by Russian Consul. 103 copies of the mark, which must contain the name of the owner or firm in full in Russian. Representations of Holy Scripture, Saints, Arms and Medals without dates, Portraits of the Emperor or other members of the Imperial Family, Foreign Sovereigns, National Flags, &c., are refused.

Re-registration of old marks under new law required.

Average Cost, 7*l.* **to 10***l.* according to length of term.

SERVIA.

Date of Law.—30th May and 11th June, 1884.

Duration.—Ten years, renewable on re-approval of mark for like period.

Requirements.—Power of attorney legalised by Servian Consul (Form 15 may be used); four copies of mark of the exact size as used; an exact list of goods; a sample of material marked.

Remarks.—Letters, numbers, &c., are excluded from registration; foreigners must register at the Belgrade Court of Commerce; assignments must be registered.

Cost of Registration.—12*l.* for one mark; 10*l.* for each other.

SPAIN.

Date of Law.—Decree of 20th November, 1850.

Duration.—For ever.

Requirements for Registration.—Power of attorney (Form 20); certificate of registration in home country attested by Spanish Consul; three or more copies of the mark.

Average Cost.—6*l.* for one mark; 5*l.* for each other. Extension to Spanish colonies 3*l.* extra per mark.

SWEDEN.

Date of Law.—5th July, 1884, amended 5th March, 1897.

Duration.—Ten years; may be extended another ten years before expiration of this term.

Requirements for Registration.—Full name and address of proprietor of mark; a description of mark and of articles for which it is used, and manner of employing it; two wood blocks or electros of mark; 5 copies of mark; certificate of registration in home country attested by Swedish Consul; power of attorney (Form 22) legalised by Swedish Consul.

Average Cost, including legalising, 6*l.* 10*s.* for each mark.

SWITZERLAND.

Date of Law.—19th December, 1879; 20th March, 1883.

Duration.—Fifteen years.

Requirements for Registration.—Power of attorney (Form 15) legalised by Swiss Consul, which at the same time must contain a certificate showing the domicile of the petitioner; certificate of registration in home country also legalised; one

wood block or electro not larger than 4 inches square; five copies of mark; a full list of the articles for which the mark is used, and description of the manner of employing it.

Average Cost, including legalising, 5*l.* for each mark.

TURKEY.

Date of Law.—11 Djemazi-el-evel, 1287.

Duration.—Fifteen years: can be renewed every 15 years.

Requirements for Registration.—Legalised power of attorney (Form 15); four copies of mark; list of goods; description as to how, and in what way, mark is to be used; electro or block must be supplied when necessary.

Remarks.—Time for obtaining mark about eight weeks. No reason is given should the mark be refused or rejected.

Average Cost, including legalising, 12*l.* for one mark and 6*l.* for each other.

ASIA.

BRITISH NORTH BORNEO.

Trade Marks can be registered in the same manner as in the Straits Settlements. The Mark should be first registered in Great Britain.

The cost is about 12*l.*

CEYLON.

Date of Law.—Trade Marks Ordinances of 1888 and 1890.

Duration.—Fourteen years, renewable.

Requirements for Registration.—Power of attorney (Form 26) five copies of mark, one block or electro.

Remarks.—The Act follows somewhat the British law, and classification is the same as in Great Britain (*see* page 368).

Average Cost.—12*l.* for each mark and each class.

DUTCH EAST INDIES.

Date of Law.—The Law of 6th April, 1885, has been superseded by the Law of 9th November, 1893, entering into force 1st January, 1894. This Law extends to all the Islands of the group.

Duration.—Twenty years, may be renewed before the expiration of twenty years for a similar term upon payment of the prescribed renewal fees.

Requirements for Registration.—The same as for Holland except that no block is required.

Remarks.—The formalities, procedure, &c., are the same as in Holland, except that in Dutch East India the term during which appeal can be lodged against refusal to register is extended to three months and the publication of the application must be inserted in the "Javasche Courant," registration being effected in Batavia.

Average Cost.—10*l.* 10*s.* for one mark, 9*l.* 10*s.* for each other, but varies with size of mark.

INDIA.

Remarks.—There is at present no Trade Marks Registration Act in force in India. The procedure usually adopted for the protection of a trade mark is to advertise in the Government Gazette and other papers any mark which a person or a firm has been using or proposes to use, setting forth by description and illustration the nature of mark claimed. An alternative method is to file a copy under the Act for Registration of Assurances, or both methods may be employed.

Requirements.—In the former case, description, diagram, two blocks, five copies of mark, power of attorney signed before a notary. In the latter case, statutory declaration of ownership combined with description of mark; five copies of mark; one power legalised by notary (Form 26).

The cost of the first method varies with size, &c., of mark; average 7*l.* per mark. The cost of the second method is 6*l.* for one mark and 2*l.* for each other.

HONG KONG.

Date of Law.—No. 16 of 1873 and No. 8 of 1886.

Duration.—Indefinite.

Requirements for Registration.—Petition (Form 84); declaration (Form 85); six copies of mark; power of attorney (Form 26).

Average Cost.—16*l.* for each mark.

STRAITS SETTLEMENTS.

Marks may be registered in the Straits Settlements, if previously registered in Great Britain. Applicants should sign Form 26. The cost is generally 10*l.*

JAPAN.

Date of Law—No. 86 of 1889.

Duration.—Twenty years, from day of registration renewable for like terms.

Requirements for Registration—Power with certificate of nationality (Form 53 or 54), legalized by Notary and Japanese Consul. Several, say eight, copies of the mark as used for each class, a block or electrotype for each class, a description of mark stating essential features. There are 67 different classes of goods.

Remarks.—Only natives and subjects of treaty countries (*see* page 307) can apply. A registered mark must be used within six months and the use not abandoned for longer than one year. Infringement is punishable by imprisonment or fine, damages may be recovered within three years of occurrence of infringement.

Cost, varying with length of translations, &c., averages 10*l.* for each mark in one class, and 8*l.* for each additional class.

AFRICA.

CAPE OF GOOD HOPE.

Date of Law.—Act No. 22 of 1877, as amended 5th July, 1895.

Duration.—Fourteen years, renewable for similar periods.

Requirements for Registration.—Application (Form 74); declaration (Form 75) signed in Great Britain before a J.P. or Mayor, if made elsewhere before a British Consul; electro of mark; six impressions of mark; power (Form 26).

Remarks.—Goods are classified into 50 classes, as in Great Britain (*see* page 368). The marks must be advertised at the applicant's expense. The nature of marks that can be registered is the same as in Great Britain.

Cost varies with the size of mark, as the advertising is a costly item; but 12*l.* for one mark in one class, 4*l.* for each other class, and 8*l.* for each other mark may be taken as an average for a mark two inches square.

EGYPT.

Marks may be registered in the Courts, a certificate of registration in the home country and a legalised power (Form 26 suitably varied) certified in each case by the Foreign Office of the country of origin are required for such registration. It has been customary to register at Cairo only, but it is advised by lawyers of that city that it is desirable also to register at Alexandria and Mansourah.

The cost varies and may be stated at about 30*l.*

MAURITIUS.

Date of Law.—No. 18 of 1868.

Duration.—Indefinite.

Requirements for Registration.—A power of attorney (Form 26). Three blocks and six copies of mark, list of goods, and description of essential features of mark. The mark has to be advertised in three daily papers.

Cost varies with size of mark; for a mark two inches square it will be 10*l.*

NATAL.

Date of Law.—No. 4 of 1885.

This law and the proceedings thereunder are substantially the same as in Cape Colony, but classification varies, Classes 19 and 20 (*see* page 369) being omitted and the remainder renumbered to give 48 in all.

Requirements for Registration.—Application (Form 76), and six copies of mark; power (Form 26).

Average Cost is the same as in Cape Colony.

ORANGE FREE STATE.

Date of Law.—No. 3 of 1891, substantially similar to the Law of the Cape Colony, classification the same.

Duration.—Indefinite.

Requirements for Registration.—Application (Form 74); declaration (Form 74); notarial power (Form 24); six copies of mark; electro or wood block.

Average Cost varies with advertisement, but is usually about 5*l.* greater than in Cape Colony.

RHODESIA.

(Comprising the British South African Company's territories.)

The Trade Mark Law of the Cape Colony has been adopted throughout these territories, the documents and papers required are the same as in the Cape Colony, but are addressed to the Registrar of Deeds, Salisbury, Rhodesia.

The Cost is variable, but is higher than in the Cape Colony.

SOUTH AFRICAN REPUBLIC.

Date of Law.—31st May, 1892.

Duration.—Indefinite.

Requirements for Registration.—Application (Form 79); six signed copies of mark; electro; notarial and legalised power of attorney (Form 24).

Average Cost varies with advertisement, but is usually about 20*l.* to 25*l.* per mark.

SWAZILAND.

(Included in and covered by registration in the South African Republic.)

ZULULAND.

The Natal Trade Mark Law is in force in this colony, consequently applications should be prepared in the same manner as for registration in Natal.

The cost is practically the same as in Natal.

NORTH AMERICA.

CANADA.

Date of Law.—42 Vic., cap. 22, 1879, embodied in cap. 63, Revised Statutes, 1886.

Trade Marks may be either "general" or "specific." A "general" trade mark is one used in connection with the sale of various articles in which the proprietor deals in his trade or business generally. A "specific" trade mark is one used in connection with the sale of a particular class or description of merchandise.

Duration.—Twenty-five years, renewable for like periods before expiry of each term. A "general" trade mark does not require renewal, but its registration lasts indefinitely.

Requirements for Registration.—Declaration, in duplicate with description of mark (Form 59) stating whether it is intended for use as a general or specific one; three copies of mark.

Average Cost for each mark:—General trade mark 9*l.*; specific trade mark, 8*l.*

MEXICO.

Date of Law.—28th November, 1889.

Duration.—Indefinite.

Requirements for Registration.—Power of attorney (Form 20) signed before notary and legalised by Mexican Consul; four copies of mark; certified copy of original registration of mark in the country where applicant resides, legalised by Mexican Consul; notarial contract of commission or appointment of agent in Mexico certified by Mexican Consul, this latter may be obtained *pro formâ* by an Agent in Mexico.

Remarks.—Marks must be registered at home before applying in Mexico.

Average Cost, inclusive of legalisation, 16*l.* for one mark, and 9*l.* for each additional mark.

NEWFOUNDLAND.

Consolidated Statutes, 2nd Series, Chap. 112.

Duration.—Indefinite.

Requirements for Registration.—Forms similar to those required in Great Britain. Nature of Trade Mark and Classification as in Great Britain. Fee $20. Power (Form 26) may be signed by applicant.

Forgery of a Trade Mark or a false trade description is liable on indictment to punishment of two years' imprisonment with or without hard labour, or to fine or both, or on summary conviction to imprisonment not exceeding four months with or without hard labour, or fine not exceeding $100, and on second conviction, imprisonment six months, or fine $200. Goods forfeited to Her Majesty. Appeal lies to the Supreme Court.

The cost varies from 10*l.* to 15*l.* for registration in one class.

UNITED STATES.

Date of Law.—3rd March, 1881.

Duration.—Thirty years, may be extended upon payment of a second fee.

Requirements for Registration.—One original copy of trade mark made similar to patent drawings, and 12 copies of mark; petition for registration (Form 63); specification of mark giving description of the goods comprised in the class to which the mark has been or is to be appropriated (Form 64); oath signed before notary or United States Consul (Form 65). These are special forms somewhat similar to those for patents, and require to be signed by the applicant.

Remarks.—Words merely descriptive of the article or the name of the manufacturer cannot be registered as a trade mark.

Average Cost.—10*l.* for each mark.

SOUTH AND CENTRAL AMERICA AND WEST INDIES.

ARGENTINE REPUBLIC.

Date of Law.—19th August, 1876.

Duration.—Ten years; may be extended.

Requirements for Registration.—Seven copies of mark; description of mark, with an indication of the class of product or merchandise to which it is to be applied; power legalised by Argentine Consul (Form 20).

Average Cost.—18*l.* for one mark and 14*l.* for each after.

BARBADOS.

Under Act No. 7 of 1896 Trade Marks can be registered, other than those registered in Great Britain under Act of 1883, or in any British possession or foreign state to which Section 103 of said Act applies, all which marks have protection in Barbados by virtue of Section 3 of the Merchandise Marks Act, 1889, of the Colony.

BOLIVIA.

Date of Law.—Decree 24th March, 1897.

Duration.—Ten years, subject to a yearly tax. The term is also renewable.

Requirements for Registration.—Power in Spanish (Form 20) legalized by Consul of Bolivia, and six copies of mark.

Remarks.—Manufacturers making use of a mark without due authorization will be subject to fine of 5 to 50 bolivianos. Foreign marks must therefore be registered in Bolivia if used there.

The cost is about 15*l.* each mark, the yearly fee with cost of payment about 5*l.*

BRAZIL.

Date of Law.—14th October, 1887.

Duration —Fifteen years, can be extended for another 15 before expiration of that term, and so on.

Requirements for Registration.—Power of attorney (Form 21), legalised by Brazilian Consul; seven copies of mark; a description of mark with claims and indication of class of goods; certificate of home registration, legalised by Brazilian Consul.

Average Cost.—12*l.* for each mark.

CHILI.

Date of Law.—12th November, 1874.

Duration.—Ten years, renewable for like periods.

Requirements for Registration.—Power of attorney in Spanish (Form 20), legalised by Chilian Consul; seven copies of mark; description of mark.

Average Cost.—15*l.* for each mark.

CUBA.

(Included and covered by Registration in Spain.)

CURAÇAO (DUTCH WEST INDIES).

Date of Law.—The Law of 3rd February, 1890, is superseded by the Law of 9th November, 1893, entering into force January 1st, 1894.

Duration.—Twenty years, may be renewed before the expiration of 20 years for a similar term upon payment of the prescribed renewal fees.

Requirements for Registration.—The same as for Holland, except that no block is required. The formalities and procedure are the same as in Dutch East Indies. The publication of the application must be inserted in the Official Journal of Curaçao, where registration is effected.

Average Cost.—10*l.* 10*s.* for one mark; 9*l.* 10*s.* for each other, but varies with size of mark.

JAMAICA.

Law No. 17 of 1888 and No. 6 of 1889.

Duration.—Fourteen years, renewable.

Application.—The forms and requirements are the same as in Great Britain. Where the mark is registered in Great Britain, a certificate to that effect will ensure its registration forthwith in Jamaica without necessity to advertise.

The cost is usually 8*l.* to 10*l*

LEEWARD ISLES.

Date of Law.—The Trade Marks Acts, 1887 and 1890.

Duration.—Fourteen years, renewable for like periods.

Requirements for Registration. — An authorization (Form), seven copies of mark, one block.

Remarks.—The law and practice are similar to those prevailing in Great Britain.

Cost.—10*l.* for each mark.

PARAGUAY.

Date of Law.—6th July, 1889.

Duration.—Ten years, which term can be renewed.

Requirements for Registration.—Seven copies of mark; description of mark, with an indication of the class of product or merchandise to which it is to be applied; power of attorney (Form 20), legalised by Paraguayan Consul.

Average Cost.—30*l.*

PERU.

Date of Law.—19th December, 1892.

Duration.—Indefinite.

Requirements for Registration. — Power of attorney (Form 20), legalised by Peruvian Consul, and remainder same as for Argentine Republic.

Average Cost.—40*l.*

SURINAM (DUTCH GUIANA).

Date of Law.—The Law of 3rd February, 1890, has been superseded by Law of 9th November, 1893, entering into force 1st January, 1894.

Duration.—Twenty years, may be renewed before the expiration of 20 years for a similar term upon payment of the prescribed renewal fees.

Requirements for Registration.—The same as for Holland, except that no block is required. The formalities and procedure are the same as in Dutch East Indies. The publication of the application must be inserted in the Official Journal of Surinam, where registration is effected.

Average Cost.—Same as for Curaçao.

TRINIDAD.

Patents, Designs and Trade Marks Ordinance of 1894, repealing No. 25 of 1867.

Duration.—Fourteen years, renewable indefinitely for like periods.

Requirements for Registration.—Authorization (Form 9), six copies of mark, one block.

Cost.—7*l.* for each mark.

URUGUAY.

Date of Law.—1st March, 1887.

Duration.—Ten years, renewable for like periods.

Requirements for Registration.—Power of attorney in Spanish (Form 20), legalised by Uruguayan Consul; seven copies of mark; description of mark and indication of class of merchandise to which it is to be applied.

Average Cost.—25*l.*

VENEZUELA.

Date of Law.—24th May, 1877.

Duration.—Thirty years, renewable for like terms but lapsing with prior registration in country where applicant carries on business.

Requirements for Registration.—Documents required same as for Argentine Republic, and also certificate of home registration. Legalisation by the Consul of Venezuela.

Average Cost.—15*l.* for one mark, 10*l.* for each other.

AUSTRALASIA.

NEW SOUTH WALES.

Date of Law.—26th May, 1865.

Duration.—Indefinite.

Requirements for Registration.—Appointment of agent (Form 27). Application to register (Form 30), which may be signed by agent. Seven copies of the mark and a wood block or electrotype.

Remarks.—The proprietor of a trade mark is not considered to possess any legal property therein until the mark is registered. On production to the Registrar of the necessary papers for application, the application is advertised in the Government Gazette, and if no opposition is made within 14 days the mark is registered.

Average Cost.—6*l.* 6*s.* for one mark in one class. 5*l.* 5*s.* for each additional mark or class.

NEW ZEALAND.

Date of Law.—No. 12 of 1889 (embodied with the Patent Act, and in all substantial respects the same as the British Acts 1883-1888).

Duration.—Fourteen years, renewable every 14 years.

Requirements for Registration.—For each class; statement of address and appointment of agent (Form 27). Application to register, which may be signed by agent. Five copies of mark. Woodcut or electro, preferably not exceeding two inches square.

Remarks.—The classification is the same as in Great Britain.

Average Cost.—4*l.* 10*s.* for one mark for one class. 3*l.* 10*s.* for each other mark. 3*l.* 5*s.* per mark for each other class.

QUEENSLAND.

Date of Law.—13th October, 1884, as amended 5th November, 1890.

Duration.—Fourteen years, renewable.

Requirements for Registration.—For each class; statement of address and appointment of agent, to be signed by

applicant (Form 27). Application to register, which may be signed by agent. Five copies of mark. Woodcut or electro, preferably not exceeding two inches square.

Remarks.—The Acts follow in all substantial particulars the British Acts 1883 and 1888, and goods are classified as in Great Britain (*see* page 368).

Average Cost.—6*l.* 6*s.* for one mark in one class. 5*l.* 5*s.* for each additional mark or class.

SOUTH AUSTRALIA.

Date of Law.—17th December, 1892.

Duration.—Fourteen years, renewable.

Requirements for Registration.—For each class; appointment of agent (Form 27). Application to register, which may be signed by agent. Five copies of mark for each class. Woodcut or electro of mark, preferably not exceeding two inches square.

Remarks.—This law is substantially the present British Law 1883–1888. Goods are classified as in Great Britain, and a separate registration is required for each class (*see* page 368).

Average Cost.—For one mark in one class, 4*l.* 10*s.* For each additional mark or class, 3*l.* 10*s.*

TASMANIA.

Date of Law.—The Act of 1864 has recently been repealed by the Act of 1893, following in its essential provisions the British Act of 1883–1888, and entering into force 1st January, 1894.

Duration.—Fourteen years under either Act.

Requirements for Registration.—For each class; appointment of agent (Form 27). Application to register (Form 90), which may be signed by agent. Five copies of mark.

Remarks.—The classification is the same as in Great Britain (*see* page 368). The mark has to be advertised in the "Hobart Gazette" at cost of applicant.

Average Cost.—8*l.* for one mark in one class. 6*l.* 10*s.* for each additional mark or class filed at same time.

VICTORIA.

Date of Law.—Act of 10th July, 1890, as amended by Act of 19th December, 1890.

Duration.—Fourteen years, renewable for like periods.

Requirements for Registration.—For each class; appointment of agent (Form 47). Application to register, which may be signed by agent. Five copies of mark. Woodcut or electro, preferably not exceeding two inches square.

Remarks.—The law follows the British Acts of 1883-88 and classification also (*see* page 368).

Average Cost.—For one mark in one class, 4*l.* 4*s.* For each additional mark or class, 2*l.* 10*s.*

WESTERN AUSTRALIA.

Date of Law.—27th August, 1884, amended in 1886 and 1894.

Duration.—Fourteen years, renewable for like periods.

Requirements for Registration.—For each class; appointment of agent (Form 27). Application to register, which may be signed by agent. Five copies of mark. Woodcut or electro of mark, preferably not exceeding two inches square.

Remarks.—This Act follows the British Act of 1883. Goods are classified as in Great Britain, and a separate registration is required for each class (*see* page 368).

Average Cost.—For one mark in one class, 4*l.* 10*s.* For each additional mark or class, 3*l.* 10*s.*

FIJI.

Date of Law.—No. 4 of 1886.

Duration.—Seven years, renewable for like periods.

Requirements for Registration.—Power of attorney (Form 26), seven copies of mark, two blocks.

Remarks.—The law and practice are similar to those prevailing in Great Britain.

Cost.—10*l.* for each mark.

Various Countries in which Trade Mark Registration Laws do not exist.

Where no Registration laws relating to Trade Marks exist, protection will often be given to Trade Marks either under the common law, or under some particular statutes relating to the fraudulent marking of goods—for instance, those known in many British colonies as the Merchandise Marks Acts. In many Eastern countries, notably China, a fairly efficient protection can be had by registering the marks at the various Consulates in the chief towns—for instance, the treaty ports. In other countries and colonies it is usual to advertise in official and other gazettes and journals laying claim to the mark and warning infringers. These proceedings have for their object a general publication or notice of proprietorship in order that infringers may not claim the privilege of ignorance.

The following is a list of countries in which protection may be obtained by one or other of the above methods; the cost varies with the nature and size of the mark and the method of protection employed:—

Bahama Islands
Bermuda
British Guiana
British Honduras
China (treaty ports)
Columbia, U. S. of
Corea
Cyprus
Gibraltar
Gold Coast Colony
Gautemaula
Lagos
Liberia
Malta
Morocco
Persia
St. Lucia
St. Vincent
Siam
Sierra Leone
Windward Isles
Zanzibar

Chapter III.

NATURE AND REGISTRATION OF DESIGNS IN GREAT BRITAIN.

Nature of Design.—Under the Patents, Designs, and Trade Marks Act of 1883 a design means any design applicable to any article of manufacture, or to any substance artificial or natural, or partly artificial and partly natural, whether 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, not being a design for a sculpture, or other thing within the protection of the Sculpture Copyright Act of the year 1814 (54 Geo. III, cap. 56).[1]

The applicant is required to point out in his application whether the design is applied to the *pattern*, *shape*, or *configuration*, but need not state in what way it is applied.

It has been held that a design may be registered even though the actual novelty therein might have been secured by patent so long as it fulfils the necessary characteristics of a design,[2] but if it is more truly a construction, such as a particular arrangement of osiers in the manufacture of a basket, consisting in working in the osiers singly with all their butt ends outside, it is not a design within the meaning of the Act.[3]

The purpose of a design is not considered at all,[4] nor is any general idea that may underlie the design.[5] Thus the providing of the handles of spoons with a design of Westminster Abbey, while considered a design capable of registration, was held not

[1] Patents, &c., Act, 1883, Sect. 60.
[2] Walker v. Falkirk Iron Company, IV *R.P.C.*, 391.
[3] Moody v. Tree, IX *R.P.C.*, 333.
[4] Hecla Foundry Company v. Walker, VI *R.P.C.*, 534.
[5] Saunders v. Wiel, IX *R.P.C.*, 469.

to prevent the application of *another view* of the same Abbey in exactly the same way to the same purpose.[1] It is the actual design itself that is considered, and in judging of similarity with previous designs or with other imitations more or less of the same nature, the eye must be the only guide.[2]

A design need not possess artistic merit,[3] but it must be new in itself. There is no novelty in taking a design used on one material, such as paper, and carrying it out in other material, such as glass.[4]

Novelty of Design.—At the time of the application for the registration of the design, it must be new and original, and not previously published in the United Kingdom,[5] while the copying of a design from one material to another cannot be said to entitle the designer to call it "new and original," the mere variation of detail in the design will also not entitle the designer to hold any copyright therein,[6] nor even if the alteration should make the design more useful.[7] Novelty is lost by prior publication, or use amounting to publication, in substantially the same way as with regard to patents of invention. Thus it has been held that the communication of a design to a commission agent to show to customers, constituted by the latter act a publication destroying the validity of subsequent registration;[8] so, also, the communication of a design by the designer himself to a person for the purpose of approval, secrecy not being specially asked for, coupled with receipt of an order for goods so designed, though the order was not fulfilled till after registration.[9]

Duration of Copyright in Design.—When a design is registered, the registered proprietor of the design shall, subject to the provisions of the Act, have copyright in the design during five years from the date of registration.[10] This term of five years cannot be renewed or prolonged.

Nature of Copyright.—"Copyright" means the exclusive right to apply a design to any article of manufacture or to any

[1] Saunders *v.* Wiel, IX *R.P.C.*, 469.
[2] Hecla Foundry Company *v.* Walker, *supra.*
[3] Walker *v.* Falkirk Iron Company, *supra.*
[4] Bach's Design, VI *R.P.C.*, 377; Read and Greswell's Design, VI *R.P.C.*, 471.
[5] Sect. 47 (1).
[6] Plackett's Design, IX *R.P.C.*, 436.
[7] Sherwood's Design, IX *R.P.C.*, 268.
[8] Blank *v.* Footman, V *R.P.C.*, 653.
[9] Winfield and Sons *v.* Snow Brothers, VIII *R.P.C.*, 15.
[10] Sect. 50.

such substance as aforesaid in the class or classes in which the design is registered.[1]

During the existence of copyright in any design :—

(*a*) It shall not be lawful for any person without the license or written consent of the registered proprietor to apply or caused to be applied such design or any fraudulent or obvious imitation thereof, in the class or classes of goods in which such design is registered, for purposes of sale, to any article of manufacture or to any substance artificial or natural, or partly artificial and partly natural; and

(*b*) It shall not be lawful for any person to publish or expose for sale any article of manufacture, or any substance to which such design, or any fraudulent or obvious imitation thereof shall have been so applied, knowing that the same has been so applied without the consent of the registered proprietor.[2]

Classification of Designs.—For the purposes of the Act, designs are classified according to the materials to which they are applied. Registration in any one class only confers exclusive rights to application of the design to material in that class, but the designer may apply for registration also in other classes.

The classes are 14 in number, and are as follows :—

(1) Articles composed wholly or partly of metal, not included in Class 2.
(2) Jewellery.
(3) Articles composed wholly or partly of wood, bone, ivory, papier maché, or other solid substances not included in other classes.
(4) Articles composed wholly or partly of glass, earthenware, or porcelain, bricks, tiles, or cement.
(5) Articles composed wholly or partly of paper (except hangings).
(6) Articles composed wholly or partly of leather, including bookbinding of all materials.
(7) Paper hangings.
(8) Carpets and rugs in all materials, floorcloths, and oilcloths.

[1] Sect. 60.
[2] Sect. 58.

(9) Lace, hosiery.
(10) Millinery and wearing apparel, including boots and shoes.
(11) Ornamental needlework on muslin or other textile fabrics.
(12) Goods not included in other classes.
(13) Printed or woven designs on textile piece goods.
(14) Printed or woven designs on handkerchiefs and shawls.

A design is not new if previously registered in another class,[1] so that applications in more than one class should be concurrent.

Who may Apply.—The Comptroller may, on application by, or on behalf of, any person claiming to be the proprietor of any new or original design not previously published in the United Kingdom, register the design.[2]

The author of any new and original design shall be considered the proprietor thereof unless he executed the work on behalf of another person for a good or valuable consideration, in which case such person shall be considered the proprietor, and every person acquiring for a good or valuable consideration a new and original design, or the right to apply the same to any such article or substance as aforesaid, either exclusively of any other person or otherwise, and also every person on whom the property in such design or such right to the application thereof shall devolve, shall be considered the proprietor of the design in the respect in which the same may have been so acquired and to that extent, but not otherwise.[3]

Method of Application.—For Classes 1 to 12 the form of application, bearing a 10*s.* stamp, must be accompanied by at least one copy, sketch, drawing, or photograph of the design, and if it is accepted, two other such copies, &c., or three in all, exactly similar in every respect must be forwarded. These copies may in certain instances be actual specimens of the design, such as pieces of leather, wall paper, &c., but only provided they are of a kind to be readily mounted in books. If the design is of a constructional form two views may be shown on each copy, but no more. The copies must be made or mounted on three sheets of paper, cloth, or card, each of the size of 13 inches by 8 inches. Examination is made to see if a similar design is already registered in the same class; if not,

[1] Read and Greswell's Design, *supra*.
[2] Sect. 47.
[3] Sect. 61.

the application is allowed. Time taken about four to seven days. If a similar design is found the applicant is allowed to inspect it, but not to take a copy. One of the original copies is affixed to the certificate of registration. For Classes 13 and 14 the Government stamp is 1*s.* only. Where the same design is applied to a series of similar articles, such as a set of dinner ware, those articles may be included in one registration. Government stamp 1*l.* In case of refusal of design, appeal lies to the Board of Trade.

Marking Goods.—Before delivery on sale of any articles, to which a registered design has been applied, the proprietor of the design shall cause each such article to be marked with the prescribed mark, or with the prescribed word or words or figures, denoting that the design is registered; and if he fails to do so the copyright in the design shall cease, unless the proprietor shows that he took all proper steps to ensure the marking of the article.[1]

This marking is important and must not be omitted, or the copyright ceases.[2] For designs registered in Classes 1 to 12 the mark is *Rd.*, followed by the number of registration. For Classes 13 and 14 the mark is *Regd.*, followed by the number.

When goods, such as trimmings, are sold in packets, the marks may be applied to the packets,[3] but where they are intended to be retailed separately, though woven in the piece (such as dusters, handkerchiefs, &c.), the mark must be applied to each.[4] Where goods are sold wholesale in an unfinished state to be subsequently finished before they are retailed, the marks must be applied before leaving the original manufacturers' hands.[5]

Secrecy of Registered Design.—By Sections 52 and 53, during the existence of copyright in a design, the design shall not be open to inspection except by the proprietor, or a person authorised in writing by the proprietor, or a person authorised by the Comptroller or by the Court, and furnishing such information as may enable the Comptroller to identify the design, nor except in the presence of the Comptroller, or of an officer acting under him, nor except 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.

When the copyright in a design has ceased, the design

[1] Sect. 51.
[2] Hothersall *v.* Moore, IX *R.P.C.*, 27.
[3] Blank *v.* Footman, *supra.*
[4] Hothersall *v.* Moore, *supra.*
[5] Woolley *v.* Broad, IX *R.P.C.*, 429.

shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.[1]

But on the request of any person producing a particular design, together with its mark of registration, or producing only its mark of registration, or furnishing such information as may enable the Comptroller to identify the design, and on payment of the prescribed fee, it shall be the duty of the Comptroller to inform such person whether the registration still exists in respect of such design, and if so, in respect of what class or classes of goods, and stating also the date of registration, and the name and address of the registered proprietor.

Working of Design Used Abroad.—If a registered design is used in manufacture in any foreign country and is not used in this country within six months of its registration in this country, the copyright in the design shall cease.

Infringement and Penalties.—If any one contravenes the copyright he is liable for every offence to forfeit a sum not exceeding 50*l.* to the registered proprietor of the design, who may recover such sum as a simple contract debt by action in any Court of competent jurisdiction, but the registered proprietor of any design may (if he elects to do so) bring an action for the recovery of any damages arising from the application of any such design, or of any fraudulent or obvious imitation thereof for the purpose of sale, to any article of manufacture or substance, or from the publication, sale, or exposure for sale, by any person of any article or substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, such person knowing that the proprietor had not given his consent to such application.[2]

The applicant must state which remedy he will take,[3] since the one apparently excludes the other. The use of the principal particulars of a design is an infringement though the details are varied.[4] The employment of a design by a British subject abroad is not an infringement.[5]

The Cost of Registration of design if unobjected to is usually 1*l.* 1*s.*, in addition to the Government stamp and the cost of making the necessary copies of the design if the same are not supplied.

[1] Sect. 52.
[2] Sections 58 and 59.
[3] Saunders *v.* Wiel, *supra.*
[4] Sherwood *v.* Decorative Art Tile Company, IV *R.P.C.*, 207.
[5] Edmund Potter and Company *v.* Braco de Piata Printing Company Limited, VIII *R.P.C.*, 218.

CHAPTER IV.

REGISTRATION OF DESIGNS ABROAD.

DESIGNS or models can be registered in several foreign countries either under special laws or Acts relating to artistic and other copyright.

The requirements always include full names, addresses, and occupation of applicants, a description of the nature of the design, of the goods to which it is applied, and of the material of which such goods are made.

The costs hereinafter given are exclusive of the cost of copies of the design or model.

EUROPE.

AUSTRIA.

The protection lasts one, two, or three years, at the option of applicant.

Requirements.—Power of attorney (Form 17), legalised by Austrian Consul, and one example or copy of the design or model.

The cost is usually 4*l.* to 6*l.*, according to length of term, exclusive of cost of copy of design.

BELGIUM.

The deposit of a design or model only gives protection to the exterior form of the object. Foreigners can only obtain such protection if their country grants the same to Belgians. There must not have been previous sale of the article. The duration

of protection is one, three, or five years, or for ever, at the option of applicant.

Requirements are a power not legalised (Form 15), a copy or specimen of the design or model; information of the full name, address, and profession of the applicant.

The cost is 4*l.* for one year, 5*l.* for five years, 6*l.* in perpetuity.

FRANCE.

The provisions are exactly the same as in Belgium, only that the power requires to be legalised, thus adding about 10*s.* to the cost.

GERMANY.

See Model Patents in Germany, pages 290, 294, and 298, for full particulars and cost.

HUNGARY.

The provisions are substantially the same as in Austria, and the cost the same.

ITALY.

The term of protection is two years, and cannot be extended.
Requirements are:—

(1) Specification.
(2) Two copies of drawings, on tracing cloth or card. The size of each sheet should not exceed 12 inches by 16 inches, with a clear margin of about 2 inches all round.
(3) A model or a photograph of the design.
(4) Power of attorney (Form 15), signed by the applicant, and legalised by the Italian Consul.
(5) A certificate to prove that the design has been patented in the applicant's country, legalised by the Italian Consul.

The cost depends upon complexity of drawings, &c., usually 8*l.* There are no renewal fees.

PORTUGAL.

Term of Protection 5 years, renewable every five years indefinitely.

Requirements.—Legalised Power (Form 21), four copies of the design, or two specimens thereof, indication of name, residence, nationality and profession of applicant, who must be either the author of the design or his assignee by legalised assignment, description of the novelties of the design and indication of the class of article in which it is to be registered. There are 56 classes.

Cost of registration in one class 6*l*.

RUSSIA.

Only so-called patterns of taste, as designs for tapestry, stuffs, carpets, &c., can be registered in Russia by any one for any term of years, from one to ten years, as desired.

No extension of term is granted.

Requisites.—Power of attorney (Form 27 or 15), certified by notary and Russian Consul; declaration of the petitioner (certified by notary and Russian Consul), that he himself is the inventor of the pattern, design, or model, or that he is the rightful owner of the same, and in the latter case a legally valid certificate to that effect must be presented, also certified by notary and Russian Consul; three drawings for each of the patterns, designs, or models to be registered.

All articles, in which the registered design or model is reproduced, must be provided with a mark, of a form specially fixed by the Minister of Finance for this purpose, which is to be exposed, by means of a seal or stamp, at the most convenient place, or on a separate leaden seal, attached to the article signifying the term for which the right to the exclusive use of the design or model has been reserved for the proprietor.

Cost from 6*l*. for one design, 4*l*. for each design after; in each case adding 5*s*. for each year of the term applied for. No renewal fees.

SWITZERLAND.

By the Law of 21st December, 1888, anything capable of being patented cannot be registered as a design. The term of registration is 2, 5, 10, or 15 years, at option of applicant. The 2 year-term can be converted into either a 5, 10, or 15 year term on payment of the respective fee.

Requirements.—One copy, specimen, drawing, or photograph; and power of attorney (Form 15).

The cost of two years' term is usually 4*l.*; conversion to 5 years', 2*l.*; thence to 10 years', 2*l.* 5*s.*; thence to 15 years', 2*l.* 10*s.* There is no examination before grant of certificate.

AFRICA.

CAPE COLONY.

Under the "Registration of Designs Acts, 1894," protection may be had for five years, the provisions of the Act are similar to those in Great Britain under the Act of 1883 and the same classification if adopted.

Requirements.—Three drawings, photographs or tracings on paper 13 inches by 8 inches, with margin of two inches on the left, or specimens, if of a nature to be pasted in books, not exceeding 12 by 21 inches. Appointment of Agent (Form 9).

The cost is from 7*l.* to 10*l.*

ASIA.

INDIA.

Under the Act of 1888 any person, whether a British subject or not, claiming to be the proprietor of any new and original design not previously published in British India, however long patented or known elsewhere, may apply to the Governor-General in Council for an order for the registration of the design.

Under the new Act "design" is defined to mean some peculiar shape, configuration, or form given to an article, or arrangement of lines or the like used on or with an article, but not the article itself.

The term of copyright is five years. The article must be marked as in Great Britain.

Requirements.—Four copies of the design and a power (Form 26).

Cost, 6*l.* 10*s.* for each design.

JAPAN.

Natives and subjects of Treaty Countries (Page 307) may register for 3, 5, 7, or 10 years. The procedure and documents are similar to those for Patents.

Cost, 10*l.* to 20*l.*

AMERICA.

CANADA.

At present only residents in Canada can register designs.

UNITED STATES OF AMERICA.

Under the Revised Statutes, Sections 4929–4933, a patent may be obtained by any person who, by his own industry, genius, efforts, and expense, has invented and produced any new and original design for a manufacture, bust, statue, alto-relievo, or bas-relief; any new and original design for the printing of woollen, silk, cotton, or other fabrics; any new and original impression, ornament, pattern, print, or picture to be printed, painted, cast, or otherwise placed on or worked into any article of manufacture; or any new, useful, and original shape or configuration of any article of manufacture, the same not having been known or used by others before his invention or production thereof, nor patented nor described in any printed publication.

Patents for designs are granted for the term of $3\frac{1}{2}$ years, or for 7 years, or for 14 years as the applicant may, in his application, elect.

The proceedings in applications for patents for designs are substantially the same as in applications for patents for inventions. Forms 60, 61 and 62A must be signed by applicant. The specification must distinctly point out the characteristic features of the design, and carefully distinguish between what is old and what is believed to be new. The claims also, when the designs admit of it, should be as distinct and specific as in the case of other applications.

When the design can be sufficiently represented by drawings, a model will not be required.

The design must be represented by a drawing made to conform to the rules laid down for drawings of mechanical inventions (*see* Appendix III). In case the nature of the design is such that it cannot properly be represented by such a drawing upon the recommendation of the examiner, a photograph may be employed.

The applicant will be required to furnish 25 extra copies of such photograph (not mounted) of a size not exceeding 7½ inches by 11.

The cost is usually 7*l.* for 3½ years, 8*l.* for 5 years, and 12*l.* for 14 years.

MEXICO.

A design may be registered under the Copyright Law.

Requirements are:—A power of attorney (Form 20), legalised by the Mexican Consul, and three copies, drawings or photographs, of the design. Copyrighted goods must bear indication of the name, date, and copyright.

The cost is usually 18*l.*

AUSTRALASIA.

NEW SOUTH WALES.

Designs are protected under the Copyright Act of 1879. Goods are classified according to the materials of which they are made into fourteen classes; these are:—

Class 1. Articles of manufacture composed wholly or chiefly of any metal or mixed metals.
Class 2. Articles of manufacture composed wholly or chiefly of wood, stone, cement, or plaster.
Class 3. Articles of manufacture composed wholly or chiefly of glass.
Class 4. Articles of manufacture composed wholly or chiefly of earthenware.
Class 5. Articles of manufacture composed wholly or chiefly of ivory, bone, papier-mâché, and every other solid substance not already comprised in the above classes numbered 1, 2, 3, 4.
Class 6. Paperhangings.
Class 7. Carpets, tapestry, floorcloths, and oilcloths.
Class 8. Shawls, if the design be applied solely by printing or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics.
Class 9. Shawls not comprised in Class 8.
Class 10. Yarn thread or warp, if the design be applied by printing or by any other process by which colours are or may hereafter be produced.
Class 11. Woven fabrics composed of linen, cotton, wool, silk, or hair, or of any two or more of such materials, if the design be applied by printing or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics, excepting the articles included in Class 12.
Class 12. Woven fabrics composed of linen, cotton, wool, silk, or hair, or of any two or more of such materials, if the design be applied by printing or by any other process by which colours are or may hereafter be produced upon tissue or

textile fabrics, such woven fabrics being or coming within the description technically called furniture, and the repeat of the design whereof shall be more than twelve inches by eight inches.

Class 13. Woven fabrics not comprised in any preceding class.

Class 14. Lace and any article of manufacture or work of art or substance not comprised in any preceding class.

A separate registration is necessary in each class. The duration for designs in Classes 1 to 5 is three years; classes 6 to 14 two years.

The application form in duplicate (Form 29) is required to state the nature of the design and wherein the novelty consists, and to bear a representation of the design. Power (Form 27) should also be furnished.

The cost is usually 5*l.* for each design or class.

NEW ZEALAND.

The provisions of the Patents, Designs, and Trade Marks Act, 1889, in respect of designs and the classification for purposes of registration are all exactly the same as in Great Britain. Term five years. Form 27 should be furnished.

The cost is usually 5*l.* for each design or class.

QUEENSLAND.

Registration of designs is governed by the Patents, Designs, and Trade Marks Act of 1884 as amended 1890; the proceedings and classification thereunder are substantially the same as in Great Britain. Term five years. Form 27 should be furnished.

The cost is usually 5*l.* for each design or class.

SOUTH AUSTRALIA.

Under the Copyright Act, 1878, the proprietor of any new and original design for any article or work of manufacture or art, and whether such article or work be for purposes of utility, ornament, or otherwise, and whether such design be applicable to the ornamentation only of any article or work of manufacture or art, or to the pattern, shape, or configuration of such article or work of manufacture or art, or to the pattern, shape, configuration, or ornamentation of any substance, artificial or natural, or partly artificial and partly natural, and whether such design be applicable to two or more of such purposes, and by whatever means such design be applicable, whether by printing, painting, embroidering, weaving, modelling, moulding, casting, embossing, engraving, staining, turning, or by any other means whatsoever, manual, mechanical, or chemical, separate or combined, and which design has not previously been published in the province of South Australia or elsewhere, shall have the sole right to apply the said design to any article or work or to any substance aforesaid, provided the same be done in the province of South Australia, and the sole right to make or ornament any article, work, or substance, according to such design, and the sole right to sell the same article, work, or substance so made or ornamented for the term of one, two, or three years, at the option of the proprietor, such term to be computed from the time of such design being registered.

The application form (Form 46) must state the title and nature of the design, name and address of proprietor, first day of publication, and term for which copyright is required, and be accompanied by two copies and duplicate description of the design. Form 27 should be added. There is no classification of goods.

Cost for one year is usually 5*l*. 10*s*.

Cost for three years is usually 7*l*.

TASMANIA.

Under the Act of 1893 designs are registered for five years. The procedure, classification, and general provisions are the same as in Great Britain. Form 27 should be signed by applicant. The cost may be estimated at 6*l*. for one class and 3*l*. for each additional class.

VICTORIA.

Designs are protected under the Copyright Act of 1890, the terms, proceedings, and classification and cost being the same as in New South Wales, which see. Form 47 should be furnished in place of 27. The cost is usually 5*l.* for each design or class.

WESTERN AUSTRALIA.

Designs are registered under the Designs and Trade Marks Act of 1884 as amended in 1886. The proceedings and classification are in every respect the same as in Great Britain Form 27 should be furnished.

The cost is usually 6*l.* for each design and class.

APPENDIX I.

Authorities Consulted and Referred to in the Text.

GREAT BRITAIN.

Treatise on Law of Patents. W. M. Hindmarsh, 1846.
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Monopolies by Patents. J. W. Gordon, 1897.

Reports of Patent Cases.

B. and Ald.	..	..	Barnewell and Alderson.
Beav.	..	..	Beavan.
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Bing. N.C.	..	..	Bingham's New Cases.
Bull N.P.	..	..	Buller's Nisi Prius.
B. Moore	..	..	B. Moore's Reports.
C.B.	..	..	Common Bench.
C.B., N.S.	..	..	Common Bench, New Series.
Carp. P.C.	..	..	Carpmael's Patent Cases.
Car. and P.	..	..	Carrington and Payne.
Coop. C.C.	..	..	Cooper's Chancery Cases.
Cr. S.	..	..	Court of Session Decrees.
Dav. P.C.	..	..	Davies' Patent Cases.
De G. and J.	..	..	De Gex and Jones.
De G., J. and S.	..	..	De Gex, Jones and Smale.
Ell. and Black.	..	..	Ellis and Blackburn.
Good. P.C.	..	..	Goodeve's Patent Cases.
Godbolt's R.	..	..	Godbolt's Reports.
Griff.	..	..	Griffin's Patent Cases.
H. Bl.	..	..	H. Blackstone's Reports.
H.L. Cas.	..	..	House of Lords Cases.
Higgins' D.P.C.	..	..	Higgins' Digest of Patent Cases.
Holroyd	..	..	Holroyd on Patents.
Inst.	..	..	Coke's Institutes.
Jur. N.S.	..	..	Jurist Reports, New Series.

John.	Johnson's Reports.
Kay	Kay's Reports.
L.R., App. C.	Law Reports, Appeal Cases.
„ Ex. D.	„ Exchequer Division.
„ Ch. D.	„ Chancery Division.
„ Eq.	„ Equity.
L.J., C.P.	Law Journal, Common Pleas.
L.T. Rep., N.S.	Law Times Reports, New Series.
Macrory P.C.	Macrory's Patent Cases.
M. and G.	Macnaughten and Gordon.
M. and W.	Meeson and Welby's Reports.
Mer.	Merivale's Reports.
Myl. and Cr.	Mylne and Craig.
Moo. P.C.C.	Moore's Privy Council Cases.
Newton's L.J.	Newton's London Journal.
R.P.C.	Reports Patent Cases, Patent Office Journal.
Rep. Arts. N.S.	Repertory of Arts and Sciences.
Ry. and Moo.	Ryan and Moody.
Scott	Scott's New Reports.
W.R.	Weekly Reporter.
Web. P.C.	Webster's Patent Cases.

FOREIGN.

Des Brevets d'Invention. *Allart*, Paris, 1885.
Commentaires des Lois sur les Brevets d'Invention. *Bédarride*, Paris, 1868.
L'Inventeur Breveté. *E. Blanc*, Paris, 1852.
De la Contrafaçon. *E. Blanc*, Paris, 1855.
Loi sur les Br. d'Invention. *Loiseau and Vergé*, Paris, 1845.
Nouveau Com. sur les Br. d'Invention. *Malapert and Formi*, Paris, 1879.
Manuel de la Propriété Industrielle. *Nicolas and Pelletier*, Paris, 1888.
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Annales de la Propriété Industrielle (33 vols.). *Pataille*, 1855–1889.
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Traité des Brevets d'Invention. *Tillière*, Bruxelles, 1856.
Traité des Brevets d'Invention. *E. Picard*, Bruxelles, 1886.
Traité des Contrafaçons. *Olin and La Fontaine*, Bruxelles, 1888.
Die Patentgesetzgebung. *Klostermann*, Berlin, 1869.
Deutsches Patentrecht. *Kohler*, Berlin, 1878.
Der Schutz der Erfindungen. *Pieper*, Dresden, 1877.
Das Deutsche Patentgesetz. *Gareis*, Berlin, 1877.
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Das Patentblatt. German Patent Office Publication.
Patentrechtliche Erörterungen. *Staub*, Berlin, 1888.
Entscheidungen in Patentsachen. *Gareis* (11 vols.), 1881–1896.
Das Oesterreichische Patentrecht. *Beck-Mannagetta*, Vienna, 1893.
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Geist der Öst. Patentgesetzgebung. *Von Krauss*, Vienna, 1838.
Étude sur la protection legale des Inventions. *Gans*, Geneva, 1886.
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Der Schweizerische Patent und Industrie-Schutz. *J. Baur*, Bern, 1891.
Patentes de Invencion y Marcas de Fabrica, etc. *Lorenzo Nicolas Quintana*, Madrid.
Legislacion Española, Pat. de Invencion, etc. *Calleja y Mariano de Lara*, Madrid.
Las Patentas de Invencion y Derechos del Inventor. *Pella y Forgas*, Barcelona, 1892.
Il Diritto di Privativa Industriale. *Giuliozzi et Bruscagli*, Turin, 1889.
Betänkande angående Patentskydd. Stockholm, 1878.
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Law and Practice of New South Wales, *re* Letters Patent. *Taylor*, Sydney, 1888.
Law of Patents. *W. Phillips*, Boston, 1857.
Patentability of Inventions. *Merwin*, Boston, 1883.
Digest of Cases. *Stephen D. Law*, New York, 1866.
Collection of Cases. *James B. Robb*, Boston, 1854.
Treatise on Law of Patents. *G. T. Curtis*, Boston, 1849.
Collection of Patent Cases. *S. G. Croswell*, Boston, 1888.
Digest of Patent Office Decisions, 1869–1870. *Simonds*, 1880.
do. do. 1880–1890. *Beach*, 1890.
do. do. 1869–1880. *Rice*.
Decisions of the Commissioner of Patents. *Published by the U.S. Patent Office.*

APPENDIX II.

FORMS.

The following forms must be signed in person.

N.B.—The blanks may be left unfilled up. Where no size is given the form should be written or printed on paper 8 inches wide and 13 inches deep, on one side only, leaving a margin 2 inches wide down the left-hand side.

No. 1. Application for British Patent. Form A.

Patents, Designs, and Trade Marks Acts, 1883–88.

APPLICATION FOR PATENT.

I (or *we*) [*name, address, and profession,*] do hereby declare that *I am* (or *we are*) in possession of an invention, the title of which is [*leave space for title*]; that *I am* (or *we are, or I* [*name of one of the joint applicants*] *am*) the true and first inventor thereof; and that the same is not in use by any other person or persons to the best of *my* (or *our*) knowledge or belief; and *I* (or *we*) humbly pray that a patent may be granted to *me* (or *us*) for the said invention.

Dated this day of , 189 .

[*Signature of Applicant.*]

No. 2. Authorization to accompany No. 1 or No. 3.

I (or *we*) hereby appoint , of , to act as *my* (or *our*) agent in respect of the within application for a Patent, and request that all notices, requisitions, and communications relating thereto may be sent to such agent, at the above address.

day of , 189 .

[*Signature of Applicant.*]

No. 3. Application for British Patent under "Convention." &c. Form A².

Patents, Designs, and Trade Marks Acts, 1883–88.

APPLICATION FOR PATENT UNDER INTERNATIONAL AND COLONIAL ARRANGEMENTS.

I (or *we*) [*name, address, calling,*] do hereby declare that *I* (or *we*) have made foreign applications for protection of *my* (or *our*) invention of [*leave space for title of invention*] in the following States, and on the following official dates, viz: [*insert same*] and in the following British possessions and on the following official dates, viz.: [*insert same, if any*]. That the said invention was not in use within the United Kingdom of Great Britain and Ireland and the Isle of Man by any other person or persons before the [*insert date of first foreign or colonial application*] to the best of *my* (or *our*) knowledge, information, and belief, and *I* (or *we*) humbly pray that a Patent may be granted to *me* (or *us*) for the said invention in priority to other applicants, and that such Patent shall have the date [*insert date of first foreign or colonial application, and no other date*].

Dated this day of , 189 .

[*Signature of Applicant.*]

No. 4. Provisional Specification, to be furnished in duplicate.

PROVISIONAL SPECIFICATION.

[*Leave space for title of Invention.*]

I (or *we*) [*name, address, calling of applicant*] do hereby declare the nature of this invention to be as follows [*insert description.*]

Dated this day of , 189 .

[*Signature of Applicant.*]

No. 5. Complete Specification, to be furnished in duplicate.

COMPLETE SPECIFICATION.

[*Leave space for title of invention.*]

I (or *we*) [*name, address, calling of applicant*] do hereby declare the nature of this invention, and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement;

[*insert description*].

Having now particularly described and ascertained the nature of this said invention, and in what manner the same is to be performed, *I* (or *we*) declare that what *I* (or *we*) claim is;

[*insert claims*].

Dated this day of , 189 .

[*Signature of Applicant.*]

FORM D.

No. 6. Opposition to Grant of British Patent, to be furnished in duplicate.

I (or *we*) [*name, address, calling of opponent*] hereby give notice of *my* (*our*) intention to oppose the grant of Letters Patent upon application No. , of [*year*], applied for by , of , upon the ground [*leave several lines for insertion of statutory ground*]. My address for service is [*leave space for same*].

[*Signature of Opponent.*]

FORM F.

No. 7. Application for Amendment.

I (or *we*) [*name, address, calling of applicant or patentee*] seek leave to amend the specification of Letters Patent No. , of 18 , as shown in red ink in the copy of the original specification hereunto annexed. *My* (or *our*) reasons for making this amendment are as follows [*state same*].

Dated this day of , 18

[*Signature of Applicant.*]

FORM T.

No. 8. Appeal to Law Officer, to be furnished in duplicate.

I (or *we*) [*name, address, calling of appellant*] hereby give notice of *my* (or *our*) intention to appeal to the Law Officer from *the decision* (or *that part of the decision*) of the Comptroller of the day of , 18 , whereby he (*refused* or *allowed application for patent*, or as the case may be), No. , of the year 18 .

[*Signature of Appellant.*]

Date

No. 9. Form of Authorization to Register a DESIGN or TRADE MARK.

I (or *we*) [*name, address, calling of applicants*], trading as , hereby appoint , of , to act as *my* (or *our*) agent in respect of the accompanying application for the registration of [*Trade Mark* or *Design*], and request that all notices, requisitions and communications relating thereto may be sent to such agent, at his address above given.

Dated day of 18 .

[*Signature of Applicant.*]

No. 10. Form of Revocation and New Appointment of Agent for PATENTS, DESIGNS, or TRADE MARKS.

I (or *we*) [*name, address, calling of applicant*] hereby revoke all prior authorizations and appointments in relation to Application No. , of 18 , for [*Patent, Design, or Trade Mark*, as the case may be], and appoint , of , to act as *my* (or *our*) agent in respect of above application, and request (etc., *remainder* as in Form 9).

FORM H.

No. 11. Form of Appeal to Board of Trade in respect of Registration of TRADE MARK.

I (or *we*) [*name, address of applicant*] hereby give notice of *my* (or *our*) intention to appeal to the Board of Trade from (that part of) the decision of the Comptroller of the day of 18 , whereby he [*insert the decision complained of*].

Accompanying this notice is a statement of my case for the decision of the Board of Trade.

[*Signature of Appellant.*]

Dated day of 18 .

FORM F.

No. 12. Form of Appeal to Board of Trade in respect of the Registration of a DESIGN, to be furnished in duplicate.

Sir,—I hereby appeal against your decision upon my application to register [*leave three lines*], and beg to submit my case for the decision of the Board of Trade.

I am, Sir,

Your obedient servant,

[*Signature of Appellant.*]

To the Comptroller,
Patent Office, London.

FORM J.

No. 13. Opposition to Registration of TRADE MARK, to be furnished in duplicate.

In the matter of an application, No. , by , of .

I (or *we*) [*name, address, of opponent*] hereby give notice of *my* or *our*) intention to oppose the registration of the Trade Mark advertised under the above number for Class , in the "Trade Marks Journal" of the day of , 18 , No. , page .

The grounds of opposition are as follows [*state grounds*].

[*Signature of Opponent.*]

Dated the day of , 18 .
Address for service:

Foreign and Colonial Forms.

No. 14. Power in French for Application for Patent.

POUVOIR.

Le soussigné [*full name of applicant*], demeurant à [*full address*] donne Pouvoir à [*leave two lines*] de pour et en nom former en la domande d'un Brevet de ans [*leave four lines*]. À cet effet signer et déposer toutes pièces, verser toutes taxes exigibles, élire domicile, remplir toutes formalités legales, retirer l'expedition du Brevet, au besoin opérer le retrait de cette demande, retirer la taxe versée, en donner décharge, déposer une nouvelle demande, et déposer toute demande supplémontaire de brevet d'addition, de reduction, et de prolongation se rattachant au dit Brevet, et au besoin substituer.

Fait à , le , 18 .

Bon pour pouvoir *

[*Signature of Applicant in full.*]

* Each applicant should write these words, "Bon pour pouvoir," in his own handwriting above his signature.

No. 15. Power in French for Registration of Trade Mark or Design.

POUVOIR.

Le soussigné [*full name of applicant*] demeurant à [*full address*] donne Pouvoir à [*leave two lines*] de pour et en nom opérer au [*leave one line*] le depôt [*leave four lines*]. À cet effet signer et déposer toutes pièces, verser toutes taxes exigibles, élire domicile, remplir toutes formalités légales, rétirer toutes pièces, substituer dans tout ou partie du present pouvoir, et en général faire aux fins que dessus tout ce qui sera requis dans les différents cas qui peuvent se présenter, promettant l'avoir pour agréable et le ratifiant d'avance.

Fait à , le , 18 .

Bon pour pouv ir *

[*Signature of Applicant in full.*]

* Each applicant should write these words, "Bon pour pouvoir," in his own handwriting above his signature.

No. 16. Power in German for Application for Patent.

VOLLMACHT.

Unterzeichnete [*name of applicant, address, occupation*], bevollmächtigt hiermit [*leave two lines*] für ein Patent [*leave four lines*] nachzusuchen, zu diesem Zwecke alle erforderlichen Unterschriften für zu vollziehen, Zahlungen zu leisten, das Gesuch zu hinterlegen und nöthigenfalls zurückzuziehen, die Patenturkunden in Empfang zu nehmen, dieselben behufs Cession und Verlängerungen wieder einzureichen, im Patentgesuche entweder Geheimhaltung oder Offenhaltung der Beilagen zu beantragen, im Falle von Geheimhaltung später auf dieselbe Verzicht zu leisten, während der Patentdauer beim Patentamte zu vertreten, sich als Vertreter in die Patentrolle eintragen zu lassen; Unterbevollmächtigte zu ernennen; etwaige Zusatzpatente für nachzusuchen und überhaupt Alles zu thun, was zur Erlangung, Vervollständigung, und Aufrechthaltung des besagten Patentes auf dessen längste Dauer erforderlich ist.

[*Place*] den , *ten* , 18 .

[*Signature of Applicant in full.*]

No. 17. Power in German for Registration of Design or Model Patent.

VOLLMACHT.

Unterzeichnete [*name of applicant, address, occupation*] bevollmächtigt hiermit [*leave two lines*] für den Schutz des Gebrauchsmuster für Modell , betreffend [*leave four lines*] nachzusuchen, zu diesem Zwecke alle erforderlichen Unterschriften für zu vollziehen, Zahlungen zu leisten, das Gesuch zu hinterlegen und nöthigenfalls zurückzuziehen, Vorstellungen gegen die Verfügungen der Anmeldestelle für Gebrauchsmuster, sowie Erklärungen und Nachträge einzureichen, Gelder, Schriftstücke und Urkunden in Empfang zu nehmen, dieselben behufs Cession und Verlängerungen wieder einzureichen, während der Schutzdauer beim Amte zu vertreten, sich als Vertreter in die Rolle eintragen zu lassen, Unterbevollmächtigte zu ernennen, und überhaupt Alles zu thun, was zur Erlangung, Vervollständigung, und Aufrechthaltung des besagten Schutzes auf dessen längste Dauer erforderlich ist.

[*Place*] den , *ten* , 18 .

[*Signature of Applicant in full.*]

No. 18. Power in German for Registration of Trade Mark.

VOLLMACHT.

Unterzeichnete [*name of applicant, address, occupation*], bevollmächtig hiermit [*leave two lines for name and address of Attorney*] für die Umregistrirung bezw den Schutz auf Waarenzeichen [*leave two lines*] für das Deutsche Reich nachzusuchen. Zu diesem Zweck alle erforderlichen Eingaben für zu machen, Unterschriften für zu vollziehen, alle gesetzlich zu zahlenden Taxen zu entrichten und zurückzuziehen, über dieselben zu quittiren oder Quittungen in Empfang zu nehmen, etwaige Gesuche um Verlängerung zu stellen, die Urkunden und alle auf gegenwärtiges Waarenzeichen Bezug habende Akten, Mittheilungen etc., in Empfang zu nehmen Löschungen zu beantragen, endlich auch Unterbevollmächtigte zu ernennen und überhaupt Alles zu thun, was zur Erlangung und Aufrechterhaltung besagten Waarenzeichens erforderlich ist.

[*Place*] den [*day of month*], *ten* [*month*] 18 .

[*Signature of Applicant.*]

No. 19. Power in Hungarian for Application for Patent.

MEGHATALMAZÁS.

Alulirott [*leave two lines*] ezennel meghatalmaz [*leave two lines*] részre és nev ben a Magyar kir. államokban [*leave four lines*] kizárolagos szabadalomért folyamodni és azt érvényben fentartani; e czélból, minden beadványt nev ben aláírni és benyujtani; esetleg visszavonni; szabadalmi díjjakat megfizetni, illetöleg visszavenni; al-meghatalmazottakat kinevezni; a szabadalmi okmányt átvenni és annak átvételét elismerni; azt átruházás és meghosszabitás végett ismét benyujtani; a mellékletek titokban vagy nyiltantartását a szabadalmi folyamodványban javaslatba hozni; titoktartás esetén, erről később lemondani; minden sérelmi és érvénytelenségi perben az illetékes bíróságnál képviselni; és egyáltalán minden, a nevezett szabadalom nemcsak megszerzésére, hanem annak a leghosszabb időtartamra való fentartására is, a törvény által megkövetelt és megengedett lépéseket megtenni.

[*Place*] [*date*]

[*Signature of Applicant in full.*]

No. 20. Power in Spanish for Application for Patent, Design, or Trade Mark.

PODER.

que suscribe [*name of applicant*] domiciliado en [*address*] constituye por el presente documento su apoderado general, con facultad de substituir, á [*leave two*

lines] al cual da· poder general, sin limitacion alguna, para que à su nombre y en su representacion, haga toda clase de diligencias y firme cuantes solicitudes y documentes sean necesarios presentar [*leave one line*]. ó á sus Ministros, Autoridades y Funcionarios de todas clases Solicitando [*leave three lines*].

En su virtud poderdante reconoce desde hoy, como si personalmente lo hiciese , cuanto haga en su nombre su referido apoderado en la gestion del asunto para que está autorizado por este documento y cuanto mas sea necesario hacer en cualquier tiempo en bien y en defensa de sus intereses.

Firmado en [*place*] à de de .

[*Signature of Applicant in full.*]

No. 21. Power in Portuguese for Application for Patent, Design, or Trade Mark.

PROCURAÇÃO.

abaixo assignado [*name of applicant*] morador [*address*] do pela presente procuração os poderes mais amplos a [*leave two lines*] para por e em nome obter do Governo [*leave four lines*]. E para este fim do poderes ao bastante procurador para preencher todas as formalidades prescriptas pela lei e regulamento rectificar e assignar todas as declaraçoes, documentos e requerimentos, inclusive desenhos e descripções, deposital-os ou em caso de necessidade retiral-os; pagar as taxas e impostos, substabelecer todos ou partes dos presentes poderes finalmente fazar tudo o que fôr à bem dos interesses do outorgante representando activa e passivamente perante o Governo.

Feita em [*place*], , 18 .

[*Signature of Applicant in full.*]

No. 22. Power in Swedish for Application for Patent or Trade Mark.

FULLMAGT.

Undertecknad [*name, address, occupation of applicant*] befullmägtiga härmed [*leave two lines*] eller den han I sitt ställe förordnar, att för [*if for Patent:* söka och uttaga Patent; *if for Trade Mark:* låregistrera ett varumärke] i Konungarlket Sverige på [*leave four lines*] samt att i allt, hvad ansökningen och angår, å vägnar tala och svara; förklarande nöjd med hvad ombudet dervid lagligen gör och låter. Ombudet eger äfven att återtaga ansökningen, då sådant befinnes nödigt eller lämpligt.

[*I lace*] den , 18 .

[*Signature of Applicant in full.*]

No. 23. Power of attorney for Danish patent application.

FULDMAGT.

Undertegnede [*name, address, and occupation of applicant*] bemyndlge herved *leave two lines*] til paa Vegne at udtage Patent i Kongeriget Danmark paa af opfund: [*leave four lines*] og være Fuldmægtig i denne Sag, og som saadan at repræsentere i alle Patentet vedrørende Anliggender, og navnlig paa Vegne at modtage Søgsmaal, som i Henhold til Patentloven af 13. April 1894 maatte rejses imod og skal derfor alt, hvad samme i den Henseende finder fornødent at foretage, være bindende for

[*Place*] den [*Date of Signing*] 189 . [*Year*]. [*Full name of applicant*]

[*Profession of applicant*] [*Full Postal address, Street and Number*]

Ovenstaaende Fuldmagt vedtages af Kjøbenhavn, den 189

No. 23a. Power for Norwegian Patent or Trade Mark or for Danish Trade Mark.

FULDMAGT.

Undertegnede [*name, address, occupation of applicant*] bemyndige herved [*leave two lines*] i Sted [*if for Patent:* at søge og at udtage Patent: *if for Trade Mark:* besörge indregistrering af it Varemærke] i Kongeriget paa [*leave four lines*] at modtage og at besvare desangaaende Skrivelser samt i alle Forhold, som vedröre Patentspörgsmaalet, at handle paa Vegne.

[*Place*] , 18 .

[*Signature of Applicant in full.*]

No. 24. Power in Dutch for Patent or Trade Mark.

VOLMACHT.

De ondergeteekende [*name, address, occupation of app'icant*] domicilie kiezende ten huize van gevolmachtigde te [*leave one line*] verkla te volmachtigen [*leave two lines*] om voor en namens te [*leave five lines*] om de daarvoor benoodigde stukken te teekenen domicilie te kiezen, in het kort alles te doen wat lastge in belang had kunnen mogen of moeten doen, onder belofte van goedkeuring en verband als naar de wet.

den 18 .

[*Signature of Applicant in full.*]

No. 25. Power in English for Russian Patent, to be signed before Notary and legalized by Russian Consul.

POWER OF ATTORNEY.

I (or *we*), the undersigned [*name, address, and occupation of applicant*], hereby retain, constitute and appoint [*leave two lines*] as *my* (or *our*) agent and attorney to apply for and obtain from the Government of Russia a Patent of , for the term of years, in *my* (or *our*) name, for an invention entitled [*leave three lines*]; to sign all papers, including the specification and drawings; to make alterations or amendments therein; to pay all necessary fees; to file additional specifications and drawings; to ask for re-examination of the Patent application; to ask for a prolongation or reduction of the Patent term: to receive the Letters Patent or other documents; to withdraw the application; to receive the fees returned in case of such withdrawal or refusal of the application; also to file all necessary certificates of the local authorities or others proving the working of the Patent, and to do such acts, including the appointment of a substitute for the whole or part of the present power and revocation of such appointment, as may be necessary or expedient in pursuance of the foregoing and in accordance with existing laws and regulations.

[*Place*], this day of , 18 .

[*Signature of Applicant.*]

No. 26. Power in English for Patent, Design, or Trade Mark in certain British Possessions.

POWER OF ATTORNEY.

In the matter of [*name of law*], and in the matter of [*name, address, and occupation of applicant*].

I (or *we*), the above named [*name*], do hereby retain, constitute, and appoint [*leave space for name and address of resident agent*], as *my* (or *our*) agent and attorney, to apply

for and obtain from the Government of (an exclusive privilege or Letters Patent, *or the registration of Design or* Trade Mark) for [*leave four lines*], and *I* (or *we*) authorise the said agent or his substitute to sign *my* (or *our*) name to such papers and writings, and do such acts, including substitution or revocation, as may be necessary or expedient —and, lastly, *I* (or *we*) request that all official communications now or hereafter relating to the same may be addressed to said agent at his above address, and that he be recognized as *my* (or *our*) authorized agent in all proceedings incident thereto.

Dated this day of , 18 .

Signed, sealed, and delivered at , this day of , 18 ; in the presence of } [*Signature of Applicant.*] (L.S.)

[*Signature, address, and occupation of witness.*]

No. 27. Statement of Address and Appointment of Agent for certain Australian Colonies.

COLONY OF

STATEMENT OF ADDRESS AND APPOINTMENT OF AGENT.

Sir,—*I* (or *we*) beg to inform you that *I* (or *we*) do hereby nominate, constitute, and appoint [*leave two lines*] to obtain [Letters Patent *or* the registration of Design or Trade Mark] in the colony of , in *my* (or *our*) favour, for *my* (or *our*) invention entitled [*leave four lines*], and for that purpose to sign *my* (or *our*) name, and as *my* (or *our*) act and deed to seal and deliver all documents that *my* (or *our*) said agent may think necessary or desirable, and *I* (or *we*) further empower *my* (or *our*) said agent to alter and amend such documents, whether originally signed by *me* (or *us*) or otherwise, in any manner which may be necessary, and *I* (or *we*) authorise and request you to send all notices, requisitions, and communications in connection with *my* (or *our*) said application to him at his address, as above given.

In witness whereof *I* (or *we*) have hereunto affixed *my* (or *our*) signature this day of , A.D. 189 . } [*Signature of Applicant.*]

Witness [*signature of witness*].

N.B.—For Queensland; insert in this Form after "documents" the parenthesis "(except such as are required by the Patent Rules to be signed by me or us)." No witness required for Queensland.

No. 28. New South Wales. Petition for Provisional Protection or for Patent.

To His Excellency the Governor of the Colony of New South Wales.

The humble Petition of [*name, address, and occupation of applicant*] sheweth:—

1. That your Petitioner is [*the assignee of*] the author or designer of a certain invention in or improvement to the arts or manufactures, for which he is desirous of obtaining [*a Certificate of Provisional Protection* or *Letters Patent*] for the Colony of New South Wales.

2. That communications from the Patents Office, relative to this application, may be forwarded to your Petitioner's agent [*leave two lines*].

3. That, in connection herewith, your Petitioner has paid to the Colonial Treasurer the sum of pounds sterling.

4. That the title of the invention or improvement is [*leave four lines*].

5. That, to the best of your Petitioner's knowledge and belief, the invention or improvement has not been publicly used or published or offered for sale within the Colony of New South Wales [*leave three lines*].

6. That a [*Provisional* or *Complete*] Specification, illustrated by drawings, is attached to this Petition.

7. That the said *invention or improvement*, so far as your Petitioner knows, has not been patented elsewhere [*or as the case may be*].

Your Petitioner therefore humbly prays that Your Excellency, with the advice of the Executive Council, will be pleased to grant unto him, *his* executors, administrators, and assigns [*a Certificate of Provisional Protection or Letters Patent*] for the said invention or improvement, in accordance with the provisions of the " Act of ."

And your Petitioner will every pray, &c.

Dated at , this day of , 18 .

[*Signature of Applicant.*]

No. 29. Application to Register Design in New South Wales, to be furnished in duplicate on paper 13 × 18 inches.

Copyright Act, 1879 (*Sections* 35 *and* 36). *Designs. Part III.*

APPLICATION TO REGISTER A DESIGN.

I [*name and address of applicant*] do hereby request the Registrar of Copyright to register, in Class , a Design for [*state nature of Design*], being a Design for [*quote class of goods*].

The novelty consists in , shown in the [*sketch, photograph, &c.*] below.

[*Signature of Applicant.*]

[*Date.*]

[*Leave room below the signature and date for affixing a sketch of the Design and a certificate, seven inches square.*]

No. 30. Application to Register Trade Mark in New South Wales, paper 15½ × 10 inches

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Trade Marks Act, 28 *Vic., No.* 9.

APPLICATION TO REGISTER UNDER CLASSIFICATION No. .

[*Date*] , 189 .

Sir,—I [*name, address, and calling of applicant*] have the honour to apply, under the provisions of the above Act, to be registered as the proprietor of a Trade Mark of the following description, viz.: [*here insert full description of the Mark*].

The above Trade Mark to be applied and used by me to [*here insert statement of the goods in respect of which the Mark is to be registered*] under Classification No. [*see note at foot*] of the Trade Marks Register in your department.

I enclose statutory fee for registration.

I have the honour to be, Sir,

Your obedient servant,

[*Signature.*]

To the Registrar-General, Sydney.

A separate application must be supplied for each separate class.

No. 31. New Zealand. Application for Patent by Inventor or Assignee.

APPLICATION FOR PATENT.

I [*name, address, and occupation of applicant*] declare that I am in possession of an invention for [*leave four lines*], that *I am* (or *A. B. is*) the true and first inventor thereof; and that the same is not in use by any other person or persons to the best of my knowledge and belief, and I pray that a Patent may be granted to me for the said invention, as described in the specification herewith.

Dated this day of , 189 .

[*Signature of Applicant.*]

Witness to signature

No. 32. New Zealand. Declaration of Assignee.

DECLARATION.

I [*name, address, and occupation of assignee*] do solemnly and sincerely declare that I am the *bond fide* assignee of [*name, address and occupation of inventor*] in respect of an invention entitled [*leave four lines*]; and I make this solemn declaration conscientiously believing the same to be true, and by virtue of [*state Statute in force where declaration is made.*]

[*Signature of Assignee.*]

Declared at , this day of , 189 .
Before me [*signature of person authorised to administer oaths.*]

No. 33. New Zealand, &c. Assignment to accompany Application of Assignee.

ASSIGNMENT.

Know all men that I [*name, address, and occupation of inventor*] do hereby acknowledge and declare that I am the actual inventor of a certain invention entitled [*leave four lines*], and that I have assigned the said invention, so far as the Colony of *New Zealand* is concerned, to [*name, address, and occupation of assignee*], with full power to apply for and obtain Letters Patent for the said invention in his own name, in the said Colony of *New Zealand.*

Dated this day of , 189 .

[*Signature of Inventor.*]

Witness [*signature, address, and occupation of witness.*]

No. 34. New Zealand. Declaration of Officer of Company.

DECLARATION.

I [*name of officer*], of [*address*], do solemnly and sincerely declare that I am the [*state nature of office*], of [*name and address of Company*], which is, I verily believe, the *bond fide* assignee of [*name, address, and occupation of inventor*], who is, I verily believe, the actual inventor of an invention entitled [*leave four lines*]. And I make this solemn declaration conscientiously believing the same to be true, and by virtue of [*recite Statute*].

[*Signature of Officer of Company.*]

Declared at , this day of , 189 .
Before me [*signature of person authorised to administer oaths.*]

No. 35. New Zealand. Appointment when Application filed in Agent's name.

APPOINTMENT OF NOMINEE.

Know all men that I [*name, address, occupation of communicator,*] [the assignee of A. B., of ,] the actual inventor of an invention entitled [*leave four lines*], for which I am desirous of obtaining Letters Patent in the colony of New Zealand do hereby nominate and appoint [*leave two lines*] my agent to represent me in all matters relating to the said application for Letters Patent. And I hereby give him full power to apply for the said Patent in his own name as my nominee.

Dated this day of , 189 .

[*Signature of Communicator.*]

Witness [*signature, address, and occupation of witness.*]

No. 38. Queensland (A).

The Patents, Designs, and Trade Marks Acts, 1884 *to* 1890.
Patents.
APPLICATION FOR A PATENT.
(By an original inventor or two or more inventors, or by two persons of whom one only is the inventor.)

[*Name, address, and occupation of applicant or applicants*] hereby apply for a patent and humbly pray that same may be granted to *me* for an invention for [*leave space for title of invention*].

[*Signature of Applicant or Applicants.*]

And *I* the said [*name of applicant or applicants*] do hereby sincerely declare that *I am* in the possession of the said invention, and that *I am* the true and first inventor thereof, and that the same is not in use within the Colony of Queensland by any other person or persons to the best of *my* knowledge and belief.

And *I* make this declaration conscientiously believing the same to be true.

Dated this day of , A.D. 1

[*Signature of Applicant or Applicants.*]

No. 39. Queensland (A2).

The Patents, Designs, and Trade Marks Acts, 1884 *to* 1890.
Patents.
APPLICATION FOR A PATENT.
(By the Assignee of the Inventor alone.)

[*Name, address, and occupation of applicant or applicants*] hereby apply for a patent and humbly pray that same may be granted to *me* for an invention for [*leave space for title of invention*].

[*Signature of Applicant.*]

And *I* do hereby sincerely declare that *I am* the Assignee of the said invention from [*name of inventor*] by virtue of a Deed of Assignment made by the said [*name of inventor*] dated the day of , one thousand hundred and .

And *I* further sincerely declare that *I am* in possession of the said invention, and that the said [*name of inventor*], the first and true inventor thereof; and that the same is not in use by any other person or persons in the Colony of Queensland to the best of *my* knowledge and belief.

And *I* make this declaration conscientiously believing the same to be true.

Dated this day of , A.D. 1 .

[*Signature of Applicant.*]

No. 40. Queensland (A4).

The Patents, Designs, and Trade Marks Acts 1884 *to* 1890. [*Patents.*]
APPLICATION FOR A PATENT UNDER INTERNATIONL ARRANGEMENTS.

[*Full name of applicant*] of [*address and occupation*], hereby apply for a patent, and humbly pray that the same may be granted to *me* in priority to other applicants for an invention for [*title of invention*] and that such patent shall have the date [*official date of the earliest English or other application*]. [*Signature of applicant or applicants.*] And *I* or *we* the said [*name of applicant or applicants*] do hereby sincerely declare that *I am* or *we are* in possession of the said invention, and same was not in use within the Colony of Queensland, by any other person or persons before [*above antedate*] to the best of *my* knowledge and belief.

And *I* or *we* do hereby further declare that *I* or *we* have made foreign application for protection of *my* or *our* invention for [*title*] in England and in the following British Possessions, and on the following official dates, viz. [*name of country followed by official date*] and in the following Foreign States and on the following official dates [*name of country followed by official date*].

And *I* or *we* make this declaration conscientiously believing the same to be true.

Dated this day of A.D. 189 .

[*Signature of Applicant or Applicants.*]

No. 41. Queensland (A5).

The Patents, Designs, and Trade Marks Acts, 1884 to 1890.

Patents.

APPLICATION FOR A PATENT

On behalf of a Company as assignee of the true and first inventor.

We [*names of principal officers*] being respectively [*state office*] of the [*name of company*] of [*address of company*] and being duly authorized by the managing body of the said company to make this application, hereby apply, on behalf of the said company, for a patent, and humbly pray that the same may be granted to us on their behalf for an invention for [*title of invention*].

[*Signature of Applicants.*]

And we do hereby sincerely declare that the said company are the assignees of the said invention from [*name of inventor*] by virtue of a deed of assignment made by the said [*name of inventor*] dated the day of 189 .

And we further sincerely declare that the said company are in possession of the said invention, and that the said [*name of inventor*] is the first and true inventor thereof, and that the same is not in use by any other person or persons in the Colony of Queensland to the best of our knowledge and belief.

And we make this declaration conscientiously believing the same to be true.

Dated this day of A.D. 189 .

[*Signature of Applicants making the declaration.*]

No. 42. South Australia. Petition for Provisional Protection.

In the Matter of the Patents Amendment Act, 1887.

To the Commissioner of Patents for the province of South Australia.

The petition of [*name, address, occupation of applicant*] sheweth that your petitioner is entitled to obtain a Patent for a certain invention or improvement in an invention for [*leave four lines*].

That your petitioner's address, to which notices in respect of this present petition may be sent, is at [*leave two lines for address in the Colony*] whom appoint as agents in respect of this application.

Your petitioner therefore humbly prays that a Certificate of Provisional Protection for the using and publishing of the said invention within the said province for the term of twelve months may be granted to your petitioner pursuant to The Patents Amendment Act, 1887.

And your petitioner will ever pray, &c.

[*Signature of Applicant.*]

* By inserting these words in italics a separate appointment of agent is not required

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No. 43. South Australia. Petition for Patent.

In the Matter of the Patent Act of 1877.

To the Commissioner of Patents for the Province of South Australia.

The petition of [*name, address, occupation of applicant*] sheweth :—

1. That your petitioner is the true and first inventor of a certain invention for [*leave four lines*].

2. That the said invention has not been publicly used or offered for sale within the said province prior to the date of this present petition.

3. That your petitioner's address, to which notices in respect of this petition may be sent, is [*leave two lines for address in the Colony*] whom appoint as agents in respect of this application.

Your petitioner therefore humbly prays that Letters Patent for the sole making, using, and exercising and vending of the said invention within the said province for a term of fourteen years, may be granted to your petitioner pursuant to the Patent Act, 1877.

And your petitioner will ever pray.

[*Signature of Applicant.*]

This is the petition marked A referred to in the annexed declaration of [*name of applicant*]. Declared at , this day of , 18 .

Before me [*signature of person administering oath*].

* By inserting these words in italics a separate appointment of agent is not required

No. 44. South Australia. Specification.

In the margin of first page of specification write:—

This is the specification marked B referred to in the annexed declaration of [*name of applicant*]. Declared at , this day of , 18 .
before me [*signature of person administering oath.*]

The specification must be signed by the applicant before two witnesses.

No. 45. South Australia. Declaration for Patent.

DECLARATION.

I [*name, address, occupation of applicant*], do solemnly and sincerely declare as follows:—

1. I verily believe myself the true and first inventor of the invention mentioned in the Petition and specification hereunto annexed and marked respectively A and B.

2. The several allegations contained in the said Petition hereunto annexed and marked A are true.

Declared at , the day of , 18 . } [*Signature of Applicant.*]

Before me [*signature of person administering oath*].

No. 46. Victoria or South Australia. Application for Registration of Design.

I [*name*], of [*address*], do hereby certify that I am the proprietor of copyright of a certain design for [*title and nature of design*]; and I hereby require you to make entry in the register book of my proprietorship of such copyright according to the particulars underwritten:—

Title and Nature of Design.	Name and Address of Proprietor.	Date of First Publication.	Term for which Applicant requires Copyright.

Dated this day of , 18 .

[*Signature of Applicant.*]

Witness [*signature of witness*].

To the Registrar of Copyrights.

No. 47. Victoria, &c. Appointment of Agent and Address for Service.

AUTHORISATION.

I hereby appoint [*leave two lines*], to act as my agent in respect of my application for [a Patent for or the registration of my trade mark in Class , in respect of] [*leave four lines*], and I request that all notices, requisitions, and communications relating thereto may be sent to such agent at the above address.

Dated the day of , one thousand eight hundred and ninety .

[*Signature.*]

No. 48. Victoria. Application for Patent by Single Inventor.

Application for Patent.

I [*name*], of [*address*], do solemnly and sincerely declare that I am in possession of an invention for [*leave four lines*], that I am the actual inventor thereof; and that the said invention is not in use in Victoria by any other person or persons to the best of my knowledge and belief. And I desire that a Patent may be granted to me for the said invention.

And I make [*here recite the Statute in force in the country in which the declaration is made*].

[*Signature of Declarant.*]

Declared this day of , one thousand eight hundred and ninety , at , in the of .

Before me [*signature of person administering oath*].

N.B.—For United States the above recital is as follows:—"and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of Section 1778 of the Revised Statutes of the United States of America approved 23rd June, 1874."

No. 49. Victoria. Application for Patent by Joint Inventors.

Application for Patent.

We [*names, addresses, occupations*] do severally, solemnly, and sincerely declare that we are in possession of an invention for [*leave four lines*], that we are the actual inventors thereof; and that the said invention is not in use in Victoria by any other person or persons to the best of our knowledge and belief; and we desire that a Patent may be granted to us for the said invention.

And I [*name*] make [*here recite the Statute in force in the country in which the declaration is made*].

[*Signature of first Declarant.*]

And I [*name*] make [*here recite the Statute in force in the country in which the declaration is made*].

[*Signature of second Declarant.*]

Declared this day of , one thousand eight hundred and ninety , at , in the of , by the above-named .

Before me [*signature of person taking declaration of first Applicant.*]

Declared this day of , one thousand eight hundred and ninety , , in the of , by the above-named .

Before me [*signature of person taking declaration of second Applicant*].

No. 50. Victoria, Application for Patent by Inventor and Assignee jointly.

Application for Patent.

We [*names, addresses, occupations*] do severally, solemnly, and sincerely declare that we are in possession of an invention for [*leave four lines*], that I the said [*name*] am the actual inventor thereof and that I the said [*name*] am the assignee of the said [*name*] of a part or share of and in the said invention; and that the said invention is not in use in Victoria by any other person or persons to the best of our knowledge and belief; and we desire that a Patent may be granted to us jointly for the said invention.

And I [*name*] make [*here recite the Statute in force in the country in which the declaration is made*].

[*Signature of first Declarant.*]

And I [*name*] make [*here recite the Statute in force in the country in which the declaration is made*].

[*Signature of second Declarant.*]

Declared this day of , one thousand eight hundred and ninety , at , in the , by the above-named [*name*].

Before me [*signature of person taking declaration of first Declarant*].

Declared this day of , one thousand eight hundred and ninety , at , in the , by the above-named [*name*].

Before me [*signature of person taking declaration of second Declarant*].

No. 51. Victoria. Application for Patent by Assignee Alone.

APPLICATION FOR PATENT.

I [*name, address, occupation*] do solemnly and sincerely declare that I am in possession of an invention for [*leave four lines*], that I am the assignee of [*name*] who is, I verily believe, the actual inventor thereof; and that the said invention is not in use in Victoria by any other person or persons to the best of my knowledge and belief. And I desire that a Patent may be granted to me for the said invention.

And I make [*here recite the Statute in force in the country in which the declaration is made*].

[*Signature of Assignee.*]

Declared this day of , one thousand eight hundred and ninety at , in .

Before me [*signature of person taking declaration*].

No. 52. Western Australia. Application for Patent. . . .

FORM OF APPLICATION FOR PATENT.

I [*name, address, and occupation*] do solemnly and sincerely declare that I am in possession of an invention for [*leave four lines*]; that I am the true and first inventor thereof; and that the same is not in use by any other person or persons, to the best of my knowledge and belief; and I humbly pray that a Patent may be granted to me for the said invention.

And I make the above solemn declaration conscientiously believing the same to be true, and by virtue of [*recite Statute*].

Your petitioner's address, to which notices in respect of the application may be sent, is at [*leave two lines for address in the Colony*].

[*Signature of Applicant.*]

Declared at , in , this day of , 18 .

Before me [*signature of person administering oath*].

No. 53. Japan. Power of Attorney for Patent, Design or Trade Mark.

I, (or *we*) [*name, address and calling of applicant or applicants in full*] hereby appoint [*leave blank for name of Japanese Agent*] to act as [*my* or *our*] lawful agent, with full power of substitution and revocation, in respect of making application for [*insert* patent of years for *title of invention or* registration of Trade Mark on *name of goods*] to the Patent Bureau of Japanese Empire, and of receiving a certificate of [*patent or trade mark*] therefrom, and if it be necessary, of applying for re-examination, and for prosecuting and conducting the case on trial, and of taking all necessary proceedings and steps for making such applications, and of making preparation, presentation, amendment, alteration, withdrawal and representation of all documents, papers, sketches and drawings necessary for the premises, by affixing as [*my or our*] lawful agent his own signature and seal thereon.

This day of , 189 .

[*Signature of Applicant or Applicants.*]

I [*name of the Notary Public*] hereby certify that [*name of the applicant or applicants*] came this day personally before me and signed the above power and I hereby certify from personal knowledge that the above mentioned [*name of the applicant or applicants is or are*] of *British** nationality.

This day of , 189 .

[*Signature of Notary Public.*]

To be legalized by Japanese Consul.

(*Seal*)

*Or *German* or *United States*, as the case may be.

No 54. Japan. Power of Attorney for Patent, Design or Trade Mark.

COMPANY OR CORPORATION.†

[*Name of company or corporation, address and occupation in full*] by [*name of a director or other officer*] on behalf of said [*company, etc.*] hereby appoint [*leave blank for name of Japanese Agent*] to act as [*the company's*] lawful agent, with full power of substitution and revocation, in respect of making application for [*insert*] patent for years for [*title of invention*] or registration of Trade Mark on [*name of goods*] to the Patent Bureau of Japanese Empire, and of receiving a certificate of [*Patent or Trade Mark*] therefrom, and if it be necessary, of applying for re-examination, and of prosecuting and conducting the case on trial, and of taking all necessary proceedings and steps for making such applications, and of making preparation, presentation, amendment alteration, withdrawal and representation of all documents, papers, sketches, and drawings, necessary for the premises, by affixing as [*the company's*] lawful agent his own signature and seal thereon.

This day of 189 .

[*Name of company, etc.*]

by [*signature of officer, etc.*]

Director [*etc.*] representing the said *company* [*etc*].

I [*name of the Notary Public*] hereby certify that [*name of the company or corporation*] being a company or corporation existing as such under *British** law is of *British** Nationality, and Mr. [*name of manager or director who came before the Notary public with the power to represent the firm*] is the [*manager, director, etc.*] with full power and authority to act and sign for the said [*name of the company or corporation*] and the said Mr. came this day personally before me and signed the above power.

This day of , 189 . [*Signature of the Notary Public.*]

(*Seal*) To be legalized by Japanese Consul.

*Or *German* or *United States of America*, as the case may be.

†Note.—In Germany, firms having a legal existence may use Form No. 54, but in Great Britain and the United States, application should be in the names of separate partners (each signing before Notary) on Form 53.

No. 55. Petition for Canadian Patent.

To the Commissioner of Patents, Ottawa.

The petition of [*name, address, and occupation of applicant*] sheweth: That [*your petitioner* or *A.B. of* ,] hath invented new and useful improvements in [*leave three lines*] not known or used by others before (*his*) invention thereof, and not being in public use or on sale for more than one year previous to (*his*) application in Canada, with (*his* or *the*) consent or allowance (*of the said A.B.*) as such inventor.

[That your petitioner, by assignment bearing date , acquired the right of obtaining a Patent from A.B. aforesaid for the said invention.]*

Your petitioner therefore prays that a Patent may be granted to him [as assignee of the said A.B.]* for the said invention as set forth in the specification in duplicate sent herewith, and for the purposes of the Patent Act your petitioner elects domicile in the city of Ottawa, province of Ontario.

[*Signature of Applicant.*]

Signed at , in , this day of , 18 .

* If applicant is the assignee, insert these words.

No. 56. Power for Canadian Patent.

To the Commissioner of Patents, Ottawa.

The undersigned [*name, address, and occupation of applicant*] hereby appoints [*leave space*], attorney, with full power of substitution and revocation to prosecute an application for new and useful improvements in [*leave three lines*] to sign the drawings, to receive the Patent, and to transact all business in the Patent Office connected therewith.

Signed at , in , this day of , 18 .

[*Signature of Applicant.*]

In the presence of [*signature of witness.*]

No. 57. Oath for Canadian Patent.

[*Country, state, and town where oath is made.*]

I [*full name of inventor, address, and occupation*] make oath and say that I verily believe that I am the inventor of the new and useful improvements in [*leave three lines*], described and claimed in the annexed specification in duplicate, and I for which ["*I*," *or* "*I and C D*," *or* "*C D*" *(the applicant)*] solicit a Patent by (*my* or *his*) petition dated the day of , 18 . And I further say that the several allegations contained in the said petition are respectively true and correct.

[*Signature of Inventor.*]

Sworn before me at the city of , the day of , 18 .

[*Signature of British Consul or Notary.*]

(Seal)

No. 58. Signatures for last sheets of Specifications for Canadian Patents, to be furnished in duplicate.

[*Place*] this day of 18 .

[*Signature of Inventor.*]

In the presence of [*signatures of two witnesses*].

No. 59. Application for Canadian Trade Mark, to be furnished in duplicate.

To the Minister of Agriculture (Trade Mark and Copyright Branch), Ottawa.

I [*name, address, and occupation of applicant*] hereby furnish a duplicate copy of [*specific* or *general*] Trade Mark to be applied to the sale of [*state to what goods the Mark is applied only in a specific Mark*] in accordance with sections of the Trade Mark and Designs Act of 1879, which I verily believe is mine on account of having been the first to make use of the same [or on account of having acquired it from A. B., of whom I verily believe to be the first proprietor thereof (*as the case may be*)].

The said Trade Mark consists in [*describe Mark*], such as shown in the accompanying *facsimile*, and I hereby request that the said Trade Mark be registered in accordance with the law. I forward herewith the fee of , in accordance with section 12 of the said Act.

In testimony thereof I have signed, in the presence of the two undersigned witnesses, at the place and date hereunder mentioned.

[*Signature of Applicant.*]

Signed in presence of [*signatures of two witnesses.*]

No. 60. Application for United States Patent or for Design.

To the Commissioner of Patents.

Your petitioner [*name of applicant*] a subject of the [*state title of sovereign*], residing at [*address of applicant*] prays that Letters Patent may be granted to him as Inventor for [*leave two lines for title*]* set forth in the annexed specification; and he hereby appoints [*leave two lines*], his attorney, with full power of substitution and revocation, to prosecute this application, make alterations and amendments therein, to sign the drawings, to receive the Patent, and to transact all business in the Patent Office connected therewith.

[*Signature of Applicant.*]

* If for a Design, insert "*for the term of years for the new and original design for* ."

No. 61. Form for end of specification for United States Patent or Design.

In witness whereof *I* (or *we*) have signed this specification in presence of two witnesses.

[*Signature of Inventor.*]

Witnesses [*signatures of two witnesses*].

No. 62. Form of Oath for United States Patents.

OATH OR AFFIRMATION.

[*Country and place where oath is taken.*]

[*Name of applicant*], the above-named petitioner, being duly sworn, deposes and says that he is a subject of the , and resident of [*town*], in , and that he verily believes *himself* to be the original, first, and [*sole*] inventor of the [*leave space for title*] described and claimed in the annexed specification; that he does not know and does not believe that the same was ever known or used before his invention or discovery thereof; or patented or described in any printed publication in the United States of America or any foreign country before his invention or discovery thereof or more than two years prior to this application; or in public use or on sale in the United States for more than two years prior to this application, and that no application for foreign patent has been filed by him or his legal representatives or assigns in any foreign country except as follows [*insert countries and dates of filing of previous applications for patents for the same invention, if any*].

[*Signature of Applicant.*]

Sworn to and subscribed before me this day of A.D. 1 .

[*Signature of Notary or U.S. Consul.*]

No. 62a. Form of Oath for United States Design.

OATH OR AFFIRMATION.

[*Country and place where oath is taken.*]

A.B., the above-named petitioner, a subject of the , and resident of [*address*], in , being duly sworn, deposes and says that he verily believes himself to be the original, first, and inventor of the [*leave space for title*] described and claimed in the foregoing specification; that the same has not been patented to himself or to others with his knowledge or consent [*if the invention has not been patented in any country, add the words "in this or any country." If prior patents exist, add the words "except in," and proceed to state the name or names of the country or countries in which it has been patented, and the official number and date of each prior patent*]; that the same has not to his knowledge been in public use or on sale in the United States for more than two years prior to this application, and he does not know and does not believe that the same was ever known or used prior to his invention thereof.

[*Signature of Inventor.*]

Sworn to and subscribed before me this day of , 18 .

(Seal.) [*Signature of Notary or U.S. Consul.*]

No. 63. Application for United States Trade Mark Registration.

LETTER OF ADVICE.

To the Commissioner of Patents.

The undersigned presents herewith a *facsimile* of his lawful Trade Mark, and requests that the same, together with the accompanying statement and declaration, may be registered in the United States Patent Office in accordance with the law in such case made and provided

[*Signature of Applicant.*]

No. 64. Statement for United States Trade Mark Registration.

STATEMENT.

To all whom it may concern.

Be it known that I , a subject of , residing at [*town*], and doing business at No. Street, in the said city, have adopted for my use a Trade Mark for , of which the following is a full, clear, and exact specification [*here describe Mark and state its essential features*].

This Trade Mark I have used continuously in my business since . The class of merchandise to which this Trade Mark is appropriated is , and the particular description of goods comprised in said class upon which I use it is . The Trade Mark is applied to the goods in the following manner—[*describe manner*].

[*Signature of Applicant.*]

[*Signatures of two witnesses.*]

No. 65. Declaration for United States Trade Mark Registration.

DECLARATION.

State of }
County of } ss.

[*Name of applicant*] being duly sworn, deposes and says that he is the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that he has at this time a right to the use of the Trade Mark therein described; that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that it is used by him in commerce between the United States and foreign nations or Indian tribes, and particularly with [*here insert name of such foreign nation*], and that the description and *facsimiles* presented for record truly represent the Trade Mark sought to be registered.

[*Signature of Applicant.*]

Sworn and subscribed before me this day of , 18 .

(Seal.) [*Signature of Notary or U.S. Consul.*]

No. 66. Forms for Hawaii.

Same form as for United States applications, Nos. 60, 61 and 62A, petition being addressed to "The Minister of the Interior," and the oath alleging, amongst the rest, that the invention has not been "introduced into public use in the Hawaiian Kingdom for more than *one* year prior" to the application, &c.

No. 67. Forms for Liberia.

Same forms as for United States applications, petition being addressed to "The Secretary of State," and the oath alleging that the invention is not publicly known or used in the Republic of Liberia.

No. 68. Form for Newfoundland.

Same forms as for United States applications, petition being addressed to "The Colonial Secretary," and the oath alleging that the invention is not publicly known or used in the Island of Newfoundland.

No. 69. Petition for British Guiana.

To His Excellency [*leave space for name of the Governor*], Governor and Commander-in-Chief in and over the Colony of British Guiana, Vice-Admiral and Ordinary of the same, &c., &c., &c.

The humble petition of [*name, address, and occupation of the applicant*] respectfully sheweth:—

That your petitioner is in possession of an invention for [*leave space for title of the invention*], which invention he believes to be of great public utility, that he is the true and first inventor thereof, and that the same is not in use by any other person or persons in this colony, to the best of his knowledge and belief.

Your Petitioner therefore humbly prays—

That your Excellency will be pleased to grant unto him, his heirs, executors, administrators, and assigns, Letters Patent in the name of Her Majesty for the sole use, benefit, and advantage of his said invention within the Colony of British Guiana, for the term of fourteen years, pursuant to the ordinance in that case made and provided. And your petitioner will ever pray, &c.

[*Signature of Applicant.*]

No. 70. Affidavit for British Guiana to be Legalized.

I [*name of applicant*], of [*insert place of residence and occupation*], having been duly sworn, make oath and say that I am in possession of an invention for [*insert the title as in petition*], which invention I believe to be of great public utility; that I am the true and first inventor thereof, and that the same is not in use by any other person or persons in this colony, to the best of my knowledge and belief.

[*Signature of Applicant.*]

Sworn this day of , A.D.
Before me

(*Official Seal.*) [*Title of Office.*]

No. 71. Specification for British Guiana to be Legalized.

To all to whom these presents shall come, I [*insert name of applicant*], of [*insert place of residence and occupation*] send greeting.

Whereas His Excellency , Governor and Commander-in-Chief in and over the Colony of British Guiana, &c., by Letters patent bearing date the day of , in the year of our Lord, one thousand eight hundred and , in the year of Her Majesty's reign, did, in the name of Her Majesty, pursuant to the ordinance in such case made and provided, give and grant unto me, the said [*name of applicant*], his especial licence that I, the said [*name of applicant*], my heirs, executors, administrators, and assigns, or such others as I, the said [*name of applicant*], my heirs, executors, administrators, and assigns, should at any time agree with, and no others, from time to time, and at all times thereafter during the term therein expressed, should and lawfully might make, use, exercise and vend within the Colony of British Guiana, an invention for [*here insert title of invention*], upon the condition (amongst others) that I, the said [*name of applicant*], by an instrument in writing, under my hand, should particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed, and cause the same to be deposited in the Registrar's office for the counties of Demerara and Essequibo, within six calendar months next and immediately after the date of the said Letters Patent.

Now know ye that I, the said [*name of applicant*], do hereby declare the nature of my said invention, and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement, that is to say [*describe the invention.*]

In witness whereof I the said , have hereunto set my hand this day of , A.D., , in the presence of the subscribing witnesses.

[*Signature of applicant.*]

[*Signature of witnesses.*]

[*To be signed before a Notary Public or British Consul.*]

No. 72. Declaration for British Honduras or Leeward Islands to be Legalized.

No.

I [*name, address, and occupation of applicant*] do solemnly and sincerely declare that I am in possession of an invention for, &c. [*leave two lines for title of invention*], which invention I believe to be of great public utility; that I am the true and first inventor thereof, and that the same is not in use by any other person on persons, to the best of my knowledge and belief. [*Where a complete specification is to be filed with the petition and declaration, insert these words*—"And that the instrument in writing under my hand and seal hereunto annexed particularly describes and ascertains the nature of the said invention and the manner in which the same is to be performed."] And I make this declaration conscientiously believing the same to be true.

[*Signature of Applicant.*]

Declared at , this day of , A.D. , before me.

[*Signature of Notary Public or British Consul.*]

No. 73. Declaration for Argentine Patent.

Abajo firmado [*name of applicant*] vecino de [*address*] juro e declaro solemnemente que la invencion cuya respectiva patente solicita y gestiona mi apoderado legal [*leave one line*] residente en [*leave one line*] y cuyo titulo es [*leave four lines*] es de mi esclusiva invencion y propriedad; que todavia no hé solicitado por ella patente alguna en ningun pais, que nadie la conoco aún; y que al presentarme preferentemente en la República Argentina, para patentearla por vez primeim, lo hago por creerlo asi mucho mas conveniente á mis intereses.

En fé de lo cual firmo la presente declaracion en [*place*] a los [*day*] dias del mes de [*month*] de 18

[*Signature of Applicant.*]

No. 74. Cape Colony, Application to Register Trade Mark.

A.—To the Registrar of Deeds, Cape Town.

I [*name, address, occupation*] hereby apply for the registration of the following Trade Mark, of which a representation is contained in the paper hereto annexed, namely [*insert description of Mark*]. I desire that the said Trade Mark may be registered in respect of [*insert description of goods and class*], in the name of [*insert name of firm*].

Dated at [*place*], this day , 18 .

[*Signature of applicant or of partner in firm, adding "a member of the firm."*]

No. 75. Cape Colony, Declaration to accompany Application for Trade Mark.

I [*name, address, occupation*] do hereby solemnly and sincerely declare:—

1. That I am lawfully entitled to the use of the Trade Mark described in the application hereto annexed marked A, which is signed by me and is shown to me at the time of making this declaration.

[*If used prior to 8th August*, 1877, *add*: 2. That the said Trade Mark was used by me (*or my firm or company*) in respect of the goods in regard to which it is sought to be registered for at least years before the 8th August, 1877.]

And I make this declaration conscientiously believing the same to be true.

[*Signature of Applicant.*]

Declared at , this day of , 18 .

Before me [*signature of person administering oath.*]

No. 76. Natal. Application for Trade Mark Registration.

One representation of the Trade Mark to be affixed here.

You are hereby requested to register the accompanying Trade Mark in respect of the following description of goods, namely: , class , in the name of , who claims to be the proprietor thereof.

[*Signature of Applicant.*]

To the Comptroller, Registrar's Office, Supreme Court.

No. 77. South African Republic or Orange Free State. Application for Patent.

OCTROOI-AANVRAGE.

Ik (or *Wij*) [*name and address of applicant*], verkla hierbij dat *ik* (or *Wij*) in het bezit van eene uitvinding voor [*leave four lines for title in Dutch*] dat *ik* (or *Wij*) de eerste en ware uitvinder daarvan ; dat die uitvinding, voor zoover *ik* (or *Wij*) weet en geloof, niet toegepast of gebruikt wordt door eenen anderen persoon of andere personen: en *ik* (or *Wij*) verzoek met verschuldigden eerbied, dat *mij* voor gezegde uitvinding een octrooi worde verleend.

[*Place*] den [*day*] dag der maand [*month*] van het jaar onzes Heeren [*year*].

[*Signatures of two Witnesses.*] [*Signature of Applicant.*]

No. 78. South African Republic and Orange Free State. Complete Specification.

BESCHRIJVING.

Ik (or *Wij*) [*name and address of applicant*], verkla hierbij, dat het wezen *mijner* uitvinding van [*leave space for title*] en de wijze van uitvoering daarvan nauwkeurig en in bijzonderheden worden uiteengezet door de volgende beschrijving [*here follows specification in Dutch*].

[*Place*] den [*day*] dag der maand [*month*] van het jaar onzes Heeren [*year*].

[*Signature of Applicant.*]

No. 79. South African Republic. Trade Mark Application.

APPLICATIE VOOR REGISTRATIE VAN HANDELSMERK.

Ik (or *Wij*) [*name of applicant*] te [*address*] van beroep [*occupation*] verkla bij dezen dat het hieronder door *mijn* (or *ons*) beschreven Handelsmerk in *het Verecnigd Koninkrijk van Groot Brittanje en Ierland* [*or as the case may be*] op den dag der maand des jaars bescherming heeft verkregen en als een wettig Handelsmerk *mijn* (or *ons*) wettig eigendom is, de beschrijving van het Handelsmerk is als volgt [*insert description of Mark in Dutch*]. Het merk te worden geregistreerd voor [*description of goods*].

En *ik* (or *wij*) wensch het gezegd Handelsmerk de onder de wetten der Zuid Afrikaansche Republiek verkrijgbare bescherming te doen verkrijgen en na daarvoor eerbiedigelijk applicatie bij de bevoegde autoriteit op dezen dag der maand des jaars 189 , in tegenwoordigheid van de ondergeteekend getuigen

[*Signature of Applicant.*]

[*Signatures and addresses of two witnesses.*]

No. 81. Victoria. For Enlargement of Time for Payment of Renewal Fee.

[*Place*] [*date*]

Sir,—I hereby apply for an enlargement of time for month , in which to make the payment of two pounds ten shillings in respect of the term upon Patent No. , transmit herewith a statutory declaration setting forth reasons for failing to make such payment within the prescribed time.

I am, Sir, your obedient servant,

[*Signature of Patentee.*]

To the Commissioner of Patents,
Patent Office, Melbourne.

No. 82. Victoria. For Enlargement of Time for leaving a Complete Specification.

Sir,—I hereby apply for an enlargement of time for one month in which to leave a complete specification upon Application No. .

The circumstances in and grounds upon which this enlargement is applied for are fully set forth in the statutory declaration forwarded herewith.

I am, Sir, your obedient servant,

[*Signature of Applicant.*]

To the Commissioner of Patents,
Patent Office, Melbourne.

No. 83. Victoria. For Enlargement of Time for Acceptance of Complete Specification.

Sir,—I hereby apply for an enlargement of time for [*one* or *two*] month , for acceptance of the complete specification upon Application No. .

The circumstances in and grounds upon which this enlargement is applied for are fully set forth in the statutory declaration forwarded herewith.

I am, Sir, your obedient servant,

[*Signature of Applicant.*]

To the Commissioner of Patents,
Patent Office, Melbourne.

No. 84. Hong Kong. Registration of Trade Marks.

"C."

This is the petition marked "C" referred to in the declaration of [*name*] made this day of , 189 , before me.

PETITION.

In the matter of Ordinance No. 16 of 1873, entitled "An Ordinance enacted by the Governor of Hong Kong, with the advice of the Legislative Council thereof, to provide for the Registration of Trade Marks," and of Ordinance No. 8 of 1886, enacted by the Governor of Hong Kong, with the advice of the Legislative Council thereof, entitled "*The Trade Marks Ordinance Amendment Ordinance, 1886.*" And

In the matter of the application of [*name*] for leave to register certain Trade Marks in the Register of Trade Marks in the Colonial Secretary's office aforesaid.

To His Excellency the Honourable administering the Government of Hong Kong and its dependencies.

The humble petition of [*name*] sheweth:—

1. Your petitioner is [*name*], of [*address*], aforesaid [*occupation*].

2. The said firm of [*name*] claim the right to the exclusive use of the several Trade Marks, *facsimiles* of which are annexed to my declaration bearing even date herewith, and respectively marked with the letters "A" and "B."

Your petitioner therefore prays your Excellency to grant him leave to register the said Trade Marks in the same of the said firm of [*name*] in the Register of

Trade Marks, and to order the registration of the said Trade Marks in the Colonial Secretary's office, and the filing therein of the said declaration transmitted herewith.

And your petitioner will ever pray, &c.

Dated this day of , 189 .

[*Signature of Applicant.*]

No. 85. Hong Kong. Declaration for Trade Marks.

In the matter of Ordinance No. 16 of 1873, entitled "An Ordinance enacted by the Governor of Hong Kong, with the advice of the Legislative Council thereof, to provide for the Registration of Trade Marks," and of Ordinance No. 8 of 1886, entitled "An Ordinance enacted by the Governor of Hong Kong, with the advice of the Legislative Council thereof, entitled 'The Trade Marks Ordinance Amendment Act of 1886.'" And

In the matter of the application of Messrs. , of , for leave to register certain Trade Marks in the Register of Trade Marks in the Colonial Secretary's office aforesaid, I [*name*], of [*address and occupation*] do solemnly, sincerely, and truly declare as follows:—

1. I am a partner in the firm of Messrs. [*name*], of [*address*].

2. To the best of my knowledge, information, and belief, the said firm of [*name*] are solely entitled to the exclusive use of the Trade Mark, *facsimiles* of which are hereunto annexed, and respectively marked "*A*" and "*B*."

3. The description and nature of goods upon which such Trade Marks are intended to be used are [*description of goods*].

4. The Trade Marks, *facsimiles* of which are hereunto annexed, are the same as the Trade Marks referred to in my petition bearing even date herewith, and now produced and shown to me and marked "C."

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the sixth year of the reign of his late Majesty King William the Fourth, entitled "An Act to repeal an Act of the (then) present session of Parliament, entitled 'An Act for the more effectual abolition of oaths and affirmations taken and made in various Departments of State, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths.'"

[*Signature of Applicant.*]

Declared at , this day of , 189 , before me.

[*Signature of person administering Declaration.*]

No. 86. Tasmania. Application for Patent.

Application for Patent.

I [*name, address, and calling*] do solemnly and sincerely declare that *I am* (or *we are*) in possession of an invention for [*title*], and *I am* (or *we are*) the true and first inventor thereof, and that the same is not in use by any other person or persons to the best of *my* (or *our*) knowledge and belief, and *I* (or *we*) humbly pray that a Patent may be granted to *me* (or *us*) for the said invention, described in the specification herewith.

Witness *my* (or *our*) hand this day of , 189 .

[*Signature of Applicant.*]

[*Witness to Signature.*]

No. 87. Tasmania. Provisional Specification.

Provisional Specification.

I (or *we*) [*name, address, and calling*] do hereby declare the nature of *my* (or *our*) invention for [*title*] to be as follows—[*here follows description.*]

[*Signature of Inventor.*]

Dated this day of , 189 .

No. 88. Tasmania. Complete Specification.

COMPLETE SPECIFICATION.

[*Insert full title of Invention.*]

I (or *we*) [*name, address, and calling*] do hereby declare the nature of *my* (or *our*) invention for [*title*], and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement—

[*Full description of Invention.*]

Having now particularly described and ascertained the nature of my said invention, and in what manner the same is to be performed, I declare that what I claim is—

[*Full Claim.*]

[*Signature of Applicant.*]

Dated this day of , 189 .

No. 89. Tasmania. Application for Design.

You are hereby requested to register the accompanying Design in Class in the name of , who claims to be the proprietor thereof, and to return the same to .

(*Statement of the nature of Design.*)

Registration fees enclosed, £ .

To the Registrar, Patents Office, Hobart.

[*Signature of Applicant.*]
[*Address.*]

No. 90. Tasmania. Application for Trade Mark.

(One *facsimile* of Mark to be fixed within this square, and a second copy on paper of same size.)

You are hereby requested to register the accompanying Trade Mark (In Class in respect of), in the name of (*name, address, and business*), who claims to be the proprietor thereof.

Registration fees enclosed, £ .

[*Signature of Applicant.*]

To the Registrar, Patents Office, Hobart.

No. 91. Power of Attorney for Jamaica Patent.

Know all men by these presents that I, of in the County of , Do hereby retain, constitute and appoint of as my agent or attorney to apply for and obtain from the Government of the said Island of Jamaica an exclusive privilege or Letters Patent for [*title of invention*], and I authorise him to sign my name and affix my seal to such petitions, declarations, specifications, plans, papers and writings and to do such acts regarding the same and obtaining, recording and completing the Letters Patent aforesaid as may be necessary or expedient. In witness whereof I, the said have herewith set my hand and affixed my seal this day of one thousand eight hundred and .

Signed, Sealed and Delivered by the said in the presence of } [*Signature of Applicant.*]

To be legalized by Notary and British Consul.

(*Seal*)

No. 92. Declaration for Jamaica Patent.

I, of do solemnly and sincerely declare that I am in possession of an invention for [*title of invention*] which invention I believe will be of great public utility; that I am the true and first inventor thereof; and that the same is not in use by any other person or persons to the best of my knowledge and belief; and that the instrument in writing under my hand and seal, hereunto annexed particularly describes and ascertains the nature of the said invention and the manner in which the same is to be performed, and I make this declaration conscientiously believing the same to be true and by virtue of the provisions of [*here recite Declaration Act or its equivalent*].

Dated at this day of A.D. 189 , before me,

[*Signature of Applicant.*]

To be legalized by Notary and British Consul.

No. 93. Specification for Jamaica Patent.

To all to whom these presents shall come, I, of send greeting:—Know Ye, that I, the said do hereby declare the nature of my invention for [*insert title of invention*] and in what manner the same is to be performed to be particularly described and ascertained, in and by the following statement (that is to say) [*here insert the invention*].

In witness whereof I, the said A.B., have hereunto set my hand this day of A.D. 189 .

We attest:— [*Signature of Applicant.*]

C.D. of address, occupation, &c.
E.F. of address, occupation, &c.

No. 94. Cape Colony. Form of Specification.

SPECIFICATION.

To all to whom these presents shall come I [*name, address, and occupation of applicant*] send greeting:—Whereas I am desirous of obtaining Letters Patent for securing unto me Her Majesty's special licence that I, my executors, and assigns, and such others as I or they should at any time agree with, and no others, should and lawfully might, from time to time and at all times during the term of fourteen years (to be computed from the day on which this instrument shall be left at the office of the Colonial Secretary) make, use, exercise and vend, within the Colony of the Cape of Good Hope, an invention for [*insert the title of the invention*]; and in order to obtain the said Letters Patent, I must, by an instrument in writing, under my hand, particularly describe and ascertain the nature of the said invention, and in what manner the same is to be performed, and must also enter into the covenant hereinafter contained:

Now know ye that the nature of the said invention and the manner in which the same is to be performed are particularly described and ascertained in and by the following statement, that is to say [*describe the invention and append claims*].

And I do hereby, for myself, my heirs and executors, covenant with Her Majesty, her heirs and successors, that I believe the said invention to be a new invention as to the public use and exercise thereof, and that I do not know or believe that any person other than myself is the true and first inventor of the said invention, and that I will not deposit these presents at the office of the Colonial Secretary with any such knowledge or belief as last aforesaid.

In witness whereof I have hereunto set my hand at , this day of , 189 .

[*Signature of Applicant.*]

No. 95. Natal. Form of Specification.

This form is the same as that for Cape Colony, No. 94, with the substitution of "Natal" for "Cape of Good Hope," and "Attorney General" for "Colonial Secretary."

No. 96. Zululand. Form of Specification.

This form is the same as that for Cape Colony, No. 94, with the substitution of "Zululand" for "Cape of Good Hope," and "Crown Prosecutor" for "Colonial Secretary."

No. 97. Rhodesia. Form of Specification.

This form is the same as that for Cape Colony, No. 94, with the substitution of "Territories of the British South African Company" for "Cape of Good Hope," and "Registrar of Deeds" for "Colonial Secretary."

APPENDIX III.

DRAWINGS.—GENERAL RULES.

(1) **Drawings** of the invention should be furnished whenever the nature of the case admits of it, and must show every feature of the invention covered by the claims. No writing other than letters of reference should appear on the drawings.

(2) **Materials.**—Drawings must be made upon the prescribed material. Indian ink alone should be used to secure perfectly black and solid lines. In some instances lithographs are accepted.

(3) **Lines.**—All drawings should be made with the pen only. Every line and letter must be absolutely black. This direction applies to all lines, however fine, to shading, and to lines representing cut surfaces in sectional views. All lines must be clean, sharp, and solid, and they must not be too fine or crowded. Drawings should be made with the fewest lines possible consistent with clearness.

(4) **Shading.**—Surface shading, when used, should be open. Sectional shading should be made by oblique parallel lines, which may be about one-twentieth of an inch apart. Shading (except on sectional views) should be used only on convex and concave surfaces, where it should be used sparingly, and may even there be dispensed with if the drawing is otherwise well executed. The plane upon which a sectional view is taken should be indicated on the general view by a dotted line. Heavy lines on the shade sides of objects should be used, except where they tend to thicken the work and obscure letters of reference. The light is always supposed to come from the upper left-hand corner at an angle of 45 degrees. Imitations of wood or surface graining should not be attempted.

(5) **The Scale** to which a drawing is made ought to be large enough to show the mechanism without crowding, and two or more sheets should be used if one does not give sufficient room to accomplish this end; but the number of sheets must never be more than is absolutely necessary.

(6) **Different Views** should be consecutively numbered. When views are longer than the width of the sheet, the sheet should be turned on its side, and *all views on the same sheet must stand in the same direction.*

(7) **Letters of Reference** must be carefully formed and be in the Latin character. They should, if possible, measure *at least one-eighth of an inch in height*, so that they may bear reduction to one twenty-fourth of an inch; and they may be much larger when there is sufficient room. They must be so placed in the close and complex parts of drawings as not to interfere with a thorough comprehension of the same, and therefore should rarely cross or mingle with the lines. When necessarily grouped around a

certain part, they should be placed at a little distance, where there is available space, and connected by short lines with the parts to which they refer. Where index numerals are used in addition to reference letters, thus; a^2, x^7, the numerals must also be not less than $\frac{1}{8}$th inch high. They must never appear upon shaded surfaces, and when it is difficult to avoid this, a black space must be left in the shading where the letter occurs, so that it will appear perfectly distinct and separate from the work. If the same part of an invention appear in more than one view of the drawing, it must always be represented by the same character, and the same character must never be used to designate different parts.

(8) **Gazette Illustrations.**—As a rule, one view only of each invention can be shown in gazette illustrations. The selection of that portion of a drawing best calculated to explain the nature of the specific improvement would be facilitated and the final result improved by the judicious execution of a figure with express reference to the gazette, but which might, at the same time, serve as one of the figures referred to in the specification. For this purpose the figure may be a plan, elevation, section, or perspective view, according to the judgment of the draughtsman. It should not cover a space exceeding 16 square inches. All its parts should be especially open and distinct, with very little or no shading, and it must illustrate the invention claimed only, to the exclusion of all other details.

(9) **Transmission.**—Drawings should be rolled for transmission upon a wooden roller or otherwise, so that they cannot be crushed. It is preferable not to send them flat, as they are liable to be creased in the post. *In no case must drawings be sent folded.*

Letters of Reference.

The following illustrate the most suitable style of lettering :—

Fig. 1 2 3 4 5 6 7 8 9 0.

a b c d e f g h i j k l m n o p q r s t u v w x y z.

a1 b2 c3, &c.

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z.

Sizes and Materials.

The following are the materials and sizes of drawings required for deposit. The sizes given are the extreme sizes from edge to edge of paper; the marginal line is to be drawn at the stated distance from the edge :—

Great Britain.—In duplicate, on smooth *white* drawing paper or card (preferably "3-sheet Bristol board"), 8 or 16 inches wide by 13 inches deep, extreme size, with ½-inch marginal line. Letters of reference on one copy to be in ink, on the other copy in *blue pencil* only.

Belgium.—In duplicate, on tracing linen, either 8¼ or 16½ or 24¾ inches wide by 13 inches deep, in black ink, except parts claimed as new, which should be drawn or shaded in *red*, ¾-inch marginal line.

Germany, Hungary, Sweden, Denmark, or Norway.—In duplicate, one on white card, the other on tracing linen, in black ink only, sizes and margin same as for Belgium. For Hungary use *transparent* linen.

Switzerland.—In duplicate, one copy on white card, the other on tracing linen, in black ink only. Sizes and margin same as for Belgium. If the drawing can be made within one sheet of the smallest size, that should be done; if not, the middle size to be used. If there are more views than fill one or more middle-sized sheets (using all available space), this size should be used, supplemented by one of the smallest size, when the remaining views will go into that space. The largest size is only to be used when any *one* view is too large for a middle-size sheet. No surface shading other than section lines to be used. Strict attention must be paid to these rules or the drawings will be refused.

Italy.—In triplicate, on any material, 6 by 8 inches, or 8 by 12, or 12 by 16 inches, 1 inch margin. The smallest size to be used whenever possible, several sheets being preferable to fewer sheets of a larger size.

Spain.—Tracing linen, in duplicate, any size.

Russia.—Three copies, one on thick white drawing paper (Bristol, Whatman, &c.), two on tracing cloth; size 13 by 8, or 13 by 16, or 13 by 24 inches. Marginal line, one inch from edge of paper. The word "Fig." should not appear on the drawing, but the figures should be simply numbered, as I, II, III, &c.

Luxemburg, Turkey, Brazil.—In triplicate, any size and material.

Canada.—Size 13 inches deep by 8 inches wide, no marginal line; two copies on tracing linen, and one copy on Bristol board.

India.—Stout paper or tracing cloth; seven copies. The size should be 16 inches wide by 13 inches deep, but in order that the drawing may not be covered by the specification to which it is attached, the left half of the sheet (8 inches) must be left clear and the drawing made only on the right half of the sheet, which should be surrounded by ½-inch marginal line. If any *one* figure of the drawing is too large for above size, the sheet may be made correspondingly wider.

Portugal.—Paper or tracing cloth in duplicate, 13 inches deep and of any width, with ¾-inch margin within said size. The drawings must be drawn to metric (decimal) scale and the scale marked on the drawing.

New South Wales.—One copy on smooth white drawing paper, one copy on similar paper, tracing cloth or parchment; size 13 inches by 8 inches or 13 inches by 16 inches, margin 1 inch all round.

Queensland.—Smooth white calendered drawing paper, two copies 20 inches by 13 inches or 28 inches by 13 inches, margin ½-inch all round.

New Zealand, Tasmania, Victoria.—Two copies on smooth drawing paper, size 8 inches by 13 inches or 16 inches by 13 inches, ½-inch margin; the larger size only to be used when any one view is too large for the smaller size.

United States.—One copy on smooth white card (Bristol board) 15 inches deep by 10 inches wide, with 1 inch marginal line. Space of 1¼-inch in breadth to be left blank within the margin along each of the shorter dimensions of the sheet. One of the shorter sides to be the top; all views to lie the same way on each sheet. A tracing should always be sent for use of the Attorney.

Other Countries.—For each duplicate drawings of any size and on any material.

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The "Inventor's Adviser" (Harrison and Sons), deals with patents in their remunerative aspect—**the precise point of view which is most important to the inventor.** It affords instruction as to the commercial development of an invention, its protection by patent at home and abroad, and the valuation and disposal of patent rights. The British patent law and practice are also fully explained, and the foreign patent laws are summarised.—*Daily Telegraph*, March 23rd, 1894.

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This book is, perhaps, better than any of its predecessors. Without being technically abstruse, it does not descend to the popular elementary type. It deals with the matter in such detail and with such references as enable an inventor or a patent agent to ascertain really what his legal position is, but this is done without confusing the explanation. In the early part of the book the commercial aspect of a patent is dealt with, and many questions considered which are usually outside the scope of books on this subject. For instance, there is a chapter on the Development and Negotiation of Patents, and another one on the Valuation of Patents and Provisional Protections, which are practically novel subjects for discussion in a book of this character. The last named chapter is soundly dealt with. **Mr. Haddan has done his work thoroughly well.** There is an **admirable section on foreign patents,** which is full of information, and the various forms used in foreign countries are fully set out, the latter being a completely novel feature in books of this type. Altogether, **this is a book to be got by all those engaged in industries affected by the patent law. It is very cheap, and is the best value we have seen.**—*Textile Recorder*, November 15th, 1894.

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