LAW AND PRACTICE

RELATING TO

LETTERS PATENT FOR INVENTIONS

TREATISE

ON THE

LAW AND PRACTICE

RELATING TO

Letters Patent for Inventions

WITH

AN APPENDIX

OF

STATUTES, INTERNATIONAL CONVENTION, RULES, FORMS AND PRECEDENTS, ORDERS, &c.

BY

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TO

THE RIGHT HONOURABLE LORD ALVERSTONE,

LORD CHIEF JUSTICE OF ENGLAND,

THIS WORK IS BY PERMISSION

Dedicated

PREFACE.

SINCE the last edition of this work was published two Patent Acts, viz., those of 1901 and 1902, have been added to the Statute Book; new Rules regulating matters of procedure at the Patent Office and before the Judicial Committee of the Privy Council have been made; and many important cases have been decided.

In response to suggestions from both Bench and Bar, I have divided the book into two volumes. I have endeavoured to so arrange the text that only one volume will be required during the hearing of a particular matter, whether in Court, the Judicial Committee of the Privy Council, Judge's Chambers, or at the Patent Office; and the Table of Cases and Index will be found in each separate volume. If desired, the Publishers will supply the two volumes bound in one.

Though the result of my labour falls far short of perfection, I venture to hope that those who consult the book will consider it satisfactorily brought up to date.

I have pleasure in thanking Mr. W. C. Fairweather for the great assistance he gave me in correcting the proof sheets as they came from the press.

5 NEW COURT,
LINCOLN'S INN, W.C.,
October 1906.

PREFACE TO THE FIRST EDITION.

THIS book is my attempt to bring within a reasonable compass our law, as it at present exists, in reference to Letters Patent for Inventions. Any complete history of our legislation in the past upon the subject would have inconveniently added to the bulk of the volume; and, consequently, it has not been referred to, except where necessary to explain the present practice. For the same reason I have omitted all reference to the laws of foreign countries where legal protection to Inventors is afforded.

To the extent that the book approximates to the end I had in view, so must be the measure of its success or failure. Whatever its shortcomings, I hope it may be found of use.

ROBERT FROST.

8 KING'S BENCH WALK, TEMPLE,
January 1891.

ABBREVIATIONS USED IN THIS WORK.

A. & E.	Adolphus and Ellis' Reports.
B. & Ad.	Barnewall and Adolphus' Reports.
B. & Ald.	Barnewall and Alderson's Reports.
B. & C.	Barnewall and Cresswell's Reports.
Beav.	Beavan's Reports.
B. & S.	Best and Smith's Reports.
Bing. N. C.	Bingham's New Cases.
B. & P. N. R.	Bosanquet and Puller's New Reports.
Brod. & Bing.	Broderip and Bingham's Reports.
Bull. N. P.	Buller's Nisi Prius.
Camp.	Campbell's Reports.
C. B.	Common Bench Reports.
C. B. N. S.	Common Bench Reports, New Series.
Car. & K.	Carrington and Kirwan's Reports.
Car. & P.	Carrington and Payne's Reports.
Carp. P. C.	Carpmael's Patent Cases.
C. L. R.	Common Law Reports.
Cl. & F.	Clark and Finnelly's Reports.
Co. R.	Coke's Reports.
Coop. Ch. Ca.	Cooper's Chancery Cases.
Cr. M. & R.	Crompton, Meeson, and Roscoe's Reports.
D. & L.	Danson and Lloyd's Reports.
Dav. P. C.	Davies' Patent Cases.
De G. F. & J.	De Gex, Fisher, and Jones' Reports.
De G. & J.	De Gex and Jones' Reports.
De G. M. & G.	De Gex, Macnaghten, and Gordon's Reports.
De G. J. & S.	De Gex, Jones, and Smith's Reports.
Dowl. & Ry.	Dowling and Ryland's Reports.
Dr. & S.	Drewry and Smale's Reports.
E. & B.	Ellis and Blackburn's Reports,
E. B. & E.	Ellis, Blackburn, and Ellis' Reports.
E. & E.	Ellis and Ellis' Reports.
Eng.	The Engineer (a weekly publication).
Eq. Rep.	Equity Reports.
Exch.	Exchequer Reports.
F. & F.	Foster and Finlason's Reports.
Giff.	Giffard's Reports.
Griff. L. O. C.	Griffin's Patent Cases decided by the Comptroller-General and Law Officers in 1887.
Griff. P. C.	Griffin's Patent Cases.
G. P. C.	Goodeve's Patent Cases.
G. P. P.	Goodeve's Patent Practice.
H. Bl.	H. Blackstone's Reports.
H. & M.	Hemming and Miller's Reports.
H. L. C.	House of Lords Cases.
Holt N. P.	Holt's Nisi Prius Cases.
H. & N.	Hurlstone and Norman's Exchequer Reports.
Ir. Ch. Rep.	Irish Chancery Reports.
Iron	Iron (a weekly publication).

Johns.	Johnson's Reports.
J. & H.	Johnson and Hemming's Reports.
Jur. N. S.	Jurist, New Series.
Jur. O. S.	Jurist, Old Series.
K. & J.	Kay and Johnson's Reports.
L. J. N. S. Ch.	Law Journal Reports, Now Series, Chancery.
L. J. N. S. C. P.	" " " Common Pleas.
L. J. N. S. Ex.	" " " Exchequer.
L. J. N. S. Q. B.	" " " Queen's Bench.
L. J. O. S.	Law Journal Reports, Old Series.
L. O. C.	Griffin's Patent Cases decided by the Comptroller-General and Law Officers in 1887.
L. R. App. Cas.	Law Reports, Appeal Cases.
L. R. Ch.	" Chancery Appeals.
L. R. Ch. D.	" Chancery Division.
L. R. C. P.	" Common Pleas Cases.
L. R. E. & I. App.	" English and Irish Appeal Cases.
L. R. Eq.	" Equity Cases.
L. R. Ex.	" Exchequer Cases.
L. R. H. L.	" House of Lords.
L. R. P. C.	" Privy Council Cases.
L. R. Q. B. D.	" Queen's Bench Division.
L. T.	Law Times, Old Series.
L. T. N. S.	Law Times, Now Series.
M. & G.	Manning and Granger's Reports.
M. & S.	Maule and Selwyn's Reports.
M. & W.	Meeson and Wolsby's Reports.
Mac. & G.	Macnaghten and Gordon's Reports.
Macr. P. C.	Macrory's Patent Cases.
Marsh.	Marshall's Reports.
Mer.	Merivale's Reports.
Moo. P. C. N. S.	Moore's Reports of Cases in the Privy Council, New Series.
Moo. P. C. O. S.	Moore's Reports of Case in the Privy Council, Old Series.
Myl. & Cr.	Mylne and Craig's Reports.
N. R.	The New Reports.
Newt. L. J. C. S.	Newton's London Journal of Arts and Sciencos, Conjointed Series.
Newt. L. J. N. S.	Newton's London Journal of Arts and Sciences, New Series.
Parl. Rep.	Parliamentary Reports.
Phill.	Phillips' Reports.
P. O. R.	Patent Office Reports of Patent Cases.
Q. B.	Queen's Bench Reports.
R.	The Reports.
R. P. C.	Patent Office Reports of Patent Cases.
R. S. C.	Rules of the Supreme Court.
Russ.	Russell's Reports.
Russ. & M.	Russell and Mylne's Reports.
Ry. & M.	Ryan and Moody's Reports.
Scott N. R.	Scott's New Reports.
Stark. R.	Starkie's Reports.
Taunt.	Taunton's Reports.
T. R.	Term Reports.
Times R.	Times Law Reports.
Tyr.	Tyrwhitt's Reports.
Ves.	Vesey's Reports.
W. N.	Weekly Notes.
W. P. C.	Webster's Patent Cases.
W. R.	The Weekly Reporter.
Y. & C.	Younge and Collyer's Reports.

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Fisher, Alma Veneer Felt Co. *v.*
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Goldberg, Davenport *v.*
Goldstein, Dubowski *v.*
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Goodier, Bovill *v.*
Goodman, Pneumatic Tyre Co. *v.*
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Govan, Williams *v.*
Grace, Barber *v.*
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Gray, McCormick *v.*
Graydon, Bassett *v.*
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Hart, Colley *v.*
Hart, Mullins *v.*
Hartlepools Pulp and Paper Co., Partington *v.*
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Henery, Alexander *v.*
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Hepponstall, Holliday *v.*
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Heywood, Roberts *v.*
Hicks, Lovell *v.*
Hicks, Musgrave *v.*
Hickson, Badische Anilin und Soda Fabrik *v.*
Higginbottom, Bunge *v.*
Higgins, Seed *v.*
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Hitchcock, Bovill *v.*
Hitchcock, Wright *v.*
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Hobson, Fritz *v.*
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Hodgson, Hattersley *v.*
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Holland, Electrolytic Plating Apparatus Co. *v.*
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Holliday, Simpson *v.*
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Holt, Spence *v.*
Homan, Fawcett *v.*
Homer, British Mutoscope and Biograph Co., Ld. *v.*
Hope, Jenkins *v.*
Hopkinson, Saccharin Corporation, Ld. *v.*
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Horton, Allen *v.*
Hoskins and Sowell, Ld., Evans and Taunton, Ld. *v.*
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Howard and Bullough, Tweedale *v.*
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Hubert Unchangeable Eylet Syndicate, Engels *v.*
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Indiarubber Co., Edison Telephone Co. *v.*
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Jackson, Brown *v.*
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Jackson, Saccharin Corporation, Ld. *v.*
James, Finnegan *v.*
James, Newburry *v.*
James, Thomson *v.*
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Jebson, Davenport *v.*
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Johnson, Jandus Arc Lamp and Electric Co., Ld. *v.*
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Johnson, Needham *v.*
Johnson, Orr-Ewing *v.*
Jones, Bacon *v.*
Jones, Canham *v.*
Jones, Dangerfield *v.*
Jones, Moser *v.*
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Jones, Saunders *v.*
Jones, Shaw *v.*
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Kaye, Tucker *v.*

Keating, Stevens *v.*
Keegan, Incandescent Gas Light Co. *v.*
Keeling, Dowler *v.*
Keen, Cornish *v.*
Keen, Westhead *v.*
Keighley, Bentley *v.*
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Kennard, Booth *v.*
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Kenyon (Lord), Myddelton *v.*
Kerr, Guilbert-Martin *v.*
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Kidd, Albo-Carbon Light Co. *v.*
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Kirkman, Meadows *v.*
Kitchin, Leadbeater *v.*
Knight, Automatic Weighing Machine Co. *v.*
Krebs, British Dynamite Co. *v.*
Krupp, Vavasseur *v.*
Kurtz, Gamble *v.*
Kynock, Batley *v.*

Lafitte, Fabriques de Produits Chimiques de Thann et Mulhouse *v.*
Lambert, Wood *v.*
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Latham, Blakeys *v.*
Lavater, Walton *v.*
Law, Ashworth *v.*
Lawes & Co., Ld., McLay, *v.*
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Lee, Jones *v.*
Lee, Sudbury *v.*
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Leese, Charter *v.*
Leicester Pneumatic Tyre and Automatic Valve Co., Pneumatic Tyre Co. *v.*
Levinstein, Badische Anilin und Soda Fabrik *v.*
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London and Globe Telephone and Maintenance Co., United Telephone Co. *v.*
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Lord Mayor, &c., of Manchester, Geipel *v.*
Lund, Axman *v.*
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Lycett's Saddle and Motor Accessories Co., Ld., Brooks *v.*
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MacIvor's Patents, Alliance Pure White Lead Syndicate *v.*
Mackenzie, Bulnois *v.*
MacKernan, How *v.*
Mackie, Solvo Laundry Supply Co. *v.*
Mackintosh, Rothwell *v.*
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Magill, Hugh *v.*
Maignen's Filtre Rapide Co., Parker *v.*
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Mangnall, McAlpine, *v.*
Mann, Newsum *v.*
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Marsh, Miligan *v.*
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Martin, Lyons *v.*
Martyn, Ellam *v.*
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Massam, Thorley's Cattle Food Co. *v.*
Massey, Pilkington *v.*
Mather, Birch *v.*
Matin, Nadel *v.*
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Maxim-Nordenfelt Guns and Ammunition Co., Nordenfelt *v.*
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Mayor, &c., of Bradford, Chamberlain and Hookham, Ld. *v.*
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Mayor of Manchester, British Thomson-Houston Co., Ld. *v.*
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Mayor of Salford, Automatic Coal-gas Retort Co. *v.*
McAlpine, Bridson *v.*
McGeoch, Leggott *v.*
McGrady (John) & Co., Welsbach Incandescent Gas Light Co., Ld., *v.*
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Midland Acetylene (Parent) Syndicate, Acetylene Illuminating Co., Ld. *v.*
Midland Lighting Co., Société Anonyme pour le Fabrication d'Apparcils d'Eclairage *v.*
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Miles, Earl de la Warr *v.*
Mill, R. *v.*
Millard, Grover and Baker Sewing Machine Co. *v.*
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Mitchell, Perry *v.*
Monte Video Gas Co., Jones *v.*
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Morris, Rowcliffe *v.*
Morris, Young *v.*
Mort, Parnell *v.*
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Moulton, Hancock *v.*
Mower, Minter *v.*
Moy (Ernest F.), Ld., Reason Manufacturing Co., Ld. *v.*
Mullinar, Redges *v.*
Muntz Metal Co., Drake *v.*
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Neal, Dunlop Pneumatic Tyre Co., Ld. *v.*
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Neilson, Baird *v.*
Neilson, Betts *v.*
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New Ixion Tyre and Cycle Co., Pneumatic Tyre Co. *v.*
New Lamb Tyre Co., Dunlop Pneumatic Tyre Co., Ld. *v.*
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Nicholson, Murchland *v.*
Nickalls, Merry *v.*
Nightingale, Arkwright *v.*
Noel, Betts *v.*
Nordon, Heine *v.*
North British Ry. Co., Adams *v.*
North British Rubber Co., Dunlop Pneumatic Tyre Co., Ld. *v.*
North British Rubber Co., Ld., Gormully and Jeffery Manufacturing Co., Ld. *v.*
North Somerset Ry. Co., Bristol *v.*
Norton, Geary *v.*
Norton, Lister *v.*
Nott, Electric Telegraph Co. *v.*
Nottingham Manufacturing Co., Lamb *v.*
Nurse, Hewett *v.*
Nuttall, Cannington *v.*
Nuttall, Cheetham *v.*
Nye, Williams *v.*

OATES, Allen *v.*
Oldham, Cheetham *v.*
Oppenheim, Wittman *v.*
Ormo Evans & Co., Ld., Presto Gear Case and Components Co., Ld. *v.*
Osborne, Hind *v.*
Osgerby, Hudson *v.*
Owen, Peters *v.*
Owens, Tadman *v.*
Oxley, Needham *v.*

PAIN, Schermuly *v.*
Palmer, Parrott *v.*
Parker, Manton *v.*
Parker, Mountain *v.*
Parmenter, Mathews *v.*
Parnell, Dredge *v.*
Parr, Potter *v.*
Parr (J.) & Co., Pneumatic Tyre Co. *v.*
Partington, McDougall *v.*
Passberg Grain Syndicate, Stavert *v.*
Patent Oxonite Co., Anderson *v.*
Patents Investments Co., Crampton *v.*
Paterson, Montgomerie *v.*
Patterson, United Telephone Co. *v.*
Patterson, Washburn and Moen Manufacturing Co. *v.*
Patullo, Hutchinson *v.*
Pavement Light Co., Hayward *v.*
Payne, Blofield *v.*
Payne, Elwes *v.*
Peach, Crofts *v.*
Pearce, Cook *v.*
Pearce, Jones *v.*
Pearson, Morrell *v.*
Pearson, Whateman *v.*
Penn, Dobbs *v.*
Perks, Deeley *v.*
Perks, Westley, Richards & Co. *v.*
Perry, Lawrence *v.*
Perry, Skinner *v.*
Phillips, Davenport *v.*
Pickaley, Bamlett *v.*
Pimm, Bovill *v.*
Pinto Leite, Craven *v.*
Pintsch's Patent Lighting Co., Douglass *v.*
Piper, Gregory *v.*
Pirrie, Elmore *v.*
Pitcher, McGruther *v.*
Pitman, Nicols *v.*
Plaff, Deutsche Mähmaschinen Fabrik vorm Wertheim *v.*
Plane, Harmer *v.*
Platt, Curtis *v.*
Pneumatic Tyre and Brook's Cycling Agency, Edlin *v.*

Pneumatic Tyre Co., Ld., Palmer Tyre Co., Ld. *v.*
Pointon, Pooley *v.*
Postill, Hoffman *v.*
Potter, Crossley *v.*
Potter, Walton *v.*
Pratt, Jupe *v.*
Prescott, Pickard *v.*
Price, Crane *v.*
Price, Macfarlane *v.*
Price, Savory *v.*
Priestman, Rockliffe *v.*
Prosser, R. *v.*
Provezende, Seixo *v.*
Province of Brescia Steam Tramways Co., Fraser *v.*
Puncture Proof Pneumatic Tyre Co., Pneumatic Tyre Co. *v.*
Purday, Chappell *v.*
Purser, Lawes *v.*
Pyatt, Allen *v.*

Queen, Feather *v.*
Quick, Southwark and Vauxhall Water Co. *v.*
Quincey, Saccharin Corporation, Ld. *v.*

Ramsey Urban District Council, Bostock *v.*
Raphael, Wood *v.*
Ratner Safe Co., Ld., Chatwood's Patent Safe and Lock Co., Ld. *v.*
Rawlinson, Coleman *v.*
Rawson, Allen *v.*
Reddaway, Gandy *v.*
Redgate, Bates *v.*
Reitmeyer, Saccharin Corporation, Ld. *v.*
Reliance Tyre Co., Birmingham Pneumatic Tyre Syndicate, *v.*
Remus, Action Gesellschaft für Cartonagen Industrie *v.*
Rennie, Mackelcan *v.*
Reynolds, Mitchell *v.*
Reynolds, Nettlefolds *v.*
Richards, Davenport *v.*
Richards, Patent Type Foundry Co. *v.*
Richardson, Benno Jaffi und Darmstaedter Lanolin Fabrik *v.*
Richardson, Brereton *v.*
Richardson, Universities of Oxford and Cambridge *v.*
Rickman, Thierry *v.*
Riemer, Incandescent Gas Light Co. *v.*
Rimington, Dunlop Pneumatic Tyre Co., Ld. *v.*
Riviere, Forsyth *v.*
Roberts, Ashworth *v.*
Roberts, Smith *v.*
Robertson, Bailey *v.*
Robertson, Holste *v.*
Robinson, Germ Milling Co. *v.*
Roburite Explosives Co., Lancashire Explosives Co. *v.*
Rodgers, Stocker *v.*
Roe, Taylor *v.*
Rogers, Steers *v.*
Rolte, Gordon *v.*
Rosenberg, Edinson-Bell Consolidated Phonograph Co., Ld. *v.*
Rosenthal, Young *v.*
Rosenwald, Kopp *v.*
Ross, Nickels *v.*
Ross, Saccharin Corporation, Ld. *v.*
Rothwell, Harris *v.*
Rowland, Peckover *v.*
Royle, Challender *v.*
Rudge's Cycle Co., Singer *v.*
Runcorn Soap and Alkali Co., Henderson *v.*
Russell, Ledsam *v.*
Rylands, Davenport *v.*
Rylands, Hazelhurst *v.*
Rylands, Useful Patents Co. *v.*
Rylands' Glass and Engineering Co., Ld., Beavis *v.*

Safety Lift and Elevator Co., Ld., General Electric Co. *v.*
Safety Lighting Co., Hinks *v.*
Salsbury, Hoffnung *v.*
Salvo Laundry Co., Mackie *v.*
Sampson, Printing and Numerical Registering Co. *v.*
Samuel, Postcard Automatic Supply Co. *v.*
Sansom, Brown *v.*
Sansum, Woodward *v.*
Saqui, Cole *v.*
Saupe, Embossed Metal Plate Co. *v.*
Saville Street Foundry and Engineering Co., Marsden *v.*
Sayer, Herbert *v.*
Schroeder, Actien Gesellschaft für Cartonagen Industrie *v.*
Schwan, Beardsell *v.*
Scott, Smith *v.*
Seabrook, Combination Hubs, Ld. *v.*
Searle, Miller *v.*

Scars, Pickard *v.*
Seaward, Morgan *v.*
Seine, R. *v.*
Sewell, Moser *v.*
Seymer, Patent Bottle Envelope Co. *v.*
Shankey, Duckett *v.*
Sharp, Cartsburn Sugar Refining Co. *v.*
Sharples, United Telephone Co. *v.*
Shaw, Barker *v.*
Shaw, Longbottom *v.*
Shaw, Pether *v.*
Sheba Gold Mining Co., African Gold Recovery Co. *v.*
Shephard, Gavioli *v.*
Sherrin, British Motor Syndicate, Ld. *v.*
Sherwood, Defries *v.*
Showes, Bickford *v.*
Shippey, Edison Electric Co. *v.*
Siddell, Vickers *v.*
Siemens Brothers & Co., Ld., Patent Exploitation, Ld. *v.*
Silber, Sugg *v.*
Silver, Tuck *v.*
Simmons, Hicks *v.*
Simms, Colburn *v.*
Simon, Parkinson *v.*
Simplex Gear Case Co., Ld., Presto Gear Case and Components Co., Ld. *v.*
Singer, Otto *v.*
Singer Manufacturing Co., Ld., Gammons *v.*
Singer Manufacturing Co., Nähmaschinen Fabrik *v.*
Skidmore, Saccharin Corporation, Ld. *v.*
Skinner, Perry *v.*
Sluces, Incandescent Gas Light Co. *v.*
Smethurst, Cochrane *v.*
Smith, Bancroft *v.*
Smith, Bovill *v.*
Smith, Bowden's Patent Syndicate (E. M.), Ld. *v.*
Smith, Carpenter *v.*
Smith, Cropper *v.*
Smith, Edison-Bell Phonograph Corporation *v.*
Smith, Heath *v.*
Smith, Jensen *v.*
Smith, Kerrison *v.*
Smith, Oddy *v.*
Smith Ralston *v.*
Smith (Herbert) & Co., Ld., Reynolds *v.*
Smith, Riding *v.*
Smith, Vidi *v.*
Société de Lunetiers, Perry *v.*
Société General d' Electricité, Wordorman *v.*
Somervell, Hancock *v.*
Somervell, Kenny's Patent Button-holing Co. *v.*
South Eastern Ry. Co., London Chatham and Dover Ry. Co. *v.*
Sowerby Bridge Flour Society, Van Golder Apsimon & Co. *v.*
Speight, Tolson *v.*
Spence, Kurtz *v.*
Spence, Mayer *v.*
Spiller, Plimpton *v.*
Spilsbury, New Ixion Tyre and Cycle Co. *v.*
Spirey, Badische Anilin Und Soda Fabrik, *r.*
Sponge, Heine *v.*
Spottiswood, Bacon *v.*
Squire, Herrberger *v.*
Starbruck Waggon Co., Eades *v.*
Stassen, Singer *v.*
Steel, Brooks *v.*
Steel, Crossthwaite *v.*
Steel, Otto *v.*
Stephens, Edgebury *v.*
Sterckx, Shrewsbury and Talbot Cab Co. *v.*
Stevens, Parkes *v.*
Stevens, Watling *v.*
Stevenson, Boake Roberts & Co. *v.*
Stevenson, Hess *v.*
Stevenson, Temler *v.*
Stewart, Crossley *v.*
Stewart, United Horseshoe and Nail Co. *v.*
St. George, United Telephone Co. *v.*
St. James Electric Light Co., Hopkinson *v.*
Stone, Wyeth *v.*
Stone and Corser, Dunlop Pneumatic Tyre Co. *v.*
Stott, Tangye *v.*
Stowers, York *v.*
Stubbs, Horrocks *v.*
Suction Cleaners, Ld., British Vacuum Cleaners Co., Ld. *v.*
Sugg, Ungar *v.*
Sunlight Incandescent Gas Lamp Co., Incandescent Gas Light Co. *v.*
Sutton Lodge Chemical Co., Proctor *v.*
Sutton, Swabey *v.*
Swears, Nicoll *v.*
Swedish Horse Nail Co., United Horseshoe and Nail Co. *v.*
Syer, Humpherson *v.*
Szalay, Sandow *v.*

TANGYES, Magee *v.*
Tasker, United Telephone Co. *v.*
Tate, Burnett *v.*
Taunton, Pow *v.*
Taylor, Bailey *v.*
Taylor, Bowman *v.*
Taylor & Sons (John), Ld., British Motor Syndicate, Ld. *v.*
Taylor, Harrison *v.*
Taylor, Hilleary *v.*
Taylor, Millar *v.*
Taylor, Siemons *v.*
Taylor, Willoughby *v.*
Temler, Actien Gesellschaft für Cartonagen Industrie *v.*
Terry, Hyam *v.*
Thierry, Rickman *v.*
Thlee, Ehrlich *v.*
Thompson, Guyot *v.*
Thompson, Neilson *v.*
Thomson; American Braided Wire Co. *v.*
Thomson, Badische Anilin und Soda Fabrik *v.*
Thomson, British United Shoe Machinery Co., Ld. *v.*
Thomson, Dudgeon *v.*
Thomson, Hill *v.*
Thomson, Moore *v.*
Thorley's (T. W.) Cattle Food Co., Massam *v.*
Tilghman's Patent Sand Blast Co., Société Anonyme de Manufactures de Glaces *v.*
Timmis Patent, Currie *v*
Tindal, Wilson *v.*
Tobin, Ruston *v.*
Todd, Stoner *v.*
Tolley, Westley *v.*
Tombs, Hill *v.*
Tomey, Crossley *v.*
Toms, White *v.*
Toope, Pascall *v.*
Tootal Broadhurst Lee Co., Boyd *v.*
Topham, Leaf *v.*
Touts, Hill *v.*
Townsend, Davies *v.*
Townsend, R. *v.*
Tremere, Lainson *v.*
Trigg, Hall *v.*
Truman, Hall *v.*
Tubeless Tyre and Capon-Heaton, Ld., Pneumatic Tyre Co. *v.*
Tullis, Dick *v.*
Tupper, Morewood *v.*
Turner, Beard *v.*
Turner, Elliot *v.*
Turner, Winter *v.*
Turton, Turton *v.*
Tweedales, Howard *v.*

ULLMANN, Gramaphone and Typewriter, Ld. *v.*
Union Boot and Shoe Machine Co., English and American Machinery Co. *v.*
Union Oil Mills, Wilson *v.*
United Alkali Co., Ld., Acetylene, Illuminating Co., Ld. *v.*
United Flexible Metallic Tubing Co., Ld., Crowther *v.*
United Motor Co., De Young *v.*
United Rubber Works, Ld., Dunlop Pneumatic Tyre Co., Ld. *v.*
United Telephone Co., Barney *v.*
Unwin, Heath *v.*
Upton, Smith *v.*
Urry, Automatic Diversions Syndicate *v.*
Usher, Lines *v.*

VAN Vlissingen, Caldwell *v.*
Vaucher, Newton *v.*
Vestry of Bermondsey, Attorney-General *v.*
Vickers, Siddell *v.*
Victoria Rubber Co., Moseley *v.*
Vivian, Muntz *v.*

WAGSTAFFE, Palmer *v.*
Wakeham, Legge *v.*
Walker, Betts *v.*
Walker, Cheaving *v.*
Walker, Collins *v.*
Walker Mitchell, John Varey, Ld. *v.*
Walker, Power *v.*
Walker, United Telephone Co. *v.*
Wallington, Weston & Co., Sirdar Rubber Co., Ld. *v.*
Wallis, Crow *v.*
Wallis, R. *v.*
Wallwork, Cleaver *v.*
Walter, Patent Type Founding Co. *v.*
Wapshaw Tube Co., Ld., Dunlop Pneumatic Tyre Co., Ld. *v.*
Warmer, Stocker *v.*
Warrillow, Pneumatic Tyre Co. *v.*
Waterloo & Co., Driffield *v.*
Watson, Grafton *v.*

Watson, Haggenmacher *v.*
Webb, Copeland *v.*
Webb, Kynoch & Co., Ld. *v.*
Webber, Howes *v.*
Webber, Parmenter *v.*
Webster, Foxwell *v.*
Welch, Thomas *v.*
Weller, Fradella *v.*
Wells, Minter *v.*
Wells, Parker *v.*
Welsbach Incandescent Gas Light Co., Ld., Bevan *v.*
West London Cycle Works, Lees *v.*
West London Rubber Co., Pneumatic Tyre Co. *v.*
Wigan & Co., Lee *v.*
Wigg, Brooke *v.*
Wilby, Gillett *v.*
Wild, Saccharin Corporation, Ld. *v.*
Wild, Wheatstone *v.*
Wild, Wren *v.*
Wilk's Patent, Thornborough *v.*
Williams, Elsas *v.*
Williams, Minter *v.*
Williams, Stead *v.*
Williams, Thomas *v.*
Williams, Williams *v.*
Wills, Dawson *v.*
Wilmott, Betts *v.*
Wilson, Bowden's Patent Syndicate, Ld. *v.*
Wilson, Church (Walter C.) Engineering Co. *v.*
Wilson, Dunlop Pneumatic Tyre Co., Ld. *v.*
Wilson, Fenner *v.*
Wilson, Grover and Baker Sewing Machine Co. *v.*
Wilson, Newall *v.*
Wilson, Singer Manufacturing Co. *v.*
Wilson & Co. (Barnsley), Ld., Wilson *v.*
Wilson & Co. (Barnsley), Ld., Wilson Brothers Bobbin Co., Ld. *v.*
Windover, Morgan *v.*
Winter, Thomas *v.*
Winter, Turner *v.*
Winyard, Youatt *v.*
Wheeler, R. *v.*
White, Baker *v.*
White (R.) & Sons, Ld., Saccharin Corporation, Ld. *v.*
White, Young *v.*
Whitecross Co., Lang *v.*
Whitehead, Duckett *v.*
Whitlingham, Cooper *v.*
Whitworth, Roskell *v.*
Wolstenholms, Jackson *v.*
Wood, Lister *v.*
Wood, Siddell and Hilton, Ld. *v.*
Wood, Trotman *v.*
Woodhouse, Edison and Swan Co. *v.*
Woodley, David *v.*
Worthing Skating Rink Co., Thorn *v.*
Wren, Bercham *v.*
Wright, Besamans *v.*
Wright, Hassall *v.*
Wright and Butler, Ld., Tilghman's Patent Sand Blast Co. *v.*
Wrightson, Richmond & Co., Ld. *v.*
Wrigley, Rainbridge *v.*
Wyatt, Johnson *v.*

Yates, Mathias *v.*
Yeatley Vacuum Hammer Co., Pilkington *v.*
York Street Flax Spinning Co., Pirrie *v.*
Young, Adair *v.*
Young, Edison United Phonograph *v.*
Young, Fernie *v.*
Young, Morris *v.*
Young, Scott *v.*

Zimmer, Wood *v.*

ADDENDA.

VOLUME I.

Page 40, note (*d*), *add* "Northern Press and Engineering Co., Ld. *v.* Hoe (R.) & Co., (1906) 23 R. P. C. 417."
„ 108, „ (*r*), *add* "Hudson, Scott & Sons, Ld. *v.* Barringer, Wallis & Manners, Ld., (1906) 23 R. P. C. 502."
„ 125, „ (*x*), *add* "23 R. P. C. 506."
„ 207, „ (*f*), *add* "23 R. P. C. 461."
„ 291, „ (*i*), *add* "*Times*, July 24th, 1906."
„ 334, „ (*l*), *add* "Gawthorp *v.* Mason, (1906) 23 R. P. C. 401."
„ 367, line 16, *add* "*Brown* v. *Hastie* (*John*) *& Co., Ld.*, (1906) 23 R. P. C. 361."
„ 376, note (*z*), *add* "23 R. P. C. 433."
„ 492, „ (*b*), *add* "Davidson *v.* Sun Fan Co., Ld., (1906) 23 R. P. C. 493."
„ 513, line 24, *add* "*Dr. Joung* v. *United Motor Co.*, (1903) 20 R. P. C. 472."
„ 521, note (*b*), *add* "as to principles on which objections should be certified as reasonable and proper, *see* Clay *v.* Allcock & Co., Ld., (1906) 23 R. P. C. 381."
„ 529, „ (*a*), *add* "Anti-Vibration Incandescent Lighting Co., Ld., *v.* Wholesale Incandescent Fittings Co., (1906) 23 R. P. C. 399."
„ 533, „ (*x*), *add* "See also Osmond *v.* Mutual Cycle and Manufacturing Supply Co., Ld., [1899] 2 Q. B. 488."

VOLUME II.

Page 83, note (*l*), *add* "Andrews' Patent, (1906) 23 R. P. C. 441; Waterhouse's Patent, (1906) 23 R. P. C. 470."
„ 179, „ (*i*), *add* "Scott's Patent, (1906) 23 R. P. C. 478."
„ 182, „ (*n*), *for* "L. R. 4 P. C., App. Cas. 88 *n.*," *read* "L. R. 5, App. Cas. 88 *n.*"
„ 182, „ (*q*), *add* "Cross, Bevan and Beadle's Patent, (1906) 23 R. P. C. 485."

LETTERS PATENT FOR INVENTIONS.

CHAPTER I.

OBTAINING LETTERS PATENT FOR INVENTIONS.

Prerogative of the Crown.

Crown exercises its prerogative

No person can demand protection for an invention by letters patent as of right. The power of the Crown to grant letters patent is purely discretionary. It was exercised during, and most probably previous to, the reign of Edward III., (*a*) and preserved by the Statute of Monopolies with reference to new inventions, (*b*) and is not suspended during the minority or other incapacity of the reigning Sovereign. (*c*)

through the medium of certain officers.

The Crown exercises its prerogative in the matter of granting patents for inventions through the medium of certain officers referred to in the Patents, Designs, and Trade Marks Act, 1883—viz., the Comptroller-General of the Patent Office, and the Attorney-General, or the Solicitor-General.

Except under sec. 103 or 104 of the Act of 1883 the Crown can grant letters patent for an invention only to the true and first inventor or inventors alone, or jointly with any other person or persons. (*d*)

Grant is made at the patentee's peril.

Every grant of letters patent is made at the grantee's peril, and on condition that it is valid only if one or more of the grantees is or are in fact the true and first inventor or inventors, the invention is new and useful, and the specification is sufficient to fulfil the requirements of the law; moreover, the Crown in no way whatever guarantees the validity of any letters patent if the representations and conditions on

(*a*) Year Book, part iv., 40 Edw. III. fol. 17, 18; Darcy *v.* Allen, (1602) Moore's Reps. 675.

(*b*) 21 Jac. I. c. 3.

(*c*) Co. Lit. 43b; 5 Co. 27a; 7 Co. 12a. See 46 & 47 Vict. c. 57, p. 241 *post*.

(*d*) 21 Jac. I. c. 3, s. 6; 46 & 47 Vict. c. 57, s. 4; 48 & 49 Vict. c. 63, ss. 5, 103, 104.

Patent Agents.

the strength of which it is made are not rigidly correct and fulfilled.

Practice is regulated by Acts and rules made thereunder.

The practice, which it is necessary for any person desirous of obtaining a grant of letters patent to observe, is laid down and regulated by the Act of 1883, together with the Amending Acts of 1885, 1886, 1888, 1901, and 1902, and the rules and regulations from time to time made by the Board of Trade in pursuance of the powers conferred by those statutes. (*e*)

Patent Agents.

It is the usual practice for a would-be patentee to engage the services of a patent agent of experience and skill to aid him in filling up the necessary forms, drafting the specifications, meeting objections, and attending the hearing of oppositions, if any, to the grant of the patent.

The form of application, and also any notice of abandonment of, or of intention not to proceed with, the application, must be signed by the applicant himself; but all other communications between the applicant and the Comptroller, and all attendances by the applicant upon the Comptroller or Examiner, may be made by or through an agent duly authorised to the satisfaction of the Comptroller, and, if he so require, resident in the United Kingdom. (*f*)

Qualifications of registered patent agents

With a view to avoid the abuse of ill-qualified persons practising as patent agents, Parliament, by the Patents, Designs, and Trade Marks Act, 1888, provided that, if after the passing of that Act any person describe himself as a patent agent, either 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 the Act, (*g*) he is liable on summary conviction to a fine not exceeding twenty pounds. But any person who proves to the satisfaction of the Board of Trade that he had been practising *bonâ fide* as a patent agent prior to December 24, 1888, is entitled as of right to be registered. (*h*) A person, however, who is not registered and knowingly describes himself as a "Patent Agent" is liable to fine, on summary conviction, notwithstanding that he *bonâ fide* practised and described himself as a patent agent before the Act of 1888

(*e*) 46 & 47 Vict. c. 57, s. 101.
(*f*) P. R. (1903) r. 81.
(*g*) 51 & 52 Vict. c. 50, s. 1.
(*h*) *Ibid.* sub-s. 3.

came into force—*i.e.*, by having so practised a person does not acquire a right within the meaning of sec. 27 of the Act, and registration and payment of fees is a condition precedent to his being allowed to continue so practising and describing himself. (*i*)

Patent Agents.

It is also provided by the Act of 1888 that persons seeking to be registered as patent agents must satisfy various examinational tests before they are entitled to be placed on the register.

Correct copies of the Register of Patent Agents are published annually, and may be obtained at the Patent Office, or any of the depôts where its publications are kept on sale, for the sum of one shilling. In this list will be found the names and business addresses of all the registered members of the Chartered Institute of Patent Agents for the time being.

Register of Patent Agents.

The Act further provides (*k*) that the Board of Trade shall have power from time to time to make such general rules as are in the opinion of the Board required for giving effect to the provisions of the Act, and that the provisions of sec. 101 of the Act of 1883 (*l*) shall apply to all rules so made as if they were made in pursuance of that section. The Register of Patent Agents' Rules for the time being in force will be found in the Appendix. (*m*) The rules so made by the Board of Trade are submitted to Parliament, and, if not annulled by either House within forty days after they are laid on the table, they acquire the force of an Act of Parliament, and the Courts will not entertain the question of any rules made with the prescribed formalities being *ultra vires*. (*n*) In case of the infraction of any rule for which a penalty is imposed—*e.g.*, practising as a patent agent without registration—the proper course is for the Institute of Patent Agents to prosecute for the penalty, and it is incompetent for the Institute or any other person aggrieved to proceed by way of action for injunction in the Supreme Court. (*o*)

Register of Patent Agents' Rules.

It has been decided that notwithstanding the Act of 1888 a person is entitled to act on behalf of another, in the matter of obtaining a patent, as an ordinary agent, and may so describe himself on every document without fear of

Any one may act as an ordinary agent.

(*i*) Storey *v.* Graham, (1899) 16 R. P. C. 106.

(*k*) s. 1, sub-s. 2; p. 249 *post*.

(*l*) 46 & 47 Vict. c. 57, s. 101; p. 236 *post*.

(*m*) p. 337 *post*.

(*n*) Chartered Institute of Patent Agents *v.* Lockwood, (1893) 10 R. P. C. 167; 11 R. P. C. 374.

(*o*) *Ibid*.

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prosecution. He is not entitled to describe himself as a "patent agent." (*p*)

The above decision of the Courts has enabled persons to evade the Act of 1888 by avoiding the use of the words "patent agent," though really representing themselves to the public as patent agents, by employing such titles as "patent office," "office for patents," "inventors agent," and other similar descriptions. A bill has recently been introduced by Lord *Colcridge* which seeks to obtain from Parliament power to prevent such evasions of the intention of the Act of 1888. (*q*)

Application.

Any person may make an application.

Any person, whether a British subject or not, is entitled to make an application for a patent, and two or more persons may make a joint application, and a patent may be granted to them jointly. (*r*)

How the application must be made.

The application must be made on one of the forms set forth in the first schedule to the Act of 1883, or in such other form as may be from time to time prescribed. (*s*)

If an invention is partly original and partly communicated from abroad, it is doubtful whether it is incumbent on the applicant to distinguish which is which; (*t*) and it is an undecided point whether or not the omission to do so would render the patent void. (*u*) It is the usual practice, however, to state on the application form that the invention is partly communicated from abroad.

Form A is not applicable to the case of a corporation alone, but is intended for cases where there is a personal applicant who is the true and first inventor. Form A1 is intended for use where there has been a communication from abroad, whether the communicatee is a corporation or a private individual. (*x*)

Application must be left at or sent by post to the Patent Office,

The applicant having filled up the form of application, which must be signed by himself, must leave it at, or send it by post

(*p*) Graham *v.* Fanta, (1872) 9 R. P. C. 164. See also Graham *v.* Eli, (1898) 15 R. P. C. 259.

(*q*) The Act has not yet been passed.

(*r*) 46 & 47 Vict. c. 57, s. 4; 48 & 49 Vict. c. 63, s. 5.

(*s*) 46 & 47 Vict. c. 57, s. 5, sub-s. 1. The forms at present in use for this purpose will be found in the second schedule to the Patent Rules, 1903; see p. 345 *post*.

(*t*) Renard *v.* Levinstein, (1864) 10 L. T. N. S. 177.

(*u*) *Re* Avery's Patent, (1887) L. R. 36 Ch. D. 307; Moser *v.* Marsden, (1893) 10 R. P. C. 209, 350.

(*x*) Société Anonyme du Générateur du Temple's Patent, (1896) 13 R. P. C. 54.

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to, the Patent Office. If sent by post as a prepaid letter it will be deemed to have been left at the Patent Office at the time when the letter containing the same would be delivered in the ordinary course of post, and, in case it becomes necessary to prove such sending, it will be sufficient to prove that the application was properly addressed and posted. (*y*)

and must contain a declaration, and be accompanied by a specification.

The application must contain a declaration, which may be either a statutory declaration under the Statutory Declarations Act, 1835, or not, as may be from time to time prescribed, (*z*) to the effect that the applicant is in possession of an invention whereof he claims, or, in the case of a joint application, one or more of the applicants claims or claim, to be the true and first inventor or inventors, and for which he or they desires or desire to obtain a patent; and must be accompanied by either a provisional or a complete specification. (*a*) In accordance with sec. 5 of the Act of 1883, the application must also be accompanied by drawings if required.

The form of declaration at present in use for the purpose of an application for a grant of a patent (*b*) is not a declaration, under the Statutory Declarations Act, 1835.

Statutory declarations for use in the Patent Office are to be made and subscribed in a certain manner,

Statutory declarations required for use in the Patent Office are to be made and subscribed as follows (*c*):—

(a) In the United Kingdom, before any justice of the peace, or any commissioner or other officer authorised by law in any part of the United Kingdom to administer an oath for the purpose of any legal proceeding;

(b) In any other part of his Majesty's dominions, before any Court, Judge, justice of the peace, or any officer authorised by law to administer an oath there for the purpose of a legal proceeding; and

(c) If made out of his Majesty's dominions, before a British Minister, or person exercising the functions of a British Minister, or a consul, vice-consul, or other person exercising the functions of a British consul, or before a notary public, or before a Judge or magistrate.

If any person is, by reason of infancy, lunacy, or other inability, incapable of making any declaration, or doing anything required or permitted by the Act of 1883, or by any rules

(*y*) 46 & 47 Vict. c. 57, s. 5, sub-s. 1; s. 97; P. R. (1903) r. 80.
(*z*) 48 & 49 Vict. c. 63, s. 2.
(*a*) 46 & 47 Vict. c. 57, s. 5, sub-s. 2. As to size of paper drawings, &c., see P. R. (1905) rr. 16–24.
(*b*) See p. 345 *post*.
(*c*) P. R. (1903) r. 26; see Appendix.

Examination and Acceptance.

made thereunder, then the guardian or committee (if any) of such incapable person, or, if there be none, any person appointed by the Court or Judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration, or a declaration as nearly corresponding thereto as circumstances permit, and do such thing, in the name and on behalf of such incapable person, and all acts done by such substitute are, for the purposes of the Act, as effectual as if done by the person for whom he is substituted. (*d*)

and are exempt from duty under Stamp Act, 1870.

A statutory declaration, made under the provisions of the Statutory Declaration Act, 1835, and forming part of an application for a patent, in conformity with the Patents, Designs, and Trade Marks Act, 1883, is exempt from the stamp duty charged on a statutory declaration, under the provisions of the Stamp Act, 1870. (*e*)

Application should comprise only one invention.

An application for a patent should comprise only one invention. It is provided by the Act of 1883 (*f*) that every patent shall be granted for one invention only; though, if a patent should, by inadvertence, include several inventions, it is not competent for any person, in an action, or other proceeding, to take any objection on the ground that it comprises more than one invention. (*g*)

Every application is referred to an examiner appointed under the Act of 1883 to discharge certain duties.

Examination and Acceptance of Application.—Every application for a patent is referred by the Comptroller-General to an examiner appointed under the Act of 1883, (*h*) whose duty it is to ascertain 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 whether the title sufficiently indicates the nature of the invention. (*i*) It is also the examiner's duty to report whether the invention is contrary to law and morality, (*k*) and whether the application comprises more than one invention. (*l*) If the examiner reports that the nature of the invention is not fairly described, or that the application, specification, or drawings, has not, or have not, been prepared in the prescribed manner, or that the title does not sufficiently indicate the

(*d*) 46 & 47 Vict. c. 57, s. 99.
(*e*) 47 & 48 Vict. c. 62, s. 9.
(*f*) s. 33.
(*g*) 46 & 47 Vict. c. 57, s. 33.
(*h*) *Ibid.* s. 83.
(*i*) *Ibid.* s. 6. See chap v.
(*k*) *Ibid.* s. 86.
(*l*) *Ibid.* s. 33.

Examination and Acceptance.

subject-matter of the invention, or that the application comprises more than one invention, the Comptroller may, subject to appeal to the law officer, refuse to accept the application, or require that the specification or drawings be amended before he proceeds further; and in the latter case the application must, if the Comptroller so directs, bear date as from the time when the requirement is complied with. (*m*) It is also competent to the Comptroller to inquire whether the alleged invention is an invention within the definition contained in sec. 46 of the Patents Act, 1883 (*n*)—*i.e.*, whether it is a manufacture within the meaning of sec. 6 of the Statute of Monopolies, (*o*) and, subject to appeal to the law officer, to refuse the application, if he is satisfied that it is not. (*p*)

Comptroller acts on the report of the examiner.

On the question whether or not the use of an invention is contrary to law or morality there appears to be no appeal from the decision of the Comptroller.

Exercise of discretionary powers by Comptroller.

The Comptroller is not entitled to exercise any discretionary power adversely to an applicant without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent. (*q*)

Right of appeal to the law officer from any decision of the Comptroller.

In any case where a person, having the right, intends to appeal to the law officer from a decision of the Comptroller, he must, within fourteen days from the date of the decision appealed against, file in the Patent Office a notice of such intention, stating the nature of the decision appealed against, and whether the appeal is from the whole or part only, and if so what part, of the decision, and he must otherwise conform to the Law Officer's Rules. (*r*) Where the right of appeal to the law officer lies against a decision of the Comptroller, the effect of Nos. 1 and 2 of the Law Officer's Rules is to limit the hearing before the law officer to points specifically raised by the notice of appeal, and in opposition cases where a notice of appeal is given as to parts only of the Comptroller's decision, the person receiving such notice, if he desires to question other parts of the decision, must give a counter notice. If the original notice of appeal is only given just before the expiration of the fourteen days, the time for giving a counter notice may be extended under Rule 5. (*s*)

(*m*) 46 & 47 Vict. c. 57, ss. 33, 86; 51 & 52 Vict. c. 50, s. 2.

(*n*) 46 & 47 Vict. c. 57, s. 46.

(*o*) See Vol. I. p. 22.

(*p*) Cooper's Patent, (1901) 19 R. P. C. 53; Johnson's Patent, (1901) 19 R. P. C. 56.

(*q*) 46 & 47 Vict. c. 57, s. 94; see P. R. (1903) rr. 28–31.

(*r*) See p. 323 *post*.

(*s*) In the Matter of Bairstow's Patent, (1888) 5 R. P. C. 289.

Examination and Acceptance.

The Act of 1883 gives the law officer control over the costs of the proceedings before him, but there is no such provision in the case of proceedings before the Comptroller. (*t*)

Costs.

As a general rule, the costs of an appeal to the law officer follow the event, (*u*) unless there has been unfair conduct; (*x*) and where an appeal is withdrawn the appellant pays the costs. (*y*)

Example of an objection to the title.

In *Brown's Application* (*z*) for a patent under the title "improvements in casks and tubs," accompanied by a complete specification in the first instance, which stated that the invention was applicable to barrels or other casks and also to tubs *and analogous vessels*, in which the staves are formed with a croze or groove for receiving the head or bottom, and the object of the invention was to secure the bottom or head against outward displacement, and also to support the staves beyond the croze against any force or blow delivered upon the exterior of the staves such as would tend to break off their ends projecting beyond the croze, the Comptroller refused to accept the specification unless the words "and analogous vessels" were added to the title or omitted from the specification, on the ground that the title did not, in view of the words "and analogous vessels" in the body of the specification, sufficiently indicate the subject-matter of the invention. The law officer on appeal, however, reversed the Comptroller's decision, being of opinion that the title, taken together with the claims, which were specific, was sufficient, and he also pointed out that the patentee is entitled to frame his title in his own way, provided he does not infringe the rules of the statute.

Application comprising more than one invention may be amended by limitation to one invention.

The Patent Rules, 1905, (*a*) provide that where a person making application for a patent has included in his specification more than one invention, the Comptroller may require or allow him to amend such application and specification and drawing, or any of them, so as to apply to one invention only, and the applicant may make application for a separate patent for any invention excluded by such amendment. Every such last-mentioned application may, if the Comptroller at any time so direct, bear the date of the original application, or

(*t*) 46 & 47 Vict. c. 57, s. 38.

(*u*) Anderton, (1885) Griff. L. O. C. 25; *Ex parte* Fox, (1812) 1 V. & B. 67; 1 W. P. C. 431 *n.*

(*x*) *Re* Lowe's Patent, (1856) 25 L. J. N. S. Ch. 456.

(*y*) Knight, (1886) Griff. L. O. C. 35; *Re* Cobley's Patent, (1861) 8 Jur. N. S. 106; *Re* Ashenhurst's Patent, (1853) 2 W. R. 3.

(*z*) (1887) Griff. L. O. C. 1.

(*a*) P. R. (1905) r. 5.

such date between the date of the original application and the date of the application in question, as the Comptroller may direct, and shall otherwise be proceeded with as a substantive application in the manner prescribed by the Act and Rules thereunder for the time being in force. Examination and Acceptance.

Where the Comptroller has required or allowed any application, specification, or drawing to be amended as aforesaid, such application shall, if the Comptroller at any time so direct, bear such date, subsequent to the original date of the application and not later than the date when the amendment was made, as the Comptroller shall consider reasonably necessary to give sufficient time for the subsequent procedure relating to such application.

When a specification comprises several distinct matters they are not deemed to constitute one invention by reason only that they are all applicable to or may form parts of an existing machine, apparatus, or process. (*b*) Test of one invention.

Lord *Herschell*, when Solicitor-General, (*c*) gave it as his opinion that the general object of the invention is the test by which the question of one invention must be decided, and in reference to a particular case said—

> "If you have a particular general object of an invention to make rails rest more securely, and you describe one, or two, or three devices of an analogous nature, cognate devices, for carrying it into effect, I should say they were all one invention; but if there is no common purpose, so that you could say, 'I use this as a substitute for that,' both serving the same purpose, although there is some difference between them, but they are to serve some different purpose, there is no connection between them, except that both are used in connection with rails, and it strikes me that would be two inventions. I should always allow alternative devices for producing a particular object as one invention. But if you say, 'I have invented six different kinds of railway sleepers, each of which has its own merits and purposes and objects distinct,' then those are six inventions."

The following two cases are given as illustrations of the circumstances in which an applicant is required to amend his application so as to limit it to one invention only :—

In *Hearson's Patent*, (1885) Griff. P. C. 266, an applicant applied for a patent, under the title "Improvements in apparatus for rapidly heating flowing water, *a part of which* Examples of cases in which amendment by limitation to

(*b*) P. R. (1905) r. 5. (*c*) Jones's Patent, Griff. P. C. 265.

Examination and Acceptance.

one invention is required.

improvements is applicable to other purposes," and after describing in his provisional specification an apparatus consisting of several parts, including improved mechanism, by which the turning of the taps of a geyser, otherwise than in the required order, was prevented, stated: "The arrangements hereinbefore described for locking the water and gas-cocks is applicable to oxyhydrogen light apparatus, and to other apparatus in which two cocks, or a number of cocks, are required to be turned in a certain order," he was ordered to amend his application by striking out from the title the words in italics. Both the Comptroller and the law officer were of opinion that the application, as it stood before amendment, included more than one invention, and the latter pointed out that the applicant was entitled, if he so desired, to make a separate contemporary application for his new and improved cock, or arrangement of cocks by itself, and that he might of course describe the cock, or arrangement of cocks, as part of his combination or apparatus which he claimed to have invented, but that he should in doing so refer to his contemporary application if he desired to make one.

In *Robinson's Patent*, Griff. P. C. 267, a person applied for a patent for an invention of "improvements in the art of producing and utilising induced electrical currents for telegraphy and other purposes," and it appeared that the invention consisted in the employment in telegraphic transmitting and receiving instruments of a certain appliance. The Comptroller objected to the title, stating that the appliance could be applied to purposes other than telegraphic, and required an amendment so as to limit the invention to such purposes, and held that, if the applicant desired to claim the general use of the appliance for the production of induced currents, it must form the subject of a separate patent.

On appeal, the law officer informed the applicant that if he intended to claim, as a combination, the whole of the apparatus as one telegraphic apparatus, then it might all be included in one specification; but if he was including, for all purposes, the invention of "the appliance," then it was something different, which could not be protected by the same patent. The law officer further stated that he would allow that, if the whole were limited to telegraphy, because that would make an improved telegraphic arrangement, and although consisting of several parts, he would allow it to be included in one patent; but if there were to be two separate things, which could only be allowed together because they went to make up one better kind of instrument or machine, then he would never allow the use of a part of that for a purpose independent of the main object of the machine.

Examination and Acceptance.

It was therefore a question for the applicant whether it answered his purpose better to protect "the appliance" for all purposes, or to protect improved telegraphic apparatus, consisting of the employment of "the appliance" therein. The applicant elected to take a patent for the general use of "the appliance," and the law officer allowed the title to be amended to "improvements in the art of producing and utilising induced electrical currents," the description of the telegraphic apparatus being struck out of the provisional specification.

The decisions above quoted still hold good as to what is *not* one invention.

It is not easy to generalise from the practice of the Patent Office, but it is safe to state that examiners do not now accept as conclusive the test of "one general object" in support of a plea to claim alternative forms, and only permit separate claims for alternative solutions of the same problem when the problem is recognised and solved for the first time. Co-operating elements of a new combination may still be claimed in one patent, but, generally, interdependence is not recognised between two arrangements either of which can be used not only with the other but also with any known equivalent. A complete machine and a subordinate integer cannot be claimed in the same patent when the subordinate integer is unnecessary to the carrying out of the invention as a whole, and in itself has a character independent from that of the complete machine. On the other hand, the Office makes no objection to an applicant making separate claims for a process, apparatus for carrying out such process and the product thereof.

Separate patents granted to joint applicants who are inventors of distinct parts.

If an application be made by two or more joint applicants, and it appears that the invention consists of distinct parts, invented separately by the applicants respectively, separate patents may be granted to the actual inventors in respect of the separate and distinct parts. (*d*)

Appeal from Comptroller on refusal to accept application, or to require an amendment.

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

(*d*) See Craig and Macfarlane's Application, P. M. J. vol. iv. 3rd series, p. 366.

(*e*) 51 & 52 Vict. c. 50, s. 2 (2).

(*f*) *Ibid.* s. 2 (3). The practice on appeal to the law officer is regulated by the Law Officer's Rules, see p. 323 *post*.

Statutory Offences.

Notice of acceptance of application.

If the application is accepted the applicant will receive due notice to this effect, (*g*) and the invention may, during the period between the date of the application and the date of sealing the patent, be used and published without prejudice to the patent to be granted for the same; (*h*) though the applicant is not entitled to sue in respect of infringements of the invention committed before the acceptance and publication of the complete specification. (*i*)

Representation that an article is patented where no patent has been granted.

Statutory Offences.—Sec. 105 of the Act of 1883 provides that any person who represents that any article sold by him is a patented article, when no patent has been granted for the same, shall be liable for every offence, on summary conviction, to a fine not exceeding five pounds. The effect of sec. 15 of the same Act, however, is to render it no offence to represent an article as "patented" when the complete specification has been accepted, though the patent has not been sealed. (*k*)

It is probably no offence under the Act of 1883 to represent an article as patented when the patent has expired and the fair implication is that the article was made under an expired and not under an existing patent. (*l*)

A person is deemed to represent that an article is patented if he sells the article with the word "patent," "patented," or any other word expressing or implying that a patent has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to the article. (*m*)

Unauthorised use of the Royal Arms.

Any person who, without the authority of His 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, is liable, on summary conviction, to a fine not exceeding twenty pounds. (*n*)

Penalties in Scotland.

In Scotland, any offence under the Act of 1883 declared to

(*g*) 51 & 52 Vict. c. 50, s. 2 (4).

(*h*) 46 & 47 Vict. c. 57, s. 14; Vol. I. p. 187.

(*i*) *Ibid.* s. 13; Vol. I. pp. 187, 383.

(*k*) R. *v.* Townsend, (1896) 13 R. P. C. 265; in R. *v.* Wallis, (1886) 3 R. P. C. 1; and R. *v.* Crampton, (1886) 3 R. P. C. 367, fines were inflicted.

(*l*) See Cheavin *v.* Walker, (1877) L. R. 5 Ch. D. 850; Merchandise Marks Act, 1887, s. 3.

(*m*) 46 & 47 Vict. c. 57, s. 105, sub-s. 2; but see Cheavin *v.* Walker, (1877) L. R. 5 Ch. D. 863; Linoleum Co. *v.* Nairn, (1877) L. R. 7 Ch. D. 834.

(*n*) 46 & 47 Vict. c. 57, s. 106; 5 Edw. VII. c. 15, s. 68.

be punishable on summary conviction may be prosecuted in the Sheriff Court. (*o*)

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The punishment for a misdemeanour, under the Act of 1883, in the Isle of Man, is 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. (*p*) And any offence 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. (*q*)

Penalties in the Isle of Man.

Filing the Complete Specification.—If an applicant does not leave a complete specification with his application, he may leave it at any subsequent time within six months, or, on obtaining the leave of the Comptroller on payment of the prescribed fee, within a further extended period of one month (*r*) from the date of application, but, unless a complete specification is left within that time, the application will be deemed to be abandoned. (*s*)

Complete specification must be filed within six, or upon leave seven, months from date of application.

The six months is reckoned exclusively of the day of the date of the application. (*t*)

Where an application for a patent has been abandoned or become void, the specification or specifications and drawings (if any) accompanying or left in connection with such application are not at any time open to public inspection, or published by the Comptroller, (*u*) except in cases under the convention.

The complete specification must be signed by the applicant or his authorised agent, but in the case of a joint application the Comptroller will probably not refuse to accept the complete specification on the ground that it is signed by, or on behalf of, one applicant only. (*x*)

Complete specification must be signed, and

It is provided by sec. 5, sub-s. 5 of the Patents Act, 1883, that a complete specification must end with a distinct statement of the invention claimed. (*y*)

must end with distinct,

It is required by Rule 4 of the Patent Rules, 1905, that the

and clear and succinct state-

(*o*) 46 & 47 Vict. c. 57, s. 108.
(*p*) *Ibid.* s. 112, sub-s. 2.
(*q*) *Ibid.* sub-s. 3.
(*r*) 2 Ed. VII. c. 34, s. 1 (8); see R. R. (1903) rr. 10, 77.
(*s*) 46 & 47 Vict. c. 57, s. 8; see also s. 98.
(*t*) Russell *v.* Ledsam, (1843) 14 M. & W. 572, 582; 16 M. & W. 633; Williams *v.* Nash, (1859) 28 Beav. 93.
(*u*) 48 & 49 Vict. c. 63, s. 4.
(*x*) In the Matter of Grenfell and McEvoy's Patent, (1890) 7 R. P. C. 151.
(*y*) See Vol. I. p. 248.

Filing Complete Specification.

statement of the invention claimed, with which a complete specification must end, shall be clear and succinct as well as separate and distinct from the body of the specification. (*z*) Claims are not disallowed merely on account of their number. (*a*)

ment of the invention claimed.

Reference of the complete specification to an examiner.

The complete specification, if left after a provisional, is referred to an examiner for report whether the complete has been prepared in the prescribed manner, and whether the invention particularly described in the complete specification is substantially the same as that which is described in the provisional specification, and, if the examiner reports that it is not so, the Comptroller is empowered to refuse to accept the complete specification unless and until it shall have been amended to his satisfaction; any such refusal, however, is subject to appeal to the law officer, who must, if required, hear the applicant and the Comptroller, and may make an order determining whether, and subject to what conditions, if any, the complete specification shall be accepted. (*b*)

The requisite amendment, if any, is to be determined by the judicial act of the Comptroller, subject to appeal to the law officer. The function of deciding what the amendment is to be is not delegated by the Act to the examiner, though the application proceeds if he reports favourably to the applicant. (*c*)

The fact that the complete specification narrows the scope of the provisional is not a ground on which the Comptroller or law officer is justified in refusing it, and the applicant may be permitted to excise any abandoned portion of the provisional specification. (*d*) Thus in *Everitt's Application* (*e*) the Comptroller refused to accept the complete specification on the ground that it claimed only a special means of carrying a principle into effect, whilst the provisional was apparently for the principle; but this decision was reversed on appeal, on the ground that in law the Comptroller was not entitled to refuse to accept the complete specification, which only narrowed down the ambit of the provisional and did not go outside it.

Examination as to novelty.

The examiner, when the complete specification has been

(*z*) As to the interpretation of this Rule in practice, see Bancroft's Application, (1905) 23 R. P. C. 89.

(*a*) *Ibid.*

(*b*) 46 & 47 Vict. c. 57, s. 9 (1), (2), 3); see In the Matter of Anderson's Patent, (1890) 7 R. P. C. 323.

(*c*) See C.'s Patent, (1890) 7. R. P. C. 256.

(*d*) Everitt, (1886) Griff. L. O. C. 27, Vol. I. pp. 184, 185.

(*e*) (1888) Griff. L. O. C. 27.

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deposited, in addition to the report above referred to forthwith makes a further investigation for the purpose of ascertaining whether the invention claimed has been wholly or in part claimed or described in any specification (other than a provisional specification not followed by a complete specification), published before the date of the application, and deposited pursuant to any application for a patent made in the United Kingdom within fifty years next before the date of the application. (*f*)

If on investigation it appears that the invention has been wholly or in part claimed or described in any such specification, the applicant is informed thereof, and he may, within such time as may be prescribed, amend his specification, and the amended specification is then investigated in like manner as the original specification; and the examiner reports to the Comptroller the result of his investigations. (*g*)

Acceptance.

If the Comptroller is satisfied that no objection exists to the specification on the ground that the invention claimed thereby has been wholly or in part claimed or described in a previous specification as before mentioned he, in the absence of any other lawful ground, accepts the specification. (*h*) If, however, he is not so satisfied after hearing the applicant, and unless the objection be removed by amending the specification to his satisfaction, he determines whether a reference to any, and, if so, what prior specification or specifications ought to be made in the specification by way of notice to the public. (*i*) An appeal lies to the law officer from the Comptroller's decision in this matter. (*k*)

It is presumed that the Comptroller will be guided in the matter of ordering the insertion or addition of specific references by the decisions which have been given, and regulate the practice in cases where the grant is opposed on the ground that the invention has been patented in this country on an application of prior date. (*l*)

It is the present practice of the Office, if the date for acceptance permit, when the specification is ready for acceptance, to issue a preliminary notice to the effect that the formal notice of acceptance will be issued after the expiration of a month, unless sufficient ground for further delay is

(*f*) 2 Ed. VII. c. 34, s. 1 (1).
(*g*) *Ibid.* s. 1 (2), (3).
(*h*) *Ibid.* s. 1 (5).
(*i*) *Ibid.* s. 1 (6); Patent Rules (1905) r. 10.
(*k*) 2 Edw. VII. c. 34, s. 1 (7).
(*l*) See pp. 43-50 *post*.

Filing Complete Specification.

afforded. This preliminary notice is, however, *only* sent in cases in which the result of the investigation prescribed by sec. 1 (1) of the Patents Act, 1902, has not been previously communicated to the applicant. No such notice is sent in convention cases, or in cases in which the applicants or agents are outside the United Kingdom. (*m*)

The investigations and reports above referred to are no guarantee of the validity of the patent, if and when obtained; and no liability attaches to the Board of Trade or any officer thereof by reason of, or in connection with, any such investigation or report, or any proceeding consequent thereon. (*n*)

The procedure as to the examination of earlier specifications is regulated by the Patents Act, 1902, and the Patents Rules, 1905, rr. 6–11. (*o*)

In case the result of the examiner's search discloses that any of the claims is or are wholly or in part anticipated by prior patents, the official letter addressed to the applicant or his agent states, as a rule, whether the invention is anticipated wholly or in part, and in the latter case as to what part. The term for replying to the objections is two months, and the applicant may either satisfy the examiner by filing a statement of arguments or by amending the specification or claims, or he may apply for an interview with the examiner and discuss the effect of the references and the wording of the proposed amendment. The said term of two months may be extended in exceptional circumstances, but if the applicant does not satisfy the examiner, and the Comptroller issues a further letter based on the same references, the term of two months dates from the first official letter. If a suitable amendment is not filed within two months, then the Comptroller appoints a hearing and decides between the applicant and the examiner. If the search has only been provisional, then, even though the Comptroller decide in favour of the applicant, instead of the application being accepted, the case is referred back to the examiner to continue his search, in which case further objections may be taken and a second hearing may be necessary.

Reports of examiners are not published.

Reports of examiners are not in any case published or open to public inspection, and are not liable to production or inspection in any legal proceedings under the Act of 1883, unless the Court or officer having power to order discovery in

(*m*) See Official Notice, P. O. J. February 14, 1906, p. 189.

(*n*) 2 Edw. VII. c. 34, s. 1 (9).

(*o*) See Appendix.

Filing Complete Specification.

such legal proceedings shall certify that such production or inspection is desirable in the interests of justice, and ought to be allowed. (*p*) It consequently follows that where there are two applicants for a patent for the same or analogous inventions, each cannot know the nature of the other's specification until the rival complete specifications themselves are open to public inspection. (*q*) The examiner cannot base an objection on the fact that the applicant's invention is described in a specification of an earlier patent, which was only published after the date of the application, but he may draw the applicant's attention to it so that the applicant can consider the desirability of making an amendment.

Subsequent application before seal is obtained in respect of a prior application.

Sub-s. 5 and 6 of sec. 7 of the Act of 1883 were found in practice to be useless, and to give rise to much hardship and blackmailing, perpetrated by prior against later applicants, and they were abolished by the Act of 1888, which substituted a new section for sec. 7 of the original Act of 1883, and *inter alia* provides that (*r*) "if, after an application for a patent has been made, but before the patent thereon has been sealed, another application for a patent is made, accompanied by a specification, bearing the same or a similar title, the Comptroller, if he thinks fit, on the request of the second applicant, or of his legal representative, may, within two months of the grant of a patent on the first application, either decline to proceed with the second application or allow the surrender of the patent, if any, granted thereon."

Amendment of a complete specification before and after acceptance.

It may happen that the applicant himself may desire to amend his specification before the seal is obtained. In this case the Comptroller may, under the substituted sec. 7 and sec. 9 of the Act of 1883, and sec. 2 and sec. 6 of the Act of 1902, allow the amendment before acceptance of the complete specification. (*s*) In the case of a voluntary amendment, which will occasion extra trouble for the Patent Office, the applicant must file a stamped form of request, and proceed under sec. 18 of the Act of 1883, (*t*) even though the complete specification has not been accepted. (*u*) If the complete specification has not become open to public inspection (*x*) there is no necessity for the advertisement of the request for leave to amend under sec. 18. (*y*)

(*p*) 46 & 47 Vict. c. 57, s. 9, sub-s. 5; 51 & 52 Vict. c. 50, s. 3; 2 Edw. VII. c. 34, s. 1 (4).
(*q*) 46 & 47 Vict. c. 57, s. 10.
(*r*) 51 & 52 Vict. c. 50, s. 2.
(*s*) Dart's Patent, Griff. P. C. 307.
(*t*) p. 83 *post*.
(*u*) Jones's Patent, Griff. P. C. 313.
(*x*) p. 18 *post*.
(*y*) Jones's Patent, Griff. P. C. 313. In

Filing Complete Specification.

The applicant should bear in mind that it is his duty to frame his specification in such a way that a patent may properly be granted; and though in suitable cases (*z*) the Comptroller or Law Officer will exercise the power of requiring amendments as a condition of granting a patent or allow an amendment under sec. 18 of the Act of 1883, yet it is not at all a matter of course that the necessary amendments will be allowed, if the specification is originally presented in such a form that the patent cannot be granted without alteration.(*a*)

Disagreement by joint applicants as to form of specification.

When joint applicants disagree as to the form of the complete specification and desire to file separate specifications, the Comptroller and law officer have no jurisdiction to decide between them, or to accept two separate specifications, or to accept a specification at all, unless the parties come independently to an agreement and settlement as to its form. (*b*)

Acceptance of complete specification is no guarantee in law.

The acceptance of a specification by the Comptroller is no guarantee that it is good in law. The Comptroller is only required to be satisfied that the specification is prepared in the prescribed manner, and that the invention particularly described in the complete is substantially the same as that described in the provisional specification, and to consider and act upon the examiner's reports. (*c*)

Acceptance of complete specification must take place within a definite period.

If a complete specification is not accepted within twelve months from the date of application, or within further extended periods not exceeding three months, on obtaining the leave of the Comptroller and payment of the prescribed fees, (*d*) then (save in the case of an appeal having been lodged against the refusal to accept) the application at the expiration of such period becomes void. (*e*)

When a complete specification becomes public.

When the complete specification is accepted, the Comptroller is required by the Act of 1883 to advertise the acceptance in the official journal of the Patent Office, and the application and specification or specifications, with the drawings (if any), are thereupon open to public inspection and may be inspected at the Patent Office upon payment of the prescribed fee. (*f*)

this case the complete specification was not yet open to public inspection. The term "public property" in the Attorney-General's judgment probably referred to the date of lodging the specification.

(*z*) Harrild and Parkin's Patent, (1900) 17 R. P. C. 617.

(*a*) See Thomas and Prevost's Patent, (1898) 16 R. P. C. 70; Garnett's Patent, (1899) 16 R. P. C. 154; Mills's Patent, (1901) 18 R. P. C. 322; Crist's Patent, (1903) 20 R. P. C. 475; p. 49 *post*.

(*b*) Apostoloff's Patent, (1896) 13 R. P. C. 275.

(*c*) See p. 6 *ante*.

(*d*) 48 & 49 Vict. c. 63, s. 3.

(*e*) 46 & 47 Vict. c. 57, s. 9 (4).

(*f*) *Ibid.* s. 10; P. R. (1903) rr. 11, 12.

Foreigner's Application.

Foreign applicants.

Applications under International and Colonial Arrangements.—In order to enable the British Government to join the "Union for the Protection of Industrial Property," which consists at present of the following States—Great Britain, Belgium, Brazil, Ceylon, Cuba, Denmark, Germany, New Zealand, Japan, San Domingo, Spain, France, Italy, Holland and its colonies, Portugal, Servia, Switzerland, Norway, Sweden, Tunis, the United States, and Mexico—it is provided by sec. 103 of the Act of 1883, as amended by sec. 6 of the Act of 1885, and sec. 1 of the Act of 1902, as follows:—

"If her Majesty is pleased to make any arrangement with the Government or Governments of any foreign State or States for mutual protection of inventions, then any person who has applied for protection for any invention in any such State shall be entitled to a patent for his invention under the Act of 1883, in priority to other applicants; and such patent shall have the same date as the date of application in such foreign State: provided that his application is made within twelve months from his applying for protection in the foreign State with which the arrangement is in force: And provided further that the patentee shall not be entitled to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification."

The word "person" includes "corporation," and so the section gives the same rights of priority to corporations as to individuals. (*g*)

It is also enacted that the publication in the United Kingdom or the Isle of Man, during the above period of twelve months, of any description of the invention, or the use therein during such period of the invention, shall not invalidate the patent which may be granted for the same.

This latter provision does not apply in all cases where a patent has been previously applied for in a foreign country, but is only applicable, as part of the general provisions of sec. 103 of the Act of 1883, to cases where the patentee avails himself of the privilege given by that section. The Act gives a foreign patentee, who has obtained a patent in a State which has joined the convention, a double right—viz., either to apply in this country for a patent antedated to the date of his foreign application, or, running the risk of publication, to obtain a patent in the ordinary way for the full period from the date of

(*g*) Carez's Patent, (1889) 6 R. P. C. 552; Société Anonyme du Générateur du Temple's Patent, (1896) 13 R. P. C. 56.

Foreigner's Application.

application. (*h*) A foreign applicant who wishes to obtain in this country an antedated patent must make his election and claim the earlier date before the expiration of twelve months from the date of his first application in a foreign country, otherwise he will be too late and a subsequent request for the benefit of sec. 103 of the Patents Act, 1883, will not be acceded to by the authorities at the Patent Office. (*i*) Sub-s. 2 of sec. 103 of the Act of 1883 gives protection against publication only to patents which are granted upon applications made under the provisions of sec. 103 as amended by subsequent Acts. (*k*)

An application under the above provisions must be accompanied by a complete specification and a copy of the foreign specification, and otherwise be made in the same manner as an ordinary application; and such provisions apply only in the case of those foreign States with respect to which his Majesty shall, from time to time, by Order in Council, declare them to be applicable, and so long only in the case of each State as the Order in Council shall continue in force with respect to that State. (*l*)

Retrospective effect of Order in Council.

An Order in Council, made under the above provisions, has a retrospective effect unless specially framed to the contrary. Thus, where a person had applied for a patent in the United States of America to which the provisions of sec. 103 of the Act of 1883 had not been extended at the date of the application, he was declared to be entitled to a British patent, bearing the date of the United States application, the provisions of sec. 103 of the Act of 1883 having been extended to such foreign State before the expiration of the period allowed by the Act. (*m*)

Provisions of s. 103 of Act of 1883 may by order in Council be applied to British possessions.

The Act of 1883 further empowers his Majesty, where it is made to appear to him that the legislature of any British possession has made satisfactory provision for the protection of inventions patented in this country, by Order in Council (to take effect as if its provisions had been contained in the Act, and from the date fixed by the Order), to apply the above provisions with such variations or additions, if any, as to his Majesty in Council may seem fit; and it is lawful for his Majesty in Council to revoke any such order. (*n*)

(*h*) British Tanning Co., Ld. *v.* Groth, (1897) 8 R. P. C. 113; Acetylene Illuminating Co., Ld. *v.* United Alkali Co., Ld., (1902) 19 R. P. C. 213.

(*i*) See Acetylene Illuminating Co., Ld. *v.* United Alkali Co., Ld., (1902) 19 R. P. C. 213; 20 R. P. C. 161.

(*k*) *Ibid.*

(*l*) 46 & 47 Vict. c. 57, s. 103, (3) and (4); 1 Edw. VII. c. 18, s. 1 (2); P. R. (1903) rr. 13-16; Acetylene Illuminating Co., Ld. *v.* United Alkali Co., Ld., (1902) 19 R. P. C. 213.

(*m*) In the Matter of Main's Patent, (1890) 7 R. P. C. 13; 1 Edw. VII. c. 18, s. 1 (1).

(*n*) 46 & 47 Vict. c. 57, s. 104; see International Convention in the Appendix.

Foreigner's Application.

A patent in this country can only be granted under the provisions of sec. 103 or sec. 104, to a person who has actually made application for protection in the foreign State, and not to another person on his behalf. (*o*) A corporation can, it is submitted, legally apply in its own name alone. Where the foreign applicant is a firm the partners must combine to file a joint application.

Only the person who actually made the foreign application is recognised.

The rights conferred by s. 103 are personal.

Moreover, secs. 103 and 104 of the Act of 1883 do not confer any rights on a person making an application for a British patent, in respect of an invention communicated to him from abroad. The rights conferred by the sections are personal, and intended to encourage people who have invented abroad to come to this country and to make known their inventions. (*p*) If the British specification be not accepted within twelve months of the foreign application, then the documents are laid open to inspection at the Patent Office before acceptance. (*q*)

L'Oiseau and *Pierrard's Application* (*r*) is an instance of the advantages conferred on foreign applicants by sec. 103 of the Act of 1883. In that case the applicants applied for a patent for "automatic apparatus for subjecting the person to the action of electric currents," which was opposed by one *Everitt*, on the ground that his prior application, in which his complete specification had been accepted, for a patent for "improvement in completing electric currents," contained the subject-matter of the applicant's alleged invention. It appeared, however, that *L'Oiseau* and *Pierrard* had obtained a patent for their invention in France on a French application of earlier date than *Everitt's* application in England. *L'Oiseau* and *Pierrard* were therefore held entitled to an English patent, under the Act of 1883 and the Convention of 1884, to the disadvantage of *Everitt*.

Effect of an abortive foreign application.

When an inventor makes an abortive application in a foreign country, and then a successful application, before applying in this country, the British patent is antedated to the date of the successful foreign application.

Thus when a person on February 8, 1887, made an application in America for a patent, which became abortive, and on September 7, 1887, renewed his application, and then on April 8, 1888, made an application for a British patent, under sec. 103 of the Act of 1883, to bear date September 7, 1887, the

(*o*) In the Matter of Shallenberger's Application, (1889) 6 R. P. C. 550; in the Matter of Carez's Application, (1889) 6 R. P. C. 552.

(*p*) In the Matter of Shallenberger's Application, (1889) 6 R. P. C. 550.

(*q*) See 1 Edw. VII. c. 18, s. 1 (2).

(*r*) (1887) Griff. L. O. C. 36.

Foreigner's Application.

Comptroller refused the application. The law officer reversed the Comptroller's decision, and ordered a patent to be granted and dated September 7, 1887, on the ground that the patentee had no subsisting rights under his abortive application in America, of February 8, 1887. (*s*)

Practice on applications under s. 103 of the Act of 1883.

An applicant for a British patent under the provisions of sec. 103 of the Act of 1883 must include in his application a declaration that the foreign application as defined by the Patent Rules, 1903, has been made, (*t*) and must specify the foreign States or British possessions in which foreign applications have been made, and the official date or dates thereof respectively. The application must be made within twelve months from the date of the first foreign application, and must be accompanied by a complete specification, and signed by the person or persons by whom such first foreign application was made. If such person, or any of such persons, be dead, the application must be signed by the legal personal representative of such dead person, as well as by the other applicants, if any, (*u*) and letters of administration must be taken out in this country.

The application in the United Kingdom must be made on the Form A2, (*x*) and must be accompanied by, in addition to the complete specification left therewith, a copy or copies of the specification, and drawings filed or deposited by the applicant in the Patent Office of the foreign State or British possession in respect of the first foreign application, duly certified by the official chief or head of the Patent Office of such foreign State or British possession as aforesaid, or otherwise verified to the satisfaction of the Comptroller. If any specification or other document relating to the application is in a foreign language, a translation thereof must be annexed thereto, and verified by statutory declaration or otherwise to the satisfaction of the Comptroller. (*y*)

Minor differences of departure in an applicant's English specification may be allowed, if the Comptroller and law officer are enabled, by the agreed translation of the foreign

(*s*) In the Matter of Van de Poele's Patent, (1890) 7 R. P. C. 69.

(*t*) "Foreign application" means an application by any person for protection of his invention ir a foreign State, or British possession, to which by an order of his Majesty in Council for the time being in force the provisions of s. 103 of the Act of 1883 have been declared applicable, see Patent Rules (1903) r. 3.

(*u*) See P. R. (1903) r. 13.

(*x*) See p. 349 *post*.

(*y*) See P. R. (1903) r. 14; for further details as to practice on applications under s. 103 of Act 1883, see rr. 15, 16.

Opposition—General.

specification, to conclude that the inventions referred to in the two documents are identical, or, at least, that the invention sought to be patented in the United Kingdom is not larger than that forming the subject of the foreign application. (z) Should the British patent be granted for an invention different to that forming the subject of the foreign application, this fact may seriously affect the validity of the patent. (a)

Though when an applicant applies for a British patent under the provisions of sec. 103 of the Act of 1883 his specification must not claim any invention which is not included in his foreign application, the British specification may be amplified beyond the disclosure made in the foreign specification; provided that the claim is limited to the invention covered by the foreign application. (b)

In the case where an invention is protected in the foreign State by more than one patent bearing the same date it is permissible to combine the various features in a single British application so long as sec. 33 of the Act of 1883 is complied with. Conversely an applicant relying on sec. 103 of the Act of 1883 may be required to divide his application, notwithstanding the fact that his invention is protected by a single patent in the foreign State.

It is immaterial whether the invention be protected in a foreign State by Letters Patent, Privilege, Certificate of Addition, or by Useful Model Registration. In all cases the period of priority allowed is twelve months. It is the practice for the examiner to quote against an application under the Convention all specifications published prior to the actual date of filing in this country, but when the previously published specification belongs to a patent of later date than that claimed under the Convention the Comptroller will not order the insertion of a reference to such prior specification.

The date of the British patent when sealed will be the date of the foreign application relied on.

Opposition.

By sec. 11 of the Patents, Designs, and Trade Marks Act, 1883, as amended by the Act of 1888, which (*inter alia*) relieved the

S. 11 of Act of 1883 as amended by Act of 1888.

(z) L'Oiseau and Pierrard, (1887) Griff. L. O. C. 37; in the Matter of Main's Patent, (1890) 7 R. P. C. 13.

(a) Avery's Patent, (1887) 4 R. P. C. 152; Renard *v.* Levinstein, (1864) 10 L. T. 177; Milligan *v.* Marsh, (1856) 2 Jur. N. S. 1083; Moser *v.* Marsden, (1893) 10 R. P. C. 209.

(b) L'Oiseau and Pierrard's Patent, (1887) Griff. L. O. C. 36.

Opposition—General.

Patent Office officials of the necessity of sending notices of interferences to prior applicants or patentees, (*c*) it is enacted as follows:—

"(1) Any person may, at any time within two months from the date of the advertisement of the acceptance of a complete specification, give notice at the Patent Office of opposition to the grant of the patent on the ground of the applicant having obtained the invention from him, or from a person of whom he is the legal representative, or on the ground that the invention has been patented in this country on an application of prior date, or on the ground that the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention forms the subject of an application made by the opponent in the interval between the leaving of the provisional specification and the leaving of the complete specification, but on no other ground.

"(2) Where such notice is given the Comptroller shall give notice of the opposition to the applicant, and shall, on the expiration of those two months, after hearing the applicant and the person so giving notice, if desirous of being heard, decide on the case, but subject to appeal to the law officer.

"(3) 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.

"(4) The law officer may, if he thinks fit, obtain the assistance of an expert, who shall be paid such remuneration as the law officer, with the consent of the Treasury, shall appoint."

Opposition is allowed on only three grounds.

Hence the only grounds on which a person entitled so to do may oppose the grant of letters patent are—

(1) That the applicant has obtained the invention from him, or from a person of whom he is the legal representative.

(2) That the invention has been patented in this country, on an application of prior date.

(3) 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.

(*c*) 51 & 52 Vict. c. 50, s. 4.

Opposition—General.

Formerly, want of novelty, non-utility, and lack of subject-matter were all grounds of opposition, but the effect of the Act of 1883 is to abolish the right of the opposer to raise any of these grounds on an application for a patent; though, if the patent is granted, the Crown in no way guarantees that it may not be upset on one or other of these points in subsequent proceedings. (*d*)

When the two months' time-limit for giving notice of opposition has expired, it is submitted, a would-be opponent can only obtain leave to oppose by obtaining a *fiat* from the Privy Council.

Notice of opposition.

A person entitled so to do, and desirous of opposing a grant of letters patent, must, within the two months allowed from the date of the advertisement of the acceptance of the complete specification, give a notice of his opposition at the Patent Office, on Form D, stating the ground or grounds on which he intends to oppose, and he must himself sign the notice, stating his address, for service in the United Kingdom, and he must accompany his notice of opposition by an unstamped copy, which will be transmitted by the Comptroller to the applicant, (*e*) and, if he opposes on the ground that the invention has been patented in this country on an application of prior date, the notice must specify the title, number, and date of the patent granted on such prior application. (*f*)

The Comptroller has power to allow an amendment of an improperly drawn notice of opposition to be made at the hearing, but he cannot impose terms. (*g*)

Evidence of opponent and applicant.

Where the ground of opposition is that the applicant has obtained the invention from the opponent, or from a person of whom such opponent is the legal representative, unless evidence in support of such allegation to be left at the Patent Office within fourteen days after the expiration of two months from the date of the advertisement of the acceptance of the applicant's specification the opposition is deemed to be abandoned; (*h*) and where this ground of opposition is raised the Comptroller may request or allow any person who has made a statutory declaration in the matter to attend before him at the hearing of the case and make oral

(*d*) p. 1 *ante*.

(*e*) P. R. (1903) r. 32.

(*f*) P. R. (1903) r. 35. The practice on oppositions to grants of patents is regulated by the Patent Rules (1903) rr. 32–41, and the Law Officer's Rules.

(*g*) In the Matter of Airey's Application, 5 P. O. R. 348; Lake, (1886) No. 8642, Griff. L. O. C. 35; P. R. (1903) r. 76.

(*h*) P. R. (1903) r. 33.

Opposition—General.

explanations with respect to such matters as the Comptroller may require.

Except in the case of the above mentioned ground of opposition being raised, statutory declarations need not be left in connection with an opposition, but the opponent may, within fourteen days after the expiration of two months from the date of advertisement of the acceptance of the applicant's complete specification, leave at the Patent Office statutory declarations in support of his opposition, and on so leaving must deliver to the applicant copies thereof. (*i*)

The applicant on his part may, within fourteen days from the delivery of such copies, leave at the Patent Office statutory declarations in answer, delivering copies thereof to the opponent, who then is allowed fourteen days from such delivery to leave at the Patent Office statutory declarations in reply, which must be confined strictly to matters in reply, and copies of which he must deliver to the applicant. (*k*)

If the opponent does not leave statutory declarations in support of his opposition, the applicant may (if he desires so to do) within three months from the date of the advertisement of the acceptance of his complete specification, leave at the Patent Office statutory declarations in support of his application, and on so leaving declarations, he must deliver to the opponent copies thereof. (*l*)

Within fourteen days from the delivery of such last-mentioned copies, the opponent may leave at the Patent Office statutory declarations in answer, and on so leaving must deliver to the applicant copies thereof, and within fourteen days from such delivery the applicant may leave at the Patent Office his statutory declarations in reply, which must be confined to matters strictly in reply, and at the same time he must deliver copies thereof to the opponent. (*m*)

No further evidence can be left on either side except by leave, or on the requisition of the Comptroller. (*n*)

If either party files a useless and unnecessary multiplicity of declarations, the law officer will, as far as possible, endeavour to fix him with the costs and responsibility of them. (*o*)

Hearing.

When the evidence is finally completed, the Comptroller

(*i*) P. R. (1903) r. 36.
(*k*) *Ibid.* r. 37.
(*l*) *Ibid.* r. 38.
(*m*) *Ibid.* r. 39.
(*n*) *Ibid.* r. 40.
(*o*) Brand's Patent, (1894) 12 R. P. C. 102.

Opposition—General.

appoints a time for the hearing of the case, of which he must give at least ten days' notice to the parties. (*p*)

If the applicant or opponent desires to be heard, he must forthwith send the Comptroller an application on Form E. (*q*) The Comptroller may refuse to hear either party who has not sent such application for hearing.

If either party does not desire to be heard he should as soon as possible notify the Comptroller to that effect. (*r*)

If either party intends to refer at the hearing to any publication other than a specification mentioned in the notice of opposition he should, unless the same has been referred to in a statutory declaration already filed, give to the other party and to the Comptroller five days' notice at the least of his intention, together with details of each publication to which he intends to refer. (*s*)

After hearing the party or parties desirous of being heard or if neither party desires to be heard, then without a hearing the Comptroller decides the case and notifies his decision to the parties. (*t*)

As a rule, at the hearing of an opposition, the applicant begins; but when the opponent alleges *fraud* as a ground of opposition, the *onus* being on him, his evidence may be ordered to be taken first. (*u*)

If the opponent does not appear at the hearing, the Comptroller will decide the case in his absence, and will not recall his decision, even though it is subsequently shown that the opponent did not, in fact, receive the notice of hearing, which was duly posted. In such a case, on appeal to the law officer, the matter would most probably be sent back to the Comptroller for rehearing. (*x*) The mere withdrawal of an opposition does not entitle the applicant to the grant of a patent; the Comptroller of Law Officer, as the case may be, will hear and decide the case in the absence of the opponent. (*y*)

Appeal from the Comptroller's decision.

The evidence used on an appeal will be the same as that used at the hearing before the Comptroller, and no further evidence can be given, save as to matters which have occurred or come to the knowledge of either party, after the date of the decision appealed against, except with the leave of the law

(*p*) P. R. (1903) r. 41. The hearing may be during the legal vacations.
(*q*) P. R. (1903) r. 41.
(*r*) *Ibid.*
(*s*) *Ibid.*
(*t*) *Ibid.*
(*u*) Luke's Patent, (1887) Griff. P. C. 294.
(*x*) Warmann, (1887) Griff. L. O. C. 43.
(*y*) Kempton and Mollan's Patent, (1905) 22 R. P. C. 573.

Opposition—General.

officer, upon application for that purpose. (*z*) Such leave may in a proper case be obtained for the examination of witnesses who did not make declarations when the matter was before the Comptroller. (*a*)

An appeal to the law officer is a rehearing. (*b*) The law officer is entitled, if he desires it, to the assistance of an expert; (*c*) and he is also empowered, at the request of either party, to order the attendance at the hearing, for the purpose of cross-examination, of any person who has made a declaration; (*d*) and he is entitled to examine witnesses on oath, and to administer oaths for that purpose, and to order costs to be paid by either party. (*e*)

The law officer does not allow the cross-examination of witnesses or the admission of further evidence, when it appears to him that there has been ample opportunity for the filing of declarations when the case was before the Comptroller, and that he could not deal better with evidence given on cross-examination than with the declarations. (*f*) The law officer does not take on himself to decide adversely to the applicant fine points of anticipation. (*g*)

The law officer (and [*sic*] the Comptroller) is entitled to look at models in order to better understand the drawings and specifications, though the models are not exhibits, and consequently not evidence. (*h*)

Where an opposer appeals to the law officer from a decision of the Comptroller, it is not necessary that he should send a copy of his notice of appeal to the applicant. (*i*)

Power of Comptroller and law officer to impose conditions.

Both the Comptroller and the law officer have power to impose conditions on the granting of a patent, which power arises from the discretion of the Crown exercised through the Comptroller-General and the law officer to refuse the grant altogether. (*k*) Many instances of conditions imposed, and the reasons for the same, will be found in the following pages, where the different grounds on opposition are separately discussed.

Patent is only refused when

A patent is only refused in cases where the opposer proves

(*z*) L. O. Rules, r. viii.; 46 & 47 Vict. c. 57, s. 38; Hampton *v.* Facer, (1887) Griff. L. O. C. 13; Cheeseborough's Patent, Griff. P. C. 303.

(*a*) Thwaite's Patent, (1892) 9 R. P. C. 515.

(*b*) Stubbs' Patent, Griff. P. C. 298.

(*c*) 46 & 47 Vict. c. 57, s. 11 (4).

(*d*) L. O. Rules, r. ix.

(*e*) 46 & 47 Vict. c. 57, s. 38.

(*f*) In the Matter of Pitt's Patent, (1888) 5 R. P. C. 343, 345.

(*g*) *Ibid.*

(*h*) Lancaster's Patent, (1887) Griff. P. C. 294.

(*i*) Anderson and McKinnell, (1886) Griff. L. O. C. 23.

(*k*) p. 1 *ante*; L'Oiseau and Pierrard's Patent, (1886) Griff. L. O. C. 36.

his ground or grounds of opposition beyond all possibility of doubt, as there is no appeal from the decision of the law officer. It is evident that, should the law officer wrongfully refuse a patent the applicant would suffer an irremediable injury, whereas if a grant be made in the face of what is really a valid ground of opposition the public injury thereby occasioned may be remedied in a subsequent action for infringement, or petition for the revocation of the patent. (*l*)

Opposition—General.

the opposition is proved.

The law officer, having examined all the evidence given on one side or the other, is only justified in stopping the issue of a patent, if he is so clearly of opinion that the opponent has made out his case that he would, if a jury were to find in favour of the applicant, refuse to accept the finding and overrule the decision on the ground that it was perverse and contrary to the obvious weight and effect of the evidence. (*m*)

Costs.

The law officer, unlike the Comptroller, has power to award costs at the hearing before him. (*n*)

It is not the custom of the law officer to attempt to give costs to such an amount as would indemnify the parties. To do so would be seriously to discourage appeals, and to limit very much the usefulness of the office which the law officers fill in these matters (*o*)

Where an applicant, on appeal, consented to make a slight modification in his specification to satisfy the ground of opposition, but asked for costs of appeal, as he had not been previously asked to make the modification, costs were disallowed, as it was not the fault of the other side that the matter had arisen. (*p*)

In cases of unsuccessful opposition, the insertion of a few explanatory words in the specification may be allowed at the hearing before the law officer, and if the amendment is not a

(*l*) *Re* Russell's Patent, (1857) 2 De G. & J. 130, 132; *Re* Simpson and Isaacs' Patent, 21 L. T. N. S. 81; *Re* Spence's Patent, (1859) 3 De G. & J. 523; *Re* Lowe's Patent, 25 L. J. Ch. 454; *Re* Tolson's Patent, (1856) 6 De G. M. & G. 422; Chandler's Patent, (1886) Griff. P. C. 270; Stubbs' Patent, (1884) Griff. P. C. 298; Welch's Patent, (1884) Griff. P. C. 300; Edmund's Patent, (1886) Griff. P. C. 281; Newman, (1887) Griff. L. O. C. 40; Jones, (1887) Griff. L. O. C. 33; in the Matter of Aire and Calder Glass Bottle Works and Walker's Application, (1888) 5 R. P. C. 345; in the Matter of Daniel's Application, (1888) 5 R. P. C. 413; in the Matter of Wallis and Ratcliff's Application, (1888) 5 R. P. C. 347; in the Matter of Luke's Patent, (1889) 6 R. P. C. 548; Stuart's Patent, (1892) 9 R. P. C. 452; Codd's Patent, (1892) 9 R. P. C. 488; Levinstein's Patent, (1894) 11 R. P. C. 348.

(*m*) As to reopening cases decided by the Comptroller or Law Officer, see Thomas and Prevost's Patent, (1898) 15 R. P. C. 257. Per Clarke, S.-G., Stuart's Patent, (1892) 9 R. P. C. 452.

(*n*) 46 & 47 Vict. c. 57, s. 38.

(*o*) Per Clarke, S.-G., Stuart's Patent, (1892) 9 R. P. C. 453.

(*p*) Woodhead, (1886) Griff. L. O. C. 44.

Opposition—First Ground.

substantial alteration the costs of the appeal may be given as if no such modification had been accepted. (*q*)

Grounds of Opposition.—It will be convenient to consider separately the three grounds on which the grant of a patent to the applicant may be opposed by persons having a *locus standi* to oppose.

I. *The applicant has obtained the invention from the opponent, or from a person of whom he is the legal representative.*

Legal representative.

A person who has obtained an assignment of a patent, with the full benefit of all improvements and modifications thereof, from the assignee of the patentee, does not thereby become the legal representative of the patentee, so as to entitle him to oppose the grant of a patent to another inventor on the ground that the applicant obtained the invention from the prior patentee;(*r*) nor is a person holding a power of attorney from a patentee his legal representative within the meaning of the Act. (*s*) The term legal representative must be construed in its ordinary meaning of executor or administrator. (*t*)

Issue of true and first inventor is not open.

It is not the duty of the Comptroller on an application which is opposed, or of the law officer on appeal, to decide whether or not the applicant is the true and first inventor, and he cannot inquire into the circumstances under which the applicant became possessed of the invention, other than those which go to show that it was derived from the opponent, or the person of whom he is the legal representative, if this ground of opposition is properly raised. (*u*)

If this objection be clearly proved no patent will be granted. (*x*)

Objection may succeed in part.

The objection may succeed as to part only of the applicant's claim, in which case a patent may be ordered to be sealed for that portion only to which the opposition does not extend. (*y*)

The words "obtained the invention" are to be read as

(*q*) Fletcher, (1886) Griff. L. O. C. 30.

(*r*) Spiel's Patent, (1887) 5 R. P. C.

(*s*) Edmund's Patent, (1888) Griff. P. C. 281.

(*t*) *Ibid.*

(*u*) See in the Matter of Adolph Spiel's Application, (1888) 5 R. P. C. 281; in the Matter of Lake's Patent, (1888) 5 R. P. C. 415.

(*x*) In the Matter of Marshall's Application, (1888) 5 R. P. C. 661; in the Matter of Griffin's Application, (1889) 6 R. P. C. 296; Stuart's Patent, (1892) 9 R. P. C. 452; Paterson and Dundon's Patent, (1884) Griff. P. C. 295; Griffin's Patent, (1888) 6 R. P. C. 452.

(*y*) Thwaite's Patent, (1892) 9 R. P. C. 515.

meaning "obtained the invention which is purported to be patented," and as referring to the identity of the invention and not to the right of the person from whom it was obtained to be regarded as the first and true inventor. (*z*)

Opposition—First Ground.

If at the hearing before the Comptroller the evidence as to the applicant having obtained the invention from the opponent or a person of whom he is the personal representative is conflicting, the patent will be ordered to be sealed without prejudice to an appeal to the law officer, (*a*) and in order that the witnesses may be cross-examined. (*b*)

Patent is sealed when evidence is conflicting.

With regard to the right of an employer to oppose the grant of a patent for an invention to his servant, it is to be noticed that there is no authority which lays down that, in the absence of special contract, the invention of a servant, even made in the employer's time, and with the use of the employer's materials, and at the expense of the employer, thereby becomes the property of the employer so as to prevent the person employed from taking out and exclusively enjoying a patent for it. (*c*)

Employer and employed.

In *David* and *Woodley's Application*, (*d*) the facts were that *Jones*, having invented some improvements in sewing machines, was introduced by *David* to *Woodley*, and *Woodley* was employed by *Jones* and *David* conjointly (*David* claiming some interest in *Jones's* invention) to make a model. *Woodley* made some suggestions, which were embodied in the model. *Jones* took out a patent for the machine, whereupon *David* and *Woodley* applied for a patent for the suggestions made by *Woodley*. *David* and *Woodley* had also applied for a patent for alleged improvements on this invention. The Comptroller refused the grant, and the law officer upheld his decision, on the ground that when a workman is employed by an inventor to make a model for the purpose of carrying out his invention, and the workman suggests improvements in detail of the machine which are adopted in the machine or model as completed, those suggestions are the property of his employer, and the workman cannot afterwards take out a patent for them. Further, if *Woodley* was in the employment of *Jones* and *David*, and not of *Jones* alone, the invention was *Jones's*, and he had never parted with his property in it, and *Woodley*

(*z*) Thwaite's Patent, (1892) 9 R. P. C. 515.

(*a*) Luke's Patent, (1887) Griff. P. C. 294.

(*b*) Hatfield's Patent, (1884) Griff. P. C. 288.

(*c*) See Heald's Patent, (1891) 8 R. P. C. 429; Vol. I. pp. 14, 15.

(*d*) (1884) Griff. L. C. C. 26.

Opposition—First Ground.

stood to *Jones* in the relation of paid servant to employer. *David* was entitled to enforce in a court of law any claims he might have against *Jones*, founded on the alleged partnership or of a pecuniary character.

Experiments by persons other than applicant.

The fact that other persons have made experiments identical with the applicant's will not stop the patent being granted unless the opposer shows that the applicant derived the invention from the person making such experiments, and then only if such person or his legal representative is the opponent. (*e*)

Assignment of unpatented and unpublished inventions.

In cases of agreements for the assignment of unpatented and unpublished inventions questions may arise as to the right of the alleged assignee to be made the patentee.

Thus, where an opponent in carrying on business had got into difficulties and had made an agreement to sell the business to the applicant, part of the consideration being an understanding that the opponent should give the applicant the benefit of a certain invention for sewing button-holes, and the opponent opposed on the ground that the invention had been obtained from him, the patent was refused in the absence of a written assignment. (*f*)

Fraud committed by applicant abroad.

Fraud committed abroad will not prejudice an applicant in respect of an invention stated to have been communicated to him from abroad.

Thus where, (*g*) on an application for a patent on a communication from abroad, the opposer objected that the applicant had obtained the invention from him through a third party abroad, the patent was granted on the ground that a person availing himself of information from abroad is an inventor within the Statute of Monopolies. (*h*) It is to be observed that the Comptroller and law officer have no authority to inquire into the source of the patentee's information in such a case; (*i*) neither will they inquire as to any alleged fraud committed by the applicant (communicatee) against the opponent abroad. (*k*)

(*e*) See *Ex parte* Henry, (1872) L. R. 8 Ch. 167; in the Matter of Homan's Patent, (1889) 6 R. P. C. 104; Saxby *v.* Gloucester Waggon Co., (1887) Griff. L. O. C. 57.

(*f*) In the Matter of Marshall's Application, (1888) 5 R. P. C. 661.

(*g*) In the Matter of Lake's Patent, (1888) 5 R. P. C. 415.

(*h*) 21 Jac. I. c. 3, s. 6; Nickels *v.* Ross, (1849) 8 C. B. 679.

(*i*) See Edmund's Patent, (1886) Griff. P. C. 281; in the Matter of Adolph Spiel's Patent, (1888) 5 R. P. C. 281; in the Matter of Bairstow's Patent, (1888) 5 R. P. C. 286.

(*k*) Higgin's Patent, (1891) 9 R. P. C. 74; Edmund's Patent, (1886) Griff. P. C. 283; Spiel's Patent, (1887) 5 R. P. C. 281; Bairstow's Patent, (1887) 5 R. P. C. 286; Lake's Patent, (1887) 5 R. P. C. 415.

Though a foreign applicant has important rights under sec. 103 of the Act of 1883 and the Convention of 1884, he is not entitled, on the ground that the applicant obtained part (*l*) or the whole (*m*) of the invention from him, to oppose an application in this country of earlier date than his own. (*n*)

Opposition—First Ground.

Rights of inventor who is a foreigner.

It is a good ground of opposition to the grant of a patent for a communication from abroad that the applicant had no authority from the foreign inventor to make the application, but that the opposer was the person to whom the foreigner entrusted his invention with the view of getting protection in this country. (*o*)

Sometimes the patent is granted to the applicant and opponent conjointly, if it appears that the invention is the joint production of both. (*p*)

Joint grantees.

When there were concurrent applications for a patent in respect of the same invention, it was formerly a recognised principle that the patent would be awarded to the inventor who ran quickest through the process and was ready first to obtain the Great Seal. (*q*) Now, however, since the patent is in all cases dated as on the day of application, (*r*) in the case of concurrent applications on the same day, one patent would most probably be granted to the two applicants jointly, and if the concurrent applications were not made on the same day the prior applicant would be entitled to the prior patent.

Concurrent applications.

It may be made a condition that the grantee shall assign a certain share to another person if the interests of justice appear to require it, as in the case of joint inventors making separate applications; (*s*) and each co-owner may be bound to pay a proportionate part of the fees necessary to keep the patent on foot. (*t*)

Condition that grantee shall assign a share.

The condition has been imposed, under circumstances that called for it, that the grantee and opponent should enter into an agreement by which the former should undertake to do all such acts as might be necessary to secure to the latter the full rights of a joint patentee in the invention, and the latter

Condition that opponent shall be made a joint patentee.

(*l*) Edmund's Patent, (1886) Griff. P. C. 281.

(*m*) In the Matter of Lake's Patent, (1888) 5 R. P. C. 415.

(*n*) Everitt, (1887) Griff. L. O. C. 28.

(*o*) Fiechter, (1882) Griff. P. C. 284.

(*p*) Eadie's Patent, (1885) Griff. P. C. 279; *Re* Russell's Patent, (1857) 2 De G. & J. 130; Luke's Patent, (1886) Griff. P. C. 294.

(*q*) *Ex parte* Dyer, Hindmarch on Patents, p. 535; *Re* Simpson and Isaacs' Patent, (1853) 21 L. T. 81.

(*r*) 46 & 47 Vict. c. 57, s. 13.

(*s*) Evans and Otway's Patent, (1884) Griff. P. C. 279; Garthwaite's Patent, (1886) Griff. P. C. 284.

(*t*) Evans and Otway's Patent, (1884) Griff. P. C. 279.

Opposition—Second Ground.

should undertake not to commence proceedings for revocation of the patent when granted. (*u*)

Rival applicants.

In the case of rival applicants, if it appear that distinct parts are the separate inventions of the rival applicants, separate patents will be ordered to be sealed to each applicant in respect of his own invention alone. (*x*)

Applicant's invention only an improvement on opponent's.

When it is clear that the applicant obtained the idea of his alleged invention from the opponent, and that the alleged invention is really nothing more than an improvement upon the opponent's patented invention, the application will be allowed only on the condition that the applicant insert in his specification a statement to the effect that his invention is an improvement upon the opponent's. (*y*)

II. *The invention has been patented in this country on an application of prior date.*

Opponent must have a *locus standi*.

It would appear at first sight that this ground of opposition is open to any person, whether he have a direct interest in opposing the patent or not; but the decisions lead to the conclusion that only persons having a direct interest are allowed to oppose on this ground now, as they were formerly by the special enactment of the repealed Act of 1852. (*z*) It must also be noticed that sub-s. 3 of sec. 11 of the Act of 1883 directs the law officer, on an appeal, to hear the applicant and any person giving notice, and being, "*in the opinion of the law officer*, entitled to be heard," and thus it is evident that the section contemplates the existence of persons who have no right of opposition, and constitutes the law officer the ultimate authority to decide the question of an opponent's *locus standi*. (*a*)

According to the law officer's decisions upon the present Acts and the practice based thereon, the only persons recognised as having a *locus standi* to be heard on this ground of opposition before the Comptroller, or, on appeal from him, before the law officer, are those who whether as original owners or assignees or otherwise have a direct interest in showing that the patent sought by the applicants would, if

(*u*) Luke's Patent, (1885) Griff. P. C. 294.

(*x*) Craig and Macfarlane's Applications, P. M. J. vol. iv. 3rd series, p. 366.

(*y*) Hoskins's Patent, (1884) Griff. P. C. 291; Newman's Patent (No. 2), (1838) 5 R. P. C. 279; for form of statement, see Griff. P. C. 292 *n*.

(*z*) s. 12.

(*a*) The Queen *v.* Comptroller-General of Patents: *Ex parte* Tomlinson, (1899) 16 R. P. C. 233.

granted, include what has already formed the subject of an earlier grant. (*b*) Thus in *Meyer's Patent* (*c*) a person who had *bonâ fide* attempted to carry out an invention but had been stopped in consequence of the existence of a patent with regard to it was held to have such an interest as entitled him to appear and support an opposition on the ground that the invention sought to be protected was identical with that which he had desired to carry out. The law officer has no wider jurisdiction than the Comptroller. He only hears cases by way of appeal, and the words "being in the opinion of the law officer entitled to be heard" refer back to the persons who are allowed to oppose by sub-s. 1 of sec. 11 of the Patents Act, 1883. (*d*)

Opposition—Second Ground.

It was held in *Bairstow's Patent* (*c*) that where a person was about to commence to work an invention, which he alleged was included under certain expired patents, he had not such an interest in the expired patents as to entitle him to be heard in opposition to the granting of a fresh patent; and in *Macevoy's Patent* (*f*) that a person who has no further interest in an expired patent than the fact that he manufactured under it is likewise not entitled to be heard in opposition to the grant of a fresh patent. Having regard, however, to the decision in *Meyer's Patent* it is extremely doubtful whether the decisions in *Bairstow's Patent* and *Macevoy's Patent* would be followed in future cases, and, it is submitted, they must be regarded as overruled.

A person who is merely an agent—*e.g.*, a patent agent—of a prior patentee has not such an interest in the prior patent as will entitle him to oppose a subsequent application in his own name. (*g*) The opposition must be in the name of the principal: otherwise this ground of opposition cannot be raised. (*g*)

A person having a *locus standi* on the second ground of opposition is entitled to rely in his opposition upon specifications

(*b*) Meyer's Patent, (1899) 16 R. P. C. 526; The Queen *v.* Comptroller General of Patents: *Ex parte* Tomlinson, (1899) 16 R. P. C. 233; J. and J.'s Patent, (1902) 19 R. P. C. 555; Stewart's Patent, (1896) 13 R. P. C. 672; Lancaster's Patent, (1884) Griff. P. C. 293; Glossop's Patent, (1884) Griff. P. C. 285; Heath and Frost's Patent, (1886) Griff. P. C. 288; Hookham's Patent, (1886) Griff. L. O. C. 32; Macevoy's Patent, (1883) 5 R. P. C. 285.

(*c*) (1899) 16 R. P. C. 526.

(*d*) See cases, note (*b*) above.

(*e*) (1888) 5 R. P. C. 286.

(*f*) (1888) 5 R. P. C. 285; see also Hookham's Patent, (1886) Griff. L. O. C. 32.

(*g*) Heath and Frost's Patent, (1886) Griff. P. C. 288; Lake, (1887) Griff. L. O. C. 35; Hookham, (1887) Griff. L. O. C. 32.

Opposition—Second Ground.

other than those in which he is, or was, interested and from which he derives his *locus standi*. (*h*)

It would appear that the effect of sec. 15 of the Act of 1883 is to place a person who has had a complete specification accepted in the same position, for the purpose of opposition, as a person who has already got a patent upon which he can oppose; (*i*) and, similarly, any other person who has a *bonâ fide* interest in showing that the invention claimed in an accepted complete specification, upon which no actual grant has been made, is identical with that of the applicant, would be allowed to oppose. (*k*)

Though law officer overrules Comptroller on question of *locus standi*, he will not lightly interfere with result of the decision.

Though the law officer on appeal allows the objection that the opponent is not a person entitled to be heard, he will not interfere with the Comptroller's decision as to the grant or refusal of the patent, unless he is satisfied that, looking at the substance of it, that decision ought to be interfered with. (*l*)

Patent allowed in doubtful cases.

When an application is resisted on this ground of opposition, (*m*) all the Comptroller or law officer can, on the hearing, be called on to decide is, whether or not the invention sought to be patented is the same as that patented on an application of prior date, and in cases of doubt the grant is allowed. (*n*)

(*h*) Stewart's Patent, (1896) 13 R. P. C. 627; Glossop's Patent, (1884) Griff. P. C. 285; Heath and Frost's Patent, (1886) Griff. P. C. 288; Hookham's Patent, (1886) Griff. L. O. C. 32; Macevoy's Patent, (1888) 5 R. P. C. 285.

(*i*) L'Oiseau and Pierrard, (1887) Griff. L. O. C. 36; but *see Ex parte* Henry, (1872) L. R. 8 Ch. 167.

(*k*) *Ibid.*; Meyer's Patent, (1899) 16 R. P. C. 526.

(*l*) Heath and Frost's Patent, (1886) Griff. P. C. 290.

(*m*) p. 34 *ante*.

(*n*) Cf. pp. 67, 68 *post*; Jones, (1886) Griff. L. O. C. 33. In the following reported cases, decided since the Act of 1883 came into operation, patents were refused on the ground that the respective inventions had been patented on applications of prior date:—

Heath and Frost's Patent, (1886) Griff. P. C. 310.
In the Matter of Daniel's Application, (1888) 5 R. P. C. 413.
In the Matter of Aire and Calder Glass Bottle Works and Walker's Application, (1888) 5 R. P. C. 345.
In the Matter of Wallis and Ratcliff's Application, (1888) 5 R. P. C. 347.
In the Matter of Webster's Patent, (1888) 6 R. P. C. 163.
Green's Patent, (1887) Griff. P. C. 286.
Lancaster's Patent, (1887) Griff. P. C. 293.
Re Bailey, Goodeve, P. P. 57.
Todd's Patent, (1892) 9 R. P. C. 488.
Boult's Application, (1893) 10 R. P. C. 275.
Stewart's Application, (1896) 13 R. P. C. 627.
Whittaker's Application, (1896) 13 R. P. C. 580.
Smith's Application, (1896) 13 R. P. C. 200.
Wylie and Morton's Application, (1896) 13 R. P. C. 97.

In the following reported cases, decided since the Act of 1883 came into operation, the objection was taken that the respective inventions had been patented on applications of prior date, but unsuccessfully:—

In the Matter of Lorrain's Patents, (1888) 5 R. P. C. 142.
In the Matter of Newman's Patent, (1888) 5 R. P. C. 271.
In the Matter of Pitt's Patent, (1888) 5 R. P. C. 343.
In the Matter of Airey's Application, (1888) 5 R. P. C. 348.
In the Matter of Sielaff's Application, (1888) 5 R. P. C. 484.

Opposition—Second Ground.

Invention described, but not claimed in a prior patent.

If an invention is only described and not claimed in a prior specification, it may be patented on an application of later date, it being a long-established and obvious rule that only that is patented which the inventor claims. (*o*) There would, of course, be great doubt as to the validity of a patent granted under such circumstances. (*p*) A manufacture though within the broad words of a prior claim is not considered as *patented* in cases before the Comptroller and law officer, unless it is clearly set out in the body of the prior specification (*q*)—*i.e.*, unless it is quite clear that the prior patent deals with the difficulties and dangers which the later applicant alleges he has contemplated and overcome. (*r*) Thus where an applicant sought to patent the manufacture of a safety explosive from certain definite proportions of ingredients in view of the facts that the explosive so made was particularly safe against fire-damp and coal-dust in mines the seal was allowed, though opposed on the ground that a claim in a prior patent included the use of the same ingredients for making explosives and in variations of proportions which would include the specific proportions claimed by the applicant. The ground of the decision was that it could not be said that the prior patentee had contemplated the safety of the explosive from the point of view of safety by reason of the absence of deleterious effects after explosion, and that under such circumstances there *might* be invention in selecting the specific proportions claimed by the applicant. (*s*)

Ambit of opponent's claim may be disputed.

The question of the validity of the prior patent, which is said by the opponent to cover the whole or a part of the applicant's claim, is quite immaterial. (*t*) An applicant, however, is entitled to contend that the state of common knowledge is such that the opponent's claim ought to be read in a

In the Matter of Brownhill's Patent, (1889) 5 R. P. C. 135.
Anderton, (1837) Griff. L. O. C. 25.
Fletcher, (1887) Griff. L. O. C. 30.
Von Buch, (1887) Griff. L. O. C. 40.
Huth's Patent, (1884) Griff. P. C. 292.
Cumming's Patent, (1884) Griff. P. C. 277.
Stubbs' Patent, (1884) Griff. P. C. 298.
Ross' Patent, (1891) 8 R. P. C. 477.
Bartlett's Patent, (1892) 9 R. P. C. 511.
Maxim and Silverman's Application, (1894) 11 R. P. C. 314.
Marsden's Patent, (1896) 12 R. P. C. 87.
Southwell's Patent, (1899) 16 R. P. C. 361.
Nahnsen's Patent, (1900) 17 R. P. C. 203.

(*o*) Von Buch, (1887) Griff. L. O. C. 40.
(*p*) See Vol. I. cnap. iii.
(*q*) See Nahnsen's Patent, (1900) 17 R. P. C. 203.
(*r*) *Ibid.*
(*s*) *Ibid.*
(*t*) Thornborough and Wilks' Patent, (1896) 13 R. P. C. 115.

Opposition—Second Ground.

particular way which will exclude the subject-matter of the applicant's claim. (*u*)

The point always is, Has what the applicant claims been already granted by the Crown, *i.e.*, formed the subject of a prior claim or claims? No doubt it would require a very clear case to stop a patent when it is sought to establish this ground of opposition by putting together claims taken from two separate prior specifications, but still it is submitted this might be done; (*x*) but, when the case is clear, the patent will be refused on the ground that all the applicant seeks to claim is covered by claims taken from two or more specifications. (*y*)

Conjoint effect of several prior patents.

Patent is refused when there is no appreciable difference between the applicant's and opponent's claims.

In cases where the law officer is forced to the conclusion that there is no substantial difference between the invention or combination claimed in the applicant's specification and an earlier specification it has not only been the practice but it is the duty of the law officer to refuse the patent. (*z*) For example, when the applicant merely claimed to effect a certain result by the use of one of many salts of chromium and one of many salts or iron from out of those covered by the claim on the opponent's specification, and there was no particular advantage shown in doing so, the patent was refused. (*a*)

When an application is opposed on the ground that an alleged invention is the same as that comprised in the opponent's patent, and it appears that there is a difference, but that such difference is quite immaterial, the patent is refused. (*b*)

In *Hedge's Patent* (*c*) it appeared that after eliminating matters of common knowledge nothing in the slightest degree materially different remained to distinguish the applicant's claim from the opponent's that could possibly be valid subject-matter, and the patent was refused accordingly.

(*u*) Haythornthwaite's Patent, (1890) 7 R. P. C. 71.

(*x*) Ross' Patent, (1891) 8 R. P. C. 477.

(*y*) Harrild and Perkin's Patent, (1900) 17 R. P. C. 617.

(*z*) Per Webster, A.-G., Todd's Patent, (1892) 9 R. P. C. 488; see also Thwaite's Patent, (1892) 9 R. P. C. 515; Daniel's Patent, (1888) 5 R. P. C. 413; Aire and Calder's Patent, (1888) 5 R. P. C. 345; Wallis and Ratcliff's Patent, (1888) 5 R. P. C. 347: Webster's Patent, (1888) 6 R. P. C. 163; Bailey's Patent, (1887) Goodeve P. C. 57; Boult's Patent, (1893) 10 R. P. C. 275; Bridge's Patent, (1901) 18 R. P. C. 257.

(*a*) Wylie's Patent, (1896) 13 R. P. C. 97; see Vol. I. p. 41, as to selection from a class being the subject-matter of invention.

(*b*) In the Matter of Aire and Calder's Patent, (1883) 5 R. P. C. 345; Wallis and Ratcliff's Patent, (1888) 5 R. P. C. 347; In the Matter of Daniel's Application, (1888) 5 R. P. C. 413; In the Matter of Haythornthwaite's Application, (1890) 7 R. P. C. 70; Heath and Frost's Patent, (1886) Griff. P. C. 310.

(*c*) (1895) 12 R. P. C. 136.

Opposition—Second Ground.

It is competent to the Comptroller or law officer, when an application is opposed on the ground that the invention has been patented on an application of prior date, to consider the question of mechanical equivalents; (*d*) though the application will not be refused unless it is clear that the invention in respect of which it is made is practically identical with that forming the subject-matter of the prior patent (*e*)—*e.g.*, where the only difference was the substitution of a coil for an internal cylinder in a heating apparatus, (*f*) or an equivalent for a crank bar (*g*) when the opponent's claim referred to a "crank bar or its equivalent."

Mechanical equivaleuts.

When a would-be patentee has good subject-matter, which is not identically the same as that comprised in a prior patent, he is entitled to have his patent sealed, though an action for infringement may lie against him if he puts his alleged invention into practice. (*h*)

It is no part of the duty of the Comptroller or law officer to inquire whether the applicant's patent, if granted, would infringe a prior patent, (*i*) or whether the alleged invention is proper subject-matter, (*k*) or whether the patent, if granted, would be invalid from any other cause; (*l*) and the applicant in all cases frames his specification at his peril. (*m*)

Notice of opposition must be distinct.

The notice of opposition must distinctly allege this ground of opposition in specific terms; it will be wrong in form if it allege that the prior invention was the same, "*or substantially the same*," as the applicant's, (*n*) or that the applicant's invention is "*a direct infringement of the opponent's patent.*" (*o*)

Question of validity of prior patent is not open.

It is not competent to the applicant to object that the prior patent relied on was void on the ground of disconformity between the specifications or between the title and the specifications, or upon any other ground. (*p*)

Green's Patent.

In *Green's Patent*, decided under the Act of 1883, before amendment of the Act of 1888, (*q*) the grant was opposed by

(*d*) In the Matter of Haythornthwaite's Application, (1890) 7 R. P. C. 70; Smith's Patent, (1896) 13 R. P. C. 200.

(*e*) p. 36 *ante*.

(*f*) Smith's Patent, (1896) 13 R. P. C. 200.

(*g*) Whittaker's Patent, (1896) 13 R. P. C. 580.

(*h*) In the Matter of Newman's Patent, (1888) 5 R. P. C. 271.

(*i*) Jones, (1887) Griff. L. O. C. 35; In the Matter of Sieluff's Application, (1888) 5 R. P. C. 484.

(*k*) Jones, (1887) Griff. L. O. C. 33.

(*l*) p. 1 *ante*.

(*m*) In the Matter of Lorrain's Patents, (1888) 5 R. P. C. 142.

(*n*) Jones, (1887) Griff. L. O. C. 33.

(*o*) In the Matter of Daniel's Application, (1888) 5 R. P. C. 413.

(*p*) Green, (1887) Griff. P. C. 286; Newman, (1887) Griff. P. C. 40; In the Matter of Haythornthwaite's Application, (1890) 7 R. P. C. 70.

(*q*) (1885) Griff. P. C. 286.

Opposition—Second Ground.

Lowcock and *Sykes*, on the ground that the invention for which the applicant sought to obtain protection had been, as to certain parts, patented by them. The applicant objected that the opponent's patent was bad, because the complete specification went beyond the provisional, which did not include the parts which the applicant wished to cover. The law officer held that, though the opponent's patent might in fact be void, yet he could not entertain the objection; and since the opponent's patent included the parts in dispute he could not allow a patent to be sealed to the applicant. The applicant consequently suffered in that he was prevented from obtaining a patent for the parts which he had invented between the dates of filing the opponent's specifications. The opponent's specifications having been referred to an examiner, and reported favourably upon by him, it was the duty of the Comptroller and law officer, for the purpose of the application, to treat them as good specifications, and consequently the question of disconformity could not be raised. (*r*)

The third ground of opposition, (*s*) which was introduced by the Act of 1888, (*t*) provides for such a case as the above. If the Act of 1888 had then been in force it would have been competent to *Green* to have opposed the grant to *Lowcock* and *Sykes*, and to have himself applied for a patent in respect of his own invention.

Claim by applicant for something not foreshadowed in the provisional specification of patent relied on by the opponent.

Where something claimed by the applicant is not to be found foreshadowed in the provisional specification of the patent relied on by the opponent, though it may possibly be found described in the complete specification of such patent, and the said complete specification was in fact filed after the date of the application, these dates become most important. In such a case the patent of the applicant should be sealed on the ground that, by refusing it, great injustice might be done to the applicant. He might succeed, if the patent is allowed, in satisfying a Court that what was described in the opponent's complete specification was in fact novel at the date of his application, since it was not foreshadowed in the opponent's provisional. (*u*)

Expiration of prior patent relied on is no bar.

Whenever the application is opposed on the ground now under discussion it does not signify that the prior patent has

(*r*) Green's Patent, (1885) Griff. P. C. 286. In the Matter of Haythornthwaite's Application, (1890) 7 R. P. C. 70.

(*s*) p. 50 *ante*. In the Matter of Anderson and Anderson's Patent, (1890) 7 R. P. C. 323.

(*t*) s. 4.

(*u*) Bartlett's Patent, (1892) 9 R.P. C. 511.

expired; (*x*) but if an invention has only been described in a provisional specification it cannot be made an objection to a later application. (*y*)

Opposition—Second Ground.

It is the duty of the Comptroller and the law officer, on appeal from him, to see that no claim in an applicant's specification is allowed which is wide enough to include something which might unquestionably form part of that which is claimed in a prior specification relied on by the opponent. (*z*) This principle is given effect to by disallowing the claim, or by ordering the claim as originally drawn to be modified, or a general or special disclaimer of the principle embodied in the prior patent to be inserted in the applicant's specification. (*a*)

Object of the power to refuse the patent, or to require an amendment or a disclaimer.

The exercise of the authority of the Comptroller and law officer to impose conditions on the grant of a patent in this way operates for the protection of previous inventors (*b*) and the public generally. (*c*)

If a subsequent patent be granted and a specification accepted which actually or apparently claims something which is included in a prior patent, or something which is not patentable, the prior patentee in the one case, or the public in the other, suffers what may be a disadvantage to them, in so far as the subsequent patentee may endeavour under his grant to lay claim to the exclusive monopoly in the particular thing in question, yet they do not sustain any permanent injury, for the subsequent patent granted under such circumstances would be void. (*d*)

It is not to the interests of subsequent patentees that their patents should be apparently for an original or far-sweeping invention, when, as a matter of fact, they can only claim a particular combination which they have described; and it is not to the interest of the public that they should be led into supposing that a description in a specification is entirely general, whereas it can only be supported as a specification of valid letters patent if the description be understood to be a description of an improvement. (*e*)

(*x*) Lancaster's Patent, (1884) Griff. P. C. 293.

(*y*) Bailey's Patent, (1884) Griff. P. C. 269; Patterson's Patent, Griff. P. C. 295.

(*z*) Curtis and Andre's Patent, (1892) 9 R. P. C. 499; Hamilton's Patent, (1901) 19 R. P. C. 33.

(*a*) Curtis and Andrés Patent, (1892) 9 R. P. C. 495; Hamilton's Patent (1901) 19 R. P. C. 35.

(*b*) In the Matter of Newman's Patent, (1888) 5 R. P. C. 271; Griff. L. O. C. 40.

(*c*) In the Matter of Lorrain's Patent, (1888) 5 R. P. C. 142; In the Matter of Guest and Barrow's Patent, (1888) 5 R. P. C. 312; Teague's Patent, (1884) Griff. P. C. 298.

(*d*) Vol. I. chap. iii. In the Matter of Hill's Application, (1888) 5 R. P. C. 599.

(*e*) Hoskins' Patent, (1884) Griff. P. C. 291; In the Matter of Newman's

Opposition—Second Ground.

Grounds for requiring a disclaimer.

The Comptroller and law officer, in deciding upon the propriety or impropriety of inserting a disclaimer in the applicant's specification, are in no way whatever concerned with the question whether the applicant's claim amounts to an infringement of the opponent's patent or not. And it is not their duty to stop a patent at the instigation of an opponent because some principle of patent law may be infringed. (*f*) Thus when the opponent desired a special reference in the applicant's specification on the ground that a claim in the prior specification amounted to a legitimate broad claim to a principle as carried out by the means described by the applicant, which were analogous to those claimed in the opponent's specification, the law officer allowed the patent without a disclaiming clause at all. (*g*) To obtain a disclaimer the opponent must show that the applicant's claim, without it, will be a repetition of the opponent's. (*h*)

That is to say, it is a principle recognised by the law officers that where there is an existing patent, and there is fair ground for supposing that on the true construction a claim made by a subsequent applicant would interfere with the rights claimed by an existing patentee, he is entitled to be protected; and such protection is usually given by the insertion in the specification of the subsequent applicant of a general disclaiming clause or special reference. (*i*)

It would appear that, if there be a distinct reference in the applicant's provisional specification to an invention or device, which was within the specification of the opponent properly construed, the opponent is entitled to have a disclaimer on the face of the complete specification. (*k*)

It is to the interests of the public that, where patents overlap, the distinctions between the inventions described in the specifications filed under the earlier and later applications

Patent (No. 2), (1888) 5 R. P. C. 279; see also Hamilton's Patent, (1901) 19 R. P. C. 35.

(*f*) Newman's Patent, (1887) 5 R. P. C. 277; McHardy's Patent, (1891) 8 R. P. C. 432; Todd's Patent, (1892) 9 R. P. C. 487.

(*g*) Marsden's Patent, (1896) 13 R. P. C. 87.

(*h*) Stell's Patent, (1891) 8 R. P. C. 236; Hill's Patent, (1888) 5 R. P. C. 599.

(*i*) In the Matter of Newman's Patent, (1888) 3 R. P. C. 271; In the Matter of Hall and Hall's Patent, (1888) R. P. C. 283; In the Matter of Lyndo's Patent, (1888) 5 R. P. C. 663; In the Matter of Gozney's Patent, (1888) 5 R. P. C. 597; In the Matter of Guest and Barrow's Patent, (1888) 5 R. P. C. 312; In the Matter of Wallace's Patent, (1889) 6 R. P. C. 134; Anderson and McKinnell, (1887) Griff. L. O. C. 23; In the Matter of Hoffman's Patent, (1889) 7 R. P. C. 92; see pp. 43–50 *post*.

(*k*) Hookham, (1887) Griff. L. O. C. 32; see also In the Matter of Hoffman's Patent, (1890) 7 R. P. C. 92.

should be made clear; (*l*) but it must be remembered that the object of a disclaiming clause is to guard against the inclusion in a new patent of something embraced by the old patent, not of something merely mentioned in the old patent, but of something which has been claimed as part of the previous invention. (*m*)

Opposition—Second Ground.

Thus Lord *Alverstone*, L.C.J., then *Webster*, A.-G., in *Stell's Patent* (*n*) stated the principles on which special disclaimers, *i.e.*, references *nominatim* to prior patents, are ordered or refused as follows:—

Principles upon which special disclaimers are ordered.

> "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."

And in *Atherton's Patent* (*o*)—

> "I consider, assuming a proper statement of prior knowledge is inserted for the protection of the public, that the claims in a specification are inserted at the risk of the patentee, because he jeopardises his own patent by inserting too much. . . . With regard to the point as to statement of prior knowledge, an important question of principle is involved, upon which I have more than once expressed my opinion, but I wish to express it again. There is no objection at all to a patentee inserting (provided he does it fairly) what he believes to be a statement of prior knowledge. It is, in my opinion, a very convenient course. He does it at his own peril; but I consider it to be a protection to the public in directing their attention to what the patentee believes to be the state of knowledge, and, further, in enabling them to see whether the patentee has made a mistake in the event of his having thought that the prior knowledge did not cover any particular device which he included, as matter of invention, in the specification. . . . But I object to any one putting in his construction of written documents, because, in my opinion, written documents have to speak for themselves or be interpreted by the Court. . . . A patentee has no right to try and put on the public what he believes to be the construction of the written document. He

(*l*) In the Matter of Hill's Application, (1888) 5 R. P. C. 599.
(*m*) In the Matter of Gozney's Patent, (1888) 5 R. P. C. 597; In the Matter of Hoffman's Patent, (1890) 7 R. P. C. 92.
(*n*) (1891) 8 R. P. C. 236.
(*o*) (1889) 6 R. P. C. 547.

Opposition—Second Ground.

has a perfect right to give his own statement of the prior knowledge and say he refers, in support of his statement, to any number of previous specifications."

And in *Guest and Barrow's Patent* (*p*)—

"I have on many occasions pointed out that the insertion of these disclaimers does not affect the rights of the prior patentee at all. They are inserted for the purpose of preventing the subsequent patentee from alleging that his invention is wider than he is entitled to claim, both in his own interests, in order that his specification may not be considered as being too wide, and in the interests of the public, on the ground that the public are entitled to know what a subsequent patentee may claim, and to have a fair description of the existing state of knowledge. It is not because a particular patentee, or a prior inventor, has made a broad claim that he is entitled to have limiting words inserted, unless he can show, upon a fair view of the evidence before the law officer, or before the Comptroller, that such words are really necessary to protect him." (*q*)

Special references and concurrent applications.

There is no reported case of a special reference having been ordered where the application of the opponent, though prior to, is practically concurrent with that of the applicant, and *Webster*, A.-G., pointed out that where the applications are concurrent the principles applicable to cases of previous patent do not equally apply, and reserved the decision of the question as to what are the proper disclaimers or references to be inserted in the case of concurrent applications till the matter has to be decided for the purposes of a particular case. (*r*) As a rule, concurrent applicants might be expected to agree on the matter to their mutual advantage. (*s*)

References to defects.

Where a specification only contains a statement of general knowledge, there is nothing in the Patent Law to prevent a patentee on the face of his specification referring to the general defects which he alleges rightly or wrongly exist; but it would appear that, if a prior patentee is referred to specifically in a subsequent specification, no reference to any defect in the prior invention ought to be allowed in the latter specification. (*t*)

When special disclaimers are required.

The Comptroller and law officers are always very unwilling to order the insertion of a special reference to the patent of a

(*p*) (1888) 5 R. P. C. 312.

(*q*) See also Newman's Patent, (1888) 5 R. P. C. 279, 281; In the Matter of Hoffman's Patent, (1890) 7 R. P. C. 92.

(*r*) Gaunt's Patent and Greenhalgh's Patent, (1897) 14 R. P. C. 383.

(*s*) *Ibid.*

(*t*) Guest and Barrow's Patent, (1888) 5 R. P. C. 316.

Opposition—Second Ground.

prior inventor and opponent, unless they can be sure that they have the whole knowledge of the trade before them, and that there are no other specifications which claim part of the ground claimed by the applicant (*u*)—*e.g.*, where it is practically admitted by the applicant that the governing principle was for the first time discovered or disclosed in the opponent's specification. (*v*)

The rule was stated by *Webster*, A.-G., in *Southwell's Patent* (*x*) to the effect that unless the parties before the Comptroller agree on a state of knowledge that is to be assumed to be the basis of both inventions, if an opponent is desirous of having a claim in an earlier specification construed as a pioneer or master claim to such an extent that he is entitled to a wide construction for the purpose of stopping future patents, he is bound to bring the state of knowledge before the Comptroller. A person who describing in specific language a method of arriving at a given end, afterwards, seeks to say that the language is to include something which is on the face of it different cannot ask the Comptroller so to act without establishing that for the purposes of the Comptroller's decision the earlier patent is to be regarded as a master patent, (*y*) and the fact that during the performance of an applicant's process certain results are obtained which may be the same as results obtained by another patented process does not make the patent for the earlier process a master patent *quoad* the applicant's process. (*z*) Where, however, the specification of the applicant shows at best a mere minimum of invention the position of an alleged master patent will not be discussed by the law officer in any narrow spirit. (*a*) Where the applicant's claim extends to something which is the subject of a claim made by a prior patentee amendment by excision, or disclaimer, will be required. (*b*)

General disclaimers are more usually required than special disclaimers.

The Comptroller and law officer usually prefer to insert a general disclaimer of the principle included in the invention of the prior patentee, (*c*) bearing in mind that every prior

(*u*) See Stell's Patent, (1891) 8 R. P. C. 236; Kilner's Patent, (1889) 8 R. P. C. 35.

(*v*) Welch's Patent, (1891) 8 R. P. C. 442.

(*x*) (1899) 16 R. P. C. 362.

(*y*) Southwell's Patent, (1899) 16 R. P. C. 362.

(*z*) Meyenberg and the Clayton Anilin Co.'s Application, (1905) 22 R. P. C. 353.

(*a*) Sach's Patent, (1900) 18 R. P. C. 221.

(*b*) See Hetherington's Patent, (1839) 7 R. P. C. 419.

(*c*) Anderson and McKinnell, (1887) Griff. L. O. C. 23; *In the Matter of* Sielaff's Application, (1888) 5 R. P. C. 484; In the Matter of Wallace's Patent, (1889) 6 R. P. C. 134; Kilner's Patent, (1889) 8 R. P. C. 35.

Opposition—Second Ground.

patentee does not possess a right to have a disclaiming clause inserted in a subsequent specification, because, as was pointed out by Lord *Cairns*, every specification must be read as though the patentee had a knowledge of every previous complete and published specification of earlier letters patent. (*d*)

Speaking generally, a special reference, at the request of the opponent, to a prior patent ought to be allowed only if in the event of the insertion of that reference being refused by the applicant the Comptroller or law officer would be justified in saying that the patent with the proposed claim should not be sealed at all, (*e*) or where there is substantial identity between the fundamental parts of the two inventions, but a difference which can only be justified upon the ground of improvement. (*f*) Sometimes the opponent is allowed to elect whether the objectionable claim of the applicant should be struck out or a disclaiming clause should be inserted in his specification. (*g*)

The legitimate objects for which general and special disclaimers are ordered.

Disclaimers and especially special disclaimers ought not to be ordered for the mere purpose of making earlier patents known, but only for the purpose of explaining what the claim of the applicant really is. A claim may be so general in its terms as to include something which has been the subject of a prior grant, as well as the improvement which the applicant has, or thinks he has, invented. It is in such a case, where it might be the duty of the Comptroller and law officer to refuse the patent altogether, unless the claim were amended in such a way as to show that it is not directed to the matters which have formed the subject of the prior grant or grants, that a special disclaimer referring *nominatim* to the prior patent or patents should be ordered. The special disclaimer is only a substitute for the more scientific way of altering the language of the claim itself to the form it ought to have assumed if it had been skilfully drawn in the first instance, having regard to the prior patent or patents. (*h*)

In cases, therefore, where the rights of prior patentees or the public cannot be effectually protected without special mention of the prior patents, the insertion of a special disclaimer is usually made a condition of the granting of a patent

(*d*) See In the Matter of Newman's Patent (1888) 5 R. P. C. 279.

(*e*) Per Finlay, S.-G., Marsden's Patent, (No. 2), (1897) 14 R. P. C. 174; see also Stell's Patent, (1891) 8 R. P. C. 235.

(*f*) Newton's Patent, (1899) 17 R. P. C. 124.

(*g*) Teague's Patent, (1885) Griff. P. C. 298.

(*h*) Marsden's Patent, (1896) 13 R. P. C. 87; Adam's Patent, (1896) 13 R. P. C. 548; Marsden's Patent, (1897) 14 R. P. C. 174.

Opposition—Second Ground.

to a subsequent applicant, and the form of reference generally ordered is to the effect that the patentee is aware of the existence of the prior patent, and that he does not claim anything claimed and described therein. (*i*) So also in the case of concurrent applications and cross oppositions, if it appear that the specification of one of the applicants includes something which is the sole invention of the other applicant the Comptroller will insist on the first applicant amending his specification so as to confine it to what has actually been invented by him. (*k*)

On the same principle, if an invention is merely an improvement on and subsidiary to a prior patented machine or process, the Comptroller and law officer will require a disclaimer by reference to the name and number of the prior patent, since it is only just to the opponent and in the interests of the public that this should be so. (*l*)

The Comptroller and law officer are bound to protect the public from being misled; (*m*) and the object for which special references to prior patents are ordered to be inserted in the applicant's specification is to guide the public to the proper construction of the claim made by the applicant. (*n*) So a special disclaimer may be ordered for the purpose of removing an ambiguity. (*o*) If, on the other hand, a special disclaimer might prejudice the construction a mere reference to the prior patent will be ordered instead, (*p*) or a disclaimer following the identical words of the opponent's claim, but without any special reference to the opponent's patent (*q*)—*e.g.*, in *Maxim and Silverman's Patent*, (*r*) where neither the Comptroller nor the law officer could come to a clear conclusion that the invention had been patented on the application of prior date relied on, and the Comptroller had ordered a special

(*i*) In the Matter of Lorrain's Patent, (1888) 5 R. P. C. 142; In the Matter of Airey's Patent, (1888) 5 R. P. C. 348; In the Matter of Lynde's Patent, (1888) 5 R. P. C. 663; In the Matter of Newman's Patent, (1888) 5 R. P. C. 271; In the Matter of Wallace's Patent, (1889) 6 R. P. C. 134; Hoskins' Patent, (1884) Griff. P. C. 291; Welch's Patent, (1884) Griff. P. C. 300.

(*k*) Paterson's Patent, (1884) Griff. P. C. 295; Craig and Macfarlane's Application, P. M. J. vol iv. 3rd series, p. 366.

(*l*) Hoskins' Patent, (1884) Griff. P. C. 291; Welch's Patent, (1884) Griff. P. C. 300; In the Matter of Newman's Application, (1888) 5 R. P. C. 271, 279; In the Matter of Lynde's Patent, (1888) 5 R. P. C. 663; Levinstein's Patent, (1894) 11 R. P. C. 349; Tattersall's Patent, (1892) 9 R. P. C. 150.

(*m*) Lorrain's Patent, (1888) 5 R. P. C. 143.

(*n*) Van Gelder's Patent, (1892) 9 R. P. C. 326; pp. 41, 46 *ante*.

(*o*) Brand's Patent, (1895) 12 R. P. C. 102.

(*p*) Van Gelder's Patent, (1892) 9 R. P. C. 325; Maxim and Silverman's Patent, (1894) 11 R. P. C. 314.

(*q*) Newton's Patent, (1899) 17 R. P. C. 123, 125.

(*r*) (1894) 11 R. P. C. 314.

Opposition—Second Ground.

disclaimer in the words, "We are aware of the specification of patent No. of granted to , *and we make no claim to anything described and claimed therein*," the law officer, on appeal, to meet the justice of the case and the public interest, ordered the words, "*and we make no claim to anything described and claimed therein*," to be struck out. (*s*) And in *Newton's Patent*, (*t*) where the Comptroller had ordered a special reference to the opponent's patent, the law officer not being satisfied that the difference between the applicant's alleged invention and the opponent's was one which could only be justified on the ground of improvement ordered a disclaimer in terms identical with the opponent's claim, but without any special reference to the opponent's patent.

It must be borne in mind that a statement of public knowledge in the terms of an opponent's claim has by no means the same effect as a special reference. It does not allow the inference that the ambit of the invention is the same in whole or in part in both cases, but leaves the question of invention to be determined from the consideration of that which the earlier patentee and the later patentee have described. (*u*) A special disclaimer may be ordered on the ground that though in the applicant's specification there are differences from the opponent's, yet there is a very strong resemblance between the mechanism as claimed by the opponent's specification and that described in the applicant's specification and drawings. (*v*)

A special reference will sometimes tend to stop further litigation where a general disclaimer would not, and will be ordered to be inserted on that account. (*x*)

Agreement between parties as to the meaning of a specification.

If the meaning of a specification be ambiguous, the Comptroller or law officer may, on the hearing of the application, order it to be placed on record to what the specification is understood to be confined by the statement and agreements of both the opposer and applicant; (*y*) and, if the provisional specification contain a reasonably clear indication of the improvement it is ultimately desired to protect by the patent, the Comptroller has power to order any amendment which will put the particular description of the invention claimed absolutely beyond doubt. (*z*)

(*s*) (1894) 11 R. P. C. 314.
(*t*) (1899) 17 R. P. C. 123.
(*u*) *Ibid.*
(*v*) Thornborough and Wilks' Patent, (1896) 13 R. P. C. 115.
(*x*) In the Matter of Lynde's Patent, (1888) 5 R. P. C. 663.
(*y*) Anderton, (1887) Griff. L. C. 25.
(*z*) Chandler's Patent, (1884) Griff. P. C. 270, 274.

Opposition—Second Ground.

Sometimes a claim in an applicant's specification is ordered to be struck out altogether, when it includes something claimed by the complete specification under a prior patent; (*a*) but it must be remembered that the applicant is entitled to frame his specification as he pleases, so long as he does not interfere with existing rights (*b*) The Comptroller or law officer has no authority to order a claim to be struck out merely because it may invite the public to infringe a prior patent, if the applicant, in the body of the specification, shows some invention with regard to the thing claimed. (*c*) Nor can the Comptroller or law officer require the amendment of a claim in order to make it conform to the description in the specification, if the claim is otherwise a real statement of the invention claimed. (*d*)

Striking out claims.

Necessity for amendment or disclaimer should be avoided.

The applicant should draft his claim in the first instance so as to embrace only his real invention. If he does not do so, he runs the risk, in the event of opposition, of not being allowed to make such an extensive amendment as might be required to remedy a defective claim, or to remedy the claim by the less scientific method of inserting a special reference to the opponent's patent. (*e*) Thus the law officer refused to seal a patent when the applicant's specification contained a claim wide enough to include, without doubt, what had been patented by the opponent; and he further refused to allow a special disclaimer or words limiting the claim, on the express ground that the claim should have been drawn originally for the slight alleged improvement if the intention was to claim it (*f*) Further, the fact that the law officer may not have the materials before him necessary to enable him to say whether, having regard to prior patents, the amended claim sought by the applicant should be allowed or not may sufficiently justify him in disallowing it. (*g*)

On the other hand, a case may well arise in which the applicant would, at the hearing of an opposition, be allowed to amend by making a claim entirely differing from that in the complete specification as originally framed. (*h*)

(*a*) In the Matter of Hall and Hall's Patent, (1888) 5 R. P. C. 283; In the Matter of Webster's Patent, (1889) 6 R. P. C. 163; Hamilton's Patent, (1901) 19 R. P. C. 35.

(*b*) See p. 18 *ante*.

(*c*) In the Matter of Webster's Patent, (1889) 6 R. P. C. 165.

(*d*) Smith's Patent, (1884) Griff. P. C. 268.

(*e*) See Whittaker's Patent, (1896) R. P. C. 58.

(*f*) Lupton and Place's Patent, (1897) R. P. C. 261.

(*g*) See Mills' Patent, (1901) 18 R. P. C. 324.

(*h*) Harrild and Perkin's Patent, (1900) 17 R. P. C. 617; but see Mills'

Opposition—Third Ground.

An opponent, though not appealing against the grant of a patent, is entitled to appeal against the Comptroller's decision that no reference to his patent be inserted in the specification. (*i*)

Appeal may be limited to the question of a special reference.

III. *That the complete specification describes and 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.*

When disconformity is a ground for refusing the patent.

A disconformity between the complete and provisional specifications is fatal to the validity of the grant of letters patent, as has been already demonstrated. (*k*) Disconformity, however, will not induce the Comptroller and law officer to refuse to seal a patent after the specification has been accepted, unless in accordance with the above-stated ground of objection (*l*) the matter in the applicant's complete specification which is in excess of the provisional has, in the interval between the leaving of the two documents, formed the subject of an application by the opponent.

When this objection is raised it is the duty of the Comptroller or law officer to ascertain what is the real and proper construction of the language of the provisional specification, and not to accept any meaning suggested by the applicant which the document itself will not bear out. (*m*) It then becomes important to ascertain whether the alleged excess invention is really only a legitimate development of the invention to be found described in the provisional, (*n*) or whether it is really a different one, and the same as that forming the subject of the opponent's subsequent application. If it is only a legitimate development the opposition will fail. (*o*) The law officer should carefully consider the question whether the patent should be stopped, because should he

Patent, (1901) 18 R. P. C. 324; and Lancaster's Patent, (1902) 20 R. P. C. 366, where a substituted claim was disallowed by the law officer on the ground that it was for something absolutely different from what was described in the provisional specification.

(*i*) Brownhill's Patent, (1889) 6 R. P. C. 135.

(*k*) Vol. I. p. 190.

(*l*) Sec. 4 of Act, 1888, Appendix.

(*m*) Birt's Patent, (1892) 9 R. P. C. 489.

(*n*) See Vol. I. p. 188.

(*o*) Edward's Patent, (1894) 11 R. P. C. 461; Miller and Miller's Patent, (1898) 15 R. P. C. 718; Birt's Patent, (1892) 9 R. P. C. 489.

improperly allow the seal, his decision might affect the question of disconformity if subsequently raised in the superior Courts. (*p*)

Sealing the Patent.

Wilson's Patent (*q*) and *Hudson's Patent* (*r*) afford good illustrations of this ground of opposition. In the former case the invention related to bicycle tyres, and the applicant's provisional specification described various combinations of parts for the construction of tyres, but did not allude to any method or methods of fastening the tyres to the wheels. The complete specification, on the other hand, described the tyres as fitted to specially constructed wheel rims with special means for fastening the tyres, and the rims, combined with the methods of fastening, were the subjects of claims. The grant was opposed by four different opponents, who had, between the dates of the filing of the applicant's provisional and his complete specification, made applications for patents for the various methods of attachment claimed in the applicant's complete specification. The Comptroller ordered the excision of the figures and drawings and of the corresponding description and claims referring to the methods of fastening the tyres to the wheels. The law officer on appeal somewhat varied the Comptroller's decision, but required that the complete specification should be amended so as to prevent the applicant from claiming as a part of his invention the means of fastening the tyres to the wheels as distinct from the construction of the tyres themselves.

Sealing the Patent.

Seal of the Patent Office.

If there be no opposition, or if there be opposition, and the determination is in favour of the grant of a patent, the Comptroller is required, on the applicant filing a request to have the patent sealed, (*s*) to cause a patent to be sealed with the seal of the Patent Office, which is equivalent for this purpose to the Great Seal of the United Kingdom. (*t*)

Time within which the patent must be sealed.

A patent cannot be sealed after the expiration of fifteen months from the date of application, (*u*) except in the following cases:—

(*p*) See Hudson's Patent, (1904) 22 R. P. C. 218.
(*q*) (1892) 9 R. P. C. 512.
(*r*) (1904) 22 R. P. C. 218.
(*s*) Patent Rules, (1905) r. 12; 46 & 47 Vict. c. 57, s. 12; 2 Edw. VII. c. 34, s. 1 (10).
(*t*) 46 & 47 Vict. c. 57, s. 12, sub-s. 2.
(*u*) *Ibid.* sub-s. 3.

Sealing the Patent.

(1) When the sealing is delayed by an appeal to the law officer, or by opposition to the grant of the patent, in which case the patent may be sealed at such time as the law officer may direct. (*y*)

(2) If the person making the application dies before the expiration of fifteen months from the date of application, in which case the patent may be granted to his legal representative, and sealed at any time within twelve months after the death of the applicant. (*z*)

(3) Where the Comptroller has granted an extension of time for the leaving or accepting of a complete specification, in which case a patent may be sealed within nineteen months from the date of the application. (*a*)

In the case of delay caused by opposition, a patent may be sealed at such time as the law officer appoints, even though the opposition is not adjudicated upon till after the expiration of fifteen months from the date of the application; (*b*) the case, however, is different when the delay is caused by the applicant. Thus, where there was an opposition which caused some delay, and the applicant by mere inadvertence neglected to comply with the Comptroller's requisition till long after fifteen months from the application, the law officer refused to seal the patent on the ground that the delay was not caused by the opposition. (*c*) An applicant may, under some circumstances, desire to delay the sealing of the patent for a longer period than fifteen months from the date of application. If this be so, he should arrange that the allowable extension to nineteen months may suffice his purpose. It is neither right nor politic that he should attempt to gain time by means of a bogus or collusive opposition to the grant; and such a proceeding would more likely than not have the effect of losing him the patent altogether as the law officer, on the ground that the opposition was not genuine, would refuse the necessary extension of time for sealing the patent. (*d*) In fact, according to the report of one such case the law officer refused to extend the time upon the express ground that, as the delay had not been caused by the opponent but had been brought about

(*y*) 46 & 47 Vict. c. 57, s. 12, sub-s. 3, p. 206 *post*.

(*z*) *Ibid*.

(*a*) 48 & 49 Vict. c. 63, s. 3, p. 245 *post*.

(*b*) 46 & 47 Vict. c. 57, s. 12 (3); cf. *Re* Somerset and Walker's Patent, (1879) L. R. 13 Ch. D. 397; *Re* Johnson's Patent, (1879) L. R. 13 Ch. D. 398 *n*.

(*c*) A. and B.'s Patent, (1896) 13 R. P. C. 63.

(*d*) See A. and B.'s Patent, (1902) 19 R. P. C. 403.

for an ulterior object, he had no jurisdiction at all under sec. 12 (3) (*a*) of the Patent Act, 1883. (*e*) **Extent and Duration of Letters Patent.**

It is expressly enacted that every patent shall be dated and sealed as of the day of the application: Provided that, in the case of more than one application for a patent for the same invention, the sealing of a patent on one of those applications shall not prevent the sealing of a patent on an earlier application. (*f*)

Before the Act of 1883, where there was more than one applicant for a patent for the same invention, the applicant who first obtained the Great Seal was held to be entitled to the benefit of it, and the patent of any other applicant, if granted at all, was dated subsequently. (*g*) Such is not the case now, for the patent of each applicant (if granted) must bear the date of the application, and consequently the first applicant is the one who gets the real benefit of the invention; for where there is more than one patent for the same invention, anything done under those subsequently dated is an infringement of that which bears the earliest date. (*h*) Formerly, however, in cases where there was evidence of *mala fides* the patent of a second applicant was ordered to be dated before that of the prior applicant. (*i*) The reason was that the Crown will not grant a second patent in derogation of its own grant, and the system of ante-dating enabled the question of validity to be decided in subsequent proceedings. (*k*)

Extent and Duration of Letters Patent.

Every patent when sealed has effect throughout the United Kingdom and the Isle of Man, (*l*) but not the Channel Islands. To extend the patent to the Channel Islands the patentee should enrol copies at the Royal Courts of Jersey and Guernsey. The term for which every patent is granted originally is fourteen years, (*m*) which may however, in certain cases, be prolonged on petition to His Majesty in Council. (*n*) The time from which a patent runs **Geographical extent.**

(*e*) A. and B.'s Patent, (1902) 19 R. P. C. 556.

(*f*) 46 & 47 Vict. c. 57, s. 13.

(*g*) *Ex parte* Bates and Rodgate, (1876) L. R. 4 Ch. 577, 580; see Vol. I. p. 8.

(*h*) Saxby *v.* Hennett, (1873) L. R. 8 Ex. 210.

(*i*) *Ex parte* Scottand Young, (1871) L. R. 6 Ch. 274; Saxby *v.* Hennett, (1873) L. R. 8 Ex. 210; *Re* Vincent's Patent, (1867) L. R. 2 Ch. D. 341.

(*k*) *Ex parte* Bailey, (1872) L. R. 8 Ch. 61; *Ex parte* Henry, (1872) L. R. 8 Ch. 167, 169; *Ex parte* Bates and Rodgate, (1869) L. R. 4 Ch. 577.

(*l*) 46 & 47 Vict. c. 57, s. 16.

(*m*) *Ibid.* s. 17.

(*n*) *Ibid.* s. 25; chap. v.

Extent and Duration of Letters Patent.

dates from, and includes, the day on which the patent is dated. (*o*)

A patent is conditional on the patentee making the prescribed payments within the prescribed times, (*p*) and ceases if he fail to do so. (*q*)

Conditional on payment of renewal fees.

Enlargement of time for payment of fees.

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 for an enlargement of the time for making that payment, and the Comptroller may, if he is satisfied that the failure has arisen from any of the above causes, on receipt of the prescribed fee for enlargement, (*r*) not exceeding ten pounds, enlarge the time accordingly, subject to the following conditions:—

(a) The time for making any payment shall not in any case be enlarged for more than three months.

(b) 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. (*s*)

An application for enlargement of the time for making a prescribed payment must state in detail the circumstances in which the patentee, by accident, mistake, or inadvertence, had failed to make such payment, and the Comptroller may require the patentee to substantiate, by such proof as he may think necessary, the allegations contained in the application for enlargement. (*t*)

Whenever the last day for leaving any document, or paying a fee, at the Patent Office falls on Christmas Day, Good Friday, or on a Saturday or Sunday, or on a day observed as a holiday at the Bank of England, or on any day observed as a public fast or thanksgiving, the documents may be left, or the fee may be paid, on the day next following any of these days. (*u*)

Revival of patent void through non-payment of fees.

If a patentee fails to make a prescribed payment, whether he has obtained an enlargement of time or not, his patent is void and can only be revived by a special Act of Parliament. (*x*) A

(*o*) Russell *v.* Ledsam, (1847) 14 M. & W. 574.

(*p*) 46 & 47 Vict. c. 57, s. 24; p. 212 *post*.

(*q*) 46 & 47 Vict. 57, s. 17 (2).

(*r*) See Appendix.

(*s*) 46 & 47 Vict. c. 57, s. 17 (3) (4).

(*t*) P. R. (1903) r. 67.

(*u*) 46 & 47 Vict. c. 57, s. 98.

(*x*) *E.g.*, Wright's Patent Act (1884); Boult's Patent Act (1885); Bradbury and Leman's Patent Act (1884); Auld's

special Act will most probably not be obtained unless it is made clear that the renewal fees were not paid in consequence of a special circumstance such as the serious illness of the patentee,(*y*) and if a special Act is passed it will most probably provide protection for persons who may have used the subject-matter of the invention after notice of the lapse of the patent. (*z*)

Journal and Report of Cases.

Application in fraud of true and first inventor.

Sec. 35 of the Act of 1883 enacts that 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.

Duplicates of letters patent.

In the event of a patent being lost or destroyed, or its non-production being accounted for to the satisfaction of the Comptroller, the Comptroller has authority at any time to cause a duplicate to be sealed. (*a*)

Adverse decision in action of infringement does not annul the patent.

A decision in an action brought upon a patent to the effect that a claim in the specification cannot be supported does not annul the patent. (*b*) Such a decision is not an order for revocation, but merely a decision that the specification is bad as it stands. The defect may well be one capable of being cured by amendment, (*c*) in which case fresh actions might be brought upon the patent after amendment. (*d*)

Illustrated Journal and Reports of Cases.

Illustrated journal and reports of cases.

The Comptroller is required to cause to be issued periodically an illustrated journal of patented inventions, as well as reports of cases decided by Courts of law, and any other information that he may deem generally useful or important. (*e*) The Comptroller is also required to keep on sale copies of the illustrated journal, and all complete specifications of patents for the time being in force; and to prepare

Patent Act (1885); Potter's Patent Act (1887). See also Appendix A to Report of Select Committee on Potter's Patent Bill [H. L.], Skrivanow's Patent Bill [H. L.], and Gilbert and Sinclair's Patent Bill [H. L.].

(*y*) See Report of Select Committee on Potter's Patent Bill [H. L.], Skrivanow's Patent Bill [H. L.], and Gilbert and Sinclair's Patent Bill; Worms and Bale's Patent Act (1891).

(*z*) *Ibid.*; Appendix A, Potter's Patent Act (1887); Worms and Bale's Patent Act (1891).

(*a*) 46 & 47 Vict. c. 57, s. 37; P. R. (1890) Form N.

(*b*) Deeley's Patent, (1894) 11 R. P. C. 75.

(*c*) See chap. ii. *post*.

(*d*) p. 82 *post*.

(*e*) 46 & 47 Vict. c. 57, s. 40.

Patent Office Museum. Register of Patents.

and publish indexes, abridgments of specifications, catalogues, and other works relating to inventions, as he may see fit. (*f*)

Patent Office Museum.

Patent Office Museum.

The control and management of the Patent Museum is vested in the Department of Science and Art, subject to such directions as His Majesty in Council may see fit to give. (*g*)

The Department of Science and Art may at any time require a patentee to furnish them with a model of his invention on payment to the patentee of the cost of the manufacture of the model; the amount to be settled, in case of dispute, by the Board of Trade. (*h*)

Register of Patents.

Register of Patents under Act of 188[illegible]

The Act of 1883 (*i*) provides that there shall be kept at the Patent Office a book called the Register of Patents, wherein shall be entered the names and addresses of grantees of patents, notifications of assignments, and of transmissions of patents, of licences under patents, and of amendments, extensions and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may from time to time be prescribed. Such other matters include applications for amendments of specifications and notices of oppositions thereto, as well as the decisions of the Comptroller and law officer; requests for entry of notifications of assignments, licences, Orders in Council affecting the patent; certificates of enlargements of time within which renewal fees may be paid; and notifications of the expiration of patents.

The present practice relative to the Register of Patents is regulated by the Patent Rules, 1903, rr. 51–65. (*k*) Any person interested in a particular patent may lodge at the Patent Office a request that he be informed if and when any attempt

(*f*) 46 & 47 Vict. c. 57, s. 40. The Illustrated Official Journal, with accompanying reports of the cases decided by the courts of law, the Comptroller, and the law officers, is at present published weekly. Cases decided before the Comptroller or the law officer ought not to be cited before the High Court of Justice or the Court of Appeal; Siddell *v.* Vickers, (1888 5 R. P. C. 416, 136.

(*g*) 46 & 47 Vict. c. 57, s. 41.

(*h*) *Ibid.* s. 42.

(*i*) s. 23.

(*k*) p. 311 *post.*

is made to register an assignment or other similar document, and if he do so the Office will notify him of any application for registration of any assignment or other similar document affecting the patent, and the registration will be suspended for a few days so as to afford such person an opportunity of taking any steps to prevent registration he may consider advisable. Where a person has lodged such a request and thinks himself aggrieved by an attempted registration, the proper course for him to adopt is to notify the Office and to apply to the Court for leave to serve notice of motion for an early date, which would be granted as a matter of course. (*l*)

Register of Patents.

The Register of Patents is *primâ facie* evidence of any matters by the Act directed or authorised to be inserted therein. (*m*) The register is admissible evidence of the various matters referred to therein, but the weight and effect of the evidence is to be considered by the Court in subsequent proceedings. Thus, though from entries on the register it appeared that a defendant to an infringement action was entitled to a licence from the patentee, the Court found to the contrary, since it was established that the order entered on the register was obtained under circumstances calculated to arouse suspicion of collusion between the defendant and the grantee of the patent who was under contract to assign it to the plaintiff in the action. (*n*)

Register is *primâ facie* evidence.

It is provided that former registers of patents and of proprietors shall be deemed parts of the same book as the Register of Patents, kept under the Act of 1883. (*o*)

Where any person becomes entitled by assignment transmission, or other operation of law, to a patent, it is the duty of the Comptroller on request, and on proof of title to his satisfaction, to cause the name of such person to be entered as proprietor of the patent in the Register of Patents; and the person for the time being entered in the Register of Patents as proprietor of a patent has, subject to the provisions of the Act of 1883, and to any rights appearing from such register to be vested in any other person, power absolutely to assign, grant licences as to or otherwise deal with the same, and to give effectual receipts for any consideration for such assignment, licence, or dealing: Provided that any equities in respect of

Effect of registration.

(*l*) See Viola *v.* Sharpe, (1904) 22 R. P. C. 23.

(*m*) 46 & 47 Vict. c. 57, s. 23 (2).

(*n*) See Action Gesellschaft für Cartonnagen Industrie *v.* Temler, (1900) 18 R. P. C. 14.

(*o*) 46 & 47 Vict. c. 57, s. 114.

Register of Patents.

such patent may be enforced in like manner as in respect of any other personal property. (*p*)

Notices of trusts, as such, cannot be registered,

By sec. 85 of the Act of 1883 (*q*) it is provided that no notice of any trust—expressed, implied, or constructive—is to be entered on the Register of Patents, nor is any such notice receivable by the Comptroller. (*r*)

but documents affecting the proprietorship —*e.g.*, equitable assignments—can be registered.

The effect of this sec. 85, read, as it must be, together with secs. 23 and 87, and the Patent Rules, 1903, rr. 51–65, is only to exclude from the register simple notices of trusts, but not documents affecting the proprietorship of a patent, whether by creating trusts or otherwise. Consequently equitable assignments of a patent, or of a share in a patent, may be entered on the register as documents affecting the proprietorship. (*s*)

Documents creating neither legal nor equitable interests cannot be registered.

A document which creates neither a legal nor an equitable interest cannot be registered. Thus, a patentee wrote a letter agreeing to give an exclusive licence, and, the patentee and proposed licensee subsequently disagreeing as to whether the amount of royalty had been fixed by subsequent parol agreement, the licensee obtained an entry of the letter on the register. On subsequent motion for rectification of the register, *North*, J., held that, even assuming the royalty had been subsequently fixed by parol agreement, the letter itself did not give any legal or equitable interest in the patent, and could not be registered. (*t*)

Documents of earlier date than the patent.

Questions sometimes arise as to the entry on the register of documents dated prior to the patent.

For example, where it appeared that, before the date of a patent, the grantee and another person signed a document referring to certain proposed dealings with the ownership of patents to be obtained for a process said to be the invention for which a patent was subsequently granted, the Comptroller refused to enter this document on the Register of Patents, on the ground that it was dated before the grant of the patent; and this decision was upheld on motion to the Court, but upon the ground that the applicant did not appear to be entitled to any share in the patent. (*u*)

It would appear from the judgment in *Parnell's Patent* (*x*)

(*p*) 46 & 47 Vict. c. 57, s. 87; 51 & 52 Vict. c. 50, s. 21.

(*q*) p. 232 *post*.

(*r*) *Ibid.*

(*s*) Stewart *v.* Casey, (1891) 9 R. P. C. 9; in view of this case the decision in Haslett *v.* Hutchinson, (1891) 8 R. P. C. 457, would appear to be wrong.

(*t*) In the Matter of Fletcher's Patent, (1893) 10 R. P. C. 252.

(*u*) In the Matter of Parnell's Patent, (1888) 5 R. P. C. 126.

(*x*) (1888) 5 R. P. C. 128.

that there may be documents dated before the grant of a patent which ought to be entered on the register after the patent is obtained, and that an agreement as to the ownership is such a document. Register of Patents.

Registration under the Act of 1883 of an exclusive licence for a limited area is not notice to the world, so as to affect defendants buying certain machines manufactured by the patentee outside the area, (*y*) and using them inside the area, without notice of the licence. Registration is not notice to all persons.

The Register of Patents is at all convenient times open to the inspection of the public, subject to the provisions of the Act of 1883, and to the prescribed regulations, (*z*) and any person requiring it may obtain, on payment of the prescribed fee, a certified copy, sealed with the seal of the Patent Office, of any entry made in the register. (*a*) Inspection of Register.

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, are admitted in evidence in all Courts in His Majesty's dominions, and in all proceedings, without further proof or production of the originals. (*b*) Evidence of entries on the Register.

A certificate purporting to be under the hand of the Comptroller as to any entry, matter, or thing which he is authorised under the Act of 1883, or any general rules made thereunder, to make or do, is *primâ facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone. (*c*)

The Court is empowered by sec. 90 of the Act of 1883, as amended by sec. 23 of the Act of 1888, 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 the register, or of any entry made without sufficient cause in the register, to 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. And the Court has power, in any proceedings under this section, to decide any question that it may be Rectification of the Register.

(*y*) Heap *v.* Hartley, (1888) 5 R. P. C. 603; 6 R. P. C. 495.
(*z*) Patent Rules, (1890) r. 78.
(*a*) 46 & 47 Vict. c. 57, s. 88; 51 & 52 Vict. c. 50, s. 22.
(*b*) 46 & 47 Vict. c. 57, s. 89.
(*c*) *Ibid.* s. 96.

Register of Patents.

necessary or expedient to decide for the rectification of the register, and to direct an issue to be tried for the decision of any question of fact, and to award damages to the party aggrieved.

The purchaser of a share of a patent is "a person aggrieved" by the entry of an assignment of a share purporting to have been made by a person in fact a bankrupt. (*d*)

Before the Court will accede to a request for the rectification of the register by the entry of a person's name as assignee of a patent or share of a patent the applicant must of course prove his title. (*e*)

Any order of the Court rectifying the register must direct that due notice of the rectification be given to the Comptroller. (*f*) Where an order has been made by His Majesty in Council for the extension of a patent for a further term, or for the grant of a new patent, (*g*) or where an order has been made by the Court for the revocation of a patent or the rectification of the register under sec. 90, or otherwise affecting the validity or proprietorship of the patent, the person in whose favour such order has been made is required forthwith to leave at the Patent Office an office copy of such order. The register will thereupon be rectified, or the purport of such order will otherwise be duly entered in the register, as the case may be. (*h*)

It is submitted that the Act of 1883 (*i*) gives the Court power to expunge any entry fraudulently made on the register, and to enter any facts relative to the ownership of a patent, but not any legal inference to be drawn from these facts. It was held that the corresponding section of the repealed Act of 1852 (*k*) gave such power to the Master of the Rolls alone. (*l*)

An appeal lies from any order made by the Court or a Judge for the rectification of the register, (*m*) though formerly there was no appeal from the decision of the Master of the Rolls.

If any rectification of the Register of Patents is required in

(*d*) Manning's Patent, (1902) 20 R. P. C. 74.

(*e*) *In re* Holmstrom, (1904) 22 R. P. C. 213.

(*f*) 46 & 47 Vict. c. 57, s. 90, sub-s. 3.

(*g*) Chap. v. *post*.

(*h*) P. R. (1890) r. 74.

(*i*) s. 90.

(*k*) s. 38.

(*l*) *Re* Morey's Patent, 25 Beav. 581; *Re* Green's Patent, (1857) 24 Beav. 145; *Re* Horsley and Knighton's Patent, (1869) L. R. 8 Eq. 475; *Re* Berdan's Patent, (1875) L. R. 20 Eq. 346.

(*m*) *Re* Morgan's Patent, (1876) 24 W. R. 245; *Re* Myer's Patent, (1882) W. N. 53, 76.

pursuance of any proceeding in a Court in Scotland or Ireland, a copy of the order, decree, or other authority for the rectification must be served on the Comptroller, who is required to rectify the register accordingly. (*n*) Register of Patents.

It is a misdemeanour for any person to make, or cause to be made, a false entry in the Register of Patents, or a writing falsely purporting to be a copy of an entry in such register, or to produce or tender, or cause to be produced or tendered, in evidence any such writing, knowing the writing or entry to be false. (*o*) Falsification of the Register is a misdemeanour.

(*n*) 46 & 47 Vict. c. 57, s. 111 (2).

(*o*) *Ibid.* s. 93.

CHAPTER II.

AMENDMENT OF THE SPECIFICATIONS.

PART I.—GENERAL.

Certain amendments are allowable.

A PATENT may be void and of no effect on account of a defect in a specification, but the law, in the interests and for the protection of patentees, allows certain amendments to be made from time to time; so a patent, otherwise void, owing to the carelessness or ignorance of the patentee in fulfilling his obligation of specifying the invention and the mode of carrying it into practical operation, may, by amendment of the specification, be made perfectly valid. (*a*)

It is not the practice of the Patent Office however to allow the amendment of the provisional specification further than what is required by the examiner, or by way of excision made before the acceptance of the complete specification, or by the correction of mere clerical errors. (*b*)

Necessity for amendments should be avoided.

It will appear that it is greatly to the interest of the patentee to draft the specifications in the first instance with such care as will render subsequent amendments unnecessary. The consequences of an amendment may be, not only the incurring of expense, but the possible inability to recover damages in respect of infringements of the patent committed before the amendment.

Procedure when specification is published.

The present procedure relative to the amendment of specifications which have become public property is regulated by sec. 18 (as amended by sec. 5 of the Act of 1885) and sec. 19 of the Act of 1883, together with the Patent Rules, 1903, made under the powers conferred by the Act of 1883. Where this

(*a*) 46 & 47 Vict. c. 57, s. 20. The present chapter deals mainly with the amendment of specifications which have been accepted and become open to public inspection (46 & 47 Vict. c. 57, s. 10); questions relating to the amendment of the specifications before they have become public property are treated of in chap. i. *ante*.

(*b*) Patent Office Circular of Information

Allowable Amendments.

procedure applies it is immaterial whether the Patent Office has, or has not, advertised its acceptance of the complete specification. (*c*) Consequently, when a complete specification has been accepted, though the Patent Office has not by advertisement (*d*) signified its acceptance, it is not a valid objection to an amendment, once it is allowed, that the request for and the nature of the amendment were not advertised in the prescribed manner. (*e*)

The hearing of an opposition to the grant of a patent will be postponed to the hearing of an opposition to an application for leave to amend the specification. (*f*)

Defects which are fatal.

If the specification describe and claim anything which is not subject-matter (*g*) or which is useless (*h*) or which is not new (*i*) at the date of the patent, the patent is void. Again, if the title of the invention is inaccurate and misdescribes the invention in any respect, the patent may be void on the ground of misrepresentation, though there may have been no intention to deceive either the Crown or the public; (*k*) and if the specification be insufficient as to any part of the invention, or if it contain any misstatement respecting any material particular relating to the invention, whether inadvertently inserted or not, the patent is wholly void so long as the specification remains tainted with any of the above defects. (*l*)

History of power of amendment.

Nature of Allowable Amendments.—Before 1834, the date of the statute 5 & 6 Will. IV. c. 83, it was impossible to cure any defects such as the above, and persons not unfrequently lost the benefit of useful and meritorious inventions in consequence. The passing of the above statute, however, to a great extent removed this reproach to our Patent Laws, and though it was repealed by the Act of 1883, (*m*) its provisions and the benefits which it extended to patentees, were, with further additions, re-enacted by that Act.

From 1834 to the passing of the Act of 1883 patentees could only amend their specifications by way of disclaimer, (*n*) that is to say, they could only cut matter out which they considered to be superfluous as lacking utility or novelty, or as not being subject-matter.

If what was left of the specification would satisfy the

(*c*) Jones' Patent, Griff. P. C. 313.
(*d*) 46 & 47 Vict. c. 57, s. 10, p. 206 *post*.
(*e*) *Ibid.* ss. 10, 18; pp. 206, 206 *post*.
(*f*) Cochrane's Patent, (1885) Griff. P. C. 304.
(*g*) Vol. I. chap. ii.
(*h*) Vol. I. chap. iv.
(*i*) Vol. I. chap. iii.
(*k*) Vol. I. chap. v.
(*l*) *Ibid.*
(*m*) 46 & 47 Vict. c. 57.
(*n*) Foxwell *v.* Bostock, (1864) 4 De G. J. & S. 298, 306.

Allowable Amendments.

requirements of the law, then the patent would be saved; but there was no provision for making a bad or incomplete description into a good or complete one, neither was it allowable to explain any ambiguity. It, consequently, very frequently happened that patentees found their specifications construed by Judges in a manner which they never intended, and were, sometimes, to their mortification told that, though their inventions were good and valuable, yet their specifications were so defective, and so hopelessly beyond the power of amendment by any means known to the law, as to make it impossible to maintain protection in respect of such inventions.

Very slight additions, however, were formerly allowed when they were necessary to render what remained after disclaimer intelligible, (*o*) as, for example, the addition or transfer of the words "herein described," (*p*) and additions in the nature of explanations necessary to define a disclaimer are allowable under the present practice. (*q*)

Amendments allowed under Act of 1883.

The Act of 1883 not only provides that patentees may disclaim any portion of their specifications, but extends to them the right, with the sanction of the Comptroller-General, and the law officer on appeal, to correct or explain any defective passage on condition that such disclaimer, correction, or explanation does not make the specification as amended claim an invention substantially larger or substantially different from the invention claimed by the specification as it stood originally. (*r*)

If there be no action for infringement or proceeding for the revocation of the patent pending at the time the patentee wishes to make an amendment in the specification, or if there be an action for infringement, or petition for revocation pending, and the patentee has obtained the necessary permission of the Court or a Judge, (*s*) all that it is necessary for him to do is to obtain the sanction of the Comptroller-General, or law officer, in the prescribed manner, when he will be allowed to make the amendment as a matter of course. (*t*)

An amendment, when there is no pending action or petition for revocation, may consist of a *disclaimer*, *correction*, or *explanation*; but when a patentee desires to amend his

(*o*) Ralston *v.* Smith, (1865) 11 H. L. C. 223, 245.

(*p*) Thomas *v.* Welch, (1866) L. R. 1 C. P. 192, 195.

(*q*) See Owen's Patent, (1898) 15 R. P. C. 755; p. 90 *post*.

(*r*) 46 & 47 Vict. c. 57, s. 18, sub-s. 8.

(*s*) *Ibid.* s. 19; Hall's Patent, (1888) 5 R. P. C. 306.

(*t*) 46 & 47 Vict. c. 57, s. 18, sub-s. 9.

specification pending an action for infringement, or petition for the revocation of the patent, he is only allowed to do so by way of *disclaimer*, and not by correction or explanation, and he must first obtain the sanction of the Court or a Judge, (*u*) after which the procedure is the same as if no such action or proceeding for revocation were pending. (*v*)

Allowable Amendments.

The Comptroller-General and law officer have an absolute discretion as to granting or refusing leave to amend, and not being a "Court" prohibition does not lie to them. (*x*)

Discretion of Comptroller and law officer.

Leave to apply is no guarantee that the specification, when amended, will not still invalidate the patent. The patentee, it must be remembered, makes the amendment at his own peril. (*y*) Thus, in the case of *Deeley's Patent* (*z*) it appeared that three claims were, in an infringement action, held to have been anticipated, and the patentee then amended by striking out the three claims and entering a disclaiming clause. The defendant in the action thereupon petitioned for the revocation of the patent, and succeeded on the ground that one of the remaining claims was bad for want of subject-matter.

Leave to amend no guarantee of validity.

It is not to be inferred from the circumstance that a patentee has entered a disclaimer, or made any other amendment of the specification, that the patent was necessarily bad before the amendment, for it may well be that the alteration was in fact not requisite, and only made to obviate any doubt that might arise on the specification as originally filed. (*a*)

Amendment no evidence of prior invalidity.

The Act of 1883, which provides that "an amendment shall, in all courts and for all purposes, be deemed to form part of the specification," (*b*) expressly states (*c*) that "no amendment shall be allowed that would make the specification, as amended, claim an invention larger than, or different from, the invention claimed by the specification as it stood before amendment."

Proposed amendments which extend the claim.

A disconformity between an amended complete specification and a provisional specification is just as fatal to the validity of the patent as a disconformity between the original specifications before amendment. (*d*)

Disconformity after amendment.

(*u*) 46 & 47 Vict. c. 57, s. 19; 51 & 52 Vict. c. 50, s. 5; see p. 90 *post*.

(*v*) Hall's Patent, (1888) 5 R. P. C. 306.

(*x*) Van Gelder's Patent, (1889) 6 R. P. C. 22; *Ex parte* Simon, 4 Times Reports 754.

(*y*) Lake, (1887) Griff. L. O. C. 16; 5 R. P. C. 415.

(*z*) (1895) 12 R. P. C. 65, 192.

(*a*) Stocker *v.* Warner, (1845) 1 C. B. 148, 165; 9 Jur. 136, 138.

(*b*) s. 18, sub-s. 9.

(*c*) s. 18, sub-s. 8.

(*d*) Gaulard and Gibbs, (1889) 6 R. P. C. 215; Lane Fox *v.* Kensington

Allowable Amendments.

A patentee is not allowed to amend his specification in such a way as to make the amendment amount to an imputation that certain disadvantages exist in the method of carrying out an invention described and claimed by the specification of a prior patent, when, as matter of fact, there is no evidence before the Comptroller or law officer of the actual existence of such alleged disadvantages, though such allegation might not be an objection to filing the specification in the first instance. (*e*)

Amended specification takes the place of the original.

The Act of 1883 further provides (*f*) that, after an amendment has been allowed, "the amendment shall, in all Courts and for all purposes, be deemed to form part of the specification." The authorities warrant the statement that these words mean (*inter alia*) that the amended specification shall, in all Courts and for all purposes, have the same effect as if it had been filed, in the amended form, on the date of the original, so that a patentee may sue for, and recover, on his amended specification, damages in respect of infringements committed before the amendment; but this statement is subject to the qualification that the patentee must establish, to the satisfaction of the Court, that his original specification was framed in good faith and with reasonable skill and knowledge. (*g*) If a successful plaintiff in an action for infringement is able to satisfy the Court on this point, the account or damages, as the case may be, will be ordered as from the date of the patent. (*h*)

Law officer's decision is final as to fact of the extension of a claim by amendment.

It would also appear, on the authority of *Moser* v. *Marsden*, (*i*) a case decided by the House of Lords, that, though it is open to an opposer before the Comptroller and law officer to raise the question that the proposed amendment would make the claims, as amended, larger than the original claim, yet the decision of the law officer is final on this point, and the Courts will not review it. It is submitted, on the other hand, that in a subsequent action on the patent the amendment is not conclusive and may be questioned on the point as to whether the amended claim embraces something which is not to be found fairly described in the original provisional specification, and so creates a fatal disconformity between the amended complete

Knightsbridge Electric Lighting Co., (1892) 9 R. P. C. 221, 413; see also Vol. I. pp. 190–199 *ante*.

(*e*) Hampton and Facer, (1887) Griff. L. O. C. 13.

(*f*) 46 & 47 Vict. c. 57, s. 18, sub-s. 9.

(*g*) *Ibid.* s. 20.

(*h*) Wenham *v.* Carpenter, (1887) 5 R. P. C. 68; Hopkinson *v.* St. James's and Pall Mall Electric Light Co., (1892) 10 R. P. C. 62.

(*i*) (1895) 13 R. P. C. 24.

specification and the former document. (*k*) That is to say, the decision of the law officer upon the question of amendment is only unreviewable so long as the amendment allowed is within the limits of the provisional specification as originally filed; if the amendment goes outside that, it creates a fatal disconformity to which the Courts would give effect. The older cases usually cited in favour of the proposition that an amendment which widens or alters the scope of the claims is fatal to the validity of the patent must, in so far as they were decided upon the former Acts, be considered as not applicable to the Act of 1883, and in so far as those decided since the Act of 1883 are concerned must be considered as overruled on this point. (*l*) Allowable Amendments.

It is to be noticed that the question of the legality of a disclaimer or other amendment once allowed by the law officer was not argued in *Moser* v. *Marsden*, (*m*) and it may be that upon argument the House of Lords might review their decision in that case so far as it affects the point under discussion, but it is submitted that the above statements embrace a true exposition of the law on the subject. In *Perry* v. *Société des Lunétiers* (*n*) the objection was taken that an amendment allowed by the law officer had enlarged the claims originally made. The objection, however, failed, and it was consequently not necessary for the Court to decide whether having regard to *Moser* v. *Marsden* the objection could be made at all. It is submitted that it could not; but, if in fact there had been an enlargement of the claim which went beyond the limits of the provisional specification, the patent might have been declared void on the ground of disconformity between the specifications. (*o*)

Before the decision in *Moser* v. *Marsden*, (*p*) the Comptroller-General and the law officers used to be guided in the matter of allowing amendments, which were said by opponents to make the specification, contrary to the provisions of sec. 18, sub-s. 8 of the Act of 1883, as amended, claim an invention substantially larger than or substantially different from

Practice when an amendment is objected to on the ground that it extends the claim.

(*k*) See Vol. I. p. 191.

(*l*) The cases referred to are Ralston v. Smith, (1865) 11 H. L. C. 550; Dudgeon v. Thompson, (1877) L. R. 3 App. Cas. 55; *Re* Gaulard v. Gibbs' Patent, (1888) 5 R. P. C. 189; 6 R. P. C. 225; 7 R. P. C. 367; Van Gelder's Patent, (1889) 6 R. P. C. 22; Farben Fabrik v. Bowker, (1891) 8 R. P. C. 391; Lane Fox v. Kensington and Knightsbridge Electric Lighting Co., (1892) 9 R. P. C. 221, 413.

(*m*) See Dellwick's Patent, (1896) 13 R. P. C. 596.

(*n*) (1896) 13 R. P. C. 664.

(*o*) See Vol. I. p. 191.

(*p*) (1895) 13 R. P. C. 24.

Allowable Amendments.

the invention claimed by the specification as it stood before amendment, by the rule that in the event of doubt the patentee was to have the benefit of the doubt. This rule was based upon the then prevailing notion that the law officer's decision was not conclusive, and consequently if it was wrongly exercised in favour of the applicant it could be set right by the Courts, but, if it was wrongly exercised against the applicant, it was final and not open to review. (*q*) When this ground of opposition is taken against a proposed amendment in future the law officers will probably not be so ready to allow the amendment as formerly, but will require to be satisfied that the amendment will not infect the specification with the vice referred to in sub-s. 8 of sec. 18 of the Act of 1883, before they will grant leave to apply at the Patent Office to make the amendment desired. (*r*)

Example of a proposed amendment which extends the claim.

Walker's Application, (*s*) selected from amongst other cases, (*t*) furnishes a good illustration of an amendment being refused on the ground that no amendment can be allowed which would make the amended specification claim an invention substantially larger than, or substantially different from, the invention as claimed by the specification as it stood before amendment. (*u*)

In *Walker's Application*, (Griff. L. O. C. 22) it appeared that *Walker's* patent was for "improvements in machinery employed for preparing and spinning cotton and other fibrous materials." The complete specification stated that the object of the invention was to support the top clearing rollers, so as to prevent them from rolling off the front rollers, and to keep them always in equal contact with both rollers. The invention consisted principally in an inclined bearer or bearers (slotted or otherwise) on or against which the pivots projecting from the centre of the clearers rested. In one part of the specification it was stated that "the said bearers may either be fixed to any hook, or they may be attached to any other fixing or part of the frame, in which case they form adjustable inclined planes." The claim was for the construction and application to the class of machinery referred to of an inclined bearer or bearers to support the top

(*q*) Bateman and Moore's Patent, (1854) Macr. P. C. 116; Lake, (1886) Griff. L. O. C. 16.

(*r*) See Parkinson's Patent, (1896) 13 R. P. C. 512.

(*s*) Griff. L. O. C. 22; see also Parkinson's Patent, (1896) 13 R. P. C. 509.

(*t*) See also Ralston v. Smith, (1865) 11 H. L. C. 223, 254; Lucas' Patent, (1854) Macr. P. C. 235; Gaulard and Gibbs' Patent, (1889) 6 R. P. C. 215; Heath and Frost's Patent, (1886) Griff. P. C. 311; Parkinson's Patent, (1896) 13 R. P. C. 509; Johnson's Patent, (1896) 13 R. P. C. 659; Vidal's Patent, (1898) 15 R. P. C. 721.

(*u*) 46 & 47 Vict. c. 57, s. 18, sub-s. 8.

clearing rollers substantially as set forth. The patentee sought by his amendment (*inter alia*) to insert the word "*adjustable*" before the term "bearer or bearers" wherever the same occurred in the description and in the claim. The Comptroller, however, refused to allow this, holding that the insertion of the word "*adjustable*," as desired, would make the specification claim an invention substantially larger than, or substantially different from, the original specification. (*v*)

Allowable Amendments.

It is competent for a patentee to claim a combination as a whole, and also a subordinate part or parts separately. (*x*) When, however, there is a distinct claim to the whole, it is not allowable for the patentee to amend his specification by striking out that claim and inserting one for a subordinate part alone, since such an alteration would make the amended specification claim an invention substantially different to that claimed by the original. (*y*)

Other examples of allowable and non-allowable amendments.

In a case where certain patentees in their specification described and claimed several parts of an apparatus, and it appeared on the face of it that the intention was to claim the several parts conjointly, an alteration was allowed whereby the words "firstly," "secondly," and "thirdly" were struck out, and the word "or" was substituted for "secondly" and "and" for "thirdly," but the insertion of the words "in combination with" between the second and third claiming clauses was not allowed. (*z*)

When an amendment is required it is because there is some defect in the specification, but that defect must be one which is consistent with the patentee intending to fulfil the condition of the grant by properly describing his invention and the mode of carrying it into effect; and if that condition has been fulfilled no amendment is required or will be allowed. (*a*)

A defect cannot be amended unless it is consistent with the patentee intending to fully specify the invention and mode of carrying it out.

Leave to apply to amend may be refused on the ground that the ambiguity of the proposed amendment, if such be the case, would lead to litigation and be calculated to create uncertainty among persons interested in the patent. (*b*)

A patentee desirous of amending his specification is required to state in writing his reasons for the same, (*c*) but such reasons

Reasons for requiring amendments

(*v*) See note (*t*), p. 68 *supra*.
(*x*) See Vol. I. p. 256.
(*y*) Serrell's Patent, (1889) 6 R. P. C. 101.
(*z*) Bateman and Moore's Disclaimer, (1852) Macr. P. C. 116.
(*a*) See Nordenfelt, (1885) No. 8269, Griff. L. O. C. 18, 21.
(*b*) Parkinson's Patent, (1896) 13 R. P. C. 509, 514.
(*c*) 46 & 47 Vict. c. 57, s. 18, sub-s. 1.

Disclaimer.

form no part of the specification when amended; (*d*) nor will leave to amend be refused merely on the ground that the reasons given by the applicant in his application are insufficient. (*e*) It is to be noticed that sec. 18, sub-s. 2, of the Act of 1883 does not in terms say that the reasons on the strength of which the applicant or patentee desires to be allowed to amend the specification are to be advertised, but probably because the reasons are considered part of the request, (*f*) it is the practice to advertise the reasons as well.

are to be stated in writing.

It will now be convenient to consider separately the different forms of amendment which the law allows.

Disclaimer.—Disclaimer, as defined by Lord *Chelmsford*, is "the renunciation of some previous claim actually or apparently made or supposed to be made," (*g*) and the following remarks of Lord *Westbury* with reference to a disclaimer under the Act of 1835 are applicable to a disclaimer under the Act of 1883 :—

> "The object of the Act authorising disclaimers was plainly this, that when you have in your specification a sufficient and good description of a useful invention, but that description is imperilled or hazarded by something being annexed to it which is capable of being severed, leaving the original description in its integrity good and sufficient . . . . then you might, by the operation of a disclaimer, lop off the vicious matter, and leave the original invention as described in the specification, untainted and uninjured by that vicious excess. (*h*) But it never was intended that you should convert a bad specification, in the sense of its not containing the description of any useful invention at all, into a good specification by adding words which would convert what has been properly called in the Court below 'a barren and unprofitable generality' into a specific and definite and practical description. . . . The statute never contemplated that a patentee should have the power, under the form of a disclaimer, of making material additions to the original specification, so as, by the aid of the corrected form of words and the additions so made, to introduce into the specification an accurate and perfect description of an invention which you seek for in vain in the original specification." (*i*)

(*d*) Cannington *v.* Nuttall, (1871) L. R. 5 H. L. App. 205, 208.

(*e*) Ashworth, (1878) No. 3513, Griff. L. O. C. 6, 7.

(*f*) *Ibid.*

(*g*) Ralston *v.* Smith, (1865) 11 H. L. C. 254.

(*h*) *E.g.*, Cochrane's Patent, (1885) Griff. P. C. 304; Ryland's Patent, (1888) 5 R. P. C. 665; Nordenfelt's Patent, (1887) Griff. L. O. C. 18; Allen's Patent, (1887) Griff. L. O. C. 3.

(*i*) Ralston *v.* Smith, (1865) 11 H. L. C. 223, 243.

A disclaimer which extends the ambit of the claims, or makes the specification claim an invention substantially different to that originally claimed, should not be allowed by the Comptroller or law officer, (*k*) though the law officer's decision must now be regarded as final. (*l*)

Disclaimer.

Disclaimers which extend the claim.

When it is said by the opponent that a disclaimer or other amendment will extend the claim, the real question to be decided always is, not whether any particular claim is extended by the amendment, but whether the total grant is extended. Though one particular claim may be extended it may be that it is only made to include something which was originally included in another claim. In such a case the law officer does not refuse leave to apply to make the amendment desired, (*m*) for the object of amendment must be merely to take out and remove part of, or to further explain, what had been claimed before, and the Act did not intend that, by striking out or altering part of the specification, the patentee should be able to give an extended and larger sense to what is left, so as to make it embrace something which it did not embrace before. (*n*)

The words of sub-s. 1 of sec. 18 of the Act of 1883, "by way of disclaimer, correction, or explanation," were meant to refer to disclaiming something which was originally wrongly inserted, or to explaining something which requires explanation, having regard to the statement made in the first instance by the patentee. (*o*)

If there is a claim for A, B, C, D, E, and F, and the patentee by amendment confines it to F, the amended claim is narrower than the original, but it is not different, for it is included in it; (*p*) but if the proposed amended claim is a claim to a combination, one part of which is not mentioned in the body of the specification, though it is shown in a drawing but equally with other features, it may not be allowed, because such a claim would make the specification as amended claim an invention substantially different from the invention claimed by the specification as it stood before amendment. (*q*)

(*k*) 46 & 47 Vict. c. 57, s. 18, sub-s. 8.

(*l*) p. 66 *ante*.

(*m*) See Cochrane's Patent, (1885) Griff. P. C. 384; Ashworth's Patent, (1886) Griff. L. C. C. 6; Rylands' Patent, (1888) 5 R. P. C. 665; Nordenfelt's Patent, (1887) Griff. R. P. C. 18; Lake's Patent, (1887) Griff. R. P. C. 16; Morgan's Patent, (1886) Griff. R. P. C. 17; Johnson's Patent, (1896) 13 R. P. C. 660; Dellwick's Patent, (1898) 15 R. P. C. 686.

(*n*) See remarks of Lord Blackburn, on the repealed statute, Dudgeon *v.* Thomson, (1877) L. R. 3 App. Cas. 55.

(*o*) Per Webster, A.-G., Johnson's Patent, (1896) 13 R. P. C. 660.

(*p*) Cochrane's Patent, (1885) Griff. P. C. 305; Dellwick's Patent, (1898) 15 R. P. C. 682; Hattersley and Jackson's Patent, (1904) 21 R. P. C. 238.

(*q*) Hattersley and Jackson's Patent,

Disclaimer.

In the case of an application to reamend a specification which has already been amended the original is not considered but only the specification in its last amended state. This is so because by express statutory provision the amendment is deemed in all Courts and for all purposes to form part of the specification. (*r*)

Disclaimer which turns an ambiguous into a clear specification is allowable, but not so a disclaimer which turns an insufficient into a sufficient description.

A disclaimer which turns an ambiguous specification into a clear specification is allowable. (*s*)

A disclaimer which, on the other hand, turns an insufficient description into a sufficient one will not be allowed when the patent was obtained on the personal application of the real inventor himself, though it might be allowed if the invention was one communicated from abroad, or where the inventor was a foreigner and his specification was mistranslated, and the foreign inventor came and satisfied the Comptroller or law officer that his agent had made a mistake in writing out or translating the description furnished to him by the foreign inventor. (*t*)

In *Ralston* v. *Smith*, (*u*) a case decided by the House of Lords under the repealed Acts, which is not an authority now upon the effect of the law officer's decision with reference to allowing an amendment, but which may be quoted as an instance of a so-called disclaimer really amounting to an extension, a patentee of "improvements in embossing fabrics" claimed the use of grooved, fluted, or indented rollers of metal, wood, or other suitable material, driven at a greater speed than the bowl or bowls connected with them, so as to exert a rubbing action on the fabric, and thereby produce an indefinite variety of patterns. Subsequently he disclaimed the use of any pattern rollers with the exception of metal rollers and circular grooves. It appeared in evidence that only circular grooves would produce the effect required, and further that the making the roller and bowl revolve at different speeds was not new at the date of the patent. As Lord *Chelmsford* observed, the rollers were not specially described in the original specification, but were merely involved in the general terms which were used, and the plaintiff had consequently not complied with the condition of the letters patent

(1904) 21 R. P. C. 233; but note the first claim of the specification, and see Hattersley *v.* Hodgson, (1904) 21 R. P. C. 517.

(*r*) See 46 & 47 Vict. c. 57, s. 18 (9); Hattersley and Jackson's Patent, (1904) 21 R. P. C. 233.

(*s*) Johnson's Patent, (1896) 13 R. P. C. 661, 662.

(*t*) See *Ibid.*

(*u*) (1865) 11 H. L. C. 223; see also cases referred to in the footnote (*t*) p. 68 *ante*.

in particularly describing and ascertaining the nature of the invention. When, therefore, by his disclaimer, he confined his claim to circular grooved rollers as his sole invention, though in one sense he might be said to narrow a right, yet he really extended it, because he thereby enlarged his alleged invention sufficiently to enable him to assert a right under the patent which he never could have successfully maintained upon the original specification. (*x*) Disclaimer.

Ralston v. *Smith* may be contrasted with *Seed* v. *Higgins*, (*y*) where a patentee obtained a patent for an improvement in machinery used for sewing-cotton, and his specification appearing to claim the discovery of the application of the principle of centrifugal force for such purpose, he filed a disclaimer, declaring that he intended to claim only the application of centrifugal force in the particular manner described in the specification, and the House of Lords held that the disclaimer was legitimate and saved the patent.

The rule involved in *Seed* v. *Higgins* is that approved of by the Attorney-General in giving his judgment in an appeal from the decision of the Comptroller, in a case (*z*) decided upon the Act of 1883—viz., if on its face the specification is clearly capable of two or more constructions, it is open to a person, applying to amend, to satisfy the law officer or the Comptroller that he desires to limit the claim to one, or more, of two or more constructions to which the specification is open. Rule in Seed v. Higgins.

Thus in the case of *Rylands' Patent*, (1888) 5 R. P. C. 665, the essence of *Rylands'* invention was two modifications in which forms of boxes were constructed, wherein, instead of there being the ordinary hoop-iron, nailed on the flat or side, and so forming an angle with the corner, a groove was cut in the surface of the two sides of the right angle, and in this groove wire or hoop-iron of some kind was placed, and fastened in, the object being to prevent the edges of the wire catching any obstruction, or being caught by any obstruction in the course of transit, and thereby being torn off or injuring other property. It was agreed on both sides that the patentee contemplated fastening the iron by either *nails* or *loops*, but the opposer alleged that to limit the claim, as the applicant desired to do, to fastening the hoop-irons in the grooves by means of *loops* would be to make the amended specification claim an

(*x*) Ralston *v.* Smith, (1869) 11 H. L. C. 255.
(*y*) (1860) 8 H. L. C. 550.
(*z*) In the Matter of Rylands' Patent, (1888) 5 R. P. C. 665.

Disclaimer.

invention larger than, and different to, that described and claimed by the specification before amendment. The Attorney-General, however, did not take this view of the case, and, applying the above-stated principle, granted leave to apply at the Patent Office to make the amendment proposed. So again, in *Ashworth's Application*, (1886) Griff. L. O. C. 6, it was objected that the proposed amendment would make the specification claim an invention different to that claimed by the original specification, but the Comptroller allowed the amendment. The Solicitor-General, in dismissing an appeal from the Comptroller's decision, expressed himself to be of opinion that the amendment only amounted to an explanation as to which of two possible constructions the patentee wished put on his claim, and that the specification, as a whole, before the amendment, indicated that the patentee really intended the construction to which by the alteration he desired to limit his claim.

During proceedings for the repeal of a patent for "improvements in instruments used for writing and marking, and in the construction of inkstands," the patentee filed a disclaimer of three of the claims of his specification. These claims related to pens, and to instruments used for marking with a stamp. Those which remained untouched by the disclaimer were for improvements in pen-holders and pencil-cases, and for the construction of inkstands. It was held by the Court of Common Pleas that the title of the letters patent was satisfied by the specification as amended by the disclaimer. (*a*)

Disclaimer does not operate as a claim to residue.

Prior to the Act of 1883 all the claiming clauses of a specification might be struck out by disclaimer, if there remained in the body of the specification words sufficient to distinguish what the invention was which the patentee claimed. The explanation given by the Court of Appeal (*b*) of the concluding words of sec. 5, sub-s. 8 of the Act of 1883 supports the statement that the law in this particular remains unaltered. It must, however, be remembered that the effect of a disclaimer is merely to strike out from the specification those parts which are disclaimed, and it cannot operate by way of a claim to the residue, nor can what remains of the specification be construed by the disclaimer; (*c*) nor does the reason for a disclaimer form any part of the specification, by virtue of the disclaimer, so as to influence the construction to be put upon it. (*d*) The amended specification must be construed,

(*a*) R. *v.* Mill, (1850) 10 C. B. 379.
(*b*) Siddel *v.* Vickers, (1888) L. R. 39 Ch. D. 92; 5 R. P. C. 416.
(*c*) Per Cresswell, J., Tetley *v.* Easton, (1852) 2 C. B. N. S. 706, 730.
(*d*) Cannington *v.* Nuttall, (1871) L. R. 5 E. & I. App. 205, 228.

without reference to any deleted part, as though it had been originally filed in its amended form, (*e*) but for the purpose of explaining an ambiguity (if any) in the amended specification reference may be made to the original. (*f*)

Correction and Explanation.

Correction and Explanation.—A mistaken method or description of a process may be corrected by amendment—*e.g.*, where a patentee directed that "the last traces" of a substance should be removed from solution by cooling by ice, and the evidence showed that *all* the substance could not be removed by ice cooling, he was allowed to substitute the words "as much as possible" for the words "the last traces." Had the specification directed the removal of "the last traces" by "any well-known means," or "by any means," or "by the best means," the amendment would not have been allowed, as it would then have made an original insufficient into a sufficient description. (*g*) In cases where an error has arisen from mistranslation it is usually necessary to file evidence in the form of statutory declarations.

Corrections and explanations are allowable when they do not exceed

The patentee must in all cases show that there is a real reason for requiring a correction or explanation before he will be permitted to make one. Thus, where an applicant asked for leave to amend his specification by inserting an explanatory statement of the principle on which the invention was based, the law officer, on appeal, refused to allow the amendment, because he thought the principle of the invention was amply described in the original specification, and he was of opinion that no ground had been shown on which the amendment ought to be allowed. (*h*)

Morgan's Patent (*i*) furnishes an instance of an amendment by way of explanation and correction. It appeared that one of the figures in the drawings had been misdescribed, and the figure was clearly included in the provisional specification and covered by the claim of the complete specification. The patentee was allowed to amend by inserting a proper description of the figure, but he was not allowed to add anything to his claim.

(*e*) Reason Manufacturing Co. *v.* Ernest F. Moy, Ld., (1902) 19 R. P. C. 409, 412, 415; Moser *v.* Marsden, (1895) 13 R. P. C. 31; Hattersley *v.* Hodgson, (1904) 21 R. P. C. 517; Jandus Arc Lamp and Electric Co., Ld. *v.* Arc Lamp Co., (1905) 22 R. P. C. 277.

(*f*) Moser *v.* Marsden, (1895) 13 R. P. C. 21, 31; Dudgeon *v.* Thompson, (1877) L. R. 3 App. Cas. 40, 45; Jandus Arc Lamp and Electric Co., Ld. *v.* Arc Lamp Co., (1905) 22 R. P. C. 277.

(*g*) Johnson's Patent, (1896) 13 R. P. C. 663; p. 72 *ante*.

(*h*) Nordenfelt's Patent, (1887) Griff. L. O. C. 18.

(*i*) (1886) Griff. L. O. C. 17.

Correction and Explanation.

the legitimate function of a correction or *explanation.*

The function of a correction or explanation within sec. 18 of the Act of 1883 is to explain more clearly what was the meaning of the patentee at the time he patented the invention; it is not intended that he should put in subsequently ascertained knowledge, and such an insertion will not be allowed. (*k*)

An explanation which is requisite to remove an ambiguity as to the real meaning of the patentee is justifiable, (*l*) but an extensive amendment which amounts to a rewriting of the specification will not be permitted. (*m*)

Clerical errors: jurisdiction of the Master of the Rolls.

The Master of the Rolls, as keeper of the records, had, prior to the Act of 1883, an original jurisdiction, in cases where he was satisfied that a specification as filed contained clerical errors, to order that such errors should be rectified. (*n*)

Corrections were made, on the authority of the Master of the Rolls, where "October" was written by mistake for "November;" (*o*) where "Charles" was written for "George;" (*p*) where reference numbers were transposed; (*q*) where "recovery" had been written for "covering;" (*r*) where "wire" was inserted for "fire," and the mistake was not discovered for five years; and where there was an apparent error in the drawings attached to the specification. (*s*)

The Master of the Rolls had never authority to permit or order an erroneous claim or statement to be expunged or amended merely in his capacity of keeper of the records, his authority in such capacity to allow corrections being strictly limited to verbal or clerical errors.

But in *Re Berdan's Patent*, (*t*) where a disclaimer had been filed without the consent of the patentee, it was held that the Master of the Rolls had jurisdiction, without bill filed, to order it to be taken off the file. The case was distinguished from *In re Sharp's Patent*, (*u*) on the ground that in the latter the application was not to take an improperly filed document off the file, but to alter an enrolment.

The Act of 1883 does not appear to have taken away this

(*k*) Beck and Justice, (1877) No. 4114, Griff. L. O. C. 10.

(*l*) Ashworth's Patent, (1886) Griff. L. O. C. 6.

(*m*) Nairn's Patent, (1891) 8 R. P. C. 444.

(*n*) Sharp's Patent, (1840) 1 W. P. C. 641, 646; 3 Beav. 245; Johnson's Patent, (1877) L. R. 5 Ch. D. 503.

(*o*) Rubery's Patent, (1837) 1 W. P. C. 649 *n*.

(*p*) Dismore's Patent, (1853) 18 Beav. 538.

(*q*) Redmond's Patent, (1828) 1 W. P. C. 649 *n*; 5 Russ. 44.

(*r*) Nickell's Patent, (1841) 1 W. P. C. 650; 4 Beav. 563.

(*s*) Abel's, (1874) No. 2081.

(*t*) (1875) L. R. 20 Eq. 346.

(*u*) (1840) 1 W. P. C. 641.

jurisdiction of the Master of the Rolls to allow an amendment of merely verbal or clerical errors in a specification, both before and after it has been placed on the file. (*x*)

Correction and Explanation.

In *Re Gare's Patent* (*y*) the Master of the Rolls allowed the correction of a clerical error in a specification which had been filed under the Patent Law Amendment Act of 1852, and gave it as his opinion that the Act of 1883 does not affect the power of the Master of the Rolls, as keeper of the records, to allow the amendment of a clerical error in a specification, which is to be considered as under his authority. The Master of the Rolls expressed the further opinion that so long as the specification is in the Patent Office, and before the patent is sealed, the proceedings of sec. 18 of the Act of 1883 should be the only proceedings taken by any one asking for amendment.

Present practice is to allow correction of clerical errors under s. 18 of Act of 1883, whether the patent is sealed or not

This section also regulates the correction of clerical errors as well as all other matters of legitimate correction after the patent is sealed, for the amendment of a clerical error is included in the term "correction" in sec. 18, sub-s. 1, of the Act of 1883, and consequently it is not necessary to invoke the authority of the Master of the Rolls to rectify a clerical mistake. Sec. 91 expressly gives the Comptroller power to correct clerical errors in, or in connection with, any application for a patent, or in the name, style, or address of a registered proprietor. (*z*)

It is the practice of the Comptroller to allow corrections of clerical errors in the specification under sec. 91 before the patent is sealed, but after sealing to insist on the amendment being filed under sec. 18 and advertised, except in cases of mere misspelling.

Delay may be a bar to amendment.

The amendment of a clerical error in a specification, as also other amendments, may be refused on the ground of delay. (*a*) Thus in *Re Blamond's Patent* (*b*) the Lord Chancellor, though doubting whether he had power under 15 & 16 Vict. c. 83 to order the amendment of a clerical error in the spelling of the patentee's name, refused to do so on the ground that the applicant had shown gross negligence in not applying to rectify the mistake earlier, as the patent was five years old,

(*x*) *Re* Gare's Patent, (1884) L. R. 26 Ch. D. 105; *Re* Morgan's Patent, (1876) 24 W. R. 245; Judicature Act, (1873) s. 17, sub-s. 6.

(*y*) L. R. (1884) 26 Ch. D. 105.

(*z*) See Patent Rules, (1890) r. 16; Form P, Appendix.

(*a*) Blamond's Patent, (1860) 3 L. T. N. S. 800; Lacy's Patent, (1890) 7 R. P. C. 469; Johnson's Patent, (1896) 13 R. P. C. 659.

(*b*) (1860) 3 L. T. N. S. 800.

Conditions.

and it was impossible to say what interests might be affected by doing what was desired.

Amendment by inserting drawings.

So far there has been no reported case of an application for leave to amend a specification by the insertion of a drawing not described in the specification. It is submitted that, if the insertion of a drawing be desirable in order to make clear what the patentee intended when he filed his specification, it would be allowed, on the ground that a drawing is part of the specification, and its insertion merely amounts to a legitimate explanation. (*c*)

Amendment of title.

Contrary to what has sometimes been said it is permissible to amend the title even after the patent is sealed. (*d*)

Amendment by adding or removing name of a co-applicant.

The Comptroller also permits the amendment of an application by adding the name of some other party, not an inventor, as a co-applicant, or by removing the name of any party who had joined with the inventor and wishes to retire from the application.

Explanation of ambiguous claim.

When a claim is ambiguous it may be amended by way of explanation, so as to make perfectly clear what was the real meaning of the patentee, taking into account the fact that the claim must be construed with reference to the context and drawings of the specification. (*e*)

Amendments are frequently only allowed on conditions framed for the protection of the public or individuals.

Conditions.—The Comptroller and law officer have the power to impose conditions when granting leave to amend; (*f*) and the Court or a Judge, in cases where a patentee desires to amend during an action for infringement or a petition for revocation, has jurisdiction to impose terms as to costs and otherwise as a condition of the leave of the Court or a Judge to apply at the Patent Office for leave to amend by way of disclaimer. (*g*)

It is not an uncommon condition that no action shall be brought on the amended specification in respect of infringements committed before amendment, (*h*) or in respect of certain continued infringements after amendment, (*i*) though such conditions are not now by any means the usual practice. The matter is one of discretion to be exercised in view of the

(*c*) Lang's Patent, (1890) 7 R. P. C. 469, 471; but see *Re* Pullan's Patent, Johns. Pat. Man. 5th ed. p. 118.

(*d*) See Arnold's Patent, (1882) Griff. L. O. C. 5.

(*e*) Ashworth, (1878) No. 3513, Griff. L. O. C. 6.

(*f*) Hearson's Patent, (1884) 1 R. P. C. 214; Pietschman's Patent, (1884) Griff. P. C. 314; but see p. 100 *post*.

(*g*) See pp. 94, 95 *post*; 46 & 47 Vict. c. 57, s. 19.

(*h*) p. 79 *post*.

(*i*) p. 79 *post*; Holmes *v.* L. & N. W. Ry. Co., (1852) Macr. P. C. 31; Smith's Patent, (1855) Macr. P. C. 282; *Re* Medlock's Patent, (1865) Newton, L.J., vol. xxii. p. 69.

peculiar circumstances of each case. The Comptroller and law officers, as also the Court, usually consider that persons who have infringed the patent before amendment are sufficiently protected by the terms of sec. 20 of the Patents Act, 1883, which provides that in an action founded on an amended specification, no damages shall be given in respect of the use of the invention before amendment unless the patentee establishes to the satisfaction of the Court that his original specification was framed in good faith and with reasonable skill and knowledge. Conditions.

Any party is, however, at liberty to bring forward any special circumstances which require a special condition for their benefit. (*k*)

During the argument in *Ashworth's Application* (*l*) the Solicitor-General said that if he saw, or if there was any evidence before him, that the patent had been used for the purpose of endeavouring to obtain a monopoly larger than that which the specification as amended claimed, he should consider that a special circumstance, and impose the condition that no action should be brought for anything done at any time before the amendment; for instance, if the patentees had been threatening persons, and endeavouring to prevent persons from making or selling wire hardened and tempered in a mode different to that described and claimed by the amended specification.

Under the old practice, in order to protect the interests of manufacturers who had embarked large capital in a trade on the strength of a patent having been allowed to remain in its imperfect state for a long time, the law officers frequently imposed conditions for their protection. (*m*) Such conditions were that the patentee should not sue in respect of infringements committed before amendment, (*n*) or in respect of certain continued infringements by the use of certain specified machines actually in use before the amendment, (*o*) or in respect of fresh infringements by certain persons in virtue of the continued use

(*k*) In the following cases special conditions were asked for, but were refused: Allen's Patent, (1887) Griff. L. O. C. 3; Ainsworth's Patent, (1895) 13 R. P. C. 76; Allison's Patent, (1898) 15 R. P. C. 408; Pitt's Patent, (1901) 18 R. P. C. 478.

(*l*) Ashworth, (1886) Griff. L. O. C. 6.

(*m*) Trantor's Patent, Jones' Patent, (1873) Johns. Pat. Man. 5th ed. pp. 191, 192.

(*n*) Lucas' Patent, (1854) Macr. P. C. 234, 239; Smith's Patent, (1855) Macr. P. C. 232.

(*o*) Harrison's Patent, (1853) Macr. P. C. 31; Westinghouse's Patent, (1885) Griff. P. C. 315; Crabtree's Patent, Eng. Rep. Jan. to Mar. 1881; Fox's Patent, (1878) No. 3988.

Conditions.

of a process employed by them prior to the amendment, (*p*) or in respect of infringements by machines made under specified contracts. (*q*) Like conditions with the same object in view may be imposed by the Comptroller and law officer, as also by the Courts pending litigation (*r*) under the present practice. Where the Court has imposed the condition that no action shall be brought in respect of acts done prior to the date of the order giving leave to apply at the Patent Office for leave to amend, it is not the custom of the Comptroller or law officer to impose conditions, the protection of sec. 20 of the Act of 1883 being deemed sufficient in respect of acts done since the date of the order of the Court up to the date of actual amendment. (*s*)

A condition that no action be brought in respect of infringements prior to a certain date protects the continued user of infringing articles made before that date, and also the sale of such articles unsold at the fixed date. (*t*)

But a condition that no action be brought in respect of the infringement of a patent, of which the amendment of the specification is sought, does not prevent the patentee from bringing an action on another patent belonging to him, if those articles infringe such other patent. (*u*)

When the condition is imposed that no action be brought in respect of certain specified machines, it is usual to order that such machines be marked with distinguishing marks. (*x*)

It is not usual for the Comptroller or law officer to impose the condition that no action shall be brought in respect of any infringements committed after that date, as such cases are provided for by sec. 20 of the Act of 1883. (*y*)

Actions commenced after the amendment of the specifications in respect of infringements committed before amendment are, in certain cases, justifiable, on the ground that it is not right that a person should gain his information from a patentee, and,

(*p*) *Re* Medlock's Patent, (1865) Newton, Lond. Journ. N. S. vol. xxii. p. 69.

(*q*) Fox's Patent, (1878) No. 3988.

(*r*) See pp. 95–99 *post*.

(*s*) Allen's Patent, (1887) Griff. L. O. C. 3; Pitt's Patent, (1901) 18 R. P. C. 478; Ainsworth's Patent, (1895) 13 R. P. C. 76; Allison's Patent, (1898) 15 R. P. C. 408.

(*t*) Cheeseborough's Patent, (1884) Griff. P. C. 303.

(*u*) United Telephone Co. *v.* London and Globe Telephone Co., (1884) L. R. 26 Ch. D. 766.

(*x*) Edison's Patent, (1877) No. 2909; Westinghouse's Patent, (1885) Griff. P. C. 315; Haddan's Patent, (1885) Griff. L. O. C. 12, 13; Crabtree's Patent, Eng. Rep. Jan. to Mar. 1881.

(*y*) See Ludington Cigarette Machine Co. *v.* Baron Cigarette Machine Co., (1900) 17 R. P. C. 214, 217, 745; Allen's Patent, (1887) Griff. L. O. C. 3; Pitt's Patent, (1901) 18 R. P. C. 478; Allison's Patent, (1898) 15 R. P. C. 408; Ainsworth's Patent, (1895) 13 R. P. C. 76.

acting on that information, copy and use his invention. He must not presume upon some defect in the specification, and infringe upon the valuable part of the patent. (*z*)

Retrospective Effect of Amendments.

Retrospective Effect of Amendments.—Under the law prior to the Act of 1883, amendments by disclaimer were retrospective, except when entered pending an action for infringement, in which case it was specially provided that the amended specification should not be given in evidence at the trial. (*a*)

Retrospective effect of amendments.

No action, however, could be brought at all in respect of infringements committed before amendment without the leave of the law officer, certified by his fiat. (*b*) Cases in which amendments were made retrospective, and power was given to the patentee to proceed against those who had infringed before the disclaimer was filed, were the exception, and not the rule, and it lay on the party applying for a certificate giving a disclaimer a retrospective power to make out a case entitling him to that certificate. (*c*)

The terms of sub-s. 9 of sec. 18 of the Act of 1883, as also the conditions usually imposed by the Court, in granting leave to apply to amend under sec. 19 of the Act of 1883, together with the concluding words of the section, "and may direct that, in the mean time, the trial or hearing of the action shall be postponed," are a clear indication that the amendment speaks from the date of the patent, and that there are cases where the Court, in its discretion, ought to, and would, under the present law, allow an amended specification to be given in evidence in a pending action. (*d*)

If a patentee obtains an injunction against an infringer, before he amends the specification, he cannot enforce his injunction after the amendment, but must proceed *de novo*. (*e*)

When leave to amend has been given, even though on condition and the patentee's assent to the condition has not been notified, an action on the amended specification can be sustained though the amendment of the specification itself was not actually made by the Patent Office officials till after the commencement of the action. (*f*)

(*z*) See Lucas' Patent, (1854) Macr. P. C. 234.

(*a*) 5 & 6 Will. IV. c. 83, s. 1; Perry *v.* Skinner, 2 M. & W. 471; R. *v.* Mill, (1850) 10 C. B. 379.

(*b*) 15 & 16 Vict. c. 83, s. 39.

(*c*) Lucas' Patent, (1854) Macr. P. C. 234, 239.

(*d*) Bray *v.* Gardner, (1887) 4 R. P. C. 41, 42.

(*e*) Dudgeon *v.* Thompson, (1877) L. R. 3 App. Cas. 34.

(*f*) Andrew *v.* Crossley, (1892) 9 R. P. C. 165.

Amendment after Action on, or Petition against, the Patent.

Amendment after Action for Infringement.—From a consideration of the principles discussed in the foregoing pages of this chapter, and also from the fact that a judgment adverse to the validity of the patent on the ground of defective specification amounts at most to a declaration of the Court to the effect that the specification as it stands is wholly, or in part, as the case may be, bad, and is not an order for revocation, it will appear that a patentee may be allowed to amend after judgment. If after amendment any portion of the specification which the Court held to be bad is not removed either by excision or alteration in meaning consequent on some amendment made, the judgment would of course act as an estoppel against the patentee as being *res judicata* in any subsequent proceedings against the same defendant. (*g*)

Amendments may be made after adverse decision in an action:

also after a conditional order for revocation.

Amendment after Order for Revocation.—As already demonstrated, so long as certain defects remain in the specification the patent is invalid. (*h*) In the event of a petition for revocation being presented to the Court, the Court is bound on proof of the existence of any one fatal defect in the specification, however meritorious the real invention may be, to hold that the patent is bad, and to make some order as to its revocation. It is only just that, if the removal by amendment of the defect in the specification on the strength of which the Court comes to a conclusion against the patent, would leave proper subject-matter, the patentee should have an opportunity of amending. Should the Court make an order for revocation without any condition it may be doubtful whether the Comptroller-General has, under any circumstances thereafter, jurisdiction to allow any amendment to be made, seeing that it may well be that the order for revocation operates as an immediate revocation, and so there is no patent in existence for the Comptroller to deal with. (*i*)

In a case where the Court of first instance had made an order for the unconditional revocation of a patent, and the House of Lords held that the patent was bad on certain grounds, but not on all the grounds alleged by the petitioner, and directed a postponement for the purpose of giving the patentee an opportunity of applying at the Patent Office for leave to amend and so remove the invalid claims, the Comptroller-General, acting on the advice of the law officer, refused leave on the ground that the patent having been revoked by

(*g*) See Vol. I. p. 408. (*h*) Vol. I. chap. v.
(*i*) See Deeley v. Perks, (1896) 13 R. P. C. 589, 590.

Practice when no Action or Petition is pending.

the order of the Judge of first instance, there was no patent existing for him to deal with. The matter being again mentioned to the House of Lords, their Lordships did not decide the point as to the jurisdiction of the Comptroller under the above circumstances, but did justice by, instead of simply affirming the order of the Judge of first instance, making an order (which was of course *nunc pro tunc*) "that the patent be revoked, unless within three months or such further time as the Court may allow the patentee obtain leave to amend his specification," &c. (*k*)

When the Court finds all the claims bad, it is submitted, an unconditional order for revocation should be made, which, it is further submitted, should be stayed, in the event of an appeal being entered within a certain time, until the appeal is disposed of as in *Owen's Patent*, (*l*) but when the Court finds that one or more of the claims are good and others bad, the proper order to make is that above referred to and adopted by the House of Lords in *Deeley* v. *Perks*, (*m*) with the addition, if the respondent asks for it, that there be a stay of execution of proceedings until after appeal heard. (*n*) Sometimes the Court, if asked so to do, imposes conditions with regard to the bringing of future actions upon the specification, if amended, in respect of infringements committed before the amendment. (*o*)

Part II.—Practice.

No Action for Infringement or Petition for Revocation pending.—When there is no pending action for infringement or petition for revocation the procedure for amendment and the kind of amendments allowable are regulated by sec. 18 of the Act of 1883, (*p*) as amended by the Act of 1888, (*q*) and by the Patent Rules, 1903, rr. 42–50. (*r*)

S. 18 of Act of 1883, as amended by Act of 1888, applies when there is no pending action for infringement or petition for revocation.

Sec. 18 of the Act of 1883, as amended by the Act of 1888, is as follows :—

S. 18 of Act of 1883 as amended by Act of 1888.

"1. An applicant or a patentee may from time to time, by request in writing left at the Patent Office, seek leave to amend

(*k*) See Deeley *v.* Perks, (1896) 13 R. P. C. 581.

(*l*) (1899) 17 R. P. C. 79; Klaber's Patent, (1904) 22 R. P. C. 1, 405; Bowden's Patent, (1904) 22 R. P. C. 49.

(*m*) (1869) 13 R. P. C. 590; see Justice's Patent, (1900) 18 R. P. C. 248; Scott's Patent, (1902) 20 R. P. C. 263.

(*n*) Armstrong's Patent, (1897) 14 R. P. C. 755; Miller's Patent, (1894) 15 R. P. C. 205.

(*o*) See pp. 95–99 *post*.

(*p*) 46 & 47 Vict. c. 57, s. 18.

(*q*) 51 & 52 Vict. c. 50, s. 5.

(*r*) p. 310 *post*.

Practice when no Action or Petition is pending.

his specification, including drawings forming part thereof, by way of disclaimer, correction, or explanation, stating the nature of such amendment and his reasons for the same.

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

"3. When such notice is given, the Comptroller shall give notice of the opposition to the person making the request, and shall hear and decide the case, subject to an appeal to the law officer.

"4. The law officer shall, if required, hear the person making the request, and the person so giving notice, and being in the opinion of the law officer entitled to be heard in opposition to the request, and shall determine whether, and subject to what conditions, if any, the amendment ought to be allowed.

"5. When no notice of opposition is given, or the person so giving notice does not appear, the Comptroller shall determine whether, and subject to what conditions, if any, the amendment ought to be allowed.

"6. When leave to amend is refused by the Comptroller, the person making the request may appeal from his decision to the law officer.

"7. The law officer shall, if required, hear the person making the request, and the Comptroller, and may make an order determining whether, and subject to what conditions, if any, the amendment ought to be allowed.

"8. No amendment shall be allowed that would make the specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the specification as it stood before amendment.

"9. Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall, in all Courts and for all purposes, be deemed to form part of the specification.

"10. The foregoing provisions of this section do not apply when, and so long as, any action for the infringement or proceeding for the revocation of a patent is pending."

Applicant's right to be heard.

The Comptroller cannot exercise any discretionary power adversely to an applicant for leave to amend a specification without (if so required within the prescribed time) giving the applicant an opportunity of being heard personally or by his agent. (s)

(s) 46 & 47 Vict. c. 57, s. 94; P. R. (1890) rr. 11–14.

Practice when no Action or Petition is pending.

Under the old law it was competent for the grantee of a patent to enter a disclaimer, even though he had partially (*t*) or wholly (*u*) parted with his interest; but this is not so now, as, according to the provisions of the Act of 1883, (*x*) only an applicant or a patentee is entitled to apply for leave to amend, and the term "patentee" is expressly defined as meaning the person for the time being entitled to the benefit of the patent. (*y*) An assignee of a patent is consequently entitled to apply for leave to amend the specification, as he was before the Act of 1883. It would appear that in the case of co-owners, whether as original grantees or as assignees, they should all join as petitioners on an application to amend; though the petition would not be refused in the absence of co-owners not on the register.

Who may be an applicant.

Mortgagee need not be a party.

It is submitted that a mortgagee need not be made a party to an application by the beneficial owner of a patent for leave to apply to amend the specification, and that he could not make the application himself without the beneficial owner being a party. (*z*)

Signature and advertisement of request.

The request for leave to amend must be signed by the applicant or patentee and must be accompanied by a duly certified printed copy of the original specification and drawings, showing in red ink the proposed amendment, and when not made in pursuance of an order of the Court or a Judge, if the patent has been sealed the request must state that no action for infringement or proceeding for revocation of the patent is pending. (*a*) The request, which states the nature of the desired amendment and the applicant's reasons for making the same, (*b*) is then advertised in the official journal of the Patent Office, and in such other manner (if any) as the Comptroller may in each case direct. (*c*) When the complete specification has not been accepted the advertisement is not required but the applicant is obliged to file a stamped form of request, which is regarded as a fine inflicted on the applicant in view of the extra trouble imposed on the Patent Office. So where an applicant has left a complete specification after a provisional specification and subsequently desires to file an entirely different complete specification he is allowed

(*t*) Spilsbury *v.* Clough, (1842) 1 W. P. C. 255.
(*u*) Wallington *v.* Dale, (1852) 7 Exch. 888.
(*x*) s. 18, sub-s. 1.
(*y*) s. 46.
(*z*) Van Gelder Co. *v.* Sowerby Co., (1889) 7 R. P. C. 208.
(*a*) Patent Rules, (1903) r. 42; p. 310 *post*.
(*b*) 46 & 47 Vict. c. 57, s. 18, sub-s. 1.
(*c*) Patent Rules, (1903) r. 42; p. 310 *post*.

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to do so (provided the six months, or, if he pays the fine, seven months from the date of filing the provisional specification have not expired), and has to file a stamped form of request as in an ordinary application for leave to amend. In this case the complete specification is treated as if filed on the later date, but the amendment is not subject to the limitations imposed by sub-s. 5 of sec. 18 of the Act of 1883. If at the time that the new complete specification is lodged the examiner has not commenced the investigation the requirement to file a stamped form of request is usually waived though the complete specification *is post-dated*.

Any one may oppose.

It is open to any person interested at any time within one month from the first advertisement of the request for and the nature of the proposed amendment to give notice at the Patent Office of opposition to the amendment. (*d*)

Notice of opposition.

The notice of opposition must state the ground or grounds on which the opponent intends to oppose the amendment and must be signed by him. Such notice must state the opponent's address for service in the United Kingdom and be accompanied by an unstamped copy. (*e*) The notice must be upon Form G. (*f*) The unstamped copy is forthwith forwarded by the Comptroller to the applicant. (*g*)

Evidence.

Within fourteen days after the expiration of one month from the first advertisement of the application for leave to amend, the opponent may leave at the Patent Office statutory declarations in support of his opposition; and on so leaving them he must deliver to the applicant a copy thereof. (*h*) The provisions of Rules 37, 40, and 41 of the Patent Rules, 1903, (*i*) then apply to the applicant's evidence, the evidence in reply, the closing of the evidence, and the hearing, with or without reference to any publication other than a specification mentioned in the notice of opposition.

Hearing by the Comptroller.

The Comptroller, upon the date fixed in the notice of hearing, hears and decides the case, subject to an appeal to the law officer, whether the parties appear or not. (*k*)

Appeal to the law officer.

The practice upon appeal to the law officer as regards notices, evidence, cross-examination of witnesses, hearing, &c., is regulated by the Law Officers' Rules. (*l*) Though the respondent is entitled to service of the notice of appeal, yet if

(*d*) 46 & 47 Vict. c. 57, s. 18, sub-s. 2.
(*e*) Patent Rules, (1903) r. 44; p. 310 *post*.
(*f*) p. 356 *post*.
(*g*) Patent Rules, (1903) r. 44.
(*h*) *Ibid*. r. 45.
(*i*) p. 309 *post*.
(*k*) 46 & 47 Vict. c. 57, s. 18, sub-s. 3; Patent Rules, (1903) r. 41.
(*l*) p. 323 *post*.

he appears without having received the notice the law officer will not refuse to hear the case. (*m*)

Practice when no Action or Petition is pending.

If the Comptroller decides against an applicant or patentee applying for leave to amend his specification, the applicant or patentee must not delay exercising his right of appeal and must file the fourteen days' notice required by the Law Officers' Rules, (*n*) or the appeal may not be heard, on the ground that it is too late.

Thus in *Arnold's Application* (*o*) the Comptroller decided against the applicant, who two years afterwards applied again, and then appealed to the law officer. The Attorney-General said that he thought he should have allowed the proposed amendment, which included an alteration in the title, but the affidavit of the applicant, to the effect that he was ignorant of the patent law and that he could have appealed against the former decision of the Comptroller, did not satisfy him that any sufficient reason existed why proceedings were not taken to question the previous decision of the Comptroller, and he refused to allow the appeal.

Right to question *locus standi* of opponent.

Sub-s. 3 of sec. 18 of the Act of 1883, which regulates the practice before the Comptroller on an application for leave to apply to amend, does not appear at first sight to give the applicant any right to object to the opposer as being a person not entitled to be heard in opposition, whereas sub-s. 4, which relates to an appeal to the law officer, provides that he (the law officer) shall hear the applicant and the opposer, who is, "in the opinion of the law officer, entitled to be heard in opposition," thus giving the applicant the right to object to the opposer as a person not entitled to be heard. It has been decided, however, that the words "in the opinion of the law officer entitled to be heard," which occur in sub-s. 3 of sec. 11 of the Act of 1883 [and *sic* the same words in the above sub-s. of sec. 18], have a retrospective effect and enable the objection to be taken before the Comptroller as well as before the law officer. (*p*) The law officer is appointed as the final authority to decide various questions under the Acts—*inter alia* the question of the *locus standi* of an opponent to a proposed amendment of a specification. (*q*) In accordance

(*m*) See Rylands' Patent, (1888) 5 R. P. C. 668.

(*n*) L. O. Rules, r. 1; p. 323 *post*.

(*o*) (1882) Griff. L. O. C. 5.

(*p*) See R. *v.* Comptroller-General of Patents, (1899) 16 R. P. C. 233; Stewart's Patent, (1896) 13 R. P. C. 627; Bell's Patent, (1887) Griff. P. C. 285; Heath and Frost's Patent, (1886) Griff. P. C. 288; Hookham's Patent, (1886) Griff. L. O. C. 32; Macevoy's Patent, (1888) 5 R. P. C. 285.

(*q*) See R. *v.* Comptroller-General of Patents, (1899) 16 R. P. C. 233.

Practice when no Action or Petition is pending.

with the practice, and upon the law officer's decisions, only persons with an interest in the matter are recognised as possessing a *locus standi* before the Comptroller or law officer upon an opposition under sec. 18 of the Act of 1883. (*r*)

A prior patentee is a person entitled to oppose an application for leave to apply to amend the specification of a subsequent patent on the ground that the amendment, if allowed, would prejudice the patentee's rights under the prior patent. (*s*)

Decision of Comptroller when there is no opposition.

When there is no notice of opposition, or the opponent does not appear, the Comptroller determines whether, and subject to what conditions, (*t*) if any, the amendment ought to be allowed. If leave to amend is refused by the Comptroller the applicant may appeal to the law officer, who must, if required, hear the applicant and the Comptroller, and may make an order determining whether, and subject to what conditions, if any, the amendment ought to be allowed; (*u*) and the decision of the law officer is final. (*x*)

When leave to amend is given, the applicant must, if the Comptroller so require, and within a time to be limited by him, leave at the Patent Office a new specification and drawings as amended, and prepared in accordance with the prescribed rules. (*y*) Every amendment of a specification is forthwith advertised by the Comptroller in the official journal of the Patent Office. (*z*)

Leave to amend is conclusive of right to amend.

Leave to amend is conclusive of the applicant's or patentee's right to make the amendment, except in the case of fraud, (*a*) *e.g.*, where a disclaimer was filed without the consent of the patentee. (*b*)

Costs.

The Comptroller has no power over the costs of an application, either directly or indirectly, by making the payment of costs a condition of the amendment; (*c*) but, on appeal, the law officer may order costs to be paid by either party, and any such order may be made a rule of Court. (*d*) Where the law officer orders that costs shall be paid by any party, he has

(*r*) See R. *v.* Comptroller-General of Patents, (1899) 16 R. P. C. 233; Bell's Patent, (1887) Griff. L. O. C. 10; see also Meyer's Patent, (1899) 16 R. P. C. 526.

(*s*) Hampton and Facer, (1885) Griff. L. O. C. 15.

(*t*) pp. 78–80 *ante*.

(*u*) 46 & 47 Vict. c. 57, s. 18, sub-s. 5, 6, and 7.

(*x*) See p. 65 *ante*.

(*y*) P. R., (1903) r. 49; p. 311 *post*.

(*z*) *Ibid*. r. 50.

(*a*) 46 & 47 Vict. c. 57, s. 18, sub-s. 2.

(*b*) *Re* Berdan's Patent, (1875) L. R. 20 Eq. 346.

(*c*) Pietschmann's Patent, (1884) Griff. P. C. 314; Codd's Patent, (1884) Griff. P. C. 305.

(*d*) 46 & 47 Vict. c. 57, s. 38.

power to fix the amount of such costs, and, if he does not fix the amount thereof, he must direct by whom and in what manner the amount of such costs shall be ascertained. (*e*)

Practice when no Action or Petition is pending.

As a general rule, costs of an appeal to the law officer are given against the unsuccessful party, but, in the case of a second amendment, costs will most probably not be given against the opponents, on the ground that second amendments are not to be encouraged if they can possibly be avoided. (*f*)

Where an applicant appeals from the decision of the Comptroller, on an unopposed application, and the Comptroller is represented at the hearing, the Comptroller does not, except in very special circumstances, either give or receive costs. (*g*)

In cases where leave is given to apply to amend a specification pending an action for infringement, or proceeding for the revocation of a patent, the Court or a Judge does not as a rule order the applicant to pay to the defendant, or petitioner, his costs of appearing to oppose the application on the hearing before the Comptroller. (*h*)

When, however, a plaintiff's application was refused by the Comptroller on the ground that an action was pending and the leave of the Court or Judge had not been obtained, on an application to the Court for leave to apply again to the Comptroller, the Judge made it a condition that the plaintiffs should pay the costs of the first application. (*i*)

Where, in an action for infringement, the plaintiff obtained the leave of the Judge to apply at the Patent Office for leave to amend, and did so, but subsequently abandoned the action, and then applied, under sec. 18 of the Act of 1883, to make a different amendment, the Comptroller and the law officer both refused to make it a condition of allowing the amendment that the applicant should pay the costs of the opponents (who were the defendants in the action) incurred in respect of the opposition to the abandoned application. (*k*)

In *Morgan's Application* (*l*) the Comptroller refused to allow an amendment, on the ground that he thought it would enlarge the scope of the invention; but the law officer, on appeal, allowed the amendment, being of opinion that the provisional specification was comprehensive enough to cover the claim to

(*e*) L. O. Rules, r. xi.; Ashworth's, (1878) Griff. L. O. C. 9; Bell's, (1885) Griff. L. O. C. 11.

(*f*) See Haddan, (1885) Griff. L. O. C. 12.

(*g*) Lake, (1887) Griff. L. O. C. 16.

(*h*) See Fusee Vesta Co. *v.* Rylands, (1889) 4 R. P. C. 71.

(*i*) Codd *v.* Bratby, (1884) 1 R. P. C. 209, 211.

(*k*) Bell, (1887) Griff. L. O. C. 10.

(*l*) (1886) Griff. L. O. C. 17.

Practice pending Action or Petition.

the thing shown in a certain drawing and indicated by the corrected description.

In this case an application was made for a return of the stamp on the notice of appeal, but the law officer refused the application, on the ground that there was sufficient difficulty to justify the Comptroller in declining to allow the amendment, and leaving it to the law officer.

When leave to amend had been obtained, but the amended specification was found defective and the patent revoked on petition on subsequent notice, costs of the motion for leave to amend were not given to either side, though on the one hand the application to amend had succeeded in procuring the amendment, and on the other hand the amendment had failed to render the patent valid. (*m*)

S. 19 of Act of 1883 applies when there is a pending action for infringement or petition for revocation.

Amendment pending Action for Infringement, or Petition for Revocation.—If a patentee is desirous of amending his specification during an action for infringement or proceeding for revocation of a patent, he cannot apply at the Patent Office for the necessary leave without first obtaining, under sec. 19 of the Act of 1883, the permission of the Court or a Judge to do so, and the authority of the Court or Judge in such cases is limited to granting permission to apply at the Patent Office for leave to amend by disclaimer. (*n*) Further, the Court, as a matter of practice, looks at the proposed amendment for the purpose of seeing whether it is really a disclaimer or otherwise, and the Court in deciding whether or not to allow an application for leave to apply at the Patent Office for leave to amend gives to the word "disclaimer," as used in sec. 19 of the Act of 1883, (*o*) a narrow meaning and refuses the application when the proposed amendment obviously in fact goes beyond a mere disclaimer and amounts to a correction or explanation, other than an explanation necessary to define the disclaimer. (*p*) That is to say, if the proposed amendment is obviously, and on the face of it one other than pure disclaimer, the Court, in the exercise of its discretion, refuses the leave to apply at the Patent Office; but it must not be inferred that it is the duty of the Court to decide doubtful cases. When there is a *bonâ fide* doubt the Court grants the leave and the Comptroller and law officer, in

(*m*) Perks *v.* Dooley, (1896) 14 R. P. C. 3.

(*n*) 51 & 52 Vict. c. 50, s. 5; 46 & 47 Vict. c. 57, s. 19.

(*o*) See *infra*.

(*p*) See Owen's Patent, (1898) 43 S. J. 43; 15 R. P. C. 755.

accordance with the duty cast upon them by the Act of 1883, thereupon decide the point and allow or refuse the proposed amendment, as the case may be; (*q*) and the amendment, if allowed, is subject to such conditions (if any) as the Comptroller or law officer think fit to impose. (*r*)

Practice pending Action or Petition.

The terms "action for infringement" and "proceeding for revocation" here mean an action for infringement and proceeding for revocation before judgment. (*s*)

Meaning of "pending action for infringement or petition for revocation.

In *Cropper* v. *Smith* (*t*) the plaintiffs obtained, at the trial, judgment against the defendants, which, however, the Court of Appeal reversed as against one of the defendants, *Hancock*. The plaintiffs thereupon applied to the Comptroller, under sec. 18 of the Act of 1883, for leave to apply at the Patent Office to amend the specification by disclaimer, and the defendants opposed the application. The defendant, *Hancock*, subsequently appealed to the House of Lords, and the Comptroller, being doubtful whether the appeal was a pending action within sec. 18, sub-s. 10, of the Act of 1883, refused to proceed with the application until the consent of the Court had been obtained. Accordingly the plaintiffs took out a summons under sec. 19 of the Act of 1883 that they might be at liberty to apply at the Patent Office to disclaim. *Chitty*, J., held that "an action for infringement pending" means an action before judgment, and, further, that, final judgment having been given, there was in the present case no action for infringement pending; and the summons was consequently dismissed, but, under the circumstances, without costs.

In *J. B. Brooks & Co., Ld.* v. *Lycett's Saddle and Motor Accessories Co., Ld.*, (*u*) the facts set forth in the head-note to the report of the case were these: In an action for infringement of a patent, the specification of which had been amended, the defendants pleaded that the amendment was invalid because at the time when it was applied for a previous action for infringement was pending and the leave of the Court for leave to apply at the Patent Office for leave to amend had not been obtained. It appeared stated, that owing to an agreement for settlement, which shortly after fell through, the first action had more than two years before the amendment been marked to stand out of the list generally with liberty to either party

(*q*) See Chatwood's Patent, (1899) 16 R. P. C. 370; Alsop's Patent, (1905) 23 R. P. C. 65.

(*r*) See p. 78 *ante*, and p. 100 *post*.

(*s*) Cropper v. Smith, (1884) 1 R. P. C. 254; L. R. 28 Ch. D. 148; Lawrence v. Perry, (1885) 2 R. P. C. 179, 188; Haslam v. Hall, (1888) 5 R. P. C. 1, 24.

(*t*) (1884) 1 R. P. C. 254.

(*u*) (1904) 21 R. P. C. 651.

Practice pending Action or Petition.

to apply to restore it. After the amendment had been made the defendants to the action obtained leave to restore it, and an order was subsequently made giving leave to the plaintiffs to discontinue it without costs to either party, it being held that there had been a tacit agreement to abandon it. The Court decided that the action in question was "pending" at the date of the application at the Patent Office for leave to amend, and that by reason of sub-s. 10 of sec. 18 of the Patents Act, 1883, the amendment was invalid. On the plaintiffs applying to the Court for liberty to apply at the Patent Office for leave to amend such liberty was given them, the action to stand over in the mean time and the costs and question of terms were reserved.

S. 19 of Act of 1883.

Sec. 19 of the Act of 1883 (*x*) deals with the amendment of the specification during an action for infringement or proceeding for the revocation of a patent, and enacts as follows:—

"In an action for the infringement of a patent, and in a proceeding for the revocation of a patent, the Court or a Judge may at any time order that the patentee shall, subject to such terms as to costs and otherwise as the Court or a Judge may impose, be at liberty to apply at the Patent Office for leave to amend his specification by way of disclaimer, and may direct that in the mean time the trial or hearing of the action shall be postponed."

The above section confers power on the Vice-Chancellor of the County Palatine of Lancaster to grant leave to apply to amend a specification by way of disclaimer pending an action in his Honour's Court. (*y*)

But it would appear that, since "the Court" means "the High Court of Justice," (*z*) the House of Lords has therefore no original jurisdiction under the section. (*a*) Further, an appeal is not a "pending" action within the meaning of the Act. (*b*)

Proceedings for amendment begun under s. 18, but not completed before commencement of

When an amendment is actually made under the procedure referred to in sec. 18 of the Act of 1883, (*c*) it cannot be objected to on the ground that before it was completed an action for infringement had been commenced. (*d*) Further,

(*x*) 46 & 47 Vict. c. 57, s. 19.
(*y*) Winter *v.* Baybut, (1884) 1 R. P. C. 76.
(*z*) s. 117.
(*a*) Cropper *v.* Smith, (1884) L. R. 28 Ch. D. 148, 152; 1 R. P. C. 90.
(*b*) See p. 91 *ante*.
(*c*) p. 83 *ante*.
(*d*) Farbenfabriken, vorms. F. Bayer *v.* Bowker, (1891) 8 R. P. C. 389.

when an application has been made by a patentee for leave to amend his specification, there being at the time of the request in writing at the Patent Office no action for infringement or petition for revocation of the patent pending, the application may effectually proceed without the leave of the Court or a Judge under sec. 19, notwithstanding that an action for infringement or proceeding for revocation is subsequently commenced. (*e*)

Practice pending Action or Petition.

action for infringement or petition for revocation.

The leave of the Court or a Judge necessary under sec. 19 may be obtained by summons in chambers, (*f*) or on motion in Court.

Leave may be obtained by summons or motion.

As a rule, patentees who obtain the consent of the Court or a Judge, pending an action for infringement or proceeding for the revocation of a patent, are not allowed to use the amended specification in evidence in the action or petition as the case may be. (*g*) Nevertheless, the patentee may in such a case derive a great benefit from being allowed to make an amendment, for there may be other persons, not parties to the action or proceeding for revocation, who, relying on some defect in the specification, are continuing an infringement on the advice that the patent is bad; and it may be of great importance to the patentee to remedy the defect, and place himself in a position to sue other parties besides the defendants in the action or the petitioners in the proceeding for revocation.

Advantages of amendments under s. 19.

To allow a plaintiff in an action for infringement or a respondent in a proceeding for the revocation of a patent to use in evidence a specification amended pending such action or proceeding would be to give him, when he had originally come to the Court with a patent which could not be relied on, power to put himself in a different position as against the defendant or petitioner; and though the consequences of amendment may be that the plaintiff or respondent is entitled to maintain an action in respect of previous acts, which are infringements of the patent as amended, yet an absolute discretion is vested in the Court to impose, as a condition of leave being granted, that the amended specification shall not be given in evidence so as to enable a patentee to sue on a patent which, at the time when he commenced his action, he could not sue on at all. (*h*)

(*e*) Woolfe *v.* Automatic Picture Gallery, Ld., (1902) 19 R. P. C. 425; 20 R. P. C. 117; overruling Deeley's Patent, (1904) 11 R. P. C. 72.

(*f*) Singer *v.* Stassen, (1884) 50 L. T. N. S. 326; 1 R. P. C. 121.

(*g*) But see *ante*.

(*h*) See remarks of Cotton, L.J., Bray *v.* Gardner, (1887) 4 R. P. C. 43.

Practice pending Action or Petition.

Court has an absolute discretion under s. 19.

The Court has a discretion, unfettered by authority, to grant or refuse leave to apply to amend by disclaimer pending an action for infringement or petition for the revocation of a patent, and to impose such terms and conditions as it may think the justice of each particular case requires, (*i*) and an appellate Court will not lightly interfere with the discretion of a Judge of first instance, unless it is clear that the Judge invested with the discretion has either exceeded it, or exercised it upon some principle inconsistent with general law or there is a miscarriage of justice. (*k*)

The result of the decisions appears to be that leave will only be given, under sec. 19 of the Act of 1883, where the Court sees its way to make full compensation to those against whom the leave is asked, and that where such compensation can be given then the leave will be given. (*l*)

The patentee is not precluded from making any number of applications for leave to apply to amend by disclaimer in the same action or petition for revocation as may be necessary to defend his patent. (*m*)

When several actions or petitions are pending leave is only necessary in one.

It is submitted that if there be more than one action for infringement or more than one petition for revocation of a patent, or an action for infringement and a petition for revocation pending, leave may be given, under sec. 19 of the Act of 1883, in one such proceeding without application being made in any other proceedings; (*n*) though no doubt the parties to the other proceedings would be protected by the terms imposed by the Court, or by the Comptroller, when granting the leave to amend. Leave given in one of several proceedings does not apply to all, and if the advantage of amendment is desired in the other pending proceedings, a special application must be made to the Court or a Judge in each. (*o*)

The former practice of the Patent Office in cases where

(*i*) Allen *v.* Doulton, (1887) 4 R. P. C. 377; Lang *v.* Whitecross Co., (1889) 6 R. P. C. 570; Ludington Cigarette Machine Co. *v.* Baron Cigarette Machine Co., (1900) 17 R. P. C. 214, 745; Allison's Patent, (1900) 17 R. P. C. 284.

(*k*) Ludington Cigarette Machine Co. *v.* Baron Cigarette Machine Co., (1900) 17 R. P. C. 748; Geipel's Patent, (1903) 20 R. P. C. 556; 21 R. P. C. 379; Armstrong's Patent, (1897) 14 R. P. C. 747; Allison's Patent, (1899) 17 R. P. C. 513.

(*l*) Per Kekewich, J., In the Matter of Gaulard and Gibbs' Patent, (1888) 4 R. P. C. 191; Bray *v.* Gardner, (1888) 5 R. P. C. 40; Gaulard *v.* Lindsay, (1888) 5 R. P. C. 192.

(*m*) See Chatwood's Patent Safe and Lock Co. *v.* Mercantile Bank of Lancashire, (1899) 17 R. P. C. 23.

(*n*) See In the Matter of Hall and others, (1888) 5 R. P. C. 306, 310; L. R. 21 Q. B. D. 137; but see Gaulard *v.* Lindsay, (1888) 5 R. P. C. 192, 196.

(*o*) See Chatwood's Patent Safe and Lock Co. *v.* Ratner Safe Co., (1899) 16 R. P. C. 449.

there was more than one action for infringement or petition for revocation, or an action for infringement and petition for revocation, pending, was to refuse to allow an application for leave to amend, unless the leave of the Court or a Judge was obtained in all the different pending proceedings; (*p*) but, it is submitted, the Comptroller would not now refuse to entertain an application made in respect of the leave of the Court, or a Judge, obtained in one only of such proceedings. (*q*)

Practice pending Action or Petition.

The Court or a Judge, as stated above, (*r*) has an absolute discretion with regard to the exercise of the power of imposing terms (*s*) when granting leave to apply at the Patent Office for leave to amend, pending an action for infringement or petition for the revocation of a patent, and no rule can be given applicable to every case.

Terms usually imposed by the Court.

The following are reported cases of actions for infringement pending which leave to apply at the Patent Office for leave to amend by way of disclaimer was given by the Court upon the terms and conditions stated:—

In *Winter* v. *Baybut*, (1884) 1 R. P. C. 76, a case tried in the Court of the County Palatine of Lancaster, the Vice-Chancellor only imposed the terms that the plaintiffs should pay the defendant's taxed costs of the motion and of the action up to, and inclusive of, the hearing of the motion; and that proceedings in the action should be stayed pending the application to the Patent Office.

In *Singer* v. *Stassen*, (1884) 1 R. P. C. 121, the Court of Appeal held that sec. 19 of the Act of 1883 applied in the case of an action commenced before the Act came into operation, and gave liberty to apply to amend the plaintiff's specification upon the terms that the costs of, and occasioned by, the amendment should be the defendants in any event; and that the specification, as amended, should not be receivable in evidence in the action; and that the costs of the appeal should be costs in the action, as there had been a substantial failure and a substantial success by both parties.

In *Cold* v. *Bratby*, (1884) 1 R. P. C. 209, *Chitty*, J., granted leave to apply under sec. 19 of the Act of 1883, on the terms that the specification, when amended, should not be given in evidence at the trial of the action, and that no evidence should be given of any infringement prior to the date of the filing of the amended

(*p*) Codd's Patent, (1884) Griff. P. C. 385; Gaulard and Gibbs, (1888) 5 R. P. C. 192, 196.

(*q*) In the Matter of Hall and others, (1888) 5 R. P. C. 307; L. R. 21 Q. B. D. 137.

(*r*) p. 94 *ante*.

(*s*) 46 & 47 Vict. c. 57, s. 19.

Practice pending Action or Petition.

Terms usually imposed by the Court.

specification; and that the costs of the motion, and of the previous application to the Comptroller, thrown away by reason of the amendment, be paid by the plaintiff.

In *Fusee Vesta Co. v Bryant and May*, (1887) 4 R. P. C. 71, *Kay*, J., granted the plaintiffs leave to apply to amend before they had delivered their statement of claim, upon the terms that they paid all costs, in any event, of the defendants of the action up to and including the application consequent on the amendment of the specification; that no further proceedings should be taken till the disclaimer had been properly made; that the plaintiffs should undertake, forthwith, to take proceedings for disclaimer, and then to amend the action by stating the disclaimer pending the action on the specification as amended; failing this, the action to be dismissed.

In *Allen* v. *Doulton*, (1887) 4 R. P. C. 377, *Huddleston*, B., held, on the authority of *Bray* v. *Gardner*, that leave to apply to amend should be given to the plaintiffs only on condition that the specification, as amended, should not be receivable in evidence in the action. Upon appeal to the Divisional Court the learned Judges were divided in opinion, and upon appeal to the Court of Appeal it was held that secs. 18 and 19 of the Patents Act of 1883 give a discretion to the Court or a Judge, to be exercised on the circumstances of each particular case, and which is not fettered by authority; and that, although there had been no exercise of discretion by the Judges below, yet, having regard to the nature of the proposed amendment, the Court, in the exercise of their discretion, would not interfere with the order.

In *Haslam Foundry and Engineering Co.* v. *Goodfellow*, (1888) 5 R. P. C. 28; L. R. 37 Ch. D. 118, *Kay*, J., granted leave under sec. 19 of the Patents, &c., Act of 1883, on the following terms: The plaintiffs to pay the costs of the application and the costs of, and occasioned by, the disclaimer; the plaintiffs and defendants to be allowed to make all necessary amendments in their pleadings after disclaimer; the plaintiffs to undertake, forthwith, to amend the pleadings, confining their action to the specification as amended by the disclaimer, or to consent to the action being dismissed with costs.

In *Gaulard* v. *Lindsay*, (1888) 5 R. P. C. 192, which was an action for infringement of five patents, a petition for the revocation of one of such patents having been previously presented, and leave to apply for liberty to disclaim having been granted in the petition, *Kekewich*, J., refused to grant similar leave in the action, but subsequently it was granted by consent by the Court of Appeal. The patentees were allowed to give the amended specification in evidence, but the terms imposed were that the plaintiffs should consent to pay all costs of the action

up to the application, and waive all claim to relief in respect of any infringement before the date of disclaimer; and that they should pay the costs of the application, but not on the higher scale.

Practice pending Action or Petition.

In *Lang* v. *Whitecross Co.*, (1889) 6 R. P. C. 570, *Wills*, J., gave the plaintiffs leave to apply at the Patent Office for liberty to amend their specification by way of disclaimer. The Judge also gave the plaintiffs leave to use the amended specification as evidence, on condition that no damages should be recovered, or claim for an injunction founded, on anything done before disclaimer, and that the costs of the action up to the time (if disclaimer used) be the defendants' costs in the cause. The Judge further ordered that the costs of the application and the costs caused in the action by the disclaimer should be the defendants' in any event, and that proceedings should be stayed pending the disclaimer. The plaintiffs appealed from this order, and contended that the conditions imposed would prevent them from deriving any advantage from continuing the present action, and that the condition as to damages was not within the jurisdiction of the Judge at Chambers; but the Divisional Court and the Court of Appeal held that the Judge had absolute discretion, under sec. 19 of the Act of 1883, to impose terms, and that the order ought not to be interfered with.

Terms usually imposed by the Court.

In *Deeley* v. *Perks*, L. R. [1896] A. C. 496; 13 R. P. C. 581, the House of Lords ordered that if the specification be amended no action should be brought for infringement of the patent in respect of any guns or parts of guns made prior to the date of the application to the House of Lords.

In *Corrigall* v. *Armstrong, Whitworth & Co.*, (1903) 20 R. P. C. 523, the Court did not consider sec. 20 of the Act of 1883 sufficient protection to the defendants and only granted leave to apply upon the plaintiff waving all claim to damages or relief in respect of infringements prior to amendment.

In *Jandus Arc Lamp and Electric Co., Ld.* v. *Arc Lamp Co.*, (1903) 21 R. P. C. 115, the Court thought the order made in *Ludington Cigarette Machine, Co., Ld.* v. *Baron Cigarette Machine Co., Ld.*, (*t*) was suitable and made a similar order, but expressly stated that the order must not be considered a settled form though it is one which works well and has stood the test of the House of Lords.

The following are reported cases of petitions for revocation pending which leave to apply at the Patent Office for leave to amend by way of disclaimer was given by the Court upon the terms and conditions stated:—

In the Matter of Gaulard and Gibbs' Patent, (1888) 5 R. P. C. 189, was a petition for the revocation of *Gaulard and Gibbs'*

(*t*) See p. 98 *post*.

Practice pending Action or Petition.

Terms usually imposed by the Court.

patent for a system of distribution of electricity. *Kekewich*, J., granted the respondents leave to apply at the Patent Office to amend, on condition that they paid the petitioner's costs up to date; and that they applied at the Patent Office forthwith, and prosecuted their application with due diligence. His Lordship also gave the petitioner leave, within fourteen days after the amendment, or after it should be ascertained that no amendment would be made, to discontinue by notice, or, if he did not do that, to have fourteen days to amend the petition and the particulars of objection.

In the Matter of Chatwood's Patent, (1899) 16 R. P. C. 370, *Byrne*, J., gave leave upon the following terms: the respondents, in any event, to pay the costs of the application, and the costs of the petition up to and occasioned by the disclaimer, except only so far as the proceedings in the matter might thereafter be utilised for the purpose of the hearing of the petition, should the same be heard. The petitioners within fourteen days after the amendment (if allowed) to elect whether to go on or not. In the event of the petitioners electing not to proceed with the petition, the respondents to pay all the costs of the proceedings.

In the Matter of Allison's Patent, (1900) 17 R. P. C. 298, 513, *Cozens-Hardy*, J., held that under the circumstances leave should be given on the terms that no action should be brought against the respondents or their customers in respect of certain articles used or sold up to the date of the notice of motion, whether prepared according to the patentees process or not, and on the usual terms as to costs.

In *Ludington Cigarette Machine Co., Ld.* v. *Baron Cigarette Machine Co., Ld.*, (1899) 17 R. P. C. 25, 214, 745, a petition and also an action both being pending, *Kekewich*, J., made one order to be headed in the action and in the petition that provided: Leave to the plaintiff in the action (respondents in the petition) to apply at the Patent Office for leave to amend the specification by way of disclaimer; leave to the petitioners after disclaimer to amend their petition; leave to the plaintiffs and defendants to amend their pleadings after disclaimer; plaintiffs not to issue any threats until after disclaimer; no action to be brought or maintained for infringement of the patent in respect of any machines or parts of machines made prior to date of order; costs of both applications and costs of the petition to date of disclaimer, and also costs of action so far not utilised for the purpose of the trial under the leave to amend, to be the defendants' costs in any event. The Court of Appeal held that under the special circumstances of the case this order was right; and that there is no settled form of order applicable to all cases. The House of Lords held that no case was made out for interfering with the

discretion of the Court below; and *semble* the order in *Deeley* v. *Perks* (*u*) would not have been made had it been a mere case of infringement.

Practice pending Action or Petition.

In the Matter of Geipel's Patent, (1903) 20 R. P. C. 558; 21 R. P. C. 379, the Court having heard the petition to judgment made the order in the form that "if the specification be amended, no injunction shall be asked for in any action brought for the infringement of the patent in respect of any steam traps made prior to this date (the date of order) 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."

Terms usually imposed by the Court.

In the Matter of Alsop's Patent, (1905) 23 R. P. C. 78, the Court of Appeal followed, substantially, the order made in *Ludington Cigarette Machine Co., Ld.* v. *Baron Cigarette Machine Co., Ld.*, (*x*) and made it a term that the appellants should not threaten any persons with legal proceedings under the letters patent until after the amendment of the specification should be made.

Decisions have not limited the discretion of the Court.

It would appear that neither of the House of Lords decisions in the cases of *Moser* v. *Marsden*, (*y*) and *Deeley* v. *Perks*, (*z*) have in any way limited the discretion of the Court in giving or refusing leave to apply for amendment. (*a*) Seeing that the Court has no jurisdiction as to the making of the amendment, when it has no means of saying whether the amendment should be allowed it would not, it is submitted, as a rule be a proper exercise of the discretion to refuse the leave and so force the plaintiff or respondent to go to trial on an unamended specification, if he is willing to accept the leave on such terms as may be necessary to protect his opponent's interests. (*b*) When the plaintiff admits that he asks for leave because he is satisfied that upon the specification unamended he cannot possibly succeed, the Court may well, as the Lord Ordinary in a Scotch case (*c*) did, refuse to grant leave and dismiss the action, leaving it to the plaintiff, if he should succeed under sec. 18 of the Act of 1883 in obtaining an amendment, to bring a fresh action on the amended specification.

Leave may be refused on the

It is submitted, however, that where there has been an adverse decision against the patent, including (*inter alia*) a

(*u*) p. 97 *ante*.
(*x*) See p. 98 *ante*.
(*y*) (1895) 13 R. P. C. 24.
(*z*) (1896) 13 R. P. C. 581.
(*a*) See Dellwick's Patent, (1896) 13 R. P. C. 591.
(*b*) *Ibid*.
(*c*) New Conveyor Co. v. Edinburgh and Leith Gas Commissioners, (1903) 21 R. P. C. 147.

Practice pending Action or Petition.

claim which the patentee is desirous of leaving untouched, or only slightly modified, the Court will not, upon a subsequent action for infringement or petition for revocation, exercise its discretion in favour of the applicant, unless it is satisfied that the applicant has substantial grounds of objection to the adverse decision worthy of being submitted to a Court with power to review it. (*d*) In one case where there was a pending petition for revocation leave to apply at the Patent Office for leave to amend was refused, on the ground that the patent if amended as desired would be still anticipated by a prior specification pleaded in the particulars. (*e*)

ground that the amendment if made would not validate the patent.

Procedure after leave of the Court has been obtained under s. 19 is regulated by s. 18 of the Act of 1883.

When, in an action for infringement or petition for revocation of a patent, permission to apply at the Patent Office for leave to amend a specification has been given by the Court or a Judge, the procedure to be observed in order to obtain the leave desired is that under sec. 18 of the Act of 1883, (*f*) which is not affected by the subsequent commencement of an action for infringement or petition for revocation of the patent, (*g*) and it does not follow, as a matter of course, that, because the Court or a Judge has given permission to apply, therefore, the Comptroller will grant the application.

When the Court does not impose terms relative to the action or petition the Comptroller or law officer does not do so.

Where, however, the Court or a Judge, in an action for infringement or petition for revocation of a patent, has granted leave to apply to the Comptroller for leave to apply at the Patent Office without imposing any terms, no terms will be imposed by the Comptroller or law officer relative to the action or petition, as the case may be. (*h*)

(*d*) See Deeley's Patent, (1894) 11 R. P. C. 72; 12 R. P. C. 65, in which leave to apply was given, and after amendment the patent was declared void.

(*e*) Armstrong's Patent, (1896) 13 R. P. C. 501; 14 R. P. C. 747.

(*f*) In the Matter of Hall, (1888) 5 R. P. C. 306; Lang's Patent, (1890) 7 R. P. C. 471; Owen's Patent, (1898) 15 R. P. C. 759.

(*g*) Woolfe *v.* Automatic Gallery Ld. (1902) 19 R. P. C. 425; 20 R. P. C. 177.

(*h*) Hearson's Patent, (1884) 1 R. P. C. 213.

CHAPTER III.

ASSIGNMENT OF LETTERS PATENT.

Origin of Power to Assign.

Rights of an author.

The author of a literary, or musical, composition actually *creates* the work which is the produce of his mental labour. The law recognises that he has as much natural and moral right to the results created by his mental exertions as he has to the proceeds of his manual industry, and, *independently of any grant from the Crown*, gives him an exclusive copyright in his book or musical composition. (*a*) The right is the creation of statute and is not deducible from common law. (*b*)

Rights of an inventor.

It cannot, however, be contended that an inventor has any natural, or even moral, right in his invention, for he does not create in the same sense as an author does.

In the case of a book, the result of the author's skill and industry has no existence before the author commits his thoughts to paper; but in the case of an invention, in the patent law sense, all that the inventor does is to make use of natural laws, which must necessarily have been pre-existent, though perhaps undiscovered, and, by a new application of them, produce a manufacture or article of commerce, which has either not been produced before or not been produced in the same way.

Distinction between a literary composition and an invention.

The distinction between the production of a great literary composition and the discovery of a great invention is made apparent by a contrast of a play of Shakespeare—"Hamlet," for instance—with a world-revolutionising invention, such as the steam-engine of Watt. Had Shakespeare never written "Hamlet," it is practically certain that the play would never have existed, and the literature of the world would, undoubtedly, have been the loser; but had Watt never lived it can scarcely be doubted that the vast superiority of the plan

(*a*) See Millar *v.* Taylor, 4 Burr. 2303.

(*b*) See Scrutton's Law of Copyright, 2nd ed. p. 3.

Origin of Power to Assign.

of condensing the steam in a steam-engine in a separate vessel, instead of in the cylinder, would have been perceived and communicated to the world by some other inventor.

The law only gives a right in an invention on condition.

It is thus evident that an inventor merely produces a new art, consisting of a novel application of previously existing, though it may be undiscovered, physical laws to the production of a new article of commerce, or of an old article of commerce in a new manner. The law does not recognise any natural, or moral, right in the inventor to the exclusive use of the invention, and will not, except on certain conditions, attempt to guarantee him a monopoly in the profitable exercise of it.

The conditions upon which the law will secure to an inventor an exclusive property in his invention for a limited period are, as we have seen, (*c*) that he shall disclose the secret of it, so that the public may enjoy it after the expiration of the patent; and also that he shall describe the best means known to him of performing the invention, in order that the public may enjoy it to the same extent as the patentee himself, when the term for which the patent is granted expires.

The inventor may perhaps be able to keep the invention a profound secret, and make considerable profit by its use; but there are very few inventions, producing valuable results, which could be worked long without the method by which the results are arrived at becoming matter of public knowledge; in which event the law will not prevent any member of the public from exercising the invention for his own gains, provided he has not been guilty of a breach of trust. (*d*) Undoubtedly the man who makes a useful discovery, or invention, and communicates it to the public is a benefactor; and it is because the law recognises this fact, as well as the desirability of encouraging the production of useful inventions for the public good, that it guarantees to the inventor, his executors, administrators, and assigns the sole privilege of making, using, exercising, and vending the invention within this realm for a definite period, by means of a grant of letters patent from the Crown, upon condition, however, that the inventor discloses the best means known to him of performing the invention.

Effect of keeping an invention secret.

If an inventor endeavours to work the invention in secret the law will not compel him to disclose it, but, if it does leak out, it can never afterwards form the subject of a grant of

(*c*) Vol. I. chap. v. (*d*) Yovatt v. Winyard, (1820) 1 J. & W. 394.

letters patent, and the inventor cannot claim any monopoly or acquire any right or property in it of any nature whatever, which the law will protect or recognise. Origin of Power to Assign.

This follows from the fact that one inventor has no natural right to prevent another from making the same invention, and deriving profit therefrom; the law only allows, as we have seen, (*c*) the grant of a monopoly in the invention for a limited period to the first and true inventor, *i.e.*, the inventor who actually *first* communicates a knowledge of it to the public.

Thus in *Canham* v. *Jones*, 2 Ves. & B. 218, the plaintiff, as the proprietor of a receipt for the preparation of a certain vegetable syrup, which had been bequeathed to him by a person named *Swainson*, who purchased it from the inventor, sought to restrain the defendant from selling an article under the same name as the plaintiff's. Sir *Thomas Plumer*, V.C., gave judgment in favour of the defendant, and used the following words: "This Bill proceeds upon an erroneous notion of exclusive property, now subsisting in this medicine, which *Swainson*, having purchased, had a right to dispose of by his will, and, as it is contended, to give the plaintiff the exclusive right of sale of. If this claim of monopoly can be maintained without any limitation of time, it is a much better right than that of a patentee; but the violation of right, with which the defendant is charged, does not fall within the cases in which the Court has restrained a fraudulent attempt by one man to invade another's property—to appropriate the benefit of a valuable interest in the nature of a goodwill, consisting in the character of his trade or production, established by individual merit; the other representing himself to be the same person, and his trade or production the same as in *Hogg* v. *Kirby*, 8 Ves. 215, combining imposition on the public with injury to the individual. This is not that sort of case. The observation is correct, that the Bill stating the defendant's medicine to be spurious asserts it not to be the same as the plaintiff's. The defendant does not hold himself out as the representative of *Swainson*, setting up a right in that character to the medicine purchased by him; but merely represents that he sells, not the plaintiff's medicine, but one of as good a quality. He is perfectly at liberty to do so. If any exclusive right in this medicine ever existed, it has long expired. The foundation of this Bill therefore, the exclusive right asserted by the plaintiff, failing, all the consequential relief falls with it; and the demurrer must be allowed."

(*c*) Vol. I chap. i.

Origin of Power to Assign.

If a discoverer keeps his invention secret, not only does he run the risk of losing the monopoly of it by an inadvertent disclosure, but he puts himself in a position of evident disadvantage, if he should wish to dispose of it to another person, for the Court could not decree the specific performance of an agreement for the sale of a secret invention, or prevent the disclosure of it. Either it is or it is not a secret. If it is, what means has the Court of interfering, so as to enforce its own orders? If it is not, there can be no ground for interfering (*f*)

The Courts will neither decree specific performance of a contract for sale of, nor restrain the publication of, a secret invention.

Moreover, it would be useless for the Court to grant an injunction to restrain the publication of a secret, for there would be no means of determining whether the injunction had been violated or not. (*g*)

In a case (*h*) where the plaintiff sought to restrain the defendant from communicating the secret of preparing a certain medicine, Lord *Eldon*, L.C., dissolved an injunction which had been obtained, and stated the principle on which the Court acts in such cases, thus:—

> "So far as the injunction goes to restrain the defendant from communicating the secret, on general principles, I do not think the Court ought to struggle to protect this sort of secret in medicine. The Court is bound, indeed, to protect them in cases of patents to the full extent of what was intended by the grant of the patent, because the patentee is a purchaser from the public, and bound to communicate his secret to the public at the expiration of the patent. Then, whether this principle can be extended to such a case as this—whether a contracting party is entitled to the protection of the Court, in the exercise of its jurisdiction, to decree the specific performance of agreements by restraining a party to the contract from divulging the secret he has promised to keep—that is a question which would require very great consideration. But the present case is not one which calls for the determination of it. If the defendant has already disclosed the secret the injunction can be of no use. If he only threatens to disclose, it thus becomes necessary to look at his affidavit; and by that he insists that what he has to disclose is no secret at all—then how is the Court to try this question? Or what can the Court do with the case altogether?"

The monopoly in an invention exists

The monopoly created by the grant of letters patent for a limited period is the only right or property which the law

(*f*) Newburry *v.* James, 2 Mcr. 446, judgment of Lord Eldon, L.C.

(*g*) *Ibid.*

(*h*) Williams *v.* Williams, 3 Mcr. 157.

recognises an inventor as possessing in his invention; and the sole or exclusive privilege of using the invention which is vested in the patentee by the patent has existence only by virtue of the grant.

Origin of Power to Assign.

only by virtue of the grant of letters patent.

The privilege is a mere naked right vested in the patentee, and it would not be assignable unless the letters patent expressly made it so, for it contains no property within itself making it of an assignable nature. (*i*)

Notwithstanding the fact that an inventor has no property in his invention unless and until it is made the subject of a grant of letters patent, he has such an interest in an invention for which he intends to take out a patent as to be able to make and enforce an agreement concerning it. Thus, in the case of *Smith* v. *Dickinson*, (*j*) it appeared that the defendant had, in fraud of the plaintiff, obtained a patent for an invention which had been communicated to him by the plaintiff under an agreement, whereby the defendant undertook, subject to a penalty, not to avail himself or take any advantage of such communication, and the Court held that the plaintiff was entitled to maintain an action for the breach of this agreement. (*k*)

Interest in an invention before the grant of letters patent.

Every patent for an invention granted by the Crown is made in the form prescribed in the Patent Rules, 1903, which may be varied to meet special circumstances. (*l*) The form W in the rules grants to the patentee the Royal 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 continuance of 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." By a previous recital, the term "patentee," as used in the letters patent, is expressly defined to mean the grantee, his executors, administrators, and assigns.

Form of letters patent.

Thus, the authority by which a patent right is created invests it with the quality of assignability; and there is now no limit to the number of persons to whom it may be assigned, though formerly it was made a condition that the grant should become void if the patent became vested in more than a specified number of assignees.

Patent is assignable only in virtue of the terms of the grant.

(*i*) Duvergier *v.* Fellows, (1828) 10 B. & C. 829.

(*j*) (1804) 3 Bos. & Pul. 630.

(*k*) See also McDougall *v.* Partington, (1890) 7 R. P. C. 216; Punchard *v.* Dale, (1894) 11 R. P. C. 257.

(*l*) See p. 373 *post*.

Assignment by Deed.

An assignment may be made to a body corporate, and the body corporate is entitled to be entered on the Register of Patents as the proprietor in its corporate name. (*m*)

Body corporate.

A patentee may assign his patent for any place in or part of the United Kingdom or Isle of Man as effectually as if the patent were originally granted to extend to that place or part only. (*n*)

Assignment for a district.

A deed of assignment for a district should contain a covenant on the part of the assignor to pay the renewal fees within the prescribed times, and to give due notice to his co-owner of every such payment when made or permit him to pay the same, and to repay the sums so paid on demand, and until repayment to charge them, together with interest, on his share in the patent. (*o*)

Assignment may be by deed or by act and operation of law.

A patent right may be assigned by deed by the patentee, or by act and operation of law.

Assignment by Deed.

Legal assignments must be by deed failing act and operation of law.

Failing an act and operation of law, which will be discussed later, (*p*) a legal assignment of letters patent can only be made by deed, (*q*) and such an assignment purporting to be made by an agent on behalf of the patentee is only valid if the agent is authorised by deed to make it. (*r*) Though the letters patent provide that a licence to use the invention must be under the hand and seal of the patentee, they do not specify any particular form or manner in which assignments are to be made. It is, however, necessary that the grant of letters patent shall be under seal, (*s*) and it is a rule of law that things which can only be granted or created by deed are assignable only by deed. (*t*)

In the words of Lord *Ellenborough*, C.J. (*u*): "If the licence, which is the lesser thing, must be in writing, *à fortiori*, the assignment, which is the greater thing, must also be."

No particular form of words is necessary.

No particular form of words is necessary to effect an assignment of a patent right, and it has been held that where a

(*m*) P. R., (1903) r. 59.

(*n*) 46 & 47 Vict. c. 57, s. 36; see Actien Gesellschaft für Cartonagen Industrie *v.* Temler, (1900) 18 R. P. C. 14.

(*o*) See Morris' Patents Conveyancing, p. 116.

(*p*) p. 125 *post*.

(*q*) Cook's Case, Power *v.* Walker, 3 M. & S. 9; Stewart *v.* Casey, (1892) 9. R. P. C. 9; L. R. (1892) 1 Ch. 104.

(*r*) Hazlehurst *v.* Rylands, (1891) 9 R. P. C. 7.

(*s*) Co. *Litt.* 9b, 172a; Shep. Touch. 223–231.

(*t*) 3 Co. R. 63a, Lincoln Coll. Cas.

(*u*) Power *v.* Walker, (1814) 3 M. & W. 9.

Assignment by Deed.

patentee has covenanted, under his hand and seal, to assign a patent on the happening of a certain event, the covenant, on the happening of the event, amounts to an actual assignment. (*x*)

Since a patent must be considered "property" within the meaning of sec. 59 sub-s. 1 of the Stamp Act of 1891, (*y*) a deed or agreement of assignment is chargeable with *ad valorem* duty under that section. This is so whether the patent is a British or a foreign one, for the property in a patent has no *locus*. (*z*)

Equitable assignments may arise from conduct when there is consideration.

An equitable assignment of a patent may, without a deed, arise from the conduct of the parties when there is consideration, and though the consideration be a past service, the equitable agreement may be enforced. Thus, a letter containing an agreement to give a share of a patent in consideration of a past service is an equitable assignment of the share. The principle on which this is so is that a past service raises an implication that it was to be paid for, and a subsequent promise to pay, if not supportable by the consideration of the past service, can be supported as a statement of the remuneration to be accepted in lieu of, or as fixing, the remuneration which the law implies in the first instance on the performance of the service. (*a*)

Consideration.

As the assignment of a grant of letters patent is by deed, no consideration need be stated.

No obligation on an assignee to maintain the patent.

Sometimes patents are assigned in consideration of a royalty reserved to the assignor, and where such is the case it is not, in the absence of covenants to that effect, obligatory on the part of the assignee to pay the duties necessary to keep the patent on foot.

Thus, in *Re Railway and Electric Appliances Co.* (*b*) it appeared that on the sale of a patent by the patentees to the company a deed of assignment was executed by the parties, by which, after a recital that the patentees had agreed to sell the patent to the company for £250, "and for the other considerations herein appearing," the patentees assigned the patent to the company absolutely, and after covenants for title by the patentees, including a covenant for quiet enjoyment of the

(*x*) Cartwright *v.* Amatt, (1799) 2 Bos. & Pul. 43.

(*y*) The Smelting Co. of Australia *v.* Commissioners of Inland Revenue, [1896] 2 Q. B. 179; [1897] 1 Q. B. 175.

(*z*) *Ibid.*

(*a*) Stewart *v.* Casey, (1892) 9 R. P. C. 9, 14; L. R. (1892) 1 Ch. 184, judgment of Bowen, L.J.

(*b*) (1888) L. R. 38 Ch. D. 597.

Assignment by Deed.

patent "during the time subsisting therein," the company covenanted to pay to the patentees a royalty for every article which should be manufactured or sold by the company under the patent "while subsisting," and also a proportion of the profits arising from the manufacture or sale and from licences granted for the manufacture or sale of articles to be manufactured under the patent "while subsisting." The deed contained no express covenant by the company to keep the patent on foot or to manufacture or sell articles under the patent. On the expiration of the first four years of the patent, the company duly paid the first renewal fee, but on the expiration of the fifth year, by inadvertence, omitted to pay the second renewal fee, and consequently the patent lapsed. After an ineffectual attempt to obtain a private Act of Parliament to revive the patent, the company passed resolutions for a voluntary winding-up, and the patentees thereupon sent in a claim for damages for the loss, through the lapse of the patent, of the royalties reserved by the assignment, contending that a covenant to keep the patent on foot should be implied in the assignment. The Court, however, held that no such covenant could be implied; and that, even if it could, the patentees could not obtain more than nominal damages, the company being under no obligation, express or implied, to manufacture the patented articles.

Power of Secretary of State for War to acquire inventions by assignment.

The Secretary of State for War is empowered, either for or without valuable consideration, to acquire by assignment to himself, on behalf of His Majesty, all the benefit of the invention and of any patent obtained or to be obtained for any improvement in instruments or munitions of war; and where any such assignment has been made to the Secretary of State for War he may at any time before the application for a patent for the invention, or before the publication of the specification or specifications, certify to the Comptroller his opinion that, in the interests of the public service, the particulars of the invention and of the manner in which it is to be performed should be kept secret; and if the Secretary of State for War so certifies, the specifications of the invention will not be published or open to public inspection at any time without the sanction of the Secretary of State for War. (*c*)

In a contract to which the Secretary of State for War is, as such, a party, it is sufficient to describe him by the style or title of His Majesty's Principal Secretary of State for the War

(*c*) See 46 & 47 Vict. c. 57, s. 44.

Assignment by Deed.

Department, and a contract signed by him, or a deed signed, sealed, and delivered by him binds his successors in office. (*d*)

Equitable and legal interests of a licensee.

The equitable interests of a licensee in relation to the district comprised in the licence are co-extensive with those of the grantee or assignee of the letters patent, yet his legal title is very different. Though an exclusive licensee may perhaps sue in his own name for infringements (*e*) he cannot apply to amend the specification or obtain an extension of the patent, and a mere licensee is not able to sue for infringements in his own name.

Different inventions included in one patent.

Before the passing of the Act of 1883 it was not uncommon to include more than one invention in a grant of letters patent, but the practice is not so frequent now, for it is provided by that Act (*f*) that every patent shall be granted for one invention only, but may contain more than claim.

It is, however, declared (*f*) that it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it comprises more than one invention. It is consequently possible that a patent granted under the present practice may comprise more than one invention.

If the patent comprise two or more inventions separate and distinct in their nature, valid assignments may be made of the different parts of the patent to different persons, and it is competent to the assignee of a separate and distinct portion of a patent to sue for an infringement of that part, without joining one who has an interest in another part, the damages recovered in the action accruing to the former alone. (*g*)

Covenants by an assignor in restraint of trade.

Sometimes the assignor covenants with the assignee that he will not trade in competition with him. Such a covenant should be carefully drawn so as not to be contrary to the doctrine of covenants in general restraint of trade. If the restraint is not wider than is necessary for the protection of the covenantee, and is not an injury to the public, the covenant can be enforced. (*h*) Thus, a patentee and manufacturer of guns and ammunition for purposes of war covenanted with a company to which his patents and business had been transferred that he would not for twenty-five years engage, except on behalf of the company, either directly or indirectly in

(*d*) 18 & 19 Vict. c. 117, s. 5.
(*e*) p. 156 *post*.
(*f*) 46 & 47 Vict. c. 57, s. 33.
(*g*) Dunnicliff *v.* Mallett, (1859) 7 C. B. N. S. 209; Walton *v.* Lavatu, (1860) 8 C. B. N. S. 162, 184.
(*h*) Nordenfelt *v.* Maxim-Nordenfelt Guns and Ammunition Co., (1894) L. R. (1894) A. C. 535; Dubowski *v.* Goldstein, L. R. (1896) 1 Q. B. 478.

Co-owners.

the business of a manufacturer of guns or ammunition. The House of Lords held, affirming the Court of Appeal, that this covenant, though unrestricted to space, was not, having regard to the nature of the business and the limited number of customers (namely, the Governments of this and other countries), wider than was necessary for the protection of the company, nor injurious to the public interests of this country; and that it was, therefore, valid, and might be enforced by injunction. (*i*)

Reservation by an assignor of right to use the invention.

A patentee may assign the patent but reserve to himself the right to use the invention. When this is done questions may sometimes arise as to the power of the assignee to restrain persons claiming to act as the agents of the assignor from manufacturing or selling articles manufactured according to the invention. Thus, in one case, (*k*) the patentee assigned two patents, reserving to himself the right to work the patents personally, which right was not to be transferable. After the death of the assignee the patents became vested in a company. The assignor entered into partnership with two other persons and by an agreement between him and his firm he agreed to employ the firm, on certain terms, to manufacture articles under the patents on his behalf, and to sell them for him, which they did. In an action by the company against the firm for an infringement of the two patents by working under the agreement, it was held that according to the true construction of the agreement, although the firm were the agents of the assignor as far as selling was concerned, they were manufacturing, not as his agents, but as contractors for him, and had thereby infringed the rights of the plaintiff company, and an injunction was granted in special terms.

Co-Owners.

Interest of Co-grantees.

The forms which are now in use at the Patent Office for the grant of patents to joint applicants (*l*) create and give a joint interest which survives to the remaining grantees or grantee on the death of one or more of the original grantees, unless there has been a severance of the joint interest. (*m*)

(*i*) Nordenfelt *v.* Maxim-Nordenfelt Guns and Ammunition Co., L. R. (1894) A. C. 535.

(*k*) Howard *v.* Tweeddales, (1895) 12 R. P. C. 519.

(*l*) See p. 105 *post*.

(*m*) See National Co. for the Distribution of Electricity by Secondary Generators *v.* Gibbs, (1899) 16 R. P. C. 339; 17 R. P. C. 302.

Co-owners.

It is open to joint owners at any time to sever their joint interest and to create a tenancy in common. (*n*)

Assignment to several persons.

A patent may be assigned to different persons in different portions as joint tenants, or as tenants in common. (*o*)

When a share in a patent is assigned, it is advisable that the deed of assignment should contain covenants binding not only the parties, but all future owners, to account to each other for the profits made by them respectively, and to grant, or concur in granting, licences in a manner prescribed. (*p*) A deed of assignment of a share of a patent should also contain a covenant by the assignee to perform and observe the stipulations (if any) which bind the assignor and to indemnify him from future breaches thereof; (*q*) and each owner should covenant to pay his proper proportion of the renewal fees, and should charge his share in the patent with the payment of any moneys which may be paid by any other owner on his behalf in this respect. (*r*) There should also be a provision to the effect that licences should be granted by the co-owners jointly, and that all benefits arising therefrom should be shared by such co-owners in proportion to their shares. (*s*) If a deed of assignment of a share of a patent provides for the sole working of the patent by one of the co-owners alone, it is well to reserve to the other co-owners the right to use the share or shares assigned on agreed conditions; and to enter a notification of such the right can be entered on the Register of Patents. (*t*)

Rights of co-owners.

It is submitted that when a patent for a single invention is held by different persons, either as joint tenants or as tenants in common, it is competent for one of such co-owners to sue alone in respect of an infringement. (*u*)

In *Smith* v. *London and North-Western Railway Co.* (*x*) it was held that where a patent is assigned to two persons as tenants in common they may maintain a joint action in respect of infringements, and the right of action survives, so that after the death of one tenant in common the survivor may sue for and recover the whole of the damages in respect of

(*n*) See National Co. for the Distribution of Electricity by Secondary Generators *v.* Gibbs, (1899) 16 R. P. C. 339; 17 R. P. C. 302.

(*o*) Walton *v.* Lavater, (1860) 8 C. B. N. S. 162; Smith *v.* London and North-Western Ry. Co., (1853) Macr. P. C. 203.

(*p*) See Morris' Patents Conveyancing, p. 120; the form of assignment, Appendix.

(*q*) See Morris' Patents Conveyancing, p. 121.

(*r*) *Ibid.* 123.

(*s*) *Ibid.*

(*t*) *Ibid.* 126.

(*u*) Sheehan *v.* Great Eastern Ry. Co., (1880) L. R. 16 Ch. D. 59.

(*x*) (1853) 2 E. & B. 69; Macr. P. C. 188.

Co-owners.

infringements committed during the lifetime of the deceased tenant in common. It must be noticed that one ground for the decision in favour of the plaintiff *Smith*, who was a surviving tenant in common, being entitled to sue in respect of the infringements in question, was that, had the action been brought during the lifetime of both tenants in common, it must have been brought by them both jointly, and the case is consequently to that extent an authority for saying that one of two co-assignees cannot sue for infringement without the other being a party to the action. (*y*)

There is, however, the authority of *Malins*, V.C., for saying that one person interested in a patent is entitled to sue without making his co-owners parties to the action, either for an injunction or for an account. (*z*) It must be concluded, from a consideration of the case (*a*) on which the learned Vice-Chancellor's opinion was mainly formed, that the damages to which the plaintiff would in such circumstances be held entitled would be, not the whole profits, but only such proportion as should appear to be his, having regard to the proportion of the patent vested in the other co-owners. And on the analogy of *Bergmann* v. *Macmillan* (*b*) the account must be taken in the presence of all the parties interested.

Moreover, it has been held that where an assignment is made of a share in profits (arising, *e.g.*, from the working of a patent by licences) the assignee is entitled to an account from the licensee, but that the account must be taken once for all in the presence of all the parties interested. Thus, if there be more than one assignee, all the assignees are necessary parties. And the assignee who asks for an account of the profits must place himself in the position of the assignor, by offering to pay to the accounting party anything which may be due to him from the assignee. Also an account of profits will not be directed if it is clear that no profits have been made. (*c*)

All parties interested in the patent, if they do not join as co-plaintiffs, may be, and for safety's sake should be, joined as defendants, in order that the infringing defendant may not be called on to account more than once, first to the plaintiff, and then separately to the other persons claiming an interest in the patent. (*d*)

(*y*) But see above.

(*z*) Sheehan *v.* Great Eastern Ry. Co., (1880) L. R. 16 Ch. D. 62.

(*a*) Dent *v.* Turpin, (1861) 2 J. & H. 139.

(*b*) (1881) L. R. 17 Ch. D. 427.

(*c*) Bergmann *v.* Macmillan, (1881) L. R. 17 Ch. D. 423.

(*d*) Wesllced *v.* Keene, (1838) 1 Beav. 287; Bergmann *v.* Macmillan,

Assignment of Improvements.

Each one of a number of joint grantees, or co-owners by assignment, of a patent is entitled to use the invention himself, without being under any obligation to obtain the consent of the others, or to account to them for any profits made by such use. (*e*) It is, however, doubtful whether one of such co-owners could grant a valid licence without the consent of the rest, and without a liability to account to them for royalties received. (*f*)

Thus a person who is co-owner in fee of one moiety of a patent and mortgagee of the other moiety is entitled to work the patent himself without liability to account to the mortgagor; though if he grant licences he would, probably, in an action for redemption be bound to account to the mortgagor for royalties received as being profits received by him when mortgagee in possession. (*g*)

It is clear that one of two co-patentees cannot dispose of the rights of the other. Thus, if A. and B. are patentees, and B. wants to get rid of A., the only way in which he can do so is by getting A. to assign his rights to him: he cannot assign the whole patent to C., and then say that A. has no right to use it at all. (*h*)

Trustees and *cestuis que trustent.*

A patent may be vested in one as trustee for another person or persons, and it is competent for trustees to sue alone in respect of infringements, but the Court or a Judge may at any stage of the proceedings order the *cestuis que trustent* to be made parties; (*i*) also a person is entitled to bring an action in his own name when the patent is registered in the name of another, if that other is a trustee for the plaintiff. (*k*)

Assignment of Future Improvements.

Covenants to assign future improvements.

When inventors have once turned their attention to a particular class of inventions, or to some problem, the successful solution of which is felt to be a desideratum, which must bring benefit to the public and remuneration to the discoverer, it is well known that they are very likely to go on inventing fresh methods and improvements in the same

(1881) L. R. 17 Ch. D. 423; Van Gelder Co. *v.* Sowerby, Ld., (1890) 7 R. P. C. 41.

(*e*) Mathers *v.* Green, (1865) L. R. 1 Ch. 29; Steers *v.* Rogers, (1893) 15 R P. C. 245.

(*f*) p. 131 *post.*

(*g*) See Steers *v.* Rogers, (1892) 9 R. P. C. 177; 10 R. P. C. 245.

(*h*) *In re* Horsley and Knighton's Patent, (1869) L. R. 8 Eq. 475.

(*i*) R. S. C. Order xvi. r. 8.

(*k*) Speckhart *v.* Campbell, "Times," Mar. 13, 1884.

Assignment of Improvements.

direction. It frequently happens, therefore, that a purchaser of an invention is desirous of acquiring the right to an assignment of all future inventions and improvements of a like nature to the invention sold, which may be the produce of the assignor's inventive talent, for, as far as the purchaser is concerned, the utter destruction of the value, from a commercial point of view, of the original invention may be the result, if the monopoly in a better method, or an improvement in the means of achieving the desired object, is allowed to pass into the possession of anybody but himself. To prevent this, a covenant by the vendor of a patent to assign to the purchaser all future patent-rights which the vendor may thereafter acquire, in whatever way, of a like nature to the patent sold, is frequently inserted in deeds of assignment; and such an agreement is not contrary to public policy. (*l*)

are not contrary to public policy.

On the contrary, public policy is directly in favour of such an agreement, by means of which a needy and struggling inventor may obtain a present payment to put his intellectual gifts at the service of a purchaser, and thus become enabled, in comparative ease and affluence, to devote his attention to scientific research, whereas if such a contract were prohibited he would be compelled to apply himself to some menial, or mechanical, or lower calling, in order to gain a livelihood. (*m*)

The purchaser of a patent can maintain an action for breach of an agreement to assign further improvements and inventions, but specific performance will not be ordered on an interlocutory application. (*n*)

Covenants for the assignment to the purchaser of patents for improvements upon the invention which the assignor shall in future become possessed of should be carefully drafted. Great difficulty and difference of opinion between Judges may easily arise as to the meaning of the word "improvements" in such a covenant. (*o*) It does not follow that because the directions given in a subsequent specification would, if carried out, amount to an improvement of a prior patent, therefore

(*l*) Printing and Numerical Registering Co. *v.* Sampson, (1875) L. R. 19 Eq. 462.

(*m*) *Ibid.*; see judgment of Jessel, M.R., p. 465.

(*n*) London and Leicester Hosiery Co., Ld. *v.* Griswold, (1886) 3 R. P. C. 251.

(*o*) See Valveless Gas Engine Syndicate *v.* Day, (1899) 16 R. P. C. 97; Davies *v.* Curtis and Harvey, Ld. (1902) 19 R. P. C. 580; 20 R. P. C. 561; Neil *v.* Macdonald, (1902) 20 R. P. C. 213.

the subsequent patent is for an improvement on the prior patent. (*p*) Estoppel.

Where an assignor covenanted that "any improvements on the said invention that he shall during the continuance of the aforesaid patents become possessed of shall be considered and be held to be part of the property hereby assigned, &c.," the covenant was held to contemplate only improvements discovered or made by the assignor himself, which he would be in a position to patent and assign to the assignee, and not to apply to patents in which he had only a beneficial interest with other persons. (*q*)

Estoppel.

If a deed of assignment recite that the assignor is the inventor, he is estopped from denying the validity of the patent in any subsequent action brought by the assignee, or any person deriving title through him, in respect of any infringement; for the principle of the law of estoppel is, that where a man has entered into a solemn engagement by deed under his hand and seal as to certain facts he shall not be permitted to deny any matter which he has so asserted. (*r*) Recitals and covenants by the assignor which operate as an estoppel.

When there is fraud, or common mistake between the parties as to what was intended, then there is no estoppel. (*s*)

It is the usual practice for the assignor to enter into covenants that he is the true and first inventor, and that the patent is valid, so far as his acts and omissions are concerned. A covenant for title is implied if the assignor is expressed to assign as beneficial owner or trustee. (*t*)

There may be an estoppel by matter of recital, (*u*) but an estoppel must be certain, and is not to be taken from argument or inference. (*x*)

If the recital only amount to an assertion that the assignor is himself an assignee of the actual inventor, it appears that

(*p*) See Valveless Gas Engine Syndicate *v.* Day, (1899) 16 R. P. C. 100, 102.

(*q*) Pneumatic Tyre Co. *v.* Dunlop, (1896) 13 R. P. C. 553.

(*r*) Bowman *v.* Taylor, (1834) 2 A. & E. 278, 291; per Taunton, J., Walton *v.* Lavater, (1860) 8 C. B. N. S. 162; Dunnicliff *v.* Mallett, (1859) 7 C. B. N. S. 209; Franklin Hocking & Co. *v.* Franklin Hocking, (1899) 6 R. P. C. 69, 72; see also rule in Pickard *v.* Sears, (1837) 6 A. & E. 469.

(*s*) Ashworth *v.* Law, (1889) 7 R. P. C. 234; Hayne *v.* Maltby, (1789) 3 T. R. 439; Lovell *v.* Hicks, (1836) 2 Y. & C. 46.

(*t*) Conveyancing Act, 1881, s. 7.

(*u*) Lainson *v.* Tremere, (1834) 1 A. & E. 792; Bowman *v.* Taylor, (1834) 2 A. & E. 278, 293.

(*x*) Co. Litt. 352 b; Bowman *v.* Taylor, (1834) 2 A. & E. 278, 294.

Estoppel.

the assignor is not estopped from denying the validity of the patent in an action brought by the assignee on a covenant contained in articles of agreement. (*y*)

The grantee and assignor of letters patent is estopped in an action brought by the assignee against him for infringement, from denying that he had any title to convey. (*z*)

Assignor not estopped from denying a particular construction of the specification.

It is competent, however, for the grantee and assignor to dissent, at the hearing of an action for infringement brought against him by his assignee, from a particular construction of the specification which would have the effect of sustaining the patent as against another construction which would invalidate it. (*a*)

Also in such an action the defendant assignor, though not entitled to dispute the validity of the patent, may contend that the specification bears such a construction as to exclude what he is in fact doing from the ambit of the claim. Thus in *Hocking & Co.* v. *Hocking* (*b*) the patent was for "an improved apparatus for heating water and other liquids, applicable also as a condenser, cooler, or refrigerator." The specifications had been amended by disclaimer and memorandum of alteration filed by other assignees and predecessors in title of the plaintiff company. The complete specification, as amended, described and claimed the construction of a condenser, cooler, or refrigerator, consisting of an arrangement of annular spaces (*i.e.*, steam-spaces), substantially as described and shown, the principle of annularity and concentricity being disclaimed. Reversibility of the steam- and water- spaces was also pointed out in the specification as a special feature. The plaintiffs alleged against the defendant infringement of the condensing apparatus. It appeared in evidence that the apparatus of the defendant, in its simple form, was composed of a helical steam-space between two water-spaces, all the spaces being concentric and annular, and his multiform arrangement consisted of a cluster of the simple forms inside a large cylindrical vessel, and neither of his forms admitted of reversibility. At the trial, the defendant denied infringement, and alleged that, if the patent was so construed as to cover the alleged infringement, it would be void for want of novelty. *Kekewich*, J., who was the Judge of first instance,

(*y*) Hayne *v.* Maltby, (1789) 3 T. R. 438; 1 W. P. C. 291; Bowman *v.* Taylor, (1834) 2 A. & E. 278.

(*z*) Oldham *v.* Langmead, (1789) 1 W. P. C. 291.

(*a*) Hocking & Co. *v.* Hocking, (1887) 4 R. P. C. 255, 434; 6 R. P. C. 69.

(*b*) (1887) 4 R. P. C. 255, 434; 6 R. P. C. 69.

held (1) that the Court would regard with extreme jealousy the defendant's claims, as being in derogation of his own grant, and would assume that the patent must have a reasonable meaning; (2) that the essence of the amended patent was the alternation of steam- and water-spaces of the particular character described and shown in the figures, combined, if convenient, but not of necessity, with concentricity; and (3) that the defendant's apparatus infringed, although it contained certain minor differences and additions, and in one form only a single steam-space, while in the rest the spaces were not concentric. The Court of Appeal (*dissentiente Fry*, L.J.), dismissed the appeal with costs, and the defendant thereupon appealed to the House of Lords. The House of Lords held that, although it approved of the principle that a grantee shall not defeat his own grant, the language of the specification must not be strained against the patentee, and that the effect of the disclaimer was to limit the patent to machines constructed substantially as described, and, therefore, the only question was whether the defendant's apparatus was so constructed. The House found as a matter of fact that the defendant's apparatus was not so constructed, and the decisions of the Court of Appeal and *Kekewich, J.*, were accordingly reversed with costs, in favour of the appellant and defendant in the action.

Estoppel.

Though an assignor, who assigns under terms which amount to an express or implied warranty of the validity of the patent, is estopped from denying the patent in an action brought against him by the assignee, he cannot be restrained from assisting as a scientific witness or otherwise a defendant, other than himself, in an action instituted by the assignee, or from communicating to such defendant evidence tending to show the invalidity of the patent.

Assignor not estopped from assisting a defendant with evidence.

Thus, on an interlocutory application in *London and Leicester Hosiery Co., Ld.* v. *Griswold* (*c*) the plaintiff sought to obtain an injunction of the Court to restrain the defendant in the action, who was the original patentee and assignor of the company's patents, from assisting, as a scientific witness or otherwise, the defendants in two other actions then pending for the infringement of the company's patents. *North*, J., in refusing the injunction asked for, pointed out that he could not, under any circumstances, grant an injunction to restrain the defendant from obeying the subpœna to attend as a

(*c*) (1886) 3 R. P. C. 251.

Warranty.

witness in Court and answering questions which might be properly put to him in the course of examination as a witness, the refusal to answer which might lead to his committal to prison for contempt.

On the same application it was also sought by the plaintiffs to restrain the defendant in the action from communicating to the defendants in other actions information in his possession which might enable the defendants in the other actions to show that the patents assigned were not valid patents. The Court refused to grant an injunction, and the learned Judge stated that, though it is well settled that a licensee of a patent is, during the continuance of the licence, estopped from disputing the existing patent, yet it is going a great deal further to say that a man, who has assigned a patent, is to be restrained from mentioning to any person, at any time, or under any circumstances, matters which might show that the patent, which was granted by the Crown in the belief that the invention claimed was a new invention, was not, as a matter of fact, a new invention.

Assignment by trustee in bankruptcy does not raise an estoppel against the bankrupt patentee.

A bankrupt patentee, whose patent has been sold by his trustee in bankruptcy, is not estopped, in an action subsequently brought against him (the patentee) for infringement, from denying the validity of the patent, either by matter of record, on the ground that the letters patent were matters of record; or by deed, by reason of the specification being under his seal; or by matters *in pais*, on the ground of the statements in the declaration accompanying his application, there being nothing to show that the purchaser bought on the faith of those statements. (*d*)

Warranty.

Warranty may be express or implied.

In cases arising on the breach of contracts by purchasers of letters patent, it is always most important to consider whether the contract contains any express or implied warranty on the part of the assignor as to the validity of the patent, for, if there is no such warranty, the purchaser, in the absence of fraud, cannot repudiate the contract on the ground that he has subsequently discovered the patent to be void. A purchaser, without a warranty from the assignor, in the absence

In the absence of warranty the doctrine of *caveat emptor* applies.

(*d*) Cropper *v.* Smith, (1884) L. R. 26 Ch. D. 700; L. R. 10 App. Cas. 249; 1 R. P. C. 81; 2 R. P. C. 17.

of fraud, is bound to take the patent with all its faults, if it have any. (e) Warranty.

In *Hall* v. *Conder*, (f) the leading case on this point, the facts were as follow:—By an agreement reciting that the plaintiff had invented a method for the prevention of boiler explosions, and had obtained a patent for the use of the same within the United Kingdom, and was desirous of taking out patents in France, Belgium, and such other places as might be found expedient, and that he had disposed of a moiety of the English patent, and had applied to the defendant to purchase the other moiety, and, to assist him in taking out the foreign patents, it was agreed that the defendants should pay to the plaintiff a certain sum in such manner as should be mutually agreed on, and also a proportion of the net profits, and in consideration of such agreement on the part of the defendant, the plaintiff "agreed to make over and transfer, and did thereby accordingly make over and transfer to the defendant one half of the said foreign patents, when the same should be obtained, and the above-mentioned one half of the English patent thereinbefore referred to." The action was brought for the specific performance of this agreement, and the defendant objected that the invention was wholly worthless, and of no public utility, and was not new in England, and that the plaintiff was not the true and first inventor. The Court of Common Pleas, however, held that, in the absence of any allegation of fraud, it must be assumed that the plaintiff was an inventor, and there was no warranty, express or implied, either that he was the true and first inventor, within the meaning of the statute of James I., or that the invention was useful or new; but that the contract was for the sale of the patent such as it was, each party having equal means of ascertaining its value, and each acting on his own judgment.

In *Smith* v. *Buckingham* (g) it appeared that the defendant had agreed to purchase the patent rights of the plaintiff in an invention for which provisional protection had been obtained. The agreement contained a recital to the effect that the plaintiff had lately invented an improved composition or material to be used in waterproofing, or rendering woven fabrics impervious to moisture. The action was on the breach of the agreement,

(e) Hall v. Conder, (1857) 2 C. B. N. S. 22; Smith v. Neale, (1857) 2 C. B. N. S. 67; Heine v. Spong, (1864) 22 L. T. C. 110.

(f) (1857) 2 C. B. N. S. 22.

(g) (1870) 21 L. T. N. S. 819.

Warranty.

and the defendant pleaded that the plaintiff had not invented an improved, or any, composition or material which could be employed in rendering woven fabrics impervious to moisture; but the Court of Queen's Bench gave judgment for the plaintiff, holding that the plea did not show a total failure of consideration, and that there was no express or implied warranty, and that the defendant had got what he bargained for.

When, upon an agreement for purchase, the validity of the patent is a subject specially contemplated by the parties, the agreement should make it clear whether the question of validity is to be decided by the opinion of the purchaser, or whether the patentee warrant the validity in fact. Thus, when an agreement for purchase was entered into for a sum down and the remainder "within twenty-eight days, which latter payment the purchaser agrees to make immediately he has satisfied himself that the said patents are valid and of full force and effectual in law," and the vendor warranted the validity, it was held that in an action for specific performance the plaintiff was entitled to particulars of the purchaser's objections to validity; and, as it turned out that one of the patents in question was void for non-payment of fees, the action was dismissed, the real question being as to the validity of the patents in fact and not whether the purchaser was satisfied as to validity. (*h*)

Covenants for validity, unless carefully drawn, may, in actions for specific performance between vendor and purchaser, give rise to different questions as to whether the guarantee is in the nature of a condition entitling the purchaser to repudiate the contract, or whether it is a mere warranty for the breach of which the remedy is only damages. That is to say, whether the covenant operates between the parties prior to the discharge of the purchase consideration, or whether it is inoperative unless and until some third party impugns the validity of the patent. (*i*)

No injunction restraining the patentee from dealing with patents which are the subject of an alleged agreement for sale and distribution of the proceeds of sale between him and the purchaser will be granted unless the purchaser is in a position to obtain specific performance of the agreement. (*k*)

(*h*) Hazleburst *v.* Rylands, (1892) 9 R. P. C. 1.

(*i*) See Nadol *v.* Martin, (1902) 20 R. P. C. 129, 723; 23 R. P. C. 41; Birchem *v.* Wren, (1904) 21 R. P. C. 683.

(*k*) Harlott *v.* Hutchinson, (1891) 8 R. P. C. 457.

Warranty.

Statement that a patent is "valuable and valid."

When a company is promoted for the purpose of acquiring a patent, which has not been declared void by a Court of law and is described in the prospectus as a "valuable and valid patent" on the strength of a favourable report of an expert, it is not competent to a shareholder in an action for the removal of his name from the register of members, on the ground of misrepresentation in the prospectus, to adduce evidence of the invalidity of the patent. In such a case the question is whether the patent was valuable at the date of the prospectus. (*l*)

No implied warranty that assignee will be able to use the invention without licence.

It is submitted that upon the sale of a patent there is no implied warranty that the purchaser will be entitled to put the invention into practice without liability to obtain the licence of a prior patentee. (*m*)

Assignee with notice takes subject to prior assignee's covenants.

When an assignee takes from a prior assignee, with notice, he takes subject to the prior assignee's covenants, when the inference is that the intention of the contracting parties was that the obligations were to attach to the patent itself. (*n*) Thus (*o*) a patentee assigned letters patent to two persons, A. and B., who covenanted with him that they, their executors, administrators, and assigns, would use their best endeavours to introduce the invention by granting licences, or working the patent, or selling it, and that the patentee should be entitled to receive a percentage of all net profits, whether arising from royalties, sale, or otherwise, which should be received by A. and B., or the survivor of them, the executors or administrators of such survivor, or their or his assigns, and that an account of profits should be rendered yearly to the patentee and his share of profits paid to him by A. and B., and the survivor of them, and the executors or administrators of such survivor, or their or his assigns, with a proviso that, after a sale had been made of the patent, the interests of the patentee in the profits should cease and a final account be come to. A. and B. had taken the assignment with a view to forming a company to work the patent. The company was formed, and the patent made over to it. The patentee sued the company for an account of profits. The company demurred, on the ground that there was no privity between

(*l*) Stavert *v.* Passberg Grain Syndicate, (1891) 8 R. P. C. 400.

(*m*) Mouforts *v.* Marsden, (1895) 12 R. P. C. 266.

(*n*) Werdermann *v.* Société Générale d'Electricité, (1881) L. R. 19 Ch. D. 246; Bagot Pneumatic Tyre Co. *v.* Clipper Pneumatic Tyre Co., (1901) 19 R. P. C. 74, 75; see also New Ixion and Cycle Co. *v.* Spilsbury, (1898) 15 R. P. C. 380, 567; [1898] 2 Ch. 137, 484.

(*o*) Werdermann *v.* Société Générale d'Electricité, (1881) L. R. 19 Ch. D. 246.

Rights of Assignees.

them and the plaintiff, and that the plaintiff's right, if any, was against A. and B. only. It was held, however, both by *Bacon*, V.C., and the Court of Appeal, that the plaintiff could sue the company for an account of profits, since the stipulations of the assignment to A. and B. amounted to a contract that the owners for the time being of the patent should account for and pay to the plaintiff a share of the profits, unless a sale within the meaning of the deed was effected, and no person taking the patent with notice of this contract could refuse to give effect to it.

Rights of Assignees.

Action for infringement by assignee.

The assignee of a patent may maintain an action for infringement, though he has acquired the right by two assignments of separate portions and the party sued is the original grantee. Moreover, the action is maintainable, although there has been no infringement since the defendant has received notice that the entire interest in the patent has become vested in the plaintiff. (*p*)

In order that an assignee may sue alone in respect of infringements, it is necessary for him to show that the assignment of the patent was completed before the issue of the writ, since a mere equitable assignee cannot maintain the action, without bringing the legal owner before the Court. (*q*) Thus, where the assignment was of the benefit of an application for a patent with a provisional specification, and subsequent to the writ an assignment of the completed patent was effected, it was held that the executors of the deceased patentee were necessary parties, and the trial was adjourned till the executors were added as plaintiffs in pursuance of leave granted. (*r*)

Action for infringement against assignor.

The assignment of a patent restrains the assignor and subsequent licensees from him from working or using the invention without the leave or licence of the assignee; (*s*) and with respect to prior licensees from the assignor the rule seems (in the absence of any express reservation in the assignment of their rights) to be that, if the assignee took the assignment with notice thereof, he takes it subject to

(*p*) Walton *v.* Lavater, (1860) 8 C. B. N. S. 162.

(*q*) See Bowden's Patent Syndicate, Ld. *v.* Smith, (1904) 21 R. P. C. 433.

(*r*) *Ibid.*

(*s*) Hassall *v.* Wright, (1870) L. R 10 Eq. 509.

their licences, and, therefore, cannot restrain them, but that, if he had no such notice, he is entitled to restrain them.

Rights of Assignees.

An assignee is, at any time so long as he remains the person for the time being entitled to the benefit of the patent, entitled to ask for leave to apply at the Patent Office for liberty to amend the specification; he is in fact included in the meaning of the term "patentee" as used in the Act of 1883. (*t*)

Amendment of specification by assignee:

It may be questioned whether a person to whom a patent has been assigned by way of mortgage is entitled to apply at the Patent Office for leave to amend the specification, or to present a petition to the Privy Council for the prolongation of the patent, without his mortgagor being a party to the application. (*u*)

e.g., mortgagee.

It is advisable for the mortgagor of a patent to insist on the mortgagee entering into a covenant not to seek leave to amend the specifications or drawings without the written consent of the mortgagor.

An assignee, as the person for the time being entitled to the benefit of the patent, is included in the meaning of the term "patentee," as defined by the Act of 1883, and competent to petition for the prolongation of the patent; (*v*) and an extension may be granted to the assignee, if the patentee has ceased to have any connection with the working of the patent, (*x*) or if the assignee has paid a large sum for the assignment and the development of the invention. (*y*)

Petition for prolongation of patent by assignee.

But assignees petitioning for the extension of letters patent, are not received with so much favour as the original grantee, (*z*) and the prayer of the petition is not usually granted unless it is evident that the original grantee will derive some benefit by the extension. (*a*)

Not unfrequently conditions are imposed for the benefit of the patentee when prolongations are granted on the petition of assignees, (*b*) and in *Bovill's Patent*, (*c*) where the

(*t*) 46 & 47 Vict. c. 57, s. 46.

(*u*) See Van Gelder Co. *v.* Sowerby, Ld., (1890) 7 R. P. C. 41, 208.

(*v*) 5 & 6 Vict. c. 83; 7 & 8 Vict. c. 69; Russell *v.* Ledsam, (1847) 14 M. & W. 574, 588; 1 H. L. Cas. 687.

(*x*) Napier's Patent, (1861) 13 Moo. P. C. 543.

(*y*) Bodner's Patent, (1849) 6 Moo. P. C. 468.

(*z*) Norton's Patent, (1863) 1 Moo. P. C. N. S. 3, 9; Claridge's Patent, (1851) 7 Moo. P. C. 394; Normand's Patent, (1870) L. R. 3. P. C. 193; p. 163 *post*.

(*a*) Norton's Patent, (1863) 1 Moo. P. C. N. S. 339; Pitman's Patent, L. R. 4 P. C. 87; pp. 163, 164 *post*.

(*b*) Pitman's Patent, (1871) L. R. 4 P. C. 84, 87; Herbert's Patent, (1867) L. R. 1 P. C. 399; Whitehouse's Patent, (1830) 1 W. P. C. 473; Markwick's Patent, (1830) 13 Moo. P. C. 310; Russell *v.* Ledsam, (1847) 14 M. & W. 574; p. 191 *post*.

(*c*) (1863) 1 Moo. P. C. N. S. 348.

Assignment and Partnership.

petition was presented by the patentee and his mortgagee, the extension was granted to the patentee alone.

Assignment and Partnership.

Assignment of a share may constitute a partnership.

The assignment of a share in the profits of letters patent may constitute a partnership between the assignor and assignee, and creat consequences not perhaps contemplated between them which might have been avoided by the grant of a licence at a royalty instead of an assignment. (*d*)

Rights of partners working an invention.

Where a partnership at will is formed for the purpose of working an invention for which a patent has been taken out by, and registered in the name of, one of the partners alone, the legal right to use the invention becomes an asset of the partnership and each partner acquires a right to practise it, which right is not taken away by the registered owner assigning the patent to third parties who have notice of the existence of the partnership; and even after the determination of the partnership each of the partners has an equal right and licence to use the invention, the dealings between them having been such as to create in the one partner an irrevocable licence, as far as the other partner, the patentee, is concerned, to use the invention. (*e*)

Thus a person named *Kenny*, who had invented an improved kind of button-hole for boots and shoes, and a machine for making it, obtained a loan from a person, *Lutwyche*, to enable him to meet the expense of taking out a patent for the invention; and the patent having been obtained by *Kenny*, in his name alone, he and *Lutwyche* for more than four years worked the invention in partnership, together. After the partnership had existed for some years, *Kenny* agreed with the trustee of a projected company to assign the patent to it, and the company having been formed, the assignment was duly made and registered. At the time of the agreement and assignment respectively, the trustee and directors of the company knew that *Lutwyche* and *Kenny* had been working the invention together. Notice of the assignment was given to *Lutwyche*, and he was warned not to infringe the patent, but he continued to work the invention, and the company then sought to restrain him from so doing, but the Court held that by the

(*d*) 1 W. P. C. 417 *n.*
(*e*) Kenny's Patent Button-holing Co. *v.* Somervell, (1878) 26 W. R. 787.

partnership *Lutwyche* had obtained a licence to work the invention; that at the time of the assignment of the patent the company had notice of the existence of his right; and that they could not revoke the licence. (*f*)

Assignment by Act and Operation of Law.

Assignment by Act and Operation of Law.

Act and operation of law.

An assignment by act and operation of law takes place when a person becomes entitled to a patent right without any deed of assignment from the person to whom he succeeds or through whom he claims. The patent is granted to the grantee, his executors, administrators, and assigns, and these words of limitation constitute it an assignable chattel interest, assignable by act and operation of law, just as any other chattel is.

Death of grantee or assignee.

On the death of a grantee or assignee of a patent, the patent vests in his executor if he has made a duly executed will, and in his administrator if he dies intestate; (*g*) and such executor or administrator may sue for and recover in respect of infringements committed during the lifetime of the testator or intestate, as the case may be, if the probate of the will or grant of letters of administration has been entered on the register of patents.

Death of person possessed of an invention.

If a person die possessed of an invention without having made an application for a patent, the right to apply vests in his legal representative, who of course would hold the patent, if granted, subject to any trusts contained in the will of the deceased, or for the benefit of the next of kin in cases of intestacy. And the application must be made within six months of the decease of such person, and must contain a declaration by the legal representative that he believes such person to be the true and first inventor. (*h*)

Trustee in bankruptcy

If a grantee or assignee is declared bankrupt, the patent vests in his trustee in bankruptcy, (*i*) who thereupon becomes entitled, for the benefit of the creditors, to sue in respect of infringements, whether committed before the bankruptcy or not, but it is submitted that the trustee, before commencing action, must obtain an entry of his title on the register of patents.

(*f*) Kenny's Patent Button-holing Co. *v.* Somervell, (1878) 26 W. R. 787.

(*g*) Williams on Executors, 8th ed. vol. i. p. 824.

(*h*) 46 & 47 Vict. c. 57, s. 34; Vol. I. p. 5.

(*i*) Bankruptcy Act, 1833, ss. 44, 50, 54, 168; see Hesse *v.* Stevenson, (1808) 3 Bos. & P. 565; Bloxam *v.* Elsee, (1827) 6 B. & C. 169; 9 Dowl. & R. 215; McAlpine *v.* Mangall, (1846) 15 L. J. C. P. 298.

Assignment by Act and Operation of Law.

If a bankrupt before he obtains his certificate of discharge obtain a patent it will vest in his trustee for the benefit of the creditors. (*k*) The fruits which result from schemes which a bankrupt has in his head before he obtains his discharge do not pass to the trustee; but if the bankrupt avail himself of his knowledge and skill, and thereby acquires a beneficial interest, which may be the subject of assignment, that interest will pass to the trustee. (*l*) An undischarged bankrupt, however, if he is on the register as legal owner, can, subject to the right of his trustee in bankruptcy to intervene, maintain an action for infringement of a patent acquired subsequently to his bankruptcy, as being an action with relation to after-acquired property. (*m*)

Rights of undischarged bankrupt to fruits of unpatented invention.

The Crown.

Upon the dissolution of a limited company the patent rights of the company vest in the Crown. It is submitted that a patent being a chose in action, (*n*) which has to all intents the like effect as against the Sovereign, his heirs and successors, as it has against a subject, (*o*) there is no merger when it vests in the Crown, but the chose in action continues to exist and inures for the benefit of the Crown, and is as much assignable by the Crown as it would have been assignable by a subject who had become possessed of it. The fact is that the right of the true and first inventor, and those who derive title through him, to interfere with acts of all other subjects, as well as the Crown itself, which would otherwise be free and lawful, is created by an exercise of the royal prerogative as distinct from a statutory power. The right cannot be created at all unless and until the invention comes into being. The Crown becoming possessed of the right is not an instance of something originally in the Crown returning to the Crown. On the contrary, it is a case of a chose in action lawfully created by the exercise of the royal prerogative coming into the possession of the Crown. (*p*)

A purchaser from the liquidator of a limited company should take care to obtain an actual legal assignment of the patent before the dissolution of the company. In one case, where

(*k*) Bankruptcy Act, 1883, ss. 44, 50, 54, 168; Hesse *v.* Stevenson, (1808) 3 Bos. & P. 565.

(*l*) *Ibid.* See judgment of the Court of Common Pleas, delivered by Lord Alvanley, C.J.

(*m*) Webb *v.* Fox, (1797) 7 T. R. 391; Fowler *v.* Down, (1797) 1 B. & P. 44; Herbert *v.* Sayer, (1844) 5 Q. B. 965; Buchan *v.* Hill, W. N. (1888) 233; Williams on Bankruptcy, 8th ed. p. 208.

(*n*) See *infra*.

(*o*) 46 & 47 Vict. c. 57, s. 21 (1); p. 145 *post*.

(*p*) Cf. *In re* Higgenson and Dean, [1899] 1 Q. B. 325, 332; but see *In re* Taylor's Agreement Trusts, [1904] 2 Ch. 737; 21 R. P. C. 713.

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a purchaser failed to obtain a legal assignment before dissolution, it was held that the provisions of the Trustee Act, 1893, as to vesting orders did not apply, since the legal estate had vested in the Crown and the Crown is not bound by a trust or the Trustee Act, and, even though the Crown consent, the Court has no jurisdiction to make a vesting order. The petition, in this case, was ordered to stand over to allow the petitioner to apply at the Patent Office to have his name entered on the register as proprietor of the patent; this was done under the direction of the Board of Trade, and the petition was dismissed. (*q*).

Seizure by sheriff.

Articles made under letters patent are liable to seizure by the sheriff under a writ of *fi. fa.*, or under a restraint, and may be sold. The rights to the free use, or at all, of such articles as against the patentee would not pass upon the sale to the purchaser when the debtor himself was only in the enjoyment of a limited personal licence to use the article, (*r*) though it is clear that the purchaser has the property in the chattel. (*s*) The patentee's right is a chose in action, and entirely distinct from the right of property in the chattel, and the patentee's right under the patent being a chose in action cannot be taken under a *fi. fa.* or *levari facias* since it has no locality, and, therefore, cannot be found upon the premises. (*t*) To quote the words of Lord *Herschell*, L.C., (*u*) "What is the right which a patentee has, or patentees have? It has been spoken of as though a patent right were a chattel or analogous to a chattel. The truth is that letters patent do not confer upon him a right to manufacture according to his invention. That is a right which he would have equally effectively if there were no letters patent at all—only in that case all the world would equally have the right. What the letters patent confer is the right to exclude others from manufacturing in a particular way and using a particular invention."

Registration of Assignments.

Statutory provisions.

By sec. 87 of the Act of 1883 (*v*) it is enacted that when a person becomes entitled by assignment, transmission, or

(*q*) Taylor's Agreement Trusts, (1904) 21 R. P. C. 713.

(*r*) See British Mutoscope and Biograph Co. *v.* Horner, (1901) 18 R. P. C. 177.

(*s*) *Ibid.*; Vavassem *v.* Krupp, (1878) L. R. 9 Ch. D. 360; Vol. I. pp. 508, 509.

(*t*) British Mutoscope and Biograph Co. *v.* Horner, (1901) 18 R. P. C. 180.

(*u*) Steers *v.* Rogers, (1893) 15 R. P. C. 251.

(*v*) See also s. 23.

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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 in the register of patents as proprietor of the patent; and it is by the same section further provided that the person for the time being entered on the register of patents as proprietor of a patent shall, subject to any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licences as to, or otherwise deal with the same, and to give effectual receipts for any consideration for such assignment, licence, or dealing, provided that any equities in respect of such patents may be enforced in like manner as in respect of any other personal property.

It is submitted that a person can only claim registration under this section if he possesses the legal estate, and consequently a mere equitable assignee is not entitled to registration under this section. (*x*) Equitable assignments, however, may be entered on the register as documents affecting the proprietorship of the patent. (*y*)

Assignments should be registered immediately.

It is to the interest of assignees to register their assignments as soon as possible. (*z*)

Mortgagees are registered as such and not as assignees.

Mortgagees of patents are always entered on the register as "mortgagees," and not as "assignees." It is submitted that a mortgagee, together with his mortgagor, form the proprietor. (*a*)

Documents of earlier date than the letters patent.

As a rule, documents relative to the proprietorship of letters patent of earlier date than the letters patent will not be entered on the register. It cannot, however, be laid down as a hard-and-fast rule that such documents ought not to be entered on the register, for there may be some which, as amounting to assignments, ought to be entered, whilst, on the other hand, to the entry of others very forcible objections might be raised which would prove absolutely insuperable. (*b*)

Practice on registration.

The practice to be observed where an application is made for an entry of an assignment on the register of patents is regulated by Patent Rules, 1903. (*c*)

Is registration a condition precedent to right to sue?

Since the Act of 1883 came into operation, there has been no decided case in which the question has been determined

(*x*) Stewart *v.* Carey, (1892) 9 R. P. C. 9, judgment of Bowen, L.J.

(*y*) See p. 58 *ante*.

(*z*) See *infra*.

(*a*) See Van Gelder Co. *v.* Sowerby, Ld., (1890) 7 R. P. C. 41, 208.

(*b*) In the Matter of Parnell's Patent, (1888) 5 R. P. C. 126, 130.

(*c*) rr. 51–65.

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whether an assignee of a patent is entitled to maintain an action for infringement before the assignment has been entered on the register, but on the authority of the old cases it is submitted that he could not do so, unless the defendant had notice of the assignment.

In *Chollet* v. *Hoffman*, (*d*) a case decided under the Act of 1852, which provided for the registration of assignments, (*e*) it was held that an assignee could not sue until his assignment had been registered, otherwise as the statute provided that before such registry the original patentee should be deemed the sole owner, a defendant would be liable to be sued at one and the same time by the grantee and assignee of the letters patent. It would appear that the reasoning upon which this case was decided applies equally to the law as it now stands.

Has registration a retrospective effect?

In *Hassall* v. *Wright*, (*f*) which differed from *Chollet* v. *Hoffman* in that it was an action between assignee and assignor, whereas the latter case was between assignee and third parties, it was decided that the assignee could maintain an action against the assignor and his licensees, who had notice of the assignment, notwithstanding the fact that the assignment had not been registered.

The question as to whether the registration of an assignment has a retrospective effect, so as to place the assignee in a position to sue for and recover damages in respect of infringement committed after the assignment, but before the registration, has not been judicially determined, but it is submitted that the registration being merely an evidence of title, relates back to the date of the assignment, and that the assignee, on having his title perfected, is entitled to maintain the action. (*g*)

Where the plaintiff in an infringement action derived his title to the patent under an assignment from the executors of the patentee, and it appeared that the assignment was made after probate was granted, but before it was registered, and that the deed of assignment was not registered until after the registration of the probate, it was held that the plaintiff was entitled to maintain his action. (*h*)

(*d*) (1857) 7 E. & B. 686.
(*e*) 15 & 16 Vict. c. 83, s. 35.
(*f*) (1870) L. R. 10 Eq. 509; 40 L. J. N. S. Ch. 145.
(*g*) Hassall *v.* Wright, (1870) L. R. 10 Eq. 509.
(*h*) Ellwood *v.* Christy, (1864) 17 C. B. N. S. 754; 18 C. B. N. S. 494; 34 L. J. C. P. 130.

Registration of Assignments.

Letters patent may be surrendered to the Crown.

Surrender.

A patentee or an assignee may dispose of the patent by surrender to the Crown, the effect being to extinguish the privilege so far as the grantee is concerned; but, it is submitted that, in the absence of conditions to the contrary, it would inure for the benefit of the Crown. (*i*) If there is more than one patentee or assignee, all should join in a surrender of the patent, though probably a joint patentee or assignee might surrender his part of the patent.

The surrender of a patent must be made by deed, which requires enrolment, for nothing can be conveyed to the Crown except by matter of record. (*k*)

(*i*) See p. 126 *ante*.

(*k*) Hindmarch on Patents, 247.

CHAPTER IV.

LICENCES.

Origin of Power to Grant Licences.

Query whether patentee could grant licences without express authority.

It is open to question whether a patentee could give a valid licence authorising another person to exercise the privilege granted by the Crown, which is of a personal nature, unless the power to grant such licence was expressly given by the letters patent themselves, which, as we have seen, not only grant, but actually create the monopoly. (*a*)

Old form of letters patent.

The old form in which letters patent were granted gave express power to the grantee to authorise his licensees to perform the invention.

Present form of letters patent.

Express power of granting licences is likewise conferred on the patentee by the form prescribed by the Act of 1883, which, or which slightly modified to meet special circumstances, is now used for the grant of letters patent for inventions. (*b*) The grant is made to the "patentee," which by a previous recital means the grantee, his executors, administrators, and assigns; and then follows a prohibition to all the King's subjects whomsoever, within the United Kingdom of Great Britain and Ireland, and the Isle of Man, that they do not at any time during the continuance of the term for which the patent is granted, either directly or indirectly, make use of or put in practice the invention, or any part of the same, nor in anywise imitate the same, nor cause to be made any addition thereto or subtraction therefrom, whereby to pretend themselves the inventors thereof, without the consent, licence, or agreement of the 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 the royal command, and of being answerable to the patentee, according to law, for his damages thereby occasioned. And the letters patent further contain a proviso that nothing therein

(*a*) p. 104 *ante.* (*b*) See p. 373 *post.*

How Licences may be Granted.

contained shall prevent the granting of licences in such manner and for such considerations as they may by law be granted.

Powers of co-owners to grant licences

Each of two or more co-owners of a patent is entitled to work the invention for himself, and to assign his share, but there is some doubt whether he is entitled to grant licences without the consent of his co-owner. (*c*)

The question whether one of several co-owners is entitled to grant a licence alone depends on the words of the letters patent. (*d*) If, as in *Mathers* v. *Green*, (*e*) the grant is made to the grantees, their executors, administrators, and assigns, that they and every of them, by themselves, their servants and agents, *and such others as they shall agree with*, and no others, may use the invention, then it is submitted that no licence could be granted without the concurrence of all the patentees. (*f*)

Royalties received by co-owners.

Each co-owner is entitled to retain whatever profit he makes by his own working of the invention, though it is open to question whether, if he is entitled to and does grant licences, he is not liable to account to his co-owners for the royalties he receives. (*g*)

Mortgagee in possession may grant licences.

A mortgagee in possession may grant licences; but he is liable to account to the mortgagor in an action for redemption for royalties received, as being profits made by him whilst mortgagee in possession. (*h*)

Assignment subject to an agreement for a licence.

The assignment of a patent subject to an agreement entered into by the assignor with a third party for a licence does not render the assignee a necessary party to the deed of licence. (*i*)

How Licences may be Granted.

Form in which licences must be granted.

The effect of the prohibiting clause in the letters patent seems to make it compulsory that the licence must be under the hand and seal of the patentee; that is to say, it must be made by deed, or rather, speaking strictly, not necessarily,

(*c*) Mathers v. Green, (1865) L. R. 1 Ch. 29; see p. 113 *ante*.

(*d*) See p. 383 *post* as to form of letters patent at present in use.

(*e*) L. R. 1 Ch. 29.

(*f*) See Jessel, M.R., Powell *v.* Head, (1879) L. R. 12 Ch. D. 690.

(*g*) Dunnicliff *v.* Mallett, (1859) 7 C. B. N. S. 209; Walter *v.* Lavater, (1860) 8 C. B. N. S. 162; Mathers *v.* Green, (1865) L. R. 1 Ch. 29; Hancock *v.* Bewley, (1860) Johns R. 601.

(*h*) Steers *v.* Rogers, (1892) 9 R. P. C. 177; 10 R. P. C. 245.

(*i*) Frentzell *v.* Dongill, (1904) 21 R. P. C. 641.

by deed but by an instrument which is only of the nature of a deed, because it does not require delivery, and will not be refused in evidence, though unstamped as a deed. (*j*)

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The prohibiting clause, however, must be read in conjunction with the provision contained in the latter part of the patent, which is in the words "but nothing herein contained shall prevent the granting of licences in such manner and for such considerations as they may by law be granted." If there is a writing purporting to be an agreement of licence between the parties which has been acted upon, it is not competent to either party to repudiate responsibility under it on the ground that it is not under seal. (*k*)

A writing if acted upon is effective though not under seal.

Also an effective licence may arise from parol agreement, (*l*) if acted upon.

Licence may arise from a parol agreement acted upon.

In the case of an executory agreement for a licence under seal, it is a question of construction as to whether the grant of a formal deed is a condition precedent; and, if this is not so, the agreement is, in equity, equivalent to a formal deed of licence in questions affecting the rights of the parties. (*m*) For example, in *Tweeddale* v. *Howard and Bullough, Ld.*, (*n*) it appeared that negotiations had taken place between the plaintiff and defendants, which in the plaintiff's view resulted in an arrangement for a licence. There never was a complete agreement between the parties as to the terms of the licence by deed which was intended to be entered into; but they had, whilst negotiating as to the terms of the deed, entered into a binding agreement which covered part of the ground contemplated, and which rendered the defendants licensees up to a specific date. The plaintiff accordingly obtained a declaration that the defendants were licensees up to that date, and also an account of royalties due.

Necessity for a formal deed is a question of construction in cases of executory agreements.

An agreement for a licence made before the patent is granted and in contemplation of the grant may be sued upon after the grant. Thus, where an applicant before filing his complete specification granted a licence to use the invention, and the licensees on being sued, after the grant of the patent, for the payment of royalties refused to pay, on the ground that the letters patent were obtained for an invention less

Agreement for licence prior to the grant of the patent.

(*j*) Chanter v. Johnson, (1845) 14 M. & W. 408.

(*k*) Chanter v. Dowhurst, (1844) 12 M. & W. 823; 13 L. J. Ex. 198; Chanter v. Johnson, (1845) 14 M. & W. 408; Post Card Automatic Supply Co. v. Samuel, (1889) 6 R. P. C. 560.

(*l*) Crossley v. Dixon, (1863) 10 H. L. C. 293.

(*m*) Post Card Automatic Supply Co. v. Samuel, (1889) 6 R. P. C. 560; Tweeddale v. Howard and Bullough, Ld., (1896) 13 R. P. C. 522.

(*n*) (1896) 13 R. P. C. 522.

Classification of Licences.

than the whole invention described in the provisional specification, *Chitty*, J., held that, on the construction of the licence, without deciding the point so raised by way of defence, the bargain was that in the circumstances the royalties should be paid. (*o*)

Stamps.

Since a licence is property within the meaning of sec. 59 (1) of the Stamp Act, 1891, (*p*) a licence to use a patented invention, if made by deed, requires an *ad valorem* stamp in cases where a fixed sum is paid as consideration. In cases where the licensee covenants to pay a minimum royalty the Stamp Office requires an *ad valorem* duty to be paid on the gross minimum royalty, and this whether or not the licence is determinable.

A mere licence in writing does not require any stamp, but if the writing amounts to an agreement it must be stamped accordingly. (*q*)

Classification of Licences.

Licences to use patented inventions may be—

(1) *Expressed.*
(2) *Implied.*

Sale of patented article without restrictions gives purchaser right to use where and how he pleases.

The sale of an article without any restriction, whether manufactured under a British or foreign patent, as against the vendor, gives the purchaser an implied licence to deal with the article during its natural life in any way he thinks fit. This includes selling in any country where there is a patent in the possession of, and owned by, the vendor, (*r*) and making simple repairs; but it does not include making such radical repairs as amount practically to the construction of a new article. (*s*) The purchaser from the patentee abroad of an article made under a foreign patent obtains *quâ* the purchase no implied licence to use the article in England as

(*o*) Otto *v.* Singer, (1889) 7 R. P. C. 7.

(*p*) The Smelting Co. of Australia, Ld. *v.* The Commissioners of Inland Revenue, [1896] 2 Q. B. 179; [1897] 1 Q. B. 175.

(*q*) Wilson *v.* Union Oil Mills, (1892) 9 R. P. C. 62.

(*r*) Société Anonyme des Manufactures des Glaces *v.* Tilghman's Patent Sand Blast Co., per Cotton, L.J., (1883) L. R. 25 Ch. D. 9; Betts *v.* Willmott, (1871) L. R. 6 Ch. 239; Heap *v.* Hartley, (1888) 5 R. P. C. 603; 6 R. P. C. 495; but see p. 148 *post* and Vol. I. p. 377.

(*s*) See Dunlop Pneumatic Tyre Co. *v.* Neal, (1899) 16 R. P. C. 24; United Telephone Co. *v.* Neilson, W. N. (1887) 193; Dunlop Pneumatic Tyre Co. *v.* Wilson, (1890) 17 R. P. C. 332; Dunlop Pneumatic Tyre Co. *v.* Excelsior Tyre Cement and Rubber Co., (1901) 18 R. P. C. 209; Dunlop Pneumatic Tyre Co. *v.* Holborn Tyre Co., (1901) 18 R. P. C. 222.

against a previous assignee of the English patent in respect of the article, (*t*) neither, it is submitted, would the purchase abroad of the foreign-made article carry an implied licence as against a subsequent assignee of the British patent without notice.

Classification of Licences.

The unconditional sale by the patentee of a patented article is a sale coupled with an estoppel by conduct against the patentee preventing him from raising any question on the patent in respect of any user of the article by the purchaser or any one into whose hands it may come. In this sense the purchaser is licensed to use. The position between the parties, however, is merely that of vendor and purchaser with the above estoppel against the vendor. The position is not that of licensor and licensee with the consequence of estoppel of the licensee from denying validity of the patent when sued, *e.g.*, for damages on an account of profits in respect of articles not supplied by the patentee. (*u*) When a person takes a patented article from the patentee, and acknowledging the patentee's title agrees, by deed or by verbal agreement acted upon, to pay royalties for the use of the patented article, there is no unconditional sale coupled with an estoppel against the patentee. The property in the article may or may not be in the patentee according to circumstances, (*x*) but the essence of the transaction is a limited right of user dependent on the licence of the patentee granted in consideration of royalties reserved. The position of licensor and licensee is, therefore, established with the consequence that the person authorised to use the article is estopped from denying the validity of the patent against the patentee, in any proceedings to which both are parties during the continuance of the licence. (*y*)

The vendee of a licensee has all the privileges of an ordinary vendee, including that of resale, unless the vendee takes with notice of some limitation to the contrary. Thus, where the defendant in an action for the infringement of a patent for improvements in the manufacture of soap pleaded that the alleged infringement was the resale by him of soap purchased by himself from licensees of the plaintiff, the Court of Common Pleas held this to be a good defence, and gave judgment for the defendant accordingly. (*z*)

(*t*) Betts *v.* Willmott, (1871) L. R. 6 Ch. 245.
(*u*) See p. 148 *post.*
(*x*) See Vol. I. pp. 25, 508.
(*y*) See p. 148 *post.*
(*z*) Thomas *v.* Hunt, (1864) 17 C. B. N. S. 183.

Classification of Licences.

What the letters patent prohibit the public from doing without the consent, licence, or agreement of the patentee, is the making use of, or putting in practice, the invention comprised in the patent—that is, the art by the exercise of which the patentee produces the finished product.

When use of a patented article is an infringement.

The public are generally entitled to use the invention in the sense of the finished product without the further licence of the patentee, if that finished product was not produced in infringement of the patent—*i.e.*, it was produced by the patentee, or under licence from him.

Use of a manufactured article only constitutes an infringement when the article used was produced without authority, (*a*) or is used in breach of a restriction of which the user had notice, (*b*) or where it was produced under a licence strictly limited to its manufacture and not applicable to its use, (*c*) for a licence to manufacture an article does not necessarily imply a licence to use the article when manufactured. (*d*)

Licences to use patented inventions may also be—

(1) *Compulsory.*
(2) *Voluntary.*

Amendment of law relating to compulsory licences.

Before the Patents Act, 1883, it was optional with the grantee of a patent whether he would grant licences or not. The repealed sec. 22 of the Act of 1883 gave power to the Board of Trade, upon the petition of any person interested to order, under *certain circumstances*, the patentee to grant licences upon such terms as the Board having regard to the nature of the invention and the circumstances of the case might deem just.

Sec. 3 of the Patents Act, 1902.

Sec. 3 of the Patents Act, 1902, repealed sec. 22 of the Act of 1883, and extended the rights of the public in the matter of compulsory licences, and substituted the judicial committee of the Privy Council for the Board of Trade as the ultimate authority to decide whether or not to grant the petition for a compulsory licence of any person interested, and alleging that the reasonable requirements of the public with respect to the patented invention have not been satisfied. Also sec. 3 of the Patents Act, 1902, authorises the revocation of the patent by Order in Council, if the judicial committee are of opinion that the reasonable requirements of the public will not be satisfied by the grant of licences: and if it is

(*a*) Vol. I. p. 375.
(*b*) Vol. I. p. 377.
(*c*) Basset *v.* Graydon, (1897) 14 R. P. C. 701.
(*d*) Basset *v.* Graydon, (1897) 14 R. P. C. 701.

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proved to the satisfaction of the judicial committee that the patent is worked, or that the patented article is manufactured exclusively or mainly outside the United Kingdom, then, unless the patentee can show that the reasonable requirements of the public have been satisfied, the petitioner is entitled either to an order for a compulsory licence or to an order for revocation of the patent. But it is provided that no order for revocation shall be made before the expiration of three years from the date of the patent, or if the patentee gives satisfactory reasons for his default.

The reasonable requirements of the public are not deemed to have been satisfied if, by reason of the default of the patentee to work his patent or to manufacture the patented article in the United Kingdom to an adequate extent, or to grant licences on reasonable terms, (a) any existing industry or the establishment of any new industry is unfairly prejudiced; or, (b) the demand for the patented article is not reasonably met. (*e*)

For convenience sec. 3 of the Patents Act, 1902, is set out here *in extenso*.

3. Section twenty-two of the principal Act (relating to the grant of compulsory licences by the Board of Trade) is hereby repealed, and the following provisions shall be substituted therefor:—

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

(2) The Board of Trade shall consider the petition, and if the parties do not come to an arrangement between themselves, the Board of Trade, if satisfied that a *prima facie* case has been made out, shall refer the petition to the judicial committee of the Privy Council, and, if the Board are not so satisfied, they may dismiss the petition;

(3) Where any such petition is referred by the Board of Trade to the judicial committee, and it is proved to the satisfaction of the judicial committee that the reasonable requirements of the public with reference to the patented invention have not been satisfied, the patentee may be ordered by an Order in Council to

(*e*) s. 3 (6) of the Patents Act, 1902.

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grant licences on such terms as the said committee may think just, or, if the judicial committee are of opinion that the reasonable requirements of the public will not be satisfied by the grant of licences, the patent may be revoked by Order in Council;

Provided that no order of revocation shall be made before the expiration of three years from the date of the patent, or if the patentee gives satisfactory reasons for his default;

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

(5) If it is proved to the satisfaction of the judicial committee that the patent is worked or that the patented article is manufactured exclusively or mainly outside the United Kingdom, then, unless the patentee can show that the reasonable requirements of the public have been satisfied, the petitioner shall be entitled either to an order for a compulsory licence or, subject to the above proviso, to an order for the revocation of the patent;

(6) For the purpose of this section the reasonable requirements of the public shall not be deemed to have been satisfied if, by reason of the default of the patentee to work his patent or to manufacture the patented article in the United Kingdom to an adequate extent, or to grant licences on reasonable terms, (a) any existing industry or the establishment of any new industry is unfairly prejudiced, or (b) the demand for the patented article is not reasonably met;

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

(8) His Majesty in Council may make rules of procedure and practice for regulating proceedings before the judicial committee under this section, and, subject thereto, such proceedings shall be regulated according to the existing procedure and practice in patent matters. Any Order in Council or any order made by the judicial committee under this Act may be enforced by the High Court as if it were an order of the High Court;

(9) The costs of and incidental to all proceedings under this section shall be in the discretion of the judicial committee, but in awarding costs on any application for the grant of a licence the judicial committee may have regard to any previous request for, or offer of, a licence made either before or after the application to the committee;

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(10) For the purposes of this section three members of the judicial committee shall constitute a quorum;

(11) This section shall apply to patents granted before as well as after the commencement of this Act.

The practice upon applications under sec. 3 of the Patents Act, 1902, is regulated by that section, Rules 69–75 of the Patent Rules, 1903, and the Privy Council Rules, 1903. (*f*)

The cases referred to in the note (*g*) below are all the reported cases of applications made for the grant of compulsory licences under the repealed sec. 22 of the Patents Act, 1883.

Licences may also be—

(1) *Revocable.*
(2) *Irrevocable.*

Licences containing provisions for revocation.

Frequently the licence contains a provision under which it may be revoked and terminated by one or both of the parties on the happening of certain events, such as the non-payment of royalties or a decision of a Court of law to the effect that the patent is void. In the latter case, where the patent is in fact declared invalid in an action against third parties, but the decision of the Court is afterwards reversed, even though by consent, the licensee cannot rely upon the decision of invalidity since it was reversed, and under such circumstances he is liable to the licensor in an action to recover unpaid royalties. (*h*)

When from an examination of the whole instrument it appears clear that the intention of the parties was that the licence was to be irrevocable, neither party can, without the consent of the other, put an end to it. (*i*)

Licence coupled with

If the licence is silent as to the power of the parties to

(*f*) See Appendix.

(*g*) Continental Gas Glühlicht Actien Gesellschaft (Meteor) Petition, (1897) 15 R. P. C. 727; Levinstein's Petition, (1898) 15 R. P. C. 732; Hulton and Bleakley's Petition, (1898) 15 R. P. C. 749; The Gormully and Jeffery Manufacturing Co.'s Petition, (1899) 16 R. P. C. 641.

(*h*) Cheetham *v.* Nuttall, (1893) 10 R. P. C. 321.

(*i*) Kenny's Patent Button-holing Co. *v.* Somervell, (1878) 26 W. R. 787; 38 L. T. N. S. 870.

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revoke it, it then becomes of the utmost importance to decide whether the licence is one coupled with an interest or not. A mere licence is, in the absence of provisions to the contrary, revocable at the will of either party; (*j*) but a licence coupled with an interest cannot be so revoked. (*k*)

An interest is not revocable, though a mere licence is revocable.

"Coupled with an interest" is a somewhat ambiguous term, and it is probably more correct, with reference to licences to use patented inventions, to say "coupled with obligations." (*l*)

Though a licence is one coupled with an interest, or involving obligations on each of the parties, and so not revocable, yet it may, upon the terms of the instrument, be liable to forfeiture in the event of breach of the terms and conditions on which it was made. (*m*)

When from the terms of the licence it appears not to be coupled with obligations on either the licensor or licensee it is, as stated above, generally speaking, revocable at the will of either party. (*n*)

When, however, the licence is coupled with obligations on both the parties it is not so revocable—*e.g.*, where the licence is exclusive and the licensor is under the obligation not to use the patented invention himself, and the licensee is under the obligation to use his best endeavours to advertise and push the invention. (*o*)

Licence providing for revocation by one party only.

And where the agreement expressly provides that one party may determine the licence, but is silent as to the power of the other party to put an end to it, the Courts will infer an intention to the effect that the licence is not determinable by such other party. (*p*)

Revocation need not necessarily be by deed.

In the absence of express provision, if the licence is revocable, whether it be made by deed or otherwise, a deed is not necessary to revoke it. (*q*) It may be revoked by an expression of intention to revoke; but a mere plea in a defence

(*j*) Wood *v.* Ledbitter, 9 Jur. 187; Redges *v.* Mulliner, (1893) 10 R. P. C. 21; Crossley *v.* Dixon, (1863) 10 H. L. C. 291; Coppin *v.* Lloyd, (1898) 15 R. P. C. 373.

(*k*) Wood *v.* Ledbitter, 9 Jur. 187; Ward *v.* Livesey, (1888) 5 R. P. C. 102; Guyot *v.* Thomson, (1894) 11 R. P. C. 541; Cutlan *v.* Dawson, (1897) 14 R. P. C. 249; 13 R. P. C. 716, 717.

(*l*) Guyot *v.* Thomson, (1894) 11 R. P. C. 553.

(*m*) Ward *v.* Livesey, (1888) 5 R. P. C. 102.

(*n*) Wood *v.* Ledbitter, 9 Jur. 187; Ridges *v.* Mulliner, (1893) 10 R. P. C. 21; Crossley *v.* Dixon, (1863) 10 H. L. C. 293.

(*o*) Guyot *v.* Thomson, (1894) 11 R. P. C. 541.

(*p*) Cutlan *v.* Dawson, (1897) 14 R. P. C. 249; 13 R. P. C. 716, 717; Guyot *v.* Thomson, (1894) 11 R. P. C. 541.

(*q*) Ward *v.* Livesey, (1888) 5 R. P. C. 102.

to an action to recover royalties, to the effect that a licence has been abandoned, is not a notice of determination, and consequently in an action to recover royalties, when an account is obtained, the account, notwithstanding such a plea, goes in respect of user after action brought till the proper determination of the licence. (*r*)

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Though a licence be one which is revocable at the will of one or of either of the parties, yet, upon the true construction of the agreement, the party or parties having the power of revoking the licence may have contracted not to exercise it, in which case, in the event of a revocation, an action for damages in respect of the breach of contract would be maintainable. (*s*)

Party to a licence may contract not to exercise his power of revocation.

Licences may also be—

(1) *General.*
(2) *Limited.*
(3) *Exclusive.*

General licences are those which include the right to use every part of the invention, in any manner and to any extent, and apply to the whole of the geographical area for which the patent was granted.

General licences.

It must be remembered that the words of grant in the letters patent themselves are "make, use, exercise, and vend." It is submitted that a distinctive effective meaning is to be attached to each of these words of grant, and that a licensee does not obtain a full general licence unless the deed of licence uses each of these words, or it is clear from the document, taken as a whole, that each is intended. In *Dunlop Pneumatic Tyre Co.* v. *North British Rubber Co.*, (*t*) it was contended that a certain deed of licence did not authorise the defendants to import and sell in this country articles made abroad according to the patent. By clause 2 of the deed, in consideration of royalties reserved, the plaintiffs granted to the defendants "full licence under the letters patent to *use and exercise* the invention." From a subsequent clause in the deed, as pointed out by *Stirling*, J., it appeared to be quite clear that *manufacture* and *sale* were intended to be amongst the matters which were authorised by the licence. It was held by the Court of Appeal that the licence was a complete general one and judgment was entered for the

(*r*) Cheetham *v.* Nuttall, (1893) 10 R. P. C. 321.
(*s*) Kerrison *v.* Smith, (1897) 2 Q. B. 445.
(*t*) (1904) 21 R. P. C. 161.

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defendants. *Vaughan Williams*, L.J., and *Cozens-Hardy*, L.J., were of opinion that the words "full licence under the letters patent to use and exercise the invention," in the absence of any subsequent words of limitation, in themselves created a full licence. *Stirling*, L.J., based his judgment on the use of those words coupled with the fact that a subsequent clause made it clear that the words *manufacture* and *sale* were also intended and the deed was to be read as though the granting words "make, use, exercise, and vend" had been employed.

A licence to *manufacture and sell* authorises the licensee to sell articles manufactured for him by his agent—*e.g.*, a foreign manufacturer abroad. (*u*)

Limited licences.

Limited licences may be limited in the sense that they apply only to a part of the invention; or to the construction or use of a patented article, but not to both; (*x*) or to the use of the invention in a particular manner, (*y*) or in a particular district, (*z*) or for a specified portion of the term for which the patent was granted. In construing limited licences it is, frequently, very important to remember that the surrounding circumstance at the time the contract was made are a proper and important guide to the true construction. (*a*)

Exclusive licences.

Exclusive licences are those under the terms of which the patentee is prevented from making a like grant to any one other than the licensee during the continuance of the licence.

Not unfrequently patentees grant exclusive licences for the whole or some particular part of the invention, applying to the whole or some particular part of the geographical area over which the patent right extends. It is usual to insert in an exclusive licence a covenant on the part of the patentee to the effect that he will not grant any other licence authorising any other person to use the invention within the district to which the licence applies. It may be questioned whether such a covenant divests the patentee of all power of granting

(*u*) Dunlop Pneumatic Tyre Co. *v.* North British Rubber Co., (1904) 21 R. P. C. 161.

(*x*) Basset *v.* Graydon, (1897) 14 R. P. C. 701.

(*y*) Société Anonyme pour la Fabrication d'Appareils d'Eclairage *v.* Midland Lighting Co., (1897) 14 R. P. C. 419; Incandescent Light Co. *v.* Cantelo, (1895) 12 R. P. C. 262; Incandescent Gas Light Co. *v.* Brogden, (1899) 16 R. P. C. 179; Dunlop Pneumatic Tyre Co. *v.* Buckingham and Adams Cycle and Motor Co., (1901) 18 R. P. C. 423.

(*z*) Société Anonyme des Manufactures des Glaces *v.* Tilghmann's Patent Sand Blast Co., (1883) L. R. 25 Ch. D. 11.

(*a*) Dunlop Pneumatic Tyre Co. *v.* Buckingham and Adams Cycle and Motor Co., (1901) 18 R. P. C. 429, 431, 432; Dunlop Pneumatic Tyre Co. *v.* Creswell, (1901) 18 R. P. C. 473, 477.

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any other licence in breach of his covenant, so far as the validity of such other licence is concerned; but he would be clearly liable in damages if he were to do so. The acceptance of royalties in respect of articles made abroad and wrongly brought into the United Kingdom is not a breach of a covenant made with an exclusive licensee not to grant further licences, but is merely a compromise in respect of infringements of the patent. (*b*)

An irrevocable exclusive licence for the whole term of the patent which reserves no interest to the licensor operates as an assignment.

If an exclusive licence be made irrevocable and applicable to the whole geographical area of the patent right, and reserves no interest in the patent to the licensor, it is a grant, or an agreement for a grant, and amounts to an assignment, or an agreement for an assignment, of the patent; (*c*) and it would appear that if the licence is made by deed, since no particular form of words is required to effect an assignment, such an exclusive licensee would be entitled to apply to have his name entered on the register of patents as the owner for the time being. (*d*)

An exclusive licence operates as an assignment of the patent in the same way as a demise by a lessee of the premises comprised in his lease for the whole of the term granted amounts to an assignment to the under-lessee. (*e*) For an assignment is a transfer or making over to another of the whole right of the assignor in the thing transferred, (*f*) and any words which show an intention to do this in a deed are sufficient with respect to a patent-right. (*g*)

Exclusive licence which reserves an interest to licensor is not an assignment.

If, however, the exclusive licence reserves to the patentee any direct interest in the patent—*e.g.*, the right to sue for infringements of the patent—it does not amount to an assignment. (*h*) A deed conferring an exclusive licence not amounting to an assignment is not a conveyance within the meaning of the Conveyancing Act, 1881; but the introduction of the words "as beneficial owner" into the deed may tend to show an intention that the licence is not to be revocable. (*i*)

Grantor of exclusive licence

A patentee who grants an exclusive licence may be

(*b*) Dunlop Pneumatic Tyre Co. *v.* North British Rubber Co., (1904) 21 R. P. C. 161.

(*c*) Guyot *v.* Thomson, (1894) 11 R. P. C. 554; Heap *v.* Hartley, (1889) 6 R. P. C. 500.

(*d*) See p. 58 *ante*; Heap *v.* Hartley, (1889) 6 R. P. C. 495, 500.

(*e*) Palmer *v.* Edwards, (1779) 1 Doug. 187 *n.*; Parmenter *v.* Webber, (1818) 8 Taunt. 593; 2 B. Mo. 656; Shep. Touch. 266.

(*f*) 2 Bl. Com.

(*g*) p. 106 *ante*.

(*h*) Guyot *v.* Thomson, (1894) 11 R. P. C. 554.

(*i*) *Ibid.*

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restrained by the licensee from working or selling under the patent during the continuance of the licence when there is no reservation to the patentee to so work and sell. (*k*)

may be restrained from infringing.

Exclusive licensee's rights to make departures in details from the invention.

The exclusive licensee is entitled to make unimportant departures in details from the specification, and may restrain the patentee, by injunction of the Court, from representing that articles so made and sold by him, the licensee, are not made in accordance with the patent. (*l*)

Licences may also be—

(1) *Assignable.*
(2) *Not assignable.*

Whether a licence is assignable or not depends on its terms.

A licence may be made to an individual only, or to him, his executors, administrators, and assigns, and the question whether or not a licence is assignable depends in each case upon the words by which it was granted.

In *Bown* v. *Humber* (*m*) it appeared that the plaintiff, the owner of a patent for improvements in the bearings of bicycles in the year 1885, granted to a firm of bicycle manufacturers a licence to use the invention within the United Kingdom, the Channel Islands, and the Isle of Man, for the purpose of applying the invention to the wheels of bicycles, &c., manufactured for sale or use or otherwise by the licensees, or by persons employed by them, but not in any other manner; with a proviso that the licence should not be construed to permit the licensees to make or sell the patent bearings to be applied to the wheels of bicycles, &c., manufactured by any other person or company other than the licensees, or by persons employed by them, and that the licence should not authorise the use of the said invention by the licensees individually or separately, but only by the licensees jointly, or such two or one of them as should continue to carry on the business hitherto carried on by the three licensees at Beeston, or the person or persons or company from time to time carrying on such business. In 1887 the defendants were registered as a limited company to acquire and carry on the business of the licensees and various other businesses at other places. The defendants claimed under the licence the right to manufacture the patent bearings at all places where they carried on business, and also to apply the patent bearings to all bicycles, &c., manufactured by them, whether manufactured by them at

(*k*) Guyot *v.* Thomson, (1894) 11 R. P. C. 541.
(*l*) *Ibid.*
(*m*) (1889) 6 R. P. C. 9.

Beeston or elsewhere. The plaintiff contended that the licence only authorised the defendants to manufacture the patent bearings at Beeston, in connection with the business of the original licensees; and, secondly, only to apply the patent bearings to all bicycles, &c., manufactured by them at Beeston in connection with the said business; and the plaintiff brought the action and moved for an injunction to restrain the defendants from using the patent otherwise than according to the plaintiff's construction of the licence, but the Court held that the defendants, as carrying on the original business of the licensees at Beeston, were entitled to start other businesses elsewhere, and to apply the patent bearings to any bicycles, &c., manufactured by them in such other businesses, and dismissed the action with costs.

Right of Crown to Use Inventions.

When a patentee has accepted royalties from an assignee of the licensee he is estopped from contending that the licence was not assignable. (*n*)

Patentee is estopped from disputing assignability if he accepts royalties from an assignee.

Right of the Crown to Use Inventions.

The Crown had the right to use the inventions comprised in all letters patent granted before the commencement of the Act of 1883, *i.e.*, January 1, 1884, or on any application then pending. And the Crown had the power to use any such invention without the assent of, or compensation to, the patentee. (*o*) The Crown enjoyed this right, not because it was exempted from the effect of the letters patent, but because the privilege thereby granted was granted against the subjects only, and not against the Crown. (*p*)

Right of Crown to free use of inventions patented prior to 1884.

With regard to all patents granted on applications dated after January 1, 1884, it is provided by the Act of 1883 (*q*) that they shall have to all intents the like effect as against His Majesty the King, his heirs and successors, as they have against a subject. But the officers or authorities administering any department of the service of the Crown may, by themselves, their agents, contractors, or others, at any time after the application, use the invention for the services of the Crown

Crown only entitled to use inventions patented after January 1, 1884, on terms.

(*n*) Lawson *v.* Donald Macpherson & Co. (1897) 14 R. P. C. 696.

(*o*) Feather *v.* The Queen, (1865) 6 B. & S. 257; Dixon *v.* The London Small Arms Co., Ld., (1875) L. R. 1 App. Cas. 632.

(*p*) Dixon *v.* The London Small Arms Co., Ld., (1875) L. R. 1 App. Cas. 659; Feather *v.* The Queen, (1865) 6 B. & S. 257.

(*q*) 46 & 47 Vict. c. 57, ss. 27 and 45 (2).

Right of Crown to Use Inventions.

on terms to be before or after the use thereof agreed on, with the approval of the Treasury, between those officers or authorities and the patentee, or, in default of such agreement, on such terms as may be settled by the Treasury after hearing all parties interested.

Government contractors.

Contractors who manufacture and supply the Government with manufactured articles are not servants of the Crown, and if such articles are manufactured according to a patented invention, without the licence of the patentee, the manufacturers are liable to be sued by the patentee for infringement; (r) but if and to the extent that the invention is used for the service of the Crown and under a contract with any officer or authority administering any department of the service of the Crown, sub-s. 2 of sec. 27 of the Patents Act, 1883, would be a good defence.

Procedure to question Crown's authority to use a patented invention.

It would appear that sec. 27 sub-s. 1 of the Patents Act, 1883, has, in the case of letters patent for an invention, created an exception to the application of the common law principle that the Crown, since the Sovereign can do no wrong, cannot commit or authorise a tort. If this be so, it follows that a patentee has a remedy by petition of right in cases where the Crown infringes his patent, and he is, consequently, able to allege a ground of complaint, which, but for the inability of the subject to sue the Sovereign, might be made the subject of a judicial proceeding. (s)

Since sub-s. 2 of sec. 27 of the Patents Act, 1883, is merely permissive the patentee can sue an officer or authority administering any department of the service of the Crown who by himself, his agents, contractors or others infringes the patent under circumstances which are outside the provisions of that sub-section.

In several cases since the Act of 1883 the Crown has, upon request of the patentee made to the Treasury, nominated an officer administering a department of the service of the Crown to defend on behalf of the Crown any action which the patentee might see fit to bring against such officer. (t)

(r) Dixon v. The London Small Arms Co., Ld., (1875) L. R. 1 App. Cas. 632.

(s) See Feather v. The Queen, (1865) 6 B. & S. 295.

(t) *E.g.* Nobel's Explosives Co. v. Anderson, (1894) 11 R. P. C. 115; Maxim-Nordenfelt Guns and Ammunition Co. v. Anderson, (1897) 14 R. P. C. 371.

Consideration.

Consideration. Covenants.

There is no restriction as to the consideration in respect of which a licence may be granted. When a licence is granted by deed, it is, of course, not necessary that there should be any consideration at all.

No restriction as to consideration for a licence to use a patented invention.

The patentee generally grants licences in return for some consideration, which is usually a money payment, either of a fixed amount, or a sum varying according to the extent to which the licensee uses the invention, or a fixed amount in respect of every single article manufactured by the licensee according to the invention, or a percentage on profits.

Covenants.

Usual covenants.

It is usual to insert in a licence which is granted in consideration of a periodical or other payment, a covenant on the part of the licensor that the patent is valid so far as his acts or omissions are concerned, and that he has power to grant the licence; and on the part of the licensee a covenant for payment of the various sums as they become due. If the sums reserved vary with the extent of the licensee's user of the invention, it is usual for him to covenant to render accounts to the patentee, and to permit periodical inspections of premises and machinery. (*u*)

It is usual also to insert conditions avoiding the licence altogether if the licensee fail to pay any of the sums and royalties reserved by the licence, or to perform any of his covenants. (*x*)

In the interests of a patentee it is absolutely necessary that a licence which is made in consideration of periodical payments should contain covenants on the part of the licensee for payment of the sums reserved, and a proviso terminating the licence if default is made; otherwise a defaulting licensee might assign the licence (if assignable), (*y*) and so escape all liability in respect of it.

It is not unusual for the patentee to covenant that if he grants licences to others upon more favourable terms the licensee shall have the benefit of such terms. (*z*)

(*u*) p. 380 *post*.
(*x*) p. 380 *post*.
(*y*) p. 144 *ante*.
(*z*) In Cheetham *v.* Nuttall, (1893) 10 R. P. C. 321, the licensee was unsuccessful on the facts in establishing his claim to a revision of terms.

Estoppel.

To meet the requirements of particular cases many other covenants may be requisite, and the circumstances peculiar to individual cases usually need careful consideration.

Difference between licence to work under a foreign patent and the unconditional sale of an article made under a foreign or British patent.

A licensor is not entitled to interfere with the trade of his licensee pending disputes as to collateral matters; (*a*) but the owner of both English and foreign patents, who has granted a licence to work under one or all of the foreign patents, but not under the English patent, will not be restrained from issuing circulars, warning the public that the sale in England of articles made abroad according to the patented invention is an infringement of the English patent. (*b*) A licence to use a patented invention under a foreign patent stands in a very different position to the sale of an article manufactured under either a foreign or an English patent.

Estoppel.

Estoppel in virtue of recitals or covenants implying validity.

A licensee, who has covenanted with the patentee to pay a royalty for the right to use a patented invention, is, by recitals or covenants implying the validity of the patent, estopped, during the continuance of the licence, from denying that validity as against the licensor in any legal proceedings to which they are both parties; (*c*) and he is so estopped independent of estoppel by deed; (*d*) and even when he has used the invention under a mere verbal agreement. (*e*) The assignor of a licensee is likewise estopped from disputing the validity of the patent as against his assignee. (*f*)

No estoppel against denial of the existence or ambit of a licence.

The licensee is entitled to dispute the existence of the licence. Thus where it is made coterminous with the existence of the patent the licensee is not estopped in an action

(*a*) Clark *v.* Adie, (1873) 21 W. R. 456, 764.

(*b*) Société Anonyme des Manufactures de Glaces *v.* Tilghman's Patent Sand Blast Co., (1883) L. R. 25 Ch. D. 1; Betts *v.* Willmott, (1870) L. R. 6 Ch. 239.

(*c*) Baird *v.* Neilson, (1842) 8 Cl. & Fin. 726; Cutler *v.* Bower, (1848) 11 Q. B. 973; 17 L. J. Q. B. 217; Hills *v.* Laming, (1853) 9 Exch. 256; 23 L. J. Ex. 60; Bowman *v.* Taylor, (1834) 2 A. & E. 278; 1 W. P. C. 292; Lawes *v.* Purser, (1856) 6 E. & B. 930; 26 L. J. Q. B. 25; Norton *v.* Brooks, (1861) 7. H. & N. 499; Smith *v.* Scott, (1859) 28 L. J. C. P. 325; 6 C. B. N. S. 771; Bessmans *v.* Wright, (1858) 6 W. R. 719; Crossley *v.* Dixon, (1863) 10 H. L. 293; 32 L. J. Ch. 617; Hall *v.* Conder, (1857) 2 C. B. N. S. 22, 53; 26 L. J. C. P. 138, 288; Trotman *v.* Wood, (1864) 16 C. B. N. S. 479; Clark *v.* Adie, (1877) L. R. 2 App. Cas. 423; Liardet *v.* Electric Lighting Co., (1883) W. N. 96; Ashworth *v.* Law, (1890) 7 R. P. C. 231; Wilson *v.* Union Oil Mills, (1892) 9 R. P. C. 63; but see p. 150 *post*.

(*d*) Lawes *v.* Purser, (1856) 6 E. & B. 930; Norton *v.* Brooks, (1861) 7 H. & N. 499.

(*e*) Crossley *v.* Dixon, (1863) 10 H. L. C. 293, 308, 310; Clark *v.* Adie, (1873) L. R. 2 App. Cas. 423.

(*f*) Gouville *v.* Hay, (1903) 21 R. P. C. 49.

for royalties from contending that the patent has in fact expired—*e.g.*, on the ground that its life depended on that of a foreign patent which has lapsed. (*g*) Estoppel.

After the termination of the licence, the licensee may dispute the validity of the patent, (*h*) but he cannot sell articles as manufactured under licence from the patentee. (*i*)

Licence to construct only may operate as an estoppel against a third party, with notice, using a patented article.

When the licence is limited to the construction as opposed to the use of a patented article when constructed, a question may arise as to the right of a third party, for whom the article was constructed under the licence, to deny the validity of the patent as against the patentee. It may well be that, if the third party knew the nature of the licence when he gave the order for the construction, an estoppel by conduct arises, and such third party is at the mercy of the patentee as to the terms upon which he may be permitted to use the article. There does not appear to be any authority against the existence of such a state of things. (*j*)

Licensee though estopped from denying validity may dispute ambit of patentee's claim.

Though the licensee during the continuance of the licence is estopped from denying the validity of the patent as against the licensor in an action for the recovery of royalties, he is entitled to dispute the ambit of the patentee's claim. (*k*) Thus he may dispute the construction put upon the specification by the licensor, and contend that the acts done by him in respect of which it is sought to make him liable in royalties are not covered by the patent upon the true construction of the specification, *i.e.*, they would not be held to be infringements in an action brought for infringement. (*l*) And, for the purpose of showing the true ambit of the claim, he may refer to anything which shows the state of public knowledge at the date of the patent. (*m*)

A licensee under a patent is in a situation analogous to a tenant who, during the tenancy, cannot dispute the title of the lessee to any of the land held under the lease; but who is nevertheless at liberty to show that part of the land he actually

(*g*) Muirhead *v.* Commercial Cable Co., (1894) 11 R. P. C. 317; 12 R. P. C. 39, 370.

(*h*) p. 150 *post*.

(*i*) Post Card Automatic Supply Co. *v.* Samuel, (1889) 6 R. P. C. 560.

(*j*) Basset *v.* Graydon, (1897) 14 R. P. C. 711.

(*k*) Crossley *v.* Dixon, (1863) 10 H. L. C. 293; Adie *v.* Clark, (1876) L. R. 2 App. Cas. 423; Cropper *v.* Smith, (1884) L. R. 26 Ch. D. 700; Couchman *v.* Greener, (1884) 1 R. P. C. 197; The Useful Patents Co. *v.* Rylands, (1895) 2 R. P. C. 253; Siemens *v.* Taylor, (1892) 393.

(*l*) Young *v.* Hennand Oil Co., (1891) 8 R. P. C. 285; 9 R. P. C. 373; Ashworth *v.* Roberts, (1892) 9 R. P. C. 89, 309.

(*m*) Young *v.* Hennand Oil Co., (1892) 9 R. P. C. 373.

Estoppel.

occupies is really not comprised within the lease, but belongs to himself under some other right. (*n*)

Determination of licence may be pleaded in action to recover royalties.

If the licensee, as is commonly done, is sued for infringements as well as royalties, it is open to him to plead the determination of the licence, if, in fact, he has determined it; and then he can also dispute the validity of the patent. (*o*) It is thus open to a licensee, by a revocation of the licence where such is possible, to turn himself from a licensee into a trespasser and wrongdoer if the patent is valid, but a lawful user if the patent is void.

Inspection against licensee not a party to an action against his licensor.

A licensee (not a party to the action) cannot be compelled to give inspection in an action against the licensor, but if the licensor can arrange for an inspection it is proper he should do so; and if it appear that the licensor is himself or by his licensee working the process in dispute the usual order for inspection will be made. (*p*)

Licensee is a competent witness in an action brought by the patentee.

A licensee is a competent witness for the plaintiff in an action for the infringement of a patent under which he has a licence. He has no direct pecuniary interest in supporting the patent, and it may be for his advantage that it should not be supported. (*q*)

No estoppel against a person who has made an agreement, not under seal, for a licence, but has not used the invention.

Where a person has agreed, not under seal, with the patentee to pay a certain sum of money, annually or otherwise, for the use of a patented invention, but has not actually used the invention, he is not estopped from denying the validity of the patent in an action brought against him by the patentee for recovery of royalties. (*r*)

No estoppel against an equitable assignee of an exclusive licence.

An equitable assignee of an exclusive licensee also is not estopped, in an action brought against him by the patentee for infringement, from disputing the validity of the patent. (*s*)

Right to dispute validity may be specially provided for.

If it is the intention of the parties that it is to be open to the licensee to dispute the validity of the patent, then the licence ought to be specially framed to allow of this by the insertion of covenants on the part of the licensor for title to grant the licence, and that the patent is valid.

If there are no express covenants on the part of the licensor as to his power to grant the licence, and as to the validity of the

(*n*) Per Lord Blackburn, (1873) Clark *v.* Adie, L. R. 2 App. Cas. 435.

(*o*) Redges *v.* Mullinar, (1892) 10 R. P. C. 21; Crossley *v.* Dixon, (1863) 10 H. L. C. 293.

(*p*) Germ Milling Co. *v.* Robinson, (1886) 3 R. P. C. 11, 14.

(*q*) Per Lord Abinger, C.B., Derosne *v.* Fairie, (1835) 2 Cr. M. & R. 476; 1 W. P. C. 154.

(*r*) Chanter *v.* Leese, (1838) 1 W. P. C. 295; 8 L. J. Ex. 58; 9 L. J. Ex. 327; 4 M. & W. 295; 5 M. & W. 698.

(*s*) Pidding *v.* Franks, (1849) 1 Mac. & G. 56; 18 L. J. Ch. 295.

patent, the law will not import any, since the privilege created by letters patent is impressed with the nature of personality, and the law will not create a covenant respecting a personal thing. (*t*) Estoppel.

In *Hayne* v. *Maltby* (*u*) the action was brought for the breach of an agreement which recited that the plaintiffs were assignees of a patent granted to *T. Taylor*, and that the defendant had applied to the plaintiffs for permission to use the patented invention, to which they assented, on condition of his working it in the manner described in the specification. The agreement contained a covenant by the plaintiffs with the defendant that he should have the free use and quiet enjoyment of the patented machine, in case the same should be worked only in the manner described in the specification, and also a covenant by the defendant that he would not, during the residue of the term, use any of the patented machines except the one by the articles allowed to be used by him. Under these circumstances, the Court of King's Bench held that the defendant was not estopped from denying the validity of the patent, and gave judgment for him on the ground that the patent was void. It is to be noticed that the agreement merely recited that the plaintiffs were assignees of the patent, not that the patent was valid. (*x*)

Estoppel terminates with licence.

After the termination of the licence, the licensee is in just the same position as the rest of the King's subjects, with regard to being able to deny the validity of the patent, if the patentee brings any action against him for infringement. (*y*)

In *Goucher* v. *Clayton* (*z*) it appeared that the plaintiff took proceedings in 1854 against a certain firm of *Clayton & Co.* for infringement of his patent. The firm submitted to a judgment in the action, and took a licence for five years (afterwards extended to seven) to work under the patent. The present suit was instituted in 1864 against the same firm, but two new partners had entered the firm after the judgment at law. The defendants raised the issues of want of novelty and sufficiency of the specification. *Wood*, V.C., overruled the objection that the defendants were estopped

(*t*) Com. Dig. tit. Covenant A. 4.

(*u*) (1789) 3 T. R. 438; 1 W. P. C. 291.

(*x*) See Bowman *v.* Taylor, (1834) 2 A. & E. 278; 1 W. P. C. 293; and remarks of Lord Cottenham, L.C., in Neilson *v.* Fothergill, (1841) 1 W. P C. 290.

(*y*) Axmann *v.* Lund, (1874) L. R. 18 Eq. 330; 43 L. J. Ch. 655; Goucher *v.* Clayton, (1865) 11 Jur. N. S. 107; 34 L. J. Ch. 239; Dangerfield *v.* Jones, (1865) 13 L. T. N. S. 142; Neilson *v.* Fothergill, (1841) 1 W. P. C. 290.

(*z*) (1865) 11 Jur. N. S. 107; 34 L. J. Ch. 239.

Registration.

from denying the validity of the patent, both as having been licensees and by reason of the judgment at law, and stated that in any case he could not prevent those defendants who were not parties to the action at law from setting up that defence.

In action of infringement alternative pleas of no infringement in fact or acts done under licence are not allowable.

It is not competent to the defendant to an action for infringement to set up alternative pleas to the effect that the acts complained of as infringements were either done under licence of the patentee, or the patent is itself invalid. He must adopt one line of defence or the other. Thus, where, in an action for infringement, the defendant, who was the mortgagee of certain articles manufactured under a licence which the plaintiff alleged was revoked, disputed the fact of revocation, and contended that the patent was invalid, the Court held that he must elect which line of defence he would adopt. (*a*)

Registration.

All licences should be registered.

A notification of every licence to work under a patent must be entered in the Register of Patents, and an attested copy of every licence granted under a patent must be left at the Patent Office by the licensee, with a request that a notification thereof may be entered in the register. The licensee must cause the accuracy of such copy to be certified as the Comptroller may direct, and the original licence must at the same time be produced and left at the Patent Office, if required, for further verification. (*b*)

The registration of a licence does not enable the licensee to enforce his legal title so as to defeat the prior, though subsequently registered, equitable right of an assignee of the patent, where the licensee takes with notice of the equitable assignment. Thus where the facts were these: (1) by assignment in writing A., the registered proprietor of a patent, agreed to assign it to B.; (2) before the agreement to assign had been registered A. granted a licence to C., who forthwith registered his licence; (3) B., subsequent to the registration of the licence, registered his agreement and took and registered an assignment of the patent; (4) C. took his licence with express notice of B.'s agreement; it was held—both on principle and under

(*a*) Post Card Automatic Supply Co. *v.* Samuel, (1889) 6 R. P. C. 560.

(*b*) 46 & 47 Vict. c. 57, s. 23; P. R., (1903) r. 63.

the proviso of sec. 87 of the Patents Act, 1883—that C., notwithstanding his legal title by prior registration, could not assert that title to defeat B.'s equitable right by notice, and that, therefore, the licence was void as against B. (*c*)

Recovery of Royalties.

The subject of the registration of licences in general has already been fully discussed in the chapter dealing with the proceedings at the Patent Office for obtaining a grant of letters patent. (*d*)

Recovery of Royalties.

Royalties may be recovered by action,

The licensor has a right of action on the contract to sue for the recovery of royalties in arrear, and if successful he may obtain an account of profits against the licensee.

An account of profits, however, will not be granted against a licensee at the instance of the licensor or his assignee if there is proof that no profits have arisen, and not in any case unless all parties interested are before the Court. (*e*)

even though the patent has been declared void.

Though before the commencement of an action for the recovery of royalties due under a licence the patent has been declared void in other proceedings, the defendant, if he be the licensee of the plaintiff under a licence containing no covenant on the part of the licensor as to his title to grant the licence and as to the validity of the patent, cannot plead that the patent is bad. (*f*)

A licensee also who has covenanted to pay royalties for a term certain is bound to pay such royalties, though the patent is in the mean time declared void and cancelled, (*g*) and he cannot, in the absence of fraud, recover royalties which he has paid under a licence, though, after the termination of the licence, it should turn out that the patent is bad. (*h*)

So where a licensee under several patents covenanted to pay royalties in respect of anything manufactured under any of the patents until the effluxion of all the terms of years respectively granted by the said letters patent, he was held liable to pay royalties for the use of any of the inventions so

(*c*) New Ixion Tyre and Cycle Co. *v.* Spilsbury, [1898] 2 Ch. 137, 484; 15 R. P. C. 380, 567.

(*d*) pp. 56–61 *ante*.

(*e*) Bergmann *v.* Macmillan, (1881) L. R. 17 Ch. D. 423.

(*f*) Grover and Baker Sewing Machine Co. *v.* Millard, (1862) 8 Jur. N. S. 713.

(*g*) African Gold Recovery Co. *v.* Sheba Gold Mining Co., (1897) 14 R. P. C. 660.

(*h*) Taylor *v.* Hase, (1805) 1 B. & P. N. R. 260; 1 W. P. C. 292; Collinge *v.* Bowman, (1834) 1 W. P. C. 295.

Recovery of Royalties.

long as any of the patents were subsisting. (*i*) Thus, in consequence of his covenant, a licensee may be compelled to pay for the use of an invention the subject of a lapsed or cancelled patent, whilst the rest of the public are entitled to use it free.

Fraud is a defence to an action to recover royalties.

Fraud and misrepresentation are defences to an action for the recovery of royalties, and also grounds on which a licensee, who has paid royalties under a licence tainted therewith, can recover the moneys he has disbursed. (*k*) A licensee who sets up a case of misrepresentation as an obvious side issue to enable him to dispute the validity of the patent is not likely to find much favour with the Court. (*l*)

Royalties paid after breach of covenant by licensor.

Royalties paid by the licensee after, and without knowledge of, a breach of covenant by the licensor may be recovered. Thus, when the licensee agreed to pay royalties for a term certain, and the patentee covenanted to protect and defend the patent from infringement, and the patent lapsed through non-payment of renewal fees by the patentee, the licensee was held entitled to recover back the royalties he had paid after, and without knowledge of, the lapse. The reason for the decision was that the neglect of the patentee to pay the renewal fees was a breach of his covenant to protect and defend the patent against infringers, which implied a covenant to keep the patent in such a position that he should be able to do so. (*m*)

Important questions as to the liabilities of licensees to pay royalties after breach of covenant by the patentee, *e.g.*, involving lapse of the patent, depend sometimes in particular cases upon whether or not the patentee's covenant for quiet enjoyment and the licensee's covenant to pay royalties are conditional and co-extensive or not. In the one case royalties may be claimed by the patentee notwithstanding his breach and the lapse of the patent; in the other case they cannot be so claimed. Moreover it must be remembered that an express condition for cesser of the payments will negative any implied condition for cesser. (*n*)

(*i*) Siemens *v.* Taylor, (1892) 9 R. P. C. 393.

(*k*) Cutler *v.* Bower, (1848) 11 Q. B. 973; 17 L. J. Q. B. 217; Hall *v.* Conder, (1857) 2 C. B. N. S. 22; 26 L. J. C. P. 138; Lawes *v.* Purser, (1850) 6 E. & B. 930; 26 L. J. Q. B. 25; Smith *v.* Scott, (1859) 28 L. J. C. P. 325; 6 C. B. N. S. 771; Jandus Arc Lamp and Electric Co., Ld. *v.* Johnson, (1900) 17 R. P. C. 361.

(*l*) See Jandus Arc Lamp and Electric Co., Ld. *v.* Johnson, (1900) 17 R. P. C. 373.

(*m*) Lines *v.* Usher, (1896) 13 R. P. C. 685; 14 R. P. C. 206.

(*n*) Mills *v.* Carson, (1892) 10 R. P. C. 9.

Recovery of Royalties.

Action may be brought for recovery of royalties or in the alternative for relief in respect of infringement.

The action for recovery of royalties is frequently brought for the recovery of the royalties or, in the alternative, for an injunction and the usual relief to restrain infringement. (*o*) In such an action where it appeared that the plaintiff was the owner of three patents, under two of which the defendant was a licensee in arrear, and the defendant did not appear on the hearing of a motion for an interlocutory injunction, the Court granted an injunction restraining infringement, but specially worded the order so as not to restrain the defendant from working under the licence. (*p*)

Court may only be able to estimate royalties due.

On the taking of an account of royalties due for the use of an invention the Court may, under the circumstances of the case, only be able to estimate the real sum due; and, under such circumstances, the Court of Appeal will not lightly put aside the finding of the officer of the Court, who comes to a conclusion upon an estimate. (*q*)

Recovery of interest on unpaid royalties.

Whether or not a patentee can in a particular case recover interest on unpaid royalties depends on the question of fact, whether, upon the true construction of the licence, the overdue royalty is a sum certain payable at a fixed time by virtue of the instrument itself. (*r*)

Taxation pending an appeal.

The taxing master has a discretion as to proceeding with the taxation when an appeal is pending and shortly coming on for hearing. In a case where the taxing master on being informed at the taxation that an appeal was pending and might possibly be decided in three days' time, in the exercise of his discretion, refused to proceed with the taxation pending the result of the appeal, the defendant took out a summons asking that the taxing master might be ordered to proceed with the taxation. The Court of Appeal decided that an order in the action refusing stay of execution was not so peremptory but that the taxing master had a discretion, which he had wisely exercised, and refused to grant the order asked for. (*s*)

When an action for the recovery of royalties is one of especial difficulty and importance, costs may be given on the higher scale. (*t*)

(*o*) Wilson *v.* Union Oil Mills Co., (1892) 9 R. P. C. 57.

(*p*) Pneumatic Tyre Co. *v.* Ferguson, (1894) 11 R. P. C. 459.

(*q*) Alma Veneer Felt Co. *v.* Fisher, (1897) 14 R. P. C. 159.

(*r*) Muirhead *v.* Commercial Cable Co., (1894) 11 R. P. C. 346; Redges *v.* Mullinar, (1893) 10 R. P. C. 25; London, Chatham and Dover Ry. Co. *v.* South Eastern Ry. Co., (1893) L. R. App. Cas. 429; Merchant Shipping Co. *v.* Armitage, (1873) L. R. 9 Q. B. 99.

(*s*) Muirhead *v.* Commercial Cable Co., (1895) 12 R. P. C. 258.

(*t*) *Ibid.*, (1894) 12 R. P. C. 39.

Licensor and Licensee Plaintiff in Action for Infringement.

Licensor's and Licensee's Powers to Sue in Respect of Infringement.

Action for infringements at the instance of licensors and licensees respectively.

It is clear that a mere licensee having a simple licence to work under a patent cannot sue alone in respect of infringements of the patent, and he must join the patentee; since the patentee may grant a licence to any other person, the defendant in the action might possibly be a licensee also, and the infringement is an injury to the patentee and not to the mere licensee. (*u*) Consequently though the licence be an exclusive licence, if it be simply an authority to do lawfully that which would otherwise have been unlawful, and not a licence coupled with or equivalent to a grant, the licensee is not entitled to sue in his own name without joining the patentee. (*x*)

It follows, therefore, that a patentee, who has merely granted simple licences, is entitled to sue alone in respect of any infringements without joining his licensees; for, since he may grant licences to whom he pleases, the injury affects him alone, and it would appear that a patentee, who has granted an exclusive licence, which does not amount to an actual assignment of the patent (*e.g.*, one which contains a power of revocation in the event of breach of covenant), may sue to restrain infringements without bringing the exclusive licensee before the Court; for the injury done to the patentee is distinct from that suffered by the exclusive licensee. The infringement affects the exclusive licensee by injuring his trade; it affects the patentee both by loss of reputation of the patent through infringements being permitted, and by loss of royalties, if royalties are paid for the licence.

The decision of Lord *Hatherley*, then Vice-Chancellor *Wood*, in *Renard* v. *Levinstein*, (*y*) appears to be an authority for the statement that an exclusive licensee is entitled to sue alone to restrain infringements within the area of the exclusive licence. It must, however, be noticed that in that case the owners of the patent were joined as defendants, and there does not appear to be any decided case in which the licensee has been allowed to sue without the patentee being a party. (*z*)

(*u*) Newby *v.* Harrison, cited in Renard *v.* Levinstein, 2 H. & M. 628; Derosne *v.* Fairie, (1835) 1 W. P. C. 155; Heap *v.* Hartley, (1888) 5 R. P. C. 603; 6 R. P. C. 495; L. R. 42 Ch. D. 461.

(*x*) Heap *v.* Hartley, (1898) L. R. 42 Ch. D. 461; 6 R. P. C. 495.

(*y*) 2 H. & M. 628.

(*z*) Plimpton *v.* Malcolmson, (1875) L. R. 3 Ch. D. 531; Barnett *v.* Barrett's Screw Stopper Bottling Co., (1884) 1 R. P. C. 9; Heap *v.* Hartley, (1888) 5 R. P. C. 603.

CHAPTER V.

PROLONGATION OR EXTENSION OF LETTERS PATENT.

Prolongation Prior to 1884.

Object of grant of letters patent.

The Common Law sanctions the grant of letters patent for inventions, because the pecuniary reward which a monopoly usually brings to the patentee acts as an inducement to others possessing inventive ability to disclose their inventions for the public good.

Letters patent are never granted in the first instance for a longer period than fourteen years; (*a*) and it sometimes happens that this term is not sufficient to enable the patentee, by means of the profits arising from his monopoly, to recoup himself the outlay to which he has been put, and to reap the remuneration which the law considers he is entitled to in return for communicating a valuable and perfected invention to the public.

Though an invention be beneficial, it may happen that the patentee does not reap any adequate reward during the original term, on account of his outlay in experiments, or on account of the public hesitating to perceive the merits of and adopt the invention. The patentee may also fail to reap a proper reward, because he has been compelled to carry on expensive litigation against persons who have infringed his patent, or to oppose petitions for its revocation. Again, inventors who are not affluent may nearly reach the expiry of their monopoly before they succeed in obtaining the monetary assistance necessary to enable them to develop their discoveries so as to make any adequate profit within the residue of the term.

Power of the Crown to prolong the monopoly.

If from any cause whatever an inventor has not been able to reap the pecuniary benefits to which he was entitled in respect of the disclosure of his secret, there is nothing in the spirit of the patent law which prohibits the Sovereign, acting

(*a*) p. 53 *ante*.

Prolongation prior to 1884.

for and on behalf of (*b*) the public, from prolonging the duration of the monopoly, if there is any likelihood of the patentee making profit during the extended period.

Historical.

Previous to the year 1835 the only way in which a patentee could obtain a prolongation of the period for which the patent was originally granted was by obtaining a special Act of Parliament, and instances of such special Acts are not wanting. (*c*)

Stat. 5 & 6 Will. IV. c. 83, s. 4.

Sec. 4 of Lord *Brougham's* Act, (*d*) passed in the year 1835, provided that—

> "If any person who now hath or shall hereafter obtain any letters patent as aforesaid—*i.e.*, as grantee, assignee, or otherwise (*e*)—shall advertise in the *London Gazette* three times, and in three London papers, and three times in some country paper published in the town where or near to which he carried on any manufacture of anything made according to his specification, or near to or in which he resides, in case he carries on no such manufacture, or published in the county where he carries on such manufacture, or where he lives, in case there shall not be any paper published in such town, that he intends to apply to His Majesty in Council for a prolongation of his term of sole using and vending his invention, and shall petition His Majesty in Council to that effect, it shall be lawful for any person to enter *a caveat* at the Council Office; and if His Majesty shall refer the consideration of such petition to the Judicial Committee of the Privy Council, and notice shall first be by him given to any person or persons who shall have entered such caveats, the petitioner shall be heard by his counsel and witnesses to prove his case, and the persons entering the caveats shall likewise be heard by their counsel and witnesses, whereupon, and upon hearing and inquiring of the whole matter, the Judicial Committee may report to His Majesty that a further extension of the term in the said letters patent should be granted, not exceeding seven years; and His Majesty is hereby authorised and empowered, if he shall think fit, to grant new letters patent for the said invention for a term not exceeding seven years after the expiration of the first term, any law, custom, or usage to the contrary in anywise notwithstanding: provided that no such extension shall be granted if the application by petition shall not be made and prosecuted

(*b*) Harmar *v.* Playne, (1809) 14 Ves. 132; Bac. Abr. tit. Prerog.; Year Book, 40 Edw. III. fol. 18.

(*c*) See 16 Geo. II. c. 25; 23 Geo. II. c. 33; 15 Geo. III. c. 52; 16 Geo. III. c 29; 17 Geo. III. c. 6; 25 Geo. III. c. 38; 32 Geo. III. c. 72; 10 Geo. IV. c. 135.

(*d*) 5 & 6 Will. IV. c. 83, s. 4.

(*e*) *Ibid.* s. 1.

with effect before the expiration of the term originally granted in such letters patent."

Prolongation prior to 1884.

In consequence of the hardships which patentees suffered who were unable to prosecute their petitions with effect before the expiration of the term of their patents, (*f*) so much of the above recited Act as provided that no extension of the term of letters patent should be granted, if the application by petition were not prosecuted with effect before the expiration of the term originally granted in such letters patent, was repealed by 2 & 3 Vict. c. 67.

Stat. 2 & 3 Vict. c. 67.

It was provided by this latter statute (*g*) that the Judicial Committee of the Privy Council should have power wherever it appeared to them that any application for an extension of the term granted by any letters patent, the petition for which extension should have been referred to them for their consideration, had not been prosecuted with effect before the expiration of the said term from any other causes than neglect, or default of the petitioner, to entertain such application, and to report thereon as by Lord *Brougham's* Act (*h*) provided, notwithstanding the term might have expired before the hearing of such application: and Her Majesty was empowered, if she should think fit, on the report of the Judicial Committee recommending an extension of the term of such letters patent, to grant such extension, or to grant new letters patent for the invention or inventions specified in such original letters patent for a term not exceeding seven years after the expiration of the term mentioned in the said original letters patent; Provided that no such extension or new letters patent should be granted if a petition for the same should not have been presented as by Lord *Brougham's* Act directed, before the expiration of the term sought to be extended, nor in case of petitions presented after November 30, 1839, unless such petition should be presented six calendar months at least before the expiration of such term, nor in any case unless sufficient reason should be shown to the satisfaction of the Judicial Committee for the omission to prosecute with effect the said application by petition before the expiration of the said term.

The fact being recognised that, for the encouragement of

Stat. 7 & 8 Vict. c. 69.

(*f*) See Bodmer's Patent (No. 1), (1838) 2 Moo. P. C. 471; 13 Newton, L. J. O. S. 175.

(*g*) s. 2.

(*h*) p. 158 *ante*.

Prolongation prior to 1884.

inventions in the useful arts, it was desirable to give the Crown power to extend the period of a patentee's monopoly beyond seven years from the expiration of the original term in cases where it could be satisfactorily shown that the expense of the invention had been too great for the patentee to recoup himself during the term then limited by law, the Legislature in 1844 by the Act 7 & 8 Vict. c. 69, secs. 2 and 3 enacted as follows:—

"If any person having obtained a patent for any invention shall, before the expiration thereof, present a petition to Her Majesty in Council, setting forth that he has been unable to obtain a due remuneration for his expense and labour in perfecting such invention, and that an exclusive right of using and vending the same for the further period of seven years in addition to the term in such patent mentioned will not suffice for his reimbursement and remuneration, then, if the matter of such petition shall be by Her Majesty referred to the Judicial Committee of the Privy Council, the said committee shall proceed to consider the same after the manner and in the usual course of its proceedings touching patents, and if the said committee shall be of opinion and shall so report to Her Majesty that a further period greater than seven years' extension of the said patent term ought to be granted to the petitioner, it shall be lawful for Her Majesty, if she shall so think fit, to grant an extension thereof for any term not exceeding fourteen years, in like manner, and subject to the same rules as to the extension for a term not exceeding seven years as now granted: Provided always, and be it enacted, that nothing herein contained shall prevent the said Judicial Committee from reporting that an extension for any period not exceeding seven years should be granted, or prevent Her Majesty from granting an extension for such lesser term than the petitioner shall have prayed." (*i*)

Stat. 15 & 16 Vict. c. 83.

By an Act of 1852 (*j*) it was provided that any letters patent obtained in the United Kingdom in respect of any invention first invented in any foreign country, or by the subject of any foreign power or State, and in respect of which any foreign letters patent or like privilege should have been obtained, should not continue in force after the expiration of the term which should first expire or be determined of such foreign letters patent or like privileges: Provided that no letters patent granted in the United Kingdom in respect of

(*i*) 7 & 8 Vict. c. 69, ss. 2 and 3. (*j*) 15 & 16 Vict. c. 83, s. 25.

any invention which formed the subject of any foreign expired letters patent should be valid.

Extension under Act of 1883.

It was, however, provided by the Act of 1852 (*k*) that the provisions of Lord *Brougham's* Act, (*l*) the Act of 1839, (*m*) and the Act of 1844 (*n*) as to prolongation of letters patent should still continue in force.

Extension by Petition under Act of 1883.

Effect of the Patents, &c., Act of 1883.

The Act of 1883 (*o*) substitutes the term "extension" in place of "prolongation" used in the earlier statutes, and repeals the whole of the statutes hereinbefore referred to.

Practice on petitions under s. 25 of the Act of 1883.

The practice which regulates the presentation and hearing of petitions for the extension of patents presented under sec. 25 of the Act of 1883 is now governed by the Privy Council Rules, 1898, made under the powers created by that section. (*p*) The former practice was governed by the Privy Council Rules (*q*) made under Lord *Brougham's* Act, (*r*) which are not expressly repealed by the new rules of 1898, and which it is presumed will still be enforced where not inconsistent with the new rules of 1898.

S. 25 of the Act of 1883.

Sec. 25 of the Act of 1883 enacts 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.

(*k*) 15 & 16 Vict. c. 83, s. 25.
(*l*) 5 & 6 Will. IV. c. 83.
(*m*) 2 & 3 Vict. c. 67.
(*n*) 7 & 8 Vict. c. 69.
(*o*) 46 & 47 Vict. c. 57, s. 113.
(*p*) See Appendix.
(*q*) *Ibid.*
(*r*) See 5 & 6 Will. IV. c. 83; Newton's Patent, (1884) L. R. 9 App. Cas. 592; 1 R. P. C. 177.

The Petitioner.

(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. (*s*)

(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 Petitioner.

Who may petition.

The term "patentee," as defined by the Act of 1883, means the person for the time being entitled to the benefit of the patent; (*t*) and it is, therefore, clear that prolongation or extension of the patent could be granted on the petition of the original patentee, his legal personal representative, or assignee, or, in the case of a partial assignment, the assignee or assignees conjointly with the original patentee or patentees.

The term "patentee" includes the executor of a deceased assignee, (*u*) the trustees of a company, (*x*) the patentee agent of a foreign inventor, (*y*) or a mortgagee. (*z*)

Under Lord *Brougham's* Act (*a*) it was doubtful whether the Crown had power to grant a prolongation in cases where there had been a complete or partial assignment of the patent right; but it was subsequently enacted that it should be lawful for Her Majesty, on the report of the Judicial Committee of the Privy Council, to grant such extension as was

(*s*) By Order in Council, Her Majesty, by and with the advice of her Privy Council, approved of the several rules and regulations contained in the schedule thereunto annexed, and ordered that on and after January, 1898, the same be respectfully observed. The Order in Council and rules referred to will be found at p. 328 *post*.

(*t*) s. 46.

(*u*) Bodmer's Patent, (1849) 6 Moo. P. C. 469.

(*x*) Petitt Smith's Patent, (1850) 7 Moo. P. C. 156.

(*y*) Newton's Patent (No. 1), (1861) 14 Moo. P. C. 156.

(*z*) Southworth's Patent, (1837) 1 W. P. C. 486; but see Church's Patent, (1886) 3 R. P. C. 95.

(*a*) 5 & 6 Will. IV. c. 83.

authorised by Lord *Brougham's* Act either to an assignee or assignees, or to the original patentee or patentees conjointly; (*b*) and assignees may obtain an extension under the present Acts. (*c*)

The Petitioner.

The Judicial Committee in forming their decision whether or not to recommend an extension of a patent always consider separately whether the extension will benefit the inventor, and also whether it will injure the public.

Committee consider probable benefit to the petitioner as well as injury to the public.

Assignees do not stand the same chance of success, on an application for extension of the patent, as original patentees, (*d*) for the object of the Crown, in granting an extension, being to reward the person who communicated the invention to the public, unless such person—*i.e.*, the original patentee—derives some benefit the extension will not be granted. (*e*) The definition of the term "patentee" by the Act of 1883 has not altered the principle which guided the Judicial Committee in the older cases with reference to allowing prolongation to assignees. (*f*)

Assignees are not received so favourably as original patentees.

The ground that the merits of the inventor ought to be properly rewarded, in dealing with an invention which has proved useful and beneficial to the public, does not exist in the case of an assignee, unless the assignee be a person who has assisted the patentee with funds to enable him to perfect and bring his invention into use. (*g*)

On an application by assignees, the Judicial Committee always consider that by favourably listening to the application of an assignee they are, though not directly, yet mediately and consequentially, as it were, giving a benefit to the inventor, because, if the assignee is not remunerated at all, it might be said that the patentee's chance of making an advantageous conveyance to an assignee would be materially diminished, and consequently his interest damnified. For this reason, consideration is given to the claims of the assignee who has an interest in a patent (*h*) and has assisted in the development of the invention.

(*b*) 7 & 8 Vict. c. 69, s. 4.

(*c*) Davies' Patent, (1894) 11 R. P. C. 28.

(*d*) Norton's Patent, (1863) 1 Moo. P. C. N. S. 339; Normand's Patent, (1870) L. R. 3 P. C. 193; Claridge's Patent, (1851) 7 Moo. P. C. 394.

(*e*) See Norton's Patent, (1863) 1 Moo. P. C. N. S. 339; Normand's Patent, (1870) L. R. 3 P. C. 193; Bovill's Patent, (1863) 1 Moo. P. C. N. S. 348; Hopkinson's Patent, (1896) 14 R. P. C. 10.

(*f*) Hopkinson's Patent, (1896) 14 R. P. C. 10.

(*g*) Per Lord Romilly, Norton's Patent, (1863) 1 Moo. P. C. N. S. 339.

(*h*) See judgment of Lord Brougham, Morgan's Patent, (1843) 1 W. P. C. 738.

The Petitioner.

It thus appears that an assignee who has assisted with capital in developing the invention will be viewed by the Judicial Committee more favourably (*i*) than one who has rendered no such assistance, but has merely purchased the invention on speculation. (*k*)

Companies.

Companies formed for the purpose of taking over patents and working them stand in the same position as other assignees with regard to petitions for extension; *i.e.*, if it can be shown that the company has expended money in developing the invention for the public benefit, and has not obtained an adequate return, the Judicial Committee will report favourably to the company, (*l*) but, if the company has been formed for purposes of speculation merely, no extension will be recommended when the original inventor has no practical interest in the question, notwithstanding that the company has suffered loss. (*m*)

Extension is not recommended unless original patentee would be directly or indirectly benefited.

There is no reported case in which the committee have recommended an extension, on the petition of an assignee, when it would not directly or indirectly tend towards the benefit of the original inventor, who would, had there been no assignment, have been in a position to claim an extension himself. (*n*)

Thus an assignee who has acquired a patent as a commercial venture cannot hope to obtain an extension when the original inventor could have no legitimate interest in making the application himself, *e.g.*, when the original patentee has been sufficiently rewarded at the expense of the patent, though the assignee has made a loss, or only a small profit, by the adventure, an extension will not be granted. (*o*)

(*i*) Bodmer's Patent, (1849) 6 Moo. P. C. 468; Berry's Patent, (1850) 7 Moo. P. C. 187; Whitehouse's Patent, (1830) 1 W. P. C. 473; 2 Moo P. C. 496; Carp. P. C. 565; Woodcroft's Patent, (1846) 2 W. P. C. 18; 10 Jur. 363; Normand's Patent, (1870) L. R. 3 P. C. 193; 6 Moo. P. C. N. S. 477; Houghton's Patent, (1871) L. R. 3 P. C. 461.

(*k*) *Ibid.*; Sillar's Patent, (1882) G. P. C. 581; Norton's Patent, (1863) 1 Moo. P. C. N. S. 339; 9 Jur. N. S. 419; G. P. C. 553; Hopkinson's Patent, (1896) 14 R. P. C. 5; Henderson's Patent, (1901) 18 R. P. C. 453.

(*l*) Petitt Smith's Patent, (1850) 7 Moo. P. C. 133; Houghton's Patent, (1871) L. R. 3 P. C. 461; 7 Moo. P. C. N. S. 309; Napier's Patent (No. 1), (1861) 13 Moo. P. C. 543; Church's Patent, (1886) 3 R. P. C. 95.

(*m*) Sillar's Patent, (1882) 1 G. P. C. 581; Claridge's Patent, (1851) 7 Moo. P. C. 394; Recce's Patent, (1881) 17 Iron. 155; 51 Eng. 207; Duncan and Wilson's Patent, (1884) 1 R. P. C. 257; see also Norton's Patent, (1863) G. P. C. 554, per Romilly, M.R.; Hopkinson's Patent, (1896) 14 R. P. C. 5; Clark's Patent, (1899) 16 R. P. C. 431.

(*n*) Bower and Barff's Patent, (1895) 12 R. P. C. 386; Hopkinson's Patent, (1896) 14 R. P. C. 5; Finch's Patent, (1898) 15 R. P. C. 674; Henderson's Patent, (1901) 18 R. P. C. 449.

(*o*) Claridge's Patent, (1851) 7 Moo. P. C. 394; Norton's Patent, (1863) 1 Moo. P. C. N. S. 339; Bower Barff's Patent, (1895) 12 R. P. C. 5; Carmont's

The merit of an importer, (*p*) *i.e.*, an inventor in the patent law sense, and not a mere assignee, is less than that of an original inventor. (*q*) To use the language of Lord *Brougham*, "the patent law is framed in a way to include two species of public benefactors; the one, those who benefit the public by their ingenuity, industry, science, invention, and personal capability; the other, those who benefit the public without any ingenuity or invention of their own, by the importation of the results of foreign inventions. Now, the latter is a benefit to the public incontestably, and, therefore, they render themselves entitled to be put upon somewhat, if not entirely, the same footing as inventors." (*r*) When the petitioner is an importer upon a communication from abroad, or the assignee of such an importer, it is absolutely essential that the committee are put in a position by the accounts to judge of the remuneration actually received, or which could have been received from the invention by the original inventor abroad, otherwise the petition will be dismissed. (*s*)

The Petition.

Merit of an importer is less than that of an original inventor.

When the patentee has granted an exclusive licence, the exclusive licensee should be a co-petitioner in order that he may show his accounts, and that the exclusive licence was not in fact prejudicial to the public, and further that he may release any rights he may have in the extension if granted. (*t*) If an exclusive licence has proved detrimental to the public interest, this fact may influence the committee not to recommend an extension. (*u*)

Exclusive licensees should be co-petitioners.

The Petition.

Two or more patents relating to cognate inventions may be included in one petition. (*x*)

Petition may include several patents.

A petitioner seeking the grace and favour of the Crown is bound to strict truth in his statements; (*y*) and the petitioner

Requisites of petition.

Patent, (1897) 14 R. P. C. 239; Hopkinson's Patent, (1896) 14 R. P. C. 5; Finch's Patent, (1898) 15 R. P. C. 674.

(*p*) See Vol. I. p. 17 *ante*.

(*q*) Soames' Patent, (1843) 1 W. P. C. 729.

(*r*) Berry's Patent, (1850) 7 Moo. P. C. 187; see also Bower Barff's Patent, (1895) 12 R. P. C. 385.

(*s*) Peach's Patent, (1901) 19 R. P. C. 65.

(*t*) Shone's Patent, (1892) 9 R. P. C. 438, 440.

(*u*) Darby's Patent, (1891) 8 R. P. C. 380; Shone's Patent, (1892) 9 R. P. C. 438.

(*x*) See Johnson and Atkinson's Patents, (1873) L. R. 5 P. C. 87; Clarke's Patent, (1870) L. R. 3 P. C. 421; 7 Moo. P. C. N. S. 255; Church's Patent, (1886) 3 R. P. C. 95; Erard's Patent, (1835) 1 W. P. C. 557.

(*y*) Clarke's Patent (No. 2), (1870) L. R. 3 P. C. 421, 426; 7 Moo. P. C. N. S. 255; Johnson's Patent, (1871) L. R. 4 P. C. 75, 83; 8 Moo. P. C. N. S. 282; Hill's Patent, (1863) 1 Moo. P. C. N. S. 238; 9 Jur. N. S. 1209; 9 L. T. N. S. 101; Horsey's Patent, (1884) 1 R. P. C. 225.

The Petition.

should remember that a prolongation or extension is a matter of favour and not of right, (*z*) and that a petition will be dismissed if it fails to state everything connected with the patent fairly and fully. (*a*) Thus, the petitioner in his petition and accounts (*b*) must refer to all patents, whether British (*c*) or foreign, (*d*) granted to him or any one through whom he claims (including, in the case of a patent for an invention communicated from abroad, the original inventor), (*e*) in respect of the invention forming the subject-matter of the English patent, and to the remuneration or loss he has derived or sustained through such foreign patents. The reason for requiring a reference to such British or foreign patents granted to the petitioner or his predecessors in title, is to be found in the fact that the questions of merit and insufficiency of remuneration may be affected by the existence of such other patents. Prolongation has been refused, on the ground of non-disclosure of material facts, where no mention was made of the circumstance that the patentee has assigned all present and future patent rights to a company, receiving no consideration in money or shares but reserving certain rights. (*f*) Prolongation has been refused on the ground that the petition was nominally presented by one, but actually in the interest and for the benefit of another company, to whom the shares in the first company had been transferred and no statement of this fact appeared in the petition, and the Judicial Committee would not have been cognisant of it, had it not been brought forward by the Attorney-General. (*g*)

Where it appeared from the petition that the petitioners were a company who had purchased the patent, but in fact no company, in a commercial sense, had been formed under the Companies Acts, and the persons really interested were the petitioner and a creditor, the Judicial Committee did not recommend an extension. (*h*)

And where the petition concealed the fact that the manufacture of the patented article had been, by contract, carried

(*z*) Adair's Patent, (1881) L. R. 6 App. Cas. 176.

(*a*) Pitman's Patent, (1871) L. R. 4 P. C. 84; 8 Moo. P. C. N. S. 293.

(*b*) p. 182 *post*.

(*c*) Standfield's Patent, (1897) 15 R. P. C. 17.

(*d*) Johnson's Patent, (1871) L. R. 4 P. C. 75; 7 Moo. P. C. N. S. 255; Pitman's Patent, (1871) L. R. 4 P. C. 84; 8 Moo. P. C. N. S. 293; Adair's Patent, (1881) L. R. 6 App. Cas. 178; 50 L. J. P. C. 68; Clarke's Patent, (1870) L. R. 3 P. C. 421.

(*e*) Peach's Patent, (1901) 19 R. P. C. 65; p. 186 *post*.

(*f*) Ferranti's Patent, (1901) 18 R. P. C. 518.

(*g*) Reece's Patent, (1881) 17 Iron. 155; 51 Eng. 207.

(*h*) Horsey's Patent, (1884) 1 R. P. C. 225.

on by one of several joint patentees, who had carried on such manufacture in conjunction with the manufacture of other articles, and the accounts did not disclose any other manufacture than that of the patented article, the petition was dismissed. (*i*)

The Petition.

Amendment of petition.

The petitioner cannot be too careful in framing his petition properly, as the indulgence of the Judicial Committee in granting amendments and adjournments cannot be relied upon; but in some cases, where there are special circumstances, an amendment, and, if necessary, an adjournment, may be allowed. (*j*) The procedure for such relief is by way of a separate petition to the committee. (*k*)

Departure from statutory requirements affects the jurisdiction of the committee, but not so a failure to comply with the rules.

A departure from the statutory provisions on presenting a petition affects the jurisdiction of the Judicial Committee, and is consequently fatal; but an omission to observe properly the rules laid down by the Judicial Committee itself may be remedied. (*l*)

Thus the committee are powerless to excuse the petitioner from the consequences of want of strict compliance with the statutory provisions for presentation of the petition at least six months before the expiration of the term of the patent. (*m*)

When petition may be presented.

In the case of patents granted prior to January 1, 1884, the petition might be presented at any time before the expiration of the patent, provided that it was prosecuted with effect (*i.e.*, the report of the Judicial Committee is obtained), (*n*) before the expiration of the term. (*o*)

The Act of 1883 does not require the petition to be prosecuted with effect before the expiration of the original term of the monopoly; and it is submitted that, if it be presented at least six months before the expiration of the term of the patent, (*p*) any patent to which the Act applies in this matter may be extended, notwithstanding that the report of the Judicial Committee is obtained, after the expiry of the original term.

There is nothing in the patent law which renders invalid a new grant of letters patent, dated after the expiry of the

(*i*) Yates and Kellett's Patent, (1887) L. R. 12 App. Cas. 147.

(*j*) See Reece's Patent, (1881) 17 Iron. 155; 51 Eng. 207; Adair's Patent, (1881) L. R. 6 App. Cas. 176, 180; Hutchinson's Patent, (1861) 14 Moo. P. C. 364.

(*k*) Brandon's Patent, (1884) 1 R. P. C. 154.

(*l*) Hutchinson's Patent, (1861) 14 Moo. P. C. 364; Lindon's Patent, (1897) 14 R. P. C. 643; Judicial Committee Rules, (1898) r. 7, p. 331 *post*.

(*m*) Adam's Patent, (1898) 16 R. P. C. 1.

(*n*) Ledsam *v.* Russell, (1847) 1 H. L. Cas. 687.

(*o*) Brandon's Patent, (1884) 1 R. P. C. 154.

(*p*) 46 & 47 Vict. c. 57, s. 25 (1).

The Petition.

original term, if such new grant is made on the representations of a report of the Judicial Committee of the Privy Council properly obtained. If, however, the petition is not presented in time, *i.e.*, six months before the natural expiration of the patent, the Judicial Committee has no jurisdiction in the matter, and so cannot entertain the petition. (*q*)

Advertisements.

It is provided by the Judicial Committee Rules, 1898, (*r*) that a party intending to apply by petition under sec. 25 of the Act of 1883 shall give public notice by advertisement 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 fifteen 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 fifteen 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 fifty 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.

It is further provided by the same rules (*s*) that 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.

Petition must be presented within one week of last advertisement in the *London Gazette*.

A petition for revocation under sec. 25 of the Act of 1883 must be presented within one week from the publication of the last of the advertisements required to be published in the *London Gazette*. (*t*)

(*q*) Jablochkoff's Patent, (1891) 8 R. P. C. 281; see above.
(*r*) Rule 1, p. 328 *post*.
(*s*) Rule 1, p. 328 *post*.
(*t*) Judicial Committee Rules, (1893) r. 2, p. 329 *post*.

The petition must be accompanied with an affidavit or affidavits of advertisements having been published according to the requirements of the Judicial Committee Rules, 1898. The statements contained in such affidavit or affidavits may be disputed upon the hearing. (*u*)

The Petition.

Affidavit of advertisements.

It is further the duty of the petitioner to apply to the Lords of the committee to fix a time for hearing the petition, and when such time is fixed the petitioner is required forthwith to give public notice of the same by advertisement once at least in the *London Gazette* and in two London newspapers. (*v*)

Application for time for hearing.

The petitioner must, not less than fourteen days before the day fixed for the hearing, 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 is to be deemed sufficient. (*w*)

Documents to be lodged by petitioner at the council office.

The petitioner is also required, not less than fourteen days before the day fixed for the hearing, to lodge at the council office eight copies of the balance-sheet of expenditure and receipts relating to the patent in question, which amounts are to be proved on oath before the Lords of the committee at the hearing. He must also furnish three copies of the said balance-sheet for the use of the Solicitor to the Treasury, and must, 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. (*x*)

If an equitable assignee is desirous of petitioning with the legal owner, his name must appear in the advertisements. (*y*)

Equitable assignee petitioning with the legal owner.

In cases where the patentee resides abroad, and the invention is carried on under licences, the advertisements should be inserted in papers circulating in places where the manufacture is actually carried on. (*z*)

Petitioner resident abroad.

The advertisements must be proved before the petition is

Proof of advertisements.

(*u*) Judicial Committee Rules, (1898) r. 2, p. 329 *post*.
(*v*) *Ibid.*
(*w*) *Ibid.* r. 3, p. 329 *post*.
(*x*) *Ibid.*
(*y*) *In re* Noble's Patent, (1850) 7 Moo. P. C. 191.
(*z*) Derosne's Patent, (1844) 2 W. P. C. 2.

Opposition.

heard, (*a*) for if anything required by the statute to be done is not done the Crown has no power to grant a prolongation. (*b*) The Judicial Committee has, however, power to dispense with exact compliance with the mode of advertisement as required by its own rules, and in a proper case will do so (*c*)—*e.g.*, where there has by an oversight been an omission to issue the preliminary advertisements, and, if the rules were insisted on, it would be impossible to comply with the statutory requirement that the petition must be presented at least six months before the expiration of the patent, the committee will allow the petition to be received before the insertion of the advertisements, the parties undertaking to insert before a day named all the advertisements required, and the order being served on the Attorney-General, and to be subject to any objection he may make. (*d*)

Order fixing the day for hearing.

The usual order fixing the day for hearing requires the petitioner to advertise the date fixed in the *London Gazette*, and two other papers named in the order. (*e*)

If on the application to fix a day for hearing it appear that the petition has been presented some considerable time (*e.g.*, eighteen months) before the expiry of the patent, the hearing will be postponed, on the ground that the profits made during the unexpired period may be sufficient adequately to reward the patentee, or affect the term of extension (if any) granted, (*f*) but it will not be necessary to serve fresh notices. (*g*)

Opposition.

Any person may enter a *caveat*.

It is to be observed that any person may, on or before the day fixed by the petitioner for his application for a time to be fixed for the hearing of his petition, enter a *caveat* or warning to the Sovereign not to accede to the prayer of the petition. (*h*) An extension of the time for entering a *caveat* will not be granted, as a rule, on the ground that the applicant did not see the advertisements of the intended application for a day for hearing till too late. (*i*) Interest in the patent is not essential,

(*a*) Perkin's Patent, (1845) 2 W. P. C. 8; p. 169 *ante*.
(*b*) *In re* Nobel's Patent, (1850) 7 Moo. P. C. 194; p. 167 *ante*.
(*c*) Jablochkoff's Patent, (1891) 8 R. P. C. 281; see p. 167 *ante*; Lindon's Patent, (1897) 14 R. P. C. 643.
(*d*) Lindon's Patent, (1897) 14 R. P. C. 643.
(*e*) See p. 415 *post*.
(*f*) See Macintosh's Patent, (1837) 1 W. P. C. 739 *n*.
(*g*) *Ibid*.
(*h*) p. 161 *ante*.
(*i*) Hopkinson's Patent, (1897) 13 R. P. C. 114.

as in the case of opposition to the grant, (*j*) the amendment of a specification, (*k*) or the revocation of a patent. (*l*) A person who has entered a *caveat* is entitled to receive four weeks' notice from the petitioner of the day fixed for the hearing, (*m*) and to be served with a copy of the petition; (*n*) but this rule was relaxed and an earlier date fixed for the hearing in a case where the patent would have expired before the notice. (*o*) He is also entitled to notice of any special application by the petitioner, (*p*) and, at his own expense, to copies of all papers lodged in reference to the petition. (*q*)

Opposition.

Notice to opponents of day fixed for hearing.

The Judicial Committee Rules (1898) require an opponent, within three weeks of being served with the petition, to lodge at the council office eight printed copies of the grounds of his objections to the granting of the prayer of the petitioner. (*r*) It will be sufficient if the grounds of the objections are stated, though particulars are not given. (*s*) The rules (*t*) made under Lord *Brougham's* Act contained a similar provision.

Notice of opponent's objections to be lodged at the council office.

Opposers are not entitled to production and inspection of the petitioner's accounts until the hearing, (*u*) but they are allowed copies of them, at their own expense, when they are filed. (*x*)

Copies of petitioner's accounts.

A party intending to oppose a petition under sec. 25 of the Act must enter a *caveat* at the council office before the day on which the petitioner applies for a time 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. (*y*) The petitioner is required to serve copies of his petition on all parties entering *caveats* in accordance with the rules, and no application to fix a time for hearing may be made without affidavit of such service. (*z*)

Time within which *caveats* may be entered.

Petition must be served on all opponents.

All parties intending to oppose are required, within three weeks after such copies are served on them, respectively to lodge at the council office eight printed copies of the

Copies of opponent's grounds of opposition to be lodged at council office.

(*j*) p. 31 *ante*.
(*k*) p. 86 *ante*.
(*l*) Vol. I. p. 293.
(*m*) Judicial Committee Rules, (1898) r. 4, see p. 330 *post*.
(*n*) *Ibid*.
(*o*) Thomas's Patent, (1892) 9 R. P. C. 378.
(*p*) Hutchinson's Patent, (1861) 14 Moo. P. C. 364.
(*q*) Judicial Committee Rules, (1898) r. 5, p. 330 *post*.
(*r*) Rule 4, p. 330 *post*.
(*s*) Ball's Patent, (1879) L. R. 4 App. Cas. 171; 48 L. J. P. C. 24.
(*t*) Rule 6, p. 330 *post*.
(*u*) Bridson's Patent, (1852) 7 Moo. P. C. 499.
(*x*) Judicial Committee Rules, (1898) r. 5, p. 330 *post*.
(*y*) *Ibid*. r. 4, p. 330 *post*.
(*z*) *Ibid*.

Hearing of the Petition.

grounds of their objections to the granting of the prayer of the petition. (*a*)

Copies of all papers lodged may be obtained.

Parties are entitled, at their own expense, to have copies of all papers lodged in respect of the petition. (*b*)

How petitions and notices of opposition, &c., are to be printed.

And all petitions as well as all statements of grounds of objection are to 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 are to be printed in a form convenient for binding along with such petitions. (*c*)

Attorney-General may be heard without notice.

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 the petition. 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. (*d*)

Costs of hearing may be taxed.

Costs incurred in the matter of the petition are 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 costs in the matter of any petition, and the registrar or such officer has authority to allow or disallow in his discretion all payments made to persons of science or skill examined as witnesses. (*e*)

Compliance with rules may be dispensed with.

The Lords of the committee have power expressly given them by the rules of 1898 to excuse petitioners and opponents from compliance with any of the requirements of such rules elating to the practice as to petitions under sec. 25 of the Act of 1883, and to give such directions in matters of procedure and practice under the section as they shall consider to be just and expedient. (*f*)

Hearing of the Petition.

Parties may appear personally or by counsel.

At the hearing of the petition, the petitioner and opposing parties, if there are any, may appear either in person or by counsel; but where there are several opponents not more than two counsel will be heard on either side, unless the opposing parties have distinct and separate interests. (*g*)

(*a*) Judicial Committee Rules, (1898) r. 4, p. 330 *post*.
(*b*) *Ibid.* r. 5, p. 330 *post*.
(*c*) *Ibid.*
(*d*) *Ibid.* r. 8, p. 331 *post*.
(*e*) *Ibid.* r. 6, p. 330 *post*.
(*f*) *Ibid.* r. 7, p. 331 *post*.
(*g*) Woodcroft's Patent, (1841) 3 Moo. P. C. 172 *n*.

Hearing of the Petition.

If there is no opposition, or if any of the grounds on which the patent might be opposed are admitted in the patentee's favour by the opponent, the committee will require formal evidence in support of the petition as a whole, or in support of the admitted grounds, as the case may be. (*h*)

Hearing when there is no opposition.

The Judicial Committee will hear and adjudicate on a petition notwithstanding that there are proceedings pending affecting the question of validity of the patent, or judgment has been given or the patent has been declared void by a Court from which an appeal lies and the decision of which is not binding on the committee. (*i*)

Petition heard though there are pending proceedings affecting question of validity.

It is the usual practice, on the hearing of a petition, for the Judicial Committee to deal first with the question of the utility of the invention to the public, (*k*) and afterwards with that of adequacy of remuneration; (*l*) but sometimes this order is reversed—*e.g.*, where the accounts (*m*) show that the remuneration has been such that it would be preposterous to grant the petition, (*n*) or the accounts are unsatisfactory. (*o*)

Practice of the committee.

In accordance with the rule laid down in *Erard's Patent*, (*p*) the Attorney-General always appears at the hearing of petitions for the extension of letters patent, whether there is opposition or not, to watch the interests of the Crown and the public, and he is entitled to be heard without having previously entered a *caveat*. (*q*) Also he is not bound to give any notice of objections at all, and may at the hearing raise objections of which no notice has been given. (*r*) The patentee comes to ask a favour, and it is his duty to show the exact state of knowledge at the time of his patent, and the exact scope of his invention, by himself referring to previous publications. (*s*)

Attorney-General always appears.

The Judicial Committee may, if they think fit, appoint one of the clerks of the Privy Council to take any formal proofs

Formal proofs may be taken by clerk of the Committee.

(*h*) Toy's Patent, (1893) 10 R. P. C. 89.

(*i*) Kay's Patent, (1839) 1 W. P. C. 568; 572 note (*f*); Heath's Patent, (1853) 2 W. P. C. 247; Lane Fox's Patent, (1892) 9 R. P. C. 411.

(*k*) p. 178 *post*.

(*l*) p. 180 *post*.

(*m*) p. 182 *post*.

(*n*) Crighton's Patent, 39 Eng. 135; Saxby's Patent, (1870) L. R. 3 P. C. 292; 7 Moo. P. C. N. S. 82; 19 W. R. 513; Clark's Patent (No. 2), (1870) L. R. 3 P. C. 421; 7 Moo. P. C. N. S. 255; Trotman's Patent, (1866) L. R. 1 P. C. 118; Houghton's Patent, (1871) 7 Moo. P. C. 309.

(*o*) Wield's Patent, (1871) L. R. 4 P. C. 89; 8 Moo. P. C. N. S. 300; Thomas's Patent, (1892) 9 R. P. C. 367.

(*p*) (1835) 1 W. P. C. 557 *n.*; Whitehouse's Patent, (1830) 1 W. P. C. 474; Clark's Patent, (1899) 16 R. P. C. 431.

(*q*) Petitt Smith's Patent, (1850) 7 Moo. P. C. 133; rule 8, p. 331 *post*.

(*r*) Rule 8, p. 331 *post*; Ball's Patent, (1879) L. R. 4 App. Cas. 171; Stewart's Patent, (1885) 3 R. P. C. 7; Church's Patent, (1886) 3 R. P. C. 101; Fountain Livet's Patent, (1892) 9 R. P. C. 327.

(*s*) Fountain Livet's Patent, (1892) 9 R. P. C. 331, 332.

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required to be taken, in dealing with the matter before them, and may proceed on the clerk's report as if the proofs had been taken by the committee itself; (*t*) and under the Act of 1883 they may call in the aid of an assessor specially qualified and hear the petition, wholly or partially, with his assistance, and determine the remuneration he is to receive. (*u*)

Where a petitioner applied to have the hearing of his petition advanced, or his evidence taken on commission on account of his impending absence from England, an order was made to the effect that, if his absence proved to be imperative, his evidence might be taken before the registrar, subject to any objection which the Attorney-General might raise. In the result the evidence was so taken, and the registrar directed that it should not be published before the hearing of the petition. (*x*)

Committee's discretion is absolute.

A patentee is never entitled to demand, *ex debito justitiæ*, a prolongation or extension of the term of his monopoly. In all cases the Judicial Committee have an absolute discretion in recommending the Crown to promote the progress of the petition; (*y*) and the only limit to this recommendation is that the period of extension shall not be more than fourteen years. (*z*)

Grounds for Extension.

Grounds for extension have reference to the patentee and to the public.

It is expressly provided by the Act of 1883 (*a*) that "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."

All the grounds upon which the Judicial Committee of the Privy Council grant extensions of patents may be said to have reference to the inventor himself. They are, in the first place, to reward the inventor for the peculiar ability and industry he has exercised in making the discovery; in the second place, to

(*t*) 7 & 8 Vict. c. 69, s. 8.
(*u*) 46 & 47 Vict. c. 57 s. 28, sub-s. 2 and 3.
(*x*) Whitworth's Patent, 48 Eng. 15.
(*y*) Jones's Patent, (1840) 1 W. P. C. 577; Smith and Robertson's Patent, (1847) 30 Newton, L. J. O. S. 451; Porter's Patent, 1 Newton, L. J. N. S. 179; Morgan's Patent, (1843) 1 W. P. C. 739; Soames' Patent, (1843) 1 W. P. C. 733; Perkins' Patent, (1845) 2 W. P. C. 16; Derosne's Patent, (1844) 2 W. P. C. 4; Honiball's Patent, (1855) 9 Moo. P. C. 393; Cardwill's Patent, (1856) 10 Moo. P. C. 490.
(*z*) 46 & 47 Vict. c. 57, s. 25; Ledsam v. Russell, (1847) 1 H. L. Cas. 687.
(*a*) s. 25, sub-s. 4.

Grounds for Extension.

reward him because some great benefit of an unusual description has by him been conferred upon the public, through the invention itself; and, lastly, because the inventor has not been sufficiently remunerated by the profits derived from his strenuous exertions to make the invention profitable. All these grounds proceed upon the supposition that the invention is new and useful. (*b*) But, nevertheless, the grant of an extended term must not be detrimental to the public interest. (*c*) The fact that foreign patents will lapse as a consequence of the refusal of the committee to prolong the British patent is a circumstance of some weight in favour of the petitioner. (*d*) The fact that the patentee has granted an exclusive licence is a point against the extension of a patent, for it is against public policy that there should be only one licensee. (*e*) This objection may be got over by making it a condition of extension that the exclusive licensee shall renounce all right and benefit in the licence. (*f*)

The fact that an extension would prevent the public from using the invention, which is one of public importance—*e.g.*, a process for deodorising manure may weigh against the grant of the prayer of the petition. (*g*)

But the fact that the invention deals with a subject, *e.g.*, smoke prevention, which the public are by statute obliged to use, does not, though the public may practically be obliged to use the patentee's invention, raise an insuperable objection against the extension of the patent. (*h*)

Two things necessary to obtain an extension.

It is thus clear that a petitioner, in order to induce the Judicial Committee to recommend the Crown to grant the prayer of the petition, must satisfactorily prove two things, viz.:—

(i) The invention is meritorious.

(ii) He has been insufficiently remunerated, owing to no fault of his own.

(*b*) Per Lord Romilly, Norton's Patent, (1863) 1 Moo. P. C. N. S. 339; 9 Jur. N. S. 419; see also Whitehouse's Patent, (1830) 2 Moo. P. C. 496; 1 W. P. C. 473; Erard's Patent, (1835) 1 W. P. C. 557; Downton's Patent, (1839) 1 W. P. C. 565; Derosne's Patent, (1844) 2 W. P. C. 1; 4 Moo. P. C. 417; Carp. P. C. 699; Woodcroft's Patent, (1841) 2 W. P. C. 18; 10 Jur. 363.

(*c*) McInnes' Patent, (1868) L. R. 2 P. C. 54; 37 L. J. P. C. 23; 5 Moo. P. C. N. S. 72.

(*d*) Thompson's Patent, (1902) 19 R. P. C. 568.

(*e*) Cardwill's Patent, (1856) 10 Moo. P. C. 488; Darby's Patent, (1891) 8 R. P. C. 380; Shone's Patent, (1892) 9 R. P. C. 438.

(*f*) Shone's Patent, (1892) 9 R. P. C. 441.

(*g*) McDougal's Patent, (1867) L. R. 2 R. P. C. 1; 5 Moo. P. C. 1; Sillar's Patent, (1882) G. P. C. 581; Morgan's Patent, (1843) 1 W. P. C. 739; Soames' Patent, (1843) 1 W. P. C. 734.

(*h*) Foardes' Patent, (1855) 9 Moo. P. C. 376.

Grounds for Extension.

(i) **Merit.**—The applicant must make out a *primâ facie* case of validity. (*i*) For this purpose, a decision of the High Court of Justice, or the Court of the County Palatine of Lancaster, in favour of the validity of the patent will be sufficient. (*j*)

Invention must be proved to be independently meritorious.

The invention must be shown to be independently meritorious—*e.g.*, it will not do to show that it could only be usefully employed in conjunction with some later discovery. (*k*) It is, however, not an objection to the grant of an extension that the invention is an improvement on, and is intended to be used with, some previously patented invention, (*l*) or that the original invention would not be used without it, (*m*) provided that there is utility in the improvement. (*n*)

In the absence of evidence as to merit the petition will not succeed. (*o*)

Only part of invention meritorious.

If an invention consist of several parts, and it appear that some part, or parts, is, or are, not meritorious, but that there is merit in the remaining part or parts, an extension will probably be recommended in respect of the meritorious part or parts alone. (*p*)

Committee does not decide question of validity.

The Judicial Committee will *not* recommend the extension of a patent which, on the face of it, appears to be invalid; (*q*) but they will not discuss or decide the question of validity, if it appear decidedly doubtful on the ground of lack of novelty, or utility, or from any other cause, (*r*) and evidence of these points may be given at the hearing. (*s*) In cases of doubt as to the validity of the patent, the Judicial Committee exercises its discretion, (*t*) and it will not refuse to act though there are

(*i*) Erard's Patent, (1835) 1 W. P. C. 557; Kay's Patent, (1839) 1 W. P. C. 568; 3 Moo. P. C. 24.

(*j*) See Bett's Patent, (1862) 7 L. T. N. S. 577; 9 Jur. N. S. 187; 1 Moo. P. C. N. S. 49.

(*k*) Bett's Patent, (1862) 1 Eng. 335; 1 Moo. P. C. 49; 7 L. T. N. S. 577.

(*l*) Bovill's Patent, (1863) 1 Moo. P. C. N. S. 348; Seames' Patent, (1843) 1 W. P. C. 729.

(*m*) Woodcroft's Patent, (1841) 1 W. P. C. 740; 3 Moo. P. C. 171; Galloway's Patent, (1843) 1 W. P. C. 727.

(*n*) Bell's Patent, (1846) 2 W. P. C. 160; 10 Jur. 363.

(*o*) Kelley's Patent, (1900) 17 R. P. C. 476.

(*p*) Bodmer's Patent, (1831) 8 Moo. P. C. 282; Lee's Patent, (1881) 10 Moo. P. C. 226; Napier's Patent, (1881) L. R. 6 App. Cas. 174; 50 L. J. P. C. 40; Church's Patent, (1886) 3 R. P. C. 95. As to effect of an admission that one claim is bad, see Burlingham's Patent, (1898) 15 R. P. C. 195.

(*q*) Kay's Patent, (1839) 1 W. P. C. 568; 3 Moo. P. C. 24; Erard's Patent, (1835) 1 W. P. C. 557; McDougal's Patent, (1867) L. R. 2 P. C. 1; 37 L. J. P. C. 17; 5 Moo. P. C. N. S. 1.

(*r*) Hill's Patent, (1863) 9 Jur. N. S. 1209; 9 L. T. N. S. 101; 1 Moo. P. C. N. S. 258; 18 Newton, L. J. N. S. 109; Cocking's Patent, (1885) 2 R. P. C. 151; Stewart's Patent, (1886) 3 R. P. C. 7; Saxby's Patent, (1870) L. R. 3 P. C. 292; 7 Moo. P. C. N. S. 82; Lyon's Patent, (1894) 11 R. P. C. 537.

(*s*) *Ibid.*

(*t*) Per Sir William Erle, McInnes' Patent, (1868) L. R. 2 P. C. 54; 37 L.

Grounds for Extension.

proceedings pending in which the validity is in question, or there is a decision against the patent of a Court whose judgments are not binding on the committee. (*u*) Though the committee does not try the issue of validity, questions which go to validity may be material upon the question of merit. Thus, prolongation was refused where it appeared that the main merit of the invention lay not in the disclosure of a principle, but in the details of construction, and the petitioner had not given sufficient disclosure in his specification as to those details, and the evidence showed that all the articles constructed under the patent were made under the personal supervision of the patentee, who alone knew the details, and so the specification was insufficient. (*v*)

A new grant is open to same objections as the old one.

If a new grant is allowed, it is of course open to the same objections, and may be annulled in the same manner as the old one; (*x*) and the Judicial Committee are not called on to discuss the question as to whether an extension, if granted, would avail the petitioner anything: that is left to the Courts of law. (*y*)

Merit in the sense of utility must be proved.

There is an obvious distinction between the "merit of ingenuity and the merit of utility" of an invention; (*z*) and unless the Judicial Committee are satisfied that the invention possesses the latter, they will not recommend an extension; (*a*) though mere simplicity of invention is not necessarily an objection to an extension, (*b*) yet the fact of great labour and ingenuity being required to produce the invention will go far to establish a case of utility strong enough to satisfy the committee that the public is likely to derive a benefit from the invention sufficient to warrant an extension. (*c*)

J. (N. S.) P. C. 23; 5 Moo. P. C. N. S. 72; Woodcroft's Patent, (1846) 2 W. P. C. 18; 10 Jur. 363; 28 Newton, L. J. C. S. 196; Pinker's Patent, (1848) 12 Jur. N. S. 433; Soames' Patent, (1843) 1 W. P. C. 729; 23 Newton, L. J. C. S. 462.

(*u*) Kay's Patent, (1839) 1 W. P. C. 568, 572 *n.*; Heath's Patent, (1853) 2 R. P. C. 247; Lane Fox's Patent, (1892) 9 R. P. C. 411.

(*v*) Fountain Livet's Patent, (1892) 9 R. P. C. 327.

(*x*) Galloway's Patent, (1843) 1 W. P. C. 724; 7 Jur. 453.

(*y*) Per Lord Brougham, Woodcroft's Patent, (1841) 2 W. P. C. 18; 10 Jur. 363; 28 Newton, L. J. C. S. 196.

(*z*) Bett's Patent, (1862) 7 L. T. N. S. 577; 9 Jur. N. S. 137; 1 Moo. P. C. N. S. 49; Pinker's Patent, (1848) 12 Jur. N. S. 433.

(*a*) Simister's Patent, (1842) 1 W. P. C. 721; 7 Jur. 451; 4 Moo. P. C. 164; 21 Newton, L. J. C. S. 465; Longmaid's Patent, 1 Eng. 347; Derosue's Patent, (1835) 2 W. P. C. 1; Carp. P. C. 699; 4 Moo. P. C. 417; 24 Newton, L. J. C. S. 459.

(*b*) Per Lord Watson, Hazeland's Patent, (1894) 11 R. P. C. 470.

(*c*) Hill's Patent, (1863) 9 L. T. N. S. 101; 9 Jur. N. S. 1209; 1 Moo P. C. N. S. 258; 18 Newton; L. J. N. S. 109.

Grounds for Extension.

Test of utility necessary for an extension.

The test of utility is not the same for the purposes of extension as in an action of infringement or petition for revocation. In the former case commercial utility is of the utmost importance, but not so in the latter. (*d*) And generally in order to succeed, the petitioner must show that there is in the invention merit beyond that ordinary merit which would be sufficient to sustain a patent in the first instance—that is to say, there must be something beyond that merit which would, in an action for infringement, support a patent in the face of a plea of want of utility. (*e*) Consequently, because an invention is new, in the sense that a patent for it could be supported on the ground of novelty, it does not necessarily follow that it is sufficiently novel, having regard to prior inventions of a like character, to satisfy the Judicial Committee that the benefit conferred by it on the public is sufficient to warrant an extension. (*f*)

Thus, where there have been previous patents for somewhat analogous methods of attaining the same result as that achieved by the petitioner's patented invention, and the petitioner's invention has not been taken up by the public, though it has been advertised to a considerable extent, the Judicial Committee will not deem the invention to possess such a sufficient degree of novelty or merit as will justify them in recommending a prolongation. (*g*)

Extent of user is an important question.

The extent to which the invention has been used by the public is, in more ways than one, an important consideration. If there has been an extensive use by the public, of course this fact is unfavourable to the contention of an applicant for prolongation or extension, for though it shows that the invention is useful, it also shows that the patentee has had an opportunity of making profit out of it. (*h*) On the other hand, if the invention has not been extensively used by the public, the presumption is against its utility, and therefore

(*d*) Lawrence's Patent, (1892) 9 R. P. C. 88; McDougal's Patent, (1884) 2 R. P. C. 11; Pitman's Patent, (1871) L. R. 4 P. C. 84; 8 Moo. P. C. N. S. 293.

(*e*) See remarks of Grove, J., Stoney's Patent, (1888) 5 R. P. C. 520; see also Saxby's Patent, (1886) 3 R. P. C. 294; Betts's Patent, (1862) 1 Moo. P. C. N. S. 49; 9 Jur. N. S. 137; 7 L. T. N. S. 577.

(*f*) Stewart's Patent, (1886) 3 R. P. C. 7; Thornycroft's Patent, (1899) 16 R. P. C. 202; Sillar's Patent, (1882) G. P. C. 581; McDougal's Patent, (1867) L. R. 2 P. C. 1; 37 L. J. (N.S.) P. C. 17; 5 Moo. P. C. N. S. 1; McInnes' Patent, (1868) L. R. 2 P. C. 54; 37 L. J. (N. S.) P. C. 23; 5 Moo. P. C. N. S. 72; Ricci's Patent, (1906) 23 R. P. C. 269.

(*g*) Allan's Patent, (1867) L. R. 1 P. C. 507; 4 Moo. P. C. N. S. 443; Stewart's Patent, (1885) 3 R. P. C. 7; Hall's Patent, (1895) 12 R. P. C. 400.

(*h*) Downton's Patent, (1839) 1 W. P. C. 565.

Grounds for Extension.

unfavourable to the applicant.(*i*) In the words of Lord *Romilly*, the Judicial Committee "find much more difficulty in dealing with the case of a patent where it has not been used for fourteen years than in dealing with one where a user has taken place, because, assuming that there is no utility in the invention, there is nobody whose interest it is to oppose it; but where it has been used for a considerable number of years there are persons who always desire to get rid of the invention [patent], and from them their lordships hear all the arguments which can properly be brought against the validity of the patent." (*k*)

Presumption of non-utility arising from limited use may be rebutted.

The presumption of non-utility arising from a limited use of the invention by the public is not in every case fatal, for it is often capable of being rebutted, (*l*) *e.g.*, where the invention was a system of railway signalling covering ground already occupied by the machinery of other systems, and railway companies could not be induced to adopt the patentee's meritorious system on account of the great expense involved in a change of system and the fear that the new system might not be so good as the old, (*m*) or where the invention is one which from its nature is capable only of occasional use, (*n*) even though there has been no user at all; (*o*) but strong evidence is required to do this. (*p*)

For example, in the case of *Southby's Patent*, (*q*) the original invention which was patented in 1877 was of great merit, but had never been brought into practical use, because the patentee was not satisfied that he had brought the invention into such practical efficiency as could justify him in incurring the expense

(*i*) Allan's Patent, (1867) L. R. 1 P. C. 507; 4 Moo. P. C. N. S. 443; Herbert's Patent, (1867) L. R. 1 P. C. 399; 4 Moo. P. C. 300; Simister's Patent, (1842) 1 W. P. C. 721; 7 Jur. 451; 4 Moo. P. C. 164.

(*k*) Allan's Patent, (1867) L. R. 1 P. C. 507; 4 Moo. P. C. N. S. 433.

(*l*) Norton's Patent, (1863) 1 Moo. P. C. N. S. 339; 9 Jur. N. S. 419; Bakewell's Patent, (1862) 15 Moo. P. C. 385; Wright's Patent, (1839) 1 W. P. C. 575; Jones' Patent, (1840) 1 W. P. C. 577; Allan's Patent, (1867) L. R. 1 P. C. 507; 4 Moo. P. C. N. S. 433; Cocking's Patent, (1885) 2 R. P. C. 151; Berrington's Patent, cited L. R. 1 P. C. 509; 4 Moo. P. C. N. S. 445; Coryton, 225; Simister's Patent, (1842) 1 W. P. C. 721; 7 Jur. 451; Southworth's Patent, (1837) 1 W. P. C. 486; Herbert's Patent, (1867) L. R. 1 P. C. 399; 4 Moo. P. C. N. S. 300; Hughes' Patent, (1879) L. R. 4 App. Cas. 174; 48 L. J. P. C. 20; Semot and Solway's Patent, (1894) 12 R. P. C. 10; Roper's Patent, (1887) 4 R. P. C. 201; Southby's Patent, (1891) 8 R. P. C. 433; Thompson's Patent, (1902) 19 R. P. C. 565.

(*m*) Currie's Patent, (1897) 15 R. P. C. 63.

(*n*) Thompson's Patent, (1902) 19 R. P. C. 568.

(*o*) Roper's Patent, (1887) 4 R. P. C. 4; Southby's Patent, (1891) 8 R. P. C. 433; Thompson's Patent, (1902) 19 R. P. C. 568.

(*p*) Allan's Patent, (1867) L. R. 1 P. C. 507; 4 Moo. P. C. N. S. 433.

(*q*) (1891) 8 R. P. C. 433.

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of putting it on the market. In 1885 the patentee took out a subsequent patent for an invention apparently essential to the working of his original machine, and which enabled such machine to be worked successfully. The Judicial Committee advised a prolongation of five years on the ground that the presumption of non-utility arising from non-user was rebutted, and that there might be some other way than that protected by the 1885 patent by which the machine might be successfully worked.

The following facts also have been held to be sufficient evidence to rebut the presumption of non-utility arising from a limited user by the public: there was a special trade opposition; (*r*) the invention was of a special nature and could not easily be brought into public use; (*s*) the market and demand was necessarily limited; (*t*) experimental difficulties; (*u*) legal proceedings; (*x*) and the scarcity of labour. (*y*)

Probability of use in the future must be established.

The applicant must show that, if an extension be allowed, there is every likelihood of the invention being used by the public—*i.e.*, that the conditions owing to which the public use has hitherto been limited (if such be the case) have ceased to exist; otherwise the intention of the Crown that the patentee should be rewarded by the profits arising from the invention, during the further period of the monopoly, could not take effect, and the Judicial Committee would not recommend the Crown to accede to the petitioner's request. (*z*)

Benefit accrued to the public compared with that derived by the patentee.

(ii) **Insufficient remuneration owing to no fault of the patentee.** —In deciding whether the patentee has been sufficiently rewarded, the Judicial Committee take into consideration the benefit which has resulted and is likely to result to the public, as compared with that which has accrued to the patentee. (*a*)

(*r*) Simister's Patent, (1842) 1 W. P. C. 721; 7 Jur. 451; 4 Moo. P. C. 161.

(*s*) Southworth's Patent, (1837) 1 W. P. C. 486; Jones' Patent, (1840) 1 W. P. C. 577; Hughes' Patent, (1879) L. R. 4 App. Cas. 174; 48 L. J. P. C. 20; Semet and Solway's Patent, (1894) 12 R. P. C. 10.

(*t*) Herbert's Patent, (1867) L. R. 1 P. C. 399; 4 Moo. P. C. N. S. 300.

(*u*) *Ibid.*

(*x*) Wright's Patent, (1839) 1 W. P. C. 575.

(*y*) Napier's Patent, (1861) 13 Moo. P. C. 543.

(*z*) Woodcroft's Patent, (1846) 2 W. P. C. 18; 10 Jur. 363; Bates' Patent, (1836) 1 W. P. C. 739; Foarde's Patent, (1855) 9 Moo. P. C. 376; see p. 193 *post*.

(*a*) Newton's Patent, (1861) 14 Moo. P. C. 156; Derosne's Patent, (1844) 2 W. P. C. 4; Mallet's Patent, (1866) L. R. 1 P. C. 308; Nussey and Leachman's Patent, (1890) 7 R. P. C. 22.

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The petitioner must satisfy the Judicial Committee that he has, having regard to the particular circumstances of each case, used his best endeavours to make the invention a pecuniary success, and that no circumstances under his control have led to his insufficient remuneration, (*b*) *e.g.*, that he has not been wanting in business skill, (*c*) and that he has at all times been willing to give the public the benefit of the invention. (*d*)

Petitioner must prove that he has used his best endeavours to make profit,

Thus, in the case of *Roper's Patent*, (*e*) the patentee of a captain's bridge constructed as a life-raft petitioned for prolongation on the ground that, owing to illness and other circumstances beyond his control, he had not been adequately remunerated. It was proved that for nearly eight years he had been practically incapacitated from business in consequence of a railway accident. The invention had been awarded prizes at exhibitions, but had never been brought into actual use. Under the circumstances, the Judicial Committee considered that, having regard to the meritorious nature of the invention, the difficulty of bringing it into actual use, the patentee's illness, and the fact that no opposition was offered on behalf of the Crown, the case was an exceptional one, and an extension for seven years should be granted. But in the case of *Dolbear's Patent* (*f*) prolongation was refused when it appeared that for twelve years before the patent was assigned to a certain petitioner no effort to work it or push it commercially had been made, and no sufficient excuse was forthcoming for the delay.

and has not permitted open infringements.

If infringements of the patent have been openly committed, it will be necessary for the petitioner to show that proceedings have been taken to protect the patent, as evidence of negligence on his part to do so will induce the Judicial Committee to refuse to recommend an extension; (*g*) whereas if the expense of litigation necessary to maintain the patent has prevented the petitioner from deriving adequate profits

(*b*) Southworth's Patent, (1837) 1 W. P. C. 486; Kollman's Patent, (1839) 1 W. P. C. 564; Lowe's Patent, (1846) 2 W. P. C. 158; 10 Jur. 363; Norton's Patent, (1863) 1 Moo. P. C. N. S. 339; 9 Jur. N. S. 419; Patterson's Patent, (1849) 6 Moo. P. C. 469; 13 Jur. 593; Wield's Patent, (1871) L. R. 4 P. C. 89; 8 Moo. P. C. N. S. 300; Cardwell's Patent, (1856) 10 Moo. P. C. 488; Bakewell's Patent, (1862) 15 Moo. P. C. 385; Stewart's Patent, (1886) 3 R. P. C. 7; Thornycroft's Patent, (1899) 16 R. P. C. 202; [1899] A. C. 415.

(*c*) Thornycroft's Patent, [1899] A. C. 415.

(*d*) Stewart's Patent, (1886) 3 R. P. C. 10.

(*e*) (1887) 4 R. P. C. 201.

(*f*) (1896) 13 R. P. C. 203.

(*g*) Simister's Patent, (1842) 1 W. P. C. 724; 4 Moo. P. C. 164; 7 Jur. 451.

Grounds for Extension.

from the invention this circumstance will tell very much in his favour. (*h*)

Disputes by co-owners.

The circumstance that the invention has not been brought into public use owing to disputes between the co-owners of a patent will not induce the Judicial Committee to recommend an extension. (*i*)

Quantum of adequate remuneration.

There does not appear to be any case reported in which an extension has been granted where the patentee has received more than £20,000 from the patent; but this is not a hard and fast rule, and possibly in a case of very special merit such a sum might be treated as inadequate remuneration. (*k*) In a case where the patentee and his assignees had received £25,000 from the invention prolongation was refused. (*l*)

Accounts to be lodged by the petitioner and their requisites.

Accounts.—The petitioner must lodge at the council office, not less than one week before the day for the hearing, (*m*) a statement of accounts as evidence of his contention that the original inventor and all claiming through him has been insufficiently rewarded, having regard to the value of the invention to the public. Where the accounts are not lodged within the time specified by the Judicial Committee Rules, an adjournment of the hearing may be ordered on the request of the Attorney-General or other opponents. (*n*) The Judicial Committee insist that the statement of accounts shall be a full, clear, and accurate (*o*) balance-sheet, showing the whole *profit and loss* which has been derived or sustained in respect of the invention. (*p*) It is the petitioner's duty to satisfy the committee, in a manner which admits of no controversy, as to the amount of remuneration which in every point of view the invention has brought to those who have introduced, or helped to introduce, it to the public, in order that their lordships may be able to come to a conclusion whether that remuneration may fairly be considered a sufficient reward or not. (*q*)

(*h*) Petitt Smith's Patent, (1850) 7 Moo. P. C. 133; Heath's Patent, (1853) 2 W. P. C. 247; 8 Moo. P. C. 217.

(*i*) Patterson's Patent, (1849) 6 Moo. P. C. 469; 13 Jur. 593.

(*k*) Thomas' Patent, (1892) 9 R. P. C. 372.

(*l*) Carmont's Patent, (1897) 14 R. P. C. 239; Parson's Patent, (1898) 15 R. P. C. 349.

(*m*) Judicial Committee Rules, (1898) r. 3, p. 329 *post*.

(*n*) Johnson's and Atkinson's Patents, (1873) L. R. 4 P. C. App. Cas. 87; Chatwood's Patent, (1874) L. R. 4 P. C. App. Cas. 88 *n*.

(*o*) Clark's Patent, (1870) L. R. 3 P. C. 421; 7 Moo. P. C. N. S. 255; Hill's Patent, (1863) 1 Moo. P. C. N. S. 258; 9 Jur. N. S. 1209; 9 L. T. N. S. 101.

(*p*) Judicial Committee Rules, (1898) r. 3, p. 329 *post*.

(*q*) Saxby's Patent, (1870) L. R. 3 P. C. 292; 7 Moo. P. C. N. S. 82; Clark's Patent, (1870) L. R. 3 P. C. 421; 7 Moo. P. C. N. S. 255; Wield's Patent, (1871) L. R. 4 P. C. 89; 8 Moo. P. C. N. S. 300; Clark's Patent, (1899) 16 R. P. C. 431.

Grounds for Extension.

In the case of an invention communicated from abroad it is absolutely essential that the petition and the accounts clearly show what remuneration has been received in fact by the original inventor from the invention abroad, and the circumstances under which it may be contended that such remuneration, through no fault of his own, is inadequate. (*r*) To use the language of Lord *Cairns*, "It is not for the committee to send back the accounts for further particulars, nor to dissect the accounts for the purpose of surmising what may be their real outcome if they were differently cast; it is for the applicant to bring his accounts before the committee in a shape which will leave no doubt as to what the remuneration has been that he (*s*) has received." (*t*)

If this requirement is not attended to carefully, the committee will most probably refuse to grant the petitioner leave to amend the accounts, (*u*) and will dismiss the petition altogether; (*x*) and the petitioner will not as a rule be excused on the ground that he has kept no such accounts, or has destroyed his books. (*y*)

Absence of books of account may sometimes be explained.

In some cases—*e.g.*, in the case of fire—the absence of books of account may be satisfactorily explained, and an affidavit of want of profits will then be accepted; (*z*) but in the absence of such books of account, whether owing to destruction by fire or otherwise, and of a reasonable explanation of such absence, everything must be taken most strongly against the petitioner. (*a*) Thus, where a statement made in the prospectus of an assignee company would, if true, necessitate the conclusion that the patentee had received from the working of the patent more than he admitted, in the absence of his books, which had been destroyed, prolongation was refused. (*b*)

(*r*) Peach's Patent, (1891) 19 R. P. C. 65; see also p. 187 *post*.

(*s*) *I.e.*, the original inventor and all claiming title through him.

(*t*) Saxby's Patent, (1870) L. R. 3 P. C. 295; 7 Moo. P. C. 82; Henderson's Patent, (1901) 18 R. P. C. 453; Wüterich's Patent, (1903) 20 R. P. C. 285.

(*u*) Newton's Patent (No. 4), (1884) 4 L. R. 9 App. Cas. 592; 1 R. P. C. 117; 52 L. T. 329; Yates and Kellett's Patents, (1887) 4 R. P. C. 150.

(*x*) Adair's Patent, (1881) L. R. 6 App. Cas. 176; 50 L. J. P. C. 68; Saxby's Patent, (1870) L. R. 3 P. C. 292; 7 Moo. P. C. N. S. 82; Bett's Patent, (1862) 1 Moo. P. C. N. S. 49; 9 Jur. N. S. 137; 7 L. T. N. S. 577; Clark's Patent, (1899) 16 R. P. C. 431.

(*y*) Yates and Kellett's Patent, (1887) L. R. 12 App. Cas. 149; 4 R. P. C. 150.

(*z*) Hutchinson's Patent, (1861) 14 Moo. P. C. 222; Markwick's Patent, (1860) 13 Moo. P. C. 310; Lowe's Patent, (1852) 10 Jur. 363.

(*a*) Yates and Kellett's Patent, (1887) L. R. 12 App. Cas. 147; 4 R. P. C. 150; Lawrence's Patent, (1892) 9 R. P. C. 85.

(*b*) Lawrence's Patent, (1892) 9 R. P. C. 85.

Grounds for Extension.

Under special circumstances, where the invention is of indisputable great merit, it may not be necessary to prove the petitioner's losses with the strict accuracy usually required. (*c*)

Sometimes losses need not be proved with strict accuracy.

Manner in which a patentee should keep his accounts from the first.

The following passage from the decision of the Judicial Committee, delivered by Lord *Hobhouse* in *Lake's Patent*, (*d*) indicates the way in which the patentee should keep his accounts from the beginning and present them to the committee:—

> "In this case their Lordships have come to the conclusion that the petition must be dismissed because it is not shown, and on the materials before the committee it cannot be shown with propriety on this occasion, that the patentee has not been adequately remunerated. In order to show that, the patentee should keep his accounts in a way which would enable the Crown Officers, to whom they are produced, and this committee, and, indeed, members of the public, to form some judgment on the question whether he has or has not received adequate remuneration; and not only should the accounts be kept in such a form, but they should be produced before this committee in such a shape that it does not require long and minute investigation of supplemental accounts in order to understand the result of them.
>
> "The principle on both points has been stated very clearly on several occasions by this committee. In *Bett's Patent*, so far back as the year 1862, it was stated that 'there can be no difficulty in a patentee beginning from the first to keep a patent account distinct and separate from any other business in which he may happen to be engaged. He knows perfectly well that if his invention is of public utility, and he has not been adequately remunerated, he will have a claim for an extension of the original term of his patent. It is not, therefore, too much to expect that he should be prepared, when the necessity arises, to give the clearest evidence of everything which has been paid and received on account of the patent.' That refers to the mode in which the accounts should be kept. In *Saxby's Patent* this committee made some observations on the mode in which the accounts should be produced. Lord *Cairns*, in delivering the judgment, said: 'It is the duty of every patentee, who comes for the prolongation of his patent, to take upon himself the onus of satisfying this committee, in

(*c*) Darby's Patent, (1891) 8 R. P. C. 380.

(*d*) (1891) 8 R. P. C. 228; see also Hughes' Patent, (1898) 15 R. P. C. 371; Henderson's Patent, (1901) 18 R. P. C. 453; Wüterich's Patent, (1903) 20 R. P. C. 285.

Grounds for Extension.

a manner which admits of no controversy, on what has been the amount of remuneration which in every point of view the invention has brought to him, in order that their Lordships may be able to come to a conclusion whether that remuneration may fairly be considered a sufficient reward for his invention or not. It is not for this committee to send back the accounts for further particulars, nor to dissect the accounts for the purpose of surmising what might be their real outcome if they were differently cast. It is for the applicant to bring his accounts before the committee in a shape which will leave no doubt as to what the remuneration has been that he has received.'"

Effect of keeping accounts on a wrong system.

Thus, where a company being assignees of a patent kept books on a wrong system for the first eight years of the patent, and the accounts furnished to the committee included certain entries, amounting to a considerable sum, as corrections of the books, which could not be checked from the accounts themselves without an examination of the books, the Judicial Committee held that the accounts were insufficient, and refused to allow the petitioners to call evidence to explain them. (*e*)

Committee have regard to the profits made by the patentee as such.

The Judicial Committee are by statute (*f*) required, when deciding the question of adequacy of remuneration, to "*have regard to the profits made by the patentee as such;*" accounts which do not show this are consequently defective. Thus where it appeared that the patentee had assigned to a company for a considerable sum, both his business and also the patent in question, together with another one, and the petitioning assignee company presented general accounts of their business which showed a considerable profit, but failed to show what the patentee had received in respect of the patent alone, or what profit had been made by the petitioning company from the patent alone apart from its general business, the committee refused to recommend a prolongation on the ground that, upon the materials before them, they could not come to the conclusion that the patentee had been inadequately remunerated by the patent. (*g*)

(*e*) Lake's Patent, (1891) 8 R. P. C. 227; see also Hughes' Patent, (1898) 15 R. P. C. 370.

(*f*) 46 & 47 Vict. c. 57, s. 25, sub-s. 4.

(*g*) Williams and Robinson's Patent, (1896) 13 R. P. C. 550; see also Thornycroft's Patent, (1899) 16 R. P. C. 204; Clark's Patent, (1899) 16 R. P. C. 431. But see Parson's Patent, (1898) 15 R. P. C. 357, where the patentee was not responsible for the difficulty.

Grounds for Extension.

It is most material for the Judicial Committee to know in what ratio the profits have increased or diminished from year to year; therefore it is advisable for the petitioner to strike a balance at the end of each year's accounts. (*h*)

Advisability of striking a balance at the end of each year's accounts.

As already stated, the committee are required to have regard to all the circumstances of the case: (*i*)

Total remuneration actually derived from, or which could have been derived from the patent, is an important question; consequently assignee's or licensee's profits must be disclosed.

One question always is, What has been the total remuneration derived from the patented invention, or which could have been derived from it? Consequently, when the patent has become vested in an assignee—*e.g.*, a company—the committee require a disclosure, not only of the assignee's profits, but also of all the profits derived by his predecessors in title, (*k*) and also, when licences have been granted, a disclosure of not only the royalties received by the patentee, but also, where possible, some evidence as to the profits made by the licensees. (*l*) A petition has been dismissed on the ground that the manufacturing profits due to the use of the invention by an assignee of a share in the patent and free licensee under it were not shown. (*m*)

Though it be clear that the patentee himself has received no profits, it is still a fatal defect if the accounts do not disclose the profits made by his assignees or licensees. (*n*)

Rule in Pitman's patent

In *Pitman's Patent* (*o*) the committee laid down the rule for their future guidance to the effect that they would consider a failure to make a full disclosure of everything relating to the patent—*e.g.*, particulars as to profits on foreign patents—as absolutely fatal to the petitioner. Further, it is to be noticed that the direction in the Act of 1883 to the effect that the Judicial Committee, in coming to a conclusion, "shall have regard to the profits made by the patentee as such," (*p*) in effect, specifies one particular class of profits as absolutely necessary; but there is nothing in the section of the Act to suggest that the committee shall not consider the profits in relation to the patent arising from other sources, and consequently the accounts must disclose all profits arising

(*h*) Perkin's Patent, (1845) 2 W. P. C. 16, 17.

(*i*) 46 & 47 Vict. c. 57, s. 25, sub-s. 4.

(*k*) Deacon's Patent, (1887) 4 R. P. C. 119.

(*l*) Trotman's Patent, (1866) L. R. 1 P. C. 123; 3 Moo. P. C. N. S. 488; Saxby's Patent, (1870) L. R. 3 P. C. 298; 7 Moo. P. C. N. S. 82; Hill's Patent, (1863) 1 Moo. P. C. N. S. 258, 268; 9 L. T. N. S. 101.

(*m*) Thomas' Patents, (1892) 9 R. P. C. 367; Barff and Bowers' Patent, (1895) 12 R. P. C. 383; (1895) L. R. App. Cas. 675.

(*n*) Lane Fox's Patent, (1892) 9 R. P. C. 411.

(*o*) (1871) L. R. 4 P. C. 84.

(*p*) s. 25 (4).

from the working of foreign patents, as was the practice before the Act of 1883. (*q*) The profits, if any, arising from the sale of articles made under the patent expressly for exportation abroad must also be disclosed. (*r*)

Grounds for Extension.

It was formerly the practice of the Judicial Committee, previous to the Act of 1883, not to recommend the prolongation of a patent for an invention, the subject of a prior foreign patent, which had expired before the hearing of the petition, on the ground that they had no authority to recommend such prolongation. (*s*) Where, however, a foreign inventor held an English patent and also foreign patents in respect of the invention, one of which, though of later date than his English patent, had expired, (*t*) or was about to expire, (*u*) the committee, in the exercise of their discretion, refused to recommend a prolongation. When the inventor was an English-born subject, the practice was that his application should not be unduly prejudiced by the fact that a foreign patent of later date than his English patent had expired. (*x*)

Former practice with regard to inventions patented abroad.

The expiration of foreign patents does not affect the validity of English patents granted after January 1, 1884, (*y*) but it is submitted that, notwithstanding the repeal of former Acts by the Act of 1883, in the case of patents dated before January 1, 1884, the Judicial Committee should and did take cognisance of the existence of foreign patents, in forming their decision whether to recommend an extension or otherwise, (*z*) as indeed it should and will when a patent of later date than January 1, 1884, is the subject of the petition.

Present practice with regard to inventions patented abroad.

The committee considers all the circumstances of the case: (*a*) and if foreigners are at liberty to use the invention free, this fact may induce the committee not to accede to the petition, on the ground that to do so would be to unduly handicap the British public, and so the fact that there are foreign patents which the petitioner has allowed to expire is

(*q*) Newton's Patent, (1884) L. R. 9 App. Cas. 592; Johnson's Patent, (1871) L. R. 4 P. C. 82; Adair's Patent, (1881) L. R. 6 App. Cas. 178; Pieper's Patent, (1895) 12 R. P. C. 293; Peach's Patent, (1901) 19 R. P. C. 65.

(*r*) Hardy's Patent, (1849) 6 Moo. P. C. 441.

(*s*) Bodmer's Patent, (1853) 8 Moo. P. C. 282; Aubo's Patent, (1854) 9 Moo. P. C. 43; Blake's Patent, L. R. 4 P. C. 535; 9 Moo. P. C. N. S. 373.

(*t*) Newton's Patent, (1862) 15 Moo. P. C. 176; 9 Jur. N. S. 109; Normand's Patent, (1870) L. R. 3 P. C. 193; 6 Moo. P. C. N. S. 477.

(*u*) Normand's Patent, (1870) L. R. 3 P. C. 193; 6 Moo. P. C. N. S. 477.

(*x*) Bett's Patent, (1862) 1 Moo. P. C. N. S. 49; 9 Jur. N. S. 137; 7 L. T. N. S. 577.

(*y*) No such patents are now in existence.

(*z*) 46 & 47 Vict. c. 57, s. 113; Newton's Patent, (1884) L. R. 9 App. Cas. 592; 1 R. P. C. 177; Brandon's Patent, (1884) 1 R. P. C. 154.

(*a*) 46 & 47 Vict. c. 57, s. 25, sub-s. 4.

Grounds for Extension.

still a great obstacle in the way of a patentee desirous of obtaining an extension of a British patent. (*b*) In such circumstances it requires a very strong case to be made out by the petitioner for extension, but if the invention is of rare or exceptional merit, and the inventor has been very insufficiently remunerated, notwithstanding that there are lapsed foreign patents, the committee will recommend a prolongation, when there is no reason to suppose that the inhabitants of Great Britain and Ireland would be thereby placed at a disadvantage in competing with foreigners. (*c*)

Items which may be credited to the petitioner.

The petitioner is entitled to place on the credit side of the account various items and expenses, but if he desires to contend that such sums are not to be considered as profits such claim must appear on the petition or in the accounts, otherwise he will not be allowed to offer any evidence in respect of it. (*d*) It is better to render a separate account of items in respect of which a deduction is claimed.

Expenses in connection with experiments, legal proceedings, salaries and commissions.

The petitioner is entitled to credit himself with the expenses incurred in making preliminary experiments, in obtaining the grant of the patent, and in legal proceedings necessary to defend it; (*e*) also necessary costs of exhibiting and advertising the invention; (*f*) reasonable salaries and travelling expenses for clerks; (*g*) and commissions on sales or royalties. (*h*)

A deduction has been allowed in the case of a foreign patentee resident abroad, who has obtained an English patent and has employed an agent in England to introduce the invention here. (*i*)

When the petitioner has compromised actions at law in relation to the patent, and foregone any claim to costs, it is improper for him to deduct the expenses of such proceedings in an unexplained lump sum. (*k*)

(*b*) Fountain Livet's Patent, (1892) 9 R. P. C. 327; Shone's Patent, (1892) 9 R. P. C. 438, 440; Semet and Solway's Patent, (1894) 12 R. P. C. 10; Pieper's Patent, (1895) 12 R. P. C. 295; Henderson's Patent, (1901) 18 R. P. C. 449.

(*c*) Semet and Solway's Patent, (1894) 12 R. P. C. 10; Pieper's Patent, (1895) 12 R. P. C. 295; Henderson's Patent, (1901) 18 R. P. C. 449.

(*d*) Bailey's Patent, (1884) 1 R. P. C. 1.

(*e*) Kay's Patent, (1839) 1 W. P. C. 572; 3 Moo. P. C. 24; Heath's Patent, (1853) 2 W. P. C. 247; 8 Moo. P. C. 217; Hill's Patent, (1863) 1 Moo. P. C. N. S. 258; 9 Jur. N. S. 1209; 9 L. T. N. S. 101; Adair's Patent, (1881) L. R. 6 App. Cas. 176; 50 L. J. P. C. 68.

(*f*) Duncan and Wilson's Patent, (1884) 1 R. P. C. 257.

(*g*) *Ibid.*

(*h*) *Ibid.*; Poole's Patent, (1867) L. R. 1 P. C. 514; 4 Moo. P. C. N. S. 452; 36 L. J. P. C. 76.

(*i*) Poole's Patent, (1867) L. R. 1 P. C. 514; 4 Moo. P. C. N. S. 452; 36 L. J. P. C. 76.

(*k*) Hill's Patent, (1863) 1 Moo. P. C. N. S. 258, 268; 9 Jur. N. S. 1209; 9 L. T. N. S. 101.

Grounds for Extension.

Deductions have been refused in respect of an item for the purchase of land for the purpose of working *in situ* a manufacture according to a patented process, (*l*) and also in respect of payments for the surrender of licences. (*m*) When a patentee, under the impression that the invention was one of small value, sold it for a trifling sum, and, after it had proved of considerable value, repurchased it at an increased price, he was not allowed to charge the item in the accounts as one of loss. (*n*)

Profits made as a manufacturer in contra-distinction to profits made as a patentee.

When the patentee is also the manufacturer of the patented article, the profits which he makes as manufacturer, although they may not be in strict point of view profits of the patent, must undoubtedly be taken into consideration. (*o*) It is obvious that in different manufactures there will be different degrees of connection between the business of the applicant as manufacturer, and his business, or his position, as the owner of a patent. There are patents which have little or no connection with the business of the manufacturer, and there are others of a different kind, where there is such an intimate connection with the business of the manufacturer that the possession of the patent virtually secures to the patentee his power of commanding orders as a manufacturer. (*p*)

When it is not possible to sever the heads of a patentee's profits, as a manufacturer and as a patentee, but it is apparent that a substantial sum has been realised, the committee will not recommend an extension. (*q*)

There is no specific rule as to the proper ratio to fix as the proportion of the total profits to be allowed as manufacturer's profits when the patentee is also the manufacturer, (*r*) but the proportion must be divided according to the circumstances of each case. (*s*)

(*l*) Fryer's Patent, 47 Eng. 49.

(*m*) Hill's Patent, (1863) 1 Moo. P. C. N. S. 258; 9 Jur. N. S. 1209; 9 L. T. N. S. 101.

(*n*) Wield's Patent, (1871) L. R. 4 P. C. 89; 8 Moo. P. C. N. S. 300.

(*o*) Bett's Patent, (1862) 1 Moo. P. C. N. S. 49; 9 Jur. N. S. 137; 7 L. T. N. S. 577; McInnes' Patent, (1868) L. R. 2 P. C. 54, 57; 5 Moo. P. C. N. S. 72; 37 L. J. P. C. 23; Hill's Patent, (1853) 1 Moo. P. C. N. S. 258; 9 Jur. N. S. 1209; 9 L. T. N. S. 101; Johnson's Patent, (1871) L. R. 4 P. C. 75; 8 Moo. P. C. 282; Saxby's Patent, (1870) L. R. 3 P. C. 292, 295; 7 Moo. P. C. N. S. 82.

(*p*) See Saxby's Patent, (1870) L. R. 3 P. C. 295.

(*q*) Muntz's Patent, (1846) 2 W. P. C. 113; Newton's Patent, 51 Eng. 208; 17 Iron, 155, 171.

(*r*) Duncan and Wilson's Patent, (1884) 1 R. P. C. 257, 260.

(*s*) See Trotman's Patent, (1866) L. R. 1 P. C. 118; 3 Moo. P. C. N. S. 488. Two-thirds has been held to be too large a proportion in Hill's Patent, (1863) 1 Moo. P. C. N. S. 258; 9 Jur. N. S. 1209; 9 L. T. N. S. 101; and also in Duncan and Wilson's Patent, (1884) 1 R. P. C. 257.

The New Grant.

Where it appeared that a considerable sum had been received from sales of the patented article, the committee refused to look on the difference between the actual cost of the articles and the price at which they were sold as mere profits made by the patentee as salesman, but concluded that a considerable proportion of this was profit which the patentee had received, because, having the patent, he was able to sell the articles, and refused to recommend an extension accordingly. (*t*)

Where the patentee is himself a manufacturer it is better for him to keep the accounts of his manufacturing business separate from those relating exclusively to the patent, so as to present them in this form to the Judicial Committee.

Personal remuneration when patentee is himself a manufacturer.

Where a patentee is a manufacturer and himself superintends the conduct of the business of making the patented article, he is often entitled to a reduction in respect of his personal services, but the amount varies with the special circumstances of each case. (*u*)

Correction of incomplete accounts.

The effect of rendering incomplete accounts, or accounts in an improper form, is not always fatal, but the petitioner must not rely on the indulgence of the committee, and he cannot be too particular in the matter of accounts. Under special circumstances, when it appears that the accounts are wrong through a *bonâ fide* mistake on the part of the patentee, the Judicial Committee may grant an adjournment in order that the accounts may be put right, (*x*) but in most cases of insufficient or improper accounts the petition will be dismissed *at once*. (*y*)

The New Grant.

Crown gives effect to the recommendation of the

It is the practice for the Crown in cases where the Judicial Committee recommend an extension of the term of a patent

(*t*) Bailey's Patent, (1884) 1 R. P. C. 1.

(*u*) As much as £600 per annum has been allowed in the case of the chairman of a company formed to work the patent: Child's Patent, 56 Eng. 435; but as a rule £400 per annum, or less, is considered sufficient; Bailey's Patent, (1884) 1 R. P. C. 1; Carr's Patent, (1873) L. R. 4 P. C. 530; 9 Moo. P. C. N. S. 379; Perkin's Patent, (No. 2) 47 Eng. 105; Cocking's Patent, (1885) 2 R. P. C. 151; Furness' Patent, (1885) 2 R. P. C. 175; Toy's Patent, (1893) 10 R. P. C. 89; Hazeland's Patent, (1894) 11 R. P. C. 467.

(*x*) Perkin's Patent, (1845) 2 W. P. C. 17; Heath's Patent, (1853) 2 W. P. C. 256; 8 Moo. P. C. 217; Henry's Patent, 38 Eng. 343, 352; Chatwood's Patent, 37 Eng. 285; Johnson and Atkinson's Patent, (1873) L. R. 5 P. C. 87.

(*y*) Clark's Patent (No. 2), (1870) L. R. 3 P. C. 421; 7 Moo. P. C. N. S. 255; Newton's Patent, (No. 4), (1884) L. R. 9 App. Cas. 592; 1 R. P. C. 177; Adair's Patent, (1881) L. R. 6 App. Cas. 178; 50 L. J. P. C. 68; Yates and Kellet's Patent, (1887) 4 R. P. C. 150.

to give effect to the report of the committee by a new grant of letters patent. (*z*)

The New Grant.

It is not necessary for the patentee to file a fresh specification on the grant of a new patent; (*a*) and the validity of the new patent may be questioned in the same way and on the same grounds as that of the old one. (*b*) The new grant is in the nature of a graft on the old one, and has no existence apart from it. (*c*) A new grant of letters patent is subject in all cases to the conditions imposed by the Act of 1883 and subsequent statutes, (*d*) and it may be granted to one only of two original patentees, (*e*) or to more than one person jointly; (*f*) but, it is submitted, a new grant cannot be made to a person or persons who has, or have not, or one of whom has not a legal interest in the old letters patent. (*g*)

Committee by means of a new grant, which is subject to same conditions as the expired grant.

The Crown in granting new letters patent has the power to, and frequently does, impose conditions in the interest of the original patentee (*h*) or his representatives. (*i*) The following are instances of cases in which such conditions have been imposed. In *Whitehouse's Patent* (*k*) extension was granted to an assignee on condition that he secured to the patentee and inventor, during the term, an annuity of £500, in addition to £300 already secured to him. In *Markwick's Patent*, (*l*) where the original patentee had been bankrupt, the condition was imposed that he should receive an annuity during the extended period. In *Morton's Patent* (*m*) the assignee was required to secure to the original patentee one half the future profits after recouping his own losses. In *Herbert's Patent* (*n*) an extension was granted to assignees on condition that they secured upon trust to the widow and representatives of the inventor one half of the profits.

Conditions in the interest of the original patentee are frequently, on the recommendation of the committee, imposed by the Crown on a new grant.

Sometimes conditions are imposed on the patentee for the benefit of other persons who have an interest in the patent, (*o*)

Conditions are sometimes imposed for the

(*z*) Stoney's Patent, (1888) 5 R. P. C. 524; Cocking's Patent, (1885) 2 R. P. C. 151; Smith's Patent, (1885) 2 R. P. C. 14.

(*a*) Wasteney Smith's Patent, (1885) 12 R. P. C. 14.

(*b*) Russell *v.* Ledsam, (1843) 14 M. & W. 583; H. L. C. 687; Bovill *v.* Finch, (1870) L. R. 5 C. P. 523.

(*c*) Bovill *v.* Finch, (1870) L. R. 5 P. C. 523; 39 L. J. C. P. 277.

(*d*) Wasteney and Smith's Patent, (1885) 2 R. P. C. 14.

(*e*) Currie's Patent, (1897) 15 R. P. C. 63.

(*f*) 46 & 47 Vict. c. 57, s. 4, sub-s. 2.

(*g*) Southworth's Patent, (1837) 1 W. P. C. 488.

(*h*) Whitehouse's Patent, (1830) 1 W. P. C. 473; reported as Russell's Patent, 2 Moo. P. C. 496.

(*i*) Herbert's Patent, (1867) L. R. 1 P. C. 399.

(*k*) (1838) 1 W. P. C. 473; reported as Russell's Patent, 2 Moo. P. C. 496.

(*l*) (1860) 13 Moo. P. C. 310.

(*m*) 51 Eng. 274; 17 Iron. 250.

(*n*) (1867) L. R. 1 P. C. 399; 4 Moo. P. C. N. S. 300.

(*o*) Normandy's Patent, (1855) 9 Moo. P. C. 452; Baxter's Patent, 13 Jur. 593.

The New Grant.

or who might be liable in respect of infringements committed between the date of the order and the sealing of the new patent, (*p*) or to the effect that a patentee mortgagor should give to his mortgagee a like security over the new patent as he had over the old. (*q*)

benefit of persons other than the original patentee, or for the benefit of the public generally.

When the justice of the case requires it, conditions will be imposed in favour of the Crown or the public generally. Thus in *Petitt Smith's Patent* (*r*) the condition was imposed that the Crown should be allowed to use the invention without licence. See also *Lancaster's Patent*, (*s*) *Carpenter's Patent*, (*t*) and *Dixon* v. *London Small Arms Co.* (*u*) These cases were all prior to the Act of 1883. Such conditions are not now insisted upon in favour of the Crown, as they are provided for by sec. 27 of the Act of 1883, which applies to all new grants of letters patent.

In *Mallet's Patent* (*x*) the condition was imposed that the patentee should grant licences upon terms similar to one already granted by him. In *Hardy's Patent* (*y*) it was made a condition of the new grant that the patentee should sell the patented article (iron axletrees) at a moderate fixed sum. Such conditions would, it is submitted, not be imposed now in view of sec. 3 of the Act of 1902.

In *Bodmer's Patent* (*z*) the condition was imposed that certain portions of the specifications which related to parts of the invention not worked out should be disclaimed. In *Lyon's Patent*, (*a*) where the patentee had granted an exclusive licence, the condition was imposed that the petitioner should grant licences on the same terms to all persons who should apply for them, the royalties to be limited to 10 per cent. upon the selling price of each machine.

Date of commencement and expiry of new grant.

It is the practice when extension is granted in respect of two cognate patents to fix the expiry of each on the same day. (*b*)

The Crown can only grant an extension of letters patent on the report of the Judicial Committee of the Privy Council. It is the invariable practice for the Crown to act on such report, but it must be remembered that the Crown

(*p*) Schlumberger's Patent, (1853) 9 Moo. P. C. 1.
(*q*) Church's Patent, (1886) 3 R. P. C. 95.
(*r*) (1850) 7 Moo. P. C. 133.
(*s*) 2 Moo. P. C. N. S. 189.
(*t*) *Ibid.* 191 *n.*
(*u*) L. R. 1 App. Cas. 632.
(*x*) (1866) L. R. 1 P. C. 308.
(*y*) 6 Moo. P. C. 441.
(*z*) (1853) 8 Moo. P C. 282.
(*a*) (1894) 11 R. P. C. 537.
(*b*) Johnson's and Atkinson's Patent, (1873) L. R. 5 P. C. 87; Church's Patents, (1886) 3 R. P. C. 95.

is not bound so to act. (*c*) The Judicial Committee before recommending an extension may require security to be given that the conditions (if any) on which the new grant is recommended will be performed. (*d*) Costs.

The new grant may be made after the expiration of the original term, if all the statutory conditions have been complied with, but it is always dated as on the day on which the original term expires.

The Crown has no authority to grant more than one period of prolongation or extension of letters patent. (*e*) Only one period of extension can be obtained.

It is not usual for the Judicial Committee to recommend a longer prolongation or extension than seven years; (*f*) but in cases where it can be shown that the invention possesses such rare and exceptional merit that the patentee would not be likely to obtain an adequate reward in seven years, a longer period will be recommended, (*g*) which may in extreme cases be fourteen years, the longest period for which the Crown has power to grant a prolongation or extension. (*h*) The Judicial Committee, in recommending a prolongation or extension, always consider the merit of the invention from the point of view of the public as well as the remuneration which the patentee has received, and adjusts the period accordingly. (*i*) Duration of new grant cannot exceed fourteen years.

If the petitioner succeed, he must forthwith leave at the Patent Office a copy of the order for prolongation or extension when obtained, that it may be entered on the register of patents. (*k*) Registration of order.

Costs.

The costs of all parties of, and incident to, proceedings before the Judicial Committee are in its discretion. (*l*) Costs are in the discretion of the committee.

It is the practice of the committee to award costs, on the

(*c*) Ledsam *v.* Russell, (1847) 1 H. L. Cas. 687.

(*d*) Whitehouse's Patent, (1830) 1 W. P. C. 473; Carp. P. C. 565; 2 Moo. P. C. 496.

(*e*) Goucher's Patent, (1865) 2 Moo. P. C. N. S. 532.

(*f*) Furness' Patent, (1885) 2 R. P. C. 175. Seven years was allowed in the following somewhat recent cases: Joy's Patent, (1893) 10 R. P. C. 89; Davies' Patent, (1893) 11 R. P. C. 27; Hazeland's Patent, (1894) 11 R. P. C. 467.

(*g*) Moncrieff's Patent, 22 Iron. 35; Mitchell's Patent, (1847) 30 Newton, L. J. C. S. 356; Darby's Patent, (1891) 8 R. P. C. 380; Currie and Timmiss' Patent, L. R. (1898) A. C. 347.

(*h*) Mitchell's Patent, (1847) 30 Newton, L. J. C. S. 356; 46 & 47 Vict. c. 57, s. 25, sub-s. 5.

(*i*) Newton's Patent, (1861) 14 Moo. P. C. 156; Bailey's Patent, (1884) 1 R. P. C. 1; Derosne's Patent, (1844) 2 W. P. C. 1; Carp. P. C. 699; 4 Moo. P. C. 417; Currie and Timmiss' Patent, L. R. (1898) A. C. 347.

(*k*) R. R. 1903, r. 60.

(*l*) 46 & 47 Vict. c. 57, s. 25. sub-s. 7; as to taxation, see p. 172 *ante*.

Costs.

principle that *bonâ fide* oppositions are rather to be encouraged than discouraged, that the Crown may be put in possession of all that can be alleged against the continuance of the patent. (*m*)

Costs of opponents will be refused, however, if the committee are satisfied that there was no sufficient ground of opposition, and opponents may be ordered to pay costs occasioned by improper opposition; (*n*) and the opponent's costs will be refused if the committee are of opinion that the opposition has been improperly conducted. (*o*)

In cases where the petition is abandoned, and there is opposition, the petitioner pays the opponent's costs. (*p*) It is not necessary for the opponent to serve the petitioner with notice of an intended application for costs. (*q*)

Sometimes one set of costs is given to each opponent, (*r*) and sometimes one set is given between all the opponents. (*s*)

In cases where there are more than one opponent it is not uncommon for the committee to award a lump sum to be divided among the opponents, either with, (*t*) or without, (*u*) the option of taxation in the usual way by the registrar of the committee. (*x*)

The Attorney-General, who represents the Crown on the hearing of petitions, does not ask for, nor is he ordered to pay, any costs.

(*m*) Wield's Patent, (1871) L. R. 4 P. C. 89; 8 Moo. P. C. N. S. 300; Westrupp and Gibbin's Patent, (1836) 1 W. P. C. 556; Honiball's Patent, (1855) 9 Moo. P. C. 378; 2 W. P. C. 201; 25 L. T. 1.

(*n*) Downton's Patent, (1839) 1 W. P. C. 567.

(*o*) Honiball's Patent, (1855) 9 Moo. P. C. 394; 2 W. P. C. 201; 25 L. T. 1.

(*p*) Bridson's Patent, (1852) 7 Moo. P. C. 499; Hornby's Patent, (1853) 7 Moo. P. C. 503; Milner's Patent, (1854) 9 Moo. P. C. 39; Macintosh's Patent, (1837) 1 W. P. C. 739; Morgan Brown's Patent, (1886) 3 R. P. C. 212.

(*q*) Bridson's Patent, (1852) 7 Moo. P. C. 449.

(*r*) Newton's Patent (No. 2), Eng. Rep. Jan. to Mar. 1881.

(*s*) Newton's Patent (No. 4), (1884) L. R. 9 App. Cas. 592; 52 L. T. 329; 1 R. P. C. 177: Henderson's Patent, (1901) 18 R. P. C. 449; Ferranti's Patent, (1901) 18 R. P. C. 518.

(*t*) Milner's Patent, (1854) 9 Moo. P. C. 39; Hill's Patent, (1873) 1 Moo. P. C. N. S. 259; Wield's Patent, (1871) L. R. 4 P. C. 89.

(*u*) Schlumberger's Patent, (1853) 9 Moo. P. C. 1; Johnson's Patent, (1871) L. R. 4 P. C. 75; 8 Moo. P. C. N. S. 282; Jones' Patent, (1854) 9 Moo. P. C. 41; Hopkinson's Patent, (1896) 14 R. P. C. 10.

(*x*) Judicial Committee Rules (1898), r. 6, p. 830 *post*.

APPENDIX.

APPENDIX.

STATUTE OF MONOPOLIES (1623).

[21 JAC. I. c. 3.]

An Act concerning Monopolies and Dispensations with Penal Laws and the forfeiture thereof.

[The following portions of this Act which are printed in italics and between brackets were repealed either by 26 & 27 Vict. c. 125 or 51 Vict. c. 3.]

All monopolies, &c., shall be void.

FORASMUCH as your most excellent Majesty, in your royal judgment, and of your blessed disposition to the weal and quiet of your subjects, did, in the year of our Lord God one thousand six hundred and ten, publish in print to the whole realm, and to all posterity, that all grants of monopolies, and of the benefit of any penal laws, or of power to dispense with the law, or to compound for the forfeiture, are contrary to your Majesty's laws, which your Majesty's declaration is truly consonant and agreeable to the ancient and fundamental laws of this your realm: and whereas your Majesty was further graciously pleased expressly to command that no suitor should presume to move your Majesty for matters of that nature; yet nevertheless upon misinformations and untrue pretences of public good, many such grants have been unduly obtained, and unlawfully put in execution, to the great grievance and inconvenience of your Majesty's subjects, contrary to the laws of this your realm, and contrary to your Majesty's most royal and blessed intention, so published as aforesaid: For avoiding whereof, and preventing of the like in time to come, may it please your excellent Majesty, at the humble suit of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, that it may be declared and enacted: and be it declared and enacted by authority of this present Parliament, that all monopolies, and all commissions, grants, licences, charters, and letters patents heretofore made or granted, or hereafter to be made or granted, to any person or persons, bodies politic or corporate whatsoever, of or for the sole buying, selling, making, working, or using of any thing within this realm, or the dominion of

Wales, or of any other monopolies, or of power, liberty, or faculty, to dispense with any others, or to give licence or toleration to do, use, or exercise anything against the tenor or purport of any law or statute; or to give or make any warrant for any such dispensation, licence, or toleration to be had or made; or to agree or compound with any others for any penalty or forfeitures limited by any statute; or of any grant or promise of the benefit, profit, or commodity of any forfeiture, penalty, or sum of money, that is or shall be due by any statute, before judgment thereupon had: and all proclamations, inhibitions, restraints, warrants of assistance, and all other matters and things whatsoever, any way tending to the instituting, erecting, strengthening, furthering, or countenancing of the same or any of them, are altogether contrary to the laws of this realm, and so are and shall be utterly void and of none effect, and in no wise to be put in use or execution.

Monopolies, &c., shall be tried by the common laws of this realm.

2. And [*be it further declared and enacted by the authority aforesaid, that*] all monopolies, and all such commissions, grants, licences, charters, letters patents, proclamations, inhibitions, restraints, warrants of assistance, and all other matters and things tending as aforesaid, and the force and validity of them, and of every of them, ought to be and shall be for ever hereafter examined, heard, tried, and determined, by and according to the common laws of this realm, and not otherwise.

All persons disabled to use monopolies, &c.

3. And [*be it further enacted by the authority aforesaid, that*] all person or persons, bodies politic and corporate whatsoever, which now are or hereafter shall be, shall stand and be disabled and incapable to have, use, exercise, or put in use any monopoly, or any such commission, grant, licence, charter, letters patents, proclamation, inhibition, restraint, warrant of assistance, or other matter or thing tending as aforesaid, or any liberty, power, or faculty, grounded or pretended to be grounded upon them, or any of them.

The party grieved by pretext of a monopoly, &c., shall recover treble damages and double costs.

4. And [*be it further enacted by the authority aforesaid, that*] if any person or persons at any time after the end of forty days next after end of this present session of Parliament shall be hindered, grieved, disturbed, or disquieted, or his or their goods or chattels any way seized, attached, distrained, taken, carried away, or detained, by occasion or pretext of any monopoly, or of any such commission, grant, licence, power, liberty, faculty, letters patents, proclamation, inhibition, restraint, warrant of assistance, or other matter or thing tending as aforesaid, and will sue to be relieved in or for any of the premises, that then and in every such case, the same person and persons shall and may have his and their remedy for the same at the common law, by any action or actions to be grounded upon this statute; the same action and actions to be heard and determined in

the Courts of King's Bench, Common Pleas, and Exchequer, or in any of them, against him or them by whom he or they shall be so hindered, grieved, disturbed or disquieted, or against him or them by whom his or their goods or chattels shall be so seized, attached, distrained, taken, carried away, or detained; wherein all and every such person and persons which shall be so hindered, grieved, disturbed, or disquieted, or whose goods or chattels shall be so seized, attached, distrained, taken, carried away, or detained, shall recover three times so much as the damages which he or they sustained by means or occasion of being so hindered, grieved, disturbed, or disquieted, or by means of having his or their goods or chattels seized, attached, distrained, taken, carried away, or detained, and double costs; and in such suits, or for the staying or delaying thereof, no essoin, protection, wager of law, aidprayer, privilege, injunction, or order of restraint, shall be in any wise prayed, granted, admitted, or allowed, nor any more than one imparlance: And if any person or persons shall, after notice given that the action depending is grounded upon this statute, cause or procure any action at the common law, grounded upon this statute, to be stayed or delayed before judgment, by colour or means of any order, warrant, power, or authority, save only of the Court wherein such action as aforesaid shall be brought and depending, or after judgment had upon such action, shall cause or procure the execution of or upon any such judgment to be stayed or delayed by colour or means of any order, warrant, power, or authority, save only by writ of error or attaint; that then the said person and persons so offending shall incur and sustain the pains, penalties, and forfeitures ordained and provided by the Statute of Provision and Præmunire made in the sixteenth year of the reign of King Richard the Second.

He that delayeth an action grounded upon this statute incurs a *præmunire*.

16 Rich. II. c. 5.

5. [*Provided nevertheless, and be it declared and enacted, that any declaration before mentioned shall not extend to any letters patents and grants of privilege for the term of one and twenty years or under heretofore made, of the sole working or making of any manner of new manufacture within this realm, to the first and true inventor or inventors of such manufactures, which others at the time of the making of such letters patents and grants did not use, so they be not contrary to the law, nor mischievous to the State, by raising of the prices of commodities at home, or hurt of trade, or generally inconvenient, but that the same shall be of such force as they were or should be, if this Act had not been made, and of none other: and if the same were made for more than one and twenty years, that then the same for the term of one and twenty years only, to be accounted from the date of the first letters patents and grants thereof made, shall be of such force as they were or should have been if the same had been made, but for term of one and*

Letters patent to use new manufactures saved.

twenty years only, and as if this Act had never been had or made, and of none other.]

Exception of future letters patent.

6. Provided also, [*and be it declared and enacted,*] That any declaration before mentioned shall not extend to any letters patents 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 patents 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 accounted from the date of the first letters patent, or grant of such privilege hereafter to be 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.

Grants confirmed by Act of Parliament saved.

7. Provided also, [*and it is hereby further intended, declared, and enacted by authority aforesaid,*] That this Act or any thing therein contained shall not in any wise extend, or be prejudicial to any grant or privilege, power, or authority whatsoever heretofore made, granted, allowed, or confirmed by any Act of Parliament now in force, so long as the same shall so continue in force.

Warrants granted to justices saved.

8. Provided also, That this Act shall not extend to any warrant or privy seal, made or directed, or to be made or directed, by his Majesty, his heirs, or successors, to the justices of the Courts of the King's Bench or Common Pleas, and Barons of the exchequer, justices of assize, justices of oyer and terminer and gaol delivery, justices of the peace, and other justices for the time being, having power to hear and determine offences done against any penal statute, to compound for the forfeitures of any penal statute, depending in suit and question before them or any of them respectively, after plea pleaded by the party defendant.

Charters granted to corporations saved.

9. Provided also, [*and it is hereby further intended, declared, and enacted,*] That this Act or any thing therein contained shall not in any wise extend or be prejudicial unto the city of London, or to any city borough or town corporate within this realm, for or concerning any grants, charters, or letters patents, to them or any of them made or granted, or for or concerning any custom or customs used by or within them or any of them: or unto any corporations, companies, or fellowships of any art, trade, occupation, or mystery, or to any companies or societies of merchants within this realm, erected for the maintenance, enlargement, or ordering of any trade of merchandise; but that the same charters, customs, corporations, companies, fellowships, and societies, and their liberties, privileges,

powers and immunities shall be and continue of such force and effects as they were before the making of this Act, and of none other; any thing before in this Act contained to the contrary in any wise notwithstanding. (*a*)

(*a*) The remaining sections of this Act have become inoperative or have been repealed by the Patents, Designs, and Trade Marks Act, 1883, and are, therefore, not printed here.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1883.

[46 & 47 Vict. c. 57.]

An Act to amend and consolidate the Law relating to Patents for Inventions, Registration of Designs, and of Trade Marks.

[25th August, 1883.]

[N.B.—The portions of this Act which have been amended or repealed by subsequent Acts are printed in italics, the amendments are printed in black type, and a reference is given to the amending or repealing Act in each case.]

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PART I.

Preliminary.

Short title.

1. This Act may be cited as the Patents, Designs, and Trade Marks Act, 1883.

Division of Act into parts.

2. This Act is divided into parts, as follows :

Part I.—Preliminary.
Part II.—Patents.
Part III.—Designs.
Part IV.—Trade Marks.
Part V.—General.

Commencement of Act.

3. This Act, except where it is otherwise expressed, shall commence from and immediately after the thirty-first day of December one thousand eight hundred and eighty-three.

PART II.

PATENTS.

Application for and Grant of Patent.

Persons entitled to apply for patent.

4. (1) Any person, whether a British subject or not, may make an application for a patent.

(2) Two or more persons may make a joint application for a patent, and a patent may be granted to them jointly. (*a*)

Application and specification.

5. (1) An application for a patent must be made in the form set forth in the First Schedule to this Act, or in such other form as may be from time to time prescribed; and must be left at, or sent by post to, the Patent Office in the prescribed manner.

(2) An application must contain a declaration to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application, one or more of the applicants, claims or claim to be the true and first inventor or inventors, and for which he or they desires or desire to obtain a patent; and must be accompanied by either a provisional or complete specification. (*b*)

(3) A provisional specification must describe the nature of the invention, and be accompanied by drawings, if required.

(4) A complete specification, whether left on application or subsequently, must particularly describe and ascertain the nature of the invention, and in what manner it is to be performed, and must be accompanied by drawings, if required. (*c*)

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

Reference of application to examiner.

6. The Comptroller shall refer every application to an examiner, who shall ascertain and report to the Comptroller 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.

Power for Comptroller to refuse application or require amendment.

7. (1) *If the examiner reports that the nature of the invention is not fairly described, or that the application, specification, or drawings has not or have not been prepared in the prescribed manner, or that the title does not sufficiently indicate the subject-matter of the invention, the Comptroller may require that the application, specification, or drawings be amended before he proceeds with the application.*

(*a*) As to construction of this sub-s. see 48 & 49 Vict. c. 63, s. 5, p. 246 *post*.
(*b*) See 48 & 49 Vict. c. 63, s. 2, p. 245 *post*.
(*c*) As to compliance with the requirements of this sub-s. see 49 & 50 Vict. c. 37, s. 2, p. 247 *post*.

(2) Where the Comptroller requires an amendment, the applicant may appeal from his decision to the law officer.

(3) The law officer shall, if required, hear the applicant and the Comptroller, and may make an order determining whether and subject to what conditions, if any, the application shall be accepted.

(4) The Comptroller shall, when an application has been accepted, give notice thereof to the applicant.

(5) If, after an application has been made, but before a patent has been sealed, an application is made, accompanied by a specification bearing the same or a similar title, it shall be the duty of the examiner to report to the Comptroller whether the specification appears to him to comprise the same invention; and, if he reports in the affirmative, the Comptroller shall give notice to the applicants that he has so reported.

(6) Where the examiner reports in the affirmative, the Comptroller may determine, subject to an appeal to the law officer, whether the invention comprised in both applications is the same, and if so he may refuse to seal a patent on the application of the second applicant (d)

Power of Comptroller to refuse application or require amendment.

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

(2) Where the Comptroller refuses to accept an application or requires an amendment, the applicant may appeal from his decision to the law officer.

(3) The law officer shall, if required, hear the applicant and the Comptroller, and may make an order determining whether, and subject to what conditions (if any) the application shall be accepted.

(4) The Comptroller shall, when an application has been accepted, give notice thereof to the applicant.

(5) If, after an application for a patent has been made, but before the patent thereon has been sealed, another application for a patent is made, accompanied by a specification bearing the same or a similar title, the

(*d*) Repealed by 51 & 52 Vict. c. 50, s. 2, p. 249 *post*.

Comptroller, if he thinks fit, on the request of the second applicant, or of his legal representative, may, within two months of the grant of a patent on the first application, either decline to proceed with the second application or allow the surrender of the patent, if any, granted thereon. (*c*)

Time for leaving complete specification.

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

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

Comparison of provisional and complete specification.

9. (1) Where a complete specification is left after a provisional specification, the Comptroller shall refer both specifications to an examiner for the purpose of ascertaining 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 which is described in the provisional specification.

(2) If the examiner reports that the conditions hereinbefore contained have not been complied with, the Comptroller may refuse to accept the complete specification unless and until the same shall have been amended to his satisfaction; but any such refusal shall be subject to appeal to the law officer.

(3) The law officer shall, if required, hear the applicant and the Comptroller, and may make an order determining whether and subject to what conditions, if any, the complete specification shall be accepted.

(4) Unless a complete specification is accepted within twelve months from the date of application, then (save in the case of an appeal having been lodged against the refusal to accept) the application shall, at the expiration of those twelve months, become void. (*h*)

(5) Reports of examiners shall not in any case be published or be open to public inspection, and shall not be liable to production or inspection in any legal proceeding, *other than an appeal to the law officer under this Act*, (*i*) unless the Court or officer having power to order discovery in such legal proceeding shall certify that such production or inspection is desirable in the interests of justice, and ought to be allowed.

(*e*) 51 & 52 Vict. c. 50, s. 2, p. 249 *post*.
(*f*) See Act of 1902, sec. 1, sub-s. 8, p. 258 *post*.
(*g*) The period of six months may be extended under 48 & 49 Vict. c. 62, s. 3, p. 245 *post*.
(*h*) The period of twelve months may be extended under 48 & 49 Vict. c. 63, s. 3, p. 255 *post*.
(*i*) 51 & 52 Vict. c. 50, s. 3, p. 249 *post*.

Advertisement on acceptance of complete specification.

10. On acceptance of the complete specification the Comptroller shall advertise the acceptance; and the application and specification or specifications, with the drawings (if any), shall be open to public inspection.

Opposition to grant of patent.

11. (1) Any person may at any time within two months from the date of the advertisement of the acceptance of a complete specification give notice at the Patent Office of opposition to the grant of the patent on the ground of the applicant having obtained the invention from him, or from a person of whom he is the legal representative, or on the ground that the invention has been patented in this country on an application of prior date, *or on the ground of an examiner having reported to the Comptroller that the specification appears to him to comprise the same invention as is comprised in a specification bearing the same or a similar title, and accompanying a previous application, but on no other ground;* (*k*) **or on the ground 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.**(*l*)

(2) Where such notice is given the Comptroller shall give notice of the opposition to the applicant, and shall, on the expiration of those two months, after hearing the applicant and the person so giving notice, if desirous of being heard, decide on the case, but subject to appeal to the law officer.

(3) 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.

(4) The law officer may, if he thinks fit, obtain the assistance of an expert, who shall be paid such remuneration as the law officer, with the consent of the Treasury, shall appoint.

Sealing of patent.

12. (1) If there is no opposition, or, in case of opposition, if the determination is in favour of the grant of a patent, the Comptroller shall cause a patent to be sealed with the seal of the Patent Office.

(2) A patent so sealed shall have the same effect as if it were sealed with the Great Seal of the United Kingdom.

(3) A patent shall be sealed as soon as may be, and not after the expiration of fifteen months from the date of application, except in the cases hereinafter mentioned, that is to say—

(*k*) 51 & 52 Vict. c. 50, s. 3, p. 249 *post*.

(*l*) *Ibid.*

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

(*b*) If the person making the application dies before the expiration of the fifteen months aforesaid, the patent may be granted to his legal representative, and sealed at any time within twelve months after the death of the applicant. (*m*)

Date of patent.

13. Every patent shall be dated and sealed as of the day of the application: Provided that no proceedings shall be taken in respect of an infringement committed before the publication of the complete specification: Provided also, that in case of more than one application for a patent for the same invention the sealing of a patent on one of those applications shall not prevent the sealing of a patent on an earlier application. (*n*)

Provisional Protection.

Provisional protection.

14. 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 in this Act referred to as provisional protection.

Protection by Complete Specification.

Effect of acceptance of complete specification.

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

Patent.

Extent of patent.

16. Every patent when sealed shall have effect throughout the United Kingdom and the Isle of Man.

Term of patent.

17. (1) The term limited in every patent for the duration thereof shall be fourteen years from its date.

(2) But every patent shall, notwithstanding anything therein or

(*m*) The period of fifteen months may be extended under 48 & 49 Vict. c. 63, s. 3, p. 245 *post*.

(*n*) See 48 & 49 Vict. c. 63, s. 4, p. 246 *post*.

in this Act, cease if the patentee fails to make the prescribed payments within the prescribed times.

(3) 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 for an enlargement of the time for making that payment.

(4) 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, enlarge the time accordingly, subject to the following conditions :

(*a*) The time for making any payment shall not in any case be enlarged for more than three months.

(*b*) 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.

Amendment of Specification.

Amendment of specification.

18. (1) An applicant or a patentee may, from time to time, by request in writing left at the Patent Office, seek leave to amend his specification, including drawings forming part thereof, by way of disclaimer, correction, or explanation, stating the nature of such amendment and his reasons for the same.

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

(3) Where such notice is given the Comptroller shall give notice of the opposition to the person making the request, and shall hear and decide the case subject to an appeal to the law officer.

(4) The law officer shall, if required, hear the person making the request and the person so giving notice, and being in the opinion of the law officer entitled to be heard in opposition to the request, and shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

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

(6) When leave to amend is refused by the Comptroller, the

person making the request may appeal from his decision to the law officer.

(7) The law officer shall, if required, hear the person making the request and the Comptroller, and may make an order determining whether, and subject to what conditions, if any, the amendment ought to be allowed.

(8) No amendment shall be allowed that would make the specification, as amended, claim an invention substantially larger than, or substantially different from, the invention claimed by the specification as it stood before amendment.

(9) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall in all Courts and for all purposes be deemed to form part of the specification.

(10) *The foregoing provisions of this section do not apply when and so long as any action for infringement or other legal proceeding in relation to a patent is pending.* (*o*) **The foregoing provisions of this section do not apply when and so long as any action for infringement or proceeding for revocation of a patent is pending.** (*p*)

Power to disclaim part of invention during action, &c.

19. (1) In an action for infringement of a patent, and in a proceeding for revocation of a patent, the Court or a Judge may at any time order that the patentee shall, subject to such terms as to costs and otherwise as the Court or a Judge may impose, be at liberty to apply at the Patent Office for leave to amend his specification by way of disclaimer, and may direct that in the mean time the trial or hearing of the action shall be postponed.

Restriction on recovery of damages.

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.

Advertisement of amendment.

21. Every amendment of a specification shall be advertised in the prescribed manner.

Compulsory Licences.

Power for Board to order grant of licences.

22. *If on the petition of any person interested it is proved to the Board of Trade that by reason of the default of a patentee to grant licences on reasonable terms—*

(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*

(*o*) 51 & 52 Vict. c. 50, s. 5, p. 250 *post*. (*p*) *Ibid.*

(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 licences on such terms as to the amount of royalties, security for payment, or otherwise, as the Board, having regard to the nature of the invention and the circumstances of the case, may deem just, and any such order may be enforced by mandamus. (q)

Law relating to compulsory licences.

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

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

(3) Where any such petition is referred by the Board of Trade to the Judicial Committee, and it is proved to the satisfaction of the Judicial Committee that the reasonable requirements of the public with reference to the patented invention have not been satisfied, the patentee may be ordered by an Order in Council to grant licences on such terms as the said Committee may think just, or, if the Judicial Committee are of opinion that the reasonable requirements of the public will not be satisfied by the grant of licences, the patent may be revoked by Order in Council;

Provided that no order of revocation shall be made before the expiration of three years from the date of the patent, or if the patentee gives satisfactory reasons for his default;

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

(q) Repealed, and the provisions following substituted therefor by 2 Edw. VII. c. 34, s. 3, p. 259 *post*.

(5) If it is proved to the satisfaction of the Judicial Committee that the patent is worked or that the patented article is manufactured exclusively or mainly outside the United Kingdom, then, unless the patentee can show that the reasonable requirements of the public have been satisfied, the petitioner shall be entitled either to an order for a compulsory licence or, subject to the above proviso, to an order for the revocation of the patent;

(6) For the purposes of this section the reasonable requirements of the public shall not be deemed to have been satisfied if, by reason of the default of the patentee to work his patent or to manufacture the patented article in the United Kingdom to an adequate extent, or to grant licences on reasonable terms, (a) any existing industry or the establishment of any new industry is unfairly prejudiced, or (b) the demand for the patented article is not reasonably met;

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

(8) His Majesty in Council may make rules of procedure and practice for regulating proceedings before the Judicial Committee under this section, and, subject thereto, such proceedings shall be regulated according to the existing procedure and practice in patent matters. Any Order in Council or any order made by the Judicial Committee under this Act may be enforced by the High Court as if it were an order of the High Court;

(9) The costs of and incidental to all proceedings under this section shall be in the discretion of the Judicial Committee, but in awarding costs on any application for the grant of a licence the Judicial Committee may have regard to any previous request for, or offer of, a licence made either before or after the application to the Committee;

(10) For the purposes of this section three members of the Judicial Committee shall constitute a quorum;

(11) This section shall apply to patents granted before as well as after the commencement of this Act.(r)

Register of Patents.

Register of patents.

23. (1) There shall be kept at the Patent Office a book called the Register of Patents, wherein shall be entered the names and addresses of grantees of patents, notifications of assignments and of transmissions of patents, of licences under patents, and of amendments, extensions, and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may from time to time be prescribed.

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

(3) Copies of deeds, licences, and any other documents affecting the proprietorship in any letters patent or in any licence thereunder, must be supplied to the Comptroller in the prescribed manner for filing in the Patent Office.

Fees.

Fees in schedule.

24. (1) There shall be paid in respect of the several instruments described in the second schedule to this Act the fees in that schedule mentioned, and there shall likewise be paid, in respect of other matters under this part of the Act, such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of her Majesty's Exchequer in such manner as the Treasury may from time to time direct.

(2) The Board of Trade may from time to time, if they think fit, with the consent of the Treasury, reduce any of those fees.

Extension of Term of Patent.

Extension of term of patent on petition to Queen in Council.

25. (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

(r) 2 Edw. VII. c. 34, s. 3, p. 259 *post*.

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 the 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.

Revocation.

Revocation of patent.

26. (1) The proceeding by *scire facias* to repeal a patent is hereby abolished.

(2) Revocation of a patent may be obtained on petition to the Court.

(3) 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.

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

(*a*) The Attorney-General in England or Ireland, or the Lord Advocate in Scotland:

(*b*) Any person authorised by the Attorney-General in England or Ireland, or the Lord Advocate in Scotland:

(*c*) 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:

(*d*) 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:

(*e*) 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.

(5) 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.

(6) Particulars delivered may be from time to time amended by leave of the Court or a Judge.

(7) 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.

(8) 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.

Crown.

Patent to bind Crown.

27. (1) A patent shall have to all intents the like effect as against her Majesty the Queen, her heirs and successors, as it has against a subject.

(2) But the officers or authorities administering any department of the service of the Crown may, by themselves, their agents, contractors, or others, at any time after the application, use the invention for the services of the Crown on terms to be before or after the use thereof agreed on, with the approval of the Treasury, between those officers or authorities and the patentee, or, in default of such agreement, on such terms as may be settled by the Treasury after hearing all parties interested.

Legal Proceedings.

Hearing with assessor.

28. (1) In an action or proceeding for infringement or revocation of a patent, the Court may, if it thinks fit, and shall, on the request of either of the parties to the proceeding, call in the aid of an assessor specially qualified, and try and hear the case wholly or partially with his assistance; the action shall be tried without a jury unless the Court shall otherwise direct.

(2) The Court of Appeal or the Judicial Committee of the Privy Council may, if they see fit, in any proceeding before them respectively, call in the aid of an assessor as aforesaid.

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

Delivery of particulars.

29. (1) In an action for infringement of a patent the plaintiff must deliver with his statement of claim, or by order of the Court or the Judge, at any subsequent time, particulars of the breaches complained of.

(2) The defendant must deliver with his statement of defence, or by order of the Court or a Judge, at any subsequent time, particulars of any objections on which he relies in support thereof.

(3) If the defendant disputes the validity of the patent, the particulars delivered by him must state on what grounds he disputes it, and if one of those grounds is want of novelty must state the time and place of the previous publication or user alleged by him.

(4) At the hearing no evidence shall, except by leave of the Court or a Judge, be admitted in proof of any alleged infringement or objection of which particulars are not so delivered.

(5) Particulars delivered may be from time to time amended, by leave of the Court or a Judge.

(6) On taxation of costs regard shall be had to the particulars delivered by the plaintiff and by the defendant; and they respectively 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 or to have been reasonable and proper, without regard to the general costs of the case.

Order for inspection, &c., in action.

30. 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 a Judge may see fit.

Certificate of validity questioned and costs thereon.

31. In an action for infringement of a patent, the Court or a Judge may certify that the validity of the patent came in question; and if the Court or a Judge so certifies, then in any subsequent action for infringement the plaintiff in that action on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client, unless the Court or Judge trying the action certifies that he ought not to have the same.

Remedy in case of groundless threats of legal proceedings.

32. 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) as may have been 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: Provided that this section shall not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent.

Miscellaneous.

Patent for one invention only.

33. Every patent may be in the form in the first schedule to this Act, and shall be granted for one invention only, but may contain more than one claim; but it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it comprises more than one invention.

Patent on application of representative of deceased inventor.

34. (1) If a person possessed of an invention dies without making application for a patent for the invention, application may be made by, and a patent for the invention granted to, his legal representative.

(2) Every such application must be made within six months of the decease of such person, and must contain a declaration by the legal representative that he believes such person to be the true and first inventor of the invention.

Patent to first inventor not invalidated by application in fraud of him.

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.

Assignment for particular places.

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

Loss or destruction of patent.

37. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the Comptroller, the Comptroller may at any time cause a duplicate thereof to be sealed.

Proceedings and costs before law officer.

38. The law officers may examine witnesses on oath and administer oaths for that purpose under this part of this Act, and may from time to time make, alter, and rescind rules regulating references and appeals to the law officers and the practice and procedure before them under this part of this Act; and in any proceeding before

either of the law officers under this part of this Act the law officer may order costs to be paid by either party, and any such order may be made a rule of the Court.

Exhibition at industrial or international exhibition not to prejudice patent rights.

39. 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. (*s*)

Publication of illustrated journal, indexes, &c.

40. (1) The Comptroller shall cause to be issued periodically an illustrated journal of patented inventions, as well as reports of patent cases decided by courts of law, and any other information that the Comptroller may deem generally useful or important.

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

(3) The Comptroller shall continue, in such form as he may deem expedient, the indexes and abridgments of specifications hitherto published, and shall from time to time prepare and publish such other indexes, abridgments of specifications, catalogues, and other works relating to inventions, as he may see fit.

Patent Museum.

41. The control and management of the existing Patent Museum and its contents shall, from and after the commencement of this Act, be transferred to and vested in the Department of Science and Art, subject to such directions as her Majesty in Council may see fit to give.

Power to require models on payment.

42. The Department of Science and Art may at any time require a patentee to furnish them with a model of his invention on payment to the patentee of the cost of the manufacture of the model; the amount to be settled, in case of dispute, by the Board of Trade.

(*s*) As to the extension of this section to exhibitions held out of the United Kingdom, see 49 & 50 Vict. c. 37, s. 3, p. 247 *post*.

Foreign vessels in British waters.

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

(2) But this section shall not extend to vessels of any foreign State of which the laws authorise subjects of such foreign State, having patents or like privileges for the exclusive use or exercise of inventions within its territories, to prevent or interfere with the use of such inventions in British vessels while in the ports of such foreign State, or in the waters within the jurisdiction of its Courts, where such inventions are not so used for the manufacture or preparation of anything intended to be sold in or exported from the territories of such foreign State.

Assignment to Secretary for War of certain inventions.

44. (1) The inventor of any improvement in instruments or munitions of war, his executors, administrators, or assigns (who are in this section comprised in the expression "the inventor") may (either for or without valuable consideration) assign to her Majesty's Principal Secretary of State for the War Department (hereinafter referred to as the Secretary of State), on behalf of her Majesty, all the benefit of the invention and of any patent obtained or to be obtained for the same; and the Secretary of State may be a party to the assignment.

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

(3) Where any such assignment has been made to the Secretary of State, he may at any time before the application for a patent for the invention, or before publication of the specification or specifications, certify to the Comptroller his opinion that, in the interest of the public service, the particulars of the invention and of the manner in which it is to be performed should be kept secret.

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

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

(6) Such sealed packet shall be delivered at any time during the continuance of the patent to any person authorised by writing under the hand of the Secretary of State to receive the same, and shall if returned to the Comptroller be again kept sealed by him.

(7) On the expiration of the term or extended term of the patent, such sealed packet shall be delivered to any person authorised by writing under the hand of the Secretary of State to receive it.

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

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

(10) No copy of any specification or other document or drawing by this section required to be placed in a sealed packet, shall in any manner whatever be published or open to the inspection of the public, but, save as in this section otherwise directed, the provisions of this part of this Act shall apply in respect of any such invention and patent as aforesaid.

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

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

Existing Patents.

Provisions respecting existing patents.

45. (1) The provisions of this Act relating to applications for patents and proceedings thereon shall have effect in respect only of applications made after the commencement of this Act.

(2) Every patent granted before the commencement of this Act, or on an application then pending, shall remain unaffected by the provisions of this Act relating to patents binding the Crown, and to compulsory licences.

(3) In all other respects (including the amount and time of payment of fees) this Act shall extend to all patents granted before the commencement of this Act, or on applications then pending, in substitution for such enactments as would have applied thereto if this Act had not been passed.

(4) All instruments relating to patents granted before the commencement of this Act required to be left or filed in the Great Seal Patent Office shall be deemed to be so left or filed if left or filed before or after the commencement of this Act in the Patent Office.

Definitions.

Definitions of patent, patentee, invention, and "injunction" in Scotland.

46. In and for the purposes of this Act—

"Patent" means letters patent for an invention :

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

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

In Scotland "injunction" means "interdict."

PART III.

DESIGNS.

Registration of Designs.

Application for registration of designs

47. (1) 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 under this part of the Act.

(2) The application must be made in the form set forth in the First Schedule to this Act, or in such other form as may be from time to time prescribed, and must be left at, or sent by post to, the Patent Office in the prescribed manner.

(3) The application must contain a statement of the nature of the

design, and the class or classes of goods in which the applicant desires that the design be registered.

(4) The same design may be registered in more than one class.

(5) In case of doubt as to the class in which a design ought to be registered, the Comptroller may decide the question.

(6) The Comptroller may, if he thinks fit, refuse to register any design presented to him for registration, but any person aggrieved by any such refusal may appeal therefrom to the Board of Trade.

(7) The Board of Trade 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.

Drawings, &c., to be furnished on application.

48. (1) On application for registration of a design the applicant shall furnish to the Comptroller the prescribed number of copies of drawings, photographs, or tracings of the design, sufficient, in the opinion of the Comptroller, for enabling him to identify the design; or the applicant may, instead of such copies, furnish exact representations or specimens of the design.

(2) The Comptroller may, if he thinks fit, refuse any drawing, photograph, tracing, representation, or specimen which is not, in his opinion, suitable for the official records.

Certificate of registration.

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

(2) The Comptroller may, in case of loss of the original certificate, or in any other case in which he deems it expedient, grant a copy or copies of the certificate.

Copyright in Registered Designs.

Copyright on registration.

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

(2) Before delivery on sale of any articles to which a registered design has been applied, the proprietor must (if exact representations or specimens were not furnished on the application for registration) furnish to the Comptroller the prescribed number of exact representations or specimens of the design; and if he fails to do so the Comptroller may erase his name from the register, and thereupon his copyright in the design shall cease.

Marking registered designs.

51. 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.

Inspection of registered designs.

52. (1) During the existence of a 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. (*t*) **Provided that where registration of a design is refused on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.** (*u*)

(2) When the copyright in a design has ceased, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

Information as to existence of copyright.

53. 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.

Cesser of copyright in certain events.

54. 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.

Register of Designs.

Register of designs.

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

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

Fees.

Fees on registration, &c.

56. There shall be paid in respect of applications and registration and other matters under this part of this Act such fees as may be

(*t*) See 51 & 52 Vict. c. 50, s. 6, p. 250 *post*. (*u*) *Ibid.*

from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of Her Majesty's Exchequer in such manner as the Treasury shall from time to time direct.

Industrial and International Exhibitions.

Exhibition at industrial or international exhibition not to prevent or invalidate registration.

57. The exhibition at an industrial or international exhibition, certified as such by the Board of Trade, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof, provided that both the following conditions are complied with, namely:—

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

(*b*) The application for registration must be made before or within six months from the date of the opening of the exhibition. (*x*)

Legal Proceedings.

Penalty on piracy of registered design.

58. During the existence of copyright in any design

(*a*) It shall not be lawful for any person without the licence or written consent of the registered proprietor to apply, or cause to be applied, (*y*) 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 of 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.

Any person who acts in contravention of this section shall be liable for every offence to forfeit a sum not exceeding fifty pounds to the registered proprietor of the design, who may recover such sum

(*x*) As to the extension of this section to industrial and international exhibitions held out of the United Kingdom, see 49 & 50 Vict. c. 37, s. 3, p. 247 *post*.
(*y*) 51 & 52 Vict. c. 50, s. 7 (1).

as a simple contract debt by action in any Court of competent jurisdiction. **Provided that the total sum forfeited in respect of any one design shall not exceed one hundred pounds.** (z)

Action for damages.

59. Notwithstanding the remedy given by this Act for the recovery of such penalty as aforesaid, 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.

Definitions.

Definition of "design," "copyright."

60. In and for the purposes of this Act—

"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 (fifty-fourth George the Third, chapter fifty-six).

"Copyright means the exclusive right to apply a design to any article of manufacture or to any such substance as aforesaid in the class or classes in which the design is registered.

Definition of proprietor.

61. 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.

(z) 51 & 52 Vict. c. 50, s. 7 (2).

PART IV.

TRADE MARKS.

Registration of Trade Marks.

Application for registration.

62. (1) *The Comptroller may, on application by or on behalf of any person claiming to be the proprietor of a trade mark, register the trade mark.*

(2) *The application must be made in the form set forth in the First Schedule of this Act, or in such other form as may be from time to time prescribed, and must be left at, or sent by post to, the Patent Office in the prescribed manner.*

(3) *The application must be accompanied by the prescribed number of representations of the trade mark, and must state the particular goods or classes of goods in connection with which the applicant desires the trade mark to be registered.*

(4) *The Comptroller may, if he thinks fit, refuse to register a trade mark, but any such refusal shall be 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.*

(5) *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.* (a)

Limit of time for proceeding with application.

63. *Where registration of a trade mark has not been or shall not be completed within twelve months from the date of the application, by reason of default on the part of the applicant, the application shall be deemed to be abandoned.* (a)

Conditions of registration of trade mark.

64. (1) *For the purposes of this Act, a trade mark must consist of or contain at least one of the following essential particulars:*

(a) *A name of an individual or firm printed, impressed, or woven in some particular or distinctive manner; and*

(b) *A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or,*

(c) *A distinctive device, mark, brand, heading, label, ticket, or fancy word or words not in common use.*

(2) *There may be added to any one or more of these particulars any letters, words, or figures, or combination of letters, words, or figures, or of any of them.*

(3) *Provided that any special and distinctive word or words, letter,*

(a) Repealed by 5 Edw. VII. c. 15, s. 73, p. 282 *post*.

figure, or combination of letters or figures or of letters and figures used as a trade mark before the thirteenth day of August one thousand eight hundred and seventy-five may be registered as a trade mark under this part of this Act. (*b*)

Connection of trade mark with goods.

65. *A trade mark must be registered for particular goods or classes of goods.* (*b*)

Registration of a series of marks.

66. *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.* (*b*)

Trade marks may be registered in any colour.

67. *A trade mark may be registered in any colour, and such registration shall (subject to the provisions of this Act) confer on the registered owner the exclusive right to use the same in that or any other colour.* (*b*)

Advertisement of application.

68. *Every application for registration of a trade mark under this part of this Act shall as soon as may be after its receipt be advertised by the Comptroller.* (*b*)

Opposition to registration.

69. (1) *Any person may within two months of the first advertisement of the application, give notice in duplicate at the Patent Office of opposition to registration of the trade mark, and the Comptroller shall send one copy of such notice to the applicant.*

(2) *Within two months after receipt of such notice or such further time as the Comptroller may allow, the applicant may send to the Comptroller a counter statement in duplicate of the grounds on which he relies for his application, and if he does not do so shall be deemed to have abandoned his application.*

(3) *If the applicant sends such counter statement, the Comptroller shall furnish a copy thereof to the person who gave notice of opposition, and shall require him to give security in such manner and to such amount as the Comptroller may require for such costs as may be awarded in respect of such opposition; and if such security is not given within fourteen days after such requirement was made or such further time as the Comptroller may allow, the opposition shall be deemed to be withdrawn.*

(4) *If the person who gave notice of opposition duly gives such security as aforesaid, the Comptroller shall inform the applicant thereof*

(*b*) **Repealed by 5 Edw. VII. c. 15, s. 73, p. 282 *post*.**

in writing, and thereupon the case shall be deemed to stand for the determination of the Court. (c)

Assignment and transmission of trade mark.

70. *A trade mark, when registered, shall be assigned and transmitted only in connection with the goodwill of the business concerned in the particular goods or classes of goods for which it has been registered, and shall be determinable with that goodwill.* (c)

Conflicting claims to registration.

71. *Where each of several persons claims to be registered as proprietor of the same trade mark, the Comptroller may refuse to register any of them until their rights have been determined according to law, and the Comptroller may himself submit or require the claimants to submit their rights to the Court.* (c).

Restrictions on registration.

72. (1) *Except where the Court has decided that two or more persons are entitled to be registered as proprietors of the same trade mark, the Comptroller shall not register in respect of the same goods or description of goods a trade mark identical with the one already on the register with respect to such goods or description of goods.*

(2) (a) *The Comptroller shall not register with respect to the same goods or description of goods a trade mark so nearly resembling a trade mark already on the register with respect to such goods or description of goods as to be calculated to deceive.* (c)

Further restriction on registration.

73. *It shall not be lawful to register as part of or in combination with a trade mark any words the exclusive use of which would by reason of their being calculated to deceive or otherwise, be deemed disentitled to protection in a Court of justice, or any scandalous design.* (c)

Saving for power to provide for entry on register of common marks as additions to trade marks.

74. (1) *Nothing in this Act shall be construed to prevent the Comptroller entering on the register, in the prescribed manner, and subject to the prescribed conditions, as an addition to any trade mark—*

(a) *In the case of an application for registration of a trade mark used before the thirteenth day of August one thousand eight hundred and seventy-five—*

Any distinctive advice, mark, brand, heading, label, ticket, letter, word, or figure, or combination of letters, words, or figures, though the same is common to the trade in the goods with respect to which the application is made;

(b) *In the case of an application for registration of a trade mark not used before the thirteenth day of August one thousand eight hundred and seventy-five—*

Any distinctive word or combination of words, though the same is common to the trade in the goods with respect to which the application is made;

(2) *The applicant for entry of any such common particular or particulars must, however, disclaim in his application any right to*

(c) **Repealed by 5 Edw. VII. c. 15, s. 73, p. 232 *post*.**

the exclusive use of the same, and a copy of the disclaimer shall be entered on the register.

(3) *Any device, mark, brand, heading, label, ticket, letter, word, figure, or combination of letters, words, or figures, which was or were, before the thirteenth day of August one thousand eight hundred and seventy-five, publicly used by more than three persons on the same or a similar description of goods shall, for the purposes of this section, be deemed common to the trade in such goods.* (*d*)

Effect of Registration.

Registration equivalent to public use.

75. *Registration of a trade mark shall be deemed to be equivalent to public use of the trade mark.* (*d*)

Right of first proprietor to exclusive use of trade mark.

76. *The registration of a person as proprietor of a trade mark shall be* primâ facie *evidence of his right to the exclusive use of the trade mark, and shall, after the expiration of five years from the date of the registration, be conclusive evidence of his right to the exclusive use of the trade mark, subject to the provisions of this Act.* (*d*)

Restrictions on actions for infringement, and on defence to action in certain cases

77. *A person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of a trade mark unless, in the case of a trade mark capable of being registered under this Act, it has been registered in pursuance of this Act, or of an enactment repealed by this Act, or, in the case of any other trade mark in use before the thirteenth day of August one thousand eight hundred and seventy-five, registration thereof under this part of this Act, or of an enactment repealed by this Act, has been refused. The Comptroller may, on request, and on payment of the prescribed fee, grant a certificate that such registration has been refused.* (*d*)

Register of Trade Marks.

Register of trade marks.

78. *There shall be kept at the Patent Office a book called the Register of Trade Marks, wherein shall be entered the names and addresses of proprietors of registered trade marks, notifications of assignments and of transmissions of trade marks, and such other matters as may be from time to time prescribed.* (*d*)

Removal of trade mark after fourteen years unless fee paid.

79. (1) *At a time not being less than two months nor more than three months before the expiration of fourteen years from the date of the registration of a trade mark, the Comptroller shall send notice to the registered proprietor that the trade mark will be removed from the register unless the proprietor pays to the Comptroller before the expiration of such fourteen years (naming the date at which the same will expire) the prescribed fee; and if such fee be not previously paid he*

(*d*) Repealed by 5 Edw. VII. c. 15, s. 73, p. 282 *post*.

shall at the expiration of one month from the date of the giving of the first notice send a second notice to the same effect.

(2) *If such fee be not paid before the expiration of such fourteen years the Comptroller may after the end of three months from the expiration of such fourteen years remove the mark from the register, and so from time to time at the expiration of every period of fourteen years.*

(3) *If before the expiration of the said three months the registered proprietor pays the said fee together with the additional prescribed fee, the Comptroller may, without removing such trade mark from the register, accept the said fee as if it had been paid before the expiration of the said fourteen years.*

(4) *Where after the said three months a trade mark has been removed from the register for nonpayment of the prescribed fee, the Comptroller may, if satisfied that it is just so to do, restore such trade mark to the register on payment of the prescribed additional fee.*

(5) *Where a trade mark has been removed from the register for nonpayment of the fee or otherwise, such trade mark shall nevertheless for the purpose of any application for registration during the five years next after the date of such removal, be deemed to be a trade mark which is already registered.* (e)

Fees.

Fees for registration, &c.

80. *There shall be paid in respect of applications and registration and other matters under this part of this Act, such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of her Majesty's Exchequer in such manner as the Treasury may from time to time direct.* (e)

Sheffield Marks.

Registration by Cutlers' Company of Sheffield marks.

81. *With respect to the master, wardens, searchers, assistants, and commonalty of the Company of Cutlers in Hallamshire, in the county of York (in this Act called the Cutlers' Company) and the marks or devices (in this Act called Sheffield marks) assigned or registered by the master, wardens, searchers, and assistants of the company, the following provisions shall have effect:*

(1) *The Cutlers' Company shall establish and keep at Sheffield a new register of trade marks (in this Act called the Sheffield register):*

(2) *The Cutlers' Company shall enter in the Sheffield register, in respect of cutlery, edge tools, or raw steel and the goods mentioned in the next sub-section, all the trade marks entered*

(e) Repealed by 5 Edw. VII. c. 15, s. 73, p. 282 *post*.

before the commencement of this Act in respect of cutlery, edge tools, or raw steel, and such goods in the register established under the Trade Marks Registration Act, 1887, *belonging to persons carrying on business in Hallamshire, or within six miles thereof, and shall also enter in such register, in respect of the same goods, all the trade marks which shall have been assigned by the Cutlers' Company and actually used before the commencement of this Act, but which have not been entered in the register established under the Trade Marks Registration Act*, 1875.

(3) *An application for registration of a trade mark used on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge, shall, if made after the commencement of this Act by a person carrying on business in Hallamshire, or within six miles thereof, be made to the Cutlers' Company:*

(4) *Every application so made to the Cutlers' Company shall be notified to the Comptroller in the prescribed manner, and unless the Comptroller within the prescribed time gives notice to the Cutlers' Company that he objects to the acceptance of the application, it shall be proceeded with by the Cutlers' Company in the prescribed manner:*

(5) *If the Comptroller gives notice of objection as aforesaid the application shall not be proceeded with by the Cutlers' Company, but any person aggrieved may appeal to the Court:*

(6) *Upon the registration of a trade mark in the Sheffield register the Cutlers' Company shall give notice thereof to the Comptroller, who shall thereupon enter the mark in the register of trade marks; and such registration shall bear date as of the day of application to the Cutlers' Company, and have the same effect as if the application had been made to the Comptroller on that day.*

(7) *The provisions of this Act, and of any general rules made under this Act, with respect to application for registration in the register of trade marks, the effect of such registration, and the assignment and transmission of rights in a registered trade mark shall apply in the case of applications and registration in the Sheffield register; and notice of every entry made in the Sheffield register must be given to the Comptroller by the Cutlers' Company, save and except that the provisions of this sub-section shall not prejudice or affect any life estate, and interest of a widow of the holder of any Sheffield mark which may be in force in respect of such mark at the time when it shall be placed upon the Sheffield register.*

(8) *Where the Comptroller receives from any person not carrying on business in Hallamshire or within six miles thereof an application for registration of a trade mark used on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge, he shall in the prescribed manner notify the application and proceedings thereon to the Cutlers' Company:*

(9) *At the expiration of five years from the commencement of this Act the Cutlers' Company shall close the Cutlers' register of corporate trade marks, and thereupon all marks entered therein shall, unless entered in the Sheffield register, be deemed to have been abandoned:*

(10) *A person may (notwithstanding anything in any Act relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of two or more trade marks:*

(11) *A body of persons, corporate or not corporate, may (notwithstanding anything in any Act relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of a trade mark or trade marks:*

(12) *Any person aggrieved by a decision of the Cutlers' Company in respect of anything done or omitted under this Act may, in the prescribed manner, appeal to the Comptroller, who shall have power to confirm, reverse, or modify the decision, but the decision of the Comptroller shall be subject to a further appeal to the Court:*

(13) *So much of the Cutlers' Company's Acts as applies to the summary punishment of persons counterfeiting Sheffield corporate marks, that is to say, the fifth section of the Cutlers' Company Act of* 1814, *and the provisions in relation to the recovery and application of the penalty imposed by such last-mentioned section contained in the Cutlers' Company's Act of* 1791, *shall apply to any mark entered in the Sheffield register.* (*f*)

PART V.

GENERAL.

Patent Office and Proceedings thereat.

Patent Office.

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

(2) Until a new Patent Office is provided, the office of the

(*f*) Repealed by 5 Edw. VII. c. 15, s. 73, p. 282 *post*.

Commissioners of Patents for inventions and for the registration of designs and trade marks existing at the commencement of this Act shall be the Patent Office within the meaning of this Act.

(3) The Patent Office shall be under the immediate control of an officer called the Comptroller-General of patents, designs, and trade marks, who shall act under the superintendence and direction of the Board of Trade.

(4) Any act or thing directed to be done by or to the Comptroller may, *in his absence*, (*g*) be done by or to any officer for the time being in that behalf authorised by the Board of Trade.

Officers and clerks.

83. (1) The Board of Trade may at any time after the passing of this Act, and from time to time, subject to the approval of the Treasury, appoint the Comptroller-General of patents, designs, and trade marks, and so many examiners and other officers and clerks, with such designations and *duties* as the Board of Trade think fit, and may from time to time remove any of those officers and clerks.

(2) The salaries of those officers and clerks shall be appointed by the Board of Trade, with the concurrence of the Treasury, and the same and the other expenses of the execution of this Act shall be paid out of the money provided by Parliament.

Seal of Patent Office.

84. There shall be a seal for the Patent Office, and impressions thereof shall be judicially noticed and admitted in evidence.

Trust not to be entered in registers.

85. There shall not be entered in any register kept under this Act, or be receivable by the Comptroller, any notice of any trust expressed, implied, or constructive. (*h*)

Refusal to grant patent, &c., in certain cases.

86. The Comptroller may refuse to grant a patent for an invention, or to register a design *or trade mark*, of which the use would, in his opinion, be contrary to law or morality. (*h*)

Entry of assignments and transmissions in registers.

87. Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to the copyright in a registered design, *or to a registered trade mark*, 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, 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 this Act and to** (*i*) any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licences as to, or

(*g*) 2 Edw. VII. c. 34, s. 4.

(*h*) This section is repealed, so far as it relates to trade marks, by 5 Edw. VII. c. 15, s. 73, p. 282 *post*.

(*i*) 51 & 52 Vict. c. 50, s. 21, p. 255 *post*.

otherwise deal with, the same and to give effectual receipts for any consideration for such assignment, licence, 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. (*j*)

Inspection of and extracts from registers.

88. 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** (*k*) such regulations as may be prescribed; and certified copies, sealed with the seal of the Patent Office, of an entry in any such register shall be given to any person requiring the same on payment of the prescribed fee. (*j*)

Sealed copies to be received in evidence.

89. 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. (*j*)

Rectification of registers by Court.

90. (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** (*l*) 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 refuse the application; and in either case may make such order with respect to the costs of the proceedings as the Court thinks fit.

(2) 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.

(3) Any order of the Court rectifying a register shall direct that due notice of the rectification be given to the Comptroller. (*j*)

Power for Comptroller to correct clerical errors.

91. The Comptroller may, on request in writing, accompanied by the prescribed fee:—

(*a*) Correct any clerical error in or in connection with an application for a patent, or for registration of a design *or trade mark*; or

(*b*) Correct any clerical error in the name, style, or address of the registered proprietor of a patent, design, *or trade mark*;

(*j*) This section is repealed, so far as it relates to trade marks, by 5 Edw. VII. c. 15, s. 73, p. 282 *post*.

(*k*) 51 & 52 Vict. c. 50, s. 22, p. 255 *post*.

(*l*) 51 & 52 Vict. c. 50, s. 23, p. 255 *post*.

(c) *Cancel the entry or part of the entry of a trade mark on the register: Provided that the applicant accompanies his request by a statutory declaration made by himself, stating his name, address, and calling, and that he is the person whose name appears on the register as the proprietor of the said trade mark.* (*m*)

(*d*) **Permit an applicant for registration of a design** *or trade mark* **to amend his application by omitting any particular goods or classes of goods in connection with which he has desired the design** *or trade mark* **to be registered.** (*n*) (*m*)

Alteration of registered mark.

92. (1) *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.*

(2) *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.*

(3) *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.* (*m*)

Falsification of entries in registers.

93. 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 misdemeanour. (*m*)

Exercise of discretionary power by Comptroller.

94. Where any discretionary power is by this Act given to the Comptroller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification, or for registration of a *trade mark* or design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent. (*m*)

Power of Comptroller to take directions of law officers.

95. The Comptroller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to either of the law officers for directions in the matter. (*m*)

Certificate of Comptroller to be evidence.

96. A certificate purporting to be under the hand of the Comptroller as to any entry, matter, or thing which he is authorised by this Act, or any general rules made thereunder, to make or do, shall be *primâ facie* evidence of the entry having been made, and of the

(*m*) This section is repealed, so far as it relates to trade marks, by 5 Edw. VII. c. 15, s. 73, p. 282 *post*.
(*n*) 51 & 52 Vict. c. 50, s 24, p. 255 *post*.

contents thereof, and of the matter or thing having been done or left undone. (*o*)

Applications and notices by post.

97. (1) Any application, notice, or other document authorised or required to be left, made or given at the Patent Office or to the Comptroller, or to any other person under this Act, may be sent by a prepaid letter through the post ; and if so sent shall be deemed to have been left, made or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post. (*o*)

(2) In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post. (*o*)

Provision as to days for leaving documents at office.

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. (*o*)

Declaration by infant, lunatic, &c.

99. If any person is, by reason of infancy, lunacy or other inability, incapable of making any declaration or doing anything required or permitted by this Act or by any rules made under the authority of this Act, then the guardian or committee (if any) of such incapable person, or, if there be none, any person appointed by any Court or Judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall for the purposes of this Act be as effectual as if done by the person for whom he is substituted. (*o*)

Transmission of certified printed copies of specifications, &c.

100. Copies of all specifications, drawings, and amendments left at the Patent Office after the commencement of this Act, printed for and sealed with the seal of the Patent Office, shall be transmitted to the Edinburgh Museum of Science and Art, and to the Enrolments Office of the Chancery Division in Ireland, and to the Rolls Office in the Isle of Man, within twenty-one days after the same shall respectively have been accepted or allowed at the Patent Office ; and certified copies of or extracts from any such documents shall

(*o*) This section is repealed, so far as it relates to trade marks, by 5 Edw. VII. c. 15, s. 73, p. 282 *post*.

be given to any person requiring the same on payment of the prescribed fee; and any such copy or extract shall be admissible in evidence in all Courts in Scotland and Ireland and in the Isle of Man without further proof of production of the originals.

Power for Board of Trade to make general rules for classifying goods and regulating business of Patent Office.

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

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

(*b*) For classifying goods for the purpose of designs *and trade marks*:

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

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

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

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

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

(2) Any of the forms in the First Schedule to this Act may be altered or amended by rules made by the Board as aforesaid.

(3) General rules may be made under this section at any time after the passing of this Act, but not so as to take effect before the commencement of this Act, and shall (subject as hereinafter mentioned) be of the same effect as if they were contained in this Act, and shall be judicially noticed.

(4) Any rules made in pursuance of this section shall be laid before both Houses of Parliament, if Parliament be in session at the time of making thereof, or, if not, then as soon as practicable after the beginning of the then next session of Parliament, and they shall also be advertised twice in the official journal to be issued by the Comptroller.

(5) If either Houses of Parliament, within the next forty days after any rule have been so laid before such House, resolve that such rules or any of them ought to be annulled, the same shall after

the date of such resolution be of no effect, without prejudice to the validity of anything done in the mean time under such rules or rule, or to the making of any new rules or rule. (*p*)

Annual reports of Comptroller.

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

102A. (1) All things required or authorised under this Act to be done by, to, or before the Board of Trade, may be done by, to, or before the President or a secretary or an assistant secretary of the Board.

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

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

International arrangements for protection of inventions, designs, and trade marks.

103. (1) If Her Majesty is pleased to make any arrangement with the Government or Governments of any foreign State or States for mutual protection of inventions, designs, and trade marks, or any of them, then any person who has applied for protection for any invention, design, or trade mark in any such State, shall be entitled to a patent for his invention or to registration of his design or trade mark (as the case may be) under this Act, in priority to other applicants; and such patent or registration shall have the same date as the *date of the protection obtained*, **date of application,** (*r*) in such foreign State.

Provided that his application is made, in the case of a patent within *seven*, **twelve** (*s*) months, and in the case of a design or trade mark within four months, from his applying for protection in the foreign State with which the arrangement is in force.

Provided that nothing in this section contained shall entitle the

(*p*) This section is repealed, so far as it relates to trade marks, by 5 Edw. VII. c. 15, s. 73, p. 282 *post*.

(*q*) 51 & 52 Vict. c. 50, s. 25, p. 255 *post*.

(*r*) 48 & 49 Vict. c. 63, s. 6, p. 246 *post*.

(*s*) 1 Edw. VII. c. 18, s. 1 (1), p. 257 *post*.

patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification, or the actual registration of his design or trade mark in this country, as the case may be.

(2) The publication in the United Kingdom or the Isle of Man during the respective periods aforesaid of any description of the invention, or the use therein during such periods of the invention, or the exhibition or use therein during such periods of the design, or the publication therein during such periods of a description or representation of the design, or the use therein during such periods of the trade mark, shall not invalidate the patent which may be granted for the invention, or the registration of the design or trade mark.

(3) The application for the grant of a patent, or the registration of a design, or the registration of a trade mark under this section, must be made in the same manner as an ordinary application under this Act: (*t*) Provided that, in the case of trade marks, any trade mark the registration of which had been duly applied for in the country of origin may be registered under this Act.

(4) The provisions of this section shall apply only in the case of those foreign States with respect to which Her Majesty shall from time to time by Order in Council declare them to be applicable, and so long only in the case of each State as the Order in Council shall continue in force with respect to the State.

Provision for colonies and India.

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

(2) An Order in Council under this Act shall, from a date to be mentioned for the purpose in the Order, take effect as if its provisions had been contained in this Act; but it shall be lawful for Her Majesty in Council to revoke any Order in Council made under this Act.

Offences.

Penalty on falsely representing articles to be patented.

105. (1) 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 offence on summary conviction to a fine not exceeding five pounds.

(*t*) But see 1 Edw. VII. c. 18, s. 1 (2), p. 257 *post*.

(2) A person shall be deemed, for the purpose 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 (*u*).

Penalty on unauthorised assumption of Royal arms.

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.

Scotland; Ireland; &c.

Saving for Courts in Scotland

107. In any action for infringement of a patent in Scotland the provisions of this Act, with respect to calling in the aid of an assessor, shall apply, and the action shall be tried without a jury, unless the Court 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.

Summary proceedings in Scotland.

108. In Scotland any offence under this Act to be punishable on summary conviction may be prosecuted in the sheriff court. (*u*)

Proceedings for revocation of patent in Scotland.

109. (1) 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.

(2) Service of all writs and summonses in that action shall be made according to the forms and practice existing at the commencement of this Act.

Reservation of remedies in Ireland.

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

General saving for jurisdiction of Courts.

111. (1) The provisions of this Act conferring a special jurisdiction on the court as defined by this Act, shall not, except so far as

(*u*) This section is repealed, so far as it relates to trade marks, by 5 Edw. VII. c. 15, s. 73, p. 282 *post*.

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 any 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.

(2) If any rectification of a register under this 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 according. (*x*)

Isle of Man.

112. This Act shall extend to the Isle of Man, and—

(1) Nothing in this Act shall affect the jurisdiction of the courts in the Isle of Man, in proceedings for infringement or in any action or proceeding respecting a patent, design, *or trade mark* competent to those courts:

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

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

112A. *The Court of Chancery of the County Palatine of Lancaster shall, with respect to any action or other proceeding in relation to trade marks the registration whereof is applied for in the Manchester office, have the like jurisdiction under this Act as her Majesty's High Court of Justice in England, and the expression 'the Court' in this Act shall be construed and have effect accordingly.*

"*Provided that every decision of the Court of Chancery of the County Palatine of Lancaster in pursuance of this section shall be subject to the like appeal as decisions of that Court in other cases.* (*y*) (*x*)

(*x*) This section is repealed, so far as it relates to trade marks, by 5 Edw. VII. c. 15, s. 73, p. 282 *post*.

(*y*) 51 & 52 Vict. c. 50, s. 26, p. 256 *post*.

Repeal; Transitional Provisions; Savings.

Repeal and saving for past operation of repealed enactments, &c.

113. The enactments described in the Third Schedule to this Act are hereby repealed. But this repeal of enactments shall not—

(*a*) Affect the past operation of any of those enactments, or any patent or copyright *or right to use a trade mark*, granted or acquired, or application pending, or appointment made, or compensation granted, or order or direction made or given, or right, privilege, obligation, or liability acquired, accrued, or incurred, or anything duly done or suffered under or by any of those enactments before or at the commencement of this Act; or

(*b*) Interfere with the institution or prosecution of any action or proceeding, civil or criminal, in respect thereof, and any such proceedings may be carried on as if this Act had not been passed; or

(*c*) Take away or abridge any protection or benefit in relation to any such action or proceeding. (*z*) (*a*)

Former registers to be deemed continued.

114. (1) The registers of patents and of proprietors kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of patents kept under this Act.

(2) The registers of designs *and of trade marks* kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of designs *and the register of trade marks* kept under this Act. (*a*)

Saving for existing rules.

115. All general rules made by the Lord Chancellor or by any other authority under any enactment repealed by this Act, and in force at the commencement of this Act, may at any time after the passing of this Act be repealed, altered or amended by the Board of Trade, as if they had been made by the Board under this Act, but so that no such repeal, alteration or amendment shall take effect before the commencement of this Act; and, subject as aforesaid, such general rules shall, so far as they are consistent with and are not superseded by this Act, continue in force as if they had been made by the Board of Trade under this Act. (*a*)

Saving for prerogative.

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

General Definitions.

General definitions.

117. (1) In and for the purposes of this Act, unless the context otherwise requires—

(*z*) See 51 & 52 Vict. c. 50, s. 27, p. 256 *post*.

(*a*) This section is repealed, so far as it relates to trade marks, by 5 Edw. VII. c. 15, s. 73, p. 282 *post*.

"Person" includes a body corporate:

"The Court" means (subject to the provisions for Scotland, Ireland, and the Isle of Man) Her Majesty's High Court of Justice in England:

"Law officer" means Her Majesty's Attorney-General or Solicitor-General for England:

"The Treasury" means the Commissioners of Her Majesty's Treasury:

"Comptroller" means the Comptroller-General of Patents, Designs, and Trade Marks.

"Prescribed" means prescribed by any of the schedules to this Act, or by general rules under or within the meaning of this Act.

"British possession" means any territory or place situate within Her Majesty's dominions, and not being or forming part of the United Kingdom, or of the Channel Islands, or of the Isle of Man, and all territories and places under one legislature, as hereinafter defined, are deemed to be one British possession for the purposes of this Act:

"Legislature" includes any person or persons who exercise legislative authority in the British possession; and where there are local legislatures as well as a central legislature, means the central legislature only.

In the application of this Act to Ireland, "summary conviction" means a conviction under the Summary Jurisdiction Acts, that is to say, with reference to the Dublin Metropolitan Police District the Acts regulating the duties of justices of the peace and of the police for such district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and any Act amending it. (*i*)

SCHEDULES.

THE FIRST SCHEDULE.

FORMS OF APPLICATION, &C.

Form A. (*c*)
Form of Application.

Form B. (*c*)
Form of Provisional Specification.

(*b*) This section is repealed, so far as it relates to trade marks, by 5 Edw. VII. c. 15, s. 73, p. 282 *post*.

(*c*) For forms A, B, and C, the Board of Trade have, under the powers conferred by s. 101, sub-s. 2, of the Act, substituted the forms A, A1, A2, B and C, which will be found at pp. 345–351 *post*.

Form C. (*d*)

Form of Complete Specification.

Form D.

Form of Patent.

Form E.

Form of Application of Registration of Design.

Form F.

Form of Application for Registration of Trade Mark.

THE SECOND SCHEDULE.

Fees on instrument for obtaining Patents and Renewal.

The fees at present in force are set out in the First Schedule to the Patent Rules, 1903, see p. 449 *post*.

THE THIRD SCHEDULE.

Enactments repealed.

21 James I. c. 3. [1623.]	The Statute of Monopolies. In part; namely,— Sections ten, eleven, and twelve.
5 & 6 Will. IV. c. 62. [1835.] In part.	The Statutory Declarations Act, 1835. In part; namely,— Section eleven.
5 & 6 Will. IV. c. 83. [1835.]	An Act to amend the law touching letters patent for inventions.
2 & 3 Vict. c. 67. [1839.]	An Act to amend an Act of the fifth and sixth years of the reign of King William the Fourth, intituled "An Act to amend the law touching letters patent for inventions."
5 & 6 Vict. c. 100. [1842.]	An Act to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.
6 & 7 Vict. c. 65. [1843.]	An Act to amend the laws relating to the copyright of designs.

(d) For forms A, B, and C, the Board of Trade have, under the powers conferred by s. 101, sub-s. 2, of the Act, substituted the forms A, A1, A2, B and C, which will be found at pp. 345–351 *post*.

7 & 8 Vict. c. 69. (e) [1844.] In part.	An Act for amending an Act passed in the fourth year of the reign of His late Majesty, intituled "An Act for the better administration of justice in His Majesty's Privy Council, and to extend its jurisdiction and powers." In part; namely,— Sections two to five, both included.
13 & 14 Vict. c. 104. [1850.]	An Act to extend and amend the Acts relating to the copyright of designs.
15 & 16 Vict. c. 83. [1852.]	The Patent Law Amendment Act, 1852.
16 & 17 Vict. c. 5. [1853.]	An Act to substitute stamp duties for fees on passing letters patent for inventions, and to provide for the purchase for the public use of certain indexes of specifications.
16 & 17 Vict. c. 115. [1853.]	An Act to amend certain provisions of the Patent Law Amendment Act, 1852, in respect of the transmission of certified copies of letters patent and specifications to certain offices in Edinburgh and Dublin, and otherwise to amend the said Act.
21 & 22 Vict. c. 70. [1858.]	An Act to amend the Act of the fifth and sixth years of Her present Majesty, to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.
22 Vict. c. 13. [1859.]	An Act to amend the law concerning patents for inventions with respect to inventions for improvements in instruments and munitions of war.
24 & 25 Vict. c. 73. [1861.]	An Act to amend the law relating to the copyright of designs.
28 & 29 Vict. c. 3. [1865.]	The Industrial Exhibitions Act, 1865.
33 & 34 Vict. c. 27. [1870.]	The Protection of Inventions Act, 1870.
33 & 34 Vict. c. 97. [1870.]	The Stamp Act, 1870. In part; namely,— Section sixty-five, and in the Schedule the words and figures— "Certificate of the registration of a design . . £5 0 0 And see section 65."
38 & 39 Vict. c. 91. [1875.]	The Trade Marks Registration Act, 1875.
38 & 39 Vict. c. 93. [1875.]	The Copyright of Designs Act, 1875.
39 & 40 Vict. c. 33. [1876.]	The Trade Marks Registration Amendment Act, 1876.
40 & 41 Vict. c. 37. [1877.]	The Trade Marks Registration Extension Act, 1877.
43 & 44 Vict. c. 10. [1880.]	The Great Seal Act, 1880. In part; namely,— Section five.
45 & 46 Vict. c. 72. [1882.]	The Revenue, Friendly Societies, and National Debt Act, 1882. In part; namely,— Section sixteen.

(e) *Note.*—Sections six and seven of this Act are repealed by the Statute Law Revision (No. 2) Act, 1874.

PATENTS, DESIGNS, &c., AMENDMENT ACT, 1885.

48 & 49 VICT. c. 63.

An Act to amend the Patents, Designs, and Trade Marks Act, 1883.

[14th August, 1885.]

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

Construction and short title.

1. This Act shall be construed as one with the Patents, Designs, and Trade Marks Act, 1883 (in this Act referred to as the principal Act).

This Act may be cited as the Patents, Designs, and Trade Marks (Amendment) Act, 1885, and this Act and the principal Act may be cited together as the Patents, Designs, and Trade Marks Act, 1883 and 1885.

Amendment of s. 5 of 46 & 47 Vict. c. 57.

2. Whereas sub-section two of section five of the principal Act requires a declaration to be made by an applicant for a patent to the effect in that sub-section mentioned, and doubts have arisen as to the nature of that declaration, and it is expedient to remove such doubts; be it therefore enacted that:

The declaration mentioned in sub-section two of section five of the principal Act may be either a statutory declaration under the Statutory Declarations Act, 1835, or not, as may be from time to time prescribed.

5 & 6 Will. IV. c. 62.

Amendment of ss. 8, 9, and 12 of 46 & 47 Vict. c. 57.

3. Whereas under the principal Act a complete specification is required (by section eight) to be left within nine months, and (by section nine) to be accepted within twelve months, from the date of application, and a patent is required by section twelve to be sealed within fifteen months from the date of application, and it is expedient to empower the Comptroller to extend in certain cases the said times; be it therefore enacted as follows:

A complete specification may be left and accepted within such extended times, not exceeding one month and three months respectively after the said nine and twelve months respectively as the Comptroller may on payment of the prescribed fee allow, and where such extension of time has been allowed a further extension of four

months after the said fifteen months shall be allowed for the sealing of the patent; and the principal Act shall have effect as if any time so allowed were added to the said periods specified in the principal Act.

Specifications, &c., not to be published unless application accepted.

4. Where an application for a patent has been abandoned, or become void, the specification or specifications and drawings (if any) accompanying or left in connection with such application, shall not at any time be open to public inspection or be published by the Comptroller.

Power to grant patents to several persons jointly.

5. Whereas doubts have arisen whether under the principal Act a patent may lawfully be granted to several persons jointly, some or one of whom only are or is the true and first inventors or inventor; be it therefore enacted and declared that it has been and is lawful under the principal Act to grant such a patent.

Amendment of s. 103 of 46 & 47 Vict. c. 57.

6. In sub-section one of section one hundred and three of the principal Act the words "date of the application" shall be substituted for the words "date of the protection obtained."

PATENTS ACT, 1886.

49 & 50 VICT. c. 37.

An Act to remove certain doubts respecting the construction of the Patents, Designs, and Trade Marks Act, 1883, *so far as respects the drawings by which specifications are required to be accompanied, and as respects exhibitions.*

[25th June, 1886.]

WHEREAS by section five of the Patents, Designs, and Trade Marks Act, 1883, specifications, whether provisional or complete, must be accompanied by drawings, if required, and doubts have arisen as to whether it is sufficient that a complete specification refers to the drawings by which the provisional specification was accompanied, and it is expedient to remove such doubts: 46 & 47 Vict c. 57.

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title and construction. 46 & 47 Vict. c. 57. 48 & 49 Vict. c. 63.

1. This Act may be cited as the Patents Act, 1886, and shall be construed as one with the Patents, Designs, and Trade Marks Acts, 1883 and 1885, and, together with those Acts, may be cited as the Patents, Designs, and Trade Marks Acts, 1883 to 1886.

The same drawings may accompany both specifications.

2. The requirement of sub-section four of section five of the Patents, Designs, and Trade Marks Act, 1883, as to drawings shall not be deemed to be insufficiently complied with by reason only that, instead of being accompanied by drawings, the complete specification refers to the drawings which accompanied the provisional specification. And no patent hitherto sealed shall be invalid by reason only that the complete specification was not accompanied by drawings, but referred to those which accompanied the provisional specification.

Protection of patents and designs exhibited at international exhibitions.

3. Whereas by section thirty-nine of the Patents, Designs, and Trade Marks Act, 1883, as respects patents, and by section fifty-seven of the same Act as respects designs, provision is made that the exhibition of an invention or design at an industrial or international exhibition, certified as such by the Board of Trade, shall not prejudice the rights of the inventor or proprietor thereof, subject to the conditions therein mentioned, one of which is that the exhibitor

must, before exhibiting the invention, design, or article, or publishing a description of a design, give the Comptroller the prescribed notice of his intention to do so:

And whereas it is expedient to provide for the extension of the said sections to industrial and international exhibitions held out of the United Kingdom, be it therefore enacted as follows:

It shall be lawful for Her Majesty, by Order in Council, from time to time to declare that sections thirty-nine and fifty-seven of the Patents, Designs, and Trade Marks Act, 1883, or either of those sections, shall apply to any exhibition mentioned in the Order in like manner as if it were an industrial or international exhibition certified by the Board of Trade, and to provide that the exhibitor shall be relieved from the conditions, specified in the said sections, of giving notice to the Comptroller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as to Her Majesty in Council may seem fit.

PATENTS, DESIGNS, AND TRADE MARKS ACT, 1888.

51 & 52 VICT. c. 50.

An Act to amend the Patents, Designs, and Trade Marks Act, 1883.

[24th December, 1888.]

[N.B.—The portions of this Act which have been repealed are printed in italics, and a reference is given to the repealing Act in each case.]

WHEREAS it is expedient to amend the Patents, Designs, and Trade Marks Act, 1883, hereinafter referred to as the principal Act: 46 & 47 Vict. c. 57.

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Register of patent agents.

1. (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.

(2) 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.

(3) 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.

(4) If any person knowingly describes himself as a patent agent in contravention of this section, he shall be liable on summary conviction to a fine not exceeding twenty pounds.

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

s. 7, as to applications.

2. For section seven of the principal Act the following section shall be substituted, namely:

Amendments of 46 & 47 Vict. c. 57.

s. 7, as to applications.

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

"(2) Where the Comptroller refuses to accept an application or requires an amendment, the applicant may appeal from his decision to the law officer.

"(3) The law officer shall, if required, hear the applicant and the Comptroller, and may make an order determining whether, and subject to what conditions (if any) the application shall be accepted.

"(4) The Comptroller shall, when an application has been accepted, give notice thereof to the applicant.

"(5) If, after an application for a patent has been made, but before the patent thereon has been sealed, another application for a patent is made, accompanied by a specification bearing the same of a similar title, the Comptroller, if he thinks fit, on the request of the second applicant, or of his legal representative, may, within two months of the grant of a patent of the first application, either decline to proceed with the second application or allow the surrender of the patent, if any, granted thereon."

s. 9, as to disclosure of reports of examiners.

3. In sub-section five of section nine of the principal Act the words "other than an appeal to the law officer under this Act" shall be omitted.

s. 11, as to opposition to grant of patent.

4. In sub-section one of section eleven of the principal Act the words from "or on the ground of an examiner" to "a previous application," both inclusive, shall be omitted, and there shall be added in lieu thereof the following words, namely, "or on the ground 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."

s. 18, as to amended specifications.

5. For sub-section ten of section eighteen of the principal Act the following sub-section shall be substituted, namely:

"(10) The foregoing provisions of this section do not apply when and so long as any action for infringement or proceeding for revocation of a patent is pending."

s. 52, as to inspection of designs.

6. After sub-section one of section fifty-two of the principal Act the following words shall be added, namely:

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

s. 58, as to piracy of registered designs.

7. (1) In section fifty-eight of the principal Act the words "or cause to be applied" shall be added after the word "apply."

(2) To the same section the following words shall be added: "Provided that the total sum forfeited in respect of any one design shall not exceed one hundred pounds."

s. 62, as to application for registration.

8. (1) *In sub-section two of section sixty-two of the principal Act for the words "the patent office in the prescribed manner" shall be substituted the words "such place and in such manner as may be prescribed."*

(2) To the same section of the principal Act the following sub-section shall be added:

"(6) Where an applicant for the registration of a trade mark otherwise than under an international convention is out of the United Kingdom at the time of making the application he shall give the Comptroller an address for service in the United Kingdom, and if he fails to do so the application shall not be proceeded with until the address has been given. (a)

s. 63, as to limit of time for proceeding with application.

9. In section sixty-three of the principal Act for the words "the application shall be deemed to be abandoned" shall be substituted the words "the Comptroller shall give notice of the non-completion to the agent employed on behalf of the applicant, and, if at the expiration of fourteen days from that notice the registration is not completed, shall give the like notice to the applicant, and if at the expiration of the latter fourteen days, or such further time as the Comptroller may in special cases permit, the registration is not completed, the application shall be deemed to be abandoned." (a)

s. 64, as to fancy words

10. (1) *For section sixty-four of the principal Act the following section shall be substituted, namely:*

"64. (1) For the purposes of this Act, a trade mark must consist of or contain at least one of the following essential particulars:

"(a) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner; or

"(b) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark; or

"(c) A distinctive device, mark, brand, heading, label, or ticket; or

"(d) An invented word or invented words; or

"(e) A word or words having no reference to the character or quality of the goods, and not being a geographical name.

"(2) There may be added to any one or more of the essential

(a) Repealed by 5 Edw. VII. c. 15, s. 73, p. 282 *post*.

particulars mentioned in this section any letters, words, or figures, or combination of letters, words, or figures, or of any of them, but the applicant for registration of any such additional matter must state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.

"(3) *Provided as follows:*

"(i) *A person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof:*

"(ii) *Any special and distinctive word or words, letter, figure, or combination of letters or figures, or of letters and figures used as a trade mark before the thirteenth day of August one thousand eight hundred and seventy-five, may be registered as a trade mark under this part of this Act."* (*b*)

s. 67, as to colours of trade marks.

11. *In section sixty-seven of the principal Act the words "or colours" shall be added after the word "colour" in each place where that word occurs.* (*b*)

s. 68, as to advertisement of applications.

12. *In section sixty-eight of the principal Act after the word Comptroller shall be added the words "unless the Comptroller refuse to entertain the application."* (*b*)

s. 60, as to opposition to registration.

13. (1) *In sub-section one of section sixty-nine of the principal Act for the words "two months" shall be substituted the words "one month or such further time, not exceeding three months, as the Comptroller may allow."*

(2) *In the same sub-section the word "first" shall be omitted.*

(3) *In sub-section two of the same section for the words "two months" shall be substituted the words "one month."*

(4) *For sub-sections three and four of the same section the following sub-sections shall be substituted, namely:*

"(3) *If the applicant sends such counter-statement the Comptroller shall furnish a copy thereof to the person who gave notice of opposition, and shall, after hearing the applicant and the opponent, if so required, decide whether the trade mark is to be registered, but his decision shall be subject to appeal to the Board of Trade, who shall, if required, hear the applicant and the opponent and the Comptroller, and may make an order determining whether, and subject to what conditions (if any), registration is to be permitted.*

"(4) *The Board of Trade may, however, if it appears expedient,*

(*b*) **Repealed by 5 Edw. VII. c. 15, s. 73, p. 282 post.**

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.

"(5) *If the applicant abandons his application after notice of opposition in pursuance of this section, he shall be liable to pay to the opponent such costs in respect of the opposition as the Comptroller may determine to be reasonable.*

"(6) *Where the opponent is out of the United Kingdom he shall give the Comptroller an address for service in the United Kingdom.*" (c)

s. 72, as to restrictions on registration.

14. *In sub-section two of section seventy-two of the principal Act, the following words shall be added at the beginning of the sub-section— namely, "except as aforesaid," and for the words "so nearly resembling," shall be substituted the words "having such resemblance to."* (c)

s. 73, as to restriction on registration.

15. *In section seventy-three of the principal Act the word "exclusive" shall be omitted.*" (c)

s. 74, as to additions to trade marks.

16. *For sub-section two of section seventy-four of the principal Act the following sub-section shall be substituted, namely:*

"(2) *The applicant for registration of any such addition must, however, state in his application the essential particulars of the trade mark, and must disclaim in his application any right to the exclusive use of the added matter, and a copy of the statement and disclaimer shall be entered on the register.*

"*Provided that a person need not under this section disclaim his own name or the foreign equivalent thereof, or his place of business, but no entry of any such name shall affect the right of any owner of the same name to use that name or the foreign equivalent thereof.*" (c)

s. 75, as to effect of registration.

17. *For section seventy-five of the principal Act the following section shall be substituted, namely:*

"*Application for registration of a trade mark shall be deemed to be equivalent to public use of the trade mark, and the date of the application shall for the purposes of this Act be deemed to be, and as from the first day of January one thousand eight hundred and seventy-six to have been, the date of the registration.*" (c)

Certificate as to exclusive use and costs thereon.

18. *After section seventy-seven of the principal Act the following section shall be added, and numbered* 77A, *namely:*

"*In an action for infringement of a registered trade mark the Court or a Judge may certify that the right to the exclusive use of the trade mark came in question, and if the Court or a Judge so certifies, then in any subsequent action for infringement the plaintiff in that action, on obtaining a final order or judgment in his favour, shall have his full costs, charges, and expenses as between solicitor and client, unless the*

(c) Repealed by 5 Edw. VII. c. 15, s. 73, p. 282 *post*.

Court or Judge trying the subsequent action certifies that he ought not to have the same." (*d*)

Amendments of 46 & 47 Vict. c. 57, s. 79, as to removal of trade mark from the register.

19. (1) *In sub-section five of section seventy-nine of the principal Act, for the words the "five years" shall be substituted the words "one year."*

(2) *To the same sub-section the following words shall be added, namely: "Unless it is shown to the satisfaction of the Comptroller that the non-payment of the fee arises from the death or bankruptcy of the registered proprietor, or from his having ceased to carry on business, and that no person claiming under that proprietor or under his bankruptcy is using the trade mark."* (*d*)

s. 81, as to Sheffield marks.

20. (1) *For sub-section two of section eighty-one of the principal Act, the following sub-section shall be substituted:*

"(2) The Cutlers' Company shall enter in the Sheffield register, in respect of metal goods, as defined in this section, all the trade marks entered before the first day of January one thousand eight hundred and eighty-nine in respect of metal goods either in the register established under the Trade Marks Registration Act, 1875, *or in the register of trade marks under this Act, belonging to persons carrying on business in Hallamshire or within six miles thereof. The Cutlers' Company shall also, on request made in the prescribed manner, enter in the Sheffield register, in respect of metal goods, all the trade marks which shall have been assigned by the Cutlers' Company and actually used before the first day of January one thousand eight hundred and eighty-four, but which have not been entered in either of the said other registers."*

38 & 39 *Vict.* c. 91.

(2) *In sub-sections three and eight of the same section, for the words "on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge," shall be substituted the words "on metal goods."*

(3) *For sub-section seven of the same section the following sub-section shall be substituted:*

"(7) The provisions of this Act and of any general rules made under this Act with respect to the registration of trade marks, and all matters relating thereto, shall, subject to the provisions of this section, apply to the registration of trade marks on metal goods by the Cutlers' Company, and to all matters relating thereto; and this Act and any such general rules shall, so far as applicable, be construed accordingly with the substitution of the Cutlers' Company, the office of the Cutlers' Company, and the Sheffield register, for the Comptroller, the Patent Office, and the Register of Trade Marks, respectively; and notice of every entry, cancellation, or correction made in the Sheffield

(*d*) Repealed by 5 Edw. VII. c. 15, s. 73, p. 282 *post*.

register shall be given to the Comptroller by the Cutlers' Company: Provided that this section shall not affect any life estate and interest of a widow of the holder of any Sheffield mark which may be in force in respect of such mark at the time when it shall be placed upon the Sheffield register."

(4) *To the same section the following sub-sections shall be added; namely:*

(14) *For the purposes of this section the expression "metal goods" means all metals, whether wrought, unwrought, or partly wrought, and all goods composed wholly or partly of any metal.*

(15) *For the purpose of legal proceedings in relation to trade marks entered in the Sheffield register a certificate under the hand of the master of the Cutlers' Company shall have the same effect as the certificate of the Comptroller.* (e)

s. 87, as to entry of assignments, &c.

21. In section eighty-seven of the principal Act, after the words "subject to," shall be added the words "the provisions of this Act and to." (f)

s. 88, as to inspection.

22. In section eighty-eight of the principal Act, after the words "subject to," shall be added the words "the provisions of this Act and to." (f)

s. 90, as to rectification of register.

23. In section ninety of the principal Act, after the words "of the name of any person," shall be added the words "or of any other particulars." (f)

s. 91, as to correction of errors.

24. To section ninety-one of the principal Act the following sub-section shall be added; namely,

"(*d*) Permit an applicant for registration of a design *or trade mark* to amend his application by omitting any particular goods or classes of goods in connection with which he has desired the design *or trade mark* to be registered." (f)

Proceedings of Board of Trade.

25. After section one hundred and two of the principal Act the following section shall be added and numbered 102A; namely,

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

"(2) All documents purporting to be orders made by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or by any person authorised in that behalf by the President of the Board, shall be

(e) Repealed by 5 Edw. VII. c. 15, s. 73, p. 282 *post*.
(f) This section is repealed, so far as it relates to trade marks, by 5 Edw. VII. c. 15, s. 73, p. 282 *post*.

received in evidence, and shall be deemed to be such orders without further proof, unless the contrary is shown.

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

Jurisdiction of Lancashire Palatine Court.

26. After section one hundred and twelve of the principal Act the following section shall be added and numbered 112A; namely,

"*The Court of Chancery of the County Palatine of Lancaster shall, with respect to any action or other proceeding in relation to trade marks the registration whereof is applied for in the Manchester office, have the like jurisdiction under this Act as her Majesty's High Court of Justice in England, and the expression 'the Court' in this Act shall be construed and have effect accordingly.*

"*Provided that every decision of the Court of Chancery of the County Palatine of Lancaster in pursuance of this section shall be subject to the like appeal as decisions of that Court in other cases.*" (*g*)

Construction of principal Act.

27. The principal Act shall, as from the commencement of this Act, take effect subject to the additions, omissions, and substitutions required by this Act, but nothing in this Act shall affect the validity of any act done, right acquired, or liability incurred before the commencement of this Act.

Commencement of Act.

28. This Act shall, except so far as is by this Act otherwise specially provided, commence and come into operation on the first day of January one thousand eight hundred and eighty-nine.

Short title.

29. This Act may be cited as the Patents, Designs, and Trade Marks Act, 1888, and this Act and the Patents, Designs, and Trade Marks Acts, 1883 to 1886, may be cited collectively as the Patents, Designs, and Trade Marks Acts, 1883 to 1888.

(*g*) This section is repealed, so far as it relates to trade marks, by 5 Edw. VII. c. 15, s. 73, p. 282 *post*.

THE PATENTS ACT, 1901.

1 EDW. VII. c. 18.

An Act to amend the Law with reference to International Arrangements for Patents.

[17th August, 1901.]

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

International arrangements. 46 & 47 Vict. c. 57.

1. (1) In the first priviso to sub-section one of section one hundred and three of the Patents, Designs, and Trade Marks Act, 1883 (which section relates to the time for making applications for protection under international arrangements), the words "twelve months" shall be substituted for the words "seven months."

(2) An application under that section shall be accompanied by a complete specification, which, if it be not accepted within the period of twelve months, shall, with the drawings (if any), be open to public inspection at the expiration of that period.

Short title, construction, and commencement.

2. (1) This Act may be cited as the Patents Act, 1901, and may be cited and shall be construed as one with the Patents, Designs, and Trade Marks Acts, 1883 to 1888.

(2) This Act shall come into operation on the first day of January one thousand nine hundred and two.

THE PATENTS ACT, 1902.

2 EDW. VII. c. 34.

An Act to amend the Law with reference to Applications for Patents and Compulsory Licences, and other matters connected therewith.

[18th December, 1902.]

Examination of previous specifications in United Kingdom on applications for patents. 46 & 47 Vict. c. 57.

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

1. (1) Where an application for a patent has been made and a complete specification has been deposited by the applicant, the examiner shall forthwith, in addition to the inquiries which he is directed to make by the Patents, Designs, and Trade Marks Act, 1883 (in this Act referred to as the principal Act), make a further investigation for the purpose of ascertaining whether the invention claimed has been wholly or in part claimed or described in any specification (other than a provisional specification not followed by a complete specification) published before the date of the application and deposited pursuant to any application for a patent made in the United Kingdom within fifty years next before the date of the application.

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

(3) The examiner shall report to the Comptroller the result of his investigations in such manner as the Board of Trade may direct.

(4) The provisions of sub-section five of section nine of the principal Act, as amended by any subsequent enactment, shall apply to reports under this section.

(5) If the Comptroller is satisfied that no objection exists to the specification on the ground that the invention claimed thereby has

been wholly or in part claimed or described in a previous specification as before mentioned, he shall, in the absence of any other lawful ground of objection, accept the specification.

(6) If the Comptroller is not so satisfied, he shall, after hearing the applicant, and unless the objection be removed by amending the specification to the satisfaction of the Comptroller, determine whether a reference to any, and, if so, what, prior specifications ought to be made in the specification by way of notice to the public.

(7) An Appeal shall lie from the decision of the Comptroller under this section to the law officer.

(8) Section eight of the principal Act and section three of the Patents, Designs, and Trade Marks (Amendment) Act, 1885 (which regulate the time for depositing a complete specification), shall have effect as if references therein to the period of nine months were references to the period of six months. 48 & 49 Vict. c. 63.

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

(10) The Board of Trade, with the sanction of the Treasury, may prescribe an additional fee not exceeding one pound in respect of the investigation mentioned in this section, which shall be payable on the sealing of the patent.

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

Limitation as to anticipation.

2. An invention covered by any patent granted on an application to which section one of this Act applies shall not be deemed to have been anticipated by reason only of its publication in a specification deposited pursuant to an application made in the United Kingdom not less that fifty years before the date of the application for a patent therefor, or of its publication in a provisional specification of any date not followed by a complete specification.

Amendment of law relating to compulsory licences.

3. Section twenty-two of the principal Act (relating to the grant of compulsory licences by the Board of Trade) is hereby repealed, and the following provisions shall be substituted therefor:—

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

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

(3) Where any such petition is referred by the Board of Trade to the Judicial Committee, and it is proved to the satisfaction of the Judicial Committee that the reasonable requirements of the public with reference to the patented invention have not been satisfied, the patentee may be ordered by an Order in Council to grant licences on such terms as the said Committee may think just, or, if the Judicial Committee are of opinion that the reasonable requirements of the public will not be satisfied by the grant of licences, the patent may be revoked by Order in Council ;

Provided that no order of revocation shall be made before the expiration of three years from the date of the patent, or if the patentee gives satisfactory reasons for his default ;

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

(5) If it is proved to the satisfaction of the Judicial Committee that the patent is worked or that the patented article is manufactured exclusively or mainly outside the United Kingdom, then, unless the patentee can show that the reasonable requirements of the public have been satisfied, the petitioner shall be entitled either to an order for a compulsory licence or, subject to the above proviso, to an order for the revocation of the patent ;

(6) For the purpose of this section the reasonable requirements of the public shall not be deemed to have been satisfied if, by reason of the default of the patentee to work his patent or to manufacture the patented article in the United Kingdom to an adequate extent, or to grant licences on reasonable terms, (*a*) any existing industry or the establishment of any new industry is unfairly prejudiced, or (*b*) the demand for the patented article is not reasonably met ;

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

(8) His Majesty in Council may make rules of procedure and practice for regulating proceedings before the Judicial Committee under this section, and, subject thereto, such proceedings shall be regulated according to the existing procedure and practice in patent matters. Any Order in Council or any order made by the Judicial Committee under this Act may be enforced by the High Court as if it were an order of the High Court;

(9) The costs of and incidental to all proceedings under this section shall be in the discretion of the Judicial Committee, but in awarding costs on any application for the grant of a licence the Judicial Committee may have regard to any previous request for, or offer of, a licence made either before or after the application to the Committee;

(10) For the purposes of this section three members of the Judicial Committee shall constitute a quorum;

(11) This section shall apply to patents granted before as well as after the commencement of this Act.

Performance of Comptroller's duties.

4. In sub-section four of section eighty-two of the principal Act (which relates to the performance of the duties of the Comptroller by other officers under the direction of the Board of Trade) the words "in his absence" shall be repealed.

Short title and construction.

5. This Act may be cited as the Patents Act, 1902, and may be cited and shall be construed as one with the Patents, Designs, and Trade Marks Acts, 1883 to 1901.

TRADE MARKS ACT, 1905.

5 EDW. VII. c. 15.

An Act to consolidate and amend the Law relating to Trade Marks.

[11th August, 1905.]

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

Short title.

1. This Act may be cited as the Trade Marks Act, 1905.

Commencement of Act.

2. This Act shall, save as otherwise expressly provided, come into operation on the first day of April one thousand nine hundred and six.

PART I.

Definitions.

Definitions.

3. In and for the purposes of this Act (unless the context otherwise requires) :—

A "mark" shall include a device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof :

A "trade mark" shall mean a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale :

A "registrable trade mark" shall mean a trade mark which is capable of registration under the provisions of this Act :

"The register" shall mean the register of trade marks kept under the provisions of this Act :

A "registered trade mark" shall mean a trade mark which is actually upon the register :

"Prescribed" shall mean, in relation to proceedings before the Court, prescribed by rules of court, and in other cases, prescribed by this Act or the Rules thereunder :

"The Court" shall mean (subject to the provisions for Scotland, Ireland, and the Isle of Man) His Majesty's High Court of Justice in England.

Register of Trade Marks.

Register of trade marks.

4. There shall be kept at the Patent Office for the purposes of this Act a book called the Register of Trade Marks, wherein shall be entered all registered trade marks with the names and addresses of their proprietors, notifications of assignments and transmissions, disclaimers, conditions, limitations, and such other matters relating to such trade marks as may from time to time be prescribed. The register shall be kept under the control and management of the Comptroller-General of Patents, Designs, and Trade Marks, who is in this Act referred to as the Registrar.

Trust not to be entered on register.

5. There shall not be entered in the register any notice of any trust expressed, implied, or constructive, nor shall any such notice be receivable by the Registrar.

Incorporation of existing register.

6. The register of trade marks existing at the date of the commencement of this Act, and all registers of trade marks kept under previous Acts, which are deemed part of the same book as such register, shall be incorporated with and form part of the register. Subject to the provisions of sections thirty-six and forty-one of this Act the validity of the original entry of any trade mark upon the registers so incorporated shall be determined in accordance with the statutes in force at the date of such entry, and such trade mark shall retain its original date, but for all other purposes it shall be deemed to be a trade mark registered under this Act.

Inspection of and extract from register.

7. The register kept under this Act shall at all convenient times be open to the inspection of the public, subject to such regulations as may be prescribed; and certified copies, sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.

Registrable Trade Marks.

Trade mark must be for particular goods.

8. A trade mark must be registered in respect of particular goods or classes of goods.

Registrable trade marks.

9. A registrable trade mark must contain or consist of at least one of the following essential particulars:

(1) The name of a company, individual, or firm represented in a special or particular manner;

(2) The signature of the applicant for registration or some predecessor in his business;

(3) An invented word or invented words;

(4) A word or words having no direct reference to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;

(5) Any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the above paragraphs (1), (2), (3), and (4), shall not, except by order of the Board of Trade or the Court, be deemed a distinctive mark:

Provided always that any special or distinctive word or words, letter, numeral, or combination of letters or numerals used as a trade mark by the applicant or his predecessors in business before the thirteenth day of August one thousand eight hundred and seventy-five, which has continued to be used (either in its original form or with additions or alterations not substantially affecting the identity of the same) down to the date of the application for registration shall be registrable as a trade mark under this Act.

For the purposes of this section "distinctive" shall mean adapted to distinguish the goods of the proprietor of the trade mark from those of other persons.

In determining whether a trade mark is so adapted, the tribunal may, in the case of a trade mark in actual use, take into consideration the extent to which such user has rendered such trade mark in fact distinctive for the goods with respect to which it is registered or proposed to be registered.

Coloured trade marks.

10. A trade mark may be limited in whole or in part to one or more specified colours, and in such case the fact that it is so limited shall be taken into consideration by any tribunal having to decide on the distinctive character of such trade mark. If and so far as a trade mark is registered without limitation of colour it shall be deemed to be registered for all colours.

Restriction on registration.

11. It shall not be lawful to register as a trade mark or part of a trade mark any matter, the use of which would by reason of its being calculated to deceive or otherwise be disentitled to protection in a court of justice, or would be contrary to law or morality, or any scandalous design.

Registration of Trade Marks.

Application for registration.

12. (1) Any person claiming to be the proprietor of a trade mark who is desirous of registering the same must apply in writing to the Registrar in the prescribed manner.

(2) Subject to the provisions of this Act the Registrar may refuse such application, or may accept it absolutely or subject to conditions, amendments, or modifications.

(3) In case of any such refusal or conditional acceptance the Registrar shall, if required by the applicant, state in writing the grounds of his decision and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Board of Trade or to the Court at the option of the applicant.

(4) An appeal under this section shall be made in the prescribed manner, and on such appeal the Board of Trade or the Court, as the case may be, shall, if required, hear the applicant and the Registrar, and shall make an order determining whether, and subject to what conditions, amendments, or modifications, if any, the application is to be accepted.

(5) Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving at his decision, and no further grounds of objection to the acceptance of the application shall be allowed to be taken by the Registrar, other than those stated by him, except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

(6) The Registrar or the Board of Trade or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as they may think fit.

Advertisement of application.

13. When an application for registration of a trade mark has been accepted, whether absolutely or subject to conditions, the Registrar shall, as soon as may be after such acceptance, cause the application as accepted to be advertised in the prescribed manner. Such advertisement shall set forth all conditions subject to which the application has been accepted.

Opposition to registration.

14. (1) Any person may, within the prescribed time from the date of the advertisement of an application for the registration of a trade mark, give notice to the Registrar of opposition to such registration.

(2) Such notice shall be given in writing in the prescribed manner, and shall include a statement of the grounds of opposition.

(3) The Registrar shall send a copy of such notice to the applicant, and within the prescribed time after the receipt of such notice, the applicant shall send to the Registrar, in the prescribed manner, a counter-statement of the grounds on which he relies for his application, and, if he does not do so, he shall be deemed to have abandoned his application.

(4) If the applicant sends such counter-statement, the Registrar shall furnish a copy thereof to the persons giving notice of opposition,

and shall, after hearing the parties, if so required, and considering the evidence, decide whether, and subject to what conditions, registration is to be permitted.

(5) The decision of the Registrar shall be subject to appeal to the Court or, with the consent of the parties, to the Board of Trade.

(6) An appeal under this section shall be made in the prescribed manner, and on such appeal the Board of Trade or the Court, as the case may be, shall, if required, hear the parties and the Registrar, and shall make an order determining whether, and subject to what conditions, if any, registration is to be permitted.

(7) On the hearing of any such appeal any party may either in the manner prescribed or by special leave of the tribunal bring forward further material for the consideration of the tribunal.

(8) In proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken by the opponent or the Registrar other than those stated by the opponent as hereinabove provided except by leave of the tribunal hearing the appeal. Where any further grounds of objection are taken the applicant shall be entitled to withdraw his application without payment of the costs of the opponent on giving notice as prescribed.

(9) In any appeal under this section, the tribunal may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark, but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

(10) The Registrar, or in the case of an appeal to the Board of Trade the Board of Trade, shall have power in proceedings under this section to award to any party such costs as they may consider reasonable, and to direct how and by what parties they are to be paid.

(11) If a party giving notice of opposition or of appeal neither resides nor carries on business in the United Kingdom, the tribunal may require such party to give security for costs of the proceedings before it relative to such opposition or appeal, and in default of such security being duly given may treat the opposition or appeal as abandoned.

Disclaimers.

15. If a trade mark contains parts not separately registered by the proprietor as trade marks, or if it contains matter common to the trade or otherwise of a non-distinctive character, the Registrar or the Board of Trade or the Court, in deciding whether such trade mark shall be entered or shall remain upon the register, may require, as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any part or parts of such

trade mark, or of all or any portion of such matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they may consider needful for the purpose of defining his rights under such registration: Provided always that no disclaimer upon the register shall affect any rights of the proprietor of a trade mark except such as arise out of the registration of the trade mark in respect of which the disclaimer is made.

Date of registration.

16. When an application for registration of a trade mark has been accepted and has not been opposed, and the time for notice of opposition has expired, or having been opposed the opposition has been decided in favour of the applicant, the Registrar shall, unless the Board of Trade otherwise direct, register the said trade mark, and the trade mark, when registered, shall be registered as of the date of the application for registration, and such date shall be deemed for the purposes of this Act to be the date of registration.

Certificate of registration.

17. On the registration of a trade mark the Registrar shall issue to the applicant a certificate in the prescribed form of the registration of such trade mark under the hand of the Registrar, and sealed with the seal of the Patent Office.

Non-completion of registration.

18. Where registration of a trade mark is not completed within twelve months from the date of the application by reason of default on the part of the applicant, the Registrar may, after giving notice of the non-completion to the applicant in writing in the prescribed manner, treat the application as abandoned unless it is completed within the time specified in that behalf in such notice.

Identical Trade Marks.

Identical marks.

19. Except by order of the Court or in the case of trade marks in use before the thirteenth day of August one thousand eight hundred and seventy-five, no trade mark shall be registered in respect of any goods or description of goods which is identical with one belonging to a different proprietor which is already on the register with respect to such goods or description of goods, or so nearly resembling such a trade mark as to be calculated to deceive.

Rival claims to identical marks.

20. Where each of several persons claims to be proprietor of the same trade mark, or of nearly identical trade marks in respect of the same goods or description of goods, and to be registered as such proprietor, the Registrar may refuse to register any of them until their rights have been determined by the Court, or have been settled by agreement in a manner approved by him or (on appeal) by the Board of Trade.

Concurrent user.

21. In case of honest concurrent user or of other special circumstances which, in the opinion of the Court, make it proper so to do,

the Court may permit the registration of the same trade mark, or of nearly identical trade marks, for the same goods or description of goods by more than one proprietor subject to such conditions and limitations, if any, as to mode or place of user or otherwise, as it may think it right to impose.

Assignment.

Assignment and transmission of trade marks.

22. A trade mark when registered shall be assigned and transmitted only in connection with the goodwill of the business concerned in the goods for which it has been registered and shall be determinable with that goodwill. But nothing in this section contained shall be deemed to affect the right of the proprietor of a registered trade mark to assign the right to use the same in any British possession or protectorate or foreign country in connection with any goods for which it is registered together with the goodwill of the business therein in such goods.

Apportionment of marks on dissolution of partnership.

23. In any case where from any cause, whether by reason of dissolution of partnership or otherwise, a person ceases to carry on business, and the goodwill of such person does not pass to one successor but is divided, the Registrar may (subject to the provisions of this Act as to associated trade marks), on the application of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications, if any, as he may think necessary in the public interest. Any decision of the Registrar under this section shall be subject to appeal to the Board of Trade.

Associated Trade Marks.

Associated trade marks.

24. If application be made for the registration of a trade mark so closely resembling a trade mark of the applicant already on the register for the same goods or description of goods as to be calculated to deceive or cause confusion if used by a person other than the applicant, the tribunal hearing the application may require as a condition of registration that such trade marks shall be entered on the register as associated trade marks.

Combined trade marks.

25. If the proprietor of a trade mark claims to be entitled to the exclusive use of any portion of such trade mark separately he may apply to register the same as separate trade marks. Each such separate trade mark must satisfy all the conditions and shall have all the incidents of an independent trade mark, except that when registered it and the trade mark of which it forms a part shall be deemed to be associated trade marks and shall be entered on the register as such, but the user of the whole trade mark shall for the purposes

of this Act be deemed to be also a user of such registered trade marks belonging to the same proprietor as it contains.

Series of trade marks.

26. When a person claiming to be the proprietor of several trade marks for the same description of goods which, while resembling each other in the material particulars thereof, yet differ in respect of—

(*a*) Statements of the goods for which they are respectively used or proposed to be used; or

(*b*) Statements of number, price, quality, or names of places; or

(*c*) Other matter of a non-distinctive character which does not substantially affect the identity of the trade mark; or

(*d*) Colour;

seeks to register such trade marks, they may be registered as a series in one registration. All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

Assignment and user of associated trade marks.

27. Associated trade marks shall be assignable or transmissible only as a whole and not separately, but they shall for all other purposes be deemed to have been registered as separate trade marks. Provided that where under the provisions of this Act user of a registered trade mark is required to be proved for any purpose, the tribunal may if and so far as it shall think right accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for such user.

Renewal of Registration.

Duration of registration.

28. The registration of a trade mark shall be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Act.

Renewal of registration.

29. The Registrar shall, on application made by the registered proprietor of a trade mark in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of fourteen years from the expiration of the original registration or of the last renewal of registration, as the case may be, which date is herein termed "the expiration of the last registration."

Procedure on expiry of period of registration.

30. At the prescribed time before the expiration of the last registration of a trade mark, the Registrar shall send notice in the prescribed manner to the registered proprietor at his registered address of the date at which the existing registration will expire and the conditions as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf such conditions have not been duly complied with, the Registrar may remove such trade mark

from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

Status of unrenewed trade mark.

31. Where a trade mark has been removed from the register for nonpayment of the fee for renewal, such trade mark shall, nevertheless, for the purpose of any application for registration during one year next after the date of such removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there had been no *bonâ fide* trade user of such trade mark during the two years immediately preceding such removal.

Correction and Rectification of the Register.

Correction of register.

32. The Registrar may, on request made in the prescribed manner by the registered proprietor or by some person entitled by law to act in his name,—

(1) Correct any error in the name or address of the registered proprietor of a trade mark; or
(2) Enter any change in the name or address of the person who is registered as proprietor of a trade mark; or
(3) Cancel the entry of a trade mark on the register; or
(4) Strike out any goods or classes of goods from those for which a trade mark is registered; or
(5) Enter a disclaimer or memorandum relating to a trade mark which does not in any way extend the rights given by the existing registration of such trade mark.

Any decision of the Registrar under this section shall be subject to appeal to the Board of Trade.

Registration of assignments, &c.

33. Subject to the provisions of this Act where a person becomes entitled to a registered trade mark by assignment, transmission, or other operation of law, the Registrar shall, on request made in the prescribed manner, and on proof of title to his satisfaction, cause the name and address of such person to be entered on the register as proprietor of the trade mark. Any decision of the Registrar under this section shall be subject to appeal to the Court or, with the consent of the parties, to the Board of Trade.

Alteration of registered trade marks.

34. The registered proprietor of any trade mark may apply in the prescribed manner to the Registrar for leave to add to or alter such trade mark in any manner not substantially affecting the identity of the same, and the Registrar may refuse such leave or may grant the same on such terms as he may think fit, but any such refusal or conditional permission shall be subject to appeal to the Board of Trade. If leave be granted, the trade mark as altered shall be advertised in the prescribed manner.

Rectification of register.

35. Subject to the provisions of this Act—

(1) The Court may on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of any entry, or by any entry made in the register without sufficient cause, or by any entry wrongly remaining on the register, or by any error or defect in any entry in the register, make such order for making, expunging, or varying such entry, as it may think fit:

(2) The Court may in any proceeding under this section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register:

(3) In case of fraud in the registration or transmission of a registered trade mark, the Registrar may himself apply to the Court under the provisions of this section:

(4) Any order of the Court rectifying the register shall direct that notice of the rectification shall be served upon the Registrar in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

Trade marks registered under previous Acts.

36. No trade mark which is upon the register at the commencement of this Act and which under this Act is a registrable trade mark shall be removed from the register on the ground that it was not registrable under the Acts in force at the date of its registration. But nothing in this section contained shall subject any person to any liability in respect of any act or thing done before the commencement of this Act to which he would not have been subject under the Acts then in force.

Non-user of trade mark.

37. A registered trade mark may, on the application to the Court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bonâ fide* intention to use the same in connection with such goods, and there has in fact been no *bonâ fide* user of the same in connection therewith, or on the ground that there has been no *bonâ fide* user of such trade mark in connection with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect of such goods.

Effect of Registration.

Powers of registered proprietor.

38. Subject to the provisions of this Act—

(1) The person for the time being entered in the register as proprietor of a trade mark shall, subject to any rights

appearing from such register to be vested in any other person, have power to assign the same, and to give effectual receipts for any consideration for such assignment:

(2) Any equities in respect of a trade mark may be enforced in like manner as in respect of any other personal property.

Rights of proprietor of trade mark.

39. Subject to the provisions of section forty-one of this Act and to any limitations and conditions entered upon the register, the registration of a person as proprietor of a trade mark shall, if valid, give to such person the exclusive right to the use of such trade mark upon or in connection with the goods in respect of which it is registered: Provided always that where two or more persons are registered proprietors of the same (or substantially the same) trade mark in respect of the same goods no rights of exclusive user of such trade mark shall (except so far as their respective rights shall have been defined by the Court) be acquired by any one of such persons as against any other by the registration thereof, but each of such persons shall otherwise have the same rights as if he were the sole registered proprietor thereof.

Registration to be *primâ facie* evidence of validity.

40. In all legal proceedings relating to a registered trade mark (including applications under section thirty-five of this Act) the fact that a person is registered as proprietor of such trade mark shall be *primâ facie* evidence of the validity of the original registration of such trade mark and of all subsequent assignments and transmissions of the same.

Registration to be conclusive after seven years.

41. In all legal proceedings relating to a registered trade mark (including applications under section thirty-five of this Act) the original registration of such trade mark shall after the expiration of seven years from the date of such original registration (or seven years from the passing of this Act, whichever shall last happen) be taken to be valid in all respects unless such original registration was obtained by fraud, or unless the trade mark offends against the provisions of section eleven of this Act:

Provided that nothing in this Act shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods upon or in connection with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of the first-mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods under the provisions of section twenty-one of this Act.

Unregistered trade mark.

42. No person shall be entitled to institute any proceeding to prevent or to recover damages for the infringement of an unregistered

trade mark unless such trade mark was in use before the thirteenth of August one thousand eight hundred and seventy-five, and has been refused registration under this Act. The Registrar may, on request, grant a certificate that such registration has been refused.

Infringement.

43. In an action for the infringement of a trade mark the Court trying the question of infringement shall admit evidence of the usages of the trade in respect to the get-up of the goods for which the trade mark is registered, and of any trade marks or get-up legitimately used in connection with such goods by other persons.

User of name, address, or description of goods.

44. No registration under this Act shall interfere with any *bonâ fide* use by a person of his own name or place of business or that of any of his predecessors in business, or the use by any person of any *bonâ fide* description of the character or quality of his goods.

"Passing-off" action.

45. Nothing in this Act contained shall be deemed to affect rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

Legal Proceedings.

Certificate of validity.

46. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question and is decided in favour of the proprietor of such trade mark, the Court may certify the same, and if it so certifies then in any subsequent legal proceeding in which such validity comes into question the proprietor of the said trade mark on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client, unless in such subsequent proceeding the Court certifies that he ought not to have the same.

Registrar to have notice of proceeding for rectification.

47. In any legal proceeding in which the relief sought includes alteration or rectification of the register, the Registrar shall have the right to appear and be heard, and shall appear if so directed by the Court. Unless otherwise directed by the Court, the Registrar in lieu of appearing and being heard may submit to the Court a statement in writing signed by him, giving particulars of the proceedings before him in relation to the matter in issue or of the grounds of any decision given by him affecting the same or of the practice of the office in like cases, or of such other matters relevant to the issues, and within his knowledge as such Registrar, as he shall think fit, and such statement shall be deemed to form part of the evidence in the proceeding.

Costs.

Costs of proceedings before the Court.

48. In all proceedings before the Court under this Act the costs of the Registrar shall be in the discretion of the Court, but the Registrar shall not be ordered to pay the costs of any other of the parties.

Evidence.

Mode of giving evidence.

49. In any proceeding under this Act before the Board of Trade or the Registrar, the evidence shall be given by statutory declaration in the absence of directions to the contrary, but, in any case in which it shall think it right so to do, the tribunal may (with the consent of the parties) take evidence *vivâ voce* in lieu of or in addition to evidence by declaration. Any such statutory declaration may in the case of appeal be used before the Court in lieu of evidence by affidavit, but if so used shall have all the incidents and consequences of evidence by affidavit.

In case any part of the evidence is taken *vivâ voce* the Board of Trade or the Registrar shall in respect of requiring the attendance of witnesses and taking evidence on oath be in the same position in all respects as an Official Referee of the Supreme Court.

Sealed copies to be evidence.

50. Printed or written copies or extracts of or from the register, purporting to be certified by the Registrar and sealed with the seal of the Patent Office, shall be admitted in evidence in all courts in His Majesty's dominions, and in all proceedings, without further proof or production of the originals.

Certificate of Registrar to be evidence.

51. A certificate purporting to be under the hand of the Registrar as to any entry, matter, or thing which he is authorised by this Act, or rules made thereunder, to make or do, shall be *primâ facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or not done.

Certificate of Board of Trade to be evidence.

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

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

Part II.

Powers and Duties of Registrar of Trade Marks.

Exercise of discretionary power by Registrar.

53. Where any discretionary or other power is given to the Registrar by this Act or rules made thereunder he shall not exercise that power adversely to the applicant for registration or the registered proprietor of the trade mark in question without (if duly required so to do within the prescribed time) giving such applicant or registered proprietor an opportunity of being heard.

Appeal from Registrar.

54. Except where expressly given by the provisions of this Act or rules made thereunder there shall be no appeal from a decision of the Registrar otherwise than to the Board of Trade, but the Court, in dealing with any question of the rectification of the register (including all applications under the provisions of section thirty-five of this Act), shall have power to review any decision of the Registrar relating to the entry in question or the correction sought to be made.

Recognition of agents.

55. Where by this Act any act has to be done by or to any person in connection with a trade mark or proposed trade mark or any procedure relating thereto, such act may under and in accordance with rules made under this Act or in particular cases by special leave of the Board of Trade be done by or to an agent of such party duly authorised in the prescribed manner.

Registrar may take directions of law officers.

56. The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to His Majesty's Attorney-General or Solicitor-General for England for directions in the matter.

Annual reports of Comptroller. 46 & 47 Vict. c. 57.

57. The Comptroller-General of Patents, Designs, and Trade Marks shall in his yearly report on the execution by or under him of the Patents, Designs, and Trade Marks Act, 1883, and Acts amending the same, include a report respecting the execution by or under him of this Act as though it formed a part of or was included in such Acts.

Powers and Duties of the Board of Trade.

Proceedings before Board of Trade.

58. All things required or authorised under this Act to be done by to or before the Board of Trade may be done by to or before the President or a secretary or an assistant secretary of the Board or any person authorised in that behalf by the President of the Board.

Appeals to Board of Trade.

59. Where under this Act an appeal is made to the Board of Trade, the Board of Trade may, if they think fit, refer any such appeal to the Court in lieu of hearing and deciding it themselves, but, unless the Board so refer the appeal, it shall be heard and decided by the Board, and the decision of the Board shall be final.

Power of Board of Trade to make rules.

60. (1) Subject to the provisions of this Act the Board of Trade may from time to time make such rules, prescribe such forms, and generally do such things as they think expedient—

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

(*b*) For classifying goods for the purposes of registration of trade marks:

(*c*) For making or requiring duplicates of trade marks and other documents:

(*d*) For securing and regulating the publishing and selling or distributing in such manner as the Board of Trade think fit, of copies of trade marks and other documents :

(*e*) Generally, for regulating the business of the office in relation to trade marks and all things by this Act placed under the direction or control of the Registrar, or of the Board of Trade.

(2) Rules made under this section shall, whilst in force, be of the same effect as if they were contained in this Act.

(3) Before making any rules under this section the Board of Trade shall publish notice of their intention to make the rules and of the place where copies of the draft rules may be obtained in such manner as the Board consider most expedient, so as to enable persons affected to make representations to the Board before the rules are finally settled.

(4) Any rules made in pursuance of this section shall be forthwith advertised twice in the Trade Marks Journal, and shall be laid before both Houses of Parliament, if Parliament be in session at the time of making thereof, or, if not, then as soon as practicable after the beginning of the then next session of Parliament.

(5) If either House of Parliament within the next forty days after any rules have been so laid before such House, resolve that such rules or any of them ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the mean time under such rules or rule or to the making of any new rules or rule.

Fees.

Fees.

61. There shall be paid in respect of applications and registration and other matters under this Act, such fees as may be, with the sanction of the Treasury, prescribed by the Board of Trade.

Special Trade Marks.

Standardization, &c., trade marks.

62. Where any association or person undertakes the examination of any goods in respect of origin, material, mode of manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by mark used upon or in connection with such goods, the Board of Trade may, if they shall judge it to be to the public advantage, permit such association or person to register such mark as a trade mark in respect of such goods, whether or not such association or person be a trading association or trader or possessed of a goodwill in connection with such examination and certifying.

When so registered such trade mark shall be deemed in all respects to be a registered trade mark, and such association or person to be the proprietor thereof, save that such trade mark shall be transmissible or assignable only by permission of the Board of Trade.

Sheffield Marks.

Sheffield marks.

63. With respect to the master, wardens, searchers, assistants, and commonalty of the Company of Cutlers in Hallamshire, in the county of York (in this Act called the Cutlers' Company), and the marks or devices (in this Act called Sheffield marks) assigned or registered by the master, wardens, searchers, and assistants of that company, the following provisions shall have effect:—

(1) The Cutlers' Company shall continue to keep at Sheffield the register of trade marks (in this Act called the Sheffield register) kept by them at the date of the commencement of this Act, and, save as otherwise provided by this Act, such register shall for all purposes form part of the register :

(2) The Cutlers' Company shall, on request made in the prescribed manner, enter in the Sheffield register, in respect of metal goods as defined in this section, all the trade marks which shall have been assigned by the Cutlers' Company and actually used before the first day of January one thousand eight hundred and eighty-four, but which have not been entered in such register before the passing of this Act :

(3) An application for registration of a trade mark used on metal goods shall, if made after the commencement of this Act by a person carrying on business in Hallamshire, or within six miles thereof, be made to the Cutlers' Company :

(4) Every application so made to the Cutlers' Company shall be notified to the Registrar in the prescribed manner, and, unless the Registrar within the prescribed time gives notice to the Cutlers' Company of any objection to the acceptance of the application, it shall be proceeded with by the Cutlers' Company in the prescribed manner :

(5) If the Registrar gives notice of an objection as aforesaid, the application shall not be proceeded with by the Cutlers' Company, but any person aggrieved may in the prescribed manner appeal to the Court :

(6) Upon the registration of a trade mark in the Sheffield register the Cutlers' Company shall give notice thereof to the Registrar, who shall thereupon enter the mark in the register of trade marks ; and such registration shall bear date as of the day of application to the Cutlers' Company,

and have the same effect as if the application had been made to the Registrar on that day :

(7) The provisions of this Act, and of any rules made under this Act with respect to the registration of trade marks, and all matters relating thereto, shall, subject to the provisions of this section (and notwithstanding anything in any Act relating to the Cutlers' Company), apply to the registration of trade marks on metal goods by the Cutlers' Company, and to all matters relating thereto ; and this Act and any such rules shall, so far as applicable, be construed accordingly with the substitution of the Cutlers' Company, the office of the Cutlers' Company, and the Sheffield register, for the Registrar, the Patent Office, and the Register of Trade Marks respectively ; and notice of every entry, cancellation, or correction made in the Sheffield register shall be given to the Registrar by the Cutlers' Company :

(8) When the Registrar receives from any person not carrying on business in Hallamshire or within six miles thereof an application for registration of a trade mark used on metal goods, he shall in the prescribed manner notify the application and proceedings thereon to the Cutlers' Company :

(9) Any person aggrieved by a decision of the Cutlers' Company in respect of anything done or omitted under this Act may, in the prescribed manner, appeal to the Court :

(10) For the purposes of this section the expression "metal goods" means all metals, whether wrought, unwrought, or partly wrought, and all goods composed wholly or partly of any metal :

(11) For the purpose of legal proceedings in relation to trade marks entered in the Sheffield register a certificate under the hand of the Master of the Cutlers' Company shall have the same effect as the certificate of the Registrar.

Cotton Marks.

Cotton marks.

64. (1) The Manchester Branch of the Trade Marks Registry of the Patent Office (hereinafter called "the Manchester Branch") shall be continued according to its present constitution. A chief officer of the Manchester Branch shall be appointed who shall be styled "the Keeper of Cotton Marks," and shall act under the direction of the Registrar. The present keeper of the Manchester Branch shall be the first Keeper of Cotton Marks.

(2) As regards cotton goods which have hitherto constituted classes 23, 24, and 25, under the classification of goods under the

Patents, Designs, and Trade Marks Acts, 1883 to 1902, the Register of Trade Marks for all such goods, except such as may be prescribed, shall be called "the Manchester Register," and a duplicate thereof shall be kept at the Manchester Branch.

(3) All applications for registration of trade marks for such cotton goods in the said classes (hereinafter referred to as "cotton marks") shall be made to the Manchester Branch.

(4) Every application so made to the Manchester Branch shall be notified to the Registrar in the prescribed manner together with the report of the Keeper of Cotton Marks thereon, and unless the Registrar, after considering the report and hearing, if so required, the applicant, within the prescribed time gives notice to the Keeper of Cotton Marks of objection to the acceptance of the application, it shall be advertised by the Manchester Branch and shall be proceeded with in the prescribed manner.

(5) If the Registrar gives notice of objection as aforesaid the application shall not be proceeded with, but any person aggrieved may in the prescribed manner appeal to the Court or the Board of Trade, at the option of the applicant.

(6) Upon the registration of a trade mark in the Manchester Register the Keeper of Cotton Marks shall upon notice thereof from the Registrar thereupon enter the mark in the duplicate of the Manchester Register, and such registration shall bear date as of the day of application to the Manchester Branch, and shall have the same effect as if the application had been made to the Registrar on that day.

(7) When any mark is removed from or any cancellation or correction made in the Manchester Register notice thereof shall be given by the Registrar to the Keeper of Cotton Marks, who shall alter the duplicate register accordingly.

(8) For the purpose of all proceedings in relation to trade marks entered in the Manchester Register a certificate under the hand of the Keeper of Cotton Marks shall have the same effect as a certificate of the Registrar.

(9) In every application for registration of a cotton mark, if such mark has been used by the applicant or his predecessors in business prior to the date of application, the length of time of such user shall be stated on the application.

(10) As from the passing of this Act—

(*a*) In respect of cotton piece goods and cotton yarn no mark consisting of a word or words alone (whether invented or otherwise) shall be registered, and no word or words shall be deemed to be distinctive in respect of such goods :

(*b*) In respect of cotton piece goods no mark consisting of a line heading alone shall be registered, and no line heading shall be deemed to be distinctive in respect of such goods:

(*c*) No registration of a cotton mark shall give any exclusive right to the use of any word, letter, numeral, line heading, or any combination thereof.

39 & 40 Vict. c. 33.

(11) The right of inspection of the Manchester Register shall extend to and include the right to inspect all applications whatsoever that have been since the passing of the Trade Marks Registration Act, 1875, and hereafter shall have been made to the Manchester Branch in respect of cotton goods in classes 23, 24, and 25, whether registered, refused, lapsed, expired, withdrawn, abandoned, cancelled, or pending.

(12) The Keeper of Cotton Marks shall, on request, and on production of a facsimile of the mark, and on payment of the prescribed fee, issue a certified copy of the application for registration of any cotton mark, setting forth in such certificate the length of time of user (if any) of such mark as stated on the application, and any other particulars he may deem necessary.

(13) As regards any rules or forms affecting cotton marks which are proposed by the Board of Trade to be made, the draft of the same shall be sent to the Keeper of Cotton Marks and also to the Manchester Chamber of Commerce. And the said Keeper, and also the said Chamber, shall, if they or either of them so request, be entitled to be heard by the Board of Trade upon such proposed rules before the same are carried into effect.

(14) The existing practice whereby the Keeper of the Manchester Branch consults the Trade and Merchandise Marks Committee appointed by the Manchester Chamber of Commerce upon questions of novelty or difficulty arising on applications to register cotton marks shall be continued by the Keeper of Cotton Marks.

International and Colonial Arrangements.

International and Colonial arrangements. 48 & 49 Vict. c. 63.

65. The provisions of sections one hundred and three and one hundred and four of the Patents, Designs, and Trade Marks Act, 1883 (as amended by the Patents, Designs, and Trade Marks (Amendment) Act, 1885), relating to the registration of trade marks both as enacted in such Acts and as applied by any Order in Council made thereunder, shall be construed as applying to trade marks registrable under this Act.

Offences.

Falsification of entries in register.

66. If any person makes or causes to be made a false entry in the 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 misdemeanour.

Penalty on falsely representing a trade mark as registered.

67. (1) Any person who represents a trade mark as registered which is not so, shall be liable for every offence on summary conviction to a fine not exceeding five pounds.

(2) A person shall be deemed, for the purposes of this enactment, to represent that a trade mark is registered, if he uses in connection with the trade mark the word "registered," or any words expressing or implying that registration has been obtained for the trade mark.

Royal Arms.

Unauthorised assumption of Royal Arms.

68. If any person, without the authority of His Majesty, uses in connection with any trade, business, calling, or profession, the Royal Arms (or arms so closely resembling the same as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorised so to use the Royal Arms, or if any person without the authority of His Majesty or of a member of the Royal Family, uses in connection with any trade, business, calling, or profession any device, emblem, or title in such manner as to be calculated to lead to the belief that he is employed by or supplies goods to His Majesty or such member of the Royal Family, he may, at the suit of any person who is authorised to use such arms or such device, emblem, or title, or is authorised by the Lord Chamberlain to take proceedings in that behalf, be restrained by injunction or interdict from continuing so to use the same: Provided that nothing in this section shall be construed as affecting the right, if any, of the proprietor of a trade mark containing any such arms, device, emblem, or title to continue to use such trade mark.

Courts.

General saving for jurisdiction of Courts.

69. The provisions of this Act conferring a special jurisdiction on the Court as defined by this Act shall not, except so far as the jurisdiction extends, affect the jurisdiction of any court in Scotland or Ireland in any proceedings relating to trade marks; and with reference to any such proceedings in Scotland the term "the Court" shall mean the Court of Session; and with reference to any such proceedings in Ireland the term "the Court" shall mean the High Court of Justice in Ireland.

Isle of Man.

70. This Act shall extend to the Isle of Man, and—

(1) Nothing in this Act shall affect the jurisdiction of the Courts in the Isle of Man in proceedings for infringement or in any action or proceeding respecting a trade mark competent to those courts :

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

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

Jurisdiction of Lancashire Palatine Court.

71. The Court of Chancery of the County Palatine of Lancaster shall, with respect to any action or other proceeding in relation to trade marks, the registration whereof is applied for in the Manchester Branch, have the like jurisdiction under this Act as His Majesty's High Court of Justice in England, and the expression "the Court" in this Act shall be construed and have effect accordingly :

Provided that every decision of the Court of Chancery of the County Palantine of Lancaster in pursuance of this section shall be subject to the like appeal as decisions of that Court in other cases.

Offences in Scotland.

72. In Scotland any offence under this Act declared to be punishable on summary conviction may be prosecuted in the Sheriff Court.

Repeal ; Savings.

Repeal and saving for rules, &c.

73. The enactments described in the schedule to this Act are repealed to the extent mentioned in the third column, but this repeal shall not affect any rule, table of fees, or classification of goods made under any enactment so repealed, but every such rule, table of fees, or classification of goods shall continue in force as if made under this Act until superseded by rules, tables of fees, or classification under this Act.

Application of 46 & 47 Vict. c. 57, ss. 82–84.

74. The provisions of sections eighty-two to eighty-four of the Patents, Designs, and Trade Marks Act, 1883, as amended by any subsequent enactment, shall continue to apply with respect to the administration at the Patent Office of the Law relating to the registration of trade marks, and shall accordingly be construed as if this Act formed part of that Act.

SCHEDULE.

Section 73.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
46 & 47 Vict. c. 57.	The Patents, Designs, and Trade Marks Act, 1883.	Sections sixty-two to eighty-one, and, so far as they respectively relate to trade marks, sections eighty-five to ninety-nine, one hundred and one, one hundred and two, one hundred and five, one hundred and eight, and one hundred and eleven to one hundred and seventeen.
51 & 52 Vict. c. 50.	The Patents, Designs, and Trade Marks Act, 1888.	Sections eight to twenty, and, so far as they respectively relate to trade marks, sections twenty-one to twenty-six.

INTERNATIONAL CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY.

SIGNED AT PARIS, MARCH 20, 1883.

RATIFICATIONS EXCHANGED AT PARIS, JUNE 6, 1884.

I.

International Convention.

SA Majesté le Roi des Belges, Sa Majesté l'Empereur du Brésil, Sa Majesté le Roi d'Espagne, le Président de la République Française, le Président de la République de Guatemala, Sa Majesté le Roi d'Italie, Sa Majesté le Roi des Pays-Bas, Sa Majesté le Roi de Portugal et des Algarves, le Président de la République de Salvador, Sa Majesté le Roi de Serbie, et le Conseil Fédéral de la Confederation Suisse,

Egalement animés du désir d'assurer, d'un commun accord, une complète et efficace protection à l'industrie et au commerce des nationaux de leurs Etats respectifs et de contribuer à la garantie des droits des inventeurs et de la loyauté des transactions commerciales, ont résolu de conclure une Convention à cet effet at ont nommé pour leurs Plénipotentiaires, savoir :

Sa Majesté le Roi des Belges : M. le Baron Beyens, Grand Officier de son Ordre Royal de Léopold, Grand Officier de la Légion d'Honneur, &c., son Envoyé Extraordinaire et Ministre Plénipotentiaire à Paris ;

Sa Majesté l'Empereur du Brésil : M. Jules Constant, Comte de Villeneuve, Membre du Conseil de Sa Majesté, son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté le Roi des Belges, Commandeur de l'Ordre du Christ, Officier de son Ordre de la Rose, Chevalier de la Légion d'Honneur, &c. ;

Sa Majesté le Roi d'Espagne : Son Excellence M. le Duc de Fernan-Nuñez, de Montellano et del Arco, Comte de Cervellon,

INTERNATIONAL CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY.

SIGNED AT PARIS, MARCH 20, 1883.

RATIFICATIONS EXCHANGED AT PARIS, JUNE 6, 1884.

I.

International Convention.

HIS Majesty the King of the Belgians, His Majesty the Emperor of Brazil, His Majesty the King of Spain, the President of the French Republic, the President of the Republic of Guatemala, His Majesty the King of Italy, His Majesty the King of the Netherlands, His Majesty the King of Portugal and the Algarves, the President of the Republic of Salvador, His Majesty the King of Servia, and the Federal Council of the Swiss Confederation,

Being equally animated with the desire to secure, by mutual agreement, complete and effectual protection for the industry and commerce of their respective subjects and citizens, and to provide a guarantee for the rights of inventors, and for the loyalty of commercial transactions, have resolved to conclude a Convention to that effect, and have named as their Plenipotentiaries, that is to say :—

His Majesty the King of the Belgians : the Baron Beyens, Grand Officer of His Majesty's Royal Order of Leopold, Grand Officer of the Legion of Honour, His Majesty's Envoy Extraordinary and Minister Plenipotentiary at Paris, &c. ;

His Majesty the Emperor of Brazil : M. Jules Constant, Count de Villeneuve, member of His Majesty's Council, His Majesty's Envoy Extraordinary and Minister Plenipotentiary at the Court of His Majesty the King of the Belgians, Commander of the Order of Christ, Officer of His Majesty's Order of the Rose, Chevalier of the Legion of Honour, &c. ;

His Majesty the King of Spain : His Excellency the Duke de Fernan-Nuñez, de Montellano et del Arco, Count de Cervellon,

Marquis de Almonacir, Grand d'Espagne de Première Classe, Chevalier de l'Ordre Insigne de la Toison d'Or, Grand-Croix de l'Ordre de Charles III., Chevalier de Calatrava, Grand-Croix de la Légion d'Honneur, &c., Sénateur du Royaume, son Ambassadeur Extraordinaire et Plénipotentiaire à Paris ;

Le Président de la République Française : M. Paul Challemel-Lacour, Sénateur, Ministre des Affaires Etrangères ; M. Hérisson, Député, Ministre du Commerce ; M. Charles Jagerschmidt, Ministre Plénipotentiaire de Première Classe, Officier de l'Ordre National de la Légion d'Honneur, &c. ;

Le Président de la République de Guatemala : M. Crisanto Medina, Officier de la Légion d'Honneur, &c., son Envoyé Extraordinaire et Ministre Plénipotentiaire à Paris ;

Sa Majesté le Roi d'Italie, M. Constantin Ressman, Commandeur de ses Ordres des Saints Maurice et Lazare et de la Couronne d'Italie, Commandeur de la Légion d'Honneur, &c., Conseiller de l'Ambassade d'Italie à Paris ;

Sa Majesté le Roi des Pays-Bas : M. le Baron de Zuylen de Nyevelt, Commandeur de son Ordre du Lion Néerlandais, Grand-Croix de son Ordre Grand Ducal de la Couronne de Chêne et du Lion d'Or de Nassau, Grand Officier de la Légion d'Honneur, &c., son Envoyé Extraordinaire et Ministre Plénipotentiaire à Paris ;

Sa Majesté le Roi de Portugal et des Algarves : M. Jose da Silva Mendes Leal, Conseiller d'Etat, Pair du Royaume, Ministre et Secrétaire d'Etat Honoraire, Grand-Croix de l'Ordre de Saint-Jacques, Chevalier de l'Ordre de la Tour et de l'Epée de Portugal, Grand Officer de la Légion d'Honneur, &c., son Envoyé Extraordinaire et Ministre Plénipotentiaire à Paris ; M. Fernand de Azevedo, Officier de la Légion d'Honneur, &c., Premier Secrétaire de la Légation de Portugal à Paris ;

Le Président de la République de Salvador ; M. Torres-Caïcedo, Membre Correspondant de l'Institut de France, Grand Officier de la Légion d'Honneur, &c., son Envoyé Extraordinaire et Ministre Plénipotentiaire à Paris ;

Sa Majesté le Roi de Serbie : M. Sima M. Marinovitch, Chargé d'Affaires par intérim de Serbie, Chevalier de l'Ordre Royal de Takovo, &c. ;

Et le Conseil Fédéral de la Confédération Suisse : M. Charles-Edouard Lardy, son Envoyé Extraordinaire et Ministre Plénipotentiaire à Paris ; M. J. Weibel, Ingénieur à Genève, Président de la Section Suisse de la Commission Permanente pour la Protection de la Propriété Industrielle :

Lesquels, après s'être communiqué leurs pleins pouvoirs respectifs,

Marquis de Almonacir, Grandee of Spain First Class, Chevalier of the Distinguished Order of the Golden Fleece, Grand Cross of the Order of Charles III., Chevalier de Calatrava, Grand Cross of the Legion of Honour, Senator of the Kingdom, His Majesty's Ambassador Extraordinary and Plenipotentiary at Paris, &c.;

The President of the French Republic: M. Paul Challemel-Lacour, Senator, Minister for Foreign Affairs; M. Hérrison, Deputy, Minister of Commerce; M. Charles Jagerschmidt, Minister Plenipotentiary of the First Class, *Officer of the National Order of the* Legion of Honour, &c.;

The President of the Republic of Guatemala: M. Crisanto Medina, *Officer* of the Legion of Honour, his Envoy Extraordinary and Minister Plenipotentiary at Paris, &c.;

His Majesty the King of Italy: M. Constantin Ressman, Commander of His Majesty's Orders of Saints Maurice and Lazarus, and of the Crown of Italy, Commander of the Legion of Honour, Councillor of the Italian Embassy at Paris, &c.;

His Majesty the King of the Netherlands: the Baron de Zuylen de Nyevelt, Commander of His Majesty's Order of the Netherlands Lion, Grand Cross of His Majesty's Grand Ducal Order of the Oaken Crown, and of the Golden Lion of Nassau, Grand Officer of the Legion of Honour, His Majesty's Envoy Extraordinary and Minister Plenipotentiary at Paris, &c.;

His Majesty the King of Portugal and the Algarves: M. Jose da Silva Mendes Leal, Councillor of State, Peer of the Realm, Minister and Honorary Secretary of State, Grand Cross of the Order of St. James, Chevalier of the Order of the Tower and Sword of Portugal, Grand Officer of the Legion of Honour, His Majesty's Envoy Extraordinary and Minister Plenipotentiary at Paris, &c.; M. Fernand de Azevedo, Officer of the Legion of Honour, First Secretary of the Portuguese Legation at Paris, &c.;

The President of the Republic of Salvador: M. Torres-Caïcedo corresponding member of the French Institute, Grand Officer of the Legion of Honour, his Envoy Extraordinary and Minister Plenipotentiary at Paris, &c.;

His Majesty the King of Servia: M. Sima M. Marinovitch, Chargé d'Affaires of Servia *ad interim*, Chevalier of the Royal Order of Takovo, &c.;

And the Federal Council of the Swiss Confederation; M. Charles Edouard Lardy, Envoy Extraordinary and Minister Plenipotentiary, at Paris, &c.; M. J. Weibel, Engineer at Geneva, President of the Swiss Section of the Permanent Commission for the Protection of Industrial Property:

Who, having communicated to each other their respective full

trouvés en bonne et du forme, sont convenus des Articles suivants :—

Article I.

Les Gouvernements de la Belgique, du Brésil, de l'Espagne, de la France, du Guatemala, de l'Italie, des Pays-Bas, du Portugal, du Salvador, de la Serbie, et de la Suisse sont constitués à l'état d'Union pour la protection de la Propriété Industrielle.

Article II.

Les sujets ou citoyens de chacun des Etats Contractants jouiront, dans tous les autres Etats de l'Union, en ce qui concerne les brevets d'invention, les dessins ou modèles industriels, les marques de fabrique ou de commerce et le nom commercial, des avantages, que les lois respectives accordent actuellement ou accorderont par la suite aux nationaux.

En conséquence, ils auront la même protection que ceux-ci et le même recours légal contre toute atteinte portée à leurs droits, sous réserve de l'accomplissement des formalités et des conditions imposées aux nationaux par la législation intérieure de chaque Etat.

Article III.

Sont assimilés aux sujets ou citoyens des Etats Contractants les sujets ou citoyens des Etats ne faisant pas partie de l'Union qui sont domiciliés ou ont des établissements industriels ou commerciaux sur le territoire de l'un des Etats de l'Union.

Article IV.

Celui qui aura régulièrement fait le dépôt d'une demande de brevet d'invention, d'un dessin ou modèle industriel, d'une marque de fabrique ou de commerce, dans l'un des Etats Contractants, jouira, pour effectuer le dépôt dans les autres Etats, et sous réserve des droits de tiers, d'un droit de priorité pendant les délais déterminés ci-après.

En conséquence, le dépôt ultérieurement opéré dans l'un des autres Etats de l'Union avant l'expiration de ces délais ne pourra être invalidé par des faits accomplis dans l'intervalle, soit, notamment, par un autre dépôt, par la publication de l'invention ou son exploitation par un tiers, par la mise en vente d'exemplaires du dessin ou du modèle, par l'emploi de la marque.

powers, found in good and due form, have agreed upon the following Articles :—

Article I.

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

Article II.

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

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

Article III.

Subjects or citizens of States not forming part of the Union, who are domiciled or have industrial or commercial establishments in the territory of any of the States of the Union, shall be assimilated to the subjects or citizens of the contracting States.

Article IV.

Any person who has duly applied for a patent, industrial design or model, or trade-mark in one of the Contracting States, shall enjoy, as regards registration in the other States, and reserving the rights of third parties, a right of priority during the periods hereinafter stated.

Consequently, subsequent registration in any of the other States of the Union before expiry of these periods shall not be invalidated through any acts accomplished in the interval, either, for instance, by another registration, 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 use of the trade-mark.

Les délais de priorité mentionnés ci-dessus seront de six mois pour les brevets d'invention, et de trois mois pour les dessins ou modèles industriels, ainsi que pour les marques de fabrique ou de commerce. Ils seront augmentés d'un mois pour les pays d'outre-mer.

Article V.

L'introduction par le breveté, dans le pays où le brevet a été délivré, d'objets fabriqués dans l'un ou l'autre des Etats de l'Union, n'entraînera pas la déchéance.

Toutefois le breveté restera soumis à l'obligation d'exploiter son brevet conformément aux lois du pays où il introduit les objets brevetés.

Article VI.

Toute marque de fabrique ou de commerce régulièrement déposée dans le pays d'origine sera admise au dépôt et protégée telle quelle dans tous les autres pays de l'Union.

Sera considéré comme pays d'origine le pays où le déposant son principal établissement.

Si ce principal établissement n'est point situé dans un des pays de l'Union, sera considéré comme pays d'origine celui auquel appartient le déposant.

Le dépôt pourra être refusé, si l'objet pour lequel il est demandé est considéré comme contraire à la morale ou à l'ordre public.

Article VII.

La nature du produit sur lequel la marque de fabrique ou de commerce doit être apposée ne peut, dans aucun cas, faire obstacle au dépôt de la marque.

Article VIII.

Le nom commercial sera protégé dans tous les pays de l'Union sans obligation de dépôt, qu'il fasse ou non partie d'une marque de fabrique ou du commerce.

Article IX.

Tout produit portant illicitement une marque de fabrique ou de commerce, ou un nom commercial, pourra être saisi à l'importation dans ceux des Etats de l'Union dans lesquels cette marque ou ce nom commercial ont droit à la protection légale.

The above-mentioned terms of priority shall be six months for patents and three months for industrial designs and models and trade-marks. A month longer is allowed for countries beyond sea.

ARTICLE V.

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

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

ARTICLE VI.

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

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

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

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

ARTICLE VII.

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

ARTICLE VIII.

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

ARTICLE IX.

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

La seisie aura lieu à la requête soit du Ministère Public, soit de la partie intéressée, conformément à la législation intérieure de chaque Etat.

Article X.

Les dispositions de l'Article précédent seront applicables à tout produit portant faussement, comme indication de provenance, le nom d'une localité déterminée, lorsque cette indication sera jointe à un nom commercial fictif ou emprunté dans une intention frauduleuse.

Est réputé partie intéressée tout fabricant ou commerçant engagé dans la fabrication ou le commerce de ce produit, et établi dans la localité faussement indiquée comme provenance.

Article XI.

Les Hautes Parties Contractantes s'engagent à accorder une protection temporaire aux inventions brevetables, aux dessins ou modèles industriels, ainsi qu'aux marques de fabrique ou de commerce, pour les produits que figureront aux Expositions Internationales officielles ou officiellement reconnues.

Article XII.

Chacune des Hautes Parties Contractantes s'engage à établir un service spécial de la Propriété Industrielle et un dépôt central, pour la communication au public des brevets d'invention, des dessins ou modèles industriels et des marques de fabrique ou de commerce.

Article XIII.

Un office international sera organisé sous le titre de "Bureau International de l'Union pour la Protection de la Propriété Industrielle."

Ce bureau, dont les frais seront supportés par les Administrations de tous les Etats Contractants, sera placé sous la haute autorité de l'Administration Supérieure de la Confédération Suisse, et fonctionnera sous sa surveillance. Les attributions en seront déterminées d'un commun accord entre les Etats de l'Union.

Article XIV.

La présente Convention sera soumise à des révisions périodiques en vue d'y introduire les améliorations de nature à perfectionner le système de l'Union.

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

ARTICLE X.

The provisions of the preceding Article shall apply to all goods falsely bearing the name of any locality as indication of the place of origin, when such indication is associated with a trade-name of a fictitious character or assumed with a fraudulent intention.

Any manufacturer of, or trader in, such goods, established in the locality falsely designated as the place of origin, shall be deemed an interested party.

ARTICLE XI.

The High Contracting Parties agree to grant temporary protection to patentable inventions, to industrial designs or models, and trade-marks, for articles exhibited at official or officially recognised International Exhibitions.

ARTICLE XII.

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

ARTICLE XIII.

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

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

ARTICLE XIV.

The present Convention shall be submitted to periodical revisions, with a view to introducing improvements calculated to perfect the system of the Union.

A cet effet, des Conférences auront lieu successivement dans l'un des Etats Contractants, entre les Délégués des dits Etats.

La prochaine réunion aura lieu en 1885, à Rome.

Article XV.

Il est entendu que les Hautes Parties Contractantes se réservent respectivement le droit de prendre séparément, entre elles, des arrangements particuliers pour la protection de la Propriété Industrielle, en tant que ces arrangements ne contreviendraient point aux dispositions de la présente Convention.

Article XVI.

Les Etats qui n'ont point pris part à la présente Convention seront admis à y adhérer sur leur demande.

Cette adhésion sera notifiée par la voie diplomatique au Gouvernement de la Confédération Suisse, et par celui-ci à tous les autres.

Elle emportera, de plein droit, accession à toutes les clauses et admission à tous les avantages stipulés par la présente Convention.

Article XVII.

L'exécution des engagements réciproques contenus dans la présente Convention est subordonnée, en tant que de besoin, à l'accomplissement des formalités et règles établies par les lois constitutionnelles de celles des Hautes Parties Contractantes qui sont tenues d'en provoquer l'application, ce qu'elles s'obligent à faire dans le plus bref délai possible.

Article XVIII.

La présente Convention sera mise à exécution dans le délai d'un mois à partir de l'échange des ratifications et demeurera en vigueur pendant un temps indéterminé, jusqu'à l'expiration d'une année à partir du jour où la dénonciation en sera faite.

Cette dénonciation sera adressée au Gouvernement chargé de recevoir les adhésions. Elle ne produira son effet qu'à l'égard de l'Etat qui l'aura faite, la Convention restant exécutoire pour les autres Parties Contractantes.

Article XIX.

La présente Convention sera ratifiée, et les ratifications en seront echangées à Paris, dans le délai d'un an au plus tard.

To this end, Conferences shall be successively held in one of the Contracting States by Delegates of the said States. The next meeting shall take place in 1885, at Rome.

ARTICLE XV.

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

ARTICLE XVI.

States which have not taken part in the present Convention shall be permitted to adhere to it at their request.

Such adhesion shall be notified officially through the diplomatic channel to the Government of the Swiss Confederation, and by the latter to all the others. It shall imply complete accession to all the clauses, and admission to all the advantages stipulated by the present Convention.

ARTICLE XVII.

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

ARTICLE XVIII.

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

ARTICLE XIX.

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

En foi de quoi les Plénipotentiaires respectifs l'ont signée et y ont apposé leurs cachets.

Fait à Paris, le 20 Mars, 1883.

(Signé)

(L.S.) BEYENS.
(L.S.) VILLENEUVE.
(L.S.) Duc DE FERNAN-NUÑEZ.
(L.S.) P. CHALLEMEL-LACOUR.
(L.S.) CH. HÉRISSON.
(L.S.) CH. JAGERSCHMIDT.
(L.S.) CRISANTO-MEDINA.
(L.S.) RESSMAN.
(L.S.) Baron DE ZUYLEN DE NYEVELT.
(L.S.) JOSE DA SILVA MENDES LEAL.
(L.S.) F. D'AZEVEDO.
(L.S.) J.-M. TORRES-CAÏCEDO.
(L.S.) SIMA M. MARINOVITCH.
(L.S.) LARDY.
(L.S.) J. WEIBEL.

II.

Final Protocol.

Au moment de procéder, à la signatnre de la Convention conclue, à la date de ce jour, entre les Gouvernements de la Belgique, du Brésil, de l'Espagne, de la France, du Guatemala, de l'Italie, des Pays-Bas, du Portugal, du Salvador, de la Serbie, et de la Suisse, pour la protection de la Propriété Industrielle, les Plénipotentiaires soussignés sont convenns de ce qui suit :

1. Les mots "Propriété Industrielle" doivent être entendus dans leur acception la plus large, en ce sens qu'ils s'appliquent non seulement aux produits de l'industrie proprement dite, mais également aux produits de l'agriculture (vins, grains, fruits, bestiaux, &c.), et aux produits minéraux livrés au commerce (eaux minérales, &c.).

2. Sous le nom de "Brevets d'Invention" sont comprises les diverses espèces de brevets industriels admises par les législations des Etats Contractants, telles que brevets d'importation, brevets de perfectionnement, &c.

3. Il est entendu que la disposition finale de l'Article II. de la Convention ne porte aucune attiente à la législation de chacun des Etats Contractants, en ce qui concerne la procédure suive devant les Tribunaux et la compétence de ces Tribunaux.

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

Done at Paris, the 20th March, 1883.

(Signed)

(L.S.) BEYENS.
(L.S.) VILLENEUVE.
(L.S.) DUC DE FERNAN-NUÑEZ.
(L.S.) P. CHALLEMEL-LACOUR.
(L.S.) CH. HÉRISSON.
(L.S.) CH. JAGERSCHMIDT.
(L.S.) CRISANTO-MEDINA.
(L.S.) RESSMAN.
(L.S.) Baron DE ZUYLEN DE NYEVELT.
(L.S.) JOSE DA SILVA MENDES LEAL.
(L.S.) F. D'AZEVEDO.
(L.S.) J.-M. TORRES-CAÏCEDO.
(L.S.) SIMA M. MARINOVITCH.
(L.S.) LARDY.
(L.S.) J. WEIBEL.

II.

Final Protocol.

On proceeding to the signature of the Convention concluded this day between the Governments of Belgium, Brazil, Spain, France, Guatemala, Italy, the Netherlands, Portugal, Salvador, Servia, and Switzerland, for the protection of Industrial Property, the undersigned Plenipotentiaries have agreed as follows :—

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

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

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

4. Le paragraphe 1er de l'Article VI. doit être entendu en ce sens qu'aucune marque de fabrique ou de commerce ne pourra être exclue de la protection dans l'un des Etats de l'Union par le fait seul qu'elle ne satisferait pas, au point de vue des signes qui la composent, aux conditions de la législation de cet Etat, pourvu qu'elle satisfasse, sur ce point, à la législation du pays d'origine et qu'elle ait été, dans ce dernier pays, l'object d'un dépôt régulier. Sauf cette exception, qui ne concerne que la forme de la marque, et sous reserve des dispositions des autres Articles de la Convention, la législation intérieure de chacun des Etats recevra son application.

Pour éviter toute fausse interprétation, il est entendu que l'usage des armoiries publiques et des décorations peut être considéré comme contraire à l'ordre public, dans le sens du paragraphe final de l'Article VI.

5. L'organisation du service spécial de la Propriété Industrielle mentionné à l'Article XII. comprendra, autant que possible, la publication, dans chaque Etat d'une feuille officielle périodique.

6. Les frais communs de Bureau International institué par l'Article XIII. ne pourront, en aucun cas, dépasser, par année, une somme totale représentant une moyenne de 2000 fr. par chaque Etat Contractant.

Pour déterminer la part contributive de chacun des Etats dans cette somme totale des frais, les Etats Contractants et ceux qui adhéreraient ultérieurement à l'Union seront divisés en six classes contribuant chacune dans la proportion d'un certain nombre d'unités, savoir :—

1e classe	. . . . .	25 unités.
2e classe	. . . . .	20 „
3e classe	. . . . .	15 „
4e classe	. . . . .	10 „
5e classe	. . . . .	5 „
6e classe	. . . . .	3 „

Ces co-efficients seront multipliés par le nombre des Etats de chaque classe, et la somme des produits ainsi obtenus fournira le nombre d'unités par lequel la dépense totale doit être divisée. Le quotient donnera le montant de l'unité de dépense.

Les Etats Contractants sont classés ainsi qu'il suit, en vue de la répartition des frais :—

1e classe	. . . . .	France, Italie.
2e classe	. . . . .	Espagne.
3e classe	. . . . .	Belgique, Brésil, Portugal, Suisse.
4e classe	. . . . .	Pays-Bas.
5e classe	. . . . .	Serbie.
6e classe	. . . . .	Guatémala, Salvador.

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

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

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

6. The common expenses of the International Office, instituted by virtue of Article XIII., are in no case to exceed for a single year a total sum representing an average of 2000 fr. for each Contracting State.

To determine the part which each State should contribute to this total of expenses, the Contracting States, and those which may afterwards join the Union, shall be divided into six classes, each contributing the proportion of a certain number of units, namely :—

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

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

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

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

L'Administration Suisse surveillera les dépenses du Bureau International, fera les avances nécessaires et établira le compte annuel, qui sera communiqué à toutes les autres Administrations.

Le Bureau International centralisera les renseignements de toute nature relatifs à la protection de la Propriété Industrielle et les réunira en une statisque générale qui sera distribuée à toutes les Administrations. Il procédera aux études d'utilité commune intéressant l'Union et rédigera, à l'aide des documents qui seront mis à sa disposition par les diverses Administrations, une feuille périodique, en langue Française, sur les questions concernant l'objet de l'Union.

Les numéros de cette feuille, de même que tous les documents publiés par le Bureau International, seront répartis entre les Administrations des Etats de l'Union, dans la proportion du nombre des unités contributives ci-dessus mentionnées. Les exemplaires et documents supplémentaires qui seraient réclamés, soit par les dites Administrations, soit par des Sociétés ou des particuliers, seront payés à part.

Le Bureau International devra se tenir en tout temps à la disposition des membres de l'Union, pour leur fournir, sur les questions relatives au service international de la Propriété Industrielle, les renseignements spéciaux, dont ils pourraient avoir besoin.

L'Administration du pays où doit siéger la prochaine Conférence préparera avec le concours du Bureau International, les travaux de cette Conférence.

Le Directeur du Bureau International assistera aux séances des Conférences et prendra part aux discussions sans voix délibérative. Il fera, sur sa gestion, un Rapport annuel, qui sera communiqué à tous les membres de l'Union.

La langue officiel du Bureau International sera la langue Française.

7. Le présent Protocole de Clôture, qui sera ratifié en même temps que la Convention conclue à la date de ce jour, sera considéré comme faisant partie intégrante de cette Convention, et aura même force, valeur de durée.

En foi de quoi, les Plénipotentiaires soussignés ont dressé le présent Protocole.

(Signé) BEYENS. RESSMAN.
VILLENEUVE. Baron DE ZUYLEN DE NYEVELT.
Duc DE FERNAN-NUÑEZ. JOSE DA SILVA MENDES LEAL.
P. CHALLEMEL-LACOUR. F. D'AZEVEDO.
CH. HÉRISSON. J.-M. TORRES-CAÏCEDO.
CH. JAGERSCHMIDT. SIMA M. MARINOVITCH.
CRISANTO-MEDINA. LARDY. J. WEIBEL.

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

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

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

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

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

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

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

The official language of the International Office will be French.

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

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

(Signed) BEYENS.
RESSMAN.
VILLENEUVE.
BARON DE ZUYLEN DE NYEVELT.
DUC DE FERNAN-NUÑEZ.
JOSE DA SILVA MENDES LEAL.
P. CHALLEMEL-LACOUR.
F. D'AZEVEDO.
CH. HÉRISSON.
J.-M. TORRES-CAÏCEDO.
CH. JAGERSCHMIDT.
SIMA M. MARINOVITCH.
CRISANTO-MEDINA.
LARDY.
J. WEIBEL.

III.

Accession of Her Majesty's Government to the Convention signed at Paris, March 20, 1883.

The Undersigned, Ambassador Extraordinary and Plenipotentiary of her Majesty the Queen of the United Kingdom of Great Britain and Ireland to the French Republic, declares that her Britannic Majesty, having had the International Convention for the Protection of Industrial Property, concluded at Paris on the 20th March, 1883, and the Protocol relating thereto, signed on the same date, laid before her, and availing herself of the right reserved by Article XVI. of that Convention to States not parties to the original Convention, accedes, on behalf of the United Kingdom of Great Britain and Ireland, to the said International Convention for the Protection of Industrial Property, and to the said Protocol, which are to be considered as inserted word for word in the present Declaration, and

[*Continued on opposite page.*]

IV.

Declaration of Acceptance of Accession.

Sa Majesté la Reine du Royaume Uni de la Grande-Bretagne et d'Irlande ayant accédé à la Convention Internationale, relative à la protection de la Propriété Industrielle, conclue à Paris le 20 Mars, 1883, et suivie d'un Protocol en date du même jour, en vertu de l'Acte d'Accession délivré par son Ambassadeur Extraordinaire et Plénipotentiaire près le Gouvernement de la République Française; acte dont la teneur suit ici, mot pour mot :—

(Here is inserted the text of No. III. in English.)

Le Président de la République Française a autorisé le Soussigné, Président du Conseil, Ministre des Affaires Etrangères, à accepter formellement la dite accession, y compris les réserves, qui y sont contenues, concernant l'Ile de Man, les Iles de la Manche et toute autre possession de Sa Majesté Britannique, s'engageant, tant en son nom qu'au nom des autres Hautes Parties Contractantes, à concourir à l'accomplissement des obligations stipulées dans la Convention et le Protocole y annexé, qui pourront concerner le Royaume Uni de la Grande-Bretagne et d'Irlande.

En foi de quoi, le Soussigné, dûment autorisé, a dressé le présent Acte d'Acceptation et y a fait apposer son cachet.

Fait à Paris, le 2 Avril, 1884.

(L.S.) (Signé) JULES FERRY.

formally engages as far as regards the President of the French Republic and the other High Contracting Parties to co-operate on her part in the execution of the stipulations contained in the Convention and Protocol aforesaid.

The Undersigned makes this Declaration on the part of her Britannic Majesty with the express understanding that power is reserved to her Britannic Majesty to accede to the Convention on behalf of the Isle of Man and the Channel Islands, and any of her Majesty's possessions, on due notice to that effect being given through her Majesty's Government.

In witness whereof the Undersigned, duly authorised, has signed the present Declaration of Accession, and has affixed thereto the seal of his arms.

Done at Paris, on the 17th day of March, 1884.

(L.S.) (Signed) LYONS.

IV.

Declaration of Acceptance of Accession.

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, having acceded to the International Convention relative to the Protection of Industrial Property, concluded at Paris, March 20, 1883, together with a Protocol dated the same day, by the Declaration of Accession delivered by her Ambassador Extraordinary and Plenipotentiary to the Government of the French Republic, the text of which Declaration is word for word as follows :—

(Here is inserted the text of No. III. in English.)

The President of the French Republic has authorised the Undersigned, President of the Council, Minister for Foreign Affairs, to formally accept the said Accession, together with the reserves which are contained in it concerning the Isle of Man, the Channel Islands, and all other possessions of her Britannic Majesty, engaging as well in his own name, as in that of the other High Contracting Parties, to assist in the accomplishment of the obligations stipulated in the Convention and the Protocol thereto annexed, which may concern the United Kingdom of Great Britain and Ireland.

In witness whereof the Undersigned, duly authorised, has drawn up the present Declaration of Acceptance, and has affixed thereto his seal.

Done at Paris, the 2nd April, 1884.

(L.S.) (Signed) JULES FERRY.

THE PATENT RULES, 1903.

By virtue of the provisions of the Patents, Designs, and Trade Marks Acts, 1883 to 1902, the Board of Trade do hereby make the following Rules :—

Short Title.

Short title.

1. These Rules may be cited as the Patents Rules, 1903.

Commencement.

Commencement.

2. These Rules shall come into operation from and immediately after the 12th day of January, 1903.

Interpretation.

Interpretation.

3. In the construction of these Rules—

"United Kingdom" includes the Isle of Man;

"Foreign Application" means an application by any person for protection of his invention in a Foreign State or British Possession to which by any Order in Council for the time being in force the provisions of section 103 of the Act of 1883 as amended by any subsequent Act have been declared applicable;

"Convention Application" means an application in the United Kingdom under the provisions of section 103 of the Act of 1883 as amended by any subsequent Act.

Save as aforesaid any words herein used defined by the said Acts shall have the meanings thereby assigned to them respectively.

Fees.

First Schedule.

4. The fees to be paid under the said Acts shall be those specified in the list of fees in the First Schedule to these Rules.

Forms.

Second Schedule.

5. The Forms (*a*) contained in the Second Schedule to these Rules may, as far as they are applicable, be used in any proceedings under the said Acts or under these Rules and so far as they relate to the

(*a*) See pp. 345–374 *post.*

same subject-matter shall be substituted for the forms in the First Schedule to the Act of 1883.

Applications for Patents.

Application by representative of deceased inventor.

6. In the case of an application for a patent by the legal representative of a person who has died possessed of an invention, the probate of his will, or the letters of administration granted of his estate and effects, or an official copy of such probate or letters, shall be produced at the Patent Office in proof of the applicant's title as such legal representative and must be supported by such further evidence as the Comptroller may require.

Address for service.

7. Every application for a patent shall be accompanied by a statement of an address (hereinafter referred to as "the address for service") to which all notices, requisitions, and communications of every kind may be sent by the Comptroller or by the Board of Trade, and such statement shall thereafter be binding upon the applicant until a substituted address for service shall be furnished by him to the Comptroller. The Comptroller may in any particular case require that the address for service be in the United Kingdom.

Order of recording applications.

8. Applications for patents sent through the post shall, as far as may be practicable, be opened and numbered in the order in which the letters containing the same have been respectively delivered in the ordinary course of post.

Applications left at the Patent Office otherwise than through the post shall be in like manner numbered in the order of their receipt at the Patent Office.

9. [*Rule 5 of the Patent Rules*, 1905, *is substituted for this Rule*, see p. 317 *post*.]

Every such application shall, if the applicant notify his desire to that effect to the Comptroller, bear the date of the first application and shall, together therewith, be proceeded with in the manner prescribed by the said Acts and by these Rules, as if every such application had been originally made on that date.

Extension of time for leaving and accepting complete specification.

10. An application for extension of time for leaving or accepting a complete specification shall be made on Form U or on Form V, as the case may require, and shall state in detail in what circumstances and upon what grounds such extension is applied for, and the Comptroller may require the applicant to substantiate such allegations by such proof as the Comptroller may think necessary.

Notice and advertisement of acceptance.

11. On the acceptance of a provisional or complete specification the Comptroller shall give notice thereof to the applicant, and shall advertise the acceptance of every complete specification in the official journal of the Patent Office.

Inspection of complete specification.

12. Upon such acceptance in the case of a complete specification, the application and specification or specifications with the drawings (if any) may be inspected at the Patent Office upon payment of the prescribed fee.

Applications under the International Convention.

Convention applications.

13. Every Convention application shall contain a declaration that foreign application has been made for protection of the invention to which such Convention application relates, and shall specify all the Foreign States or British Possessions in which such foreign applications have been made, and the official date or dates thereof respectively. The application must be made within twelve months from the date of the first foreign application, and must be accompanied by a complete specification, and signed by the person or persons by whom such first foreign application was made. If such person, or any of such persons be dead, the application must be signed by the legal representative of such dead person, as well as by the other applicants, if any.

Foreign specification, &c., to accompany application.

14. Every Convention application, in addition to the specification left therewith, must be accompanied by a copy or copies of the specification, and drawings or documents filed or deposited by the applicant in the Patent Office of the Foreign State or British Possession in respect of the first foreign application, duly certified by the official chief or head of the Patent Office of such Foreign State or British Possession as aforesaid, or otherwise verified to the satisfaction of the Comptroller. If any specification or other document relating to the application is in a foreign language, a translation thereof shall be annexed thereto and verified by statutory declaration or otherwise to the satisfaction of the Comptroller.

Public inspection.

15. If the complete specification left with the application be not accepted within twelve months from the date of the first foreign application, it shall, with the drawings, if any, be open to public inspection at the expiration of that period.

Proceedings.

16. Save as aforesaid and as provided by Rule 52 all proceedings in connection with a Convention application shall be taken within the times and in the manner prescribed by the said Acts or these Rules for ordinary applications.

Size, &c., of Documents.

17. [*Rule 15 of the Patent Rules*, 1905, *is substituted for this Rule*, see p. 320 *post*.]

Drawings accompanying Specifications.

[*Rules 16 to 24 of the Patent Rules*, 1905, *are substituted for Rules 18 to 24*, see p. 320 *post*.]

Statutory Declarations and Affidavits.

Form, &c., of statutory declaration and affidavit.

25. The statutory declarations and affidavits required by these Rules, or used in any proceedings thereunder, shall be headed in the matter or matters to which they relate and shall be drawn up in the first person, and shall be divided into paragraphs consecutively numbered, and each paragraph shall so far as possible be confined to one subject. Every statutory declaration or affidavit shall state the description and true place of abode of the person making the same, and shall be written or printed bookwise, and shall bear the name and address of the person leaving it, and shall state on whose behalf it is left.

Manner in which, and persons before whom, declaration or affidavit is to be taken.

26. The statutory declarations and affidavits required by the said Acts and these Rules, or used in any proceedings thereunder, shall be made and subscribed as follows :—

(*a*) In the United Kingdom, before any justice of the peace, or any commissioner or other officer authorised by law in any part of the United Kingdom to administer an oath for the purpose of any legal proceeding ;

(*b*) In any other part of His Majesty's dominions, before any court, judge, justice of the peace, or any officer authorised by law to administer an oath there for the purpose of a legal proceeding ; and

(*c*) If made out of His Majesty's dominions, before a British Minister, or person exercising the functions of a British Minister, or a Consul, Vice-Consul, or other person exercising the functions of a British Consul, or before a notary public, or before a judge or magistrate.

Industrial or International Exhibitions.

Industrial or international exhibitions.

27. Any person desirous of exhibiting an invention at an industrial or international exhibition, or of publishing any description of the invention during the period of the holding of the exhibition, or of using the invention for the purpose of the exhibition in the place where the exhibition is held, may, after the Board of Trade have issued a certificate that the exhibition is an industrial or international one, give to the Comptroller notice on Form O of his intention to exhibit, publish, or use the invention, as the case may be. For the purpose of identifying the invention in the event of an application for a patent being subsequently made the inventor shall furnish to the Comptroller a brief description of his invention, accompanied, if necessary, by drawings, and such other information as the Comptroller may in each case require.

Exercise of Discretionary Powers by the Comptroller.

Exercise of discretionary powers by Comptroller.

28. Before exercising any discretionary power given to the Comptroller by the said Acts or these Rules adversely to the applicant for a patent or for amendment of a specification, the Comptroller shall give ten days' notice, or such longer notice as he may think fit, to the applicant of the time when he may be heard personally or by his agent before the Comptroller.

Notice of hearing.

Notice by applicant.

29. Within five days from the date when such notice would be delivered in the ordinary course of post, or such longer time as the Comptroller may appoint in such notice, the applicant shall notify in writing to the Comptroller whether or not he intends to be heard upon the matter.

Comptroller may require statement, &c.

30. Whether the applicant desires to be heard or not, the Comptroller may at any time require him to submit a statement in writing within a time to be notified by the Comptroller, or to attend before him and make oral explanations with respect to such matters as the Comptroller may require.

Decision to be notified to parties.

31. The decision or determination of the Comptroller in the exercise of any such discretionary power as aforesaid shall be notified by him to the applicant, and to any other person who appears to him to be affected thereby.

Opposition to Grants of Patents.

Notice of opposition.

32. A notice of opposition to the grant of a patent shall be on Form D, and shall state the ground or grounds on which the person giving such notice (hereinafter called the opponent) intends to oppose the grant, and must be signed by him. Such notice shall state his address for service in the United Kingdom, and shall be

Copy for applicant.

accompanied by an unstamped copy, which copy shall be transmitted by the Comptroller to the applicant.

Evidence in support of allegation that invention has been obtained from opponent.

33. Where the ground of an opposition is that the applicant has obtained the invention from the opponent, or from a person of whom such opponent is the legal representative, unless evidence in support of such allegation be left at the Patent Office within fourteen days after the expiration of two months from the date of the advertisement of the acceptance of the applicant's complete specification, the opposition shall be deemed to be abandoned.

Attendance of declarant on Comptroller.

34. Where the ground of an opposition is that the applicant has obtained the invention from the opponent, or from a person of whom such opponent is the legal representative, the Comptroller may request or allow any person who has made a statutory declaration in the matter to which the opposition relates to attend before him at the

hearing of the case and make oral explanations with respect to such matters as the Comptroller may require.

Particulars of prior patent.

35. Where the ground or one of the grounds of opposition is that the invention has been patented in this country on an application of prior date, the number and date of such prior application shall be specified in the notice.

Opponent's evidence.

36. Except in the case provided for in Rule 33, statutory declarations need not be left in connection with an opposition, but the opponent may within fourteen days after the expiration of two months from the date of the advertisement of the acceptance of the applicant's complete specification, leave at the Patent Office statutory declarations in support of his opposition, and on so leaving shall deliver to the applicant copies thereof.

Applicant's evidence.

37. Within fourteen days from the delivery of such copies, the applicant may leave at the Patent Office statutory declarations in answer, and on so leaving shall deliver to the opponent copies thereof, and within fourteen days from such delivery the opponent may leave at the Patent Office his statutory declarations in reply, and on so leaving shall deliver to the applicant copies thereof. Such last-mentioned declarations shall be confined to matters strictly in reply.

Evidence in reply.

Applicant's evidence if opponent does not leave statutory declarations.

38. If the opponent does not leave statutory declarations in support of his opposition, the applicant may (if he desires so to do) within three months from the date of the advertisement of the acceptance of his complete specification, leave at the Patent Office statutory declarations in support of his application, and on so leaving shall deliver to the opponent copies thereof.

Opponent's evidence.

39. Within fourteen days from the delivery of such copies, the opponent may leave at the Patent Office statutory declarations in answer, and on so leaving shall deliver to the applicant copies thereof, and within fourteen days from such delivery the applicant may leave at the Patent Office his statutory declarations in reply, and on so leaving shall deliver to the opponent copies thereof. Such last-mentioned declarations shall be confined to matters strictly in reply.

Evidence in reply.

Closing of evidence.

40. No further evidence shall be left on either side except by leave, or on the requisition, of the Comptroller.

Hearing.

41. On completion of the evidence (if any), or at such other time as he may see fit, the Comptroller shall appoint a time for the hearing of the case, and shall give the parties ten days' notice at the least of such appointment. If either party does not desire to be heard he shall as soon as possible notify the Comptroller to that effect. If either party desires to be heard he must leave Form E at the Patent Office. The Comptroller may refuse to hear either party who has not left Form E prior to the date of hearing. If either party intends to refer at the hearing to any publication other than a specification

mentioned in the notice of opposition, he should, unless the same has been referred to in a statutory declaration already filed, give to the other party and to the Comptroller five days' notice at least of his intention, together with details of each publication to which he intends to refer. After hearing the party or parties desirous of being heard or if neither party desires to be heard, then without a hearing the Comptroller shall decide the case and notify his decision to the parties.

Amendment of Specification.

Request for leave to amend.

42. A request for leave to amend a specification must be signed by the applicant and shall contain an address for service in the United Kingdom. When not made in pursuance of an order of the Court or a judge the request must, where a patent has been sealed, also contain a statement that no action for infringement nor proceeding for revocation of the patent is pending. The request must be accompanied by a duly certified copy of the original specification and drawings, showing in red ink the proposed amendment, and shall be advertised by publication of the request and the nature of the proposed amendment in the official journal of the Patent Office, and in such other manner (if any) as the Comptroller may in each case direct.

Leave by Order of Court.

43. Where a request for leave to amend is made in pursuance of an order of the Court or a judge, an office copy of the order shall be left with the request at the Patent Office.

Notice of opposition.

44. A notice of opposition to the amendment shall be on Form G and shall state the ground or grounds on which the person giving such notice (hereinafter called the opponent) intends to oppose the amendment, and must be signed by him. Such notice shall state his address for service in the United Kingdom, and shall be accompanied by an unstamped copy, which copy shall be transmitted by the Comptroller to the applicant.

Copy for the applicant.

Opponent's evidence.

45. Within fourteen days after the expiration of one month from the first advertisement of the application for leave to amend, the opponent may leave at the Patent Office statutory declarations in support of his opposition, and on so leaving shall deliver to the applicant copies thereof.

Further proceedings.

46. Upon such declarations being left, and such copies being delivered, the provisions of Rules 37, 40, and 41 shall apply to the case, and the further proceedings therein shall be regulated in accordance with such provisions as if they were here repeated.

Applicant's evidence if opponent does

47. If the opponent does not leave statutory declarations in support of his opposition, the applicant may (if he desires so to do) within

two months from the date of the first advertisement of the application for leave to amend leave at the Patent Office statutory declarations in support of his application, and on so leaving shall deliver to the opponent copies thereof. not leave statutory declarations.

48. Upon such declarations being left, and such copies being delivered, the provisions of Rules 39, 40, and 41 shall apply to the case, and further proceedings therein shall be regulated in accordance with such provisions as if they were here repeated. Further proceedings.

49. Where leave to amend is given the applicant shall, if the Comptroller so require, and within a time to be limited by him, leave at the Patent Office a new specification and drawings as amended, to be prepared in accordance with Rules 17 to 23. Requirements on amendment.

50. Every amendment of a specification shall be advertised forthwith by the Comptroller in the official journal of the Patent Office, and in such other manner (if any) as the Comptroller may direct. Advertisement of amendment.

Register of Patents.

51. Upon the sealing of a patent the Comptroller shall cause to be entered in the Register of Patents the name, address, and calling of the patentee as the grantee thereof, and the title of the invention, together with the address for service. Entry of grant.

52. The patent granted on any Convention application shall be entered in the register as dated of the date on which the first foreign application was made, and the payment of renewal fees, and the expiration of the patent, shall be reckoned as from the date of the first foreign application. Entry in respect of Convention application.

53. If a patentee send to the Comptroller on Form R notice of an alteration in his address, the Comptroller shall cause the register to be altered accordingly, and may require the altered address to be in the United Kingdom. Alteration of address.

54. Where a person becomes entitled to a patent, or to any share or interest therein, by assignment, or by transmission, or other operation of law, a request for the entry of his name in the register as such complete or partial proprietor of the patent, or of such share or interest therein, as the case may be, shall be addressed to the Comptroller, and left at the Patent Office. Request for entry of subsequent proprietorship.

55. Such request shall be on Form L and shall in the case of individuals be made and signed by the person requiring to be registered as proprietor, or by his agent duly authorised to the satisfaction of the Comptroller, and in the case of a body corporate by its agent, authorised in like manner. Form and signature of request.

56. Every such request shall state the name, address, and calling of the person claiming to be entitled to the patent, or to any share Particulars to be stated in request.

or interest therein, as the case may be, and the particulars of the assignment, transmission, or other operation of law, by virtue of which he claims to be entered in the register as proprietor, so as to show the manner in which, and the person or persons to whom, the patent, or such share or interest therein as aforesaid, has been assigned or transmitted.

Production of documents of title and other proof.

57. Every assignment, and every other document containing, giving effect to, or being evidence of, the transmission of a patent or affecting the proprietorship thereof as claimed by such request, except such documents as are matters of record, shall, unless the Comptroller in his discretion otherwise directs, be produced to him together with the request, and such other proof of title as he may require for his satisfaction.

As to a document which is a matter of record, an official or certified copy thereof shall in like manner be produced to the Comptroller.

Copies for Patent Office.

58. There shall also be left with the request an attested copy of the assignment or other document or copy above required to be produced.

Body corporate.

59. A body corporate may be registered as proprietor by its corporate name.

Entry of Orders of the Privy Council or of the Court.

60. Where an order has been made by his Majesty in Council for the extension of a patent for a further term or for the grant of a new patent, or where an order has been made for the revocation of a patent or the rectification of the register under section 90 of the Act of 1883, or otherwise affecting the validity of proprietorship of the patent, the person in whose favour such order has been made shall forthwith leave at the Patent Office an office copy of such order. The register shall thereupon be rectified or the purport of such order shall otherwise be duly entered in the register, as the case may be.

Entry of date of payment of fees on issue of certificate.

61. Upon the issue of a certificate of payment under Rule 68, the Comptroller shall cause to be entered in the register a record of the date of payment of the fee on such certificate.

Entry of failure to pay fees.

62. If a patentee fails to make any prescribed payment within the prescribed time, or any enlargement thereof duly granted, there shall be duly entered in the register a notification of such failure.

Entry of notification of licence, or other document.

63. An attested copy of every licence granted under a patent, or of any other document purporting to affect the proprietorship of a patent, shall be left at the Patent Office with a request on Form M that a notification thereof may be entered in the register. The accuracy of such copy shall be certified as the Comptroller may direct, and the original document shall at the same time be produced and left at the Patent Office if required for further verification.

Hours of inspection register.

64. The register of patents shall be open to the inspection of the public on every week day except Saturday between the hours of ten and four, and on Saturday between the hours of ten and one, except on the days and the times following :—

(*a*) Christmas Day, Good Friday, the day observed as His Majesty's birthday, days observed as days of public fast or thanksgiving, and days observed as holidays at the Bank of England ; or

(*b*) Days which may from time to time be notified by a placard posted in a conspicuous place at the Patent Office ;

(*c*) Times when the register is required for any purpose of official use.

Certified copies of documents.

65. Certified copies of any entry in the register, or certified copies of, or extracts from, patents, specifications, disclaimers, affidavits, statutory declarations, and other public documents in the Patent Office, or of or from registers and other books kept there, may be furnished by the Comptroller on payment of the prescribed fee.

Payment of Fees for Continuance of Patent.

Payment of fees for continuance of patent.

66. If a patentee intends at the expiration of the fourth year from the date of his patent to keep the same in force, he shall, before the expiration of the fourth and each succeeding year during the term of the patent, pay the prescribed fee. The patentee may pay the whole or any portion of the aggregate of such prescribed annual fees in advance.

The Form J in the Second Schedule, duly stamped, should be used for the purpose of this payment.

Enlargement of time for payments.

67. An application for an enlargement of the time for making a prescribed payment shall state in detail the circumstances in which the patentee by accident, mistake, or inadvertence has failed to make such payment, and the Comptroller may require the patentee to substantiate by such proof as he may think necessary the allegations contained in the application for enlargement.

Certificate of payment.

68. On due compliance with the terms of Rule 66, and as soon as may be after such respective periods as aforesaid, or any enlargement thereof respectively duly granted, the Comptroller shall issue a certificate that the prescribed payment has been duly made.

Compulsory Licences and Revocation of Patents.

Petition for grant of compulsory

69. A petition to the Board of Trade for an order under section 3 of the Patents Act, 1902, shall show clearly the nature of the

Licence or revocation of patent.

petitioner's interest and the ground or grounds upon which he claims to be entitled to relief, and shall state in detail the circumstances of the case, the terms upon which he asks that an order may be made, and the purport of such order, and the name and address of the patentee and any other person who is alleged in the petition to have made default.

To be left with evidence at Patent Office.

70. The petition and an examined copy thereof shall be left at the Patent Office accompanied by affidavits or statutory declarations in proof of the allegations contained in the petition together with any other documentary evidence in support, and the petitioner shall simultaneously with, or as soon as may be after the leaving of such petition deliver to the patentee and any other person who is alleged in the petition to have made default, copies of the petition and of such affidavits or statutory declarations and other documentary evidence in support.

Opponent's evidence.

71. The persons to whom such copies are delivered by the petitioner, may within fourteen days after being invited to do so by the Board of Trade leave at the Patent Office their affidavits or statutory declarations in answer, and if they do so shall deliver copies thereof to the petitioner; and the petitioner may within fourteen days from such last-mentioned delivery leave at the Patent Office his affidavits or statutory declarations in reply, and if he does so shall deliver copies thereof to the patentee or any other person alleged in the petition to have made default, such last-mentioned affidavits or statutory declarations being confined to matters strictly in reply.

Evidence in reply.

The times prescribed by this Rule may be altered or enlarged by the Board of Trade, if they think fit, upon such notice to parties interested and upon such terms, if any, as they may direct.

Closing of evidence.

72. No further evidence than as aforesaid may be left by either side at the Patent Office except by leave or on requisition of the Board of Trade and upon such terms, if any, as the Board may think fit.

Power of Board of Trade to dismiss petition.

73. The Board of Trade shall consider the petition and the evidence, with a view to satisfying themselves whether a *primâ facie* case has been made out for proceeding further with the petition, and if they are not so satisfied they shall dismiss the petition.

Arrangements between parties.

74. If they are so satisfied, they shall consider whether there is any probability of an arrangement being come to between the parties, and if it appears to them that there is any reasonable probability that such an arraugement can be come to, they may take such steps as they consider desirable to bring it about, and in the meanwhile may defer the reference of the petition to the Judicial Committee of the Privy Council.

75. If the Board are not of opinion that there is a reasonable probability of any arrangement being come to between the parties, and are satisfied that a *primâ facie* case has been made out by the petitioner, the, shall refer the petition to the Judicial Committee, with copies of any affidavits, statutory declarations, or other documentary evidence which may have been furnished under the foregoing Rules, and with certified copies of all entries in the Register of Patents relating to the patent in question and any other information in the possession of the Board which it appears to them may be of service to the Judicial Committee in ascertaining what persons should be made parties to the proceedings before the Committee, and the Board shall give written notice to the parties that the petition has been referred to the Judicial Committee. Reference of petition to Judicial Committee.

General.

76. Any document for the amendment of which no special provision is made by the said Acts may be amended, and any irregularity in procedure, which in the opinion of the Comptroller may be obviated without detriment to the interests of any person, may be corrected, if and on such terms as the Comptroller may think fit. Power of amendment, &c.

77. The times prescribed by these Rules for doing any act, or taking any proceeding thereunder, other than the times for lodging evidence referred to in Rule 33 or in the procedure in these Rules relating to compulsory licences and revocation of patents, may be enlarged by the Comptroller if he think fit, and upon such notice to other parties, and proceedings thereon, and upon such terms, as he may direct. General power to enlarge time.

78. Where, under these Rules, any person is required to do any act or thing, or to sign any document, or to make any declaration on behalf of himself or of any body corporate, or any document or evidence is required to be produced to or left with the Comptroller, or at the Patent Office, and it is shown to the satisfaction of the Comptroller that from any reasonable cause such person is unable to do such act or thing, or to sign such document, or make such declaration, or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the Comptroller, with the sanction of the Board of Trade, and upon the production of such other evidence, and subject to such terms as they may think fit, to dispense with any such act or thing, document, declaration, or evidence. Power to dispense with evidence.

79. The Patent Office shall be open to the public every week-day except Saturday between the hours of ten and four, and on Saturday between the hours of ten and one, except on the days following :— Hours of business.

Christmas Day, Good Friday, the day observed as His Majesty's birthday, the days observed as days of public fast or thanksgiving, or as holidays at the Bank of England, and days which may from time to time be notified by a placard posted in a conspicuous place at the Patent Office.

Leaving documents.

80. Any application, notice, or other document authorised or required to be left, made, or given at the Patent Office, or to the Comptroller, or to any other person under these Rules, may be sent by a prepaid letter through the post, and if so sent shall be deemed to have been left, made, or given at the time when the letter containing the same would be delivered in the ordinary course of post. In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

Agency.

Agency.

81. With the exception of the signing of the following documents, namely, applications for patents, requests for leave to amend applications, specifications, or letters patent, authorisations of agents, notices of oppositions, requests for issue of duplicate letters patent, notices of abandonment of or of intention not to proceed with applications, surrenders of letters patent, and petitions for compulsory licence and revocation of patent, all communications to the Comptroller under the said Acts and these Rules may be signed by and all attendances upon the Comptroller may be made by or through an agent duly authorised to the satisfaction of the Comptroller, and, if he so require it, resident in the United Kingdom. The Comptroller shall not be bound to recognise as such agent, or to receive further communications from any person whose name, by reason of his having been adjudged guilty of disgraceful professional conduct, has been erased from the register of patent agents, kept under the provisions of the Patents, Designs, and Trade Marks Act, 1888, relating to the registration of patent agents, and not since restored. In any particular case, the Comptroller may, if he think fit, require the personal signature or presence of an applicant, opponent, or other person.

Repeal.

Repeal.

82. All general rules relative to Patents heretofore made by the Board of Trade under the Patents, Designs, and Trade Marks Acts, 1883 to 1901, and in force on the 12th day of January, 1903, shall be and they are hereby repealed as from that date, without prejudice, nevertheless, to anything done under such rules, or to any application or other matter then pending.

Dated the 12th day of January, 1903.

G. W. BALFOUR,
President of the Board of Trade.

THE PATENT RULES, 1905.

By virtue of the provisions of the Patents, Designs, and Trade Marks Acts, 1883 to 1902, the Board of Trade do hereby make the following Rules :—

Short Title.

1. These Rules may be cited as the Patents Rules, 1905. Short title.

Commencement.

2. These Rules shall come into operation from and immediately after the 31st day of December, 1904. Commencement.

Interpretation.

3. In the construction of these Rules, any words herein used defined by the said Acts shall have the meanings thereby assigned to them respectively. Interpretation.

Application for Patents.

4. The statement of the invention claimed, with which a complete specification must end, shall be clear and succinct as well as separate and distinct from the body of the specification. Claims.

5. For Rule 9 of the Patents Rules, 1903, the following Rule shall be substituted :—

When a specification comprises several distinct matters, they shall not be deemed to constitute one invention by reason only that they are all applicable to or may form parts of an existing machine, apparatus, or process. One invention.

When a person making application for a patent has included in his specification more than one invention, the Comptroller may require or allow him to amend such application and specification and drawings or any of them so as to apply to one invention only, and the applicant may make application for a separate patent for any invention excluded by such amendment. Applications for separate patents by way of amendment.

Every such last-mentioned application may, if the Comptroller at any time so direct, bear the date of the original application, or such

date between the date of the original application and the date of the application in question, as the Comptroller may direct, and shall otherwise be proceeded with as a substantive application in the manner prescribed by the said Acts and by any Rules thereunder for the time being in force.

Where the Comptroller has required or allowed any application, specification or drawings to be amended as aforesaid, such application shall, if the Comptroller at any time so direct, bear such date, subsequent to the original date of the application and not later than the date when the amendment was made, as the Comptroller shall consider reasonably necessary to give sufficient time for the subsequent procedure relating to such application.

Procedure under section 1 *of the Patents Act*, 1902.

Power of Comptroller to post-date.

6. If after the leaving of any complete specification the Examiner reports that the nature of the invention is not sufficiently disclosed and defined to enable him to make the investigation prescribed by sub-section 1, and the Comptroller has required amendment of the specification and drawings, or either of them, the application shall, if the Comptroller at any time so direct, bear such date, subsequent to its original date and not later than the date when the requirement is complied with, as the Comptroller may consider reasonably necessary to give sufficient time for the subsequent procedure relating to such application.

Provisional raport in case of complete anticipation.

7. When the Examiner in prosecution of the investigation prescribed by sub-section 1, finds that the invention claimed in the specification under examination has been wholly claimed or described in one or more specifications within the meaning of the sub-section in question, he shall, without any further prosecution of the investigation, make a provisional report to that effect to the Comptroller.

If the provisional report of the Examiner made under this Rule be not reversed or altered, it shall be deemed a final report, and the application shall be dealt with as provided by sub-section 6. If, however, such provisional report be reversed or altered, the investigation prescribed by sub-section 1 shall be continued, and a further report shall be made to the Comptroller, and the specification shall be dealt with as provided in sub-section 5 or sub-section 6, as the case may require.

Time for leaving amended specification.

8. The time within which an applicant may leave his amended specification under sub-section 2 shall be two months from the date of the letter informing him that the invention claimed has been wholly or in part claimed or described in any specification or specifications within the meaning of sub-section 1.

In any special case the Comptroller may, if he think fit, enlarge the time prescribed by this Rule. Extension of time.

9. When the applicant for a patent has been informed of the result of the investigation of the Examiner, made under the provisions of sub-section 1, and the time allowed by Rule 8 for amendment of his specification has expired, the Comptroller, if he is not satisfied that no objection exists to the specification on the ground that the invention claimed therein has been wholly or in part claimed or described in a previous specification within the meaning of that sub-section, shall inform the applicant accordingly and appoint a time for hearing him, and shall give him ten days' notice at the least of such appointment. The applicant shall as soon as possible notify the Comptroller whether or not he desires to be heard. The Comptroller shall, after hearing the applicant, or without a hearing, if the applicant has not attended a hearing appointed or has notified that he does not desire to be heard, determine whether reference ought to be made in the applicant's specification to any, and, if so, what, prior specification or specifications by way of notice to the public. Hearing by the Comptroller under sub-section 6.

10. When under sub-section 6 the Comptroller determines that a reference to a prior specification ought to be made by way of notice to the public, the form of reference shall be as follows and shall be inserted after the claims :— Reference to prior specification.

> Reference has been directed in pursuance of section 1, sub-section 6, of the Patents Act, 1902, to the following specification of Letters Patent No. granted to .

Where the reference is inserted as the result of a provisional report under Rule 7, a statement to that effect shall be added to the reference.

Appeal.

11. Every decision of the Comptroller under the foregoing Rules shall be subject to an appeal to the Law Officer. Appeal to Law Officer.

Sealing of Patent and Payment of Fee.

12. If the applicant for a patent desires to have a patent sealed on his application, he must, on or before the last day on which a patent can lawfully be sealed, pay the prescribed sealing fee; and if such fee be not paid, no patent shall be sealed. Sealing of patent and payment of fee.

The prescribed sealing fee should be paid by leaving at the Patent Office Form X (*a*) in the Second Schedule to these Rules, duly stamped.

(*a*) See p. 375 *post*.

Fees.

First Schedule. 13. To the fees specified in the First Schedule to the Patents Rules, 1903, shall be added the fee specified in the First Schedule hereto. (*b*)

Forms.

Second Schedule. 14. To the forms contained in the Second Schedule to the Patents Rules, 1903, shall be added the Form X contained in the Second Schedule hereto; and in the Form C contained in the first-mentioned Schedule the following direction shall be added in a marginal note, namely:—"In the preparation of the claim or claims careful attention should be paid to the terms of Rule 4 of the Patents Rules, 1905. Any unnecessary multiplicity of claims or prolixity of language should be avoided."

Size, &c., of Document.

15. For Rule 17 of the Patents Rules, 1903, the following Rule shall be substituted:—

Size, &c., of documents. All documents and copies of documents, except drawings, sent to or left at the Patent Office or otherwise furnished to the Comptroller or to the Board of Trade shall be written, type-written, lithographed or printed in the English language (unless otherwise directed) in large and legible characters with deep permanent ink upon strong white paper, and, except in the case of statutory declarations and affidavits, on one side only, of a size of approximately 13 inches by 8 inches, leaving a margin of at least 1½ inches on the left-hand part thereof, and the signatures thereto must be written in a large and legible hand. Duplicate documents shall at any time be left, if required by the Comptroller.

At the top of the first page of a specification a space of about 2 inches should be left blank.

Drawings accompanying Specifications.

16. For Rules 18 to 24 of the Patents Rules, 1903, the following Rules shall be substituted:—

As the drawings are printed by a photolithographic process, the character of each original drawing must be brought as nearly as possible to a uniform standard of excellence, suited to the requirements of such process, and calculated to give the best results in the interests of inventors, of the Office, and of the public. The following

(*b*) See p. 449 *post*.

requirements should, therefore, be strictly observed, as non-compliance therewith will be certain to cause delay in the progress of an application for a patent.

17. Drawings, when furnished, should accompany the provisional or complete specification to which they refer, except in the case provided for by Rule 24. No drawing or sketch such as would require the preparation for the printer of a special illustration for use in the letterpress of the specification when printed should appear in the specification itself. General.

18. Drawings may be made by hand or lithographed, printed, &c. They must be made on pure white, hot-pressed, rolled, or calendered strong paper of smooth surface, good quality, and medium thickness without washes or colours, in such a way as to admit of being clearly reproduced on a reduced scale by photography. Mounted drawings must not be used. Requirements as to paper.

19. Drawings must be on sheets which measure 13 inches from top to bottom and are either from 8 inches to 8¼ inches or from 16 inches to 16½ inches wide, the narrower sheets being preferable. Size of drawings and arrangement of figures.

If there are more figures than can be shown on one of the smaller sized sheets, two or more of these sheets should be used in preference to employing the larger size. When an exceptionally large drawing is required, it should be continued on subsequent sheets. There is no limit to the number of sheets that may be sent in, but no more sheets should be employed than are necessary and the figures should be numbered consecutively throughout and without regard to the number of sheets. The figures should not be more numerous than is absolutely necessary. They should be separated by a sufficient space to keep them distinct.

20. Drawings must be prepared in accordance with the following requirements:— Drawings to be suitable for reproduction.

(*a*) They must be executed with absolutely black ink.

(*b*) Each line must be firmly and evenly drawn, sharply defined, and of the same strength throughout.

(*c*) Section lines, lines for effect, and shading lines should be as few as possible, and must not be closely drawn.

(*d*) Shade lines must not contrast too much in thickness with the general lines of the drawing.

(*e*) Sections and shading should not be represented by solid black or washes.

(*f*) They should be on a scale sufficiently large to show the invention clearly, and only so much of the apparatus machine, &c., should appear as effects this purpose. If the scale is given, it should be drawn, and not denoted by words.

Reference letters and figures, and index numerals used in conjunction therewith, must be bold, distinct and not less than one-eighth of an inch in height. The same letters should be used in different views of the same parts. Where the reference letters are shown outside the figure, they must be connected with the parts referred to by fine lines.

Drawings to bear name of applicant, &c., but no descriptive matter.

21. Drawings must bear the name of the applicant (and, in the case of drawings left with a complete specification after a provisional specification, the number and year of the application) in the left-hand top corner; the number of sheets of drawings sent, and the consecutive number of each sheet, in the right-hand top corner; and the signature of the applicant or his agent in the right-hand bottom corner. Neither the title of the invention nor any descriptive matter should appear on the drawings.

Copies of drawings.

22. A facsimile or "true copy" of the original drawings must be filed at the same time as the original drawings, prepared strictly in accordance with the above Rules, except that it may be on tracing cloth and the reference letters and figures should be in black-lead pencil.

Marking of originals and true copies.

The words "original" or "true copy" must in each case be marked at the right-hand top corner, under the numbering of the sheet.

Delivery of drawings.

23. Drawings must be delivered at the Patent Office so as to be free from folds, breaks, or creases which would render them unsuitable for reproduction by photography.

Provisional drawings used for complete specifications.

24. If an applicant desires to adopt the drawings lodged with his provisional specification as the drawings for his complete specification, he should refer to them in the complete specification as those left with the provisional specification.

Dated the 20th day of October, 1904.

G. W. BALFOUR,
President of the Board of Trade.

RULES REGULATING THE PRACTICE AND PROCEDURE ON APPEAL TO THE LAW OFFICERS.

Notice of appeal.

I. When any person intends to appeal to the law officer from a decision of the Comptroller in any case in which such appeal is given by the Acts, he shall within fourteen days from the date of the decision appealed against file in the Patent Office a notice of such his intention.

Requisites of notice of appeal.

II. Such notice shall state the nature of the decision appealed against, and whether the appeal is from the whole, or part only, and if so, what part of such decision.

Copies of notice of appeal to be sent.

III. A copy of such notice of intention to appeal shall be sent by the party so intending to appeal to the law officers' clerk, at Room 549, Royal Courts of Justice, London; and when there has been an opposition before the Comptroller, to the opponent or opponents; and when the Comptroller has refused to seal a patent on the ground that a previous application for a patent for the same invention is pending, to the prior applicant.

Comptroller to transmit papers to law officers' clerk upon notice of appeal.

IV. Upon notice of appeal being filed, the Comptroller shall forthwith transmit to the law officers' clerk all the papers relating to the matter of the application in respect of which such appeal is made.

Notice of appeal not given in specified time.

V. No appeal shall be entertained of which notice is not given within fourteen days from the date of the decision appealed against, or such further time as the Comptroller may allow, except by special leave, upon application to the law officer.

Seven days' notice of hearing.

VI. Seven days' notice, at least, of the time and place appointed for the hearing of any appeal, shall be given by the law officers' clerk unless special leave be given by the law officer that any shorter notice be given.

To whom notice of hearing is to be given.

VII. Such notice shall in all cases be given to the Comptroller and the appellant; and, when there has been an opposition before the Comptroller, to the opponent or opponents; and, when the Comptroller has refused to seal a patent on the ground that an application for a patent for the same invention is pending, to the prior applicant.

Evidence.

VIII. The evidence used on appeal to the law officer shall be the same as that used at the hearing before the Comptroller; and no further evidence shall be given, save as to matters which have occurred or come to the knowledge of either party, after the date of the decision appealed against, except with the leave of the law officer upon application for that purpose.

Cross-examination.

IX. The law officer shall, at the request of either party, order the attendance at the hearing on appeal, for the purpose of being cross-examined, of any person, who has made a declaration, in the matter to which the appeal relates, unless in the opinion of the law officer there is good ground for not making such order.

Conduct-money.

X. Any person requiring the attendance of a witness for cross-examination shall tender to the witness whose attendance is required a reasonable sum for conduct-money.

Amount of costs to be fixed.

XI. Where the law officer orders that costs shall be paid by any party to another he may fix the amount of such costs, and if he shall not think fit to fix the amount thereof, he shall direct by whom and in what manner the amount of such costs shall be ascertained.

Order for payment of costs.

XII. If any costs so ordered to be paid be not paid within fourteen days after the amount thereof has been so fixed or ascertained, or such shorter period as shall be directed by the law officer, the party to whom such costs are to be paid may apply to the law officer for an order for payment under the provisions of section 38 of the Act.

Documentary evidence.

XIII. All documentary evidence required, or allowed by the law officer to be filed, shall be subject to the same regulations, in all respects, as apply to the procedure before the Comptroller, and shall be filed in the Patent Office, unless the law officer shall order to the contrary.

Sending notices or documents to law officers' clerk.

XIV. Any notice or other document required to be given to the law officers' clerk, under these Rules, may be sent by a prepaid letter through the post.

HENRY JAMES, A.-G.
FARRER HERSCHELL, S.-G.

PATENT CASES BEFORE THE JUDICIAL COMMITTEE.

NOTE.—*The following Rules must be considered as repealed in so far as they are at variance with the Privy Council Rules*, 1898. (*a*)

Rules to be observed in Proceedings before the Right Honourable the Lords of the Judicial Committee of the Privy Council under the Act of the 5th and 6th William IV., intituled "An Act to amend the Law touching Letters Patent for Inventions," cap. 83.

RULE I.

Advertisement of intention to apply by petition.

A party intending to apply by petition, under section 2 of the said Act, shall give public notice by advertising in the *London Gazette* three times, and in three London papers, and three times in some country paper published in the town where or near to which he carries on any manufacture of anything made according to his specification, or near to or in which he resides, in case he carries on no such manufacture, or published in the county where he carries on such manufacture, or where he lives, in case there shall not be any paper published in such town, that he intends to petition his Majesty under the said section, and shall in such advertisements state the object of such petition, and give notice of the day on which he intends to apply for a time to be fixed for hearing the matter of his petition (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*), and that on or before such day, notice must be given of any opposition intended to be made to the petition ; and any person intending to oppose the said application shall lodge notice to that effect at the Council Office, on or before such day so named in the said advertisements, and having lodged such notice shall be entitled to have from the petitioner four weeks' notice of the time appointed for the hearing.

RULE II.

Advertisements to give notice of day

A party intending to apply by petition, under section 4 of the said Act, shall, in the advertisements directed to be published by

(*a*) p. 328 *post*.

on which party intends to apply for time to be fixed for hearing.

the said section, give notice of the day on which he intends to apply for a time to be fixed for hearing the matter of his petition (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*), and that on or before such day *caveats* must be entered; and any person intending to enter a *caveat* shall enter the same at the Council Office, on or before such day so named in the said advertisements; and having entered such *caveat*, shall be entitled to have from the petitioner four weeks' notice of the time appointed for the hearing.

Rule III.

Petitions to be presented within one week from the last of the advertisements.

Petitions under sections 2 and 4 of the said Act must be presented within one week from the insertion of the last of the advertisements required to be published in the *London Gazette*.

Rule IV.

Affidavits of advertisements.

All petitions must be accompanied with affidavits of advertisements having been inserted according to the provisions of section 4 of the said Act, and the first and second of these Rules and the matters in such affidavits may be disputed by the parties opposing upon the hearing of the petitioner.

Rule V.

Who is to be served with copies of petitions.

All persons entering *caveats* under section 4 of the said Act, and all parties to any former suit or action touching letters patent in respect of which petitions shall have been presented under section 2 of the said Act, and all persons lodging notices of opposition under the first of these Rules, shall respectively be entitled to be served with copies of petitions presented under the same sections, and no application to fix a time for hearing shall be made without affidavit of such service.

Rule VI.

Notice of grounds of objections.

All parties served with petitions shall lodge at the Council Office, within a fortnight after such service, notice of the grounds of their objections to the granting of the prayers of such petitions.

Rule VII.

Copies of all papers lodged.

Parties may have copies of all papers lodged in respect of any application under the said Act, at their own expense.

Rule VIII.

Taxation of costs.

The Registrar of the Privy Council, or other officer to whom it

may be referred to tax the costs incurred in the matter of any petition presented under the said Act, shall allow or disallow in his discretion all payments made to persons of science or skill examined as witnesses to matters of opinion chiefly.

Rule IX.

Papers to be lodged at the council office.

A party applying for an extension of a patent, under section 4 of the said Act, must lodge at the Council Office six printed copies of the specification, and also four 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. In the event of the applicant's specification not having been printed, and if the expense of making six copies of any drawing therein contained or referred to would be considerable, the lodging of two copies only of such specification and drawing will be deemed sufficient.

All copies mentioned in this Rule must be lodged not less than one week before the day fixed for hearing the application.

Attorney-General or other counsel on behalf of the Crown.

The Judicial Committee will hear the Attorney-General, or other counsel, on behalf of the Crown, against granting any application made under either the 2nd or 4th section of the said Act, in case it shall be thought fit to oppose the same on such behalf.

PRIVY COUNCIL RULES, 1898.

ORDER IN COUNCIL.

WHEREAS by the 25th section of an Act of Parliament passed in the 46th and 47th years of her Majesty's reign, intituled "The Patents, Designs, and Trade Marks Act, 1883," it is amongst other things enacted that a patentee may, after advertising in manner directed by any rules made under the said 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; that 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 that it shall be lawful for her Majesty in Council to make from time to time rules of procedure and practice for regulating the 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:

And whereas her Majesty in Council has deemed it expedient to make rules for regulating proceedings in such petitions:

Her Majesty is therefore pleased by and with the advice of her Privy Council to approve of the several rules and regulations contained in the Schedule hereunto annexed, and to order as it is hereby ordered that on and after January 1, 1898, the same be respectfully observed.

Whereof all persons whom it may concern are to take notice and govern themselves accordingly.

C. L. PEEL.

THE SCHEDULE ABOVE REFERRED TO.

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.

I.

Advertisement of intention to apply by petition.

A party intending to apply by petition under section 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 fifteen 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 fifteen 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 fifty 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.

II.

Petition to be presented within one week of last advertisement, and accompanied with affidavit of advertisement.

A petition under section 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 first of these Rules. The statements contained in such affidavit or affidavits may be disputed upon the hearing.

Petitioner to apply to fix a time for hearing and to advertise the same.

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.

III.

Papers to be lodged at the council office.

A party presenting a petition under section 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.

IV.

Caveat. 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.

Service of petition. 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.

Grounds of objections to be lodged at council office. 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.

V.

Copies of papers lodged. Parties shall be entitled to have copies of all papers lodged in respect of any petition under section 25 of the Act at their own expense.

How petitions, &c., are to be printed. 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.

VI.

Taxation of costs. Costs incurred in the matter of any petition under section 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.

VII.

Non-compliance with these rules.

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 section 25 of the Act as they shall consider to be just and expedient.

VIII.

Attorney-General or other counsel on behalf of the Crown.

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 section 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.

PRIVY COUNCIL RULES, 1903.

ORDER IN COUNCIL.

The 16th day of February, 1903.

WHEREAS by the third section of an Act of Parliament passed in the second year of his Majesty's reign intituled "The Patents Act, 1902," it is amongst other things enacted that any person interested may present a petition to the Board of Trade alleging that the reasonable requirements of the public with respect to a patented invention have not been satisfied, and praying for the grant of a compulsory licence, or, in the alternative for the revocation of the patent; that the Board of Trade shall in the circumstances set out in this section refer the petition to the Judicial Committee of the Privy Council; and that his Majesty in Council may make rules of procedure and practice for regulating proceedings before the Judicial Committee under this section, and subject thereto such proceedings shall be regulated according to the existing procedure and practice in patent matters:

And whereas his Majesty in Council has deemed it expedient to make rules regulating proceedings in such petitions before the Judicial Committee.

His Majesty is therefore pleased, by and with the advice of his Privy Council, to approve of the several rules and regulations contained in the Schedule hereunto annexed, and to order, as it is hereby ordered, that on and after the making of this Order the same be respectively observed.

A. W. FITZROY.

THE SCHEDULE ABOVE REFERRED TO.

Rules to be observed in Proceedings before the Judicial Committee of the Privy Council under the Patents Act, 1902, *section* 3.

I.

Application to fix a time for hearing.

On receiving written notice from the Board of Trade that a petition has been referred to the Judicial Committee of the Privy Council, the petitioner shall, after satisfying the requirements of

Rules II. and IV., apply to the Judicial Committee to fix a time for hearing the petition.

II.

Notice of application for hearing.

(*a*) No application to fix a time for hearing the petition shall be made unless the petitioner shall have previously given notice to the patentee, to the opponents, and to any other person claiming an interest in the patent as exclusive licensee or otherwise, that the petition has been referred to the Judicial Committee, that it is his intention to apply to the Judicial Committee on a specified day, which day shall be not less than four weeks from the date when the notice is served or sent, to fix a time for hearing the petition, and that any person desiring to be heard before the Judicial Committee at the time so fixed must enter a *caveat* at the Council Office on or before the day so specified.

(*b*) The said notice shall be served in the usual way, but where the person to be served resides or has his principal place of business outside the United Kingdom, it may be sent to him by post in a registered envelope.

III.

Caveat.

(*a*) Any person claiming an interest in the patent as exclusive licensee or otherwise, whether he has received the notice prescribed by Rule II. or not, shall, if he desires to be heard before the Judicial Committee, enter a *caveat* at the Council Office on or before the day specified by such notice, provided always that, if he has not received the said notice, or if he resides or has his principal place of business outside the United Kingdom, he may apply to the Judicial Committee to extend the time for entering his *caveat* on the ground that the time limited by such notice is insufficient.

(*b*) Every *caveat* shall specify the *caveator's* address for service, which address shall be within four miles of the Council Office.

IV.

Documents to accompany application for hearing.

An application to the Judicial Committee to fix a time for the hearing of the petition shall be accompanied by eight printed copies of the specification, and by an affidavit of the petitioner showing the persons to whom, and the manner in which, the notice prescribed by Rule II. has been given.

V.

Time for hearing not to be less than four

The time for hearing a petition shall be fixed by an Order of the Judicial Committee, and shall be not less than four weeks from

weeks from application for fixing the same.

the day on which the application for fixing the same is made. The petitioner shall, immediately after the issue of such Order, give public notice thereof by advertising the same once at least in the *London Gazette* and in the *Times*, and in such other newspaper or newspapers (if any) as the Judicial Committee may direct. After completing such advertisements, the petitioner shall forthwith lodge an affidavit thereof at the Council Office.

VI.

Statements in affidavits may be disputed upon hearing.

The statements contained in the affidavits required by Rules IV. and V. may be disputed upon the hearing.

VII.

Caveators required to serve notice of objections on petitioner.

The petitioner shall be entitled to be served by the *caveators*, not less than three weeks before the day of hearing, with notice of the grounds of their respective objections, if such grounds are different from or additional to those taken by them in the proceedings before the Board of Trade. Copies of all objections, or additional objections, so served as aforesaid, shall be lodged at the Council Office not less than fourteen days before the day fixed for the hearing.

VIII.

Form of petitions and other documents, &c.

(*a*) All petitions and other documents lodged at the Council Office shall (unless the Judicial Committee otherwise direct) be printed in the form prescribed by the Patents Rules of the Board of Trade which are in force for the time being, and the parties shall furnish as many copies of the documents lodged by them as shall be required by the Judicial Committee.

(*b*) Parties shall be entitled to have copies of all papers lodged in respect of the petition at their own expense.

IX.

Solicitors and agents.

No solicitor or agent shall be entitled to conduct proceedings under this Act before the Judicial Committee unless he is a solicitor or agent admitted to practice before the Privy Council in accordance with her late Majesty's Order in Council of the 6th March, 1896. Such solicitor or agent shall be allowed the same fees, and the same Council Office fees shall be chargeable in respect of proceedings under this Act, as are prescribed by the general Rules applicable to proceedings before the Judicial Committee.

X.

Applications to the Judicial Committee to fix a time for hearing the petition and on other matters of procedure shall be addressed in the first instance to the Registrar of the Privy Council, who shall take their Lordships' instructions thereon and communicate the same to the parties. In cases of doubt the Registrar may, or, if so requested by any of the parties, he shall, enter the application for hearing before their Lordships' Board.

Applications for hearing to be addressed to Registrar of Privy Council.

XI.

The Judicial Committee may excuse the parties from compliance with any of the requirements of these Rules, and may give such directions in matters of procedure and practice and otherwise as they shall consider to be just and expedient.

Power to excuse compliance with rules.

XII.

(*a*) Any affidavits, statutory declarations or other documentary evidence which may have been furnished to the Board of Trade, or any copies thereof which may be referred by the Board to the Judicial Committee, may be received in evidence in proceedings under this Act before the Judicial Committee, subject to such cross-examination of any of the deponents as may be permitted by the Judicial Committee. The Judicial Committee may require the production of any original documents, copies of which are tendered in evidence under this Rule.

(*b*) The parties may tender before the Judicial Committee such further documentary or other evidence as they may be advised.

Evidence.

XIII.

The Judicial Committee may refer any matters in connection with proceedings under this Act to be examined and reported on in the same manner as matters may be referred by them under section 17 of the Act 3 & 4 Will. IV. c. 41 (Judicial Committee Act, 1833).

Reference of matters to be examined and reported on.

XIV.

The Judicial Committee will hear the Attorney-General or other counsel on behalf of the Crown on the question of granting the prayer of any petition. Counsel on behalf of the Crown 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 committee.

Attorney-General or other counsel on behalf of the Crown.

XV.

Costs. Costs incurred in the matter of any petition under this Act shall be taxed by the Registrar of the Privy Council, or other officer deputed by the Judicial Committee to tax the same, 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.

REGISTER OF PATENT AGENTS RULES, 1889.

For the purpose of giving effect to the provisions of the Patents, Designs, and Trade Marks Act, 1888, relating to the registration of patent agents, the Board of Trade, by virtue of the provisions of the said Act, hereby make the following Rules :—

Register to be kept.

1. A Register shall be kept by the Institute of Patent Agents, subject to the provisions of these Rules and to the orders of the Board of Trade, for the registration of patent agents in pursuance of the Act.

Contents of Register.

2. The Register shall contain in one list all patent agents who are registered under the Act and these Rules.

Such list shall be made out alphabetically, according to the surnames of the registered person, and shall also contain the full name of each registered person, with his address, the date of registration, and a mention of any honours, memberships, or other additions to the name of the registered person which the Council of the Institute may consider worthy of mention in the Register. The Register shall be in the Form 1 in Appendix A., (*a*) with such variations as may be required.

Printed copies to be published annually, and to be evidence of contents of Register.

3. The Institute shall cause a correct copy of the Register to be, once every year, printed, under their direction, and published and placed on sale. Such correct copy shall, in the year 1889, be printed and published at as early a date as is possible, and in every year subsequent to the year 1889, shall be printed and published on the 31st day of January. A copy of the Register for the time being purporting to be so printed and published shall be admissible as evidence of all matters stated therein, and the absence of the name of any person from the Register shall be evidence, until the contrary is made to appear, that such person is not registered in pursuance of the Act.

Registrar.

4. The Institute shall appoint a Registrar, who shall keep the Register in accordance with the provisions of the Act, and these Rules, and, subject thereto, shall act under the directions of the Institute, and the Board of Trade.

(*a*) p. 376 *post*.

Registration of persons who were patent agents prior to the passing of this Act.

5. A person who is desirous of being registered in pursuance of the Act, on the ground that prior to the passing of the Act he had been *bonâ fide* practising as a patent agent, shall produce or transmit to the Board of Trade a statutory declaration in the Form 2 in Appendix A.; (*b*) provided that the Board of Trade may, in any case in which they shall think fit, require further or other proof that the person had prior to the passing of the Act been *bonâ fide* practising as a patent agent. Upon the receipt of such statutory declaration or of such further or other proof to their satisfaction as the case may be, the Board of Trade shall transmit to the Registrar a certificate that the person therein named is entitled to be registered in pursuance of the Act, and the Registrar shall on the receipt of such certificate cause the name of such person to be entered in the Register.

Final qualifying examination for registration.

6. Subject to the provisions of the Act in favour of every person who proves to the satisfaction of the Board of Trade that prior to the passing of the Act he had been *bonâ fide* practising as a patent agent, no person shall be entitled to be registered as a patent agent, unless he has passed, and produces or transmits to the Registrar a certificate under the seal of the Institute that he has passed, such final examination as to his knowledge of patent law and practice and of the duties of a patent agent as the Institute shall from time to time prescribe.

Exemption of pupils and assistants from preliminary examination.

7. Any person who has been for at least seven consecutive years continuously engaged as a pupil or assistant to one or more registered patent agents, and any person for the time being entitled to practise as a Solicitor of the Supreme Court of Judicature in England or Ireland, or as a law agent before the Court of Session in Scotland, shall be entitled to be registered without passing any examination other than the final examination provided for in the last preceding Rule. The Registrar shall before registering the name of any such person as a patent agent (in addition to the final examination certificate) require proof satisfactory to the Registrar that such person has been for at least seven consecutive years continuously engaged as such pupil or assistant, or is entitled to practise as such Solicitor or Law Agent.

Qualifications of persons generally for registration.

8. Any person who is not qualified under Rule 7 must, in order to be entitled to present himself for the final qualifying examination, be—

A person who has passed one of the preliminary examinations mentioned in Appendix B., (*c*) or such other examination as the Institute shall, with the approval of the Board of Trade, by regulation prescribe.

(*b*) p. 376 *post.* (*c*) p. 377 *post.*

Final qualifying examinations to be held by the Institute.

9. The Institute shall hold at least once in the year, commencing with the first day of July, 1889, and in every other succeeding year, a final qualifying examination, which shall be the final qualifying examination required under Rules 6 and 7; and the Institute shall, subject to these Rules, have the entire management and control of all such examinations, and may from time to time make regulations with respect to all or any of the following matters, that is to say—

(*a*) The subjects for and the mode of conducting the examination of candidates;

(*b*) The times and places of the examinations, and the notices to be given of examinations;

(*c*) The certificates to be given to persons of their having passed the examinations;

(*d*) The appointment and removal of examiners, and the remuneration, by fees or otherwise, of the examiners so appointed; and

(*e*) Any other matter or thing as to which the Institute may think it necessary to make regulations for the purpose of carrying out this Rule.

Corrections of names and addresses in Register.

10. The Registrar shall from time to time insert in the Register any alteration which may come to his knowledge in the name or address of any person registered.

Erasure of names of deceased persons.

11. The Registrar shall erase from the Register the name of any registered person who is dead.

Erasure of names of persons who have ceased to practise.

12. The Registrar may erase from the Register the name of any registered person who has ceased to practise as a patent agent, but not (save as hereinafter provided) without the consent of that person. For the purposes of this Rule the Registrar may send by post to a registered person to his registered address a notice inquiring whether or not he has ceased to practise or has changed his residence, and if the Registrar does not within three months after sending the notice receive an answer thereto from the said person, he may, within fourteen days after the expiration of the three months, send him by post to his registered address another notice referring to the first notice, and stating that no answer has been received by the Registrar; and if the Registrar either before the second notice is sent receives the first notice back from the dead letter office of the Postmaster-General, or receives the second notice back from that office, or does not within three months after sending the second notice receive any answer thereto from the said person, that person shall, for the purposes of this Rule, be deemed to have ceased to practise, and his name may be erased accordingly.

Erasure of names for non-payment of fees.

13. If any registered person shall not, within one month from the day on which his annual registration fee becomes payable, pay such

fee, the Registrar may send to such registered person to his registered address a notice requiring him, on or before a day to be named in the notice, to pay his annual registration fee; and if such registered patent agent shall not within one month from the day named in such notice pay the registration fee so due from him, the Registrar may erase his name from the Register: provided that the name of a person erased from the Register under this Rule may be restored to the Register by direction of the Institute or the Board of Trade on payment by such person of the fee or fees due from him, together with such further sum of money, not exceeding in amount the annual registration fee, as the Institute or the Board of Trade (as the case may be) may in each particular case direct.

Registrar to act on evidence.

14. In the execution of his duties the Registrar shall, subject to these Rules, in each case act on such evidence as appears to him sufficient.

Erasure of incorrect or fraudulent entries.

15. The Board of Trade may order the Registrar to erase from the Register any entry therein which is proved to their satisfaction to have been incorrectly or fraudulently inserted.

Erasure of names of persons convicted of crimes, and persons found guilty of disgraceful conduct.

16. If any registered person shall be convicted in her Majesty's dominions or elsewhere of an offence which, if committed in England, would be a felony or misdemeanour, or after due inquiry is proved to the satisfaction of the Board of Trade to have been guilty of disgraceful professional conduct, or having been entitled to practise as a Solicitor or Law Agent shall have ceased to be so entitled, the Board of Trade may order the Registrar to erase from the Register the name of such person. Provided that no person shall be adjudged by the Board of Trade to have been guilty of disgraceful professional conduct unless such person has received notice of, and had an opportunity of defending himself from, any charge brought against him.

Restoration of erased name.

17. (1) Where the Board of Trade direct the erasure from the Register of a name of any person, or of any other entry, the name of the person or the entry shall not be again entered in the Register, except by order of the Board of Trade.

(2) The Board of Trade may in any case in which they think fit restore to the Register any name or entry erased therefrom either without fee, or on payment of such fee, not exceeding the registration fee as the Board of Trade may from time to time fix, and the Registrar shall restore the name accordingly.

(3) The name of any person erased from the Register at the request or with the consent of such person shall, unless it might, if not so erased, have been erased by order of the Board of Trade, be restored to the Register by the Registrar on his application and on payment of such fee, not exceeding the registration fee, as the Institute shall from time to time fix.

Inquiry by Board of Trade before erasure of name from Register.

18. For the purpose of exercising in any case the powers of erasing from and of restoring to the Registrar the name of a person, or an entry, the Board of Trade may appoint a committee consisting of such persons as they shall think fit. Every application to the Board of Trade for the erasure from, or restoration to, the Registrar of the name of any patent agent shall be referred for hearing and inquiry to the committee, who shall report thereon to the Board of Trade, and a report of the committee shall be conclusive as to the facts for the purpose of the exercise of the said powers by the Board of Trade.

Appeal to Board of Trade.

19. Any person aggrieved by any order, direction, or refusal of the Institute or Registrar may appeal to the Board of Trade.

Notice of appeal.

20. A person who intends to appeal to the Board of Trade under these Rules (in these Rules referred to as the appellant) shall, within fourteen days from the date of the making or giving of the order, direction, or refusal complained of, leave at the office of the Institute a notice in writing signed by him of such his intention.

Case on appeal.

21. The notice of intention to appeal shall be accompanied by a statement in writing of the grounds of the appeal, and of the case of the appellant in support thereof.

Transmission of notice of appeal to Board of Trade.

22. The appellant shall also immediately after leaving his notice of appeal at the Institute send by post a copy thereof with a copy of the appellant's case in support thereof addressed to the Secretary of the Board of Trade, 7, Whitehall Gardens, London.

Directions as to hearing of appeal.

23. The Board of Trade may thereupon give such directions (if any) as they may think fit for the purpose of the hearing of the appeal.

Notice of hearing of appeal.

24. Seven days' notice, or such shorter notice as the Board of Trade may in any particular case direct, of the time and place appointed for the hearing of the appeal shall be given to the appellant and the Institute and the Registrar.

Hearing and decision of appeal.

25. The appeal may be heard by the President, a Secretary, or an Assistant Secretary of the Board of Trade, and the decision and order thereon of the President, Secretary, or Assistant Secretary, as the case may be, shall be the decision of the Board of Trade on such appeal. On the appeal such decision may be given or order made in reference to the subject-matter of the appeal as the case may require.

Fees.

26. The fees set forth in Appendix C. (*d*) to these Rules shall be paid in respect of the several matters, and at the times and in the manner therein mentioned. The Board of Trade may from time to time, by orders signed by the Secretary of the Board of Trade, alter any of, or add to, the fees payable under these Rules.

(*d*) p. 448 *post*.

Alteration of regulations.

27. Any regulation made by the Institute under these Rules may be altered or revoked by a subsequent regulation. Copies of all regulations made by the Institute under these Rules shall, within twenty-eight days of the date of their being made, be transmitted to the Board of Trade, and if within twenty-eight days after a copy of any regulation has been so transmitted, the Board of Trade by an order signify their disapproval thereof, such regulation shall be of no force or effect; and if, after any regulation under these Rules has come into force, the Board of Trade signify in manner aforesaid their disapproval thereof, such regulation shall immediately cease to be of any force or effect.

Report to Board of Trade.

28. The Institute shall once every year in the month of December transmit to the Board of Trade a Report stating the number of applications for registrations which have been made in the preceding year, the nature and results of the final examinations which have been held, and the amount of fees received by the Institute under these Rules, and such other matters in relation to the provisions of these Rules, as the Board of Trade may from time to time, by notice signed by the Secretary of the Board of Trade and addressed to the Institute, require.

Definitions.

29. In these Rules, unless the context otherwise requires—

"The Act" means the Patents, Designs, and Trade Marks Act, 1888.

"The Institute" means the Institute of Patent Agents, acting through the Council for the time being.

"The Registrar" means the Registrar appointed under these Rules.

"Registered patent agent" means any agent for obtaining patents in the United Kingdom whose name is registered under the Act and these Rules.

Commencement.

30. These Rules shall commence and come into operation on the 12th day of June, 1889, but at any time after the making thereof any appointment or regulations may be made and things done for the purpose of bringing these Rules into operation on the said day.

Title.

31. These Rules may be cited as the Register of Patent Agents Rules, 1889.

By the Board of Trade,

COURTENAY BOYLE,

Assistant Secretary, Railway Department.

The 11th day of June, 1889.

REGISTER OF PATENT AGENTS RULES, 1891.

WHEREAS by the Register of Patent Agents Rules, 1889, it is provided, amongst other things, that the Register of Patent Agents established by the said Rules shall be kept, and certain duties in reference thereto and to the examination and registration of and otherwise in relation to patent agents shall be performed, by the Institute of Patent Agents referred to in the said Rules :

And whereas the said Institute of Patent Agents has been dissolved and ceased to exist, and in place thereof the Chartered Institute of Patent Agents has, by Royal Charter dated the 11th day of August, 1891, been incorporated :

Now, therefore, for the purpose of giving effect to the provisions of the Patents, Designs, and Trade Marks Act, 1888, relating to the registration of patent agents, the Board of Trade, by virtue of the provisions of the said Act, hereby make the following Rules :—

Transfer of powers and duties of Institute of Patent Agents to Chartered Institute.

1. From and after the commencement of these Rules all the duties and powers of the Institute of Patent Agents under the Register of Patent Agents Rules, 1889 (hereafter in the present Rules referred to as "the Rules of 1889"), shall be transferred to and vested in the Chartered Institute of Patent Agents, and the Rules of 1889 shall, where applicable, and save so far as they are altered by the present Rules, have effect, with the following modifications :—

(1) For the words "The Institute of Patent Agents" there shall be substituted the words "The Chartered Institute of Patent Agents."

(2) The Registrar shall be the person who, for the purposes of the duties of the Registrar under the Rules of 1889 and the present Rules, shall be continued in office or appointed by the Chartered Institute of Patent Agents.

Saving rights, privileges, acts, appointments, and regulations under Rules of 1889.

2. Nothing contained in the present Rules shall affect any right, privilege, obligation, or liability acquired, accrued, or incurred, any act done, or appointment or regulation made under the Rules of 1889; and any regulation made by the Institute of Patent Agents under the Rules of 1889 prior to the commencement of the present Rules shall be subject to alteration and revocation by subsequent

regulations to be made by the Chartered Institute of Patent Agents under Rule 27 of the Rules of 1889, as amended by the present Rules.

Publication of register.

3. So much of Rule 3 of the Rules of 1889 as provides that the correct copy of the Register therein referred to shall be printed and published in every year subsequent to the year 1889 on the 31st day of January is hereby annulled, and instead thereof the following Rule shall have effect :—

> In the month of February in each year, and at such other times as the Chartered Institute of Patent Agents may think desirable, the said Chartered Institute shall cause a correct copy of the register to be printed under their direction, and placed on sale.

Alteration of Appendix B.

4. Instead of Appendix B. to the Rules of 1889 there shall be substituted the Appendix to the present Rules, which may be cited as Appendix B.

Commencement and citation.

5. The present Rules shall commence and come into operation on the 19th day of November, 1891, and, together with the Rules of 1889, may be cited as the Register of Patent Agents Rules, 1889 to 1891.

By the Board of Trade,
COURTENAY BOYLE,
Assistant Secretary.

Dated the 18th day of November, 1891.

FORMS. (a)

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

Form A.

(To be accompanied by two copies of Form B or of Form C.)

PATENT.

APPLICATION FOR PATENT.

(a)_____

_____

_____

_____

_____

_____do hereby

(a) Here insert (*in full*) name, address, and calling of applicant or applicants.

declare that_____in possession of an invention the title of which

is (b)_____

_____

_____

(b) Here insert title of invention.

that (c)_____

claim to be the true and first inventor_____thereof; and that the same is not in use by any other person or persons to the best of_____knowledge and belief; and_____humbly pray that a

(c) In the case of more than one applicant, state whether all, or if not, who is or are the inventor or inventors.

Patent may be granted to_____for the said invention.

Dated_____day of_____19____

(d) _____

_____

_____

_____

(d) To be signed by applicant or applicants.
In the case of a Firm, each member of the Firm must sign.

NOTE.—One of the two forms on the back hereof or a separate authorisation of agent should be signed by the applicant or applicants.

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

(a) The following forms A to W are contained in the second Schedule to the Patent Rules, 1903.

(1) *Where application is made through an Agent* (*Rule* 81).

_____

_____hereby appoint_____

of_____

to act as _____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_____19____

* To be signed by applicant or applicants.

*_____

_____

_____

_____

(2) *Where application is made without an Agent* (*Rule* 7).

_____

_____hereby request that all notices, requisitions, and communications in respect of the within application may be sent to

_____at_____

_____day of_____19____

† To be signed by applicant or applicants.

†_____

_____

_____

_____

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

PATENT.

Form A1.

(To be accompanied by two copies of Form B or of Form C.)

APPLICATION FOR PATENT FOR INVENTIONS COMMUNICATED FROM ABROAD.

I (*a*)_____ (*a*) Here insert (*in full*) name, address, and calling of applicant.

of_____ in the

county of_____ do hereby declare that I

am in possession of an invention the title of which is (*b*)_____ (*b*) Here insert title of invention.

which invention has been communicated to me by (*c*)_____ (*c*) Here insert name, address, and calling of communicator.

that I claim to be the true and first inventor thereof; and that the same is not in use within the United Kingdom of Great Britain and Ireland and the Isle of Man 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.

Dated_____ day of _____ 19_____

(*d*)_____ (d) To be signed by applicant or applicants.

NOTE.—One of the two forms on the back hereof or a separate authorisation of agent should be signed by the applicant or applicants.

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

(1) *Where application is made through an Agent* (*Rule* 81).

_____

_____hereby appoint_____

of_____

to act as_____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_____19____

* To be signed by applicant or applicants.

*_____

_____

_____

_____

_____

(2) *Where application is made without an Agent* (*Rule* 7).

_____

_____hereby request that all notices, requisitions, and communications in respect of the within application may be sent to_____

_____

_____at_____

_____

_____day of_____19____

† To be signed by applicant or applicants.

†_____

_____

_____

_____

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

Form A2.

(To be accompanied by two copies of Form C.)

PATENT.

APPLICATION FOR PATENT UNDER INTERNATIONAL AND COLONIAL ARRANGEMENTS.

(*a*)

(*a*) Here insert (*in full*) name, address, and calling of applicant, or of each of the applicants.

do hereby declare that I (or we) have made applications for protection of my (or our) invention of (*b*)

(*b*) Here insert title of invention.

in the following Foreign States and on the following official dates, viz.: (*c*)

(*c*) Here insert the name of each Foreign State, followed by the official date of the application in each respectively.

and in the following British Possessions and on the following official dates, viz.: (*d*)

(*d*) Here insert the name of each British Possession, followed by the official date of the application in each respectively.

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 (*e*)

(*e*) Here insert the official date of the earliest foreign application.

to the best of knowledge, information, and belief, and humbly pray that a patent may be granted to for the said invention in priority to other applicants, and that such patent shall have the date (*f*)

(*f*) Here insert the official date of the earliest foreign application.

(*g*)_____

_____

_____

(*g*) Signature of applicant or of each of applicants.

NOTE.—One of the two forms at the back hereof, (*b*) or a separate authorisation of agent, should be signed by the applicant or applicants.

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

(*b*) These forms will be found on the back of Form A2, as issued by the Patent Office.

To be issued with Form A or A1.

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

Form B.

PROVISIONAL SPECIFICATION.

(To be furnished in Duplicate.)

(a) Here insert title verbally agreeing with that in the application form.

(a)_____

(b) Here insert (*in full*) name, address, and calling of applicant or applicants as in application form.

(b)_____

(c) Here begin description of the nature of the invention. The continuation of the specification should be upon wide-ruled paper of the same size, on one side only, with a margin of two inches on the left hand of the paper. The specification and the duplicate thereof must be dated (thus): "Dated this day of , 19 , and signed at the end.

do hereby declare the nature of this invention to be a follows:—(c)

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

Where provisional specification has been left, quote No. and date.

No._____

Date_____

PATENT.

Form C.

COMPLETE SPECIFICATION.

(To be furnished in Duplicate—one unstamped.)

(a)_____

(a) Here insert title verbally agreeing with that in the application form.

(b)_____

(b) Here insert (*in full*) name, address, and calling of applicant or applicants as in application form.

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 :

(c)

(c) Here begin full description of invention. The continuation of the specification should be upon wide-ruled paper of the same size, on one side only, with a margin of at least one inch and a half on the left hand of the paper. The completion of the description should be followed by the words : "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 :" After which should be written the claim or claims numbered consecutively. In the preparation of the claim or claims careful attention should be paid to the terms of Rule 4 of the Patent Rules, 1905. Any unnecessary multiplicity of claims or prolixity of language should be avoided. The specification and the duplicate thereof must be dated (thus) : "Dated this day of , 19 ," and signed at the end.

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

Form C[1].

POSTAL REQUEST FOR PRINTED SPECIFICATION.

To the Comptroller-General.

Please send one copy of Specification, No. _____ Year _____

to

(*Name in full*) _____

(*Address*) _____

PATENTS,
7½*d.*

The Comptroller-General,

The Patent Office,

25, *Southampton Buildings,*

London, W.C.

½*d.*

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

Form D.

PATENT.

FORM OF OPPOSITION TO GRANT OF PATENT.

[To be accompanied by an unstamped copy.]

*I_____ * Here state (in *full*) name and address.

_____

_____

_____

hereby give notice of my intention to oppose the grant of Letters Patent upon application No._____of_____, applied for by_____

_____

_____

_____

upon the ground †_____ † Here state upon which of the grounds of opposition permitted by section 11 of the Act of 1883, as amended by section 4 of the Act of 1888, the grant is opposed.

_____

_____

_____

_____

_____

_____

_____

_____

(Signed) ‡_____ ‡ To be signed by opponent.

My address for service in the United Kingdom is :—

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENT.

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

Form E.

FORM OF NOTICE THAT HEARING BEFORE THE COMPTROLLER WILL BE ATTENDED.

OPPOSITIONS TO THE GRANT OF PATENTS OR TO AMENDMENTS.

SIR,

(a) Here insert address.

_____ of (a) _____

_____

hereby give notice that the hearing in reference to _____

_____ will be attended by myself or by some person on my behalf.

_____

Sir,

Your obedient Servant,

(Signed) _____

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 to 1902.

Form F.

PATENT.

FORM OF APPLICATION FOR AMENDMENT OF SPECIFICATION.

* _____

_____

_____

_____

_____

* Here state (*in full*) name and address of applicant or patentee.

seek leave to amend the specification of Letters Patent No. _____ of 19 , as shown in red ink in the certified copy of the original specification hereunto annexed.

† I declare that no action for infringement or proceeding for revocation of the Letters Patent in question is pending.

† These words are to be struck out when Letters Patent have not been sealed, or when, if Letters Patent have been sealed, the application is made in pursuance of an order of the Court or a Judge.

My reasons for making this amendment are as follows: ‡ _____

_____

_____

_____

_____

_____

‡ Here state reasons for seeking amendment; and where the applicant is not the patentee, state what interest he possesses in the Letters Patent.

(Signed) § _____

§ To be signed by applicant.

My address for service in the United Kingdom is:—

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

N.B.—No amendment is permissible that would make the invention substantially larger or substantially different (section 18 of the Act of 1883); nor, so long as any action for infringement or proceeding for revocation of a patent is pending, may the application be made except by leave of the Court or a Judge under section 19 of the Act of 1883. If the application is made by such leave, this should be stated, and an office copy of the Order of the Court or Judge should accompany the application.

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

Form G.

PATENT.

FORM OF OPPOSITION TO AMENDMENT OF SPECIFICATION.

[To be accompanied by an unstamped copy.]

* Here state (*in full*) name and address of opponent.

*_____

_____

_____

_____

_____

hereby give notice of objection to the proposed amendment of the specification of Letters Patent No. _____ of 1 _____ for the following reason :†_____

† Here state reason of opposition.

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

(Signed)_____

My address for service in the United Kingdom is :—

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS ACT, 1902.

Form H.

PATENT.

FORM OF APPLICATION FOR GRANT OF COMPULSORY LICENCE OR REVOCATION OF PATENT.

[*To be accompanied by an unstamped copy.*]

*_____

_____

* Here state (*in full*) name and address of applicant.

_____

hereby request you to bring to the notice of the Board of Trade the accompanying petition for the grant of a licence to me by †

† Here state name and address of patentee, and number and date of his Patent.

_____

_____

_____

_____

_____

(Signed)_____

NOTE.—The petition must clearly set forth the facts of the case and be accompanied by an examined copy thereof. *See* Form H1.

To the Comptroller,

The Patent Office, 25, Southampton Buildings,

Chancery Lane, London, W.C.

PATENTS ACT, 1902.

Form H1.

FORM OF PETITION FOR GRANT OF COMPULSORY LICENCE OR REVOCATION OF PATENT.

To the LORDS of the COMMITTEE of PRIVY COUNCIL for TRADE.

(a) Here insert (*in full*) name, address, and calling.

THE PETITION of (*a*) of in the county of , being a person interested in the matter of this petition as hereinafter described :—

(b) Here insert title of invention.

SHEWETH as follows :—

(c) Here state fully the nature of petitioner's interest.

1. A patent dated No. was duly granted to for an invention of (*b*)

(d) Here state in detail the circumstances of the case under section 3 of the said Act, and show that it arises by reason of the default of the patentee, or as the case may be, of any other person claiming an interest in the Patent as exclusive licensee or otherwise to work his Patent or to manufacture the patented article in the United Kingdom to an adequate extent, or to grant licences on reasonable terms. The statement of the case should give the names and addresses of any persons who are alleged in the petition to have made default. The paragraphs should be numbered consecutively.

2. Tho nature of my interest in the matter of this petition is as follows :— (*c*)

3. (*d*)

(e) Here state what affidavits or statutory declarations together with any other documentary evidence will be left at the Patent Office with the petition, as required by Rule 70.

The evidence which I propose to leave at the Patent Office accompanying this petition is as follows :— (*e*)

Having regard to the circumstances above stated, the petitioner alleges that by reason of the aforesaid default the reasonable requirements of the public with respect to the invention patented as above stated have not been satisfied.

Your petitioner therefore prays that an order may be made granting to him a compulsory licence on the terms following, viz. :—(*f*)

or that the said patent may be revoked.

(Signed)_____

NOTE.—In pursuance of the requirements of Rule 70, the petitioner must deliver to the patentee and to any other person alleged to have made default, copies of the petition and of the affidavits or statutory declarations and other documentary evidence in support.

(*f*) Here state the terms as to the amount of royalties, security for payment, or otherwise, upon which the petitioner claims to be entitled to the relief in question.

PATENTS ACT, 1902.

Form I.

PATENT.

FORM OF OPPOSITION TO PETITION FOR GRANT OF COMPULSORY LICENCE OR REVOCATION OF PATENT.

(a)_____ (a) Here state (*in full*) name and address.

_____

_____

hereby give notice of opposition to the petition of _____

_____

_____

_____

for the grant of a compulsory Licence under Patent No. _____ of 1 ,

or the revocation of the said patent. The grounds upon which I oppose the said application are as follows, viz. :—(*b*)

(*b*) Here state fully the grounds of opposition.

(Signed)_____

NOTE.—In pursuance of the requirements of Rule 71, copies of the affidavits or statutory declarations in reply to the evidence left with the petition must be delivered to the petitioner.

To the Comptroller,

The Patent Office, 25, Southampton Buildings,

Chancery Lane, London, W.C.

[When stamped this Form must be sent at once to the Patent Office.]

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

Form J.

APPLICATION FOR CERTIFICATE OF PAYMENT OR RENEWAL.

_____hereby transmit the fee prescribed for the continuation in force of *_____Patent No._____, of 1_____for a further period of_____

* Here insert name of patentee.

Name †_____

† Here insert name and full address.

Address_____

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENT.

[This part of the Form to be filled in at the Patent Office.]

CERTIFICATE OF PAYMENT OR RENEWAL.

Letters Patent No._____of 1_____

_____ 1_____

This is to certify that_____did this_____day of_____19____, make the prescribed payment of £_____ in respect of a period of_____from_____and that by virtue of such payment the rights of the patentee remain in force.*

* See section 17 of the Patents, Designs, and Trade Marks Act, 1883.

Seal.

The Patent Office, London.

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 to 1902.

Form K.

PATENT.

FORM OF APPLICATION FOR ENLARGEMENT OF TIME FOR PAYMENT OF RENEWAL FEE.

SIR,

I HEREBY apply for an enlargement of time for_____month in which to make the_____payment of_____ upon my Patent, No._____of 1 .

The circumstances in which the payment was omitted are as follows:—(a)

(a) The circumstances must be stated in detail; see Rule 67.

I am,

Sir,

Your obedient Servant,

(b)_____

_____

_____

(b) Here insert full address to which receipt is to be sent.

To the Comptroller,

The Patent Office, 25, Southampton Buildings,

Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

Form L.

PATENT.

FORM OF REQUEST TO ENTER NAME UPON THE REGISTER OF PATENTS.

(a) *Or* We. Here insert (*in full*) name, address, and description.

I (*a*)_____

(b) *My or* our. (c) *Or* names.

hereby request that you will enter (*b*)_____name (*c*) in the Register of Patents :—

(d) *I or* We. (e) Here insert the nature of the claim, *e.g.*, *as Assignee.*

(*d*)_____claim to be entitled (*e*)_____

(*f*) Here give name and address of person to whom Patent was granted.

of the Patent No._____of 1 , granted to (*f*)_____

(*g*) Here insert title of the invention.

the title of which is (*g*)_____

(*h*) Here specify the particulars of such document, giving its date, and the parties to the same, and showing how the claim here made is substantiated.

by virtue of (*h*)_____

(*i*) Here insert the nature of the document.

And in proof whereof I transmit the accompanying (*i*)_____ with an attested copy thereof.

I am,

Sir,

Your obedient Servant,

To the Comptroller,

The Patent Office, 25, Southampton Buildings,

Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

PATENT.

Form M.

FORM OF REQUEST TO ENTER NOTIFICATION OF LICENCE OR OTHER DOCUMENT IN THE REGISTER OF PATENTS.

SIR,

I HEREBY transmit an attested copy of (a)_____

(a) Here insert a description of the nature of the document.

under Patent No._____of 1 , as well as the original document for verification, and I have to request that a notification thereof may be entered in the Register.

I am,

Sir,

Your obedient Servant,

(Signed)_____

(b)_____

(b) Here insert full address.

To the Comptroller,

The Patent Office, 25, Southampton Buildings,

Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

PATENT.

Form N.

APPLICATION FOR DUPLICATE OF PATENT.

Date

SIR,

I REGRET to have to inform you that the Patent dated *

* Here insert date, number, full name, and address of grantee.

No. granted to

for an invention the title of which is †

† Here insert title of invention.

has been ‡

‡ Here insert the word "destroyed" or "lost," as the case may be, and state, in full, the circumstances of the case, which must be verified by statutory declaration.

I beg therefore to apply for the issue of a duplicate of such Patent.§

§ Here state interest possessed by applicant in the Patent.

(Signature of Patentee.)

To the Comptroller,

The Patent Office, 25, Southampton Buildings,

Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

Form O.

PATENT.

NOTICE OF INTENDED EXHIBITION OF AN UNPATENTED INVENTION.

* Here state (*in full*) name and address of applicant.

* _____

_____

_____

hereby give notice of my intention to exhibit a _____

of _____ at the _____

_____

_____

Exhibition, which † _____ of _____ 19 , under the provisions of the Patents, Designs, and Trade Marks Acts, 1883 to 1902.

† State "opened" or "is to open."

‡ _____ herewith enclose a brief description of my invention

_____

_____

‡ This description of invention should be accompanied by drawings if necessary.

(Signed) _____

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENT.

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

Form P.

FORM OF REQUEST FOR CORRECTION OF CLERICAL ERROR.

SIR,

I HEREBY request that the following clerical error (*a*)_____

(*a*) or errors.

_____

in the (*b*)_____

(*b*) Here state whether in application, specification, or register.

No._____of 1____, may be corrected in the manner shown in red ink

in the certified copy of the original (*b*)_____

_____

hereunto annexed.

Signature_____

Full Address_____

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

Form Q.

PATENT.

CERTIFICATE OF COMPTROLLER-GENERAL.

The Patent Office,

London,

19 .

I, , Comptroller-General of Patents, Designs, and Trade Marks, hereby certify

To *

* Here insert (*in full*) name and address of person requiring the certificate.

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

Form R.

PATENT.

FORM OF NOTICE FOR ALTERATION OF AN ADDRESS IN REGISTER.

SIR,

(a) _____

(a) Here state (*in full*) name or names and address of applicant or applicants.

_____

_____

_____

_____

hereby request that_____address now upon the Register may be altered as follows :—

(b) _____

(b) Here insert full address.

_____

_____

Sir,

Your obedient Servant,

To the Comptroller,

The Patent Office, 25, Southampton Buildings,

Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

Form S.

PATENT.

FORM OF APPLICATION FOR ENTRY OF ORDER OF PRIVY COUNCIL IN REGISTER.

(a) _____

(a) Here state (in full) name and address of applicant.

hereby transmit an office copy of an Order in Council with reference to (b)

(b) Here state the purport of the order.

Sir,

Your obedient Servant,

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

Form T.

PATENT.

FORM OF APPEAL TO LAW OFFICER.

(a) Here insert (*in full*) name and address of appellant.

I, (*a*)_____

(b) Here insert "the decision" or "that part of the decision," as the case may be.

hereby give notice of my intention to appeal to the Law Officer from (*b*) _____

of the Comptroller of the _____ day of _____

19 , whereby he (c)_____

(c) Here insert "refused [or allowed] application for Patent," or "refused [or allowed] application for leave to amend Patent," or otherwise, as the case may be.

No. (*d*)_____ of the year 1 (*d*)

(*d*) Insert number and year.

Signature_____

Date_____

N.B.—This notice must be sent to the Comptroller-General at the Patent Office, London, W.C., and a copy of the same to the Law Officers' Clerk at Room 549, Royal Courts of Justice, London.

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

Form U.

PATENT.

FORM OF APPLICATION FOR EXTENSION OF TIME FOR LEAVING A COMPLETE SPECIFICATION.

Sir,

I, _____ hereby, in respect of application No. _____ dated _____, apply for one month's extension of time in which to leave a Complete Specification.

The circumstances in and grounds upon which this extension is applied for are as follows :—(a) _____

(a) The circumstances and grounds must be stated in detail; *see* Rule 10.

Sir,

Your obedient Servant,

(b) _____

(b) To be signed by applicant or applicants or his or their agent.

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENT.

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

Form V.

FORM OF APPLICATION FOR EXTENSION OF TIME FOR ACCEPTANCE OF A COMPLETE SPECIFICATION.

SIR,

I _____ hereby apply for _____ months extension of time for the acceptance of the Complete Specification upon application No. _____ dated _____

The circumstances in and grounds upon which this extension is applied for are as follows :— (a) _____

(a) The circumstances and grounds must be stated in detail; *see* Rule 10.

Sir,

Your obedient Servant,

(b) _____

(b) To be signed by applicant or applicants or his or their agent.

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

Form W.

FORM OF PATENT.

EDWARD VII., by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India: To all to whom these presents shall come greeting:

WHEREAS

hath declared that he is in possession of an invention for

that he claims to be 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 a patent might be granted unto him for the sole use and advantage of his said invention:

And whereas the said inventor (hereinafter together with his executors, administrators, and assigns, or any of them, referred to as the said patentee) hath by and in his complete specification particularly described the nature of his 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 licence 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 licences 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 and to be sealed as of the

one thousand nine hundred

and

* Here is to be inserted the name of the Comptroller-General.

Comptroller-General of Patents, Designs, and Trade Marks.

Seal of Patent Office.

PATENTS, DESIGNS, AND TRADE MARKS ACTS, 1883 TO 1902.

Form X. (*a*)

PATENT.

FORM OF NOTICE OF DESIRE TO HAVE PATENT SEALED.

I (*a*) desire to have a patent sealed on my (*b*) Application No. of 19 , and I (*c*) hereby transmit the prescribed fee on sealing.

(*a*) *or* We.
(*b*) *or* Our.
(*c*) *or* We.

Name (*d*)_____

(*d*) Here insert name, or names, and full address or addresses.

Address_____

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

(*a*) This form is contained in the second Schedule to the Patent Rules, 1905.

APPENDICES TO PATENT AGENTS RULES, 1889.

Appendix A.

Form 1.

Form of Register.

Name.	Designation.	Address.	Date of Registration.

Form 2.

Form of Statutory Declaration. (a)

REGISTER OF PATENT AGENTS RULES, 1889.

I, *A.B.* [*insert full name, and in the case of a member of a firm add,* "a member of the firm of "] of , in the county of Patent Agent, do solemnly and sincerely declare as follows:

1. That prior to the 24th December, 1888, I had been *bonâ fide* practising in the United Kingdom as a patent agent.

2. That I acted as patent agent in obtaining the following patents:

[*Give the official numbers and dates of some patents for the United Kingdom in the obtaining of which the declarant acted as patent agent.*]

3. That I desire to be registered as a patent agent in pursuance of the said Act.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared at

Appendix B.

(*Appendix B to the Patent Agents Rules*, 1891, *is substituted for this Appendix*, see p. 377 *post*.)

Appendix C.

(*List of Fees*, see p. 449, *post*.)

(a) A printed form of this declaration for use of applicants is now also on sale

APPENDIX TO THE PATENT AGENTS RULES, [1891.

Appendix B.

Particulars of Preliminary Examinations.

1. The Matriculation examination at any University in England, Scotland, or Ireland.
2. The Oxford or Cambridge Middle Class Senior Local Examinations.
3. The first public examination before Moderators at Oxford.
4. The previous examination at Cambridge.
5. The examination in Arts for the second year at Durham.
6. The examination for first-class certificate at the College of Preceptors (40 & 41 Vict. c. 25, s. 10).
7. The examination resulting in the obtaining of a Whitworth scholarship.

ASSIGNMENT OF LETTERS PATENT TO-GETHER WITH THE BENEFIT OF FUTURE IMPROVEMENTS.

Parties. THIS INDENTURE, made the day of , 18 , BETWEEN A. B., of, &c. (hereinafter called the assignor), of the one part, and C. D., of, &c. (hereinafter called the assignee), of the other part.

Recitals. WHEREAS the assignor is the true and first inventor of an invention of [*title of invention*].

True and first inventor. AND WHEREAS by letters patent dated the day of , 18 , and numbered ,

Patents. the sole and exclusive licence and authority of making, using, exercising, and vending in the United Kingdom of Great Britain and Ireland and the Isle of Man the said invention of improvements in, &c. [*title of invention*], were granted to the assignor, his executors, administrators, and assigns, for the term of fourteen years from the day of , 18 , subject to the payment of the fees and the conditions for making void the same as therein provided.

Agreement for sale. AND WHEREAS the assignor has agreed with the assignee to sell to him for the sum of £ the said invention and letters patent, and the exclusive benefit thereof, and of all extensions of the said letters patent; and also (subject to the provisions hereinafter contained) of all improvements or additions to the said invention or discoveries connected with the manufacture of , whether the same are now known or shall hereafter become or be made known to the assignor.

Assignment. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £ paid by the assignee to the assignor (the receipt whereof the assignor doth hereby acknowledge), the assignor as beneficial owner doth hereby assign unto the assignee ALL THOSE the said invention and letters patent, and the sole and exclusive benefit thereof, and of all extensions thereof, and of all rights, powers, emoluments, and advantages whatsoever under or in respect of the said letters patent,

TO HAVE AND TO HOLD, use, exercise, and enjoy the said invention, letters patent, and premises unto the assignee, his executors, administrators, and assigns, absolutely.

Covenant as to validity. AND the assignor doth hereby covenant with the assignee, his executors, administrators, and assigns, that, notwithstanding any thing by him the assignor done, omitted,

or knowingly suffered, the said letters patent are now valid and subsisting, and not void or voidable. AND ALSO that he the assignor will from time to time, after making any improvement in or addition to the said invention, or any discovery in connection with the manufacture of , as well all improvements, additions, or discoveries as aforesaid (if any) now known or which may hereafter become or be made known to him, forthwith give notice thereof in writing to the assignee, his executors, administrators, or assigns, who shall be entitled to the sole and exclusive use and benefit thereof. AND ALSO WILL, as and when reasonably required by the assignee, his executors, administrators, or assigns, communicate and explain to him or them, or to his or their agents, such improvement, addition, or discovery, the assignee, his executors, administrators, or assigns, paying all costs, charges, and expenses (if any) thereby actually incurred. AND WILL, at the expense of the assignee, his executors, administrators, or assigns, if he or they shall so require, either alone or conjointly with the assignee, his executors, administrators, or assigns, apply for and obtain letters patent in respect of such improvement, addition, or discovery, and execute and do all such assurances and things as shall be necessary or convenient for vesting the same letters patent, and the sole and exclusive benefit thereof, in the assignee, his executors, administrators, or assigns, as by him or them shall be reasonably required. AND WILL, at the expense of the assignee, his executors, administrators, or assigns, execute and do all such assurances and things as shall be reasonably required for enabling him or them to obtain, hold, and enjoy the exclusive benefit of any extension of the terms comprised in the letters patent hereby assigned, or, as far as practicable, of any term which may be comprised in any letters patent which may hereafter be vested in the assignor, either solely or jointly with the assignee, his executors, administrators, or assigns, according to the covenant in this behalf hereinbefore contained.

In Witness, &c.

Covenant to assign future improvements.

Covenant to assign extension of terms of patents.

NON-ASSIGNABLE LICENCE TO USE AND EXERCISE A PATENTED INVENTION WITHIN A DISTRICT.

Parties.

THIS INDENTURE, made the day of , 18 , BETWEEN A. B., of, &c. (hereinafter called the licensor), of the one part, and C. D., of, &c. (hereinafter called the licensee), of the other part.

Recital of grant of patent.

WHEREAS, by letters patent dated the day of 18 , and numbered , the sole and exclusive licence and authority of making, using, exercising, and vending in the United Kingdom of Great Britain and Ireland and the Isle of Man the said invention of improvements, &c. [*title of patent*], were granted to the licensor, his executors, administrators, and assigns, for the term of fourteen years from the date thereof, subject to the payment of the fees, and the conditions for making void the same, as therein provided.

Recital of agreement for licence.

AND WHEREAS the licensor has agreed to grant the licensee a licence to use and exercise the said invention within the district hereinafter described, upon the terms hereinafter appearing.

Grant of licence.

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement, and in consideration of the royalties hereinafter reserved and made payable to the licensor, and the covenants on the part of the licensee hereinafter contained, the licensor doth hereby grant unto the licensee full liberty, licence, power, and authority, within the district, being [*define the district*], to use and exercise the said invention during the term of years from the date hereof, and to sell and dispose of all manufactured according to the said invention, when and as the licensee shall think fit, for his absolute use and benefit.

Covenants.

AND it is hereby mutually covenanted and agreed between and by the parties hereto as follows, namely:—

Payment of royalties.

1. The licensee shall, and will, pay to the licensor, his executors, administrators, and assigns, yearly during the said term of years, and so in proportion for any less time than a year, the sum of £ , as a fixed or minimum royalty in the nature of rent, by equal quarterly payments, on the day of , the day of , the day of , and the day of in each year, the first of such payments to be made on the day of next; and shall, and will, also pay

to the licensor, his executors, administrators, or assigns, in respect of every manufactured by the licensee according to the said invention, in every half-year of the said term, commencing on the day of and the day of , the royalty or sum of £ , to become due and to be paid at the end of two calendar months after the expiration of the half-year during which the same shall have been manufactured or made as aforesaid.

Accounts.

2. The licensee shall, and will, at all times during the continuance of this licence, keep, at his usual place of business, all proper books of account, and make true and complete entries therein, at the earliest opportunities, of all particulars necessary or convenient for the purposes hereof, of all manufactured or made by him according to the said invention, and produce the said books to the licensor, his executors, administrators, or assigns, or his or their agent, at all reasonable times, for inspection and the taking of copies or extracts therefrom; and shall, and will, at his, the licensee's, own expense, obtain and give to the licensor, his executors, administrators, or assigns, or his or their agent, all such information as to any item or matter contained, or which ought to be contained, therein as shall be reasonably required.

Statements of accounts.

3. The licensee shall, and will, at the end of each half-year in the first paragraph mentioned, deliver or send to the licensor, his executors, administrators, or assigns, a statement in writing of the number of manufactured or made by the licensee in such half-year, and the amount of royalties payable in respect thereof, as in the first paragraph mentioned; and will, if and when required by the licensor, his executors, administrators, or assigns, but at the expense of the licensee, verify, or procure some suitable person in his employ to verify, the said statement, or any part or parts thereof, by statutory declaration.

Inspection of premises.

4. The licensor, his executors, administrators, or assigns, shall be at liberty, at any time during the continuance of this licence, to enter upon any factory or place of business of the licensee in which the manufacture of shall be carried on, at any reasonable hour of the daytime, to inspect the same, and the works thereof, and all manufactured, or in course of manufacture, in such factory or place.

Assistance from licensor.

5. The licensor shall, and will, whenever so required, give to the licensee such assistance and information respecting the said invention and the mode of working the same, and all processes connected therewith, as may be necessary for enabling him to use and exercise the said invention to the greatest advantage.

Infringements.

6. In the event of the said letters patent being infringed during

the continuance of this licence, the licensor, his executors, administrators, or assigns, shall, and will, after notice of such infringement, at his or their own costs, take all necessary proceedings for effectually protecting and defending the same; and in default of his or their so doing, the licensee shall be at liberty, by notice in writing given to or left at the usual or last known place of business or residence of the licensor, his executors, administrators, or assigns, to determine this licence.

Validity of patent.

7. The licensee shall not at any time during the continuance of this licence dispute the validity of the said letters patent.

Alienation.

8. The licensee shall not, without the written consent of the licensor, his executors, administrators, or assigns, first had and obtained, assign, mortgage, charge, or grant sub-licences in respect of, or otherwise deal or part with the possession or control of, this licence, or attempt so to do.

Termination.

9. This licence may be determined at any time after the first six calendar months by either party, on giving to the other party, or leaving at his usual or last known place of business or residence, three calendar months' previous notice in writing of his intention so to do; and, at the expiration of such notice, these presents, and all covenants, agreements, and provisions therein contained, shall cease and be void, but without prejudice to the remedies of either party for the recovery of any moneys then due to him hereunder.

In Witness, &c.

MORTGAGE OF LETTERS PATENT.

THIS INDENTURE, made the day of , 18 , Parties.
BETWEEN A. B. (hereinafter called the mortgagor, which expression shall include his executors, administrators, and assigns where the context so admits), of the one part, and C. D. (hereinafter called the mortgagee, which expression shall include his executors, administrators, and assigns where the context so admits), of the other part.
WHEREAS the mortgagor was the true and first inventor of certain Recitals.
improvements in, &c. [*title of invention*]. AND WHEREAS, by letters True and first inventor.
patent dated the day of , 18 , and numbered , the sole and exclusive licence and authority of making, Grant of patent.
using, exercising, and vending in the United Kingdom of Great Britain and Ireland and the Isle of Man the said invention of improvements, &c. [*title of invention*] were granted to the mortgagor for the term of fourteen years from the date thereof, subject to the payment of the fees and the conditions for making void the same as therein mentioned. AND WHEREAS the mortgagor has applied to Request for loan.
the mortgagee for a loan of £ , and the mortgagee has agreed to lend to the mortgagor the said sum of £ upon having the repayment thereof, together with interest thereon at the rate hereinafter mentioned, secured in manner hereinafter appearing. NOW Covenant of repayment.
THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £ now paid by the mortgagee to the mortgagor (the receipt whereof the mortgagor doth hereby acknowledge), the mortgagor doth hereby covenant with the mortgagee that he, the mortgagor, will on the day of next [*first day for payment of interest*] pay to the mortgagee the sum of £ [*the sum advanced*], together with interest for the same in the meantime at the rate of per centum per annum from the date hereof. AND will, in case and so long as the said sum of £ or any part thereof shall remain unpaid, pay to the mortgagee interest for the same at the rate aforesaid by equal half-yearly [*or* quarterly] payments on the day of , &c. [*half-yearly or quarterly days*], in every year. AND THIS INDENTURE ALSO WITNESSETH, Assignment.
that, in further pursuance of the said agreement and in consideration

of the premises, the mortgagor as beneficial owner doth hereby assign and transfer unto the mortgagee ALL THAT the said invention of improvements in, &c. [*title*], and the said letters patent for the same, and the full and exclusive benefit thereof (and of any and every improvement, extension, or renewal thereof), and the right to apply for and obtain an extension or renewal thereof, and all rights, powers, and benefits to the said invention and letters patent, belonging, TO HOLD the said invention, letters patent, and premises unto the mortgagee, subject to the proviso for redemption hereinafter contained. PROVIDED ALWAYS, and it is hereby agreed and declared, that if the mortgagor shall pay to the mortgagee the sum of £ [*sum advanced*], together with interest for the same at the aforesaid rate of per centum per annum, on the day of next [*date of first payment of interest*], the mortgagee shall at any time thereafter, upon the request and at the cost of the mortgagor, reassign the said premises hereinbefore assigned, to the mortgagor, or as he shall direct. AND the mortgagor doth hereby covenant with the mortgagee that he, the mortgagor, will, so long as any money shall remain on the security of these presents, pay the fees required by law for keeping the said letters patent on foot one calendar month at least before the latest time allowed by law for payment of the same respectively, and will do all other acts and things as may be necessary to maintaining the said letters patent, and will send or deliver to the mortgagee the receipt for every such payment immediately after the same shall have been made. AND FURTHER, that he, the mortgagor, will from time to time, so long as any money shall remain on the security of these presents, use his best endeavours to discover any infringement now or hereafter to be made of the said letters patent, or any extension thereof, and communicate to the mortgagee every suspected or ascertained infringement aforesaid, and if, and when, required in writing by the mortgagee so to do, will either himself commence or take and prosecute or defend all legal or other proceedings necessary or suitable for the protection of the said letters patent, or the recovery of damages for, or restraining, the infringement thereof, or permit the mortgagee to take such proceedings, and, in the event of the mortgagor taking such proceedings will do everything in his power for the purpose of making such proceedings successful, and will, whatever the event of any such proceedings, pay on demand the costs of the mortgagee (if any) relating thereto, as between solicitor and client. AND FURTHER, that in case the mortgagor shall neglect or refuse to make the payments aforesaid, or any of them, it shall be lawful for the mortgagee to pay the same. AND that all moneys and expenses (if any) paid by the mortgagee for or in respect of any

Habendum.

Covenants.

Payment of fees.

Infringements.

Power to mortgagee to pay fees.

renewal fees or other charges, or any proceedings or other matters aforesaid, together with interest for the same at the rate of per centum per annum from the time, or respective times, of the same having been made or expended, shall be repaid by the mortgagor to the mortgagee on demand, and shall in the meantime, and until repayment thereof, be charged on the premises hereby assigned. PROVIDED ALWAYS, and it is hereby agreed and declared, that at any time, or times, before the mortgagee shall have become entitled to exercise the power of sale vested in him by virtue of these presents and the statute in that behalf, it shall be lawful for the mortgagor himself to use and exercise the said invention without interruption from the mortgagee, and, in the name and as the attorney of the mortgagee, to grant licences for the use of the said invention and letters patent for such periods, and upon such conditions, as he shall think fit, but so that the mortgagor shall not be authorised to enter into any covenants in the name of the mortgagee, or to subject him to any personal liability, and so that no exclusive licence shall be granted without the consent in writing of the mortgagee, and so that on every such licence there be reserved the best rent or royalty that can conveniently be obtained without taking anything in the nature of a fine or a premium. AND it shall be lawful for the mortgagee, at any time, or times, after he shall have become entitled to exercise the power of sale aforesaid, to grant licences for the use of the said invention and letters patent for such periods, and upon such conditions, and in such manner as he may think fit, and in consideration of a sum, or sums, in gross, or any rents or royalties, or otherwise.

Power to mortgagor to use invention.

Licences.

In Witness, &c.

ACTION OF INFRINGEMENT.

INDORSEMENT ON WRIT. (*a*)

The plaintiff's claim is for damages for the infringement of the plaintiff's patent.

And for an injunction to restrain the defendant from infringing the plaintiff's patent.

ANOTHER FORM.

1. For an injunction to restrain the defendant his servants and agents from infringing the plaintiff's letters patent dated the day of 19 and numbered

2. For damages for such infringement or at the option of the plaintiff an account of all profits derived by the defendant from such infringement.

3. For the delivery up to the plaintiff or the destruction of all articles in the possession of the defendant made in such infringement.

4. For costs.

STATEMENT OF CLAIM. (*b*)

Infringement. The defendant has infringed the plaintiff's patent No. 14,084 granted for the term of fourteen years from the 21st May, 1880, for certain improvements in the manufacture of iron and steel whereof the plaintiff was the first inventor.

Injunction and damages. The plaintiff claims an injunction to restrain the defendant from further infringement and £100 damages.

Particulars of breaches are delivered herewith.

Place of trial Durham.

(Signed)

Delivered

(*a*) See R. S. C. 1883, Appendix A., part iii. sec. iv.
(*b*) R. S. C. 1883, Appendix C., Form 6.

ANOTHER FORM.

19 —K—No.

In the High Court of Justice
King's Bench Division
[*or* Chancery Division.
Mr. Justice ——]
Writ issued

Between A. B.,

Plaintiff

and

C. D.,

Defendant.

STATEMENT OF CLAIM.

The defendant has infringed the plaintiff's patent No. of Infringement.
A.D. granted for the term of fourteen years from the
day of 19 for certain improvements in
whereof E. F. therein named was the true and first inventor.

1. The plaintiff claims an injunction to restrain the defendant from further infringement. Injunction.

2. An inquiry as to the damages sustained by the plaintiff by reason of the infringement or at plaintiff's option an account of profits made by the defendant. Damages or account.

3. That the defendant may be ordered to pay to the plaintiff the amount so found to be due. Payment of amount found due.

4. That the defendant may be ordered forthwith to deliver up to the plaintiff to be destroyed all machines or apparatus made in infringement of the plaintiff's patent. Delivery up.

5. Costs. Costs.

(Signed)

Particulars of breaches are delivered herewith.

Delivered this day of 19 by
of solicitor for the plaintiff.

ANOTHER FORM.

19 --A—No.

In the High Court of Justice
Chancery Division
Mr. Justice ——
[*or* King's Bench Division]
Writ issued
Between A. B.,

Plaintiff

and

C. D.,

Defendant.

Statement of Claim.

Title. 1. The plaintiff is the registered legal owner of the letters patent dated the day of 19 and numbered for an invention of improvement in the manufacture of granted for the term of fourteen years from the date thereof to E. F.

2. The said letters patent were duly assigned to the plaintiff by an indenture dated the day of 19 and made between the said E. F. and the plaintiff. Notice of such assignment was entered on the Register of Patents on the day of 19 since which date the plaintiff has remained the sole registered owner of such letters patent.

Validity. 3. The said letters patent are good and valid and are and have been ever since the grant thereof of full force and effect.

Infringement. 4. Since the day of 19 and prior to the issue of the writ herein the defendant has infringed [*or* threatened to infringe] the said letters patent and has made sold supplied let on hire and used [*or* threatened to make sell supply let on hire and use] manufactured according to the invention in respect of which the said letters patent were granted and he threatens and intends to continue to do so unless restrained by the order of this honourable Court.

The plaintiff claims—

Injunction. 1. An injunction to restrain the defendant his servants agents and workmen during the continuance of the said letters patent from manufacturing selling supplying letting on hire or using any manufactured according to

or in the manner described in the complete specification filed previous to the grant of the said letters patent as therein recited or according to or in any manner only colourably differing from the same and generally from infringing the rights of the plaintiff in respect of such letters patent.

2. An account of all gains and profits made by the defendant by the manufacture sale supply letting on hire or use of such manufactured sold supplied let on hire or used by the defendant or by any person or persons by the order or for the use of the defendant and that the defendant may be ordered to pay the amount of such gains and profits to the plaintiff. Account.

3. Damages for the infringement of the said letters patent. Damages.

4. Delivery up to the plaintiff of all such aforesaid as are in the possession or power of the defendant. Delivery up.

5. Costs.

6. The plaintiff claims full costs charges and expenses as between solicitor and client. In an action brought by the plaintiff against G. H. for infringement of the said letters patent the index and reference numbers of which are 19 H. No. Mr. Justice —— certified that the validity of the said letters patent came in question. Costs as between solicitor and client.

7. Such further or other relief as the nature of the case may require. Further or other relief.

(Signed)

Particulars of breaches [*or* threatened breaches] are delivered herewith.

Delivered the day of 19 by of solicitor for the plaintiff.

PARTICULARS OF BREACHES. (*c*)

19 . —A—No.

In the High Court of Justice
King's Bench Division
[*or* Chancery Division
Mr. Justice ——]

Between A. B., Plaintiff

and

C. D., Defendant.

(*c*) As to the objects and requisites of particulars of breaches, see Vol. I. p. 395.

Particulars of Breaches.

Delivered with the Statement of Claim in this Action pursuant to the Statute in that case made and provided.

The following are the particulars of breaches of which the plaintiffs complain in this action :—

Infringements at divers times subsequent to the date of plaintiff's patent.

1. The defendants have subsequently to the granting of the letters patent in the statement of claim referred to and subsequently to the amendment of the said letters patent on the of 19 and prior to the issue of the writ in this action used constructed in accordance with the invention disclosed in the said specification of the said letters patent.

2. The so used by the defendants are constructed and operate substantially in accordance with the invention described in the specification of the plaintiffs' said letters patent and claimed in the and claiming clauses thereof.

Specific infringements.

3. The plaintiffs in particular complain of the use by the defendants of bearing the name of and believed by the plaintiff's to be constructed by .

Such are used by the defendants for the purpose .

The defendant sold a to one of on the day of 19 .

Number and date of other infringements not known to the plaintiff.

The exact number and dates of the defendant's infringements save as hereinbefore mentioned are not at present known to the plaintiff, but the plaintiff will claim to recover full compensation from the defendant in respect of all such infringements.

(Signed)

Delivered this day of 19 by of solicitor for the plaintiff.

DEFENCE. (*d*)

1. The defendant did not infringe the patent.
2. The invention was not new.
3. The plaintiff was not the first or true inventor.
4. The invention was not useful.
5. [*Denial of any other matter of fact affecting the validity of the patent.*]
6. The patent was not assigned to the plaintiff.

(Signed)

Delivered

(*d*) R. S. C. 1883, Appendix D, sec. vi.

ANOTHER FORM.

19 —A—No.

In the High Court of Justice
King's Bench Division
[*or* Chancery Division
Mr. Justice ——]
Between A. B., Plaintiff

and

C. D., Defendant.

DEFENCE.

The defendants says that—

1. He has not infringed the plaintiff's patent No. of A.D. Infringement.

2. The defendant contends that the invention which is described and claimed in [*the patentee's*] specification is one in which and that the as described in the said specification is not claimed by any of the claiming clauses thereof except when in combination with the invention as hereinbefore described and limited. The defendant sells and exports considerable numbers of and separately and not in the form of complete and they contend that such acts are not infringements of the said letters patent.

3. The alleged invention was not new. Novelty.

4. The alleged invention was not useful. Utility.

5. The alleged invention is not proper subject-matter for a patent. Subject-matter.

6. E. F. was not the true and first inventor of the alleged invention. True and first inventor.

7. The plaintiff is not in law the proprietor of the exclusive right to make and sell [*the articles complained of*] by reason that the exclusive right to make and sell such [*articles complained of*] was granted prior to the date of the said letters patent No. of 19 [*the plaintiff's patent*] to A. R. by letters patent No. of 19 . The grant of the said letters patent No. of 19 to A. R. Prior grant.

is available by way of defence to this action under sec. 26 of the Patents, Designs, and Trade Marks Act, 1883. (*e*)

8. The complete specification of the alleged invention does not Insufficiency of specification.

(*e*) See Vol. I. p. 405.

particularly describe the nature thereof and it what manner the same is to be performed.

9. The said complete specification does not distinguish what parts of the alleged invention are new and what old.

Variance of specifications.

10. The provisional specification of the alleged invention does not describe the nature thereof and the invention claimed in the said complete specification is an invention different from and larger than that described in the provisional specification.

Defendant an officer or servant of the Crown.

11. If the issues of the validity of the plaintiff's patent and the infringement thereof are found in the plaintiff's favour as the defendant is [*Director-General of Ordnance*] and an officer or servant of the Crown the plaintiff is not entitled to damages or an injunction but only to have the terms of the user of his invention agreed or in default of agreement settled by the Treasury under the provisions of sec. 27 of the Patents, Designs, and Trade Marks Act, 1883.

(Signed)

Delivered the day of 19 by
of solicitor for the defendant.

ANOTHER FORM.

19 —A—No.

In the High Court of Justice
King's Bench Division
[*or* Chancery Division
Mr. Justice ——]

Between A. B.,

Plaintiff

and

C. D.,

Defendant.

DEFENCE.

1. The defendant has not infringed the said letters patent.

2. The said letters patent are and always have been null and void for the reasons stated in the particulars of objections delivered herewith.

(Signed)

Delivered this day of 19 by
of solicitor for the defendant.

PARTICULARS OF OBJECTIONS. (*f*)

19 —A—No.

In the High Court of Justice
King's Bench Division
[*or* Chancery Division
Mr. Justice ——]

Between A. B., Plaintiff

and

C. D., Defendant.

Particulars of Objections.

Delivered by the Defendant with his Statement of Defence.

The following are the particulars of the objections on which the defendant relies in support of his defence :—

1. The said E. F. referred to in the statement of claim was not the true and first inventor of the said invention. **True and first inventor.**

2. The said [*patentee*] obtained the said patent by misrepresentation in falsely alleging that he was the true and first inventor [*add details*].

3. The plaintiff is not in law the proprietor of the exclusive right to make and sell [*the articles complained of*] by reason that the exclusive right to make and sell such [*articles complained of*] was granted prior to the date of the said letters patent No. of 19 [*the plaintiff's patent*] to A. R. by letters patent No. of 19 . The grant of the said letters patent No. of 19 to A. R. is available by way of defence to this action under sec. 26 of the Patents, Designs, and Trade Marks Act, 1883. **Prior Grant.**

4. The alleged invention is not the proper subject-matter for a patent. **Subject-matter.**

5. The alleged invention is not useful. **Utility.**

6. The alleged invention was not new *de jure* at the date of the said letters patent and was not proper subject-matter for valid letters patent having regard to the common and public knowledge at the date thereof. The defendant proposes to refer to all the prior publications set out in paragraph hereof as disclosing part of the common general knowledge and to allege that it was common general knowledge to [*add particulars*]. **Common knowledge.**

The defendant will contend that the plaintiff's alleged invention

(*f*) As to the objects and requisites of particulars of objections, see Vol. I. p. 412.

is a mere particular application involving no invention of such common general knowledge.

Publication of prior specifications.

7. The alleged invention was published within this realm prior to the date of the said letters patent by the filing at the Patent Office of the following specifications :—

Name.	No. and date.	Part relied on.	Claims of plaintiffs' patent published.
John Jones	1262 of 1902	The whole	No. 3
William Brown	5842 of 1876	p. 2, ll. 20–25	All

[*Add other specifications*].

Publication by prior books.

8. The alleged invention was published within this realm prior to the date of the said letters patent in the following printed books :—

(*Title*) edition page line to line .
(*Title*) edition page line to page line .

[*Add other books.*]

Publication by prior reports and drawings.

9. The alleged invention was published within this realm prior to the date of the said letters patent in a report and drawings by C. W. S. Such report is dated the day of 19 and was published in London by being forwarded by the said C. W. S. (from his office in Westminster) on or about that date to H. W. B. of .

The said report was further published in London by copies thereof having been forwarded about the date aforesaid to (amongst others) the following persons :—

(*a*) W. H. T. of .
(*b*) J. L. of .

[*Add others.*]

Publication by prior machines.

10. The alleged invention was published within this realm prior to the date of the said letters patent by the manufacture and sale [*or* erection *or* use *or* public exhibition] of machines similar to the machine described and claimed in the plaintiff's complete specification at the places and in the years hereinafter mentioned that is to say—

(*a*) By J. W. of at in 19 .
(*b*) By Messrs. H. H. & Co. of at in 19 .

[*Add others.*]

Other instances of publication.

11. [*Other instances of prior publication*, e.g., *oral communications.*]

Disconformity.

12. The provisional specification of the alleged invention does not describe the nature thereof and the invention claimed in the said complete specification [*as amended*] is an invention differing from

and larger than that described in the said provisional specification and differs therefrom in the following particulars that is to say [*point out differences*].

13. The complete specification of the alleged invention does not particularly describe the nature thereof and in what manner the same is to be performed, inasmuch as— Insufficiency of complete specification.

(*a*) The directions given on page line to line are not sufficient to enable a practical result to be obtained.

(*b*) The said complete specification does not distinguish what parts of the alleged invention are new and what parts thereof are old.

(*c*) The said complete specification contains false suggestions to wit that [*certain parts*] are described as useful and necessary whereas the said [*same parts*] are not of any utility and are not necessary.

(*d*) The said complete specification is ambiguous and calculated to mislead in that [*add particulars*].

(*e*) The said complete specification is insufficient by reason that it does not contain sufficient information to enable a workman skilled in the trade to [*add details*].

(*f*) The patentee did not state in the said complete specification the most beneficial method with which he was at the date of the said specification acquainted of carrying out the said invention to wit he did not state [*add particulars*].

Delivered this day of 19 by of solicitor for the defendant.

NOTICE OF MOTION FOR LEAVE TO AMEND A SPECIFICATION PENDING ACTION FOR INFRINGEMENT.

TAKE NOTICE that this Honourable Court will be moved before his lordship, Mr. Justice ——, on the day of , 19 , or so soon thereafter as counsel can be heard by counsel on behalf of the above-named the owner of the letters patent mentioned in the writ in this action, that he may be at liberty to apply at the Patent Office for leave to amend the specification filed in pursuance of the said letters patent by way of disclaimer, and that in the meantime the hearing of this action may be postponed. And that the said specification, when so amended as aforesaid, may be used in evidence on the hearing of the said action upon such terms as may seem fit to his lordship.

To [*the defendant*], and , of , his solicitor.

NOTICE OF MOTION FOR INTERLOCUTORY INJUNCTION.

TAKE NOTICE that this Honourable Court will be moved before his lordship, Mr. Justice ——, on the day of , 19 , or so soon thereafter as counsel can be heard, by Mr. ——, of counsel on behalf of the above-named plaintiff, that the defendant, his servants and agents, may be restrained until the trial of this action, or until further order, during the continuance of the letters patent bearing date the day of , 19 , and numbered , from making, selling, supplying, using, or putting in practice any [*patented articles*], made according to or in the manner described in the specification [or specifications], of the invention for which the said letters patent were granted, or according to or in any manner only colourably differing from the same, and from in any manner infringing the said letters patent, and that such further order may be made as to this Honourable Court shall seem meet.

JUDGMENT FOR PLAINTIFF AFTER TRIAL OF ACTION.

Order of Mr. Justice , dated day of , 19 .
19 —B—No.

In the High Court of Justice,
Chancery Division,
Mr. Justice ——
Wednesday, the day of 19 .

Between The B. A. Company,
Plaintiffs
and
I. L., J. L., and C., and J. L. L. and S.,
Defendants.

This action coming on the day of and the day of , 19 , for trial before this Court, in the presence of counsel for the plaintiffs and defendants, and upon hearing the pleadings in the action the letters patent of the day of Pleadings, &c. 19 , granted to J. H., therein mentioned, and the indenture of the day of 19 , also therein mentioned, and so much of the answer of the said defendant I. L. to the plaintiff's interrogatories as is contained in paragraphs 6, 8, &c., and the further answer of the said defendant I. L. read, and upon

hearing the evidence of the several persons named in the schedule hereto on their examination taken orally before this Court upon the several days set opposite their names in the said schedule, and upon producing the several exhibits to such persons on their said examinations referred to in the third column of the said schedule; and the defendants by their counsel admitting that the dye analysed by Dr. William O., Professor I. D., Dr. J. B. G., and Professor W. E. A. was the Fast Blackley Red which was sold to A. S. B., as in the pleadings mentioned, and that the same was sold by the defendants; and upon hearing what was alleged by counsel for the plaintiff and defendants; and the Judge, for his assistance, having submitted certain questions to Professor R. for his opinion, and obtained from the said Professor R. certain reports thereon, dated respectively the day of , 19 , and the day of , 19 : Admissions.

This Court did order that this action should stand for judgment, and, this action standing for judgment, this day, in the presence of counsel for the plaintiffs and defendants, and the particulars of objections of the defendants being deemed to be amended by the addition thereto of an objection that the alleged invention of J. H. J., in the pleadings named, was and is not proper subject-matter for which letters patent can be validly granted: This Court doth order that the defendants, I. L., J. L., and C., and J. L. L. and S., their servants, agents, and workmen, be restrained, during the continuance of the letters patent in the pleadings mentioned, from making, using, or putting in practice, or permitting to be made, used, or put in practice, the invention described in the specification of J. H. J., in the pleadings mentioned, or any part of the same invention, and from manufacturing, selling, or making any profitable use, or permitting the manufacture, sale, or profitable use, of any dyes or colouring matters being the same as "Fast Blackley Red" sold to A. S. B., in the pleadings mentioned, or any dyes or colouring matters made according to the said invention, or any part thereof, or by any process being a colourable imitation of the said invention, or any part thereof, and from in any manner infringing the rights and privileges granted by the said letters patent. And it is ordered that an account be taken of all dyes or colouring matters being the same as the "Fast Blackley Red" sold to the said A. S. B. as aforesaid, or otherwise made in infringement of the said letters patent, which have been manufactured, or sold, or used by, or by the order of for the use or profit of, the defendants, or any of them; and also of the gains or profits made by the defendants, or any of them, by reason of such manufacture, sale, or use. And it is ordered that the defendants do, within fourteen days after the date of the Chief Clerk's Certificate, pay to the plaintiffs what shall be certified to be the amount of such

Action to stand for judgment.

Injunction.

Account to be taken.

profits made by the defendants respectively. And it is ordered that
Delivery up. the defendants I. L., J. L., and C. and J. L. L. and S. deliver up to the plaintiffs, The B. A. and S. F., or in the presence of the plaintiffs or their agents destroy or otherwise render unfit for use, all dyes or colouring matters made or used by, or by the order or for the profit of, the defendants, or any of them, being the same as the "Fast Blackley Red" sold to the said A. S. B. as aforesaid, or otherwise made in infringement of the said letters patent, which are in the possession, custody, or power of the defendants, or any of them, or the servants or agents of them, or any of them, the particulars of such dyes or colouring matters to be verified by affidavit, but such delivery, destruction, or otherwise rendering unfit for use is not to be enforced before the of , 19 ; and in the event of the defendants electing to appeal, not until the appeal has been disposed of, or until further order, and in that case such dyes or colouring matters are to be deposited for safe custody at the office of M. A. and G. W. F., the defendants' solicitors, at No. P. S. M.

Deposit of documents, &c. And it is ordered that the plaintiffs do deposit with the Master of the Supreme Court the original shorthand-writers' notes of the and argument, and also all printed or written copies thereof in the possession or power of the plaintiffs, their solicitor, agent, and witnesses (to be verified by affidavit), the same to remain in Court until either there shall be an appeal, or until, by lapse of time or otherwise, it shall be determined that there shall be no appeal. And
Appeal. in the event of such appeal, the parties respectively are to be at liberty to apply for delivery out to them of so many copies of the said notes, or of the said printed or written copies, as they may
Application. require. And if, by lapse of time or otherwise, it shall be determined that there shall be no appeal, either of the parties are to be at liberty
Certificate of validity. to make such application to the Court for the disposal of the said notes, and printed and written copies, as they may think fit. And this Court certifies pursuant to the 31st section of the Patents, Designs, and Trade Marks Act, 1883, that upon the trial of this action the validity of the said letters patent came in question. And this Court
Certificate as to particulars of breaches. certifies pursuant to the 29th section of the Patents, Designs, and Trade Marks Act, 1883, that in the trial of this action the plaintiffs proved the particulars of breaches delivered by them. And it is
Payment of costs. ordered that the said defendants do pay to the said plaintiffs their costs of this action, including the costs of transcribing and printing the shorthand-writers' notes, and the costs of Professor R.'s reports; such costs to be taxed by the Taxing Master.

JUDGMENT FOR DEFENDANT AFTER TRIAL OF ACTION.

19 —C—No.

In the High Court of Justice,
Chancery Division,
Mr. Justice ——

Mr. ——, Reg. Friday the day of 19 .
Fo. 88.

Between A. B.,

Plaintiffs

and

C. D.,

Defendants.

This action coming on for trial on the
days of 19 before this Court in the presence of counsel for the plaintiffs and for the defendants and upon hearing the pleadings in this action the particulars of breaches delivered with the statement of claim and re-amended particulars of objections delivered on the of 19 read and the evidence of the several persons named in the Schedule A. hereto on their examinations taken orally before this Court on the days mentioned in the second column and upon production to them of the exhibits specified in the third column of the said schedule and what was alleged by counsel on both sides. This Court did order that this action should stand for judgment and the same standing in the paper for judgment this day accordingly in the presence of counsel for the plaintiffs and for the defendants.

This Court doth order and adjudge that this action do stand dismissed out of this Court with costs to be taxed by the Taxing Master on the higher scale and the Taxing Master is to allow the defendants three counsel and (by consent) to include the costs of taking transcribing and printing the shorthand-writers' notes.

And it is ordered that the plaintiffs A. B. do pay to the defendants C. D. the amount of their said costs when taxed.

And this Court certifies pursuant to the 29th section of the Patents, Designs, and Trade Marks Act, 1883, that the defendants' following objections were reasonable and proper that is to say Objections No. 1, No. 3, No. 4, Objection No. 5 except
and Objection No. 6 except

THE SCHEDULE A.

No.	Names of witnesses.	Date of Examination, May, 19 .	Exhibits.
1	G. H.	8th and 9th.	G.H. 1. Plaintiffs' apparatus with weight. G.H. 2. Plaintiffs' meter. G.H. 3. Small model dynamo. G.H. 4. Alleged infringement. G.H. 5. Defendants' wooden model of bar magnets. G.H. 6. A model Barlow wheel. G.H. 7. A model of Abel magnet. G.H. 8. Another model Barlow wheel made prior to 1884.

NOTICE OF APPEAL TO COURT OF APPEAL.

In the Court of Appeal,
Between A. B.,

Plaintiffs

and

C. D.,

Defendants.

Take notice that the Court of Appeal will be moved on Monday the day of 19 at 10.30 o'clock in the forenoon or so soon thereafter as cousel can be heard by counsel for the plaintiffs and on their behalf that the judgment of Mr. Justice made in this action and dated the day of 19 may be reversed in so far as it is adjudged that the defendants did not infringe the plaintiffs' patent No. of and that judgment may be entered herein for the plaintiffs on the above issue with costs in the Court of Appeal and in the Court below.

Dated the day of 19 .

Solicitors for the plaintiffs

To the defendants and to their solicitors.

JUDGMENT OF COURT OF APPEAL AFFIRMING THE JUDGMENT OF THE COURT BELOW.

In the Court of Appeal,

Mr. K——, Registrar.

Friday the day of , 19 .

Between A. B.,

Plaintiffs

and

C. D.,

Defendants.

Upon motion by way of appeal from the judgment of Mr. Justice dated the May, 19 made unto this Court on the and days of 19 by counsel for the plaintiffs and upon motion of the plaintiffs made unto this Court at the same time to be at liberty to adduce fresh evidence. And upon hearing counsel for the defendants and upon reading the said judgment an affidavit of G. H. an affidavit of S. H. H. an affidavit of D. C. and an affidavit of J. S. all filed April 19 . And upon hearing the evidence of J. S. taken upon his oral examination on the day of November 19 before this Court.

This Court did order that the said appeal should stand for judgment and the said appeal standing for judgment this day in the paper in the presence of counsel for the plaintiffs and for the defendants.

This Court doth order that the said judgment of Mr. Justice dated May, 19 be affirmed.

And it is ordered that the plaintiffs A. B. do pay unto the defendants C. D. their costs occasioned by the said appeal including their costs of the said motion for leave to adduce fresh evidence and including a moiety of the costs of taking transcribing and printing the shorthand-writers' notes of the hearing of this appeal such costs to be taxed by the Taxing Master.

JUDGMENT OF COURT OF APPEAL VARYING THE JUDGMENT OF THE COURT BELOW.

ORDER OF THE COURT OF APPEAL.

Dated 19 .

Court of Appeal,

19 —B—No. .

Saturday, the day of , 19 .

Mr. C., Regr.

Between B. A., &c. Plaintiffs

and

I. L., &c. Defendants.

Upon motion by way of appeal on the of November, and the of December, 19 , made unto this Court by counsel for the defendants, from the judgment dated the June 19 , and upon hearing counsel for the plaintiffs, and upon reading the said judgment:

This Court did order that the said appeal should stand for judgment, and the same standing on the March, 19 , and this day in the paper for judgment, in the presence of counsel on both sides:

Judgment reversed. This Court doth order that the said judgment be reversed.

And it is ordered that the plaintiffs' action do stand dismissed.

Repayment of costs. And it is ordered that the plaintiffs, B. A., &c., do repay the defendants, I. L., &c., the sum of £ , being the amount of the costs of the said judgment, already paid by the defendants to the plaintiffs.

Taxation of costs. And it is ordered that it be referred to the Taxing Master to tax —(1) The defendants their costs of this action, other than their costs occasioned by the issue or issues raised by the Particulars of Breaches in the said judgment mentioned, and other than the defendants' costs of the motion on the November, 19 , but including in the defendants' costs the costs of transcribing and printing the shorthand-writers' notes in the Court below, and the costs of Professor R.'s report in the judgment mentioned; (2) The costs of the defendants occasioned by the said appeal, other than their costs occasioned by the issue or issues raised by the Particulars of Breaches aforesaid; and (3) The costs of the plaintiffs of the said action, as well in the Court of Appeal as in the Court below,

occasioned by the issue or issues raised by the said Particulars of Breaches.

And it is ordered that such costs of the plaintiffs, and the sum of £ , the taxed costs of the plaintiffs of the motion made on the November, 19 , in this action by the defendants, be set-off against such costs by the defendants. And the Taxing Master is to certify to whom, after such set-off, the balance is due. Set-off.

And it is ordered that the party from whom such balance shall be certified to be due pay the amount thereof to the other party. Payment of balance.

CERTIFICATE OF VALIDITY.

I hereby certify, pursuant to the 31st section of the Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), that upon the trial of this action, the validity of the letters patent, in the pleadings mentioned, dated the 28th November, 1878, and numbered 4847, granted to F. J. C., amended by disclaimer allowed 12th November, 1884, and now vested in the Edison and Swan United Electric Light Company, Limited, came into question.

Dated this 16th day of July, 1888.

E. E. KAY.

ACTION TO RESTRAIN THREATS OF LEGAL PROCEEDINGS.

INDORSEMENT ON WRIT.

The plaintiff's claim is—

1. For an injunction to restrain the defendant from continuing to threaten the plaintiff, or any other person or persons, whereby the plaintiff may be aggrieved, by circulars, advertisements, or otherwise, with any legal proceedings or liability in respect of any alleged manufacture, use, sale, or purchase of any invention in infringement of the defendant's patent, dated the day of , 19 , and numbered , or in respect of any article or articles, process or processes, alleged by the defendant to be an infringement of his said patent.

2. For damages in respect of such threats.

3. For costs.

STATEMENT OF CLAIM.

19 —A—No.

In the High Court of Justice
King's Bench Division
[*or* Chancery Division
Mr. Justice ——]

Between A. B., Plaintiff

and

C. D., Defendant.

STATEMENT OF CLAIM.

1. On the day of 19· the defendant by [*set out particulars*] claiming to be the patentee of an invention for [*state the title of the invention*] threatened the plaintiff [*or* E. F.,

who was a customer of the plaintiff] with legal proceedings in respect of the sale [*or* purchase *or* use] by the plaintiff [*or* the said E. F.] of certain [*add particulars*] to [*add particulars*].

2. The plaintiff was aggrieved by reason of such threats adn injured in his business, and in consequence of the said threats [*add particulars of injury*].

3. The sale [*or* purchase *or* use] of the said [*add particulars*] to which the said threats related was not in fact an infringement of any legal rights of the defendant.

4. The defendant issued the said threats falsely and maliciously and with the object of injuring the plaintiff and not *bonâ fide* in support of any patent or other right which he possesses.

5. Unless the defendant is restrained from publishing the said or similar threats the plaintiff will be greatly injured in his business.

The plaintiff claims—

1. An injnnction to restrain the defendant from alleging by letters, circulars, advertisements or in any other manner that [*the articles in question*] constructed or sold [*or* purchased *or* used] by the plaintiff are constructed in infringement of the defendant's patent and to restrain the defendant from threatening the plaintiff or any of his customers with proceedings for infringement of any patents the property of the defendant in connection with the construction or sale [*or* purchase *or* use] by the plaintiff of any of the said [*the articles in question*].

2. An injunction to restrain the defendant from writing or forwarding to any customers of the plaintiff or to any other person any letters, documents or statements alleging that they are entitled to restrain the plaintiff from selling [*or* constructing *or* purchasing *or* using *the articles in question*] or that it is their intention to take any proceedings to restrain the plaintiff from selling his [*or* constrncting *or* purchasing *or* using *the articles in question*].

3. Damages.

4. A declaration that the [*the articles in question*] constructed and sold [*or* used] by the plaintiff are not infringements of any patent or other rights vested in the defendant.

DEFENCE.

19 —A—No.

In the High Court of Justice
King's Bench Division
[*or* Chancery Division
Mr. Justice ——]

Between A. B.,

Plaintiff

and

C. D.,

Defendant.

DEFENCE.

1. The defendant denies that by the letters patent No. of or No. of or either of them referred to in paragraph of the statement of claim he threatened the plaintiff with any legal proceedings in respect of the sale by the plaintiff of [*the articles in question*] to [*the plaintiff's customer*] or in respect of any alleged sale of [*the articles in question*] or other inventions. The defendant does not and never did allege any such sale as aforesaid and he denies that the plaintiff in fact ever sold a [*the article in question*].

2. The defendant denies that the plaintiff was a person aggrieved within the meaning of sec. 32 of the Patents, Designs, and Trade Marks Act, 1883, and that he has suffered any damage by reason of the alleged threats.

3. The invention referred to in paragraph of the statement of claim was the subject of letters patent granted to No. of 19 which expired in 19 . The defendant did not during the currency of the said letters patent claim and has not since the expiration of the said letters patent claimed to be patentee thereunder of the said invention. The fact that the said letters patent had expired in 19 was well known to the persons to whom the letters complained of by the plaintiff were addressed.

4. The said letters were not written falsely or maliciously or with the object of injuring the plaintiff but were written *bonâ fide* under the circumstances hereinafter mentioned.

[*State the circumstances.*]

5. With regard to the invention referred to in paragraph of the statement of claim the said invention is the subject-matter of letters patent No. of 19 of which the defendant is the registered legal owner and the said letters are and always have been good and

valid. Such threats having reference to the said letters patent as were in fact made by the defendant were made *bonâ fide* and with the intention of protecting his rights under the said letters patent.

6. The said has in fact infringed the defendant's said letters patent No. of in manner following that is to say [*add particulars*].

7. On the day of the defendant commenced an action [*add the title of the infringement action*] for the infringement of the said letters patent No. of . Such action is still pending and the defendant will rely on the same as an answer to this action.

REPLY.

19 —A—No.

In the High Court of Justice
King's Bench Division
[*or* Chancery Division
Mr. Justice ——]

Between A. B., Plaintiff

and

C. D., Defendant.

Reply.

1. As to paragraphs and of the defence the plaintiff joins issue thereon.

2. As to paragraph of the defence the plaintiff says and will contend that—

(*a*) he has not infringed the defendant's letters patent No. of as alleged or at all;

(*b*) the said letters patent were at the date of the alleged threats complained of by the plaintiff and are at the present date invalid for the reasons set forth in the particulars of objection delivered herewith.

3. At the date of the said threats the letters patent in paragraph of the statement of claim referred to were invalid to the knowledge of the defendant, and since the date of the said threats the defendant has amended his specification filed in respect of such letters

patent and the plaintiff will contend that by reason of the said amendment the defendant is estopped from alleging that at the date of the said threats the said letters patent were valid and subsisting letters patent.

REJOINDER.

19 —A—No.

In the High Court of Justice
King's Bench Division
[*or* Chancery Division
Mr. Justice ——]
Between A. B.,

Plaintiff

and

C. D.,

Defendant.

REJOINDER.

1. The defendant denies that at the date of the alleged threats complained of the said letters patent No. of were invalid, or that they are at the present time invalid, or that they were at any time known to him to be invalid.

2. The defendant joins issue with the plaintiff on his reply.

REVOCATION OF LETTERS PATENT.

PETITION FOR REVOCATION.

In the High Court of Justice,
Chancery Division,
Mr. Justice ——
In the Matter of G. & G.'s Patent,
No. A.D. 19
and
In the Matter of the Patents, Designs, and
Trade Marks Acts, 1883–1902.
To His Majesty's High Court of Justice

THE HUMBLE PETITION of S. S., of , in the City of London.

SHEWETH AS FOLLOWS :—

1. Your petitioner is an electrician, and the patentee of many inventions in connection with the production, distribution, and utilisation of electric currents, which inventions are now in extensive practical use.

2. Among other methods of distribution, for some time past your petitioner has specially occupied himself with methods of effecting the same by means of secondary generators by which electrical action is obtained at different points of an electrical circuit by means of electric induction only, without interrupting such circuit or making any connection with the conductor conveying the current.

3. In or about the month of December, 19 , your petitioner invented an improved form of secondary generator for the purpose of effecting economically and conveniently the above-mentioned object, and on the day of December, 19 , your petitioner applied for and obtained a provisional protection, No. A.D. 19 for such invention, and has since filed a complete specification for the said invention.

4. Since obtaining the said provisional protection your petitioner has manufactured and used secondary generators constructed according to your petitioner's said invention, and the same have been

shown to possess great advantages over other forms, and to be of great practical utility.

5. The sale and user of the said secondary generators made according to your petitioner's invention has recently been interfered with by a Limited Company named the National Company for the Distribution of Electricity by Secondary Generators (Limited). The said company claim to be entitled to restrain any person using any mode of electrical distribution by means of secondary generators, of whatever form or construction such generators may be.

6. The said claim of the aforesaid company purports to be based upon letters patent granted to L. G. and J. D. G., and numbered A.D. 19 . The invention in respect of which the said letters patent were granted was in no wise novel at the date of the same, and the said letters patent are and always have been of no force and validity by reason thereof and of the other matters set forth in the particulars of objection delivered herewith in pursuance of sec. 26 of the above-named Act.

7. The existence of the above-named letters patent claiming a wide and general monopoly of the system of distribution by means of secondary generators, which was known to and the property of the public at the date of the said letters patent, has been and is the cause of great injury to the public by preventing the sale of machines made according to your petitioner's invention, as well as those made by other inventors who likewise have made improvements in secondary generators and in the distribution of electricity thereby.

8. That the public are prejudiced by the above-mentioned general claim in the said letters patent, because consumers of electricity are not in general acquainted with the science of electricity and the technical application thereof, and are therefore unable to form an opinion as to the invalidity of the said letters patent, whereby the sale and use of improved secondary generators are wholly prevented.

9. The office of Mr. A. C. C. H., No. , , in the county of , is the place where the petitioner may be served with any petition or summons or notice of any proceedings or order of the Courts relating to the matters herein referred to.

Your petitioner therefore humbly prays for the revocation of letters patent No. A.D. 19 , or that such order may be made in the premises as to this Honourable Court may seem meet.

And your petitioner will ever pray, &c.

(Signed) S. Z.

It is intended to serve this petition on L. G., J. D. G., and the

N. Co. for the Distribution of Electricity by Secondary Generators (Limited).

I hereby authorise the presentation to the High Court of Justice of the above-written petition. Fiat of Attorney-General.

(Signed)

Attorney-General.

ROYAL COURTS OF JUSTICE,
, 19 .

MEMORIAL TO THE ATTORNEY-GENERAL FOR HIS FIAT.

In the Matter of Letters Patents granted to A. B., for an invention of [*title*] and numbered of 19
and
In the Matter of the Patents, Designs, and Trade Marks Acts, 1883–1902.

To His Majesty's Attorney-General for England. The Memorial of , of , in the County of .

SHEWETH AS FOLLOWS :—

1. Your memorialist is [*add description*].
2. The invention set forth in the complete specification of the said letters patent No. of granted to A. B. for an invention of [*title*] relates to [*add short description of the invention*].
3. The claiming clause of the said specification is as follows :— [*claim*].
4. Your memorialist is seriously hampered in his trade by the existence of the said letters patent No. of by reason [*add reasons*].
5. The said letters patent are and always have been null and void for the reasons set forth in the particulars of objections which is one of the documents accompanying this memorial.
6. The following documents accompany this memorial, viz. :—
   (*a*) A king's printers copy of the specifications of the said letters patent No. of .
   (*b*) Two copies of the petition which your memorialist desires to present to the Court.

(*c*) Two copies of the particulars of objections which your memorialist desires to present with the said petition.

(*d*) Statutory declaration by your memorialist verifying the statements herein and stating that there are no pending proceedings in the United Kingdom wherein the issues proposed to be raised by the said petition or particulars of objections could be determined.

(*e*) The certificate of [*a Barrister-at-law*] that the said petition is proper to be authorised by you.

(*f*) The certificate of [*a Solicitor*] that your memorialist is a proper person to be a petitioner and that he is competent to answer the costs of all proceedings in connection with the petition if unsuccessful.

Your memorialist therefore prays that you will be pleased to grant leave to him to present the said petition to His Majesty's High Court of Justice for the revocation of the said letters patent No. of ,
granted to the said A. B.

EXTENSION OF LETTERS PATENT.

ADVERTISEMENT OF INTENTION TO PRESENT PETITION FOR EXTENSION OF LETTERS PATENT.

In the Privy Council.

In the Matter of Letters Patent granted to , of , and bearing date the day of 19 , and numbered .

Notice is hereby given, that it is the intention of , of [*as assignee of the above patent*], to present a petition to His Majesty in Council praying that the term of the said letters patent may be extended. And notice is hereby further given, that on the day of inst., or on such subsequent day as the Judicial Committee of His Majesty's Privy Council shall appoint for that purpose, application will be made to the said committee that a day may be fixed for hearing the matter of the said petition, and any person or persons desirous of being heard in opposition to the said petition must enter a *caveat* to that effect in the Privy Council on or before the said day of next.

Dated this day of , 19 .

Solicitor for the Petitioner.

CAVEAT.

In the Privy Council.

In the Matter of Letters Patent granted to , of , and bearing date the day of , and numbered .

Caveat issued on behalf of .

Let nothing be done in reference to the above-mentioned patent without due notice to .

Dated this day of , 19 .

Solicitor for .

NOTICE OF OBJECTIONS TO EXTENSION OF TERM OF PATENT.

In the Privy Council.

In the Matter of Letters Patent granted to A. B., of , in the County of , for the Invention of "Improvements in the manufacture, &c.," bearing date the day of , 19 , and numbered .

In the Matter of the Petition of for an extension of the term of the said letters patent.

The grounds of objection of , of , to the granting of the prayer of the above-mentioned petition are the following, viz. :—

Novelty denied. 1. The alleged invention was not new at the date of the said letters patent.

Utility denied. 2. The alleged invention was not useful.

Merit denied. 3. The alleged invention never has been, and is not likely to be, of great advantage to the public.

Sufficient remuneration. 4. The petitioner has already received a full and adequate reward for the said alleged invention, and also large trade profits from the manufacture of under the monopoly created by the said letters patent.

Laches of petitioner. 5. If the petitioner has not been adequately rewarded, his want of proper remuneration has been caused by his own acts in not advertising and pushing the said invention, and in refusing to grant licences for the use of the same.

Infringements. 6. The petitioner has permitted infringements of the said letters patent, and never brought actions to restrain such infringements.

Allegations incapable of proof. 7. The allegations contained in the said petition are incapable of proof.

Dated this day of , 19 .

Solicitor for .

ADVERTISEMENT OF DAY FIXED FOR HEARING PETITION FOR EXTENSION.

In the Privy Council.

In the Matter of Letters Patent granted to , of , and bearing date the day of , 19 , and numbered .

Notice is hereby given, that their lordships, the Judicial Committee of the Privy Council, have appointed the day of , 19 , at half-past ten o'clock in the forenoon, for hearing the matter of the petition of the above-named for an extension of the term of the above letters patent.

Solicitor for the Petitioner.

PETITION FOR EXTENSION OF LETTERS PATENT.

In the Privy Council.

Presented the day of , 19 .

To the King's Most Excellent Majesty in Council.

In the Matter of Letters Patent granted to R. R., formerly of No. , A. Road, now No. , H. Road, N. C., in the County of , Contractor, for the Invention of "A new or improved captain's bridge, constructed as a self-launching life-raft," dated the day of , 19 .

THE HUMBLE PETITION of the above-named R. R., formerly of No. , A. Road, now No. , H. Road, N. C., in the County of , Contractor.

SHEWETH :—

1. That your petitioner, previously to the grant of the letters patent hereinafter mentioned, invented, after considerable personal application and cost, "A new or improved captain's bridge, constructed as a self-launching life-raft" (hereinafter called "the said invention"), which invention was and is of great utility, and therefore beneficial to the public. Invention.

2. That your Majesty was graciously pleased, by letters patent bearing date the day of , 19 , to grant unto your Grant of letters patent.

petitioner R. R., his executors, administrators, and assigns, the sole privilege and authority to use the said invention within the said United Kingdom, the Channel Islands, and the Isle of Man for the term of fourteen years from the date of the said letters patent.

No foreign patent rights.

3. That your petitioner has not obtained any letters patent or brevets d'invention for his said invention in any foreign country.

Expenditure, &c., on invention.

4. That your petitioner has expended large sums of money and devoted great pains and trouble while in health in endeavouring to introduce the said invention to the public and to bring the same into use.

Accident to petitioner.

5. That your petitioner met with an accident while travelling on the South-Eastern Railway between London Bridge and Cannon Street on the day of , 19 , and in consequence thereof was confined to his bed until nearly the end of the year 19 .

Cause of delay in presenting petition.

6. That your petitioner would have presented this his petition earlier, and about the day of , 19 , when he called at the Privy Council Office for particulars as to presenting same; he was, however, unfortunately seized that day with a fit, and is only now able to attend to business.

Insufficient remuneration.

7. That your petitioner has, owing to his illness and other circumstances wholly beyond his control, failed to receive adequate benefit from his invention.

Probability of invention becoming profitable.

8. Your petitioner has no doubt that, if the term of the said letters patent should be extended, the said letters patent will become productive, and your petitioner will be able to obtain a fair reimbursement and remuneration commensurate with the great public value and importance of the said invention, and which his state of health will now allow him energetically to prosecute.

Merits of invention.

9. That your petitioner's invention was tried practically, and with great success, in the month of , 19 , on board H.M.S. *Polyphemus*, at Portsmouth, before Lord and others, when the use of the invention for the saving of life was most amply demonstrated.

Medals awarded for invention.

10. That your petitioner exhibited a model of his invention at the Exhibition held in London in 19 , when he was awarded a gold medal; and at the Exhibition held at the Agricultural Hall, Islington, in , 19 , when he was awarded the first prize of 100 guineas.

Seven years' extension desired.

11. That your petitioner humbly submits that, under the circumstances of the case, an exclusive right of using and vending the said invention for the further period of seven years will not sufficiently reimburse and remunerate your petitioner.

12. That your petitioner has given public notice by advertisements caused to be inserted the requisite number of times in the *London Gazette* and in other newspapers, pursuant to the statutes in that case made and provided, that it is his intention to apply to your Majesty in Council that the said letters patent may be extended for a further term. Advertisements.

Your petitioner therefore humbly prays that your Majesty will be graciously pleased to take the case of your petitioner into your Royal consideration, and to refer this petition to the Judicial Committee of your Majesty's Most Honourable Privy Council, and that your petitioner may be heard before such committee by his counsel and witnesses; and that your Majesty will be graciously pleased to grant to your petitioner a prolongation of the term by the said letters patent granted for the additional term of fourteen years, or for such term as to your Majesty shall seem fit, Prayer.

And your petitioner will ever pray.

R. P. U.,
Solicitor for the Petitioner.

ANOTHER FORM.

In the Privy Council.

Presented day of , 19 .

To the King's Most Excellent Majesty in Council.

In the Matters of Letters Patent granted to W. A. M., late of , in the of , but now of and , in the of , for the invention of "Improvements in apparatus for consuming smoke, promoting combustion, and feeding furnaces with fuel," bearing date the day of , 19 , No. .

THE HUMBLE PETITION of W. M., of Nos. and , in the of , , and of the above-named W. A. M.

SHEWETH:—

1. That your petitioner the above-named W. A. M., previously to the grant of the letters patent hereinafter mentioned, invented, after considerable personal application and cost, certain "Improvements in apparatus for consuming smoke, promoting combustion, Invention.

and feeding furnaces with fuel" (hereinafter called "the said invention"), which invention was and is of great utility and greatly beneficial to the public.

Grants of letters patent.

2. That your Majesty was graciously pleased, by letters patent bearing date the day of , 19 , to grant unto your petitioner W. A. M., his executors, administrators, and assigns, the sole privilege and authority to use the said invention within the said United Kingdom, the Channel Islands, and Isle of Man for the term of fourteen years from the date of the said letters patent.

Foreign patent rights.

3. That your petitioner W. A. M. also obtained letters patent or brevets d'invention for his said invention in the Empire of France, dated the day of , 19 ; in the Dominion of Canada, dated the day of , 19 , and in the Kingdom of Norway, dated the day of , 19 .

4. That letters patent, dated the day of , 19 , for the use of the said invention in the United States of America were also granted to your petitioner W. A. M., and one J. A., of Broadway, New York, to whom the said W. A. M. had by an agreement dated the day of 19 , agreed to grant an exclusive licence to make, use, and vend the said invention in the said United States at the royalty and upon the conditions in the same agreement mentioned. Your petitioner W. A. M. ultimately assigned one moiety of the last-mentioned letters patent to one E. H. A., of Boston, in the State of Massachusetts, in the United States aforesaid, your petitioner W. A. M. remaining the owner of the other moiety thereof. The said last-mentioned letters patent were re-issued in the United States of America under date 19 .

Licences granted.

5. That by an indenture dated the day of , 19 , and made between your petitioner W. A. M. of the first part, and the said J. A. of the second part, after reciting that, by an assignment of even date, your petitioner had conveyed to the said J. A. an undivided half of his right in the said Canadian patent, your petitioner granted to the said J. A., his executors, administrators, and assigns, the exclusive licence to make, use, and vend the said invention in the Dominion of Canada at the royalty and upon the conditions in the same indenture mentioned.

6. That on the of , 19 , letters patent for the use of the said invention in the Empire of Austria were, on the nomination of your petitioner W. A. M., granted to a certain firm of B. N. & F., in consideration of a sum of £ by the last-named persons paid to your petitioner W. A. M., and an agreement on their part to pay to your last-named petitioner a royalty of

£ per door, and a minimum yearly royalty of £ .
The contract under which the said Austrian patent was obtained by the said B. N. & F. (which contract was dated in the year 19) provided for the obtaining by that firm of a patent or brevet d'invention for the use of the last-mentioned invention in Russia, but your petitioners have been unable to ascertain whether any such Russian patent was ever obtained. Your petitioners did not, nor did either of them, ever obtain any patent for the said invention in Russia. Your petitioners received from the said firm of B. N. & F. the aforesaid sum of £ , and a further sum of £ for royalties; but, except as aforesaid, they have not, nor has either of them, ever received any moneys from the last-mentioned firm.

Expiration of foreign patent rights.

7. That the said several letters patent or brevets d'invention for France, Canada, the United States of America, and Austria have all expired, or lapsed, or been abandoned. The said patent or brevet d'invention for Norway is still in force, but will expire on the day of , 19 .

Object of invention.

8. That the said invention relates to improvements in the means of consuming smoke and of effecting combustion in steam boilers, as also improvements in the means of supplying furnaces with fuel.

Expenditure, &c., on invention.

9. That your petitioner W. A. M. is a civil engineer, and he has for more than thirty years past devoted his attention to smoke-consuming apparatus, and has given much time and labour and expended very considerable sums of money in conducting experiments relating to the subject-matter of the said invention, and either alone, or with his then partner, one E. W., he obtained letters patent for apparatus relating thereto, all of which last-mentioned letters patent have expired or become void.

Improvements produced by invention.

10. That previously to the time when your petitioner W. A. M. turned his attention to the subject, the smoke-consuming apparatus then known were ineffective on account of some of them failing to introduce the air to the furnaces in such a manner as to support combustion, and those apparatus which succeeded in consuming smoke diminished the efficiency of the fire and caused waste of fuel, and in some cases became destroyed by the action of the fire. These defects were sought to be remedied by an apparatus which was the subject of the letters patent dated , 19 , No. , granted to your petitioner W. A. M. and one J. P. This invention consisted of argand fire-bars, and the object was to cause an increased supply of atmospheric air to enter the furnace through the grate. This object, however, was not attained, by reason of the holes frequently becoming clogged with dross and clinker from the fire, rendering them useless as conductors of the air. Subsequently your petitioner W. A. M., and the said J. P.,

obtained letters patent of the , 19 , No. , for a contrivance which consisted in constructing the furnace with rocking bars. The object of the last-mentioned contrivance was to provide a means for keeping the surface of the grate free from the accumulations of dross, clinker, &c., and so to maintain a regular supply of air to the furnace from the ash-pit. This was sought to be accomplished by giving a rocking motion to the fire-bars. The system introduced by the last-mentioned letters patent proved to be defective in consequence of the fire-bars being necessarily too deep, and consequently impeding the passage of air and clogging the air spaces. In case the stoker neglected to frequently put these rocking bars in motion, they became fast, so that they could not be put in motion at all until the fire was out and the apparatus re-adjusted. Your petitioner W. A. M. then obtained letters patent of the , 19 , No. , for a contrivance the object of which was to secure lightness as well as strength, so that thin bars could be used. As these bars consisted of two parts, wrought and cast iron, and the parts had to be put together, the manufacture under this last patent was found to be too expensive.

Prior patents for allied but unsuccessful inventions.

11. That your petitioner W. A. M. also, in conjunction with one E. W., obtained provisional protection dated , 19 , and letters patent dated , 19 , for inventions connected with smoke-consuming apparatus, which, however, were not successful; and ultimately your petitioner W. A. M. invented the contrivance which was patented by the above-mentioned letters patent of day of , 19 , the subject of this present petition. The general advantages of this invention are as follow:—It was found that the consumption of smoke could not be successfully carried out by the fire-bars, but that a proper admission of atmospheric air at the mouth of the furnace was required. The patent door the subject of the invention comprised in the last-mentioned letters patent accomplished that object. It secured a better control over the air admitted than any other system, and was easily manipulated. Being balanced, it would remain in whatever position it was set—a great advantage for marine purposes. The manner of consuming, or rather preventing, the smoke was by opening the door a few inches inward. This caused the atmospheric air to impinge on the fuel at the commencing point of combustion, causing the gases to be perfectly developed before leaving the furnace, an effect which may be compared with a glass chimney on a lamp.

Assignment of patent.

12. That by an indenture dated the day of , 19 , and made and executed between and by your petitioner W. A. M. of the one part, and your petitioner W. M. of the other

part, your petitioner W. A. M., in consideration of the sum of £ , in the said indenture expressed to be paid by your petitioner W. M. to your petitioner W. A. M., assigned the said letters patent of the day of , 19 , to your petitioner W. M. for all the residue of the term of the said letters patent.

Non-payment of purchase-money.

13. That your petitioner W. M. is a son of your petitioner W. A. M., and at the date of the assignment was a clerk in the office of your last-named petitioner. That the sum of £ mentioned in the last-stated indenture was never paid by your petitioner W. M. to your petitioner W. A. M.; and the said assignment was, in fact, executed by your petitioner W. A. M. with the view to make a provision for his said son, your petitioner W. M., in the event of your petitioner W. A. M. dying during the continuance of the said letters patent, leaving his said son him surviving. That your petitioner W. M. is still in the employment of your petitioner W. A. M., and assists him in his business of a civil engineer, but does not participate in any profits thereof, and merely receives a salary. That the said letters patent of the day of , 19 , although vested under the assignment aforesaid in your petitioner W. M., are, and ever since the year 19 have been, worked for the sole benefit of your petitioner W. A. M.

Expenditure, &c., in endeavouring to introduce invention.

14. That your petitioner W. A. M. has expended large sums of money, and devoted great pains and labour, in endeavouring to introduce the said invention to the public, and to bring the same into use. That for this purpose your petitioners, or one of them, advertised the said invention extensively, and personally undertook journeys to all parts of the country to visit various manufacturing towns and other places where it was likely the said invention would be taken up, and also employed travellers or agents to sell on commission fire-doors made according to the said invention, and also supplied such fire-doors free of expense to shipowners and manufacturers for the purpose of trial.

Insufficient remuneration.

15. That although, under the circumstances aforesaid, considerable numbers of fire-doors made according to the said invention comprised in the said letters patent of the day of , 19 , were sold, yet the necessary expenses of introducing the said invention as aforesaid were so great that it was only during the last year and nine months, or thereabouts, that is to say, the years 19 and 19 , that any profit was made from the said invention. In all other years since the date of the said letters patent, the working of the said letters patent, and the manufacture and sale of fire-doors made according to the said invention, resulted in losses, which far more than counter-balanced

the profit of the years 19 and 19 aforesaid; and, on the whole, your petitioner W. A. M., instead of obtaining any profit from the said invention, has sustained a very considerable loss.

Only one licence granted in the United Kingdom.

16. That only one licence has ever been granted for the use of the said invention in the United Kingdom, that is to say, a licence to one J. B., of M. and O., which was granted by your petitioner W. A. M. in or about the month of , 19 . That the said licence was granted with a view to the establishment of the said J. B. as an agent for the sale of fire-doors made according to the said invention, but the business arising therefrom being very small and unprofitable to your petitioner, he in the month of , 19 , revoked the said licence. Your petitioner believes that the said J. B. made no profit whatever from his use of the said invention under the said licence.

Reasons for delay in public appreciation of invention.

17. That, at the time when your petitioners were endeavouring to introduce the said invention to the public, there were so many other inventions before the public having the same object as the said invention of your petitioner W. A. M. that it was very difficult to induce manufacturers and others to give a trial to any new invention; and further, the Acts for preventing smoke nuisance were not at that time so rigidly enforced as they are at present; and from these and other circumstances your petitioners experienced great difficulty in getting manufacturers and steam-users to give a trial to the same invention, and their endeavours to introduce the same to the public necessarily involved great expense on the part of your petitioners.

Utility of invention.

18. That of late the utility of the said invention has been generally acknowledged, and steam-users are now requiring that boilers made for them shall be fitted with fire-doors made according to the said invention, and compelling engineers to apply such fire-doors, and in consequence there has arisen a considerable demand (which is increasing) for fire-doors made according to the said invention. Moreover, the Lords Commissioners of the Admiralty have caused the boilers of ten of His Majesty's ships to be fitted with the said fire-doors made according to the said invention; and your petitioner W. A. M. has supplied several of the said fire-doors for the boilers used at His Majesty's Dockyard at Portsmouth, where they are now in use. Under the circumstances aforesaid, the working of the said letters patent and invention has resulted, during the last two years, in a considerable increase in the number of sales, with a diminution in the expenses of working.

Loss sustained by petitioner.

19. That, under the circumstances aforesaid, your petitioner W. A. M. has, notwithstanding his considerable outlay upon the said invention, been unable to obtain any profit thereupon, nor has

he obtained any remuneration for his expense and labour in perfecting the same; but, on the contrary, he has sustained considerable loss in relation to the said invention, and it is only now, when the letters patent are about to expire, that the use of the said invention is becoming fully established and extending.

Probability of patent becoming productive.

20. That your petitioners have no doubt that, if the term of the said letters patent should be prolonged, the said letters patent will now become productive, and your petitioner W. A. M. will be able to obtain a fair reimbursement and remuneration commensurate with the great public value and importance of the said invention.

Seven years' extension asked for.

21. That your petitioners humbly submit that, under the circumstances of the case, an exclusive right of using and vending the said invention for the further period of seven years will not sufficiently reimburse and remunerate your petitioner W. A. M.

Advertisements.

23. That your petitioners have given public notice, by advertisements caused to be inserted the requisite number of times in the *London Gazette* and in metropolitan and country newspapers, pursuant to the statutes in that case made and provided, that it is their intention to apply to your Majesty in Council for a prolongation of the term of sole using and vending the said invention.

Prayer.

Your petitioners therefore humbly pray that your Majesty will be graciously pleased to take the case of your petitioners into your Royal consideration, and to refer the same to the Judicial Committee of your Majesty's Most Honourable Privy Council, and that your petitioners may be heard before such Committee by their counsel and witnesses, and that your Majesty will be pleased to grant to your petitioners a prolongation of the term of sole using and vending the said invention for the further and additional term of fourteen years, or for such other term as to your Majesty shall seem fit, and to grant new letters patent for the said invention to your petitioners for such term as to your Majesty shall seem fit, after the expiration of the first term originally granted by the existing letters patent hereinbefore mentioned according to the form of the statutes in such cases made and provided.

And your petitioners will ever pray, &c.

B. & R.,
Solicitors for Petitioners.

FORM OF THE ACCOUNTS WHICH MUST ACCOMPANY PETITION FOR EXTENSION OF LETTERS PATENT.

IN THE PRIVY COUNCIL.

Re R. Patent, 19 , No. .

STATEMENT OF RECEIPTS AND EXPENDITURE FILED ON PETITION FOR PROLONGATION OF PATENT.

19	*Receipts.*	£	s.	d.
April	Money received in prizes at exhibitions, viz.:—			
	1st prize at Agricultural Hall, London .			
	Do. at the International Fisheries Exhibition			

19	*Expenditure.*	£	s.	d.
April	Taking out patent, making drawings, &c.			
	Making three working models, and exhibiting same at the London Tavern .			
19				
June	Exhibiting models at the Exhibition of Life Saving Apparatus at Liverpool .			
Dec.	Exhibiting models at the Admiralty .			
19				
April	Paid Government stamp			
	Paid patent agents' charges . . .			
19				
May	Exhibiting models at Fishmongers' Hall .			
19				
March	Do. at United Service Institute . .			
May	Do. do.			
Aug.	Do. at the Royal Aquarium, when 1st prize silver medal was received . .			

		£	s.	d.
Nov.	Making two large working models of the *Princess Alice*, and exhibiting same to the jury at Woolwich, and at the Board of Trade Office, Poplar			
19 April	Paid Government stamp			
	Paid patent agents' charges . . .			
	Making eight working models to scale, and exhibiting same at the Naval and Submarine Exhibition at the Agricultural Hall, Islington, London—			
	Rent of space . .			
	Fitting up stand, &c. .			
	Wages, attendance to show models . .			
	Carriage of models each way			
	Workmen's time and *materials* . . .			
	Printing circulars, &c., in connection with same			
19 April	Exhibiting models at Clarence House to H.R.H. the Duke of Edinburgh . .			
May	Do. do. at Admiralty to Sir Thomas Brassey			
	Do. do. to Sir Francis Sullivan .			
	Carried forward . . .			

Carried forward . . .

		£	s.	d.
	Brought forward . . .			
	Total Receipts . .	£		

		£	s.	d.
19	Brought forward . .			
July	Exhibiting models at Admiralty to Sir William Mends			
May to Oct.	Making eight improved large working models, and exhibiting same with others at the International Fisheries Exhibition, London—			
	Fitting up of stand and writing boards . .			
	Carriage of models .			
	Attendants—			
	2 men for 6 months .			
	1 man for 3 months .			
	Making of models, workmen's time, and materials . . .			
19	Taking models and exhibiting same in Germany—viz., Riel, Berlin, and Hamburg			
	Do. do. at Liverpool . . .			
	Total Expenditure . .	£		

ANOTHER FORM OF THE ACCOUNTS WHICH MUST ACCOMPANY PETITION FOR EXTENSION OF LETTERS PATENT.

19	*Receipts.*	£	s.	d.	£	s.	d.
	To Sale of 69 doors, as per press copy-book						
	Less discount . .						
	To Balance, being loss . .						
					£		

19	*Expenditure.*	£	s.	d.	£	s.	d.
	By Purchases of raw material for 69 doors, calculated to be at least . . .						
	,, Trade expenses, as per cash-book, being one year's travelling—						
	Expenses of several travellers . . .						
	Patent agents' charges .						
	Stationery . . .						
	Petty expenses for patterns, oil, and other trade expenses . .						
	,, Commission, as per cash-book						
	,, Advertising . . .						
	,, Wages of workmen . .						
	,, Rent, taxes, and lighting .						
	,, Bad debts						
					£		

The purchases for 19 , 19 , 19 , are calculated upon accounts in subsequent years. The actual vouchers for 19 , 19 , 19 , were destroyed when petitioner removed to new premises in F. Street, where room was very valuable, and, in consequence, old papers and books no longer considered necessary were not provided with room, but were destroyed. The above calculations for 19 , 19 , 19 , are based on actual accounts kept for ten years following.

19	*Receipts.*	£	s.	d.	£	s.	d.
	To Sale of 156 doors, as per press copy-book . . .						
	Less discount . .						
	To Balance, being loss . .						
					£		

19	*Expenditure.*	£	s.	d.	£	s.	d.
	By Purchases of raw material for 156 doors, calculated to be at least . . .						
	,, Trade expenses, as per cash-book, being one year's travelling—						
	Expenses of several travellers . . .						
	Stationery . . .						
	Patent agents' charges .						
	Charges for patterns, oil, and other trade expenses . . .						
	,, Commission, as per cash-book						
	,, Advertising . . .						
	,, Wages of workmen . .						
	,, Rent, taxes, and lighting .						
	,, Bad debts						
				£			

19	*Receipts.*	£	s.	d.	£	s.	d.
	To Sale of 301 doors, as per press copy-book . . .						
	Less discount . . .						
	To Balance, being loss . .						
					£		

19	*Expenditure.*	£	s.	d.	£	s.	d.
	By Purchases of raw material for 301 doors, calculated to be at least . . .						
	,, Trade expenses, as per cash-book, being one year's travelling—						
	Expenses of several travellers . . .						
	Law expenses incurred in recovering several debts						
	Patent fees . . .						
	Stationery						
	Charges for patterns, oil, and other trade expenses . . .						
	,, Commission, as per cash-book						
	,, Advertising . . .						
	,, Wages of workmen . .						
	,, Rent, taxes, and lighting .						
					£		

19	*Receipts.*	£	s.	d.	£	s.	d.
	To Sales of 254 doors as per press copy-book . . .						
	Lees discount . . .						
	To Balance, being loss .						
					£		

19	*Expenditure.*	£	s.	d.	£	s.	d.
	By Purchases of raw material for 254 doors, as per vouchers						
	,, Trade expenses, as per cash-book, being one year's travelling—						
	Expenses of several travellers . . .						
	Law expenses incurred in recovering several debts . . .						
	Bricklayers' work . .						
	Stationery . . .						
	Charges for patterns, oil, and other expenses .						
	,, Commission, as per cash-book						
	,, Advertising . . .						
	,, Wages of workmen . .						
	,, Rent, taxes, and lighting .						
					£		

19	*Receipts.*	£	*s.*	*d.*	£	*s.*	*d.*
	To Sale of 364 doors, as per press copy-book . . .						
	Less discount . . .						
	To Balance, being loss . .						
					£		

19	*Expenditure.*	£	*s.*	*d.*	£	*s.*	*d.*
	By Purchases of raw material for 364 doors, as per vouchers						
	,, Trade expenses, as per cash-book, being one year's travelling—						
	Expenses of several travellers . . .						
	Bricklayers' work . .						
	Stationery . . .						
	Charges for patterns, oil, and other trade expenses . . .						
	,, Commission, as per cash-book						
	,, Advertising . . .						
	,, Wages of workmen . .						
	,, Rent, taxes, and lighting .						
					£		

19	*Receipts.*	£	s.	d.	£	s.	d.
	To Sale of 415 doors as per press copy-book . . .						
	Less discount . . .						
	To Balance, being loss . .						
					£		

19	*Expenditure.*	£	s.	d.	£	s.	d.
	By Purchases of raw material for 415 doors, as per vouchers						
	,, Trade expenses, as per cash-book, being one year's travelling—						
	Expenses of several travellers . . .						
	Stationery . . .						
	Bricklayers' work . .						
	Charges for patterns, oil, and other trade expenses . . .						
	,, Commission, as per cash-book						
	,, Advertising . . .						
	,, Wages of workmen . .						
	,, Rent, taxes, and lighting .						
	,, Bad debts						
					£		

19	*Receipts.*	£	s.	d.	£	s.	d.
	To Sale of 473 doors, as per press copy-book . . .						
	Less discount . . .						
	To Balance, being loss . .						
					£		

19	*Expenditure.*	£	s.	d.	£	s.	d.
	By Purchases of raw material for 473 doors, as per vouchers						
	,, Trade expenses, as per cash-book, being one year's travelling—						
	Expenses of several travellers . . .						
	Bricklayers' work . .						
	Stationery . . .						
	Charges for patterns, oil, and other trade expenses . . .						
	,, Commission, as per cash-book						
	,, Advertising . . .						
	,, Wages of workmen . .						
	,, Rent, taxes, and lighting .						
	,, Bad debts						
					£		

19	*Receipts.*	£	*s.*	*d.*	£	*s.*	*d.*
	To Sale of 365 doors, as per press copy-book . . .						
	Less discount . . .						
	To Royalties—						
	England						
	America						
	To Balance, being loss . .						
					£		

19	*Expenditure.*	£	*s.*	*d.*	£	*s.*	*d.*
	By Purchases, as per vouchers, of raw material for 365 doors						
	,, Trade expenses, as per cash-book, being one year's travelling—						
	Expenses of several travellers . . .						
	Patent expenses (stamp)						
	Stationery . . .						
	Bricklayers' work . .						
	Law expenses incurred in the recovery of several debts . .						
	Charges for patterns, oil, and other trade expenses . . .						
	,, Commission, as per cash-book						
	,, Advertising . . .						
	,, Wages of workmen . .						
	,, Rent, taxes, and lighting .						
					£		

19	*Receipts.*	£	s.	d.	£	s.	d.
	To Sale of 330 doors, as per press copy-book . . .						
	Less discount . . .						
	To Royalties—						
	England						
	New York						
	Austria						
	To Balance, being loss . .						
					£		

19	*Expenditure.*	£	s.	d.	£	s.	d.
	By Purchases of raw material for 330 doors, as per vouchers						
	,, Trade expenses, as per cash-book, being one year's travelling—						
	Expenses of several travellers . . .						
	Stationery . . .						
	Bricklayers' work . .						
	Law expenses incurred in recovering several debts						
	Charges for patterns, oil, and other trade expenses . . .						
	,, Commission, as per cash-book						
	,, Advertising . . .						
	,, Wages of workmen . .						
	,, Rent, taxes, and lighting .						
					£		

19	*Receipts.*	£	s.	d.	£	s.	d.
	To Sale of 325 doors, as per press copy-book . . .						
	Less discount . . .						
	To Royalties—						
	Austria						
	America						
	To Balance, being loss . .						
					£		

19	*Expenditure.*	£	s.	d.	£	s.	d.
	By Purchases of raw material for 325 doors, as per vouchers						
	,, Trade expenses, as per cash-book, being one year's travelling—						
	Expenses of several travellers . . .						
	Stationery . . .						
	Bricklayers' work . .						
	Charges for patterns, oil, and other trade expenses . . .						
	,, Advertising, as per cash-book						
	,, Commission . . .						
	,, Wages of workmen . .						
	,, Rent, taxes, and lighting .						
	,, Bad debts						
					£		

19	*Receipts.*	£	s.	d.	£	s.	d.
	To Sale of 311 doors, as per press copy-book . . .						
	Less discount . . .						
	To Royalties—						
	England						
	To Balance, being loss . .						
					£		

19	*Expenditure.*	£	s.	d.	£	s.	d.
	By Purchases of raw material for 311 doors, as per vouchers						
	,, Trade expenses, as per cash-book, being one year's travelling—						
	Expenses of several travellers . . .						
	Stationery . . .						
	Charges for patterns, oil, and other trade expenses . . .						
	,, Commission, as per cash-book						
	,, Advertising . . .						
	,, Wages of workmen . .						
	,, Rent, taxes, and lighting .						
	,, Bad debts						
					£		

19	*Receipts.*	£	s.	d.	£	s.	d.
	To Sale of 313 doors, as per press copy-book . . .						...
	Less discount . . .						
	To Royalties—						
	Austria						
	To Balance, being loss . .						
					£		

19	*Expenditure.*	£	s.	d.	£	s.	d.
	By Purchases of raw material for 313 doors, as per vouchers						
	,, Trade expenses, as per cash-book, being one year's travelling—						
	Expenses of several travellers . . .						
	Law. expenses incurred in recovering several debts . . .						
	Stationery . . .						
	Charges for patterns, oil, and other trade expenses . . .						
	,, Commission, as per cash-book						
	,, Advertising . . .						
	,, Wages of workmen . .						
	,, Rent, taxes, and lighting .						
	,, Bad debts						
					£		

19	*Receipts.*	£	s.	d.	£	s.	d.
	To Sale of 411 doors, as per press copy-book . . .						
	Less discount . . .						
	To Royalties—						
	Austria						
	£						

19	*Expenditure.*	£	s.	d.	£	s.	d.
	By Purchases of raw material for 411 doors, as per vouchers						
	,, Trade expenses, as per cash-book, being one year's travelling—						
	Expenses of several travellers . . .						
	Stationery . . .						
	Charges for patterns, oil, and other trade expenses . . .						
	,, Commission, as per cash-book						
	,, Advertising . . .						
	,, Wages of workmen . .						
	,, Rent, taxes, and lighting .						
	By Balance, being profit . .						
	£						

Receipts.	£	s.	d.	£	s.	d.
19						
(Eight months.)						
To Sale of 181 doors, as per press copy-book, from January to August . . .						
Less discount . . .						
				£		

Expenditure.	£	s.	d.	£	s.	d
19						
(Eight months.)						
By Purchases of raw material for 181 doors, from January to August (eight months), as per vouchers						
,, Trade expenses, as per cash-book, being eight months' travelling—						
Expenses of several travellers . . .						
Stationery . . .						
Charges for patterns, oil, and other trade expenses . . .						
,, Commission, as per cash-book						
,, Advertising . . .						
,, Wages of workmen . .						
,, Rent, taxes, and lighting for eight months (estimated)						
,, Balance, being profit . .						
,, Balance brought down, value of plant and stock in 19						
,, Do. do. 19 . .						
				£		

Summary.

Date.		Receipts.			Expenditure.				Profit.			Loss.		
		£	s.	d.	£	s.	d.		£	s.	d.	£	s.	d.
	18													
	18													
	18													
	18													
	18													
	18													
	18													
	19													
	19													
	19													
	19													
	19													
Jan. to Aug. (8 months)	19													
		£			£			£	£			£		

Stock £

£

Loss . . £

M.'s PATENT.

List of Firms supplied gratuitously with Furnace Doors.

			Cost.		
			£	s.	d.

ORDERS.

ORDER FOR REVOCATION OF LETTERS PATENT.

Re *Gaulard and Gibbs' Patent*, 4362, A.D. 1882
(*North, J., July* 9, 1888).

Upon the petition of S. Z. de F., in the
on the day of , 19 , preferred unto this Court, and upon hearing counsel for the petitioner and for the respondents, L. G. and J. D. G., and the N. Co. for the Distribution of Electricity by Secondary Generators, Limited, on the , and upon reading the petition, the amended particulars of objections delivered by the petitioner, the exhibits produced to the witnesses named in the schedule hereto, and set opposite to their names in the third column of such schedule, and upon hearing the evidence of the witnesses named in the first column of such schedule, upon their examination taken orally before this Court on the days mentioned in such schedule: this Court did order that the petition should stand for judgment, and the same standing for judgment this day in the paper, in the presence of counsel for the petitioner and the respondents: this Court doth order that the letters patent No. 4362, A.D. 1882, in the petition mentioned, granted to L. G. and J. D. G., be revoked. And it is ordered that the respondents L. G., J. D. G., and the N. Co. for the Distribution of Electricity by Secondary Generators, Limited, pay to the petitioner, S. Z. de F., his costs of the said petition, to be taxed by the taxing master on the higher scale.

SCHEDULE.

ORDER FOR FURTHER AND BETTER PARTICULARS OF OBJECTIONS.

Harris v. *Rothwell* (*Feb.* 13, 1886).

Upon, &c., this Court doth order that the defendant do on or before the day of , 19 , deliver to the plaintiff further and better particulars in writing of his objections as to the

validity of the letters patent on which he means to rely at the trial, viz. :—

Portions of invention alleged to have been published.

1. By stating what portions of the plaintiff's invention are alleged to have been published prior to the date of the letters patent in each of the several publications in the particulars of objections mentioned by reference to the claiming clauses of the specification of the said patent.

Parts of prior publications relied on.

2. Also by stating more specifically the parts of the alleged publications relied on by the defendant in paragraph eleven of the said particulars of objections.

3. Also by stating more particularly the time and place of the alleged prior users.

Claim anticipated.

4. Also by stating, by reference to the claiming clauses of the specification of the plaintiff's patent, which portions of the said patent are alleged to be anticipated by each of such prior users.

Interrogatories.

And it is ordered that the plaintiff be at liberty to administer interrogatories for the examination of the defendant.

Costs.

And it is ordered that the costs of this application be costs in the action.

ORDER FOR LEAVE TO AMEND SPECIFICATION DURING ACTION OF INFRINGEMENT.

The Haslam Foundry and Engineering Company v. *Goodfellow and others* (*Kay, J., Dec.* 2, 1887).

Upon motion this day made unto this Court by counsel for the plaintiffs, and upon hearing counsel for the defendants, and upon reading the pleadings in this action, and an affidavit of A. C., filed the 1st December, 1887, and the exhibits therein referred to: it is ordered that the plaintiffs be at liberty to apply at the Patent Office for leave to further amend the specification of their patent, No. 1034 of the year 1877, by striking out the second claim thereof, and by making such other alterations (if any) as will be rendered necessary thereby. And it is ordered that, after such amendment has been made, the plaintiffs be at liberty to amend their statement of claim so as to limit this action to the amended specification of the said patent. And in default thereof, it is ordered that this action do stand dismissed of this Court, with costs, to be taxed by the taxing master, and be paid by the plaintiffs, the Haslam Foundry and Engineering Company, Limited, to the defendants. And it is ordered that the costs of the defendants Messrs. G. & M., Messrs. L.

& H., and Messrs. T. N. & Son, of this application, and of and occasioned by such last-mentioned amendment, be their costs in any event, and be borne by the said plaintiffs, the Haslam Foundry and Engineering Company, Limited. And it is ordered that, in the event of this action proceeding, all other costs be reserved.

ORDER FOR LEAVE TO AMEND SPECIFICATION PENDING PETITION FOR REVOCATION OF PATENT.

Re *Gaulard and Gibbs' Patent* (*Kekewich, J., Nov.* 21, 1887).

Upon motion this day made unto this Court by counsel for L. G. and J. D. G., and the N. Co., the respondents to the petition preferred by the above-named S. Z. F., and upon hearing counsel for the said petitioner, an affidavit of the petitioner, S. Z. F., filed the day of , 19 , and an affidavit of J. D. G., filed the day of , 19 : this Court doth order that the applicants be at liberty forthwith to apply to amend their specification filed in pursuance of the above letters patent, No. of 19 , by way of disclaimer, the applicants undertaking to prosecute their proceedings with all diligence. And it is ordered that the petitioner be at liberty, within fourteen days after notice of the amendments made in the specification, either to amend his petition and the particulars of objection delivered by him, or to discontinue all proceedings thereunder. And it is ordered that the respondents L. G., J. D. G., and the N. Co. do pay to the petitioner, S. Z. F., his costs of and consequent upon the presentation of his petition up to and including his costs of this motion. Costs to be taxed by the taxing master.

19 —A—No.

ORDER FOR INSPECTION.

The Haslam Foundry and Engineering Company, Limited v. *Goodfellow and others* (*Kay, J., April* 5, 1887).

Upon motion this day made unto this Court by counsel for the plaintiffs, and upon reading the writ issued in this action and affidavit of , &c. &c., and the plaintiffs by their counsel undertaking during the inspection hereinafter directed, or until further

order, not to threaten the defendants, Messieurs Goodfellow and Mathews, or their customers, or any other person or persons, by circulars, advertisements, or otherwise, with any legal proceedings or liability in respect of the manufacture, use, sale, or purchase of refrigerating engines or machines by the said defendants, or the use, sale, or purchase of engines or machines, sold by, or offered for sale by any purchaser from, the said defendants: this Court doth order that the plaintiffs be at liberty, on giving four days' notice, by [*scientific experts*] and solicitor, to inspect refrigerating machines manufactured and in course of manufacture by the defendants, Messieurs Goodfellow and Mathews, for the other defendants, or one of them, which are referred to in the said affidavit of R. M. in the said action of Goodfellow *v.* The Haslam Foundry and Engineering Company, Limited, 1887—G—573. And it is ordered that the costs of this application be costs in the action.

ORDER OF REFERENCE TO INDEPENDENT EXPERT FOR REPORT TO THE COURT DURING ACTION OF INFRINGEMENT.

Badische Anilin und Soda Fabrik v. *Levenstein.* (*a*)

The Court, being desirous of obtaining the opinion of Professor R. upon the questions set forth or referred to in the schedule hereto, doth order that such questions be referred to the said Professor for inquiry and report, and that a specification of the patent, dated February 25, 1878, No. 786, be supplied to the Professor.

SCHEDULE.

ORDER FOR EXPERIMENTS BEFORE SCIENTIFIC EXPERT AND HIS REPORT TO THE COURT DURING ACTION OF INFRINGEMENT.

Edison and Swan United Electric Light Company, Limited v. *Holland and others* (*Kay, J., Jan.* 1, 1888).

This Court, being desirous that experiments should be conducted as hereinafter mentioned, doth hereby order that experiments

(*a*) 2 R. P. C. 77.

confined to the repetition of experiments of which evidence has already been given before this Court on behalf of the plaintiff and defendants respectiveiy upon the patent of , dated the day of , and numbered , be conducted before one of the following persons in the following rotation [*names of scientific experts*]. And the plaintiffs and defendants respectively are to repeat in the presence of the person before whom such experiments are conducted, and of two experts on each side, any of their said experiments of which evidence has been given as aforesaid which they may think fit, with the aid of assistants. Each side to choose the place at which its experiments shall be made. And it is ordered that such one of them the said before whom such experiments shall be conducted do report to the Court the nature and result of each experiment made before him.

FEES.

FEES IN REFERENCE TO THE REGISTRATION OF PATENT AGENTS. (*a*)

Nature of Fee.	When to be Paid.	To whom to be Paid.	Amount.
			£ s. d.
For registration of name of patent agent who had been *bonâ fide* in practice prior to the passing of the Act.	On application and before registration.	To the Registrar at the Institute.	5 5 0
For registration of name of any person other than as above.	Do. do.	Do.	5 5 0
Annual fee to be paid by every registered patent agent.	On or before November 30 of each year, in respect of the year commencing January 1st following.	Do.	3 3 0
On entry of a candidate for the final qualifying examination.	At time of entering name.	Do.	2 2 0

(*a*) This list forms Appendix C. to the Register of Patent Agents' Rules, 1889.

LIST OF FEES PAYABLE ON AND IN CONNECTION WITH LETTERS PATENT. (*b*)

	£ s. d.	£ s. d.
1. On application for provisional protection	1 0 0	
2. On filing complete specification	3 0 0	
	———	4 0 0
or		
3. On filing complete specification with first application		4 0 0
4. On appeal from Comptroller to Law Officer. By appellant		3 0 0
5. On notice of opposition to grant of patent. By opponent		0 10 0
6. On hearing by Comptroller. By applicant and by opponent respectively		1 0 0
On application to amend specification :—		
7. Up to sealing. By applicant		1 10 0
8. After sealing. By patentee		3 0 0
9. On notice of opposition to amendment. By opponent		0 10 0
10. On hearing by Comptroller. By applicant and by opponent respectively		1 0 0
11. On application to amend specification during action or proceeding. By patentee		3 0 0
12. On application to the Board of Trade for a compulsory licence. By person applying		1 0 0
13. On opposition to grant of compulsory licence. By opponent		1 0 0
13A. On sealing of patent; in respect of each application (*c*)		1 0 0
On certificate of renewal :—		
14. Before the expiration of the 4th year from the date of the patent and in respect of the 5th year ...		5 0 0
15. Before the expiration of the 5th year from the date of the patent and in respect of the 6th year ...		6 0 0
16. Before the expiration of the 6th year from the date of the patent and in respect of the 7th year ...		7 0 0
17. Before the expiration of the 7th year from the date of the patent and in respect of the 8th year ...		8 0 0
18. Before the expiration of the 8th year from the date of the patent and in respect of the 9th year ...		9 0 0

(*b*) This list forms the First Schedule to the Patent Rules, 1903.
(*c*) See Patent Rules, 1905, r. 13, p. 320, *ante*.

		£	s.	d.
19.	Before the expiration of the 9th year from the date of the patent and in respect of the 10th year ...	10	0	0
20.	Before the expiration of the 10th year from the date of the patent and in respect of the 11th year ...	11	0	0
21.	Before the expiration of the 11th year from the date of the patent and in respect of the 12th year ...	12	0	0
22.	Before the expiration of the 12th year from the date of the patent and in respect of the 13th year ...	13	0	0
23.	Before the expiration of the 13th year from the date of the patent and in respect of the 14th year ...	14	0	0
	On enlargement of time for payment of renewal fees:—			
24.	Not exceeding one month	1	0	0
25.	„ „ two months	3	0	0
26.	„ „ three months	5	0	0
27.	For every entry of an assignment, transmission, agreement, licence, or extension of patent	0	10	0
28.	For duplicate of letters patent ... ... each	2	0	0
29.	On notice to Comptroller of intended exhibition of a patent under section 39	0	10	0
30.	Search or inspection fee ... ... each	0	1	0
31.	For office copies ... ... every 100 words (but never less than one shilling)	0	0	4
32.	For office copies of drawings, cost according to agreement			
33.	For certifying office copies, MSS. or printed ... each	0	1	0
34.	On postal request for printed specification	0	0	8
	On request to Comptroller to correct a clerical error :—			
35.	Up to sealing	0	5	0
36.	After sealing	1	0	0
37.	For certificate of Comptroller under section 96 ...	0	5	0
38.	For altering address in register	0	5	0
39.	For enlargement of time for filing complete specification, not exceeding one month	2	0	0
	For enlargement of time for acceptance of complete specification :—			
40.	Not exceeding one month	2	0	0
41.	„ „ two months	4	0	0
42.	„ „ three months	6	0	0

THE END

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