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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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. .....Drowry 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.

I. O. J. .....The Illustrated Official Journal (Patents).
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, New 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, New Series.

M. & G. .....Manning and Granger's Reports.
M. & S. .....Maule and Selwyn's Reports.
M. & W. .....Meeson and Welsby'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 Cases 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 Sciences, 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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Hinks, Rollins *v.*
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James, Thomson *v.*
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Marshalls, Ld., Chameleon Patents Manufacturing Co., Ld. *v.*

Martin, Lyons *v.*
Martins, Cochrane (T. P.) & Co. *v.*
Martyn, Ellam *v.*
Marwood, Pneumatic Tyre Co. *v.*
Mason, Gawthorp *v.*
Massam, Thorley's Cattle Food Co. *v.*
Massey, Pilkington *v.*
Mather, Birch *v.*
Matin, Nadel *v.*
Maxim-Nordenfelt Guns and Ammunition Co., Delta Metal Co. *v.*
Maxim-Nordenfelt Guns and Ammunition Co., Nordenfelt *v.*
May, Wenham *v.*
Mayor and Corporation of Newcastle-upon-Tyne, Lyon *v.*
Mayor, &c. of Bradford, Chamberlain and Hookham, Ld. *v.*
Mayor, &c. of Huddersfield, Chamberlain and Hookham, Ld. *v.*
Mayor of Manchester, British Thomson-Houston Co., Ld. *v.*
Mayor of Manchester, Gadd *v.*
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.*
McMillan, Bergman *v.*
Mechan, Chadburn *v.*
Menck, National Phonograph Co. of Australia *v.*
Menzies, Betts *v.*
Mercantile Bank of Lancashire, Ld., Chatwoods Patent Safe and Lock Co., Ld. *v.*
Metcalf, R. *v.*
Metropolitan Gas Meters, Ld., Martins, Ld. *v.*
Metropolitan Gas Moters, Ld., Meters, Ld. *v.*
Meyor's Patent, Meyenburg and The Clayton Anilin Co.'s Application *v.*
M'Grundy & Co., Incandescent Gas Light Co. *v.*
Middleton, Morton *v.*
Midland Acotylene (Parent) Syndicate, Acetylene Illuminating Co., Ld. *v.*

Midland Lighting Co., Société Anonyme pour le Fabrication d'Appareils d'Eclairage *v.*
Midland Ry. Co., Stark *v.*
Miles, Earl de la Warr *v.*
Mill, R. *v.*
Millard, Grover and Baker Sewing Machine Co. *v.*
Miller, Lucas *v.*
Minerals Separation, Ld., British Ore Concentration Syndicate, Ld. *v.*
Mitchell, Perry *v.*
Monopole Cycle and Carriage Co., Ld., Spaul *v.*
Monte Video Gas Co., Jones *v.*
Moore, Bovill *v.*
Moore, Jordan *v.*
Moore, Thomson *v.*
Moorwood, Crossthwaite *v.*
Morgan, Burt *v.*
Morgan, Knott *v.*
Morgan, Shrewsbury and Talbot Cab Co. *v.*
Morley, Mandelberg *v.*
Morris, Rowcliffe *v.*
Morris, Young *v.*
Mort, Parnell *v.*
Mottershead, United Telephone Co. *v.*
Moule's Earth Closet, Baird *v.*
Moulton, Hancock *v.*
Mower, Minter *v.*
Moy (Ernest F.), Ld., Reason Manufacturing Co., Ld. *v.*
Mullinar, Redges *v.*
Muntz Metal Co., Drake *v.*
Murdock, Warner *v.*
Mussary, R. *v.*
Mutual Cycle and Manufacturing Co., Ld., Osmond *v.*

Nairn, Linoleum Co. *v.*
Nash, Williams *v.*
National Bolivian Navigation Co., Republic of Bolivia *v.*
National Exhibitions Association, Automatic Weighing Machine Co. *v.*
National Saccharin Co., Ld., Saccharin Corporation, Ld. *v.*
Neal, Dunlop Pneumatic Tyre Co., Ld. *v.*
Neal, Smith *v.*
Needle, Jackson *v.*
Neilson, Baird *v.*
Neilson, Betts *v.*
Neilson, Household Co. *v.*
Neilson, R. *v.*
Neilson, United Telephone Co. *v.*
Nelson, Swinborne *v.*
New Incandescent Mantle Co., Incandescent Gas Light Co. *v.*
New Ixion Tyre and Cycle Co., Pneumatic Tyre Co. *v.*
New Lamb Tyre Co., Dunlop Pneumatic Tyre Co., Ld. *v.*
New Seddon Pneumatic Tyre and Self-closing Tube Co., Dunlop Pneumatic Tyre Co. *v.*
New Townsend Cycle Co., Ld., Dover (H. W.) and Dover, Ld. *v.*
Newton Hindmarch on Patents, R. *v.*
Nicholls, Clark *v.*
Nicholson, Harrison Patents Co., Ld. *v.*
Nicholson, Murchland *v.*
Nickalls, Merry *v.*
Nightingale, Arkwright *v.*
Nobel's Explosive Co., Ld., Badische Anilin und Soda Fabrik *v.*
Noel, Betts *v.*
Norden, 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 Jeffory 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.*
O'Neill and Brown, Gall *v.*
Oppenheim, Wittman *v.*
Ore Concentration Co., Ld., Minerals Separation, Ld. *v.*
Orme Evans & Co., Ld., Presto Gear Case and Components Co., Ld. *v.*
Osborne, Hind *v.*
Osgerby, Hudson *v.*
Osram Lamp Works, Ld., "Z" Electric Lamp Manufacturing Co., Ld. *v.*
Owon, Peters *v.*
Owens, Tadman *v.*
Oxley, Needham *v.*

PAIN, Schermuly *v.*
Palmer, Parrott *v.*
Parker, Manton *v.*
Parker, Mountain *v.*
Parmentier, 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 and Machine Improvements Co., Ld., Hickton's Patent Syndicate *v.*
Patents Investments Co., Crampton *v.*
Paterson, Montgomerie *v.*
Patterson, United Telephone Co. *v.*
Patterson, Washburn and Moen Manufacturing Co. *v.*
Pattullo, Hutchinson *v.*
Pavement Light Co., Hayward *v.*
Payne, Blofield *v.*
Payne, Elwes *v.*
Peach, Crofts *v.*
Peacock, International Harvester Company of America *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.*
Phillips (John) & Co., Lynch and Henry Wilson & Co., Ld. *v.*
Picard, Edwards & Co. *v.*
Picksley, Bamlett *v.*
Pimm, Bovill *v.*
Pinto Leite, Craven *v.*
Pintsch's Patent Lighting Co., Douglass *v.*
Piper, Gregory *v.*
Pirrie, Elmore *v.*
Pitcher, McGrunther *v.*
Pitman, Nicols *v.*
Plaff, Deutsche Nähmaschinen 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.*
Pott, Cassels and Williamson, Watson, Laidlaw & Co., Ld. *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.*
Read, Holliday & Sons, Ld., Vidal Dyers Syndicate, Ld. *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.*
Rendell, Underwood & Co., Ltd., Brooks (A. B.) & Co., Ld. *v.*
Rennie, Mackelcan *v.*
Reynolds, Mitchell *v.*
Reynolds, Nettlefolds *v.*
Richards, Davenport *v.*
Richards, Patent Type Foundry Co. *v.*
Richardson, Benno Jaffé und Darmstaedter Lanolin Fabrik *v.*
Richardson, Bereton *v.*
Richardson, Universities of Oxford and Cambridge *v.*
Riches, Wool, Hide and Skin Syndicate *v.*
Riekman, 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, Edison-Bell Consolidated Phonograph Co., Ld. *v.*
Rosenthal, Young *v.*
Rosenwald, Kopp *v.*
Ross, Nickels *v.*
Ross, Saccharin Corporation, Ld. *v.*
Rotax Motor Accessories Co., Lake and Elliot *v.*
Rothwell, Harris *v.*
Rowland, Peckover *v.*
Royle, Challender *v.*
Rudge's Cycle Co., Singer *v.*
Ruhl, Gramaphone Co., Ld. *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, Saccharin Corporation, Ld. *v.*
Scott, Smith *v.*
Seabrook, Combination Hubs, Ld. *v.*

Searle, Miller *v.*
Sears, Pickard *v.*
Seaward, Morgan *v.*
Seine, R. *v.*
Senior, Crossthwaite Fire Bar Syndicate *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.*
Shiels, Henderson *v.*
Shippey, Edison Electric Co. *v.*
Shoppee, Bimm *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.*
Simon Collier, Ld., British United Shoe Machinery Co., Ld. *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.*
Snell, Dansk Rekylriffel Syndikat Aktieselskab *v.*
Société de Lunetiers, Perry *v.*
Société General d'Electricité, Werderman *v.*
Somervell, Hancock *v.*
Somervell, Kenny's Patent Buttonholing Co. *v.*
South Eastern Ry. Co., London Chatham and Dover Ry. Co. *v.*
Sowerby Bridge Flour Society, Van Gelder Apsimon & Co. *v.*
Speight, Tolson *v.*
Spence, Kurtz *v.*
Spence, Mayer *v.*
Spiller, Plimpton *v.*
Spilsbury, New Ixion Tyre and Cycle Co. *v.*
Spiroy, Badische Anilin und Soda Fabrik *v.*
Sponge, Heine *v.*
Spottiswood, Bacon *v.*
Squire, Herrberger *v.*
Standard Piston Ring and Engineering Company, Ld., Robertson *v.*
Starbuck Waggon Co., Eades *v.*
Stassen, Singer *v.*
Steel, Brooks *v.*
Steel, Crossthwaite *v.*
Steel, Otto *v.*
Stephens, Edgebury *v.*
Stepney Spare Motor Wheel, Ld., Hall *v.*
Sterckx, Shrewsbury and Talbot Cab Co. *v.*
Sterious, Taddy *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.*
Sun Fan Co., Ld., Davidson *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, Annand *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, Siemens *v.*
Taylor, Willoughby *v.*
Taylor, Maddox & Co., Wrightson *v.*
Temler, Actien Gesellschaft für Cartonagen Industrie *v.*
Terry, Hyam *v.*
Thierry, Rickman *v.*
Thomas, Hill *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.*
Townsend (R.) & Co., Ld., Molassine Co., Ld. *v.*
Trapp & Co., Adhesive Dry Mounting Co., Ld. *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.*
Tweedale, 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 Press Manufacturing Co., Elder *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 Varcy, Ld. *v.*
Walker, Power *v.*
Walker, United Telephone Co. *v.*
Wallington, Weston & Co., Sirdar Rubber Co., Ld. *v.*
Wallis, Crow *v.*
Wallis, R. *v.*
Wallis and Stevens, Ld., Foden *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.*
Water Tube Boiler and Engineering Co., Babcock and Wilcox, Ld. *v.*
Waterloo & Co., Driffield *v.*
Watson, Grafton *v.*
Watson, Haggenmacher *v.*
Watts, Beston *v.*
Webb, Copeland *v.*
Webb, Kynoch & Co., Ld. *v.*
Webber, Howes *v.*
Webber, Parmenter *v.*
Webster, Foxwell *v.*
Welch, Thomas *v.*
Weldite, Ld., Thermit, Ld. *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.*
Wheeler, R. *v.*
White, Baker *v.*
White (R.) & Sons, Ld., Saccharin Corporation, Ld. *v.*
White, Thomson & Co., Kelvin *v.*
White, Young *v.*
Whitecross Co., Lang *v.*
Whitehead, Duckett *v.*
Whitlingham, Cooper *v.*
Whitworth, Roskell *v.*
Wholesale Incandescent Fittings Co., Anti-Vibration Incandescent Lighting Co., Ld. *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, Clement Talbot, Ld. *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.*
Wolff, Marsh *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, Bessmans *v.*
Wright, Hassall *v.*
Wright and Butler, Ld., Tilghman's Patent Sand Blast Co. *v.*
Wrightson, Richmond & Co., Ld. *v.*
Wrigley, Bainbridge *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.*
Yuill, May *v.*

ZIMMER, Wood *v.*

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 before, the reign of Edward III. (*a*). It is 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 officials—viz., the Comptroller-General of the Patent Office, and the Attorney-General, or the Solicitor-General.

Grant is made at the patentee's peril.

Every grant of letters patent is made at the grantee's peril. The Crown in no way whatever guarantees the validity of the grant if the representations and conditions on 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 Patents and Designs Act, 1907, together with the rules and regulations from time to time made by the Board of Trade in pursuance of the powers conferred by that statute.

(*a*) Year Book, part iv., 40 Edw. 3, fol. 17, 18; Darcy *v.* Allen (1602), Moore's Reps. 675.

(*b*) 21 Jac. 1, c. 3.

(*c*) Co. Lit. 43b; 5 Co. 27a; 7 Co. 12a. See 7 Edw. 7, c. 29, s. 97.

Patent Agents.

Patent Agents.

It is the usual practice for a would-be patentee to engage the services of a patent agent 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 resident, or having a place of business, in the United Kingdom. In any particular case the Comptroller may, if he think fit, require the personal signature or presence of the applicant (*d*).

Qualifications of registered patent agents.

With a view to avoid the abuse of ill-qualified persons practising as patent agents, Parliament, by sect. 1 of the Patents, Designs, and Trade Marks Act, 1888 (the provisions of which are incorporated in the Patents and Designs Act, 1907, s. 84), 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, 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 (*e*). A person 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 December 24, 1888—*i.e.*, by having so practised a person does not acquire a right, and registration and payment of fees is a condition precedent to his being allowed to continue so practising and describing himself (*f*).

(*d*) P. R. (1908), r. 9.
(*e*) 7 Ed. 7, c. 29, s. 84 (2).
(*f*) Storey *v.* Graham (1899), 16 R. P. C. 106.

Patent Agents.

Persons seeking to be registered as patent agents must satisfy various examinational tests before they are entitled to be placed on the register (*g*).

Register of Patent Agents.

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' Rules.

The Board of Trade have power to make such general rules as they think expedient for regulating the practice of registration (*h*). The Register of Patent Agents' Rules for the time being in force will be found in the Appendix (*i*). The rules 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* (*k*). 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 (*l*).

Anyone may act as an ordinary agent.

Notwithstanding the provisions of sect. 84, sub-sect. (1) of the Act of 1907, but, of course, subject to the new provisions of sect. 85, 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 prosecution. He is not entitled to describe himself as a "patent agent" (*m*).

With the object of remedying abuses arising from certain persons practising as agents and not being registered patent agents, Parliament by sect. 48 of the Patents and Designs

(*g*) R. P. A. R. (1908), r. 7.
(*h*) 7 Edw. 7, c. 29, s. 86.
(*i*) P. 426, *post*.
(*k*) Chartered Institute of Patent Agents *v.* Lockwood (1893), 10 R. P. C. 167; 11 R. P. C. 374.
(*l*) *Ibid.*
(*m*) See Graham *v.* Fanta (1872), 9 R. P. C. 164; Graham *v.* Eli (1898), 15 R. P. C. 259.

Patent Agents.

(Amendment) Act, 1907, which is sect. 85 of the Patents and Designs Act, 1907, made the following statutory provisions:—

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

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

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

Improper use of the words "Patent Office."

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

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 (*p*).

(*n*) See p. 348, *post*.

(*o*) 7 Edw. 7, c. 29, s. 89 (5).

(*p*) 7 Edw. 7, c. 29, s. 1.

Application.

The application must be made on one of the prescribed forms (*q*).

How the application must be made.

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

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 (*r*); and it is an undecided point whether or not the omission to do so would render the patent void (*s*). It is the usual practice, however, to state on the application form that the invention is partly communicated from abroad.

Form No. 1 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 No. 1A is intended for use where there has been a communication to the applicant from abroad, whether the communicatee is a corporation or a private individual (*t*).

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 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 (*u*).

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 (*x*), 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

(*q*) 7 Edw. 7, c. 29, s. 1 (2). The forms at present in use will be found in the second schedule to the Patents Rules, 1908, p. 377, *post*.

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

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

(*t*) See Société Anonyme du Générateur du Templé's Patent (1896), 13 R. P. C. 54.

(*u*) 7 Edw. 7, c. 29, s. 5 (2); s. 81; P. R. 1908, r. 7.

(*x*) 7 Edw. 7, c. 29, s. 1 (4).

Application.

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 (*y*). Drawings (if any) attached to the specification are deemed to form part of it, and the Comptroller has power to require that suitable drawings shall be supplied with the specification, or at any time before acceptance of the same (*z*).

The form of declaration at present in use for the purpose of an application for a grant of a patent (*a*) 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 headed, made and subscribed as stated in Patents Rules, 1908, rr. 106 and 107.

If any person is, by reason of infancy, lunacy, or other inability, incapable of making any declaration, or doing anything required or permitted by or under the Act of 1907, the guardian or committee (if any) of the person subject to the disability, or, if there be none, any person appointed by any Court possessing jurisdiction in respect of his property, may make such declaration, or a declaration as nearly corresponding thereto as circumstances permit, and do such thing, in the name and on behalf of the person subject to the disability (*b*). An appointment may be made by the Court for these purposes upon the petition of any person acting on behalf of the person subject to the disability or of any other person interested in the making of the declaration or the doing of the thing (*c*).

and are exempt from duty under Stamp Act, 1870.

A statutory declaration, made under the provisions of the Statutory Declarations Act, 1835, and forming part of an application for a patent, is exempt from the stamp duty charged on a statutory declaration, under the provisions of the Stamp Act, 1870 (*d*).

Application should comprise only one invention.

An application for a patent should comprise only one invention. Sect. 14, sub-sect. (2) of the Patents and Designs Act, 1907, like the corresponding section of the repealed Act of 1883, provides that every patent shall be granted for one invention only; but the specification may contain more than one claim, and it is not competent to take any objection to the

(*y*) 7 Edw. 7, c. 29, s. 1 (3).
(*z*) 7 Edw. 7, c. 29, s. 2 (2).
(*a*) See p. 377, *post*.
(*b*) 7 Edw. 7, c. 29, s. 83 (1).
(*c*) 7 Edw. 7, c. 29, s. 83 (2).
(*d*) 47 & 48 Vict. c. 62, s. 9.

patent on the ground that it has been granted for more than one invention.

Application.

Examination and Acceptance of Application.—Every application for a patent is referred by the Comptroller-General to one of the examiners who are appointed by the Board of Trade (*e*), and 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 subject-matter of the invention (*f*). It is also the examiner's duty to report whether the invention is contrary to law and morality (*g*), and whether the application comprises more than one invention (*h*). 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, 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 (*i*). It is also competent to the Comptroller to inquire whether the alleged invention is an invention within the definition contained in sect. 93 of the Patents and Designs Act, 1907—*i.e.*, whether it is a manufacture within the meaning of sect. 6 of the Statute of Monopolies, and, subject to appeal to the law officer, to refuse the application, if he is satisfied that it is not (*j*).

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

Comptroller acts on the report of the examiner.

The Comptroller has power to refuse to grant a patent for an invention of which the use would, in his opinion, be contrary to law and morality (*k*).

The Comptroller is not entitled to exercise any discretionary power given to him by or under the Act of 1907 adversely to an applicant without (if so required within the prescribed time

Exercise of discretionary powers by Comptroller.

(*e*) See 46 & 47 Vict. c. 57, s. 83; 7 Edw. 7, c. 29, s. 63.
(*f*) 7 Edw. 7, c. 29, s. 3.
(*g*) 7 Edw. 7, c. 29, s. 75.
(*h*) 7 Edw. 7, c. 29, s. 14.
(*i*) 7 Edw. 7, c. 29, s. 3.
(*j*) Cooper's Patent (1901), 19 R. P. C. 53; Johnson's Patent (1901), 19 R. P. C. 56.
(*k*) 7 Edw. 7, c. 29, s. 75.

Application.

by the applicant) giving the applicant an opportunity of being heard (*l*). Both the Comptroller and the law officer have now power to award costs of proceedings before them, and to direct by whom and how the same are to be paid (*m*).

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 Officers' Rules (*n*). 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 Officers' 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 (*o*).

Example of an objection to the title.

Brown's Application (*p*) for a patent under the title "improvements in casks and tubs" may be given as an example of an objection taken to the title. It was accompanied by a complete specification in the first instance. The specification 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. The object of the invention was stated to be 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,

(*l*) 7 Edw. 7, c. 29, s. 73; see P. R. (1908) rr. 102—105.
(*m*) 7 Edw. 7, c. 29, ss. 39, 40.
(*n*) See p. 424, *post*.
(*o*) In the Matter of Bairstow's Patent (1888), 5 R. P. C. 289.
(*p*) (1887), Griff. L. O. C. 1.

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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, 1908 (*q*), 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 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 the Rules thereunder for the time being in force.

The Rules further provide that 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.

Test of one invention.

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 (*r*).

(*q*) P. R. (1908), r. 13 (1).

(*r*) P. R. (1908), r. 13 (1). The following 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 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, other-

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Lord *Herschell*, when Solicitor-General (*s*), 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,

wise 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. 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.

(*s*) Jones's Patent, Griff. P. C. 265.

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." Application.

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.

With reference to sect. 14 (2) of the Patents and Designs Act, 1907, which provides that every patent shall be granted for one invention only, and Rule 13 (1) of the Patents Rules, 1908, which prescribes that 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 part of an existing machine, apparatus or process, it has been stated by the law officer as follows:—It is impossible to give a definition of what constitutes "one invention" or a "distinct matter" which would be applicable to every case. Each case must be dealt with in reference to its own facts. The question is one of importance to the Office, because it has now to make a search in accordance with sect. 7 of the Patents and Designs Act, 1907, and if a patent is allowed comprising several distinct matters, and indeed involving several inventions, a search would have to be made under many

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classes, and, moreover, upon the filing of subsequent applications, as the patent granted would have to be filed in several classes, and parts only of it would be applicable to those classes, a large amount of extra labour would be involved in searching beyond that which would be necessary were the claims subdivided into appropriate classes. The question cannot be decided upon any strict principle. A certain amount of discretion must be permitted to the Comptroller, and unless he exercises that discretion in any way which is clearly unreasonable the law officer ought not to interfere with it (*t*).

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 (*u*).

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, who shall, if required, hear the applicant and the Comptroller, and may make an order determining whether, and subject to what conditions, if any, the application shall be accepted (*x*).

Notice of acceptance of application.

If the application is accepted the applicant will receive due notice to this effect (*y*), 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 (*z*); though until the patent is granted the applicant cannot sue at all (*a*); and even then he is not entitled to sue in respect of infringements committed before the acceptance and publication of the complete specification (*b*).

An application for a patent may be abandoned at any time by the true and first inventor. Technically the application is not withdrawn, but there is a failure to proceed (*c*). If there are joint applicants, and the applicant alleged to be the true

(*t*) See per Evans, S.-G., Z.'s Application (1910), 27 R. P. C. 285.

(*u*) See Craig and Macfarlane's Application, P. M. J. Vol. IV. 3rd series, p. 366.

(*x*) 7 Edw. 7, c. 29, s. 3 (3). The practice on appeal to the law officer is regulated by the Law Officer's Rules, see p. 424, *post*.

(*y*) 7 Edw. 7, c. 29, s. 3 (4).

(*z*) 7 Edw. 7, c. 29, s. 4.

(*a*) 7 Edw. 7, c. 29, s. 10.

(*b*) 7 Edw. 7, c. 29, s. 13; Vol. I. pp. 181, 389.

(*c*) Wool, Hide and Skin Syndicate v. Riches (1902), 19 R. P. C. 127; A. and B.'s Application (1911), 28 R. P. C. 454.

and first inventor signifies his desire that the application should not proceed, no patent can be granted to the other joint applicant (*d*). Application.

Statutory Offences.—Sub-sects. 2 and 3 of sect. 89 of the Patents and Designs Act, 1907, which are a re-enactment of sect. 105 of the Act of 1883, provide that any person who represents falsely that any article sold by him is a patented article shall be liable for every offence, on summary conviction, to a fine not exceeding five pounds. The effect of sect. 10 of the Act of 1907, which is the same as sect. 15 of the repealed Act of 1883, 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 (*e*). Representation that an article is patented where no patent has been granted.

It is probably no offence under the Act of 1907 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 (*f*).

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 (*g*).

The grant of a patent under the Act of 1907 does not authorise the grantee to use the Royal Arms or to place the Royal Arms on any patented article. And any person who, without the authority of His Majesty, uses in connection with any business, trade, 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 to the belief that he is duly authorised to use the Royal Arms, is liable, on conviction under the Summary Jurisdiction Acts, to a fine not exceeding twenty pounds (*h*). But these provisions do not affect the rights, if any, of the proprietor of a trade mark containing the Royal Arms to continue the use of the same (*i*). Unauthorised use of the Royal Arms.

In Scotland, any offence under the Act of 1907 declared to Penalties in Scotland.

(*d*) *Ibid.*

(*e*) 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.

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

(*g*) 7 Edw. 7, c. 29, s. 89 (3); but see Cheavin *v.* Walker (1877), L. R. 5 Ch. D. 863; Linoleum Co. *v.* Nairn (1877), L. R. 7 Ch. D. 834.

(*h*) 7 Edw. 7, c. 29, s. 90.

(*i*) *Ibid.*

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be punishable on summary conviction may be prosecuted in the Sheriff Court.

Penalties in the Isle of Man.

The punishment for a misdemeanour, under the Act of 1907, 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 (*k*). 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 (*l*).

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

Filing and Examination of 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 from the date of the application; and if an application is made for an extension of the time for leaving a complete specification, the Comptroller must, on payment of the prescribed fee, grant an extension of time to the extent applied for but not exceeding one month (*m*). Unless a complete specification is left within that time, the application will be deemed to be abandoned (*n*).

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

Where an application for a patent has been abandoned or become void before acceptance of the complete specification, 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 (*p*), except in cases under the convention.

Complete specification must be signed.

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 (*q*).

(*k*) 7 Edw. 7, c. 29, s. 96 (2).
(*l*) 7 Edw. 7, c. 29, s. 96 (3).
(*m*) 7 Edw. 7, c. 29, s. 5 (1).
(*n*) 7 Edw. 7, c. 29, s. 5 (2).
(*o*) Russell *v.* Ledsam (1843), 14 M. & W. 572, 582; 16 M. & W. 633; Williams *v.* Nash (1859), 28 Beav. 93.
(*p*) 7 Edw. 7, c. 29, s. 69 (1).
(*q*) In the Matter of Grenfell and McEvoy's Patent (1890), 7 R. P. C. 151.

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Drawings.

The complete specification may be accompanied by drawings; and the Comptroller has power to require that drawings shall be supplied with it, or at any time before its acceptance; and drawings (if any) are deemed to be parts of the specification (*r*). Drawings, if furnished, must comply with the requirements of Patents Rules, 1908, rr. 19—26.

Distinct and clear and succinct statement of the invention claimed.

The Act of 1907, as did the Act of 1883, prescribes that a complete specification must end with a distinct statement of the invention claimed (*s*), and it is required by Rule 14 of the Patents Rules, 1908, that 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 (*t*). Claims are not disallowed merely on account of their number (*u*).

Samples and specimens as to chemical inventions.

The Patents and Designs Act, 1907, comprises a new provision (which was enacted by sect. 3 of the Patents and Designs (Amendment) Act, 1907) to the effect that where the invention in respect of which an application is made is a chemical invention, such typical samples and specimens as may be prescribed shall, if in any particular case the Comptroller considers it desirable to so require, be furnished before acceptance of the complete specification (*v*); and Rule 26 of the Patents Rules, 1908, regulates the manner in which such samples, if required, are to be supplied.

The object of giving the Comptroller the above power is to prevent the granting of mere blocking patents. It is to enable the Comptroller, on behalf of the public, to be satisfied that the alleged invention will really produce the results stated. If a claim be allowed which is in terms sufficiently vague to apparently include the production of a chemical body which, as a matter of fact, the applicant cannot produce by the alleged invention, the patent may be used to harass a subsequent meritorious inventor, who, by a different invention, is able to produce such chemical body. When the Comptroller considers it desirable to call for samples and specimens, and the applicant is unable to produce them, or satisfy the Comptroller that they can be produced, the Comptroller can, upon the report of the

(*r*) 7 Edw. 7, c. 29, s. 2 (3).
(*s*) 7 Edw. 7, c. 29, s. 2 (4); see Vol. I. p. 244.
(*t*) See Bancroft's Application (1905), 23 R. P. C. 89.
(*u*) *Ibid.*
(*v*) 7 Edw. 7, c. 29, s. 2 (5); see J Y I's Application (1911), 28 R. P. C. 625.

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examiner (*x*) either refuse the application or require amendment on the ground that the specification does not fairly describe the nature of the invention. This power may enable the Comptroller to prevent the dog-in-the-manger tactics which previously were, in some cases, practised by patentees whose claims were purposely drafted in language sufficiently vague to appear to claim chemical bodies which could not be produced by the alleged invention.

Examination as to form and conformity.

The complete specification is referred to an examiner for report whether it has been prepared in the prescribed manner; and, if the examiner reports that it has not been so prepared, the Comptroller may refuse to accept it until it has been amended to his satisfaction (*y*). The examiner also reports 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; or (with the consent of the applicant) to cancel the provisional specification, and treat the application as having been made on the date on which the complete specification was left, and the application has effect as if made on that date: provided that where the complete specification includes an invention not included in the provisional, the Comptroller may allow the original application to proceed so far as the invention included both in the provisional and in the complete specification is concerned, and treat the claim for the additional invention included in the complete specification as an application for that invention made on the date at which the complete specification was left (*z*). A refusal of the Comptroller to accept a complete specification 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 (*a*).

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

(*x*) See *infra*.
(*y*) 7 Edw. 7, c. 29, s. 6 (2).
(*z*) 7 Edw. 7, c. 29, s. 6 (3).
(*a*) 7 Edw. 7, c. 29, s. 6 (4).

to be is not delegated by the Act to the examiner, though the application proceeds if he reports favourably to the applicant (*b*). **Application.**

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 (*c*). Thus in *Everitt's Application* (*d*) 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 deposited, in addition to the report above referred to forthwith makes an investigation for the purpose of ascertaining whether the invention claimed has been wholly or in part claimed or described in any specification (other than a provisional specification not followed by a complete specification), published before the date of the application, and left pursuant to any application for a patent made in the United Kingdom within fifty years next before the date of the application (*e*). A specification which is open to public inspection under the provisions of sect. 91, sub-sect. (3) of the Act of 1907 is deemed to be published for the purposes of this investigation, though there is no evidence that it has in fact been inspected by the public (*f*). This investigation extends to specifications published after the date of the application in respect of which the investigation is made, and being specifications which have been deposited pursuant to prior applications (*g*); and for this purpose an application is deemed to be prior to another application if the patent applied for when granted would be of prior date to the patent granted pur-

(*b*) See C.'s Patent (1890), 7 R. P. C. 256.
(*c*) Everitt (1886), Griff. L. O. C. 27; Vol. I. pp. 178, 179.
(*d*) (1888), Griff. L. O. C. 27.
(*e*) 7 Edw. 7, c. 29, s. 7 (1).
(*f*) Parsons and Stoney's Application (1910), 27 R. P. C. 491.
(*g*) 7 Edw. 7, c. 29, s. 8 (1).

Application.

suant to that other application (*h*). It may well be that a specification published after the date of the application, and deposited pursuant to an application which is, or is deemed to be, a prior application, will not be published till after the applicant's specification has been accepted, or a patent has been granted to him. It is specially provided by the statute that in such a case the applicant shall, "whether or not his specification has been accepted or a patent granted to him, be afforded such facilities as may be prescribed for amending his specification, and in the event of his failing to do so, the Comptroller shall, in accordance with such procedure as may be prescribed, determine what reference, if any, to other specifications ought to be made in his specification by way of notice to the public" (*i*).

The practice as regards the investigation of specifications published before the date of the application is governed by Patents Rules, 1908, rr. 28—32, and as regards the investigation of specifications published after the date of the application, it is governed by Patents Rules, 1908, rr. 33—35. The rules prescribe the form in which references to prior specifications, if necessary, are to be made, and provide that when, after the acceptance of the specification has been published, any amendment has been made, or any reference inserted therein, notice thereof shall be advertised in the Official Journal (*k*).

In November, 1909, the Patent Office issued a notice in the following terms:—"In the earlier working of the Patents Act it was thought convenient not to insist too stringently upon a strict observance of Patents Rules 30 and 31. It has been found, however, in practice that this has occasioned increasing work to the Patent Office by the multiplication of correspondence, and other communications, and has tended to delay the progress of cases.

As a consequence, it has been found impossible to cope with the extra work entailed under the present procedure, and, in carrying out the Rules, the following Office practice will therefore in future be adopted on and after December 1st:—

(1) Rule 30 must be complied with, but where good cause is shown, time will be allowed—*e.g.*, when the appli-

(*h*) 7 Edw. 7, c. 29, s. 8 (3).
(*i*) 7 Edw. 7, c. 29, s. 8 (2) (3).
(*k*) P. R. (1908), r. 35.

cant is abroad or the complexity of the case requires it. Application.

(2) The interviews and correspondence between examiner and applicant will be restricted as far as possible to the absolute necessities of the case, and will aim at bringing to a clear issue at the *earliest possible date* the differences between the applicant and the examiner. A time limit will be imposed wherever practicable in accordance with the circumstances and complexity of the case.

(3) No hearing will be appointed unless there is a direct issue between the examiner and the applicant, or unless the applicant fails to submit amendments or make a real endeavour to avoid the citations within the time limited. When the issues are defined or when agreement is clearly impossible, notice of a hearing for a future date will at once be given.

(4) If the applicant desires any amendments to be considered at the hearing, other than those which he has submitted to the examiner under Rule 30, such amendments should be submitted seven days at least before the date of the hearing.

(5) At the hearing, whether attended or not by the applicant, the Comptroller may, as an alternative to the insertion of references, prescribe amendments which will be to his satisfaction under sect. 7, sub-sect. (4), and in such case the applicant must elect within such time as may be fixed by the Comptroller whether he agrees to the prescribed amendments or to the insertion of a reference. If no communication is received within the time prescribed, the references will be inserted. In cases requiring special treatment a limited time may be allowed for the precise form of amendment to be settled, and the hearing adjourned, if necessary.

(6) As far as possible, all questions between examiner and applicant will be decided at the hearing, and, except as indicated herein, no further opportunity of amendment will be allowed to the applicant, and the specification will only be accepted with the amendments or references prescribed in the Comptroller's decision.

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(7) If after the decision has been given or the applicant has made his election under paragraph 5 the applicant desires to amend, he must make a special application for that purpose to the Comptroller, and for this purpose Form 17, having a 30*s*. stamp, may be used. If the amendments suggested are satisfactory to the Comptroller, a statutory reference may be removed."

If on investigation it appears that the invention has been wholly or in part claimed or described in any specification published before the date of the application, 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 (*l*).

Acceptance of the Complete Specification.—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 (*m*). 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. Provided that the Comptroller, if satisfied that the invention claimed has been wholly and specifically claimed in any specification to which the investigation has extended, may in lieu of requiring references to be made in the applicant's specification as aforesaid refuse to grant a patent (*n*). It is to be noticed that this proviso does not give the Comptroller power to refuse the grant when the invention is shown to have been wholly or in part described, but not claimed, in a complete specification not more than fifty years old. The reason for this is that Parliament did not intend to give the Comptroller power to decide doubtful questions of novelty which are often the most debateable the Courts have to determine. It is also to be noticed that the words "wholly and specifically claimed" are a direction that

(*l*) 7 Edw. 7, c. 29, s. 7 (2).
(*m*) 7 Edw. 7, c. 29, s. 7 (3).
(*n*) 7 Edw. 7, c. 29, s. 7 (4).

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when it is not established that there is an entire and specific claim to the invention in a specification not more than fifty years old, the grant is to be allowed, but subject to such specific or other references to prior specifications as may be required to protect the public. The reason for the amendment of the specification, or the insertion of specific references or disclaimers, upon the reports of the examiner are similar to those for requiring amendment or specific references or disclaimers when an opponent partially establishes a case of prior claim (*o*). An appeal lies to the law officer from the Comptroller's decision in this matter (*p*).

Investigations no guarantee of validity.

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 (*q*).

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 1907, unless the Court or officer having power to order discovery in such legal proceedings shall certify that such production or inspection is desirable in the interests of justice, and ought to be allowed (*r*). 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 (*s*).

Amendment of a complete specification before and after acceptance.

The applicant may, under sect. 21 of the Patents and Designs Act, 1907, seek leave to amend his specification by way of disclaimer, correction or explanation (*t*), at any time even though the complete specification has not been accepted (*u*). Sect. 21 does not authorise the amendment of the title or provisional specification, but it is competent to the Comptroller to allow a disclaimer of part of the invention covered by the title, or under sects. 3, 6 and 7 of the Act to amend the title by way of an excision which does not extend its scope (*x*). If the

(*o*) See pp. 56—66, *post*.
(*p*) 7 Edw. 7, c. 29, s. 7 (5); s. 8 (2).
(*q*) 7 Edw. 7, c. 29, s. 7 (6).
(*r*) 7 Edw. 7, c. 29, s. 68.
(*s*) P. 23, *post*; 7 Edw. 7, c. 29, s. 9.
(*t*) P. 104, *post*.
(*u*) Jones's Patent, Griff. P. C. 313.
(*x*) See Dart's Patent, Griff. P. C. 307.

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complete specification has not become open to public inspection (*y*) there is no necessity for the advertisement of the request for leave to amend under sect. 21 (*z*).

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 (*a*) the Comptroller or law officer will exercise the power of requiring amendments as a condition of granting a patent or allow an amendment under sect. 21 of the Act of 1907, 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 (*b*).

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 (*c*).

Effect of acceptance of complete specification.

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. After the acceptance of the complete specification and until the date of sealing a patent in respect thereof, on the expiration of the time for sealing, the applicant has 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, except that he is not entitled to institute any proceedings for infringement until a patent for the invention has been granted to him (*d*).

Acceptance of complete

If a complete specification is not accepted within twelve

(*y*) P. 23, *post*.

(*z*) Jones's Patent, Griff. P. C. 313. In 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.

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

(*b*) See Thomas and Prevost's Patent (1858), 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. 66, *post*.

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

(*d*) 7 Edw. 7, c. 29, s. 10.

months from the date of application or within a further extended period not exceeding three months, which may be obtained by the applicant upon request and payment of the prescribed fee, then (except where an appeal has been lodged) the application at the expiration of such period becomes void (*e*).

Application.—specification must take place within a definite period.

When the complete specification is accepted, the Comptroller is required 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*).

When complete specification becomes public.

Patents of Addition.—Sect. 19 of the Patents and Designs Act, 1907, provides as follows:—

Statutory provisions.

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

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

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

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

This section was sect. 5 of the Patents and Designs (Amendment) Act of 1907.

The improvement or modification referred to in sub-sect. 1 must in itself, and independently of the invention upon which

Improvement must itself be an invention.

(*e*) 7 Edw. 7, c. 29, s. 6 (5); P. R. (1908), r. 37.

(*f*) 7 Edw. 7, c. 29, s. 9; P. R. (1908), rr. 38, 39.

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it is an improvement or modification, be an invention, because the Crown can only grant the patent for an invention (*g*). Further, in sub-sect. (4), the term used is "the invention," and under sect. 1 of the Act, sub-sect. (3), the applicant must make a declaration to the effect that he is in possession of an invention for which he desires to obtain a patent.

Test of proper subject-matter for patent of addition.

Probably it will be held that the test of "one general object" is the true test to apply to ascertain whether the invention is proper subject-matter for a patent of addition under this section; though, as specially provided in sub-sect. (4), if once a patent of addition is granted, it is not competent to question it on the ground that it is not proper subject for a patent of addition and ought to have been the subject of an independent patent.

When original patent has not been granted.

If the original patent has been only applied for and not granted, the applicant should apply under sub-sect. (1) that the term of the patent of addition be the same as the original, and so minimise the risk of attack on the ground of personal publication (*h*). If the original patent has been granted, the patent of addition will be dated as of the day of application for the patent of addition, and the term will be the unexpired term of the original patent.

Cannot be based on previous patent of addition.

A patent of addition cannot be based on a previous patent of addition (*i*).

Duration.

Probably the true construction of the words, "a patent of addition shall remain in force so long as the patent for the original invention remains in force and no longer," which occur in sub-sect. (3), is that the patent of addition shall not remain in force longer than that for the original invention, or during any period during which the patent for the original invention is not in force. This would appear to be so from the consideration that there is nothing in the Act which renders the patent of addition free from attack upon any of the grounds upon

(*g*) See Vol. I. p. 34; Patents Form No. 1c; but see 1910 (J), 27 R. P. C. App. p. xii. Unless the dictum "the specification must not disclose a separate or different invention," which occurs in this judgment, means the specification must not disclose an invention which is not an improvement in or modification of the original invention, it is submitted that it is wrong. The common law in force at the date of the commencement of the Act of 1907, and Patents Form No. 1c (which has statutory effect) both require that the subject-matter of the patent of addition shall be an invention which is new, *i.e.*, which is different from all previously known inventions.

(*h*) See Vol. I. p. 134.

(*i*) (1910) (J.), 27 R. P. C. App. p. xii.

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which the validity of an independent patent could be questioned. If the original patent is revoked or lapses, the patent of addition is no longer in force, though in the case of a lapse of the original, both patents could probably be restored, if, where the provisions of sect. 20 apply to the original patent, the patentee takes advantage of that section. A judgment for the defendant in an infringement action on the original patent which is based on the ground of invalidity of the patent, does not absolutely annul the patent (*j*). But unless and until the judgment of the Court is reversed or overruled by a Court of competent jurisdiction, or the specification is amended so as to remove the ground on which the Court held the patent bad, the original patent is not enforceable, and, possibly, within the meaning of sub-sect. (3) it would not be "in force." On the other hand, it may be that the original patent "remains in force" within the meaning of the section so long as it is not actually revoked or has not lapsed. The section is not clear on the point, and will, no doubt, be the subject of judicial interpretation in due course.

Policy.

Whether, in a particular case, it is good policy for the inventor to avail himself of the provisions of this section may be a difficult question and require careful consideration. Though procedure under this section may be economical by virtue of the latter part of sub-sect. (3), it is not always wise.

Sect. 16 of Patents and Designs Act, 1907.

Cognate Inventions.—It is provided by sect. 16 of the Patents and Designs Act, 1907, as follows:—

> (1) Where the same applicant has put in two or more provisional specifications for inventions which are cognate or modifications one of the other, and has obtained thereby concurrent provisional protection for the same, and the Comptroller is of opinion that the whole of such inventions are such as to constitute a single invention and may properly be included in one patent, he may accept one complete specification in respect of the whole of such applications and grant a single patent thereon.
>
> (2) Such patent shall bear the date of the earliest of such applications, but in considering the validity of the same and for the purpose of the provisions of this Act

(*j*) See Vol. I. p. 307.

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with respect to oppositions to the grant of patents, the Court or the Comptroller, as the case may be, shall have regard to the respective dates of the provisional specifications relating to the several matters claimed therein.

This provision was introduced by the Patents and Designs (Amendment) Act of 1907, s. 4.

Several inventions of a cognate nature may be included in one patent.

The effect of this section is to somewhat modify sect. 14, sub-sect. (2) of the Patents and Designs Act, 1907, which was sect. 33 of the Act of 1883. In virtue of the present section, it is competent to the Comptroller to allow one patent for several inventions, provided that they are of a cognate nature or modifications one of the other. By virtue of the old provisions now contained in sect. 14, sub-sect. (2) of the Patents and Designs Act, 1907, any patent which, as a fact, is allowed, notwithstanding that it is for more than one invention, cannot be questioned upon that ground.

The applicant will be required to satisfy the Comptroller that the inventions are cognate to or modifications one of the other. It would, therefore, appear that the test of one general object will be the true test to apply. Otherwise it is difficult to interpret the idea contained in sub-sect. (1) of several inventions being a single invention.

Dangers in including cognate inventions in one patent.

There is nothing in this section, or in any other part of the Act, to negative the proposition that, in the event of a patent being granted for several inventions which are cognate or modifications one of the other, and it being proved that as regards one of the inventions, there is a good objection to validity, on the ground of want of subject-matter, novelty, insufficient specification, or any other cause, the whole patent will be void; and the patentee will incur the risk of being unable to obtain damages in respect of infringement of any of the other inventions committed before amendment of his specification by the disclaimer of the invalidating invention (*k*). The foregoing consideration is sufficient to indicate that, in some cases, patentees who avail themselves of the provisions of this section will find it anything but a blessing. An applicant who, during the course of his application, conceives modifications and variations of his original idea, which may constitute one in-

(*k*) See Vol. I. p. 110.

vention with, or be different inventions but cognate to, or modifications of, the original invention, must ponder carefully before he decides to avail himself of the provisions of this section, or to apply for patents of addition, or to apply for separate patents altogether, or to treat the modifications as one invention with the original and fit subjects for different claims under sect. 14 of the Act of 1907. The questions of policy which will arise under such circumstances are too many and complicated for general discussion here. Each case will require careful consideration as it arises. Application.

Because of the provisions of sub-sect. (2), it has become the practice for all the provisional specifications, identified by the respective dates upon which they were put in, to be published and issued with the complete specification. All provisional specifications issued with the complete.

Probably it will be held competent to an applicant, whose complete specification has been accepted, to apply under this section to have his complete specification cancelled, so as to allow of the inclusion of an invention which is cognate to, or a modification of, the original, provided that the patent can be sealed within the prescribed time (*l*) from the date of the original application. Cancellation of an accepted complete specification.

Applications under International and Colonial Arrangements.—In order to enable the British Government to join the "Union for the Protection of Industrial Property"—which besides Great Britain comprises Austria, Belgium, Brazil, Ceylon, Commonwealth of Australia, Cuba, Denmark, France, Germany, Holland and its colonies, Hungary, Italy, Japan, Mexico, New Zealand, Norway, Portugal, San Domingo, Servia, Spain, Sweden, Switzerland, Trinidad and Tobago, Tunis, and the United States—it was provided by sect. 103 of the Act of 1883, as amended by sect. 6 of the Act of 1885, and sect. 1 of the Act of 1902, all of which provisions are re-enacted by sect. 91 (1) of the Patents and Designs Act, 1907, as follows:— Foreign applicants.

> (1) If his Majesty is pleased to make any arrangement with the Government of any foreign State for mutual protection of inventions, or designs, or trade marks, then any person who has applied for protection for any

(*l*) See 7 Edw. 7, c. 29, s. 12.

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invention, design, or trade mark in that State shall be entitled to a patent for his invention or to registration of his design or trade mark under this Act or the Trade Marks Act, 1905, in priority to other applicants; and the patent or registration shall have the same date as the date of the application in the foreign State.

Provided that—

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

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

The word "person" includes "corporation," and so the section gives the same rights of priority to corporations, *i.e.*, bodies of persons corporate or unincorporate, as to individuals (*m*).

Protection against publication during a period of twelve months.

The section also enacts 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 sect. 91 of the Act of 1907, to cases where the patentee avails himself of the privilege given by that section. A foreign patentee, who has obtained a patent in a State which has joined the convention, has a double right—viz., either to apply in this country under the above provisions 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

(*m*) P. 305, *post*; Carez's Patent (1889), 6 R. P. C. 552; Société Anouyme du Générateur du Templé's Patent (1896), 13 R. P. C. 56.

Application.

the date of application (*n*). 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 sect. 91 of the Patents and Designs Act, 1907, will not be acceded to by the authorities at the Patent Office (*o*). The section gives protection against publication only to patents which are granted upon applications made under its provisions (*p*), and if the grant is made under the provisions of the convention, the Comptroller or law officer has no authority to date the patent as of any date other than that of the first foreign application (*q*).

These 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 (*r*).

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 sect. 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 sect. 103 of the Act of 1883 having been extended to such foreign State before the expiration of the period allowed by the Act (*s*).

Provisions of sect. 91 of Act of 1907 may by Order in Council be applied to British possessions.

The section 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 apply the provisions thereof with such variations or additions, if any, as may be stated in the Order; and sect. 88 of the Act provides that an Order in Council under the Act shall, from a date to be

(*n*) British Tanning Co., Ld. *v.* Groth (1891), 8 R. P. C. 113; Acetylene Illuminating Co., Ld. *v.* United Alkali Co., Ld. (1902), 19 R. P. C. 213.

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

(*p*) *Ibid.*

(*q*) Scott's Application (1910), 27 R. P. C. 298.

(*r*) 7 Edw. 7, c. 29, s. 91 (4); Acetylene Illuminating Co., Ld. *v.* United Alkali Co., Ld. (1902), 19 R. P. C. 213.

(*s*) In the Matter of Main's Patent (1890), 7 R. P. C. 13.

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mentioned for the purpose in the Order, take effect as if it had been contained in the Act; but may be revoked or varied by a subsequent Order.

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

A patent in this country can only be granted under the provisions of sect. 91 of the Act of 1907, to a person who has actually made application for protection in the foreign State, and not to another person on his behalf (*t*).

The rights conferred by sect. 91 are personal.

Moreover, sect. 91 of the Act of 1907 does 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 section are personal, and intended to encourage persons who have invented abroad to come to this country and to make known their inventions (*u*).

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 sect. 103 of the Act of 1883 (now sect. 91 of the Act of 1907), to bear date September 7, 1887, the 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 (*x*).

Practice on applications under sect. 91 of the Act of 1907.

An applicant for a British patent under the provisions of sect. 91 of the Act of 1907 must include in his application a declaration that the foreign application as defined by the Patent Rules, 1908, has been made (*y*), 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

(*t*) 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.

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

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

(*y*) "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 sect. 91 of the Act of 1907 have been declared applicable, see Patents Rules (1908), r. 3.

dato 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 (*z*), and letters of administration must be taken out in this country. Application.

The application in the United Kingdom must be made on Patents Form 1B (*a*), and, in accordance with Rule 16, must be accompanied by, in addition to the complete specification left therewith, a copy or copies of the specification or specifications, 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, must be left at the Office at the same time as the application, or within such further time thereafter, not exceeding three months, as the Comptroller may allow. 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 (*b*).

For the purposes of the official search in the Patent Office and ordering the insertion of references to other patents, the date of application is the date of the actual application in England, not the date of the first foreign application (*c*).

Difficulties have arisen with regard to the documents which an applicant for a patent under the Convention should furnish to the Patent Office. The matter is under consideration in connection with the practice of foreign patent offices. In the meantime the following practice will, in accordance with notice given on 31st March, 1911, be adopted by the British Patent Office, and applies to all applications filed on or after the 1st May, 1911:—

(*z*) P. R. (1908), r. 15.

(*a*) See p. 381, *post*.

(*b*) P. R. (1908), r. 16.

(*c*) Deutsche Gold and Silber-Scheide Anstalt vorm. Rössler's Application (1907), 24 R. P. C. 209.

Application.

(1) The certified copy of the foreign specification furnished under Rule 16 should be a copy of the specification as originally filed in the foreign country or British possession. In the case of countries where no search for novelty is made and alterations are not probable a copy of the foreign specification as finally allowed or accepted will be taken as sufficient, but in other cases it will only be admitted on a certificate by the Foreign Patent Office, that no substantial addition has in fact been made to the specification since it was originally filed.

(2) Where the Convention application is based upon a foreign application which has been filed in the Foreign Patent Office on a certain date, but an earlier date is claimed as the date of the foreign application on the ground that the subject-matter was included in a specification of an earlier foreign application and has been divided out therefrom, and the applicant desires the date so claimed should be given to the patent to be granted in this country, then a certified copy of the foreign specification of the date claimed from which the subject-matter of the application has been so divided out or of that part of the foreign specification describing the invention it is now desired to protect should be furnished under Rule 16, together with the specification filed with the actual application made at the later date in the Foreign Office.

In such cases the date when the application in the foreign country in regard to the subject-matter so divided out was actually filed in the Foreign Patent Office will not be given to the patent to be granted in this country, unless the Comptroller is satisfied that the earlier date cannot properly be regarded as the date of the application in the foreign country.

In the latter case it will be sufficient to furnish a certified copy of the specification lodged in the Foreign Patent Office with the application when filed.

(3) A Convention application in respect o "renewed" application in the United States should be accompanied by a certified copy of the specification filed

in the United States with such "renewed" application, and the patent to be sealed in this country would be dated as of the date of filing such "renewed" application in the United States. Application.

(4) A Convention application in respect of a United States "reissue" application should be made in regard only to the new matter claimed for the first time in the "reissue" specification, a certified copy of which specification should be furnished under Rule 16, and the patent to be sealed in this country would be dated as of the date of filing such "reissue" application in the United States.

The Comptroller has a discretion under the Rules (*e*), to excuse, by way of an extension of time, strict compliance with the rule requiring that the certified copy of the foreign specification shall accompany the British application; and, in a proper case, he will no doubt do so in the future, as he has done in the past. Applicants should be careful to observe the rule, as non-compliance is rarely excused (*f*).

An application for extension of time for leaving the copy or copies of the foreign specification or specifications, drawings or documents must be made on Patents Form No. 5 (*g*).

If the complete specification left with the application be not accepted within twelve months from the date of application it becomes open to public inspection at the expiration of that period (*h*).

Save as aforesaid and as provided by Patents Rules, 1908, r. 83, as to payment of renewal fees, all proceedings in connection with a Convention application must be taken within the times and in the manner prescribed by the Acts or the Rules for ordinary applications (*i*).

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 specification, to conclude that the inventions referred to in

(*e*) Patents Rules (1908), r. 109.

(*f*) See In the Matter of an Application for a Patent under sect. 103 of the Patents, &c. Acts (1906), 23 R. P. C. 788.

(*g*) Patents Rules (1908), r. 16.

(*h*) 7 Edw. 7, c. 29, s. 91 (3) (a).

(*i*) 7 Edw. 7, c. 29, s. 91 (3); P. R. (1908), r. 18.

Application.

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 (*k*). Should the British patent be granted for an invention different from that forming the subject of the foreign application, this fact may seriously affect the validity of the patent (*l*).

Though when an applicant applies for a British patent under the provisions of sect. 91 of the Act of 1907 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 (*m*).

The question to be decided always is what in fact was the invention included in the foreign application, and is the invention claimed in the British specification the same. It would appear that *primâ facie* the foreign specification should be construed and examined on precisely the same principles as that of an English patent. Where different principles apply in foreign countries, the Patent Office requires that, in order to determine what is in fact included under the terms of a foreign application some *primâ facie* evidence must be given on behalf of the applicant to show the foreign practice, though strict proof is not demanded on this point (*n*).

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 sect. 14 (2) of the Act of 1907 is complied with. Conversely an applicant relying on sect. 91 of the Act of 1907 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.

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

(*l*) 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.

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

(*n*) See (1910) (B), 27 R. P. C. App. ii.

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

Opposition—General.

Opposition.

By sect. 11 of the Patents and Designs Act, 1907, it is enacted as follows:—

Sect. 11 of Act of 1907.

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

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

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

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

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

but on no other ground.

(2) Where such notice is given the Comptroller shall give notice of the opposition to the applicant, and shall, on the expiration of those two months, after hearing the applicant and the opponent, if desirous of being heard, decide on the case.

Opposition—General.

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

Opposition is allowed on only four 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 claimed in any complete specification for a British patent which is or will be of prior date to the patent the grant of which is opposed, other than a specification deposited pursuant to an application made more than fifty years before the date of the application for such last mentioned patent.

(3) That the nature of the invention or the manner in which it is to be performed is not sufficiently described and ascertained in the complete specification.

(4) 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.

Formerly, want of novelty, non-utility, and lack of subject-matter were all grounds of opposition, but the Act of 1883 abolished the right of the opposer to raise any of these grounds on opposition to the grant of 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.

The practice on opposition to grants of patents is regulated by the Patents Rules, 1908, rr. 40—47, and the Law Officers' Rules.

Notice of opposition.

A person entitled so to do, and desirous of opposing, must, within the two months allowed from the date of the advertise-

ment of the acceptance of the complete specification, give a notice of his opposition at the Patent Office, on Patents Form No. 8, 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 (*o*).

Opposition—General.

Where the person giving notice of an opposition does not desire that the patent should be refused, but merely that the specification should be amended by disclaimer or limitation, the notice of opposition should be accompanied or supplemented as soon as may be by a written statement to that effect indicating so far as can be conveniently done the general nature of the amendments desired and the portions, if any, of the earlier specifications relied upon as necessitating such amendments (*p*). If the opponent fails to obtain a refusal of the patent and has not put in a statement suggesting an alternative remedy, he will be cast in costs, but, if he has put in such a statement and obtains a portion of the redress to which he claims to be entitled, he is not debarred from receiving his costs where he is in a large measure successful (*q*).

Where the ground of opposition is that the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described and ascertained in the complete specification, the notice of opposition should be accompanied by a written statement indicating, so far as can conveniently be done, in what respects the invention is alleged to be insufficiently or unfairly described or ascertained (*r*).

It is in the public interest that all facts relating to the case should be before the Comptroller at the hearing, and he has power to allow an amendment of the notice of opposition by the insertion of references to prior specifications not originally included or otherwise, but the opponent seeking amendment may be penalised by costs and an adjournment at his expense in proper cases (*s*).

Amendment of notice of opposition.

Where the ground of opposition is that the applicant has obtained the invention from the opponent, or from a person

Evidence of opponent and applicant.

(*o*) P. R. (1908), r. 40.
(*p*) P. R. (1908), r. 40.
(*q*) See (1910) (H), 27 R. P. C., App. p. x.
(*r*) P. R. (1908), r. 41 (2).
(*s*) (1910) (C), 27 R. P. C. App., p. i.; Airey's Application (1888), 5 R. P. C. 348; Lake (1886), No. 8,642; Griff. L. O. C. 35.

Opposition—General.

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 or such further time as the Comptroller may in any special case allow, the opposition is deemed to be abandoned (*t*).

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 (*u*).

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 (*x*).

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 (*y*).

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 (*z*).

(*t*) P. R. (1908), r. 41.
(*u*) P. R. (1908), r. 42.
(*x*) P. R. (1908), r. 43.
(*y*) P. R. (1908), r. 44.
(*z*) P. R. (1908), r. 45.

Opposition—General.

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

If either party files a useless and unnecessary multiplicity of declarations, he runs the risk of being fixed with the costs and responsibility of them (*b*).

Hearing.

When the evidence is finally completed, the Comptroller appoints a time for the hearing of the case, of which he must give at least ten days' notice to the parties (*c*).

If the applicant or opponent desires to be heard, he must forthwith send the Comptroller an application on Patents Form No. 9 (*d*). 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 (*e*).

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 (*f*).

The Comptroller has power in any case in which he thinks it right so to do to take evidence *vivâ voce* in lieu of or in addition to evidence by declaration. And in case he decides to take evidence *vivâ voce* he has, in respect of requiring the attendance of witnesses and taking evidence on oath, the same powers as an official referee of the Supreme Court (*g*).

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 (*h*).

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 (*i*).

(*a*) P. R. (1908), r. 46.
(*b*) Brand's Patent (1894), 12 R. P. C. 102.
(*c*) P. R. (1908), r. 47. The hearing may be during the legal vacations.
(*d*) P. R. (1908), r. 47.
(*e*) *Ibid.*
(*f*) *Ibid.*
(*g*) 7 Edw. 7, c. 29, s. 77.
(*h*) *Ibid.*
(*i*) Luke's Patent (1887), Griff. P. C. 294.

Opposition—General.

It is the duty of the Comptroller and law officer at the hearing of an opposition to guard the interests of the public quite apart from those of the opponent (*k*). And there may be cases where, in the public interest, amendments or disclaimers may be required, even though the opponent fails in his opposition and costs are given against him (*l*).

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 (*m*). The mere withdrawal of an opposition does not entitle the applicant to the grant of a patent; the Comptroller or law officer, as the case may be, as guardian of the public interest, will hear and decide the case upon its merits in the absence of the opponent (*n*).

Appeal from the Comptroller's decision.

The procedure on appeal to the law officer is governed by the Law Officers' Rules, which see (*o*).

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

An appeal to the law officer is a rehearing (*r*). The law officer is entitled, if he desires it, to the assistance of an expert (*s*); 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 declara-

(*k*) Kempton and Mollan's Patent (1905), 22 R. P. C. 573; Lorrain's Patent (1888), 5 R. P. C. 142; Wadham's Patent (1910), 27 R. P. C. 172.

(*l*) See Wadham's Application (1910), 27 R. P. C. 172.

(*m*) Warmann (1887), Griff. L. O. C. 43.

(*n*) Kempton and Mollan's Patent (1905), 22 R. P. C. 573.

(*o*) P. 424, *post*.

(*p*) L. O. Rules, r. viii.; Hampton *v.* Facer (1887), Griff. L. O. C. 13; Cheeseborough's Patent, Griff. P. C. 303.

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

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

(*s*) 7 Edw. 7, c. 29, s. 11 (3).

Opposition—General.

tion (*t*); 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 (*u*).

Tho 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 (*x*). The law officer does not take on himself to decide adversely to the applicant fine points of anticipation (*y*).

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 (*z*).

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 (*a*). 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 the opposition is proved.

A patent is only refused in cases where the opposer proves 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.

The law officer is only justified in stopping the issue of a patent if he is satisfied that no jury could reasonably come to a decision in favour of the applicant (*b*).

(*t*) L. O. Rules, r. ix.
(*u*) 7 Edw. 7, c. 29, s. 40.
(*x*) In the Matter of Pitt's Patent (1888), 5 R. P. C. 343, 345.
(*y*) *Ibid.*
(*z*) Lancaster's Patent (1887), Griff. P. C. 294.
(*a*) P. 1, *ante*; L'Oiseau and Pierrard's Patent (1886), Griff. L. O. C. 36.
(*b*) Stuart's Application (1892), 9 R. P. C. 453.

Opposition—General.

The law officer has power, under special circumstances, to reopen cases which have been decided, *e.g.*, where there is fraud, a serious mistake, or miscarriage, he may direct a rehearing in order to see whether justice demands that another conclusion should be arrived at (*c*).

Costs.

Both the Comptroller and law officer now have power to award costs of proceedings before them, and to direct by whom and how the same are to be paid (*d*). They also have power to require security for costs from an opponent or an appellant (*e*). An order for costs made by the Comptroller or law officer is enforced by making it a rule of Court (*f*). And the practice is for the Comptroller or law officer to award an additional three guineas in the event of it becoming necessary to make the order a rule of Court (*g*). The order is made a rule of Court by counsel on motion, which is not made *vivâ voce* but by endorsement of the order required on his brief, which is then handed to the Registrar in Court (*h*).

Costs are not usually given to such an amount as would indemnify the parties. To do so would be seriously to discourage opposition, and to limit very much the usefulness of the office which the Comptroller and law officer fill in these matters (*i*).

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 (*k*).

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

Grounds of Opposition.—It will be convenient to consider separately the four grounds on which the grant of a patent

(*c*) Thomas and Prevost's Application (1898), 15 R. P. C. 258.
(*d*) 7 Edw. 7, c. 29, ss. 39, 40.
(*e*) *Ibid.*
(*f*) See 7 Edw. 7, c. 29, ss. 39, 40.
(*g*) See Goldstein's Application (1910), 27 R. C. P. 297.
(*h*) See White Book (1912), p. 877.
(*i*) See Stuart's Patent (1892), 9 R. P. C. 453.
(*k*) Woodhead (1886), Griff. L. O. C. 44.
(*l*) Fletcher (1886), Griff. L. O. C. 30.

to the applicant may be opposed by persons having a *locus standi* to oppose.

Opposition—First Ground.

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

It is not necessary for an opponent on this ground of opposition to prove fraud. But he must clearly show that the invention was obtained from him either directly or indirectly, or through his agent; or he must bring the applicant, by evidence of notice or by the doctrine of estoppel or otherwise, into some known legal relationship or connection with himself. It is not sufficient to show that the invention has been handed on from A. to B. through numerous intermediate parties, and that B. has received it in entire innocence of the fact that it owed its origin to A. (*m*).

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 (*n*); nor is a person holding a power of attorney from a patentee his legal representative within the meaning of the Act (*o*). The term legal representative must be construed in its ordinary meaning of executor or administrator (*p*).

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 (*q*).

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

(*m*) See Francis' Application (1910), 27 R. P. C. 86.

(*n*) Spiel's Patent (1888), 5 R. P. C. 281.

(*o*) Edmunds' Patent (1888), Griff. P. C. 281.

(*p*) *Ibid.*

(*q*) 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.

(*r*) In the Matter of Marshall's Application (1888), 5 R. P. C. 661; In the Matter of Griffin's Applica-

Opposition—First Ground.

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 this ground of opposition does not extend (*s*), or is not established (*t*).

Objection may succeed in part.

The words "obtained the invention" are to be read as 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 (*u*).

Certain dicta of the Comptroller in a recent case (*x*) seem to suggest that it is important, in reference to this ground of opposition, to inquire whether the invention alleged to have been obtained from the opponent has been claimed in an earlier specification. There are reasons for saying that such an inquiry is irrelevant to this ground of opposition, since the question is whether "the invention which is purported to be patented" was obtained from the opponent, and not whether it has been already claimed in a specification which is or will be of prior date. The point may be the subject of a decision of the law officer on some future occasion.

Employer and employed.

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 (*y*).

In *David* and *Woodley's Application* (*z*), 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

tion (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.

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

(*t*) Ashton and Knowles' Application (1910), 27 R. P. C. 181.

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

(*x*) Ashton and Knowles' Application (1910), 27 R. P. C. 181.

(*y*) See Heald's Patent (1891), 8 R. P. C. 429; Vol. I. pp. 21, 22.

(*z*) (1884), Griff. L. O. C. 26.

Opposition—First Ground.

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* 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 (*a*).

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, 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 (*b*).

Fraud committed by applicant abroad.

Fraud committed abroad will not prejudice an applicant in

(*a*) 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.

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

Opposition—First Ground.

respect of an invention stated to have been communicated to him from abroad.

Thus where (*c*), 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 (*d*). 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 (*e*); neither will they inquire as to any alleged fraud committed by the applicant (communicatee) against the opponent abroad (*f*).

Rights of inventor who is a foreigner.

Though a foreign applicant has important rights under sect. 91 of the Act of 1907 and the Convention of 1884, he is not entitled, on the ground that the applicant obtained part or the whole of the invention from him, to oppose an application in this country of earlier date than his own, if the communication relied upon was made abroad and not in the United Kingdom or the Isle of Man (*g*).

Probably in the case of an application for a patent for an invention communicated from abroad, if it could be shown by a third party that the applicant had no authority from the foreign communicator to make the application, but that the third party had such authority, the Comptroller would refuse to recognise the applicant, and would accept an application made by such third party (*h*).

Joint grantees.

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

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

(*d*) 21 Jac. 1, c. 3, s. 6; Nickels *v.* Ross (1849), 8 C. B. 679.

(*e*) See Edmunds' 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; McNeil's Patent (1907), 24 R. P. C. 680; Mears-Gerkin's Application (1910), 27 R. P. C. 565.

(*f*) Higgins' Patent (1891), 9 R. P. C. 74; Edmunds' Patent (1886), Griff. P. C. 283; Spiel's Patent (1888), 5 R. P. C. 281; Bairstow's Patent (1887), 5 R. P. C. 286; Lake's Patent (1887), 5 R. P. C. 415; McNeil's Patent (1907), 24 R P. C. 680; Mears-Gerkin's Application (1910), 27 R. P. C. 565.

(*g*) Edmunds' Patent (1886), Griff. P. C. 281; In the Matter of Lake's Patent (1888), 5 R. P. C. 415.

(*h*) See Fiechter (1882), Griff. P. C. 284.

(*i*) 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.

Opposition—First Ground.

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 (*k*). Now, however, since the patent is in all cases dated as on the day of application (*l*), 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 (*m*); and each co-owner may be bound to pay a proportionate part of the fees necessary to keep the patent on foot (*n*).

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

Condition that opponent shall be made a joint patentee.

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 (*p*).

Rival applicants.

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 (*q*).

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

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

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

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

(*n*) Evans and Otway's Patent (1884), Griff. P. C. 279.

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

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

(*q*) Hoskins's Patent (1884), Griff. P. C. 291; Newman's Patent (No. 2) (1888), 5 R. P. C. 279; for form of statement, see Griff. P. C. 292, n.

Opposition—Second Ground.

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

This ground is the second ground of opposition which was provided for by the repealed Act of 1883 as interpreted by the law officer (*r*), but extended as regards patents which will be of prior date and limited as regards specifications which are more than fifty years old at the date of the application which is opposed.

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 establish that only persons having a direct interest are allowed to oppose on this ground. Sub-sect. (3) of sect. 11 of the Act of 1907, as did the corresponding sub-section of the Act of 1883, directs the law officer, on an appeal, to hear the applicant and, "*in his opinion*, the opponent, if the opponent is a person entitled to be heard." It is thus 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* (*s*).

According to the law officer's decisions, 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 applicant would, if granted, include what has already formed or will form the subject of an earlier grant (*t*). Thus in *Meyer's Patent* (*u*)

(*r*) See p. 52, *post*.

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

(*t*) Meyer's Patent (1899), 16 R. P. C. 626; 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. 627; 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 (1888), 5 R. P. C. 285.

(*u*) (1899), 16 R. P. C. 526.

Opposition—Second Ground.

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 "in his opinion a person entitled to be heard" refer back to the persons who are allowed to oppose by sub-sect. (1) of sect. 11 of the Patents and Designs Act, 1907 (*x*).

It was held in *Bairstow's Patent* (*y*) 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* (*z*) it was held 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*, the decision in *Macevoy's Patent* is not now acted upon, and must be regarded as overruled (*a*).

If the opponent can prove that he carries on a *bonâ fide* manufacture, and that such manufacture is not merely of the type of the article or invention sought to be protected, but appears generally to possess the special features which characterise the applicant's invention, he is deemed to have a *locus standi* to be heard in opposition to the grant (*b*).

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 (*c*). The opposition must be in the name of the principal: otherwise this ground of opposition cannot be raised (*c*).

(*x*) See cases, note (*t*), p. 48, *ante*.
(*y*) (1888), 5 R. P. C. 286.
(*z*) (1888), 5 R. P. C. 285; see also Hookham's Patent (1886), Griff. L. O. C. 32.
(*a*) See (1911) (B.), 28 R. P. C. App. p. v.
(*b*) (1911) (B.), 28 R. P. C. App. p. vi.
(*c*) Heath and Frost's Patent (1886), Griff. P. C. 289; Lake (1887), Griff. L. O. C. 35; Hookham (1887), Griff. L. O. C. 32.

Opposition—Second Ground.

The old ground of opposition was simply that the invention had been patented, in this country, on an application of prior date. Consequently a foreigner who had made an application under the terms of sect. 91 of the Patents and Designs Act, 1907, claiming the date of his first foreign application had no *locus standi* to oppose the grant of a patent upon an application dated between the date he claimed and the actual date upon which he made his application in this country (*d*). Now, since the present ground of opposition is that the invention has been claimed in any complete specification which is or will be of prior date to the applicant's, a foreigner under the above circumstances would have a *locus standi*.

A person having a *locus standi* on the second ground of opposition is entitled to rely in his opposition upon specifications other than those in which he is, or was, interested and from which he derives his *locus standi* (*e*).

The effect of sect. 11, sub-sect. 1 (b) of the Patents and Designs Act, 1907, is to place a person who has deposited a complete specification, whether accepted or not, in the same position, for the purpose of opposition, as a person who has already got a patent upon which he can oppose (*f*); and, similarly, any other person who has a *bonâ fide* interest in showing that the invention claimed in an accepted or merely deposited complete specification, upon which no actual grant has been made, is identical with that of the applicant, would be allowed to oppose (*g*).

Upon the hearing of an application the Comptroller acting in the public interest is justified in considering and giving effect to any earlier specification, however it is brought to his notice, whether by the opponent or the authorities of the Office (*h*). Consequently, though the opponent may have no *locus standi* to be heard, and the case may be dismissed as against him, the Comptroller may refuse to seal the patent.

(*d*) Everitt's Patent (1886), Griff. L. O. C. 28; Johnson's Patent (1907), 24 R. P. C. 694.

(*e*) 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.

(*f*) See L'Oiseau and Pierrard (1887), Griff. L. O. C. 36; p. 48, *ante*.

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

(*h*) Hughes and Kennaugh's Application (1910), 27 R. P. C. 281.

Opposition—Second Ground.

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 (*i*).

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

When an application is resisted on this ground of opposition, 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 claimed in the complete specification of a British patent which is or will be of prior date, and in cases of doubt the grant is allowed (*k*).

Patent allowed in doubtful cases.

It is only in the clearest cases that the law officer accepts the serious responsibility of stopping a patent. The seal is

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

(*k*) Cf. pp. 108, 109, *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. C. 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.
Van Wye's Application (1909), 26 R. P. C. 490.
Deutsche Gasglühlicht Aktiengesellschaft's Application (1909), 26 R. P. C. 101.
Bosch's Application (1909), 26 R. P. C. 710.

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. 464.
In the Matter of Brownhill's Patent (1889), 5 R. P. C. 135.
Anderton (1887), 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.

Opposition—Second Ground.

not refused unless the law officer is satisfied that there is identity, and that the merit both in form and substance rests with the opponent. Each case must be decided on its particular facts (*l*). The law officer and the Comptroller have not to consider the question of subject-matter or invention pure and simple, but only the question of prior invention in a limited sense, *i.e.*, identity of the prior with the applicant's claim (*m*).

Invention described, but not claimed in a prior patent.

If an invention is only described and not claimed in a prior specification, it may, so far as this ground of opposition is concerned, 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 (*n*). There would, of course, be great doubt as to the validity of a patent granted under such circumstances (*o*). A manufacture though within the broad words of a prior claim is not considered as *patented*, *i.e.*, claimed, in cases before the Comptroller and law officer, unless it is clearly set out in the body of the prior specification (*p*)—*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 (*q*). Thus where an applicant sought to patent the manufacture of a safety explosive from certain definite proportions of ingredients, which explosive so made was particularly safe against fire-damp and coaldust 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 (*r*).

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

(*l*) Nahnsen's Application (1900), 17 R. P. C. 203.
(*m*) *Ibid.* p. 208.
(*n*) Von Buch (1887), Griff. L. O. C. 40; but see Wadham's Application (1910), 27 R. P. C. 172.
(*o*) See Vol. I. chap. iv.
(*p*) See Nahnsen's Patent (1900), 17 R. P. C. 203.
(*q*) *Ibid.*
(*r*) *Ibid.*

Opposition—Second Ground.

applicant's claim, is quite immaterial (*s*). 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 particular way which will exclude the subject-matter of the applicant's claim (*t*).

Conjoint effect of several prior patents.

The point always is, Has what the applicant claims been already granted by the Crown, *i.e.*, has it formed the subject of a prior claim or claims, or will it be the subject of a grant bearing an earlier date than that of the application which is opposed? No doubt it requires 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 this may be done (*u*); and, 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 (*x*).

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 (*y*). 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 of iron from out of those covered by the claim in the opponent's specification, and there was no particular advantage shown in doing so, the patent was refused (*z*). But a patent may be obtained for the selection of the best material for a particular purpose when the suitability of such material for the purpose was not previously known, the test being whether the selection involves invention (*a*).

(*s*) Thornborough and Wilks' Patent (1896), 13 R. P. C. 115; Green (1887), Griff. P. C. 286; Newman (1887), Griff. P. C. 40; (1911) (C.), 28 R. P. C. App. p. viii.

(*t*) Haythornthwaite's Patent (1890), 7 R. P. C. 71.

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

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

(*y*) 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.

(*z*) Wylie's Patent (1896), 13 R. P. C. 97; see also Deutsche Gasglühlicht Aktiengesellschaft's Application (1909), 26 R. P. C. 101. See Vol. I. p. 44, as to selection from a class being the subject-matter of invention.

(*a*) Bosch's Application (1909), 26 R. P. C. 710.

Opposition—Second Ground.

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. So also where an applicant merely claimed the use of one support between the two glass bottles in a *Thermos* flask, and it appeared that a prior patent described and claimed the use of several similar supports for the same purpose, and there was no evidence of invention in the mere use of one support only, the patent was refused (*d*).

If it is not clear beyond all reasonable doubt that no tribunal entitled to deal with the matter could reasonably find that there is invention in the difference between what is described and claimed in the applicant's specification and the specification relied on by the opponents, the patent will be sealed (*e*).

Mechanical equivalents.

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 (*f*); 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 (*g*)—*e.g.*, where the only difference was the substitution of a coil for an internal cylinder in a heating apparatus (*h*), or an equivalent for a crank bar (*i*) when the opponent's claim referred to a "crank bar or its equivalent."

(*b*) In the Matter of Airo and Calder's Patent (1888), 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; Hodgkin's Application (1906), 23 R. P. C. 527.

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

(*d*) Van Wye's Application (1909), 26 R. P. C. 490.

(*e*) Krupp (Fried.) Aktiengesellschaft Germaniawerft's Application (1908), 25 R. P. C. 809.

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

(*g*) P. 51, *ante*.

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

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

Opposition—Second Ground.

Conflict as to utility.

In cases where there is a conflict of testimony on the declarations as to the comparative utility of what is claimed in the applicant's and opponent's specifications respectively, the Comptroller will not, except in very exceptional cases, attempt to decide the point by actual experimental demonstration. It is only when no proper protection can be given by means of disclaimer, or reference, or other amendment of the applicant's specification, that experimental proof will be entertained. When experimental proof is necessary, the proper course is for the experiment to be made in the presence of both parties, and preferably in the presence of an expert chosen by the Comptroller (*k*).

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 (*l*), or that the applicant's invention is "*a direct infringement of the opponent's patent*" (*m*).

Claim by applicant to 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 the subject of his claim was in fact novel and his invention at the date of his application, since it was not foreshadowed in the opponent's provisional (*n*).

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

(*k*) See (1910) (D.), 27 R. P. C. App. p. iv.

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

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

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

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

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

Opposition—Second Ground.

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

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 (*q*). 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 (*r*).

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 (*s*) and the public generally (*t*).

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 (*u*).

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 (*v*).

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

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

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

(*t*) 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; Wadham's Application (1910), 27 R. P. C. 172.

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

(*v*) Hoskins' Patent (1884), Griff. P. C. 291; In the Matter of Newman's Patent (No. 2) (1888), 5 R. P. C. 279; see also Hamilton's Patent (1901), 19 R. P. C. 35.

Opposition—Second Ground.

Grounds for requiring a disclaimer.

The Comptroller and law officer do not insert disclaimers in the applicant's specification simply because the applicant's claim may amount to an infringement of the opponent's patent. And it is not their duty to stop a patent at the instigation of an opponent on the ground of the infraction of some other principle of patent law (*w*), or to consider whether the alleged invention is proper subject-matter (*x*), or whether the patent, if granted, would be invalid from any other cause (*y*); and the applicant in all cases frames his specification at his peril (*z*). 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, though the opponent might possibly succeed in an action for infringement if the applicant worked under his patent (*a*). To obtain a disclaimer the opponent must show that the applicant's claim, without it, will be a repetition of the opponent's (*b*). 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 (*c*).

Where the applicant describes, though he does not claim, something which is the subject of a claim made by a prior

(*w*) Nowman's Patent (1887), 5 R. P. C. 277; Sielaff's Patent (1887), 5 R. P. C. 484; McHardy's Patent (1891), 8 R. P. C. 432; Todd's Patent (1892), 9 R. P. C. 487; Jones (1887), Griff. L. O. C. 35.

(*x*) Jones (1887), Griff. L. O. C. 53.

(*y*) P. 1, *ante*.

(*z*) Lorrain's Patent (1888), 5 R. P. C. 142.

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

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

(*c*) In the Matter of Newman's Patent (1888), 3 R. P. C. 271; In the Matter of Hall and Hall's Patent (1888), 5 R. P. C. 283: In the Matter of Lynde'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. 58—66, *post*.

Opposition—Second Ground.

patentee, amendment by excision or disclaimer may be required (*d*).

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 (*e*).

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 should be made clear (*f*); 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 (*g*).

Principles upon which special disclaimers are ordered.

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

"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* (*i*)—

"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

(*d*) Teague's Patent (1884), Griff. P. C. 298; Hetherington's Patent (1889), 7 R. P. C. 419; Wadham's Application (1910), 27 R. P. C. 172.

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

(*f*) In the Matter of Hill's Application (1888), 5 R. P. C. 599; see also Wadham's Application (1910), 27 R. P. C. 172.

(*g*) 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.

(*h*) (1891), 8 R. P. C. 236.

(*i*) (1889), 6 R. P. C. 547.

Opposition—Second Ground.

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 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* (*k*)—

"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" (*l*).

The present Comptroller-General has thus formulated the

(*k*) (1888), 5 R. P. C. 312.

(*l*) See also Newman's Patent (1888), 5 R. P. C. 279, 281; Hoffman's Patent (1890), 7 R. P. C. 92; Brockie's Patent (1908), 25 R. P. C. 817.

Opposition—Second Ground.

principles which ought to regulate the practice of the Office as regards the insertion of specific references or disclaimers:—

> "What is requisite is to ascertain the true values of the inventions involved, and I think the real underlying principle which should govern the insertion of specific references is this, 'Is the governing idea or basic principle of the invention sought to be protected claimed or protected in a specific earlier patent? In other words, the condition necessary is, that the new invention should be based on a definite invention already protected, and the earlier invention should be clearly and unequivocally repeated or involved in the new specification. . . . There are two classes of case to be considered—(1) where what is called 'a master patent' is involved; (2) where there is no claim to a 'master patent' as such. . . . And in this sense a specific reference is rightly inserted if the new invention is merely an improvement or amendment on the 'master patent.' . . . In cases where there is no proper 'master patent' involved, I think the same general principle in regard to specific references applies, but the conditions are stricter and more severe. I think in such cases a specific reference should only be allowed where the following conditions are present, viz.:—(a) The patent to which reference is asked should be clear and distinct in its own field and as far as can be gathered free from anticipation; (b) The invention claimed therein must be clearly and unequivocally claimed or included in the later specification; (c) It must be claimed or included substantially as a whole and not merely as a part; (d) The improvement or addition claimed by the applicant must be small and insignificant, and the governing principle, so to speak, must come from the prior patent" (*m*).

Special references and concurrent applications.

Under the Act of 1883 there was some doubt as to whether the principles applicable to the insertion of references were the same in the case of concurrent applications as in the more common case where the application for the patent on which the opponent relied was not concurrent with that of the applicant (*n*). It appears clear that the same principles apply in both cases under the present Act of 1907, and the Comptroller has so decided (*o*). Sect. 8 of the Act empowers the Comp-

(*m*) Hopkins' Patent (1909), 27 R. P. C. 388.
(*n*) See Gaunt's Patent (1897), 14 R. P. C. 72.
(*o*) (1910) (G.), 27 R. P. C. App. p. viii.

troller, apart from any question of opposition, to order a reference to a specification of a patent which if granted will be of earlier date than that of the applicant, though it was not published when the application was made; and there does not appear to be anything in the Act to support the contention that any different principle should apply when the specification on which the opponent relies under sect. 11 has become published (*p*). **Opposition—Second Ground.**

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 (*q*). **References to defects.**

The Comptroller and law officers are always very unwilling to order the insertion of a special reference to the patent of a 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 (*r*)—*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 (*s*). **Pioneer or Master Patent.**

The rule was stated by *Webster*, A.-G., in *Southwell's Patent* (*t*), 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 estab-

(*p*) See *ibid.*
(*q*) Guest and Barrow's Patent (1888), 5 R. P. C. 316.
(*r*) See Stell's Patent (1891), 8 R. P. C. 236; Kilner's Patent (1889), 8 R. P. C. 35.
(*s*) Welch's Patent (1891), 8 R. P. C. 442.
(*t*) (1899), 16 R. P. C. 362.

Opposition – Second Ground.

lishing that for the purposes of the Comptroller's decision the earlier patent is to be regarded as a master patent (*u*). 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 (*x*). 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 (*y*).

As a rule of practice it is requisite for the opponent, if he intends to claim the position of a master patent for the patent on which he relies, to furnish to the Office and the applicant a statement of the invention for which the patent is claimed to be a master patent. This statement should be made either in a declaration under Patents Rules, 1908, Rule 42, or in appropriate cases under Rule 40. Any further statement as to a search or investigation having been made is not strictly necessary, but the opponent who makes such a claim must, if the statement is challenged, be prepared to deal with the prior state of the Act and any suggested anticipation. It is open to the applicant to produce any evidence against the claim of "master patent" position, and for the purpose to cite from specifications and other publications in this country, with the object of limiting the opponent's claim to a particular construction (*z*).

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 (*a*), bearing in mind that every prior 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 (*b*).

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

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

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

(*z*) (1911) (C.), 28 R. P. C. App. p. viii.

(*a*) 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.

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

Opposition—Second Ground.

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 (*c*), 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 (*d*). 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 (*e*).

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 (*f*). Where the applicant's specification is ambiguous and it is difficult or impossible to introduce amendments or disclaimers or to re-write it so as to disclose the true scope of the invention and distinguish it from what has gone before, it may be necessary to protect the public, and to do justice to prior patentees, by the rough and ready means of inserting specific references in certain special cases. It should, however, be borne in mind that this is not the best or most scientific method, and that it is

(*c*) Per Finlay, S.-G., Marsden's Patent (No. 2) (1897), 14 R. P. C. 174; but see per Evans, S.-G., Brockie's Patent (1908), 25 R. P. C. 817; see also Stell's Patent (1891), 8 R. P. C. 235.

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

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

(*f*) 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.

merely employed to save time and trouble in cases where other amendment seems impossible (*g*).

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 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 (*h*). 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 (*i*).

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 (*k*).

Form of specific reference.

P. R. (1908), rr. 32 and 34, prescribe a specific form which is insisted upon, unless by amendment a specific reference is rendered unnecessary. (*P.'s Application* (1906), 23 R. P. C. 644.)

The Comptroller and law officer are bound to protect the public from being misled (*l*); 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 (*m*). So a special disclaimer may be ordered for the purpose of removing

(*g*) See I. O. J., No. 1072, p. 1239.

(*h*) 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.

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

(*k*) 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.

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

(*m*) Van Gelder's Patent (1892), 9 R. P. C. 326; p. 63, *ante*.

Opposition—Second Ground.

an ambiguity (*n*). If, on the other hand, a special disclaimer might prejudice the construction a mere reference to the prior patent will be ordered instead (*o*), or a disclaimer following the identical words of the opponent's claim, but without any special reference to the opponent's patent (*p*)—*e.g.*, in *Maxim and Silverman's Patent* (*q*), 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 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 (*r*). And in *Newton's Patent* (*s*), 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 (*t*). 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 (*u*).

A special reference will sometimes tend to stop further

(*n*) Brand's Patent (1895), 12 R. P. C. 102.
(*o*) Van Gelder's Patent (1892), 9 R. P. C. 325; Maxim and Silverman's Patent (1894), 11 R. P. C. 314.
(*p*) Newton's Patent (1899), 17 R. P. C. 123, 125.
(*q*) (1894), 11 R. P. C. 314.
(*r*) *Ibid.*
(*s*) (1899), 17 R. P. C. 123.
(*t*) *Ibid.*
(*u*) Thornborough and Wilks' Patent (1896), 13 B. P. C. 115.

Opposition—Second Ground.

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*).

Striking out claims.

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*).

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

(*x*) In the Matter of Lyude's Patent (1888), 5 R. P. C. 663.

(*y*) Anderton (1887), Griff. L. O. C. 25.

(*z*) Chandler's Patent (1864), Griff. P. C. 270, 274.

(*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. 22, *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), 13 R. P. C. 580.

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*). Opposition—Second Ground.

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*).

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.

III. *That the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described and ascertained in the complete specification.*

This ground of opposition was not open to an applicant before the Patents and Designs Act of 1907.

It is clear that the old grounds of opposition I. and IV. are not open to any person, but only to particular persons specified who have a special interest in opposing the grant.

It is not quite so clear whether the words "any person" with which sect. 11 of the Act of 1907 commences, when applied to this third ground of opposition, include any person generally, or are limited to persons having a special interest. It has been decided that the second ground of opposition is not open to any person generally, but only to persons, whether *Locus standi.*

(*f*) Lupton and Place's Patent (1897), 14 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' 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 (1899), 6 R. P. C. 135.

Opposition—Third Ground.

as original owners, assignees, or otherwise, having a direct interest in opposing the grant (see *ante*, pp. 48—51). The *ratio decidendi* (viz. that the words "if the opponent is, in his opinion, a person entitled to be heard" which occur in sub-sect. (3) of sect. 11 of the Act, point to persons who are not entitled to be heard) of the cases which establish this point as to the second ground of opposition are equally applicable to this new third ground; and it is, therefore, to be assumed that this ground is only open to persons having a direct interest. It is apparent that there may be persons who have a direct interest in preventing the grant on the ground of insufficient description, *e.g.*, a prior (actual or prospective) patentee, when the applicant's specification is sufficiently vague to be capable of a construction which would include something within the prior claim; or a manufacturer who is actually making, or *bonâ fide* proposing to make, something which is old, and yet, by virtue of the applicant's insufficient description, might possibly be held to come within his claim; or a person who is *bonâ fide* desirous of embarking on the manufacture of the invention as a licensee (compulsory or otherwise), but is unable to appreciate, from the description given in the specification, the manner in which the invention is to be performed; or a person who *bonâ fide* believes himself a prior user and desires to have the invention unequivocally defined so as to exclude his prior user; or a concurrent applicant for a patent for a very nearly related invention. The reasons upon which the constituted tribunals held that the old ground of opposition based on prior claim was only open to persons having a direct interest in stopping the grant are equally applicable to this new ground. It will probably be held that this new ground is not open to any person, but only to any person who has a direct interest. Ever since the Act of 1852, up to the passing of the Act of 1907, it has been competent to an applicant to question the *locus standi* of an opponent on any authorised ground of opposition. Since the Act of 1907 does not define the term "any person" as used in sect. 11, it is likely that the term will, in accordance with the well-established rule, be construed as bearing the limited meaning which the decided cases under the older and consolidated Acts put upon it.

Irrelevant matter.

A specification which includes matters irrelevant to the

claim is open to the objection that it does not give a fair description of the invention, and the irrelevant matter may, at the hearing of an opposition based upon this ground, be deleted, or a disclaimer with respect to it may be required according to circumstances (*k*).

Opposition—Third Ground.

The Comptroller has jurisdiction to require, at any stage when the matter comes before him, and whether the point is taken by an opponent or not, any amendment of an applicant's specification which he considers necessary to prevent ambiguity (*l*). The inclusion of this ground of opposition in the notice of opposition will often be of material assistance to an opponent whose case is mainly based upon the ground of prior claim (*m*).

Jurisdiction of Comptroller to prevent ambiguity.

IV. *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.*

The real object of this ground of opposition is to prevent a patentee getting a prior date for an invention which is not his own, and which he has obtained from the specification of later date. This would not occur where the opponent's application was of the same date as the applicant's, and under such circumstances, the opponent could not bring his case within the specific provisions of this ground of opposition (*n*).

Object of this ground of opposition.

Before the existence of this ground of opposition, which was first introduced by the repealed Act of 1888, the opponent was unable to obtain a patent for an invention which he himself made between the dates of the applicant's provisional and complete specifications, and which was included in the applicant's claim. Though such inclusion effected a disconformity between the applicant's specifications, it was not competent for the Comptroller or law officer to consider the

(*k*) See Francis' Application (1910), 27 R. P. C. 86.
(*l*) *Ibid.*
(*m*) See Wadham's Application (1910), 27 R. P. C. 172.
(*n*) See (1910) (A.), 27 R. P. C. App. p. i.

Opposition—Fourth Ground.

question of disconformity between the applicant's specifications, and the opponent suffered, although the applicant's patent was rendered void by the inclusion of the invention made by the opponent (*o*).

When disconformity is a ground for refusing the patent.

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 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 (*p*). 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 (*q*), 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 (*r*). The law officer should carefully consider the question whether the patent should be stopped, because should he improperly allow the seal, his decision might affect the question of disconformity if subsequently raised in the superior Courts (*s*).

Wilson's Patent (*t*) and *Hudson's Patent* (*u*) 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

(*o*) See Green's Patent (1885), Griff. P. C. 286; Hawthorn's Patent (1890), 7 R. P. C. 70.

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

(*q*) See Vol. I. p. 182.

(*r*) 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.

(*s*) See Hudson's Patent (1904), 22 R. P. C. 218.

(*t*) (1892), 9 R. P. C. 512.

(*u*) (1904), 22 R. P. C. 218.

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 application 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.

Opposition—Fourth Ground.

Sealing the Patent.

If there be no opposition, or if there be opposition, and the determination is in favour of the grant of a patent, and the applicant desires to have a patent sealed he must, within the period allowed by sect. 12 of the Patents and Designs Act, 1907, pay the sealing fee by leaving at the Patent Office Patents Form No. 10 duly stamped. The seal of the Patent Office is equivalent for this purpose to the Great Seal of the United Kingdom (*x*).

Seal of the Patent Office.

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

Time within which the patent must be sealed.

(1) When the Comptroller has allowed an extension of the time within which a complete specification may be left or accepted, in which case a further extension of four months after the said fifteen months is allowed for sealing the patent (*z*).

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

(*x*) 7 Edw. 7, c. 29, s. 14 (1).
(*y*) 7 Edw. 7, c. 29, s. 12 (2).
(*z*) 7 Edw. 7, c. 29, s. 12 (2) (a).
(*a*) 7 Edw. 7, c. 29, s. 12 (2) (b).

Sealing the Patent.

(3) When the patent is granted to the legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent, in which case the patent may be sealed at any time within twelve months after the date of such death (*b*).

(4) When, in consequence of the neglect or failure of the applicant to pay any fee, a patent cannot be sealed within the period allowed by sect. 12 of the Act of 1907, in which case that period may, on payment of the prescribed fee and on compliance with the prescribed conditions, be extended to such an extent as may be prescribed (*c*).

In the case of delay caused by opposition, a patent may, as above stated, 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 (*d*); 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 (*e*). 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, might refuse the necessary extension of time for sealing the patent (*f*). In fact, according to the report of one such case the law officer refused to extend the time upon the express ground that, as

(*b*) 7 Edw. 7, c. 29, s. 12 (2) (c).

(*c*) 7 Edw. 7, c. 29, s. 12 (2) (d). As to conditions, see Patents Rules, 1908, r. 48.

(*d*) See Somerset and Walker's Patent (1879), L. R. 13 Ch. D. 397; *Re* Johnson's Patent (1879), L. R. 13 Ch. D. 398, n.

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

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

Sealing the Patent.

the delay had not been caused by the opponent, but had been brought about for an ulterior object, he had no jurisdiction at all under sect. 12 (3) (a) of the Patent Act, 1883 (*g*).

It is expressly enacted that every patent shall be dated and sealed as of the day of the application: save as otherwise expressly provided for by the Patents and Designs Act, 1907 (*h*). If an application is left at the Patent Office on any particular day after office hours it must bear date as of the following day (*i*).

Several applicants for same invention.

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 (*j*). 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 (*k*). 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 (*l*). 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 (*m*).

Extent and Duration of Letters Patent.

Geographical extent.

Every patent when sealed has effect throughout the United Kingdom and the Isle of Man (*n*), but not the Channel Islands. To extend the patent to the Channel Islands the patentee should enrol copies at the Royal Courts of Jersey

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

(*h*) 7 Edw. 7, c. 29, s. 13.

(*i*) Mathews and Stranger's Patent (1910), 27 R. P. C. 288.

(*j*) *Ex parte* Bates and Redgate (1876), L. R. 4 Ch. 577, 580; see Vol. I. p. 17.

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

(*l*) *Ex parte* Scott and 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.

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

(*n*) 7 Edw. 7, c. 29, s. 14 (1).

Extent and Duration of Letters Patent.

and Guernsey. The term for which every patent is granted originally, save as otherwise expressly provided for by the Act of 1907, is fourteen years (*o*), which may, however, in certain cases, be prolonged on petition to the Court (*p*). The time from which a patent runs dates from, and includes, the day on which the patent is dated (*q*).

Conditional on payment of renewal fees.

A patent is conditional on the patentee making the prescribed payments within the prescribed times (*r*), and ceases if he fail to do so (*s*); but it is provided that the Comptroller, upon the application of the patentee, shall, on receipt of such additional fee, not exceeding ten pounds, as may be prescribed, enlarge the time to such an extent as may be applied for, but not exceeding three months (*t*).

Enlargement of time for payment of fees.

Whenever the last day fixed by the Act of 1907, or the Rules, for doing anything falls on a day when the Office is not open, or on a Saturday, which days are excluded days for the purposes of the Act and the Rules, it is lawful to do any such thing on the day next following such excluded day or days (*u*).

Restoration of lapsed patents.

Before the 1st January, 1908, the date of commencement of the Patents and Designs Act, 1907, if the patentee failed to make a prescribed payment, whether he had obtained an enlargement of time or not, and his patent became void accordingly, it could only be revived by a special Act of Parliament (*x*), which was not likely to pass unless it was clear that the renewal fees were not paid in consequence of some special circumstance such as the serious illness of the patentee (*y*). And such special Acts always provided protection for persons who might have used the subject-matter of the invention after notice of the lapse of the patent (*z*).

The Patents and Designs Act, 1907, invests the Comptroller, subject to an appeal to the Court, with power to restore a patent

(*o*) 7 Edw. 7, c. 29, s. 17 (1).

(*p*) 7 Edw. 7, c. 29, s. 18.

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

(*r*) 7 Edw. 7, c. 29, s. 65; p. 421, *post*.

(*s*) 7 Edw. 7, c. 29, s. 17 (2).

(*t*) *Ibid.*

(*u*) 7 Edw. 7, c. 29, s. 82; P. R. (1908), rr. 110, 111.

(*x*) *E.g.*, Wright's Patent Act (1884); Boult's Patent Act (1885); Bradbury and Leman's Patent Act (1884); Auld's 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 on 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.*; Potter's Patent Act (1887); Worms and Bale's Patent Act (1891).

which had lapsed owing to the failure of the patentee to pay any prescribed fee within the prescribed time. Sect. 20 of the Act provides as follows:— **Extent and Duration of Letters Patent.**

(1) Where any patent has become void owing to the failure of the patentee to pay any prescribed fee within the prescribed time, the patentee may apply to the Comptroller in the prescribed manner for an order for the restoration of the patent.

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

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

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

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

The procedure under this section is regulated by Patents Rules, 1908, rr. 55—59. The applicant is required to show that the omission was unintentional, and that no undue delay has occurred in making the application (*a*); and in case of an opposition the opponent will not be able to stop the restoration unless he can show an intentional omission. The section is only intended to meet such a case as a mistake of fact. Consequently, where a patentee intentionally refrains from paying a fee under a mistaken notion of patent law or patent practice, he is not protected by the section (*b*).

(*a*) *Supra.*
(*b*) (1910) (I.), 27 R. P. C. xi.; Land's Patent (1910), 27 R. P. C. 481.

Extent and Duration of Letters Patent.

The appeal to the Court from a decision of the Comptroller upon a hearing of the case is by petition to the Court presented within one calendar month from the decision of the Comptroller, or within such further time as the Court may under special circumstances allow. The petition must 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 the decision. It must also state concisely the grounds of the appeal, and no grounds other than those so stated shall, except with the leave of the Court to be given on such terms and conditions as may seem just, be allowed to be taken by the appellant at the hearing (*c*). "The Court" here means such judge of the High Court as the Lord Chancellor may select for the purpose of hearing the appeal (*d*).

The object of an opponent may be not so much to prevent an order for restoration being obtained as to secure the insertion in the order of some special provision for his benefit. The Rules (*e*) provide that in every order of the Comptroller restoring a patent, provision shall be inserted for the protection of persons who may have availed themselves of the subject-matter of the patent after the patent has been announced as void in the journal, and that such provisions shall restrain the patentee from commencing or prosecuting any action or proceeding, and from recovering any damage in respect of certain infringements which are particularly specified in the Rule (see p. 360, *post*). The Rules also require that the order shall further provide that if any person within one year after the date thereof makes an application to the Board of Trade for compensation in respect of money, time or labour expended by the applicant upon the subject-matter of the patent in the *bonâ fide* belief that such patent had become and continued to be void, it shall be lawful for the Board, after hearing the parties concerned or their agents, to assess the amount of such compensation, if in their opinion the application ought to be granted, and to specify the party by whom and the day on which such compensation shall be paid, and if default shall be made in payment of the sum awarded, then the said patent shall become void, but the sum awarded shall be recoverable as a debt or damages (*f*).

(*c*) R. S. C., Ord. liiiA. r. 11.
(*d*) See 7 Edw. 7, c. 29, s. 92 (2).
(*e*) P. R. (1908), r. 58.
(*f*) P. R (1908), r. 59.

Extent and Duration of Letters Patent.

Sect. 15, sub-sect. (1) of the Patents and Designs Act, 1907, re-enacts the provisions of sect. 35 of the Act of 1883, which provided 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.

Application in fraud of true and first inventor.

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 (*g*).

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 (*h*). 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 (*i*), in which case fresh actions might be successfully brought upon the patent after amendment (*k*).

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

(*g*) 7 Edw. 7, c. 29, s. 44; P. R. (1908), r. 100.

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

(*i*) See chap. ii., *post*.

(*k*) P. 131, *post*.

(*l*) 7 Edw. 7, c. 29, s. 46 (1).

(*m*) 7 Edw. 7, c. 29, s. 46 (2), (3). 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, 436.

Patent Office Museum.

Patent Office Museum.

Patent Office Museum.

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

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

Register of Patents.

Register of patents under Act of 1883.

The Act of 1907 (*p*) provides that there shall be kept at the Patent Office a book called the Register of Patents, with which the Register of Patents existing at the commencement of the Act is incorporated and forms part, and 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 Patents Rules, 1908, rr. 82—90. Any person interested in a particular patent may lodge at the Patent Office a request that he be informed if and when any attempt 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

(*n*) 7 Edw. 7, c. 29, s. 47 (1). (*o*) 7 Edw. 7, c. 29, s. 47 (2).
(*p*) Sect. 28.

Register of Patents.

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 (*q*).

Register is *primâ facie* evidence.

The Register of Patents is *primâ facie* evidence of any matters by the Act directed or authorised to be inserted therein (*r*). 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 (*s*).

Effect of registration.

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 registered as the proprietor of a patent has, subject to the provisions of the Act of 1907, and to any rights appearing from the register to be vested in any other person, power absolutely to assign, grant licences as to or otherwise deal with the patent, and to give effectual receipts for any consideration for such assignment, licence, or dealing: Provided that any equities in respect of such patent may be enforced in like manner as in respect of any other personal property (*t*). And where any person becomes entitled as mortgagee, licensee or otherwise to any interest in a patent he is entitled, on request and on proof of his title to the satisfaction of the Comptroller, to have notice of his interest entered in the manner prescribed by the Patents Rules, 1908, in the Register of Patents (*u*).

(*q*) See Viola *v.* Sharpe (1904), 22 R. P. C. 23.
(*r*) 7 Edw. 7, c. 28, s. 28 (3).
(*s*) See Actien Gesellschaft für Cartonnagen Industrie *v.* Temler (1900), 18 R. P. C. 14.
(*t*) 7 Edw. 7, c. 29, s. 71 (1), (3); P. R. (1908), rr. 82—94.
(*u*) 7 Edw. 7, c. 29, s. 71 (2); P. R. (1908), rr. 82—94.

Register of Patents.

According to the practice of the Office, no entry is allowed in respect of a lapsed patent (*x*).

Notices of trusts, as such, cannot be registered,

By sect. 66 of the Act of 1907 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.

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

The effect of sect. 66, read, as it must be, together with sects. 28 and 71, and the Patents Rules, 1908, rr. 83—94, 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 (*y*). But an assignment does not justify the entry of the assignee on the Register as proprietor unless it is a legal assignment (*z*), and so an assignee under a deed purporting to be an assignment of a patent not actually sealed will not be entered as proprietor, but, if he desires it, he is entitled to an entry of his interest in the patent as equitable assignee (*a*).

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 (*b*).

Documents of earlier date than the patent.

Questions sometimes arise as to the entry on the register of documents of earlier date than 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

(*x*) (1910) (E.), 27 R. P. C. App. v.

(*y*) 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.

(*z*) (1910) (E.), 27 R. P. C. App. v.

(*a*) *Ibid.*

(*b*) In the Matter of Fletcher's Patent (1893), 10 R. P. C. 252.

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 (*c*).

Register of Patents.

It would appear from the judgment in *Parnell's Patent* (*d*) that there may be documents dated before the grant of a patent which ought to be entered in the register after the patent is obtained, and that an agreement as to the ownership is such a document.

Registration is not notice to all persons; and it has been held that the registration of an exclusive licence for a district did not operate so as to prevent an innocent purchaser of the patented article outside the district using it within the district (*e*).

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 1907, and to the prescribed regulations (*f*); and any person requiring it, on payment of the prescribed fee, may obtain a certified copy, sealed with the seal of the Patent Office, of any entry made in the register (*g*).

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 (*h*).

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 by the Act of 1907, 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 (*i*).

(*c*) In the Matter of Parnell's Patent (1888), 5 R. P. C. 126.
(*d*) (1888), 5 R. P. C. 128.
(*e*) Heap *v.* Hartley (1888), 5 R. P. C. 603; 6 R. P. C. 495.
(*f*) Patents Rules (1908), r. 94.
(*g*) 7 Edw. 7, c. 29, s. 67.
(*h*) *Ibid.*
(*i*) 7 Edw. 7, c. 29, s. 78.

Register of Patents.

Rectification of register.

The Court is empowered, by sect. 72 of the Act of 1907, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the Register of Patents of any entry, or by any entry made therein without sufficient cause, or by any entry wrongly remaining therein, or by an error or default in any entry therein, to make such order for making, expunging, or varying such entry as it may think fit. The Court may in any proceeding under the section decide any question that it may be necessary or expedient to decide in connection with the rectification of the register. The section further provides that the prescribed notice under the section shall be given to the Comptroller, who shall have the right to appear and be heard thereon, and shall appear if so directed by the Court; and any order of the Court rectifying the Register shall direct that notice of the rectification be served on the Comptroller, in the prescribed manner, who shall upon the receipt of such notice rectify the Register accordingly. Under the existing Supreme Court Rules, the manner of application to the Court is by way of motion; and the Comptroller is entitled to four clear days' notice of the application to the Court (*k*).

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 (*l*).

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 (*m*).

It is submitted that the Court has power to expunge any entry fraudulently made in 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 repealed Act of 1852 (*n*) gave such power to the Master of the Rolls alone (*o*).

An appeal lies from any order made by the Court or a

(*k*) See P. R. (1908), r. 113.
(*l*) Manning's Patent (1902), 20 R. P. C. 74.
(*m*) *In re* Holmstrom (1904), 22 R. P. C. 213.
(*n*) Sect. 38.
(*o*) *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.

Judge for the rectification of the register (*p*), though formerly there was no appeal from the decision of the Master of the Rolls. **Register of Patents.**

If any rectification of the Register of Patents 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 must be served on the Comptroller, who is required to rectify the register accordingly (*q*).

Falsification of the register is a misdemeanour.

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 (*r*).

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

(*q*) 7 Edw. 7, c. 29, s. 94 (7), and s. 95 (3).

(*r*) 7 Edw. 7, c. 29, s. 89 (1).

CHAPTER II.

REVOCATION ON APPLICATION TO THE COMPTROLLER.

I.—Under Section 26 of the Patents and Designs Act, 1907.

Power of Comptroller to revoke patents.

The Patents and Designs (Amendment) Act, 1907, by sects. 14 and 15, which are now embodied in the Patents and Designs Act, 1907, as sects. 26 and 27, conferred upon the Comptroller authority to revoke patents on certain specific grounds.

Provisions of sect. 26 of the Act of 1907.

Sect. 26, sub-sect. (1) of the Patents and Designs Act, 1907, provides as follows:—

> Any person who would have been entitled to oppose the grant of a patent, or is the successor in interest of a person who was so entitled, may, within two years from the date of the patent, in the prescribed manner apply to the Comptroller for an order revoking the patent on any one or more of the grounds on which the grant of the patent might have been opposed.
>
> Provided that when an action for infringement or proceedings for the revocation of the patent are pending in any Court, an application under this section shall not be made except with the leave of the Court.

The Comptroller is required by the statute (*a*) to give notice of the application to the patentee, and he is empowered, after hearing the parties, if desirous of being heard, to make an order revoking the patent or requiring the specification relating thereto to be amended by disclaimer, correction or explanation, or dismissing the application; but it is also enacted that the Comptroller shall not make an order revoking the

(*a*) 7 Edw. 7, c. 29, s. 26 (2).

patent unless the circumstances are such as would have justified him in refusing to grant the patent had the proceedings been proceedings in an opposition to the grant (*b*).

Under sect. 26 of the Act of 1907.

The effect of sect. 26 of the Act, therefore, is to prolong, for two years from the date of the patent, *i.e.*, the application, the period during which the grant may, upon the grounds stated in sect. 11 of the Act, be objected to by a person who was entitled to oppose the grant, or is the successor in interest of such a person. A proceeding under sect. 26 may be considered as an opposition to the grant, but commenced and prosecuted after the seal has been obtained.

"Successor in interest."

It would seem that a person is not entitled to apply for revocation as a "successor in interest" of a person who would have been entitled to oppose unless he is the legal representative of such person, *e.g.*, an assignee from a person who might have opposed is not entitled to apply for revocation under these provisions (*c*).

Procedure.

The prescribed procedure for the revocation of a patent by application under sect. 26 of the Act is that the application shall be made on Patents Form No. 22, and shall be accompanied by an unstamped copy of the form, which shall be transmitted by the Comptroller to the patentee. When the ground of application is that the applicant for the patent obtained the invention from the person applying for revocation, evidence by way of statutory declaration in support of such allegation must be left at the Patent Office at the same time as the application for the revocation, or as soon as may be thereafter. In other cases evidence in support of his case by way of statutory declarations may be so left by the applicant for revocation if he desires. Copies of any declaration so left at the Office shall be delivered by the applicant to the patentee (*d*). The provisions of the Patents Rules, 1908, applicable to opposition cases, apply *mutatis mutandis* to the furnishing of further evidence and to the hearing of the case before the Comptroller (*e*). At the hearing the patentee has the right to begin, except in cases where the ground upon which revocation is sought is that the patentee obtained the invention from the petitioner or from a person of whom he is the legal repre-

(*b*) *Ibid.*
(*c*) See Gascoine's Patent (1910), 27 R. P. C. 78.
(*d*) P. R. (1908), r. 75.
(*e*) P. R. (1908), r. 76.

Under sect. 26 of the Act of 1907.

sentative (*f*). In fact, the case proceeds before the Comptroller as if it were an opposition to the grant as regards evidence whether by declaration or *viva voce*.

In cases of opposition under sect. 11, the grant of a patent is refused only when the ground of opposition relied upon is clearly proved. If there is any doubt, the grant is allowed, but subject to such modifications of the specifications, references and disclaimers as may be required to protect the opponent and the public. The practice in this respect on application to the Comptroller under sect. 26 is similar to that established with reference to cases under sect. 11. Questions as to the *locus standi* of persons claiming to be entitled to oppose the grant of a patent and the general principles upon which amendments, references, and disclaimers are ordered in opposition proceedings have been fully discussed in Chapter I. of this volume.

Apparently proceedings properly commenced under sect. 26 of the Act are not stayed by the subsequent commencement of an action for infringement or proceedings for revocation of the patent (*g*).

The proviso to sect. 26, sub-sect. (1).

A proceeding for revocation under sect. 25 is clearly one which is within the proviso to sect. 26, sub-sect. (1), of the Act; but it is doubtful whether proceedings for revocation taken under sects. 24 or 27 are proceedings within the meaning of such proviso. First, as regards proceedings under sect. 24. It may be that, since the proceeding is before the Court and *inter alia* for revocation, the proviso applies. On the other hand, it may be that the proceeding is only for revocation as an alternative remedy, and the term "revocation" in sect. 24 means cancellation of the patent on the ground of an improper use, or mis-use of it, and not on any ground of objection to its validity, which, under any circumstances, could be removed by amendment of the specification; whereas sub-sect. (2) of sect. 26 shows that the proceedings for revocation referred to in the proviso are such as in some cases may be removed by amendment of the specification, and sub-sect. (1) indicates that they are such as in all cases are based upon some ground or grounds of objection to the validity of the patent itself. Secondly, as regards sect. 27, the grounds for revocation under

(*f*) See (1910) (F.), 27 R. P. C. App. p. vii.

(*g*) See p. 141, *post*.

Under sect. 26 of the Act of 1907.

that section have no reference to any inherent defect in the patent itself, but only relate to some improper use of the monopoly. These points will have to be decided by the Court.

Surrender of patent.

Sect. 26, sub-sect. (3) of the Act provides that a patentee may at any time by giving notice in the prescribed manner to the Comptroller offer to surrender his patent, and the Comptroller may, if after giving notice of the offer, and hearing all parties who desire to be heard he thinks fit, accept the offer, and thereupon make an order for the revocation of the patent.

This is a new statutory power in relation to the surrender of a patent. If a patentee, as was the practice before the Act, disposed of his patent by surrender to the Crown by enrolled deed, the patent, in the absence of conditions to the contrary, probably enured for the benefit of the Crown (*h*). An order under sect. 26, sub-sect. (3), would annul the patent altogether.

The prescribed manner of giving notice to the Comptroller of an offer by a patentee to surrender his patent is that it shall be given on Patents Form No. 23, and shall be advertised by the Comptroller in the journal and in such other manner, if any, as he deems desirable (*i*).

Appeal from Comptroller's decision.

Any decision of the Comptroller under sect. 26 of the Act is subject to appeal to the Court (*k*), and sect. 92, sub-sect. (2) provides that the appeal is to be to such Judge of the High Court as the Lord Chancellor may select for the purpose, and the decision of that Judge is final, unless the decision of the Comptroller is in favour of revoking the patent. Apparently, therefore, there is no appeal to the Court of Appeal and House of Lords if the selected Judge decides in favour of revocation but the Comptroller does not, and there is such an appeal if the Comptroller decides to revoke the patent and the Judge either agrees or disagrees with him. There does not seem to be any particular reason why this should be so. Again, it is somewhat curious that in cases of opposition under sect. 11, in which the same questions may be raised as under sect. 26, the appeal from the Comptroller is to the law officer, from whom, under no circumstances, is there a further appeal.

The appeal to the Court must be brought by petition pre-

(*h*) See p. 173, *post*.
(*i*) P. R. (1908), r. 77.
(*k*) 7 Edw. 7, c. 29, s. 26 (4).

Under sect. 26 of the Act of 1907.

sented within one calendar month of the decision of the Comptroller, or within such further time as the Court may, under special circumstances, allow. The time for appealing runs during the long vacation, and inability of counsel to settle the petition owing to absence from London is not a special circumstance which will warrant an extension of time (*l*). The petition must 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. It must also state concisely the grounds of the appeal, and no grounds other than those stated can, except with the leave of the Court, to be given on such terms and conditions as may seem just, be allowed to be taken by the appellant at the hearing (*m*). It is obvious, therefore, that the appellant should be exceedingly careful in stating fully the grounds on which he wishes to rely at the hearing of the appeal.

At present the selected Judge is a Judge of the Chancery Division, and subject to any direction of the Court to the contrary, the appeal is to be set down in the same manner as if it were a witness action assigned to such Judge, and be heard and disposed of in due course (*n*).

It is provided by the Rules that the evidence used on the appeal shall be the same as that used at the hearing before the Comptroller, and no further evidence shall be given except by the leave of the Court on application to be made to the Court at or before the hearing (*o*). Presumably the practice which governs the admission of fresh evidence by the Court of Appeal in appeals to it (*p*) will be followed by the Court in the case of appeals from a decision of the Comptroller under sect. 26 of the Act. The Court has all the powers by the Act vested in the Comptroller, and may make any order which might, or ought to, have been made by the Comptroller (*q*).

The costs of and incident to the appeal, including the costs of the hearing before the Comptroller, are in the discretion of the Court (*r*).

(*l*) See Beldam's Patent (1910), 27 R. P. C. 758.
(*m*) R. S. C., Ord. liiiA, r. 4.
(*n*) R. S. C., Ord. liiiA, r. 5.
(*o*) R. S. C., Ord. liiiA, r. 6.
(*p*) See Vol. I. p. 495.
(*q*) R. S. C., Ord. liiiA, r. 8.
(*r*) R. S. C., Ord. liiiA, r. 9.

II.—Under Sect. 27 of the Patents and Designs Act, 1907.

Under sect. 27 of the Act of 1907.

Sect. 27 of the Patents and Designs Act, 1907, provides as follows:—

Provisions of sect. 27 of the Act of 1907.

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

(2) The Comptroller shall consider the application, and, if after inquiry he is satisfied that the allegations contained therein are correct. then, subject to the provisions of this section, and unless the patentee proves that the patented article or process is manufactured or carried on to an adequate extent in the United Kingdom, or gives satisfactory reasons why the article or process is not so manufactured or carried on, the Comptroller may make an order revoking the patent either—

(a) forthwith; or

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

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

(3) If within the time limited in the order the patented article or process is not manufactured or carried on within the United Kingdom to an adequate extent, but the patentee gives satisfactory reasons why it is not so manufactured or carried on, the Comptroller may extend the period mentioned in the

Under sect. 27 of the Act of 1907.

previous order for such period not exceeding twelve months as may be specified in the subsequent order.

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

Policy of sect. 27 of the Act of 1907.

Under this section the patent is not revoked on any ground inherently affecting its validity, but as a penalty for what the law now considers to be an improper use made of the monopoly by the patentee. The section does not provide for the compulsory working of the invention in this country in the way in which the laws of some countries do as a condition of the grant. But in the event of the patented article or process being manufactured or carried on exclusively or mainly outside the United Kingdom, it imposes on the patentee the obligation of proving that the patented article or process is manufactured or carried on in the United Kingdom to what, in sub-sect. (2), is called an adequate extent, or of giving satisfactory reasons why such is not the case. The policy of the section is protection of the trade of the United Kingdom, but not in any fiscal sense of that term. It is a free trade policy. It is to secure that the patentee shall not, by means of an abuse of his monopoly, stunt the growth of, and so hamper, a British trade, not that he shall by means of his monopoly foster a British trade in comparison with foreign trade. It is to secure what has been stated by *Parker*, J., as "fair play between foreign industries and the industries of this country; and not to secure for the latter during the period of the patent a protection which they would not enjoy if no patent had been granted, and which the Legislature can always secure for them, either temporarily or permanently, if and when it considers fit" (*s*). Again, the section is not meant to penalise the patentee for want of success when want of success arises from circumstances beyond his control and not from the manner in which he has exercised the right conferred upon him by the patent (*t*). Sect. 24, by means of compulsory licence or, in

(*s*) Hatschek's Patent, [1909] 2 Ch. 68; 26 R. P. C. 242.

(*t*) Bremer's Patent, [1909] 2 Ch. 217; 26 R. P. C. 465.

Under sect. 27 of the Act of 1907.

the alternative, revocation, secures that the patentee shall not unfairly hamper British trade quite apart from anything which is being done abroad; and sect. 27 secures that the patentee shall not by means of the monopoly favour the development of industries abroad at the expense of industries in the United Kingdom. The two sections no doubt overlap, but such is the broad distinction between them (*u*). The cumulative effect of the two sections is to put upon the patentee the obligation not to so use, or withhold the use of, his monopoly, that the establishment of an industry in this country is unfairly prevented or hindered.

The section applies to all patents, whether granted before the Act or afterwards. To a limited extent, possibly, the Court would, in the case of a patent granted before the Act, accept as satisfactory reasons which would not be regarded as satisfactory if the patent had been granted after the Act (*x*). It is open to anyone whether a British subject or not, and whatsoever his motive, to apply for revocation under the section. In fact, the application may be at the instance of a common informer (*y*).

Applicant must establish a *primâ facie* case.

It is clear from the language of the section that before the patentee can be called upon, under sub-sect. (2), to justify the use he has made of his monopoly, the applicant must establish a *primâ facie* case to the effect that the patented article or process has been exclusively or mainly manufactured or carried on outside the United Kingdom (*z*).

"The patented article is manufactured."

It will sometimes be most important to determine what precisely is the patented article or process. The determination of this point will depend upon a critical examination and construction of the specification as a whole, and the patentee may find himself estopped by his claims if they are too widely drawn (*a*). The question arises what is the meaning in sub-sect. (1) of the words "the patented article is manufactured." Does this mean that only such acts as could be restrained as infringements are to be taken into account in deciding

(*u*) See Hatschek's Patent, [1909] 2 Ch. 68; 26 R. P. C. 239; Fiat Motors, Ld.'s Patent (1910), 27 R. P. C. 767; [1911] 1 Ch. 70.

(*x*) See Hatschek's Patent, [1909] 2 Ch. 68; 26 R. P. C. 244; Kent's Patent (1909), 26 R. P. C. 669.

(*y*) See Hatschek's Patent, [1909] 2 Ch. 68; 26 R. P. C. 239, 240.

(*z*) See p. 93, *post*.

(*a*) See Lake's Patent (1909), 26 R. P. C. 443.

Under sect. 27 of the Act of 1907.

whether the patented article is manufactured exclusively or mainly outside the United Kingdom, or does it mean that all parts of the article which as a whole could not be put upon the market without licence of the patentee must be regarded? To take the case of a pure combination patent, *i.e.*, one in which the claim is for the combination quite irrespective of the individual parts as integers of the combination. All the patentee can restrain is the putting together or assembling of the parts to form the combination. It would appear that only the extent to which the parts are fitted for assembly together is to be considered, and in this connection it is no doubt most important not to forget that the sale of the unpatented parts of a patented combination so constructed that they can be and are intended to be put together to form the patented combination substantially without further work being done upon them, is an infringement of the patent (*b*). It would appear, therefore, that only the extent to which unpatented parts are specially prepared for subsequent assembly together to form the patented combination is to be considered. The extent to which parts are otherwise manufactured is outside the question. In view of the before-explained policy of the section, it would seem to be manifestly improper to hold the patentee responsible for the effect on a part of the trade of the United Kingdom which may be carried on without his leave and licence. In one case (*c*), where the patent claimed an article, and also that article in combination with another and unpatented article; and the applicant relied upon the fact that the unpatented article was manufactured abroad but the combination was effected in this country, the Comptroller held that evidence of such fact did not discharge the onus cast upon the applicant by sub-sect. (1). In another case (*d*), where the specification of a patent contained fifty-five claims for different combinations, and the machines made in accordance with the invention were wholly made abroad, but before sale in this country a few of the parts were taken out and replaced by like parts which were made in this country, the Comptroller revoked the patent on the ground of inadequate

(*b*) See Vol. I. pp. 376, 377.
(*c*) Lake's Patent (1909), 26 R. P. C. 442.
(*d*) Johnson's Patent (1908), 26 R. P. C. 52.

manufacture without satisfactory reasons. Apparently the machines sold in the United Kingdom comprised many of the patented combinations which were assembled abroad.

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"Exclusively or mainly."

The exact meaning to be given to the words "exclusively or mainly" in sub-sect. (1) is a matter of great importance. The close connection of the words "exclusively" and "mainly" is to be noticed. As regards the meaning of "exclusively," there is of course no difficulty. But the matter is otherwise with reference to the word "mainly." It would appear that the manufacture cannot be said to be mainly carried on abroad unless the quantum of foreign manufacture exceeds that of the home manufacture by something over fifty per cent. In view of the interpretation put upon the word "mainly" by the Court it does not, however, follow that when something over fifty per cent. of the total manufacture is carried on abroad it is necessarily mainly carried on abroad. In the opinion of the Court, to come within the intention and meaning of the sub-section, the disparity must be greater than a mere small percentage, and if the article be manufactured or the process be carried on in the United Kingdom, not only to a substantial extent, but to an extent as substantial as may reasonably be expected, having regard to what is done abroad, the state of circumstances is not that which is contemplated (*e*). The comparison is to be that between the extent to which the article or process, the subject of the patent, is manufactured or carried on in the United Kingdom and the extent to which it is manufactured or carried on abroad, whether the articles so manufactured or resulting from the process so carried on abroad are or are not imported into the United Kingdom (*f*). In this connection the extent to which the patented article or process is manufactured or carried on by infringers of the patent in the United Kingdom is to be taken into account in favour of the patentee upon an inquiry under the section (*g*). In a case (*h*) where it appeared that a patented process was carried on in the United Kingdom to a substantial extent for one of the purposes of the invention, but was not carried on in the

(*e*) See Hatschek's Patent, [1909] 2 Ch. 68; 26 R. P. C. 240.

(*f*) *Ibid.*; Fiat Motors, Ld.'s Application, [1911] 1 Ch. 66; 27 R. P. C. 409, 762.

(*g*) Fiat Motors, Ld.'s Application, [1911] 1 Ch. 66; 27 R. P. C. 409, 762.

(*h*) Bonet's Patent (1909), 26 R. P. C. 424.

Under sect. 27 of the Act of 1907.

United Kingdom at all for another important purpose of the invention, whereas it was carried on for both purposes abroad, and it further appeared that the owners of the patent had granted licences under it for the latter purpose on reasonable terms, and were willing to grant a similar licence to the applicant, the Comptroller held that the applicant failed to discharge the onus of proving a *primâ facie* case in support of the allegation that the process was mainly carried on abroad, and dismissed the application accordingly.

"Adequate extent."

If the applicant is successful in establishing a *primâ facie* case, under sub-sect. (1), to the effect that the patented article or patented process is manufactured or carried on exclusively or mainly outside the United Kingdom, the patentee in order to save the patent must, in accordance with sub-sect. (2), prove that the patented article or process is manufactured or carried on to an adequate extent in the United Kingdom, or give satisfactory reasons why such is not the case. If the applicant establishes a *primâ facie* case to the satisfaction of the Comptroller, and the patentee does not file rebutting evidence, the patent will be revoked forthwith (*i*).

Should the patentee intend to defend the use he has made of the monopoly, he must do so by (a) showing that the manufacture is carried on to an adequate extent in the United Kingdom, or (b) explaining satisfactorily why it is not so carried on. Both these defences are questions of fact, and, as in all cases depending upon fact, the facts of one case are not much guide to the correct conclusion to be drawn from the facts of another case. Each case must be considered on its own merits.

As regards adequate working it is to be noticed that the word "adequate" is a very elastic expression. What is adequate in one set of circumstances may very well be totally inadequate in another and different set of circumstances. The Legislature wisely used this indefinite expression in order that the Court may have ample authority to do justice in the matter under all conditions as they arise.

The Court has expressed the opinion in general terms that the extent to which the article is manufactured or the process

(*i*) Jonkegow and Destrez's Patent (1910), 27 R. P. C. 540. Reported as Green's Application, [1911] 1 Ch. 754.

Under sect. 27 of the Act of 1907.

is carried on in the United Kingdom cannot be considered adequate if it be less than it would have been but for the fact that the patentee has exercised the right conferred by the patent to the hurt of British industry, *e.g.*, the fact that he has given foreign traders a preference over British traders (*k*).

The demand in this country for the patented article or the article produced by the patented process is one point to be considered, and the patentee is entitled to the benefit of the fact, if such be the case, that, in spite of such efforts as he may justly be called upon to make there is no demand at all or that such demand as there is is largely for the article as manufactured abroad.

In the language of *Parker*, J.: "If, for example, the patent be for a new article, and such article be manufactured both here and abroad, and part of the demand here be for the article made abroad, because it is got up more to the taste of a section of the public, the manufacture here could not on that account alone be said to be inadequate. To so hold would, in effect, be to force a patentee to use his patent right to exclude altogether the import of foreign goods. The demand and supply in this country are to be considered, though they are not the only facts to be considered upon the question of adequacy. If there was insufficient manufacture here to meet the demand for the home-made article, it might well be that the manufacture might be held to be inadequate, because the right of the patentee might have been so exercised as to preclude the growth of a demand by the imposition of unreasonable prices or unreasonable terms for licences, or simply because the patentee had wholly neglected this country in his efforts to develop a foreign trade. Every case must be considered on its own merits and with reference to its own attendant circumstances" (*l*).

Though there be no demand for the patented article or process in the United Kingdom, it does not follow that there is no obligation on the patentee to start, or attempt to start, an industry here. If there is in fact a manufacture abroad, he must exert himself to create a demand here such as a reasonable business man would deem sufficient, and not necessarily

(*k*) See Hatschek's Patent, [1909] 2 Ch. 68; 26 R. P. C. 241.

(*l*) Hatschek's Patent, [1909] 2 Ch. 68; 26 R. P. C. 243.

Under sect. 27 of the Act of 1907.

such as he himself considers enough, *i.e.*, he must not treat this country unfairly in regard to other countries, and it must not be forgotten that the establishment of an industry here may in itself help to create a demand for the article or process (*m*). If, however, the patentee is innocent of any unfair treatment of this country as against foreign countries, the existence of a limited but satisfied demand in the United Kingdom will be ample justification for the fact that the manufacture is mainly carried on abroad (*n*); and in some cases the absence of any demand at all in this country may be satisfactorily explained, *e.g.*, where there is for the time being no practical commercial utility in the invention with reference to the trade of the United Kingdom (*o*).

"Satisfactory reasons."

The expression "satisfactory reasons," like "adequate extent," is very elastic, and completes the power of the Court to do justice in the light of all the circumstances peculiar to a particular case. The Court will deem no reasons satisfactory which do not account for the inadequacy of the extent to which the patented article is manufactured or the patented process is carried on in the United Kingdom by causes operating irrespective of any abuse of the monopoly granted by the patent (*p*). The position of affairs at the date of the patent and not at the time of the application under the section, is the important point. The question always is, could the patentee have developed a home industry if he had used his monopoly fairly between home and foreign trade, or if he had devoted the time and money which he has expended upon the industry abroad to developing a home industry (*q*); subject, however, to this, that some allowance may be made to a foreign patentee who has devoted his energies for some legitimate time to perfecting and proving the commercial feasibility of the invention in his own country before introducing it to the United Kingdom (*r*).

The following may be suggested as grounds for reasons which, in many cases, would be deemed satisfactory within

(*m*) See Boult's Patent (1909), 26 R. P. C. 383.

(*n*) *E.g.*, Kent's Patent (1909), 26 R. P. C. 666; Bremer's Patent, [1909] 2 Ch. 217; 26 R. P. C. 465.

(*o*) Osborn's Patent (1909), 26 R. P. C. 820.

(*p*) Per Parker, J., Hatschek's Patent, [1909] 2 Ch. 68; 26 R. P. C. 241.

(*q*) See *ibid.*, 26 R. P. C. 243.

(*r*) See Boult's Patent (1909), 26 R. P. C. 386.

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sub-sect. (2):—The fact that the patentee has made *bonâ fide* efforts to induce British manufacturers, by purchase or licence, to take up the manufacture the subject of the invention, but without success: The patentee has treated the United Kingdom fairly in all respects, and has not given any undue preference to foreign countries: Failure to establish an industry has been due to the conservatism of British manufacturers, and not to any lack of effort on the part of the patentee: No demand in the United Kingdom for the patented article, and for the time being no practical commercial utility in the invention in this country (*s*): The invention was not originally perfect or very satisfactory, and the patentee has devoted his energies and money in his own country to perfecting the invention before introducing it, without undue delay, to the British market (*t*): Conditions peculiar to foreign countries are more favourable to the manufacture than in the United Kingdom, and the public as well as the patentee get an advantage by the manufacture being carried on mainly abroad (*u*): Patent actually assigned to a British company within four years of its date, and at the time of application for revocation the British company was in a position to manufacture to a full and adequate extent in the United Kingdom (*x*): Patentee has used his best endeavours to establish an industry in the United Kingdom, and failure to do so was caused by circumstances beyond his control (*y*): The price charged for the home-made article is higher than that charged for the foreign-made article, but is a *bonâ fide* price, and not adopted for the purpose of checking and diminishing the demand for the home-made article (*z*).

Procedure.

The procedure before the Comptroller under sect. 27 is regulated by rules 78—87 of the Patents Rules, 1908, and the Official Notice issued in the Official Journal of April 28th, 1909 (*a*), and is as follows:—The application must be made on Patents Form No. 24, and the applicants simultaneously with, or as soon as may be after, the leaving of the application

(*s*) See Osborn's Patent (1909), 26 R. P. C. 820.

(*t*) See Boult's Patent (1909), 26 R. P. C. 386.

(*u*) See Hatschek's Patent, [1909] 2 Ch. 68; 26 R. P. C. 243.

(*x*) See Tottrank's Patent (1909), 26 R. P. C. 850.

(*y*) See Bremer's Patent, [1909] 2 Ch. 217; 26 R. P. C. 449.

(*z*) See Kent's Patent (1909), 26 R. P. C. 666; Osborn's Patent (1909), 26 R. P. C. 821.

(*a*) See p. 98, *post*.

Under sect. 27 of the Act of 1907.

at the Office, must deliver, or cause to be delivered, to the patentee or his agent a copy of such application, and furnish the Comptroller with evidence of such delivery (*b*). He must also simultaneously with his application form leave at the Patent Office evidence by way of statutory declaration, stating the particulars upon which he relies in support of the allegations contained in the application; and copies of such declaration must accompany the copy of the application form delivered to the patentee or his agent (*c*). The patentee should, within fourteen days from the delivery to him or his agent of the copy of the last-mentioned declaration, or within such further time as the Comptroller may allow, leave at the Office evidence by way of statutory declaration stating whether or not the allegations contained in the application are correct; and if they are incorrect, giving the particulars upon which he intends to rely in answer to the allegations made by the applicant. Copies of such evidence should at the same time be delivered to the applicant (*d*). Should the applicant then decide to proceed with his application, he may then leave further statutory declarations in answer, within fourteen days from the delivery of the said copies of the patentee's declaration, or within such further time as the Comptroller may allow; and on so leaving such further declarations he is required to deliver to the patentee or his agent, copies thereof, and to furnish the Comptroller with evidence of such delivery (*e*).

The Comptroller will then intimate to the parties whether, having regard to the circumstances of the case, he considers it desirable and intends to hold a preliminary hearing on the question whether a *primâ facie* case has been made in support of the allegations in the application, or whether he intends in ordinary course to deal at one hearing with the whole case, including the further questions whether the patentee can prove that the patented article or process is manufactured or carried on to an adequate extent in the United Kingdom, or can give satisfactory reasons why the article or process is not so manufactured or carried on (*f*).

(*b*) P. R. (1908), r. 76.
(*c*) Official Notice, O. J., April 28th, 1909.
(*d*) Official Notice, O. J., April 28th, 1909; P. R. (1908), r. 79.
(*e*) *Ibid.*
(*f*) Official Notice, I. O. J., April 28th, 1909.

Under sect. 27 of the Act of 1907.

Should the Comptroller think fit to hold a preliminary hearing, and as a result of such hearing decide that a *primâ facie* case has been made in support of the allegation in the application, or should he determine to proceed in the ordinary course to deal at one hearing with the whole case, including the question whether the patentee can prove that the patented article or process is manufactured or carried on to an adequate extent in the United Kingdom, or can give satisfactory reasons why the article or process is not so manufactured or carried on, then, and in either of the said cases, he will give to the patentee further time for leaving at the Office and delivering to the applicant, pursuant to rule 79, evidence by way of statutory declaration with regard to such further questions or either of them, and will, subsequently, give to the applicant under rule 79, and thereafter, if necessary, to the patentee under rule 80, further time for leaving further evidence by way of statutory declaration with regard to such questions or either of them in answer or reply, as the case may be (*g*).

On completion of the evidence or at such other time as he may see fit, the Comptroller appoints a time for the hearing of the case, and gives to the parties ten days' notice at least of such appointment, and in the event of his deciding to take evidence *vivâ voce* in lieu of or in addition to the evidence by declaration, or to allow any declarant to be cross-examined on his declaration, under the provisions of sect. 77 of the Patents and Designs Act, 1907, he may require the attendance of any declarant or other person whose evidence he may consider desirable (*h*).

If the Comptroller decides to revoke the patent, he makes an order for its revocation either forthwith, or after such reasonable interval as may be specified in the order, unless in the meantime it is shown to his satisfaction that the patented article or process is manufactured or carried on within the United Kingdom to an adequate extent (*i*). The patentee may obtain the discharge of a conditional order for revocation upon application to the Comptroller and proof of compliance with the condition within the period fixed by the order (*k*).

(*g*) *Ibid.*
(*h*) P. R. (1908), r. 81.
(*i*) See 7 Edw. 7, c. 29, s. 27 (2).
(*k*) See Weber's Patent (1910), 27 R. P. C. 30.

Under sect. 27 of the Act of 1907.

The Act specially provides that no order shall be made which is at variance with any treaty, convention, arrangement, or engagement with any foreign country or British possession (*l*). This proviso was inserted because of Article II. of the modifying Act of 1900 (*m*).

It is of course open to the patentee at any stage of the proceedings to consent to an order for the revocation of the patent upon an admission of the fact alleged by the applicant. If a patentee intends not to contest the case, he should consent to the revocation promptly upon commencement of the proceedings in order to reduce the amount of costs he may be ordered to pay (*n*).

Appeal from Comptroller's decision.

There is a right of appeal to the Court from any decision of the Comptroller under this section; and on any such appeal the law officer or such other counsel as he may appoint is entitled to appear and be heard (*o*). In this connection "the Court" means such Judge as the Lord Chancellor may select for the purpose, and the decision of such Judge is final (*p*).

The appeal to the Court must be brought by petition, presented within one calendar month of the decision of the Comptroller, or within such further time as the Court may, under special circumstances, allow (*q*). The time for appealing runs during the long vacation, and the fact that the counsel who acted for the appellant at the hearing before the Comptroller, owing to absence from London, was not able to prepare the petition of appeal within the calendar month allowed by the Act, is not a special circumstance which will warrant an extension of time (*r*).

The petition must 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. It should also state concisely the ground of the appeal, and no grounds, other than those so stated, are, except with the leave of the Court, to be given on such terms and conditions as may seem just, allowed to be taken by the appellant at the hearing (*s*).

(*l*) See sect. 27 (2).
(*m*) See p. 337, *post*.
(*n*) See Taylor's Patent (1910), 26 R. P. C. 384; Boult's Patent (1909), 26 R. P. C. 219; Müller's Patent (1909), 26 R. P. C. 209; Brooke's Patent (1909), 26 R. P. C. 161.
(*o*) 7 Edw. 7, c. 29, s. 27 (4).
(*p*) 7 Edw. 7, c. 29, s. 92 (2).
(*q*) R. S. C. Ord. liiia. r. 4.
(*r*) Beldam's Patent (1910), 27 R. P. C. 758.
(*s*) R. S. C. Ord. liiia. r. 4.

Under sect. 27 of the Act of 1907.

If the selected Judge is a Judge of the Chancery Division, the appeal is, subject to any direction of the Court to the contrary, to be set down in the same manner as if it were a witness action assigned to such Judge to be heard and disposed of in due course (*t*).

The evidence used at the hearing of the appeal must be the same as that used at the hearing before the Comptroller, and no further evidence can be given except by the leave of the Court, on application to be made to the Court at or before the hearing (*u*). Where the patentee did not contest an application for revocation before the Comptroller, and the Comptroller made an order revoking the patent, but there was a sale *pendente lite*, the purchaser was granted leave to adduce further evidence on appeal, and was successful in obtaining a reversal of the Comptroller's order (*x*). The Court has all the powers by the Act vested in the Comptroller, and may make any order which might or ought to have been made by the Comptroller (*y*).

The costs of and incident to the appeal, including the costs of the hearing before the Comptroller, are in the discretion of the Court (*z*).

(*t*) R. S. C. Ord. liiia. r. 5.
(*u*) R. S. C. Ord. liiia. r. 6.
(*x*) Jonkergouw and Destrez's Patent (1911), 28 R. P. C. 28, 423.
(*y*) R. S. C. Ord. liiia. r. 8.
(*z*) R. S. C. Ord. liiia. r. 9.

CHAPTER III.

AMENDMENT OF THE SPECIFICATIONS.

PART I.—GENERAL.

Certain amendments are allowable.

A PATENT may be void and of no effect on account of a flaw in a specification. The law, in the interests and for the protection of patentees, allows certain amendments to be made from time to time; so a patent, which is 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 in certain cases, 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. Further, the patentee cannot claim amendment of a specification as matter of right. The Comptroller and the Court have a discretion in the matter, and in a proper case amendment will be refused on this ground (*c*).

Procedure when specification is published.

The procedure relative to the amendment of specifications which have become public property is regulated by sect. 21 and

(*a*) The present chapter deals mainly with the amendment of specifications which have been accepted and become open to public inspection; 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.

(*c*) See *e.g.*, Alsop's Patent (1907), 24 R. P. C. 684.

sect. 22 of the Patents and Designs Act, 1907, together with the Patents Rules, 1908, rr. 60—67., made under the powers conferred by the Act, and by the Supreme Court Rules, Ord. 53A, r. 23. Where this procedure applies it is immaterial whether the Patent Office has, or has not, advertised its acceptance of the complete specification (*d*). Consequently, when a complete specification has been accepted, though the Patent Office has not by advertisement 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. General.

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 (*e*).

It has been demonstrated in Vol. I. that if the specification describe and claim anything which is not subject-matter, or which is useless, or which is not new at the date of the patent, or 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. Defects which are fatal.

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 (*f*), its provisions and the benefits which it extended to patentees, were, with further additions, re-enacted by that Act, and again by the Act of 1907. History of power of amendment.

From 1834 to the passing of the Act of 1883 patentees could only amend their specifications by way of disclaimer (*g*), that is to say, they could only cut matter out which they con-

(*d*) Jones' Patent, Griff. P. C. 313.
(*e*) Cochrane's Patent (1885), Griff. P. C. 304.
(*f*) 46 & 47 Vict. c. 57.
(*g*) Foxwell *v.* Bostock (1864), 4 De G. J. & S. 298, 306.

Nature of Allowable Amendments.

sidered to be superfluous as lacking utility or novelty, or as not being subject-matter.

If what was left of the specification would satisfy the 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 (*h*), as, for example, the addition or transfer of the words "herein described" (*i*), and additions in the nature of explanations necessary to define a disclaimer are allowable under the present practice when the application is made pending action for infringement or petition for revocation (*k*).

Amendments allowed under Act of 1907.

The Act of 1907, like that 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 (*l*).

Upon obtaining the leave of the Comptroller or the law officer, or the order of the Court as the circumstances may require, the applicant or patentee is required to leave at the Patent Office a new specification and drawings as amended and prepared in accordance with Patents Rules, 1908, r. 66.

An amendment, when there is no pending action or petition

(*h*) Ralston *v.* Smith (1865), 11 H. L. C. 223, 245.
(*i*) Thomas *v.* Welch (1866), L. R. 1 C. P. 192, 195.
(*k*) See Owen's Patent (1898), 15 R. P. C. 755; p. 138, *post*.
(*l*) 7 Edw. 7, c. 29, ss. 21, 22.

Nature of Allowable Amendments.

for revocation, may, under the provisions of sect. 21 of the Act of 1907, consist of a *disclaimer, correction, or explanation;* but when a patentee desires to amend his specification pending an action for infringement, or petition for the revocation of the patent, he is, under the provisions of sect. 22 of the Act of 1907, only allowed to do so by way of *disclaimer*, and not by correction or explanation, and he must first obtain the order of the Court, and in neither case is any amendment allowable 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 (*m*).

Discretion of Comptroller and law officer.

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 (*n*).

It is not easy to imagine a case in which, failing a decision of the House of Lords to the effect that the patent is void from some cause—*e.g.*, lack of subject-matter—which is incapable of being removed by amendment, it is on the whole desirable in the best interests of the public (of whom it must not be forgotten the patentee is a part) that the Comptroller should, in exercising his discretion to allow or refuse amendment, consider questions not directly relating to the inquiry whether the amendment sought is or is not a disclaimer, correction, or explanation, which does not make the specification as amended claim an invention substantially larger than, or substantially different from, the invention claimed by the specification without the amendment. Such questions as that: (1) the specification has already been amended once, and it would be unfairly prejudicial to the interests of some sections of the trade were the same to be amended again; (2) the patent has been held by a judgment, which has not been appealed from, to be void of subject-matter; and (3) if amended as proposed, the patent would be void of subject-matter (*o*), are for the consideration of the Court, and except in so far as they affect the question whether conditions should be imposed upon the patentee (*p*), ought not, it is submitted, to be entertained by

(*m*) 7 Edw. 7, c. 29, s. 22; s. 21 (8).

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

(*o*) See (1911) (A.), 28 R. P. C. App. p. i.

(*p*) See p. 121, *post*.

Nature of Allowable Amendments.

the Comptroller. If satisfied that the amendment of the specification would not remove the ground upon which the House of Lords has declared the patent to be invalid, the Comptroller rightly in his discretion and the best interests of all concerned refuses to allow amendment at all (*q*).

Leave to amend no guarantee of validity.

Leave to amend 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 (*r*). Thus, in the case of *Deeley's Patent* (*s*), 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.

Amendment no evidence of prior invalidity.

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 (*t*).

Disconformity after amendment.

A disconformity between an amended complete specification and a provisional specification, if within sect. 42 of the Act, is fatal to the validity of the patent (*u*).

Defects in earlier specifications.

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 (*x*).

Specification amended under provisions of

As regards an amendment made under the provisions of sect. 21, the Act of 1907 provides (*y*) that "the amendment

(*q*) See, *e.g.*, Hennebique's Patent (1910), 28 R. P. C. 41.
(*r*) Lake (1887), Griff. L. O. C. 16; 5 R. P. C. 415.
(*s*) (1895), 12 R. P. C. 65, 192.
(*t*) Stocker *v.* Warner (1845), 1 C. B. 148, 165; 9 Jur. 136, 138.
(*u*) See Vol. I. pp. 184—191, *ante*.
(*x*) Hampton and Facer (1887), Griff. L. O. C. 13.
(*y*) 7 Edw. 7, c. 29, s. 21 (7).

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 (*z*). 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 (*a*).

Nature of Allowable Amendments.

Sect. 21 of the Act of 1907 takes the place of the original for all purposes.

In the case of an application under sect. 21 of the Act of 1907 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 (*b*).

It would also appear, on the authority of *Moser* v. *Marsden* (*c*), a case decided by the House of Lords, that, though it is open to an opposer to raise the question that the proposed amendment would make the claim, as amended, larger than the original claim, yet the decision of the law officer allowing amendment 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, within sect. 42 of the Act of 1907, between the amended complete specification and the provisional (*d*). That is to say, the decision of the law officer upon the question of amendment is unreviewable so long as the amendment

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

(*z*) 7 Edw. 7, c. 29, s. 23.

(*a*) 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.

(*b*) See 7 Edw. 7, c. 29, s. 21 (7); Hattersley and Jackson's Patent (1904), 21 R. P. C. 233.

(*c*) (1895), 13 R. P. C. 24.

(*d*) See Vol. I. p. 184.

Nature of Allowable Amendments.

allowed is within the limits of the provisional specification as originally filed; but if the amendment goes outside that, it may create 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 Acts of earlier date than that of 1883, be considered as not applicable to the Act of 1907, and in so far as those decided since the Act of 1883 are concerned must be considered as overruled on this point (*e*).

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* (*f*), 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 Lunetiers* (*g*) 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, in accordance with the law in force at that date, have been declared void on the ground of disconformity between the specifications (*h*).

Practice when an amendment under sect. 21 is objected to on the ground that it extends the claim.

Before the decision in *Moser* v. *Marsden* (*i*), 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 now included in sect. 21, sub-sect. (7), of the Act of 1907, claim an invention substantially larger than or substantially different

(*e*) 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 & 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.

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

(*g*) (1896), 13 R. P. C. 664.

(*h*) See Vol. I. p. 184.

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

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from 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 (*k*). When this ground of opposition is taken against a proposed amendment now the law officers require to be satisfied that the amendment will not infect the specification with the vice referred to, before they grant leave to amend (*l*).

Examples of amendments which are not allowable.

Walker's Application (*m*), selected from amongst other cases (*n*), 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 (*o*).

In *Walker's Application* (*p*), 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 construc-

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

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

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

(*n*) 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.

(*o*) 7 Edw. 7, c. 29, s. 21 (*b*).

(*p*) Griff. L. O. C. 22.

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tion and application to the class of machinery referred to of an inclined bearer or bearers to support the top 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 (*q*).

It is competent for a patentee to claim a combination as a whole, and also a subordinate part or parts separately (*r*). 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 (*s*).

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 (*t*).

Leave 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 (*u*).

Amendment by the Court.—Sect. 22 of the Patents and Designs Act, 1907, was sect. 13 of the Patents and Designs (Amendment) Act, 1907, the new provisions of which replaced sect. 19 of the Patents, Designs and Trade Marks Act,

(*q*) See note (*n*), p. 109, *ante*.
(*r*) See Vol. I. p. 250.
(*s*) Sorrell's Patent (1889), 6 R. P. C. 101.
(*t*) Bateman and Moore's Disclaimer (1852), Macr. P. C. 116.
(*u*) Parkinson's Patent (1896), 13 R. P. C. 509, 514.

1883 (*x*). The terms of sect. 22 of the Patents and Designs Act, 1907, are as follows:— **Amendment by the Court.**

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

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

Sect. 22 of the Act of 1907 compared with sect. 19 of the Act of 1883.

Comparing the substituted with the older section, it is apparent that, whereas under the old section the Court had power to order that the patentee should, subject to such terms as to costs or otherwise as the Court or a Judge might impose, be at liberty to apply at the Patent Office for leave to amend by disclaimer, under the new substituted section the Court has power itself, by order, to allow the patentee to amend by way of disclaimer, and subject to such terms as to costs, advertisement or otherwise, as the Court may think fit.

The first part of the proviso limits the power of the Court to allowing only amendments by way of disclaimer which do not 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. In case of leave being given by the Court or a Judge, under the old sect. 19 of Act of 1883, to apply at the Patent Office to amend by way of disclaimer, the procedure was by

(*x*) Sect. 19 of the Act of 1883 was as follows:—"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 meantime, the trial or hearing of the action shall be postponed."

Amendment by the Court.

way of sect. 18 of the Act of 1883, which is sect. 21 of the present Act (*y*), and that section contained the same provision as to the nature of allowable amendments by way of disclaimer as the present sect. 22 does. But sect. 18 of the Act of 1883 further provided that the amendment should be advertised in the prescribed manner, and should in all Courts, and for all purposes, be deemed to form part of the specification. The latter provision is re-enacted by sect. 21, sub-sect. (7). An amendment sanctioned under sect. 21 by the law officer is not open to review by the Court in subsequent proceedings relating to the patents (*z*). It is to be noticed that there is nothing in the present sect. 22 to correspond with the provisions of sect. 21, sub-sect. (7), that the amendment shall, in all Courts and for all purposes, be deemed to form part of the specification; and further, by sect. 21, sub-sect. (8), it is provided that the provisions of sect. 21 are not applicable when the provisions of sect. 22 apply. It, therefore, seems that a disclaimer which has been allowed by the Court under sect. 22, in one proceeding, may be questioned, in other proceedings between different parties, either on the ground that it was not a disclaimer, or that, though a disclaimer, it was one which made 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.

The present section provides that the Comptroller shall appear and be heard if he desires so to do, or if the Court so directs him.

Leave may be refused on the ground that the amendment if made would not validate the patent.

It is submitted that where there has been an adverse decision against the patent, including (*inter alia*) a 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 (*a*). In one case, under sect. 19 of the

(*y*) Hall's Patent (1888), 5 R. P. C. 306; Lang's Patent (1890), 7 R. P. C. 471; Owen's Patent (1898), 15 R. P. C. 759.

(*z*) See p. 107, *ante*.

(*a*) 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.

Act of 1883, 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 (*b*). **Amendment by the Court.**

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" (*c*), 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 1907:— **Definition.**

> "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 (*d*). 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" (*e*).

(*b*) Armstrong's Patent (1896), 13 R. P. C. 501; 14 R. P. C. 747.

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

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

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

Disclaimer.

Disclaimers which extend the claim.

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 (*f*).

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 leave to amend should not be refused (*g*). The legitimate object of amendment is to take out and remove part of, or to further explain, what had been claimed before; it is not legitimate by striking out or altering part of the specification, to give an extended and larger sense to what is left, so as to make it embrace something which it did not embrace before (*h*). Where, in the original specification, there are separate claims to distinct things or features, but it is distinctly pointed out to the public that the patentee intended to claim the combination of the same, it is permissible to delete the separate claims and substitute a new claim for the combination (*i*).

The words of sub-sect. (1) of sect. 21 of the Act of 1907, "by way of disclaimer, correction, or explanation," 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 (*k*).

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 (*l*). This reasoning does not apply in a case where the special form to which it is proposed to confine the

(*f*) 7 Edw. 7, c. 29, ss. 21 and 22.

(*g*) See Cochrane's Patent (1885), Griff. P. C. 384; Ashworth's Patent (1886), Griff. L. O. 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.

(*h*) See remarks of Lord Blackburn, Dudgeon *v.* Thompson (1877), L. R. 3 App. Cas. 55.

(*i*) Goldstein's Patent (1910), 27 R. P. C. 289.

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

(*l*) 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.

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claim is not specifically described in the unamended specification, and there is ground for holding that it was not intended to be specifically claimed originally. Under such circumstances the amendment should not be allowed, because it might make the amended specification claim an invention substantially different to that claimed in the unamended specification (*m*); and 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 (*n*).

In *Ralston* v. *Smith* (*o*), 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 in particularly describing and ascertaining the nature of the invention. When, therefore, by his disclaimer, he confined

(*m*) *E.g.*, Dobbie's Patent (1909), not reported.

(*n*) Hattersley and Jackson's 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; 23 R. P. C. 192.

(*o*) (1865), 11 H. L. C. 225; see also cases referred to in the footnote (*n*), p. 109, *ante*.

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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 (*p*).

Ralston v. *Smith* may be contrasted with *Seed* v. *Higgins* (*q*), 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.

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 (*r*).

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 (*s*).

Rule in Seed v. Higgins.

The rule involved in *Seed* v. *Higgins* was applied by the Attorney-General in giving his judgment in an appeal from the decision of the Comptroller in *Rylands' Patent* (*t*), decided under 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.

Thus in *Rylands' Patent* (*u*), the essence of *Rylands'* in-

(*p*) Ralston *v.* Smith (1865), 11 H. L. C. 255.
(*q*) (1860), 8 H. L. C. 550.
(*r*) Johnson's Patent (1896), 13 R. P. C. 661, 662.
(*s*) See *Ibid.*
(*t*) (1898), 5 R. P. C. 665.
(*u*) *Ibid.*

vention 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 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 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* (*x*), 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 in *R.* v. *Mill* (*y*) 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. These claims related to pens, and to instruments used for marking with a stamp. Those which remained untouched were for improvements in pen-holders and pencil-cases, and for the construction of ink-stands. 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.

Disclaimer.

(*x*) (1886), Griff. L. O. C. 6.

(*y*) (1850), 10 C. B. 379.

Disclaimer.

Amended specification must be construed without reference to the disclaimer.

It must 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 (*z*); 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 (*a*). The amended specification must be construed, without reference to any deleted part, as though it had been originally filed in its amended form (*b*), but for the purpose of explaining an ambiguity (if any) in the amended specification reference may be made to the original (*c*); and when a specification is amended by disclaimer by referring to what is illustrated, it is read as a claim for a special construction, with the result that a different construction is no infringement (*d*).

Corrections and explanations are allowable when they do not exceed

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 (*e*). In cases where an error has arisen from mistranslation it is usually necessary to file evidence in the form of statutory declarations.

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

(*z*) Per Cresswell, J., Tetley *v.* Easton (1852), 2 C. B. N. S. 706, 730.

(*a*) Cannington *v.* Nuttall (1871), L. R. 5 E. & I. App. 205, 228.

(*b*) 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; Lake and Elliot *v.* Rotax Motor Accessories, Ld. (1911), 28 R. P. C. 532.

(*c*) 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.

(*d*) Foden *v.* Wallis & Stevens, Ld. (1908), 25 R. P. C. 786.

(*e*) Johnson's Patent (1896), 13 R. P. C. 663; p. 116, *ante*.

Correction and Explanation.

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 (*f*).

Morgan's Patent (*g*) 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.

The legitimate function of a correction or explanation.

The function of a correction or explanation within sect. 21 of the Act of 1907 is to explain more clearly what was the meaning, *i.e.*, the intention 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 (*h*).

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

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 (*l*).

Corrections were made, on the authority of the Master of the Rolls, where "October" was written by mistake for "November" (*m*); where "Charles" was written for "George" (*n*); where reference numbers were transposed (*o*); where "recovery"

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

(*g*) (1886), Griff. L. O. C. 17.

(*h*) Beck and Justice (1877), No. 4114, Griff. L. O. C. 10; Johnson's Patent (1909), 26 R. P. C. 780.

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

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

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

(*m*) Rubery's Patent (1837), 1 W. P. C. 640, n.

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

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

Correction and Explanation.

had been written for "covering" (*p*); 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 (*q*).

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* (*r*), 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* (*s*), 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 Acts of 1883 and 1907 do not appear to have taken away this 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 (*t*).

In *Re Gare's Patent* (*u*) 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 sect. 18 of the Act of 1883, now sect. 21 of the Act of 1907, should be the only proceedings taken by any one asking for amendment.

Present practice as to correction of clerical errors.

Sect. 21 of the Act of 1907 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 sub-

(*p*) Nickell's Patent (1841), 1 W. P. C. 650; 4 Beav. 563.
(*q*) Abel's (1874). No. 2081.
(*r*) (1875), L. R. 20 Eq. 346.
(*s*) (1840), 1 W. P. C. 641.
(*t*) *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.
(*u*) L. R. (1884) 26 Ch. D. 105.

sect. (1), and consequently it is not necessary to invoke the authority of the Master of the Rolls to rectify a clerical mistake. Sect. 70 expressly gives the Comptroller power to correct clerical errors in, or in connection with, any application for a patent, or in any patent or any specification (*x*).

Correction and Explanation.

It is the practice of the Comptroller to allow corrections of clerical errors in the specification under sect. 70 before the patent is sealed, but after sealing to insist on the amendment being filed under sect. 21 and advertised, except in such cases as mere misspelling.

The amendment of a clerical error in a specification, as also other amendments, may be refused on the ground of delay (*y*). Thus in *Re Blamond's Patent* (*z*), 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, and it was impossible to say what interests might be affected by doing what was desired.

Delay may be a bar to amendment.

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 (*a*).

Amendment by inserting drawings.

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 (*b*).

Explanation of ambiguous claim.

Conditions.—The Comptroller and law officer have the power to impose conditions when granting leave to amend (*c*);

(*x*) See Patents Rules (1908), r. 95.
(*y*) Blamond's Patent (1860), 3 L. T. N. S. 800; Lang's Patent (1890), 7 R. P. C. 469; Johnson's Patent (1896), 13 R. P. C. 659.
(*z*) (1860), 3 L. T. N. S. 800.
(*a*) Lang's Patent (1890), 7 R. P. C. 469, 471.
(*b*) Ashworth (1873), No. 3513, Griff. L. O. C. 6.
(*c*) 7 Edw. 7, c. 29, s. 21; Hearson's Patent (1884), 1 R. P. C. 214; Pietsch-

Conditions.

and the Court, 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 order allowing the patentee to amend by way of disclaimer (*d*).

Condition that no action be brought in respect of infringements before a certain date.

Before the Act of 1883 it was not an uncommon condition that no action should be brought on the amended specification in respect of infringements committed before amendment (*e*), or in respect of certain continued infringements after amendment (*f*). The matter is one of discretion to be exercised in view of the 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 sect. 23 of the Patents and Designs Act, 1907, which is a reproduction of sect. 20 of the Act of 1883, and 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.

Any party is, however, at liberty to bring forward any special circumstances which require a special condition for his benefit (*g*).

During the argument in *Ashworth's Application* (*h*) 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

man's Patent (1884), Griff. P. C. 314; Davies *v.* Davies (1911), 28 R. P. C. 50.

(*d*) 7 Edw. 7, c. 29, s. 22.

(*e*) P. 123, *post*.

(*f*) P. 123, *post*; Holmes *v.* L. & N. W. Ry. Co. (1852), Macr. P. C. 31; Smith's Patent (1855), Macr. P. C. 232; *Re* Medlock's Patent (1865), Newton, L. J., vol. xxii. p. 69.

(*g*) In the following cases special conditions were asked for, but were refused: Ashworth's Patent (1886), Griff. L. O. C. 6; Allon'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; (1911) (A.), 28 R. P. C. App. p. i.; Davies and Davies' Patent (1911), 28 R. P. C. 50.

(*h*) Ashworth (1886), Griff. L. O. C. 6; Davies and Davies' Patent (1911), 28 R. P. C. 50.

tho 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. Conditions.

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. Such conditions were that the patentee should not sue in respect of infringements committed before amendment (*i*), or in respect of certain continued infringements by the use of certain specified machines actually in use before the amendment (*k*), or in respect of fresh infringements by certain persons in virtue of the continued use of a process employed by them prior to the amendment (*l*), or in respect of infringements by machines made under specified contracts (*m*). Like conditions with the same object in view may be imposed by the Comptroller and law officer, as also by tho Courts pending litigation (*n*), under the present practice.

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 (*o*).

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 (*p*).

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 (*q*).

(*i*) Lucas' Patent (1854), Macr. P. C. 234, 239; Smith's Patent (1855), Macr. P. C. 232.

(*k*) 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.

(*l*) *Re* Medlock's Patent (1865), Newton, Lond. Journ. N. S. vol. xxii. p. 69.

(*m*) Fox's Patent (1878), No. 3988.

(*n*) See p. 124, *post*.

(*o*) Cheeseborough's Patent (1884), Griff. P. C. 303.

(*p*) United Telephone Co. *v.* London and Globe Telephone Co. (1884), L. R. 26 Ch. D. 766.

(*q*) Edison's Patent (1877), No. 2909;

Conditions.

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, 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 (*r*).

Terms imposed by the Court.

The terms which the Court will impose upon granting an order for amendment of the specification by way of disclaimer will, no doubt, be similar to those formerly imposed by the Court when granting leave under the old sect. 19 of the Act of 1883 to apply at the Patent Office for leave to amend by way of disclaimer.

The following are reported cases of actions for infringement pending which, under the Act of 1883, leave to apply at the Patent Office for leave to amend by way of disclaimer, or under the Act of 1907 leave to amend by way of disclaimer, was given by the Court upon the terms and conditions stated:—

In *Winter* v. *Baybut* (*s*), 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* (*t*), the Court of Appeal held that sect. 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 defendant's 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 *Codd* v. *Bratby* (*u*), *Chitty*, J., granted leave to apply

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.

(*r*) See Lucas' Patent (1854), Macr. P. C. 234.
(*s*) (1884), 1 R. P. C. 76.
(*t*) (1884), 1 R. P. C. 121.
(*u*) (1884), 1 R. P. C. 209.

under sect. 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 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. Conditions.

In *Fusee Vesta Co.* v. *Bryant and May* (*x*), *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* (*y*), *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 sects. 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* (*z*), *Kay*, J., granted leave under sect. 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;

(*x*) (1887), 4 R. P. C. 71.
(*y*) (1887), 4 R. P. C. 377.
(*z*) (1888), 5 R. P. C. 28; L. R. 37 Ch. D. 118.

Conditions.

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* (*a*), 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.

In *Lang* v. *Whitecross Co.* (*b*), *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 sect. 19 of the Act of 1883, to impose terms, and that the order ought not to be interfered with.

In *Deeley* v. *Perks* (*c*), the House of Lords ordered that if

(*a*) (1888), 5 R. P. C. 192.
(*b*) (1889), 6 R. P. C. 570.
(*c*) [1896] A. C. 496; 13 R. P. C. 581.

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. Conditions.

In *Corrigall* v. *Armstrong, Whitworth & Co.* (*d*), the Court did not consider sect. 20 of the Act of 1883 sufficient protection to the defendants, and only granted leave to apply upon the plaintiff waiving 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.* (*e*), the Court thought the order made in *Ludington Cigarette Machine Co., Ld.* v. *Baron Cigarette Machine Co., Ld.* (*f*), 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.

In *Gillette Safety Razor Co.* v. *Luna Safety Razor Co., Ld.* (*g*), leave to amend by disclaimer was given upon the terms that the applicants should pay the costs of the application, and under R.S.C. Ord. 53A, r. 23, all pending actions for infringement should be discontinued, the applicants paying the costs; the applicants to seek no relief by action or claim for injunction in respect of [*the patented articles*] made in or imported into the United Kingdom before [*the date of the order*], if the Judge at the trial should hold that the original claim was not framed in good faith and with reasonable skill and knowledge, and also undertaking not to claim any relief in respect of any [*patented articles*] purchased or in the hands of the public as distinguished from the trade prior to the [*date of the order*].

The following are reported cases of petitions for revocation pending which, under the Act of 1883, leave to apply at the Patent Office for leave to amend by way of disclaimer, or under the Act of 1907 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 (*h*), was a petition for the revocation of *Gaulard and Gibbs'* patent for a

(*d*) (1903), 20 R. P. C. 523.
(*e*) (1903), 21 R. P. C. 115.
(*f*) See p. 128, *post*.
(*g*) [1910] 2 Ch. 373; 27 R. P. C. 527.
(*h*) (1888), 5 R. P. C. 189.

Conditions.

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 (*i*), *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 (*k*), *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.* (*l*), 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

(*i*) (1899), 16 R. P. C. 370.
(*k*) (1900), 17 R. P. C. 298, 513.
(*l*) (1899), 17 R. P. C. 25, 214, 745.

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* (*m*) would not have been made had it been a mere case of infringement. **Conditions.**

In the Matter of Geipel's Patent (*n*), 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."

In the Matter of Alsop's Patent (*o*), the Court of Appeal followed, substantially, the order made in *Ludington Cigarette Machine Co., Ld.* v. *Baron Cigarette Machine Co., Ld.* (*p*), 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.

In the Matter of Klaber's Patent (*q*), which was the first application under sect. 22 of the Patents and Designs Act, 1907, *Neville*, J., adopted the form of order made in *Geipel's case*, *supra*, and ordered the applicant to pay the Comptroller's costs, and made the petitioners' costs on the application their costs in any event.

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

(*m*) (1896), 13 R. P. C. 581.
(*n*) (1903), 20 R. P. C. 558; 21 R. P. C. 379.
(*o*) (1905), 23 R. P. C. 78.
(*p*) See p. 123, *ante*.
(*q*) [1908] 1 Ch. 845; 25 R. P. C. 334.

Retrospective Effect of Amendments.

trial (*r*). 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 (*s*). 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 (*t*).

The terms of sub-sect. (7) of sect. 21 of the Act of 1907, as also the conditions usually imposed by the Court, in granting an order for amendment under sect. 22, 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 (*u*).

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* (*x*).

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 (*y*). And if proceedings before amendment have been duly taken, an action is maintainable upon the amended specification though the writ was issued pending the proceedings before leave to amend was given (*z*).

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,

(*r*) 5 & 6 Will. 4, c. 83, s. 1; Perry *v.* Skinner, 2 M. & W. 471; R. *v.* Mill (1850), 10 C. B. 379.
(*s*) 15 & 16 Vict. c. 83, s. 39.
(*t*) Lucas' Patent (1854), Macr. P. C. 234, 239.
(*u*) See Bray *v.* Gardner (1887), 4 R. P. C. 41, 42.
(*x*) Dudgeon *v.* Thompson (1877), L. R. 3 App. Cas. 34.
(*y*) See Andrew v. Crossley (1892), 9 R. P. C. 165.
(*z*) Stepney Spare Motor Wheel, Ld. *v.* Hall, [1911] 1 Ch. 514; 28 R. P. C. 381.

as the case may be, bad, and is not an order for revocation, it is clear 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 (*a*).

Amendment after Action on, or Petition against, the Patent.

Amendment after Order for Revocation.—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 (*b*).

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 sect. 21 of the Patents and Designs Act, 1907, and the Patents Rules, 1908, rr. 60—67.

Sect. 21 of Act of 1907 applies when there is no pending action for infringement or petition for revocation.

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 (*c*).

Applicant's right to be heard.

(*a*) See Vol. I. p. 415.
(*b*) See Deeley *v.* Perks (1896), 13 R. P. C. 589, 590; see also Vol. I. pp. 305—307.
(*c*) 7 Edw. 7, c. 29, s. 73; P. R. 1908, rr. 102—105.

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 (*d*) or wholly (*e*) parted with his interest; but this is not so now, as, according to the provisions of the Act of 1907 (*f*), 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 (*g*). An assignee of a patent is consequently entitled to apply for leave to amend the specification. 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 (*h*). The mortgagor is, it is submitted, "the person for the time being entitled to the benefit of the patent" within the meaning of sect. 93, and so entitled to apply under sect. 21 of the Act of 1907. As being entitled to the benefit of the patent he can sue alone in respect of infringement to *his* patent (*i*). Of course the mortgagee, as a person interested, could claim to be heard on the application to amend and object to the amendment; but it does not appear to follow that the beneficial owner of the patent, by creating a debt and securing it by a mortgage of *his* patent, fetters his right to apply alone for leave to amend the specification of the patent which remains his own (*k*).

Reasons for requiring amendments are to be stated in writing.

A patentee desirous of amending his specification, under the provisions of sect. 21 of the Act of 1907, is required to state in writing his reasons for the same (*l*), but such reasons form no part of the specification when amended (*m*); nor will leave to amend be refused merely on the ground that the reasons

(*d*) Spilsbury *v.* Clough (1842), 1 W. P. C. 255.
(*e*) Wallington *v.* Dale (1852), 7 Exch. 888.
(*f*) Sects. 21, 22.
(*g*) Sect. 46.
(*h*) Van Gelder Co. *v.* Sowerby Co. (1889), 7 R. P. C. 208.
(*i*) *Ibid.*
(*k*) Van Gelder Co. *v.* Sowerby Co. (1889), 7 R. P. C. 208; but see Goltstein's Patent (1910), 27 R. P. C. 294.
(*l*) 7 Edw. 7, c. 29, s. 21 (1).
(*m*) Cannington *v.* Nuttall (1871), L. R. 5 H. L. App. 205, 208.

given by the applicant in his application are insufficient (*n*). It is to be noticed that sect. 21, sub-sect. (2), of the Act of 1907 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 (*o*), it is the practice to advertise the reasons as well.

Practice when no Action or Petition is pending.

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 (*p*). The request, which states the nature of the desired amendment and the applicant's reasons for making the same (*q*), 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 (*r*). 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 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-sect. (6) of sect. 21 of the Act of 1907. 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.

Signature and advertisement of request.

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 (*s*).

Any one interested may oppose.

(*n*) Ashworth (1878), No. 3513, Griff. L. O. C. 6, 7.
(*o*) *Ibid.*
(*p*) P. R. (1908), r. 60.
(*q*) 7 Edw. 7, c. 29, s. 21.
(*r*) P. R. (1908), r. 60.
(*s*) 7 Edw. 7, c. 29, s. 21 (2).

Practice when no Action or Petition is pending.

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 (*t*). The notice must be upon Patents Form No. 18 (*u*). The unstamped copy is forthwith forwarded by the Comptroller to the applicant (*x*).

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 (*y*). The provisions of Rules 43, 46 and 47 of the Patent Rules, 1908, then apply to the case (*z*). If the opponent does not so leave statutory declarations, the applicant may within two months from the date of the first advertisement of the application for leave to amend leave at the Office statutory declarations in support of his application, and if he does so he must deliver to the opponent copies thereof (*a*). If the applicant leaves such declarations the provisions of Patents Rules 45, 46 and 47 then apply to the case (*b*).

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 (*c*).

The Comptroller has power to take evidence *vivâ voce*, if he thinks fit, in lieu of or in addition to evidence by declaration, or to allow any declarant to be cross-examined on his declaration; and he is in the same position as an official referee in respect of requiring the attendance of witnesses and taking evidence on oath (*d*).

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 (*e*). Though the respondent is entitled to service of the notice of appeal, yet if he appears without having received the notice the law officer will not refuse to hear the case (*f*).

(*t*) P. R. (1908), r. 61.
(*u*) P. 403, *post*.
(*x*) P. R. (1908), r. 61.
(*y*) P. R. (1908), r. 62.
(*z*) P. R. (1908), r. 63.
(*a*) P. R. (1908), r. 64.
(*b*) P. R. (1908), r. 65.
(*c*) 46 & 47 Vict. c. 57, s. 18, sub-s. 3; Patents Rules (1903), r. 41.
(*d*) 7 Edw. 7, c. 29, s. 77.
(*e*) P. 424, *post*.
(*f*) See Rylands' Patent (1888), 5 R. P. C. 668.

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 (*g*), or the appeal may not be heard, on the ground that it is too late.

Thus in *Arnold's Application* (*h*) 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-sect. (3) of sect. 21 of the Act of 1907, 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-sect. (5), which relates to an appeal to the law officer, provides that he (the law officer) shall hear the applicant and the opposer, if he 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. The words "in his opinion a person entitled to be heard," which occur in sub-sect. (3) of sect. 11 of the Act of 1907 [and *sic* the similar words in sub-sect. (3) of sect. 21], have a retrospective effect and enable the objection to be taken before the Comptroller as well as before the law officer (*i*). 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 (*k*). In accordance with the practice, and upon

(*g*) L. O. Rules, r. 1; p. 424, *post*.
(*h*) (1882), Griff. L. O. C. 5.
(*i*) 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.
(*k*) See R. *v.* Comptroller-General of Patents (1899), 16 R. P. C. 233.

Practice when no Action or Petition is pending.

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 sect. 21 of the Act of 1907 (*l*).

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 (*m*).

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 (*n*), 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 (*o*); and the decision of the law officer is final (*p*).

Amended specification to be left at the Patent Office.

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 (*q*). Every amendment of a specification is forthwith advertised by the Comptroller in the official journal of the Patent Office (*r*).

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 (*s*), *e.g.*, where a disclaimer was filed without the consent of the patentee (*t*).

Costs.

The Patents and Designs Act, 1907, sect. 39, gives the Comptroller power by order to award to any party such costs as he may consider reasonable, and to direct how and by what parties they are to be paid. Before 1907 the Comptroller had no power over the costs of an application to amend, though the law officer had power over the costs of an appeal to him.

(*l*) 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.

(*m*) Hampton and Facer (1885), Griff. L. O. C. 15.

(*n*) Pp. 121—129, *ante*.

(*o*) 7 Edw. 7, c. 29, s. 21 (4), (6).

(*p*) See p. 107, *ante*.

(*q*) P. R. (1908), r. 66.

(*r*) *Ibid.* r. 67.

(*s*) 7 Edw. 7, c. 29, s. 21 (7).

(*t*) *Re* Berdan's Patent (1875), L. R. 20 Eq. 346.

The order of the Comptroller fixes the amount of costs and directs how and by whom they are to be paid (*u*).

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 (*x*).

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 (*y*).

When an 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 (*z*).

Where, under the law before the Act of 1907, 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 sect. 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 (*a*).

In *Morgan's Application* (*b*) 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 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

(*u*) As to enforcement of the order, see p. 42, *ante*.
(*x*) See Haddan (1885), Griff. L. O. C. 12.
(*y*) Lake (1887), Griff. L. O. C. 16.
(*z*) Codd *v.* Bratby (1884), 1 R. P. C. 209, 211.
(*a*) Bell (1887), Griff. L. O. C. 10.
(*b*) (1886), Griff. L. O. C. 17.

Practice pending Action or Petition.

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 (*c*).

Sect. 22 of Act of 1907 applies when there is a pending action for infringement or petition for revocation.

Amendment pending Action for Infringement, or Petition for Revocation.—The foregoing provisions of sect. 21 of the Patents and Designs Act, 1907, do not apply when and so long as any action for infringement or proceeding before the Court for revocation of a patent is pending (*d*). Under such circumstances the patentee is only allowed to amend his specification by way of disclaimer, and he must obtain the order of the Court allowing him to do so in accordance with the provisions of sect. 22 of the Act, and subject to such conditions (see p. 121, *ante*) as the Court may see fit to impose.

The procedure to obtain the order of the Court is by motion in the proceeding pending before the Court, and notice of such motion, together with a King's Printer's copy of the specification showing in red ink the amendment proposed to be made, must be served on the parties to the proceedings, and in the first instance upon such parties only (*e*). On the hearing of the motion the Court decides whether, and on what terms as to costs or otherwise, the application shall be allowed to proceed, and if the application be allowed to proceed, the Court gives directions as to whether such application shall be heard on oral, or affidavit evidence, and if on affidavit evidence fixes the times within which affidavits are to be filed by the parties respectively, and by any other person entitled to be heard under the Act or the Rules of the Supreme Court (*f*). If the application is allowed to proceed, the requirements of R. S. C., Ord. LIIIA. r. 23 (c), (d) and (e), as to service, advertisements and setting the application down in the witness

(*c*) Perks *v.* Deeley (1896), 14 R. P. C. 3.
(*d*) 7 Edw. 7, c. 29, s. 21 (8).
(*e*) R. S. C., Ord. liiia. r. 23 (a).
(*f*) R. S. C., Ord. liiia. r. 23 (b).

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or non-witness list must be complied with. Any person giving notice in accordance with R. S. C., Ord. LIIIA. r. 23 (e), is entitled to be heard in opposition, and, provided he gives an address for service in the United Kingdom, to be served with a copy of the notice of motion together with a copy of the specification with the proposed amendment in red ink, and a copy of the order allowing the application to proceed.

When the Court allows a specification to be amended, the applicant is required to forthwith lodge with the Comptroller an office copy of the order allowing the amendment, and the Comptroller must advertise the same at least once in the Illustrated Official Journal (Patents). The applicant must also, if required so to do by the Court, or by the Comptroller, leave at the Patent Office a new specification and drawings as amended, the same being prepared in accordance with the rules of the Patent Office for the time being in force (*g*).

The Court in deciding whether or not to allow an amendment gives to the word "disclaimer," as used in sect. 22 of the Act of 1907 (*h*), 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 (*i*).

Meaning of "pending action for infringement or petition for revocation."

The terms "action for infringement" and "proceeding for revocation" in the connection mean an action for infringement and proceeding for revocation before judgment (*k*).

In *Cropper* v. *Smith and Hancock* (*l*) the plaintiffs, at the trial, obtained judgment against both defendants, which, however, the Court of Appeal reversed as against the defendant *Hancock*. The plaintiffs thereupon applied to the Comptroller, under sect. 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 sect. 18, sub-sect. (10), of the Act of 1883, refused to proceed with the application until the consent of

(*g*) R. S. C., Ord. liiia. r. 23 (f).
(*h*) See *infra*.
(*i*) See Owen's Patent (1898), 43 S. J. 43; 15 R. P. C. 755.
(*k*) 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.
(*l*) (1884), 1 R. P. C. 254.

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the Court had been obtained. Accordingly the plaintiffs took out a summons under sect. 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 *Brooks (J. B.) & Co., Ld.* v. *Lycett's Saddle and Motor Accessories Co., Ld.* (*m*), the facts 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, 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 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 without costs to either party, it being held that there had been a tacit agreement to abandon the action. 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-sect. (10) of sect. 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 meantime and the costs and question of terms were reserved.

The "Court"

The power conferred upon the "Court" by sect. 22 of the Patents and Designs Act, 1907, may be exercised by any Lord Ordinary of the Court of Session of Scotland (*n*), and by the High Court in Ireland (*o*). It would appear that the Vice-Chancellor of the County Palatine of Lancaster has jurisdic-

(*m*) (1904), 21 R. P. C. 651.

(*n*) 7 Edw. 7, c. 29, s. 94 (4).

(*o*) 7 Edw. 7, c. 29, s. 95 (2).

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tion under sect. 22 of the Act of 1907, and sect. 3 of the Chancery of Lancaster Act, 1890, to order an amendment of a specification by way of disclaimer pending an action in his Honour's Court. Under sect. 19 of the Act of 1883, he had jurisdiction to grant leave to apply at the Patent Office for leave to amend (*p*).

Apparently, since "the Court," subject to the provisions as to Scotland, Ireland, and the Isle of Man. means the High Court in England (*q*), the House of Lords has therefore no original jurisdiction under the section (*r*). Further, an appeal is not a "pending" action within the meaning of the Act (*s*).

Proceedings for amendment begun under sect. 21, but not completed before commencement of action for infringement or petition for revocation.

When an amendment is actually made under the procedure referred to in sect. 21 of the Act of 1907, it is doubtful whether it can be objected to on the ground that before it was completed an action for infringement had been commenced (*t*). It was held, under the old law, that when an application had 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 might effectually proceed without the leave of the Court or a Judge, notwithstanding that an action for infringement or proceeding for revocation is subsequently commenced (*u*).

Advantages of amendments under sect. 22.

As a rule, patentees who obtain an order of the Court allowing an amendment of the specification, 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. 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 assumption 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

(*p*) Winter *v.* Baybut (1884), 1 R. P. C. 76; 53 & 54 Vict. c. 23, s. 2.
(*q*) 7 Edw. 7, c. 29, s. 92 (1).
(*r*) Cropper *v.* Smith (1884), L. R. 28 Ch. D. 148, 152; 1 R. P. C. 90.
(*s*) See p. 139, *ante*.
(*t*) See Farbenfabriken vorms. F. Bayer *v.* Bowker (1891), 8 R. P. C. 389.
(*u*) 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.

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besides the defendants in the action or the petitioners in the proceeding for revocation.

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 (*x*).

Court has an absolute discretion under sect. 22.

The Court has a discretion, unfettered by authority, to grant or refuse its order allowing amendment 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 (*y*); 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 (*z*).

The result of the decisions appears to be that an order will not be made unless the Court sees its way to make full compensation to all opponents (*a*).

Re-amendment.

The patentee is not precluded from making any number of applications for leave to amend by disclaimer in the same action or petition for revocation as may be necessary to defend his patent (*b*).

(*x*) See remarks of Cotton, L.J., Bray *v.* Gardner (1887), 4 R. P. C. 43.

(*y*) See 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; see p. 121, *ante*.

(*z*) 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.

(*a*) See 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.

(*b*) See Chatwood's Patent Safe and Lock Co. *v.* Mercantile Bank of Lancashire (1899), 17 R. P. C. 23.

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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 sect. 22 of the Act of 1907, in one such proceeding without application being made in any other proceedings (*c*); though no doubt the parties to the other proceedings would be protected by the terms imposed by the Court when granting the order. Leave given in one of several proceedings does not apply in 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 (*d*).

When several actions or petitions are pending leave is only necessary in one.

(*c*) 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.

(*d*) See Chatwood's Patent Safe and Lock Co. *v.* Ratner Safe Co. (1899), 16 R. P. C. 449.

CHAPTER IV.

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

(*a*) See Millar *v.* Taylor, 4 Burr. 2303.

(*b*) See Scrutton's Law of Copyright, 3rd ed. p. 1.

Origin of Power to Assign.

can scarcely be doubted that the vast superiority of the plan 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 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.

(*c*) Vol. I chap. vi.
(*d*) Yovatt *v.* Winyard (1820), 1 J.& W. 394.

Origin of Power to Assign.

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, subject to sect. 41 (2) of the Act of 1907, it cannot form the subject of Letters Patent, and the inventor cannot claim any monopoly or acquire any right or property in it which the law will protect or recognise.

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 (*e*), 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* (*f*), 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* (*g*), 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

(*e*) Vol. I. chap. ii.

(*f*) 2 Ves. & B. 218.

(*g*) 8 Ves. 215.

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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."

The Courts will neither decree specific performance of a contract for sale of, nor restrain the publication of, a secret invention.

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 (*h*).

The monopoly in an invention exists only by virtue of the grant of letters patent.

The monopoly created by the grant of letters patent for a limited period is the only right or property which the law 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.

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*).

Interest in an invention before the grant of letters patent.

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* (*k*), 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

(*h*) Newburry *v.* James, 2 Mer. 446, judgment of Lord Eldon, L.C.; see also Williams *v.* Williams, 3 Mer. 157.

(*i*) Duvergier *v.* Fellows (1828), 10 B. & C. 829.

(*k*) (1804), 3 Bos. & Pul. 630.

Origin of Power to Assign.

communication, and the Court held that the plaintiff was entitled to maintain an action for the breach of this agreement (*l*).

Form of letters patent.

Every patent for an invention granted by the Crown is made in the form prescribed in the Patents Rules, 1908, which may be varied to meet special circumstances (*m*). The grant comprises 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.

Patent is assignable only in virtue of the terms of the grant.

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.

Assignment for a district.

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*).

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.

(*l*) See also McDougall *v.* Partington (1890), 7 R. P. C. 216; Punchard *v.* Dale (1894), 11 R. P. C. 257.

(*m*) See p. 421, *post*.

(*n*) 7 Edw. 7, c. 29, s. 14 (1); see Actien Gesellschaft für Cartonagen Industrie *v.* Temler (1900), 18 R. P. C. 14.

(*o*) See Morris' Patents Conveyancing, p. 116.

Assignment by Deed.

Assignment by Deed.

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*).

Legal assignments must be by deed failing act and operation of law.

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 to effect an assignment of a patent right, and it has been held that where a 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*).

No particular form of words is necessary.

Since a patent must be considered "property" within the meaning of sect. 59, sub-sect. (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*).

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 contain-

Equitable assignments may arise from conduct when there is consideration.

(*p*) P. 172, *post*.

(*q*) Cook's Case, Power *v.* Walker, 3 M. & S. 9; Stewart *v.* Casey (1892), 9 R. P. C. 9; [1892] 1 Ch. 104.

(*r*) Hazlehurst *v.* Rylands (1891), 9 R. P. C 7.

(*s*) Co. Litt. 9b, 172a; Shep. Touch. 229—231.

(*t*) 3 Co. R. 63a, Lincoln Coll. Cas.

(*u*) Power *v.* Walker (1814), 3 M. & W. 9.

(*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.*

Assignment by Deed.

ing 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.

When 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*l*., "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 "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 it. 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 volun-

(*a*) Stewart *v.* Casey (1892), 9 R. P. C. 9, 14; [1892] 1 Ch. 184, judgment of Bowen, L.J.

(*b*) (1888), L. R. 38 Ch. D. 597.

Assignment by Deed.

tary 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 and the Admiralty to acquire inventions by assignment.

By sect. 30 of the Patents and Designs Act, 1907, the Secretary of State for War, and the Admiralty, are respectively empowered, either for or without valuable consideration, to acquire by assignment, on behalf of his Majesty, all the benefit of an 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 the Secretary of State for War or the Admiralty 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 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 or the Admiralty so certifies, the specifications of the invention will not be published or open to public inspection at any time, unless the Secretary of State for War or the Admiralty waives the benefit of the section. The full provisions of sect. 30 are as follows:—

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

(2) The assignment shall effectually vest the benefit of the invention and patent in the Secretary of State or the Admiralty on behalf of his Majesty, and all covenants and agreements therein contained for keeping the invention secret and otherwise shall be valid and effec-

Assignment by Deed.

tual (notwithstanding any want of valuable consideration), and may be enforced accordingly by the Secretary of State or the Admiralty.

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

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

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

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

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

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

by authority of the Secretary of State or the Admiralty. **Assignment by Deed.**

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

(10) No copy of any specification or other document or drawing, by this section required to be placed in a sealed packet, shall in any manner whatever be published or open to the inspection of the public, but, save as in this section otherwise directed, the provisions of this Act shall apply in respect of any such invention and patent as aforesaid.

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

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

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

The provisions of sub-sect. (13) are new, and the rest of the section is a repetition of the provisions of sect. 44 of the Act of 1883 but extended to the Admiralty. The rules at present in force under the provisions of sub-sect. (13) are Patents Rules, 1908, rr. 97—99.

Assignment by Deed.

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 Department, and a contract signed by him, or a deed signed, sealed, and delivered by him binds his successors in office (*c*).

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 (*d*) 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 was provided by that Act, as it is by the Act of 1907 (*e*), that every patent shall be granted for one invention only, but the specification may contain more than one claim. The Act, however, declares (*g*) 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 (*h*).

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 en-

(*c*) 18 & 19 Vict. c. 117, s. 5.
(*d*) P. 209, *post*.
(*e*) 7 Edw. 7, c. 29, s. 14 (2).
(*g*) *Ibid*.
(*h*) Dunnicliff *v.* Mallett (1859), 7 C. B. N. S. 209; Walton *v.* Lavater (1860), 8 C. B. N. S. 162, 184.

forced (*i*). 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 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 (*k*).

Assignment by Deed.

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 (*l*), 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.

Reservation by an assignor of right to use the invention.

(*i*) Nordenfelt *v.* Maxim-Nordenfelt Guns and Ammunition Co., [1894] A. C. 535; Dubowski *v.* Goldstein, [1896] 1 Q. B. 478.

(*k*) Nordenfelt *v.* Maxim-Nordenfelt Guns and Ammunition Co., [1894] A. C. 535.

(*l*) Howard *v.* Tweeddales (1895), 12 R. P. C. 519.

Co-owners.

Co-Owners.

Interest of co-grantees.

The Patents and Designs Act, 1907, s. 37, contains the following new statutory provisions, viz.: "Where after the commencement of the Act a patent is granted to two or more persons jointly, they shall, unless otherwise specified in the patent, be treated, for the purpose of devolution of the legal interest therein, as joint tenants, but, subject to any contract to the contrary, each such person shall be entitled to use the invention for his own profit without accounting to the others, but shall not be entitled to grant a licence without their consent, and if any such person dies, his beneficial interest in the patent shall devolve upon his personal representatives as part of his personal estate."

It is to be noticed that the section does not provide that all patents are to be granted in a form which creates a joint tenancy, for it may be "otherwise specified" in the patent, and sect. 14 (2) of the Act provides that every patent shall be in the "prescribed form" (*m*).

The form of patent which was in use at the commencement of the Act, and now constitutes Form A in the third schedule to the Patents Rules, 1908, apart from the provisions of the section, according to judicial interpretation, creates and gives a joint interest which survives to the remaining grantee or grantees upon the death of one or more of the original grantees, unless there was a severance of the joint interest before the death of such grantee or grantees; and it was always open to joint owners at any time to sever their joint interest and create a tenancy in common (*n*). The section, therefore, upon this point, embodies in the statute what formerly rested upon judicial decision, but the section does more than this, for it provides that, subject to any contract to the contrary, the beneficial interest passes to the legal representatives of a deceased joint tenant as part of his personal estate, and so removes all question as to whether the surviving joint tenant holds as trustee for the representatives of the deceased joint tenant.

Before the Act of 1907 the Courts had decided that each

(*m*) See also P. R. (1908), rr. 49—51.

(*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.

of a number of joint grantees, or co-owners by assignment, could, in the absence of agreement to the contrary, use the invention himself without obligation to account to his co-owners (*o*). In this respect, again, the section gives statutory effect to previous judicial decision. Co-owners.

Before the Act the question whether or not one of several co-owners could grant licences alone without the consent of his co-owners depended upon the form of the patent, and it was held that when the patent was in a form similar to that usually employed at present he could not do so (*p*). The section, therefore, makes no real alteration in the law in this respect, for it merely provided that unless otherwise specified in the patent, each joint owner, subject to any contract to the contrary, shall not be entitled to grant licences without the consent of his joint owners.

Patents granted before the 28th August, 1907, which is the date of commencement of the Act of 1907, are not included in the foregoing new statutory provisions.

A patent may be assigned to different persons in different portions as joint tenants, or as tenants in common (*q*). An assignee whether of the entirety of a patent, or of a part or share in it, takes the legal interest, and is not to be considered merely as a licensee (*r*). Assignment to several persons.

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 (*s*). 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 (*t*); 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

(*o*) Mathews *v.* Green (1865), L. R. 1 Ch. 29; Steers *v.* Rogers (1893), 10 R. P. C. 245.

(*p*) Mathews *v.* Green (1865), L. R. 1 Ch. 29.

(*q*) Walton *v.* Lavater (1860), 8 C. B. N. S. 162; Smith *v.* London and North-Western Ry. Co. (1853), Macr. P. C. 203.

(*r*) Walton *v.* Lavater (1860), 8 C. B. N. S. 162, 187, 189.

(*s*) See Morris' Patents Conveyancing, p. 120.

(*t*) *Ibid.*

Co-owners.

behalf in this respect (*u*). 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 (*x*). 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 on the Register of Patents (*y*).

A 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 (*z*).

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 (*a*).

Co-owner's right to sue for infringement.

It is submitted that when a patent for an invention is held by several 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 (*b*).

In *Smith* v. *London and North-Western Railway Co.* (*c*) 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 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

(*u*) See Morris' Patents Conveyancing, p. 123.
(*x*) *Ibid.*
(*y*) *Ibid.* 126.
(*z*) See Steers *v.* Rogers (1892), 9 R. P. C. 177; 10 R. P. C. 245.
(*a*) Horsley and Knighton's Patent (1869), L. R. 8 Eq. 475.
(*b*) Sheehan *v.* Great Eastern Ry. Co. (1880), L. R. 16 Ch. D. 59.
(*c*) (1853), 2 E. & B. 69; Macr. P. C. 188.

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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. 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 (*d*). The damages to which the plaintiff would in such circumstances be held entitled would be, not the whole damage to the joint owners, but only such proportion as should appear to be the plaintiff's, having regard to the proportion of the patent vested in the other co-owners. And on the analogy of *Bergmann* v. *Macmillan* (*e*) the account must be taken in the presence of all the other 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 (*f*).

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 finding of the Court as to validity of the patent may be binding upon all the co-owners as against the defendant, and 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 (*g*).

Trustee 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

(*d*) Sheehan *v.* Great Eastern Ry. Co. (1880), L. R. 16 Ch. D. 62.
(*e*) (1881), L. R. 17 Ch. D. 427.
(*f*) Bergmann *v.* Macmillan (1881), L. R. 17 Ch. D. 423.
(*g*) Westhead *v.* Keene (1838), 1 Beav. 287; Bergmann *v.* Macmillan (1881), L. R. 17 Ch. D. 423; Van Gelder Co. *v.* Sowerby, Ld. (1890), 7 R. P. C. 41.

Assignment of Future Improvements.

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 (*h*); 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 (*i*).

Assignment of Future Improvements.

Covenants to assign future improvements are not contrary to public policy.

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 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 (*k*). 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 might be compelled to apply himself to some

(*h*) R. S. C., Ord. xvi. r. 8.
(*i*) Speckhart *v.* Campbell, "Times," Mar. 13, 1884.
(*k*) Printing and Numerical Registering Co. *v.* Sampson (1875), L. R. 19 Eq. 462.

menial, or mechanical, or lower calling, in order to gain a livelihood (*l*).

Assignment of Future Improvements.

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 (*m*).

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 (*n*). It does not follow that because the directions given in a subsequent specification would, if carried out, amount to an infringement of a prior patent, therefore the subsequent patent is for an improvement on the prior patent (*o*). Neither does it follow that because a subsequent patent is no infringement of the prior patent, the subsequent invention is not an improvement upon the prior invention (*p*). In fact, the consideration of the question of infringement does not usually assist in the determination of the question whether a subsequent invention is an improvement upon a prior invention within the meaning of a particular covenant. In the case of a patented machine, an improvement of it may include any machine which, while retaining some of those essential or characteristic parts of the machine which are the subject of the monopoly claims, yet by addition, omission or alteration, better achieves the same or better results, whether such improvement infringes the monopoly claim of the patented machine or not (*q*).

Where an assignor covenanted that "any improvements on the said invention that he shall during the continuance of

(*l*) *Ibid.*; see judgment of Jessel, M.R., p. 465.

(*m*) London and Leicester Hosiery Co., Ld. *v.* Griswold (1880), 3 R. P. C. 251.

(*n*) See Wilson *v.* Barbour (1888), 5 R. P. C. 245, 675; 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; Linotype and Machinery Co., Ld. *v.* Hopkins (1908), 25 R. P. C. 665; 26 R. P. C. 109; Davies *v.* Davies' Patent Boiler Co., Ld. (1908), 25 R. P. C. 823.

(*o*) See Valveless Gas Engine Syndicate *v.* Day (1899), 16 R. P. C. 100, 102.

(*p*) Linotype and Machinery Co., Ld. *v.* Hopkins (1908), 25 R. P. C. 665; 26 R. P. C. 109.

(*q*) *Ibid.*

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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 (*r*).

Estoppel.

Recitals and covenants by the assignor which operate as an 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 (*s*).

When there is fraud, or common mistake between the parties as to what was intended, then there is no estoppel (*t*).

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 (*u*).

There may be an estoppel by matter of recital (*x*), but an estoppel must be certain, and is not to be taken from argument or inference (*y*).

If the recital only amount to an assertion that the assignor is himself an assignee of the actual inventor, the assignor is not estopped from denying the validity of the patent in an action brought by the assignee on a covenant contained in an agreement (*z*).

(*r*) Pneumatic Tyre Co. *v.* Dunlop (1896), 13 R. P. C 553.

(*s*) 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.

(*t*) 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.

(*u*) Conveyancing Act, 1881, s. 7.

(*x*) Lainson *v.* Tremere (1834), 1 A. & E. 792; Bowman *v.* Taylor (1834), 2 A. & E. 278, 293.

(*y*) Co. Litt. 352 b; Bowman *v.* Taylor (1834), 2 A. & E. 278, 294.

(*z*) Hayne *v.* Maltby (1789), 3 T. R. 438; 1 W. P. C. 291; Bowman *v.* Taylor (1834), 2 A. & E. 278.

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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 (*a*).

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 (*b*).

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* (*c*) 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, held (1) that the Court would regard with extreme jealousy the defendant's claims, as being in derogation of his own grant, and would

(*a*) Oldham *v.* Langmead (1789), 1 W. P. C. 291.

(*b*) Hocking & Co. *v.* Hocking (1887), 4 R. P. C. 255, 434; 6 R. P. C. 69.

(*c*) (1887), 4 R. P. C. 255, 434; 6 R. P. C. 69.

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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.

Assignor not estopped from assisting a defendant with evidence.

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.

Thus, on an interlocutory application in *London and Leicester Hosiery Co., Ld.* v. *Griswold* (*d*) 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

(*d*) (1886), 3 R. P. C. 251.

witness in Court and answering questions which might be properly put to him, 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 from communicating to the defendants in other actions information in his possession which might enable them 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.

Estoppel.

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 (*e*).

Assignment by trustee in bankruptcy does not raise an estoppel against the bankrupt patentee.

Warranty.

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

Warranty may be express or implied.

In the absence of warranty the doctrine of *caveat emptor* applies.

(*e*) 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.

Warranty.

of fraud, is bound to take the patent with all its faults, if it have any (*f*).

In *Hall* v. *Conder* (*g*), 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 defendant 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* (*h*) 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

(*f*) Hall *v.* Conder (1857), 2 C. B. N. S. 22; Smith *v.* Neale (1857), 2 C. B. N. S. 67; Heine *v.* Spong (1904), 22 R. P. C. 110.
(*g*) (1857), 2 C. B. N. S. 22.
(*h*) (1870), 21 L. T. N. S. 819.

fabrics impervious to moisture. The action was on the breach of the agreement, 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. **Warranty.**

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 warrants 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 (*i*).

Covenants for validity, unless carefully drawn, may, in actions for specific performance between vendor and purchaser, give rise to difficult 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 (*k*).

No injunction restraining the patentee from dealing with

(*i*) Hazlehurst *v.* Rylands (1892), 9 R. P. C. 1.

(*k*) See Nadel *v.* Martin (1902), 20 R. P. C. 129, 723; 23 R. P. C. 41; Birchem *v.* Wren (1904), 21 R. P. C. 683; Henderson *v.* Shiels (1906), 24 R. P. C. 108.

Warranty.

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 (*l*).

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 (*m*).

No implied warranty that vendee of a patented article will be able to use it without licence of a prior patentee.

Upon the sale of a patented article there is no implied warranty that the purchaser will be entitled to use the article without liability to obtain the licence of a prior patentee (*n*).

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 (*o*). Thus (*p*) 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

(*l*) Harlett *v.* Hutchinson (1891), 8 R. P. C. 457.

(*m*) Staveit *v.* Passberg Grain Syndicate (1891), 8 R. P. C. 400.

(*n*) Monforts *v.* Marsden (1895), 12 R. P. C. 266.

(*o*) Werdermanu *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; Dansk Rekylriffel Syndicat Aktieselskab *v.* Snell (1908), 25 R. P. C. 421; [1908] 2 Ch. 127; see also New Ixion and Cycle Co. *v.* Spilsbury (1898), 15 R. P. C. 380, 567; [1898] 2 Ch. 137, 484.

(*p*) Werdermann *v.* Société Générale d'Electricité (1881), L. R. 19 Ch. D. 246.

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 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 in 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.

Warranty.

Rights of Assignees.

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 (*q*).

Action for infringement by assignee.

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 (*r*). Thus, where the assignment was of the benefit of an application for a patent with a provisional specification, and an assignment of the completed patent was not effected till after the issue of the writ, it was held that the executors of the deceased patentee, in whom was the legal estate at the issue of the writ, were necessary parties, and the trial was adjourned

(*q*) Walton *v.* Lavater (1860), 8 C. B. N. S. 162.

(*r*) See Bowden's Patent Syndicate, Ld. *v.* Smith (1904), 21 R. P. C. 438; Spennymoor Foundry, Ld. *v.* Catherall and Geldard (1909), 26 R. P. C. 822.

Rights of Assignees.

till the executors were added as plaintiffs in pursuance of leave granted (*s*).

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 (*t*); 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 their licences, and, therefore, cannot restrain them, but that, if he had no such notice, he is entitled to restrain them.

Amendment of specification by assignee:

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 1907 (*u*).

***e.g.*, mortgagee.**

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 Court for the prolongation of the patent, without his mortgagor being a party to the application (*x*).

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.

Petition for prolongation of patent by assignee.

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 1907, and competent to petition for the prolongation of the patent (*y*); and an extension may be granted to the assignee, if the patentee has ceased to have any connection with the working of the patent (*z*), or if the assignee has paid a large sum for the assignment and the development of the invention (*a*).

(*s*) See note (*r*), p. 169.
(*t*) Hassall *v.* Wright (1870), L. R. 10 Eq. 509.
(*u*) 7 Edw. 7, c. 29, s. 93.
(*x*) See Van Gelder Co. *v.* Sowerby, Ld. (1890), 7 R. P. C. 41, 208; see p. 132, *ante*.
(*y*) Russell *v.* Ledsam (1847), 14 M. & W. 574, 588; 1 H. L. Cas. 687.
(*z*) Napier's Patent (1861), 13 Moo. P. C. 543.
(*a*) Bodner's Patent (1849), 6 Moo. P. C. 468.

Rights of Assignees.

But assignees petitioning for the extension of letters patent, are not received with so much favour as the original grantee (*b*), 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 (*c*).

Not unfrequently conditions are imposed for the benefit of the patentee when extensions are granted on the petition of assignees (*d*). In *Bovill's Patent* (*e*), where the 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 create consequences not perhaps contemplated between them which might have been avoided by the grant of a licence at a royalty instead of an assignment (*f*).

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 (*g*).

Thus, a person named *Kenny*, who had invented an improved kind of button-hole for boots and shoes, and a machine for

(*b*) 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. 215, *post*.

(*c*) Norton's Patent (1863), 1 Moo. P. C. N. S. 339; Pitman's Patent, L. R. 4 P. C. 87; pp. 215, 244, *post*.

(*d*) 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* (1860), 13 Moo. P. C. 310; Russell *v.* Ledsam (1847), 14 M. & W. 574; pp. 216, 244, *post*.

(*e*) (1863), 1 Moo. P. C. N. S. 348.

(*f*) 1 W. P. C. 417, n.

(*g*) Kenny's Patent Button-Holing Co. *v.* Somervell (1878), 26 W. R. 787.

Assignment and Partnership.

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. The Court held that, by the 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 (*h*).

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 (*i*); 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.

(*h*) Kenny's Patent Button-holing Co. *v.* Somervell (1878), 26 W. R. 787.

(*i*) Williams on Executors, 8th ed. vol. i. p. 824.

Assignment by Act and Operation of Law.

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 contain a declaration by the legal representative that he believes such person to be the true and first inventor (*k*).

Trustee in bankruptcy.

If a grantee or assignee is declared bankrupt, the patent vests in his trustee in bankruptcy (*l*), 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.

Rights of undischarged bankrupt to fruits of unpatented invention.

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 (*m*). 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 (*n*). 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 (*o*).

Patent vesting in the Crown.

Upon the dissolution of a limited company any undisposed of patent rights of the company vest in the Crown. It is submitted that a patent being a chose in action (*p*), which has to all intents the like effect as against the Sovereign, his heirs and successors, as it has against a subject (*q*), there is no

(*k*) 7 Edw. 7. c. 29, s. 43.

(*l*) 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.

(*m*) Bankruptcy Act, 1883, ss. 44, 50, 54, 168; Hesse *v.* Stevenson (1808), 3 Bos. & P. 565.

(*n*) *Ibid.* See judgment of the Court of Common Pleas, delivered by Lord Alvanley, C.J.

(*o*) 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.

(*p*) See *infra*.

(*q*) 7 Edw. 7, c. 29, s. 29; p. 193, *post*.

Assignment by Act and Operation of Law.

merger when it vests in the Crown, but the chose in action continues to exist and enures 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 (*r*).

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 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 (*s*).

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 (*t*); though

(*r*) 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.

(*s*) Taylor's Agreement Trusts (1904), 21 R. P. C. 713.

(*t*) See British Mutoscope and Biograph Co. *v.* Horner (1901), 18 R. P. C. 177; National Phonograph Co. of Australia, Ld. v. Menck, [1911] A. C. 336; 28 R. P. C. 247.

Assignment by Act and Operation of Law.

it is clear that the purchaser has the property in the chattel (*u*). 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 (*x*). To quote the words of Lord *Herschell*, L.C. (*y*), "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 sect. 71 of the Act of 1907 (*z*) it is enacted that when a person becomes entitled by assignment, transmission, or other operation of law, to a patent, the Comptroller shall, on request and on proof of title to his satisfaction, register such person as proprietor of the patent; and it is by the same section further provided that the person registered as the proprietor of a patent shall, subject to the provisions of this Act and to any rights appearing 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 the patent 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 (*a*). Equitable assignments, however, may

(*u*) *Ibid.*; Vavasseur *v.* Krupp (1878), L. R. 9 Ch. D. 360; Vol. I. pp 525—527.

(*x*) British Mutoscope and Biograph Co. *v.* Horner (1901), 18 R. P. C. 180. As to appointment of a receiver, see Edwards *v.* Picard, [1909] 2 K. B. 903.

(*y*) Steers *v.* Rogers (1893), 15 R. P. C. 251.

(*z*) See also sect. 28.

(*a*) Stewart *v.* Carey (1892), 9 R. P. C. 9, judgment of Bowen, L.J.

Registration of Assignments.

be entered on the register as documents affecting the proprietorship of the patent (*b*).

It is to the interest of assignees to register their assignments as soon as possible (*c*).

Assignments should be registered immediately.

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 provided that where any person becomes entitled as mortgagee, licensee, or otherwise, to any interest in a patent, the Comptroller shall, on request and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register of patents (*d*).

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 (*e*).

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 Patents Rules, 1908 (*f*).

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 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* (*g*), a case decided under the Act of 1852, which provided for the registration of assignments (*h*), 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

(*b*) See p. 80, *ante*.
(*c*) See *infra*.
(*d*) 7 Edw. 7, c 29, s. 71 (2).
(*e*) Parnell's Patent (1888), 5 R. P. C. 126. 130.
(*f*) Rr. 85—91.
(*g*) (1857), 7 E. & B. 686.
(*h*) 15 & 16 Vict. c. 83, s. 35.

Registration of Assignments.

case was decided applies equally to the law as it now stands, since though the present Act does not contain the provision above referred to it does provide that the person registered as the proprietor shall, subject to the provisions of the Act, and to any rights appearing from the register to be vested in any other person, have power absolutely to assign, grant licences as to or *otherwise deal with* the patent, and to give effective receipts for any consideration for any such assignment, licence or dealing (*i*).

In *Hassall* v. *Wright* (*k*), 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.

Has registration a retrospective effect?

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 (*l*).

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 (*m*).

(*i*) 7 Edw. 7, c. 29, s. 71 (3).
(*k*) (1870), L. R. 10 Eq. 509; 40 L. J. N. S. Ch. 145.
(*l*) See Hassall *v.* Wright (1870), L. R. 10 Eq. 509.
(*m*) Ellwood *v.* Christy (1864), 17 C. B. N. S. 754; 18 C. B. N. S. 494; 34 L. J. C. P. 130.

CHAPTER V.

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 Forms A and B, prescribed by the Statutory Rules of 1908 (*b*), which, or which slightly modified to meet special circumstances, are now used for the grant of letters patent for inventions (*c*). 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

(*a*) Pp. 145—147, *ante*. (*b*) P. R. (1908), rr. 49, 50.
(*c*) See p. 421, *post*.

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 contained shall prevent the granting of licences in such manner and for such considerations as they may by law be granted.

Origin of Power 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 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*).

Powers of co-owners to grant licences.

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*).

Royalties received by co-owners.

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*).

Mortgagee in possession may grant licences.

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*).

Assignment subject to an agreement for a licence.

How Licences may 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

Form in which licences must be granted.

(*d*) See p. 156, *ante*.
(*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. 611.

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made by deed, or rather, speaking strictly, not necessarily 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*).

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.

Licence may arise from a parol agreement acted upon.

Also an effective licence may arise from parol agreement (*l*), if acted upon.

Necessity for a formal deed is a question of construction in cases of executory agreements.

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.

Agreement for licence prior to the grant of the patent.

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

(*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.

How Licences may be Granted.

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 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 sect. 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

(*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 de 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. 196, *post*, and Vol. I. p. 381: National Phonograph Co. of Australia, Ld. *v.* Menck, [1911] A. C. 336; 28 R. P. C. 229.

Classification of Licences.

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 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 to import it as against a subsequent assignee of the British patent who took prior to the importation and without notice.

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 or 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*).

(*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.

(*t*) Betts *v.* Willmott (1871), L. R. 6 Ch. 245.

(*u*) See p. 201, *post*.

(*x*) See Vol. I. pp. 31, 526.

(*y*) See p. 201, *post*.

Classification of Licences.

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*).

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*.

Law relating to compulsory licences.

Before the Patents, Designs and Trade Marks Act, 1883, it was optional with the grantee of a patent whether he would grant licences or not. Sect. 22 of that Act 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

(*z*) Thomas *v.* Hunt (1864), 17 C. B. N. S. 183.
(*a*) Vol. I. p. 378.
(*b*) Vol. I. p. 381.
(*c*) Basset *v.* Graydon (1897), 14 R. P. C. 701.
(*d*) Basset *v.* Graydon (1897), 14 R. P. C. 701.

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nature of the invention and the circumstances of the case might deem just.

Sect. 3 of the Patents Act, 1902, repealed sect. 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 sect. 3 of the Patents Act, 1902, authorised the revocation of the patent by Order in Council, if the Judicial Committee were of opinion that the reasonable requirements of the public would not be satisfied by the grant of licences: and if it was proved to the satisfaction of the Judicial Committee that the patent was worked, or that the patented article was manufactured exclusively or mainly outside the United Kingdom, then, unless the patentee could show that the reasonable requirements of the public had been satisfied, the petitioner was entitled either to an order for a compulsory licence or to an order for revocation of the patent. But it was provided that no order for revocation should be made before the expiration of three years from the date of the patent, or if the patentee gave satisfactory reasons for his default. The reasonable requirements of the public were 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 was unfairly prejudiced; or (b) the demand for the patented article was not reasonably met.

Sect. 3 of the Patents Act of 1902 was somewhat amended by the Patents and Designs (Amendment) Act, 1907 (*e*).

The existing statute law as to compulsory licences is now comprised in sect. 24 of the Patents and Designs Act, 1907 (*f*), which is here set out:—

> (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 inven-

(*e*) 7 Edw. 7, c. 28, s. 16.

(*f*) 7 Edw. 7, c. 29, s. 24.

tion have not been satisfied, and praying for the grant of a compulsory licence, or, in the alternative, for the revocation of the patent.

Classification of Licences.

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

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

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

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

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

(a) if by reason of the default of the patentee to manufacture to an adequate extent and supply on reasonable terms the patented article, or any parts thereof which are necessary for its efficient working, or to carry on the patented process to an adequate extent or to grant licences on reasonable terms, any existing trade or industry, or the establishment of any new trade or industry in the United Kingdom

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is unfairly prejudiced, or the demand for the patented article or the article produced by the patented process is not reasonably met; or

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

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

This section is the Act of 1902, s. 3, as amended by the (Amendment) Act of 1907, s. 16. The procedure under the section is regulated by Patents Rules, 1908, rr. 68—74. The alteration in the law as compared with the Act of 1902, s. 3, is as follows: Petitions for the grant of a compulsory licence or, in the alternative, for the revocation of a patent are now to be referred by the Board of Trade to the Court instead of to the Judicial Committee of the Privy Council. Accordingly, the references in the old section to the Judicial Committee and to Orders in Council are, in this section, represented by references to the Court and Orders of the Court respectively, and sub-sects. (8), (9) and (10) of the old section, which dealt with procedure before the Judicial Committee, are not repeated. The grounds stated in sub-sect. (5), upon which the reasonable requirements of the public are to be deemed not to have been satisfied are somewhat different to the grounds stated in sub-sects. (5) and (6) of the Act of 1902, for which the present section was substituted by the (Amendment) Act of 1907, s. 16, sub-s. 2.

The "Court" in this section means such Judge of the High Court as the Lord Chancellor shall appoint, and there is no appeal from the decision of such Judge (*g*).

Ever since the Act of 1883 it has, by virtue of statutory provisions, been possible for persons interested to obtain com-

(*g*) 7 Edw. 7, c. 29, s. 92 (2).

pulsory licences, under conditions, and upon proof of circumstances more or less like those defined by the present section. Applications for compulsory licences have, however, been conspicuous by their absence. In fact, of reported cases there have been only four (*h*) under the Act of 1883, and none at all under the Acts of 1902 and 1907. Possibly, because of the cheaper procedure under the present Act, and the new grounds upon which the reasonable requirements of the public are to be deemed not to have been satisfied, applications for compulsory licences may be more frequent in the future than they have been in the past.

Classification of Licences.

Hitherto the Courts, acting upon the principle *cujus est dare ejus est disponere*, have held that the patentee could attach any condition he liked in respect to the purchase, hire, or use of a patented article (*i*). The effect of sub-sect. (5) (b) of the above section and sect. 38 of the Act, is to considerably modify this view.

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 (*k*).

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 (*l*).

(*h*) 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.

(*i*) See Vol. I. p. 381.

(*k*) Cheetham *v.* Nuttall (1893), 10 R. P. C. 321.

(*l*) Kenny's Patent Button-holing

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If the licence is silent as to the power of the parties to 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 (*m*); but a licence coupled with an interest cannot be so revoked (*n*).

Licence coupled with 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" (*o*).

Though a licence is one coupled with an interest, *i.e.*, 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 (*p*).

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 (*q*).

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 (*r*).

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 (*s*).

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

Co. *v.* Somervell (1878), 26 W. R. 787; 38 L. T. N. S. 870.

(*m*) 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.

(*n*) 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.

(*o*) Guyot *v.* Thomson (1894), 11 R. P. C. 553.

(*p*) Ward *v.* Livesey (1888), 5 R. P. C. 102.

(*q*) Wood *v.* Ledbitter, 9 Jur. 187; Redges *v.* Mulliner (1893), 10 R. P. C. 21; Crossley *v.* Dixon (1863), 10 H. L. C. 293.

(*r*) Guyot *v.* Thomson (1894), 11 R. P. C. 541.

(*s*) Cutlan *v.* Dawson (1897), 14 R. P. C. 249; 13 R. P. C. 716, 717; Guyot *v.* Thomson (1894), 11 R. P. C. 541.

not necessary to revoke it (*t*). It may be revoked by an expression of intention to revoke; but a mere plea in a defence 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 (*u*). Classification of Licences.

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 (*x*). 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.* (*y*), 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

(*t*) Ward *v.* Livesey (1883), 5 R. P. C. 102.
(*u*) Cheetham *v.* Nuttall (1893), 10 R. P. C. 321.
(*x*) Kerrison *v.* Smith, [1897] 2 Q. B. 445.
(*y*) (1904), 21 R. P. C. 161.

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to *use and exercise* the invention." From a subsequent clause in the deed, as pointed out by *Stirling*, L.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 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 (*z*).

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 (*a*); or to the use of the invention in a particular manner (*b*), or in a particular district (*c*), 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 circumstances at the time the contract was made are a proper and important guide to the true construction (*d*).

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.

(*z*) Dunlop Pneumatic Tyre Co. *v.* North British Rubber Co. (1904), 21 R. P. C. 161.

(*a*) Basset *v.* Graydon (1897), 14 R. P. C. 701.

(*b*) 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; National Phonograph Co. of Australia, Ld. *v.* Menck, [1911] A. C. 336; 28 R. P. C. 247.

(*c*) Société Anonyme des Manufactures de Glaces *v.* Tilghman's Patent Sand Blast Co. (1883), L. R. 25 Ch. D. 11; National Phonograph Co. of Australia, Ld. *v.* Menck, [1911] A. C. 336; 28 R. P. C. 247.

(*d*) 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.

Classification of Licences.

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 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 (*e*).

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 (*f*); 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 (*g*).

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 (*h*). For an assignment is a transfer or making over to another of the whole right of the assignor in the thing transferred (*i*), and any words which show an intention to do this in a deed are sufficient with respect to a patent-right (*k*).

(*e*) Dunlop Pneumatic Tyre Co. *v.* North British Rubber Co. (1904), 21 R. P. C. 161.

(*f*) Guyot *v.* Thomson (1894), 11 R. P. C. 554; Heap *v.* Hartley (1889), 6 R. P. C. 500.

(*g*) Heap *v.* Hartley (1889), 6 R. P. C. 495, 500.

(*h*) Palmer *v.* Edwards (1779), 1 Doug. 187, n.; Parmenter *v.* Webber (1818), 8 Taunt. 593; 2 B. Mo. 656; Shep. Touch. 266.

(*i*) 2 Bl. Com.

(*k*) P. 149, *ante*.

Classification of Licences.

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 (*l*). 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 (*m*).

Grantor of exclusive licence may be restrained from infringing.

A patentee who grants an exclusive licence may be 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 (*n*).

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 (*o*).

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* (*p*) 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. There was 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

(*l*) Guyot *v.* Thomson (1894), 11 R. P. C. 554.
(*m*) *Ibid.*
(*n*) Guyot *v.* Thomson (1894), 11 R. P. C. 541.
(*o*) *Ibid.*
(*p*) (1889), 6 R. P. C. 9.

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 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. 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. 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.

Classification of Licences.

When a patentee has accepted royalties from an assignee of the licensee he is estopped from contending that the licence was not assignable (*q*).

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

Right of Crown to free use of inventions patented prior to 1884.

(*q*) Lawson *v.* Donald Macpherson & Co. (1897), 14 R. P. C. 696.

Right of Crown to Use Inventions.

patentee (*r*). 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 (*s*).

Crown only entitled to use inventions patented after January 1, 1884, on terms.

Sect. 29 of the Act of 1907, as did the Act of 1883, provides that a patent shall have to all intents the like effect as against His Majesty the King, his heirs and successors, as it has against a subject. But any Government department may, by themselves, their agents, contractors, or others, at any time after the application, use the invention for the services of the Crown on terms to be before or after the use thereof agreed on, with the approval of the Treasury, between the department and the patentee, or, in default of such agreement, on such terms as may be settled by the Treasury after hearing all parties interested (*t*).

Government contractors.

Contractors who manufacture and supply a Government department 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 (*u*); but if and to the extent that the invention is used for the service of the Crown and under a contract with any such department, sect. 29 of the Patents and Designs Act, 1907, would be a good defence.

Procedure to question Crown's authority to use a patented invention.

It would appear that the provisions now contained in sect. 29 of the Patents and Designs Act, 1907, which first appeared in the Act of 1883 (sect. 27, sub-sect. (1)), have, 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 (*x*).

(*r*) Feather *v.* The Queen (1865), 6 B. & S. 257; Dixon *v.* The London Small Arms Co., Ld. (1875), L. R. 1 App. Cas. 632.

(*s*) Dixon *v.* The London Small Arms Co., Ld. (1875), L. R. 1 App. Cas. 659; Feather *v.* The Queen (1865), 6 B. & S. 257.

(*t*) See 7 Edw. 7, c. 29, s. 29; 46 & 47 Vict. c. 57, ss. 27 and 45 (2).

(*u*) Dixon *v.* The London Small Arms Co., Ld. (1875), L. R. 1 App. Cas. 632.

(*x*) See Feather *v.* The Queen (1865), 6 B. & S. 295.

Since the proviso of sect. 29 of the Patents and Designs Act, 1907, 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 by use for purposes other than for the service of the Crown. **Consideration.**

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 (*y*).

Consideration.

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.

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 (*z*). **Usual covenants.**

It is usual also to insert conditions avoiding the licence

(*y*) *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.

(*z*) P. 436, *post*.

Covenants. altogether if the licensee fail to pay any of the sums and royalties reserved by the licence, or to perform any of his covenants (*a*).

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), 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 (*b*).

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 (*c*); 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 (*d*). A licence to use a manufacture abroad under a foreign patent stands in a very different position to the sale of an article abroad by the owner of the English patent (*e*).

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

Sect. 38 of the Patents and Designs Act, 1907, embodies certain provisions as to the sale or lease of or licence to use or work any article or process protected by a patent, which provisions were put upon the Statute Book for the first time by sect. 24 of the Patents and Designs (Amendment) Act, 1907.

The text of sect. 38 of the Patents and Designs Act, 1907, is as follows:—

(1) It shall not be lawful in any contract made after the

(*a*) P. 436, *post*.

(*b*) 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.

(*c*) Clark *v.* Adie (1873), 21 W. R. 456, 764.

(*d*) 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.

(*e*) *Ibid.*

passing of this Act in relation to the sale or lease of, or licence to use or work, any article or process protected by a patent to insert a condition the effect of which will be— **Covenants.**

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

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

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

Provided that this sub-section shall not apply if—

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

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

(2) Any contract relating to the lease of or licence to use or work any patented article or patented process, whether made before or after the passing of this Act, may at any time after the patent or all the patents by which the article or process was protected at the time of the making of the contract has or have ceased to be in force, and notwithstanding anything in the same or in any other contract to the contrary, be determined by either party on giving

Covenants.

three months' notice in writing to the other party; but where any such notice is given determining any contract made before the passing of this Act, the party giving the notice shall be liable to pay such compensation as failing agreement may be awarded by an arbitrator appointed by the Board of Trade.

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

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

(5) Nothing in this section shall—

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

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

(c) affect any right of determining a contract or condition in a contract exercisеable independently of this section; or

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

Sub-sects. (1) and (4) relate to contracts made after the passing of the Act; sub-sect. (2) relates to contracts whether made before or after the passing of the Act; and sub-sect. (3) relates to contracts made before the passing of the Act, *i.e.*, 28th August, 1907.

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Comments on sect. 38 of the Patents and Designs Act, 1907.

A licensor of an article or process protected by the patent must of necessity have an interest in the patent, but a seller or lessor need not have any such interest. The Courts, having regard to the object of the section, may possibly construe the words "sale" and "lease" as limited to transactions *ejusdem generis* with licence, and so hold that the section only applies to contracts to which a person for the time being having an interest in the patent is a party. Otherwise the section would make alterations in the general law of contracts of a very startling nature, which it could hardly have been the intention of Parliament to effect by this section which incorporates into the Act sect. 24 of the repealed Patents and Designs (Amendment) Act of 1907, which, as regards patents, otherwise only purported to deal with the amendment of the law relating to questions in which applicants for patents, or patentees, are personally concerned.

Sub-sect. (1) has reference to the insertion of certain conditions in any contract made after the passing of the Act in relation to the sale or lease of, or licence to use or work any article or process protected by a patent, and declares that any such condition shall be null and void, as being in restraint of trade, unless the provisions of the proviso to the sub-section are complied with. To be within this sub-section the contract must be made after the passing of the Act, and the condition must be of the defined kind, and must relate to the sale or lease of, or licence to use or work an article or process protected by a patent. The words "protected by a patent" clearly mean that the article or process to which the condition relates must be one the unlicensed manufacture, use, or sale of which would be a direct or indirect infringement of the patent rights of the patentee, *i.e.*, the person for the time being entitled to the benefit of the patent (see sect. 93). It is the condition which is declared to be null and void, not the contract as a whole, which contains the condition; and, where the contract is one which consists of several parts, the legal parts of the contract are enforceable in accordance with the time-honoured

Covenants. rule laid down in Coke's Reports (*Pigot's case*, Co. Rep. 11), which is applicable to illegalities existing by statute or at common law, viz.: "That if some of the covenants of an indenture or of the conditions endorsed upon a bond are against law and some are good and lawful, that in this case the covenants or conditions which are against law are void *ab initio*, and the others stand good."

Referring to the particular conditions which are, by sub-sect. (1), made null and void as being in restraint of trade, it is to be noticed that such conditions are defined by reference to their effect. Those within sub-sect. (1) (a) are such as have the effect of prohibiting or restraining the purchaser, lessee or licensee of the protected article from *using* any article supplied by any person other than the seller, lessor, or licensor. Those within sub-sect. (1) (b) are such as have the effect of requiring the purchaser, lessee, or licensee of the protected article to *acquire* from the seller, lessor, or licensor, or his nominees, any article or class of articles not protected by the patent. Sub-sect. (1) (a) does not mention *nominatim* a non-patented process, but a condition to the effect that the purchaser, lessee or licensee of the protected article or process should not use a non-patented process, would be null and void as being a restraint upon the use of articles by which the non-patented process is carried out, and which are supplied by or owned by a person other than the seller, lessor, or licensor.

The definitions in sub-sect. (1) (a) and (b) are modified by sub-sect. (5) (a) and (b). Thus, in cases not covered by the proviso to sub-sect. (1), a condition which provides that a licensee shall not use with the protected article any article, whether or not it is the subject of a patent other than the patent to which the contract relates, is null and void as being a prohibition or restriction under sub-sect. (1) (a), and if the condition provides that the lessee shall acquire any such article, other than the article protected by the patent, from the patentee only it is null and void under sub-sect. (1) (b). But a condition to the effect that the lessee shall not sell any goods of the patented class other than those of the patentee is good under sub-sect. (5) (a), though the contract is subject to the provisions of sub-sect. (2); and a condition which provides that the licensee will acquire from the patentee, or his nominees, only any article, whether patented or not, which is to be used

to replace an old part of the patented article so as to put or keep the patented article in repair, is good under sub-sect. (5) (a), though the extension of the condition beyond the life of the patent would be subject to the provisions of sub-sect. (2). **Covenants.**

The words in sub-sect. (2), "the patent or all the patents by which the article or process was protected," apparently imply that the right under the sub-section does not arise until "the patented article or process" is no longer one the sale or use of which, without the licence of the patentee, is, apart from the terms of the agreement, lawful, in consequence of the patentee having no existing patent rights in respect of it. That is to say, where the patented article or process is protected, at the time of the contract, by more than one patent, all must cease to be in force before the rights under sub-sect. (2) come into being.

In view of the penalty imposed by sub-sect. (4), it behoves patentees who contemplate entering into contracts for sale, lease or licence to very carefully consider the terms of this section in relation to the proposed contract before it is finally settled.

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 (*f*); and he is so estopped independent of estoppel by deed (*g*); and even when he has used the invention under a mere verbal agreement (*h*). The assignor of a licensee

(*f*) 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. 203, *post*.

(*g*) Lawes *v.* Purser (1856), 6 E. & B. 930; Norton *v.* Brooks (1861), 7 H. & N. 499.

(*h*) Crossley *v.* Dixon (1863), 10 H. L. C. 293, 308, 310; Clark *v.* Adie (1873), L. R. 2 App. Cas. 423.

Estoppel.

is likewise estopped from disputing the validity of the patent as against his assignee (*i*).

Sometimes the licensee covenants not to dispute the validity even after the expiration of the licence. Such a covenant precludes him from raising any defence in an action for infringement other than non-infringement (*k*). If the licence contains a guarantee of the validity of the patent by the licensor, and such guarantee is the basis of the contract, then the licensee is not estopped from denying validity in an action for royalties and may counterclaim for the repayment of royalties actually paid (*l*).

Covenant not to carry out work which might infringe or compete with the patent.

A covenant to the effect that the licensee will not at any time, without the written consent of the licensor, carry out or contract to carry out any work which might be an infringement of the patent, or be in competition with it, has been held to be no undue restraint of trade and valid where it appeared that it was limited to the period of the licence (*m*).

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 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 (*n*).

After the termination of the licence, the licensee, in the absence of a special covenant not to do so (*o*), may dispute the validity of the patent (*p*), but he cannot sell articles as manufactured under licence from the patentee (*q*).

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

(*i*) Gouville *v.* Hay (1903), 21 R. P. C. 49.

(*k*) Watts *v.* Everett Press Manufacturing Co. (1910), 27 R. P. C. 400, 718.

(*l*) Henderson *v.* Shiels (1907), 24 R. P. C. 108.

(*m*) Mouchel *v.* Cubitt (William) & Co. (1907), 24 R. P. C. 194.

(*n*) Muirhead *v.* Commercial Cable Co. (1894), 11 R. P. C. 317; 12 R. P. C. 39, 370.

(*o*) See *supra*.

(*p*) P. 205, *post*.

(*q*) Post Card Automatic Supply Co. *v.* Samuel (1889), 6 R. P. C. 560.

Estoppel.

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 (*r*).

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 (*s*). 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 (*t*). 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 (*u*).

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 occupies is really not comprised within the lease, but belongs to himself under some other right (*x*).

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 (*y*). 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

A licensee (not a party to the action) cannot be compelled to give inspection in an action against the licensor, but if the

(*r*) Basset *v.* Graydon (1897), 14 R. P. C. 711.

(*s*) 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 (1885), 2 R. P. C. 253; Siemens *v.* Taylor (1892), 9 R. P. C. 393.

(*t*) Young *v.* Hermand Oil Co. (1891), 8 R. P. C. 285; 9 R. P. C. 373; Ashworth *v.* Roberts (1892), 9 R. P. C. 89, 309.

(*u*) Young *v.* Hermand Oil Co. (1892), 9 R. P. C. 373.

(*x*) Per Lord Blackburn (1873), Clark *v.* Adie, L. R. 2 App. Cas. 435.

(*y*) Redges *v.* Mullinar (1892), 10 R. P. C. 21; Crossley *v.* Dixon (1863), 10 H. L. C. 293.

Estoppel.

an action against his licensor.

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 (*z*).

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 (*a*).

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 (*b*).

No estoppel against an equitable assignee of an exclusive licence.

An equitable assignee of an exclusive licence also is not estopped, in an action for infringement brought against him by the patentee, from disputing the validity of the patent (*c*).

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 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 (*d*).

In *Hayne* v. *Maltby* (*e*) 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.

(*z*) Germ Milling Co. *v.* Robinson (1886), 3 R. P. C. 11, 14.

(*a*) Per Lord Abinger, C.B., Derosne *v.* Fairie (1835), 2 Cr. M. & R. 476; 1 W. P. C. 154.

(*b*) 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.

(*c*) Pidding *v.* Franks (1849), 1 Mac. & G. 56; 18 L. J. Ch. 295.

(*d*) Com. Dig. tit. Covenant A. 4.

(*e*) (1789), 3 T. R. 438; 1 W. P. C. 291.

Estoppel.

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 (*f*).

Estoppel terminates with licence.

After the termination of the licence, in the absence of express covenant to the contrary (*g*), 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 (*h*).

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 (*i*).

Registration.

All licences should be registered.

A notification of every licence to work under a patent should be entered in the Register of Patents (*k*).

The registration of a licence does not enable the licensee to

(*f*) 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.

(*g*) See p. 202, *ante*.

(*h*) 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.

(*i*) Post Card Automatic Supply Co. *v.* Samuel (1889), 6 R. P. C. 560.

(*k*) See 7 Edw. 7, c. 29, s. 28; P. R. (1908), rr. 85—91.

Registration.

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 the proviso of sect. 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. (*l*).

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 (*m*).

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 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 (*n*).

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 (*o*).

A licensee also who has covenanted to pay royalties for a

(*l*) New Ixion Tyre and Cycle Co. *v.* Spilsbury, [1898] 2 Ch. 137, 484; 15 R. P. C. 380, 567.

(*m*) Pp. 78—83, *ante*.

(*n*) Bergmann *v.* Macmillan (1881), L. R. 17 Ch. D. 423.

(*o*) Grover and Baker Sewing Machine Co. *v.* Millard (1862), 8 Jur. N. S. 713.

term certain is bound to pay such royalties, though the patent is in the meantime declared void and cancelled (*p*), 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 (*q*).

Recovery of Royalties.

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 long as any of the patents were subsisting (*r*). Thus, subject to sect. 38, sub-sect. 2, of the Act of 1907, a licensee may have to pay royalties for the use of an invention, whilst the rest of the public are entitled to use it free.

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 (*s*). 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 (*t*).

Fraud is a defence to an action to recover royalties.

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 cove-

Royalties paid after breach of covenant by licensor.

(*p*) African Gold Recovery Co. *v.* Sheba Gold Mining Co. (1897), 14 R. P. C. 660.

(*q*) Taylor *v.* Hasc (1805), 1 B. & P. N. R. 260; 1 W. P. C. 292; Collinge *v.* Bowman (1834), 1 W. P. C. 295.

(*r*) Siemens *v.* Taylor (1892), 9 R. P. C. 393.

(*s*) 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.

(*t*) See Jandus Arc Lamp and Electric Co., Ld. *v.* Johnson (1900), 17 R. P. C. 373.

Recovery of Royalties.

nant to keep the patent in such a position that he should be able to do so (*u*).

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 (*x*).

Action may be brought for recovery of royalties or in the alternative for relief in respect of infringement.

Where the ambit of the patent is in dispute an action may be brought for the recovery of the royalties, or, in the alternative, for an injunction and the usual relief to restrain infringement (*y*). 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 (*z*).

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 (*a*).

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 (*b*).

(*u*) Lines *v.* Usher (1896), 13 R. P. C. 685; 14 R. P. C. 206.

(*x*) Mills *v.* Carson (1892), 10 R. P. C. 9.

(*y*) Wilson *v.* Union Oil Mills Co. (1892), 9 R. P. C. 57.

(*z*) Pneumatic Tyre Co. *v.* Ferguson (1894), 11 R. P. C. 459.

(*a*) Alma Veneer Felt Co. *v.* Fisher (1897), 14 R. P. C. 159.

(*b*) 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] A. C. 429; Merchant Shipping Co. *v.* Armitage (1873), L. R. 9 Q. B. 99.

Recovery of Royalties.

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 (*c*).

Costs on higher scale.

When an action for the recovery of royalties is one of especial difficulty and importance, costs may be given on the higher scale (*d*).

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 (*e*). 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 (*f*).

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

(*c*) Muirhead *v.* Commercial Cable Co. (1895), 12 R. P. C. 258.

(*d*) *Ibid.* (1894), 12 R. P. C. 39.

(*e*) 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.

(*f*) Heap *v.* Hartley (1898), L. R. 42 Ch. D. 461; 6 R. P. C. 495.

Licensor and Licensee Plaintiff in Action for Infringement.

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* (*g*), 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 contested case in which an exclusive licensee has been allowed to sue without the patentee being a party (*h*). In *Cochrain* (*J. P.*) *& Co.* v. *Martins* (*Birmingham*), *Ld.* (*i*), which is a recent Scottish case, where it appeared that the pursuer held an exclusive licence for the whole area of the patent (and, *sic*, the licence was irrevocable) and the pursuer joined the patentee as a defender, but the patentee made no appearance, and the defender's objection to the pursuer's title to sue was withdrawn by counsel at the Bar, the Lord President stated his own view to be as follows: "Where the licence granted is an exclusive licence, the patentee's title must be held to be given to the licensee for the purpose of action upon the old familiar ground expressed in the well-known brocard—*Quando aliquid conceditur omnia concessa videtur sine quibus hoc explicari nequit.*"

(*g*) 2 H. & M. 628.
(*h*) 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.
(*i*) (1911), 28 R. P. C. 284.

CHAPTER VI.

EXTENSION OF TERM OF LETTERS PATENT.

Historical.

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 cannot be 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 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

(*a*) P. 74, *ante*.

Historical.

spirit of the patent law which prohibits the prolongation of the monopoly, if there is any likelihood of the patentee making profit during the extended period.

Before 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 (*b*).

Extension upon report of the Judicial Committee of the Privy Council.

Lord *Brougham's* Act (*c*), passed in 1835, gave the Judicial Committee of the Privy Council statutory power, in proper cases, after hearing the patentee and other parties, to report to the Sovereign that a further extension of the term of the patent should be granted, and authorised the Sovereign, if he thought fit, to grant new letters patent for the invention for a term not exceeding seven years. Subsequent but now repealed Acts varied in detail and regulated the powers and authority of the Judicial Committee of the Privy Council and the Crown in the matter of the extension of the terms of patents, and authorised the grant of fresh letters patent for a term not exceeding fourteen years (*d*).

Extension is now granted by order of the Court.

Sect. 18 of the Patents and Designs Act, 1907, provides as follows:—

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

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

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

(4) The Court, in considering its decision, shall have regard

(*b*) As instances of such special Acts, see 16 Geo. 2, c. 25; 23 Geo. 2, c. 33; 15 Geo. 3, c. 52; 16 Geo. 3, c. 29; 17 Geo. 3, c. 6; 25 Geo. 3, c. 38; 32 Geo. 3, c. 72; 10 Geo. 4, c. 135.

(*c*) 5 & 6 Will. 4, c. 83.

(*d*) See 2 & 3 Vict. c. 67; 7 & 8 Vict. c. 69; 15 & 16 Vict. c. 83; 46 & 47 Vict. c. 57.

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. Historical.

(5) If it appears to the Court that the patentee has been inadequately remunerated by his patent, the Court may by order extend the term of the patent for a further term not exceeding seven, or, in exceptional cases, fourteen years, or may order the grant of a new patent for such term as may be specified in the order, and containing any restriction, conditions, and provisions the Court may think fit.

Provisions of sect. 18 of of Patents and Designs Act, 1907.

This section is the embodiment of sect. 17 of the Patents and Designs (Amendment) Act, 1907 (*e*), which that Act substituted for the repealed sect. 25 of the Act of 1883 (*f*). It substituted the Court for the Judicial Committee of the Privy Council as the tribunal before which proceedings for extension of the term of a patent are to be taken; and it gives power to the Court, by order, to extend the term for a further period not exceeding seven, or, in exceptional cases, fourteen years,

(*e*) 7 Edw 7, c. 28, s. 17.

(*f*) 46 & 47 Vict. c. 57, s. 25. Sect. 25 of the Act of 1883 was as follows:—

(1) A patentee may, after advertising in manner directed by any rules made under this section his intention to do so, present a petition to Her Majesty in Council, praying that his patent may be extended for a further term; but such petition must be presented at least six months before the time limited for the expiration of the patent.

(2) Any person may enter a caveat, addressed to the Registrar of the Council at the Council Office, against the extension.

(3) If Her Majesty shall be pleased to refer any such petition to the Judicial Committee of the Privy Council, the said Committee shall proceed to consider the same, and the petitioner and any person who has entered a caveat shall be entitled to be heard by himself or by counsel on the petition.

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

(5) If the Judicial Committee report that the patentee has been inadequately remunerated by his patent, it shall be lawful for Her Majesty in Council to extend the term of the patent for a further term not exceeding seven, or in exceptional cases fourteen, years; or to order the grant of a new patent for the term therein mentioned, and containing any restrictions, conditions, and provisions that the Judicial Committee may think fit.

(6) It shall be lawful for Her Majesty in Council to make, from time to time, rules of procedure and practice for regulating proceedings on such petitions, and subject thereto such proceedings shall be regulated according to the existing procedure and practice in patent matters of the Judicial Committee.

(7) The costs of all parties of and incident to such proceedings shall be in the discretion of the Judicial Committee; and the orders of the Committee respecting costs shall be enforceable as if they were orders of a Division of the High Court of Justice.

Historical.

or to order the grant of a new patent for such term as may be specified in the order, and containing any restriction, conditions and provisions the Court may think fit. The section further provides for some consequent necessary alterations in details of procedure. The object of these alterations as to tribunal and procedure is to lessen the cost of obtaining an extension.

The grounds and conditions upon which, and the periods for which, extension of the term of a patent may be obtained remain the same as they were at the date of the Act.

The "Court" in this connection means, as regards England, such Judge of the High Court as the Lord Chancellor may select for the purpose (*g*); as regards Scotland, any Lord Ordinary of the Court of Session (*h*); and as regards Ireland, the High Court in Ireland (*i*). In each case the decision of the Court so defined is final (*k*). Further, with reference to proceedings in Scotland, the expression "Rules of the Supreme Court" in the above sect. 18 means Act of Sederunt (*l*); and the Court orders the service of the petition upon the Comptroller (*m*).

The Petitioner.

Who may petition.

The term "patentee," as defined by the Act of 1907, means the person for the time being entitled to the benefit of the patent (*n*); and it is, therefore, clear that 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. It has been held that the term "patentee" includes the executor of a deceased assignee (*o*), the trustee of a company (*p*), the patentee agent of a foreign inventor (*q*), or an assignee (*r*). A mortgagee as legal owner

(*g*) 7 Edw. 7, c. 29, s. 92 (2).
(*h*) 7 Edw. 7, c. 29, s. 94 (5).
(*i*) 7 Edw. 7, c. 29, s. 95 (2).
(*k*) 7 Edw. 7, c. 29, s. 92 (2); Lawrence and Kennedy's Patent (1910), 27 R. P. C. 252; see Frost's Patents and Designs Act, 1907, pp. 44, 45.
(*l*) 7 Edw. 7, c. 29, s. 94 (6).
(*m*) McCulloch's Patent (1908), 25 R. P. C. 207.
(*n*) Sect. 93.
(*o*) Bodmer's Patent (1849), 6 Moo. P. C. 469; Davies' Patent (1899), 11 R. P. C. 28.
(*p*) Petitt Smith's Patent (1850), 7 Moo. P. C. 156.
(*q*) Newton's Patent (No. 1) (1861), 14 Moo. P. C. 156.
(*r*) Southworth's Patent (1837), 1 W. P. C. 486.

should be a party to the petition, though the petition may proceed in his absence (*s*).

The Petitioner.

The Court in deciding whether or not to order an extension of a patent always considers separately whether the extension will benefit the inventor, and also whether it will injure the public.

Court considers 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 (*t*), for the object 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 (*u*). The definition of the term "patentee" by the Act of 1883, which definition is embodied in the Act of 1907 (*x*), has not altered the principle which guided the Judicial Committee in the older cases with reference to allowing prolongation to assignees (*y*).

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 (*z*).

On an application by an assignee, the Court always considers that by favourably listening to the application it is, 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 (*a*) and has assisted in the development of the invention.

It thus appears that an assignee who has assisted with

(*s*) See Church's Patent (1886), 3 R. P. C. 100.

(*t*) 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.

(*u*) 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.

(*x*) 7 Edw. 7, c. 29, s. 93.

(*y*) Hopkinson's Patent (1896), 14 R. P. C. 10.

(*z*) Per Lord Romilly, Norton's Patent (1863), 1 Moo. P. C. N. S. 339.

(*a*) See judgment of Lord Brougham, Morgan's Patent (1843), 1 W. P. C. 738.

The Petitioner.

capital in developing the invention will be viewed by the Court more favourably (*b*) than one who has rendered no such assistance, but has merely purchased the invention on speculation (*c*).

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 Court will act favourably to the company (*d*), but if the company has been formed for purposes of speculation merely, no extension is likely to be granted when the original inventor has no practical interest in the question, notwithstanding that the company has suffered loss (*e*).

There is no reported case in which an extension was allowed on the petition of an assignee, when it would not directly or indirectly tend towards the benefit of the original inventor or his estate, who would, had there been no assignment, have been in a position to claim an extension himself (*f*), or in which an extension has been granted where the inventor was dead and could not possibly have derived any advantage from the extension if he had been alive (*g*).

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

(*b*) 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. 475; 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.

(*c*) *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.

(*d*) 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.

(*e*) Sillar's Patent (1882), 1 G. P. C. 581; Claridge's Patent (1851), 7 Moo. P. C. 394; Reece'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.

(*f*) 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.

(*g*) Van Gelder's Patent, [1907] A. C. 174; 24 R. P. C. 175.

The Petitioner.

the assignee has made a loss, or only a small profit, by the adventure, an extension will not be granted (*h*).

Merit of an importer is less than that of an original inventor.

The merit of an importer (*i*), *i.e.*, an inventor in the patent law sense, and not a mere assignee, is less than that of an original inventor (*k*). 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" (*l*). When the petitioner is an importer upon a communication from abroad, or the assignee of such an importer, it is absolutely essential that the Court be 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 (*m*).

Exclusive licensees should be co-petitioners.

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 (*n*). If an exclusive licence has proved detrimental to the public interest, this fact may influence the Court not to grant an extension (*o*).

The Petition.

Petition may include several patents.

Two or more patents relating to cognate inventions could formerly and may now be included in one petition (*p*).

Requisites of petition.

A petitioner seeking the grace and favour of the Crown is

(*h*) 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 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.

(*i*) See Vol. I. p. 23.

(*k*) Soames' Patent (1843), 1 W. P. C. 729.

(*l*) Berry's Patent (1850), 7 Moo. P. C. 187; see also Bower Barff's Patent (1895), 12 R. P. C. 385.

(*m*) Peach's Patent (1901), 19 R. P. C. 65.

(*n*) Shone's Patent (1892), 9 R. P. C. 438, 440.

(*o*) Darby's Patent (1891), 8 R. P. C. 380; Shone's Patent (1892), 9 R. P. C. 438.

(*p*) See Johnson and Atkinson's Patents (1873), L. R. 5 P. C. 87;

The Petition.

bound to strict truth in his statements (*q*); and everything relating to the matter should be disclosed. In fact *uberrimæ fides* is required of him. The petitioner should remember that an extension is a matter of favour and not of right (*r*), and a petition will be dismissed if it fails to state everything connected with the patent fairly and fully (*s*). Thus, the petitioner in his petition and accounts (*t*) must refer to all patents, whether British (*u*) or foreign (*x*), 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 (*y*)), 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. If such foreign patents have been applied for and refused, information of the facts should be given to the Court (*z*). 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 in one case was refused, on the ground of non-disclosure of material facts, where no mention was made of the circumstance that the patentee had assigned all present and future patent rights to a company, for no consideration in money or shares but reserving certain rights (*a*). 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

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.

(*q*) 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. 258; 9 Jur. N. S. 1209; 9 L. T. N. S. 101; Horsey's Patent (1884), 1 R. P. C. 225.

(*r*) Adair's Patent (1881), L. R. 6 App. Cas. 176.

(*s*) Pitman's Patent (1871), L. R. 4 P. C. 84; 8 Moo. P. C. N. S. 293.

(*t*) P. 235, *post*.

(*u*) Standfield's Patent (1897), 15 R. P. C. 17.

(*x*) 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; Johnson's Patent (1908), 25 R. P. C. 727.

(*y*) Peach's Patent (1901), 19 R. P. C. 65; p. 239, *post*.

(*z*) Johnson's Patent (1908), 25 R. P. C. 728.

(*a*) Ferranti's Patent (1901), 18 R. P. C. 518.

The Petition.

would not have been cognisant of it, had it not been brought forward by the Attorney-General (*b*). In another case, 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 (*c*). And where a petition concealed the fact that the manufacture of the patented article had been, by contract, carried 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 (*d*).

Amendment of petition.

The petitioner cannot be too careful in framing his petition properly, as indulgence in the matter of 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 (*e*). The procedure for such relief was formerly by way of a separate petition to the Judicial Committee (*f*); now, it would be by way of motion to the Court.

When petition may be presented.

A departure from the statutory provisions on presenting a petition affects the jurisdiction of the Court, and is consequently fatal; but an omission to observe properly the rules of the Court may be remedied (*g*). Thus the Court is 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 (*h*), and its advertisement, before presentation, in manner provided by the Rules of the Supreme Court (*i*).

In the case of patents granted prior to January 1, 1884, the

(*b*) Reece's Patent (1881), 17 Iron. 155; 51 Eng. 207.

(*c*) Horsey's Patent (1884), 1 R. P. C. 225.

(*d*) Yates and Kellett's Patent (1887), L. R. 12 App. Cas. 147.

(*e*) 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.

(*f*) Brandon's Patent (1884), 1 R. P. C. 154.

(*g*) See R. S. C., Ord. liiiA. r. 3 (8); Hutchinson's Patent (1861), 14 Moo. P. C. 364; Lindon's Patent (1897), 14 R. P. C. 643.

(*h*) Adam's Patent (1898), 16 R. P. C. 1.

(*i*) Friese-Greene's Patent, [1907] A. C. 460; 24 R. P. C. 464.

The Petition.

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 (*k*)), before the expiration of the term (*l*).

The Act of 1907, like that 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, any patent to which the Act applies in this matter may be extended, notwithstanding that the decision of the Court is given, 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 original term, if such new grant is made in pursuance of an order of the Court under the section. If, however, the petition is not presented in time, *i.e.*, six months before the natural expiration of the patent, the Court has no jurisdiction in the matter, and so cannot entertain the petition (*m*).

Advertisements.

It is provided by the Rules of the Supreme Court (*n*) that a party intending to apply by petition under sect. 18 of the Act of 1907 shall give public notice by advertisement three times in the *London Gazette*, and once, at least, in a London daily newspaper, the price of which is not less than one penny. 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 such place of business, then, if he carries on the manufacture of anything made under his specification in the United Kingdom 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 such place of business, and carries on no such manufacture in the United Kingdom, then, if he resides at a distance of fifty miles or more from Charing

(*k*) Ledsam *v.* Russell (1847), 1 H. L. Cas. 687.
(*l*) Brandon's Patent (1884), 1 R. P. C. 154.
(*m*) Jablochkoff's Patent (1891), 8 R. P. C. 281; see above.
(*n*) Ord. liiiA. r. 3 (a) and (b).

Cross, he shall advertise once, at least, in some newspaper published or circulating in the town or district where he resides. **The Petition.**

It is further provided by the same rules (*o*) that the applicant shall in his advertisements state the object of his petition and shall give notice of the day (which, if the Court is for the time being a Judge of the Chancery Division, shall be an ordinary petition day) on which he intends to apply to the Court, on a day to be fixed before which the petition shall not be in the paper for hearing (called "the appointed day"), which first-mentioned 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*. Every such advertisement shall state an address within the United Kingdom for service under the rule. He shall also give notice that notices of objections must be lodged, as in the rules provided, on or before such appointed day so named in the said advertisements. A copy of such advertisement shall be forwarded by the applicant to the solicitor for the Board of Trade at the same time as the first advertisement is sent to the *London Gazette*, and the Board of Trade shall thereupon cause such advertisement to be inserted in the three following issues of the *Illustrated Official Journal* (*Patents*).

Petition must be presented within one week of last advertisement in the *London Gazette*.

The petition for extension must be presented within one week from the publication of the last of the advertisements required to be published in the *London Gazette*, and a copy of the petition must within the same time be furnished to the solicitor of the Board of Trade. The rules also provide that the petition shall be made returnable for the day named in the advertisements (*p*).

Affidavit of advertisements.

The petition must be accompanied by an affidavit or affidavits of advertisements having been published according to the above-mentioned requirements. The statements contained in such affidavit or affidavits may be disputed upon the hearing (*q*).

Application for day for hearing.

The rules provide that upon the day named in the advertisements the petition shall appear in the Court list, and the petitioner shall apply to the Court to fix the appointed day: and the petitioner is required forthwith to give public notice of the

(*o*) Ord. liiiA. r. 3 (c). (*p*) R. S. C., Ord. liiiA. r. 3 (d).
(*q*) R. S. C., Ord. liiiA. r. 3 (a).

The Petition.

same by advertisement once at least in the *London Gazette* and in two London newspapers (*r*).

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 (*s*), but it will not be necessary to serve fresh notices (*t*).

Documents to be lodged by petitioner.

The petitioner must lodge, in the manner provided by R. S. C., Ord. LIIIA. r. 3 (r), a copy of the petition with two printed copies of the specification; and he must also lodge in like manner, not less than three weeks before the appointed day, 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 Court at the hearing. He must also furnish three copies of the said balance-sheet for the use of the Solicitor to the Board of Trade, and must, upon receiving two days' notice, give the Solicitor to the Board of Trade, 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 (*u*).

Equitable assignee petitioning with the legal owner.

If an equitable assignee is desirous of petitioning with the legal owner, his name must appear in the advertisements (*x*).

Petitioner resident abroad.

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 (*y*).

Non-compliance with rules as to advertisements.

The advertisements must be proved before the petition is heard (*z*), for if anything required by the statute to be done is not done the Court has no power to grant a prolongation (*a*). The Court has, however, power to dispense with exact com-

(*r*) R. S. C., Ord. liiiA. r. 3 (f) (g).
(*s*) See Macintosh's Patent (1837), 1 W. P. C. 739, n.
(*t*) *Ibid.*
(*u*) R. S. C., Ord. liiiA. r. 3 (h) (i) and (r).
(*x*) *In re* Nobel's Patent (1850), 7 Moo. P. C. 191.
(*y*) See Derosne's Patent (1844), 2 W. P. C. 2; p. 220, *ante*.
(*z*) Perkin's Patent (1845), 2 W. P. C. 8; p. 221, *ante*.
(*a*) *In re* Nobel's Patent (1850), 7 Moo. P. C. 194; p. 219, *ante*.

The Petition.

pliance with the mode of advertisement as required by its own rules, and in a proper case will do so (*b*)—*e.g.*, where there was by an oversight an omission to issue the preliminary advertisements, and, if the rules then in force were insisted on, it would have been impossible to comply with the statutory requirement that the petition must be presented at least six months before the expiration of the patent, and at the time of application no rules had been made under sect. 25, sub-sect. (1) of the then existing Act of 1883 (*c*), the Judicial Committee allowed 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 to file a proper affidavit (*d*).

Opposition.

Any person may object to the extension.

Notice of opposition.

It is enacted that any person may give notice to the Court of objection to the extension (*e*). The rules provide that any person desirous of opposing the prayer of a petition shall lodge, as in the rules provided, a notice that he intends to so oppose, and giving an address in the United Kingdom for service of any document requiring service under the rules. Such person shall at the same time serve upon the petitioner a copy of such notice. Such notices shall be respectively lodged and served before the day named in the petitioner's advertisement as that on which he intends to apply to the Court for the appointed day to be fixed (*f*).

Service of any document requiring service in the matter of a petition to the Court under the section for an extension of the term of a patent may be made by enclosing such document in a prepaid registered letter and posting such letter to the person required to be served at his address for service (*g*).

Copy of petition to be served upon opponent.

The petitioner is required forthwith, upon receipt of the notice of objection, to serve a copy of his petition upon each person giving such notice (*h*). And every person giving such

(*b*) R. S. C., O. liiiA. r. 3 (s); Jablochkoff's Patent (1891), 8 R. P. C. 281; see p. 219, *ante*; Lindon's Patent (1897), 14 R. P. C. 643.

(*c*) See Friese Greene's Patent, [1907] A. C. 460; 24 R. P. C. 464.

(*d*) Lindon's Patent (1897), 14 R. P. C. 643; Poyser's Patent (1907), 24 R. P. C. 157.

(*e*) 7 Edw. 7, c. 29, s. 18 (2).

(*f*) R. S. C., O. liiiA. r. 3 (j).

(*g*) R. S. C., O. liiiA. r. 8 (x).

(*h*) R. S. C., O. liiiA. r. 3 (k).

Opposition.

notice is required, within three weeks after service of the petition upon him, to lodge, as in the rules provided, two copies, and serve upon the petitioner one copy, and lodge with the Solicitor of the Board of Trade three copies in writing of the

Particulars of objections.

particulars of the objections upon which he intends to rely against the granting of the prayer of the petition (*i*). The considerations which apply to the proper framing of the particulars of objections are those which apply to pleadings generally. The particulars should give the petitioner full notice of the opponent's case against the extension of the term of the patent. If want of novelty or lack of subject-matter be alleged, the particulars must give particulars of the literature, specifications and general knowledge relied upon by the opponent (*k*).

Every opponent who does not within the said three weeks lodge and serve particulars of objections as by the rule provided, is deemed to have abandoned his opposition (*l*). And no person who has lodged particulars of objections is entitled to oppose the granting of the prayer of the petition on any ground not stated in his particulars (*m*).

Opponent is entitled to be heard on application to fix the appointed day.

Any person who has lodged a notice of opposition is entitled to be heard on the application to fix the appointed day before which the petition shall not be in the paper for hearing; and the petitioner must serve every person who has lodged a notice of opposition with a notice of the appointed day (*n*).

Entry of petition in the list for trial.

It is provided that the petition shall not be entered in the list for trial until the expiration of the time limited for the lodging and service of the particulars of objections, and shall only be entered for trial on the lodging of an affidavit on behalf of the petitioner that all persons who have served him with notice of intention to oppose the prayer of his petition have been served with copies of the petition. And the petition shall, if and so long as the Court is a Judge of the Chancery Division, and subject to any direction of the Court to the contrary, be set down in the same manner as if it had been a witness action assigned to that Judge, and shall be marked in the list not before the day of , 19 , being the appointed day (*o*).

(*i*) R. S. C., O. liiiA. r. 3 (l).
(*k*) Johnson's Patent, [1908] 2 Ch. 487; 25 R. P. C. 542.
(*l*) R. S. C., O. liiiA. r. 3 (m).
(*m*) R. S. C., O. liiiA. r. 3 (n).
(*n*) R. S. C., O. liiiA. r. 3 (o).
(*o*) R. S. C., O. liiiA. r. 3 (p).

Any persons who have delivered particulars of objections are entitled, at their own expense, to obtain from the petitioner copies of the accounts lodged by him (*p*). **Opposition.**

It is requisite that all petitions, documents, and copies by the rules required to be lodged, if and so long as the Court is a Judge of the Chancery Division, shall be lodged at the chambers of the Judge, and, subject as aforesaid, shall be lodged with such person and at such place as the Court may from time to time direct (*q*).

The Court has power under the Rules to excuse petitioners and opponents from compliance with any of the requirements of the Rules, and may give such directions in the matters of procedure and practice under sect. 18 of the Act of 1907 as it shall consider to be just and expedient (*r*). **Power of Court to excuse compliance with Rules.**

Under the former practice before the Judicial Committee, an extension of the time for entering a *caveat* was not 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 (*s*).

Hearing of the Petition.

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 (*t*). **Parties may appear personally or by counsel.**

Though there is no opposition, or some of the grounds on which the petition might be opposed are admitted in the patentee's favour by the opponent, the Court will require formal evidence in support of the petition as a whole, or in support of the admitted grounds, as the case may be (*u*). **Hearing when there is no opposition.**

Probably the Court, like the Judicial Committee under the old procedure, would 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 **Petition heard though there are pending proceedings affecting question of validity.**

(*p*) R. S. C., O. liiiA. r. 3 (q).
(*q*) R. S. C., O. liiiA. r. 3 (r).
(*r*) R. S. C., O. liiiA. r. 3 (s); see Stearn's Patents (1911), 28 R. P. C. 663.
(*s*) Hopkinson's Patent (1897), 13 R. P. C. 114.
(*t*) See Woodcroft's Patent (1841), 3 Moo. P. C. 172, n.
(*u*) Toy's Patent (1893), 10 R. P. C. 89.

Hearing of the Petition.

or the patent has been declared void by a Court whose decision may be reversed and is not binding on the Court in relation to extension proceedings (*x*).

Usual to deal with utility first.

It is the usual practice, on the hearing of a petition, for the Court to deal first with the question of the utility of the invention to the public (*y*), and afterwards with that of adequacy of remuneration (*z*); but sometimes this order is reversed—*e.g.*, where the accounts (*a*) show that the remuneration has been such that it would be preposterous to grant the petition (*b*), or the accounts are unsatisfactory (*c*).

Comptroller always appears.

Following the rule laid down in *Erard's Patent* (*d*), as to appearance of the Attorney-General at the hearing of petitions for the extension of letters patent under the old procedure, whether there was opposition or not, to watch the interests of the Crown and the public, it will probably be the invariable practice in the future for the Comptroller to appear. The Comptroller, if he elects or is directed to appear on the question of granting the prayer of the petition, like the Attorney-General under the old procedure before the Judicial Committee, is not required to give notice of the grounds of any objection he may think fit to place before the Court (*e*). The practice is for the Comptroller to be represented by the Attorney-General, whose duty it is as much to instruct the Court and assist it as to oppose, and, indeed, only to oppose the extension of the term of the patent when in his judgment he considers that it is one which ought not to be prolonged (*f*).

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 pale of his invention, by himself referring to previous publications (*g*).

It is to be noticed that sect. 18 of the Act of 1907 does not

(*x*) See Kay's Patent (1839), 1 W. P. C. 568, 572, note (*f*); Woodcroft's Patent (1841), 2 W. P. C. 18; Heath's Patent (1853), 2 W. P. C. 247; Lane Fox's Patent (1892), 9 R. P. C. 411.

(*y*) P. 229, *post*.

(*z*) P. 233, *post*.

(*a*) P. 235, *post*.

(*b*) 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.

(*c*) 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.

(*d*) (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.

(*e*) R. S. C., O. liiiA. r. 3 (t).

(*f*) See Stoney's Patent (1888), 5 R. P. C. 522.

(*g*) Fountain Livet's Patent (1892), 9 R. P. C. 331, 332.

Hearing of the Petition.

provide for the hearing of a petition for extension by the Court with an assessor, whereas a petition for extension which under the old procedure was heard by the Judicial Committee, could, under the provisions of Act of 1883, s. 28, be so heard. The result is that now the tribunal which hears petitions for extension of the term of a patent has no statutory power under the Patents and Designs Act, 1907, to call in the aid of an assessor, though no doubt it has authority to do so under the provisions of sect. 56 of the Judicature Act, 1873.

Court'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 Court has an absolute discretion, the only limit being that the period of extension shall not be more than fourteen years (*h*). Extension does not by any means follow as a matter of course, but is granted only upon a proper case made out (*i*).

Grounds for Extension.

Grounds for extension have reference to the patentee and to the public.

It is expressly provided by the Act of 1907 (*k*) that "the Court, in considering its decision, shall have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case."

All the grounds upon which extensions are granted 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 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 in-

(*h*) 7 Edw. 7, c. 29, s. 18 (5); Ledsam *v.* Russell (1847), 1 H. L. Cas. 687.

(*i*) See 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.

(*k*) Sect. 18 (4).

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vention is new and useful (*l*). But, nevertheless, detriment to the public interest is an important factor against the grant of an extension (*m*); though the public interest is by no means a fatal objection in all cases (*n*). The fact that foreign patents will lapse as a consequence of the refusal of a prolongation of a British patent is a circumstance of some weight in favour of the petitioner (*o*). 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 (*p*). 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 (*q*).

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 (*r*). If it be alleged that traders of this country, if the patent be prolonged, will be put at a disadvantage compared with the traders of other countries, the Court ought to be supplied with proper statistics or other information as to the nature and extent of the competition feared by the party making the allegation, whether he be an ordinary opponent or the Comptroller (*s*).

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 (*t*).

Two things necessary to obtain an extension.

It is thus clear that a petitioner, in order to induce the Court to grant the prayer of the petition, must satisfactorily

(*l*) 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.

(*m*) McInnes' Patent (1868), L. R. 2 P. C. 54; 37 L. J. P. C. 23; 5 Moo. P. C. N. S. 72.

(*n*) See McCulloch's Patent (1908), 25 R. P. C. 692.

(*o*) Thompson's Patent (1902), 19 R. P. C. 568.

(*p*) 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.

(*q*) Shone's Patent (1892), 9 R. P. C. 441.

(*r*) McDougal's Patent (1867), L. R. 2 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.

(*s*) Johnson's Patent, [1908] 1 Ch. 144; 25 R. P. C. 728.

(*t*) Foardes' Patent (1855), 9 Moo. P. C. 376.

prove two things, viz.:—(i) That the invention is meritorious; and (ii) that the petitioner has been insufficiently remunerated, owing to no fault of his own.

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(i) **Merit.**—The applicant must make out a *primâ facie* case of validity (*u*). 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 is obviously sufficient (*v*). It is not as a general rule necessary for the petitioner to do more than establish a *primâ facie* case for upholding the validity of the patent in respect of novelty and subject-matter (*x*).

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 (*y*). 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 (*z*), or that the original invention would not be used without it (*a*), provided that there is utility in the improvement (*b*). In fact, it is not material upon the question of merit for the purpose of extension proceedings to enquire whether the patent is a pioneer one or not (*c*). In the absence of evidence as to merit the petition will not succeed (*d*).

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 may be granted in respect of the meritorious part or parts alone (*e*).

Court does not decide question of validity.

The Court will not extend a patent which, on the face of it, appears to be invalid (*f*); but it will not decide the ques-

(*u*) Erard's Patent (1835), 1 W. P. C. 557; Kay's Patent (1839), 1 W. P. C. 568; 3 Moo. P. C. 24.

(*v*) See Bett's Patent (1862), 7 L. T. N. S. 577; 9 Jur. N. S. 137; 1 Moo. P. C. N. S. 49.

(*x*) Johnson's Patent (1908), 25 R. P. C. 724.

(*y*) Bett's Patent (1862), 1 Eng. 335; 1 Moo. P. C. 49; 7 L. T. N. S. 577.

(*z*) Bovill's Patent (1863), 1 Moo. P. C. N. S. 348; Soames' Patent (1843), 1 W. P. C. 729.

(*a*) Woodcroft's Patent (1841), 1 W. P. C. 740; 3 Moo. P. C. 171; Galloway's Patent (1843), 1 W. P. C. 727.

(*b*) Bell's Patent (1846), 2 W. P. C. 160; 10 Jur. 363.

(*c*) McCulloch's Patent (1908), 25 R. P. C. 692.

(*d*) Kelley's Patent (1900), 17 R. P. C. 476.

(*e*) Bodmer's Patent (1881), 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; Burlingham's Patent (1898), 15 R. P. C. 195; Lodge's Patent (1911), 28 R. P. C. 365.

(*f*) 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

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tion of validity, if it appear decidedly doubtful on the ground of lack of novelty, or utility, or from any other cause (*g*); though evidence of these points may be given at the hearing (*h*). In cases of doubt as to the validity of the patent, the Court exercises its discretion (*i*); and it will not refuse an extension merely because there are proceedings pending in which the validity is in question, or there is a decision against the patent, which may be reversed by a superior Court (*k*). Though the Court 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 adequate 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 (*l*).

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 (*m*).

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 (*n*); and unless the Court is satisfied that the invention possesses the latter, it will not grant an extension (*o*). Though mere simplicity of invention is not necessarily an objection to an extension (*p*), yet the fact of great labour and ingenuity being re-

Patent (1867), L. R. 2 P. C. 1; 37 L. J. P. C. 17; 5 Moo. P. C. N. S. 1.

(*g*) 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; Lyons' Patent (1894), 11 R. P. C. 537.

(*h*) *Ibid.*

(*i*) Per Sir William Erle, McInnes' Patent (1868), L. R. 2 P. C. 54; 37 L. 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; Pinkus's Patent (1848), 12 Jur. part i. 233; Soames' Patent (1843), 1 W. P. C. 729; 23 Newton, L. J. C. S. 462.

(*k*) See Woodcroft's Patent (1846), 2 W. P. C. 18; 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.

(*l*) Fountain Livet's Patent (1892), 9 R. P. C. 327.

(*m*) Galloway's Patent (1843), 1 W. P. C. 724; 7 Jur. 453.

(*n*) Bett's Patent (1862), 7 L. T. N. S. 577; 9 Jur. N. S. 137; 1 Moo. P. C. N. S. 49; Pinkus's Patent (1848), 12 Jur. part i. 233.

(*o*) 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; Derosne's Patent (1835), 2 W. P. C. 1; Carp. P. C. 699; 4 Moo. P. C. 417; 24 Newton, L. J. C. S. 459.

(*p*) Per Lord Watson, Hazeland's Patent (1894), 11 R. P. C. 470.

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quired to produce the invention will go far to establish a case of utility strong enough to satisfy the Court that the public is likely to derive a benefit from the invention sufficient to warrant an extension (*q*).

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 (*r*). 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 (*s*). 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 Court that the benefit conferred by it on the public is sufficient to warrant an extension (*t*).

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 Court will probably not deem the invention to possess such a sufficient degree of novelty or merit as will justify an extension (*u*).

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

(*q*) 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.

(*r*) 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.

(*s*) 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; Bott's Patent (1862), 1 Moo. P. C. N. S. 49; 9 Jur. N. S. 137; 7 L. T. N. S. 577; Van Gelder's Patent, [1907] A. C. 174; 24 R. P. C. 174.

(*t*) 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.

(*u*) 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.

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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 (*x*). On the other hand, if the invention has not been extensively used by the public, the presumption is against its utility, and therefore unfavourable to the applicant (*y*). There is much more difficulty in dealing with the case of a patent where it has not been used 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 patent, and from them the Court hears all the arguments which can properly be brought against it (*z*).

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 (*a*), *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 (*b*); or where the invention is one which from its nature is capable only of occasional use (*c*); or even though there has been no user at all (*d*); but strong evidence is required in all these cases (*e*).

(*x*) Downton's Patent (1839), 1 W. P. C. 565.

(*y*) 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; Scott's Patent (1906), 23 R. P. C. 478.

(*z*) See Allan's Patent (1867), L. R. 1 P. C. 507; 4 Moo. P. C. N. S. 433.

(*a*) 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 (1855), 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; Semet 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.

(*b*) Currie's Patent (1897), 15 R. P. C. 63.

(*c*) Thompson's Patent (1902), 19 R. P. C. 568.

(*d*) 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.

(*e*) Allan's Patent (1867), L. R. 1 P. C. 507; 4 Moo. P. C. N. S. 433.

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For example, in the case of *Southby's Patent* (*f*), 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 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. A prolongation of five years was granted 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 (*g*); the invention was of a special nature and could not easily be brought into public use (*h*); the market and demand was necessarily limited (*i*); experimental difficulties (*k*); legal proceedings (*l*); and the scarcity of labour (*m*).

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 Court would not accede to the petitioner's request (*n*).

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 Court takes into consideration the benefit

(*f*) (1891), 8 R. P. C. 433.

(*g*) Simister's Patent (1842), 1 W. P. C. 721; 7 Jur. 451; 4 Moo. P. C. 161.

(*h*) 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; Board's Patent (1908), 25 R. P. C. 537.

(*i*) Herbert's Patent (1867), L. R. 1 P. C. 399; 4 Moo. P. C. N. S. 300.

(*k*) *Ibid.*

(*l*) Wright's Patent (1839), 1 W. P. C. 575.

(*m*) Napier's Patent (1861), 13 Moo. P. C. 543.

(*n*) 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.

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which has resulted and is likely to result to the public, as compared with that which has accrued to the patentee (*o*).

Petitioner must prove that he has used his best endeavours to make profit,

Though it may appear that the petitioner has not been adequately remunerated, there may be circumstances sufficient to induce the Court to refuse to exercise its discretion in his favour (*p*). The petitioner must satisfy the Court that he has, having regard to the particular circumstances of the 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 (*q*), *e.g.*, that he has not been wanting in business skill (*r*), and that he has at all times been willing to give the public the benefit of the invention (*s*), and used his best endeavours to launch it on the British market (*t*).

Thus, in the case of *Roper's Patent* (*u*), 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, it was 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* (*x*) prolongation was refused when it appeared that for twelve years before the patent was assigned

(*o*) 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.

(*p*) See Johnson's Patent (1908), 25 R. P. C. 723.

(*q*) Southworth's Patent (1837), 1 W. P. C. 486; Kollmann'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.

(*r*) Thornycroft's Patent, [1899] A. C. 415.

(*s*) Stewart's Patent (1886), 3 R. P. C. 10.

(*t*) Johnson's Patent, [1969] 1 Ch. 144; 25 R. P. C. 727.

(*u*) (1887), 4 R. P. C. 201.

(*x*) (1896), 13 R. P. C. 203.

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. **Grounds for Extension.**

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 may induce the Court to refuse an extension (*y*); whereas if the expense of litigation necessary to maintain the patent has prevented the petitioner from deriving adequate profits from the invention this circumstance will tell very much in his favour (*z*). **and has not permitted open infringements.**

The circumstance that the invention has not been brought into public use owing to disputes between the co-owners of a patent is not likely to induce the Court to grant an extension (*a*). **Disputes by co-owners.**

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 (*b*). In a case where the patentee and his assignees had received £25,000 from the invention prolongation was refused (*c*). **Quantum of adequate remuneration.**

The petitioner is required to lodge 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 (*d*). **Accounts to be lodged by the petitioner and their requisites.**

The Court insists that the statement of accounts shall be a full, clear, and accurate (*e*) balance-sheet, showing the whole *profit and loss* which has been derived or sustained in respect of the invention. The accounts are to be proved on oath by the petitioner at the hearing (*f*). It is the petitioner's duty to satisfy the Court, in a manner which admits of no controversy, as to the amount of remuneration which in every point

(*y*) Sinister's Patent (1842), 1 W. P. C. 724; 4 Moo. P. C. 164; 7 Jur. 451.

(*z*) Petitt Smith's Patent (1850), 7 Moo. P. C. 133; Heath's Patent (1853), 2 W. P. C. 247; 8 Moo. P. C. 217.

(*a*) Patterson's Patent (1849), 6 Moo. P. C. 469; 13 Jur. 693.

(*b*) Thomas' Patent (1892), 9 R. P. C. 372.

(*c*) Carmont's Patent (1897), 14 R. P. C. 239; Parson's Patent (1898), 15 R. P. C. 349.

(*d*) P. 233, *ante*.

(*e*) 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.

(*f*) R. S. C. Ord. liiia. r. 3 (i).

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of view the invention has brought to those who have introduced, or helped to introduce, it to the public, in order that the Court may be able to come to a conclusion whether that remuneration may fairly be considered a sufficient reward or not (*g*). 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 (*h*). It is not for the Court 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 Court in a shape which will leave no doubt as to what the remuneration has been that the original patentee and all claiming title through him have received (*i*).

If this requirement be not attended to carefully, the Court will most probably refuse to grant the petitioner leave to amend the accounts (*k*), and will dismiss the petition altogether (*l*); 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 (*m*).

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 evidence of want of profits will then be accepted (*n*); but in the absence of such books of account, whether owing to destruction by fire

(*g*) 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; Cross, Bevan and Beadle's Patents (1906), 23 R. P. C. 485.

(*h*) Peach's Patent (1891), 19 R. P. C. 65; see also p. 240, *post*.

(*i*) 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.

(*k*) Newton's Patent (No. 4) (1884), L. R. 9 App. Cas. 592; 1 R. P. C. 117; 52 L. T. 329; Yates and Kellett's Patent (1887), 4 R. P. C. 150.

(*l*) 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; Lawrence and Kennady's Patent (1910), 27 R. P. C. 252.

(*m*) Yates and Kellett's Patent (1887), L. R. 12 App. Cas. 149; 4 R. P. C. 150.

(*n*) 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.

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or otherwise, and of a reasonable explanation of such absence, everything must be taken most strongly against the petitioner (*o*). 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 (*p*).

Sometimes losses need not be proved with strict accuracy.

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 (*q*).

Manner in which a patentee should keep his accounts from the first.

The following passage from the decision of the Judicial Committee of the Privy Council, delivered by Lord *Hobhouse* in *Lake's Patent* (*r*), indicates the way in which the patentee should keep his accounts from the beginning and present them to the Court:—

> "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

(*o*) 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.

(*p*) Lawrence's Patent (1892), 9 R. P. C. 85.

(*q*) Darby's Patent (1891), 8 R. P. C. 38 i.

(*r*) (1891), 8 R. P. C. 228; see also Hughes' Patent (1898), 15 R P. C. 371; Henderson's Patent (1901), 18 R. P. C. 463; Wüterich's Patent (1903), 20 R. P. C. 285.

Grounds for Extension.

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 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 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, it was held that the accounts were insufficient, and the petitioners were not allowed to call evidence to explain them (*s*).

Court has regard to the profits made by the patentee as such.

The Court is by statute (*t*) 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

(*s*) Lake's Patent (1891), 8 R. P. C. 227; see also Hughes' Patent (1898), 15 R. P. C. 370.

(*t*) 7 Edw. 7, c. 29, s. 18 (4).

Grounds for Extension.

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, extension was refused on the ground that, upon the materials, the conclusion that the patentee had been inadequately remunerated by the patent could not be established (*u*).

Advisability of striking a balance at the end of each year's accounts.

It is most material for the Court 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 (*x*).

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 circumstance of the case which has to be considered 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 Court requires a disclosure, not only of the assignee's profits, but also of all the profits derived by his predecessors in title (*y*), 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 (*z*). 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 (*a*).

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 (*b*).

Rule in Pitman's Patent.

In *Pitman's Patent* (*c*) the rule was laid down to the effect that a failure to make a full disclosure of everything relating to the patent—*e.g.*, particulars as to profits on foreign patents—

(*u*) 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.

(*x*) Perkin's Patent (1845), 2 W. P. C. 16, 17.

(*y*) Deacon's Patent (1887), 4 R. P. C. 119.

(*z*) 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.

(*a*) Thomas' Patents (1892), 9 R. P. C. 367; Barff and Bowers' Patent (1895), 12 R. P. C. 383; [1895] A. C. 675.

(*b*) Lane Fox's Patent (1892), 9 R. P. C. 411.

(*c*) (1871), L. R. 4 P. C. 84.

Grounds for Extension.

is absolutely fatal to the petitioner. Further, it is to be noticed that the direction in the Act of 1907 to the effect that the Court, in coming to a conclusion, "shall have regard to the profits made by the patentee as such" (*d*), in effect, specifies one particular class of profits as absolutely necessary; but there is nothing to suggest that the Court shall not consider the profits in relation to the patent arising from other sources, and consequently the accounts must disclose all profits arising from the working of foreign patents, as was the practice before the Act of 1883 (*e*). The profits, if any, arising from the sale of articles made under the patent expressly for exportation abroad must also be disclosed (*f*).

Expiration of foreign patents.

It is a circumstance of the case to be considered that if foreigners are at liberty to use the invention free, to accede to the petition might be to unduly handicap the British public, and so the fact that there are foreign patents which the petitioner has allowed to expire is a great obstacle in the way of a patentee desirous of obtaining an extension of a British patent (*g*). 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 Court may grant an extension, 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 (*h*).

No application for foreign patents.

In these days of rapid interchange of commercial news between the great manufacturing and trading nations, the Court would not be very likely to be greatly influenced by an argument based upon the distinction drawn in *Blake's Patent* (*i*) between allowing a foreign patent to expire and not taking out a foreign patent at all, viz., that where a patentee takes out a patent for a foreign invention he is taking active measures to make the invention known in the country in which

(*d*) 7 Edw. 7, c. 29, s. 18 (4).

(*e*) Nowton'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.

(*f*) Hardy's Patent (1849), 6 Moo. P. C. 441.

(*g*) 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.

(*h*) *Ibid.*

(*i*) (1873), 4 R. P. C. 538.

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he takes out such a patent. In either case the Court will probably take into serious consideration the probability (if any) of the British public being placed at a disadvantage as compared with foreigners able to manufacture without payment of royalties, and give effect to it as one of the many circumstances to be considered.

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 (*k*). 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 (*l*); also necessary costs of exhibiting and advertising the invention (*m*); reasonable salaries and travelling expenses for clerks (*n*); and commissions on sales or royalties (*o*).

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 (*p*).

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 (*q*).

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 (*r*), and also in respect of payments for the surrender of licences (*s*). When a patentee, under the impression that the invention was one of

(*k*) Bailey's Patent (1884), 1 R. P. C. 1.

(*l*) 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.

(*m*) Duncan and Wilson's Patent (1884), 1 R. P. C. 257.

(*n*) *Ibid.*

(*o*) *Ibid.*; Poole's Patent (1867), L. R. 1 P. C. 514; 4 Moo. P. C. N. S. 452; 36 L. J. P. C. 76.

(*p*) Poole's Patent (1867), L. R. 1 P. C. 514; 4 Moo. P. C. N. S. 452; 36 L. J. P. C. 76.

(*q*) Hill's Patent (1863), 1 Moo. P. C. N. S 258, 268; 9 Jur. N. S. 1209; 9 L. T. N. S. 101.

(*r*) Fryer's Patent, 47 Eng. 49.

(*s*) Hill's Patent (1863), 1 Moo. P.

Grounds for Extension.

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 (*t*).

Profits made as a manufacturer in contradistinction 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 (*u*). 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 (*x*).

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 and adequate sum has been realised, the Court will not grant an extension (*y*).

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 (*z*), but the proportion must be divided according to the circumstances of each case (*a*).

Where it appeared that a considerable sum had been received from sales of the patented article, the Judicial Committee of the Privy Council refused to look on the difference between the actual cost of the articles and the price at which they were

C. N. S. 258; 9 Jur. N. S. 1209; 9 L. T. N. S. 101.

(*t*) Wield's Patent (1871), L. R. 4 P. C. 89; 8 Moo. P. C. N. S. 300.

(*u*) 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 (1863), 1 Moo. P. C. N. S. 258; 8 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.

(*x*) See Saxby's Patent (1870), L. R. 3 P. C. 295.

(*y*) Muntz's Patent (1846), 2 W. P. C. 113; Newton's Patent, 51 Eng. 208; 17 Iron, 155, 171.

(*z*) Duncan and Wilson's Patent (1884), 1 R. P. C. 257, 260.

(*a*) 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.

Grounds for Extension.

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 (*b*).

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 Court.

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 usually entitled to a reduction in respect of his personal services, but the amount varies with the special circumstances of each case (*c*).

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 Court, 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 Court may grant an adjournment in order that the accounts may be put right (*d*), but in most cases of insufficient or improper accounts the petition will be dismissed at once (*e*).

The New Grant.

Court gives effect to its decision by means of a new grant,

It will most probably become the practice, in cases where the Court decides to grant an extension of the term of a patent, to give effect to the decision by ordering the grant of a new

(*b*) Bailey's Patent (1884), 1 R. P. C. 1.

(*c*) 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.

(*d*) Perkin's Patent (1845), 2 W. P. C. 17; Heath's Patent (1853), 2 W. P. C. 256; 8 Moo. P. C. 277; 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.

(*e*) 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 Kellett's Patent (1887), 4 R. P. C. 150.

The New Grant.

patent for such term as may be specified in the order, and containing any restrictions, conditions, and provisions the Courts may think fit (*f*).

It is not necessary for the patentee to file a fresh specification on the grant of a new patent (*g*); 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 (*h*). The new grant is in the nature of a graft on the old one, and has no existence apart from it (*i*). A new grant of letters patent is subject in all cases to the conditions imposed by the Act of 1907 (*k*); and it may be granted to one only of two original patentees (*l*), or to more than one person jointly (*m*); 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 (*n*).

which is subject to same conditions as the oxpired grant.

Conditions in the interest of the original patentee are frequently, on the recommendation of the committee, imposed by the Crown on a new grant.

The Court, upon a grant of new letters patent, has the power to, and frequently does, impose conditions in the interest of the original patentee (*o*) or his representatives (*p*). The following are instances of cases in which such conditions have been imposed. In *Whitehouse's Patent* (*q*) 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* (*r*), 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* (*s*) the assignee was required to secure to the original patentee one half the future profits after recouping his own losses. In *Herbert's Patent* (*t*) 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. And

(*f*) See 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.

(*g*) Wasteney Smith's Patent (1885), 2 R. P. C. 14.

(*h*) Russell *v.* Ledsam (1843), 14 M. & W. 583; H. L. C. 687; Bovill *v.* Finch (1870), L. R. 5 C. P. 523.

(*i*) Bovill *v.* Finch (1870), L. R. 5 P. C. 523; 39 L. J. C. P. 277.

(*k*) See Wasteney Smith's Patent (1885), 2 R. P. C. 14.

(*l*) Currie's Patent (1897), 15 R. P. C. 63.

(*m*) 46 & 47 Vict. c. 57, s. 4, sub-s. 2.

(*n*) Southworth's Patent (1837), 1 W. P. C. 488.

(*o*) Whitehouse's Patent (1830), 1 W. P. C. 473; reported as Russell's Patent, 2 Moo. P. C. 496.

(*p*) Herbert's Patent (1867), L. R. 1 P. C. 399.

(*q*) (1838), 1 W. P. C. 473; reported as Russell's Patent, 2 Moo. P. C. 496.

(*r*) (1860), 13 Moo. P. C. 310.

(*s*) 51 Eng. 274; 17 Iron. 250.

(*t*) (1867), L. R. 1 P. C. 399; 4 Moo. P. C. N. S. 300.

in *McCulloch's Patent* (*u*), the condition was imposed that the petitioning assignee company should issue a number of fully paid-up shares to the executors of the deceased grantee of the patent.

The New Grant.

Sometimes conditions are imposed on the patentee for the benefit of other persons who have an interest in the patent, or who might be liable in respect of infringements committed between the date of the order and the sealing of the new patent (*x*); 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 (*y*). In *Hart's Patent* (*z*), it was made a condition that the petitioner should grant licences on terms fixed by the Board of Trade, and accept the decision of the Board as to whether or not he was charging excessive prices; and in *Lodge's Patent* (*a*), an order was made that the new grant should contain a proviso or condition making it incumbent on the patentees to grant licences to all who desire to make use of the protected invention on such terms as a duly qualified arbitrator, to be nominated by the Board of Trade, shall think fair and reasonable. In *Petitt Smith's Patent* (*b*), the condition was imposed that the Crown should be allowed to use the invention without licence. See also *Lancaster's Patent* (*c*), *Carpenter's Patent* (*d*), and *Dixon* v. *London Small Arms Co.* (*e*). 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 sect. 29 of the Act of 1907, which applies to all new grants of letters patent. In *Mallet's Patent* (*f*) the condition was imposed that the patentee should grant licences upon terms similar to one already granted by him. In *Hardy's Patent* (*g*) 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 sect. 24 of the Act of 1907. In *Bodmin's Patent* (*h*)

Conditions are sometimes imposed for the benefit of persons other than the original patentee, or for the benefit of the public generally.

(*u*) (1908), 25 R. P. C. 684.
(*x*) Schlumberger's Patent (1853), 9 Moo. P. C. 1.
(*y*) Church's Patent (1886), 3 R. P. C. 95.
(*z*) (1908), 25 R. P. C. 299.
(*a*) (1911), 28 R. P. C. 365.
(*b*) (1850), 7 Moo. P. C. 133.
(*c*) 2 Moo. P. C. N. S. 189.
(*d*) *Ibid.* 191, n.
(*e*) L. R. 1 App. Cas. 632.
(*f*) (1866), L. R. 1 P. C. 308.
(*g*) 6 Moo. P. C. 441.
(*h*) (1853), 8 Moo. P. C. 282.

The New Grant.

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* (*i*), 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.

Cognate patents.

It is the practice when extension is granted in respect of two cognate patents to fix the expiry of each on the same day (*k*).

Security as to conditions.

The Court may require security to be given that the conditions (if any) on which the new grant is to be made will be performed (*l*).

Expiry of original term.

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.

Only one period of extension can be obtained.

The Court has no authority to grant more than one period of prolongation or extension of letters patent (*m*).

Duration of new grant cannot exceed fourteen years.

It is not usual for the Court to grant a longer extension than seven years (*n*); 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 granted (*o*), which may in extreme cases be fourteen years, the longest period for which the Court has power to grant an extension (*p*). The Court always considers the merit of the invention from the point of

(*i*) (1894), 11 R. P. C. 537.

(*k*) Johnson and Atkinson's Patent (1873), L. R. 5 P. C. 87; Church's Patents (1886), 3 R. P. C. 95.

(*l*) See Whitehouse's Patent (1830), 1 W. P. C. 473; Carp. P. C. 565; 2 Moo. P. C. 406.

(*m*) Goucher's Patent (1865), 2 Moo. P. C. N. S. 532; Thompson's Patent (No. 2), [1909] 2 Ch. 447: 26 R. P. C. 673.

(*n*) Furness' Patent (1885), 2 R. P. C. 175. Seven years was allowed in the following 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. In Cross, Bevan and Beadle's Patent (1906), 23 R. P. C. 485, five years was allowed, and that period was stated to be the longest term which has been granted of late years to an invention of conspicuous merit. In Hart's Patent (1908), 25 R. P. C. 299, six years. In Board's Patent (1908), 25 R. P. C. 537, three years. In McCulloch's Patent (1908), 25 R. P. C. 684, ten years. And in Lodge's Patent (1911), 28 R. P. C. 365, seven years' extension was allowed.

(*o*) 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, [1898] A. C. 347.

(*p*) Mitchell's Patent (1847), 30 Newton, L. J. C. S. 356; 7 Edw. 7, c. 29, s. 18 (5).

view of the public as well as the remuneration which the patentee has received, and adjusts the period accordingly (*q*). Costs.

A successful petitioner must forthwith leave an office copy of the order at the Patent Office for registration in accordance with P. R. (1908), r. 113. Registration of order.

Costs.

It is provided by the Rules of the Supreme Court that the Court may, in cases where opposition has been entered to the prayer of the petition, give costs to or against the opponents (*r*), and in the event of the Court refusing the prayer of the petition, the Court shall not, except under special circumstances, give more than one set of costs amongst all the opponents (*s*).

It is further provided by the rules that the Comptroller and the Board of Trade shall not be entitled to any costs on or in relation to their appearance on or opposition to the granting of the prayer of the petition (*t*).

It is the practice of the Court to award costs, on the principle that *bonâ fide* oppositions are rather to be encouraged than discouraged, that the Court may be put in possession of all that can be alleged against the continuance of the patent (*u*).

Costs of opponents are refused, however, if the Court is satisfied that there was no sufficient ground of opposition, and opponents may be refused or ordered to pay costs occasioned by an improper (*x*) or improperly conducted opposition (*y*).

In cases where the petition is abandoned, and there is opposition, the petitioner usually pays the opponent's costs (*z*).

(*q*) 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, [1898] A. C. 347.

(*r*) R. S. C., Ord. liiiA. r. 3 (u).

(*s*) R. S. C., Ord. liiiA. r. 3 (v).

(*t*) R. S. C., Ord. liiiA. r. 3 (w).

(*u*) 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.

(*x*) Downton's Patent (1839), 1 W. P. C. 567.

(*y*) Honiball's Patent (1855), 9 Moo. P. C. 394; 2 W. P. C. 201; 25 L. T. 1.

(*z*) 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.

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*

Letters patent to use new manufactures saved.

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 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 delivory, 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 AND DESIGNS ACT, 1907.

[7 EDW. VII. c. 29.]

An Act to consolidate the enactments relating to Patents for Inventions and the Registration of Designs and certain enactments relating to Trade Marks. [28*th August*, 1907.]

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

PART I.—PATENTS.

Application for and Grant of Patent.

Application.

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

(2) The application must be made in the prescribed form, and must be left at, or sent by post to, the Patent Office in the prescribed manner.

(3) The 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 at least of the applicants, claims to be the true and first inventor, and for which he desires to obtain a patent, and must be accompanied by either a provisional or complete specification.

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

Specifications.

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

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

(3) In the case of any provisional or complete specification where the comptroller deems it desirable he may require that

suitable drawings shall be supplied with the specification, or at any time before the acceptance of the same, and such drawings shall be deemed to form part of the said specification.

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

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

Proceedings upon application.

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

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

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

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

Provisional protection.

4. Where an application for a patent in respect of an invention has been accepted, the invention may during the period between the date of the application and the date of sealing such patent be used and published without prejudice to the patent to be granted for the invention; and such protection from the consequences of use and publication is in this Act referred to as provisional protection.

Time for leaving complete specification.

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

Provided that where an application is made for an extension of the time for leaving a complete specification, the comptroller shall, on payment of the prescribed fee, grant an extension of time to the extent applied for but not exceeding one month.

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

Comparison of provisional and complete specification.

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

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

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

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

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

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

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

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

Provided that where an application is made for an extension of time for the acceptance of a complete specification, the comptroller shall, on payment of the prescribed fee, grant an exten-

sion of time to the extent applied for but not exceeding three months.

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

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

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

(4) If the comptroller is not so satisfied, he shall, after hearing the applicant, and unless the objection is removed by amending the specification to the satisfaction of the comptroller, determine whether a reference to any, and, if so, what prior specifications ought to be made in the specification by way of notice to the public:

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

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

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

Investigation of specifications pub-

8.—(1) An investigation under the last preceding section shall extend to specifications published after the date of the applica-

lished subsequently to application.

tion in respect of which the application is made, and being specifications which have been deposited pursuant to prior application; and that section shall, subject to rules under this Act, have effect accordingly.

(2) Where, on such an extended investigation, it appears that the invention claimed in the specification deposited pursuant to an application is wholly or in part claimed in any published specification deposited pursuant to a prior application, the applicant shall, whether or not his specification has been accepted or a patent granted to him, be afforded such facilities as may be prescribed for amending his specification, and in the event of his failing to do so the comptroller shall, in accordance with such procedure as may be prescribed, determine what reference, if any, to other specifications ought to be made in his specification by way of notice to the public.

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

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

Advertisement on acceptance of complete specification.

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

Effect of acceptance of complete specification.

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

Opposition to grant of patent.

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

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

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

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

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

but on no other ground.

(2) Where such notice is given the comptroller shall give notice of the opposition to the applicant, and shall, on the expiration of those two months, after hearing the applicant and the opponent, if desirous of being heard, decide on the case.

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

Grant and sealing of patent.

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

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

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

(b) Where the sealing is delayed by an appeal to the law officer, or by opposition to the grant of the patent, the

patent may be sealed at such time as the law officer may direct:

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

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

Date of patent.

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

Effect, extent, and form of patent.

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

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

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

Fraudulent applications for patents.

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

(2) Where a patent has been revoked on the ground of fraud,

the comptroller may, on the application of the true inventor made in accordance with the provisions of this Act, grant to him a patent in lieu of and bearing the same date as the patent so revoked:

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

Single patent for cognate inventions.

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

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

Term of Patent.

Term of patent.

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

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

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

Extension of term of patent.

18.—(1) A patentee may, after advertising in manner provided by rules of the Supreme Court his intention to do so, pre-

sent a petition to the Court praying that his patent may be extended for a further term, but such petition must be presented at least six months before the time limited for the expiration of the patent.

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

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

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

(5) If it appears to the Court that the patentee has been inadequately remunerated by his patent, the Court may by order extend the term of the patent for a further term not exceeding seven, or, in exceptional cases, fourteen years, or may order the grant of a new patent for such term as may be specified in the order and containing any restriction, conditions, and provisions the Court may think fit.

Patents of addition.

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

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

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

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

Restoration of lapsed Patents.

Restoration of lapsed patents.

20.—(1) Where any patent has become void owing to the failure of the patentee to pay any prescribed fee within the prescribed time, the patentee may apply to the comptroller in the prescribed manner for an order for the restoration of the patent.

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

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

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

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

Amendment of Specification.

Amendment of specification by comptroller.

21.—(1) An applicant or a patentee may at any time, by request in writing left at the Patent Office, seek leave to amend his specification, including drawings forming part thereof, by way of disclaimer, correction, or explanation, stating the nature of, and the reasons for, the proposed amendment.

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

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

(4) Where no notice of opposition is given, or the person so giving notice of opposition does not appear, the comptroller shall

determine whether and subject to what conditions, if any, the amendment ought to be allowed.

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

(6) No amendment shall be allowed that would make the specification, as amended, claim an invention substantially larger than or substantially different from the invention claimed by the specification as it stood before amendment.

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

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

Amendment of specification by the Court.

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

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

Restriction on recovery of damages.

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

Compulsory Licences and Revocation.

Compulsory licences and revocation.

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

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

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

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

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

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

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

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

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

Revocation of patent.

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

(2) Every ground on which—

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

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

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

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

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

(b) by any person alleging—

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

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

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

Power of comptroller to revoke patents on certain grounds.

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

Provided that when an action for infringement or proceedings

for the revocation of the patent are pending in any Court, an application under this section shall not be made except with the leave of the Court.

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

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

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

Revocation of patents worked outside the United Kingdom.

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

(2) The comptroller shall consider the application, and, if after enquiry he is satisfied that the allegations contained therein are correct, then, subject to the provisions of this section, and unless the patentee proves that the patented article or process is manufactured or carried on to an adequate extent in the United Kingdom, or gives satisfactory reasons why the article or process is not so manufactured or carried on, the comptroller may make an order revoking the patent either—

(a) forthwith; or

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

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

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

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

27A - added in 1919

Register of Patents.

Register of patents.

28.—(1) There shall be kept at the Patent Office a book called the register of patents, wherein shall be entered the names and addresses of grantees of patents, notifications of assignments and of transmissions of patents, of licences under patents, and of amendments, extensions, and revocations of patents, and such other matters affecting the validity or proprietorship of patents as may be prescribed.

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

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

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

Crown.

Patent to bind Crown.

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

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

am. 1919

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

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

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

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

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

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

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

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

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

comptroller, and the packet shall be subject to the foregoing provisions respecting a packet sealed by authority of the Secretary of State or the Admiralty.

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

(10) No copy of any specification or other document or drawing, by this section required to be placed in a sealed packet, shall in any manner whatever be published or open to the inspection of the public, but, save as in this section otherwise directed, the provisions of this Act shall apply in respect of any such invention and patent as aforesaid.

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

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

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

Legal Proceedings.

Hearing with assessor.

31.—(1) In an action or proceeding for infringement or revocation of a patent, the Court may, if it think fit, and shall on the request of either of the parties to the proceeding, call in the aid of an assessor specially qualified, and try the case wholly or partially with his assistance; the action shall be tried without a jury unless the Court otherwise directs.

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

(3) The remuneration, if any, to be paid to an assessor under

this section shall be determined by the Court or the Court of Appeal, as the case may be, and be paid as part of the expenses of the execution of this Act.

Power to counterclaim for revocation in an action for infringement.

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

Exemption of innocent infringer from liability for damages.

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

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

Order for inspection, &c., in action.

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

Certificate of validity questioned and costs thereon.

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

Remedy in case of groundless threats of legal proceedings.

36. Where any person claiming to be the patentee of an invention, by circulars, advertisements, or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the patent, any person aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats, and may recover such damage (if any) as he has sustained thereby, if the alleged infringement to which the threats related was not in fact

an infringement of any legal rights of the person making such threats:

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

Miscellaneous.

Grant of patents to two or more persons.

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

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

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

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

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

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

Provided that this sub-section shall not apply if—

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

(ii) the contract entitles the purchaser, lessee, or licensee to relieve himself of his liability to observe any such condition on giving the other party three months

notice in writing and on payment in compensation for such relief in the case of a purchase of such sum, or in the case of a lease or licence of such rent or royalty for the residue of the term of the contract, as may be fixed by an arbitrator appointed by the Board of Trade.

(2) Any contract relating to the lease of or licence to use or work any patented article or patented process, whether made before or after the passing of this Act, may at any time after the patent or all the patents by which the article or process was protected at the time of the making of the contract has or have ceased to be in force, and notwithstanding anything in the same or in any other contract to the contrary, be determined by either party on giving three months notice in writing to the other party; but where any such notice is given determining any contract made before the passing of this Act, the party giving the notice shall be liable to pay such compensation as failing agreement may be awarded by an arbitrator appointed by the Board of Trade.

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

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

(5) Nothing in this section shall—

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

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

(c) affect any right of determining a contract or condition

in a contract exerciseable independently of this section; or

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

Costs and security for costs.

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

(2) If a party giving notice of opposition to the grant of a patent or to the amendment of a specification, or applying to the comptroller for the revocation of a patent, or giving notice of appeal from any decision of the comptroller, neither resides nor carries on business in the United Kingdom or the Isle of Man, the comptroller, or, in case of appeal to the law officer, the law officer, may require such party to give security for costs of the proceedings or appeal, and in default of such security being given may treat the proceedings or appeal as abandoned.

Procedure on appeal to law officer.

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

Provisions as to anticipation.

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

(2) A patent shall not be held to be invalid by reason only of the invention in respect of which the patent was granted, or any part thereof, having been published prior to the date of the

patent, if the patentee proves to the satisfaction of the Court that the publication was made without his knowledge and consent, and that the matter published was derived or obtained from him, and, if he learnt of the publication before the date of his application for the patent, that he applied for and obtained protection for his invention with all reasonable diligence after learning of the publication.

Disconformity.

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

Patent on application of representative of deceased inventor.

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

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

Loss or destruction of patent.

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

Provisions as to exhibitions.

45.—(1) The exhibition of an invention at an industrial or international exhibition, certified as such by the Board of Trade, or the publication of any description of the invention during the period of the holding of the exhibition or the use of the invention for the purpose of the exhibition in the place where the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere, without the privity or consent of the inventor, shall not prejudice the right of the inventor to apply for and obtain a patent in respect of the invention or the validity of any patent granted on the application, provided that—

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

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

(2) His Majesty may by Order in Council apply this section to any exhibition mentioned in the order in like manner as if it

were an industrial or international exhibition certified as such by the Board of Trade, and any such order may provide that the exhibitor shall be relieved from the condition of giving notice to the comptroller of his intention to exhibit, and shall be so relieved either absolutely or upon such terms and conditions as may be stated in the order.

Publication of illustrated journal, indexes, &c.

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

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

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

Patent Museum.

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

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

Foreign vessels in British waters.

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

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

PART II.—DESIGNS.

Registration of Designs.

Application for registration of designs.

49.—(1) The comptroller may, on the application made in the proscribed form and manner of any person claiming to be the proprietor of any new or original design not previously published in the United Kingdom, register the design under this part of this Act.

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

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

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

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

Registration of designs in new classes.

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

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

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

Certificate of registration.

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

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

Register of designs.

52.—(1) There shall be kept at the Patent Office a book called the Register of Designs wherein shall be entered the names and

addresses of proprietors of registered designs, notifications of assignments and of transmissions of registered designs, and such other matters as may be prescribed.

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

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

Copyright in registered Designs.

Copyright on registration.

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

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

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

Requirements before delivery on sale.

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

(a) (if exact representations or specimens were not furnished on the application for registration), furnish to the comptroller the prescribed number of exact representations or specimens of the design; and if he fails to do so the comptroller may erase his name from the register, and thereupon the copyright in the design shall cease; and

(b) cause each such article to be marked with the prescribed mark, or with the prescribed words or figures denoting that the design is registered; and if he fails to do so the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design unless he shows that he took all proper steps to ensure the marking of the article, or unless

he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.

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

Effect of disclosure on copyright.

55. The disclosure of a design by the proprietor to any other person, in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person other than the proprietor of the design, and the acceptance of a first and confidential order for goods bearing a new or original textile design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof if registration thereof is obtained subsequently to the disclosure or acceptance.

Inspection of registered designs.

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

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

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

(3) Different periods may be prescribed under this section for different classes of goods.

Information as to existence of copyright.

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

Cancellation of registration of designs used wholly or mainly abroad.

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

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

Industrial and International Exhibitions.

Provisions as to exhibitions.

59.—(1) The exhibition at an industrial or international exhibition certified as such by the Board of Trade, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof: Provided that—

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

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

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

relieved either absolutely or upon such terms and conditions as may be stated in the order.

Legal Proceedings.

Piracy of registered design.

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

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

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

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

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

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

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

Part III.—General.

Patent Office and Proceedings thereat.

Patent Office.

5 Edw. 7. c. 15.

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

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

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

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

Officers and clerks.

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

(2) The salaries of those officers and clerks shall be appointed by the Board of Trade, with the concurrence of the Treasury, and those salaries and the other expenses of the execution of this Act and the Trade Marks Act, 1905, shall continue to be paid out of money provided by Parliament.

Seal of Patent Office.

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

Fees.

Fees.

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

Provisions as to Registers and other Documents in Patent Office.

Trust not to be entered in registers.

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

Inspection of and extracts from registers.

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

Privilege of reports of examiners.

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

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

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

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

Power for comptroller to correct clerical errors.

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

(a) correct any clerical error in or in connexion with any application for a patent or in any patent or any specification;

(b) cancel the registration of a design either wholly or in respect of any particular goods in connexion with which the design is registered;

(c) correct any clerical error in the representation of a design or in the name or address of the proprietor of any patent or design, or in any other matter which is entered upon the register of patents or the register of designs.

Entry of assignments and trans-

71.—(1) Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to the

missions in registers.

copyright in a registered design, the comptroller shall, on request and on proof of title to his satisfaction, register him as the proprietor of a patent or design.

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

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

Rectification of registers by Court.

72.—(1) The Court may, on the application in the prescribed manner of any person aggrieved by the non-insertion in or omission from the register of patents or designs of any entry, or by any entry made in either such register without sufficient cause, or by any entry wrongly remaining on either such register, or by an error or defect in any entry in either such register, make such order for making, expunging, or varying such entry as it may think fit.

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

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

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

Powers and Duties of Comptroller.

Exercise of discretionary power by comptroller.

73. Where any discretionary power is by or under this Act given to the comptroller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification, or for registration of a design, without (if so required

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within the prescribed time by the applicant) giving the applicant an opportunity of being heard.

Power of comptroller to take directions of law officers.

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

Refusal to grant patent, &c. in certain cases.

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

Annual reports of comptroller.

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

Evidence, &c.

Evidence before comptroller.

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

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

Certificate of comptroller to be evidence.

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

Evidence of documents in Patent Office.

79. Printed or written copies or extracts, purporting to be certified by the comptroller and sealed with the seal of the Patent Office, of or from patents, specifications, and other documents in

the Patent Office, and of or from registers and other books kept there, shall be admitted in evidence in all Courts in His Majesty's dominions, and in all proceedings, without further proof or production of the originals.

Transmission of certified printed copies of specifications, &c.

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

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

Applications and notices by post.

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

Excluded days.

82. Where the last day fixed by this Act for doing anything under this Act falls on any day specified in rules under this Act as an excluded day, the rules may provide for the thing being done on the next following day not being an excluded day.

Declaration by infant, lunatic, &c.

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

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

Register of Patent Agents.

Register of patent agents.

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

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

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

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

Agents for patents.

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

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

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

Powers, &c. of Board of Trade.

Power for Board of Trade to make general rules.

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

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

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

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

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

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

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

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

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

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

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

Proceedings of the Board of Trade.

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

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

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

Provision as to Order in Council.

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

Offences.

Offences.

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

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

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

(4) Any person who, after the copyright in a design has expired, puts or causes to be put on any article to which the design has been applied the word "registered," or any word or words implying that there is a subsisting copyright in the design, shall be liable on conviction under the Summary Jurisdiction Acts to a fine not exceeding five pounds.

(5) If any person uses on his place of business, or on any document issued by him, or otherwise, the words "Patent Office," or any other words suggesting that his place of business is officially connected with, or is, the Patent Office, he shall be liable

on conviction under the Summary Jurisdiction Acts to a fine not exceeding twenty pounds.

Unauthorised assumption of Royal Arms.

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

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

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

International and Colonial Arrangements.

International and Colonial arrangements.

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

Provided that—

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

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

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

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

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

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

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

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

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

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

(4) The provisions of this section shall apply only in the case of those foreign states with respect to which His Majesty by Order in Council declares them to be applicable, and so long only in the case of each state as the Order in Council continues in force with respect to that state.

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

Definitions.

Provisions as to "the Court."

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

(2) Where by virtue of this Act a decision of the comptroller is subject to an appeal to the Court, or a petition may

be referred or presented to the Court, the appeal shall, subject to and in accordance with rules of the Supreme Court, be made and the petition referred or presented to such judge of the High Court as the Lord Chancellor may select for the purpose, and the decision of that judge shall be final, except in the case of an appeal from a decision of the comptroller revoking a patent on any ground on which the grant of such patent might have been opposed.

Definitions.

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

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

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

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

"Patent" means letters patent for an invention:

"Patentee" means the person for the time being ~~entitled to the benefit of a patent~~: in the register as the grantee

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

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

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

54 Geo. 3, c. 56.

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

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

"Proprietor of a new and original design,"—

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

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

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

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

"Working on a commercial scale" ——— s. 27 1919

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

Application to Scotland.

94. In the application of this Act to Scotland—

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

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

(3) Proceedings for revocation of a patent shall be in the form of an action of reduction at the instance of the Lord Advocate, or at the instance of a party having interest with his concurrence, which concurrence may be given on just cause shown only, and service of all writs and summonses in that action shall

be made according to the forms and practice existing at the commencement of this Act:

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

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

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

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

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

Application to Ireland.

95. In the application of this Act to Ireland—

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

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

(3) If any rectification of a register under this Act is required in pursuance of any proceeding in a Court, a copy of the order, decree, or other authority for

the rectification shall be served on the comptroller, and he shall rectify the register accordingly.

Isle of Man.

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

(1) Nothing in this Act shall affect the jurisdiction of the Courts in the Isle of Man in proceedings for infringement, or in any action or proceeding respecting a patent or design competent to those Courts:

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

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

Repeal, Savings, and Short Title.

Saving for prerogative.

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

Repeal and savings.

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

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

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

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

and the enactments mentioned in Part II. and Part III. of that

schedule shall, until so repealed, have effect as if they formed part of this Act:

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

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

Short title and commencement.

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

SCHEDULES.

Section 65.

FIRST SCHEDULE.

Fees on Instruments for obtaining Patents and Renewal.

(*a*) *Up to sealing.*

	£	s.	d.	£	s.	d.
On application for provisional protection	1	0	0			
On filing complete specification	3	0	0			
				4	0	0
or						
On filing complete specification with first application				4	0	0
On the sealing of the patent in respect of investigations as to anticipation				1	0	0

(*b*) *Further before end of four years from date of patent.*

On certificate of renewal	50	0	0

(*c*) *Further before end of eight years from date of patent.*

On certificate of renewal	100	0	0

Or in lieu of the fees of £50 *and* £100 *the following annual fees:*

Before the expiration of the—	£	s.	d.
Fourth year from the date of the patent.....	10	0	0
Fifth ,, ,, ,, ...	10	0	0
Sixth ,, ,, ,, ...	10	0	0
Seventh ,, ,, ,, ...	10	0	0
Eighth ,, ,, ,, ...	15	0	0
Ninth ,, ,, ,, ...	15	0	0
Tenth ,, ,, ,, ...	20	0	0
Eleventh ,, ,, ,, ...	20	0	0
Twelfth ,, ,, ,, ...	20	0	0
Thirteenth ,, ,, ,, ...	20	0	0

SECOND SCHEDULE. Section 98.

Enactments Repealed.

Part I.

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

Part II.

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

PART III.

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

PATENTS AND DESIGNS ACT, 1908.

[8 EDW. VII. c. 4.]

An Act to explain section ninety-two of the Patents and Designs Act, 1907. [1*st August,* 1908.]

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:—

Explanation of 7 Edw. 7, c. 22, s. 92.

1. It is hereby declared that so much of sub-section (2) of section ninety-two of the Patents and Designs Act, 1907, as provides that the decision of a judge of the High Court to whom a petition is presented by virtue of that Act is to be final does not apply in the case of a petition for the revocation of a patent under section twenty-five of that Act.

Short title.

2. This Act may be cited as the Patents and Designs Act, 1908.

INTERPRETATION ACT, 1889, EXTRACTS FROM.

[52 & 53 VICT. c. 62.]

An Act for consolidating enactments relating to the Construction of Acts of Parliament and for further shortening the Language used in Acts of Parliament.

[30*th August*, 1889.]

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:

Re-enactment of existing Rules.

Rules as to gender and number.

1.—(1) In this Act and in every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, unless the contrary intention appears,—

(a) words importing the masculine gender shall include females; and

(b) words in the singular shall include the plural, and words in the plural shall include the singular.

(2) The same rules shall be observed in the construction of every enactment relating to an offence punishable on indictment or on summary conviction, when the enactment is contained in an Act passed in or before the year one thousand eight hundred and fifty.

Application of penal Acts to bodies corporate.

2.—(1) In the construction of every enactment relating to an offence punishable on indictment or on summary conviction, whether contained in an Act passed before or after the commencement of this Act, the expression "person" shall, unless the contrary intention appears, include a body corporate.

(2) Where under any Act, whether passed before or after the commencement of this Act, any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where that body is the party aggrieved.

Meanings of certain words in Acts since 1850.

3. In every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them; namely,—

The expression "month" shall mean calendar month:

The expression "land" shall include messuages, tenements, and hereditaments, houses, and buildings of any tenure:

The expressions "oath" and "affidavit" shall, in the case of

persons for the time being allowed by law to affirm or declare instead of swearing, include affirmation and declaration, and the expression "swear" shall, in the like case, include affirm and declare.

Sections to be substantive enactments.

8. Every section of an Act shall have effect as a substantive enactment without introductory words.

Acts to be public Acts.

9. Every Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, shall be a public Act and shall be judicially noticed as such, unless the contrary is expressly provided by the Act.

Amendment or repeal of Acts in same session.

10. Any Act may be altered, amended, or repealed in the same session of Parliament.

Effect of repeal in Acts passed since 1850.

11.—(1) Where an Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, repeals a repealing enactment, it shall not be construed as reviving any enactment previously repealed, unless words are added reviving that enactment.

(2) Where an Act passed after the year one thousand eight hundred and fifty, whether before or after the commencement of this Act, repeals wholly or partially any former enactment and substitutes provisions for the enactment repealed, the repealed enactment shall remain in force until the substituted provisions come into operation.

New General Rules of Construction.

Official definitions in past and future Acts.

12. In this Act, and in every other Act whether passed before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

(1) The expression "the Lord Chancellor" shall, except when used with reference to Ireland only, mean the Lord High Chancellor of Great Britain for the time being, and when used with reference to Ireland only, shall mean the Lord Chancellor of Ireland for the time being.

(2) The expression "the Treasury" shall mean the Lord High Treasurer for the time being or the Commissioners for the time being of Her Majesty's Treasury.

(3) The expression "Secretary of State" shall mean one of Her Majesty's Principal Secretaries of State for the time being.

(4) The expression "the Admiralty" shall mean the Lord High Admiral of the United Kingdom for the time being, or the Commissioners for the time being for executing the office of Lord High Admiral of the United Kingdom.

(5) The expression "the Privy Council" shall, except when used with reference to Ireland only, mean the Lords and others for

the time being of Her Majesty's Most Honourable Privy Council, and when used with reference to Ireland only, shall mean the Privy Council of Ireland for the time being.

Judicial definitions in past and future Acts.

13. In this Act and in every other Act whether passed before or after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

(1) The expression "Supreme Court," when used with reference to England or Ireland, shall mean the Supreme Court of Judicature in England or Ireland, as the case may be, or either branch thereof:

(2) The expression "Court of Appeal," when used with reference to England or Ireland, shall mean Her Majesty's Court of Appeal in England or Ireland, as the case may be.

(3) The expression "High Court," when used with reference to England or Ireland, shall mean Her Majesty's High Court of Justice in England or Ireland, as the case may be.

(6) The expression "the Summary Jurisdiction Act, 1848," shall mean the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders."

(7) The expression "the Summary Jurisdiction (England) Acts" and the expression "the Summary Jurisdiction (English) Acts" shall respectively mean the Summary Jurisdiction Act, 1848, and the Summary Jurisdiction Act, 1879, and any Act, past or future, amending those Acts or either of them.

11 & 12 Vict. c. 43.
42 & 43 Vict. c. 49.

(8) The expression "the Summary Jurisdiction (Scotland) Acts" shall mean the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, and any Act, past or future, amending those Acts or either of them.

27 & 28 Vict. c. 33.
44 & 45 Vict. c. 33.

(9) The expression "the Summary Jurisdiction (Ireland) Acts" shall mean, as respects the Dublin Metropolitan Police District, the Acts regulating the powers and duties of justices of the peace or of the police of that district, and as respects any other part of Ireland, the Petty Sessions (Ireland) Act, 1851, and any Act, past or future, amending the same.

14 & 15 Vict. c. 93.

(10) The expression "the Summary Jurisdiction Acts" when used in relation to England or Wales shall mean the Summary Jurisdiction (England) Acts, and when used in relation to Scotland the Summary Jurisdiction (Scotland) Acts, and when used in relation to Ireland the Summary Jurisdiction (Ireland) Acts.

(11) The expression "Court of summary jurisdiction" shall mean any justice or justices of the peace, or other magistrate, by

whatever name called, to whom jurisdiction is given by, or who is authorised to act under, the Summary Jurisdiction Acts, whether in England, Wales, or Ireland, and whether acting under the Summary Jurisdiction Acts or any of them, or under any other Act, or by virtue of his commission, or under the common law.

Meaning of "rules of Court."

14. In every Act passed after the commencement of this Act, unless the contrary intention appears, the expression "rules of Court" when used in relation to any Court shall mean rules made by the authority having for the time being power to make rules or orders regulating the practice and procedure of such Court, and as regards Scotland shall include acts of adjournal and acts of sederunt.

The power of the said authority to make rules of Court as above defined shall include a power to make rules of Court for the purpose of any Act passed after the commencement of this Act, and directing or authorising anything to be done by rules of Court.

Geographical and colonial definitions in future Acts.

18. In this Act, and in every Act passed after the commencement of this Act, the following expressions shall, unless the contrary intention appears, have the meanings hereby respectively assigned to them, namely:—

(1) The expression "British Islands" shall mean the United Kingdom, the Channel Islands, and the Isle of Man.

(2) The expression "British possession" shall mean any part of Her Majesty's dominions exclusive of the United Kingdom, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one British possession.

(3) The expression "colony" shall mean any part of Her Majesty's dominions exclusive of the British Islands, and of British India, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature shall, for the purposes of this definition, be deemed to be one colony.

Meaning of "person" in future Acts.

19. In this Act and in every Act passed after the commencement of this Act the expression "person" shall, unless the contrary intention appears, include any body of persons corporate or unincorporate.

Meaning of "writing" in past and future Acts.

20. In this Act and in every other Act whether passed before or after the commencement of this Act expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form.

Meaning of "statutory

21. In this Act, and in every other Act, whether passed before

declaration" in past and future Acts. 5 & 6 Will. 4, c. 62.

or after the commencement of this Act, the expression "statutory declaration" shall, unless the contrary intention appears, mean a declaration made by virtue of the Statutory Declarations Act, 1835.

Meaning of service by post.

26. Where an Act passed after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve," or the expression "give" or "send," or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the document, and unless the contrary is proved to have been effected at the time at which the letter would be delivered in the ordinary course of post.

References to the Crown.

30. In this Act and in every other Act, whether passed before or after the commencement of this Act, references to the Sovereign reigning at the time of the passing of the Act or to the Crown shall, unless the contrary intention appears, be construed as references to the Sovereign for the time being, and this Act shall be binding on the Crown.

Construction of statutory rules, &c.

31. Where any Act, whether passed before or after the commencement of this Act, confers power to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or bye-laws, expressions used in the instrument, if it is made after the commencement of this Act, shall, unless the contrary intention appears, have the same respective meanings as in the Act conferring the power.

Construction of provisions as to exercise of powers and duties.

32.—(1) Where an Act passed after the commencement of this Act confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2) Where an Act passed after the commencement of this Act confers a power or imposes a duty on the holder of an office, as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

(3) Where an Act passed after the commencement of this Act confers a power to make any rules, regulations, or bye-laws, the power shall, unless the contrary intention appears, be construed as including a power, exerciseable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend, or vary the rules, regulations, or bye-laws.

"Commencement."

36.—(1) In this Act, and in every Act passed either before or after the commencement of this Act, the expression "commencement," when used with reference to an Act, shall mean the time at which the Act comes into operation.

(2) Where an Act passed after the commencement of this Act,

or any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or bye-laws made, granted, or issued, under a power conferred by any such Act, is expressed to come into operation on a particular day, the same shall be construed as coming into operation immediately on the expiration of the previous day.

Exercise of statutory powers between passing and commencement of Act.

37. Where an Act passed after the commencement of this Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, an Order in Council, order, warrant, scheme, letters patent, rules, regulations, or bye-laws, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation.

Effect of repeal in future Acts.

38.—(1) Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

(2) Where this Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or

(c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment, may be imposed, as if the repealing Act had not been passed.

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 Confédération 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 et 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 Officier 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 respec-

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. Hérisson, 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 Nyeveit, 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

tifs, 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 a 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 de 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 saisie 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 do 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 échangées 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 signature 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 convenus 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 atteinte à la législation de chacun des Etats Contractants, en ce qui concerne la procédure suivie 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'objet 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, daus le sens du paragraphe final de l'Article VI.

5. L'organisation du service spécial de la Propriété Industriolle mentionné à l'Article XII. comprendra, autant que possible, la publication dans chaque Etat d'une feuille officielle périodique.

6. Les frais communs du 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:—

1 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 statistique 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, des 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 et 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.
VILLENEUVE.
DUC DE FERNAN-NUÑEZ.
P. CHALLEMEL-LACOUR.
CH. HÉRISSON.
CH. JAGERSCHMIDT.
CRISANTO-MEDINA.
RESSMAN.
BARON DE ZUYLEN DE NYEVELT.
JOSE DA SILVA MENDES LEAL.
F. D'AZEVEDO.
J.-M. TORRES-CAÏCEDO.
SIMA M. MARINOVITCH.
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

[*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 toutes autres possessions 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.

Declaration, and 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.

ADDITIONAL ACT MODIFYING THE INDUSTRIAL PROPERTY CONVENTION OF MARCH 20, 1883.

SIGNED AT BRUSSELS, DECEMBER 14, 1900.

Sa Majesté la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes; Sa Majesté le Roi des Belges; le Président des Etats-Unis du Brésil; Sa Majesté le Roi de Danemark; le Président de la République Dominicaine; Sa Majesté le Roi d'Espagne et, en son nom, Sa Majesté la Reine-Régente du Royaume; le Président des Etats-Unis d'Amérique; le Président de la République Française; Sa Majesté le Roi d'Italie; Sa Majesté l'Empereur du Japon; Sa Majesté la Reine des Pays-Bas; Sa Majesté le Roi du Portugal et des Algarves; Sa Majesté le Roi de Serbie; Sa Majesté le Roi de Suède et de Norvège; le Conseil Fédéral de la Confédération Suisse; le Gouvernement Tunisien, ayant jugé utile d'apporter certaines modifications et additions à la Convention Internationale du 20 Mars, 1883, ainsi qu'au Protocole de clôture annexé à ladite Convention, ont nommé pour leurs Plénipotentiaires, savoir:

Sa Majesté la Reine du Royaume-Uni de la Grande-Bretagne et d'Irlande, Impératrice des Indes, le Très Honorable C. B. Stuart Wortley, M.P.; Sir Henry Bergne, K.C.M.G., Chef du Département Commercial au Foreign Office; M. C. N. Dalton, C.B., Comptroller-General of Patents;

Sa Majesté le Roi des Belges, M. A. Nyssens, Ancien Ministre de l'Industrie et du Travail; M. L. Capelle, Envoyé Extraordinaire et Ministre Plénipotentiaire, Directeur-Général du Commerce et des Consulats au Ministère des Affaires Etrangères; M. Georges de Ro, Avocat à la Cour d'Appel de Bruxelles, Ancien Secrétaire de l'Ordre; M. J. Dubois, Directeur-Général au Ministère de l'Industrie et du Travail;

Le Président des Etats-Unis du Brésil, M. da Cunha, Envoyé Extraordinaire et Ministre Plénipotentiaire des Etats-Unis du Brésil près Sa Majesté le Roi des Belges;

Sa Majesté le Roi de Danemark, M. H. Holten-Nielsen, Membre de la Commission des Brevets, Enregistreur des marques de fabrique;

Le Président de la République Dominicaine, M. J.-W. Hunter, Consul-Général de la République Dominicaine à Anvers;

ADDITIONAL ACT MODIFYING THE INDUSTRIAL PROPERTY CONVENTION OF MARCH 20, 1883.

SIGNED AT BRUSSELS, DECEMBER 14, 1900.

HER Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India; His Majesty the King of the Belgians; the President of the United States of Brazil; His Majesty the King of Denmark; the President of the Dominican Republic; Her Majesty the Queen-Regent of Spain, in the name of His Majesty the King of Spain; the President of the United States of America; the President of the French Republic; His Majesty the King of Italy; His Majesty the Emperor of Japan; Her Majesty the Queen of the Netherlands; His Majesty the King of Portugal and the Algarves; His Majesty the King of Servia; His Majesty the King of Sweden and Norway; the Federal Council of the Swiss Confederation; and the Tunisian Government, having deemed it expedient to make certain modifications in, and additions to, the International Convention of the 20th March, 1883, and also as regards the Final Protocol annexed to the said Convention, have named as their Plenipotentiaries, that is to say:

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, Empress of India, the Right Honourable C. B. Stuart Wortley, M.P.; Sir Henry Bergne, K.C.M.G., Head of the Commercial Department of the Foreign Office; Mr. C. N. Dalton, C.B., Comptroller-General of Patents;

His Majesty the King of the Belgians, M. A. Nyssens, formerly Minister of Industry and Works; M. L. Capelle, Envoy Extraordinary and Minister Plenipotentiary, Director-General of Commerce and of Consulates at the Ministry for Foreign Affairs; M. Georges de Ro, Advocate at the Court of Appeal of Brussels, formerly Secretary of the Order; M. J. Dubois, Director-General at the Ministry of Industry and Works;

The President of the United States of Brazil, M. da Cunha, Envoy Extraordinary and Minister Plenipotentiary of the United States of Brazil at the Court of His Majesty the King of the Belgians;

His Majesty the King of Denmark, M. H. Holten-Nielsen, Member of the Commission for Patents, Registrar of Trade-Marks;

The President of the Dominican Republic, M. J.-W. Hunter, Consul-General of the Dominican Republic at Antwerp:

Sa Majesté le Roi d'Espagne et, en son nom, Sa Majesté la Reine-Régente du Royaume, M. de Villa Urrutia, son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté le Roi des Belges;

Le Président des Etats-Unis d'Amérique, M. Lawrence Townsend, *Envoyé Extraordinaire et Ministre Plénipotentiaire* des Etats-Unis d'Amérique près Sa Majesté le Roi des Belges; M. Francis Forbes; M. Walter H. Chamberlin, Assistant Commissioner of Patents;

Le Président de la République Française, M. Gérard, Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté le Roi des Belges; M. C. Nicolas, Ancien Conseiller d'Etat, Directeur honoraire au Ministère du Commerce, de l'Industrie, des Postes et des Télégraphes; M. Michel Pelletier, Avocat à la Cour d'Appel de Paris;

Sa Majesté le Roi d'Italie, M. Romeo Cantagalli, son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté le Roi des Belges; M. le Commandeur Carlo-Francesco Gabba, Sénateur, Professeur à l'Université de Pise; M. le Chevalier Samuele Ottolenghi, Chef de Division au Ministère de l'Agriculture, de l'Industrie et du Commerce, Directeur du Bureau de la Propriété Industrielle;

Sa Majesté l'Empereur du Japon, M. Itchiro Motono, son *Envoyé Extraordinaire et Ministre Plénipotentiaire* près Sa Majesté le Roi des Belges;

Sa Majesté la Reine des Pays-Bas, M. F.-W.-J.-G. Suyder van Wissenkerke, Docteur en Droit, Conseiller au Ministère de la Justice, Directeur du Bureau de la Propriété Industrielle;

Sa Majesté le Roi de Portugal et des Algarves, M. le Conseiller E. Madeira Pinto, Directeur-Général au Ministère des Travaux Publics, du Commerce et de l'Industrie;

Sa Majesté le Roi de Serbie, M. le Docteur Michel Vouïtch, son *Envoyé Extraordinaire et Ministre Plénipotentiaire* à Paris;

Sa Majesté le Roi de Suède et de Norvège, M. le Comte Wrangel, son Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté le Roi des Belges;

Le Conseil Fédéral de la Confédération Suisse, M. J. Borel, Consul-Général de la Confédération Suisse à Bruxelles; M. le Docteur Louis-Rodolphe de Salis, Professeur à Berne;

Le Président de la République Française, pour la Tunisie. M. Gérard, Envoyé Extraordinaire et Ministre Plénipotentiaire près Sa Majesté le Roi des Belges; M. Bladé, Consul de première classe au Ministère des Affaires Etrangères de France;

Her Majesty the Queen-Regent of Spain, in the name of His Majesty the King of Spain, M. de Villa Urrutia, Envoy Extraordinary and Minister Plenipotentiary at the Court of His Majesty the King of the Belgians;

The President of the United States of America, Mr. Lawrence Townsend, Envoy Extraordinary and Minister Plenipotentiary of the United States of America at the Court of His Majesty the King of the Belgians; Mr. Francis Forbes; M. Walter H. Chamberlin, Assistant Commissioner of Patents;

The President of the French Republic, M. Gérard, Envoy Extraordinary and Minister Plenipotentiary at the Court of His Majesty the King of the Belgians; M. C. Nicolas, ex-Councillor of State, Honorary Director at the Ministry of Commerce, Industry, Posts and Telegraphs; M. Michel Pelletier, Advocate at the Court of Appeal of Paris;

His Majesty the King of Italy, M. Romeo Cantagalli, His Envoy Extraordinary and Minister Plenipotentiary at the Court of His Majesty the King of the Belgians; Commander Carlo-Francesco Gabba, Senator, Professor at the University of Pisa; Chevalier Samuele Ottolenghi, Head of Department at the Ministry of Agriculture, Industry, and Commerce, Director of the Office of Industrial Property;

His Majesty the Emperor of Japan, M. Itchiro Motono, His Envoy Extraordinary and Minister Plenipotentiary at the Court of His Majesty the King of the Belgians;

Her Majesty the Queen of the Netherlands, M. F.-W.-J.-G. Snyder van Wissenkerke, Doctor of Law, Councillor at the Ministry of Justice, Director of the Office of Industrial Property;

His Majesty the King of Portugal and the Algarves, the Councillor E. Madeira Pinto, Director-General at the Ministry of Public Works, Commerce, and Industry;

His Majesty the King of Servia, Dr. Michel Vouïtch, His Envoy Extraordinary and Minister Plenipotentiary at Paris;

His Majesty the King of Sweden and Norway, Count Wrangel, His Envoy Extraordinary and Minister Plenipotentiary at the Court of His Majesty the King of the Belgians;

The Federal Council of the Swiss Confederation, M. J. Borel, Consul-General of the Swiss Confederation at Brussels, Dr. Louis-Rudolphe de Salis, Professor at Berne;

The President of the French Republic, on behalf of Tunis, M. Gérard, Envoy Extraordinary and Minister Plenipotentiary at the Court of His Majesty the King of the Belgians; M. Bladé, Consul of the First Class at the French Ministry for Foreign Affairs;

Lesquels, après s'être communiqué leurs pleins pouvoirs respectifs, trouvés en bonne et due forme, sont convenus des Articles suivants:—

ARTICLE I.

La Convention Internationale du 20 Mars, 1883, est modifiée ainsi qu'il suit:—

1. L'Article III. de la Convention aura la teneur suivante:—

"Art. 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 effectifs et sérieux sur le territoire de l'un des Etats de l'Union."

2. L'Article IV. aura la teneur suivante:—

"Art. 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 des 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 la mise en vente d'exemplaires du dessin ou du modèle, par l'emploi de la marque.

"Les délais de priorité mentionnés ci-dessus seront de douze mois pour les brevets d'invention, et de quatre mois pour les dessins ou modèles industriels, ainsi que pour les marques de fabrique ou de commerce."

3. Il est inséré dans la Convention un Article IV. *bis* ainsi conçu:—

"Art. IV. *bis*. Les brevets demandés dans les différents Etats contractants par des personnes admises au bénéfice de la Convention aux termes des Articles II. et III., seront indépendants des brevets obtenus pour la même invention dans les autres Etats adhérents ou non à l'Union.

"Cette disposition s'appliquera aux brevets existant au moment de sa mise en vigueur.

"Il en sera de même, en cas d'accession de nouveaux Etats, pour les brevets existant de part et d'autre au moment de l'accession."

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon the following Articles:—

ARTICLE I.

The International Convention of the 20th March, 1883, shall be modified as follows:—

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

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

2. Article IV. shall run as follows:—

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

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

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

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

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

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

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

4. Il est ajouté à l'Article IX. deux alinéas ainsi conçus:—

"Dans les Etats dont la legislation n'admet pas la saisie à l'importation, cette saisie pourra être remplacée par la prohibition d'importation.

"Les autorités ne seront pas tenues d'effectuer la saisie en cas de transit."

5. L'Article X. aura la teneur suivante:—

"Art. 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 producteur, fabricant ou commerçant, engagé dans la production, la fabrication ou le commerce de ce produit, et établi soit dans la localité faussement indiquée comme lieu de provenance, soit dans la région où cette localité est située."

6. Il est inséré dans la Convention un Article X. *bis* ainsi conçu:—

"Art. X. *bis*. Les ressortissants de la Convention (Articles II. et III.) jouiront, dans tous les Etats de l'Union, de la protection accordée aux nationaux contre la concurrence déloyale."

7. L'Article XI. aura la teneur suivante:—

"Art. XI. Les Hautes Parties Contractantes accorderont, conformément à la législation de chaque pays, une protection temporaire aux inventions brevetables, aux dessins ou modèles industriels, ainsi qu'aux marques de fabrique ou de commerce, pour les produits qui figureront aux Expositions internationales officielles ou officiellement reconnues, organisées sur le territoire de l'une d'elles."

8. L'Article XIV. aura la teneur suivante:—

"Art. XIV. La présente Convention sera soumise à des revisions périodiques en vue d'y introduire les améliorations de nature à perfectionner le système de l'Union.

"A cet effet, des Conférences auront lieu successivement dans l'un des Etats contractants, entre les Délégués desdits Etats."

9. L'Article XVI. aura la teneur suivante:—

"Art. 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.

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

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

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

5. Article X. shall run as follows:—

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

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

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

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

7. Article XI. shall run as follows:—

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

8. Article XIV. shall run as follows:—

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

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

9. Article XVI. shall run as follows:—

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

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

"Elle emportera, de plein droit, accession à toutes les clauses et admission à tous les avantages stipulés par la présente Convention, et produira ses effets un mois après l'envoi de la notification faite par le Gouvernement Suisse aux autres Etats unionistes, à moins qu'une date postérieure n'ait été indiquée par l'Etat adhérent."

ARTICLE II.

Le Protocole de clôture annexé à la Convention Internationale du 20 Mars, 1883, est complété par l'addition d'un numéro 3 *bis*, ainsi conçu:—

"3 *bis*. Le breveté, dans chaque pays, ne pourra être frappé de déchéance pour cause de non-exploitation qu'après un délai minimum de trois ans, à dater du dépôt de la demande dans le pays dont il s'agit, et dans le cas où le breveté ne justifierait pas des causes de son inaction."

ARTICLE III.

Le présent Acte additionnel aura même valeur et durée que la Convention du 20 Mars, 1883.

Il sera ratifié, et les ratifications en seront déposées à Bruxelles, au Ministère des Affaires Etrangères, aussitôt que faire se pourra, et au plus tard dans le délai de dix-huit mois à dater du jour de la signature.

Il entrera en vigueur trois mois après la clôture du procès-verbal de dépôt.

En foi de quoi les Plénipotentiaires respectifs ont signé le présent Acte additionnel.

Fait à Bruxelles, en un seul exemplaire, le 14 Décembre, 1900.

Pour la Grande-Bretagne:

(Signé) CHARLES B. STUART WORTLEY.
H. G. BERGNE.
C. N. DALTON.

Pour la Belgique:

(Signé) A. NYSSENS.
CAPELLE.
GEORGES DE RO.
J. DUBOIS.

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

Article II.

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

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

Article III.

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

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

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

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

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

For Great Britain:
(Signed) Charles B. Stuart Wortley.
H. G. Bergne.
C. N. Dalton.

For Belgium:
(Signed) A. Nyssens.
Capelle.
Georges de Ro.
J. Dubois.

Pour le Brésil:
(Signé) F. XAVIER DA CUNHA.

Pour le Danemark:
(Signé) H. HOLTEN NIELSEN.

Pour la République Dominicaine:
(Signé) JOHN W. HUNTER.

Pour l'Espagne:
(Signé) W. R. DE VILLA URRUTIA.

Pour les Etats-Unis d'Amérique:
(Signé) LAWRENCE TOWNSEND.
FRANCIS FORBES.
WALTER H. CHAMBERLIN.

Pour la France:
(Signé) A. GÉRARD.
C. NICOLAS.
MICHEL PELLETIER.

Pour l'Italie:
(Signé) R. CANTAGALLI.
C. F. GABBA.
S. OTTOLENGHI.

Pour le Japon:
(Signé) I. MOTONO.

Pour la Norvège:
(Signé) COMTE WRANGEL.

Pour les Pays-Bas:
(Signé) SNYDER VAN WISSENKERKE.

Pour le Portugal:
(Signé) ERNESTO MADEIRA PINTO.

Pour la Serbie:
(Signé) DR. MICHEL VOUÏTCH.

Pour la Suède:
(Signé) COMTE WRANGEL.

For Brazil:
(Signed) F. XAVIER DA CUNHA.

For Denmark:
(Signed) H. HOLTEN NIELSEN.

For the Dominican Republic:
(Signed) JOHN W. HUNTER.

For Spain:
(Signed) W. R. DE VILLA URRUTIA.

For the United States of America:
(Signed) LAWRENCE TOWNSEND.
FRANCIS FORBES.
WALTER H. CHAMBERLIN.

For France:
(Signed) A. GÉRARD.
C. NICOLAS.
MICHEL PELLETIER.

For Italy:
(Signed) R. CANTAGALLI.
C. F. GABBA.
S. OTTOLENGHI.

For Japan:
(Signed) I. MOTONO.

For Norway:
(Signed) COMTE WRANGEL.

For the Netherlands:
(Signed) SNYDER VAN WISSENKERKE.

For Portugal:
(Signed) ERNESTO MADEIRA PINTO.

For Servia:
(Signed) DR. MICHEL VOUÏTCH.

For Sweden:
(Signed) COMTE WRANGEL.

Pour la Suisse:
(Signé) JULES BOREL.
L. R. DE SALIS.

Pour la Tunisie:
(Signé) A. GÉRARD.
ETIENNE BLADÉ.

Procès-verbal.

LES Parties Contractantes ayant unanimement accepté que l'échange des ratifications sur l'Acte Additionnel à la Convention du 20 Mars, 1883, signé à Bruxelles le 14 Décembre, 1900, se ferait moyennant le dépôt des instruments respectifs aux archives du Ministère des Affaires Etrangères de Belgique, le présent procès-verbal de dépôt a été, à cet effet, ouvert au Ministère des Affaires Etrangères ce jourd'hui, 3 Mai, 1901.

(Signé)
LAWRENCE TOWNSEND.

Ce même jour a été effectué le dépôt des ratifications du Président des Etats-Unis d'Amérique.

(Signé)
JULES BOREL.

Ont été successivement présentées au dépôt:

Le 5 Août, 1901, les ratifications du Conseil Fédéral Suisse;

(Signé)
F. G. SCHACK DE BROCKDORFF.

Le 10 Octobre, 1901, les ratifications de Sa Majesté le Roi de Danemark;

(Signé)
CTE. DE TOVAR.

Le 5 Novembre, 1901, les ratifications de Sa Majesté le Roi de Portugal et des Algarves;

(Signé)
CONSTANTINE PHIPPS.

Le 6 Décembre, 1901, les ratifications de Sa Majesté le Roi du Royaume-Uni de la Grande-Bretagne et d'Irlande et des Possessions Britanniques au delà des Mers, Empereur des Indes;

For Switzerland:
(Signed) JULES BOREL.
L. R. DE SALIS.

For Tunis:
(Signed) A. GÉRARD.
ETIENNE BLADÉ.

Procès-Verbal.

THE Contracting Parties having unanimously agreed that the exchange of the ratifications of the Additional Act to the Convention of the 20th March, 1883, signed at Brussels on the 14th December, 1900, shall be effected by means of the deposit of the respective instruments in the archives of the Belgian Ministry for Foreign Affairs, the present Protocol recording the deposit has been, for this purpose, drawn up at the Ministry for Foreign Affairs this 3rd day of May, 1901.

(Signed)
LAWRENCE TOWNSEND.

On this day the ratification of the President of the United States of America has been deposited.

In succession have been deposited:

(Signed)
JULES BOREL.

On the 5th August, 1901, the ratification of the Swiss Federal Council.

(Signed)
F. G. SCHACK DE BROCKDORFF.

On the 10th October, 1901, the ratification of His Majesty the King of Denmark.

(Signed)
CTE. DE TOVAR.

On the 5th November, 1901, the ratification of His Majesty the King of Portugal and the Algarves.

(Signed)
CONSTANTINE PHIPPS.

On the 6th December, 1901, the ratification of His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India.

(Signé)
P. DE FAVEREAU.

Le 10 Décembre, 1901, les ratifications de Sa Majesté le Roi des Belges;

(Signé)
R. CANTAGALLI.

Le 12 Décembre, 1901, les ratifications de Sa Majesté le Roi d'Italie;

(Signé)
S. MATSUGATA.

Le 21 Avril, 1902, les ratifications de Sa Majesté l'Empereur du Japon;

(Signé)
A. GÉRARD.

Le 23 Mai, 1902, les ratifications du Président de la République Française et du Gouvernement Tunisien;

(Signé)
CTE. WRANGEL.

Le 5 Juin, 1902, les ratifications de Sa Majesté le Roi de Suède et de Norvège, pour la Suède;

(Signé)
CTE. WRANGEL.

Le même jour, les ratifications de Sa Majesté le Roi de Suède et de Norvège, pour la Norvège;

(Signé)
R. DE PESTEL.

Le 10 Juin, 1902, les ratifications de Sa Majesté la Reine des Pays-Bas.

Conformément à l'Article 3 de l'Acte Additionnel du 14 Décembre, 1900, le présent procès-verbal a été clos à la date de ce jour.

Le Ministre des Affaires Etrangères
de Belgique,
(Signé) P. DE FAVEREAU.

Bruxelles, le 14 Juin, 1902.

Le dépôt des ratifications du Président des Etats-Unis du Brésil, du Président de la République Dominicaine, de Sa Majesté le Roi d'Espagne, et de Sa Majesté le Roi de Serbie n'ayant pu être

(Signed) P. DE FAVEREAU.	On the 10th December, 1901, the ratification of His Majesty the King of the Belgians.
(Signed) R. CANTAGALLI.	On the 12th December, 1901, the ratification of His Majesty the King of Italy.
(Signed) S. MATSUGATA.	On the 21st April, 1902, the ratification of His Majesty the Emperor of Japan.
(Signed) A. GÉRARD.	On the 23rd May, 1902, the ratifications of the President of the French Republic and of the Government of Tunis.
(Signed) CTE. WRANGEL.	On the 5th June, 1902, the ratification of His Majesty the King of Sweden and Norway, on behalf of Sweden.
(Signed) CTE. WRANGEL.	On the same day, the ratification of His Majesty the King of Sweden and Norway, on behalf of Norway.
(Signed) R. DE PESTEL.	On the 10th June, 1902, the ratification of Her Majesty the Queen of the Netherlands.

In conformity with Article 3 of the Additional Act of the 14th December, 1900, the present Protocol has been closed on this date.

The Belgian Minister for Foreign Affairs,

(Signed) P. DE FAVEREAU.

Brussels, June 14, 1902.

It not having been possible to deposit the ratifications of the President of the United States of Brazil, the President of the Dominican Republic, His Majesty the King of Spain, and His

effectué dans le délai fixé, les Gouvernements de la Belgique, du Danemark, des Etats-Unis d'Amérique, de la France, de la Grande-Bretagne, de l'Italie, du Japon, de la Norvège, des Pays-Bas, du Portugal, de la Suède, de la Suisse, et de la Tunisie se sont trouvés unanimement d'accord pour appliquer, à partir du 14 Septembre, 1902, l'Acte Additionnel du 14 Décembre, 1900, entre eux ainsi que vis-à-vis de ceux des quatre autres Etats Signataires dont les ratifications seraient déposées dans l'intervalle.

Pour copie conforme:
Le Secrétaire-Général
du Ministère des Affaires Etrangères de
Belgique,

(Signé) BARON LAMBERMONT.

Majesty the King of Servia, within the stipulated period, the Governments of Belgium, Denmark, the United States of America, France, Great Britain, Italy, Japan, Norway, the Netherlands, Portugal, Sweden, Switzerland, and Tunis have unanimously agreed that the Additional Act of the 14th December, 1900, shall, from the 14th September, 1902, take effect as regards themselves, and also as regards those of the other four Signatory States whose ratifications may in the interval have been deposited.

Certified copy:
The Secretary-General
of the Belgian Ministry for Foreign
Affairs,

(Signed) BARON LAMBERMONT.

STATUTORY RULES AND ORDERS, 1908.

No. 950.

PATENTS.

THE PATENTS RULES, 1908, DATED DECEMBER 17, 1907.

By virtue of the provisions of the Patents and Designs Act, 1907, hereinafter referred to as the "Act," the Board of Trade, hereinafter referred to as the "Board," do hereby make the following Rules:—

SHORT TITLE.

Short title. 1. *These Rules may be cited as the Patents Rules, 1908.*

COMMENCEMENT.

Commencement. 2. These Rules shall come into operation from and immediately after the 31st December, 1907, with the exception of such of them as relate to procedure under Section 8 of the Act, which shall come into operation at such date as the Board may by Order direct.

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 91 of the Act are applicable;

"Convention Application" means an application in the United Kingdom under Section 91 of the Act;

"Office" means the Patent Office;

"Journal" means the Illustrated Official Journal (Patents).

FEES.

First Schedule. 4. The fees to be paid under the Act, so far as it relates to Patents, shall be those specified in the list of fees in the First Schedule to these Rules.

Forms.

5. The forms herein referred to are those contained in the Second and Third Schedules to these Rules, and such forms shall be used in all cases to which they are applicable, and shall be modified as directed by the comptroller to meet other cases. Second Schedule.

Documents.

6. All documents and copies of documents, except drawings, sent to or left at the Office or otherwise furnished to the comptroller or to the Board 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 one inch and a half 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. Size, &c., of documents.

At the top of the first page of a specification a space of about two inches should be left blank.

7. Any application, notice, or other document authorised or required to be left, made, or given at the Office, or to the comptroller, or to any other person under the Act or these Rules, may be sent by a prepaid or official paid 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 sending or service, it shall be sufficient to prove that the letter was properly addressed and put into the post. Leaving and serving documents.

A letter addressed to a patentee at his address as it appears on the register of patents or at his address for service or to any applicant for or opponent to the grant, revocation, or restoration of a patent at the address appearing on the application or notice of opposition or given for service as hereinafter provided shall be deemed to be sufficiently addressed.

8. Every applicant for and opponent to the grant of a patent or the revocation of a patent or the restoration of a lapsed patent or the amendment of a specification, and every person who shall hereafter become a patentee, shall give an address for service in the United Kingdom, and such address may be treated, for all purposes connected with the patent, as the actual address of such applicant, opponent or patentee. Address for service.

If any patentee desires to have two addresses for service

entered in the register a request therefor shall be made on Patents Form No. 26.

The comptroller may require any existing patentee, who does not reside in the United Kingdom, to give an address for service within the United Kingdom, and such address may be treated as the actual address of the patentee for all purposes connected with such patent.

Agency.

Agency.

9. With the exception of the signing of the following documents namely, applications for patents, or for the revocation of patents or the restoration of lapsed patents, requests for leave to amend applications, specifications, or letters patent, authorisations of agents, notices of oppositions, requests for issue of duplicate letters patent, and surrenders of letters patent, all communications to the comptroller under the Act and these Rules relating to patents 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 resident or having a place of business in the United Kingdom. The comptroller shall not be bound to recognise as such agent, or to receive further communications in respect of any business under the Act relating to patents 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 Act, and not since restored, or any person who is proved to the satisfaction of the Board, after being given an opportunity of being heard, to have been convicted of such an offence or to have been guilty of such misconduct as would have rendered him liable, if his name had been on the register of patent agents, to have his name erased therefrom, or any company, which if it had been an individual, the comptroller could refuse to recognise as agent, or any company or firm, if any person whom the comptroller could refuse to recognise as an agent acts as director or manager of the company or is a partner in the firm. In any particular case, the comptroller may, if he think fit, require the personal signature or presence of an applicant, opponent, or other person.

Applications for the Grant of Patents.

Form of application.

10. An application for a patent, other than a Patent of Addition or a Secret Patent, shall be made on one of the Patent Forms, Nos. 1, 1A or 1B, as the case may be. An application for a

Patent of Addition shall be made on Patents Form No. 1C, and an application for a Secret Patent on Patents Form No. 1D.

Application by representative of deceased inventor.

11. 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 Office in proof of the applicant's title as such legal representative and be supported by such further evidence as the comptroller may require.

Order of recording applications.

12. 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 Office otherwise than through the post shall be in like manner numbered in the order of their receipt at the Office.

One invention.

13.—(1) 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.

Applications for separate patents by way of amendment.

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 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.

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 Act and by those Rules.

Where the comptroller has required or allowed any application or specification or drawings or any of them 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.

(2) Where the same applicant has put in two or more provisional specifications for inventions which he believes to be cognate or modifications one of the other and the comptroller is of opinion that such inventions are not cognate or modifications one of the other, the applicant may divide the complete specification left in connexion with his application into such number of

complete specifications as may be necessary to enable the application to be proceeded with as two or more separate applications for patents for different inventions.

Claims.

14. 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.

APPLICATIONS UNDER THE INTERNATIONAL CONVENTION.

Convention applications.

15. Every Convention application shall contain a declaration that foreign application has been made for protection of the invention to which such Convention application rolates, 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.

1. In addition to the specification left with every Convention application a copy or copies of the specification or specifications 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, must be left at the Office at the same time as the application or within such further time thereafter not exceeding three months as the comptroller may allow. 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.

An application for extension of time for leaving the copy or copies of the foreign specification or specifications, drawings or documents shall be made on Patents Form No. 5.

Public inspection.

17. If the complete specification left with the application be not accepted within twelve months from the date of the first foreign application, it shall be open to public inspection at the expiration of that period.

Proceedings.

18. Save as aforesaid and as provided by Rule 83 all proceedings in connexion with a Convention application shall be taken

within tho times and in the manner prescribed by the Act or these Rules for ordinary applications.

Drawings.*

General.

19. Drawings, when furnished, should accompany the provisional or complete specification to which they refer, except in the case provided for by Rule 26. 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.

Requirements as to paper, &c.

20. 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 washos 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.

Size of drawings and arrangement of figures.

21. Drawings must be on sheets which measure 13 inches from top to bottom and are either from 8 inches to $8\frac{1}{4}$ inches or from 16 inches to $16\frac{1}{2}$ inches wide, the narrower sheets being preferablo.

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 figure 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. The figures should be numbered consecutively throughout and without regard to the number of sheets, and should not be more numerous than is absolutely necessary. They should be separated by a sufficient space to keep them distinct.

Drawings to be suitable for reproduction.

22. Drawings must be prepared in accordance with the following requirements:—

(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) Shading 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.

* Note.—Copies of Instructions as to the Preparation of Drawings may be had on application to the Patent Office.

(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.

23. Drawings must bear the name of the applicant (and, in the case of drawings left with a complete specification after one or more provisional specifications, the numbers and years of the applications) 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.

24. A facsimile or "true copy" of the original drawings should 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.

25. Drawings must be delivered at the 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.

26. If an applicant desires to adopt the drawings lodged with his provisional specification as the drawings or part of the drawings for his complete specification, he should refer to them in the complete specification as those left with the provisional specification.

Extension of time for leaving Complete Specification.

Extension of time for leaving complete specification.

27. An application for one month's extension of time for leaving a complete specification shall be made on Patents Form No. 6.

Procedure under Section 7 of the Act.

Power of comptroller to post-date.

28. 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 requires amendment of the specification and drawings, or any 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 report in case of complete anticipation.

29. 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, 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 may be deemed a final report, and the application shall be dealt with as provided by sub-section 4. If, however, such provisional report be reversed or altered, the investigation 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 3 or sub-section 4, as the case may require.

Time for leaving amended specification.

30. 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.

Hearing by the comptroller under sub-section 4.

31. 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 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, and in the event of the invention claimed

being wholly and specifically claimed in any specification to which the investigation has extended whether he should refuse to grant a patent.

Reference to prior specification.

32. When under sub-section 4 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 has been directed in pursuance of section 7, sub-section 4, of the Patents and Designs Act, 1907, to specification No. of 1 .

Where the reference is inserted as the result of a provisional report under Rule 29, a statement to that effect shall be added to the reference.

Procedure under Section 8 of the Act.

Procedure under section 8.

33. Where on the extended investigation provided for by section 8 of the Act it appears that the invention claimed in any specification deposited pursuant to an application is wholly or in part claimed in any published specification deposited pursuant to a prior application, the applicant shall be informed of the result of such extended investigation, and shall, within two months from the date of the letter so informing him, apply for leave to amend his specification by way of disclaimer, stating specifically what amendments he is prepared to make in it to remove the objection of anticipation, or if he considers that no amendments are necessary, inform the comptroller accordingly.

The comptroller shall consider any amendments submitted by the applicant for this purpose, and may allow the necessary amendments to be made.

Hearing by comptroller.

If, at the expiration of the said two months, or such further time as the comptroller may allow, the comptroller is not satisfied that the invention claimed by the applicant is not wholly or in part claimed in the specification or specifications cited, he 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.

34. When, under sub-sect. 2, the comptroller determines that 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 sect. 8, sub-sect. 2, of the Patents and Designs Act, 1907, to specification No. of ."

35. When, after any accepted specification has been published, any amendment has been made, or any reference inserted therein, under either of the last two preceding Rules, notice thereof shall be advertised in the Journal. Advertisement of amendments.

CHEMICAL INVENTIONS.—TYPICAL SAMPLES AND SPECIMENS.

36. Where under sect. 2, sub-sect. (5), of the Act before the acceptance of the complete specification left on any application for a patent for a chemical invention, the comptroller in any particular case considers it desirable to require typical samples or specimens to be furnished, such samples or specimens must, if so required by the comptroller, be supplied in duplicate. Chemical inventions—Typical samples and specimens.

The fact that such samples or specimens have been furnished shall be notified to the public by a statement to that effect on the complete specification, and in connexion with the advertisement of acceptance of same in the Journal.

The samples or specimens must, unless other directions are specially given, be supplied in glass bottles of a total height not exceeding three inches, and of an external diameter of $1\frac{1}{2}$ inches, and the bottle must be securely closed by well-fitting stoppers, and sealed. Each bottle must have an adhesive or otherwise securely attached label bearing a description which clearly identifies the sample with the substance described in the specification. Labels which are not secured to the bottle by an adhesive should be 3 inches wide and not more than 4 inches long.

Where samples or specimens of colouring matters are required to be supplied, they must be accompanied by samples or specimens of materials printed or dyed with such colouring matters; such last-mentioned samples or specimens must be as flat as possible, and firmly attached to cards 13 inches long by 8 inches broad. The cards must bear a full description of the processes by which the respective dyed or printed effects were produced, including the compositions and strengths of the various baths, the temperatures, duration of treatment, degree of exhaustion of the dye baths, in the case of dyed fabrics the percentage of colouring matter fixed on, in the case of prints the composition of the

printing paste, and other necessary information. This description must also clearly identify the substance used with that described in the specification.

Samples of poisonous, corrosive, explosive, or easily inflammable substances must be clearly marked as such.

Acceptance of Specifications.

Extension of time for accepting complete specification.

37. An application for extension of time for accepting a complete specification shall be made on Patents Form No. 7.

Notice and advertisement of acceptance.

38. 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 Journal.

Inspection of specification.

39. 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 Office upon payment of the prescribed fee.

Opposition to Grants of Patents.

Notice of opposition.

40. A notice of opposition to the grant of a patent shall be given on Patents Form No. 8, and shall state the ground or grounds on which the person giving such notice (herein called the opponent) intends to oppose the grant, and must be signed by him. Such notice shall be accompanied by an unstamped copy, which shall be transmitted by the comptroller to the applicant.

Copy for applicant.

Statement of amendments desired.

Where the person giving notice of an opposition does not desire that the patent should be refused, but merely that the specification should be amended by disclaimer or limitation, the notice of opposition should be accompanied or supplemented as soon as may be by a written statement to that effect, indicating so far as can conveniently be done the general nature of the amendments desired and the portions of the earlier specifications, if any, relied upon as necessitating such amendments.

Evidence in support of allegation that invention has been obtained from opponent.

41.—(1) 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 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 or such further time as the comptroller may in any special case allow, the opposition shall be deemed to be abandoned.

(2) Where the ground of the opposition is that the nature of the invention or the manner in which it is to be performed is not sufficiently or fairly described and ascertained in the complete specification, the notice of opposition should be accompanied by a written statement indicating so far as can conveniently be done in what respects the invention is alleged to be insufficiently or unfairly described or ascertained.

Opponent's evidence.

42. Except in the case provided for in Rule 41 (1) statutory declarations need not be left in connexion 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 Office statutory declarations in support of his opposition, and on so leaving shall deliver to the applicant copies thereof.

Applicant's evidence.

43. Within fourteen days from the delivery of such copies, the applicant may leave at the 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 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.

44. 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 Office statutory declarations in support of his application, and on so leaving shall deliver to the opponent copies thereof.

Opponent's evidence.

45. Within fourteen days from the delivery of such copies, the opponent may leave at the 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 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.

46. No further evidence shall be left on either side except by leave, or on the requisition, of the comptroller.

Hearing.

47. 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 Patents Form No. 9 at the Office. The comptroller may refuse to hear either party who has not left Patents Form No. 9 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 the 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.

Sealing of Patent and Payment of Fee.

Sealing of patent and payment of fee.

48. If the applicant for a patent desires to have a patent sealed on his application, he shall within the period allowed by sect. 12 of the Act pay the sealing fee by leaving at the Office Patents Form No. 10, duly stamped.

Where in consequence of the neglect or failure of the applicant to pay such fee, a patent cannot be sealed within the period allowed by sect. 12, the applicant may apply to the comptroller on Patents Form No. 11 or Patents Form No. 12, as the case may be, for an extension of such period not exceeding three months where the period allowed for the sealing of the patent expires after the commencement of the Act, and not exceeding three months after the commencement of the Act where the period allowed for the sealing of the patent expired before the commencement of the Act.

The comptroller shall consider such application, and if the circumstances of the case appear to him to warrant the granting of the extension, he may seal the patent within such extended period.

Where the period allowed for the sealing of the patent has expired before the commencement of the Act, no proceedings shall be taken in respect of an infringement committed after the failure to pay the fee and before the sealing of the patent.

Form of Patent.

Form of patent.

49. A patent, except in the cases provided for in Rules 50 and 51, may be in the Form A, in the Third Schedule to these Rules.

Form of patent of addition.

50. A patent of addition may be in the Form B, in the Third Schedule to these Rules.

Form of patent to legal representatives of deceased inventor and others.

51. Where after the commencement of the Act a patent is granted to the legal representatives of a deceased inventor, or in any case in which the applicants have asked to be treated for the purpose of the devolution not only of the legal but also of the beneficial interest in such patent as joint tenants, the form of the

patent shall be modified so as to show clearly that the persons to whom the grant is made are to be treated for the purpose of the devolution not only of the legal but also of the beneficial interest in the patent as joint tenants.

Renewal Fees.

Renewal fees.

52. If a patentee intends, at the expiration of the fourth year from the date of his patent or of any succeeding year during the term of the patent, to keep the same in force, he shall before the expiration of such year pay the prescribed annual renewal fee by means of Patents Form No. 13. The patentee may pay all or any of such prescribed annual renewal fees in advance. An application for an enlargement of time for payment of any fee under this Rule shall be made on Patents Form No. 14.

Certificate of payment of fee.

53. On due compliance with the terms of Rule 52, the comptroller shall issue a certificate that the prescribed payment has been duly made.

Notice as to renewal fees.

54. At any time not less than one month before the date when any renewal fee will become due in respect of any patent, the comptroller shall send to the patentee or patentees, whose names appear in the Register of Patents, at his or their address or addresses for service, or to the address of the person or persons who paid the last renewal fee, a notice reminding him or them of the date when such fee will become due, and of the consequences of the non-payment thereof.

Restoration of Lapsed Patents.

Restoration of lapsed patents.

55. Where any patent has become void owing to the failure of the patentee to pay any prescribed fee within the prescribed time the patentee may apply to the comptroller on Patents Form No. 15 for an order for the restoration of the patent. Every such application shall be accompanied by one or more statutory declarations verifying the statements contained in such application. If the comptroller entertains the application, he shall advertise it in the Journal, and in such other manner as in his opinion is desirable. At any time within two months from the first of such advertisements in the Journal any person may give notice of opposition at the Office on Patents Form No. 16, and a copy of such notice shall be transmitted by the comptroller to the applicant.

Opponent's evidence.

56. Where such notice is given the opponent shall within 14 days after leaving the notice leave at the Office one or more statutory declarations verifying any evidence on which he relies in

support of the grounds of his opposition, and on so leaving shall deliver to the applicant copies thereof.

Further procedure.

57. Upon such declarations being left and delivered the provisions of Rules 43, 46, and 47 shall apply to the case, and the further proceedings thereon shall be regulated in accordance with such provisions as if they were herein repeated.

Order.

58. In every Order of the comptroller restoring a patent, provisions shall be inserted for the protection of persons who may have availed themselves of the subject-matter of the patent after the patent has been announced as void in the Journal. Such provisions shall restrain the patentee from commencing or prosecuting any action or other proceeding, and from recovering any damage:—

(1) In respect of any infringement of the patent which shall have taken place after the date on which the patent was announced in the Journal to be void and before the date of the order.

(2) In respect of the use or employment at any time thereafter of any mechanism, machine, machinery, process or operation actually made or carried on within the United Kingdom or of the use, purchase, or sale of any article manufactured or made in infringement of the patent after the date of the said announcement and before the date of the order. Provided that such use, purchase, sale, or employment is by the person or corporation by or for whom such machine or machinery or article was *bonâ fide* manufactured or made, or such mechanism, machine, machinery, process or operation was *bonâ fide* made or carried on, his or their executors, administrators, successors, or vendees, or his or their assigns respectively.

(3) In respect of the use, employment, or sale at any time thereafter by any person or corporation entitled for the time being under the preceding sub-section to use or employ any machine, machinery, mechanism, process or operation, or any improved or additional machine, machinery, mechanism, process or operation, or of the use or sale of any article manufactured or made by any of the means aforesaid in infringement of the patent; provided that the use or employment of any such improved or additional machine, machinery, mechanism, process or operation shall be limited to the buildings, works or premises existing at the time being or afterwards erected of the person or corporation by or for whom such machine, machinery, mechanism, process or operation was made or carried on within the meaning of the preceding paragraph, his or their executors, administrators, successors or assigns.

Compensation.

59. The Order shall further provide that if any person within one year after the date thereof make an application to the Board

for compensation in respect of money, time, or labour expended by the applicant upon the subject-matter of the patent in the *bonâ fide* belief that such patent had become and continued to be void, it shall be lawful for the Board, after hearing the parties concerned or their agents to assess the amount of such compensation, if in their opinion the application ought to be granted, and to specify the party by whom and the day on which such compensation shall be paid, and if default shall be made in payment of the sum awarded, then the said patent shall become void, but the sum awarded shall not in that case be recoverable as a debt or damages.

Amendment of Specification.

Request for leave to amend.

60. A request to the comptroller for leave to amend a specification, except when such request is made under Rule 33, shall be made on Patents Form No. 17. The request must be accompanied by a duly certified copy of the original specification and drawings, showing in red ink the proposed amendment in such manner as to indicate clearly the alteration desired, and shall be advertised by publication of the request and the nature of the proposed amendment in the Journal, and in such manner (if any) as the comptroller may in each case direct.

Notice of opposition. Copy for the applicant.

61. A notice of opposition to the amendment shall be on Patents Form No. 18, and shall be accompanied by an unstamped copy, which copy shall be transmitted by the comptroller to the applicant.

Opponent's evidence.

62. 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 Office statutory declarations in support of his opposition, and on so leaving shall deliver to the applicant copies thereof.

Further proceedings.

63. Upon such declarations being left, and such copies being delivered, the provisions of Rules 43, 46, and 47 shall apply to the case, and the further proceedings shall be regulated in accordance with such provisions as if they were herein repeated.

Applicant's evidence if opponent does not leave statutory declarations.

64. 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 Office statutory declarations in support of his application, and on so leaving shall deliver to the opponent copies thereof.

Further proceedings.

65. Upon such declarations being left, and such copies being delivered, the provisions of Rules 45, 46, and 47 shall apply to the

case, and further proceedings therein shall be regulated in accordance with such provisions as if they were herein repeated.

Requirements on amendment.

66. 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 Office a new specification and drawings as amended, to be prepared in accordance with Rules 6 and 19 to 25.

Advertisement of amendment.

67. Every amendment of a specification shall be advertised forthwith by the comptroller in the Journal, and in such other manner (if any) as the comptroller may direct.

Compulsory Licences and Revocation of Patents.

Petition for grant of compulsory licence or revocation of Patent.

68. A petition to the Board for an order under sect. 24 of the Act shall be made on Patents Form No. 20, and shall show clearly the nature of the 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 Office.

69. The petition and an examined copy thereof shall be left at the Office with a request on Patents Form No. 19, and shall be 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.

70. The persons to whom such copies are delivered by the petitioner may give notice of opposition on Patents Form No. 21. and may, within fourteen days after being invited to do so by the Board, leave at the 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 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, if they think fit, upon such notice to parties interested and upon such terms, if any, as they may direct.

71. No further evidence than as aforesaid may be left by either side at the Office except by leave or on requisition of the Board and upon such terms, if any, as the Board may think fit. Closing of evidence.

72. The Board 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. Power of Board of Trade to dismiss Petition.

73. 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 arrangement 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 Court. Arrangements between parties.

74. 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, they shall refer the petition to the Court, 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 Court in ascertaining what persons should be made parties to the proceedings before the Court, and the Board shall give written notice to the parties that the petition has been referred to the Court. Reference of petition to the Court.

Procedure under Section 26 of the Act.

75. An application for the revocation of a patent under sect. 26 of the Act shall be made on Patents Form No. 22, and shall be accompanied by an unstamped copy of the form, which shall be transmitted by the comptroller to the patentee. Where the ground of application is that the applicant for the patent obtained the invention from the person applying for the revocation of the patent, evidence by way of statutory declaration in support of such allegation shall be left at the Office at the same time as the application for the revocation, or as soon as may be thereafter. In other cases such evidence may be so left by the applicant for revocation if he desires. Copies of any declaration left at the Office under this Rule shall be delivered by the applicant to the patentee. Application under sect. 26 of the Act.

76. Upon such declarations being left and delivered the provision of Rules 43 to 47 shall apply *mutatis mutandis* to the Procedure.

furnishing of further evidence and to the hearing of the case before the comptroller.

Surrender of patent.

77. A notice of an offer by a patentee to surrender his patent under sect. 26 of the Act shall be given on Patents Form No. 23, and shall be advertised by the comptroller in the Journal and in such other manner, if any, as he deems desirable.

Revocation of Patents worked outside the United Kingdom.

Revocation of patents worked outside the United Kingdom.

78. An application for the revocation of a patent under sect. 27 of the Act shall be made on Patents Form No. 24. The applicant shall simultaneously with, or as soon as may be after, the leaving of such application at the Office deliver, or cause to be delivered, to the patentee or his agent a copy of such application, and furnish the comptroller with evidence of such delivery.

Procedure.

79. The patentee shall within fourteen days from the delivery of such copy, or within such further time as the comptroller may allow, leave at the Office evidence, by way of statutory declaration, stating whether or not the allegations contained in the application are correct; and, if they are incorrect, to what extent, and in what place the patented article or process is manufactured or carried on in the United Kingdom; and setting out in the event of the article or process not being manufactured or carried on in the United Kingdom to an adequate extent, the reasons why it is not so manufactured or carried on. The patentee shall deliver or cause to be delivered, copies of such evidence to the applicant and furnish the comptroller with evidence of such delivery.

Within fourteen days from the delivery of such copies, or within such further time as the comptroller may allow, the applicant shall, if he decides to proceed with his application, leave at the Office statutory declarations in answer, and on so leaving shall deliver to the patentee or his agent copies thereof, and furnish the comptroller with evidence of such delivery.

Closing of evidence.

80. No further evidence shall be left at the Office on either side except by leave, or on the requisition of the comptroller, and upon such terms, if any, as the comptroller may think fit.

Hearing.

81. On completion of the evidence or at such other time as he may see fit, the comptroller shall appoint a time for the hearing of the case, and give the parties 10 days' notice at least of such appointment, and in the event of his deciding to take evidence *viva voce* in lieu of or in addition to the evidence by declaration,

or to allow any declarant to be cross-examined on his declaration, he may require the attendance of any declarant or other person, whose evidence he may consider desirable.

Register of Patents.

Entry of grant.

82. 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, the title of the invention, the date of the patent, and the date of the grant thereof, together with the address for service.

Entry in respect of Convention application.

83. 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. The date of the application in this country shall also be entered in the register.

Alteration of address.

84. If a patentee send to the comptroller on Patents Form No. 25 notice of an alteration in his name or address or address for service, the comptroller shall cause the register to be altered accordingly, and may require the altered address to be in the United Kingdom.

Request for entry of subsequent proprietorship.

85. Where a person becomes entitled by assignment, transmission, or other operation of law to a patent, or to any interest therein, as mortgagee, licensee or otherwise, a request for the entry in the register of his name as proprietor of the patent, or of a notice of such interest, as the case may be, shall be addressed to the comptroller, and left at the Office.

Form and signature of request.

86. Such request shall be on Patents Form No. 27 or Patents Form No. 28, as the case may be, and shall in the case of individuals be made and signed by the person requiring to be registered as proprietor, or by his agent, and in the case of a body corporate by its agent.

Particulars to be stated in request.

87. Every such request shall state the name, address, and calling of the person claiming to be entitled to the patent, or to any 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 have entered in the register his name as proprietor or a notice of such interest, so as to show the manner in which, and the person or persons to whom, the patent, or such interest therein as aforesaid, has been assigned or transmitted.

Production of documents of title and other proof.

88. 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 he may call for 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 Office.

89. There shall also be left with the request an attested copy of the assignment or other document or copy above required to be produced.

Entry of notice of interest.

90. The notice of interest in the patent of any person other than the proprietor entered in the register in pursuance of the request shall be such as may appear applicable to the circumstances of the particular case.

Entry of notification of document.

91. Where it is desired to enter in the register a notification of any document purporting to affect the proprietorship of a patent an attested copy of such document shall be left at the Office with a request on Patents Form No. 29 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 Office if required for further verification.

Entry of date of payment of fees on issue of certificate.

92. Upon the issue of a certificate of payment under Rule 53, 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.

93. 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.

Hours of inspection of register.

94. The register of patents shall be open to the inspection of the public on every day on which the Office is open to the public during the time it is so open except at such times when the register is required for any purpose of official use.

Correction of Clerical Errors.

Correction of clerical errors.

95. A request for the correction of a clerical error in or in connexion with an application for a patent, or in any patent or specification, or in any matter which is entered upon the register of patents, shall be made on Patents Form No. 30.

Certificates.

Certificates and certified copies of documents.

96. A request for a certificate of the comptroller as to any entry, matter or thing which he is authorised by the Act or any

of these Rules to make or do, shall be made on Patents Form No. 31.

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 Office, or of or from registers and other books kept there, may be furnished by the comptroller on payment of the prescribed fee.

Secret Patents.

Secret patents.

97. When it has been decided by the Secretary of State for War or the Admiralty that it is advisable to take out a secret patent for any invention assigned under sect. 30 of the Act, and an application for such patent has been made on Patents Form No. 1D, accompanied by a certificate of the Secretary of State or the Admiralty, under sect. 30 (3) of the Act, the comptroller shall not communicate the application or any documents relating thereto to any member of his staff other than a deputy or special examiner or examiners, who shall make the required investigations and reports required by the Act to be made in the case of other applications for patents.

Unless and until such invention is re-assigned to the inventor by the Secretary of State or the Admiralty—

(1) No copy of any specification or any other document or drawing relating thereto shall in any manner whatever be published or open to the inspection of the public.

(2) The application for the patent, and the acceptance of any specification relating to the invention shall not be advertised, nor shall the grant of the patent for such invention be open to opposition under sect. 11 of the Act; but the comptroller shall cause a patent to be sealed in respect of every such invention as soon as may be after the acceptance of the complete specification relating thereto.

(3) Every such secret patent shall be registered in a confidential register at the Office, and no details or particulars relating thereto shall at any time be published as required by the Act for ordinary patents. Nor shall any entry be made in the ordinary Register of Patents in respect of any such patent or any assignment thereof.

(4) No fees shall be payable in respect of any secret patent, and every such patent, notwithstanding the non-payment of such fees, shall remain in force for the full period of 14 years from its date.

Certificate of secrecy after application.

98. When an application has been made otherwise than as provided by the last preceding rule for a patent for an invention, and such application is still pending, and a certificate under sect. 30 (3) of the Act is furnished to the comptroller by the Secretary of State or the Admiralty, the provisions of such rule shall, so far as is practicable, having regard to the date of such certificate, apply to such application and to all documents relating thereto.

Re-assignment.

99. In the event of any secret patent being re-assigned to the inventor by the Secretary of State or the Admiralty, it shall be removed from the Confidential Register of secret patents; all fees that would have been thereafter payable if the same had not been a secret patent shall be paid in respect thereof; and the patent shall remain in force only for the same term, and subject to the same conditions as to payment of fees and otherwise as if it had not been a secret patent.

Lost Patent.

Lost patent.

100. An application for a duplicate of a patent which has been lost or destroyed shall be made on Patents Form No. 32, and in accordance with the directions thereon.

Industrial or International Exhibitions.

Industrial or international exhibitions.

101. 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 have issued a certificate that the exhibition is an industrial or international one, give to the comptroller notice on Patents Form No. 33 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.

102. Before exercising any discretionary power given to the comptroller by the Act 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.

103. Within five days from the date on which 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. Notice by applicant.

104. 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. Comptroller may require statement, &c.

105. 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. Decision to be notified to parties.

Statutory Declarations and Affidavits.

106. 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. Form, &c., of statutory declaration and affidavit.

107. The statutory declarations and affidavits required by the Act and these Rules, or used in any proceedings thereunder, shall be made and subscribed as follows:— Manner in which, and persons before whom, declaration or affidavit is to be taken.

(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.

GENERAL.

Power of amendment, &c.

108. Any document for the amending of which no special provision is made by the Act 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.

General power to enlarge time.

109. 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 Rules 68 to 74, or the times prescribed by Rules 16, 41 and 55, may be enlarged by the comptroller if he thinks fit, and upon such notice to other parties, and proceedings thereon, and upon such terms, as he may direct.

Days and hours of business.

110. The Office shall be open to the public every weekday except Saturday between the hours of ten and four, and on Saturday between the hours of ten and one, except on the days following:—

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 Office.

Excluded days.

111. Whenever the last day fixed by the Act, or by these Rules, for doing anything shall fall on a day when the Office is not open or on a Saturday, which days shall be excluded days for the purposes of the Act and these Rules, it shall be lawful to do any such thing on the day next following such excluded day, or days if two or more of them occur consecutively.

Power to dispense with evidence, signature, &c.

112. 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 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 to 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, and upon the production of such other evidence, and subject to such terms as he may think fit, to dispense with any such act or thing, document, declaration, or evidence.

Applications to and Orders of Court.

Applications to a Court.

113. Four clear days' notice of every application to the Court under sect. 72 of the Act for rectification of the register of patents shall be given to the comptroller.

Orders of Court.

Where any Order has been made by the Court under the Act revoking a patent or extending the term of a patent, or allowing a patentee to amend his specification or affecting the validity or proprietorship of a patent, the person in whose favour such Order has been made shall forthwith leave at the Office an office copy of such Order together with Patents Form No. 34. The specification shall thereupon be amended or the register rectified or the purport of such Order shall otherwise be duly entered in the register as the case may be.

Repeal.

Repeal.

114. All general rules relative to Patents heretofore made by the Board of Trade under the Patents, Designs and Trade Marks Acts, 1883 to 1902, and in force on the 31st day of December, 1907, 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 17th day of December, 1907.

D. Lloyd George,
President of the Board of Trade.

THE FIRST SCHEDULE.

List of Fees payable in respect of the Grant of Patents and of other Matters with relation thereto.

	£ s. d.	£ s. d.	Corresponding Form.
1. On application accompanied by provisional specification ...	1 0 0		Patents Form No. 1, 1A, 1B, or 1C.
2. On filing complete specification thereafter	3 0 0	4 0 0	Patents Form No. 3.
or			
3. On application accompanied by complete specification		4 0 0	,, ,,
4. On appeal from Comptroller to Law Officer. By appellant		3 0 0	Patents Form No. 4.

		Corresponding Form.
	£ s. d.	
5. For extension of time under Rule 16 :— Not exceeding one month	2 0 0	Patents Form No. 5.
,, two months	4 0 0	,, ,,
,, three months... ...	6 0 0	,, ,,
6. For extension of time for leaving complete specification not exceeding one month	2 0 0	Patents Form No. 6.
7. For extension of time for acceptance of complete specification :— Not exceeding one month	2 0 0	Patents Form No. 7.
,, two months ...	4 0 0	,, ,,
,, three months ...	6 0 0	,, ,,
8. On notice of opposition to grant of patent. By opponent	0 10 0	Patents Form No. 8.
9. On hearing by Comptroller. By applicant and by opponent respectively ...	1 0 0	Patents Form No. 9.
10. On sealing of patent	1 0 0	Patents Form No. 10.
11. For extension of time for sealing of patent where period allowed for the sealing of the patent will expire after the commencement of the Act :— Not exceeding one month	2 0 0	Patents Form No. 11.
,, two months... ...	4 0 0	,, ,,
,, three months ...	6 0 0	,, ,,
12. For extension of time for sealing a patent, where period allowed for the sealing of the patent has expired before the commencement of the Act	10 0 0	Patents Form No. 12.
On certificate of renewal :—		
13. Before the expiration of the 4th year from the date of the patent and in respect of the 5th year	5 0 0	Patents Form No. 13.
14. Before the expiration of the 5th year from the date of the patent and in respect of the 6th year	6 0 0	,, ,,
15. Before the expiration of the 6th year from the date of the patent and in respect of the 7th year	7 0 0	,, ,,
16. Before the expiration of the 7th year from the date of the patent and in respect of the 8th year	8 0 0	,, ,,
17. Before the expiration of the 8th year from the date of the patent and in respect of the 9th year	9 0 0	,, ,,
18. Before the expiration of the 9th year from the date of the patent and in respect of the 10th year	10 0 0	,, ,,
19. Before the expiration of the 10th year from the date of the patent and in respect of the 11th year	11 0 0	,, ,,

	—			Corresponding Form.
	£	s.	d.	
20. Before the expiration of the 11th year from the date of the patent and in respect of the 12th year	12	0	0	Patents Form No. 13.
21. Before the expiration of the 12th year from the date of the patent and in respect of the 13th year	13	0	0	,, ,,
22. Before the expiration of the 13th year from the date of the patent and in respect of the 14th year	14	0	0	,, ,,
23. On enlargement of time for payment of renewal fees:—				
Not exceeding one month	1	0	0	Patents Form No. 14.
,, two months	3	0	0	,, ,,
,, three months	5	0	0	,, ,,
24. On application for restoration of a lapsed patent	20	0	0	Patents Form No. 15.
25. On notice of opposition to application for restoration of lapsed patent ...	1	0	0	Patents Form No. 16.
26. On hearing by Comptroller. By applicant and opponent respectively ...	1	0	0	Patents Form No. 9.
27. On application to amend specification :— Up to sealing. By applicant ...	1	10	0	Patents Form No. 17.
After sealing. By patentee	3	0	0	,, ,,
28. On notice of opposition to amendment. By opponent	0	10	0	Patents Form No. 18.
29. On hearing by Comptroller. By applicant and by opponent respectively ...	1	0	0	Patents Form No. 9.
30. On application to the Board of Trade for a compulsory licence. By person applying	1	0	0	Patents Form No. 19.
31. On opposition to grant of compulsory licence. By opponent	1	0	0	Patents Form No. 21.
32. On application to Comptroller to revoke a patent under Section 26	2	0	0	Patents Form No. 22.
33. On hearing by Comptroller. By applicant and by patentee respectively ...	2	0	0	Patents Form No. 9.
34. On offer to surrender a patent under Section 26	1	0	0	Patents Form No. 23.
35. On hearing by Comptroller. By applicant and by opponent respectively ...	1	0	0	Patents Form No. 9.
36. On application under Section 27 to Comptroller to revoke a patent worked outside the United Kingdom.	2	0	0	Patents Form No. 24.

		Corresponding Form.
	£ s. d.	
37. On hearing by Comptroller. By applicant and by patentee respectively ...	2 0 0	Patents Form No. 9.
38. For altering name or address or address for service in register	0 5 0	Patents Form No. 25.
39. For entry of two addresses for service in register	0 5 0	Patents Form No. 26.
40. On request to enter name of subsequent proprietor in the register of patents...	0 10 0	Patents Form No. 27.
41. On request to enter notice of interest in the register of patents	0 10 0	Patents Form No. 28.
42. On request to enter notification of a document in the register of patonts...	0 10 0	Patents Form No. 29.
43. On request to Comptroller to correct a clerical error:—		
Up to sealing	0 5 0	Patents Form No. 30.
After sealing	1 0 0	,, ,,
44. For certificate of Comptroller under Section 78	0 5 0	Patents Form No. 31.
45. For duplicate of letters patent	2 0 0	Patents Form No. 32.
46. On notice to Comptroller of intended exhibition of an invention under Section 45	0 10 0	Patents Form No. 33.
47. On notice of Order of Court for amendment of specification or rectification of register	0 10 0	Patents Form No. 34.
48. On postal request for printed specification	0 0 8	Patents Form No. 35.
49. Search or inspection fee	0 1 0	
50. For office copies ... every 100 words (but never less than one shilling)	0 0 4	
51. For office copies of drawings, cost according to agreement.		
52. For certifying office copies, MSS. or printed ... ... each	0 1 0	

President of the Board of Trade.

Dated the 17th day of December, 1907.

Approved:

JOSEPH A. PEASE.
T. H. WHITLEY.

Lords Commissioners of His Majesty's Treasury.

THE SECOND SCHEDULE.

Forms.	Page in this Volume.	Corresponding Fee.
Patents Form No. 1.—Application for Patent ...	377	£1
,, No. 1A.—Application for Patent communicated from abroad ...	379	£1
,, No. 1B.—Application for Patent under International and Colonial arrangements	381	£1
,, No. 1C.—Application for Patent of Addition	383	£1
,, No. 1D.—Application for Secret Patent	385	—
,, No. 2.—Provisional Specification...	387	—
,, No. 3.—Complete	388	£3
,, No. 4.—Appeal to Law Officer ...	389	£3
,, No. 5.—Application for extension of Time under Rule 16	390	£2, £4, or £6
,, No. 6.—Application for extension of Time for leaving Complete Specification	391	£2
,, No. 7.—Application for extension of Time for acceptance of Complete Specification	392	£2, £4, or £6
,, No. 8.—Opposition to Grant of Patent	393	10s.
,, No. 9.—Notice that Hearing will be attended	394	£1 or £2
,, No. 10.—Notice of Desire to have Patent sealed	395	£1
,, No. 11.—Application for extension of Time for sealing of Patent, where period allowed for Sealing of Patent will expire after commencement of Act	396	£2, £4, or £6
,, No. 12.—Application where period allowed for the Sealing of the Patent has expired before the commencement of the Act ...	397	£10
,, No. 13.—Application for Certificate of Payment or Renewal	398	£5 to £14
,, No. 14.—Application for Enlargement of Time for Payment of Renewal Fee	399	£1, £3, or £5
,, No. 15.—Application for restoration of a lapsed Patent	400	£20
,, No. 16.—Notice of opposition to an application for restoration of a lapsed Patent	401	£1
,, No. 17.—Application to amend Specification	402	£1 10s. or £3
,, No. 18.—Opposition to Amendment of Specification	403	10s.

Forms.	Page in this Volume.	Corresponding Fee.
Patents Form No. 19.—Application for Grant of Compulsory Licence or Revocation of Patent	404	£1
,, No. 20.—Petition for Grant of Compulsory Licence or Revocation of Patent	405	—
,, No. 21.—Opposition to Petition for Grant of Compulsory Licence or Revocation of Patent	406	£1
,, No. 22.—Application to the Comptroller for an Order for the Revocation of a Patent under sect. 26 of the Act	407	£2
,, No. 23.—Offer to Surrender a Patent	408	£1
,, No. 24.—Application for Revocation of a Patent under sect. 27 of the Act	409	£2
,, No. 25.—Notice of Alteration of Name or Address for Service in Register	410	5s.
,, No. 26.—Request to enter two Addresses for Service in Register ..	411	5s.
,, No. 27.—Request to enter Name upon the Register of Patents ...	412	10s.
,, No. 28.—Request to enter Notice of Interest in the Register ...	413	10s.
,, No. 29.—Request to enter Notification of Document in Register..	414	10s.
,, No. 30.—Request for Correction of Clerical Error	415	5s. or £1
,, No. 31.—Request for Certificate of Comptroller	416	5s.
,, No. 32.—Application for Duplicate of Patent	417	£2
,, No. 33.—Notice of Intended Exhibition of Unpatented Invention	418	10s.
,, No. 34.—Application for Entry of Order of Court	419	10s.
,, No. 35.—On postal request for printed Specification	420	8d.

PATENTS FORM NO. 1.

PATENT.
£1.

PATENTS AND DESIGNS ACT, 1907.

(To be accompanied by two copies of Patents Form No. 2 or of Patents Form No. 3.)

APPLICATION FOR PATENT.

(a) Here insert (*in full*) name, address and calling of applicant or applicants.

(a) I (or we) _____

_____

_____

_____

_____do hereby declare that I am (or we are) in possession of an invention the title of which is (*b*)_____

(b) Insert title of invention.

_____

_____

_____

(c) In the case of more than one applicant, state here who is or are the inventor or inventors.

that (*c*)_____ claim to be the true and first inventor ... thereof; and that the sum is not in use by any other person or persons to the best of my (or our) knowledge and belief; and I (or we) humbly pray that a Patent may be granted to me (or us) for the said invention.

Dated the_____day of_____, 19____

(d) To be signed by applicant or applicants. In the case of a Firm, each member of the Firm must sign.

(*d*)_____

_____

_____

_____

NOTE.—One of the two forms on the back hereof or a separate authorization of agent should be signed by the applicant or applicants.

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

APPENDIX.

(1.) *Where application is made through an Agent* (*Rule* 9).

I (or we) hereby appoint_____

of_____

to act as my (or our) Agent in respect of the within application for a Patent, and request that all notices, requisitions, and communications relating thereto may be sent to such Agent at the above address.

Dated the_____day of_____, 19_____

* To be signed by applicant or applicants.

* _____

(2.) *Where application is made without an Agent* (*Rule* 8).

I (or we) hereby request that all notices, requisitions, and communications in respect of the within application may be sent to

_____at_____

Dated the day of_____, 19_____

† To be signed by applicant or applicants.

† _____

PATENTS FORM NO. 1A.

PATENT.
£1.

PATENTS AND DESIGNS ACT, 1907.

(To be accompanied by two copies of Patents Form No. 2 or of Patents Form No. 3.)

APPLICATION FOR PATENT FOR INVENTION COMMUNICATED FROM ABROAD.

(a) Here insert (*in full*) name, address, and calling of applicant or applicants.

(a) I (or we) _____

of _____

_____ do hereby declare

that I am (or we are) in possession of an invention the title of which is

(b) Here insert title of invention.

(b) _____

_____

_____

(c) Here insert name, address, and calling of communicator.

which invention has been communicated to me (or us) by (c) _____

_____

_____

_____

that I (or we) 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 (or our) knowledge and belief; and I (or we) humbly pray that a Patent may be granted to me (or us) for the said invention.

Dated the _____ day of _____, 19___.

(d) To be signed by applicant or applicants.

(d) _____

_____

_____

_____

NOTE.—One of the two forms on the back hereof or a separate authorization 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* 9).

I (or we) hereby appoint_____

of_____

to act as my (or our) Agent in respect of the within application for a Patent, and request that all notices, requisitions, and communications relating thereto may be sent to such Agent at the above address.

Dated the_____ day of_____, 19___

* To be signed by applicant or applicants.

* _____

_____

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(2) *Where application is made without an Agent* (*Rule* 8).

I (or we) hereby request that all notices, requisitions, and communications in respect of the within application may be sent to_____

_____

_____ at_____

_____

Dated the_____ day of _____, 19___

+ To be signed by applicant or applicants.

† _____

_____

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PATENTS FORM No. 1B.

PATENT.
£1.

PATENTS AND DESIGNS ACT, 1907.

(To be accompanied by two copies of Patents Form No. 3.)

APPLICATION FOR PATENT UNDER INTERNATIONAL AND COLONIAL ARRANGEMENTS.

(a) Here insert (*in full*) name, address, and calling of applicant or applicants.

(*a*) I (or we)

do hereby declare that I (or we) have made applications for protection of

(b) Here insert title of invention.

my (or our) invention of (*b*)

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 my (or our) knowledge, information, and belief, and I (or we) humbly pray that a patent may be granted to me (or us) for the said invention in priority to other applicants, and that such patent shall have the date (*f*)

(f) Here insert the official date of the earliest foreign application.

(*g*)_____

(g) Signature of applicant or of each of the applicants.

_____

_____

NOTE.—One of the two forms on the back hereof or a separate authorization 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* 9).

I (or we) hereby appoint_____

of_____

to act as my (or our) Agent in respect of the within application for a Patent, and request that all notices, requisitions, and communications relating thereto may be sent to such Agent at the above address.

Dated the_____day of_____, 19_____

* To be signed by applicant or applicants.

* _____

_____

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(2) *Where application is made without an Agent* (*Rule* 8).

I (or we) hereby request that all notices, requisitions, and communications in respect of the within application may be sent to_____

_____

_____at_____

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Dated the _____day of _____, 19_____

† To be signed by applicant or applicants.

† _____

_____

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PATENTS FORM No. 1c.

PATENT.
£1.

PATENTS AND DESIGNS ACT, 1907.

(To be accompanied by two copies of Patents Form No. 2 or of Patents Form No. 3.)

APPLICATION FOR PATENT OF ADDITION.

(a) Here insert (*in full*) name, address, and calling of applicant or applicants.

(*a*) I (or we), _____ _____, do hereby declare that I am (or we are) in possession of an invention the title of

(b) Here insert title of invention.

which is (*b*) _____

(c) In the case of more than one applicant, state here who is or are the inventor or inventors.

that (*c*) _____ claim to be the true and first inventor____thereof; that the same is not in use by any other person or persons to the best of my (or our) knowledge and belief, and that the said invention is an improvement in or modification of my (or our) invention for which a patent was applied for on the_____, and numbered , [for which I was / we were the applicant——] [of which I am / we are the patentee——]; and I (or we) humbly pray that a patent may be granted to me (or us) for the said invention, and request that the term limited in such further patent for the duration thereof be the same as that of the original patent, or so much of that term as is unexpired.

Dated the _____day of_____, 19_____.

(d) To be signed by applicant or applicants. In the case of a Firm, each member of the Firm must sign.

(*d*) _____

NOTE.—One of the two forms on the back hereof, or a separate authorization of agent, should be signed by the applicant or applicants.

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

APPENDIX.

(1) *Where application is made through an Agent* (*Rule* 9).

I (or we) hereby appoint _____

of _____

to act as my (or our) Agent in respect of the within application for a Patent, and request that all notices, requisitions, and communications relating thereto may be sent to such Agent_____at the above address.

Dated the_____day of_____, 19____.

* To be signed by applicant or applicants.

* _____

_____

_____

_____

(2) *Where application is made without an Agent* (*Rule* 8).

I (or we) hereby request that all notices, requisitions, and communications in respect of the within application may be sent to_____

at _____

Dated the_____day of_____, 19____.

† To be signed by applicant or applicants.

† _____

_____

_____

_____

PATENTS FORM NO. 1D.

PATENTS AND DESIGNS ACT, 1907.

(To be accompanied by two copies of Patents Form No. 2 or of Patents Form No. 3, and a certificate under Sect. 30 (3)).

APPLICATION FOR A SECRET PATENT.

(a) Here insert (*in full*) name, address, and calling of applicant or applicants.

(a) I (or we)_____

_____

_____

_____

_____, do hereby declare that I am (or we are) in possession of an invention the title of which is (*b*) _____

(*b*) Here insert title of invention.

_____

_____

(*c*) In the case of more than one applicant, state here who is or are the inventor or inventors.

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 my (or our) knowledge and belief; and I (or we) humbly pray that a secret patent may be granted to me (or us) for the said invention.

Dated the_____day of_____, 19____.

(*d*) To be signed by applicant or applicants. In the case of a Firm, each member of the Firm must sign.

(*d*) _____

_____

_____

_____

NOTE.—One of the two forms on the back hereof, or a separate authorization 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* 9).

I (or wo) heroby appoint-- _____

of _____

to act as my (or our) Agent in respect of the within application for a Patent, and request that all notices, requisitions, and communications relating thereto may be sent to such Agent_____at the above address.

Dated the_____day of_____, 19_____.

* To be signed by appiicant or applicants.

* _____

_____

_____

(2) *Where application is made without an Agent* (*Rule* 8).

I (or we) hereby request that all notices, requisitions, and communications in respect of the within application may be sent to_____

at _____

Dated the_____day of _____, 19_____.

† To be signed by applicant or applicants.

† _____

_____

_____

PATENTS FORM NO. 2.

To be issued with Patents Forms Nos. 1, 1A, 1C or 1D.

PATENTS AND DESIGNS ACT, 1907.

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) (I or we)_____

do hereby declare the nature of this invention to be as follows:—(c)

(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 one inch and a half on the left hand part of the paper. The specification and the duplicate thereof must be signed at the end, and dated (thus): "Dated the day of , 19 ."

PATENTS FORM No. 3.

PATENT.
£3.

PATENTS AND DESIGNS ACT, 1907.

Where provisional specification or specifications have been left, quote No. or Nos., and date or dates.
No.
Date

COMPLETE SPECIFICATION.

(To be furnished in Duplicate—one unstamped.)

(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) I (or we)

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) 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 one inch and a half on the left hand part of the paper. The completion of the description should be followed by the words: "Having now particularly described and ascertained the nature of my (or our) said invention and in what manner the same is to be performed, I (or we) declare that what I (or we) claim is:" after which should be written the claim or claims numbered consecutively. The specification and the duplicate thereof must be signed at the end and dated (thus): "Dated the day of , 19 ."

(c)

NOTE.—In the preparation of the claim or claims careful attention should be paid to the terms of Rule 14 of the Patents Rules, 1908. Any unnecessary multiplicity of claims or prolixity of language should be avoided.

PATENTS FORM No. 4.

PATENT.

£3.

PATENTS AND DESIGNS ACT, 1907.

FORM OF APPEAL TO LAW OFFICER.

(a) Here insert (*in full*) name and address of appellant or appellants.

(a) I (or we) _____

_____

hereby give notice of my (or our) intention to appeal to the Law Officer

(b) Here insert "the decision" or "that part of the decision," as the case may be.

from (b) _____

_____

of the _____ of the _____ day of _____

(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.

19 _ whereby he (c) _____

_____

(d) Insert number and year.

No. (d) _____ of the year 1_____ (d)

Signature _____

Date _____

NOTE.—This notice must be sent to the Comptroller-General at the Patent Office, London, W.C., and an unstamped copy of the same to the Law Officers' Clerk at Room 549, Royal Courts of Justice, London.

PATENTS FORM No. 5.

PATENT.

£2, £4, or £6.

PATENTS AND DESIGNS ACT, 1907.

FORM OF APPLICATION FOR EXTENSION OF TIME FOR LEAVING COPY OR COPIES OF THE FOREIGN SPECIFICATION OR SPECIFICATIONS, DRAWINGS OR DOCUMENTS UNDER RULE 16.

I (or we) hereby apply for ——— month extension of time for leaving copy or copies of the foreign specification or specifications, drawings or documents under Rule 16 in respect of application No. ——— dated ———

(a) ———

(a) 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.

PATENTS FORM No. 6.

PATENT.

£2.

PATENTS AND DESIGNS ACT, 1907.

FORM OF APPLICATION FOR EXTENSION OF TIME FOR LEAVING A COMPLETE SPECIFICATION.

I (or we) hereby, in respect of application No. ——————————

dated —————— , apply for one month's extension of time in which to leave a Complete Specification.

(a) To be signed by applicant or applicants or his or their agent.

(a) ——————————

——————————

——————————

To the Comptroller,

The Patent Office, 25, Southampton Buildings,

Chancery Lane, London, W.C.

PATENTS FORM NO. 7.

PATENT.
£2, £4, or £6.

PATENTS AND DESIGNS ACT, 1907.

FORM OF APPLICATION FOR EXTENSION OF TIME FOR ACCEPTANCE OF A COMPLETE SPECIFICATION.

I (or we) hereby apply for ____ month ____ extension of time for the acceptance of the Complete Specification upon application No. ____ dated ____

(a) To be signed by applicant or applicants or his or their agent.

(a) ____

To the Comptroller,

The Patent Office, 25, Southampton Buildings,

Chancery Lane, London, W.C.

PATENTS FORM No. 8.

PATENTS AND DESIGNS ACT, 1907.

PATENT
10*s.*

FORM OF OPPOSITION TO GRANT OF PATENT.

[*To be accompanied by an unstamped copy.*]

* Here state (*in full*) name and address.

* I (or we) _____

_____

_____

_____

hereby give notice of my (or our) 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 the grant is opposed. Where the ground or one of the grounds of opposition is that the invention has been claimed in any complete specification which is or will be of a prior date, the number and date of such prior specification should be stated. Where the person giving notice of an opposition does not desire that the patent should be refused, but merely that the specification should be amended by disclaimer or limitation, it is desirable that the notice of opposition should be accompanied or supplemented as soon as may be by a written statement to that effect indicating as far as can conveniently be done the general nature of the amendments desired and the portions of the earlier specifications if any relied upon as necessitating such amendments.

My (or our) address for service in the United Kingdom is :—

‡ _____

‡ To be signed by opponent or opponents.

To the Comptroller,

The Patent Office, 25, Southampton Buildings,

Chancery Lane, London, W.C.

PATENTS FORM NO. 9.

PATENT.

£1 or £2.

PATENTS AND DESIGNS ACT, 1907.

FORM OF NOTICE THAT HEARING OF OPPOSITION BEFORE THE COMPTROLLER WILL BE ATTENDED.

(a) Here insert (*in full*) name and address.

(a) I (or we) _____

hereby give notice that the hearing in reference to _____

_____ will be attended by myself (or ourselves) or by some person on my (or our) behalf.

(b) Signature.

(b) _____

To the Comptroller,

The Patent Office, 25, Southampton Buildings,

Chancery Lane, London, W.C.

PATENTS FORM NO. 10.

PATENT.
£1.

PATENTS AND DESIGNS ACT, 1907.

FORM OF NOTICE OF DESIRE TO HAVE PATENT SEALED.

(a) Here insert name of applicant or applicants.

(a) I (or we)_____desire to have a patent sealed on my (or our) Application No._____ of 19____, and I (or we) hereby transmit the prescribed fee on sealing, and request that the following may be entered on the Register as my (or our) address for service:—

_____

_____

(b) Signature of applicant or applicants or his or their agent.

(b)_____

_____

To the Comptroller,

The Patent Office, 25, Southampton Buildings,

Chancery Lane, London, W.C.

PATENTS FORM No. 11.

PATENT.

£2, £4, or £6.

PATENTS AND DESIGNS ACT, 1907.

FORM OF APPLICATION FOR EXTENSION OF TIME FOR THE SEALING OF A PATENT WHERE THE PERIOD ALLOWED FOR THE SEALING OF THE PATENT WILL EXPIRE AFTER THE COMMENCEMENT OF THE ACT.

I (or we) hereby apply for ——— month's extension of time for the sealing of a patent upon Application No. ——, dated ———

The circumstances and grounds upon which this extension is applied for are as follows (*a*) :—

(*a*) The circumstances and grounds must be stated in detail.

———

———

———

———

———

———

———

(*b*) ———

———

———

(*b*) To be signed by the applicant or applicants, or his or their agent.

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS FORM No. 12.

PATENT.
£10.

PATENTS AND DESIGNS ACT, 1907.

FORM OF APPLICATION FOR EXTENSION OF TIME FOR THE SEALING OF A PATENT WHERE THE PERIOD ALLOWED FOR THE SEALING OF THE PATENT HAS EXPIRED BEFORE THE COMMENCEMENT OF THE ACT.

I (or we) hereby apply for an extension of time not exceeding three months after the commencement of the Act for the sealing of a patent 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.

———

———

———

———

———

(*b*) To be signed by the applicant or applicants, or his or their agent.

(*b*) ———

———

———

To the Comptroller,

The Patent Office, 25, Southampton Buildings,

Chancery Lane, London, W.C.

PATENTS FORM No. 13.

PATENT.
£5 to £14.

[When stamped this Form must be sent at once to the Patent Office.]

PATENTS AND DESIGNS ACT, 1907.

APPLICATION FOR CERTIFICATE OF PAYMENT OR RENEWAL.

I (or we) 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.

It is requested that the address for service of the patentee in the United Kingdom shall be:—

_____

Name† _____

Address _____

† Here insert name and full address to which certificate is to be sent.

To the Comptroller,

The Patent Office, 25, Southampton Buildings,

Chancery Lane, London, W.C.

[This part of the Form to be filled in at the Patent Office.]

CERTIFICATE OF PAYMENT OR RENEWAL.

Letters Patent No. _____ of 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 and Designs Act, 1907.

Seal.

The Patent Office, London.

PATENTS FORM NO. 14.

PATENT.

£1, £3, or £5.

PATENTS AND DESIGNS ACT, 1907.

FORM OF APPLICATION FOR ENLARGEMENT OF TIME FOR PAYMENT OF RENEWAL FEE.

I (or we) hereby apply for an enlargement of time for ——— month in which to make the ——— payment of ———

upon my (or our) Patent, No. ——— of 1——

(*b*) Here insert name and full address to which receipt is to be sent.

(*b*) ———

———

———

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS FORM No. 15.

PATENT.

£20.

PATENTS AND DESIGNS ACT, 1907.

FORM OF APPLICATION FOR THE RESTORATION OF A LAPSED PATENT UNDER SECTION 20 OF THE ACT.

I (or we) hereby apply for an Order of the Comptroller for the restoration of the patent granted upon Application No. _____ dated _____.

The circumstances which have led to the omission of the payment of the *fee* of (*a*) _____ on or before the (*b*) _____ are as follows:—(*c*) _____

(*a*) State amount of fee.
(*b*) State last day when fee was due.
(*c*) The circumstances must be stated in detail.

(*d*) _____

(*d*) To be signed by the applicant or applicants.

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS FORM No. 16.

PATENTS AND DESIGNS ACT, 1907.

PATENT.
£1.

FORM OF NOTICE OF OPPOSITION TO AN APPLICATION FOR THE RESTORATION TO A LAPSED PATENT.

[*To be accompanied by an unstamped copy.*]

* Here state (*in full*) name and address of opponent or opponents.

* I (or we) _____

_____

_____

hereby give notice of opposition to the application for restoration of the patent granted upon application No. _____ dated _____

† Here state reason of opposition.

for the following reasons :—† _____

_____

_____

_____

_____

_____

_____

My (or our) address for service in the United Kingdom is :— _____

_____

‡ To be signed by the opponent or opponents.

‡ _____

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS FORM No. 17.

PATENT.
£1 10*s.*
or £3.

PATENTS AND DESIGNS ACT, 1907.

FORM OF APPLICATION FOR AMENDMENT OF SPECIFICATION OTHERWISE THAN UNDER RULE 33.

* Here state (*in full*) name, and address of applicant or patentee.

* I (or we) _____

_____

_____

_____

_____

seek leave to amend the specification of Letters Patent No._____ of 1_____, as shown in red ink in the certified copy of the original specification hereunto annexed.

† These words are to be struck out when Letters Patent have not been sealed.

† I (or we) declare that no action for infringement or proceedings before the Court for the revocation of the Letters Patent in question is pending.

‡ Here state reasons for seeking amendment: and where the applicant is not the patentee, state what interest he possesses in the Letters Patent.

My (or our) reasons for making this amendment are as follows ‡

_____

_____

_____

_____

_____

My (or our) address for service in the United Kingdom is:—

§ To be signed by applicant or patentee.

§_____

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. *See* section 21 of the Act.

PATENTS FORM No. 18.

PATENT.
10*s.*

PATENTS AND DESIGNS ACT, 1907.

FORM OF OPPOSITION TO AMENDMENT OF SPECIFICATION.

[*To be accompanied by an unstamped copy.*]

* Here state (*in full*) name and address of opponent.

* I (or we) _____

_____

_____

_____

_____

_____

hereby give notice of opposition to the proposed amendment of the specification of Letters Patent No. _____ of 1 _____ for the following reason : † _____

† Here state reason of opposition.

_____

_____

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_____

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_____

My address for service in the United Kingdom is :—

‡ To be signed by opponent or opponents.

‡ _____

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS FORM No. 19.

PATENT.
£1.

PATENTS AND DESIGNS ACT, 1907.

FORM OF APPLICATION FOR GRANT OF COMPULSORY LICENCE OR REVOCATION OF PATENT UNDER SECTION 24 OF THE ACT.

[*To be accompanied by an unstamped copy.*]

* Here state (*in full*) name and address of applicant or applicants.

* I (or we) _____

_____

_____

hereby request you to bring to the notice of the Board of Trade the accompanying petition for the grant of a licence to me (or us) by †

† Here state name and address of patentee, and number and date of his patent.

_____

_____

_____

_____

_____

My (or our) address for service in the United Kingdom is:—

‡ To be signed by applicant or applicants.

‡ _____

_____

NOTE.—The petition must clearly set forth the facts of the case and be accompanied by an examined copy thereof. *See* Patents Form No. 20.

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London. W.C.

PATENTS FORM No. 20.

PATENTS AND DESIGNS ACT, 1907.

FORM OF PETITION FOR GRANT OF COMPULSORY LICENCE OR REVOCATION OF PATENT.

To the BOARD of TRADE.

(a) Here insert (*in full*) name, address, and calling.

(b) Here insert title of invention.

(c) Here state fully the nature of petitioner's interest.

(d) Here state fully in detail the circumstances of the case under section 24 of the 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.

(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 69.

(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.

(g) Signature.

THE PETITION of (*a*) _____, of _____ in the county of _____, being a person interested in the matter of this petition as hereinafter described :—

SHEWETH as follows :—

1. A patent date _____ No. _____ was duly granted to _____ for an invention of (*b*) _____

2. The nature of my (or our) interest in the matter of this petition is as follows :—(*c*) _____

3. (*d*) _____

The evidence (which I (or we) 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 the reasonable requirements of the public with respect to the invention patented as above stated have not been satisfied.

Your petitioner therefore pray that an order may be made granting to him (or them) a compulsory licence on the terms following, viz. :—(*f*) _____

or in the alternative that the said patent may be revoked.

(*g*) _____

NOTE.—In pursuance of the requirements of Rule 69, 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.

PATENTS FORM No. 21.

PATENT.

£1.

PATENTS AND DESIGNS ACT, 1907.

FORM OF OPPOSITION TO PETITION FOR GRANT OF COMPULSORY LICENCE OR REVOCATION OF PATENT UNDER SECTION 24.

(*a*) Here state (*in full*) name and address of opponent or opponents.

(*a*) I (or we) _____

_____

_____

_____

hereby give notice of opposition to the petition of _____

_____

_____

_____

for the grant of a compulsory Licence under Patent No. _____ of 1___ , or in the alternative, for the revocation of the said patent. The grounds upon which I (or we) oppose the said application are as follows, viz.:—(*b*)

(*b*) Here state fully the grounds of opposition.

(*c*) To be signed by the opponent or opponents.

(*c*) _____

NOTE.—In pursuance of the requirements of Rule 70, 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.

PATENTS FORM NO. 22.

PATENT.

£2.

PATENTS AND DESIGNS ACT, 1907.

FORM OF APPLICATION TO THE COMPTROLLER FOR AN ORDER FOR THE REVOCATION OF A PATENT UNDER SECTION 26 OF THE ACT.

* Here state (*in full*) name and address of applicant, or applicants, for revocation.

* I (or we)_____

_____

_____

_____

hereby apply for an Order for the revocation of the patent granted upon Application No. dated_____

† The ground or grounds of an application for revocation under section 26 of the Act must be any one or more of the grounds on which the grant of the patent might have been opposed. Where the ground or one of the grounds of opposition is that the invention has been claimed in any complete specification which is or will be of a prior date, the number and date of such prior specification should be stated.

on the following grounds: †_____

_____

_____

_____

_____

_____

‡ If such an action is pending in any Court the application cannot be made without the leave of the Court.

No action‡ for infringement or proceedings for the revocation of the patent are pending.

My (or our) address for service in the United Kingdom is:_____

_____

_____

§_____

§ To be signed by the applicant, or applicants, for revocation.

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS FORM No. 23.

PATENT.

£1.

PATENTS AND DESIGNS ACT, 1907.

FORM OF OFFER TO SURRENDER A PATENT UNDER SECTION 26 OF THE ACT.

* Here state (*in full*) name and address of patentee or patentees.

* I (or we) _____

_____

_____

_____

hereby offer to surrender the patent granted upon Application No. _____ dated _____.

† If any action or proceedings are pending, state what is their nature.

No action † for infringement or proceedings for the revocation of the patent are pending.

My (or our) reasons for making this offer are as follows: _____

_____

_____

My (or our) address for service in the United Kingdom is: _____

_____

_____

‡ To be signed by the patentee or patentees.

‡ _____

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS FORM NO. 24.

PATENT.
£2.

PATENTS AND DESIGNS ACT, 1907.

FORM OF APPLICATION FOR REVOCATION OF A PATENT UNDER SECTION 27 OF THE ACT.

* Here state (*in full*) name and address of applicant, or applicants, for revocation.

* I (or we)_____

hereby apply for the revocation of Letters Patent No._____of 1_____on the ground that the patented article (or process) is manufactured [or carried on] exclusively or mainly outside the United Kingdom.

My (or our) address for service in the United Kingdom is:_____

† To be signed by applicant, or applicants, for revocation.

†_____

To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS FORM NO. 25.

PATENT.
5s.

PATENTS AND DESIGNS ACT, 1907.

FORM OF NOTICE FOR ALTERATION OF A NAME OR AN ADDRESS OR AN ADDRESS FOR SERVICE IN REGISTER OF PATENTS.

In the matter of Patent No. ———

of ———

(a) Here state (*in full*) name or names and address of applicant or applicants.

(a) I (or we) ———

———

———

———

———

hereby request that ——— address [or ——— address for service] now

(b) Here insert full address.

upon the Register of Patents may be altered to (b) ———

———

———

———

(c) Signature of applicant or applicants.

(c) ———

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS FORM NO. 26.

PATENT.

5s.

PATENTS AND DESIGNS ACT, 1907.

FORM OF REQUEST FOR ENTRY OF TWO ADDRESSES FOR SERVICE IN REGISTER OF PATENTS.

In the matter of Patent No. _____

of _____

(a) Here state (*in full*) name or names and address of applicant or applicants.

(a) I (or we) _____

hereby request that the two following addresses for service may be entered in the Register of Patents:—

(b) Here insert full addresses.

(1) _____

(2) _____

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS FORM No. 27.

PATENTS AND DESIGNS ACT, 1907.

PATENT.

10*s*.

FORM OF REQUEST TO ENTER NAME OF PROPRIETOR UPON THE REGISTER OF PATENTS.

(*a*) Here insert (*in full*) name, address, and calling.

(*a*) I (or we)_____

hereby request that you will enter my (or our) name (or names) in the Register of Patents as proprietor of Patent No.____ of 1_____, granted to (*b*)

(*b*) Here give name and address of person to whom patent was granted.

(*c*) Here insert title of the invention.

the title of which is (*c*)

(*d*) 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.

I (or we) claim to be so entitled by virtue of (*d*)_____

(*e*) Here insert the nature of the document.

And in proof whereof I (or we) transmit the accompanying (*e*)_____ with an attested copy thereof.

My (or our) address for service in the United Kingdom is:—

(*f*) Signature.

(*f*)_____

(*g*) Here state in what capacity the signatory is acting.

(*g*)_____

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS FORM NO. 28.

PATENT.
10*s*.

PATENTS AND DESIGNS ACT, 1907.

FORM OF REQUEST TO ENTER IN THE REGISTER OF PATENTS A NOTICE OF AN INTEREST IN A PATENT.

(*a*) Here insert (*in full*) name, address, and calling.

(*a*) I (or we) _____

_____

_____

hereby request that you will enter in the Register of Patents a notice of the following interest in a patent :—

(*b*) Here insert the nature of the claim, whether by way of Mortgage Licence or otherwise.

I (or we) claim to be entitled (*b*) _____ to an interest in Patent No. _____ of 1 ____, granted to (*c*) _____

(*c*) Here give name and address of person to whom patent was granted.

_____

_____

(*d*) Here insert title of the invention.

the title of which is (*d*) _____

_____

_____

(*e*) 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 (*e*) _____

_____

_____

_____

_____

_____

_____

(*f*) Here insert the nature of the document.

And in proof whereof I (or we) transmit the accompanying (*f*) _____ with an attested copy thereof.

My (or our) address for service in the United Kingdom is :—

_____

(*g*) Signature.

(*g*) _____

(*h*) Here state in what capacity the signatory is acting.

(*h*) _____

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS FORM NO. 29.

PATENT.

10*s*.

PATENTS AND DESIGNS ACT, 1907.

FORM OF REQUEST TO ENTER NOTIFICATION OF DOCUMENT IN THE REGISTER OF PATENTS.

(*a*) Here insert a description of the nature of the document, giving its date and the names and addresses of the parties thereto.

I (or we) HEREBY transmit an attested copy of (*a*)_____

_____

_____

under Patent No. _____ of I_____, as well as the original document for verification, and I (or we) have to request that a notification thereof may be entered in the Register.

(*b*) Signature.

(*b*) _____

(*c*) Here insert full address of party benefiting under the document.

(*c*) _____

_____

_____

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS FORM NO. 30.

PATENT.

5s. or £1.

PATENTS AND DESIGNS ACT, 1907.

FORM OF REQUEST FOR CORRECTION OF CLERICAL ERROR.

(a) Or errors.

I (or we) hereby request that the following clerical error (a)_____

_____

(b) Here state whether in application, specification, or register.

in the (b)_____

No._____ of 1____, may be corrected in the manner shown in red ink in the certified copy of the original (b)_____

_____

hereunto annexed.

(c) Signature.

(c) _____

(d) Address in full.

(d) _____

_____

_____

To the Comptroller,

The Patent Office, 25, Southampton Buildings,

Chancery Lane, London, W.C.

PATENTS FORM No. 31.

PATENT.
£2.

PATENTS AND DESIGNS ACT, 1907.

REQUEST FOR CERTIFICATE OF COMPTROLLER.

In the matter of the Patent No. _____

of 1_____

_____

I (or we) _____

of _____

hereby request you to furnish me (or us) with your Certificate to the effect that (*a*) _____

_____

_____

_____

(*a*) Here set out the particulars which the comptroller is requested to certify.

(*b*) _____

(*b*) Name and full address to which certificate is to be sent.

Dated the _____ day of _____19 ... .

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS FORM NO. 32.

PATENT.
£2.

PATENTS AND DESIGNS ACT, 1907.

APPLICATION FOR DUPLICATE OF PATENT.

Date _____

I (or we) REGRET to have to inform you that the Patent dated *_____

_____No._____ granted to _____

_____

* Here insert date, number, full name, and address of grantee or grantees.

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 (or we) beg therefore to apply for the issue of a duplicate of such Patent.§ _____

§ Here state interest possessed by applicant, or applicants, in the Patent.

_____

_____

_____

‖ Signature of patentee or patentees.

‖ _____

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS FORM No. 33.

PATENT.

10*s*.

PATENTS AND DESIGNS ACT, 1907.

NOTICE OF INTENDED EXHIBITION OF AN UNPATENTED INVENTION.

* Here state (*in full*) name and address of applicant or applicants.

* I (or we) _____

_____

_____

hereby give notice of my (or our) intention to exhibit a _____

of _____ at the _____

_____

_____

† State "opened" or "is to open."

Exhibition, which † _____ on the _____ day of _____ 19

under the provisions of the Patents and Designs Act, 1907.

‡ This description of invention should be accompanied by drawings if necessary.

‡ I (or we) hereby enclose a brief description of my (or our) invention

_____

_____

§ To be signed by the applicant or applicants.

§ _____

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS FORM No. 34.

PATENT.
10*s*.

PATENTS AND DESIGNS ACT, 1907.

FORM OF APPLICATION FOR ENTRY OF ORDER OF COURT IN REGISTER.

(*a*) Here state (*in full*) name and address of applicant or applicants.

(*a*) I (or we)_____

(*b*) Here state the purport of the order.

hereby transmit an office copy of an Order of the Court with reference to (*b*)

(*c*) Signature.

(*c*)_____

To the Comptroller,
The Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS FORM No. 35.

PATENTS AND DESIGNS ACT, 1907.

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.*

½*d.*

The Comptroller,

The Patent Office,

25, *Southampton Buildings,*

London, W.C.

FORM A.

THE THIRD SCHEDULE.

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 the said invention:

And whereas the said inventor (herein-after 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 always that these letters patent shall be revocable on any of the grounds from time to time by law prescribed as grounds for revoking letters patent granted by Us, and the same may be revoked and made void accordingly: 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 herein-before 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

and

one thousand nine hundred

* Here is to be inserted the name of the comptroller-general.

Comptroller-General of Patents, Designs, and Trade Marks.

Seal of Patent Office.

FORM B.

FORM OF PATENT OF ADDITION.

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 that the said invention is an improvement in or modification of his invention for which a patent was applied for on and numbered and on which a patent (hereinafter called the original patent) has been granted for which he was the applicant (or of which he is the patentee):

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 has requested that the term limited in such patent for the duration thereof be the same as that of the original patent or so much of that term as is unexpired:

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 day of being the date of the said original patent No. , or so much of that term as is unexpired. 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 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 ALWAYS that these letters patent shall be revocable on any of the grounds from time to time by law prescribed as grounds for working letters patent granted by Us, and the same may be revoked and made void accordingly. PROVIDED ALSO, that if the said patentee shall not pay all fees by law required to be paid in respect of the grant of the said original 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 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 herein-before 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.

Seal of Patent Office.

Comptroller-General of Patents, Designs, and Trade Marks.

Dated the 17th of December, 1907.

D. LLOYD GEORGE.

President of the Board of Trade.

RULES REGULATING THE PRACTICE AND PROCEDURE ON APPEALS 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 Act, he shall within 14 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 Chief Clerk, Law Officers' Department, at Room 549, Royal Courts of Justice, London; and when there has been an opposition before the Comptroller, to the opponent or applicant as the case may be.

Comptroller to transmit papers to law officers' clerk.

IV. Upon notice of appeal being filed, the Comptroller shall forthwith transmit to the Chief Clerk, Law Officers' Department, 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 14 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 Chief Clerk, Law Officers' Department, 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 applicant, as the case may be.

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, 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.

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. Conduct money.

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. Amount of costs to be fixed.

XII. If any costs so ordered to be paid be not paid within 14 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 the costs are to be paid may apply to the law officer for an order for payment under the provisions of section 40 of the Act. Order for payment of costs.

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 Law Officers' Department, unless the law officer shall order to the contrary. Documentary evidence.

XIV. Any notice or other document required to be given to the Chief Clerk, Law Officers' Department, under these Rules, may be sent by a prepaid letter through the post. Sending notice or other documents by post.

JOHN L. WALTON,
Attorney-General.

W. S. ROBSON,
Solicitor-General.

Law Officers' Department,
11 December, 1907.

STATUTORY RULES AND ORDERS, 1908.

No. 951.

PATENTS.

REGISTER OF PATENT AGENTS RULES, 1908. DATED DECEMBER 17, 1907.

By virtue of the provisions of the Patents and Designs Act, 1907, hereinafter referred to as the Act, the Board of Trade, hereinafter referred to as the "Board," do hereby make the following Rules:—

1. These Rules may be cited as the Register of Patent Agents Rules, 1908.

Register to be kept.

2. A Register of Patent Agents shall be kept by the Chartered Institute of Patent Agents (hereinafter called the Institute), subject to the provisions of these Rules and to the Orders of the Board, for the registration of patent agents in pursuance of Section 84 of the Act. The Register of Patent Agents existing at the commencement of the Act shall be incorporated with and form part of the Register of Patent Agents under the Act.

Contents of Register.

3. 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 according to the surnames of the registered persons, 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., with such variations as may be required.

Printed copies to be published annually, and to be evidence of contents of Register.

4. The Institute shall cause a correct copy of the Register, but with the names arranged alphabetically, to be printed under their direction and published and placed on sale. Such correct copy shall be printed and published not later than the end of February in each year. 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 or any Act repealed by the Act.

5. The Institute shall continue in office or 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. Registrar.

6. A person who is desirous of being registered in pursuance of the Act, on the ground that prior to the 24th day of December, 1888, he had been *bonâ fide* practising as a patent agent, shall produce or transmit to the Board a statutory declaration in the Form 2 in Appendix A.; provided that the Board 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 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. Registration of persons who were patent agents prior to the passing of this Act.

7. Subject to the provisions of the Act in favour of every person who proves to the satisfaction of the Board that prior to the 24th day of December, 1888, 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. Final qualifying examination for registration.

8. Any person who has been for at least five years engaged as a pupil or technical 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. Exemption of pupils and assistants from preliminary examination.

9. Any person who is not qualified under Rule 8 must, in order to be entitled to present himself for the final qualifying examination, be— Qualifications of persons generally for registration.

A person who has passed one of the preliminary examinations which the Institute shall by regulation prescribe.

10. The Institute shall hold at least once in every year, a final qualifying examination, which shall be the final qualifying examination required under Rules 7 and 8; and the Institute shall, subject to these Rules, have the entire management and control Final qualifying examinations to be held by the Institute.

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 the 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.

Correction of names and addresses in Register.

11. The Registrar shall from time to time insert in the Register any alteration which may come to his knowledge in the name and address of any person registered.

Erasure of names of deceased persons.

12. 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.

13. 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 purpose of this Rule, be deemed to have ceased to practise, and his name may be erased accordingly.

Erasure of name for non-payment of fees.

14. 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 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 (as the case may be) may in each particular case direct.

Registrar to act on evidence.

15. 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.

16. The Board 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.

17. If any registered person shall be convicted in His Majesty's dominions or elsewhere of an offence which, if committed in England, would be a felony or misdemeanor, or after due inquiry, is proved to the satisfaction of the Board 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 may order the Registrar to erase from the Register the name of such person. Provided that no person shall be adjudged by the Board 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 by Board of erased name.

18. Where the Board 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.

The Board may in any case in which they think fit restore to the Register such name or entry erased therefrom either without fee, or on payment of such fee, not exceeding the registration fee, as the Board may from time to time fix, and the Registrar shall restore the name accordingly.

Inquiry by Board of Trade before erasure of name from Register.

19. For the purpose of exercising in any case the powers of erasing from and of restoring to the Register the name of a person, or an entry, the Board may appoint a committee consisting of such persons as they shall think fit. Every application to the Board for the erasure from, or restoration to, the Register of the name of any patent agent shall be referred for hearing and inquiry to the committee, who shall report thereon to the Board, 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.

Restoration by Institute of erased name.

20. 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, 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.

Appeal to Board of Trade.

21. Any person aggrieved by any order, direction, or refusal of the Institute or Registrar may appeal to the Board.

Notice of appeal.

22. A person who intends to appeal to the Board under these Rules (in these Rules referred to as the appellant) shall, within 14 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.

23. 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.

24. 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 appeal.

25. The Board 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.

26. Seven days' notice, or such shorter notice as the Board 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.

27. The appeal may be heard and decided by the Board, and such decision may be given or order made in reference to the subject-matter of the appeal as the case may require.

Fees.

28. The fees set forth in Appendix B. to these Rules shall be paid in respect of the several matters, and at the times and in the manner therein mentioned. The Board may from time to time, alter any of, or add to, the fees payable under these Rules.

Alteration of regulations.

29. 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, and if within twenty-eight days after a copy of any regulation has been so transmitted, the Board 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 signify in manner aforesaid their disapproval thereof, such regulation shall immediately cease to be of any force or effect.

Report to Board of Trade.

30. The Institute shall once every year in the month of March transmit to the Board a report stating the number of applications for registration which have been made in the preceding twelve months, 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 may from time to time require.

Commencement.

31. These Rules shall come into operation from and immediately after the 31st December, 1907, and all general rules relative to the Register of Patent Agents in force on the 31st December, 1907, shall be and are hereby repealed as from that date without prejudice nevertheless to any thing done under such Rules or to any application or other matter then pending.

Dated the 17th day of December, 1907.

D. Lloyd George.
President of the Board of Trade.

APPENDIX A.

Form 1.

Form of Register.

Name.	Designation.	Address.	Date of Registration.

APPENDIX.

Form 2.

Form of Statutory Declaration.

Patents and Designs Act, 1907.

Register of Patent Agents pursuant to Section 84.

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.

Fees.

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. do.	5 5 0
Annual fee to be paid by every registered patent agent.	On or before November 30th of each year, in respect of the year commencing January 1st following.	Do. do.	2 2 0
On entry of a candidate for the final qualifying examination.	At time of entering name.	Do. do.	2 2 0

Dated the 17th day of December, 1907.

D. Lloyd George.
President of the Board of Trade.

RULES OF THE SUPREME COURT (PATENTS AND DESIGNS), 1908. DATED JUNE 3, 1908.

ORDER LIIIA.

Procedure in Actions for Infringements of Patents and under the Patents and Designs Act, 1907.

Definitions.

1. In this Order:—

"The Act" means the Patents and Designs Act, 1907.

"The Comptroller" means the Comptroller-General of Patents Designs and Trade Marks.

"The Court" includes the Judge of the High Court for the time being selected by the Lord Chancellor as the Court for the purpose of hearing appeals and petitions under the Act.

Rules of Supreme Court for time being applicable to proceedings before the Court under the Act.

2. The Rules of the Supreme Court for the time being in force shall apply, so far as may be practicable (unless by the Act or by these Rules otherwise expressly provided), to all proceedings before the Court under the Act. In particular, if the Court is for the time being a Judge of the Chancery Division, the provisions of Order 5, Rule 9 (A) shall apply to all such proceedings, as being business assigned to the Court within the meaning of that Rule.

Extension of term of patent.

3. In the case of Petitions for extension of the term of a patent under Section 18 of the Act, the following Rules shall apply:—

(a) A party intending to apply by Petition under Section 18 of the Act shall give public notice by advertising three times in the "London Gazette" and once at least in a London Daily newspaper, the price of which is not less than one penny.

(b) If the Applicant's principal place of business is situated in the United Kingdom at a distance of 15 miles or more from Charing Cross he shall also advertise once at least in some local newspaper published or circulating in the town or district where such place of business is situated. If the Applicant has no such place of business, then if he carries on the manufacture of anything made under his specification in the United Kingdom at a distance of 15 miles or more from Charing Cross he shall

advertise once at least in some local newspaper published or circulating in the town or district where he carries on such manufacture. If he has no such place of business and carries on no such manufacture in the United Kingdom, then if he resides in the United Kingdom at a distance of 50 miles or more from Charing Cross he shall advertise once at least in some newspaper published or circulating in the town or district where he resides.

(c) The Applicant shall in his advertisements state the object of his Petition and shall give notice of the day (which if the Court is for the time being a Judge of the Chancery Division shall be an ordinary Petition day) on which he intends to apply to the Court for a day to be fixed before which the Petition shall not be in the paper for hearing (hereinafter called "the appointed day"), which first mentioned 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." Every such advertisement shall state an address within the United Kingdom for service on the applicant of any document requiring service under this rule. He shall also give notice that notices of objection must be lodged as hereinafter provided before such day so named in the said advertisements. A copy of such advertisement shall be forwarded by the Applicant to the Solicitor for the Board of Trade at the same time as the first advertisement is sent to the "London Gazette" and the Board of Trade shall thereupon cause such advertisement to be inserted in the three following issues of the Illustrated Official Journal (Patents).

(d) A Petition under Section 18 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" and a copy of the Petition must within the same time be furnished to the Solicitor to the Board of Trade. Such Petition shall be made returnable for the day named in the advertisements.

(e) The Petition must be accompanied by an affidavit or affidavits of advertisements having been published by the Petitioner according to the requirements of Rules (a), (b), and (c) hereof. The statements contained in such affidavit or affidavits may be disputed upon the hearing.

(f) Upon the day named in the advertisements the Petition

shall appear in the Court List, and the Petitioner shall apply to the Court to fix the appointed day.

(g) The Petitioner shall forthwith after the appointed day has been fixed give public notice of the same by advertising once at least in the "London Gazette."

(h) A party presenting a Petition under Section 18 of the Act must lodge as hereinafter provided a copy thereof with two printed copies of the Specification of his Patent.

(i) The Petitioner shall also lodge as hereinafter provided, not less than three weeks before the appointed day, two 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 Court at the hearing. He shall also at the same time furnish three copies of the specification and of the said balance sheet to the Solicitor to the Board of Trade, and shall upon receiving two days' notice give the Solicitor to the Board of Trade 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 or from which the materials for making up the said balance sheet have been derived.

(j) Any person desirous of opposing the prayer of a Petition under Section 18 of the Act shall lodge as hereinafter provided a notice that he intends so to oppose and giving an address in the United Kingdom for service of any document requiring service under this rule. Such person shall at the same time serve upon the Petitioner a copy of such notice. Such notices shall be respectively lodged and served before the day named in the Petitioner's advertisements as that on which he intends to apply to the Court for the appointed day to be fixed.

(k) The Petitioner shall forthwith upon receipt of such notice serve a copy of his Petition upon each person giving such notice.

(l) Every person giving such notice as aforesaid shall within three weeks after service of the Petition upon him lodge as hereinafter provided two copies and serve upon the Petitioner one copy and lodge with the Solicitor of the Board of Trade three copies in writing of Particulars of the Objections upon which he intends to rely against the granting of the Prayer of the Petition.

(m) Any person who shall not within the said three weeks

lodge and serve such Particulars of Objections as aforesaid shall be deemed to have abandoned his opposition.

(n) No person who has delivered such Particulars of Objections shall be entitled to oppose the granting of the Prayer of the Petition on any grounds not stated in such Particulars.

(o) Any person who has lodged notice that he intends to oppose the granting of the Prayer of the Petition shall be entitled to be heard on the application to fix the appointed day, and every person who has lodged and served Particulars of Objection shall be served by the Petitioner with notice of the appointed day.

(p) The Petition shall not be entered in the list for Trial until the expiration of the time limited for the lodging and service of the Particulars of Objections, and shall only be entered for trial on the lodging of an affidavit on behalf of the Petitioner that all persons who have served him with Notice of Intention to Oppose the Prayer of his Petition have been served with copies of the Petition. The Petition shall, if and so long as the Court is a Judge of the Chancery Division and subject to any direction of the Court to the contrary be set down in the same manner as if it had been a witness action assigned to that Judge and shall be marked in the witness list not before the of 190 being the appointed day.

(q) Any persons who have delivered Particulars of Objections shall be entitled, at their own expense, to obtain from the Petitioner copies of the accounts which have been lodged by him.

(r) All Petitions, documents, and copies by these Rules required to be lodged shall if and so long as the Court is a Judge of the Chancery Division be lodged at the Chambers of the Judge, and subject as aforesaid shall be lodged with such person and at such place as the Court may from time to time direct.

(s) The Court 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 18 of the Act as it shall consider to be just and expedient.

(t) The Comptroller if he elects or is directed to appear on the question of granting the prayer of any Petition under Section 18 of the Act shall not be 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 Court.

(u) The Court may in cases where opposition has been entered to the prayer of a Petition under Section 18 of the Act give costs to or against such opponents.

(v) In the event of the Court refusing the prayer of the Petition the Court shall not except under special circumstances give more than one set of costs amongst all the opponents.

(w) The Comptroller-General and the Board of Trade shall not be entitled to any costs on or in relation to their appearance on or opposition to the granting of the prayer of a Petition.

(x) Service of any document requiring service under this rule may be made by enclosing such document in a prepaid registered letter and posting such letter to the person required to be served at his address for service.

Appeals to the Court from decisions of Comptroller under sects. 20, 26 or 27 of the Act.

4. All Appeals to the Court from any decision of the Comptroller under Sections 20, 26, or 27 of the Act shall be brought by Petition presented to the Court within one calendar month of the decision of the Comptroller or within such further time as the Court may under special circumstances allow. Each such Petition 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. It shall also state concisely the grounds of the appeal, and no grounds, other than those so stated, shall, except with the leave of the Court to be given on such terms and conditions as may seem just, be allowed to be taken by the Appellant at the hearing.

5. Every appeal to the Court under Sections 20, 26, or 27 of the Act shall, if and so long as the Court is a Judge of the Chancery Division, and subject to any direction of the Court to the contrary, be set down in the same manner as if it were a Witness Action assigned to such Judge and be heard and disposed of in due course.

6. In all proceedings before the Court under Sections 20, 26, and 27 of the Act, the evidence used shall be the same as that used at the hearing before the Comptroller and no further evidence shall be given except by the leave of the Court on application to be made to the Court at or before the hearing.

Petitions referred by Board of Trade to the

7. In all Petitions referred by the Board of Trade to the Court under Section 24 of the Act the following Rules shall apply:—

(a) No evidence shall be given upon any issues other than those

Court under sect. 24 of the Act.

raised upon the original Petition before the Board of Trade.

(b) Every person who has given notice of opposition in accordance with the Patent Rules, 1908, shall be entitled to be heard on such Petition and the Court may direct the Petition to be served or notice thereof to be given to such other person or persons as may be thought desirable.

(c) The Petition shall if and so long as the Court be a Judge of the Chancery Division and subject to any direction of the Court to the contrary be set down in the same manner as if it were a Witness Action assigned to such Judge.

(d) The Petition shall be heard by the Court as a Witness Action and shall come on in due course in the Witness List.

Court has all powers vested in Comptroller by the Act.

8. In all proceedings before the Court under the Act the Court shall have all the powers by the Act vested in the Comptroller and may make any Order which might, or ought to, have been made by the Comptroller.

Costs in discretion of the Court.

9. In all proceedings before the Court under the Act the costs of and incident thereto, including the costs of hearings before the Comptroller or the Board of Trade, as the case may be, shall be in the discretion of the Court (except as hereinbefore expressly provided in the case of Petitions under Section 18 of the Act).

Defence under sect. 38 of the Act.

10. If a Defendant in an action for infringement of a patent intends to rely as a defence to such action on the insertion by the Patentee in any contract or contracts of any condition which by virtue of Section 38 of the Act is null and void, he shall deliver with his defence full particulars of the dates of and parties to all contracts on which he intends to rely as containing any such condition, and of the particular conditions in any such contracts on which he intends to rely as being by virtue of that section null and void, and save as appears from such particulars, no defence shall be available to him in such action under sub-section (4) of that Section. Provided that particulars delivered under this rule may be from time to time amended by leave of the Court.

Particulars of objections to be delivered with petition under sect. 25 of the Act.

11. Any person presenting a Petition for the revocation of a Patent under Section 25 of the Act must deliver with his Petition Particulars of the Objections to the validity of the patent on which he means to rely and no evidence shall, except by leave of the Court, be admitted in proof of any objection of which particulars are not so delivered.

Respondent to petition under sect. 25 of the Act

12. The Respondent to a Petition for the revocation of a Patent under Section 25 of the Act shall be entitled to begin and give evidence in support of the patent and if the Petitioner gives evi-

dence impeaching the validity of the patent the Respondent shall be entitled to reply. entitled to begin.

13. In an action for infringement of a patent the Plaintiff must deliver with his Statement of Claim particulars of the breaches relied upon. Particulars of breaches in action for infringement.

14. In an action for infringement of a patent the Defendant if he disputes the validity of the patent must deliver with his Defence, Particulars of the Objections on which he relies in support of such invalidity. Particulars of objections in action for infringement.

15. A defendant in an action for infringement of a patent who under Section 32 of the Act counterclaims in the action for the revocation of the patent shall with his counterclaim deliver Particulars of any Objection to the validity of the patent on which he relies in support of his counterclaim. Particulars of objections with counterclaim.

16. Particulars of Breaches shall specify which of the claims in the Specification of the patent sued upon are alleged to be infringed and shall give at least one instance of each type of infringement of which complaint is made. Requisites of particulars of breaches.

17. Particulars of Objections (whether delivered with the Defence in an action for infringement of patent or with a Petition for Revocation under Section 25 of the Act or with a Counterclaim for Revocation under Section 32 of the Act) must state every ground upon which the validity of the patent is disputed and must give such particulars as will clearly define every issue which it is intended to raise. Requisites of particulars of objections.

18. If one of the objections taken in the Particulars of Objections be want of novelty the Particulars must state the time and place of the previous publication or user alleged, and if it be alleged that the invention has been used prior to the date of the patent must also specify the names of the persons or person who are alleged to have made such prior user and whether such prior user is alleged to have continued down to the date of the patent, and if not, the earliest and latest dates on which such prior user is alleged to have taken place, and shall also contain a description (accompanied by drawings if necessary) sufficient to identify such alleged prior user, and if such user relates to any machinery or apparatus shall specify whether the same is in existence and where the same can be inspected.

No evidence at variance with any statement contained in the Particulars shall be given in support of any objection, and no evidence as to any machinery or apparatus which is alleged to have been used prior to the date of the patent and which is in existence at the date of the delivery of the Particulars shall be receivable unless it be proved that the party relying on such prior

user has, if such machinery or apparatus be in his own possession, offered inspection of the same, or if not in his own possession, has used his best endeavours to obtain inspection of the same for the other parties to the proceedings.

Amendment of particulars of breaches and objections.

19. Particulars of Breaches and Particulars of Objection may from time to time be amended by leave of the Court upon such terms as may be just.

Further and better particulars.

20. Further and better Particulars of Breaches or Particulars of Objections may at any time be ordered by the Court.

Evidence not raised in the particulars.

21. At the hearing of any Action, Petition or Counterclaim relating to a patent no evidence shall except by leave of the Court (to be given upon such terms as to the Court may seem just) be admitted in proof of any alleged infringement or objection not raised in the Particulars of Breaches or Objections respectively.

Taxation of costs.

Necessity for certificate as to particulars when action, petition or counterclaim proceeds to trial.

22. On taxation of costs in any action or counterclaim for infringement of patent or in any Petition for Revocation of a patent under Section 25 of the Act or in any Counterclaim for Revocation of a patent under Section 32 of the Act the following provision shall apply, that is to say:—

If the Action Petition or Counterclaim proceeds to trial on any patent no costs shall be allowed in respect of any issues raised in the Particulars of Breaches or Particulars of Objections and relating to that patent to the parties delivering the same respectively except in so far as such Particulars are certified by the Court to have been proven or to have been reasonable and proper without regard to the general costs of the case but subject as aforesaid the costs of the issues raised by the Particulars of Breaches and the Particulars of Objections shall be in the discretion of the Taxing Master.

Application for leave to amend specification under sect. 22 of the Act.

23. Where an application is made by a Patentee for leave to amend his Specification by way of disclaimer under Section 22 of the Act, the following rules shall apply:—

(a) The application shall be made by motion in the proceedings pending before the Court and notice of such motion together with a King's Printers' copy of the Specification showing in red ink the amendment proposed to be made shall be served on the parties to such proceedings and in the first instance upon such parties only.

(b) On the hearing of such motion the Court shall decide whether and on what terms as to costs or otherwise the application shall be allowed to proceed and if the application be allowed to proceed shall give directions

as to whether such application shall be heard on oral or Affidavit evidence and if on Affidavit evidence shall fix the times within which Affidavits shall be filed by the parties respectively and by any other person entitled to be heard under the Act or these rules.

(c) If the application be allowed to proceed the Applicant shall forthwith serve the Comptroller with a copy of the notice of motion together with such copy Specification as aforesaid and also a copy of the order allowing the application to proceed, and also with the name and address of the Applicant's Solicitor and the proposed amendment shall be advertised in the Illustrated Official Journal (Patents), such advertisement stating that any person desiring to oppose the amendment must within fourteen days of the issue of the advertisement give notice in writing of such desire to the Applicant's Solicitor, whose name and address for that purpose shall be also stated in the advertisement. Any person giving such notice shall be entitled to be heard upon the hearing of the motion.

(d) Within seven days after the receipt of any such notice the Applicant shall, if the person giving such notice shall have stated therein an address for service within the United Kingdom, serve on such person a copy of the notice of motion together with such copy of the Specification as aforesaid, and also a copy of the order allowing the application to proceed. Such service may be made by prepaid registered letter sent to such person through the post at his address for service.

(e) In the case of an application directed to be heard on oral evidence the Applicant shall as soon as he shall have complied with the requirements of the preceding rules set the same down for hearing in the witness list and in the case of an application directed to be heard on Affidavit evidence the Applicant shall after such compliance as aforesaid and after the times fixed for filing evidence have expired set the same down for hearing in the non-witness list and the application so set down shall be heard and disposed of in due course.

(f) Where the Court allows a Specification to be amended the Applicant shall forthwith lodge with the Comptroller an office copy of the order allowing such amendment, and the Comptroller shall advertise the same once at least in the Illustrated Official Journal (Patents). He shall also if required so to do by the Court or by the

Comptroller leave at the Patent Office a new Specification and Drawings as amended, the same being prepared as far as may be in accordance with the rules of the Patent Office for the time being in force.

Title. 24. These Rules may be cited as the Rules of the Supreme Court (Patents and Designs), 1908, and shall be read with the Rules of the Supreme Court, 1883.

LOREBURN, C.
ALVERSTONE, C.J.
H. H. COZENS-HARDY, M.R.
ROLAND L. VAUGHAN-WILLIAMS, L.J.
J. GORELL BARNES, P.
R. J. PARKER, J.
CHRISTOPHER JAMES.

The 3rd day of June, 1908.

ASSIGNMENT OF LETTERS PATENT TOGETHER WITH THE BENEFIT OF FUTURE IMPROVEMENTS.

THIS INDENTURE, made the day of , 19 , Parties.
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. WHEREAS the assignor is the true and first inventor Recitals.
of an invention of [*title of invention*]. AND WHEREAS by letters True and first inventor.
patent dated the day of , 19 , 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 19 , subject to the payment of the fees and the conditions for making void the same as therein provided. AND WHEREAS the assignor has agreed Agreement for sale.
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. NOW THIS INDENTURE WITNESSETH, that in pursuance of the Assignment.
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. AND the assignor Covenant as to validity.
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.

Covenant to assign future improvements.

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

Covenant to assign extension of terms of patents.

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.

NON-ASSIGNABLE LICENCE TO USE AND EXERCISE A PATENTED INVENTION WITHIN A DISTRICT.

THIS INDENTURE, made the day of , 19 , 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. WHEREAS, by letters patent dated the day of , 19 , 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. 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. 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. AND it is hereby mutually covenanted and agreed between and by the parties hereto as follows, namely:—

Parties.

Recital of grant of patent.

Recital of agreement for licence.

Grant of licence.

Covenants.

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

Payment of royalties.

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 infringe-

ment, 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.

Parties. THIS INDENTURE, made the day of , 19 , 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.

Recitals. WHEREAS the mortgagor was the true and first inventor of certain improvements in, &c. [*title of invention*].

True and first inventor. AND WHEREAS, by letters patent dated the day of , 19 , 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 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.

Grant of patent.

Request for loan. AND WHEREAS the mortgagor has applied to 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.

Covenant of repayment. NOW 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.

Assignment. AND THIS INDENTURE ALSO WITNESSETH, 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.

Power to mortgagor to use invention.

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.

Licences.

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.

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*).

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. Infringement.

The plaintiff claims an injunction to restrain the defendant from further infringement and £100 damages. Injunction and damages.

Particulars of breaches are delivered herewith.

Place of trial Durham.

(Signed)

Delivered

(*a*) See R. S. C. 1883, Appendix A., part iii. sect. 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.

Infringement. The defendant has infringed and threatens and intends to infringe the plaintiff's patent No. of 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.

Injunction. 1. The plaintiff claims an injunction to restrain the defendant from further infringement.

Damages or account. 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.

Payment of amount found due. 3. That the defendant may be ordered to pay to the plaintiff the amount so found to be due.

Delivery up. 4. That the defendant may be ordered forthwith to deliver up to the plaintiff to be destroyed all machines or apparatus in the possession custody or power of the defendant and made in infringement of the plaintiff's patent.

Costs. 5. 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
[*or* King's Bench Division]
Mr. Justice ——
Writ issued

Between A. B., Plaintiff

and

C. D., Defendant.

Statement of Claim.

1. The plaintiff is the registered legal owner of the letters patent dated the day of 19 and numbered for an invention of improvements in the manufacture of granted for the term of fourteen years from the date thereof to E. F. Title.

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.

3. The said letters patent are good and valid and are and have been ever since the grant thereof of full force and effect. Validity.

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. Infringement.

5. The complete specification of the said letters patent was duly amended by order of the Comptroller-General [*or* the Court] dated the day of 19 . The said complete specification was originally framed in good faith and with reasonable skill and knowledge. Amendment of specification.

Certificate of validity.

6. 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.

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.

Account or damages.

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 or at the plaintiff's option damages for the infringement of the said letters patent.

Delivery up.

3. Delivery up to the plaintiff of all such aforesaid as are in the possession or power of the defendant.

Costs as between solicitor and client.

4. Full costs charges and expenses as between solicitor and client.

Further or other relief.

5. Such further or other relief as the nature of the case may require.

(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.

PARTICULARS OF BREACHES.

Delivered with the Statement of Claim in this Action.

The following are the particulars of breaches of which the plaintiffs complain in this action:—

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 complete specification 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. Infringements at divers times subsequent to the date of plaintiff's 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.

3. The plaintiffs in particular complain of the use by the defendants of bearing the name of and believed by the plaintiffs 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 . Specific infringements.

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. Number and date of other infringements not known to the plaintiff.

(Signed)

Delivered this day of 19 by
of solicitor for the plaintiff.

(*c*) As to the objects and requisites of particulars of breaches, see Vol. I. p. 401.

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

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 plaintiff.

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.

(*d*) R. S. C. 1883, Appendix D., sect. vi.

DEFENCE.

1. The defendant denies the allegations made in paragraphs and of the statement of claim. Denial of certain allegations.

2. The defendants have not infringed or threatened to infringe the said letters patent. Non-infringement.

3. The said letters patent are and always have been void and of no effect for the reasons stated in the particulars of objections delivered herewith. Invalidity.

4. Under and by virtue of the Patents and Designs Act, 1907, the said letters patent were liable to be revoked by the Comptroller on the ground that at and prior to the time of the issue of the writ in this action and at a time not less than four years after the date of the said letters patent and not less than one year after the passing of the said Act the patented articles and process to which the said letters patent relate were manufactured and carried on exclusively or mainly outside the United Kingdom. The said patented articles and process were during the period aforesaid manufactured and carried on if at all [*add particulars: see Vol. I., pp.* 414, 479].

The defendant relies on these matters as a defence to this action under section 28 sub-section 2 of the said Act. Patent liable to revocation by the Comptroller.

5. At the date of the issue of the writ in this action the said letters patent were liable to be revoked as an alternative to the grant of a compulsory licence on the ground that the reasonable requirements of the public with respect to the patented invention had not been satisfied inasmuch as [*add particulars sufficient to define the issues. As to the nature of the facts which should be alleged, see p.* 185, ante].

The defendant relies on these matters as a defence to this action under section 25 sub-section 2 of the Patents and Designs Act, 1907. Or as an alternative to the grant of a compulsory licence.

6. At the date of the issue of the writ in this action a certain contract made the day of between the plaintiff of the one part and of of the other part was in force. The said contract contains the following conditions namely [*set out the conditions. As to the nature of conditions which can be relied on under this plea, see pp.* 196—198, ante].

The defendant relies on these matters as a defence to this action under section 38 sub-section 4 of the Patents and Designs Act, 1907. Existence of a contract containing illegal conditions.

7. The said letters patent were granted after the commencement of the Patents and Designs Act, 1907, and at the date of the alleged infringement complained of in this action the defendant Ignorance of the existence of the patent,

was not aware nor had he reasonable means of making himself aware of the existence of the said letters patent.

The defendant relies on these matters as a defence to the plaintiff's claim for damages under section 33 of the Patents and Designs Act, 1907.

or defendant protected by 7 Edw. 7, c. 29, s. 29.

8. If the issue of the validity of the said letters patent and the infringement thereof are found in the plaintiff's favour inasmuch as the defendant is [Director-General of Ordnance, *or some other person protected by sect.* 29 *of the Act of* 1907, *as to which, see p.* 194, *ante*] and has not used the said alleged invention otherwise than for the services of the Crown the plaintiff is not entitled to damages [*or* an account] or an injunction but only to have the terms of the user of his said alleged invention agreed on with the approval of the Treasury or in default of agreement settled by the Treasury under the provisions of section 29 of the Patents and Designs Act, 1907.

COUNTERCLAIM.

9. The defendant is entitled to present a petition to the Court for revocation of the said letters patent by reason that he is duly authorised so to do by the fiat of His Majesty's Attorney-General dated the day of 19 [*or* by reason that *add facts which bring the defendant within sect.* 25, *sub-sect.* 3 (b) *of the Act of* 1907].

10. The defendant repeats paragraphs 3, 4 and 5 of the Defence.

11. The defendant counterclaims for revocation of the said letters patent.

(Signed)

Delivered the day of 19 by
of solicitor for the defendant.

PARTICULARS OF OBJECTIONS (*e*).

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.

(*e*) As to the objects and requisites of particulars of objections, see Vol. I. p. 422.

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 [*the grantee of the patent*] referred to in the statement of claim was not the true and first inventor of the said invention. — True and first inventor.

2. 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 sect. 25 of the Patents and Designs Act, 1907. — Prior grant.

3. The alleged invention is not the proper subject-matter for a patent, *or* — Subject-matter.

The alleged invention was not subject-matter for valid letters patent by reason of the common and/or public knowledge at the date of the said letters patent. The defendant proposes to refer to all the prior publications set out in paragraph hereof as disclosing part of the public knowledge and to allege that it was common general knowledge that [*add particulars*].

The defendant will contend that the plaintiff's alleged invention is a mere particular application involving no invention of such public or common general knowledge.

4. 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:— — Publication of prior 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.*]

5. The alleged invention was published within this realm prior to the date of the said letters patent by the deposit in the library — Publication by prior books.

of the British Museum and public sales of 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.

6. 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.

7. 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 .

The said machines are still in existence and may be inspected by the plaintiff at [*or, state other facts necessary to satisfy R. S. C., Ord. LIIIA. r.* 18].

Other instances of publication.

8. [*Other instances of prior publication,* e.g., *oral communications.*]

Disconformity.

9. The provisional specification of the alleged invention does not describe the nature thereof and the invention claimed in the said complete specification [*if the specification has been amended add* 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*] and the said further and different invention was not novel at the date when the said complete specification was put in but had been published [*state particulars of publication*] and the said [*grantee of the patent*] was not the first and true inventor thereof.

10. 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) It is not possible by following out the directions given to achieve a useful result.

(b) The claiming clause of the said complete specification does not distinguish matters mentioned in the said specification which are old from matters mentioned in the said specification which are new and claim only the latter. The said matters which are old are [*add particulars*].

(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.

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.:—

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. Portions of invention alleged to have been published.

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 AMENDMENT OF PARTICULARS OF OBJECTIONS BY ADDING FURTHER OBJECTIONS (*f*).

Upon motion, &c., on behalf of the defendants. Let the plaintiff, within six weeks from the date of this order, elect whether he will discontinue this suit, and if the plaintiff shall elect to discontinue this suit, and shall give notice thereof to the defendants within six weeks from the date of this order, refer it to Taxing Master to tax the defendants their costs up to and including the 23rd of February, 1875 [*delivery of the original particulars of objection*], and to tax the plaintiff's costs of this suit subsequently to the said 23rd of February, 1875, to the date of this order, and the Taxing Master is to set off the costs of the plaintiff and of the defendants to be so respectively taxed, and certify to which of them the balance after such set-off is due. And let such balance be paid by the party from whom to the party to whom the same shall be certified to be due. And if the plaintiff shall not give notice to the defendants of his discontinuance of this suit within the time aforesaid, let the defendants be at liberty to add to the particulars of objections to the validity of the plaintiff's letters patent, &c. which have been already delivered by the defendants, the following further objections to be relied on by the defendants at the hearing of this cause, viz.: [*particulars of new objections proposed to be introduced by amendment*]. And let defendants, Moule's, &c. Company, pay to the plaintiff, A. F. Baird, his costs of this application, to be taxed, &c. Liberty to apply.

(*f*) This Order was settled by Jessel, M.R., in *Baird* v. *Moule's Patent Earth Closet Co., Ltd.*, L. R. 17 Ch. D. 139 n.

NOTICE OF MOTION FOR AMENDMENT OF A COMPLETE 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 the complete specification filed in pursuance of the letters patent No. of be amended by way of disclaimer as indicated in red ink on the king's printer's copy of the said specification delivered herewith, 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.

ORDER ALLOWING APPLICATION FOR AMENDMENT OF A COMPLETE SPECIFICATION PENDING ACTION FOR INFRINGEMENT TO PROCEED.

This motion coming before this Court on the day of 19 and upon hearing counsel for the plaintiff and counsel for the defendant and upon reading a king's printer's copy of the complete specification filed in pursuance of letters patent No. of with proposed amendments indicated thereon in red ink this Court doth order that the application of the plaintiff be allowed to proceed and that this motion shall stand for hearing in the [witness *or* non-witness] list on the day of 19 .

And the costs of this motion up to and including this order shall be [*as directed by the Court*] (*g*).

(*g*) The requirements of R. S. C., Ord. LIIIA. r. 23 (c), (d) and (*e*) (see p. 441, *ante*), must be complied with.

ADVERTISEMENT IN THE ILLUSTRATED OFFICIAL JOURNAL (PATENTS) OF APPLICATION FOR LEAVE TO AMEND SPECIFICATION PENDING ACTION FOR INFRINGEMENT.

19 [*add letter and number of action*].

In the High Court of Justice
Chancery Division
Mr. Justice ——.

In the Matter of Letters Patent granted to , and numbered of 19 ,

and

In the Matter of the Patents and Designs Act, 1907.

Whereas A. B. (the patentee) has applied to the Court, under section 22 of the above-mentioned Act, for leave to amend the specification of letters patent No. of 19 , in the manner hereinafter set forth.

And whereas the Honourable Mr. Justice —— has directed that the application shall be allowed to proceed.

Notice is hereby given, in pursuance of rule 23 (c) of the Rules of the Supreme Court (Patents and Designs), 1908, that the said A. B. seeks leave to amend the said specification for "Improvements in, &c." as follows [printed copy of the specification referred to]:—

[*Set out the proposed amendments thus:—*

On page .

Line . By inserting after the word "——" the following: [*add the proposed new matter*].]

And notice is hereby further given that any person desirous of opposing the foregoing amendment must, within fourteen days from the date of this Journal, give notice in writing of such desire to the applicant's solicitors, Messrs. of .

(Signed)
Comptroller-General.

FINAL ORDER FOR AMENDMENT OF COMPLETE SPECIFICATION DURING ACTION OF INFRINGEMENT.

This motion coming on for final hearing in the [witness *or* non-witness] list this day of , 19 , and upon hearing counsel for the plaintiff, counsel for the defendant, counsel for A. B. [*an opponent to the application*], and counsel on behalf of the Comptroller-General of Patents, and upon reading the specification and proposed amendments and the pleadings and particulars in this action, and upon hearing the evidence of the several persons named in the schedule hereto on their examinations taken orally [*or* and upon reading the affidavits of B., C., and D. filed respectively the day of , the day of , and the day of]: it is ordered that the complete specification of letters patent, No. of the year 19 , be amended by [*set out amendments*]. And it is ordered that the plaintiff may within days amend his statement of claim so as to limit this action to the amended specification of the said letters 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 plaintiff to the defendant. And it is ordered that the costs of the defendant of this application, and of and occasioned by such last-mentioned amendment, be his costs in any event, and be borne by the plaintiff. And it is ordered that the plaintiff do pay to the Comptroller-General of Patents his costs of this application. And it is ordered that, in the event of this action proceeding, all other costs be reserved (*h*).

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 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

(*h*) For an order under different circumstances, see Seton.

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.

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 (*i*).

(*i*) For an order under different circumstances, see Seton.

ORDER OF REFERENCE TO INDEPENDENT EXPERT FOR REPORT TO THE COURT DURING ACTION OF INFRINGEMENT.

Badische Anilin und Soda Fabrik v. *Levinstein* (*k*).

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 confined to the repetition of experiments of which evidence has already been given before this Court on behalf of the plaintiff and defendants respectively 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.

(*k*) (1865), 2 R. P. C. 77.

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

Pleadings, &c. the pleadings in the action, the letters patent of the day of 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

Admissions. 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 : This

Action to stand for judgment. 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 continuanco 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 profits made by the defendants respectively. And it is ordered that 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.

Injunction.

Account to be taken.

Delivery up.

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

Appeal.

there shall be no appeal. And 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

Application.

printed or written copies, as they may 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 to make such application to the Court for the disposal of the said notes, and

Certificate of validity.

printed and written copies, as they may think fit. And this Court certifies pursuant to the 35th section of the Patents and Designs Act, 1907, that upon the trial of this action the validity of the said letters patent came in question. And this Court cer-

Certificate as to particulars of breaches.

tifies that in the trial of this action the plaintiffs proved the particulars of breaches delivered by them.

Payment of costs.

And it is 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 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 counsel 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:

This Court doth order that the said judgment be reversed. Judgment reversed.

And it is ordered that the plaintiffs' action do stand dismissed.

And it is ordered that the plaintiffs, B. A., &c., do repay the defendants, I. L., &c., the sum of £ , being the amount of Repayment of costs.

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.

Set-off.

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.

Payment of balance.

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.

CERTIFICATE OF VALIDITY.

I hereby certify, pursuant to the 35th section of the Patents and Designs Act, 1907 (7 Edw. 7, c. 29), that upon the trial of this action, the validity of the letters patent, in the pleadings mentioned, dated the day of , 19 , and numbered , granted to A. B., amended by disclaimer allowed the day of , 19 , and now vested in [*the legal owner*], came into question.

Dated this day of , 19 .

[*Signature of Judge.*]

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 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 infringement of letters patent for the said invention by 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 and 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 injunction 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* constructing *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 sect. 36 of the Patents and Designs Act, 1907, 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 and Designs Acts, 1907, 1908.
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 inter-

fered 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 rule 12 of the Rules of the Supreme Court (Patents and Designs), 1908.

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 Court 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).

Fiat of Attorney-General.

I hereby authorise the presentation to the High Court of Justice of the above-written petition.

(Signed)
Attorney-General.

ROYAL COURTS OF JUSTICE,
, 19 .

MEMORIAL TO THE ATTORNEY-GENERAL FOR HIS FIAT.

In the Matter of Letters Patent granted to A. B., for an invention of [*title*] and numbered of 19
and
In the Matter of the Patents and Designs Acts, 1907—1908.

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. C. D. of has recently commenced an action in the Chancery Division for infringement of the said letters patent No. of 19 against your memorialist. The said action was commenced by writ issued on the day of , 19 , and the index and reference numbers of the said action are 19 —A—No. .

7. Your memorialist desires to apply in accordance with the Rules of the Supreme Court by way of Counterclaim in the said pending action for infringement for the revocation of the said letters patent No. of 19 , under the terms and provisions of sect. 32 of the Patents and Designs Act, 1907, but by reason that he is not entitled to present a petition to the Court for revocation of the said letters patent No. of 19 , under the provisions of sect. 25, sub-sect. 3 (b) of the said Act he is not entitled to apply as aforesaid unless by obtaining your authority he can bring himself within the provisions of sect. 25, sub-sect. 3 (a) of the said Act. It is the intention of your memorialist if authorised by your fiat to present a petition to the Court for revocation of the said letters patent No. of 19 to proceed by way of counterclaim in the said action for infringement under the provisions of sect. 32 of the Patents and Designs Act, 1907 (*l*).

Your memorialist therefore prays that you will be pleased to grant leave to him to present a 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.

ORDER FOR REVOCATION OF LETTERS PATENT.

Upon the petition of S. Z., in the on the day of , 19 , preferred unto this Court, and upon hearing counsel for the petitioner and for the respondent, L. G., on the day of , 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 respondent: this Court doth order that the letters patent No. 4362, A.D. 1882, in the petition mentioned,

(*l*) In addition to the documents referred to, Vol. I., p. 293, a short statement in writing by an expert as to the nature and effect of each of the prior specifications and other publications referred to in the particulars of objections is frequently required by the Law Officers' Department.

granted to L. G., be revoked. And this Court certifies that the respondent's following objections No. , No. , and No. , were proven [*or*, were reasonable and proper]. And it is ordered that the respondent, L. G., pay to the petitioner, S. Z., his costs of the said petition, to be taxed by the taxing master on the higher scale.

SCHEDULE.

EXTENSION OF LETTERS PATENT.

ADVERTISEMENT OF INTENTION TO PRESENT PETITION FOR EXTENSION OF LETTERS PATENT

In the Matter of Letters Patent granted to , of , and bearing date the day of , 19 , and numbered

and

In the Matter of the Patents and Designs Act, 1907.

Notice is hereby given, that it is the intention of , of [*add if such is the case* as assignee of the above patent], to present a petition to His Majesty's High Court of Justice praying that the term of the said letters patent may be extended. And notice is hereby further given, that on the day of next, or on such subsequent day as the Court shall appoint for that purpose, application will be made to the said Court that a day may be fixed before which the petition will not be in the paper for hearing, and any person desirous of being heard in opposition to the said petition must lodge notice of his objection in the Chambers of Mr. Justice on or before the said day of next.

Dated this day of , 19 .

Solicitor for the Petitioner.

NOTICE OF OPPOSITION.

In the Matter of Letters Patent granted to of , and bearing date the day of , 19 , and numbered

and

In the Matter of the Patents and Designs Act, 1907.

Notice is hereby given that C. D. of intends to oppose the petition of A. B. for the extension of the said letters patent returnable the day of next. And notice is hereby further given that is the address for service upon the said C. D. of any documents requiring service upon him in accordance with Rules of the Supreme Court (Patents and Designs), 1908, rule 3 (j).

Dated this day of , 19 .

(Signed)

Solicitor for the said C. D.

ADVERTISEMENT OF DAY BEFORE WHICH THE PETITION SHALL NOT BE IN THE PAPER FOR HEARING, *i.e.*, "THE APPOINTED DAY."

PETITION FOR EXTENSION OF TERM OF PATENT.

In the High Court of Justice.

Mr. Justice ——.

In the Matter of Letters Patent granted to A. B. of , and bearing date the day of , 19 , and numbered

and

In the Matter of the Patents and Designs Act, 1907.

NOTICE is hereby given, that his Lordship Mr. Justice has directed that the matter of the petition of the said A. B., for an extension of the term of the above-mentioned letters patent, be heard not before , the day of , 19 , at half-past ten in the forenoon.

Dated this day of , 19 .

(Signed)

Solicitor for the Petitioner.

PETITION FOR EXTENSION OF LETTERS PATENT.

In the High Court of Justice,

Chancery Division.

Mr. Justice ——.

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

and

In the Matter of the Patents and Designs Act, 1907.

To His Majesty's High Court of Justice.

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:—

Invention. 1. That your petitioner, previously to the grant of the letters patent hereinafter mentioned, invented, after considerable per-

sonal 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.

Grant of letters patent.

2. That His Majesty was graciously pleased, by letters patent bearing date the day of , 19 , to grant unto your petitioner R. R., his executors, administrators, and assigns, the sole privilege and authority to use the said invention within the 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 proposed to take steps to present 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 not sufficient.

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.

Advertisements.

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 Rules of the Supreme Court (Patents and Designs), 1908, in that case made and provided, that it is his intention to apply to this Honourable Court that the said letters patent may be extended for a further term.

Prayer.

Your petitioner therefore humbly prays that the said letters patent may be extended for a further term of fourteen years, or for such other term as to this Honourable Court shall seem fit.

And your petitioner will ever pray.

R. P. U.,
Solicitor for the Petitioner.

ANOTHER FORM.

In the High Court of Justice,
Chancery Division.
Mr. Justice ——.
In the Matter 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.

and

In the Matter of the Patents and Designs Act, 1907.

To His Majesty's High Court of Justice.

THE HUMBLE PETITION of W. M., of Nos. and , in the of , , and of the above-named W. A. M.

SHEWETH:—

Invention.

1. That your petitioner the above-named W. A. M., previously to the grant of the letters patent hereinafter mentioned, invented,

aftor considerable personal application and cost, certain "Improvements in apparatus for consuming smoke, promoting combustion, 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 His 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 patont.

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 per-

fectly 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 said 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 not sufficient.

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 Rules of the Supreme Court (Patents and Designs), 1908, in that case made and provided, that it is their intention to apply to this Honourable Court for a prolongation of the term of sole using and vending the said invention.

Prayer.

Your petitioners therefore humbly pray that the said letters patent may be extended for a further term of fourteen years, or for such other term as to this Honourable Court shall seem fit, and that new letters patent for the said invention may be granted to your petitioners for such term as to this Honourable Court 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.

PARTICULARS OF OBJECTIONS TO EXTENSION OF TERM OF PATENT.

In the High Court of Justice,
Chancery Division.
Mr. Justice ——.
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 Patents and Designs Act, 1907,
and
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.:—

1. The alleged invention was not new at the date of the said letters patent. — Novelty denied.

2. The alleged invention was not useful. — Utility denied.

3. The alleged invention never has been, and is not likely to be, of great advantage to the public. — Merit denied.

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. — Sufficient remuneration.

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. — Laches of petitioner.

6. The petitioner has permitted infringements of the said letters patent, and never brought actions to restrain such infringements. — Infringements.

7. The allegations contained in the said petition are incapable of proof. — Allegations incapable of proof.

Dated this day of , 19 .

Solicitor for .

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