OBSERVATIONS

ON

THE DEFECTS

OF

THE PATENT LAWS

OF THIS COUNTRY;

WITH

SUGGESTIONS FOR THE REFORM OF THEM.

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OBSERVATIONS

ON

THE DEFECTS OF THE PATENT LAWS,

WITH

SUGGESTIONS FOR THE AMENDMENT OF THEM.

THE necessity for some alteration of the Patent Laws of this country has long been felt, and the time seems at length to have arrived when something must be done to satisfy the demands of the public, for such a reform of those laws as will adapt them to the present advanced state of the useful arts.

The difficulty of dealing with this subject has hitherto been the main impediment to this desirable reform; and, in order now to insure the preparation of a useful law respecting patent inventions, it is desirable that the subject should be fully discussed, so that the new law may be made as perfect as practicable.

With this view the writer ventures to submit to the public a few observations respecting the defects of the existing laws, and the provisions required for remedying the evils which they produce.

And, firstly, with respect to the Defects of the existing Law and Practice.

The objections to the present state of the patent law have regard—to the complicated and dilatory proceedings *which must be taken [*2] to procure patents;—to the enormous cost of such grants; and—to the inefficiency of the law for the protection of the rights either of patentees or the public.

The report of the Privy Seal Commission, published some months ago, and the subsequent public discussions respecting the complex procedure for obtaining a patent, render it unnecessary to make any detailed statement of the numerous steps which must be taken before an inventor can obtain a grant of the sole use of his invention.

The proceedings may, however, be shortly stated as being,—a petition for the patent, verified by a solemn declaration, and left at the Home Office; a reference of the petition by the Secretary of State to the Attorney or Solicitor General; a report by one of those officers to the

Crown in favour of the grant; a warrant under the sign manual to the Attorney or Solicitor General to prepare a bill for the patent; the preparation of the bill and two transcripts or copies of it in the Attorney General's Office, called the Patent Bill Office; the conversion of one of these copies of the bill into the Queen's Bill, upon its receiving the sign manual; the first bill being deposited in the Signet Office, a second copy is transformed into the Signet Bill by adding a few formal words to it, and sealing it with the seal of the Secretary of State; the Signet Bill being received in the Privy Seal Office, the remaining copy of the bill is in a similar manner converted into the Privy Seal Bill; the Privy Seal Bill is then delivered to the Lord Chancellor, and a patent made in the form contained in the bill.

The three bills which have been mentioned are in fact to this effect—that the Queen's Bill commands A., the signet officer, to command B., the Lord Keeper of the Privy Seal, that he command C., the Lord Chancellor, to make the intended grant. A. then issues the required command to B., who, in his turn, issues a command to C., *and C. then directs his officers to prepare and seal a patent.

[*3]

It is not very certain when this complex machinery first had its origin, but at present it is regulated, and indeed required by a statute of the twenty-seventh year of the reign of Henry the Eighth.

Sir Edward Coke, in his Second Institute,(a) speaks exultingly of the provisions of our law in this respect, and says, "such was the wisdom of prudent antiquity, that whatsoever should passe the Great Seale should come through so many hands, to the end that nothing should passe that Great Seale, that is so highly esteemed and accounted of in law, that was against law or inconvenient; or that anything should passe from the king anywayes, which he intended not, by undue or surreptitious meanes."

At the time when these observations of our great legal commentator were written, it seems to have been thought that the public security against the making of improper grants by the crown was most effectually provided for by requiring that this exercise of the prerogative should be subject to the supervision of a large number of officers.

In the present day, however, the division of responsibility amongst a large number of persons appears to produce no good result, and the best mode of providing for the security of the public is by casting responsibility upon persons of high character and attainments, who can be made accountable in their places in Parliament for their official acts.

It appears, from the language of the act of the twenty-seventh of Henry the Eighth, to be very probable that the complicated machinery which has been mentioned was in former times found to be burthensome to suitors for crown grants, for it shows that the object of the statute was to prevent the officers being deprived of their fees by the making of such grants without passing the bills through *the Signet and Privy Seal offices according to ancient custom.

[*4]

(a) Commentary on the 28th Edw. 1, stat. 3, c. vi. (*Articuli super Chartas,*) 2 Inst. p. 555.

The natural consequence of using such cumbrous machinery for making patent grants to inventors has been that the proceedings are treated as matters of course at almost every stage, the only exceptions being that the Attorney and Solicitor-General exercise a controlling power in opposed cases, and if, when the proceedings have arrived at the last stage, the sealing of a patent be opposed, the Lord Chancellor decides whether it is just that the patent should be sealed or not.

The first and most obvious mode of reforming this unnecessarily complicated procedure seems to be, to abolish every part of it which is not really useful; and the want of utility is an objection which applies to every part except the proceedings before the Attorney or Solicitor-General and the Lord Chancellor.

Although these useless forms are observed with respect to patents for inventions, there are many patents of other descriptions—and, to say the least, of quite as important a character—which pass the Great Seal without the authority of either a privy seal bill, a signet bill, or queen's bill; and it is sufficient to mention, as examples, commissions of the peace, commissions of assize and patents of precedence.

The Lord Chancellor has full power of his own authority to issue letters-patent under the great seal (commonly called a commission,) appointing such persons to be justices of the peace, as his Lordship may think fit; and in many other cases may, after taking her majesty's pleasure, he may issue patents without further warrant or authority.

But even if there were no precedents for dispensing with the useless forms which have been mentioned, the retention of them would be utterly indefensible for several reasons.

No security or benefit accrues to the public from these forms, for the officers preparing them issue them as of course, and the chances of error are greatly increased by *the unnecessary multiplication of documents which are in effect copies of each other. [*5]

Her majesty's labours are unnecessarily increased by being compelled to sign her name twice for every patent granted for an invention, and the completion of a patent is occasionally so much delayed as to render it worthless when obtained.

The cost of obtaining a patent is also greatly increased, and indeed nearly doubled by these superfluous forms. In obtaining a patent extending to England and the Colonies in an unopposed case by a single person, the expense of these forms amounts to about £45: 19s.;(a) and

(a) The fees are as follows:

	Patent for England. £ s. d.	Extra for the Colonies. £ s. d.
Reference Home Office	2 2 6	
Warrant do.	7 13 6	1 7 6
Patent Bill Office	15 16 0	0 2 6
Queen's Bill	7 13 6	1 7 6
Signet Bill	4 7 0	0 13 6
Privy Seal Bill	4 2 0	0 13 6
	£41 14 6	£4 4 6

if there be two patentees, the useless expense amounts to about £61: 18s. 6d.(a)

The extra fees paid at the Home Office, the Signet Bill Office, and the Privy Seal Office, shows most conclusively indeed that the sums extracted from the pockets of poor inventors at those offices can never have been intended to bear any proportion to the work to be done, unnecessary
[*6] *as it is. The intention seems rather to have been to impose a tax, two persons being deemed able to pay more than one.

Thus at the Home Office, the extra fees payable for every additional name amount to £2: 15s.; the name in fact giving hardly any, if any, additional trouble.

At the Signet Office where a patent (not extending to the Colonies) is to be granted to one person, the fee is £4: 7s.; but if the patent is to be granted to more than one person, a further fee of £5: 18s. 6d. is demanded for every additional name (however numerous they may be), although no extra trouble is occasioned beyond writing the additional name once or twice. And in the Privy Seal Office, the fees demanded for additional names are the same as in the Signet Office, and bear the same proportion to the services performed.

Many of these fees, including all those received in the Privy Seal Office, and a considerable portion of those received in the Signet Office, are now paid into the Exchequer by the officers who receive them; and there can therefore be no difficulty in at once abolishing the unnecessary forms in respect of which they are paid.(b)

The observations which have been made respecting the antiquated and useless forms of passing patents for inventions through the Home, Signet and Privy Seal Offices apply, in fact, to many other bills for crown grants which pass through those offices; and there can be little doubt that the mode of making such grants requires a thorough revision, so as to make it better adapted to the exigencies of the times.

Many of the necessary reforms have been pointed out *in the
[*7] Report on the Signet and Privy Seal Offices, which has already been mentioned; but it may admit of great doubt whether that inquiry (useful, no doubt, as far as it proceeded) was not of too limited a description, and whether it ought not to have been extended to the modes of passing grants under the Exchequer seal, and all other grants made

(a) The extra fees are paid as follows:

At the Home Office (for the Queen's Warrant)	1	7	6
Patent Bill Office	1	7	6
Home Office (for the Queen's Bill)	1	7	6
Signet Office	5	18	6
Privy Seal Office	5	18	6
	£15	19	6

(b) To the fees here mentioned to be paid for useless forms may be added £17: 13s. 4d. of the fees paid at the Patent Office (where the patents are actually prepared) to the holder of a sinecure office, for every patent granted to a single person. And of the fees paid at the same office a further sum of £6: 8s. 4d. is paid into the Consolidated Fund, and about £3: 5s. 6d. into the Fee Fund of the court.

by public departments, whether under the provisions of special acts of parliament or otherwise.

The division of crown grants, according to their importance to the State, into those which should pass the Great Seal and those which should pass the Privy Seal, would seem to be very natural and useful; and several departments of our state machinery might be very much simplified, by providing that all crown grants should pass under the one of those seals.

If the Lord Keeper of the Privy Seal were to be made a judge of the Court of Chancery, the grants under the Privy Seal might be recorded in that court (which is in fact the great record office of the kingdom), in the same way as those which pass the Great Seal, and thus all the records of crown grants would be collected in one place.(*a*)

If all the useless forms and proceedings for obtaining patents for inventions which have been mentioned were abolished, there would still remain the proceedings before the Attorney or Solicitor General and those in the Court of Chancery.

The petition of an inventor might then be to her Majesty in Chancery, and be referred by the Lord Chancellor to the Attorney or Solicitor General to report upon, in like manner as at present, and the patent might be prepared *and sealed, upon a report being made in favour of the petitioner. [*8]

In this way the Attorney or Solicitor General might be enabled to exercise precisely the same supervision over patent grants for inventions as at present, and parties would have the same right of appeal to the Lord Chancellor as they now possess.

But the question which seems to arise is, whether the petitions of inventors for patents should still continue to be referred to the Attorney and Solicitor-General.

Many persons contend that this duty ought to be transferred to some other officer, firstly, because the professional and official duties of the Attorney and Solicitor General prevent them from giving sufficient attention to the subject; and, secondly, because it sometimes happens that an Attorney or Solicitor-General has not the requisite knowledge of practical science to enable him to determine the conflicting claims of parties soliciting and opposing such grants.

In order to determine the validity of these objections, it is of importance to inquire what the Attorney or Solicitor-General does when he disposes of a petition referred to him.

If the application of an alleged inventor for a patent be not opposed, a report is made in his favour by the Attorney or Solicitor-General, as a matter of course, without any examination into the nature of the invention, or the merits of the petitioner.

If the petition for a patent be opposed, the only question which the Attorney or Solicitor-General decides between the parties is, whether the

(*a*) It may perhaps deserve consideration whether making the Lord Keeper of the Privy Seal a judge of the Court of Chancery, having co-ordinate jurisdiction with the Lord Chancellor in that court, would not be equivalent in effect to abolishing an office deemed by many to be useless, and at the same time relieve the Lord Chancellor of many of the duties with which he is overburthened.

inventions of the petitioner and the opposing party are the same or different.

If he thinks that they are different, he will report in favour of the petitioner as a matter of course; but if he should think the inventions to be the same, he makes no report: and if any part of the petitioner's in-
[*9] vention appear *to be the same as anything claimed by the opposing party, the petitioner will only obtain a report in favour of a patent for such of his claims as do not conflict with any of those of the opposing party.

This is the practice which has, it is believed, been observed by the law officers of the crown for many years, and the effect of it is that in every unopposed case there is nothing to decide, the patent passing as of course; and that in every opposed case a question respecting the similarity of opposing claims only is decided, and a report made or withheld (as to the whole or any partof an invention for which a patent is sought) upon that ground alone.

It is true that, by a regulation made by Lord Campbell when he was Attorney-General, the petitioner for a patent in every *opposed* case was compelled to deposit an outline description of his invention with the Attorney or Solicitor-General; and this, by a recent order of Sir J. Romilly when Attorney-General, was in effect extended to unopposed cases. These orders no doubt impose upon the Attorney and Solicitor-General the duty of seeing that the descriptions of inventions deposited by petitioners are sufficiently definite, and these deposits are, as far as they go, useful, as tending to protect other inventors against fraudulent claims. But these regulations do not make it necessary for the law officers of the crown to decide anything more between petitioners for patents and their opponents than was done according to the previous practice.

The consequence of the mode of administering the law, which has been described, is that, if two parties claim the invention, and each opposes the grant of a patent to the other, no patent will be granted to either; and each of them will be refused a grant, although the one of them may really have a better claim than his antagonist, either by reason of priority of application or otherwise.

One great source of difficulty in performing the duty cast upon the law
[*10] officers of the crown to decide between *opposing inventors arises from the necessity of hearing each party in private, and in the absence of the other. If the parties could be heard in each other's presence, in all probability neither of them would be able to mislead the Attorney or Solicitor-General; but, at a private hearing, a party may make what assertions he pleases respecting the nature of his invention; and if the Attorney or Solicitor-General happens not to be familiar with the branch of practical art to which it relates, he may very easily be grossly deceived.

And it is doubtless a grave objection to the administration of the law, that a real inventor has no means of vindicating his claim to a patent before the law officers of the crown against the pretensions of a charlatan, who may have surreptitiously obtained a knowledge of the invention.

But the truth is that the machinery for deciding safely upon such con-

flicting claims before the Attorney or Solicitor-General does not exist, and indeed the duty of deciding upon such claims could not with propriety be cast upon the law officers of the crown.

It is also to be observed, that the law or rather practice now in effect vests in the Attorney or Solicitor-General the absolute discretion of granting or withholding a patent, as he may think fit; and as the grant of a patent is made merely as a grace and favour, there is no appeal, no means by which an unsuccessful applicant for a patent can obtain a review of the decision by which his petition is refused.

The existence of this power is very much complained of, and it is urged by some that an inventor should be entitled as of right to have a patent for his invention; but the fallacy of the reasons which have been brought forward in support of this claim will be presently shown.

By others it is contended (and with much greater show of reason) that, if a discretionary power is allowed to continue, the exercise of it ought to be subject to some review, *and that a right of appeal ought to be given to every person who may deem himself aggrieved by a [*11] decision made in the first instance, whether the alleged grievance be occasioned by the granting or withholding of a patent.

The question to be considered, therefore, is whether the power of deciding, in the first instance, between claimants for patents and their opponents, should be vested in the Attorney or Solicitor-General or in some other officer, and whether the exercise of that power (in whomsoever vested) should not be subjected to some appeal or control.

The chief, if not the only, advantage to be derived from this power being vested (as at present) in the Attorney or Solicitor-General is, that, those officers being necessarily men of such high character and standing in the profession and in the country, no one ever doubts their impartiality.

But if in every case of an application for a patent there ought to be such an examination into the claims of the petitioner as will prevent the public from being inconvenienced by grants for inventions to which the petitioner has no valid claim, or by any other description of improper grant, it seems to be quite clear that the law officers of the crown could not devote sufficient time to the subject to enable them to perform this duty.

And the duty now performed by the Attorney and Solicitor-General, which may be said (as already explained) merely to extend to deciding questions respecting the similarity of inventions or the differences between them, may clearly be at least as well performed by any other competent officer.

On the whole, it seems to be difficult to resist the conclusion, that the duty of investigating the claims of inventors and determining the extent of their rights, should be transferred from the Attorney and Solicitor-General to some other officer, who can devote more time and attention to the subject.

The enormous sums which inventors must pay to obtain patents for their inventions, form one of the greatest grievances of which they have to complain.

[*12] *The fees and stamps payable upon the grant of an unopposed patent to one person for England and Wales amount to

	£94	17	0
Extra fees for an opposition at the report .	3	10	0
Extra fees when the patent extends (as it usually does) to the colonies	4	4	6
	£102	11	6
And if there be more than one patentee, the extra fees for each additional name amount to	18	12	10
	£121	4	4

So that a patent very frequently costs in fees and stamps upwards of 120*l.*, exclusive of the agent's fee (which is usually 10*l.*), and if there be an opposition at the Great Seal, the amount of the petitioner's costs there is uncertain, but it will rarely be less than 30*l.*

But the unfortunate inventor is not yet done with outlay; he has to prepare and enrol his specification, and the costs of so doing is seldom less than 20*l.*, and has been known to exceed ten times that amount.

The outlay which has been mentioned, however, only enables an inventor to obtain a patent for England, Wales and the colonies, and to procure an Irish patent he must also pay about 120*l.*, and for a Scotch patent the additional cost is about 80*l.*

In every case, therefore, in which an inventor seeks to secure to himself the profit arising from his invention, he must incur a cost exceeding 300*l.* for three patents, besides the expense of preparing and enrolling three specifications; and it may be assumed that the average cost of securing the sole use of an invention, in the whole of the united kingdom, is not less than 400*l.*

This enormous cost of patents throws very many serious difficulties in
[*13] in the way of inventors. Such persons are *seldom affluent, but on the contrary are generally in straitened circumstances, frequently very poor. Many intelligent workmen are possessed of very considerable inventive powers; but being unable to pay the cost of a patent for anything they may invent, they have no motive to turn aside out of the beaten track, but continue to follow the old and well known modes of operating, however imperfect they may be. In order to make and perfect any new art of manufacturing, very considerable labour and expense is generally requisite; and an artisan has no motive for exerting himself to develope such an art, so as to bring it into practical operation, when the effect of his success will be to benefit others rather than himself. And if an artisan should seek the assistance of a capitalist to enable him to obtain the means of procuring a patent, he must disclose the invention to the man of whom he is in fact asking a favour, and thus put himself wholly in the power of the capitalist, who may dictate his own terms respecting the assistance which he will afford, and the manner of doing it. In such cases poor inventors usually pay dearly for the assistance

which they obtain; and it frequently happens that they fail to obtain any profit from their inventions. And if a person to whom an inventor discloses his invention should decline to render any pecuniary assistance, what security can he have against an improper use being made of the knowledge thus communicated? Many cases occur in which inventors are entirely deprived of the benefit of their inventions, by the fraudulent conduct of those persons whom they have been induced to trust in this way.

The great cost also frequently induces an inventor to include several inventions in a patent, when, if the expense was moderate, he would obtain a separate patent for each. It is always perilous to include more than one invention in a patent; for if the claim to any one of them cannot be supported, the patent is void, and will continue so until the objectionable invention is got rid of by a disclaimer, *and in the mean time the patentee loses the entire benefit of the patent right, even as to his [*14] other inventions. And if one of the inventions, or, as usually termed, one of the parts of an invention, happens to be really useful and beneficial to the public, a person desiring to infringe may, if he possesses evidence to show that the patent includes anything for which it cannot be supported, set the patentee at defiance; and the patentee may go into court in an action against the infringer, expecting to have to try the validity of the patent as to the invaded part of it, and he may be turned round upon an objection to another part of it which is of no substantial value, by evidence of which he was ignorant previously to the trial.

Inventors have also frequently been induced, in order to save the cost of a patent, to take a course which is attended with the greatest peril to the validity of a patent.

If a person has made an invention which will not bear the cost of a patent, he looks through the list of unspecified patents, and if he can find a patent with a title large enough to include his invention, he goes to the patentee and makes a bargain with him to insert the invention in his specification, and for the consideration agreed upon to assign over so much of the patent as relates to the invention thus inserted. If a patentee has deposited a description of his invention at the time of obtaining his patent, it is of course more difficult to insert any other person's invention in his specification in this way; but titles in general are so very vague and indefinite, that a person seeking to get his invention included in another's patent in this way will not, generally speaking, have long to wait before he finds a patentee who is able and willing to enter into an arrangement.(*a*)

The great cost of patents also frequently produces *indirectly [*15] another evil, viz., bad specifications. When an inventor has expended so large a sum in obtaining his patent right, he is, of course, anxious to save as much as possible in the cost of his specification, and this frequently induces patentees to avoid having recourse to professional assistance in the preparation of that most important document. The consequence of this is, that very many vicious specifications are enrolled, and

(*a*) These arrangements have been rendered more difficult by the descriptions now required to be deposited in every case, but they have not been entirely prevented.

patentees frequently lose the benefit of their patents by the mistakes made in describing their inventions.

An inventor may have the clearest idea possible respecting his invention, but unless he has been in the habit of reducing his thoughts into writing, he will, most probably, fail to draw such a description of his invention as, even with the aid of drawings, will convey his ideas to those who may read his specification.

Bad specifications not only produce great loss to inventors, but also prevent the public from acquiring such accurate information respecting the nature of the inventions as they are entitled to obtain. This information, it is to be borne in mind, is not only valuable for the purpose of enabling others to work the particular invention itself when the patent has expired; but a knowledge of one invention very frequently suggests another to the mind of an ingenious person, although perhaps the invention thus suggested may be for a purpose very different from that of the previous invention.

The loss which patentees sustain from bad specifications is very serious, and sometimes it is incurable. Thus where a patentee by mistake makes a wrong claim, claiming that for which a patent cannot be supported, the mistake is fatal, although there may be something not claimed for which the patent might have been supported. And when the specification of an invention is so vicious as to render the patentee's title doubtful, parties desirous of infringing will obtain advice respecting the sufficiency of the instrument, and will frequently proceed to use the invention [*16] *upon the speculation that the patentee may fail to sustain his patent, either altogether or until amended under the act 5 & 6 Will. IV. c. 83, usually called Lord Brougham's Act.

The inefficiency of the law for the protection of the rights of patentees and the public is occasioned to a great extent by the defects in the procedure for obtaining patents, and the other defects of the law which have already been mentioned.

There are some few others which will be adverted to hereafter in the suggestions which will be made for the alterations of the law, and it is therefore only necessary here to mention some complaints made against the present state of the law with regard to the definition of what may be made the subjects of patent privileges, and the remedies of patentees against those who violate their rights.

It has been contended, that the restriction contained in the Statute of Monopolies, with respect to the nature of an invention which may be made the subject of a patent grant, is of too limited a description, and that it ought to be extended.

But all the substitutes which have been suggested are either included in the words of the statute, or would, if adopted, extend to things which ought not to be made the subjects of patent privileges.

The important words in the statute(*a*) are, "the sole working or making of *any manner* of new manufactures;" and, according to the construction put upon them by our courts of law, they are sufficiently ex-

(*a*) 21 Jac. 1, c. 3, s. 6. See the observations of Mr. Justice Heath on these words in Boulton v. Bull, 2 H. Bl. 463, and Dav. P. C. 191.

tensive to include anything which ought to be made the subject of a patent.

There have been very few cases in which patents have been held bad, on the ground of the inventions not being proper subjects for patent grants; and it is believed that there is not one reported case which shows that the law is not in this respect sufficiently extensive.

*It is alleged by some, that when once a patent has been granted, the patentee should be entitled to the undisturbed enjoy- [*17] ment of the grant for which, as it is said, he has paid his money, without any one being allowed to question the validity of it in any way.

The large sums demanded for patents have doubtless been one great cause of originating this opinion amongst persons interested in patent privileges.

But such persons seem to forget that the principle of the law is this, that they are allowed to have grants upon the faith that their representations as to the novelty and utility of their inventions are true; and if true, they have no reason to fear the result of any contest respecting the validity of their patents. Every man who makes an invention must be deemed to have peculiar, or at all events accurate, knowledge respecting the particular branch of art to which the invention belongs, and there can be no hardship in requiring that he should give accurate information to the authorities upon the grant of his patent, respecting what he claims to be new. He is therefore allowed to make his claims in his own way, but at his own peril; and if he will be so foolish as to claim any thing old, and which is therefore the property of the public, he must, for his dishonesty or carelessness suffer the penalty of having his grant avoided.

But it is alleged by some that there ought to be a preliminary inquiry respecting the novelty of any thing for which a patent is sought to be obtained, and that the determination of that inquiry should be final. It would, however, be impossible to conduct such inquiries in such a manner as to avoid doing injustice either to petitioners for patents or to the public. Knowledge of the useful arts progresses amongst us daily; what was new yesterday is not so to day, and the lapse of a single day may have effected such a publication of an art, that no one should be allowed to deprive the public of the benefit of it, by claiming it as the subject of a patent. This progression of *knowledge and pub- [*18] lication is also going on simultaneously in all parts of the empire; and in order to ascertain the absolute novelty of anything at any particular time, it would be necessary that all persons having knowledge upon the subject, wheresoever resident within her majesty's dominions, should be called upon to give, or at all events have afforded the opportunity of giving, information to those who might conduct an inquiry of this description.

To summon all persons having knowledge on such a subject would simply be impracticable, and it would be the height of injustice to conclude any one by an inquiry conducted in his absence. If any tradesman yesterday commenced the public sale of a new article of manufacture in a distant part of the kingdom, why should a patent be granted to day so as to prevent the tradesman from doing that which he and all

the rest of the public had yesterday acquired a right to do? And yet a patent may be applied for and granted, for an invention thus recently published, but of the publication of which not only the patentee but also the authorities granting the patent were perfectly ignorant.

It is true that any person may enter an opposition to any application for a patent of which he may have notice, and in this way the grant of a patent for any thing clearly old may be prevented. But according to the principle which has hitherto (and most properly) regulated the decisions upon such oppositions, the grant of a patent is never refused in a doubtful case; and by granting the patent as requested, the patentee is placed in such a position that he will be enabled to sustain the grant if it be right that he should do so.

For these reasons it would appear that the principle on which patent grants are at present made, without any warranty respecting their validity, is the only one which can be safely adopted; and as a petitioner knows that he must run the risk of his patent being avoided by any [*19] prior public use of his invention, although unknown to him *at the date of his patent, he will feel it to be his duty to acquire accurate information respecting the novelty of his invention, so as to enable him to avoid claiming in his specification anything to which he is not entitled.

Many persons entertain an opinion that the courts of law of this country are not fitted to determine questions respecting patent rights, and they contend that peculiar tribunals ought therefore to be erected with exclusive jurisdiction over all suits respecting patents; and this complaint against our courts is very commonly set down as one of the grievances under which patentees are now suffering.

In our courts it is well known to be the province of the judges to decide all questions of law which may arise between the parties to suits, whilst questions of fact are submitted to juries for their determination, great care being taken to keep the two descriptions of questions separate from each other, so that each of them may be determined in the manner appointed by law for that purpose.

The complaint just mentioned cannot apply to the mode in which *the law* respecting patent privileges has in modern times been expounded by our judges, for they have uniformly given the most favourable interpretation to the law of which it was capable in favour of the rights of patentees; and although there have long been many acknowledged defects in the law, the legislature alone could apply the necessary remedies.

But with respect to questions of fact arising in patent suits, there can be no doubt that juries are rarely, if ever, found to be fully competent to determine such questions. In the absence of a thorough understanding of the facts brought before them in such cases, juries are too prone to be swayed more by appeals to their feelings and prejudices than by their reason, and consequently the party having the last word at the trial is almost certain to obtain a verdict. Thus in an action for the [*20] infringement of a patent, the *patentee being plaintiff, his counsel has the right of reply after the defendant has given his evidence; and the trial of such an action is therefore almost certain to ter-

minate in favour of the plaintiff. But in a scire facias to repeal a patent, in which the position of the parties is reversed, that is to say, the patentee is defendant, and the prosecutor has the right to begin and to reply, the verdict will most assuredly be against the defendant.

It appears therefore that the true ground of complaint, with respect to the administration of the law in patent suits, is, that juries are not competent or not sufficiently competent to deal with the questions of fact, which usually arise in such suits. But this objection (if valid) is not confined to suits of that description, but applies to all actions in which juries are called upon to determine questions respecting matters not within the ordinary knowledge of the class of persons to which they may belong.

And if the law is to be altered at all in this respect, it should be a general alteration, applying not only to patent suits, but to all others in which equally difficult questions of fact may arise.

Many grave objections have been made to trial by jury in civil cases; but it may well be doubted whether any satisfactory substitute has yet been suggested. The great cause of the unfitness of juries for determining such questions as have been alluded to arises from the limited nature of the education of the people, more particularly as to matters of science and art; and as knowledge on these subjects becomes more and more general, we shall probably find our juries become better fitted to decide various questions of fact submitted to their determination.

The great expense of patent suits has also been urged as a reason for instituting some other tribunal than our courts of law for taking cognizance of such suits. But the great expense of law proceedings is not confined to patent suits: and patentees have no greater claim for relief in this respect than many other classes of persons. And [*21] *those who advocate the institution of a special tribunal for the reason just mentioned, seem to forget that the expense of it would be great; probably much more in proportion to the business to be done, than the total amount of costs in patents actions tried in our courts of law; and if a special court is to be erected for the benefit of a particular class of persons, the expense of that court must be borne by that class of persons, and not paid out of the public purse.

That the civil procedure of our law courts ought to be reformed is now almost universally admitted. It is to be hoped that we shall have it made much more simple and less costly than at present; and it is very desirable, if practicable, that such a system of procedure should be adopted as may be afterwards extended to all the other superior courts in the kingdom, whether in Ireland or Scotland.

There would be considerable difficulty, no doubt, in overcoming the prejudices of many persons in favour of ancient forms; but the benefits arising from the adoption of one general system of civil procedure would be very great, if it be sufficiently simple to make it comprehensible by all persons of ordinary understanding. Simplicity in forms ought never to be lost sight of in framing a system of procedure, whether for obtaining a patent or for pursuing a right in a court of law. The system of procedure adopted in our courts of law (more especially that part which

consists of the written pleadings) has failed to give satisfaction to the public, because it has been framed too much in accordance with a fancied perfection of reason, but without sufficient regard to the imperfections of the human mind.

Secondly, as to the Alterations which are required to be made in our Law relating to Patents.

An endeavour has been made in the foregoing pages to describe some of the more prominent defects of the present law and practice respecting
[*22] patents for inventions; *and it is surprising that such a state of the law should have been so long tolerated in a country, which has derived so many of its advantages from improvements in the useful arts.

It is however evident that the whole system must be changed, and such alterations effected, as will make this branch of our law cease to be a reproach to the country.

What alterations ought to be made in the law, and how it should be moulded to accomplish the great objects in view, are questions now earnestly discussed, and it is to be hoped that they will speedily obtain some satisfactory solution. There are numerous parties proposing various changes, each of them advocating the alterations which would best accord with their peculiar views and interests: the difficulty is to devise such a system as shall deal equal justice to all.

The first question which seems to present itself, when considering the alterations which ought to be made in the law, is, whether an inventor ought to be allowed to acquire the sole privilege of using his invention merely by registering it, in the same way as many copyrights are now secured, or whether such privileges should, as at present, only be obtained by express grant.

The principal reason usually given in favour of a system of registration is, that every person has a natural right to the productions of his own mind, and that when he has invented any new art of manufacturing articles of commerce, the law ought to recognize a right of property in the invention as belonging to him in the same way as any other property he may possess, without requiring any grant to be made to him of that which, it is alleged, is in fact his own.

This is at best a very specious mode of dealing with the subject, and a little examination will show that, even if the premises were to be conceded (which they cannot be), the alleged consequence does not follow.

One great error committed by those who advocate a system of registra-
[*23] tion of inventions consists in supposing *that a person has the same degree of right or interest in his invention of something new in practical science, as an author, composer or designer has in the product of his imagination. But these two descriptions of things do not by any means stand upon the same foundation, nor have their authors the same claims upon the public as to their respective productions.

A work of the imagination, whether in literature or the fine arts, such as a poem, a piece of music, a painting, or a piece of sculpture, is actually

created by its author, and he gives to the world that which in all probability never would be produced by any other mind. But he who invents a new practical manufacturing art, although the art may be of greater utility than any product of the imagination, does but find out that which had previous existence, in the same way as travellers discover new countries or places. Inventions in the useful arts are based upon physical laws, which are immutable; every investigation of those laws in any given direction must end in the same result, and the consequence is, that it frequently happens that several persons unknown to each other make almost precisely the same invention.

If Milton had not written Paradise Lost, and Handel had not composed the Messiah, neither of those splendid productions of the creative powers of the mind would ever have seen the light; but if Watt had not invented his famous condensing steam engine, there can be little doubt that, long ere this, it would have been discovered that great benefit results from condensing the steam of such an engine in a vessel separate from the cylinder.

The merit of an inventor, which entitles him to the consideration of the public, in truth consists in his being the first to *communicate* a knowledge of the art which he has discovered to the public, and his merit with the public is the same whether any one has before *secretly* discovered the same art or not; but he no more creates that art than Sir Isaac Newton did the law of gravitation, which he discovered.

*The "natural right" (as it is called), which an inventor has in his invention, without the aid of positive law, is, in fact, to keep his knowledge of the invention to himself, and if he publishes it he abandons all claim to everything but the privilege which the law may think fit to give; and to contend that he is of right entitled to more, is, in effect, to say that he is entitled to a perpetual privilege in his invention, for if he have any natural right to his invention after publication of it, what is there in the nature of such a right which can prescribe any particular duration to it? [*24]

But even if it be conceded that an inventor has a natural right of any description to his invention, it does not follow that the community is bound so to legislate in his favour as to enable him to restrain all other persons from using the newly discovered art (whether they derive a knowledge of it from him or not), except upon some fair terms; and why may it not be made part of the terms that he shall accept of a grant of a patent in satisfaction of all his claims?

And the legislature has, in fact, assumed the right to deal with literary copyrights in this way, and in lieu of those natural and perpetual rights which were formerly claimed for authors, has given them rights for limited terms only, but with ample powers to make the more substantial rights thus conceded available for their profit and benefit.

The claims which inventors have for sufficient, and indeed ample rewards for their services to the public are in truth sufficiently great, without it being necessary to have recourse to such (to say the least) questionable grounds as those which have been adverted to. No one can reasonably doubt that they confer great benefits upon the community,

and the important question now is, how can the patent law be altered so as to give them the rewards which they so amply merit without prejudicing the rights of the public with regard to anything known before the dates of their patents. And whether the express grants are to continue to be made (in a modified form), or a system of registration substituted, is in fact a question of public expediency, and of that only.

[*25] *Some persons have lately referred to the working of the act respecting the registration of designs having reference to purposes of utility,(a) and other registration acts, as showing that a mere registration of an invention is all that should be required to secure the use of it to the first inventor. And it has been asserted that the large number of registrations of such designs, as just mentioned, and the small amount of litigation which has arisen respecting them, sufficiently show that a system of registration for inventions would work equally well.

More accurate information respecting the practical working of the act for the registration of useful designs would show persons who assume this position, that there is no ground for the conclusion to which they have arrived.

The number of registrations under the act has been greatly increased by a mistaken notion, that new inventions of manufactures may be registered, and a short patent thus obtained. Many persons have, by acting upon this erroneous opinion, lost the benefit of their inventions, by registering them, and thus publishing them to the world in such a way as to prevent patents from being afterwards obtained.

Those who are affected by the registry of designs under this act have this grievance to complain of, that a registration affords so little information respecting the subject of it, that it is frequently almost impossible to ascertain, from an inspection of the entry in the register, the precise extent of the claim intended to be made.

The specifications of patent inventions are at present very loose and insufficient; but if pretended inventors were allowed to register a specification of anything they might think fit, the loose generalities of their claims would give rise to most intolerable grievances to the manufacturers throughout the country.

And the real reason why there is so small an amount of litigation [*26] respecting registrations is this, that even police *magistrates (usually lawyers) have frequently declined to decide upon the numerous difficult questions which arise upon the construction of the acts and the effect of a registration, the consequence of which is, that, except in a very clear case, the proprietor of the copyright in a design has no practical remedy; for the expense and delay of an action at law respecting a right of such short duration are sufficient to deter him from having recourse to such a proceeding.

Works of art, which form the greater part of the subjects of registration under other copyright statutes,(b) are generally distinct or easily distinguishable *from each other*, without the aid of a specification, and in every case the entire thing registered can always be referred to, in order

(a) 6 & 7 Vict. c. 65.
(b) 5 & 6 Vict. c. 45; 5 & 6 Vict. c. 100; 7 & 8 Vict. c. 000.

to see whether there is any conflict between the rights of the person who has effected the registration and those of any other person.

But in the case of inventions it is widely different; they must be defined by written specifications; they frequently resemble or approach each other so nearly, that there is great difficulty in distinguishing them from each other, and it often happens that the distinction between two inventions can only be accurately comprehended by persons of skill in the particular branch of manufacture to which the inventions relate.

It is no uncommon thing for the various parts of a complicated machine to be made the subject of a multitude of patents, one person inventing an improvement in one part of the machine, and some other person another improvement in a different part, or perhaps even a further improvement upon the same part; so that the greatest nicety is requisite in order to distinguish between the several inventions.

And, even with machinery of a less complicated description, it frequently happens that there are several inventions of various modes of constructing the machinery for *carrying out in each case the particular object in view; but yet the shades of distinction between the various inventions are so very fine that they are scarcely appreciable. [*27]

And it must be borne in mind, that, as we proceed onward in the improvement of every manufacture, the degrees of improvement (if such a term may be used) become smaller and smaller; and it becomes daily more necessary to be circumspect to prevent confusion and collision between the rights of inventors.

For these reasons it seems to be expedient, or rather absolutely necessary, that, when any person claiming to be an inventor seeks to make an alleged new art or invention the subject of an exclusive privilege, he should be compelled to describe it with such particularity as will enable every one to understand clearly the nature and extent of the claim to which the exclusive right is intended to apply, so that no one may ignorantly violate the right sought to be obtained.(*a*) The desired privilege should also be conceded only upon condition, that the description of the invention is true, and the claim not more extensive than the law allows.

To accomplish these objects by means of a system of registration would hardly be practicable, but it will be endeavoured to be shown that they may be accomplished by means of a well-regulated system of patent grants.

Laws for authorizing the grant of patents in various forms have been introduced into almost all civilized countries, but the writer is not aware of any country in which an inventor can acquire the sole use of his invention by registration merely, or without a formal grant being made to him by some authority in the state.

The reasons which have been stated against the adoption of a system of registration, seem also to show that it would be imprudent to allow every person alleging that he has discovered a new manufacture a right to demand a patent for that which he may please to say he has invented;

(*a*) See the observations respecting specifications, post, 38.

[*28] and *that a discretionary power to concede or withhold a patent grant for an invention should continue to be vested in some competent officer.

This description of power would enable the officer in whom it might be vested to refuse a grant in every case in which the petitioner for a patent might appear to be wholly devoid of merit, or to be without title to the invention, and in every case in which the object of the alleged invention might appear to be immoral or injurious to the public.

Such a power would, in all probability, be as rarely exercised against a petitioner as that now possessed by the Attorney and Solicitor-General; but the existence of such a power would be sufficient to prevent applications for fictitious inventions by parties, who would inevitably put forward such claims if they could sustain them as of right. Any chance of abuse of this power, or injury by the mistaken exercise of it, would be remedied by giving every petitioner a right to appeal to a superior tribunal.

Conflicting claims to inventions have frequently arisen under the present law, and there can hardly be a doubt that such claims will continue to arise under any system of law which can be devised. It has been shown(*a*) that there are not at present any adequate means of determining such questions, and any alteration of the law which may be made will be imperfect if it do not embrace this object.

In order that claims of this description may be decided fairly between the contending parties, they should be referred to some officer competent to determine legal questions, and it can hardly be doubted that against the determinations of such an officer there ought to be a power of appeal. The jurisdiction for hearing such appeals could not safely be vested anywhere except in a court of justice, and the Court of Chancery seems to be better adapted for the exercise of this jurisdiction than any other court we possess.

If it should be determined to require the printing of every specifica-

[*29] tion(*b*) the number of officers requisite for *managing the business of the Patent Office would not be large; and it is probable that in addition to the existing officers, it would only be necessary to appoint a competent person to whom all petitions for patents might be referred by the Lord Chancellor.

Such an officer should be invested with all the powers now exercised by the Attorney and Solicitor-General, and such further powers as may be necessary to enable him to determine the various questions submitted to him.(*c*) To a competent officer of this description might be referred questions and matters of account in Chancery suits relating to patents, and it would probably be convenient, therefore that he should have the powers of a Master in Chancery.

Such an officer should also be competent to perform several other important duties, the nature of which will be mentioned in the ensuing observations.

All applications for patents might then be made by lodging petitions

(*a*) Ante, p. 10. (*b*) Vide post, p. 44. (*c*) Vide post, p .36.

in the Patent Office of the court, and there should be no necessity for applying at any other office to obtain them.

Every such petition should at once be referred or submitted to the officer just mentioned (who, for the sake of brevity, will in the succeeding observations be called the Master of the Patent Office) to inquire and report to the court what ought to be done respecting the petition.

According to the present state of the law, a person who has imported a foreign invention which is new in this country, or who, according to the ordinary language of petitions in such cases, is possessed of the invention, "in consequence of a communication from a foreigner residing abroad," is deemed to be the true and first inventor *within this realm*, within the meaning of the Statute of Monopolies, and entitled to sustain a patent for the invention.

The reason alleged for this in some of our old law books is, that whether the invention "be learned by study or *travail," is of no consequence, so that the patentee, at his own costs and charges, [*30] bringeth a new art or manufacture into the realm.

In ancient times the importation of any new invention might be a matter of considerable difficulty or of great expense, and the probabilities of foreign inventors introducing their inventions into this country were so small that it can hardly be questioned that it was *then* good policy to grant patents to the importers of foreign inventions.

The circumstances of the present times, however, are widely different from those of the period (about 1568) in which it was first held, at least so far as recorded in our law books, that a patent might be legally granted to the importer of a foreign invention. This country is happily now the continual resort of foreigners from every part of the world. Every invention which may happen to be made in any country quickly finds its way into this, where it is published, either by its being made the subject of a patent, or a description of it being inserted in some of our numerous scientific periodicals.

It is quite unnecessary, therefore, now to hold out any inducements to procure the importation of foreign inventions; and the present state of the law in this respect opens a door to the perpetration of numerous frauds, by means of which foreign inventors are frequently deprived of the benefit of their inventions in this country.

There are persons who make it their business to obtain early information respecting every patented or otherwise published foreign invention, and each of those which is deemed of sufficient value is immediately made the subject of a patent in this country, as an invention "communicated to the patentee by a foreigner residing abroad." In these cases the real inventor obtains no benefit from the patent right in this country, but all the profit is pocketed by persons who make a trade of patents in this way.

*The inventions thus appropriated by mock inventors are always published more or less in the foreign country from which [*31] they are obtained, and it would rarely happen that any such invention would not within a very short time be described in some of the English periodicals devoted to such purposes.(a)

(a) Publication in a foreign country should, *after the lapse of some period*, be equivalent to a publication here.

The mere importers of foreign inventions, indeed, may now be said to be devoid of any merit of *their own*, and to give the public no consideration for the patents which they obtain; and they frequently anticipate the real inventors, and deprive them of the profits to be obtained from the use of their inventions in this country, the great reward for which every inventor looks forward so anxiously.

It is true that in some cases foreign inventions are communicated by the inventors to their English agents, who obtain patents for their benefit; but a very large proportion of the patents for foreign inventions are not obtained for the benefit of the real inventors.

The great object of the patent law is to reward inventors, and, by so doing, to induce such persons to give the public the benefit of their inventions. This surely must extend to foreign as well as to English inventors; and it can hardly be maintained, that it is good policy to permit persons to defraud foreign inventors of the benefits which are as justly their due as if they were citizens of this country. It is also to be borne in mind, that persons surreptitiously appropriating the inventions of others, can rarely describe them for the benefit of the public so accurately as the real inventors could do; and in many cases such purloiners would be utterly incompetent to put their stolen inventions into practice. It may therefore be safely assumed, that the existing law in this respect is injurious alike to foreign inventors and to the public of this country.

[*32] The remedy for these evils seems to be very simple, *viz. to provide that no patent shall be granted for a foreign invention except to the actual inventor or his assignee, and this is in fact the law in the United States of America and some other countries.

If this were the law here, a foreign inventor transmitting a specification of his invention to this country, might either obtain a patent here in his own name, or by sending an assignment also, might have it granted to his assignee.

In this way foreign inventors would be protected from the gross frauds to which they are at present subject, and we should encourage them to send us the most accurate descriptions of their inventions which they are able to give.

Nor does there seem to be any real objection to permitting patents to be granted to the assignees of inventors, whether foreign or English. A patent right may be transferred the moment after it has been granted, and the permission of a previous transfer duly authenticated and filed in court could hardly be productive of any mischief to any one. All difficulty might, however, be avoided by a provision, that the title of an assignee to a patent granted to him as such should depend upon the validity of the assignment under which he claims.(*a*)

According to a long established practice, the petition for a patent, as now framed, contains no other descriptions of the invention for which a patent is sought to be obtained than a short title (afterwards inserted in the patent), which gives no definite information respecting the nature of the invention.

(*a*) In a subsequent part of this Pamphlet the propriety of requiring the registration of all assignments of patents will be suggested.

This practice afforded facilities for numerous abuses, which have been in some measure checked, firstly by requiring (as already mentioned) petitioners in opposed cases to deposit descriptions of their inventions; and secondly by a very recent order of Sir John Romilly, when Attorney-General, compelling every petitioner, whether opposed or not, to deposit a description of his invention before he is allowed to have a report in his favour. [*33]

The beneficial effects of these orders would be more effectually attained by requiring every petitioner to deposit with his petition at the Patent Office such a description of his invention as shall be sufficient to enable the officer of the court to understand the real nature of the invention; and also to clearly identify the invention as that to which the petition relates. And until this be done to the satisfaction of the master of the Patent Office, no proceeding upon any petition should be allowed.

No one should be permitted in his petition for a patent to use what is frequently called a blind title (which gives no notion of the actual nature of the invention,) or any other title calculated to mislead, but every person should be compelled to insert in his petition such a title as will be sufficient to enable the public to understand clearly the particular branch of manufacture or subject to which the invention relates.

By some persons it has been proposed that a petitioner should be required to lodge with his petition a full and accurate specification of his invention; but, considering the difficulty in many cases of perfecting the description of inventions without performing experiments, which are almost certain to lead to a publication, it seems to be hardly fair to require so great a degree of particularity in the first instance.

But every person who really has invented something, can intitule it in such an intelligible manner and give such a description of it as will be sufficient to enable any competent person to understand the leading features of the invention; and until a person can do this it may well be doubted whether he can be correctly said to have invented anything, although he may have conceived some inchoate idea which may ultimately lead to a perfect invention.

Until a person has really invented something, he cannot *give any consideration to the public for the protection claimed, and it can hardly be considered expedient to encourage speculative claims which have no certain foundation. [*34]

The protection at present given to an inventor commences only from the day of the date of his patent, and up to that time he must run the risk of being anticipated or having his claim to a patent defeated by a publication of his invention. So long as an applicant for a patent states nothing respecting his invention but the title or name he designs it to bear, it would hardly be practicable, and it would clearly be imprudent, to give him any earlier protection than the law at present affords.

But if an applicant describes his invention in such a manner that it may be distinguished from any other with reasonable facility, it is but fair that he should be entitled to protection from the date of his petition, (by which he in effect offers the public the benefit of his invention,) if after applying for a patent he proceeds to procure it to be sealed within

a reasonable time, which might be allowed to vary according to the exigencies of the case, and the date of the petition might be fixed by a recital in the patent.

By adopting this course, inventors might be enabled to obtain many, if not all, of the benefits which would arise from a provisional registration of their inventions.

The practice of entering caveats and oppositions before the Attorney and Solicitor-General has originated in the necessity for providing some means to prevent the success of fraudulent claims for patents.

With a well-regulated system of practice for granting patents, there will probably be few instances of fraudulent applications; but unless securities be provided against such applications, there can be little doubt that they will be numerous.

For this purpose it seems expedient to publish the title of every invention for which a patent is sought to be obtained, taking care that [* 35] the title shall not be such as to *mislead. Inventors cannot fairly object to this if they be protected from the dates of their petitions, and in this way the entering of caveats would be rendered unnecessary; but every person, who sees published an application for a patent which may affect his interests, might enter an opposition at the Patent Office, in like manner as now done at the office of the Attorney or Solicitor-General.

But although it may be deemed expedient to publish the titles of inventions for which patents are sought to be obtained, it is at least doubtful whether the names of the applicants should be published. For when once it is known that a man has invented some new art or manufacture, persons are upon the alert to discover what it is; and he may in this way be seriously prejudiced, if not deprived of the benefit of his invention.

Oppositions are usually made to grants of patents by two different classes of persons; one class of those who oppose patents being persons who intend themselves to procure patents for their inventions, and fear that they may be anticipated by others; and the other class being persons who merely desire to prevent their interests being prejudiced by the grant of patents for such things as cannot legally be made the subjects of patent privileges.

Well regulated oppositions by each of those classes of persons will be useful; the first, because they will prevent grants of patents being made to those who have no right or claim to them; and the second, because they will prevent, or materially tend to prevent, the public from being vexed by the grant of improper patents.

But every person seeking to prevent the grant of a patent should be compelled, when he enters an opposition to it, to state the ground upon which he intends to oppose; and if he opposes on the ground that the invention is his, it seems to be but fair that he ought to be compelled to take proceedings for obtaining a patent himself, so that the public [*36] may not be deprived of the invention, or *unnecessarily delayed in obtaining the advantages which may arise from it.

It has already been stated(a) that there are no adequate means at present of deciding properly between adverse claimants to an invention, and

(a) Ante, p. 10.

this defect ought to be remedied by investing the master of the Patent Office with power to award a patent for an invention to the person who may establish the least claim to it.

For this purpose, the Master of the Patent Office should have power to receive proofs by way of affidavit, or viva voce examination of the parties and their witnesses on oath, and also power to compel the attendance of witnesses.

In every case of opposition the applicant for a patent should, if practicable, be allowed to be present at the hearing of every part of an opposition to his petition, except perhaps so much of it (if any) as may relate to the claim of the opposing party to the invention as belonging to himself.

The great cost of a patent induces an inventor to include as many things as possible in one patent, and the consequence is, that a title which in the language of a patent is deemed to be descriptive of *an invention*, usually comprises *several* inventions, and the separate claims of invention in a specification are frequently very numerous; indeed, specifications containing nearly forty of such claims have been sometimes enrolled.

This practice of including several inventions in one patent is very objectionable; it has led to the use of indefinite, and, indeed, it may be said, incomprehensible titles, and it imposes upon a patentee the burthen of sustaining the validity of his patent as to each of the inventions, although he may be proceeding against a party who has only infringed one of them. And the description of so many inventions in a specification as being (what in fact they are not) several parts of one invention, frequently produces much confusion in the description, and occasions [*87]
*great difficulty in arriving at the true meaning or construction of the instrument.

But if the cost of a patent be limited to some small reasonable sum, it might then be properly laid down as a rule of practice that only one invention should be permitted to be included in a patent, without, however, prohibiting the insertion of several claims for things necessarily connected together, or forming parts of one and the same machine, article or invention.

If this course were to be adopted, the titles of inventions for which patents are sought might easily be so framed that when published they would convey to every one interested sufficient information to warn him of any probable danger to his interests which may ensue from allowing any proposed grant to be made without opposition.

When the Master of the Patent Office or other officer, after giving notice of an application for a patent, and hearing all oppositions (if any) to the grant, shall have decided that a patent ought or ought not to be granted for the invention, he should report his decision to the Court, and either the petitioner, or any other person who might deem himself prejudiced, should be at liberty to appeal to the Court against the decision, within a limited time after it has been made.

The hearings of such appeals would be similar in effect to hearings, according to the present practice, before the Lord Chancellor upon oppo-

sitions to the sealing of patents, and the decisions upon such appeals should in like manner be final, so far as regards the issuing or withholding of the patent.

Upon a report being made in favour of a petitioner, and not appealed against (within a time to be limited) or confirmed upon appeal, the Lord Chancellor should in some way confirm the report, so as to entitle the applicant to his patent, and that might be done by his lordship signing the usual docket paper, or in any other form which may be deemed most
[*38] convenient, for authorizing the proper officer *to seal a patent upon performance of such condition as may be deemed necessary for the protection of the public.

One condition which ought to be imposed upon every petitioner for a patent should be, that he deposit in the Patent Office a sufficient specification of his invention, and until that is done he should not have his patent. For this purpose an applicant should be allowed the same time as at present allowed to patentees, but if he fail to deposit a sufficient specification within the limited time (which might be extended if necessary) his petition should be dismissed, or at all events treated as a new petition, and subject to the opposition of any other persons who may have become interested in the making or withholding the patent.

It is well known that according to the present practice a patent for an invention contains no further description of it than the short title of it given in the petition for the patent,(*a*) but the patent contains a condition by which the patentee is obliged to enrol a detailed description of it within a limited time after the date of the patent.

This practice has been occasioned, firstly, by a desire which every inventor has to obtain protection as speedily as possible, which under the present law can only be had by sealing the patent; and, secondly, by the difficulty of describing an invention with sufficient accuracy before it has been tested in a more practical manner than can safely be done before the sealing of the patent.

There can be little doubt of the great practical benefit which arises from allowing patentees a reasonable time to perfect the specifications of their inventions, for in this way they are enabled more clearly to define the extent of their rights to the inventions which they claim to have made, and also more clearly to describe those inventions for the benefit of the public.

But to enable an inventor to do this with safety to himself it would
[*39] not by any means be necessary that his patent *should be actually sealed, if he were but protected as well against anticipation by others as also against the consequence of any publication of his invention.

And the practice of issuing patents before specifications of the inventions are deposited has given rise to a system which can hardly be termed less than fraudulent; and it cannot be wondered that the system should produce such a result when it is considered that no one has authority to exercise any control over the manner in which specifications

(*a*) Vide ante, p. 32.

are framed, or prevent patentees from framing them as delusively as they please.

Those interested in the continuance of the present system will no doubt say, that a specification framed in a delusive manner is bad and renders the patent void. And there can be no doubt that such a specification is bad according to the strict letter of the law, but nevertheless delusive specifications are enrolled almost daily, and such specifications will continue to be enrolled until measures be taken to put a stop to such practices.

It is at present a very common practice in the specification of a patent to describe the whole subject to which the invention relates, the particular nature of the invention being mentioned in as general terms as possible. No particular claims are inserted, or, if inserted, made as indefinite as possible, and every one reading the specification is left to put his own construction upon the instrument, and, if he can, discover to what invention the patent relates.

This is frequently a matter of no small difficulty to persons who are not in the practice of construing written instruments, and the difficulty is much increased by specifications being *purposely* framed in ambiguous language by persons who devote their attention to the subject. Patentees may avail themselves of the skill of such persons in drawing their specifications, so as to give the smallest amount of information to the public which is deemed safe; and if the validity of the patent or the specification should ever come into question, the person employed to draw the *specification becomes a most convenient witness, capable of proving the validity of the patent in the most satisfactory [*40] manner possible.

In all these proceedings the parties take into consideration and calculate upon the leaning of our courts and juries in favour of patents, and thus the very laudable desire to secure to every inventor a fair reward for his ingenuity, is taken advantage of and made available for the purpose of perpetrating fraud and deceit upon the public.

It is not intended to be said that there are not many inventors who are thoroughly honest and straightforward, and who earnestly desire to frame their specifications fairly and so as to comprise no more than they are fairly entitled to claim. And indeed whenever a patentee has obtained a patent for a good and useful invention, he will (if he knows his own interest) prepare a specification with the utmost fidelity, carefully distinguishing his invention from every thing which preceded it. Specifications of patents framed in this manner make the patents almost unassailable, for almost every man who desires to use a patent invention, first obtains advice respecting the validity of the specification, and when it appears to have been prepared with the requisite care and fidelity, few persons venture to run the risk of invading the rights of the patentee.

But there are very many patents obtained by persons who are not content with the profit arising from their inventions, but seek to appropriate to themselves, by general words in their specifications, every thing that cannot be shown to be old at the dating of their patents.

Thus a person who has invented an improvement in any description

of machinery, mentions in his specification the benefits which he deems his invention to have produced, and describes the whole of the improved machinery in as general terms as may be deemed safely practicable, knowing that after the lapse of two or three years it may become
[*41] *difficult, if not impossible, to prove the want of novelty at the date of the patent in some parts of the machinery, which he would not dare particularly to claim at the time he is compelled to enrol his specification.

In fact, the difficulties which fraudulent patents and specifications occasionally impose upon manufacturers are far greater than could possibly be supposed by any one not called upon to advise them in their difficulties. And these lengthened observations respecting specifications have been made, because almost all persons who have written upon the subject of the amendment of the patent laws, in their desire to benefit inventors seem entirely to have lost sight of the necessity of providing fairly for the security of the public.

The protection of the public against such fraudulent practices as have been mentioned might be effected by a rule compelling every applicant for a patent to set forth in his specification some clear and distinct claim or claims of invention, stating either that every thing described is intended to be claimed, or that it is intended to claim some particular part or parts only, specifying which of them.

If an applicant be allowed a reasonable time for this purpose (during which he is protected) he cannot have any reasonable ground of complaint against being compelled to deposit a sufficient specification of his invention. Indeed, the evils resulting from the present system of specifying inventions are so great, that it seems now to be a general opinion that every inventor ought to be compelled to deposit a specification of his invention before a patent is granted to him.

To prevent evasions of this rule and enforce a fair and bona fide specification in every case, it should be the duty of the Master of the Patent Office to examine every specification offered by a petitioner for a patent, in order to see that it contains a proper claim or claims, and, in every case in which the claims may appear to him to be insufficient, to reject the specification.

[*42] *The performance of a rule requiring definite claims in specifications could only be insured, by refusing to seal a patent for any invention of which such a specification has not been deposited in the Patent Office; and the strict observance of this regulation would produce the greatest benefit not only to the public but also to all honest inventors.

With such claims in specifications of patent inventions the public would have more specific information as to what they are prohibited from doing during the existence of the patents, and patentees would have their rights as against the public more clearly defined, and thus a great amount of useless litigation might be prevented.

According to the present practice of the law respecting the specification of inventions, a patentee must first prepare an instrument in writing under his hand and seal describing his invention, and, if necessary, an-

nexing drawings to the instrument to illustrate the description which it contains; and then he must cause the whole of it to be entered upon the rolls of the Court of Chancery, to which copies of the drawings (if there be any) must be annexed.

These rolls are long narrow strips of parchment, upon which specifications are copied in the old engrossing hand writing, and they are as inconvenient as they well could be for the purposes of reference.

This state of things exactly suits the objects which many patentees have in view, viz., as much as possible to prevent the public from having the means of acquiring a knowledge of the particulars of the invention. And for better effecting this object patentees frequently make their specifications as long as they possibly can, and annex a great many unnecessary drawings to them. By taking this course, not only is the difficulty of reference to the inrolment increased, but the expense of office copies is greatly enhanced, and few persons care to incur the cost of obtaining an office copy of the inrolments of specifications until they are *compelled by legal proceedings for alleged infringements being either actually commenced or threatened. [*43]

It is true that there are several periodicals which give copies of a few specifications, and one of those publications professes to give a copy, or the substance, of every specification which is enrolled in England. But none of these publications afford the public the means of obtaining the accurate information they are entitled to require respecting the extent of the patent rights, of which the law requires them to take notice at their peril.

These publications are usually conducted by patent agents, who are enabled to give copies of such specifications as they themselves may have drawn, or which may otherwise come within their reach, but they are unable to give accurate copies of anything like all the enrolled specifications.

The writer would be sorry to say anything to disparage the publications alluded to, and which there can be no doubt have been of great public utility. But the great expense of office copies prevents them from affording the public the amount of information required, viz., an accurate knowledge of the contents of every specification of an invention enrolled in pursuance of a patent.

This knowledge the public does not at present possess anything like adequate means of obtaining, and the consequence is, that there are very many patented inventions of which specifications have been duly enrolled, but of which the public remains profoundly ignorant.

It has happened more than once to the writer, that a client has come to ask for advice respecting a supposed new invention, which had in fact, to the knowledge of the writer, been previously made the subject of a patent, but of which the public remained in ignorance, because the specification had never been published beyond the purlieus of the Court of Chancery.

This state of things ought not to be permitted to continue; and if more extensive or effectual privileges are to be *granted to inventors, some better mode of affording information to the public respecting the contents of their specifications ought to be required, [*44]

not only for the purpose of enabling all who may be interested to know what they are prohibited from doing, during the existence of the patent privilege, but also for the purpose of enabling those persons, who may be in possession of the most accurate information respecting the branch of manufacture to which every patent invention may relate, to see whether the patentee has claimed more than he is entitled to do.

The cost at present incurred in preparing and engrossing a specification, and procuring it to be enrolled, would, in almost every case, be sufficient to pay the cost of causing a considerable number of copies of the specification to be printed. And in every case in which an inventor obtains patents for the whole of the United Kingdom, he must incur the expense of preparing three specifications, and of causing each of them to be enrolled, an expense which, in almost every case, would be more than sufficient to pay the cost of printing 1000 copies of the specification.

Some few years ago there might have been a little difficulty in printing some specifications, with the figures which are requisite for illustrating the descriptions of the inventions; but it is now perfectly easy, in the present advanced state of the art of engraving on wood, to insert in letter-press forms every description of figure which can really be required for illustrating the description of any invention. To prove this, it is only necessary to refer to the various illustrated periodicals with which every one is familiar, many of which are devoted to scientific subjects, and every week insert figures of the description which have been mentioned.

It is true that, if specifications are to be printed, it will not be easy to insert in the letter-press forms the beautifully-coloured drawings which are frequently annexed to specifications; but it is very doubtful whether such drawings are more advantageous than uncoloured figures; and

[*45] *it is quite certain that uncoloured figures may be drawn in such manner as to illustrate any mechanical description quite as effectually as any coloured drawing, however finely finished. Indeed, the superior manner in which drawings annexed to specifications are frequently finished, is adopted, not for the purpose of improving or better illustrating the description of the invention, but for the purpose of increasing the cost of office copies. By multiplying unnecessary expensive drawings in this manner the office copy of a specification is sometimes made to cost an enormous sum; and in one case the writer has been informed that an office copy of the specification, with all its drawings, would cost more than £100!

By compelling patentees to pay the cost of printing their specifications, all these fraudulent expedients for preventing the publication of specifications would be rendered useless, and no patentee would ever introduce any figure into his specification unless it should be necessary so to do. And even if it should ever become necessary in a specification to use larger figures than could be inserted in letter-press forms (which is not very probable if the prescribed form should be quarto or folio,) such figures might be inserted in the same way as plates are usually inserted in printed books, and patentees would take care never to have recourse to them unless it should be necessary, or, at all events, to their interest so to do.

If specifications were printed in the manner which has been suggested, copies should be sent to public libraries at home and in the colonies, so that all persons in every part of the empire might be more fairly than at present required to observe the prohibitions contained in patents against the use of the inventions comprised in them.

Many copies of printed specifications might also be sold, and the produce of such sales would no doubt materially diminish the amount to be charged to patentees for printing the specifications; and there can be little doubt that the patentees would soon find it to their interest to have *printed copies of their specifications, not only as a means of promoting the adoption of their inventions by the public, but also for the purpose of making them more easily nnderstood when any litigation should arise respecting their patents. [*46]

By adopting this course, a printed copy of a specification would be in the hands of almost every one interested in the branch of manufacture to which the invention might relate, and every man would be enabled easily to ascertain to what extent existing patents interfere with anything which he might propose to do.

The mere circumstance of specifications being printed would induce every patentee to take more care in framing his specification, and so render it more certain and definite; and the general diffusion of an accurate knowledge of inventions would in all probability greatly tend to prevent infringements of the rights of patentees; for the number of persons capable of detecting such violations of their rights would be increased to such an extent, that detection would be almost certain in every case.

For the reasons which have been given, it may be inferred, that the printing of specifications would be productive of great benefit to patentees as well as to the public, and every patentee ought therefore to be compelled to pay the cost of printing a limited number of copies of his specification.

And even suppose all of the suggested benefits cannot be realized, if the alterations which shall be made in the law in other respects shall produce great advantages to patentees, it seems but fair that they should be compelled to concede something to the public, and provide sufficient means for enabling every man to ascertain with facility what any patent prohibits him from doing during the existence of the privilege which it grants.

A convenient time (say two years) being allowed to every patentee to extend his patent rights over as many foreign countries as he pleases, copies of specifications might be periodically sent to other countriess in exchange *for copies of the specifications of the patented *inventions* of *those countries*, and *in this way we might secure a knowledge of all foreign inventions which the inventors may not think fit to take patents for in this country. [*47]

The form of patent at present in use seems to have been framed so as to contain any exposition of the law relating to the grant which it makes.

This may have been very proper at the time when the form of patent was first settled after the passing of the Statute of Monopolies, because the knowledge of the law relating to patent grants was then very limited,

and it might be desirable that the form of such a grant should show to those ignorant on the subject the extent of the rights which were conferred by it upon the patentee.

The necessity for retaining this long, verboso form of patent does not now exist, and it can hardly be doubted that tho form of the instrument cannot be made too short, if it do but express the intent with sufficient clearness.

Patents, as now granted, always contain conditions for the protection of the public against fraudulent claims, or claims by persons having no just title to an invention, and the form of patent might be very greatly shortened by an enactment annexing to every future patent such of the conditions as may still be requisite.

Every patent should have annexed to it a copy of the patentee's specification of his invention, so that the patent may in every case afford sufficient evidence of the subject of the grant, and avoid all questions as to variances between the titles and specifications of inventions. And if specifications be printed, as already suggested,(*a*) a printed copy specification should be annexed to every patent.

Supposing a patent to be framed in the manner which has been suggested, the next subject which seems to present itself is the extent of the right or privilege which the patent ought to confer.

[* 48] *Copyrights, which need merely registration in London to perfect the title of authors, composers or designers, are made to extend to the whole of the united kingdom and all its colonies and dependencies.

Whether a patent for England, Wales, the Channel Islands, "and all her majesty's colonies and plantations abroad," extends to the East Indies and some other parts of her majesty's dominions, seems to be doubtful; and there is no apparent reason why a patent should not grant the patentee the sole right to use his invention throughout the whole of the realm.

The sale of printed specifications will most probably produce a considerable fund, which should be applied in some way for the benefit of inventors and the residue of the public.

This fund may be very beneficially expended in gradually printing all the old specifications, or such of them as may be deemed of any public importance, and providing indices for facilitating references to all the old as well as modern patents and specifications.

One of the most important questions in connection with the necessary reformation of the patent law, is what sum ought an inventor to be compelled to pay for a patent grant of the sole use of his invention?

The great amount of fees paid for unnecessary proceedings upon the passing of every patent for an invention has already been mentioned,(*b*) and the impolicy of taxing inventors has already(*c*) been pointed out.

But if inventors are to continue to be taxed, it seems to be very hard to make them pay the whole amount of the taxation upon the grant of their patents, and before they have derived any profit from their inventions. An inventor ought, therefore, to be allowed to have the option of

(*a*) Ante, p. 44. (*b*) Ante, p. 5. (*c*) Ante, p. 12.

paying the tax upon his patent, either in periodical sums during the continuance of the patent, or otherwise in a gross sum upon obtaining the patent; and if he adopt *the latter alternative, it seems but [*49] fair that the amount should be somewhat smaller than if he were to pay by instalments.

The grant of patents subject to the payment of a periodical tax, it has been contended, would be productive of this benefit—that patents for useless inventions would be allowed to expire by the non-payment of the tax, and in this way (it is said) many obstacles to further improvements in various branches of manufactures would be removed.

The doubtful benefit just adverted to can furnish no justification for this very impolitic tax; and if the public be protected by compelling every applicant for a patent to specify his invention in the manner which has been suggested, there need not be any fear that the public will be prejudiced by patents for useless inventions.

The amount of fees payable for patents should be adjusted so as to raise a sufficient sum to defray the costs of the establishment which may be necessary for transacting all the business connected with the granting of patents; and these fees should be paid into a separate fund, which might be called "The Patent Office Fund."

Considering the large number of patents granted annually, and the great augmentation of that number which will take place if the cost be diminished, and the practice of allowing several inventions to be included in one patent abolished, a fee of £20 for each patent (besides the costs of the specification) would raise a fund at least sufficient to pay all necessary office expenses. It is probable, indeed, that this amount of fee would soon be found to be more than sufficient for raising the requisite funds; and it is to be hoped, that whatever may be the amount of fee fixed upon in the first instance, it will be diminished from time to time whenever it may be practicable so to do.

There are at present some office holders who would probably claim compensation for the diminution of their *emoluments or the abolition of their fees, which would be occasioned by an alteration [*50] in the mode of granting patents. These persons would (according to the usual course) be compensated by annual payments, in lieu of the fees of which they would be deprived; and it is to be feared, that the House of Commons would not sanction the payment of those compensations out of the public purse.

It will therefore be necessary to raise fund for the payment of these compensations, by charging extra fees upon patents of the amount which may be necessary for this purpose. The extra fee to be thus charged upon every patent would be about 20*l*., if the number of patents granted during the year shall not increase; but if the number shall materially increase the amount of this fee may be proportionably diminished. These compensations will of course cease upon the death of the claimants, and, as the amount of them diminish from time to time, the extra fee may be diminished also, and totally cease when all further claim upon the fund shall be at an end.

If the suggestion here made were to be adopted, it is estimated that the costs of a patent would be as follows :—

	£	s.	d.
Office Fund	20	0	0
Compensation Fund . . .	20	0	0
Printing Specification, say . .	10	0	0
Total	£50	0	0

Besides which the patentee would have to pay his agent 10*l.*, and probably upon an average about 10*l.* more would be required to obtain him assistance in preparing the draft of his specification, thus making the total cost of patents average about 70*l.*

The fee for entering an opposition should be small (say 10*s.*,) and the costs of the hearings before the Master should be in his discretion.

[*51] *This sum is quite large enough without enhancing the cost of a patent by a tax of any description; and it is therefore strongly contended, that all taxes either upon patents or specifications ought to be at once abolished, as being not only impolitic but also oppressive in the greatest degree.

By several of the acts relating to copyrights provisions have been made for rendering valid some simple forms of transfers, the transfers being required to be registered.

The facility with which copyrights may be transferred under these provisions has been found to be very beneficial, and the registration makes it easy for all persons to ascertain at any time the name of the proprietor of any copyright. The extension of this system to the transfers of patent rights would be beneficial not only to patentees but also to the public.

Patentees would be benefited because the title to a patent would at all times be more clear and certain, and any one inclined to purchase a patent would do so with much more confidence, and therefore give a better price, if he could be assured that no adverse claim could be set up to the patent under any instrument not previously registered.

Proprietors of patent rights would also derive advantage from a register which would enable any one at any time to find out the name of the proprietor of any patent of whom he might either desire to make a purchase or take a license.

The public would also be benefited by the registration of transfers of patents, because not only would fraudulent claims of proprietorship be prevented, but there would be certain means of ascertaining the names of parties against whom proceedings should be taken for repealing any illegal patent.

It is unnecessary here to mention any mode in which transfers should be made or registered; there can, indeed, be little difficulty in carrying out such a system as has been suggested.

[*52] *If it be possible to exempt transfers of patents from the payment of stamp duties, the exemption would be a great boon

to poor patentees, and would cause very little diminution of the revenue.

According to the present state of the law there is a remedy (by action of scire facias) by means of which any illegal patent may be repealed and cancelled. But if any person should unfairly acquire a knowledge of the invention of another, and fraudulently obtain a patent for it, the patent may, it is true, be repealed, but there are no means of restoring the real inventor to the position he would have occupied if the fraud had not been practised against him, and, therefore, he will be forever deprived of the benefit of his invention. This is a grievance which has occurred much more frequently than the public are aware of; and the reason why such cases are not made public is, that the real inventor of an invention thus fraudulently appropriated knows that he cannot gain any pecuniary advantage by the repeal of the patent, and he is therefore too glad to make the best terms he can with the man who has defrauded him, and get the best price he can for keeping silence respecting the facts of the case.

The remedy by scire facias is very expensive, and the party prosecuting such an action can never recover any costs of suit against the defendant, although he may be called upon to pay the defendant's costs if the patent be not repealed. And however frequently a patentee may be defeated in actions for the infringement of his patent, there are no means by which the patent can be repealed except an action of scire facias.

For the purposes of remedying the first of these defects in the law, it should be provided that any person claiming to be the inventor of any patented invention, and alleging that the patentee had no title to the invention at the time the patent was granted, might petition the Lord Chancellor to have the patent revoked, and to have a grant made to him as the true inventor; and that upon every such petition *such proceedings should be had as might be necessary to try and determine the rights of the respective parties and do justice between them. [*53]

And if a patent should be granted to a person claiming to be the assignee of a foreign or other inventor,(a) and it should be afterwards alleged that the patentee had no title as assignee, the party claiming to be entitled should be at liberty to apply by petition to the Court in a similar manner. And provision should also be made, that, whenever any patent should be revoked upon the petition of a person claiming and proving himself to be the true inventor, a new patent should be forthwith granted to the petitioner, to take effect as from the day of the date of the repealed patent, and to have the same validity as it would have had if it had been granted to him on that day.

For the prevention of unnecessary and vexatious litigation it should also be provided, that whenever it shall be made to appear to the Lord Chancellor, by the judgment of any court of competent jurisdiction, that any patent is void for any cause, and the patentee shall not within three months remove the defect in his title (when practicable so to do), the Lord Chancellor shall have power upon petition to revoke the patent, and compel the patentee to bring it into court to be cancelled.

(a) Vide ante, p. 32.

If an officer shall be appointed to perform the duty of investigating the claims of petitioners for patents, he should also be invested with the powers now given to the Attorney and Solicitor-General with respect to disclaimers and memorandums of alteration, and it would be useful to consolidate all the provisions upon this subject into one enactment. If parties be compelled to frame their specifications in the manner which has been suggested, disclaimers and alterations will not often be found necessary.

The powers of the Court to amend erroneous patents and specifications, and proceedings relating to them, might [*54] also be extended with great advantage; and the Court should have power to act upon the complaint of any person, either claiming that he is interested in a patent, or alleging that he is prejudiced by it in any way.

Summary of suggested Alterations of the Law.

The statute 27 Hen. VIII. c. 11, which makes it necessary that patents should pass by bill signed (or Queen's Bill), Signet Bill and Privy Seal Bill to be repealed, and the Lord Chancellor to be authorized to grant patents to inventors upon petition.

No patent for an invention to be granted to any person, except the actual inventor or his assignee.

That a person to whom an invention shall have been communicated by a foreigner, shall not be deemed to be an inventor.

That when a description of an invention in print shall have been published in a foreign country for a considerable period (say twelve months), the publication shall be equivalent to a publication here.

All the present preliminary proceedings for obtaining patents to be abolished.

Every application for a patent to be made by petition left at the Patent Office in Chancery, the petition to include only one invention, which must be accurately *intituled.*

Every petitioner to deposit with his petition such a description of his invention as shall be sufficient to explain the nature of it and distinguish it from any other. If the title or description of an invention be insufficient, no proceeding to take place upon the petition until amended.

No publication of an invention after an inventor has deposited his petition, with a proper title and description of the invention, to defeat a patent afterwards granted to him, if he procure it to be sealed within a limited time.

Notice to be given in the Gazette of every application [*55] for a patent (mentioning the title of the invention, but not name of the petitioner), and all persons to be entitled within a limited time to enter an opposition.

All petitions for patents to be referred to an officer of the Court of Chancery to be appointed for that purpose, who shall have authority to inquire into the truth of every petition, the nature and extent of the petitioner's claim to his alleged invention, and report the result to the Lord Chancellor.

Every person, who shall duly enter an opposition at the Patent Office, to be entitled to be heard against the grant of a patent.

The Chancery officer to have power to take evidence upon oath, and to compel the attendance of witnesses.

Every person alleging that he is aggrieved by a report of the officer, either in favour of or against the grant of a patent, to be entitled to appeal to the Lord Chancellor within a limited time.

That in every case, in which it shall be decided that the prayer of a petition ought to be granted, an order shall be made for the sealing of the patent so soon as the applicant shall have filed a sufficient specification of his invention, and paid the fees, &c.

That every specification shall contain some clear and distinct claim or claims of invention to the satisfaction of the officer of the court, and shall be filed within a definite time after a decision in favour of the petitioner; but that the description of an invention deposited with the petition may be accepted as a specification, if it contains sufficient claims.

That every patentee shall pay the cost of printing a limited number (say 250) copies of his specification by the printer of the Patent Office, a further number of copies being printed for public sale.

That the copies of a specification paid for by the patentee shall be distributed amongst public libraries in this kingdom and the colonies.

*Every patent to have a printed copy of the specification annexed to it, and the form of the grant to be made as short as practicable. [*56]

Every condition and provision necessary for the protection of patentees or the public to be annexed to every patent grant, by express enactment.

The fees to be charged for patents not to exceed the amount necessary for paying the office expenses connected with the grant of patents; the fees to be paid into a separate fund, and the amount to be diminished from time to time when found practicable.

Such further sums to be paid for patents as shall be required to raise the annual amount necessary for the payment of compensations, those sums to be paid into a separate fund (which may be called "The Compensation Fee Fund"), the fees to be diminished from time to time as the claims upon the fund diminish, and to cease upon the termination of the compensation payments.

All taxes upon patents and specifications to be abolished.

It is estimated that the office charges upon the grant of a patent, if regulated in the manner suggested, would at the commencement be about £50.(*a*)

The privilege granted by a patent to extend to the whole realm, and no separate patent for Ireland or Scotland to be necessary.

The powers of the Attorney and Solicitor-General respecting disclaimers and memorandums of alterations to be transferred to the Chancery Officer appointed to report upon petitions for patents.

A short form of transfer to be given by act of parliament, and all transfers to be registered in the Patent Office within three months after

(*a*) Vide ante, p. 50.

their dates, or within one month after their arrival in England from abroad.

The Lord Chancellor to have power upon petition to revoke a patent fraudulently obtained for an invention by *a person not the in- [*57] ventor, and to grant it to the true inventor; and his lordship to have power to direct any trial or inquiry for determining the rights of the parties.

The Lord Chancellor also to have power to revoke a patent which by any court of competent jurisdiction shall have been adjudged to be void, unless the patentee shall within a limited time remove the defect (when practicable) by disclaimer or alteration.

That the Lord Chancellor shall also have power to alter and amend patents and specifications in such manner as may be necessary to do justice to patentees or other parties claiming to be prejudiced.

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