# A SUMMARY

OF THE

# LAW OF PATENTS,

AND OF EXTENSION OF PATENTS:

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With Forms, and all the Statutes.

BY

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Inscribed,

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TO

SIR ALEXANDER JAMES EDMUND COCKBURN,

HER MAJESTY'S ATTORNEY-GENERAL,

BY THE AUTHOR.

# PREFACE.

THIS treatise has been written in order to show, in a summary form, the Law relating to Patents for Inventions as altered by the Act of the last Session, 15 & 16 Vict. c. 83.

The Appendix contains all the Statutes, together with various forms, pleadings, particulars of breaches, notices of objections, &c.

The Rules and Regulations issued by the Commissioners of Patents are also given in the Appendix. A doubt had existed whether they were to be acted upon, or whether others in substitution should not be issued (see note 2 to page 9); but that doubt no longer exists.

It may be worthy of notice in this place, as an important alteration effected by the Statute above-

mentioned, that the limitation of the number of persons interested in a Patent to twelve, hitherto in force, is now removed, so that in future a Joint Stock Company may be formed for the working of Patents.

CHARLES WORDSWORTH.

4, Paper Buildings, Temple,
*March* 1, 1853.

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# SUMMARY

OF THE

# LAW OF PATENTS.

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## SECTION I.

### INTRODUCTION.

LETTERS PATENT (*literæ patentes*) are so called because they are not sealed up, but exposed to open view, with the great seal pendant at the bottom. The grant of a patent right is not *ex debito justitiæ*, but an act of royal favour. Introduction.

The law of patents may be said to be founded upon the 6th section of the 21 Jac. I. ch. 3.[1] By the common law as to patents, before that time all monopolies were illegal and void. The statutory provision just referred to was made in affirmance of that common law, and introduced no other alteration than the restriction in point of time for which a patent might be granted. It may, however, be stated, that cases decided before the statute of James prove that grants by the crown to persons who had brought any new trade into the realm were good at common law.[2]

[1] Appendix 57.

[2] See case of Monopolics, *Noy. Rep.* 182; Clothworkers of Ipswich Case, *Godbolt's Rep.* 252. See judgment of Buller, J., in Boulton *v.* Bull, 2 *H. Bl.* 486.

Introduction.

A distinction should be borne in mind between a right to the exclusive use of a discovery secured by patent, and the right of a manufacturer to be protected from the attempt of another to persuade the public that the article sold is the production of the former, or, to use the words of Sir Thomas Plumer, Vice-Chancellor,[1] "a fraudulent attempt by one man to invade another's property, by appropriating the benefit of a valuable interest in the nature of good will, consisting in the character of his trade or production, established by individual merit, —the other representing himself to be the same person, and his trade or production the same (as in Hogg *v.* Kirby, 8 *Ves.* 215), combining imposition on the public with injury to the individual.[2]

The first and principal statute relating to patents is the "*Act concerning Monopolies and Dispensations with Penal Laws and the Forfeitures thereof*,"[3] which declares that

[1] Canham *v.* Jones, 2 *Ves. & Bea.* 221; Williams *v.* Williams, 3 *Meriv.* 157.

[2] And see Blofield *v.* Payne, 4 *B. & Ad.* 410; Archbold *v.* Sweet, 1 *Moo. & Rob.* 162. See Pierce *v.* Franks, 15 *Law J., N. S.* 122, *Ch.*; where an injunction was granted to restrain the defendant from selling tooth and nail brushes on which the words "Smyths, Bond Street" were stamped, that being a trade-mark to which the plaintiff was entitled.

[3] 21 *Jac.* I. c. 3, App. 57. See Reg. *v.* Prosser, 18 *Law J., N. S.* 35, *Ch.*, where the Master of the

monopolies are contrary to law, but enacts that such declaration shall not extend to any letters patent and grants of privilege for the term of *fourteen years or under*, hereafter to be made, of the sole working or making of any manner of *new manufactures* within this realm, to the true and *first inventor* or inventors of such manufactures, which others, at the time of making such letters patent and grants, shall not use; so also as they be not contrary to the law nor mischievous to the state, by raising prices of commodities at home, or hurt of trade, or generally inconvenient; the said fourteen years to be accounted from the date of the said letters patent or grant of such privilege hereafter to be made, but that the same shall be of such force as they should be if this act never had been made, and of none other."[1]

The next statute is "*An Act to amend the Law touching Letters Patent for Inventions*,"[2] which recites that it is "expedient to make certain additions to and alterations in the present law touching letters patent for inventions, as well for the better pro-

Rolls says, "an illegal monopoly is a public grievance."

[1] Sec. 6, App. 61.

[2] 5 & 6 W. IV. c. 83, App. 66. The term "invention" is interpreted by the 15 & 16 Vict. c. 83, s. 55, App. 110, to mean "any manner of new manufacture. the subject of letters patent and grant of privilege within the meaning of the 21 James I. c. 3."

Introduction.

tecting of patentees in the rights intended to be secured by such letters patent, as for the more ample benefit of the public from the same,"—and which empowers the Privy Council to extend for *seven years* longer the term mentioned in the statute of James.

And two subsequent statutes have been passed,[1] under which power is given to grant a still further extension of term, on the ground that it is expedient, for the further encouragement of inventions in the useful arts, to enable the time of monopoly in patents to be extended in cases in which it can be satisfactorily shown that the expense of the invention has been greater than the time then limited by law will suffice to reimburse.[2]

And, lastly, is the 15 & 16 Vict. c. 83,[3] which constitutes commissioners of patents, and contains various and important provisions as to the mode of obtaining letters patent, and the effect to be given to them, &c. Under this statute the commissioners' seal is affixed to warrants for letters patent, and all instruments and copies issued by them. The seal, as also impressions of it, are received in evidence, in like manner

[1] 2 & 3 Vict. c. 67, App. 73; and 7 & 8 Vict. c. 69, App. 76.

[2] See recital to section 2, 7 & 8 Vict. c. 69, App. 76; and see *post*, section on *prolongation of patents*.

[3] App. 84.

as impressions of the great seal. Copies or extracts of documents certified under the commissioners' seal are made evidence.[1] Rules and regulations respecting the business of their office may be made from time to time by the commissioners.[2] Introduction.

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## SECTION II.

### WHO MAY OBTAIN A PATENT.

As already shown, the person who may obtain a patent is required by the statute to be "the true and first inventor of such manufactures which others, at the time of making such letters patent and grants, shall not use."[3] Who may obtain a patent.

The word *inventor* refers to some exertion of ingenuity, and supposes some difficulty surmounted; so that when the new manufacture is of an obvious character, requiring no skill or contrivance for its production, it is not a fit subject for protection under a patent.[4] None can claim the character of

[1] 15 & 16 Vict. c. 83, s. 2, App 84.

[2] Sect. 3. Some rules have been published, but I find from the Attorney-General that they are not intended to be acted upon (15th December, 1852); if fresh ones are published in time, they will be added to the Appendix.

[3] See *ante*, 3.

[4] *Steph. Comm.* vol. 2, p. 88.

Who may obtain a patent.

true and first inventor, if it appear that the novelty was first suggested to him by some other person in this country.[1] But where the secret is acquired abroad, by one who afterwards introduces it into the realm, he is considered as the true inventor; for it is immaterial whether the benefit bestowed on the public be the result of a man's travel and observation, or the fruit of his original genius.[2]

If a patentee himself has, before obtaining his patent, made the particular article for sale, as an article of commerce, for gain to himself, and been in the practice of selling it publicly, that is, to any one who would buy, the invention cannot be said to be *new* at the date of the patent. This appears to be founded on reason; for if an inventor could sell his invention, keeping the secret to himself, and when it was likely to be discovered by another, take out a patent, he might have practically a monopoly for a much longer period than the term intended to be granted.[3]

[1] Lewis *v.* Marling, 10 *B. & C.* 22.

[2] Edgeberry *v.* Stephens, 2 *Salk*, 447; *Davies' Pat. Ca.* 36; Wood *v.* Zimmer, *Holt, N. P. C.* 58.

[3] Baron Parke's judgment, Morgan *v.* Seaward, 2 *M. & W.* 559; and see Wood *v.* Zimmer, *Holt's N. P. C.* 60, where Gibbs, C. J., says: "They gave it to the world without a patent, and they cannot afterwards obtain a patent." See Cornish *v.* Keene, 3 *Bing. N. C.* 570, 588; Lewis *v.* Marling,

Who may obtain a patent.

A person who has taken his idea from a book, or from the information of others, is not the true and first inventor;[1] but a discoverer who has employed a skilful person to assist in the mechanical parts of his contrivance has a right to the additions made by that person, and may include them in his patent.[2]

A person who has imported an invention into this country, where it was not known before, is a first inventor within the meaning of the statute; and it does not affect the patent that the party importing the invention is merely an agent for the inventor, nor that the patent was taken out in trust for aliens residing abroad.[3]

In the case of two simultaneous discoverers, he who first procures a patent, before the matter is made public, is entitled to enjoy the exclusive privilege it confers.[4]

But a person, believing himself to be the "true and first inventor," may subsequently discover that another person really was so. In such a case, the statute law provides, as hereafter shown, that such letters may

10 *B. & C.* 22; Boulton *v.* Bull, 2 *H. Bl.* 487; 3 *Inst.* 184; *Davies' Pat. Ca.* 429.

[1] Arkwright's Case, *Davies' Pat. Ca.* 129.

[2] Bloxam *v.* Elsee, 1 *Car. & P.* 558.

[3] Beard *v.* Egerton, 15 *Law J., N. S.* 270, *C. P.*

[4] *Steph. Comm.* vol. 2, p. 88; Boulton *v.* Bull, 2 *H. Bl.* 487; Lewis *v.* Marling, 10 *B. & C.* 22.

Who may obtain a patent.

be confirmed, or new ones granted by the Privy Council on petition.[1]

Where a person obtains a patent in the United Kingdom, and the like privilege had been obtained abroad, for an invention first invented there, the former becomes void immediately upon the determination of the foreign patent.[2]

Executors and administrators may obtain letters patent at any time within three months after the death of the applicant, if that occurs during provisional or other protection, notwithstanding the term of such protection may have expired.[3]

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## SECTION III.

### FOR WHAT A PATENT MAY BE OBTAINED.

For what a patent may be obtained.

ACCORDING to the statutes, a patent may be obtained for "the sole working or making of any manner of new *manufactures* which others at the time of making such letters patent and grant shall not use."[4]

[1] 5 & 6 W. IV. c. 83, s. 2, App. 67; 15 & 16 Vict. c. 83, s. 40, App. 103. See *post*, section on *prolongation of patents*.

[2] 15 & 16 Vict. c. 83, s. 25, App. 95.

[3] 15 & 16 Vict. c. 83, s. 21, App. 93.

[4] 21 James I. c. 3. s. 6, App. 61. See the statutable meaning of the word "invention" *ante*, 3.

For what a patent may be obtained.

"The word *manufacture* in the statute is of extensive signification, and applies not merely to *things made*, but to *the practice of making*, to principles carried into practice by means tangible and capable of being accurately described. Undoubtedly there can be no patent for a mere *principle*; but for a principle so far embodied and connected with corporeal substances as to be in a condition to act and to produce effects in any trade, mystery, or manual occupation, there may be a patent."[1]

A patent may be obtained for a mere process, as, for instance, "for a new and improved process or manufacture of silk, and silk in combination with certain other fibrous substances;"[2] so also for improvements in the mode of doing anything by a known process.[3]

[1] Bolton *v.* Bull, 2 *H. Bl.* 492, 495, judgment of C. J. Eyre; and see Hornblower *v.* Boulton, 8 *T. R.* 95. See also Rex *v.* Wheeler, 2 *B. & A.* 350, 353; 3 *Meriv.* 629; Minter *v.* Wells, 5 *Tyr.* 163; Lewis *v.* Davis, 3 *C. & P.* 502; Hullett *v.* Hague, 2 *B. & Ad.* 370; Cornish *v.* Keene, 3 *Bing. N. C.* 570; Kay *v.* Marshall, 5 *Bing. N. C.* 492; Saunders *v.* Aston, 3 *B. & Ad.* 881. See a construction of "manufacture" in Morgan *v.* Seaward, 2 *M. & W.* 558, and in Cornish *v.* Keene.

[2] 1 Gibson *v.* Campbell, 11 *Law J., N. S.* 177, *C. P.*; and see Boulton *v.* Bull, 2 *H. Bl.* 468; Rex. *v.* Wheeler, 2 *B. & A.* 345. See also Walton *v.* Potter, 11 *Law J., N. S.* 138, *C. P.*, as to what was a new invention in the particular circumstances of the case.

[3] Electric Telegraph Company *v.* Brett, 20 *Law J., N. S.* 123, *C. P.*

For what a patent may be obtained.

And an invention, consisting in no more than in the use of things already known, and acting with them in a way already known, and producing effects already known, but producing those effects so as to be more economically or beneficially enjoyed by the public, is also properly the subject matter of a patent.[1]

It is a question of fact for the jury, not of law for the judge, whether an invention is a new manufacture.[2]

It must not only be a *manufacture*, but *such a new manufacture which others at the time of the making of the patent do not use.* The invention may be a manufacture, and the claimant may be its first and true inventor; still, if it have been *used* within the realm, it cannot be the subject of a patent.[3]

And as already stated elsewhere, this is founded on reason; for if it were otherwise, the inventor might have practically a monopoly for a much longer period than the term granted by the patent.[4]

By *using*, however, is meant an using publicly, for (as in Dolland's patent for object glasses) if two persons make the same

[1] Crane *v.* Price, 12 *Law J., N. S.* 81, *C. P.*

[2] Steiner *v.* Heald, 20 *Law J., N. S.* 410, *Exch.*

[3] Tennant's Case, *Davies' Pat. Ca.* 429; Wood *v.* Zimmer, 1 *Holt, N. P. C.* 58; Smith's Epitome, p. 14.

[4] Morgan *v.* Seaward, 2 *M. & W.* 559. See *ante*, 6.

discovery, and one forbear to divulge it, the other will have a right to obtain a patent for it.[1] But a *public use* of an invention does not mean a general use, but a use in public, as distinguished from one that is secret.[2]

For what a patent may be obtained.

To an action for an infringement of a patent for a lock, the defendant pleaded that the lock was not "a new invention" as to the public use thereof. It appeared that a lock, similar to that of the plaintiff's, had been used by a third party, on a gate by the road-side, for sixteen years before the patent was taken out, and that locks on the same principle had been manufactured in this country for money, from a pattern sent from America, and had afterwards been exported to that country. It was held, that under these circumstances the defendant was entitled to the verdict.[3]

It has also been held, upon the equity and general policy of the statute, that the manufacture for which a patent is granted must be *useful*[4] to the community.

[1] Boulton *v.* Bull, 2 *H. Bl.* 487; Lewis *v.* Marling, 10 *B. & C.* 22.

[2] Carpenter *v.* Smith, 11 *Law J., N. S.* 213, *Exch.*

[3] *Ibid.*

[4] Manton *v.* Parker, *Davies' Pat. Ca.* 332; Brunton *v.* Hawkes, 4 *B. & A.* 555; Hill *v.* Thompson, 2 *Bayly Moo.* 424, *In Eq.* 3 *Meriv.* 629; Bloxam *v.* Elsee, 6 *B. & C.* 169; Haworth *v.* Hardcastle, 1 *Bing. N. C.* 182; Lewis *v.* Marling, 10 *B. & C.* 22; Judgment of C. J. Eyre, Boulton *v.* Bull, 2 *H. Bl.* 498; Rex *v.* Arkwright, *Davies'*

For what a patent may be obtained.

If, then, it be a *manufacture* not before used in this realm, and likely to prove beneficial to the public, it is unimportant whether the subject matter of the patent be a thing existing independently and by itself, or an addition to or improvement upon something before existing. But if the latter be the case, the patent must be for the addition or improvement only, not for the thing added to or improved.[1] Of course, if the addition or improvement be made to the subject matter of an existing patent, the second patentee will have no right to manufacture that, but must make and sell his own invention separately[2]

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## SECTION IV.

### HOW TO OBTAIN A PATENT.

How to obtain a patent.

A patent is obtained by petition to the Crown.[3]

*Pat. Ca.* 118; Morgan *v.* Seaward, 2 *M. & W.* 544; Edgeberry *v.* Stephens, 2 *Salk.* 447; *Davies' Pat. Ca.* 36.

[1] Buller's, J., judgment in Boulton *v.* Bull, 2 *H. Bl.* 489. See Bircot's Ca. 3 *Inst.* 184; Morris *v.* Branson, *Bull, N. P.* 76; Boulton *v.* Bull. See Huddart *v.* Grimshawe, *Davies' Pat. Ca.* 265.

[2] Ex parte Fox, 1 *V. & B.* 67; Smith's Epitome, 14. See Harmer *v.* Playne, 11 *East*, 101.

[3] See 15 & 16 Vict. c. 83, s. 44, App. 44; and Schedule, App. 111, as to the fees and stamps now payable on letters patent, specifications, warrants, &c.; and see s. 53, App. 109.

How to obtain a patent.

The "petition"[1] for letters patent, and the "declaration" required to accompany it,[1] together with a "provisional specification,"[1] are left at the Commissioners' Office; and the date of leaving is there recorded, and also indorsed upon the several documents; and a certificate thereof is then given to the applicant or his agent.[2]

The "application" for letters patent, together with the "provisional specification," is referred by the commissioners to the law officer,[3] who, if satisfied that the "provisional specification," describes the nature of the invention, gives a certificate of allowance,[4] which is filed by the commissioners. Upon this, the invention may be "used and published" during six months from the date of the petition. This is called "provisional protection," and is without prejudice to any letters patent to be afterwards granted for the same invention.[5]

But the applicant may, if he think fit, file with his "petition" and "declaration" a "complete specification"[6] (instead of a

[1] See Forms, App. 112.

[2] 15 & 16 Vict. c. 83, s. 6, App. 86. A registry of these documents, and of the proceedings thereon, is kept by the commissioners.

[3] See Interpretation Clause, 55, App. 110.

[4] The law officer may call in scientific or other aid if necessary, but at the expense of the applicant: he may also amend the "title of the invention," or the "provisional specification," if "too large or insufficient:" s. 8.

[5] 15 & 16 Vict. c. 83, s. 8, App. 86.

[6] See *post*, 30.

How to obtain a patent.

"provisional" one), therein "particularly describing and ascertaining the nature of the invention, and in what manner the same is to be performed." The "declaration" must mention this "complete specification." The day of delivery at the office of the "petition," "declaration," and "complete specification" is there recorded, and is indorsed, and a certificate granted, in like manner as already shown in the case of a "provisional specification." The invention then becomes protected for six months from the date of the application, and may be "used and published" without prejudice to any letters patent to be afterwards granted for the same invention, the applicant being invested with the "like powers, rights, and privileges as might have been conferred upon him by letters patent for such invention issued under the Act, and duly sealed, as of the day of the date of such application."[1]

It is provided, that an application for letters patent and protection granted, if in fraud of the true and first inventor, shall not invalidate the patent granted to him.[2]

These protections, whether provisional or complete, are advertised by the commissioners.[3]

[1] 15 & 16 Vict. c. 83, s. 9, App. 87. The public may inspect a copy of the "complete specification" as soon as it is deposited: *Ib.*

[2] *Ib.* s. 10.

[3] *Ib.* s. 11.

How to obtain a patent.

The applicant for letters patent, as soon as he may think fit after "provisional protection," or as soon as he may think fit after depositing a "complete specification," may give notice of his intention to proceed for his letters patent. The commissioners then advertise the application. Any person "having an interest in opposing the grant of letters patent for the said invention" may leave written objections to the application with the commissioners.[1] When the time for delivery of the objections has expired, the provisional or complete specification and objections are referred to the law officer to whom the original application had been referred.[2]

If any hearing or inquiry take place before the law officer, upon any "objection or otherwise in relation to the grant of such letters patent, or in relation to the provisional or other protection acquired by the applicant," the law officer may certify by or to whom the costs of the hearing or inquiry shall be paid, and in what manner and by whom to be ascertained. If such costs are not paid within four days after being ascertained, the law officer may make an order for payment, which order may be made a

[1] 15 & 16 Vict. c. 83, s. 12, App. 88. The objections must be lodged within a time to be fixed by the commissioners.

[2] *Ib.* s. 13.

How to obtain a patent.

rule of Court, "to the effect that execution may pass thereupon in common form."[1]

The law officer, after the hearing, if any, may cause a warrant to be made for the sealing of letters patent for the invention;[2] and he directs the insertion in the letters of such restrictions, conditions, and provisoes as he may deem usual and expedient in such grants, or necessary in pursuance of the provisions of the Act.[3]

The commissioners prepare letters patent according to the tenor of the warrant, and so soon after the sealing of the latter as required by the applicants: the letters extend to Great Britain and Ireland, the Channel Islands, and the Isle of Man, and also to any colonies, if so directed in the warrant.[4]

[1] 15 & 16 Vict. c. 83, s. 14, App. 89.

[2] The warrant is sealed with the commissioners' seal, and sets forth the effect of the letters patent thereby authorized to be granted.

[3] 15 & 16 Vict. c. 83, s. 15, App. 89. The Lord Chancellor, however, still retains his power as to the warrant and letters patent as he had before the act under the Great Seal: *Ib.* The prerogative of the Crown as to granting or withholding letters patent is also saved. The Crown may also direct the law officer to withhold the "warrant," or that letters shall not be granted if warrant already issued, or that other restrictions, &c., than those under the act may be added or substituted in the letters patent. Her Majesty may, moreover, direct that any complete specification, if letters not already granted, be cancelled, upon which protection ceases: s. 16.

[4] 15 & 16 Vict. c. 83, s. 18, App. 91. But this does

How to obtain a patent.

But the letters are not to issue unless application to seal them be made within three months after the date of the warrant;[1] nor can they be issued except during the continuance of "provisional protection," or where a "complete specification" has been deposited, unless the letters be granted during the protection conferred by reason of that deposit. To this, however, there is the exception where the sealing of the letters has been delayed by a *caveat*, or application to the Lord Chancellor, against the sealing,—then they may be sealed at such time as he may direct.[2]

not make letters patent valid in a colony contrary to the laws of such colony. With respect to *Scotland*, a transcript of the letters is sent to the Chancery there, and is there recorded on payment of certain fees. Extracts from such records are made evidence: *Ib.* s. 18. A transcript is also sent to the Court of Chancery, *Dublin:* s. 29, App. 97.

[1] *Ib.* s. 19. The letters may be sealed and bear date as of the day of the application for the same, or as of the day of provisional registration under the "Protection of Inventions Act, 1851;" or on any day, at the discretion of the law officer or the Lord Chancellor, between the day of the application or provisional registration and the actual day of sealing: *Ib.* s. 23. And letters, if ante-dated, are of the same validity as if sealed on the day of the date. But no proceeding at law or in equity can be had on letters patent in respect of any infringement committed before they were actually granted, except in those cases in which a complete specification has been deposited: *Ib.* s. 24.

[2] *Ib.* s. 20.

How to obtain a patent.

There is also a provision against the death of the applicant during either provisional or the other protection; in which event the letters may be granted to the executors or administrators of the applicant during the state of protection, or at any time within three months after his death, notwithstanding the term of protection may have expired.[1]

So likewise as to letters patent lost or destroyed, other letters bearing same date as the originals may be issued.[2]

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## SECTION V.

### FORM AND OPERATION OF PATENT—LICENCES.

Form and operation of patent.

THE recent statute, 15 & 16 Vict. c. 83, gives the form of a patent.[3] It contains a clause by which it is to be "construed and adjudged in the most favourable and beneficial sense for the best advantage of the patentee."

The term of a patent commences with and includes its date: where it was dated 26th February, 1825, the fourteen years were held to expire at midnight of the 25th February, 1839.[4]

[1] 15 & 16 Vict. c. 83, s. 21, App. 93.
[2] *Ib.* s. 22.
[3] App. 84.
[4] Russell *v.* Ledsam, 14 *Law J., N. S.* 353, *Exch.*

Form and operation of patent.

The title of a patent is a description, in general terms, of the particular invention. The reader will bear in mind the distinction between this title and the particular description of the nature and mode of working the invention contained in the specification hereinafter treated of.[1]

A patent will not be void from mere vagueness and generality in its title, or, in other words, in the description of the thing for which the patent has been obtained, unless, indeed, there is evidence leading to an inference of fraud upon the Crown, or prejudice to the public. Such was the decision where the patent was for "improvements in carriages:" the improvement, in fact, consisted of using "German shutters."[2]

So the title was held not ambiguous or repugnant where it was for "a new or improved method of obtaining the spontaneous reproduction of all the images received in the focus of the camera obscura."[3]

Formerly every patent contained a clause making it void if a specification was not enrolled in chancery within a prescribed time.[4]

[1] *Post*, 24.

[2] Cook *v.* Pearce, in error, 13 *Law J., N. S.* 189, *Q. B.*; reversing the judgment in Cook *v.* Pearce, 12 *Law J., N. S.* 187, *Q. B.* See Neilson *v.* Harford, 11 *Law J., N. S.* 20, *Exch.*

[3] Beard *v.* Egerton, 15 *Law J., N. S.* 270, *C. P.*

[4] Ex parte Hoops, 6 *Ves.* 599; Ex parte Beek, 1 *Bro. Ch. Ca.* 578. See Watson *v.* Pears, 2 *Camp.* 294.

Form and operation of patent.

But now all letters patent under the new statute, except only those granted after the filing of a complete specification, require the specification thereunder to be filed in chancery, and not enrolled.[1] And the letters patent now, in lieu of a condition for making them void in case the invention be not described and ascertained by a *subsequent* specification, are conditioned to become void if the complete specification, filed as hereafter mentioned,[2] does not "particularly describe and ascertain the nature of the said invention, and in what manner the same is to be performed."[3]

There is also a condition making them void at the expiration of three years and seven years respectively from the date, unless before those periods terminate the monies and stamp duties mentioned in the Act are paid to the commissioners.[4]

The patent always contained another clause, providing that it should be void if transferred to more than five persons, or, in

[1] 15 & 16 Vict. c. 83, s. 27, App. 96. See further as to specification, *post*, 24, 30. It will be observed that provisional and complete specifications are filed with the commissioners, but those required after the grant of the letters must be filed in chancery.

[2] *Post*, 24.

[3] 15 & 16 Vict. c. 83, s. 9, App. 87.

[4] *Ib.* s. 17, App. 91. See Schedule, App. 111. The commisioners give a certificate for these payments, and a receipt for them is also indorsed on the letters patent.

any of certain modes therein described, rendered beneficial to more than five persons.[1] This clause, however, applied to assignments by the act of the party, not to those by operation of law.[2] Form and operation of patent.

But it is now enacted, that, notwithstanding any such proviso, more than twelve persons may have a legal and beneficial interest in such letters patent.[3]

Where letters patent are granted, since the passing of the 15 & 16 Vict. c. 83, for an "invention first invented" in a foreign country, or by the subject of a foreign state, and a patent or like privilege for the use of it in a foreign country is there obtained before the grant of such letters in the united kingdom, the latter become void immediately upon the expiration of the former.[4] And it is provided that letters patent are not to prevent the use of inventions in foreign ships resorting to British ports, except ships of

[1] See Duvergier *v.* Fellowes, 5 *Bing.* 248, and 10 *B. & C.* 826.; Protheroe *v.* May, 5 *M. & W.* 675.

[2] Bloxam *v.* Elsee, 6 *B. & C.* 169; 1 *C. & P.* 558.

[3] 15 & 16 Vict. c. 83, s. 36, App. 101. There will therefore no longer be the difficulty hitherto existing as to the working of patents by joint stock companies. Such companies, incorporated under the 7 & 8 Vict. c. 110, may now take to patents, with their capacity of applying a large capital, an advantage that will be extensively felt in respect of many patents. For information as to such associations, see *Wordsworth's Law of Joint Stock Companies*, 5th edition.

[4] 15 & 16 Vict. c. 83, s. 25, App. 95.

Form and operation of patent.

foreign states in whose ports British ships are prevented from using foreign inventions.[1]

It was said by Mr. Justice Bayley,[2] if a patent be taken out for several different things, the entire discovery of all those things is the consideration upon which the King is induced to make the grant; that consideration is entire, and if it fails in any part, it fails *in toto*. It may be considered by the persons who are to advise the Crown as to the propriety of the grant, that the discovery of the three things together may form the proper subject of a patent, though each *per se* would not induce them to recommend the grant; therefore, if a patent was taken out for two things, and one was old, the whole patent was void, although the other was new, and the proper subject of a patent.[3]

But, nevertheless, there does not appear to be any objection to a patent being taken out for that which includes the subject matter of a patent still in force, if the specification properly distinguish that which is new from that which is old.[4]

These difficulties are now, however, remedied by what is called a *disclaimer* of any

1 15 & 16 Vict. c. 83. s. 26, App. 95.

2 Brunton *v.* Hawkes, 4 *B.* & *A.* 553; Campion *v.* Benyon, 3 *B.* and *B.* 5; Bloxam *v.* Elsee, 6 *B.* & *C.* 169.

3 Brunton *v.* Hawkes; Campion *v.* Benyon, *supra.*

4 Crane *v.* Price, 12 *Law J., N. S.* 81, *C. P.*

part of either the title of the invention or of the specification, as hereafter explained.[1]

Form and operation of patent.

With respect to the operation of a patent, it should also be remarked, that in order to prevent objections being vexatiously urged to the validity of a patent, contrary to the real justice of the case, the Privy Council may, under certain circumstances, confirm an existing patent. This, however, will be treated of at the same time that we consider the subject of prolongation of patents.[2]

Licences.

It has been already seen that a patent may be assigned. The patentee or assignee may also grant *licences* to one person, or any number of persons, to manufacture the particular article. They need not be under seal,[3] and do not require to be stamped.[4]

If a licence be granted, and the licensee transfer his interest, the transferee is not thereby prevented from disputing the validity of the patent.[5]

The grant of an exclusive licence to use a patent does not invalidate the patent itself, whatever may be the number of persons in whom the licence is vested; nor is a licence invalid if the district covered by it includes the extent of the patent.[6]

[1] 5 & 6 W. 4, c. 83, App. 66; and see *post*, 31.

[2] 5 & 6 W. 4, c. 83, s. 2, App. 67; 15 & 16 Vict. c. 83, s. 40, App. 103.

[3] Chanter *v.* Dewhurst, 12 *M. & W.* 825.

[4] Chanter *v.* Johnson, 14 *M. & W.* 408.

[5] Pidding *v.* Franks, 18 *Law J., N. S.* 295, *Ch.*

[6] Protheroe *v.* May, 5 *M. & W.* 675.

## SECTION VI.

### SPECIFICATION.

Specification.

THE letters patent, as will be seen by referring to the form given by the 15 & 16 Vict. c. 83,[1] contain a proviso making them void if the patentee shall not particularly describe the nature of his invention, and in what manner the same is to be performed, by an instrument in writing under his hand and seal, and cause it to be filed within the limited time therein mentioned. This instrument is called a *specification*.

But whether the letters patent, in such a case, become void from the date of the letters, or only from the expiration of the prescribed period, does not appear to have been determined.[2]

The time for filing a specification is reckoned exclusively of the day the patent bears date.[3]

With respect to the framing of the specification, it should, to use the language of Buller's Nisi Prius,[4] be such, that others

[1] App. 84.

[2] See Bentley *v.* Goldthorp, 14 *Law J., N. S.* 115, *C. P.*; Muntz. *v.* Foster, 13 *Law J., N. S.* 1 *C. P.*

[3] Russell *v.* Ledsam, 14 *Law J., N. S.* 353, *Exch.*; Watson *v.* Pears, 2 *Camp.* 294.

[4] Page 76.

may be taught by it to do the things for which the patent is granted; for the end and meaning of the specification is to teach the public, after the term for which the patent is granted, what the art is. And it must put the public in possession of the secret in as ample and beneficial a way as the patentee himself uses it; and the description should be such as to enable persons of ordinary skill to make the patent article, by simply following the directions given, without resorting to contrivances of their own.[1] Or, as has been said more recently, the terms of a specification are to be read altogether, and a fair and reasonable interpretation given thereto; then, if it be sufficiently plain to be understood by an operator of fair intelligence, the specification is good.[2] Specification.

Of late years, the courts have been more liberal than formerly in construing patents and specifications; and it has been said, that "a great deal too much critical acumen has been applied to the construction of patents,

[1] Bloxam *v.* Elsee, 6 *B. & C.* 169; Crossley *v.* Beverley, 9 *B. & C.* 63. The specification must be sufficient within itself. It must not direct the public to books for information as to the mode of doing what it prescribes: Hurman *v.* Playne, 11 *East*, 101; *Jessop's Case*, 2 *H. Bl.* 489; Crossley *v.* Beverley, 3 *C. & P.* 513.

[2] Beard *v.* Egerton, 19 *Law J., N. S.* 36, *C. P.*; and see Neilson *v.* Harford, *Ib.* 11 vol. 20, *Exch.*

Specification.

as if the objects were to defeat and not to sustain them."[1]

But, as will be more particularly shown hereafter,[2] those difficulties are in some degree removed by the statutory provisions, under which a patentee may enter a *disclaimer* of any part of either the title of the invention or of the specification.

It seems, however, that not only will the patent be void on failure to file a specification within the prescribed time, but also if the one filed is in any part of it materially false or defective.

In framing the specification, regard may be had to the following principal rules:—

In describing the nature of the invention, the specification must, in the first place, correspond with the title of the patent, for its office is to set forth with more particularity the subject already indicated in the patent itself; and if one thing be claimed by the patent, and another by the specification, the patent is void.[3]

The specification must not cover too much, that is, include in its claim of new invention anything which in fact has been already known and practised;[4]—therefore, if the

[1] Hullett *v.* Hague, 2 *B. & Ad.* 377; 1 *Moo. & M.* 283; Haworth *v.* Hardcastle, 1 *Bing. N. C.* 182.

[2] *Post*, 31.

[3] Rex *v.* Wheeler, 2 *B. & Ald.* 345; De Rosne *v.* Fairie, 5 *Tyr*, 393; *Steph. Comm.* 2 vol. 90.

[4] Harman *v.* Playne, 11 *East*, 101; Bovill *v.* Moore,

entire article for which the patent has been taken out comprise some matter of this description, in connexion with others that are new, the claim should be made in such form as to apply to the latter only; or if the combination of several known things happen to be the only novelty, it is to the combination only that the claim should be pointed. Specification.

A specification may claim not only a principle, but a machine embodying a principle.[1]

It may be added, that no circumstance can be safely passed over in the description in the specification which is advantageous, whether absolutely essential or not, in the conduct of the process; and that if several methods be stated, the specification will be defective if *any* of them be found to fail in effecting the promised result.[2]

The patent will also be void if the specification be ambiguous, for in that case the public cannot be said to be enabled to avail themselves practically of it.[3]

2 *Marsh*, 211; Brunton *v.* Hawkes, 4 *B. & Ald.* 541; Champion *v.* Benyon, 6 *Moore*, 71; Bloxam *v.* Elsee, 6 *B. & C.* 169; Saunders *v.* Aston, 3 *B. & Ad.* 881; Morgan *v.* Seaward, 2 *M. & W.* 544; Minter *v.* Mower, 6 *Ad. & Ell.* 735; *Steph. Comm.* 2 vol. 90; Huddart *v.* Grimshawe, *Dav. Pat. Ca.* 295; Macfarlane *v.* Price, 1 *Stark*, 199.

[1] Neilson *v.* Harford, 11 *Law J., N. S.* 20, *Exch.*

[2] Wood *v.* Zimmer, *Holt's N. P. C.* 58.

[3] Turner *v.* Winter, 1 *T. R.* 602; Rex *v.* Wheeler, 2 *B. & Ald.* 349; Felton *v.* Greaves, 3 *C. & P.* 611; Crompton *v.* Ibbotson, *Dan. & Lloyd*, 33. If you

Specification.

The specification must be full—no necessary circumstance must be omitted.[1] The description in it may be aided by diagrams; but if the specification contain several heads of invention, the patentee must support *all*, or the patent will be void.[2] The insertion of unnecessary ingredients, constituting surplusage, vitiates the specification.[3]

If the patentee use cheaper ingredients than those specified, or if he specify a more tedious or less ready mode of using his invention than he himself employs, the patent will be bad, for the public do not then get the invention in the most beneficial manner, as they are entitled to have it:[4] so also, if the specification casts upon the public the expense and labour of experiment and trial.[5]

A patent for *tapering brushes* has been held not to be supported by a specification of brushes, the hairs of which varied from

describe in a specification two ways of doing a thing, and by one way it cannot be done, the specification is bad. *Per* Maule, J.: Beard *v.* Egerton, 19 *Law J., N. S.* 36, *C. P.*

[1] Liardet *v.* Johnson, *B. N. P.* 76.

[2] Gibson *v.* Campbell, 11 *Law J., N. S.* 177, *C. P.*

[3] Arkwright's Case, *Davies' Pat. Ca.* 129, 139, 148; Savory *v.* Price, *Ry. & Moo.* 1.

[4] *Per* Buller, J.: Turner *v.* Winter, 1 *T. R.* 607; Rex *v.* Wheeler, 2 *B. & A.* 345; Boville *v.* Moore, *Dav. Pat. Ca.* 403; Savory *v.* Price, *Ry. & Moo.* 1; Lewis *v.* Marling, 10 *B. & C.* 22.

[5] Rex *v.* Wheeler, 2 *B. & Ald.* 345; Stephens *v.* Keating, 19 *Law J., N. S.* 57, *Exch.*

an inch to a quarter of an inch in length, but did not end in a point;[1] and a patent for *a method of drying and preparing malt* was not sustained by a specification of a new method of heating ready-made malt.[2] Specification.

Sometimes a discrepancy arises between the title of an invention and the specification,—where the former was "improvements in the manufacture of plaited fabrics," and the specification showed only a single improvement, the discrepancy was held not to be such as to invalidate the patent.[3]

It remains to observe, as to the requisites of the specification, that the new statute requires that the specification shall "particularly describe and ascertain the nature of the invention, and in what manner the same is to be performed."[4]

In an action for infringement, it is for the court, not the jury, to construe the meaning of the specification.[5] The judge is to state to the jury what the specification orders to be done, and the jury are to say whether it would produce the result.[6]

[1] Rex *v.* Metcalfe, 2 *Stark*, 249.
[2] Rex *v.* Wheeler, 2 *B. & A.* 350.
[3] Nickels *v.* Haslem, 13 *Law J., N. S.* 146, *C. P.* "Improvement" is *nomen collectivum*, *Ib.* See *In re* Redmund, 5 *Russ.* 44, as to amending a clerical error in the specification.
[4] 15 & 16 Vict. c. 83, s. 9, App. 87.
[5] Neilson *v.* Harford, 11 *Law J., N. S.* 20, *Exch.*
[6] *Per* Cresswell, J.: Beard *v.* Egerton, 19 *Law J.*,

Specification.

An office is appointed for filing specifications in Chancery. Every specification to be filed in pursuance of the condition of any letters patent must be there filed, and every "provisional specification" and "complete specification" left at the Commissioners' Office,[1] on the application for letters patent, forthwith after the grant of such letters, or if none be granted, then immediately on the expiration of six months from the time of such application, must be transferred to and kept at the office so appointed as above. An extra copy of the drawings must be left with the specification, if reference is made thereto in the specification deposited and filed under the Act.[2]

The commissioners are to cause true copies of all specifications (other than provisional ones), disclaimers, and memoranda of alterations filed in pursuance of the Act, and of all provisional specifications after the term of the provisional protection has expired, to be open to public inspection[3] at the Commissioners' Office.[4]

They are also to print, publish, and sell all specifications (including provisional ones),

*N. S.* 36, *C. P.* See Elliott *v.* Turner, 15 *Law J.*, *N. S.* 49, *C. P.*

[1] See *ante*, 20.

[2] 15 & 16 Vict. c. 83, s. 38, App. 101.

[3] *Ibid*, s. 29.

[4] And at an office in Edinburgh and Dublin respectively.

disclaimers, and memoranda of alterations. They may present copies to libraries and museums, and allow the person depositing or filing them to have a number of copies, not exceeding twenty-five, without paying for them;[1] and they are required to have indexes made to the old specifications, &c., which may be printed, published, and sold.[2] Specification.

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## SECTION VII.

### DISCLAIMERS AND CAVEATS.

If any error be discovered in the title of the patent, or in the specification, the patentee, or his assigns, may rectify it for the future (though not as regards any pending action or suit for an infringement), by filing with the specification to which it relates, at the office for filing specifications,[3] a disclaimer of any part of the title or specification, stating the reason for such disclaimer, or a memorandum of any alteration therein (not operating as an extension of the patent right); and the disclaimer or memorandum, when filed, Disclaimers and Caveats.

[1] 15 & 16 Vict. c. 83, s. 30. App. 97. See s. 31 as to transfering old specifications, &c. to the office for filing such documents under this Act.

[2] *Ibid*, s. 32. Copies of all specifications, &c. printed by the Queen's printers, are made *primâ facie* evidence, s. 33.

[3] See *ante*, 30.

Disclaimers and Caveats.

is unimpeachable, and is thenceforth to be deemed part of the letters patent or specification.[1]

It has been held, under 5 & 6 W. IV. c. 83, that the grantee of letters patent may enter a disclaimer, though at the time of doing so he had once parted with all his interest in the patent, but had since become assignee of two third parts by reconveyance.[2]

Before, however, a disclaimer can be filed, leave must be obtained from the law officers, the application for which must be made at the Commissioners' Office, after which it is referred to the law officers.[3]

No action can be brought on any letters patent in which, or on the specification of which, a disclaimer or memorandum of alteration has been filed, in respect of an infringement committed prior to the filing, unless the law officer shall grant his fiat for that purpose.[4]

It had been decided on the previous statute, that although a disclaimer had relation to the date of the letters patent, making them good from that time, yet that persons

[1] 5 & 6 W. IV. c 83, s. 1, App. 66; 7 & 8 Vict. c. 69, App. 76; 12 & 13 Vict. c. 109, App. 80; 15 & 16 Vict. c. 83, s. 39, App. 102. See Reg. *v.* Mill, 20 *Law J., N. S.* 16, *C. P.*; Clark *v.* Kenrick, 13 *Law J., N. S.* 6, *Exch.*

[2] Spilsbury *v.* Clough, 11 *Law J., N. S.* 109, *Q. B.*

[3] 15 & 16 Vict. c. 83, s. 39, App. 102.

[4] *Ibid.*

were not made wrongdoers by that relation, namely, for acts done between the date of the letters and the date of filing the disclaimer;[1] and the disclainer or alteration cannot be received in evidence in any action or suit (except a proceeding by *scire facias*) pending at the time of filing. Before granting the fiat for filing a disclaimer or alteration, the law officer may require the applicant to advertise it; and if so advertised, the fiat states that such advertising has been made.[2] Disclaimers and Caveats.

A *caveat* relating to the disclaimer or memorandum of alteration is lodged at the Commissioners' Office. This caveat gives the party filing it a right to have notice of the application being heard by the law officer.[3]

The fact of a party having entered a disclaimer does not in itself necessarily import that his patent as it stood was bad; for there are many reasons which might induce a patentee to disclaim, and yet his patent might have been originally good. The object of the statute in permitting disclainers was

[1] Stocker *v.* Warner, 14 *Law J., N. S.* 90, *C. P.*: 1 *Com. B.* 148. See Perry *v.* Skinner, 2 *M. & W.* 476.

[2] 5 & 6 W. IV. c. 83, s. 1, App. 66; 15 & 16 Vict. c. 83, s. 39, App. 102.

[3] 15 & 16 Vict. c. 83, s. 39. The caveat is in this form: "Caveat against any person entering a disclaimer or alteration in a title or specification relating to without notice to ."

Disclaimers and Caveats.

not only to enable patentees to set themselves right when their patents are void, but also to afford them the means of preventing the doubts and difficulties which so frequently hang over trials relating to patents; to obviate them, parties were allowed the option of disclaiming.[1]

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## SECTION VIII.

### INFRINGEMENT—COSTS—INJUNCTION.

Infringement.

If a patent right be infringed, the inventor, or his assignee, may bring an action of trespass on the case, to recover damages for the injury sustained. He may also obtain an injunction, and thereby restrain the wrong-doer from the further use of the invention,[2] and compel him to account for the profits which he may have already derived from a sale of the article. And where an action is brought in the Superior Courts at Westminster for an infringement, the court, or a judge, if the court be not then sitting, may order an injunction, inspection, or account.[3]

[1] Stocker *v.* Warner, 14 *Law J., N. S.* 90, *C. P.*

[2] Hill *v.* Thompson, 3 *Meric.* 622; Crossley *v.* Beverley, 1 *Russ. & Myl.* 166, *in notis.* See Harmer *v.* Plane, 14 *Ves.* 130; also Boulton *v.* Watt, 3 *Ves.* 140. See further, *post*, 43.

[3] 15 & 16 Vict. c. 83, s. 42, App. 105.

In order to constitute an infringement, it is not necessary that the invention should have been servilely and precisely imitated—it will be sufficient that it has been so substantially, and in the main point;[1] and in determining whether a defendant has infringed a patent, no question arises as to his intention, but only as to his acts.[2] And it appears that an infringement does not take place where the defendant is ignorant of the fact that he has used the same substance as that employed by the plaintiff. This was the decision of the Court of Exchequer; but in the same case in equity, it was there considered, that although the act was committed unconsciously, the defendant was liable for the injury he had done.[3] Infringement.

A person makes and puts in practice another's invention, who gives an order to make the particular thing by the other's process, the article being made, and afterwards received by the person ordering.[4]

Where a patent is granted for a combination of several things, some of which are old

[1] Hill *v.* Thompson, *supra*; Bovill *v.* Moore, *Davies' Pat. Ca.* 348; Manton *v.* Manton, *Ib.*, *B. N. P.* 76.

[2] Stead *v.* Anderson, 16 *Law J., N. S.* 250, *C. P.*

[3] Heath *v.* Unwin, 16 *Law J., N. S.* 283, *Ch.*

[4] Gibson *v.* Campbell, 11 *Law J., N. S.* 177, *C. P.* See Minter *v.* Williams, 4 *Ad. & Ell.* 251, where "exposure to sale" of articles intended to imitate the invention was held not to be an infringement of the patent.

Infringement.

and some new, the question for the jury is, whether, taking the specification altogether, that which is claimed as a whole is new; and the imitation by a chemical or mechanical equivalent of a part of the combination which is both material and new is an infringement.[1]

As it has been shown that the patent may be assigned, it need scarcely be said that the assignee is entitled to his action for an infringement, in the same manner as the patentee himself; indeed, the assignee may sue the inventor himself, if he use the invention after the assignment; and in his case it will not (though in ordinary cases it will) be a defence to show that the patent is invalid.[2]

A proceeding for infringement only may be successfully resisted, either on the ground that no infringement has, in fact, taken place, or that the patent is void; and its invalidity may be established by showing that the article was not a fit subject for a patent, or that the patentee was not the first inventor, or that the specification was insufficient.[3]

[1] Newton *v.* Grand Junction Railway Company, 20 *Law J., N. S.* 427, *Exch.*; Sellers *v.* Dickinson, *Ib.* 417, *Exch.*; and see Heath *v.* Unwin, 14 *Law J., N. S.* 153, *Exch.*, for an instance of colourable variation.

[2] Oldham *v.* Langmead, cited 3 *T. R.* 439.

[3] *Steph. Comm.* 2 vol. 92. A penalty of 50*l.* is imposed for using, unauthorized, the name, stamp, or mark of a patentee, 5 & 6 W. IV. c. 83. s. 7, App. 71.

If an action be brought for the infringement of a patent, the plaintiff must deliver with his declaration particulars of the breaches he complains of; so also the defendant, on pleading thereto, must deliver with his pleas particulars of the objections on which he means to rely at the trial. Neither party can travel out of these particulars. It had been held that the notice need not state who was the first inventor, nor under what circumstances the invention was used before.[1] But under the new statute the places at or in which and in what manner the invention is alleged to have been used or published prior to the date of the letters patent, must be stated in the particulars. A judge at Chambers may permit an amendment of the particulars on terms.[2]

Action.

Breaches and notice of objections.

It will be observed, that the delivery of breaches by the plaintiff is a new provision; the former statute, 5 & 6 Will. IV. c. 83, having been confined to the delivery of a notice of objections to the patent by the defendant. The Court of Common Pleas, in an action for infringement of a patent, claimed to be for nine several improvements,

[1] Russell *v.* Ledsam, 12 *Law J., N. S.* 439, *Exch.*; Bulnois *v.* Mackenzie, 4 *Bing. N. C.* 127; Reg. *v.* Walton, cited in judgment of Baron Parke, in Russell *v.* Ledsam. And see Bentley *v.* Keighley, 13 *Law J., N. S.* 167, *C. P.*; Jones *v.* Berger, 12 *Law J., N. S.* 179, *C. P.*

[2] 15 & 16 Vict. c. 83, s. 41, App. 104.

Breaches and notice of objections.

had refused to make an order upon the plaintiff for particulars of the infringement.[1]

Objections are not part and parcel of the record, so as to be incorporated with the issues, and show that those specific objections are in issue; but they are more like particulars of the plaintiff's demand in an ordinary action, for the purpose of giving a defendant notice of what he has to meet at the trial.[2]

The objections must be more specific and particular than the pleas;[3] and as at Nisi Prius the only question for the judge is whether the notice fairly includes the objection, a previous application, if the notice is too general, should be made to the court or a judge for redress.[4]

An objection that the specification does not sufficiently describe the nature of the invention, and the manner in which it is to be performed, is sufficient;[5] but one which states that the invention is not new, and was either wholly or in part used and made public before obtaining the patent, is not sufficient, but must point out the material parts which have been previously in use.[6]

[1] Electric Telegraph Company *v.* Nott, 16 *Law J., N. S.* 174, *C. P.*

[2] Reg. *v.* Mill, 20 *Law J., N. S.* 16, *C. P.*

[3] Neilson *v.* Harford, 11 *Law J., N. S.* 20, Exch.; Jones *v.* Berger, 12 *Ib.* 179, *C. P.*

[4] Neilson *v.* Harford. See Leaf *v.* Topham, 14 *M. & W.* 146; Fisher *v.* Dewick, 4 *Bing. N. C.* 706.

[5] Heath *v.* Unwin, 12 *Law J., N. S.* 46, Exch.

[6] *Ib.* acc. Russell *v.* Ledsam, *Ib.*, Exch. 439.

In taxing costs of an action for infringement, regard is had to the particulars delivered. Neither party is allowed costs in respect of any particular, unless certified by the judge at Nisi Prius to have been proved. This is without regard to the general costs of the cause.[1] Costs.

The judge is empowered to certify on the record, that the validity of the patent came in question. The record, with such certificate, being given in evidence in any action[2] for infringement, or in any proceeding by *scire facias*, entitles the plaintiff in the action, or the prosecutor of the *scire facias*, to his "full costs" taxed as between attorney and client, unless the judge at Nisi Prius shall certify that the party ought not to have full costs.[3]

It has been already shown,[4] that a power is now, for the first time, given to courts of law to grant an injunction. Injunction.

Equity also interferes by injunction in cases of infringement.

The principle upon which equity proceeds is, that where there has been long possession of a patent, the injunction ought to be granted, though the court may entertain considerable doubts of its validity, or may even be inclined against it, for that there is less inconvenience in granting the injunc-

[1] 15 & 16 Vict. c. 83, s. 43, App. 105.
[2] Or "suit," *Ib.* [3] Sec. 43. [4] *Ante*, 34.

Injunction.

tion until after the question shall have been tried, than in dissolving it, at the hazard that the grant of the crown may in the result prove to be valid. But where the possession is *recent*, and the right doubtful, the court will not grant an injunction without putting the patentee to establish it in an action at law; nor will an injunction ever be granted, unless the applicant swear, at the time of applying, that he is the original inventor to the best of his belief; for though he swore this when he obtained the patent, yet he may have since discovered its want of originality.[1]

But it has since been determined, that even though a patent is of long standing, yet if, from the nature of the alleged invention, or the conflicting evidence as to its novelty, its validity appears to be doubtful, or if the evidence of exclusive possession is not satisfactory, an injunction will not be granted until the title has been established at law.[2]

[1] Smith's Epitome, 26; Boulton *v.* Watt, 3 *Ves.* 140; Harmer *v.* Plane, 14 *Ves.* 130; Hill *v.* Thompson, 3 *Merir.* 622; Crossley *v.* Beverley, 1 *Russ. & Myl.* 166, *in notis.*

[2] Collard *v.* Allison, 4 *Myl. & Cr.* 487. The Chancellor said, that the case wanted that evidence of exclusive possession on which Lord Eldon acted in Hill *v.* Thompson, 3 *Merir.* 622; and see Electric Telegraph Company *v.* Nott, 11 *Jurist*, 157, further, as to the principles on which a Court of Equity acts in granting or refusing an injunction, where the legal right of the plaintiff as against the defendant is open to doubt.

# SECTION IX.

## PATENT—HOW AVOIDED.—SCIRE FACIAS.

Patent—how avoided.

THE action for infringement has been already spoken of, and it has been seen what answers may be made to it. Another mode, however, of contesting the validity of a patent is by suing out a writ of *scire facias*.[1] This proceeding formally impeaches the patent.

Scire facias.

The issuing of the *scire facias* is a proceeding of the Crown for the benefit of the public, adopted and authorized upon information that letters patent are void and of no force or effect in law, for some such reason as, that the conditions upon which the grant was made were not performed; that the grant was improperly made; or that, in effect, a monopoly supposed to be granted legally has been granted illegally, and to the prejudice of the public or her Majesty's subjects.

The writ is not granted as of course. The Attorney-General, who authorizes the issuing of it, has the right and duty of controlling the conduct of the action. In the ordinary course of proceeding upon a *scire facias*, it is within the Attorney-General's discretion to determine upon what or whose information, or on what terms, he will permit the action to be prosecuted. His exercise of that discretion, in the conduct of the action,

[1] See 15 & 16 Vict. c. 83, s. 15, App. 89.

Scire facias. is not subject to the control of the Court in which the proceeding takes place.

It does not affect the issuing of the *scire facias* that the information was given by an alien, or by a person who had no special or direct interest in the matter, or was endeavouring to promote the interest of some other person, or was actuated by some improper motive—for an illegal monopoly is a public grievance.[1]

The writ of *scire facias*[2] to repeal letters patent may be issued to the sheriff of the county wherein the grantee resided at the time the letters were granted; but if he do not reside in the United Kingdom, it will be sufficient to file the writ in the Petty Bag Office, and serve a written notice of it at his last known residence or place of business.[3]

The prosecutor in *scire facias* is required to deliver with his declaration particulars of objections on which he means to rely at the trial in support of the suggestions in the declaration. No evidence can be given at the trial in support of any objection impeaching the validity of the letters patent which is not contained in the particulars.[4]

[1] Reg. *v.* Prosser, 18 *Law J., N. S.* 35, *Ch.*

[2] See 15 & 16 Vict. c. 83, s. 35 & 43, App. 99, 105, as to proceedings in Scotland to repeal letters patent, and for infringement.

[3] 15 & 16 Vict. c. 83, s. 35, App. 99. See 12 & 13 Vict. c. 109, s. 29, App. 83.

[4] 15 & 16 Vict. c. 83, s. 41, App. 104.

The particulars must also disclose the places where, and the manner in which, the invention is alleged to have been used or published prior to the date of the letters.[1] Scire facias.

A judge at Chambers may amend these particulars upon such terms as he may think fit.[1]

On the trial of the *scire facias*, the defendant begins and gives evidence in support of his patent; and in case evidence be adduced by the prosecutor impeaching the validity of the patent, the defendant will be entitled to the reply.[1]

The judgment[2] in *scire facias* to repeal a patent is, "that the said letters patent be cancelled, vacated, disallowed, annulled, made void and invalid, and be altogether had and held for nothing; and also that the enrolment thereof be cancelled, and that the said letters patent be restored into her said Majesty's Court of Chancery at Westminster aforesaid, there to be cancelled."

After issue joined in *scire facias*, the defendant enrolled a disclaimer. The Court held, that such disclaimer was not only admissible for the defendant, but that it was to be read as part of the original specification, and that it was not necessary to plead the disclaimer *puis darrein continuance*.[3]

[1] 15 & 16 Vict. c. 83, s. 41, App. 104.

[2] Bynner *v.* The Queen, 15 *Law J., N. S.* 414, *Q. B.* in error.

[3] Reg. *v.* Mill, 20 *Law J., N. S.* 16, *C. P.*

# SECTION X.

## REGISTER OF PATENTS AND OF PROPRIETORS.

Register of patents and of proprietors.

A "REGISTER of patents" is kept at the office for filing specifications in Chancery: the register itself, or a copy, is open to public inspection.[1]

In the same office is kept a "register of proprietors." This contains assignments of the letters patent, or shares therein; licences granted thereunder, with the names of parties, and other particulars. Any person may obtain a certified copy, under seal of the office, of any entry in the book, which is made evidence in all Courts and in all proceedings, and *primâ facie* proof of assignment, or of the licence or proprietorship, as therein expressed. But until such an entry has been made, the grantee of letters patent is deemed to be the sole proprietor thereof, and of the licences and privileges thereby given.[2] The register, or a copy, is open to public inspection at the Commissioners' Office.[3]

[1] 15 & 16 Vict. c. 83, s. 34, App. 99. See the clause for the contents of the register.

[2] Certified duplicates of the entries are transmitted to the Commissioners' Offices in Edinburgh and Dublin, and are there open to public inspection.

[3] 15 & 16 Vict. c. 83. s. 35, App. 99. The falsifying or forging of entries, or tendering in evidence of such entries, is made a misdemeanor, s. 37.

These entries may, however, be expunged, vacated, or varied by direction of the Master of the Rolls, or a Court of Common Law at Westminster in term time, or by a judge in vacation; and costs may be given.[1] Register of patents and of proprietors.

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## SECTION XI.

### PROLONGATION OF PATENTS—CONFIRMATION.

It sometimes happens that, from the amount of the expenses incurred in perfecting the invention, or protecting the patent right from infringement, or from other causes, the patentee is unable to reap within the period to which his privilege is limited any reward fairly adequate to the labour and ingenuity employed. In favour of a party so situated, the legislature has frequently interfered, by passing a private act of parliament (and there was no other way of accomplishing it) to secure him the continuance of the privilege for a further term of years, in addition to that first limited by the letters patent.[2] Prolongation of patents.

But now by general statute, a patentee, under such circumstances, may obtain an

[1] Sec. 38, App. 101.
[2] *Steph. Comm.* 2 vol. 91.

Prolongation of patents.

extension of his term from the Privy Council. This is done by petition.[1]

Before presenting the petition, the patentee or assignee must advertise his intention to ask for a further term three times in the *London Gazette* and in three London papers, and three times in a country paper, as prescribed by the statute.[2]

Against such petition any person may enter a caveat, which will entitle him to receive a notice from the petitioner before the hearing; at which both parties may attend by counsel and witnesses.

The rule respecting the number of counsel entitled to be heard is the same before the Privy Council as in the House of Lords, namely, two only on either side; therefore, if several caveats are entered against a petition, two counsel only will be heard to oppose it, unless the parties have independent and distinct grounds of opposition, founded on separate and independent interests.[3]

With respect to the advertisement it may be observed, that it will be a sufficient compliance, in a case where the petitioner is resident abroad, and has no manufactory in England, if he advertise in the newspapers

[1] See Form, App. 122.

[2] 5 & 6 W. 4, c. 83, s. 4, App. 70. See form of advertisement contained in affidavit of advertisements having been duly made, App. 124.

[3] Woodcroft's Patent, 3 *Moore, P. C. Rep.* 171.

published in the towns or county where the persons to whom he has granted licences are resident.[1] Prolongation of patents.

These renewed letters patent are granted by the Crown, under the 5 & 6 W. IV. c. 83, and 2 & 3 Vict. c. 67; 7 & 8 Vict. c. 69, s. 4; 15 & 16 Vict. c. 83, s. 40,[2] as well to assignees as the original grantees. The new letters are dated as of the day after the expiration of the term granted by the original letters.

But to get a renewed patent, a petition for an extension must have been presented to the Privy Council six calendar months at the least before the expiration of the term sought to be extended; and "sufficient reason" must be shown, to the satisfaction of the Privy Council, at the hearing, for the omission, if any, to prosecute with effect the application by petition before the expiration of the said term. This power seems not to apply to cases where there has been "neglect or default" on the part of the petitioner.[3]

Parties using the invention in the interval between the expiration of the old term and the grant of the extension are not responsible; and those who may have invested

[1] Derosne's Patent, 4 *Moore, P. C. Rep.* 416.
[2] App. 70, 73, 76, 103.
[3] 2 & 3 Vict. c. 67, s. 2, App. 74; 7 & 8 Vict. c. 69, ss. 2, 3, App. 76. See Bodmer's Patent, 2 *Moore, P. C. Rep.* 471.

Prolongation of patents.

capital in the use of it in that interval may appear before the Privy Council, and either oppose any new grant altogether, or claim to be protected and indemnified for what they have lawfully done.[1]

It has been uniformly required by the Privy Council, that the petitioner for an extension should show, first, some invention; secondly, that the invention was of a nature to benefit the public; and, thirdly, that the inventor had not received an adequate reward.[2]

The fact of an invention, when known, not getting into general use is a presumption against its utility; and as it is one of the considerations for extending the term of letters patent that the public will be benefited after the term has expired, it follows, that if the utility of an invention be small, a reason is afforded against the granting of a further term.[3]

The novelty of an invention may be small; but this does not afford a reason against a prolongation, as it does where the utility is small, provided the public have derived great benefit from the discovery.[4]

But where an invention was of great merit and public utility, and the patentee and his

[1] Russell *v.* Ledsam, 14 *Law J., N. S.* 353, *Exch.*; *S. C.* in error; 16 *Law J., N. S.* 145, *Exch.*

[2] Derosne's Patent, 4 *Moore, P. C. Rep.* 416. See Bodmer's Patent, 6 *Moore, P. C. Rep.* 468.

[3] Sinister's Patent, 4 *Moore, P. C. Rep.* 164.

[4] Derosne's Patent, *Ib.* 416.

grantees had received no remuneration, in consequence of the originality of the patent being disputed at law, an extension was granted.[1] Prolongation of patents.

And an extension has been granted where the invention was an ingenious one, and it did not appear that the patentee had received any remuneration until within three years previous to the expiration of the patent.[2]

So likewise in the case of a patent for new and improved machinery for preparing and spinning flax, hemp, and other fibrous substances by power, notwithstanding the validity of the patent was at that time in dispute.[3]

A petition was presented for a prolongation of a patent "for certain processes, and apparatus for printing and preparing for manufacture yarns of linen, cotton, silk, woollen, or any other fibrous material." The extension was refused on the ground of insufficient merit.[4]

Where an invention is not prosecuted until a short time before the patent expires, a strong reason is afforded for refusing an extension.[5]

In cases for extension, the Attorney-Gene-

[1] 7 *Moore, P. C. Rep.* 133.
[2] Bodmer's Patent, 2 *Moore, P. C. Rep.* 471.
[3] Kay's Patent, 3 *Moore, P. C. Rep.* 24.
[4] Wooderoft's Patent, 3 *Moore, P. C. Rep.* 171.
[5] Patterson's Patent, 6 *Moore, P. C. Rep.* 469.

Prolongation of patents.

ral represents the government and the public generally. As he watches the interests of the government, no counsel need be sent to the Privy Council from any separate department of the government, such as the Admiralty.[1]

In prolonging a patent likely to be used for government purposes (such as the application of an improved propeller for steam and other vessels), the Privy Council will impose a condition, that the Lords of the Admiralty shall have the right of manufacturing the invention for the service of her Majesty without licences from the patentee.[2]

The Privy Council will take care of the patentee's interests even after assignment, where the inventors and patentees have made nothing by their invention.

The inventor and patentee of improvements in manufacturing iron axle-trees for railway carriages had lost largely by the patent; but his assignees had lately made very considerable profits, and from their position in the trade were likely to command a very large sale of the patent article. The patent was of high merit, and of great service to the publics afety. Under such circumstances, a prolongation for four years was granted to the assignees, upon the conditions that the assignees secured to the patentee half the profits derived from the sale, and

[1] Pettit Smith's Patent, 7 *Moore, P. C. Rep.* 133.
[2] *Ibid.*

that the patented article should be sold by the assignees to the public at a certain price.[1] Prolongation of patents.

An extension for six years was granted, on the ground of the great merit and utility of the invention, and the inadequate remuneration, occasioned in a great measure by the expense incurred by litigation, in which the assignee of the patent had been involved for the protection of his patent rights. The patent was for improvement in manufacturing tubes for gas and other purposes. In this case, the inventor, a mechanic, had assigned the patent to his master. The Privy Council made it a condition that the assignee should secure the inventor an annuity during the period of the extension.[2]

If a jury find a verdict that a person who has obtained letters patent was not the first inventor, by reason of some other person having invented or used the invention, or part of it, before the date of the letters; or if the patentee finds that some person has, unknown to him, invented or used it, or part of it, before such date, the Privy Council may confirm the letters or grant new ones. This is by petition, and the Privy Confirmation of letters patent.

[1] Hardy's Patent, 6 *Moore, P. C. Rep.* 441. In estimating the profits made under a patent, the profits arising from the sale of the patented article for exportation must be included: *Ib.*; Bodmer's Patent, *ib.* 468, where the petition was by the executor of the assignee of a patentee.

[2] Russell's Patent, 2 *Moore, P. C. Rep.* 496.

Confirmation of letters patent.

Council must be "satisfied that the patentee believed himself to be the first and original inventor." Any person may oppose the petition; and any person, party to a former suit or action touching the first letters, must have notice of the petition before it is presented.[1]

The Privy Council, under the 5 & 6 Will. IV. c. 83, refused to confirm a Scotch patent, the invention having been used in England before the date of the Scotch patent.[2]

To entitle a patentee to a confirmation of letters patent, the petitioner must show that he believed himself the first and true inventor.

Upon an application for such confirmation, it was proved that the patent article was not publicly and generally known prior to the letters patent, but that some persons had systematically used an article, identical with the patent article, for several years prior to the grant of the letters patent, and that the subject of the patent was little more than an application of a well-known article in trade. Under such circumstances, the Privy Council held that it was not a case to which the statute was intended to apply.[3]

[1] 5 & 6 W. 4, c. 83, s. 2, App. 67; 15 & 16 Vict. c. 83, s. 40, App. 103.

[2] Robinson's Patent, 5 *Moore, P. C. Rep.* 65.

[3] Card's Patent, 6 *Moore, P. C. Rep.* 207. See what Lord Campbell says, "that the confirmation of the letters patent would be absolute and conclusive evidence that the invention was new:" *Ib.*

# APPENDIX.

## STATUTE 21 JAC. I. CAP. 3.

### An Act concerning Monopolies and Dispensations with Penal Laws, and the Forfeitures thereof.

Monopolies, &c. contrary to the laws of the realm.

FORASMUCH as your most excellent Majesty, in your royal judgment, and of your blessed disposition to the weal and quiet of your subjects, did in the year of our Lord God, one thousand six hundred and ten, publish in print to the whole realm, and to all posterity, that all grants and monopolies, and of the benefit of any penal laws, or of power to dispense with the law, or to compound for the forfeiture, are contrary to your Majesties laws, which your Majesties declaration is truly consonant and agreeable to the ancient and fundamental laws of this your realm: And whereas your Majesty was further graciously pleased expressly to command that no suiter should presume to move your Majesty for matters of that nature; yet nevertheless upon misinformations, and untrue pretences of public good, many such grants have been unduly obtained, and unlawfully put in execution, to the great grievance and inconvenience of your Majesties subjects, contrary to the laws of this your realm, and contrary to your Majesties most royal and blessed intention so published, as aforesaid; for avoiding thereof, and preventing of the like to come, may it please your excellent Majesty, at the humble suit

of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, that it may be declared and enacted, and be it declared and enacted by authority of this present parliament, that all monopolies, and all commissions, grants, licences, charters, and letters patents heretofore made or granted, or hereafter to be made or granted to any person or persons, bodies politic or corporate whatsoever, of or for the sole buying, selling, making, working or using of any thing within this realm, or the dominion of Wales; or of any other monopolies, or of power, liberty or faculty, to dispense with any others, or to give licence or toleration to do, use, or exercise anything against the tenour or purport of any law or statute; or to give or make any warrant for any such dispensation, licence or toleration to be had or made, or to agree or compound with any others for any penalty or forfeitures limited by any statute, or of any grant or promise of the benefit, profit or commodity of any forfeiture, penalty, or sum of money, that is or shall be due by any statute, before judgment thereupon had, and all proclamations, inhibitions, restraints, warrants of assistance, and all other matters and things whatsoever, any way tending to the instituting, erecting, strengthening, furthering, or countenancing of the same, or any of them, are altogether contrary to the laws of this realm, and so are, and shall be utterly void and of none effect, and in no wise to be put in use or execution.

Monopolies, &c. shall be tryed by the common laws of this realm.

2. And be it further declared and enacted by the authority aforesaid, that all monopolies, and all such commissions, grants, licences, charters, letters patents, proclamations, inhibitions, restraints, warrants of assistance, and all other matters and things tending, as aforesaid, and the force and validity of them, and every of them, ought to be, and shall be

for ever hereafter examined, heard, tryed and determined by and according to the common laws of this realm, and not otherwise.

All persons disabled to use monopolies, &c.

3. And be it further enacted by the authority aforesaid, that all person and persons, bodies politic and corporate whatsoever, which now are, or hereafter shall be, shall stand and be disabled, and uncapable to have, use, exercise or put in use any monopoly, or any such commission, grants, licence, charter, letters patents, proclamation, inhibition, restraint, warrant of assistance, or other matter or thing tending, as aforesaid, or any liberty, power or faculty, grounded or pretended to be grounded, upon them or any of them.

The party grieved by pretext of a monopoly, &c. shall recover treble damages and double costs.

4. And be it further enacted by the authority aforesaid, that if any person or persons at any time after the end of forty days next after the end of this present session of parliament, shall be hindred, grieved, disturbed or disquieted, or his or their goods or chattels any way seized, attached, distrained, taken, carried away or detained, by occasion or pretext of any monopoly, or of any such commission, grant, licence, power, liberty, faculty, letters patents, proclamation, inhibition, restraint, warrant of assistance, or other matter or thing tending as aforesaid, and will sue to be relieved in, or for any of the premises, that in every such case the same person and persons shall and may have his and their remedy for the same at the common law, by an action or actions to be grounded upon this statute; the same action and actions to be heard and determined in the Courts of King's Bench, Common Pleas and Exchequer, or in any of them, against him or them by whom he or they shall be so hindred, grieved, disturbed or disquieted, or against him or them by whom his or their goods or chattels shall be so seized, attached, distrained, taken, carried away or detained, wherein

all and every such person and persons which shall be so hindred, grieved, disturbed or disquieted, or whose goods or chattels shall be so seized, attached, distrained, taken, carried away or detained, shall recover three times so much as the damages which he or they sustained, by means or occasion of being so hindred, grieved, disturbed, or disquieted, or by means of having his or their goods or chattels seized, attached, distrained, taken, carried away or detained, and double costs; and in such suits, or for the staying or delaying thereof, no essoin, protection, wager of law, aid, prayer, privilege, injunction, or order of restraint, shall be in any wise prayed, granted, admitted or allowed, nor any more than one imparlance: And if any person or persons shall, after notice given that the action depending is grounded upon this statute, cause or procure any action at the common law, grounded upon this statute, to be stayed or delayed before judgment, by colour or means of any order, warrant, power or authority, save only of the court wherein such action, as aforesaid, shall be brought and depending, or after judgment had upon such action, shall cause or procure the execution of or upon any such judgment to be stayed or delayed by colour or means of any order, warrant, power or authority, save only by writ of error or attaint, that then the said person and persons so offending, shall incur and sustain the pains, penalties, and forfeitures ordained and provided by the statute of provision and præmunire, made in the sixteenth year of the reign of King Richard the Second.

He that delayeth an action grounded upon this statute incurs a *præmunire*.

St. 16 R. 2. 5.

Letters patents to use new manufactures, saved.

5. Provided nevertheless, and be it declared and enacted, that any declaration before mentioned shall not extend to any letters patents and grants of privilege for the term of one and twenty years, or under, heretofore made of the sole work-

ing or making of any manner of new manufacture within this realm, to the first and true inventor or inventors of such manufactures, which others at the time of the making of such letters patents and grants did not use, so they be not contrary to the law, nor mischievous to the state, by raising of the prices of commodities at home, or hurt of trade, or generally inconvenient, but that the same shall be of such force as they were, or should be, if this Act had not been made, and of none other: And if the same were made for more than one and twenty years, that then the same for the term of one and twenty years only, to be accompted from the date of the first letters patents and grants thereof made, shall be of such force as they were or should have been, if the same had been made but for term of one and twenty years only, and as if this Act had never been had or made, and of none other.

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

Grants confirmed by Act of Parliament, saved.

7. Provided also, and it is hereby further intended, declared, and enacted by authority aforesaid, that this Act, or any thing therein contained, shall not in any wise extend, or be prejudicial to any grant or privilege, power or authority whatsoever heretofore made, granted, allowed, or confirmed by any act of parliament now in force, so long as the same shall so continue in force.

Warrants granted to justices, saved.

8. Provided also, that this Act shall not extend to any warrant or privy seal, made or directed, or to be made or directed by his Majesty, his heirs or successors, to the justices of the Courts of the King's Bench, or Common Pleas, and barons of the Exchequer, justices of assize, justices of oyer and terminer, and gaol delivery, justices of the peace, and other justices for the time being, having power to hear and determine offences done against any penal statute, to compound for the forfeitures of any penal statute, depending in suit and question before them, or any of them respectively, after plea pleaded by the party defendant.

Charters granted to corporations, saved.

9. Provided also, and it is hereby further intended, declared, and enacted, that this Act or any thing therein contained, shall not in any wise extend or be prejudicial unto the city of London, or to any city, borough, or town-corporate within this realm, for, or concerning any grants, charters, or letters patents to them, or any of them, made or granted, or for, or concerning any custom or customs used by or within them, or any of them, or unto any corporations, companies, or fellowships of any art, trade, occupation, or mystery, or to any companies or societies of merchants within this realm, erected for the maintenance, enlargement, or ordering of any trade or merchandize; but that the same charters, customs, corporations, companies, fellowships and societies, and their liberties, privileges, powers, and immunities, shall be and

continue of such force and effect as they were before the making of this Act, and of none other; any thing before in this Act contained to the contrary in any wise notwithstanding.

Letters patents that concern printing, saltpetre, gunpowder, great ordnance, shot, or offices, saved.

10. Provided also, and be it enacted, that this Act, or any declaration, provision, disablement, penalty, forfeiture, or other thing before mentioned, shall not extend to any letters patents, or grants of privilege heretofore made, or hereafter to be made, of, for, or concerning printing; nor to any commission, grant, or letters patents heretofore made, or hereafter to be made, of, for, or concerning the digging, making, or compounding of saltpetre or gunpowder; or the casting or making of ordnance; or shot for ordnance; nor to any grant or letters patents heretofore made, or hereafter to be made, of any office or offices heretofore erected, made, or ordained, and now in being, and put in execution, other than such offices as have been decryed by any of his Majesties proclamation or proclamations; but that all and every the same grants, commissions, and letters patents, and all other matters and things tending to the maintaining, strengthening, or furtherance of the same, or any of them shall be and remain of the like force and effect, and no other, and as free from the declarations, provisions, penalties, and forfeitures contained in this Act, as if this Act had never been had nor made, and not otherwise.

This Act shall not extend to commissions for alum mines.

11. Provided also, and be it enacted, that this Act, or any declaration, provision, disablement, penalty, forfeiture, or other thing before mentioned, shall not extend to any commission, grant, letters patents, or privilege, heretofore made, or hereafter to be made, of, for, or concerning the digging, compounding, or making of alum or alum mines, but that all and every the same commissions, grants, letters patents, and privileges, shall be and

remain of the like force and effect, and no other, and as free from the declarations, provisions, penalties, and forfeitures contained in this Act, as if this Act had never been had nor made, and not otherwise.

Nor to the liberties of Newcastle-upon-Tyne, nor to licences of keeping taverns.

12. Provided also, and be it enacted, that this Act, or any declaration, provision, penalty, forfeiture, or other thing before mentioned, shall not extend or be prejudicial to any use, custom, prescription, franchise, freedom, jurisdiction, immunity, liberty, or privilege heretofore claimed, used, or enjoyed by the governors and stewards and brethren of the fellowship of the hoast-men of the town of Newcastle-upon-Tyne, or by the ancient fellowship, guild, or fraternity, commonly called hoast-men; or concerning the selling, carrying, lading, disposing, shipping, venting or trading of, or for any sea coals, stone coals, or pit coals, forth, or out of the haven and river of Tyne; or to a grant made by the said governor and stewards and brethren of the fellowship of the said hoast-men, to the late queen Elizabeth, of any duty or sum of money to be paid for or in respect of any such coals as aforesaid; nor to any grants, letters patents, or commission heretofore granted, or hereafter to be granted, of, for, or concerning the licensing of the keeping of any tavern or taverns, or selling, uttering, or retailing of wines, to be drunk or spent in the mansion-house, or houses, or other place, in the tenure or occupation of the party or parties so selling or uttering the same; or for, or concerning the making of any compositions for such licences, so as the benefit of such compositions be reserved and applied to, and for the use of his Majesty, his heirs or successors, and not to the private use of any other person or persons.

13. Provided also, and be it enacted, that this Act, or any declaration, provision, penalty, forfeiture, or other thing before mentioned, shall not extend or be prejudicial to a grant or privilege for, or concerning the making of glass, by his Majestics letters patents, under the great seal of England, bearing date the two and twentieth day of May, in the one and twentieth year of his Majesties reign of England, made and granted to Sir Robert Mansel, knight, vice-admiral of England, nor to a grant or letters patents, bearing date the twelfth day of June, in the thirteenth year of his Majesties reign of England, made to James Maxewell, esquire, concerning the transportation of calves skins, but that the said several letters patents last mentioned shall be and remain of the like force and effect, and as free from the declarations, provisions, penalties, and forfeitures before mentioned, as if this Act had never been had nor made, and not otherwise.

Nor to letters patents granted to Sir Robert Mansel, bart., or to James Maxewell, esq.

14. Provided also, and be it declared and enacted, that this Act, or any declaration, provision, penalty, forfeiture, or other thing before mentioned, shall not extend or be prejudicial to a grant or privilege for or concerning the making of smalt, by his Majesties letters patents under the great seal of England, bearing date the sixteenth day of February, in the sixteenth year of his Majesties reign of England, made or granted to Abraham Baker; nor to a grant or privilege for or concerning the melting of iron ewer, and of making the same into cast works or bars, with sea coals or pit coals, by his Majesties letters patents, under the great seal of England, bearing date the twentieth day of February, in the nineteenth year of his Majesties reign of England, made or granted to Edward Lord Dudley; but that the same several letters patents and grants shall be and remain of

Nor to those granted to Abraham Baker, or Edward Lord Dudley.

the like force and effect, and as free from the declarations, provisions, penalties, and forfeitures before mentioned, as if this Act had never been had nor made, and not otherwise.

## 5 & 6 WILL. IV. Cap. 83.

An Act to amend the Law touching Letters Patent for Inventions.

10*th Sept.*, 1835.

WHEREAS it is expedient to make certain additions to and alterations in the present law touching letters patent for inventions, as well for the better protecting of patentees in the rights intended to be secured by such letters patent, as for the more ample benefit of the public from the same: Be it enacted by, &c., that any person who, as grantee, assignee, or otherwise, hath obtained or who shall hereafter obtain letters patent, for the sole making, exercising, vending, or using of any invention, may, if he think fit, enter[a] with the clerk of the patents of England, Scotland, or Ireland, respectively, as the case may be, having first obtained the leave of his Majesty's attorney-general or solicitor-general in case of an English patent, of the lord advocate or solicitor-general of Scotland in the case of a Scotch patent, or of his Majesty's attorney-general or solicitor-general for Ireland in the case of an Irish patent, certified by his fiat and signature, a disclaimer of any part of either the title of the invention or of the specification, stating the reason for such disclaimer, or may, with such leave as aforesaid, enter a memorandum of any alteration in the said title or specification, not being such disclaimer or such alteration as shall

Disclaimer of any part of specification, or a memorandum of any alteration therein.

[a] See 15 & 16 Vict., c. 83, s. 39, *post*.

extend the exclusive right granted by the said letters patent; and such disclaimer or memorandum of alteration being filed by the said clerk of the patents, and enrolled with the specification, shall be deemed and taken to be part of such letters patent or such specification in all courts whatever: Provided always, that any person may enter a caveat, in like manner as caveats are now used to be entered, against such disclaimer or alteration; which caveat being so entered shall give the party entering the same a right to have notice of the application being heard by the attorney-general, or solicitor-general, or lord advocate, respectively: Provided also, that no such disclaimer or alteration shall be receivable in evidence in any action or suit (save and except in any proceeding by *scire facias*) pending at the time when such disclaimer or alteration was enrolled, but in every such action or suit the original title and specification alone shall be given in evidence, and deemed and taken to be the title and specification of the invention for which the letters patent have been or shall have been granted: Provided also, that it shall be lawful for the attorney-general, or solicitor-general, or lord advocate, before granting such fiat, to require the party applying for the same to advertise his disclaimer or alteration in such manner as to such attorney-general, or solicitor-general, or lord advocate shall seem right, and shall, if he so require such advertisement, certify in his fiat that the same has been duly made.

Caveat.

Disclaimer not to affect actions pending at the time.

Attorney-general may require the party to advertise his disclaimer.

2. And be it enacted, that if in any suit or action it shall be proved or specially found by the verdict of a jury that any person who shall have obtained letters patent for any invention or supposed invention was not the first inventor thereof, or of some part thereof, by reason of some other person or persons having invented or used the same, or some

Mode of proceeding where patentee is proved not to be the real inventor, though he believed himself to be so.

part thereof, before the date of such letters patent, or if such patentee or his assigns shall discover that some other person had, unknown to such patentee, invented or used the same, or some part thereof, before the date of such letters patent, it shall and may be lawful for such patentee or his assigns to petition his Majesty in council to confirm the said letters patent or to grant new letters patent,[a] the matter of which petition shall be heard before the judicial committee of the privy council; and such committee, upon examining the said matter, and being satisfied that such patentee believed himself to be the first and original inventor, and being satisfied that such invention or part thereof had not been publicly and generally used before the date of such first letters patent, may report to his Majesty their opinion that the prayer of such petition ought to be complied with, whereupon his Majesty may, if he think fit, grant such prayer; and the said letters patent shall be available in law and equity to give to such petitioner the sole right of using, making, and vending such invention as against all persons whatsoever, any law, usage, or custom to the contrary thereof notwithstanding: Provided, that any person opposing such petition shall be entitled to be heard before the said judicial committee: Provided also, that any person, party to any former suit or action touching such first letters patent, shall be entitled to have notice of such petition before presenting the same.[b]

[a] See 15 & 16 Vict. c. 83, s. 40, *post*.

[b] Hitherto, if an inventor could have managed to use his discovery in such a manner as to enjoy the benefit of it without laying his process open to discovery, he might have enjoyed all the advantages of a patentee without obtaining a patent, and of course without putting the public in possession of his discovery through the medium of a specifi-

3. And be it enacted, that if any action at law or any suit in equity for an account shall be brought in respect of any alleged infringement of such letters patent heretofore or hereafter granted, or any *scire facias* to repeal such letters patent, and if a verdict shall pass for the patentee or his assigns, or if a final decree or decretal order shall be made for him or them, upon the merits of the suit, it shall be lawful for the judge before whom such action shall be tried to certify on the record, or the judge who shall make such decree or order to give a certificate under his hand, that the validity of the patent came in question before him, which record or certificate being given in evidence in any other suit or action whatever touching such patent, if a verdict shall pass, or decree or decretal order be made, in favour of such patentee or his assigns, he or they shall receive treble costs in such suit or action, to be taxed at three times the taxed costs, unless the judge making such second or other decree or order, or trying such second or other action, shall certify that he ought not to have such treble costs.[a]

If a verdict pass for the patentee, the judge may grant a certificate, which being given in evidence in any other suit, shall entitle the patentee, upon a verdict in his favour, to treble costs.

cation; and yet although the same idea might subsequently occur to some other person, who might be anxious to obtain a patent for it, the previous use by the first discoverer would have been sufficient to prevent the grant or to avoid the instrument if granted, so that the public would have been altogether deprived of the advantage arising from a specification. A singular instance of this kind of mischief seems to have occurred in Mr. Watt's case, whose specification, though upheld by the courts, is stated to have been totally useless and unintelligible in practice. The consequence of which was, that the enjoyment of Mr. Watt's exclusive privileges continued for nearly thirty years after the expiration of the patent.—*Note to Mr. Smith's Epitome, App.* p. 44.

[a] This section is impliedly repealed by 15 & 16 Vict. c. 83, s. 43, *post*. Treble costs are calculated thus: 1, the

Mode of proceeding in case of application for the prolongation of the term of a patent.

4. And be it further enacted, that if any person who now hath or shall hereafter obtain any letters patent as aforesaid, shall advertise in the *London Gazette* three times, and in three *London* papers, and three times in some country paper published in the town where or near to which he carried on any manufacture of any thing made according to his specification, or near to or in which he resides, in case he carried on no such manufacture, or published in the county where he carries on such manufacture, or where he lives, in case there shall not be any paper published in such town, that he intends to apply to his Majesty in council for a prolongation of his term of sole using and vending his invention, and shall petition his Majesty in council to that effect, it shall be lawful for any person to enter a caveat at the council office; and if his Majesty shall refer the consideration of such petition to the judicial committee of the privy council, and notice shall first be by him given to any person or persons who shall have entered such caveats, the petitioner shall be heard by his counsel and witnesses to prove his case, and the persons entering caveats shall likewise be heard by their counsel and witnesses; whereupon, and upon hearing and inquiring of the whole matter, the judicial committee may report to his Majesty that a further extension of the term in the said letters patent should be granted, not exceeding seven years; and his Majesty is hereby authorized and empowered, if he shall think fit, to grant new letters patent for the said invention for a term not exceeding seven years after the expiration of the first term, any law, custom, or usage to the contrary in anywise notwithstanding: Provided that

common costs; 2, half of these, and then, half of the latter. —*See Tidd's Pr.* 9th Ed. 987.

no such extension shall be granted, if the application by petition shall not be made and prosecuted with effect before the expiration of the term originally granted in such letters patent."

In case of action, &c. notice of objections to be given.

5. And be it enacted, that in any action brought against any person for infringing any letters patent, the defendant on pleading thereto shall give to the plaintiff, and in any *scire facias* to repeal such letters patent the plaintiff shall file with his declaration, a notice of any objections on which he means to rely at the trial of such action, and no objection shall be allowed to be made in behalf of such defendant or plaintiff respectively at such trial, unless he prove the objections stated in such notice: Provided always, that it shall and may be lawful for any judge at chambers, on summons served by such defendant or plaintiff on such plaintiff or defendant respectively, to show cause why he should not be allowed to offer other objections whereof notice shall not have been given as aforesaid, to give leave to offer such objections, on such terms as to such judge shall seem fit.[a]

As to costs in actions for infringing letters patent.

6. And be it enacted, that in any action brought for infringing the right granted by any letters patent, in taxing the costs thereof regard shall be had to the part of such case which has been proved at the trial, which shall be certified by the judge before whom the same shall be had, and the costs of each part of the case shall be given according as either party has succeeded or failed therein, regard being had to the notice of objections, as well as the counts in the declaration, and without regard to the general result of the trial.[b]

Penalty for using, unauthorised, the name of a patentee, &c.

7. And be it enacted, that if any person shall write, paint, or print, or mould, cast, or carve, or

[a] See 2 & 3 Vict. c. 67, s. 2, *post*.

[b] These sections are impliedly repealed by 15 & 16 Vict. c. 83, s. 43, *post*.

Penalty, &c.

engrave or stamp, upon any thing made, used, or sold by him, for the sole making or selling of which he hath not or shall not have obtained letters patent, the name or any imitation of the name of any other person who hath or shall have obtained letters patent for the sole making and vending of such thing, without leave in writing of such patentee or his assigns, or if any person shall upon such thing, not having been purchased from the patentee or some person who purchased it from or under such patentee, or not having had the licence or consent in writing of such patentee or his assigns, write, paint, print, mould, cast, carve, engrave, stamp, or otherwise mark the word "patent," the words "letters patent," or the words "by the king's patent," or any words of the like kind, meaning, or import, with a view of imitating or counterfeiting the stamp, mark, or other device of the patentee, or shall in any other manner imitate or counterfeit the stamp or mark or other device of the patentee, he shall for every such offence be liable to a penalty of fifty pounds, to be recovered by action of debt, bill, plaint, process, or information in any of his Majesty's courts of record at Westminster or in Ireland, or in the court of session in Scotland, one half to his Majesty, his heirs and successors, and the other to any person who shall sue for the same: Provided always, that nothing herein-contained shall be construed to extend to subject any person to any penalty in respect of stamping or in any way marking the word "patent" upon any thing made, for the sole making or vending of which a patent before obtained shall have expired.

# 2 & 3 VICTORIA, CAP. 67.

An Act to amend an Act of the fifth and sixth years of the reign of King *William* the Fourth, intituled *An Act to amend the Law touching Letters Patent for Inventions.*

21th *August* 1839.

WHEREAS by an Act passed in the fifth and sixth years of the reign of his Majesty King *William* the Fourth, intituled *An Act to amend the Law touching Letters Patent for Inventions*, it is amongst other things enacted, that if any person having obtained any letters patent as therein mentioned, shall give notice as thereby required of his intention to apply to his Majesty in council for a prolongation of his term of sole using and vending his invention, and shall petition his Majesty in council to that effect, it shall be lawful for any person to enter a caveat at the Council Office; and if his Majesty shall refer the consideration of such petition to the judicial committee of the privy council, and notice shall be first given to any person or persons who shall have entered such caveats, the petitioner shall be heard by his counsel and witnesses to prove his case, and the persons entering caveats shall likewise be heard by their counsel and witnesses, whereupon, and upon hearing and inquiry of the whole matter, the judicial committee may report to his Majesty that a further extension of the term in the said letters patent shall be granted, not exceeding seven years, and his Majesty is thereby authorized and empowered, if he shall think fit, to grant new letters patent, for the said invention for a term not exceeding seven years

5 & 6 W. 4, c. 83.

after the expiration of the first term, any law, custom, or usage to the contrary notwithstanding; provided that no such extension shall be granted if the application by petition shall not be made and prosecuted with effect before the expiration of the term originally granted in such letters patent: And whereas it has happened since the passing of the said Act, and may again happen, that parties desirous of obtaining an extension of the term granted in letters patent of which they are possessed, and who may have presented a petition for such purposes in manner by the said recited Act directed, before the expiration of the said term, may nevertheless be prevented by causes over which they have no control from prosecuting with effect their application before the judicial committee of the privy council; and it is expedient therefore that the said judicial committee should have power, when under the circumstances of the case they shall see fit to entertain such application, and to report thereon, according to the provisions of the said recited Act, notwithstanding that before the hearing of the case before them the terms of the letters patent sought to be renewed or extended may have expired: Be it therefore enacted by &c., that so much of the said recited Act as provides that no extension of the term of letters patent shall be granted as therein mentioned if the application by petition for such extension be not prosecuted with effect before the expiration of the term originally granted in such letters patent, shall be and the same is hereby repealed.

Repealing provision as to presenting petition for extension before the expiration of the patent.

2. And be it further enacted, that it shall be lawful for the judicial committee of the privy council, in all cases where it shall appear to them that any application for an extension of the term granted by any letters patent, the petition for which extension shall have been referred to them

Term may be extended though the application for extension be not prosecuted with effect before the expiration thereof.

for their consideration, has not been prosecuted with effect before the expiration of the said term from any other causes than the neglect or default of the petitioner, to entertain such application, and to report thereon as by the said recited Act provided, notwithstanding the term originally granted in such letters patent may have expired before the hearing of such application; and it shall be lawful for her Majesty, if she shall think fit, on the report of the said judicial committee recommending an extension of the term of such letters patent, to grant such extension, or to grant new letters patent for the invention or inventions specified in such original letters patent, for a term not exceeding seven years after the expiration of the term mentioned in the said original letters patent: Provided always, that no such extension or new letters patent shall be granted if a petition for the same shall not have been presented as by the said recited Act directed before the expiration of the term sought to be extended, nor in case of petitions presented after the thirtieth day of *November*, one thousand eight hundred and thirty-nine, unless such petition shall be presented six calendar months at the least before the expiration of such term, nor in any case unless sufficient reason shall be shown to the satisfaction of the said judicial committee for the omission to prosecute with effect the said application by petition before the expiration of the said term.

## 7 & 8 VICTORIA, CAP. 69.

An Act for amending an Act passed in the fourth year of the reign of his late Majesty, intituled *An Act for the better Administration of Justice in his Majesty's Priy Council;* and to extend its Jurisdiction and Powers.

6th *August* 1844.

WHEREAS the Act passed in the fourth year of the reign of his late Majesty, intituled *An* 3 & 4 W. 4. c. 41. *Act for the better Administration of Justice in His Majesty's Priey Council*, hath been found beneficial to the due administration of justice: And whereas another Act, passed in the sixth year of the said 5 & 6 W. 4. c. 83. reign, intituled *An Act to amend the Law touching Letters Patent for Inventions*, hath been also found advantageous to inventors and to the public: And whereas the judicial committee acting under the authority of the said Acts hath been found to answer well the purposes for which it was so established by Parliament, but it is found necessary to improve its proceedings in some respects, for the better despatch of business, and expedient also to extend its jurisdiction and powers. [The *remainder of the preamble, and the whole of the clause, are inapplicable to the Law of Patents*].

On petition, her Majesty may grant an extension of patent term in certain cases.

2. And whereas it is expedient, for the further encouragement of inventions in the useful arts, to enable the time of monopoly in patents to be extended in cases in which it can be satisfactorily shown that the expense of the invention hath been greater than the time now limited by law will suffice to reimburse; be it enacted, that if any person, having obtained a patent for any invention, shall,

before the expiration thereof, present a petition to her Majesty in council, setting forth that he has been unable to obtain a due remuneration for his expense and labour in perfecting such invention, and that an exclusive right of using and vending the same for the further period of seven years, in addition to the term in such patent mentioned, will not suffice for his reimbursement and remuneration, then, if the matter of such petition shall be by her Majesty referred to the judicial committee of the privy council, the said committee shall proceed to consider the same after the manner and in the usual course of its proceedings touching patents; and if the said committee shall be of opinion, and shall so report to her Majesty, that a further period greater than seven years' extension of the said patent term ought to be granted to the petitioner, it shall be lawful for her Majesty, if she shall so think fit, to grant an extension thereof for any time not exceeding fourteen years, in like manner and subject to the same rules as the extension for a term not exceeding seven years is now granted under the powers of the said Act of the sixth year of the reign of his late Majesty.

Extension may be for a lesser term than that prayed.

3. Provided always, and be it enacted, that nothing herein contained shall prevent the said judicial committee from reporting that an extension for any period not exceeding seven years should be granted, or prevent her Majesty from granting an extension for such lesser term than the petition shall have prayed.

As to extension of term where patentees have assigned their patent rights.

4. And whereas doubts have arisen touching the power given by the said recited Act of the sixth year of the reign of his late Majesty in cases where the patentees have wholly or in part assigned their right; be it enacted, that it shall be lawful for her Majesty, on the report of the judicial committee, to grant such extension as is authorized by the

said Act and by this Act, either to an assignee or assignees, or to the original patentee or patentees, or to an assignee or assignees and original patentee or patentees conjointly.

Disclaimer and memorandum of alteration notwithstanding original patentee may have assigned his patent right.

5. And be it enacted, that in case the original patentee or patentees hath or have departed with his or their whole or any part of his or their interest by assignment to any other person or persons, it shall be lawful for such patentee, together with such assignee or assignees, if part only hath been assigned, and for the assignee or assignees, if the whole hath been assigned, to enter a disclaimer and memorandum of alteration under the powers of the said recited Act; and such disclaimer and memorandum of such alteration, having been so entered and filed as in the said recited Act mentioned, shall be valid and effectual in favour of any person or persons in whom the rights under the said letters patent may then be or thereafter become legally vested; and no objection shall be made in any proceeding whatsoever on the ground that the party making such disclaimer or memorandum of such alteration had not sufficient authority in that behalf.

Disclaimer and memorandum of alteration already made to be deemed valid.

6. And be it enacted, that any disclaimer or memorandum of alteration before the passing of this Act, or by virtue of the said recited Act, by such patentee with such assignee or by such assignee as aforesaid, shall be valid and effectual to bind any person or persons in whom the said letters patent might then be or have since become vested; and no objection shall be made in any proceeding whatsoever that the party making such disclaimer or memorandum of alteration had not authority in that behalf.

New letters patent granted under 5 & 6 W. 4, to assig-

7. And be it enacted, that any new letters patent which before the passing of this Act may have been granted, under the provisions of the above-recited

Act of the sixth year of the reign of his late Majesty, to an assignee or assignees, shall be as valid and effectual as if the said letters patent had been made after the passing of this Act, and the title of any party to such new letters patent shall not be invalidated by reason of the same having been granted to an assignee or assignees: Provided always, that nothing herein contained shall give any validity or effect to any letters patent heretofore granted to any assignee or assignees where any action or proceeding in *scire facias* or suit in equity shall have been commenced at any time before the passing of this Act, wherein the validity of such letters patent shall have been or may be questioned.

nees before passing of this Act declared valid.

Proviso.

8. Provided always, and be it enacted, that in the case of any matter or thing being referred to the judicial committee, it shall be lawful for the said committee to appoint one or other of the clerks of the privy council to take any formal proofs required to be taken in dealing with the matter or thing so referred, and shall, if they so think fit, proceed upon such clerk's report to them as if such formal proofs had been taken by and before the said judicial committee.

Judicial committee may appoint clerk of privy council to take proofs in matters referred to them.

## 12 & 13 VICTORIA, Cap. 109.

An Act to amend an Act to regulate certain Offices in the Petty Bag in the High Court of Chancery, the Practice of the Common-Law Side of that Court, and the Enrolment Office of the said Court.[a]

1st *August* 1849.

Certificates of enrolment in the Petty Bag Office.

12. And be it enacted, that the Clerk of the Petty Bag shall, upon request, and payment of the proper fees payable in respect thereof, indorse or write upon every specification which at any time heretofore has been enrolled in the Petty Bag Office (provided the enrolment shall then be in his custody) and upon every deed, instrument in writing, and document which at any time heretofore has been or at any time hereafter shall be enrolled in the Petty Bag Office, a certificate stating that such specification, deed, instrument in writing, or document has been or was enrolled in the said Petty Bag Office, and the day of such enrolment, and shall cause such certificate to be sealed or stamped with the said chancery common-law seal; and every such certificate purporting or appearing to be so sealed or stamped shall be admitted and received in evidence as well before either House of Parliament as also before any committee thereof, and also by and before all courts, tribunals, judges, justices, and other persons whomsoever, without further proof, and as sufficient *primâ facie* evidence that the specification, deed, instrument in writing,

[a] This Act contains many clauses inapplicable to the Patent Laws: those only are inserted which do apply.

or document therein mentioned was duly enrolled in the Petty Bag Office on the day mentioned in such certificate.

Copies of documents sealed to be received as evidence without further proof.

13. And be it enacted, that every office copy issued from the Petty Bag Office shall be sealed with the said chancery common law seal for the time being; and every document sealed with such seal, and purporting to be a copy of any record or other document of any description, shall be deemed to be a true copy of such record or other document, and shall, without further proof, be admissible and admitted and received in evidence, as well before either house of parliament as also before any committee thereof, and also by and before all courts, tribunals, judges, justices, officers, and other persons whomsoever, in like manner and to the same extent and effect as the original record or other document would or might be admissible or admitted or received if tendered in evidence, as well for the purpose of proving the contents of such record or other document, as also proving such record or other document to be a record or document of or belonging to the said Court of Chancery, but not further or otherwise.

Specifications to be enrolled in the Enrolment Office.

15. And be it enacted, that every specification or instrument in writing, for describing or ascertaining any invention, and to be enrolled in Chancery in pursuance of letters patent under the great seal, shall be enrolled in the Enrolment Office of the Court of Chancery; and every disclaimer and memorandum of alteration to be enrolled in pursuance of an Act passed in the sixth year of the reign of his late Majesty King *William* the Fourth, intituled *An Act to amend the Law touching Letters Patent for Inventions*, shall also be enrolled in the said Enrolment Office, whether the specification of the invention to which such disclaimer or memorandum of alteration shall relate shall or shall not

5 & 6 W. 4, c. 83.

have been enrolled in the said Enrolment Office; and the enrolment of every such disclaimer and memorandum or alteration in the said Enrolment office shall be and be deemed to be the enrolment thereof in the proper office in pursuance of the provisions of the said Act.

Certificates of enrolment to be given, and when sealed, shall be admitted as evidence.

18. And be it enacted, that the clerk of the said Enrolment Office, or his deputy or assistant, shall, upon request, and payment of the proper fees payable in respect thereof, indorse or write upon every deed, specification, instrument in writing, and document which at any time heretofore has been or at any time hereafter shall be enrolled in the said Enrolment Office, a certificate that such deed, specification, instrument in writing, or document has been or was enrolled in chancery, and the day on which such enrolment was made, and shall cause such certificate to be sealed or stamped with the said seal of the Chancery Enrolment Office: and every such certificate purporting or appearing to be so sealed or stamped shall be admitted and received in evidence by all courts and other tribunals, judges, justices, and others, without further proof, and as sufficient *primâ facie* evidence that the deed, specification, document, or instrument in writing therein mentioned was duly enrolled in the Court of Chancery on the day and at the time mentioned in such certificate.

Copies of enrolments stamped with seal of Enrolment Office to be admitted in evidence.

19. And be it enacted, that every document or writing sealed or stamped or purporting or appearing to be sealed or stamped with the said seal of the Chancery Enrolment Office, and purporting to be a copy of any enrolment or other record, or of any other document or writing of any description whatsoever, including any drawings, maps, or plans thereunto annexed or indorsed thereon, shall be deemed to be a true copy of such enrolment, record, document, or writing, and of such drawing, map,

or plan (if any) thereunto annexed, and shall, without further proof, be admissible and admitted evidence, as well before either House of Parliament as also before any committee thereof, and also by and before all courts, tribunals, judges, justices, officers, and other persons whomsoever, in like manner and to the same extent and effect as the original enrolment, record, document, or writing could or might be admissible or admitted in evidence, as well for the purpose of proving the contents of such enrolment, record, document, or writing, and the drawing, map, or plan (if any) thereunto annexed, as also proving such enrolment, record, document, or writing of or belonging to the said Court of Chancery, and that such enrolment, record, document, or writing was made, acknowledged, prepared, filed, or entered on the day and at the time when the original enrolment, record, document, or writing shall purport to have been made, acknowledged, prepared, filed, or entered.

Writs of scire facias may be directed to sheriff of any county.

29. And be it enacted, that any writ of scire facias for repealing, cancelling, or vacating any letters patent or charter, which shall or may at any time hereafter be issued in any action at the suit of her Majesty, hereafter to be commenced, shall or may be directed and sent to the sheriff of any county in *England* or *Wales*, although the record upon which such writ shall be founded or issued may be or remain in the county of *Middlesex* or any other county, and that it shall not be necessary that any such writ which at any time hereafter may be issued and directed to the sheriff of any such county as aforesaid shall be a testatum writ, or founded upon any previous writ directed or sent to the sheriff of *Middlesex* or any other county.[a]

[a] See 15 & 16 Vict. c. 83. s. 35, *post*.

# 15 & 16 VICTORIA, Cap. 83.

## An Act for amending the Law for granting Patents for Inventions.

1st *July* 1852.

WHEREAS it is expedient to amend the law concerning letters patent for inventions: Be it enacted by, &c. as follows:

Certain persons constituted commissioners of patents for inventions.

1. The Lord Chancellor, the Master of the Rolls, her Majesty's attorney general for *England*, her Majesty's solicitor general for *England*, the lord advocate, her Majesty's solicitor general for *Scotland*, her Majesty's attorney general for *Ireland*, and her Majesty's solicitor general for *Ireland*, for the time being respectively, together with such other person or persons as may be from time to time appointed by her Majesty, as herein-after mentioned, shall be commissioners of patents for inventions; and it shall be lawful for her Majesty from time to time, by warrant under her royal sign manual, to appoint such other person or persons as she may think fit to be a commissioner or commissioners as aforesaid; and every person so appointed shall continue such commissioner during her Majesty's pleasure; and all the powers hereby vested in the commissioners may be exercised by any three or more of them, the Lord Chancellor or Master of the Rolls being one.

Seal of the commissioners.

2. It shall be lawful for the commissioners to cause a seal to be made for the purposes of this Act, and from time to time to vary such seal, and to cause to be sealed therewith all the warrants for letters patent under this Act, and all instruments

and copies proceeding from the office of the commissioners, and all courts, judges, and other persons whomsoever shall take notice of such seal, and receive impressions thereof in evidence, in like manner as impressions of the great seal are received in evidence, and shall also take notice of and receive in evidence, without further proof or production of the originals, all copies or extracts, certified under the seal of the said office, of or from documents deposited in such office.

Power to commissioners to make rules and regulations.

3. It shall be lawful for the commissioners from time to time to make such rules and regulations (not inconsistent with the provisions of this Act) respecting the business of their office, and all matters and things which under the provisions herein contained are to be under their control and direction, as may appear to them necessary and expedient for the purposes of this Act; and all such rules shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament be sitting, and if Parliament be not sitting, then within fourteen days after the next meeting of Parliament; and the commissioners shall cause a report to be laid annually before Parliament of all the proceedings under and in pursuance of this Act.

Annual report to Parliament.

Treasury to provide offices.

4. It shall be lawful for the commissioners of her Majesty's treasury to provide and appoint from time to time proper places or buildings for an office or offices for the purposes of this Act.

Commissioners to appoint clerks, &c.

5. It shall be lawful for the commissioners, with the consent of the commissioners of the treasury, from time to time to appoint for the purposes of this Act such clerks and officers as the commissioners may think proper; and it shall be lawful for the commissioners from time to time to remove any of the clerks and officers so appointed.

Petition and declaration to be accompanied with a provisional specification.

6. Every petition for the grant of letters patent for an invention, and the declaration required to accompany such petition, shall be left at the office of the commissioners, and there shall be left therewith a statement in writing, herein-after called the provisional specification, signed by or on behalf of the applicant for letters patent, describing the nature of the said invention; and the day of the delivery of every such petition, declaration, and provisional specification shall be recorded at the said office, and indorsed on such petition, declaration, and provisional specification, and a certificate thereof given to such applicant or his agent; and all such petitions, declarations, and provisional specifications shall be preserved in such manner as the commissioners may direct, and a registry thereof and of all proceedings thereon kept at the office of the commissioners.

Application referred to law officers.

7. Every application for letters patent made under this Act shall be referred by the commissioners, according to such regulations as they may think fit to make, to one of the law officers.

Provisional specification referred to law officer who may give a certificate of his allowance.

8. The provisional specification shall be referred to the law officer, who shall be at liberty to call to his aid such scientific or other person as he may think fit, and to cause to be paid to such person by the applicant such remuneration as the law officer shall appoint; and if such law officer be satisfied that the provisional specification describes the nature of the invention, he shall allow the same, and give a certificate of his allowance, and such certificate shall be filed in the office of the commissioners, and thereupon the invention therein referred to may, during the term of six months from the date of the application for letters patent for the said invention, be used and published without prejudice to any letters patent to be granted for the same, and such protection from the con-

sequences of use and publication is herein-after referred to as provisional protection: Provided always, that in case the title of the invention or the provisional specification be too large or insufficient, it shall be lawful for the law officer to whom the same is referred to allow or require the same to be amended.

Inventor may deposit, in lieu of a provisional specification, a complete specification.

9. The applicant for letters patent for an invention, instead of leaving with the petition and declaration a provisional specification as aforesaid may, if he think fit, file with the said petition and declaration an instrument in writing under his hand and seal (herein-after called a complete specification), particularly describing and ascertaining the nature of the said invention, and in what manner the same is to be performed, which complete specification shall be mentioned in such declaration, and the day of the delivery of every such petition, declaration, and complete specification shall be recorded at the office of the commissioners, and indorsed on such petition, declaration, and specification, and a certificate thereof given to such applicant or his agent, and thereupon, subject and without prejudice to the provisions herein-after contained, the invention shall be protected under this Act for the term of six months from the date of the application, and the applicant shall have during such term of six months the like powers, rights, and privileges as might have been conferred upon him by letters patent for such invention, issued under this Act, and duly sealed as of the day of the date of such application; and during the continuance of such powers, rights, and privileges under this provision, such invention may be used and published without prejudice to any letters patent to be granted for the same; and where letters patent are granted in respect of such invention, then in lieu of a condition for making

void such letters patent in case such invention be not described and ascertained by a subsequent specification, such letters patent shall be conditioned to become void if such complete specification, filed as aforesaid, does not particularly describe and ascertain the nature of the said invention, and in what manner the same is to be performed; and a copy of every such complete specification shall be open to the inspection of the public, as herein-after provided, from the time of depositing the same, subject to such regulation as the commissioners may make.

Letters patent to first inventor not invalidated by protection obtained in fraud of the first inventor.

10. In case of any application for letters patent for any invention, and the obtaining upon such application of provisional protection for such invention, or of protection for the same, by reason of the deposit of a complete specification as aforesaid in fraud of the true and first inventor, any letters patent granted to the true and first inventor of such invention shall not be invalidated by reason of such application, or of such provisional or other protection as aforesaid, or of any use or publication of the invention subsequent to such application, and before the expiration of the term of such provisional or other protection.

Commissioners to cause protections to be advertised.

11. Where any invention is provisionally protected under this Act, or protected by reason of the deposit of such complete specification as aforesaid, the commissioners shall cause such provisional protection or such other protection as aforesaid to be advertised in such manner as they may see fit.

Application for letters patent to be advertised and also oppositions.

12. The applicant for letters patent, so soon as he may think fit after the invention shall have been provisionally protected under this Act, or where a complete specification has been deposited with his petition and declaration, then so soon as he may think fit after such deposit, may give notice at the office of the commissioners of his intention of pro-

ceeding with his application for letters patent for the said invention, and thereupon the said commissioners shall cause his said application to be advertised in such manner as they may see fit; and any persons having an interest in opposing the grant of letters patent for the said invention shall be at liberty to leave particulars in writing of their objections to the said application at such place and within such time and subject to such regulations as the commissioners may direct.

Specification and objections referred to law officer.

13. So soon as the time for the delivery of such objections shall have expired, the provisional specification or complete specification (as the case may be) and particulars of objection (if any) shall be referred to the law officer to whom the application has been referred.

Power to law officer to order by or to whom costs shall be paid.

14. It shall be lawful for the law officer to whom any application for such letters patent is referred, if he see fit, by certificate under his hand, to order by or to whom the costs of any hearing or inquiry upon any objection, or otherwise in relation to the grant of such letters patent, or in relation to the provisional (or other) protection acquired by the applicant under this Act, shall be paid, and in what manner and by whom such costs are to be ascertained; and if any costs so ordered to be paid be not paid within four days after the amount thereof shall be so ascertained, it shall be lawful for such law officer to make an order for the payment of the same, and every such order may be made a rule of one of her Majesty's Superior Courts at *Westminster* or *Dublin*, and may be recorded in the books of council and session in *Scotland* to the effect that execution may pass thereupon in common form.

Power to law officer to cause a warrant to be made for sealing of letters patent.

15. It shall be lawful for such law officer, after such hearing, if any, as he may think fit, to cause a warrant to be made for the sealing of letters

patent for the said invention, and such warrant shall be sealed with the seal of the commissioners, and shall set forth the tenor and effect of the letters patent thereby authorized to be granted, and such law officer shall direct the insertion in such letters patent of all such restrictions, conditions, and provisoes as he may deem usual and expedient in such grants, or necessary in pursuance of the provisions of this Act; and the said warrant shall be the warrant for the making and sealing of letters patent under this act according to the tenor of the said warrant: Provided always, that the Lord Chancellor shall and may have and exercise such powers, authority, and discretion in respect to the said warrant, and the letters patent therein directed to be made under this Act, as he now has and might now exercise with respect to the warrant for the issue under the great seal of letters patent for any invention, and with respect to the making and issuing of such letters patent; and the writ of scire *facias* shall lie for the repeal of any letters patent issued under this Act, in the like cases as the same would lie for the repeal of letters patent which may now be issued under the great seal.

Chancellor's powers in respect to warrant, &c.

Scire facias.

Nothing to affect the prerogative of the crown as to letters patent.

16. Provided also, that nothing herein contained shall extend to abridge or affect the prerogative of the crown in relation to the granting or withholding the grant of any letters patent; and it shall be lawful for her Majesty, by warrant under her royal sign manual, to direct such law officer to withhold such warrant as aforesaid, or that any letters patent for the issuing whereof he may have issued a warrant as aforesaid shall not issue, or to direct the insertion in any letters patent to be issued in manner herein provided of any restrictions, conditions, or provisoes which her Majesty may think fit in addition to or in substitution for any restrictions, conditions, or provisoes which

would otherwise be inserted therein under this Act; and it shall also be lawful for her Majesty, by like warrant, to direct any complete specification which may have been filed under the provision herein-before contained, and in respect of the invention described in which no letters patent may have been granted, to be cancelled, and thereupon the protection obtained by the filing of such complete specification shall cease.

Letters patent subject to avoidance on nonfulfilment of conditions.

17. All letters patent for inventions granted under the provisions herein-before contained shall be made subject to the condition that the same shall be void, and that the powers and privileges thereby granted shall cease and determine, at the expiration of three years and seven years respectively from the date thereof, unless there be paid, before the expiration of the said three and seven years respectively, the sum or sums of money and stamp duties in the Schedule to this Act annexed: and the payment of the said sums of money and stamp duties respectively shall be indorsed on the warrant for the said letters patent; and such officer of the commissioners as may be appointed for this purpose shall issue under the seal of the commissioners a certificate of such payment, and shall endorse a receipt for the same on any letters patent issued under the authority of the said warrant; and such certificate duly stamped, shall be evidence of the payment of the several sums respectively.

Letters patent issued under the great seal valid for the whole of the United Kingdom.

18. The commissioners, so soon after the sealing of the said warrant as required by the applicant for the letters patent, shall cause to be prepared letters patent for the invention, according to the tenor of the said warrant, and it shall be lawful for the Lord Chancellor to cause such letters patent to be sealed with the great seal of the United Kingdom, and such letters patent so sealed

shall extend to the whole of the United Kingdom of *Great Britain* and *Ireland*, the Channel Islands, and the *Isle of Man*; and in case such warrant so direct, such letters patent shall be made applicable to her Majesty's colonies and plantations abroad, or such of them as may be mentioned in such warrant; and such letters patent shall be valid and effectual as to the whole of such United Kingdom, and the said islands and isle, and the said colonies or plantations, or such of them as aforesaid, and shall confer the like powers, rights, and privileges as might, in case this Act had not been passed, have been conferred by several letters patent of the like purport and effect passed under the great seal of the United Kingdom, under the seal appointed to be used instead of the great seal of *Scotland*, and under the great seal of *Ireland* respectively, and made applicable to *England*, the dominion of *Wales*, the town of *Berwick-upon-Tweed*, the Channel Islands, and *Isle of Man*, and the said colonies and plantations, or such of them as aforesaid, to *Scotland* and to *Ireland* respectively, save as herein otherwise provided: Provided always, that nothing in this Act contained shall be deemed or taken to give any effect or operation to any letters patent to be granted under the authority of this Act in any colony in which such or the like letters patent would be invalid by the law in force in the same colony for the time being: Provided always, that a transcript of such letters shall, so soon after the sealing of the same and in such manner as the commissioners shall direct, be transmitted to the director of Chancery in *Scotland*, and be recorded in the records of Chancery in *Scotland*, upon payment of such fees as the commissioners shall appoint, in the same manner and to the same effect in all respects as letters patent passing under the seal appointed by the treaty of union to be

Nothing to give effect to any letters patent granted in any colony.

used in place of the great seal of *Scotland* have heretofore been recorded, and extracts from t said records shall be furnished to all parties requiring the same, on payment of such fees as the commissioners shall direct, and shall be received in evidence in all courts in *Scotland* to the like effect as the letters patent themselves.

No letters patent to be issued after three months from date of warrant.

19. Provided always, that no letters patent, save as herein-after mentioned in the case of letters patent destroyed or lost, shall issue on any warrant granted as aforesaid, unless application be made to seal such letters patent within three months after the date of the said warrant.

No letters patent (except in lieu of those lost, &c.) to be issued after expiration of protection given by this Act.

20. Provided also, that no letters patent (save letters patent issued in lieu of others destroyed or lost) shall be issued or be of any force or effect unless the same be granted during the continuance of the provisional protection under this Act, or, where a complete specification has been deposited under this Act, then unless such letters patent be granted during the continuance of the protection conferred under this Act by reason of such deposit, save that where the application to seal such letters patent has been made during the continuance of such provisional or other protection as aforesaid, and the sealing of such letters patent has been delayed by reason of a caveat or an application to the Lord Chancellor against or in relation to the sealing of such letters patent, then such letters patent may be sealed at such time as the Lord Chancellor shall direct.

Letters patent may be granted to personal representatives of the applicant.

21. Provided also, that where the applicant for such letters patent dies during the continuance of the provisional protection, or the protection by reason of the deposit of a complete specification, (as the case may be,) such letters patent may be granted to the executors or administrators of such applicant during the continuance of such provi-

sional or other protection, or at any time within three months after the death of such applicant, notwithstanding the expiration of the term of such provisional or other protection, and the letters patent so granted shall be of the like force and effect as if they had been granted to such applicant during the continuance of such provisional or other protection.

If letters patent be destroyed or lost, others may be issued.

22. Provided also, that in case any such letters patent shall be destroyed or lost, other letters patent of the like tenor and effect, and sealed and dated as of the same day, may, subject to such regulations as the commissioners may direct, be issued under the authority of the warrant in pursuance of which the original letters patent were issued.

Letters patent may be dated as of the day of the application.

23. It shall be lawful (the Act of the eighteenth year of King *Henry* the Sixth, chapter one, or any other Act, to the contrary notwithstanding) to cause any letters patent to be issued in pursuance of this Act to be sealed and bear date as of the day of the application for the same, and in case of such letters patent for any invention provisionally registered under the "Protection of Inventions Act, 1851," as of the day of such provisional registration, or, where the law officer to whom the application was referred, or the Lord Chancellor, thinks fit and directs, any such letters patent as aforesaid may be sealed and bear date as of the day of the sealing of such letters patent, or of any other day between the day of such application or provisional registration and the day of such sealing.

Letters patent where antedated to be of the same validity as if sealed on the day of the date.

24. Any letters patent issued under this Act sealed and bearing date as of any day prior to the day of the actual sealing thereof shall be of the same force and validity as if they had been sealed on the day as of which the same are expressed to

be sealed and bear date: Provided always, that save where such letters patent are granted for any invention, in respect whereof a complete specification has been deposited upon the application for the same under this Act, no proceeding at law or in equity shall be had upon such letters patent in respect of any infringement committed before the same were actually granted.

Letters patent obtained in United Kingdom for patented foreign inventions not to continue in force after the expiration of the foreign patent.

25. Where, upon any application made after the passing of this Act, letters patent are granted in the United Kingdom for or in respect of any invention first invented in any foreign country or by the subject of any foreign power or state, and a patent or like privilege for the monopoly or exclusive use or exercise of such invention in any foreign country is thereby obtained before the grant of such letters patent in the United Kingdom, all rights and privileges under such foreign patent shall (notwithstanding any term in such letters patent limited) cease and be void immediately upon the expiration or other determination of the term during which the patent or like privilege obtained in such foreign country shall continue in force, or where more than one such patent or like privilege is obtained abroad, immediately upon the expiration or determination of the term which shall first expire or be determined of such several patents or like privileges: Provided always, that no letters patent for or in respect of any invention for which any such patent or like privilege as aforesaid shall have been obtained in any foreign country, and which shall be granted in the said United Kingdom after the expiration of the term for which such patent or privilege was granted or was in force, shall be of any validity.

Letters patent not to prevent the use of in-

26. No letters patent for any invention (granted after the passing of this Act) shall extend to prevent the use of such invention in any foreign ship

ventions in foreign ships.

or vessel, or for the navigation of any foreign ship or vessel, which may be in any port of her Majesty's dominions, or in any of the waters within the jurisdiction of any of her Majesty's courts, where such invention is not so used for the manufacture of any goods or commodities to be vended within or exported from her Majesty's dominions: Provided always, that this enactment shall not extend to the ships or vessels of any Foreign State of which the laws authorize subjects of such Foreign State, having patents or like privileges for the exclusive use or exercise of inventions within its territories, to prevent or interfere with the use of such inventions in *British* ships or vessels, or in or about the navigation of *British* ships or vessels, while in the ports of such foreign state, or in the waters within the jurisdiction of its courts, where such inventions are not so used for the manufacture of goods or commodities to be vended within or exported from the territories of such foreign state.

except, &c.

Specifications to be filed instead of being enrolled.

27. All letters patent to be granted under this Act (save only letters patent granted after the filing of a complete specification) shall require the specification thereunder to be filed in the High Court of Chancery, instead of requiring the same to be enrolled, and no enrolment shall be requisite.

Specifications, &c. to be filed in such office as Lord Chancellor shall direct.

28. Every specification to be filed in pursuance of the condition of any letters patent shall be filed in such office of the Court of Chancery as the Lord Chancellor shall from time to time appoint, and every provisional specification and complete specification left or filed at the office of the commissioners on the application for any letters patent, shall forthwith after the grant of the letters patent, or if no letters patent be granted then immediately on the expiration of six months from the time of such application, be transferred to and kept in the said office appointed for filing specifi-

cations in Chancery; and in case reference is made to drawings in any specification deposited or filed under this Act, an extra copy of such drawings shall be left with such specification.

As to filing extra copies of drawings.

29. The commissioners shall cause true copies of all specifications (other than provisional specifications), disclaimers, and memoranda of alterations filed under or in pursuance of this Act, and of all provisional specifications after the term of the provisional protection of the invention has expired, to be open to the inspection of the public at the office of the commissioners, and at an office in *Edinburgh* and *Dublin* respectively, at all reasonable times, subject to such regulations as the commissioners may direct; and the commissioners shall cause a transcript of the said letters patent to be transmitted for enrolment in the Court of Chancery, *Dublin*, and shall cause the same to be enrolled therein, and the transcript or exemplification thenceforward shall have the like effect to all intents and purposes as if the original letters patent had been enrolled in the Court of Chancery in *Dublin*, and all parties shall have all their remedies by scire facias or otherwise, as if the letters patent had been granted to extend to *Ireland* only.

Copies of specifications open to inspection at office of commissioners.

30. The commissioners shall cause to be printed, published, and sold, at such prices and in such manner as they may think fit, all specifications, disclaimers, and memoranda of alterations deposited or filed under this Act, and such specifications (not being provisional specifications), disclaimers, and memoranda respectively shall be so printed and published as soon as conveniently may be after the filing thereof respectively, and all such provisional specifications shall be so printed and published as soon as conveniently may be after the expiration of the provisional protection obtained in respect thereof; and it shall be lawful for the

Specifications and other documents printed and published.

Copies of publications to public libraries, &c.

commissioners to present copies of all such publications to such public libraries and museums as they may think fit, and to allow the person depositing or filing any such specification, disclaimer, or memorandum of alteration to have such number, not exceeding twenty-five, of the copies thereof so printed and published, without any payment for the same, as they may think fit.

Enrolments, &c. may be removed to the office for specifications.

31. It shall be lawful for the Lord Chancellor and the Master of the Rolls to direct the enrolment of specifications, disclaimers, and memoranda of alterations heretofore or hereafter enrolled or deposited at the *Rolls Chapel* Office, or at the Petty Bag Office, or at the Enrolment Office of the Court of Chancery, or in the custody of the Master of the Rolls as keeper of the public records, to be transferred to and kept in the office appointed for filing specifications in chancery under this Act.

Indexes to be made to old specifications, &c.; such specifications, &c. may be printed and published.

32. The commissioners shall cause indexes to all specifications, disclaimers, and memoranda of alterations heretofore or to be hereafter enrolled or deposited as last aforesaid to be prepared in such form as they may think fit, and such indexes shall be open to the inspection of the public at such place or places as the commissioners shall appoint, and subject to the regulations to be made by the commissioners, and the commissioners may cause all or any of such indexes, specifications, disclaimers, and memoranda of alterations to be printed, published, and sold in such manner and at such prices as the commissioners may think fit.

Copies of specifications, &c. to be evidence.

33. Copies, printed by the printers to the Queen's Majesty of specifications, disclaimers, and memoranda of alterations shall be admissible in evidence, and deemed and taken to be *primâ facie* evidence of the existence and contents of the documents to which they purport to relate in all courts and in all proceedings relating to letters patent.

Register of patents.

34. There shall be kept at the office appointed for filing specifications in chancery under this Act a book or books, to be called "The Register of Patents," wherein shall be entered and recorded in chronological order all letters patent granted under this Act, the deposit or filing of specifications, disclaimers, and memoranda of alterations filed in respect of such letters patent, all amendments in such letters patent and specifications, all confirmations and extensions of such letters patent, the expiry, vacating, or cancelling such letters patent, with the dates thereof respectively, and all other matters and things affecting the validity of such letters patent as the commissioners may direct, and such register, or a copy thereof, shall be open at all convenient times to the inspection of the public, subject to such regulations as the commissioners may make.

A register of proprietors to be kept at the office for filing specifications.

35. There shall be kept at the office appointed for filing specifications in chancery under this Act, a book or books entitled "The Register of Proprietors," wherein shall be entered, in such manner as the commissioners shall direct, the assignment of any letters patent, or of any share or interest therein, any license under letters patent, and the district to which such license relates, with the name or names of any person having any share or interest in such letters patent or license, the date of his or their acquiring such letters patent, share, and interest, and any other matter or thing relating to or affecting the proprietorship in such letters patent or license; and a copy of any entry in such book, certified under such seal as may have been appointed or as may be directed by the Lord Chancellor to be used in the said office, shall be given to any person requiring the same, on payment of the fees herein-after provided; and such copies so certified shall be received in evidence in all courts

and in all proceedings, and shall be *primâ facie* proof of the assignment of such letters patent, or share or interest therein, or of the license or proprietorship, as therein expressed: Provided always, that until such entry shall have been made the grantee or grantees of the letters patent shall be deemed and taken to be the sole and exclusive proprietor or proprietors of such letters patent, and of all the licenses and privileges thereby given and granted; that certified duplicates of all entries made in the said register of proprietors shall forthwith be transmitted to the office of the commissioners in *Edinburgh* and *Dublin*, where the same shall also be open to the inspection of the public; and any writ of scire facias to repeal such letters patent may be issued to the sheriff of the county or counties in which the grantee or grantees resided at the time when the said letters patent were granted; and in case such grantee or grantees do not reside in the United Kingdom it shall be sufficient to file such writ in the Petty Bag Office, and serve notice thereof in writing at the last known residence or place of business of such grantee or grantees; and such register or a copy shall be open to the inspection of the public at the office of the commissioners, subject to such regulations as the commissioners may make: Provided always, that in any proceeding in *Scotland* to repeal any letters patent, service of all writs and summonses shall be made according to the existing forms and practice: Provided also, that the grantee or grantees of letters patent to be hereafter granted may assign the letters patent for *England*, *Scotland*, or *Ireland* respectively as effectually as if the letters patent had been originally granted to extend to *England* or *Scotland*, or *Ireland* only, and the assignee or assignees shall have the same rights of action and remedies, and shall be subject to the

like actions and suits as he or they should and would have had and been subject to upon the assignment of letters patent granted to *England*, *Ireland*, or *Scotland* before the passing of this Act.

More than twelve persons may have an interest in patent.

36. Notwithstanding any proviso that may exist in former letters patent, it shall be lawful for a larger number than twelve persons hereafter to have a legal and beneficial interest in such letters patent.

Falsification or forgery of entries a misdemeanor.

37. If any person shall wilfully make or cause to be made any false entry in the said register of proprietors, or shall wilfully make or forge, or cause to be made or forged, any writing falsely purporting to be a copy of any entry in the said book, or shall produce or tender, or cause to be produced or tendered in evidence any such writing, knowing the same to be false or forged, he shall be guilty of a misdemeanor, and shall be punished by fine and imprisonment accordingly.

Entries may be expunged.

38. If any person shall deem himself aggrieved by any entry made under colour of this Act in the said register of proprietors, it shall be lawful for such person to apply by motion to the Master of the Rolls, or to any of the Courts of Common Law at *Westminster* in term time, or by summons to a judge of any of the said courts in vacation, for an order that such entry may be expunged, vacated, or varied; and upon any such application the Master of the Rolls, or such court or judge respectively, may make such order for expunging, vacating, or varying such entry, and as to the costs of such application, as to the said Master of the Rolls or to such court or judge may seem fit; and the officer having the care and custody of such register, on the production to him of any such order for expunging, vacating, or varying any such entry, shall expunge, vacate, or vary the same according to the requisitions of such order.

Provisions of 5 & 6 W. 4, c. 83, and of 7 & 8 Vict. c. 69, as to disclaimers and memoranda of alterations to apply to patents under this Act.

39. All the provisions of the Acts of the session holden in the fifth and sixth years of king *William* the Fourth, chapter eighty-three, and of the session holden in the seventh and eighth years of her Majesty, chapter sixty-nine, respectively relating to disclaimers, and memoranda of alterations in letters patent and specifications, except as herein-after provided, shall be applicable and apply to any letters patent granted, and to any specification filed under the provisions of this Act: Provided always, that all applications for leave to enter a disclaimer or memorandum of alteration shall be made, and all caveats relating thereto shall be lodged at the office of the commissioners, and shall be referred to the respective law officers in the said first-recited Act mentioned: Provided also, that every such disclaimer or memorandum of alteration shall be filed in the office appointed for filing specifications in chancery under this Act, with the specification to which the same relates, in lieu of being entered or filed and enrolled as required by the said first-recited Act, or by the Act of the session, holden in the twelfth and thirteenth years of her Majesty, chapter one hundred and nine, and the said Acts shall be construed accordingly: Provided also, that such filing of any disclaimer or memorandum of alteration, in pursuance of the leave of the law officer in the first-recited Act mentioned, certified as therein mentioned, shall, except in cases of fraud, be conclusive as to the right of the party to enter such disclaimer or memorandum of alteration under the said Acts and this Act; and no objection shall be allowed to be made in any proceeding upon or touching such letters patent, specification, disclaimer, or memorandum of alteration, on the ground that the party entering such disclaimer or memorandum of alteration had not sufficient authority in that behalf: Provided also,

Applications for disclaimers and caveats to be at office of commissioners.

that no action shall be brought upon any letters patent in which or on the specification of which any disclaimer or memorandum of alteration shall have been filed in respect of any infringement committed prior to the filing of such disclaimer or memorandum of alteration, unless the law officer shall certify in his fiat that any such action may be brought, notwithstanding the entry or filing of such disclaimer or memorandum of alteration.

Provisions of 5 & 6 W. 4, c. 83, 2 & 3 Vict. c. 67, and 7 & 8 Vict. c. 69, as to confirmation and prolongation, to apply to patents under this Act.

40. All the provisions of the said Act of the fifth and sixth years of King *William* the Fourth, for the confirmation of any letters patent, and the grant of new letters patent, and all the provisions of the said Act, and of the Acts of the session holden in the second and third years of her Majesty, chapter sixty-seven, and of the session holden in the seventh and eighth years of her Majesty, chapter sixty-nine, respectively, relating to the prolongation of the term of letters patent, and to the grant of new letters patent for a further term shall extend and apply to any letters patent granted under the provisions of this Act, and it shall be lawful for her Majesty to grant any new letters patent, as in the said Acts mentioned; and in the granting of any such new letters patent her Majesty's order in council shall be a sufficient warrant and authority for the sealing of any new letters patent, and for the insertion in such new letters patent of any restrictions, conditions, and provisions in the said order mentioned; and the Lord Chancellor on the receipt of the said order in council, shall cause letters patent, according to the tenor and effect of such order, to be made and sealed in the manner herein directed for letters patent issued under the warrant of the law officer: Provided always, that such new letters patent shall extend to and be available in and for such places as the original letters patent extended to and were

available in: Provided also, that such new letters patent shall be sealed and bear date as of the day after the expiration of the term of the original letters patent which may first expire.

In actions for infringement of letters patent, particulars to be delivered, and no evidence allowed not mentioned therein.

41. In any action in any of her Majesty's Superior Courts of Record at *Westminster* or in *Dublin* for the infringement of letters patent the plaintiff shall deliver with his declaration particulars of the breaches complained of in the said action, and the defendant, on pleading thereto, shall deliver with his pleas, and the prosecutor in any proceedings by scire facias to repeal letters patent shall deliver with his declaration, particulars of any objections on which he means to rely at the trial in support of the pleas in the said action, or of the suggestions of the said declaration in the proceedings by scire facias respectively; and at the trial of such action or proceeding by scire facias no evidence shall be allowed to be given in support of any alleged infringement or of any objection impeaching the validity of such letters patent which shall not be contained in the particulars delivered as aforesaid: Provided always, that the place or places at or in which and in what manner the invention is alleged to have been used or published prior to the date of the letters patent shall be stated in such particulars: Provided also, that it shall and may be lawful for any judge at Chambers to allow such plaintiff or defendant or prosecutor respectively to amend the particulars delivered as aforesaid, upon such terms as to such judge shall seem fit: Provided also, that at the trial of any proceeding by scire facias to repeal letters patent the defendant shall be entitled to begin and to give evidence in support of such letters patent, and in case evidence shall be adduced on the part of the prosecutor impeaching the validity of such letters patent, the defendant shall be entitled to the reply.

Courts of Common Law may grant injunction.

42. In any action in any of her Majesty's Superior Courts of Record at *Westminster* and in *Dublin* for the infringement of letters patent, it shall be lawful for the court in which such action is pending, if the court be then sitting, or if the court be not sitting then for a judge of such court, on the application of the plaintiff or defendant respectively, to make such order for an injunction, inspection, or account, and to give such direction respecting such action, injunction, inspection, and account, and the proceedings therein respectively, as to such court or judge may seem fit.

Particulars to be regarded in taxation of costs.

43. In taxing the costs in any action in any of her Majesty's Superior Courts at *Westminster* or in *Dublin*, commenced after the passing of this Act for infringing letters patent regard shall be had to the particulars delivered in such action, and the plaintiff and defendant respectively shall not be allowed any costs in respect of any particular unless certified by the judge before whom the trial was had to have been proved by such plaintiff or defendant respectively, without regard to the general costs of the cause; and it shall be lawful for the judge before whom any such action shall be tried to certify on the record that the validity of the letters patent in the declaration mentioned came in question; and the record, with such certificate, being given in evidence in any suit or action for infringing the said letters patent, or in any proceeding by scire facias to repeal the letters patent, shall entitle the plaintiff in any such suit or action, or the defendant in such proceeding by scire facias on obtaining a decree, decretal order, or final judgment, to his full costs, charges, and expenses, taxed as between attorney and client, unless the judge making such decree or order, or the judge trying such action or proceeding, shall certify that the plaintiff or defendant respectively ought not to have such full

costs: Provided always, that nothing herein contained shall effect the jurisdiction and forms of process of the courts in *Scotland* in any action for the infringement of letters patent or in any action or proceeding respecting letters patent hitherto competent to the said courts: Provided also, that when any proceedings shall require to be taken in *Scotland* to repeal any letters patent, such proceedings shall be taken in the form of an action of reduction at the instance of her Majesty's advocate, or at the instance of any other party having interest with concurrence of her Majesty's advocate, which concurrence her Majesty's advocate is authorized and empowered to give upon just cause shown only.

Payments and stamp duties on letters patent to be as in schedule.

44. There shall be paid in respect of letters patent applied for or issued as herein mentioned, the filing of specifications and disclaimers, certificates, entries, and searches, and other matters and things mentioned in the schedule to this Act, such fees as are mentioned in the said schedule; and there shall be paid unto and for the use of her Majesty, her heirs and successors, for or in respect of the warrants and certificates mentioned in the said schedule, or the vellum, parchment, or paper on which the same respectively are written, the stamp duties mentioned in the said schedule: and no other stamp duties shall be levied, or fees, except as herein-after mentioned, taken in respect to such letters patent and specifications, and the matters and things in such schedule mentioned.

Duties under commissioners of inland revenue.

45. The stamp duties hereby granted shall be under the care and management of the commissioners of inland revenue; and the several rules, regulations, provisions, penalties, clauses, and matters contained in any Act now or hereafter to be in force with reference to stamp duties shall be applicable thereto.

46. The fees to be paid as aforesaid shall from time to time be paid into the receipt of the exchequer, and be carried to and made part of the consolidated fund of the United Kingdom.

All monies paid to consolidated fund.

47. Provided always, that nothing herein contained shall prevent the payment as heretofore to the law officers in cases of opposition to the granting of letters patent, and in cases of disclaimers and memoranda of alterations, of such fees as may be appointed by the Lord Chancellor and Master of the Rolls as the fee, to be paid on the hearing of such oppositions, and in the case of disclaimers and memoranda of alterations respectively, or of such reasonable sums for office or other copies of documents in the office of the commissioners, as the commissioners may from time to time appoint to be paid for such copies, and the Lord Chancellor and Master of the Rolls, and the commissioners, are hereby respectively authorized and empowered to appoint the fees to be so paid in respect of such oppositions, disclaimers, and memoranda of alterations respectively, and for such office or other copies.

Not to prevent payment of fees to law officers in cases of opposition, &c.

48. It shall be lawful for the commissioners of her Majesty's treasury from time to time to allow such fees to the law officers and their clerks (for duties under this Act in respect of which fees may not be payable to them under the provisions lastly herein-before contained) as the Lord Chancellor and Master of the Rolls may from time to time appoint, and to allow such salaries and payments to any clerks and officers to be appointed under this Act, and such additional salaries and payments to any other clerks and officers in respect of any additional duties imposed on them by this Act, as the said commissioners of the treasury may think fit.

Fees and salaries of officers.

49. It shall be lawful for the commissioners of her Majesty's treasury to allow from time to time

Sums for defraying salaries and expenses

paid out of monies provided by parliament.

the necessary sums for providing offices under this Act, and for the fees, salaries, and payments allowed by them as aforesaid, and for defraying the current and incidental expenses of such office or offices; and the sums to be so allowed shall be paid out of such monies as may be provided by parliament for that purpose.

Compensation to persons affected by this Act.

50. And whereas divers persons by virtue of their offices or appointments are entitled to fees or charges payable in respect of letters patent as heretofore granted within the United Kingdom of *Great Britain* and *Ireland*, or have and derive in respect of such letters patent, or the procedure for the granting thereof, fees or other emoluments or advantages:

It shall be lawful for the said commissioners of the treasury to grant to any such persons who may sustain any loss of fees, emoluments, or advantages by reason of the passing of this Act, such compensation as, having regard to the tenure and nature of their respective offices and appointments, such commissioners deem just and proper to be awarded; and all such compensations shall be paid out of such monies as may be provided by parliament for that purpose: Provided always, that in case any person to whom any yearly sum by way of compensation shall be awarded and paid shall, after the passing of this Act, be appointed to any office or place of emolument under the provisions of this Act, or in the public service, then and in every such case the amount of such yearly sum shall in every year be diminished by so much as the emoluments of such person for such year from such office or place shall amount to, and provision in that behalf shall be made in the award to him of such yearly sum.

Account of salaries, fees, and compensation

51. An account of all salaries, fees, allowances, sums, and compensations to be appointed, allowed,

or granted under this Act shall, within fourteen days next after the same shall be so appointed, allowed, or granted respectively, be laid before both Houses of Parliament, if Parliament be then sitting, or if Parliament be not then sitting, then within fourteen days after the next meeting of Parliament.

Allowances laid before parliament.

52. Letters patent may be granted in respect of applications made before the commencement of this Act, in like manner and subject to the same provisions as if this Act had not been passed.

Patents applied for before commencement of Act.

53. Where letters patent for *England* or *Scotland* or *Ireland* have been granted before the commencement of this Act, or are in respect of any application made before the commencement of this Act hereafter granted for any invention, letters patent for *England*, or *Scotland* or *Ireland* may be granted for such invention in like manner as if this Act had not been passed: Provided always, that in lieu of all the fees or payments and stamp duties now payable in respect of such letters patent, or in or about obtaining a grant thereof, there shall be paid in respect of such letters patent for *England* or *Scotland* or *Ireland* on the sealing of such respective letters patent a sum equal to one-third part of the fees and stamp duties which would be payable according to the Schedule to this Act in respect of letters patent issued for the United Kingdom under this Act, on or previously to the sealing of such letters patent; and at or before the expiration of the third year and the seventh year respectively of the term granted by such letters patent for *England* or *Scotland* or *Ireland*, sums equal to one-third part of the fees and stamp duties payable at the expiration of the third year and the seventh year respectively of the term granted by letters patent issued for the United Kingdom under this Act; and the condition of such letters patent for *England* or *Scotland* or *Ire-*

As to patent granted before commencement of this Act for England, Scotland, or Ireland.

*land* shall be varied accordingly; and such fees shall be paid to such persons as the commissioners of her Majesty's treasury shall appoint, and shall be carried to and form part of the said consolidated fund.

Forms in schedule may be used.

54. The several forms in the schedule to this Act may be used for and in respect of the several matters therein mentioned, and the commissioners may, where they think fit, vary such forms as occasion may require, and cause to be printed and circulated such other forms as they may think fit to be used for the purposes of this Act.

Interpretation of terms.

55. In the construction of this Act the following expressions shall have the meanings hereby assigned to them, unless such meanings be repugnant to or inconsistent with the context; (that is to say,)

The expression "Lord Chancellor" shall mean the Lord Chancellor, or lord keeper of the great seal, or lord commissioner of the great seal:

The expression "The Commissioners" shall mean the commissioners for the time being acting in execution of this Act:

The expression "Law Officer" shall mean her Majesty's attorney-general or solicitor-general for the time being for *England*, or the lord advocate, or her Majesty's solicitor-general for the time being for *Scotland*, or her Majesty's attorney-general or solicitor-general for the time being for *Ireland*:

The expression "Invention" shall mean any manner of new manufacture the subject of letters patent and grant of privilege within the meaning of the Act of the twenty-first year of the reign of King *James* the First, chapter three:

The expressions "Petition," "Declaration," "Provisional Specification," "Warrant," and

"Letters Patent" respectively, shall mean instruments in the form and to the effect in the schedule hereto annexed, subject to such alterations as may from time to time be made therein under the powers and provisions of this Act.

Short title.

56. In citing this Act in other Acts of Parliament, instruments, and proceedings, it shall be sufficient to use the expression "The Patent Law Amendment Act, 1852."

Commencement of Act.

57. This Act shall commence and take effect from the first day of *October* one thousand eight hundred and fifty-two.

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## The SCHEDULE to which this Act refers.

### FEES TO BE PAID.

Fees.

| | £ | s. | d. |
|---|---|---|---|
| On leaving petition for grant of letters patent | 5 | 0 | 0 |
| On notice of intention to proceed with the application | 5 | 0 | 0 |
| On sealing of letters patent | 5 | 0 | 0 |
| On filing specification | 5 | 0 | 0 |
| At or before the expiration of the third year | 40 | 0 | 0 |
| At or before the expiration of the seventh year | 80 | 0 | 0 |
| On leaving notice of objections | 2 | 0 | 0 |
| Every search and inspection | 0 | 1 | 0 |
| Entry of assignment or licence | 0 | 5 | 0 |
| Certificate of assignment or licence | 0 | 5 | 0 |
| Filing application for disclaimer | 5 | 0 | 0 |
| Caveat against disclaimer | 2 | 0 | 0 |

### STAMP DUTIES TO BE PAID.

| | | | |
|---|---|---|---|
| On warrant of law officer for letters patent | 5 | 0 | 0 |

| | £ | s. | d. |
|---|---|---|---|
| On certificate of payment of the fee payable at or before the expiration of the third year . . . . . | 10 | 0 | 0 |
| On certificate of payment of the fee payable at or before the expiration of the seventh year . . . . . | 20 | 0 | 0 |

# FORMS.

No. **PETITION.**

**To the Queen's most excellent Majesty.**

The humble Petition of [*here insert name and address of petitioner*] for, &c.

Sheweth,—That your petitioner is in possession of an invention for

[*the title of the invention*],

which invention he believes will be of great public utility; that he is the true and first inventor thereof; and that the same is not in use by any other person or persons, to the best of his knowledge and belief.

Your petitioner therefore humbly prays, that your Majesty will be pleased to grant unto him, his executors, administrators, and assigns, your royal letters patent for the united kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, [*colonies to be mentioned, if any*], for the term of fourteen years, pursuant to the statutes in that case made and provided.

And your petitioner will ever pray, &c.

No. **DECLARATION.**

I of in the county of do solemnly and sincerely declare, that I am in possession of an invention for, &c.

[*The title as in petition*]

which invention I believe will be of great public utility; that I am the true and first inventor thereof; and that the same is not in use by any other person or persons, to the best of my knowledge and belief; [*where a complete specification is to be filed with the petition and declaration, insert these words*:—"And that the instrument in writing under my hand and seal, hereunto annexed, particularly describes and ascertains the nature of the said invention, and the manner in which the same is to be performed;"] and I make this declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the Session of Parliament held in the fifth and sixth years of the reign of his late Majesty King William the Fourth, intituled "An Act to repeal an Act of the present Session of Parliament, intituled 'An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the state, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits,' and to make other provisions for the abolition of unnecessary oaths."

*A. B.*

Declared at this day of
A.D. before me,

A Master in Chancery,
*or*
Justice of the Peace.

## PROVISIONAL SPECIFICATION.

No.

I do hereby declare the nature of the said invention for

[*insert title as in petition,*]

to be as follows:

[*here insert description.*]

Dated this day of A.D.

(*To be signed by applicant or his Agent.*)

## REFERENCE.

(*To be endorsed on the petition.*)

Her Majesty is pleased to refer this petition to to consider what may be properly done therein.

Clerk of the Commissioners.

## WARRANT.

In humble obedience to her Majesty's command referring to me the petition of of , to consider what may be properly done therein, I do hereby certify as follows: that the said petition sets forth that the petitioner

[*Allegations of the petition.*]

And the petitioner most humbly prays,

[*Prayer of the petition.*]

That in support of the allegations contained in the said petition the declaration of the petitioner has been laid before me, whereby he solemnly declares, that

[*Allegations of the declaration.*]

That there has also been laid before me [a provisional specification signed , and also a certificate ,] *or* [a complete specification, and a certificate of the filing thereof,] whereby it appears that the said invention was provisionally protected [*or* protected] from the day of A.D. in pursuance of the statute:

That it appears that the said application was duly advertised:

Upon consideration of all the matters aforesaid, and as it is entirely at the hazard of the said petitioner whether the said invention is new or will have the desired success, and as it may be reasonable for her Majesty to encourage all arts and inventions which may be for the public good, I am of opinion, that her Majesty may grant her royal

letters patent unto the petitioner, his executors, administrators, and assigns, for his said invention within the united kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, [*colonies to be mentioned, if any,*] for the term of fourteen years, according to the statute in that case made and provided, if her Majesty shall be graciously pleased so to do, to the tenor and effect following:

[*See next form.*]

Given under my hand, this day of A.D.

[*Seal of the Commissioners.*]

## LETTERS PATENT.

VICTORIA, by the grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith; to all to whom these presents shall *come greeting*:

Whereas hath by his petition humbly represented unto us that he is in possession of an invention for which the petitioner conceives will be of great public utility; that he is the true and first inventor thereof; and that the same is not in use by any other person or persons, to the best of his knowledge and belief: the petitioner therefore most humbly prayed that we would be graciously pleased to grant unto him, his executors, administrators, and assigns, our royal letters patent for the sole use, benefit, and advantage of his said invention within our United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, [*Colonies to be mentioned, if any,*] for the term of fourteen years, pursuant to the statutes in that case made and provided:

[And whereas the said hath particularly described and ascertained the nature of the said invention, and in what manner the same is to be performed, by an instrument in writing under his

hand and seal, and has caused the same to be duly filed in :]

And we, being willing to give encouragement to all arts and inventions which may be for the public good, are graciously pleased to condescend to the petitioner's request: Know ye, therefore, that we, of our especial grace, certain knowledge, and mere motion, have given and granted, and by these presents, for us, our heirs, and successors, do give and grant unto the said his executors, administrators, and assigns, our especial licence, full power, sole privilege, and authority that he the said his executors, administrators, and assigns, and every of them, by himself and themselves, or by his and their deputy or deputies, servants or agents, or such others as he the said his executors, administrators, or assigns, shall at any time agree with, and no others, from time to time and at all times hereafter during the term of years herein expressed, shall and lawfully may make, use, exercise, and vend his said invention within our United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, in such manner as to him the said his executors, administrators, and assigns, or any of them, shall in his or their discretion seem meet; and that he the said , his executors, administrators, and assigns, shall and lawfully may have and enjoy the whole profit, benefit, commodity, and advantage from time to time coming, growing, accruing, and arising by reason of the said invention, for and during the term of years herein mentioned; to have, hold, exercise, and enjoy the said licences, powers, privileges, and advantages herein-before granted or mentioned to be granted unto the said his executors, administrators, and assigns, for and during and unto the full end and term of fourteen years from

the day of A. D. next and immediately ensuing, according to the statute in such case made and provided; and to the end that he the said , his executors, administrators, and assigns, and every of them, may have and enjoy the full benefit and the sole use and exercise of the said invention, according to our gracious intention herein-before declared, we do by these presents, for us, our heirs and successors, require and strictly command all and every person and persons, bodies politic and corporate, and all other our subjects whatsoever, of what estate, quality, degree, name, or condition soever they be, within our United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, [*Colonies to be mentioned, if any,*] that neither they nor any of them, at any time during the continuance of the said term of fourteen years hereby granted, either directly or indirectly do make, use, or put in practice the said invention or any part of the same, so attained unto by the said as aforesaid, nor in anywise counterfeit, imitate, or resemble the same, nor shall make or cause to be made any addition thereunto or subtraction from the same, whereby to pretend himself or themselves the inventor or inventors, devisor or devisors thereof, without the consent, licence, or agreement of the said , his executors, administrators, or assigns, in writing under his or their hands and seals first had and obtained in that behalf upon such pains and penalties as can or may be justly inflicted on such offenders for their contempt of this our royal command, and further to be answerable to the said , his executors, administrators, and assigns, according to law, for his and their damages thereby occasioned: and moreover we do by these presents, for us, our heirs, and successors, will and command all and singular the justices of

the peace, mayors, sheriffs, bailiffs, constables, headboroughs, and all other officers and ministers whatsoever of us, our heirs and successors, for the time being, that they or any of them do not nor shall at any time during the said term hereby granted in anywise molest, trouble, or hinder the said , his executors, administrators, or assigns, or any of them, or his or their deputies, servants, or agents, in or about the due and lawful use or exercise of the aforesaid invention, or anything relating thereto: Provided always, and these our letters patent are and shall be upon this condition, that if at any time during the said term hereby granted it shall be made appear to us, our heirs, or successors, or any six or more of our or their privy council, that this our grant is contrary to law, or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention, as to the public use and exercise thereof, or that the said is not the true and first inventor thereof within this realm as aforesaid, these our letters patent shall forthwith cease, determine, and be utterly void to all intents and purposes, anything herein-before contained to the contrary thereof in anywise notwithstanding: Provided also, that these our letters patent, or anything herein-contained, shall not extend or be construed to extend to give privilege unto the said his executors, administrators, or assigns, or any of them, to use or imitate any invention or work whatsoever which hath heretofore been found out or invented by any other of our subjects whatsoever, and publicly used or exercised, unto whom our like letters patent or privileges have been already granted for the sole use, exercise, and benefit thereof: it being our will and pleasure that the said his executors, administrators, and assigns, and all and every other

person and persons to whom like letters patent or privileges have been already granted as aforesaid, shall distinctly use and practice their several inventions by them invented and found out, according to the true intent and meaning of the same respective letters patent and of these presents: Provided likewise nevertheless, and these our letters patent are upon this express condition, [that if the said shall not particularly describe and ascertain the nature of his said invention, and in what manner the same is to be performed, by an instrument in writing under his hand and seal, and cause the same to be filed in within calendar months next and immediately after the date of these our letters patent;] [and also if the said instrument in writing filed as aforesaid does not particularly describe and ascertain the nature of the said invention, and in what manner the same is to be performed;] and also if the said his executors, administrators, or assigns, shall not pay or cause to be paid at the office of our commissioners of patents for inventions the sums following, that is to say, the sum of pounds on or before the day of A. D. and the stamp duty payable in respect of the certificate of such payment, and the sum of pounds on or before the day of A. D. and the stamp duty payable in respect of the certificate of such payment; and also if the said his executors, administrators, or assigns, shall not supply or cause to be supplied for our service all such articles of the said invention as he or they shall be required to supply by the officers or commissioners administering the department of our service for the use of which the same shall be required, in such manner, at such times, and at and upon such reasonable prices and terms as shall be settled for that purpose by the said officers or

commissioners requiring the same; that then and in any of the said cases these our letters patent, and all liberties and advantages whatsoever hereby granted, shall utterly cease, determine, and become void, anything herein-before contained to the contrary thereof *in anywise* notwithstanding: Provided that nothing herein-contained shall prevent the granting of licences in such manner and for such considerations as they may by law be granted; and lastly, we do by these presents, for us, our heirs, and successors, grant unto the said his executors, administrators, and assigns, that these our letters patent, or the filing thereof, shall be in and by all things good, firm, valid, sufficient, and effectual in the law according to the true intent and meaning thereof, and shall be taken, construed, and adjudged in the most favourable and beneficial sense for the best advantage of the said his executors, administrators, and assigns, as well in all our courts of record as elsewhere, and by all and singular the officers and ministers whatsoever of us, our heirs, and successors, in our United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, [*Colonies to be mentioned, if any,*] and amongst all and every the subjects of us, our heirs, and successors, whatsoever and wheresoever, notwithstanding the not full and certain describing the nature or quality of the said invention or of the materials thereunto conducing and belonging. In witness whereof we have caused these our letters to be made patent, this day of A.D. and to be sealed and bear date as of the said day of A.D. , in the year of our reign.

## SPECIFICATION.

To all to whom these presents shall come;

I of send greeting:

Whereas her most excellent Majesty Queen Victoria, by her letters patent bearing date the day of A.D. , in the year of her reign, did for herself, her heirs, and successors, give and grant unto me the said her special licence that I the said my executors, administrators, and assigns, or such others as I the said , my executors, administrators, and assigns, should at any time agree with, and no others, from time to time and at all times thereafter during the term therein expressed, should and lawfully might make, use, exercise, and vend, within the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, [*Colonies to be mentioned, if any,*] an invention for

[*insert title as in letters patent*]

upon the condition (amongst others) that I the said by an instrument in writing under my hand and seal, should particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed, and cause the same to be filed in within calendar months next and immediately after the date of the said letters patent: Now know ye, that I the said do hereby declare the nature of my said invention, and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement; (that is to say,)

[*describe the invention.*]

In witness whereof I the said *A. B.* have heretofore set my hand and seal, this day of A.D.



*A. B.*

# FORM OF PETITION

FOR

# EXTENSION OF TERM IN PATENT.

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*To the Queen's most Excellent Majesty in Council.*

The Humble Petition of Samuel Wright, of *Skelton*, in the Staffordshire Potteries, in the County of Stafford.

Sheweth,

That your petitioner, after much trouble and expense, invented "a manufacture of ornamental tiles, bricks, and quarries, for floor pavements and other purposes," which invention is of great public utility.

That his late most excellent Majesty King George the Fourth was graciously pleased, in consideration thereof, by his royal letters patent under the Great Seal of Great Britain, bearing date at Westminster the twenty-sixth day of January, one thousand eight hundred and thirty, to grant to your said petitioner, his executors, administrators, and assigns, the sole use and exercise of the said invention within that part of the United Kingdom of Great Britain and Ireland called England, the dominion of Wales, and the town of Berwick-upon-Tweed, for the term of fourteen years from the date of the said letters patent.

That your petitioner, in pursuance of a proviso in the said letters patent, did particularly describe

and ascertain the nature of his said invention, and in what manner the same is to be performed, by an instrument in writing under his hand and seal, and did cause the same to be enrolled in your Majesty's High Court of Chancery at Westminster on the twenty-sixth day of July, one thousand eight hundred and thirty. Extension of term.

That your petitioner has advertized in the *London Gazette* three times, and in three London Papers, namely, *Times*, *Morning Chronicle*, and *Morning Herald*, and three times in the *Staffordshire Mercury*, being a country paper published in the county where your said petitioner resides: That it is his intention to petition your Majesty in Council to grant to him a prolongation of his term of sole using and exercising his said invention.

Your petitioner therefore humbly prays your Majesty will be graciously pleased to take your petitioner's case into your royal consideration, and to refer the same to the Judicial Committee of your Majesty's most honorable Privy Council, and that your Petitioner may be heard before such committee by his counsel and witnesses.

And that your Majesty will be pleased to grant to your petitioner new letters patent for his said invention, for a term of seven years, or for such other term not exceeding seven years, as from and after the expiration of the *said term of fourteen years granted by the said* letters patent as to your Majesty may seem fit, *according to the form of the statute in such* case made and provided.

And your petitioner shall ever pray, &c.

SAMUEL WRIGHT.

# AFFIDAVIT

OF

# INSERTION OF ADVERTISEMENT,

WITH FORM OF ADVERTISEMENT.

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In the matter of Petition to the Queen in Council of Samuel Wright for prolongation of Letters Patent.

[*Stamp* 2*s.* 6*d.*] RICHARD ARCHIBALD BROOMAN, clerk to Messrs. Robertson and Co., of 166 Fleet Street, in the City of London, Patent Agents, maketh oath, and saith, that the advertisement, of which the following is a copy, has, in pursuance of the provisions of the 5th & 6th William the Fourth, c. 83, been inserted in the *London Gazette* of the twenty-eighth day of April, the second day of May, and the ninth day of May, all now last past, and in the *Times*, *Morning Chronicle*, and *Morning Herald*, each of the fifteenth day of May instant, and in the *Staffordshire Mercury* of the twenty-ninth day of April, the sixth day of May, and the thirteenth day of May, all now last past:—"In the matter of letters patent for Eng-"land, Wales, and the Town of Berwick-upon-"Tweed granted to Samuel Wright of Skelton, in "the Staffordshire Potteries, in the County of Staf-"ford, bearing date the twenty-sixth January 1830, "for his invention of 'a manufacture of ornamental "tiles, bricks, and quarries for floor, pavements, "and other purposes.' Notice is hereby given, "that under and by virtue and in pursuance of an

"Act made and passed in the 5th & 6th William "the Fourth, intituled 'An Act to amend the Laws "touching Letters Patent for Inventions,' he the "said Samuel Wright intends to petition her "Majesty in council praying to her Majesty to "grant to him a prolongation of his term of sole "using and exercising his said invention: And "notice is hereby further given, that an applica- "tion will be made on the seventh day of June to "the Right Honourable the Lords of the Judicial "Committee of the Privy Council to fix an early "day for the hearing of the matters contained in "the said petition.—J. C. Robertson and Co., "Agents for the Patentee, 166, Fleet Street, "London."

Advertisement and affidavit.—Extension of term.

Sworn at the Public Office, Southampton Buildings, Chancery Lane, this fifteenth day of May, one thousand eight hundred and forty three. } R. A. BROOMAN.

Before me,

J. E. DOWDESWELL.

# FORM OF DECLARATION IN ACTION FOR INFRINGEMENT.

Infringement of a patent.

THAT the plaintiff was the first and true inventor of a certain new manufacture, that is to say, of "certain improvements in the manufacture of sulphuric acid;" and thereupon her Majesty Queen Victoria, by letters patent under the Great Seal of England, granted the plaintiff the sole privilege to make, use, exercise, and vend the said invention within England for the term of fourteen years from the day of A. D. , subject to a condition that the plaintiff should, within six calendar months next after the date of the said letters patent, cause to be enrolled in the High Court of Chancery an instrument in writing under his hand and seal, particularly describing and ascertaining the nature of his said invention, and in what manner the same was to be and might be performed; and the plaintiff did within the time prescribed fulfil the said condition, and the defendant during the said term did infringe the said patent.[a]

[a] The above form is given by the Common Law Procedure Act, 15 & 16 Vict. c. 76, but will require some alteration in accordance with the particular patent infringed. See form of patent given by the 15 & 16 Vict. c. 83, *ante*, p. 115.

## PLEAS.

1. The defendant, by A. B. his attorney, says, that he is not guilty.

2. And for a second plea, the defendant says, that the plaintiffs were not the first and true inventors of the said supposed new manufacture as alleged.

3. And for a third plea, the defendant says, that the said alleged invention was not an invention of any manner of new manufacture, which others at the time of making and granting the letters patent did not use.

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## REPLICATION.

The plaintiffs take issue upon the first, second, and third pleas.

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## PLAINTIFF'S PARTICULARS OF BREACHES DELIVERED WITH DECLARATION.

The particulars of breaches complained of in the said action are,—That the defendant, without the license or consent of the plaintiffs or either of them, on or about the 26th day of March last, did sell a fire cock and stand pipe, made in imitation of the invention described in the plaintiff's specification, to consist in the opening of valves for the passage of fluids by means of a movable opening key, with proper adjuncts thereto.

W. & H.,

Dated this Plaintiffs' attornies.

*To* A. B., Defendant's attorney.

[a] See *ante*, p. 41.

## DEFENDANT'S OBJECTIONS.[a]

The objections on which the defendant means to rely, are—

1. That the defendant never infringed the plaintiffs' patent.

2. That the plaintiffs' alleged invention was not new at the time of granting the letters patent.

3. That the plaintiffs are not the true inventors of that part of their alleged invention which is included in their *first* claim.

4. Similar objection to the *second* claim.

5. That Freeman Roe was the inventor of the said first above-mentioned part.

6. That (same as the 5th) as to the second part.

(Other objections may follow. In the case from which the above were taken there were twenty-two others.)

H. & S. L.,

Dated this Defendant's attornies.

*To* W. & H., Plaintiff's attornies.

[a] See *ante*, p. 41.

# COMMISSIONERS' RULES.

## First set of Rules and Regulations under the Act 15 & 16 Vict. c. 83.

WHEREAS a commodious office is forthwith intended to be provided by the Crown as the Great Seal Patent Office; and the Commissioners of her Majesty's treasury have, under the powers of the said Act, appointed such office as the office also for the purposes of the said Act.

I. All petitions for the grant of letters patent, and all declarations and provisional specifications, shall be left at the said Commissioners' Office, and shall be respectively written upon sheets of paper of twelve inches in length by eight inches and a half in breadth, leaving a margin of one inch and a half on each side of each page, in order that they may be bound in the books to be kept in the said office.

II. The drawings accompanying provisional specifications shall be made upon a sheet or sheets of parchment, paper, or cloth, each of the size of twelve inches in length by eight inches and a half in breadth, or of the size of twelve inches in breadth by seventeen inches in length, leaving a margin of one inch on every side of each sheet.

III. Every provisional protection of an invention allowed by the law officer shall be forthwith advertised in the London Gazette, and the advertisement shall set forth the name and address of the petitioner, the title of his invention, and the date of the application.

IV. Every invention protected by reason of the deposit of a complete specification shall be forthwith advertised in the London Gazette, and the advertise-

ment shall set forth the name and address of the petitioner, the title of the invention, the date of the application, and that a complete specification has been deposited.

V. Where a petitioner applying for letters patent after provisional protection, or after deposit of a complete specification, shall give notice in writing at the office of the Commissioners of his intention to proceed with his application for letters patent, the same shall forthwith be advertised in the London Gazette, and the advertisement shall set forth the name and address of the petitioner and the title of his invention; and that any persons having an interest in opposing such application are to be at liberty to leave particulars in writing of their objections to the said application at the office of the Commissioners within twenty-one days after the date of the Gazette in which such notice is issued.

VI. The Lord Chancellor having appointed the Great Seal Patent Office to be the office of the Court of Chancery, for the filing of specifications, the Great Seal Patent Office and the office of the Commissioners shall be combined; and the clerk of the patents for the time being shall be the clerk of the Commissioners for the purposes of the Act.

VII. The office shall be open to the public every day, Christmas Day and Good Friday excepted, from ten to four o'clock.

VIII. The charge for office or other copies of documents in the office of the Commissioners shall be at the rate of twopence for every ninety words.

(Signed) ST. LEONARDS, C.
JOHN ROMILLY, M.R.
FRED. THESIGER, A.G.
FITZROY KELLY, S.G.

Dated the 1st Oct. 1852.

Ordered,

That there shall be paid to the law officers and to their clerks the following fees:—

By the person opposing a grant of letters patent.

| | £ | s. | d. |
|---|---|---|---|
| To the law officer . . . . . | 2 | 12 | 6 |
| To his clerk . . . . . | 0 | 12 | 6 |
| To his clerk for summons . . . . | 0 | 5 | 0 |

By the petitioner on the hearing of the case of opposition.

| | | | |
|---|---|---|---|
| To the law officer . . . . . | 2 | 12 | 6 |
| To his clerk . . . . . | 0 | 12 | 6 |
| To his clerk for summons . . . . | 0 | 5 | 0 |

By the petitioner for the hearing, previous to the fiat of the law officer allowing a disclaimer or memorandum of alteration in letters patent and specification.

| | | | |
|---|---|---|---|
| To the law officer . . . . . | 2 | 12 | 6 |
| To his clerk . . . . . | 0 | 12 | 6 |

By the person opposing the allowance of such disclaimer or memorandum of alteration, on the hearing of the case of opposition.

| | | | |
|---|---|---|---|
| To the law officer . . . . . | 2 | 12 | 6 |
| To his clerk . . . . . | 0 | 12 | 6 |

By the petitioner for the fiat of the law officer allowing a disclaimer or memorandum of alteration in letters patent and specification.

| | | | |
|---|---|---|---|
| To the law officer . . . . . | 3 | 3 | 0 |
| To his clerk . . . . . | 0 | 12 | 6 |

(Signed) ST. LEONARDS, C.
JOHN ROMILLY, M.R.

Dated the 1st Oct. 1852.

Ordered,

I. All specifications in pursuance of the conditions of letters patent, and all complete specifications accompanying petitions and declarations before grant of letters patent, shall be filed in the Great Seal Patent Office.

II. All specifications in pursuance of the conditions of letters patent, and all complete specifications accompanying petitions for the grant of letters patent, shall be respectively written bookwise upon a sheet or sheets of parchment, each of the size of twenty-one inches and a half in length by fourteen inches and three-fourths of an inch in breadth; the same may be written upon both sides of the sheet, but a margin must be left of one inch and a half on every side of each sheet.

III. The drawings accompanying such specifications shall be made upon a sheet or sheets of parchment, each of the size of twenty-one inches and a half in length by fourteen inches and three-fourths of an inch in breadth, or upon a sheet or sheets of parchment, each of the size of twenty-one inches and a half in breadth, by twenty-nine inches and a half in length, leaving a margin of one inch and a half on every side of each sheet.

IV. The charge for office or other copies of documents in the Great Seal Patent Office shall be at the rate of twopence for every ninety words.

(Signed) ST. LEONARDS, C.

Dated the 1st Oct. 1852.

NOTE.—*It is recommended to applicants and patentees to make their elevation drawings according to the scale of one inch to a foot.*

## Second Set of Rules and Regulations under the Act 15 & 16 Vict. c. 83.

I. The office of the Director of Chancery in *Scotland*, being the office appointed by the Act for the recording of Transcripts of Letters Patent, shall be the office of the Commissioners in *Edinburgh* for the filing of copies of specifications, disclaimers, memoranda of alterations, provisional specifications, and certified duplicates of the register of proprietors.

II. All such transcripts, copies, and certified duplicates shall be bound in books, and properly indexed; and shall be open to the inspection of the public at the said office, every day from ten to three o'clock.

III. The charge for office copies of such transcripts, copies, and certified duplicates, recorded and filed in the said office, shall be at the rate of twopence for every ninety words.

IV. The Enrolment Office of the Court of Chancery in *Dublin*, being the office appointed by the Act for the Enrolment of Transcripts of Letters Patent, shall be the office of the Commissioners in *Dublin* for the filing of copies of specifications, disclaimers, memoranda of alterations, provisional specifications, and certified duplicates of the register of proprietors.

V. All such transcripts, copies, and certified duplicates shall be bound in books, and properly indexed; and shall be open to the inspection of the public at the said Enrolment Office every day, Christmas Day and Good Friday excepted, from ten to three o'clock.

VI. The charge for office copies of such transcripts, copies, and certified duplicates, enrolled and filed as aforesaid, shall be at the rate of twopence for every ninety words.

VII. No warrant is to be granted for the sealing of any letters patent which contains two or more distinct substantive inventions.

VIII. A provision is to be inserted in all letters patent in respect whereof a provisional and not a complete specification shall be left on the application for the same, requiring the specification to be filed within six months from the date of the application.

IX. No amendment or alteration, at the instance of the applicant, will be allowed in a provisional specification after the same has been recorded, except for the correction of clerical errors or of omissions made *per incuriam*.

X. The provisional specification must state distinctly and intelligibly the whole nature of the invention, so that the law officer may be apprised of the improvement, and of the means by which it is to be carried into effect.

(Signed) ST. LEONARDS, C.
JOHN ROMILLY, M.R.
FRED. THESIGER, A.G.
FITZROY KELLY, S.G.

Dated the 15th of Oct. 1852.

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Ordered,

Every application to the Lord Chancellor against or in relation to the sealing of letters patent shall be by notice, and such notice shall be left at the Commissioners' Office, and shall contain particulars in writing of the objections to the sealing of such letters patent.

(Signed) ST. LEONARDS, C.

Dated the 15th of Oct. 1852.

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