

through a desire to delay or overreach, it is proper, upon a satisfactory showing, to extend the time.

*The Shaw & Welty Shirt Co. v. The Quaker City Shirt Co.*, 157 O. G. 1000.

If there is lack of diligence in procuring the testimony, no extension allowed.

*McCallum v. Bremer*, 1900 C. D. 186, 93 O. G. 1917.

The fact that one is financially unable to take the testimony accepted as an excuse when it appeared that there was a prospect of his becoming so.

*Wightman v. Rothenstein*, 1902 C. D. 82, 98 O. G. 2172.

A less showing of diligence is required in these than where a case has been decided. The unwillingness of witness.

*Watson D. Thomas*, 1902 C. D. 90, 98 O. G. 2361.

In the absence of good reasons for delay, the motion will be refused.

*Brilland Adams v. Uebelacker*, 1902 C. D. 220, 99 O. G. 2966.

Additional time will not be given to afford an opportunity to rebut the testimony that one of the exhibits does not disclose the invention.

*Pfatischer v. Buck*, 1902 C. D. 390, 101 O. G. 1370.

The action of Davis, in absenting himself beyond all ordinary means of communication, without even leaving his address by which he might be communicated with, must be considered as a waiver of his rights to present his testimony.

*Davis v. Cody*, 1902 C. D. 388, 101 O. G. 1369.

Ignorance, inadvertence or mistake on the part of a party or his attorney, is no ground for a new trial.

*Roberts v. Bachellet*, 1902 C. D. 415, 101 O. G. 1831.

Where a party delays taking his testimony until the last of the time allowed, and gives no good reason, time should not be extended.

*Reynolds v. Bean*, 1902 C. D. 461, 101 O. G. 2821.

The rule as to the sufficiency of the reason is not so strictly applied in regard to the first extension, but in all cases good reasons must be given.

*Wilcomb v. Lasher*, 1902 C. D. 485, 101 O. G. 3109.

Motion to reopen and further take testimony should be heard and determined in the first instance by the Examiner of Interferences.

*Robinson v. Townsend v. Copeland*, 106 O. G. 997.

Motion should contain names of witnesses that are to be examined.

*Tripp v. Wolf v. Jones*, 108 O. G. 563.

Extensions of time not favored.

Dunbar v. Schellinger, 113 O. G. 2213-4; Dalton v. Hopkins v. Newman, 121 O. G. 2666.

(5) *Official Records and Special Matters Offered in Evidence.*

The records of the Patent Office is sufficient to prove the contents of a French patent.

Robin v. Muller and Bonnet, 108 O. G. 292.

The Rules provide for the introduction of records as evidence during the period assigned for taking testimony; but the adverse parties are entitled to introduce such rebuttal as they may be advised to make, after which the case can proceed to hearing and decision upon all the evidence adduced.

Booth v. Lyman, 80 C. D. 151, 18 O. G. 132.

While it is proper, in some cases, to take cognizance of the records of this office which have not been placed in evidence in order that justice may be done (Cain v. Park, 86 O. G. 707), it is not thought that they should ordinarily be examined when not placed in evidence for the sole purpose of discrediting a witness. If they had been placed in evidence T. would have had an opportunity to explain them.

Bowditch v. Todd, 112 O. G. 1477.

(6) *Depositions to be Filed in Patent Office.*

Immediately after taking testimony the notary left for Europe, and did not file testimony until his return. In the absence of any showing of injury to the other side, a motion to suppress was refused.

Moss v. Blaisdell, 113 O. G. 2505.

(7) *Miscellaneous.*

Subject-matter of this rule.

Claasen v. Stiffen, 113 O. G. 2507-8.

The fact that H. said nothing about his invention when he examined the drawings of another might possibly be explained, but his failure to make an application for a year afterward hardly

Harter v. Barrett, 114 O. G. 975.

The provision of the statutes giving an applicant the right to have a claim twice rejected (Secs. 4003 and 4909 R. S.) does not apply in *inter partes* cases where a Primary Examiner, on motion to dissolve, decides that one of the parties has no right to make the claims of an interference issue, and such party, after filing an appeal from said decision, fails to prosecute the same, and abandons it, such decision becomes final and

binding upon the parties, and precludes the subsequent *ex parte* consideration of the same question.

United States of America *ex rel.* The Newcomb Motor Co. v. Moore, Com., etc., 133 O. G. 1680.

The question whether one of the parties to an interference proceeding is debarred from receiving a patent for the same invention is a question of *ex parte* consideration after the termination of the interference.

Gueniffet, Benoit and Nicault v. Wictorsohn, 134 O. G. 255.

It is incumbent upon a party to present the entire case in the first instance; when a case has been decided on stipulation it will not be reopened to take testimony.

De Ferranti v. Lindmark, 137 O. G. 731.

Refusal to explain a certain portion of the device because it was the subject-matter of a separate invention, and failure to file an application therefor, evidence of an abandoned experiment.

Reichenbach v. Riley, 94 O. G. 1185.

It is essential to the reopening of a case, after the testimony is all taken, and a party is thus put in possession of the facts of his opponent's case, that a clear showing of diligence be made out, and it must be shown that the testimony is material.

Robinson v. Townsend v. Copeland, 1902 C. D. 405, 101 O. G. 1611.

A practice which would allow a contestant to experimentally conduct his own case to a probable failure, and then permit him, after consulting with competent assistance, to make further endeavors to show what he could and should have earlier shown with such assistance, would be contrary to all well-established rules and legal principles.

Werk v. McCurran, 103 O. G. 890.

Now while affidavits would be permitted to show or explain material changes that may have occurred by accident or otherwise, in an exhibit after its transmission to this court, when the details of its construction might be of importance in determining the issue, they will not be received in contradiction or correction of the record of the proceedings in the tribunals of the Patent Office.

Blackford v. Wilder, 104 O. G. 581.

It appears to be well settled that the right to take evidence to explain or surrebut evidence given in rebuttal is a matter resting in the discretion of the court (Greenleaf, Vol. 1, 16 Ed., pp. 601-2), and that this privilege will be extended to a party whenever he has been surprised by evidence or a line of



defense in rebuttal which he has had no reason to anticipate or opportunity to prepare against.

*Donning v. Stackpole v. Lagank*, 106 O. G. 264; *Winton v. Jeffery*, 112 O. G. 500.

### **Rule 155. Formalities.**

The pages of each deposition must be numbered consecutively, and the name of the witness plainly and conspicuously written at the top of each page. The testimony must be written upon legal cap or foolscap paper, with a wide margin on the left-hand side of the page, and with the writing on one side only of the sheet.

### **Rule 156. Testimony.**

The testimony will be taken in answer to interrogatories, with the questions and answers committed to writing in their regular order by the officer, or, in his presence, by some person not interested in the case either as a party thereto or as attorney. But with the written consent of the parties the testimony may be taken stenographically, and the deposition may be written out by other persons in the presence of the officer.

Where testimony is taken stenographically, a long-hand or typewritten copy shall be read to the witness, or read over by him, as soon as it can be made, and shall be signed by him as provided in paragraph 3 of Rule 154. No officer who is connected by blood or marriage with either of the parties, or interested, directly or indirectly, in the matter in controversy, either as counsel, attorney, agent, or otherwise, is competent to take depositions, unless with the written consent of all the parties.

*CONSTRUCTIONS.*

Where the testimony was taken stenographically, and transcribed, 24 days' delay was not considered unreasonable. In the absence of any stipulation, the objection that the notary permitted the exhibits to be taken out of his possession and custody is well taken.

Rolfe v. Taylor, 111 O. G. 1938.

The objection that the testimony was taken stenographically, without written consent, of no force when the moving party did not attend. This rule should be read with R. 159, that says no attention will be given to merely formal objections.

Rolfe v. Taylor, 111 O. G. 1938.

Objection to a notary because he was an employe of the attorney, not made at the taking of the testimony, is waived.

Royce v. Kempshall, 117 O. G. 2090.

Rule 156 does not apply to preliminary statements.

Bundy v. Rumbarger, 1900 C. D. 94, 91 O. G. 2210.

**Rule 157. Testimony Taken in one Interference may be Used in Another.**

Upon motion duly made and granted (see Rule 153) testimony taken in an interference proceeding may be used in any other or subsequent interference proceeding, so far as relevant and material, subject, however, to the right of any contesting party to recall witnesses whose depositions have been taken, and to take other testimony in rebuttal of the depositions.

*CONSTRUCTIONS.*

In an interference between H. and T., a witness testified to certain facts. Later, in an interference between H. and W., he denied any knowledge of these facts. Held, that T. and W. not being parties, the testimony in the former interference cannot be admitted in the latter except for the purpose of discrediting the witness, even if the witness is present and may be cross-examined.

Hewitt v. Weintraub, 134 O. G. 1561.

Where the real parties in interest in a pending interference are the same as in a prior interference, and the inventions involved are substantially the same, permission may be obtained

to use, in the pending interference, the testimony taken in the former interference.

*Beall, Jr., v. Lyn*, 127 O. G. 3215.

The motion should not be denied because the present interference relates to a process, whereas the other interferences relate to apparatus, or because it contains unnecessary matter.

*Strube v. Young*, 119 O. G. 338.

It is not contrary to the fundamental rules of evidence to use in one cause depositions given in another cause involving the same parties.

*Kenny and Thordarson v. O'Connell v. Baird v. Schmidt*, 117 O. G. 1163.

The object sought to be attained by consolidation can be accomplished by stipulating that the record taken in one interference can be used in the other.

*Klein v. Groebli*, 110 O. G. 305.

Where in one interference one of the applicants admits that the proceeding is closely related to another interference in which he was involved, and introduces in evidence the decision in that other interference in which he was involved, and says that there is no objection to the introduction of the entire record, Held, that the opposing party may refer to the entire record without printing it as a part of the proofs.

*Hall v. Weber*, 108 O. G. 1054.

If the new interference is declared, Foote may make a motion under Rule 157 to use the present testimony. Until the new interference is disclosed, such a motion cannot be entertained.

*Brooks v. Foote v. Wenk*, 108 O. G. 287.

It is well settled that Rule 157 relates merely to the form in which testimony may be introduced, and does not modify the other rules relating to the taking of testimony.

The motion under consideration is not accompanied by a showing why Stackpole and Langanke did not introduce the testimony of which they desire to avail themselves at the time originally set for taking testimony.

*Doning v. Stackpole & L.*, 107 O. G. 268.

Even where such testimony is not admissible, it may be referred to for the purpose of discrediting a witness.

*Talbot v. Morrell*, 1902 C. D. 216, 99 O. G. 2965.

Subject-matter of this rule.

*Wilson v. Haines*, 1891 C. D. 210.



**Rule 158. Testimony Taken in Foreign Countries.**

Upon motion duly made and granted (see Rule 153) testimony may be taken in foreign countries, upon complying with the following requirements:

(a) The motion must designate a place for the examination of the witnesses at which an officer duly qualified to take testimony under the laws of the United States in a foreign country shall reside, and it must be accompanied by a statement under oath that the motion is made in good faith, and not for purposes of delay or of vexing or harassing any party to the case; it must also set forth the names of the witnesses, the particular facts to which it is expected each will testify, and the grounds on which is based the belief that each will so testify.

(b) It must appear that the testimony desired is material and competent, and that it can not be taken in this country at all, or can not be taken here without hardship and injury to the moving party greatly exceeding that to which the opposite party will be exposed by the taking of such testimony abroad.

(c) Upon the granting of such motion, a time will be set within which the moving party shall file in duplicate the interrogatories to be propounded to each witness, and serve a copy of the same upon each adverse party, who may, within a designated time, file, in duplicate, cross-interrogatories. Objections to any of the interrogatories or cross-interrogatories may be filed at any time before the depositions are taken, and such objections will be considered and determined upon the hearing of the case.

(d) As soon as the interrogatories and cross-interrogatories are decided to be in proper form, the Commissioner will cause them to be forwarded to

the proper officer, with the request that, upon payment of, or satisfactory security for, his official fees, he notify the witnesses named to appear before him within a designated time and make answer thereto under oath; and that he reduce their answers to writing, and transmit the same, under his official seal and signature, to the Commissioner of Patents, with the certificate prescribed in Rule 154 (c).

(e) By stipulation of the parties the requirements of paragraph (c) as to written interrogatories and cross-interrogatories may be dispensed with, and the testimony may be taken before the proper officer upon oral interrogatories by the parties or their agents.

(f) Unless false swearing in the giving of such testimony before the officer taking it shall be punishable as perjury under the laws of the foreign state where it shall be taken, it will not stand on the same footing in the Patent Office as testimony duly taken in the United States; but its weight in each case will be determined by the tribunal having jurisdiction of such case.

Rev Stat., sec. 4905.

### CONSTRUCTIONS.

A motion refused for want of a sufficient showing.

Winn v. Thuillier v. Frisbie & Baker, 180 O. G. 1138.

Motion to strike out improper cross-interrogatories properly granted before final hearing.

Actiengesellschaft Paulanerbrau Salvatorbrauerei v. Conrad Seipp Brewing Co., 135 O. G. 1121.

It appears that G. is not employed by the Company which is the assignee of Rupling's invention, and therefore that company has no such control over him as would make it incumbent upon them to send him to this country. A party who has regular employment cannot be presumed to be willing to give up that employment for the purpose of giving his testimony in a foreign country. Such cases differ from one in which the inventor himself, or a witness in his employ, de-



clines to leave his business for the purpose of testifying in a foreign country. Affidavits.

Lowry v. Rupling, 135 O. G. 662.

Expert evidence that the issues are not patentable to either party is not pertinent to the question of priority, and may not be admitted.

Dixon and Maren v. Graves & Whittemore, 127 O. G. 1993.

Written interrogatories necessary.

Herreschoff v. Knietsch, 111 O. G. 1039.

But not without mutual consent.

Hereschoff v. Knietsch, 111 O. G. 1039.

G. wishes to show that S. received his knowledge of the invention from parties who received their knowledge from G. The facts alleged tend to support this contention, and G. should not be prevented from proving those facts merely upon the suggestion of an ulterior motive. Any improper question will appear when the interrogatories are filed.

Stiff v. Galbraith, 108 O. G. 290.

Testimony cannot properly be taken in foreign countries otherwise than as prescribed by Rule 158 (3), unless the procedure be waived by stipulation of the parties. Rule 158 (5).

Raffard v. DeFerranti, 1892 C. D. 161.

The commissioner has power to issue letters rogatory for the taking of testimony, whereas in Germany, the ordinary commission cannot legally be executed. The letters will be issued upon a proper showing when the interrogatories to be propounded have been filed.

Potter v. Ochs, 97 O. G. 1835, 1901 C. D. -205.

The date of filing an application for a British patent is immaterial in a question of priority, and leave to take testimony for this purpose will not be granted. The convention has not been made effective in this country by Congress, notwithstanding the U. S. has adhered to it.

Butterworth v. Brae and Kymer v. Ecob, 97 O. G. 1596; 1901 C. D. 193.

Without the antecedent authority of the Commissioner, depositions taken in a foreign country are inadmissible as evidence.

Lauder v. Crowell, 1879 C. D. 177, 16 O. G. 405.

### **Rule 159. Evidence on Hearing.**

Evidence touching the matter at issue will not be considered on the hearing which shall not have been

taken and filed in compliance with these rules. But notice will not be taken of merely formal or technical objections which shall not appear to have wrought a substantial injury to the party raising them; and in case of such injury it must be made to appear that, as soon as the party became aware of the ground of objection, he gave notice thereof to the office, and also to the opposite party, informing him at the same time that, unless it be removed, he (the objector) will urge his objection at the hearing. This rule is not to be so construed as to modify established rules of evidence, which will be applied strictly in all practice before the office.

#### CONSTRUCTIONS.

The junior party alleges the filing of a caveat. He has also alleged other disclosures in his preliminary statement, and it is optional with him whether to rely upon the caveat or not. If he does not wish to rely upon his caveat, he is justified in withholding it from inspection. If he offers his caveat in evidence the other party will be able to inspect it.

*Stauff v. Reeder*, 157 O. G. 208.

Deposition not read. It was alleged reading was waived. No notice whatever appears to have been given either to the Office or to the opposing party. For this reason it is believed that the deposition should not have been suppressed.

*Rhodes v. Rhodes*, 132 O. G. 680.

A motion to suppress testimony in the decision of which a review of a large portion of the testimony would be involved will be postponed to the final hearing.

*Dyson v. Sand v. Dunbar v. Browne*, 130 O. G. 1690.

Where the motion to suppress testimony was granted after the testimony was printed, it will be a sufficient compliance with the ruling in *Marconi v. Shoemaker v. Fessenden*, 121 O. G. 2664, for the docket clerk to indicate in the usual manner in the printed record the matter which has been expunged.

130 O. G. 1690.

A refusal to suppress testimony not reversible error.

*Kempshall v. Royce*, 129 O. G. 3162.

Affidavit of a physician that a witness was unable to testify not admissible. The physician should have been called.

*Munsler v. Ashworthy*, 128 O. G. 2088.

Objections made when the testimony is taken must be specific. (Authorities.)

*Emmet v. Fullagar*, 124 O. G. 2178.

Where the witness, upon direct examination, refuses to answer practically every question regarding particular apparatus, and no questions are asked thereon about the detailed structure of the apparatus, or about theories, principles, operations, or results, a deposition on cross-examination setting forth such matters throughout fifty or more typewritten pages is *prima facie* bad.

*Marconi v. Shoemaker v. Fessenden*, 121 O. G. 2664.

An appeal from the Examiner's ruling raises only the question whether or not the Examiner was right in postponing the consideration of the question, which is a matter that will not be reviewed and reversed except in a clear case of abuse of discretion.

*Royce v. Kempshall*, 119 O. G. 338.

The objection to certificate because it fails to state whether a party or his attorney was present when the deposition was taken, but both of the parties agree that neither said party nor his attorney was present, is not substantial, nor is a slight delay, not caused by a party, sufficient to warrant the striking out of the testimony.

*Royce v. Kempshall*, 117 O. G. 2090.

The Court of Appeals will not review a decision of the Commissioner expunging testimony, but applicant may have relief under R. S. 4915 and 4918.

*Jones v. Starr*, 117 O. G. 1495.

The Notary acted outside of the territory in which he was authorized to administer oaths. "The reservation" (in the stipulation) "of certain objections, and the failure to reserve the one now made taken with the delay in making the objection must be regarded as a waiver."

*Badger v. Morgan & Hoheisel*, 117 O. G. 598.

If the testimony of a wife in favor of her husband in such a matter as the present is admissible at all, and if disclosure to a wife is disclosure of an invention to others or to the public, in the sense of the Patent Law, about which grave doubts may well be entertained, certainly such testimony must be rigidly scrutinized, and not lightly admitted as sufficient without corroboration.

*Harter v. Barrett*, 114 O. G. 975.

The testimony of Harter's father-in-law amounts to nothing, for he does not tell what was disclosed to him, except in a



most vague and general way that is utterly useless for the purpose of the corroboration of Harter's statement.

Harter v. Barrett, 114 O. G. 975.

When the deposition is suppressed because of unfair and overreaching conduct, to the prejudice of the adverse party, the denial of a motion to retake the testimony is proper.

Jones v. Starr, 111 O. G. 2221.

The omission of these formalities does not seem to be good grounds for suppressing the deposition.

Rolfe v. Taylor, 111 O. G. 1938.

It has been the uniform practice not to suppress the testimony before final hearing.

Talbot v. Monell, 1902 C. D. 216, 99 O. G. 2965; Hall v.

Alvord, 1902 C. D. 418, 101 O. G. 1833; Andrews v.

Nelson,, 101 O. G. 1038.

A motion to suppress testimony in the determination of which the entire case will have to be gone into will be postponed to the final hearing.

Hall v. Alvord, 1902 C. D. 418, 101 O. G. 1833.

Because of formal irregularities, testimony ordered retaken.

Blackman v. Alexander, 1902 C. D. 323, 100 O. G. 2383.

See also Hewitt v. Wientraub, 134 O. G. 1561.

### **Rule 160. Subpoenas.**

The law requires the clerks of the various courts of the United States to issue subpoenas to secure the attendance of witnesses whose depositions are desired as evidence in contested cases in the Patent Office.

Rev. Stat., sec. 4906.

H. B. No. 11984 has a provision for subpoenas duces tecum.

### *CONSTRUCTIONS.*

The filing of a motion in a court to compel a witness to answer is a simple matter, and an unexplained delay of three weeks is sufficient to authorize a refusal to extend time for taking testimony.

Donning v. Anderson, 111 O. G. 582.

### **Rule 161. Inspection.**

After testimony is filed in the office it may be inspected by any party to the case, but it can not be withdrawn for the purpose of printing. It may be

printed by someone specially designated by the office for that purpose, under proper restrictions.

**Rule 162. Copies of Testimony.**

Thirty-one or more printed copies of the testimony must be furnished—five for the use of the office, one for each of the opposing parties, and twenty-five for the Court of Appeals of the District of Columbia, should appeal be taken. If no appeal be taken, the twenty-five copies will be returned to the party filing them. The preliminary statement required by Rule 110 must be printed as a part of the record. These copies of the record of the junior party's testimony must be filed not less than forty days before the day of final hearing, and in the case of the senior party not less than twenty days. They will be of the same size, both page and print, as the Rules of Practice, with the names of the witnesses at the top of the pages over their testimony, and will contain indexes with the names of all witnesses and reference to the pages where copies of papers and documents introduced as exhibits are shown.

When it shall appear, on motion duly made and by satisfactory proof, that a party, by reason of poverty, is unable to print his testimony, the printing may be dispensed with; but in such case typewritten copies must be furnished—one for the office and one for each adverse party. Printing of the testimony can not be dispensed with upon the stipulation of the parties without the approval of the Commissioner.

*HISTORY.*

Amended to read thirty-one and twenty-five. March 29, 1901.

95 O. G. 235.

*CONSTRUCTIONS.*

If junior party fails to print, judgment of priority in favor of opposing party.

*Browne v. Gillitt*, 191 O. G. 832.

If a party is excused from printing his testimony, if it is necessary for the offering party to appeal to the Court of Appeals, it would throw upon him the burden of printing his opponent's testimony. A party ought not, therefore, be excused except in extreme cases.

*Landau v. Spitzenberg*, 159 O. G. 742.

Default relieved against. Doubted if default is the penalty of disregarding this rule.

*Dunkley v. Bickjuist*, 158 O. G. 886.

The assets of the company should be set out in the affidavit.

*McManus v. Hammer*, 143 O. G. 562.

Must show that all interested parties are unable to print.

*McManus v. Hammer*, 143 O. G. 561.

That it is inconvenient for the party to print the record not sufficient.

*McManus v. Hammer*, 143 O. G. 562.

Considering C.'s request for sufficient time to permit him to print and file his testimony forty days before the final hearing, T. agreeing, it will be granted.

*Corrington v. Turner*, 136 O. G. 1067.

Appeal will lie from an order striking an application from the files on account of an unauthorized amendment or alteration.

*Moore v. Heaney*, 34 App. D., C. 31.

Will review a holding that an application is abandoned.

*Selden*, 164 O. G. 741.

The fact that the senior party took no testimony is not a sufficient reason for waiving the requirements of the rule.

*Alberson Bros. Milling Co. v. Forest*, 311 O. G. 1419.

Reopening of case to permit party to print his opponent's testimony refused in view of the delay.

*Parker v. Corkhill*, 130 O. G. 2067.

If only one party takes testimony, still he must print it.

*Peak v. Brush*, 129 O. G. 1268.

Last clause—This provision is not to be extended.

*Dow v. DesJardins*, 119 O. G. 1923.

Judgment on the record was rendered against a party who had failed to print his testimony without considering his testimony.

*Cooper & Somers v. Bannister*, 112 O. G. 1480.



Subject-matter of this rule.

Faller v. Lorimer, 111 O. G. 579.

Rule requiring testimony to be printed is of binding force.

Plummer v. Penniston, 1894 C. D. 60.

### BRIEFS.

#### Rule 163. Size and Time of Filing Briefs.

Briefs at final hearing and on appeals from final decisions in contested cases shall be submitted in printed form and shall be of the same size and the same as to page and print as the printed copies of testimony. But in case satisfactory reason therefor is shown, typewritten briefs may be submitted. Six copies of the briefs at final hearing shall be filed three days before the hearing. Briefs on appeals shall be filed as provided in Rule 144.

At interlocutory hearings and on appeal from interlocutory decisions typewritten briefs may be used, and such briefs may be filed at or before the hearing. By stipulation of the parties or by order of the tribunal before whom the hearing is had briefs may be filed otherwise than as here prescribed.

### CONSTRUCTIONS.

These rules were construed in *Newcomb v. Simp* (109 O. G. 2171), where it was held that the typewritten briefs might be received on motions and on interlocutory appeals, and that it was unnecessary to file printed copies, as required by Rule 147, except for final hearings.

*Stevens v. Patterson*, 142 O. G. 568.

See note to Rule 147.

It is a general principle of law that the statements of counsel with regard to a case are privileged, and that he is permitted to use language in his argument, and make statements in his brief which, if used out of court, might be considered objectionable.

*Schellenbach v. Harris*, 111 O. G. 2223.

One brief on a side. The requirement of printing not applicable to interlocutory motions and appeals.

109 O. G. 2172.

A brief filed after the hearing, without the consent of the Examiner, expunged from the files. An accompanying affidavit also canceled from the files.

Miller, 105 O. G. 1532.

The records of the office, being regular, will be accepted as evidence of allowance and notice of that fact. The Commissioner has no authority to extend the time for paying the final fee.

Haeseler & Taylor, 101 O. G. 2826.

Affidavits as to the opinions as to the scope and meaning of the issue, and as to the question of interference in fact between the claims involved in this interference, are inadmissible.

Summers v. Hart, 1902 C. D. 104, 98 O. G. 2585-6.

Proper divisional patents between process and product, machine and product and machine and method, should issue simultaneously, and not otherwise.

Holt, 29 O. G. 170.

### *ISSUE.*

#### **Rule 164. Notice of Allowance.**

If, on examination, it shall appear that the applicant is justly entitled to a patent under the law, a notice of allowance will be sent him or his attorney, calling for the payment of the final fee within six months from the date of such notice of allowance, upon the receipt of which within the time fixed by law the patent will be prepared for issue. (See Rules 167, 194.)

Rev. Stats., secs. 4885, 4893, 4897.

### *CONSTRUCTIONS.*

The records of the Office, being regular, will be accepted as evidence of allowance and notice of that fact. The Commissioner has no authority to extend the time for paying the final fee.

Haeseler & Taylor, 101 O. G. 2826.

Under the practice of the Office, after an application has been allowed, and the notice of allowance sent to the applicant or his agent, the act of allowance is complete, and the application can only be returned to the jurisdiction of the Ex-

aminer by a formal withdrawal of the application from the issue files.

100 O. G. 2774.

Proper divisional patents between process and product, machine and product and machine and method, should issue simultaneously, and not otherwise.

Holt, 29 O. G. 170.

### **Rule 165. Withdrawal from Issue.**

After notice of the allowance of an application is given, the case will not be withdrawn from issue except by approval of the Commissioner, and if withdrawn for further action on the part of the office a new notice of allowance will be given. When the final fee has been paid upon an application for letters patent, and the case has received its date and number, it will not be withdrawn from issue on account of any mistake or change of purpose of the applicant or his attorney, nor for the purpose of enabling the inventor to procure a foreign patent, nor for any other reasons except mistake on the part of the office, or because of fraud, or illegality in the application, or for interference. (See Rule 78.)

#### *CONSTRUCTIONS.*

Will not be withdrawn for the insertion of an invention so distinct as to require a supplemental oath, even for the purpose of an interference.

Stimson, 226 O. G. 699.

The final fee having been paid, and the case having received its date and number, under Rule 165.

Orandoff, 140 O. G. 1001.

Applicant filed an amendment withdrawing claims rejected, and on the same day filed an appeal and withdrawal of such amendment. Held, that the appeal should be forwarded.

Kruse, 133 O. G. 229.

It is not the practice of the Office to withdraw a case from issue unless the Office has made an obvious mistake, except in cases where irremediable injury would occur. In this case applicant is not without remedy, for he can allow the case to be



come forfeited, renew the same, and present the claims of the Parker patent, and secure the interference he desires.

Meyer, 130 O. G. 1689.

Issue not stayed to await result of bill in equity under R. S., sec. 4915.

Dunbar v. Shellinger, 129 O. G. 2087.

See order, 122 O. G. 735.

For interference. If the application is now withdrawn from issue, it will be necessary for this Office to stamp the patent "withdrawn" in seven thousand copies of the Official Gazette, and to make the proper entries in the records. Such a burden should not be placed upon the Office through no fault of its own, except under extraordinary circumstances. Petition denied.

Dorman, 102 O. G. 1049.

The application will not be withdrawn from issue to await the termination of an interference in which a divided application is involved, so that patents on the two applications may issue on the same day.

Carroll, 115 O. G. 510.

See 94 O. G. 2169.

The withdrawal of an application from issue for the purpose of inserting a claim previously presented and voluntarily canceled will not be permitted.

Blakeslee, 1893 C. D. 72, 63 O. G. 1201.

Motion to vacate an interference judgment because of alleged misunderstanding as to what applications were included denied.

Huntor v. Knight, 1892 C. D. 211.

An application will not be withdrawn from issue for the insertion of new claims because applicant was surprised by the allowance after the interference had terminated, when he knew it was ready for allowance.

Pierce, 1901 C. D. 224, 97 O. G. 2307.

For mode of procedure, see order No. 629, Oct. 15, '98, published in O. G., 92d volume, and page 1239.

An application will not be withdrawn from issue for the purpose of adding claims to a feature described and reserved, but not claimed in a prior patent to the same inventor, because of the fact that more than two years have elapsed since said prior patent was issued, when it appears that a new application can be filed in such a manner that the two applications may be considered continuous.

Schieling, 1892 C. D. 147, 60 O. G. 160; Nash, 1892 C. D. 146, 60 O. G. 15A.

The rule that an application will not be withdrawn from issue for the purpose of allowing an applicant to amend his claims is subject to exception only in cases where its enforcement would work irremediable injury.

Gold, 1892 C. D. 138, 59 O. G. 2067.

An application will not be withdrawn from issue to permit applicant to reinsert a claim originally presented, but voluntarily erased.

Wood, 1892 C. D. 4.

An application will not be withdrawn from issue if such withdrawal will have the effect, directly or indirectly, of extending the time allowed by law for the payment of the final fee.

Brand, 1891 C. D. 134, 56 O. G. 1062.

Where an application has been once forfeited and renewed, it will not be withdrawn from issue for the purpose of adding new claims in the absence of a showing of hardship.

Myer, 1891 C. D. 6, 54 O. G. 265.

A case will not be withdrawn from issue for the sake of incorporating the claims of a forfeited application.

Hopkinson, 1891 C. D. 4, 54 O. G. 264.

Amendment after allowance, in case a refusal would work irreparable injury: as to introduce claims that could not be claimed in a separate application.

Myer, 1889 C. D. 198, 49 O. G. 131.

A patent may be withheld any time before it is both signed and sealed.

Hunt, 1878 C. D. 149.

When the Commissioner may deem it improper to complete the issuance of a patent after it has been signed, he should forthwith transmit the case, before taking further action therein, with his reasons for declining to complete the issuance of such patent, to the Secretary of the Interior, for consideration and instruction.

Hunt, 1878 C. D. 149.

The Commissioner has a right to withhold from issue a patent allowed by one of his subordinate officers.

Hull v. The Commissioner of Patents, 2 McArthur, 90.

Subject-matter of the rule.

Simonson, 1890 C. D. 177, 53 O. G. 1571.

**Rule 166. Withdrawal from Issue will not stay Abandonment.**

Whenever the Commissioner shall direct the withdrawal of an application from issue on request of an applicant for reasons not prohibited by Rule 165, this withdrawal will not operate to stay the period of one year running against the application, which begins to attach from the date of the notice of allowance.

*CONSTRUCTIONS.*

Where an application is withdrawn from issue at the request of the applicant to await the allowance of a related application, and no action is taken therein until after the expiration of the statutory period allowed for taking action, which dates from the notice of allowance, the application is abandoned in the absence of special circumstances excusing the delay.

Brooks, 127 O. G. 847.

*DATE, DURATION AND FORM OF PATENTS.***Rule 167. Date of Patent.**

Every patent shall issue within a period of three months from the date of the payment of the final fee, which fee shall be paid not later than six months from the time at which the application was passed and allowed and notice thereof was sent to the applicant or his agent; and if the final fee be not paid within that period the patent shall be withheld. (See Rule 175.) In the absence of request to suspend issue the patent will issue in regular course. The issue closes weekly on Thursday, and the patents bear date as of the fourth Tuesday thereafter.

A patent will not be antedated.

Rev. Stat., secs. 4885, 4935.

See notes to Rules 164 and 194.



*CONSTRUCTIONS.*

The records of the Post Office taken as conclusive that a letter containing the final fee was not put into a receptacle set apart for the Patent Office until after the expiration of the time limited.

In re Dempsey, 132 O. G. 1074.

The Post Office is the agent of the sender in transmitting the final fee.

Dempsey, 132 O. G. 1072.

It was said the notice was not received. It is not alleged that no notice was mailed, and the record indicates clearly that it was mailed. Under such circumstances, this Office has no jurisdiction to extend the time for the payment of the final fee, either directly or indirectly.

Glafke, 122 O. G. 351.

It is the time of sending the notice that time is to be reckoned from. The records of the Office are proper to fix this date. The Office cannot extend the time.

Pieper, 115 O. G. 1063.

The final fee must be delivered. It is not sufficient that it was deposited in the mail in due time. Applicant is responsible for the agent he chooses for transmission.

Cannon, 94 O. G. 2165.

Notice to the inventor is equivalent to notice to the administrator.

Deeter, 93 O. G. 190-91.

Six calendar months.

Brown, 1893 C. D. 64, 63 O. G. 759.

There is no discretion in the Commissioner to receive the fee after the time limited.

Anderson, 1892 C. D. 221, 61 O. G. 886.

Not even if the last day falls on a holiday.

Mills, 1892 C. D. 11, 62 O. G. 317.

Handing twenty dollars to a watchman not employed by the Patent Office, at 11:55 P. M. on the last day of the six months' limit is not a payment of a final fee to the Office within the six months allowed by law.

Poulter, 1891 C. D. 205, 57 O. G. 1128; approved by sec. 1892 C. D. 241. 58 O. G. 241.

Inventor, or assignee, to file a new application for the invention within two years after the date of allowance. In the consolidation of the patent laws in 1870, however, the provisions of the Acts of 1863, that upon the forfeiture of the application the invention shall become public property, as against the applicant therefor, was omitted.

Hardy, 1877 C. D. 110; Livingston, 1881 C. D. 42.

Where a patent fee is paid to a subordinate specifying the case, it is effective as of the date of payment, and not the date when the certificate reaches the Office. (No reference given.)

Subject-matter of this rule.

Barri, 97 O. G. 1176.

### **Rule 168. Title of Invention.**

Every patent will contain a short title of the invention or discovery indicating its nature and object, and a grant to the patentee, his heirs and assigns, for the term of seventeen years, of the exclusive right to make, use, and vend the invention or discovery throughout the United States and the Territories thereof. The duration of a design patent may be for the term of three and one-half, seven, or fourteen years, as provided in Rule 80. A copy of the specifications and drawings will be annexed to the patent and form part thereof.

Rev. Stat., sec. 4884.

### *DELIVERY.*

### **Rule 169. Delivery of Patent.**

The patent will be delivered or mailed on the day of its date to the attorney of record, if there be one; or, if the attorney so request, to the patentee or assignee of an interest therein; or, if there be no attorney, to the patentee or to the assignee of the entire interest, if he so request.

### *CORRECTION OF ERRORS IN LETTERS PATENT.*

### **Rule 170. Correction of Mistakes Incurred Through Fault of the Office.**

Whenever a mistake, incurred through the fault of the office, is clearly disclosed by the records or files

of the office, a certificate, stating the fact and nature of such mistake, signed by the Commissioner of Patents, and sealed with the seal of the Patent Office, will, at the request of the patentee or his assignee, be indorsed without charge upon the letters patent, and recorded in the records of patents, and a printed copy thereof attached to each printed copy of the specification and drawing.

Whenever a mistake, incurred through the fault of the office, constitutes a sufficient legal ground for a reissue, the reissue will be made, for the correction of such mistake only, without charge of office fees, at the request of the patentee.

Mistakes not incurred through the fault of the office, and not affording legal grounds for reissues, will not be corrected after the delivery of the letters patent to the patentee or his agent.

Changes or corrections will not be made in letters patent after the delivery thereof to the patentee or his attorney, except as above provided.

#### CONSTRUCTIONS.

Petitioner asks a reissue at the expense of the Office because the errors were obvious, and ought to have been noted by the Examiner. Refused.

Conrad & Conrad, 192 O. G. 517.

It appearing that the attorneys were fully advised as to the record relating to the title, a certificate of correction in the issue refused, especially as not all the parties interested joined in the petition, nor does it appear that they were notified.

Jacobson, 183 O. G. 221.

A certificate of correction will not be granted to make a patent conform to a change in practice.

Rundle, 116 O. G. 593.

The patent was issued to the inventor instead of to the assignee. Held, that a certificate of correction would be granted on request, but that the patent would not be reissued.

Fish, 114 O. G. 2091.



A paragraph was sought to be canceled, but by mistake was printed in the patent. A certificate of correction was thought to be sufficient.

Barry, 112 O. G. 2095.

Application to trade-marks.

The Strobel & Wilken Co., 105 O. G. 2058.

It is only to correct discrepancies between the original record and the patent as printed that certificates of correction are endorsed upon patents.

105 O. G. 500.

The error in this case does not seem to be one calling for correction by the Office. The question is one of little importance, and it is not believed that it affects the validity or operativeness of the patent.

Long, 104 O. G. 851.

The fact that the Office suggested a claim which was adopted by applicant is not sufficient ground for accepting a reissue application without the usual fee.

Graves, 103 O. G. 228.

A reference letter which appeared in the specification was, by mistake, not put on the drawing; it was held that the error being inconsequential, it would be corrected neither by certificate nor reissue.

Dailey, 101 O. G. 2825.

The misspelling of a name is unimportant if the resemblance to the true name is sufficient for identification. A certificate is proper and sufficient to correct such a mistake.

101 O. G. 2569.

A certificate granted to correct the middle initial in the signature of applicant, and refused to correct the name of a witness. If a signature is illegible, it is not the fault of the Office.

Keen & Wims, 101 O. G. 1372.

This certificate is the only proper remedy for a clerical mistake which does not affect the scope of the patent.

Alexander, 98 O. G. 2365.

The misspelling of the name of one of the joint grantees of the patent, through the fault of the Office, should be corrected by a reissue and not by a certificate. Cancellation and granting a new patent suggested.

97 O. G. 2305.

The applicant requested a change in the title after the allowance. Request granted, and Examiner changed title in preamble, but title was not changed elsewhere. Held, a case for certificate of correction and not for reissue.

Dondict, 93 O. G. 551.

Certificates are only issued to make the patent correspond with the record in the office.

Rosback, 89 O. G. 705.

*ABANDONED, FORFEITED, REVIVED AND RENEWED APPLICATIONS.*

**Rule 171. Abandoned Application.**

An abandoned application is one in which all the essential parts have not been filed so that it is completed and prepared for examination within a period of one year, or which the applicant has failed to prosecute within one year after any action therein of which notice has been duly given (see Rules 31 and 77), or which the applicant has expressly abandoned by filing in the office a written declaration of abandonment, signed by himself and assignee, if any, identifying his application by title of invention, serial number, and date of filing. (See Rule 60.)

Prosecution of an application to save it from abandonment must include such proper action as the condition of the case may require. The admission of an amendment not responsive to the last official action, or refusal to admit the same, and any proceedings relative thereto, shall not operate to save the application from abandonment under section 4894 of the Revised Statutes.

Rev. Stat., sec. 4894.

*HISTORY.*

1869—"7—All applications not completed for examination within two years after the filing of the petition will be regarded as abandoned, unless it be satisfactorily proved to the office that such delay was unavoidable."

1870—"7—All applications for patents shall be completed and prepared for examination within two years after the filing of the petition, and in default thereof, or upon failure of the applicant to prosecute the same within two years after any ac-

tion therein, of which notice shall have been given to the applicant, they shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable."

1871—"11. . . . two years after any action thereon, of which notice shall have been mailed to him or his agent . . . the model may be returned upon the filing of a formal abandonment signed by applicant in person."

1873—"40—When the application has been rejected, but not withdrawn, any act which calls it up for further consideration upon its merits will be regarded as constituting a renewal."

1878—Rule 39 under the general heading of "Abandoned Applications" reads as follows:

"When an application for a patent has been rejected, and the applicant fails to renew the same or to file a new one within two years after the date when notice of the last official action was mailed to him or to his agent, his application will be held to have been abandoned.

"Any action which calls such rejected application up for further consideration, within the time mentioned, will be regarded as constituting a renewal."

Rule 165 of 1879 "(and assignee, if any)" added 1883 "Serial number" and last sentence 1892, and two years changed to one year, 1897.

Prior to the law of 1870 there was no fixed time that worked abandonment of a rejected case.

Gordon, 6 O. G. 543, 1874 C. D. 108.

As to the effect of this law, see *Gray v. Hale*, 1871 C. D. 129.

See notes to Rules 31, 65, 66, 68 and Rules 77, 116, 172.

### CONSTRUCTIONS.

- (1) RULE IN GENERAL.
- (2) ACTION BY THE OFFICE.
- (3) ACTION BY APPLICANT.
- (4) TIME LIMIT.
- (5) DELAY WITHIN THE LIMIT.
- (6) FORMAL ABANDONMENT.
- (7) ADDITIONAL CASES.

#### (1) *Rule in General.*

In this exceptionally complex art the Office has found itself unable to bring about an improvement. Amendments are delayed in many instances until the end of the period allowed



by law, and when applications are passed to issue they frequently are forfeited and renewed with further amendments, and their slow prosecution is renewed.

The only possible relief from conditions which have become intolerable is to force an application to patent or abandonment whenever an opportunity presents itself.

Dyson, 233 O. G. 755.

The Court of Appeals will entertain the question of abandonment.

Selden, 164 O. G. 741.

But not by mandamus.

Sang v. Moore, Com., 172 O. G. 834.

The question of abandonment may be raised in an interference proceeding.

Kinsman v. Strohm, 125 O. G. 1699, 1906 C. D. 481, 31 App. D. C. 587.

The excuse that the last Office letter was not received is without weight when it was known to applicant that such a letter was written and he made no effort to get a copy. Furthermore, there is no affidavit on file relative to said letter.

Woods, 121 O. G. 689, 1906 C. D. 103.

Abandonment of application should be distinguished from abandonment of invention.

Springer, 120 O. G. 2754, 1906 C. D. 85.

If the first fee is not paid within a year the case is abandoned.

Kurz, 119 O. G. 961, 1905 C. D. 486.

The law never presumed abandonment.

Newberry v. O'Donohue, 111 O. G. 300, 1904 C. D. 249.

If the original application was filed previous to Jan. 1, 1893, the divisional application filed subsequent to that date is subject to the old law limiting the time for amendment to two years.

Balzer, 101 O. G. 2824, 1902 C. D. 470.

Apply to reissue application.

Laughlin & Reuleau, 92 O. G. 2003, 1901 C. D. 144.

Reissue cases are abandoned after two years of inactivity, like other cases, by operation of section 4894.

Messinger, 78 O. G. 1903, 1897 C. D. 1.

The fact that an inventor is dead, and that his executor has not asserted his rights, does not deprive an application of standing before the Office. It cannot be considered abandoned until the expiration of the time allowed by law for amendment.

Decker v. Loosley, 77 O. G. 2140, 1896 C. D. 106.

Where an applicant for a patent already has a prior patent three and one-half years old, which fully describes the invention claimed in the subsequent application, but does not claim it or make any reservation thereof, Held, to constitute abandonment.

*Zipernowsky v. Edison*, 58 O. G. 803, 1892 C. D. 23.

Abandonment is never presumed, but must be always strictly proved.

*Clark v. Brown*, 57 O. G. 1426, 1891 C. D. 217; *Price*, 57 O. G. 1000, 1891 C. D. 201.

Application abandoned by delay in not paying the first fee. *Fennon*, 52 O. G. 1665, 1890 C. D. 138.

Abandonment is not favored, and must be conclusively proved.

*Johnston*, 18 O. G. 1052, 1880 C. D. 207; *Golding*, 8 O. G. 141, 1875 C. D. 98.

Abandonment of the application is not abandonment of the invention.

*Golding*, 8 O. G. 141, 1875 C. D. 98; *Livingston*, 20 O. G. 1747, 1881 C. D. 42; *Crompton*, 9 O. G. 5, 1876 C. D. 35; *Casilear & McIntire*, 8 O. G. 474, 1875 C. D. 117; see *Mills*, 7 O. G. 961, 1875 C. D. 74, 35 App. D. C. 377; *Gray v. Hale*, 1871 C. D. 129.

### (2) *Action by the Office.*

Where affidavits as to operativeness were filed and found insufficient, the rejection should not have been made final.

*McGill*, 195 O. G. 817.

When an applicant is referred to this rule he must examine it.

*Vesey*, 195 O. G. 273.

Where applicant asks for an application of the references, and the Examiner thinks he has already given such, he should so state, and not finally reject the case.

*Perkins*, 192 O. G. 1262.

When two claims were objected to, and withdrawn, and one of them immediately reinserted. Held, the Examiner should have treated it as a request for a reconsideration, and not held the application abandoned because the action was not responsive.

*Ehrlich Bertheim*, 191 O. G. 1068.

Under these circumstances there is no excuse for the delay in correcting the drawings in accordance with the Examiner requirements, and his action holding the case abandoned is

clearly right. If the amendment is not substantial a final rejection is proper.

Thomson v. Reves, 184 O. G. 805, 806; Myers, 184 O. G. 802.

It would of course be improper for the Examiner to state fully for the first time his reasons for rejecting the claims in the letter in which the rejection was made final.

Hartford, 184 O. G. 551.

A reference to a decision held to be sufficiently definite statement of reasons.

Patterson, 178 O. G. 885.

Where a case is appealed, the decision of the Commissioner affirming the decision of the Examiner is sufficient without any action by the Examiner.

Gale, Sr., 161 O. G. 530.

A strained construction should not be placed upon an amendment in order that it may save the application from abandonment, but it should be construed according to the intent of the applicant as determines from a consideration of the whole instrument.

Richards, 124 O. G. 627, 1906 C. D. 321.

Where Office gave wrong date of filing, leading applicant to pay fee after expiration of time limit, held not abandoned.

Matthews, 117 O. G. 2631, 1906 C. D. 310.

The Primary Examiner has no discretion in the matter, but acts in a ministerial capacity in comparing the dates; he acts in a ministerial capacity in determining whether the applicant's action is sufficient. In such case it is proper to ask for a reconsideration, but such request should be made with diligence, and should be accompanied by a statement of reasons.

Naef, 115 O. G. 1583, 1906 C. D. 121.

Letters written by Examiner after the abandonment do not relieve against abandonment.

Ries, 113 O. G. 1147, 1904 C. D. 501.

The irregularity of the final rejection by the Examiner is no excuse for the delay. He should have tried to have the Examiner's action set aside as irregular.

Munson, 105 O. G. 264, 1903 C. D. 219.

If no appeal or petition is taken within the time fixed by law, no inquiry will be made to determine whether the action was right or wrong.

Munson, 105 O. G. 264, 1903 C. D. 219.

An action under Rule 96 establishes a date for the one year limitation.

Coulson v. Callender & Callender, 101 O. G. 1607, 1902 C. D. 395.



A formal defect.

Sack, 99 O. G. 2101, 1902 C. D. 187.

The tacitly favorable action of one Examiner upon a question of abandonment should at least be persuasive upon his successor.

Burson, 81 O. G. 2246, 1897 C. D. 196.

If an amendment, after rejection, inserting additional claims and requesting suspension of action upon other matters for stated reasons, be admitted without question, it cannot be objected to at a subsequent period as insufficient to obviate abandonment.

Burson, 81 O. G. 2246, 1897 C. D. 196.

Where it appears that at no time while the case has been before the Office has it been placed by the Examiner in condition for appeal to the Examiners-in-Chief upon its merits, Held, that although the action of the appellant has been irregular, the case has not become abandoned under second paragraph of Rule 171.

Blessing, 71 O. G. 1027, 1895 C. D. 9.

Error on the part of the Examiner does not cure parties' own laches.

Hien, 62 O. G. 316, 1893 C. D. 7.

Letters requiring division held to save case from abandonment.

Hunter, 57 O. G. 999, 1891 C. D. 198.

If in his letter of March 5, 1886, the Examiner had given the applicant clearly to understand that his action upon the question of division was simply a reiteration of his action in the same regard of February 13, 1885, I should hold that the application had become abandoned on the expiration of two years from and after February 13, 1885; but the Examiner is found as late at July 25, 1889, requiring a division in such a manner as to convey the inference that the case was still open for that action. I have grave doubts as to the right of the Office to thus practically nullify section 4894 of the statute, but the doubts do not justify me in holding that the application has become abandoned.

Hunter, 57 O. G. 999, 1891 C. D. 198.

### (3) *Action by the Applicant.*

Piecemeal prosecution as an excuse for laches.

Levy, 220 O. G. 1043.

A petition from the ruling that the case is abandoned must be taken promptly.

Thomas, 197 O. G. 977.

If the Examiner objects to the multiplicity of claims, an answer that takes no notice of his objection is not responsive.

Creveling, 197 O. G. 779.

Amendment may be made by telegram, especially if confirmed.

Wheary, 197 O. G. 534.

If the part of the claims rejected are to be abandoned they must be definitely canceled.

Iddings v. Iddings, 197 O. G. 239.

Amendment filed in plenty of time and forwarded to an associate, who inadvertently failed to file it. Enquiry was made in a reasonable time. Excused.

Hilderbrandt, 196 O. G. 1051.

Design application. An unsigned photograph filed instead of a drawing. Case abandoned.

Bennett, 189 O. G. 1032.

After a final rejection applicant canceled claims. He cannot be heard to question the propriety of the final rejection, even if an appeal on another question is necessary.

Stickney, 185 O. G. 1379.

The claims were rejected and amended. The amendment was held to constitute new matter, and was withdrawn. Case abandoned.

Webster, 183 O. G. 1032.

A change of wording of the claim without changing the meaning will not save it from abandonment.

Kaufman, 182 O. G. 719. See Hice, 117 O. G. 2365.

A petition to the Commissioner to reopen a case, which was denied, will not save a case from abandonment.

Brenzinger, 182 O. G. 509.

After electing to prosecute one set of claims, an amendment presenting another set is not a proper response to save the same from abandonment.

Stroh, 180 O. G. 1137.

Neglect to place explanation in specification as required proper foundation for final rejection.

Dean, 177 O. G. 1295.

A request to point out the pertinency of the references is not sufficient if applicant has not tried to show how the device differs.

Sevy, 173 O. G. 288.

A Swedish patent was cited for the first time, but not specially applied. The applicant responded by canceling claims and substituting other claims which he said avoided the reference. The Examiner held that he had not pointed out how

the new claims avoided the references; held that the prosecution of the case (there being no evidence of intentional delay) met the requirement of the rules.

Watters, 163 O. G. 231.

A confused application filed—the specification was required to be rewritten, and in response a specification without claims filed. Not responsive.

Kehrhahn, 162 O. G. 537.

After the final rejection it was incumbent upon applicant to respond within a year either by appeal, by cancellation of the rejected claims, or by having the case reopened, as by submitting an amendment with verified excuse for not prosecuting it before final rejection.

Sorenz, 160 O. G. 1039.

The fact that the word “sole” was omitted from the oath held not to cause abandonment of the application.

Mygatt, 160 O. G. 773.

New drawings required blue prints only furnished, case held abandoned after one year from the requirements of new drawings.

Mastagler, 159 O. G. 489.

If claims are rejected and an amendment of the drawing required, a compliance with the latter requirement will not be sufficient to relieve from abandonment.

Sturtevant v. Sturtevant, 158 O. G. 885.

Where an applicant was notified that certain interferences had been decided in his favor and that the case awaited action in response to previous Office actions. The filing of an amendment containing the claims of a patent and requesting an interference therewith is not such action as the condition of the case required, and did not operate to stay the running of the year from the previous Office action.

Curtis, 138 O. G. 767.

A person may not delay amending because if he does amend his opponent will have access to the amendment under Rule 108.

Dilg and Fowler, Jr., 132 O. G. 1837.

Where, after a final rejection, the proceedings were not such as to save the case from abandonment, a petition to set aside such rejection more than one year after such rejections should not be considered, even if a reconsideration was requested within the year.

Fowler, 127 O. G. 1578; contra. More, 197 O. G. 533.

A claim was presented which was in part responsive, but in



addition limitations were removed without explanation. *Held*, that the case was abandoned.

Richards, 124 O. G. 2534, 1906 C. D. 403.

A mere request for reconsideration, without giving any reasons therefor, especially where a party has abandoned all hope or expectation of securing a patent, is not sufficient to save an application from abandonment.

Krejce, 121 O. G. 1011, 1906 C. D. 111.

If the action is not complete, it is not sufficient to prevent abandonment.

Schmitt & Tanody, 121 O. G. 688, 121 C. D. 102; Sperry, 121 O. G. 687, 1906 C. D. 100.

Supposed error in Examiner's action no excuse for delay beyond the time limit.

Richardson, 120 O. G. 2753, 1906 C. D. 83.

Where applicant's attorneys place the case in condition for final action and final action is given, an applicant can not secure an extension of the time allowed by law by revoking the power of attorney and filing a request for further explanation, even though such request is filed within the year.

Cazin, 120 O. G. 660, 1906 C. D. 30.

Where certain formal objections are raised and the claims are finally rejected, an amendment curing the formal objections will not save the case from abandonment, even though by curing the formal objections the scope of the claims is changed. A final rejection must be met by an appeal, and not by an amendment changing the scope of the claims.

Walton, 120 O. G. 659, 1906 C. D. 28.

A proposed amendment does not save a case from abandonment that was finally rejected.

Marr, 119 O. G. 2521, 1905 C. D. 556.

Where applicant filed an appeal within the year, and asked to temporarily withdraw it, the case not abandoned.

Dieterle, 118 O. G. 1685, 1905 C. D. 410.

A petition under Rule 145 is not in itself sufficient to prevent abandonment. "At the expiration of the year following final rejection the applicant must within that time file his appeal or take steps resulting in the setting aside of the final rejection"

Wagner, 118 O. G. 1684, 1905 C. D. 406, 22 App. D. C. 267.

If an appeal and an amendment are filed at the same time, and it is held that the amendment is not admissible, still the appeal is sufficient to prevent abandonment, as the law does not favor forfeiture.

Bach, 118 O. G. 1363, 1905 C. D. 383.

The attorney prepared and forwarded a proper amendment in ample time, but it was not received by the Office. Upon discovering that fact, the attorney prepared and filed a second amendment. Held not abandoned, though the second amendment was not received until the expiration of the time limited.

Eluere, 117 O. G. 2635, 1905 C. D. 321.

An application should not be held abandoned when an informal amendment was filed in good time.

Gaylord, 117 O. G. 2366, 1905 C. D. 309.

When a requirement for division has been made final, the only thing to prevent the time limit from running is to take a proper action to have the requirement set aside.

Tuttle, 117 O. G. 1796, 1905 C. D. 274.

"He had merely asserted twice that the references do not seem to anticipate the claims; but it is very clear that such assertion did not tend to furnish new light for the Examiner." Case abandoned.

Busenbenz, 117 O. G. 600.

The question whether an amendment presented was such proper action as the condition of the case required must be determined by the practice of the Office in force at the time, and it is not affected by a subsequent change of practice.

Naef, 115 O. G. 2135, 1906 C. D. 121.

A request for reconsideration, without giving reasons why applicant thinks the Examiner erred, is not such action as the case demands, and the case may be held to be abandoned.

Linde, 115 O. G. 1329, 1905 C. D. 118.

When there is a requirement of division applicant must appeal or amend within the year. The question of division will not be reviewed upon petition.

Galley, 115 O. G. 802, 1905 C. D. 95.

As it is evident that all the actions that have been made in this case by the applicant have been for the purpose of making a substantial advance, and not for the purpose of delay, it is *held* that the application has not been abandoned.

Smyth, 114 O. G. 762, 1905 C. D. 29.

While an attempt to claim a species not originally claimed is not such action as the case demands within this rule, still in view of apparent good faith a proper amendment will be received if promptly filed.

Lillie, 114 O. G. 541, 1905 C. D. 15.

To save from abandonment the action must be responsive.

Parkes, 113 O. G. 2213, 1904 C. D. 551.

The case became abandoned because applicant neglected to give his reasons for asking a reconsideration.

Alton, 113 O. G. 1968-1969, 1904 C. D. 541.

Where the Examiner finally rejects claims an appeal must be taken within a year or the propriety of the Examiner's action will not be considered.

LeFever, 110 O. G. 1430, 1904 C. D. 205.

If the applicant's action was within the year it is immaterial whether that of the office was or not.

Lovejoy, 108 O. G. 1053, 1904 C. D. 52.

The proposed amendment was not accompanied by a showing, duly verified, of good and sufficient reasons why it was not earlier presented. It was not therefore such proper action as the case required to keep it from abandonment.

Lay, 107 O. G. 2337, 1903 C. D. 501.

An action which does not and was not intended to make a substantial advance toward closing the prosecution of the application is not such a proper action as is required by the law and the rules.

La France, 105 O. G. 262, 1903 C. D. 215.

Must be such action as the case requires, either acquiescence in appeal to Examiners-in-Chief or a successful petition to the Commissioner.

Landis, 103 O. G. 1164-5, 1903 C. D. 127.

An amendment which, if entered, would require a division, is not such an action as will save the case from abandonment. The Commissioner is, however, vested with a judicial discretion to relieve against the penalty. (At this time a requirement of division was a formal action, appealable to the Commissioner in person.)

McGenniss, 101 O. G. 2075, 1902 C. D. 422.

A petition to the Commissioner which does not change the status of the case will not save it from abandonment.

Fritts, 101 O. G. 1131, 1903 C. D. 383.

Applicant filed a proper amendment within the required time, which was not entered for want of supplementary oath. The Examiner said "The applicant has not failed to act upon previous requirements, but has merely failed to anticipate a requirement subsequently made."

Yerdon, 101 O. G. 1830, 1892 C. D. 411.

The Examiner rejected the claims and required a division. Applicant amended the claims and asked a reconsideration of the requirement to divide. Though doubted if the request to reconsider was sincere, still it was an action interrupting the time.

Chamberlain, 101 O. G. 447, 1902 C. D. 354.



A request for reconsideration as to part of the requirement of division and a compliance with the rest is an action limiting the running of the time limit.

*Naef*, 100 O. G. 2601, 1902 C. D. 325.

A request for reconsideration accompanied by an argument, and also by an additional claim which was objectionable because requiring division, *Held*, that the request for consideration and argument was sufficient to save the case from abandonment.

*Scott*, 100 O. G. 681, 1902 C. D. 258, 25 App. D. C. 307.

Part of claims rejected for one reason and part for another an amendment or request for reconsideration, as to part of the claims does not save the case from abandonment.

*Spiller*, 99 O. G. 2320.

The insertion of an additional claim is not sufficient nor the request for reconsideration.

*Kuper*, 97 O. G. 2981, 1901 C. D. 258.

It must be an action made in good faith, with the purpose and effect of making a substantial advance toward closing the prosecution of the case.

*Vaughen*, 97 O. G. 957, 1901 C. D. 161.

A mere reassertion of a position is not such an action as will save a case from abandonment unless the rules provide for it.

*Grant*, 93 O. G. 2532, 1900 C. D. 199.

Petition may not be signed by the attorney in original case.

*Thomas*, 92 O. G. 1035, 1900 C. D. 116.

Action by an applicant made in good faith, and which is such as the condition of the case requires, is sufficient to save the case from abandonment; although it is not completely responsive to every requirement made, affidavits under Rule 75 is such an action as the rule contemplates.

*Wright & Stebbins*, 88 O. G. 1161, 1899 C. D. 153.

When upon a requirement of division claims for a process were canceled, and an application was limited to claims for an article, and a second application for the process was filed while the first application was pending, but not within two years from the cancellation of the process claims from the first application, *Held*, that the process claims were not abandoned and the second application was a division of the first.

*Richardson v. Leidgen*, 77 O. G. 153, 1896 C. D. 63.

When the Examiner makes a definite requirement and a suggestion, it is the requirement alone that must be acted upon within the time limit.

*Hume*, 57 O. G. 123, 1891 C. D. 168.

Amendments of no considerable importance filed the last day

of time limited. Held, that the section so far as it went was a proper action, and there was no such utter failure to prosecute within the two years as would warrant a judgment forfeiting rights.

Todd, 49 O. G. 732, 1889 C. D. 217.

The fact that one party to an interference has taken an appeal in which counsel of both parties participate does not relieve the other party from the operation of the rule of limitations.

Cruikshank v. Strong, 17 O. G. 511, 1860 C. D. 102.

The law evidently contemplates official action, either preliminary or on the merits taken in the regular course of the examination of the case. The abandonment of an application, or withdrawal of model requires no such action.

Graham, 3 O. G. 211, 1873 C. D. 34; Lee v. Smith, 5 O. G. 58, 1874 C. D. 14.

The official stamp of the Office is the proper evidence of the date of the last official action.

Blake, 3 O. G. 2, 1873 C. D. 6.

#### (4) *Time Limit.*

The Supreme Court distinguishes between the constructive notice incident to the grant of a patent and the "actual and specific" notice under this rule.

Chapman v. Wintroath, 272 O. G. 913.

Perhaps the year limit ought to run from the time of receipt of the notice and not from the time of the Patent Office action.

Time past due to a clerical mistake. Excusable.

Hinrich, 191 O. G. 1067.

Questioned if the one year limitation does not apply to action under Revised Statute, sec. 4915.

Wened v. Horine, 191 F. 620.

If the year ends on Sunday the amendment must be filed Saturday.

182 O. G. 971.

Records of attorney upon which he relied imperfect. Excuse insufficient.

Amigo, 174 O. G. 833.

Whether or not the ruling that the year runs from a given date is correct will not be considered until the case is held to have been abandoned, unless in a clear case.

Inneau, 160 O. G. 1038 (149 O. G. 773).

Subject-matter of this rule.

Barrett and Aller, 127 O. G. 847.

One of the requisites to a favorable decision on the question

of abandonment is that a proper action be filed, upon which action can at once be taken by the Office.

Roger, 125 O. G. 2766, 1906 C. D. 528.

In view of the fact that the proposed amendment would place the case in condition for allowance, and the fact that the delay over the year is slight, the doubt upon the question whether the total delay was unavoidable is resolved in the applicant's favor. See also note to Rule 68.

Richards, 124 O. G. 627, 1906 C. D. 321.

Action by the applicant was intentionally delayed until near the close of the year following the rejection. In such cases the applicant assumes the risk of such accidents as occurred in this case (misplaced files), and must bear the consequences.

Klussman, 123 O. G. 2311, 1906 C. D. 276.

Great stress is laid by the applicant on the value and importance of the invention. These are reasons for giving the showing made the most careful consideration, but are not reasons for relaxing the usual requirements in cases of this kind. I am not satisfied that the delay was unavoidable, and therefore I am without authority to regard this case as otherwise than abandoned.

Ilgner, 122 O. G. 1721, 1906 C. D. 182.

Where the time expired Sunday, March 5, and the Office was closed on the 4th, and the amendment would have been received that day, the closing of the Office not being known to applicant, case not abandoned.

Ries, 116 O. G. 2007, 1905 C. D. 211.

If the last day comes on Sunday, amendment must be filed Saturday.

Weirick, 97 O. G. 1373, 1901 C. D. 183; Koritski & Wipf, 113 O. G. 1145, 1904 C. D. 498.

The year begins to run from the last action which tends to cause a real advance in the prosecution of the case.

Naef, 110 O. G. 2016, 1904 C. D. 230.

Mistake in attorney's office record, but no showing that amendment could have been made before. Not "unavoidable."

Raymond, 109 O. G. 1608, 1904 C. D. 113.

The claims having been twice rejected finally, as involving new matter, and the proposed amendment not seeking to remedy this defect, the case is abandoned.

Edwards, 108 O. G. 1051, 1904 C. D. 48; Novotny, 108 O. G. 1327, 1904 C. D. 57.

This action was taken within the year, but the case was not reached for consideration by the Office until the expiration of the year. Applicant had a right to a reconsideration.

Lovejoy, 108 O. G. 1053, 1904 C. D. 52.



The word "unavoidable" in the statute means more than that to act would have been inconvenient. Since the delay in this case is attempted to be explained on the ground that Marconi did not furnish the necessary information, it cannot be held that the delay was unavoidable in the absence of a showing by him of good reasons why he did not furnish the information.

Marconi, 108 O. G. 796-7, 1904 C. D. 31.

The amendment was not accompanied by a showing as to why it was not presented before; it was not therefore such proper action as the case required to keep it from abandonment.

Lay, 107 O. G. 2237, 1903 C. D. 501.

The petitioner may not have the application revived and a limit of six months set for him to amend.

Miller, 105 O. G. 2057, 1903 C. D. 282.

An assignee refused a revival of the application because no excuse was given for the first nine months of the delay.

Miller, 105 O. G. 2057, 1903 C. D. 282.

After rejection by the Examiners-in-Chief, the claims in question were canceled, and more than a year after said rejection. An amendment was filed attempting to reinstate the abandoned claims. *Held*, that the amendment cannot be entered. The case was abandoned.

Oviatt & Dean, 107 O. G. 269, 1903 C. D. 419.

Time limit for appeal begins to run from time of definite final rejection.

Kuhlewind, 101 O. G. 3107, 1902 C. D. 481.

If the last day falls on Sunday, action must be taken on Saturday.

Beecher, 101 O. G. 1132, 1902 C. D. 384.

See notes to Rules 65 and 68.

Bursen, 81 O. G. 2246, 1897 C. D. 196.

The limitation does not run while an interference is pending.

Taylor v. Shreffler, 24 O. G. 1175, 1883 C. D. 63.

The day of the last action of the Office is excluded in the computation of the two years.

Musser, 16 O. G. 858, 1879 C. D. 252.

There is no rule which excludes the filing of any amendment more than two years after the filing of an application that would ever be admissible at all. There is no limit of time restricting amendments except that provided in the statute defining abandonment, and that has no relation to the character of the amendment or other matter presented.

Dodge, 3 O. G. 179, 1872 C. D. 202.

(5) *Delay Within the Limit.*

See *Chapman v. Wintroath*, 272 O. G. 913.

In this exceptionally complex art the Office has found itself unable to bring about an improvement (Automatic Telephones). Amendments are delayed in many instances until the end of the period allowed by law, and when applications are passed to issue they frequently are forfeited and renewed with further amendment, and their slow prosecution is resumed. The only possible relief from conditions which have become intolerable is to force an application to patent or abandonment whenever an opportunity presents itself.

*Dyson*, 233 O. G. 755.

The record seems to show a deliberate attempt to prolong the prosecution of the case, and under the circumstances having taken advantage of a technical application of the rules. Applicant is not in a position to complain of a like application by the Office.

*Copeland*, 140 O. G. 1207.

A person has a perfect right to delay action until near the end of the year, but in so doing he risks a delay due to a mistake.

*Grant*, 128 O. G. 885.

When an applicant intentionally delays to the last of the time limited, and by mistake the application is not filed until the day after time limited, he is not entitled to relief.

*Clausen*, 118 O. G. 838, 1905 C. D. 367.

If there was no excuse why applicant did not act during the first six months, or his attorneys during the second six months, the case held abandoned, notwithstanding excuses for the rest of the time.

*Simon*, 118 O. G. 838, 1905 C. D. 366.

Delay which is within the time limited will not be considered unfavorable to a contestant.

*Jones v. Starr*, 117 O. G. 1495, 1905 C. D. 694, 26 App. D. C. 64.

Where the record shows that the applicant is in the habit of waiting almost the full statutory period before amending, he is not in position to rely on any matters of equity when a question is raised whether he has acted in time, but only upon his strict technical rights.

*Naef*, 115 O. G. 2135, 1905 C. D. 137.

The applicant's rights are not prejudiced by any delay less than a year.

*Booth*, 113 O. G. 2216, 1904 C. D. 558.

Where a party relies upon his technical rights to delay, he

should not be heard to complain where he fails to meet the requirements.

Ries, 113 O. G. 1147, 1904 C. D. 501.

It is the right of an applicant to wait until the last of the time allowed him; but when he continually does so he is not in position to ask for leniency in the application of the rule against delay.

Pietzner, 103 O. G. 2171, 1903 C. D. 142.

It is settled by the Supreme Court that so long as a party complies with the law in prosecuting his application, no delay in the Office can be regarded as unreasonable and as operating as a forfeiture of his rights.

Osborn v. Hotsapillar, 102 O. G. 1297, 1902 C. D. 47.

If applicant waits till the latter part of the time limit he takes all risks.

Beecher, 101 O. G. 1132, 1902 C. D. 384; Smith, 101 O. G. 1369, 1902 C. D. 387.

When an applicant waits until the last day of the year to file an amendment he assumes all risks, and an action which would be insufficient if made earlier cannot be held to be sufficient for this reason. Said of an amendment which was refused because it would require division. The circumstances of this case are such as to entitle the applicant to favorable consideration if he will promptly file a proper amendment, accompanied by petition for revival.

Morrison, 99 O. G. 2969, 1902 C. D. 226.

In view of a suggestion that the inventor is in fault for any avoidable delay, the Court says: "The inventor does not determine the measure of his right or of his obligations. The law determines that for him, and if the government thinks that more speed is desirable in the interests of the public it should change the law." If an inventor is allowed two years to take an appeal, he may wait till the last day of the two years—same case.

Crown Cork & Seal Co. v. Aluminum Stopper Co., 96 O. G. 3576, 1901 C. D. 450.

Must be unavoidable for the entire time.

Warren, 96 O. G. 2410, 1901 C. D. 137, 22 App. D. C. 267.

A request for further information not sufficient to save case from abandonment. The Office will not scrutinize the record to find a way of saving an application from abandonment that has already been pending for more than eleven years, especially where the art during that period has rapidly developed, and where the grant of a patent upon the claims now in the case might be a menace to more diligent inventors.

Hunter, 66 O. G. 1449, 1894 C. D. 34.



*(6) Formal Abandonment.*

The signature of the assignee is necessary.

Weideman, 81 O. G. 2245, 1897 C. D. 194.

Whether a declaration of abandonment shall be put in a set form of words is a matter in the discretion of the Office.

Lassell, 29 O. G. 861, 1884 C. D. 66.

It is thought that an erasure of all the claims, without substituting others, is an abandonment of the application.

Lassell, 29 O. G. 861, 1884 C. D. 66; Lassell, 28 O. G. 1274, 1884 C. D. 42.

One of the two joint inventors cannot abandon the joint invention without the consent of the other.

Sawyer & Mann v. Edison, 25 O. G. 597, 1883 C. D. 80.

*(7) Additional Cases.*

Subject-matter of this rule:

Kinsman v. Strohm, 120 O. G. 2127, 31 App. D. C. 581; Berg, 120 O. G. 903; Skinner v. Murray, 107 O. G. 542, 1903 C. D. 429; Bowles, 103 O. G. 429, 1903 C. D. 95; Raymond, 99 O. G. 1386, 1902 C. D. 170; Sibbald v. Cassidy & Smith, 61 O. G. 563, 1892 C. D. 214; Funston, 49 O. G. 1044, 1889 C. D. 224; Hamilton v. Fisher, 1871 C. D. 271.

**Rule 172. Revival of Application.**

Before an application abandoned by failure to complete or prosecute can be revived as a pending application it must be shown to the satisfaction of the Commissioner that the delay was unavoidable.

Rev. Stat., sec. 4894.

*HISTORY.*

Substantially Rule 166 of 1879.

*CONSTRUCTIONS.**Revival of Application.*

See notes to Rule 171.

Amendment must reach the Patent Office in time. It is not sufficient that it was mailed in time.

James, 189 O. G. 1032.

A case will not be revised merely for the sake of giving a date to a second application.

Girardill, 181 O. G. 1073.

The mere failure to file an amendment which was prepared at the end of the year from the Office, action does not, in my opinion, constitute any sufficient showing of unavoidable delay which would warrant the revival of an application within the provision of Section 4894 of Revised Statutes.

Ciofi, 137 O. G. 1238.

The Commissioner cannot reinstate an application formally abandoned by the applicant himself.

Hirth, 137 O. G. 977.

A person may not delay amending because if he does amend his opponent will have access to the amendment under Rule 108.

Digy & Fowler, Jr., 132 O. G. 1837.

That claims under Rule 96 were not suggested is no excuse for failure to amend.

McKee, 130 O. G. 980.

That a case was inadvertently crossed off the attorney's docket not sufficient excuse where it appears that delay until near the close of the period was intended.

Duryea, 128 O. G. 1291.

The showing relates to matter outside the Office, and is not verified nor has a proper amendment been filed. Delay will not be held unavoidable under these circumstances. Moreover, the excuse made does not cover the whole period.

Myers, 123 O. G. 1663, 1906 C. D. 263.

Matter tending to excuse the latter part of the delay is not sufficient.

Marburg, Jr., 121 O. G. 687, 1906 C. D. 98.

Delay in transmission through the mails from a foreign country unverified statement.

Botzky, 121 O. G. 338, 1906 C. D. 94.

An action before the Primary Examiner consisting of an appeal, held proper, notwithstanding it did not obviate the objection of the Examiner that it defined the article in the claim by reference to its mode of manufacture.

Warren, 120 O. G. 2755, 1906 C. D. 87, 30 App. D. C. 308.

A petition must be accompanied by an action.

Richardson, 120 O. G. 2573, 1906 C. D. 83.

A delay of four years difficult to excuse.

Gironcoli, 120 O. G. 2753, 1906 C. D. 82.

The fact that the amendment was mislaid by attorney does not show unavoidable delay.

Block, 119 O. G. 963, 1905 C. D. 493.

The contention on petition that the alleged final rejection was premature must be made within the year.

Read, 119 O. G. 337, 1905 C. D. 458.

Mistake of attorney as to date not sufficient excuse.

Hallot, 118 O. G. 592, 1905 C. D. 351.

Inventor prosecuting his own case, did not receive first notice; second notice reached him when he was ill, from which illness he died; his representatives acted promptly.

Sellers, 118 O. G. 270, 1905 C. D. 336.

Delay may not be excused because applicant was trying to improve his invention. The improvement cannot be included in the case.

Raymond, 118 O. G. 269, 1905 C. D. 334.

Only the Commissioner is authorized to pass upon the sufficiency of an excuse. The Examiner may not do so.

Reis, 116 O. G. 2007, 1905 C. D. 211.

Delay in acting upon an application is not to be excused for the purpose of permitting the applicant to devise means for making the delayed invention practical and useful. The law does not contemplate the filing of applications upon incomplete or useless inventions.

Murphy, 115 O. G. 1848, 1905 C. D. 132.

The applicant must present his petition accompanied by affidavits setting forth excuse for delay. He must do this promptly, and may not wait a year as with an amendment. Delay in presenting the petition must also be excused.

Naed, 115 O. G. 1583, 1905 C. D. 121.

A change in practice will not revive an abandoned case, but a change before it becomes abandonment may prevent its becoming abandoned.

Thompson, 113 O. G. 2504, 1904 C. D. 566.

Delay in presenting a petition for relief against the abandonment should be taken into consideration.

Koritski & Wipf, 113 O. G. 1145, 1904 C. D. 498.

It is necessary to see that amendments are received by the Office. The fact that the petitioner cannot file a new case by reason of foreign patents is not alone sufficient to excuse delay.

Stuckgold, 106 O. G. 545, 1903 C. D. 307.

An application allowed to lapse because, under the law then in force, a foreign patent was a bar, cannot be reinstated, notwithstanding the law has been changed so that it would remove the bar but for abandonment.

Casalonga, 105 O. G. 261, 1903 C. D. 212.

It is said by the applicant that he is barred from filing a new



application because of foreign patents. That fact might be sufficient to turn the scale in a doubtful case, but is not in itself a reason for holding that a case is not abandoned.

Pietzner, 103 O. G. 2172, 1903 C. D. 142.

The failure to act within the last few weeks was unavoidable, but they constitute only a small part of the delay. The law says that the delay must be unavoidable, and not merely that the last few weeks must be so.

McElroy, 101 O. G. 2823, 1902 C. D. 467.

The Commissioner has no discretion in reviewing an abandoned application unless it appears to him that the abandonment was caused by unavoidable delay.

Beecher, 101 O. G. 1132, 1902 C. D. 384.

A wrong entry on office books of attorney no excuse.

~~Beecher~~, 101 O. G. 1132, 1902 C. D. 384.

The existence of a bar to the filing of a new application is entitled to weight, and would justify this Office in resolving doubts as to the sufficiency of the showing in the applicant's favor on a request for a revival, but it does not alone warrant the revival of any case.

Bohlecke, 97 O. G. 2743, 1901 C. D. 239.

Delay cannot be considered unavoidable where it is due to the negligence of the attorney.

Collins, 97 O. G. 1372, 1901 C. D. 181.

Petitions for revival will not be docketed for hearing, but will be decided upon facts presented in the petition.

92 O. G. 561.

Showing must cover the entire period of delay.

Heine, 64 O. G. 1006, 1893 C. D. 106.

Excuse must cover entire period.

Clarke, 61 O. G. 286, 1892 C. D. 208.

The abandoned application of a foreign applicant will not be revised upon a showing that the two years' limit was allowed to expire without action solely through the inadvertence of the Associate Attorney's clerk.

Ralymaeckus, 60 O. G. 1749, 1892 C. D. 194.

Misunderstanding of attorneys not sufficient to excuse delay.

Macphail, 56 O. G. 1062, 1891 C. D. 134.

Excuse for delay must cover entire time. Neglect of attorneys not sufficient.

Murray, 56 O. G. 1060, 1891 C. D. 130; Edison, 56 O. G. 1061, 1891 C. D. 133, 30 App. D. C. 321.

A matter under this rule is addressed wholly and solely to

the discretion of the Commissioner, but by the discretion of the Commissioner is to be understood his judicial discretion.

Chapman, 29 O. G. 950, 1884 C. D. 72.

If a party seeks to escape from the operation of the limitation he must establish the utmost good faith and diligence in his conduct.

Mayor, 113 O. G. 912, 1878 C. D. 60; Chapman, 29 O. G. 950, 1884 C. D. 72.

### **Rule 173. New Application.**

When a new application is filed in place of an abandoned or rejected application, a new petition, specification, oath, and fee will be required; but the old drawing, if suitable, may be used upon the filing of suitable permanent photographic copies thereof.

#### *CONSTRUCTIONS.*

A canceled sheet from the original application may be used.

Scheiner, 259 O. G. 383.

So long as he can make the prescribed oath, an applicant may file identical applications until the patience of the Office is exhausted.

Barrett v. Hart, 256 O. G. 225.

The drawings from an abandoned case may not be used in a new application.

Farnham, 114 O. G. 2090.

Renewed application seems to be a continuation of the former application, and the record should contain a reference to such former application.

Lewis v. Unger, 106 O. G. 543.

Where claims were allowed on appeal, then the case formally abandoned and another application substituted. In the allowance of the latter an entry should be made referring to the first case.

Lewis & Unger, 106 O. G. 543.

Petition may not be signed by the attorney in original case.

Thomas, 92 O. G. 1035.

The existence of a bar to the filing of a new application is entitled to weight, and would justify this Office in resolving doubts as to the sufficiency of the showing in the applicant's favor on a request for a revival, but it does not alone warrant the revival of any case.

Bohlecke, 97 O. G. 2743.

**Rule 174. Forfeited or Withheld Application.**

A forfeited application is one upon which a patent has been withheld for failure to pay the final fee within the prescribed time. (See Rule 167.)

**Rule 175. New Application after Non-Payment of Final Fee.**

When the patent has been withheld by reason of nonpayment of the final fee, any person, whether inventor or assignee, who has an interest in the invention for which the patent was ordered to issue may file a renewal of the application for the same invention; but any renewal application must be made within two years after the allowance of the original application. Upon the hearing of the new application abandonment will be considered as a question of fact.

Rev. Stat., sec. 4897.

*CONSTRUCTIONS.*

The renewal application should be accepted when made by the assignee within 2 years and 9 months.

(War Regulation Oct. 6, 1917) Tschunke, 266 O. G. 596.

Where an intent to continue is manifest, or is proven, the question is whether the specification of the earlier was sufficient as a basis for the claims ultimately founded on the later application.

General Electric Co. v. Continental Fibre Co., 268 O. G. 193.

An applicant may ordinarily make a new election in a renewal application and prosecute claims to a species other than that originally elected, provided that such species is fully disclosed in the original application.

Prouty, 264 O. G. 533.

All right to keep the reallocated application alive expired with the failure to pay the final fee within six months of the second allowance.

Barrett v. Hart, 256 O. G. 224.

M.'s patent was issued between the dates of T.'s forfeiture and application for renewal. No testimony taken as to aban-



donment, and the renewal by the Commissioner rebuts any such presumption. May have filing date.

Murphy v. Thompson, 246 O. G. 825.

The application has been once allowed, forfeited and renewed. A second forfeiture would presumably result in abandonment.

Dyson, 233 O. G. 755.

That an interfering application was filed during the period of forfeiture apparently is not sufficient to make out abandonment.

Gehring et al. v. Burry, etc., 225 O. G. 371.

Where W., with knowledge that B. was in the field, deliberately withheld his invention from the market, and neglected to renew his forfeited application or to reinsert his claims for a patent until practically the end of the period allowed, this amounted to an abandonment of the invention. (Dec. Ex.-in-Chief.)

Barbar v. Wood, 207 O. G. 299.

Attorney may sign petition for renewal.

Le Brow v. Nix, 177 O. G. 771, 180 O. G. 1139; per contra, *ex parte* Thomas, 92 O. G. 1035.

The Commissioner has no authority to accept a fee after two years.

159 O. G. 197.

The question of abandonment is one to be determined upon proof of the facts and circumstances, and will not be presumed from laches in filing the renewal application, although it may be within the power of the Commissioner, whenever he entertains a doubt as to whether there has been an abandonment to require an explanation of the delay.

Cutler v. Leonard, 136 O. G. 438.

An opinion of the Assistant Attorney-General for the Interior Department relating to the right to file a second renewal application rendered upon request of the Commission of Patents, might properly have been disregarded, and the custom which obtained for 30 years, of granting such, be persisted in. The appeal on such questions is to the Court and not to the Secretary.

*In re* Sambert, 135 O. G. 1584.

For all these reasons, the practice is restored which prevailed prior to 1894, of allowing more than one renewal of a forfeited application provided that it is made within two years following the date of allowance of the original application. Not retroactive.

Sumbort, 135 O. G. 1581.

Only one renewal permissible, or, if allowable, the final one must be within two years of the original.

Weston Electrical Inst. Co. v. Empire, 131 F. R. Co., 1894 C. D. 111.

But a new application may be made.

1895 C. D. 95.

The practice of refusing to entertain a second renewal application is founded upon opinions of the Attorney-General, published in 69 O. G. 639, 1894 C. D. 111, and in 70 O. G. 493, 1895 O. G. 95, which are controlling.

Theodor and Carl Weil, 122 O. G. 352.

The payment of the fee alone is not sufficient.

Ryan, 117 O. G. 599.

Last sentence sufficient authorization for signing and prosecuting renewal application.

Agee, 101 O. G. 1609.

But the law does not favor forfeiture, and it being a question of fact whether there has been abandonment, all reasonable doubt must be solved in favor of the patent.

96 O. G. 2576.

An application cannot be renewed until it has become forfeited by lapse of time.

Nicholson, 52 O. G. 310; Schulz, 111 O. G. 2494.

As, between an applicant resting upon a mere constructive reduction to practice, especially where his application is a renewal of a forfeited application, and a party who is really the first inventor, and to whom a patent has been issued for the invention. *Held*, that priority must be found for the patentee.

C. of A. D. of C., 90 O. G. 223. Above cases refer to Rules 174, 176, 177 and 178.

Although the third renewal of an application was received, acted upon the merits, and pending at the date of the Secretary's decision denying a right to a second renewal. *Held*, under the decision, that application cannot be prosecuted. (See C. D. 1894, 111; 69 O. G. 639.)

Vulte, 1895 C. D. 1, 70 O. G. 631.

The papers in an application, forfeited and abandoned by operation of law under Sec. 4897, cannot be withdrawn from the case to be used in a new application.

Vulte, 1895 C. D. 1, 70 O. G. 631.

Under Sec. 4897 R. S., a second application for renewal cannot be made, but a new application for a patent can be made.

1895 C. D. 95, 70 O. G. 493.

The right of an applicant to renew a forfeited application under Sec. 4897 is exhausted when once exercised.

1894 C. D. 111, 69 O. G. 639.

It is not sufficient that the final fee was mailed within the 6 months it must have been received.

Riley, 1891 C. D. 136, 56 O. G. 1203.

There is no authority of law permitting the renewal of an application, or the acceptance of the fee for such renewal, before the date on which the application would actually become forfeited for non-payment of the final fee.

Nicholson, 1890 C. D. 112, 52 O. G. 310.

The present application is by law, regardless of the wishes of the applicant, a continuation of the prior application. There can be no question but that the applicant may assert his earlier application to avoid bars, such as public use and prior invention, that might operate against the latter application. (Cases cited.)

Taylor, Jr., 44 O. G. 1265.

The 25th section (laws of 1870) gives to the Commissioner no power to revive a forfeited application when more than two years have elapsed since the date of its allowance. It is then absolutely abandoned, with no provision for reconsideration, and its subject-matter becomes the property of the public.

McCulley, 74 C. D. 76; contra Livingston, 81 C. D. 42; Sebald v. Cassidy & Smith, 61 O. G. 563, 1892 C. D. 223.

Subject-matter of this rule.

Barrett, 1891 C. D. 125, 56 O. G. 930; Ostergren v. Trippler, 95 O. G. 838; Myers, 1891 C. D. 6, 54 O. G. 265; Hopkinson, 1891 C. D. 4, 54 O. G. 264.

### **Rule 176. Old Application Papers may be Used in Renewal.**

In a renewal the oath, petition, specification, drawing, and model of the original application may be used; but a new fee will be required. The renewal application will not be regarded for all purposes as a continuation of the original one, but must bear date from the time of renewal and be subject to examination like an original application.



*CONSTRUCTIONS.*

Petition not defective because it did not specify the original petition as one of the papers to be used.

Le Brow v. Nix, 177 O. G. 771, 180 O. G. 1139.

A second allowance of a claim after forfeiting adds to the presumption as to its patentability.

Hay, 139 O. G. 241.

If new matter is introduced, the old drawings may not be used.

Noyes, 122 O. G. 2062.

There must be some form of petition; the payment of the fee alone is not sufficient.

Ryan, 117 O. G. 599.

New claims may be presented.

Barrett, 1891 C. D. 154, 56 O. G. 1564.

From the first the Office has accepted the payment of a new fee and a request that the patent issue upon the old papers as a sufficient new filing, or refiling, within the spirit of the law.

Livingston, 1881 C. D. 42.

Subject-matter of this rule.

Agee, 101 O. G. 1609; Nelson, 1897 C. D. 174, 81 O. G. 1781; Brown v. Guild, 6 O. G. 392; Sexton, 1876 C. D. 251.

**Rule 177. Forfeited and Abandoned Applications.**

Forfeited and abandoned applications will not be cited as references.

**Rule 178. Notice of Subsequent Applications.**

Notice of the filing of subsequent applications will not be given to applicants while their cases remain forfeited.

**Rule 179. Copies.**

Copies of the files of forfeited and abandoned applications may be furnished when ordered by the Commissioner. The requests for such copies must be presented in the form of a petition properly verified as

to all matters not appearing of record in the Patent Office. (See Form 35.)

### CONSTRUCTIONS.

It is not the practice to split up cases and furnish copies of parts.

Marsh Engineering Co., 193 O. G. 510.

The certificate of a judge is necessary.

Standard Adding Machine Co., 160 O. G. 257.

The trustee in bankruptcy has no such title to the applications as would justify his request for access to and copies thereof. Whether he has such an interest as would justify his being allowed to inspect them can only be decided after a hearing upon a petition duly filed, with proof of service upon the owner, in accordance with the practice set out in the decisions in the cases of Commercial Mica Co., 129 O. G. 479 and Bullock Electric Mfg. Co., 129 O. G. 1611.

In re Ives, 149 O. G. 309.

Where the patent in suit refers to an abandoned application, parties entitled to obtain copies.

Marvin Estate Co., 148 O. G. 571.

An order of the Court advisable but not necessary.

Marvin Estate Co., 148 O. G. 171.

A petition to inspect and obtain copies of an abandoned application of which patent in suit seems to be a division. The abandoned application of Reed, No. 397,553, is a part of the proceedings leading to the grant of the patent in suit, and for that reason virtually part and parcel of said patent. Petition granted.

Vacuum Specialty Co., 142 O. G. 1114.

The practice requires that access to pending applications will be refused except to parties showing a proper interest therein, and the mere allegation of an attorney that the company for which he is a counsel desires to defend a suit brought on a patent divided out of such application is not sufficient showing of interest.

In re Miami Cycle & Mfg. Co., 136 O. G. 1067.

Petition refused because references in patent was not of such a nature as to waive right of secrecy, because not accompanied by certificate of court; because not served on assignee of invention. (Service on attorney not sufficient.)

Commercial Mica Co., 129 O. G. 479; The Bullock Electric Mfg. Co., 129 O. G. 1611.

The petition, however, is not accompanied by proof of service

upon the applicant. For this reason the petition is dismissed without prejudice.

Standard Computing Scale Co. v. Stimpson, 125 O. G. 2047.

Where the patent purports to be a continuation of an earlier application, it is to be presumed that the right of the public to inspect the earlier application was affirmatively determined by the issue of the patent with such reference therein; but where the patent contains no reference to earlier applications, the patentee should be given opportunity to produce such reasons as he may have at his command why access should not be permitted.

Lanning, 124 O. G. 2902.

Copy of application of defeated party to an interference granted upon a petition duly served upon the applicant, no objection being offered, and a court stating that it would be admitted in evidence.

Benedict v. Morsell, 116 O. G. 874.

An application was required to be abandoned before patent allowed. A formal abandonment was filed. Held, that the record of the abandoned case was part of the proceeding leading to the grant of the patent, and as such accessible to the public.

Doman, 115 O. G. 804; Heard, 114 O. G. 2381.

It is the settled policy of the Office to preserve the various parts of complete applications as records of the cases in which they are originally filed. (Ayres, 51 O. G. 1944; Lawson, 101 O. G.; Priest, 103 O. G. 428. Rule 173.)

Farnhan, 114 O. G. 2090.

Petitioner wished a copy of the U. S. application if there was one, for use in defense against a French patent. Held, that the showing was insufficient.

Taupenet, 113 O. G. 1418.

To obtain copies of an abandoned application there must be shown some necessary connection between the applications and the patent upon which suit is brought.

Rusk, 113 O. G. 1418.

If the files are referred to in a record, the precise place should be specified.

Fowler, 113 O. G. 549.

Copies of an abandoned application referred to in a patent in litigation furnished upon affidavit quoted, the patentee not appearing to oppose the motion.

Standard Plunger Elevator Co., 112 O. G. 1480.

Abandoned application referred to in a suit for infringe-



ment. Judge certified that copy would be received in evidence. Petition granted. (109 O. G. 1885.)

Ashtabula Telephone Co., 110 O. G. 860.

Requests for pending or abandoned applications referred to in patents should be supported by a showing of reasons why they are desired, together with proof of service upon the applicant of the papers constituting the request and showing.

Dyar, 106 O. G. 1508.

The request is defective, in that it is not sufficiently explicit. The particular application, copies of which it is desired to obtain, is not specified.

McWilliams, 100 O. G. 2774.

Abandoned applications on file in the Patent Office are not open to public inspection.

Wycoff, 1892 C. D. 108, 59 O. G. 1104.

Abandoned applications on file in the Patent Office are not open to public inspection.

Wycoff, 1892 C. D. 108, 54 O. G. 1104.

A petition, accompanied by a reasonable suggestion of their necessity for purposes of evidence, for certified copies of an abandoned application, will be granted, though permission to inspect the abandoned cases in the Patent Office will be refused.

Fowler and Fowler, 1889 C. D. 209, 49 O. G. 562.

### *EXTENSIONS.*

#### **Rule 180. Extensions.**

Patents can not be extended except by act of Congress.

Rev. Stat., sec. 4924.

### *DISCLAIMERS.*

#### **Rule 181. Disclaimer of Parts of Inventions not New.**

Whenever, through inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, a patentee has claimed as his invention or discovery more than he had a right to claim as new, his patent will be valid for all that part which is truly and justly his own, provided the same is a material

or substantial part of the thing patented; and any such patentee, his heirs or assigns, whether of the whole or any sectional interest therein, may, on payment of the fee required by law (\$10), make disclaimer of such parts of the thing patented as he or they shall not choose to claim or to hold by virtue of the patent or assignment, stating therein the extent of his interest in such patent. Such disclaimer shall be in writing, attested by one or more witnesses, and recorded in the Patent Office; and it shall thereafter be considered as part of the original specification to the extent of the interest possessed by the claimant and by those claiming under him after the record thereof. But no such disclaimer shall affect any action pending at the time of filing the same, except as to the question of unreasonable neglect or delay in filing it.

#### CONSTRUCTIONS.

The power to disclaim is a beneficial one, and ought not to be denied except where it is resorted to for a fraudulent and deceptive purpose. We think there is no force in the criticism that a disclaimer may not extend to a part of the specification as well as to a distinct claim.

*The Carnegie Steel Co., Ltd., v. The Cambria Co.*, 99 O. G. 1870, 1902 C. D. 592.

This rule does not refer to disclaimers which are filed to make an application conform to the state of the art. (V. R. 182.)

*Murdoch*, 1879 C. D. 260.

The effect of a disclaimer is entirely neutralized when, in its substance, it is contradictory of the claim, and not merely explanatory of it.

*Hobson*, 1872 C. D. 20.

A disclaimer should specify by verbal description the particular thing or construction to which it was designed to apply. It is not sufficient to disclaim all things, arrangements and combinations shown and described in a certain patent.

*Richardson*, 1871 C. D. 303.

**Rule 182. Different Kinds of Disclaimers.**

The statutory disclaimers treated of in Rule 181 are to be distinguished from those which are embodied in original or reissue applications, as first filed or subsequently amended, referring to matter shown or described, but to which the disclaimant does not choose to claim title, and also from those made to avoid the continuance of an interference. The disclaimers falling within this present rule must be signed by the applicant in person and require no fee. (See Rule 107. For forms of disclaimers see appendix, Forms 28 and 29.)

*ASSIGNMENTS.***Rule 183. Assignability of Patents.**

Every patent or any interest therein is assignable in law by an instrument in writing; and the patentee or his assigns or legal representatives may, in like manner, grant and convey an exclusive right under the patent to the whole or any specified part of the United States.

Rev. Stats., sec. 4898.

*CONSTRUCTIONS.*

See Rules 5, 6 and 26.

It seems to be plain that legal title to a patent does not completely vest in the assignee until the patent is issued. Before that, an assignment of the right to a patent gives the assignee merely legal title to such right as the patentee may have. As between the assignee and the U. S. these rights are equitable.

*Thompson v. Automatic Fire Protection Co.*, 197 F. 754.

Inasmuch as M. made a legal transfer of his inchoate right to the K. K. Mfg. Co., and requested the patent to issue to that Company, and the H. R. Miller Mfg. Co. is adjudged a bankrupt, the title of the bankrupt to the inchoate right is vested, by operation of law, in the trustee in bankruptcy under the provision of Bankruptcy Act, and the trustees in bank-



ruptey having made a sale of the property in question to the petitioner, and that sale having been approved by a court of competent jurisdiction, it is held that the petitioner should be recognized in the prosecution of the above entitled applications, and that when patents are granted thereon they shall issue to the petitioner as assignee.

Slibler, 177 O. G. 1044.

Apparently a request to issue the patent to the assignee is not necessary to the completeness of the assignment.

Wende v. Horine, 191 F. 620.

### **Rule 184. May be Vested in Whom.**

Interest in patents may be vested in assignees, in grantees of exclusive territorial rights, in mortgages, and in licenses.

(a) An assignee is a transferee of the whole interest of the original patent or of an undivided part of such whole interest, extending to every portion of the United States. The assignment must be written or printed and duly signed.

(b) A grantee acquires by the grant the exclusive right, under the patent, to make, use, and vend, and to grant to others the right to make, use, and vend, the thing patented within and throughout some specified part of the United States, excluding the patentee therefrom. The grant must be written or printed and be duly signed.

(c) A mortgage must be written or printed and be duly signed.

(d) A licensee takes an interest less than or different from either of the others. A license may be oral, written, or printed, and if written or printed, must be duly signed.

### *CONSTRUCTIONS.*

The Supreme Court has said (*Pope Mfg. Co. v. Gormully*, 59 O. G. 471) that part of the claims of a patent cannot be assigned.

McCormick, 116 O. G. 1183-1184.

Subject-matter of this rule.

Hunter, 1891 C. D. 122, 56 O. G. 929.

### **Rule 185. Validity of Assignment.**

An assignment, grant, or conveyance of a patent will be void as against any subsequent purchaser or mortgagee for a valuable consideration without notice unless recorded in the Patent Office within three months from the date thereof (or prior to such subsequent purchase or mortgage. Proposed Law H. R. 11984).

If any assignment, grant, or conveyance of any patent shall be acknowledged before any notary public of the several States or Territories or the District of Columbia, or any commissioner of the United States circuit court, or before any secretary of legation or consular officer authorized to administer oaths or perform notarial acts under section 1750 of the Revised Statutes, the certificate of such acknowledgment, under the hand and official seal of such notary or other officer, shall be *prima facie* evidence of the execution of such assignment or conveyance.

Rev. Stat., sec. 4898.

Act Mar. 3, 1897.

### *CONSTRUCTIONS.*

Subject-matter of this rule.

Funiston, 1889 C. D. 225.

### **Rule 186. Recording.**

No instrument will be recorded which is not in the English language and which does not, in the judgment of the Commissioner, amount to an assignment, grant, mortgage, lien, incumbrance, or license, or which does not affect the title of the patent or invention to which it relates. Such instrument should identify the patent by date and number; or, if the invention be unpatented, the name of the inventor,

the serial number, and date of the application should be stated.

### CONSTRUCTIONS.

The transfer of an interest in a company which he agrees to form to promote invention is not a recordable assignment.

Farand, 181 O. G. 267.

It is held that the word "lien" in Rule 198 does not refer to an *ex parte* statement or affidavit by the beneficiary under the lien.

Clark, 115 O. G. 250.

An instrument may be an assignment and convey the legal title even if a license is reserved.

Rowand, 114 O. G. 2091.

The law does not provide for recording evidence relating to assignments, but merely for recording the instruments themselves. Letters are merely evidence, and cannot be recorded.

Charlton, 104 O. G. 1120.

The instrument must be of such a character that it may itself affect the title or the rights of the patentee. The Office cannot strike from the record any instrument regularly and properly recorded. It does not pass upon evidence as to validity, and does not record anything which merely constitutes such evidence.

Flanigan, 103 O. G. 428.

No residence given, nor filing date.

Brand, 821 O. G. 893, 1898 C. D. 12, 82 O. G. 893.

### Rule 187. Conditional Assignments.

Assignments which are made conditional on the performance of certain stipulations, as the payment of money, if recorded in the office are regarded as absolute assignments until canceled with the written consent of both parties or by the decree of a competent court. The office has no means for determining whether such conditions have been fulfilled.

### CONSTRUCTIONS.

Ratifications of assignment by persons not appearing as parties thereto are subject to fees for recording, in addition to those charged for recording the assignment.

Bradford v. Hood, 123 O. G. 1283.



A case that passes on the subject-matter of this rule.

Pender, 123 O. G. 2975.

An assignment of an application includes any application divided therefrom.

Wurtz, 120 O. G. 2441.

An assignment referring to an application filed by two parties as joint inventors cannot be applied to an application or patent in the name of one of them as a sole inventor, even where the same invention is claimed in both cases.

Harris, 116 O. G. 297.

The instrument is to be taken as a whole in identifying the application.

E. P. O'Leary, 91 O. G. 2001.

Assignment and license—difference.

Rosback, 89 O. G. 705.

### **Rule 188. Patent Issue to Assignee.**

In every case where it is desired that the patent issue to an assignee, the assignment must be recorded in the Patent Office at a date not later than the day on which the final fee is paid. (See Rule 26.) The date of the record is the date of the receipt of the assignment at the office.

#### *CONSTRUCTIONS.*

An assignment by a master under order of the Court refused recognition.

McPherson, 117 O. G. 275.

An assignment must be given force by the Office until modified by the written consent of the parties or a decree of a competent court.

Milton, 97 O. G. 2307.

Questions under this rule reviewable by Secretary of the Interior.

Cole Co., 1893 C. D. 138, 65 O. G. 1915.

The provisions of the rule are never departed from except in cases where both the inventor and the assignee request that the patent shall issue to the assignee, the assignment being on record not later than the day of closing the weekly issue, namely, Thursday of every week.

Cole Co., 1893 C. D. 138, 65 O. G. 1915.

**Rule 189. Acknowledgment of Assignments.**

The receipt of assignments is generally acknowledged by the office. They are recorded in regular order as promptly as possible, and then transmitted to the persons entitled to them. (For form of assignment, see appendix, forms 38-43.)

*CONSTRUCTIONS.*

“It is believed that the Office should follow the uniform rule of not returning an assignment filed to any one save the person filing it or the beneficiary of the instrument. It may depart from the rule upon the advice of a court of competent jurisdiction, but has no machinery or jurisdiction to investigate and determine the rights of the parties except as shown by the instrument itself.”

Hogan, 105 O. G. 1780.

*OFFICE FEES.*

**Rule 190. Payable in Advance.**

Nearly all the fees payable to the Patent Office are positively required by law to be paid in advance—that is, upon making application for any action by the office for which a fee is payable. For the sake of uniformity and convenience, the remaining fees will be required to be paid in the same manner.

Rev. Stat., sec. 4893.

**Rule 191. Schedule of fees.\***

The following is the schedule of fees and of prices of publications of the Patent Office:

|   |         |
|---|---------|
| On filing each original application for a patent, except in design cases..... | \$15.00 |
| On issuing each original patent, except in design cases.....                  | 20.00   |

\*It is proposed to make the filing fee \$20.00 and the final fee \$15.00.

## In design cases:

|  |       |
|--|-------|
| For 3 years and 6 months.....  | 10.00 |
| For 7 years.....   | 15.00 |
| For 14 years.....  | 30.00 |
| On every application for the reissue of a patent,  | 30.00 |
| On filing each disclaimer.....   | 10.00 |
| On an appeal for the first time from the pri-<br>mary examiner to the examiners in chief...  | 10.00 |
| On every appeal from the examiners in chief to<br>the Commissioner.....  | 20.00 |
| For certified copies of patents if in print:   |       |
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| For the certificate.....   | .25   |
| For the grant.....   | .50   |
| For certifying to a duplicate of a model..   | .50   |
| For manuscript copies of records, for every 100<br>words or fraction thereof.....  | .10   |
| If certified, for the certificate additional..   | .25   |
| For 20-coupon orders, each coupon good for one<br>copy of a printed specification and drawing,<br>and receivable in payment for photographic<br>prints ..... | 2.00  |
| For 100 coupons in stub book.....  | 10.00 |
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| For photo prints of drawings, for each sheet of<br>drawings:   |       |
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|   |      |
|---|------|
| For recording every assignment, agreement, power of attorney, or other paper, of 300 words or under.....  | 1.00 |
| Of over 300 and under 1,000 words.....  | 2.00 |
| For each additional 1,000 words or fraction thereof.....  | 1.00 |
| (It is proposed, H. B. 11984, to add "For each additional patent or application included in one writing, twenty-five cents additional.")  |      |
| For abstracts of title to patents or inventions:  |      |
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| Each additional hour or fraction thereof..  | .50  |
| For each brief from the digest of assignments, of 200 words or less.....  | .20  |
| Each additional 100 words or fraction thereof .....   | .10  |
| For searching titles or records, one hour or less,  | .50  |
| Each additional hour or fraction thereof..  | .50  |
| For assistance to attorneys in the examination of publications in the Scientific Library, one hour or less.....   | 1.00 |
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|  |      |
|--|------|
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| For the library edition, monthly volumes from Jan. 1, 1906, to June 30, 1912, tan duck binding .....   | 5.00 |
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| In paper covers.....   | 1.00 |

A single uncertified copy of a decision or action by any



tribunal of this Office will be furnished to an interested party without charge.

Taylor, 1892 C. D. 96.

Only one fee on appeal to the Examiners-in-Chiefs in a single case.

Thomson, 1891 C. D. 138, 56 O. G. 1203.

A case that passes on the subject-matter of the rule.

Bradford & Hood, 123 O. G. 1283. See note to Rule 198.)

### **Rule 192. Order for copy of Assignment.**

An order for a copy of an assignment must give the liber and page of the record, as well as the name of the inventor; otherwise an extra charge will be made for the time consumed in making any search for such assignment.

Much time may be saved by making the order for copies definite. See notice, 233 O. G. 1.

### **Rule 193. Copies and Tracings from the Files.**

Persons will not be allowed to make copies or tracings from the files or records of the office. Such copies will be furnished, when ordered, at the rates already specified.

### **Rule 194. Mode of Payment.**

All payments of money required for office fees must be made in specie, Treasury notes, national-bank notes, certificates of deposit, post-office money orders, or certified checks. Money orders and checks should be made payable to the "Commissioner of Patents." Payment may also be made to the Treasurer, or to any of the depositaries, national banks, or receivers of public money, designated by the Secretary of the Treasury for that purpose, who will issue a certificate of deposit in triplicate and will forward the original and the duplicate certificates to the Sec-

retary of the Treasury and the Commissioner of Patents, respectively, and will give the triplicate certificate to the depositor. Money sent by mail to the Patent Office will be at the risk of the sender. Letters containing money should be registered. In no case should money be sent with models.

Rev. Stat., sec. 4935.

### CONSTRUCTIONS.

See notes to Rules 164 and 167.

Applicants and attorneys should take notice of the fact that the last regular mail delivery at the Patent Office is at about noon each day, and it would seem to be an act of prudence, where the matter is of vital importance, as in the present case, and it is doubtful whether the papers will reach the Patent Office in time by the regular mail, to employ some other agency, or at least to affix a special delivery stamp to the envelope.

136 O. G. 657.

The duplicate and not triplicate receipt sent to the Office. Date of payment and not date of receipt prevails.

Connell, 107 O. G. 2235.

It was his duty to pay the fee in time to obtain the certificate and mail it within the six months.

Baldwin, 106 O. G. 1780.

Coupons are only received when properly filled out.

92 O. G. 441.

A draft dishonored because of failure of bank does not constitute a payment of a patent fee. (Disc. of Sec.)

Wash, 1897 C. D. 204, 81 O. G. 799.

History of the rule.

Griffith, 1897 C. D. 46, 80 O. G. 1126.

This rule does not interfere with the right given an applicant by the statute of paying patent fees to the officers designated in section 4935 R. S. any time within the period fixed by law, but prevents the abuse of this privilege by requiring that the certificate of deposit shall be promptly forwarded to the Patent Office.

Griffith, 1897 C. D. 46, 80 O. G. 1126.

The part of this rule relating to certificates of deposit, adopted June 18, 1897, should not be held to apply to certificates of deposit issued prior to the approval of the rule, pro-

vided they are forwarded to the patent Office within a reasonable time after the publishing of said rule.

Griffith, 1897 C. D. 46, 80 O. G. 1126.

### *REPAYMENT OF MONEY.*

#### **Rule 195. Money Paid by Mistake Refunded.**

Money paid by actual mistake, such as a payment in excess, or when not required by law, or by neglect or misinformation on the part of the office, will be refunded; but a mere change of purpose after the payment of money, as when a party desires to withdraw his application for a patent or for the registration of a trade-mark, or to withdraw an appeal, will not entitle a party to demand such a return.

Rev. Stat., sec. 4936.

### *CONSTRUCTIONS.*

Hereafter all patent fees shall be paid to the Commissioner of Patents, who shall deposit the same in the Treasury of the United States in such manner as the Secretary of the Treasury shall direct, and said Commissioner is authorized to pay back any sum or sums of money paid to him by any person by mistake or in excess of the fee required by law. Excerpt from the Deficiency Appropriation Act, approved March 6, 1920.

Fee not returned or transferred when applicant finds that another than himself was the real inventor.

Giles, 190 O. G. 547.

A new reference cited in Commissioners decision, the appeal fees not returned, as new citation was made to cure a defect not previously pointed out by applicant.

Hofmann, 125 O. G. 991.

The Examiner's ruling was a judicial decision subject to review upon appeal, and since the applicant accepted his decision without appeal it is not entitled to the return of the fee in the present case.

The Chapot Shirlaw Co., 121 O. G. 2327.

A filing fee will not be transferred from a proper sole application to a joint application. A fee paid as a joint application which the Office has refused to file may be applied to a sole application.

Harris, 118 O. G. 1682.



The appeal was in order, and, having decided to take the same, the petitioner made no mistake in paying the necessary fee. The motion to reopen, with the consequent proceedings which the petitioner brought and carried on, instead of following up the appeal, represents a mere change of purpose on his part. The fee not returned.

Townsend, 118 O. G. 1386.

A joint application became abandoned for want of filing fee. One of the joint inventors filed an application with fee—a request to transfer the fee to a subsequent joint application refused.

Harris, 117 O. G. 1164.

Division requested found to be an error. The fee not returned.

Thompson, 107 O. G. 270.

The record of each application must be complete within itself, and the parts of an application once filed cannot be used as parts of a later application.

103 O. G. 428.

Money will not be returned merely because the applicant wishes to change the original application into one for a re-issue.

Priest, 103 O. G. 428.

Mistake in payment, not a mistake in judgments, as where one makes an application as a sole inventor when he should have applied as a joint inventor. Application to a different application is equivalent to a repayment.

101 O. G. 2079.

Applicant filed an application which was rejected. He then sought to introduce new claims which were rejected for new matter, the Examiner saying that the matter was patentable. In a separate application, applicant filed an application for such new matter, which was rejected by the new Examiner. Fee not returned. (Motion for rehearing denied.) 101 O. G. 2827.

Fowler, 101 O. G. 1833-4.

Drawings in one case and specification which was a copy of a specification in another case filed. Refused to apply the filing fee in a new case.

Lawson, 101 O. G. 1833.

When a caveat was filed under the mistaken idea that it was only necessary to state the object of the invention, the fee will not be returned.

Landenberger, 99 O. G. 1866.

An appeal was taken to Examiner-in-Chief, who decided

that the appeal was improper under Rule 124. The return of the appeal fee refused.

Brill & Adams, 98 O. G. 2587.

Question as to whether an application with fee should be construed as for a design or mechanical patent.

Hartje, 95 O. G. 2485.

When an appeal is regularly taken, and the fee therefor paid, but thereafter the applicant changes his purpose, and concludes not to prosecute the appeal. Held that there was no such mistake in the payment as would warrant the return of the appeal fee.

Horton, 1897 C. D. 207, 81 O. G. 800.

An appeal fee will not be returned because applicant concludes not to prosecute.

Horton, 1896 C. D. 99, 77 O. G. 2137.

Request after examination for the return of fee paid upon an application for a design upon the same day that a patent issued to the same inventor for the same design refused.

Flomerfelt, 1895 C. D. 101, 73 O. G. 1411.

Where an applicant paid a second renewal fee on the very day that a decision was published to the effect that there was no authority in the statute for more than one renewal fee of an application. Held that the fee was paid by mistake, and should be returned.

Smith, 1895 C. D. 99, 71 O. G. 297.

Where the original application had been stricken from the files because it appeared that the inventor has signed and sworn to it in blank—Held, that the fee formerly paid upon said application could not be applied to a new application filed in place thereof.

Ayres, 1890 C. D. 103, 51 O. G. 1944.

When an application is made, by mistake, for a mechanical patent, the fee will not be applied as part payment for a design patent.

Sellers, 1870 C. D. 58.

A case that passes on the subject-matter of this rule.

Zehrbach, 108 O. G. 290.

## Rule 196. Official Gazette.

The Official Gazette, a weekly publication which has been issued since 1872, takes the place of the old Patent Office Report. It contains claims of all patents issued, including reissues and designs, with por-

tions of the drawings selected to illustrate the inventions claimed, illustrations of trade-marks published, and lists of trade-marks, prints, and labels registered. It also contains decisions rendered by the courts in patent cases and by the Commissioner of Patents, and other special matters of interest to inventors.

The Gazette is furnished to subscribers at the rate of \$5 per annum. When sent abroad, an additional charge is made for the payment of postage. Single copies are furnished for ten cents. All orders and remittances for the Gazette should be sent to the Superintendent of Documents, Government Printing Office, Washington, D. C. The Gazette is issued in monthly volumes, with a title page and index to each volume. An index is published annually, which is sent to all subscribers without additional cost.

On June 30, 1912, the publication of the monthly library edition, issued since 1872, containing the full specifications and drawings of all patents granted during the previous month, was suspended.

Rev. Stat., sec. 489.

#### *LIBRARY REGULATIONS.*

#### **Rule 197. Removal of Books.**

Officers of the bureau and members of the examining corps only are allowed to enter the alcoves or take books from the scientific library.

Books taken from this library must be entered in a register kept for the purpose, and returned on the call of the librarian. They must not be taken from the building except by permission of the Commissioner.

Any book lost or defaced must be replaced by a new copy.



Patentees and others doing business with the office can examine the books only in the library hall.

Translations will be made only for official use.

Copies or tracings from works in the library will be furnished by the office at the usual rates.

Rev. Stat., sec. 486.

#### *AMENDMENTS OF THE RULES.*

##### **Rule 198. Publication of Amendment.**

All amendments of the foregoing rules will be published in the Official Gazette.

#### *QUESTIONS NOT SPECIFICALLY PROVIDED FOR.*

##### **Rule 199. Supervisory Authority of the Commissioner.**

All cases not specifically defined and provided for in these rules will be decided in accordance with the merits of each case under the authority of the Commissioner, and such decision will be communicated to the interested parties in writing.

#### *CONSTRUCTIONS.*

In an interference case, when time seemed to be needlessly consumed by an applicant in contest with a patentee.

Gregory, Jackson & Connet v. Ledoux, 219 O. G. 929.

Upholding authority of the Commissioner, even after a favorable decision by the Board.

Case Moore v. U. S. ex rel. Chott, 192 O. G. 520.

The supervisory power of the Commissioner will not be exercised to require a dissolution of an interference unless a proper affidavit under Rule 75 was filed.

Hodgkinson v. Roller, 185 O. G. 251.

The Supervisory authority of the Commissioner will not be exercised where there is still an appeal to him.

Brown v. Inwood & Lavenberg, 135 O. G. 895; Frost v. Chase, 151 O. G. 741.

Interference dissolved, apparently under supervisory power.

Reechert v. Brown, 124 O. G. 2903.

See note to Rule 124.

The supervisory authority of the Commissioner will be exercised only in a clear case.

Munro v. Walker, 122 O. G. 2062.

There is no such error in the Examiner's decision as would warrant the review of the Primary Examiner's decision affirming the patentability of a claim.

Rinsche v. Sandherr, 105 O. G. 1780.

An interference may be dissolved, under the supervisory authority of the Commissioner, but the power should be exercised with caution, and only in a clear case.

Wilcomb v. Lasher, 105 O. G. 743.

It is only in rare cases that the supervisory authority of the Commissioner will be exercised, and then only to the extent of returning it to the Examiner to be reconsidered. (See Hicks & Costello, 103 O. G. 1163.)

Read v. Scott, 101 O. G. 449.

The discretionary power of the Commissioner should be exercised only in exceptional cases, and then only to correct some palpable error in the decision of the Examiner which is clear and evident on its face.

Goss v. Scott, 96 O. G. 2307; Denton & Denton v. Riker, 98 O. G. 415. See Ware, 97 O. G. 2744.

That authority should be exercised only where the rules present no remedy.

Curtis v. Matsh, 92 O. G. 1236.

The Commissioner has power to withhold a patent even after a favorable decision by a tribunal of the Office, but this power will only be exercised in extreme cases.

Strong, 1891 C. D. 175, 57 O. G. 274.

Cases that pass on the subject-matter of this rule.

Sipschutz v. Floyd, 130 O. G. 2718; Wickers and Furlong v. Weiwurm, 129 O. G. 250-1; Serrell v. Donnelly, 129 O. G. 250-1; Barber v. Wood, 127 O. G. 1991; Daggett v. Kaufmann, 127 O. G. 3641.

## **Rule 200. Application of Former Rules.**

Questions arising in applications filed prior to January 1, 1898, where these rules do not apply, shall be governed by the rules of June 18, 1897.

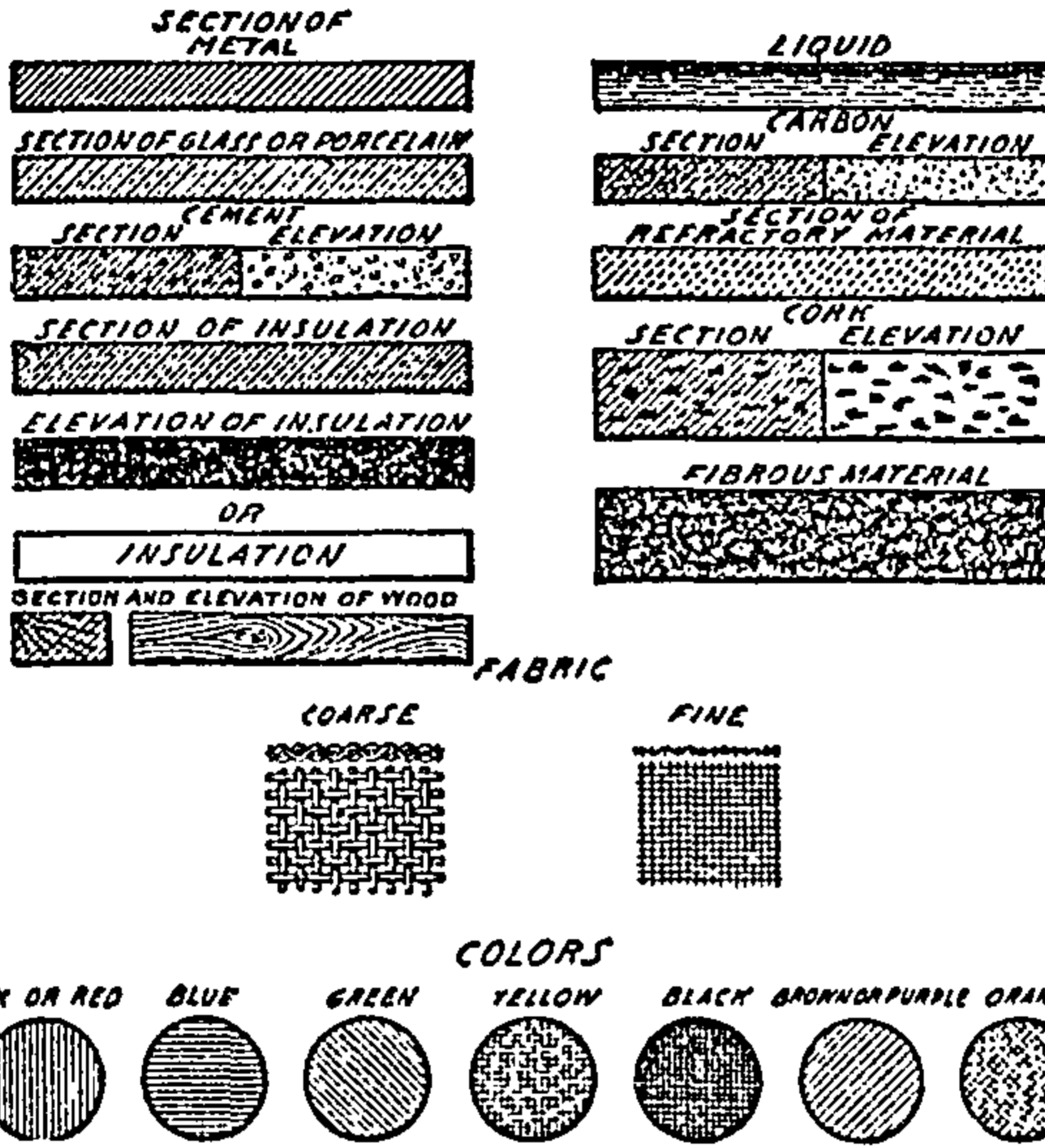
THOMAS EWING,  
*Commissioner of Patents.*

**APPENDICES.**



# APPENDIX A.

## CHARTS FOR DRAFTSMEN.



*ABCDEFGHIJKLMNOPQRSTUVWXYZ*  
*abcdefghijklmnopqrstuvwxyz*  
*1234567890*

### ELECTRICAL SYMBOLS:

|  |   |   |                                     |                                       |  |
|--|---|---|-------------------------------------|---------------------------------------|--|
| <p>1. CROSSING AND JOINED WIRES<br/>OPEN</p>       | <p>2. CROSSING AND JOINED WIRES<br/>CLOSE</p>     | <p>3. MAIN CIRCUITS<br/>SHUNT OR CONTROL CIRCUITS</p> | <p>4. REVERSING SWITCH</p>          | <p>5. SWITCH</p>                      | <p>6. KNIFE SWITCH</p>                 |
| <p>7. DOUBLE POLE SWITCH</p>                       | <p>8. POLE CHANGER</p>                            | <p>9. RESISTANCE</p>                                  | <p>10. NON INDUCTIVE RESISTANCE</p> | <p>11. IMPEDANCE</p>                  | <p>12. RHEOSTAT</p>                    |
| <p>13. INDUCTIVE RESISTANCE</p>                    | <p>14. INDUCTIVE RESISTANCE (ADJUSTABLE CORE)</p> | <p>15. INDUCTIVE RESISTANCE (ADJUSTABLE COIL)</p>     | <p>16. CONDENSER</p>                | <p>17. CONDENSER (ADJUSTABLE)</p>     | <p>18. COMPRESSIBLE PILE REGULATOR</p> |
| <p>19. CIRCUIT BREAKER (INDEPENDENTLY TRIPPED)</p> | <p>20. FUSE</p>                                   | <p>21. LIGHTNING ARRESTER</p>                         | <p>22. GROUND</p>                   | <p>23. CIRCUIT BREAKER (OVERLOAD)</p> | <p>24. CIRCUIT BREAKER (UNDERLOAD)</p> |

|  |  |  |   |   |  |
|--|--|--|---|---|--|
| 25. RELAY<br>  | 26. DIFFERENTIAL RELAY<br>                                 | 27. POLARIZED RELAY<br>                                | 28. A.C. RELAY<br>  | 29. RETARDED RELAY<br>  | 30. RETARDED RELAY<br>   |
| 31. SHUNT<br>  | 32. GALVANOMETER<br>                                       | 33. VOLTMETER<br>                                      | 34. AMMETER<br>   | 35. WATTMETER<br>   | 36. HOT WIRE MEASURING INSTRUMENT<br>                            |
| 37. INTEGRATING METER<br>                                      | 38. WATTHOUR METER-2 WIRE<br>                              | 39. WATTHOUR METER-3 WIRE<br>                          | 40. INCANDESCENT LAMP<br>   | 41. INCANDESCENT LAMPS LIGHTED OUT<br>                          | 42. ELECTRIC ARC<br>   |
| 43. ARCLAMPS LIGHTED OUT<br>                                   | 44. TELEPHONE SUBSTATION<br>                               | 45. AUDION<br>   | 46. BELL<br>  | 47. POLARIZED BELL<br>  | 48. Buzzer<br>   |
| 49. ANNUNCIATORS<br>   | 50. DROP ANNUNCIATOR<br>                                   | 51. TRANSMITTERS<br>                                   | 52. RECEIVERS<br>   | 53. TELEPHONE HOOK<br>  | 54. SWITCH BOARD PLUG AND JACK<br>                               |
| 55. LISTENING RINGING KEY<br>                                  | 56. TELEGRAPH KEY<br>                                      | 57. D.C. RELAY OR SOUNDER<br>                          | 58. CONERER<br>   | 59. WAVE DETECTOR<br>   | 60. ELECTROLYTIC DETECTOR<br>                                    |
| 61. QUENCHED SPARK-GAP<br>                                     | 62. BATTERY<br>  | 63. THERMO-ELECTRIC GENERATOR<br>                      | 64. ANTENNAE<br>  | 65. STORAGE CELL<br>  | 66. COMMUTATOR MOTOR OR GENERATOR<br>                            |
| 67. COMMUTATOR MOTOR OR GENERATOR (SERIES WOUND)<br>           | 68. COMMUTATOR MOTOR OR GENERATOR (SHUNT WOUND)<br>        | 69. COMMUTATOR MOTOR OR GENERATOR (COMPOUND WOUND)<br> | 70. COMMUTATOR MOTOR OR GENERATOR (COMPOUND WOUND) (COMPARATED)<br> | 71. REPLICATION MOTOR<br>                                       | 72. COMMUTATOR THREE-PHASE SHUNT Y MOTOR OR GENERATOR<br>        |
| 73. ANTI-GENERATOR<br>   | 74. ROTARY CONVERTER (THREE-PHASE)<br>                     | 75. SYNCHRONOUS MOTOR OR GENERATOR THREE-PHASE Y<br>   | 76. SYNCHRONOUS MOTOR OR GENERATOR QUARTER-PHASE Δ<br>              | 77. INDUCTION MOTOR OR GENERATOR SQUIRREL CAGE SINGLE-PHASE<br> | 78. INDUCTION MOTOR OR GENERATOR SQUIRREL CAGE THREE-PHASE Y<br> |
| 79. INDUCTION MOTOR OR GENERATOR SQUIRREL CAGE SIX-PHASE Δ<br> | 80. INDUCTION MOTOR OR GENERATOR PHASE WOUND SECONDARY<br> | 81. FREQUENCY CHANGER THREE-PHASE<br>                  | 82. TRANSFORMER<br>   | 83. AUTO TRANSFORMER<br>  | 84. SERIES TRANSFORMER<br>                                       |
| 85. MERCURY ARC RECTIFIER<br>                                  | 86. SYMMETRIC CELL<br>                                     | 87. ADJUSTABLE TRANSFORMER COUPLING<br>                | 88. ADJUSTABLE TRANSFORMER<br>                                      | 89. SPARK GAP<br>   |  |

(See next page.)

This chart should be followed.  
Daum, 267 O. G. 183.

*CONSTRUCTIONS.*

The insulating material should be indicated as provided in the charts.

Whitney, 110 O. G. 603.

See Journal of American Society of Mechanical Engineers, Dec., 1912, page 48.

As to colors, see M. Zimmerman Company, 127 O. G. 1991.

“While a full and complete disclosure is essential, on the other hand, the invention should be disclosed in its *simplest aspect*. For instance, where the invention resides in a motor provided with a main field, an armature and a compensating winding, bearing certain space relations to each other, the invention is best illustrated by the simplest form of diagrammatic view (see Chart for Draftsmen, Rules of Practice) showing these parts conventionally in their proper space relations (Illus.-Pats., 946, 502; 1, 138, 673; 931, 336). To present working drawings or a photographic view of such a motor showing details of base supports, casings, journals and bearings, or even the specific form of pole pieces and windings, where such specific forms are not of the essence of the invention, not only places needless labor upon the office, but obscures the real invention. This is even more true of complicated systems of wiring involving many circuits. *Only circuits typical of the invention* should be illustrated, and they in the *simplest form possible, duplication being ordinarily avoided*. An intricate working drawing of such a system is the bane of all who have to deal with it, and the amount of unnecessary time and labor in the aggregate, spent by the office, attorneys and the courts in deciphering it, both before and after patent, can not be estimated. If we multiply one such patent by the total number of this character among nearly one and a quarter million patents granted by our office we can appreciate what an unnecessary load our system labors under.



“The *main circuit and all apparatus connected in series* therewith should be shown in *heavy lines* and, so far as practicable, *in the same horizontal or vertical direction*, while the *shunt and control circuits* should be shown in *lighter lines*, preferably at right angles thereto. Lines should cross as little as possible. The arrangement of apparatus should be such as to keep the groups distinct and clearly show their relations at a glance (Illus.-Pats., 1, 113, 199; 900, 707; 1, 170, 211). Much ingenuity can be displayed in skillfully arranging the parts of electrical systems and all work in connection therewith is ever afterward facilitated thereby. So vital is this to a clear understanding of the invention that in some cases in division 26, it is necessary for the examiner to make his own layout of the system in working up the case.

“In the case of *methods*, each step of which involves a different particular arrangement of parts of an electrical system, in addition to the showing of the system *the arrangement of parts for each step should be diagrammatically illustrated in the most conventional manner, the diagrams being arranged in the order of the steps*. This is more important to a clear disclosure, even, than a complete layout of the system, including the controller features and connections, since given the sequence of steps desired the designer or draftsman may well supply the latter (Illus.-Pats., 527, 947; 516, 834; 1, 199, 453; 587, 340).

“Where the drawing alone can not be made to tell the whole story of an invention, often a *legend applied to a part* will facilitate search. For instance, where it is essential that the field magnet of a dynamo electric machine be normally saturated, the addition of the words “normally saturated” discloses at a glance the essential characteristic of the device.”

—Richard E. Marine, *Paper before Examining Corps.*

# APPENDIX B.

## FORMS.

### PETITIONS.

The forms given in the Rules of Practice are merely suggestive and not mandatory.

Cook, 1892 C. D. 232, 61 O. G. 1480.

#### No. 1. By a Sole Inventor.

*To the Commissioner of Patents:*

Your petitioner, ....., a citizen of the United States and a resident of .....  
....., in the county of .....  
..... and State of ..... (or, subject, etc.), whose post-office address is .....  
....., prays that letters patent may be granted to him for the improvement in .....  
..... set forth in the annexed specification.

Signed at ....., in the county of ..... and State of .....  
....., this ..... day of ..... 19.....

.....

#### No. 2. By Joint Inventors.

*To the Commissioner of Patents:*

Your petitioners, ....., and .....  
....., citizens of the United States and residents, respectively, of .....  
....., in the county of .....  
and State of ..... and of .....  
....., in the county of .....  
..... and State of .....

(*or*, subjects, etc.), whose post-office addresses are, respectively, ..... and .....  
 ....., pray that letters patent may be granted to them, as joint inventors, for the improvement in ....., set forth in the annexed specification.

Signed at ....., in the county of ..... and State of .....  
 ....., this ..... day of ....., 19.....

.....  
 .....

Two petitions may be used.

S. T. and C. H. Wellman, 88 O. G. 2065.

**No. 3. By an Inventor, for Himself and Assignee.**

*To the Commissioner of Patents:*

Your petitioner, ....., a citizen of the United States and a resident of .....  
 ....., in the county of .....  
 ..... and State of ..... (*or*, subject, etc.), whose post-office address is .....  
 ....., prays that letters patent may be granted to himself and ....., a citizen of the United States and a resident of .....  
 ....., in the county of .....  
 ..... and State of ....., whose post-office address is ....., as his assignee, for the improvement in .....  
 ....., set forth in the annexed specification.

Signed at ....., in the county of ..... and State of .....  
 ....., this ..... day of ....., 19.....

.....  
 .....



**No. 4. Petition with Power of Attorney.***To the Commissioner of Patents:*

Your petitioner, ....., a citizen of the United States and a resident of .....  
 ....., in the county of .....  
 ..... and State of ..... (*or*,  
 subject, etc.), whose post-office address is .....  
 ....., prays that letters patent may be  
 granted to him for the improvement in .....  
 ....., set forth in the annexed specification;  
 and he hereby appoints ....., of  
 ....., State of .....,  
 his attorney, with full power of substitution and revo-  
 cation, to prosecute this application, to make altera-  
 tions and amendments therein, to receive the patent,  
 and to transact all business in the Patent Office con-  
 nected therewith.

Signed at ....., in the county  
 of ..... and State of .....  
 ....., this ..... day  
 of ....., 19.....

.....

Last sentence sufficient authorization for signing and prose-  
 cuting renewal application.

Agee, 101 O. G. 1609.

**No. 5. By an Administrator.***To the Commissioner of Patents:*

Your petitioner, ....., a citi-  
 zen of the United States and a resident of .....  
 ....., in the county of .....  
 ..... and State of ..... (*or*,  
 subject, etc.), whose post-office address is .....  
 ....., administrator of the estate of .....

....., late a citizen of .....  
 ....., deceased (as by reference to the duly certified copy of letters of administration, hereto annexed, will more fully appear), prays that letters patent may be granted to him for the invention of the said ..... (improvement in .....), set forth in the annexed specification.

Signed at ....., in the county of ..... and State of .....  
 ....., this ..... day of ....., 19.....

.....,  
*Administrator, etc.*

**No. 6. By an Executor.**

*To the Commissioner of Patents:*

Your petitioner, ....., a citizen of the United States and a resident of .....  
 ....., in the county of .....  
 ..... and State of ..... (*or, subject, etc.*), whose post-office address is .....  
 ....., executor of the last will and testament of .....  
 ....., late a citizen of .....  
 ....., deceased (as by reference to the duly certified copy of letters testamentary, hereto annexed, will more fully appear), prays that letters patent may be granted to him for the invention of the said ..... (improvement in .....), set forth in the annexed specification.

Signed at ....., in the county of ..... and State of .....

....., this ..... day  
of ....., 19.....

.....,  
*Executor, etc.*

**No. 7. By a Guardian of an Insane Person.**

*To the Commissioner of Patents:*

Your petitioner, ....., a citizen of the United States and a resident of .....  
....., in the county of .....  
..... and State of ..... (*or, subject, etc.*), whose post-office address is .....  
....., and who has been appointed guardian (*or conservator or representative*) of .....  
..... (as by reference to the duly certified copy of the order of court, hereto annexed, will more fully appear), prays that letters patent may be granted to him for the invention of the said .....  
..... (improvement in .....), set forth in the annexed specification.

Signed at, ....., in the county of ..... and State of .....  
....., this ..... day of ....., 19.....

.....,  
*Guardian, etc.*

**No. 8. For a Reissue (by the Inventor).**

*To the Commissioner of Patents:*

Your petitioner, ....., a citizen of the United States and a resident of .....  
....., in the county of .....  
..... and State of ..... (*or, subject, etc.*), whose post-office address is .....



....., prays that he may be allowed to surrender the letters patent for an improvement in ..... granted to him ..... 19....., whereof he is now sole owner (*or*, whereof ..... on whose behalf and with whose assent this application is made, is now sole owner, by assignment), and that letters patent may be reissued to him (*or*, the said ..... ) for the same invention upon the annexed amended specification. With this petition is filed an abstract of title, duly certified, as required in such cases.

Signed at ....., in the county of ..... and State of ..... this ..... day of ....., 19.....

.....  
*[Assent of Assignee to Reissue.]*

The undersigned, assignee of the entire (or of an undivided) interest in the above-mentioned letters patent, hereby assents to the accompanying application.

.....

**No. 9. For a Reissue (by the Assignee).**

[To be used only when the inventor is dead.]

*To the Commissioner of Patents:*

Your petitioner, ....., a citizen of the United States and a resident of ..... in the county of ..... and State of ..... (*or*, subject, etc.), whose post-office address is ..... prays that he may be allowed to surrender the letters patent for an improvement in .....

....., No. ...., granted  
 ....., 19....., to .....  
 ....., now deceased, whereof he is now  
 owner, by assignment of the entire interest, and that  
 the letters patent may be reissued to him for the  
 same invention, upon the annexed amended specifi-  
 cation. With this petition is filed an abstract of title  
 (*or*, an order for making and filing the same, etc.).

Signed at ....., in the county  
 of ..... and State of .....  
 ....., this ..... day  
 of ....., 19.....

**No. 10. For Letters Patent for a Design.**

*To the Commissioner of Patents:*

Your petitioner, ....., a citi-  
 zen of the United States and a resident of .....  
 ....., in the county of .....  
 ..... and State of ..... (*or*,  
 subject. etc.), whose post-office address is .....  
 ....., prays that letters patent may be  
 granted to him for the term of three and one-half  
 years (*or*, seven years or fourteen years) for the new  
 and original design for ....., set  
 forth in the annexed specification.

Signed at ....., in the county  
 of ..... and State of .....  
 ....., this ..... day  
 of ....., 19.....

**No. 11. For a Caveat.**

(This form is obsolete; law relating to caveats re-  
 pealed by act of July 1, 1910.)

**No. 12. For the Renewal of a Forfeited Application.**

*To the Commissioner of Patents:*

Your petitioner, ....., a citizen of the United States and a resident of .....  
 ....., in the county of .....  
 ..... and State of ..... (*or*,  
 subject, etc.), whose post-office address is .....  
 ....., represents that on .....  
 ....., 19....., he filed an application for letters  
 patent for an improvement in .....,  
 serial number ....., which appli-  
 cation was allowed ....., 19.....,  
 but that he failed to make payment of the final fee  
 within the time allowed by law. He now makes re-  
 newed application for letters patent for said inven-  
 tion, and prays that the original specification, oath,  
 drawings, and model may be used as a part of this  
 application.

Signed at ....., in the county  
 of ..... and State of .....  
 ....., this ..... day  
 of ....., 19 .....

The attorney in the original case may not sign.

Thomas, 92 O. G. 1035. See also Barre, 97 O. G. 1176  
 and 94 O. G. 1791; La Brow v. Nix, 177 O. G. 771.

*SPECIFICATIONS.*

**No. 13. For an Art or Process.**

*To all whom it may concern:*

Be it known that I, ....., a  
 citizen of the United States, residing at .....  
 ....., in the county of .....  
 and State of ..... (*or*, subject,



etc.), have invented new and useful improvements in processes of extracting gold from its ores, of which the following is a specification:

This invention relates to the process of extracting gold from its ores by means of a solution of cyanide of an alkali or alkaline earth, and has for its object to render the process more expeditious and considerably cheaper.

In extracting gold from its ores by means of a solution of cyanide of potassium, sodium, barium, etc., the simultaneous oxidation of the gold is necessary, and this has hitherto been effected by the action of the air upon the gold which is rendered oxidizable thereby by the action of the cyanide solution.

Instead of depending solely upon the agency of the air for the oxidizing action I employ, to assist the oxidation of the gold, ferricyanide of potassium or another ferricyanogen salt of an alkali or of an earth alkali in an alkaline solution. By this means the oxidation, being rendered very much more energetic, is effected with a considerably smaller quantity of the solvent. Thus, by the addition of ferricyanide of potassium or other ferricyanides to the cyanide of potassium solution, as much as eighty percent of potassium cyanide may be saved.

It may be remarked that the ferricyanide of potassium alone will not dissolve the gold and does not therefore come under the category of a solvent hitherto employed in processes of extraction. It does not therefore render unnecessary the employment of the simple cyanide as a solvent, but only reduces the amount required owing to the capacity of the ferricyanide to assist the air to rapidly oxidize the gold in the presence of the simple salt. Consequently the

cyanogen of the latter is not used to form the gold cyanide compound.

I claim:

The process of extracting gold from its ores consisting in subjecting the ores to the dissolving action of cyanide of potassium in the presence of ferri-cyanide of potassium, substantially as herein described.

.....

#### No. 14. For a Machine.

*To all whom it may concern:*

Be it known that I, ....., a citizen of the United States, residing at ..... .., in the county of ..... .. and State of ..... .. (or, subject, etc.), have invented a new and useful meat-chopping machine, of which the following is a specification:

My invention relates to improvements in meat-chopping machines in which vertically reciprocating knives operate in conjunction with a rotating chopping block; and the objects of my improvements are, first, to provide a continuously lubricated bearing for the block; second, to afford facilities for the proper adjustment of the knives independently of each other in respect to the face of the block; and, third, to reduce the friction of the reciprocating rod which carries the knives.

I attain these objects by the mechanism illustrated in the accompanying drawing, in which—

Figure 1 is a vertical section of the entire machine; Fig. 2, a plan view of the machine as it appears after the removal of the chopping block and knives; Fig. 3, a vertical section of a part of the machine on the line

3 3, Fig. 2; and Fig. 4, a detailed view in perspective of the reciprocating crosshead and its knives.

Similar numerals refer to similar parts throughout the several views.

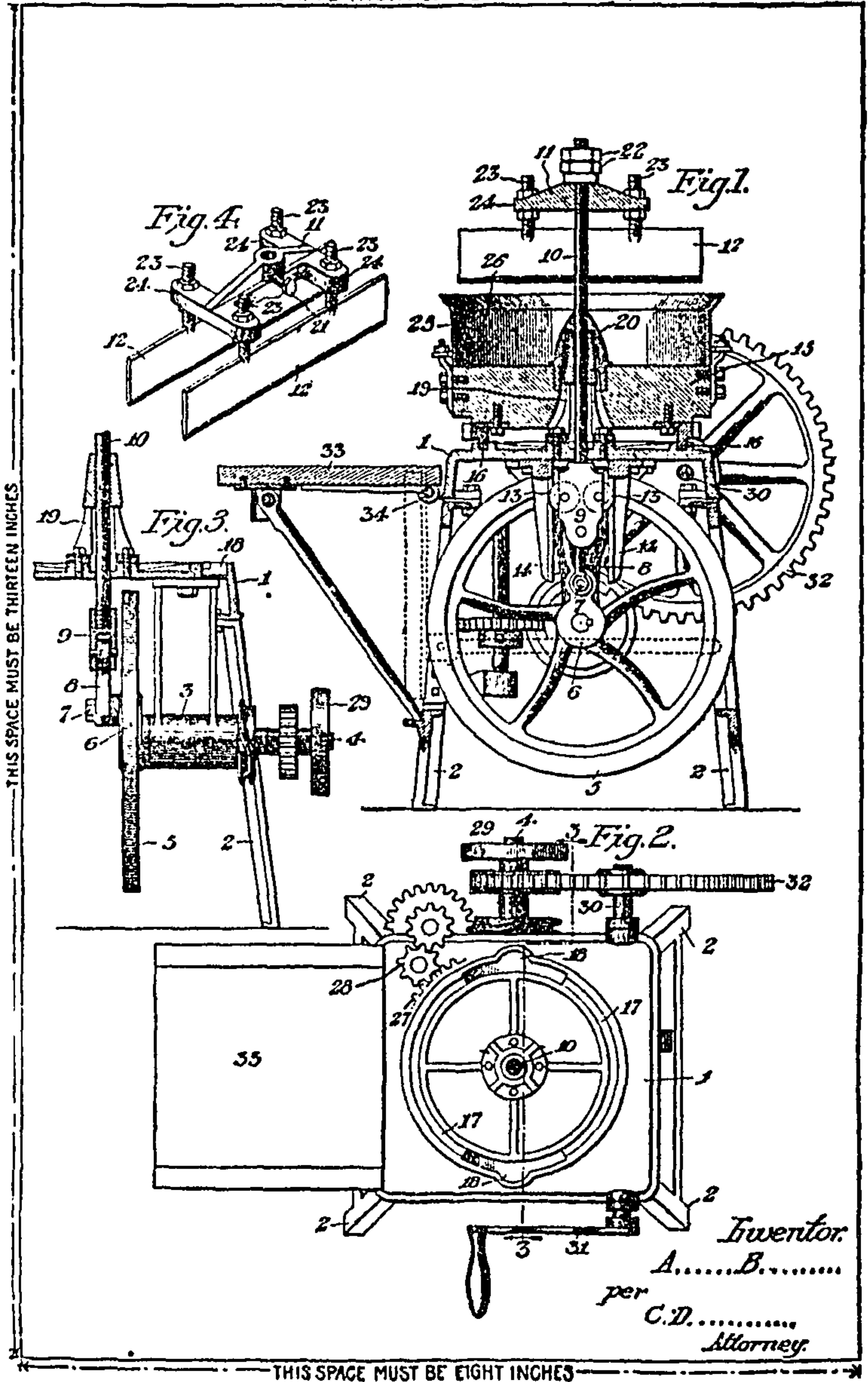
The table or plate 1, its legs or standards 2 2, and the hanger 3, secured to the underside of the table, constitute the framework of the machine. In the hanger 3 turns the shaft 4, carrying a fly-wheel 5, to the hub of which it attached a crank 6, and a crank-pin 7, connected by a link 8, to a pin passing through a crosshead 9, and to the latter is secured a rod 10, having at its upper end a crosshead 11, carrying the adjustable chopping knives, 12 12, referred to hereinafter.

The crosshead 9, reciprocated by the shaft 4, is provided with anti-friction rollers 13 13, adapted to guides 14 14, secured to the underside of the table 1, so that the reciprocation of this crosshead may be accompanied with as little friction as possible.

To the underside of a wooden chopping block 15 is secured an annular rib 16, adapted to and bearing in an annular groove 17 in the table 1. (*See Figs. 1 and 2.*) This annular groove or channel is not of the same depth throughout, but communicates at one or more points (two in the present instance) with pockets or receptacles 18, 18 wider than the groove and containing supplies of oil, in contact with which the rib 16 rotates, so that the continuous lubrication of the groove and rib is assured. The rod 10 passes through and is guided by a central stand 19, secured to the table 1, and projecting through a central opening in the chopping block without being in contact therewith, the upper portion of the said stand being contained within a cover 20, which is secured to the block, and which prevents particles of meat from escaping through the central opening of the same.



THE SIZE OF THE SHEET MUST BE EXACTLY 10 x 13 INCHES. SEE RULE 52, (b).



THIS SPACE MUST BE THIRTEEN INCHES

Inventor  
 A.....B.....  
 per  
 C.D.....  
 Attorney.

THIS SPACE MUST BE EIGHT INCHES

The crosshead 11, previously referred to, and shown in perspective in Fig. 4, is vertically adjustable on the rod 10, and can be retained after adjustment by a set-screw 21, the upper end of the rod being threaded for the reception of nuts 22, which resist the shocks imparted to the crosshead when the knives are brought into violent contact with the meat or the chopping-block.

The knives 12, 12 are adjustable independently of each other and of the said crosshead, so that the coincidence of the cutting-edge of each knife with the face of the chopping-block may always be assured.

I prefer to carry out this feature of my invention in the manner shown in Fig. 4, where it will be seen that two screw-rods 23, 23 rise vertically from the back of each knife and pass through lugs 24, 24 on the cross-head, each rod being furnished with two nuts, one above and the other below the lug through which it passes. The most accurate adjustment of the knives can be effected by the manipulation of these nuts.

A circular casing 25 is secured to the chopping-block, so as to form on the same a trough 26 for keeping the meat within proper bounds; and on the edge of the annular rib 16, secured to the bottom of the block, are teeth 27, for receiving those of a pinion 28, which may be driven by the shaft 4 through the medium of any suitable system of gearing, that shown in the drawing forming no part of my present invention.

This shaft 3 may be driven by a belt passing round the pulleys 29, or it may be driven by hand from a shaft 30, furnished at one end with a handle 31, and at the other with a cog-wheel 32, gearing into a pinion on the said shaft 4.

A platform 33 may be hinged, as at 34, to one edge of the table 1, to support a vessel in which the chopped meat can be deposited. The means by which it may be supported are shown in full lines, and the most convenient method of disposing of it when not in use is shown in dotted lines, in Fig. 1.

I am aware that prior to my invention meat-chopping machines have been made with vertically-reciprocating knives operating in conjunction with rotating chopping-blocks. I therefore do not claim such a combination broadly; but

I claim:

1. The combination, in a meat-chopping machine, of a rotary chopping-block having an annular rib, with a table having an annular recess to receive said rib, and a pocket communicating with the said recess, all substantially as set forth.

2. In a meat-chopping machine, the combination of a rotary chopping-block with a reciprocating cross-head carrying knives, each of which is vertically adjustable on the said cross-head independently of the other, substantially as described.

3. A chopping knife having two screw rods projecting perpendicularly from its back and parallel with the sides of the knife.

4. A meat-chopping machine provided with a rod carrying chopping knives and adapted to be reciprocated, a cross-head secured to said rod, anti-friction rollers mounted on the cross-head, and guides with which the rollers cooperate, substantially as described.

.....

This seems to have had its origin in U. S. letters patent No. 157,213, granted to August Nittinger, Jr., Nov. 24, 1874. The drawing has also been adopted by the Canadian Patent Office. The attorneys of record were unable to give the name of the draftsman.



*Name of the Draftsman Sought.*

We can not tell you at this date the name of the draftsman who made the original drawing, which is now used by the United States and the Canadian Patent Offices. We had several draftsmen at that time who were capable of making the drawings.

Regretting that we can not give you this information, we are,

Yours very truly,

Howson & Howson,  
Solicitors of Patents, Philadelphia.

Specification forming part of Letters Patent No. 157,213, dated November 24, 1874; application filed January 21, 1874.

*To all whom it may concern:*

Be it known that I, August Nittinger, Jr., of Philadelphia, Pa., have invented an Improved Meat-Chopping Machine, of which the following is a specification:

My invention relates to meat-chopping machines in which vertically-reciprocating knives operate in conjunction with a rotating chopping-block; and the objects of my invention are, first, to diminish friction in driving the reciprocating rod which carries the knives; and, second, to provide a continuously-lubricated bearing for the rotating chopping-block, which objects I attain by the mechanism illustrated in the section, Figure 1, plan view, Fig. 2, and perspective view, Fig. 3, of the accompanying drawing.

The frame-work of the machine consists of a table, A, supported on suitable legs or standards, B, and in suitable bearings in the frame turns the driving-shaft D, carrying a fly-wheel, E, a crank-pin on the hub of

which is connected by a link, *a*, to the cross-head G, to which is secured a rod, H, having at its upper end a cross-head, I, carrying the adjustable chopping-knives C, referred to hereafter.

The cross-head G has anti-friction rollers, *e'*, adapted to guides M, secured to the under side of the table A, so that the reciprocation of the cross-head G, consequent upon the rotation of the driving-shaft, may be accompanied with as little friction as possible.

J is the chopping-block, to the under side of which is secured the annular rib *d*, adapted to an annular groove, *e*, in the table A. (See Fig. 2.)

This groove or annular channel is not of the same depth throughout, but communicates at one or more points (two, in the present instance) with deeper pockets, *f*, containing supplies of oil, so that as the annular rib rotates in the groove it will continuously convey from the pockets sufficient oil to insure proper lubrication.

The rod H passes through and is guided by a central stand, K, secured to the table A, the upper portion of this stand, which projects above the chopping-block, being contained within a cover, L, secured to the said block, so as to prevent the escape of particles of meat through the center of the block and the access of such meat to the standard K.

The cross-head I, best observed in the perspective view, Fig. 3, is vertically adjustable on the rod H, and can be secured after the adjustment by a set-screw, X, and from each side of the cross-head project two lugs, *h h*, each pair of lugs carrying a knife, *b*, and each knife having two screw-rods, *i*, passing through the said lugs, and furnished above and below with nuts, so that the knives can be readily adjusted

in the cross-head, while the latter with its knives can be easily adjusted on the rod H.

This plan of adjusting the knives, both in respect to each other and to the surface of the chopping-block, is an important feature of my invention, as one by which the best cutting effect of the knives can always be attained.

A trough, P, for keeping the meat within proper limits on the chopping-block, is secured to the latter, and on the edge of the annular rib *d*, on the under side of the chopping-block, are teeth for receiving those of a pinion, *m*, which may be driven from the shaft D through the medium of any suitable system of gearing, that shown in the drawing forming no part of my present invention.

A platform, Q, is hinged, at *h*, to one edge of the table A, and to the under side of this platform, near the outer edge of the same, is hinged the upper end of a diagonal rod, R, the lower end of which rests upon a ledge, *w*, on one of the stands B of the frame. This platform serves to support a vessel, into which the chopped meat can be deposited; but when the platform is not required for this purpose, and when the machine has to be moved about from place to place, the rod R may be detached from its ledge, the platform lowered, and both platform and rod arranged in the position shown by dotted lines in Fig. 1.

I claim as my invention—

1. The combination, in a meat-chopper, of the rod H, carrying the knives, the block G, secured to the lower end of the rod, and provided with rollers *e' e'*, the guides M M, and crank-shaft connected by the arm *a* to the block G, all as set forth.



2. The combination of the rotating block J, its annular rib *d*, the groove *e*, for receiving said rib, and pockets *f f*, communicating with said groove, all as specified.

In testimony whereof, I have signed my name to this specification in the presence of two subscribing witnesses.

AUGUST NITTINGER, JR.

Witnesses:

WM. A. STEEL,

HARRY SMITH.

**No. 15. For a Composition of Matter.**

*To all whom it may concern:*

Be it known that I, ....., a  
(Full name of applicant.)  
 citizen of ....., residing at ....  
 ....., in the county of .....  
 ..... and State of .....  
 (or, subject of, etc.), have invented a new and useful  
 Non-Conducting Plastic Composition, of which the fol-  
 lowing is a specification:

The object of my invention is the production of a plastic nonconducting composition or cement to be applied to the surfaces of steam-boilers and steam-pipes and other receptacles and conduits as a lagging for preventing radiation of heat and the permeation of water, and rendering them fireproof.

My composition consists of a mixture of paper-pulp or other vegetable fibrous material, a powdered mineral filler, such as soapstone or Portland cement, a mineral fibrous material, such as asbestos, and a mineral cementing material, such as silicate of sodium or potassium (soluble glass).

In preparing the composition I prefer to use the ingredients in about the following proportions, viz., fifty pounds of paper-pulp, fifty pounds of soapstone, twenty-five pounds of asbestos, and three quarts of a 33° Baumé solution of soluble glass. Good results may be obtained, however, when the ingredients are varied within the following limits: vegetable fibrous material, forty to sixty pounds; powdered mineral filler, forty-five to fifty-five pounds; mineral fibrous material, twenty to thirty pounds; soluble glass, two to four quarts of a 30° Baumé to 35° Baumé solution.

The asbestos may in some cases be omitted when a cheaper product is desired, though the composition is not then so efficient for the lagging of surfaces subjected to high temperatures.

These ingredients are mixed with a quantity of water sufficient to form a paste or mortar of such consistency as to enable it to be plastered over the surface to be protected. It may be applied in one or more coats or layers, in the ordinary manner, according to the nature of the article and the amount of protection required.

My composition is light, is fireproof, is a very efficient nonconductor of heat, is impervious to water, adheres without cracking when it dries to the surface to which it is applied, and, as a whole, possesses in a high degree all the desired properties of a lagging for steam-heated surfaces.

I claim:

1. A plastic composition adapted to form a lightweight, fireproof and waterproof lagging for steam-heated surfaces, comprising a vegetable fibrous material, a mineral filler in powdered form and a mineral cementing substance.

2. A plastic composition adapted to form a lagging for steam pipes and the like comprising forty to sixty pounds of paper-pulp, forty-five to fifty-five pounds of powdered soapstone, and two to four quarts of a 30° Baumé to 35° Baumé solution of soluble glass.

3. A plastic composition consisting of a vegetable fibrous material, a powdered mineral filler, a mineral fibrous material and a mineral cementing substance substantially as described.

4. A plastic composition consisting of fifty pounds of paper pulp, fifty pounds of powdered soapstone, twenty-five pounds of asbestos fiber and three quarts of a 33° Baumé solution of soluble glass.

**No. 16. For a Design.**

*To all whom it may concern:*

Be it known that I, ....., a citizen of the United States, residing at .....  
....., in the county of .....  
and State of ..... (or, subject, etc.), have invented a new, original, and ornamental Design for Watch-Cases, of which the following is a specification, reference being had to the accompanying drawing, forming part thereof.

The figure is a plan view of a watch case, showing my new design.

I claim:

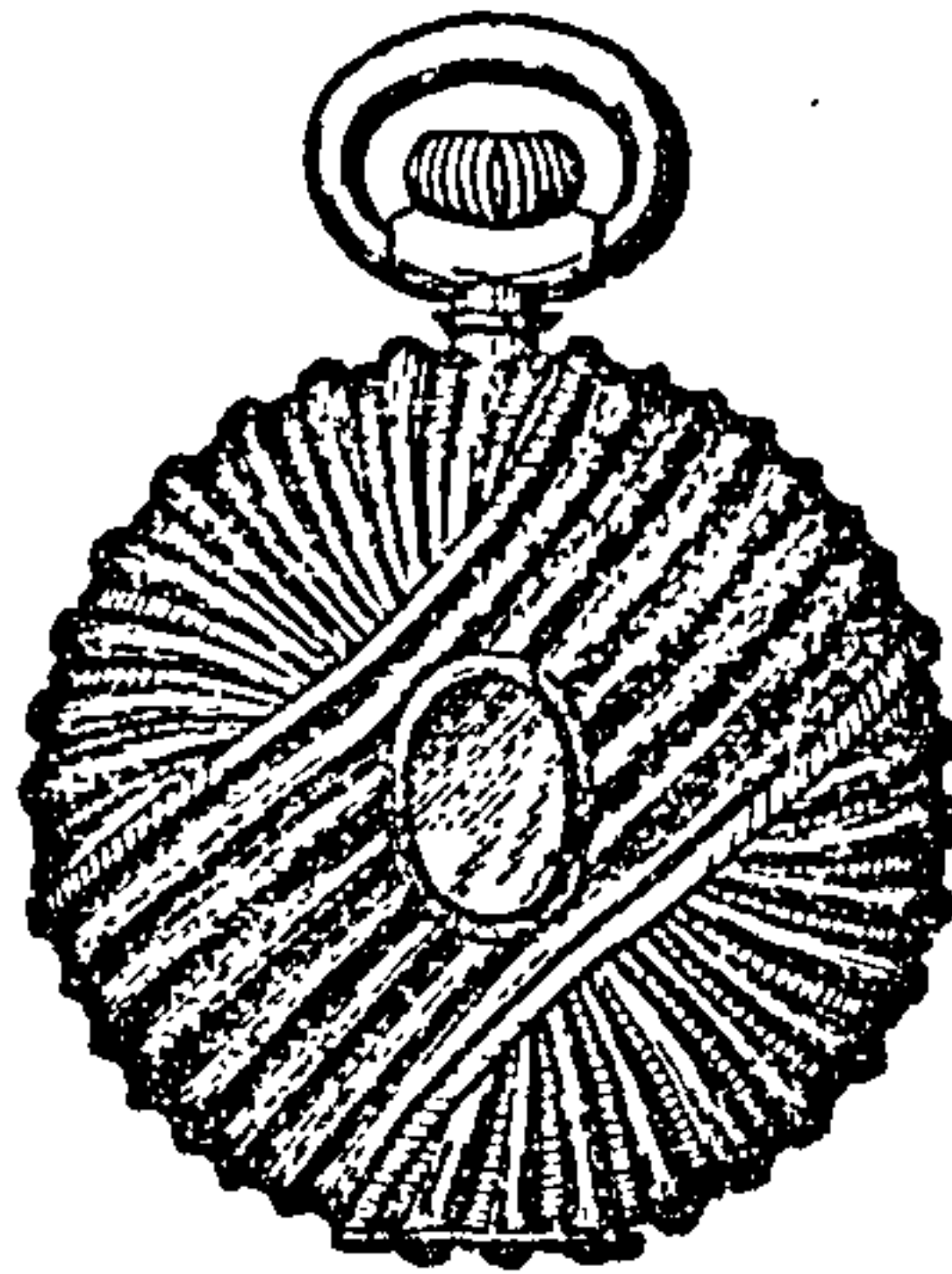
The ornamental design for a watch case, as shown.

.....



*The size of the sheet must be exactly 10x15 inches. See rule 52(b).*

*This space must be thirteen inches*



*Inventor:*  
*I..... B.....*  
*per*  
*G..... C.....*  
*Attorney.*

*This space must be eight inches.*

Design: This descriptive language illustrates, in connection with the drawing of this case, the utter futility of attempting by words to describe the appearance of an object which may be perceived immediately upon inspection of a picture thereof. In designs the appearance is the new thing which is to be secured by a patent. Words do not explain, but rather confuse, when added to the disclosure of the drawing. For this reason such descriptive material should be reduced to a minimum, or, better still, entirely eliminated from design patent specifications.

Freeman, 104 O. G. 1396.

(It is believed the above dicta is more general in its language than is now warranted by the decisions.)—Ed.

“In the testimony whereof,” immediately preceding the signature, is surplusage.

Pappenhagen, 79 Ms. D. 157.

**No. 17. For a Caveat.**

(This form is obsolete; law relating to caveats repealed by act of July 1, 1910.)

*OATHS.*

**No. 18. Oath to Accompany an Application for United States Patent.**

..... }  
 ..... } ss:  
 .....,<sup>1</sup> the above-named petitioner....., being sworn (*or*, affirmed), depose..... and says..... that ..... citizen..... of<sup>2</sup> ..... and resident..... of<sup>3</sup> ....., that ..... verily believe ..... to be the original, first, and<sup>4</sup> ..... inventor..... of the improvement in<sup>5</sup> ..... described and claimed in the annexed specification; that ..... do..... not know and do .....

not believe that the same was ever known or used before ..... invention or discovery thereof, or patented or described in any printed publication in any country before ..... invention or discovery thereof, or more than two years prior to this application, or in public use or on sale in the United States for more than two years prior to this application; that said invention has not been patented in any country foreign to the United States on an application filed by ..... OR ..... legal representatives or assigns more than twelve months prior to this application; and that no application for patent on said improvement has been filed by ..... or ..... representatives or assigns in any country foreign to the United States, except as follows:<sup>6</sup> .....

Inventor's full name:<sup>7</sup> { .....  
 Sworn to and subscribed before me this .....  
 ..... day of ....., 19....  
 [SEAL.] .....  
 [Signature of justice or notary.]  
<sup>8</sup> .....  
 [Official character.]

1. If the inventor be dead, the oath will be made by the administrator; if insane, by the guardian, conservator, or legal representative. In either case the affiant will declare his belief that the party named as inventor was the original and first inventor.
2. If the applicant be an alien, state of what foreign country he is a citizen or subject.
3. Give residence address in full; as "a resident of..... in the county of ....., and State of .....,," or "of No.



..... street, in the city of ....., county of ....., and State (Kingdom, Republic, or Empire) of ....."

4. "Sole" or "joint." (174 O. G. 280.)

5. Insert title of invention.

6. Name each country in which an application has been filed, and in each case give date of filing the same. If no application has been filed, erase the words "except as follows."

7. All oaths must bear the signature of the affiant.

8. . . . "When the person before whom the oath or affirmation is made is not provided with a seal, his official character shall be established by competent evidence, as by a certificate from a clerk of a court of record or other proper officer having a seal."

A certificate of the official character of a magistrate, stating date of appointment and term of office, may be filed in the Patent Office, which will obviate the necessity of separate certificates in individual cases.

When the oath is taken abroad before a notary public, judge, or magistrate, his authority should in each instance be proved by a certificate of a diplomatic or consular officer of the United States.

**No. 19. Oath to Accompany an Application for United States Patent for Design.**

..... }  
..... } ss:

.....,<sup>1</sup> the above-named petitioner....., being sworn (or, affirmed), depose..... and say..... that ....., citizen..... of<sup>2</sup> ..... and resident..... of<sup>3</sup> ....., that ..... verily believe ..... to be the original, first, and<sup>4</sup> ..... inventor of the design for<sup>5</sup> ..... described and claimed in the annexed specification; that ..... do..... not know and do..... not believe that the same was ever known or used before ..... invention thereof, of patented or described in any

printed publication in any country before .....  
 ..... invention thereof, or more than two  
 years prior to this application, or in public use or  
 on sale in the United States for more than two years  
 prior to this application; that said design has not  
 been patented in any country foreign to the United  
 States on an application filed by.....  
 or ..... legal representatives or  
 assigns more than four months prior to this applica-  
 tion; and that no application for patent on said de-  
 sign has been filed by ..... or  
 ..... representatives or assigns  
 in any country foreign to the United States, except  
 as follows: <sup>6</sup>.....

Inventor's full name: <sup>7</sup> { .....  
 .....  
 Sworn to and subscribed before me this .....  
 ..... day of ....., 19....

[SEAL.]

<sup>8</sup> .....  
 [*Signature of justice or notary.*]

.....  
 [*Official character.*]

1. If the inventor be dead, the oath will be made by the administrator; if insane, by the guardian, conservator, or legal representative. In either case the affiant will declare his belief that the party named as inventor was the original and first inventor.

2. If the applicant be an alien, state of what foreign country he is a citizen or subject.

3. Give residence address in full; as "a resident of..... in the county of ....., and State of .....,," or "of No. .... street, in the city of ....., county of ....., and State (Kingdom, Republic, or Empire) of .....,."

4. "Sole" or "joint" (124 O. G. 280).

5. Insert title of invention.

6. Name each country in which an application has been

filed, and in each case give date of filing the same. If no application has been filed, erase the words "except as follows."

7. All oaths must bear the signature of the affiant.

8. . . . "When the person before whom the oath or affirmation is made is not provided with a seal, his official character shall be established by competent evidence, as by a certificate from a clerk of a court of record or other proper officer having a seal."

A certificate of the official character of a magistrate, stating date of appointment and term of office, may be filed in the Patent Office, which will obviate the necessity of separate certificates in individual cases.

When the oath is taken abroad before a notary public, judge, or magistrate, his authority should in each instance be proved by a certificate of a diplomatic or consular officer of the United States.

A case on the subject-matter of this form.

Arms, 127 O. G. 3644.

**No. 20. By an Applicant for a Reissue (Inventor).**

[When the original patent is claimed to be inoperative or invalid "by reason of the patentee claiming as his own invention or discovery more than he had a right to claim as new," this form can be modified accordingly.]

..... } ss:  
..... }  
....., the above-named petitioner, being duly sworn (*or*, affirmed), deposes and says that he does verily believe himself to be the original, first, and <sup>1</sup>..... inventor of the improvement set forth and claimed in the foregoing specification and for which improvement he solicits a patent; that deponent does not know and does not believe that said improvement was ever before known or used; that deponent is a citizen of the United States of America, and resides at .....  
....., in the county of .....  
..... and State of .....; <sup>2</sup> that



deponent verily believes that the letters patent referred to in the foregoing petition and specification and herewith surrendered are inoperative (*or*, invalid), for the reason that the specification thereof is defective (*or*, insufficient), and that such defect (*or*, insufficiency) consists particularly in<sup>3</sup> .....  
 .....; and deponent further says that the errors which render such patent so inoperative (*or*, invalid) arose from inadvertence (*or*, accident, or mistake), and without any fraudulent or deceptive intention on the part of deponent;<sup>4</sup> that the following is a true specification of the errors which it is claimed constitute such inadvertence (*or*, accident, or mistake) relied upon:<sup>3</sup> .....; that such errors so particularly specified arose (*or*, occurred) as follows:<sup>3</sup> .....

Inventor's full name: { .....

Subscribed and sworn to before me this .....  
 ..... day of ....., 19....

[SEAL.]

.....,  
 [Signature of justice or notary.]

.....,  
 [Official character.]

- 1. "Sole" or "joint."
- 2. Rule 46.
- 3. Rule 87.
- 4. Rule 87 (5).

**No. 21. By an Applicant for a Reissue (Assignee).**

[To be used only when the inventor is dead.]

..... } ss:  
 .....

....., the above-named petitioner, being duly sworn (*or*, affirmed), deposes and

says that he verily believes that the aforesaid letters patent granted to ..... are (*here follows Form 20, the necessary changes being made*); that the entire title to said letters patent is vested in him; and that he verily believes the said ..... to be the first and original inventor of the invention set forth and claimed in the foregoing amended specification; and that the said ..... is now deceased.

Sworn to and subscribed before me this ..... day of ....., 19....  
[SEAL.] .....  
[Signature of justice or notary.]  
.....  
[Official character.]

**No. 22. Supplemental Oath to Accompany a Claim for Matter Disclosed but not Claimed in an Original Application.**

..... } ss:  
.....  
....., whose application for letters patent for an improvement in .....  
....., serial No. ...., was filed in the United States Patent Office on or about the ..... day of .....  
....., 19....., being duly sworn (*or, affirmed*), deposes and says that the subject matter of the foregoing amendment was part of his invention, was invented before he filed his original application, above identified, for such invention, was not known or used before his invention, was not patented or described in a printed publication in any country more than two

years before his application, was not patented in a foreign country or an application filed by his legal representatives or assigns more than twelve months before his application, was not in public use or on sale in this country for more than two years before the date of his application, and has not been abandoned.

.....  
 Sworn to and subscribed before me this .....  
 ..... day of ....., 19....

[SEAL.]

.....,  
 [*Signature of justice or notary.*]

.....,  
 [*Official character.*]

**No. 23. Oath as to the Loss of Letters Patent.**

..... }  
 ..... } ss:

....., being duly sworn (*or*, affirmed), depose..... and say..... that the letters patent No. ...., granted to him, and bearing date on the ..... day of ....., 19....., have been either lost or destroyed; that he has made diligent search for the said letters patent in all places where the same would probably be found, if existing, and that he has not been able to find them.

.....  
 Subscribed and sworn to before me this .....  
 day of ....., 19....

[SEAL.]

.....,  
 [*Signature of justice or notary.*]

.....,  
 [*Official character.*]



**No. 24. Oath of Administrator as to the Loss of Letters Patent.**

..... }  
..... } ss:

....., being duly sworn, de-  
pose..... and say..... that he is administra-  
tor of the estate of ....., deceased,  
late of ....., in said county; that  
the letters patent No. ....., granted  
to said ....., and bearing date of  
the ..... day of .....  
....., 19, ....., have been lost or destroyed,  
as he verily believes; that he has made diligent search  
for the said letters patent in all places where the  
same would probably be found, if existing, and espe-  
cially among the papers of the decedent, and that he  
has not been able to find said letters patent.

.....,  
*Administrator, etc.*

Subscribed and sworn to before me this .....  
..... day of ....., 19....

[SEAL.]

.....,  
[Signature of justice or notary.]

.....,  
[Official character.]

**No. 25. Power of Attorney After Application Filed.**

[If the power of attorney be given at any time other than that  
of making application for letters patent, it will be in substan-  
tially the following form:]

*To the Commissioner of Patents:*

The undersigned having, on or about the .....  
..... day of .....,  
19....., made application for letters patent for

an improvement in ..... (*serial number* .....), hereby appoints .....<sup>1</sup> of ..... in the county of ..... and State of ....., his attorney, with full power of substitution and revocation, to prosecute said application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

Signed at ....., in the county of ....., State of .....  
 ....., this ..... day  
 of ....., 19.....

1. If the power of attorney be to a firm, the name of each member of the firm must be given in full.

**No. 26. Revocation of Power of Attorney.**

*To the Commissioner of Patents:*

The undersigned having, on or about the ..... day of ....., 19....., appointed ....., of ....., in the county of ..... and State of ....., his attorney to prosecute an application for letters patent, which application was filed on or about the ..... day of ....., 19....., for an improvement in ..... (*serial number* .....), hereby revokes the power of attorney then given.

Signed at ....., in the county of ..... and State of .....  
 ....., this ..... day  
 of ....., 19.....

**No. 27. Amendment.<sup>1</sup>**

*To the Commissioner of Patents:*

In the matter of my application for letters patents for an improvement in ....., filed ....., 19..... (serial number .....), I hereby amend my specification as follows:

By striking out all between the ..... and ..... lines, inclusive, of page .....

By inserting the words “.....,” after the word “.....,” in the ..... line of the ..... claim; and

By striking out the ..... claim and substituting therefore the following:

.....  
Signed at ....., in the county of ..... and State of .....

.....  
By .....  
*His Attorney in Fact.*

1. In the preparation of all amendments a separate paragraph should be devoted to each distinct erasure or insertion, in order to aid the Office in making the entry of the amendment into the case to which it pertains.

*DISCLAIMERS.*

**No. 28. Disclaimer After Patent.**

*To the Commissioner of Patents:*

Your petitioner, ....., a citizen of the United States, residing at ..... in the county of .....



and State of ..... (or, subject, etc.), represents that in the matter of a certain improvement in ....., for which letters patent of the United States No. .... were granted to ....., on the ..... day of ....., 19....., he is (*here state the exact interest of the disclaimant; if assignee, set out liber and page where assignment is recorded*), and that he has reason to believe that through inadvertence (accident or mistake) the specification and claim of said letters patent are too broad, including that of which said patentee was not the first inventor. Your petitioner, therefore, hereby enters this disclaimer to that part of the claim in said specification which is in the following words, to wit:

.....  
 Signed at ....., in the county of ..... and State of .....  
 ....., this ..... day of ....., 19.....

Witness:

.....  
 .....

**No. 29. Disclaimer During Interference.**

*Interference.*

..... }  
*v.* } Before the examiner of interferences.  
 .....

Subject matter: .....

*To the Commissioner of Patents:*

SIR: In the matter of the interference above noted, under the provisions of and for the purpose set forth

in Rule 107, I disclaim (*set forth the matter as given in declaration of interference*), as I am not the first inventor thereof.

Signed at ....., in the county of ..... and State of .....  
....., this ..... day of ....., 19.....

Witness:

.....  
.....

*APPEALS AND PETITIONS.*

**No. 30. From a Principal Examiner to the Examiners in Chief.**

*To the Commissioner of Patents:*

SIR: I hereby appeal to the examiners in chief from the decision of the principal examiner in the matter of my application for letters patent for an improvement in ....., filed .....  
....., 19....., serial number .....  
....., which on the .....  
....., 19....., was rejected the second time. The following are the points of the decision on which the appeal is taken: (*Here follows a statement of the points on which the appeal is taken.*)

Signed at ....., in the county of ..... and State of .....  
....., this ..... day of ....., 19.....

.....

**No. 31. From the Examiner in Charge of Interferences to the Examiners in Chief.**

*To the Commissioner of Patents:*

SIR: I hereby appeal to the examiners in chief from the decision of the examiner of interferences in the matter of the interference between my applications for letters patent for improvement in ..... and the letters patent of ..... , in which priority of invention was awarded to said ..... The following are assigned as reasons of appeal: (*Here should follow an explicit statement of alleged errors in the decision of the examiner of interferences.*)

Signed at ..... , in the county of ..... and State of ..... , this ..... day of ..... , 19.....

.....

**No. 32. From the Examiners-in-Chief to the Commissioner in Ex Parte Cases.**

*To the Commissioner of Patents:*

SIR: I hereby appeal to the Commissioner in person from the decision of the examiners-in-chief in the matter of my application for letters patent for an improvement in ..... , filed ..... , 19..... , serial number ..... The following are assigned as reasons of appeal: (*Here follow the reason as in Form 30.*)

Signed at ..... , in the county of ..... and State of ..... , this ..... day of ..... , 19.....

.....



**No. 33. From the Examiners-in-Chief to the Commissioner in Interference Cases.**

*To the Commissioner of Patents:*

SIR: I hereby appeal to you in person from the decision of the examiners-in-chief, made .....  
....., 19....., in the interference between my application for letters patent for improvement in ..... and the letters patent of ..... in which priority of invention was awarded to said.....

The following are assigned as reasons of appeal: *(Here should follow an explicit statement of the alleged errors in the decision of the examiners-in-chief.*

Signed at ....., in the county of ..... and State of .....  
....., this ..... day of ..... 19.....

**No. 34. Petition from a Principal Examiner to the Commissioner.**

Application of .....  
Serial number .....  
Subject of invention .....

*To the Commissioner of Patents:*

Your petitioner avers—

First. That he is the applicant above named.

Second. That said application was filed on the ..... day of ..... 19.....

Third. That when so filed said application contained ..... claims.

Fourth. That your petitioner was informed by office letter of the ....., 19.....

(1) that his ..... claim was rendered vague and indefinite by the employment of the words “.....,” which words should be erased; (2) that his ..... claim was met by certain references which were given; and (3) that the ..... claim was mere surplusage and should be eliminated.

Fifth. That on the ..... day of ..... your petitioner filed an amendment so eliminating his ..... claim, and accompanied such amendment with a communication in which he declined to amend such ..... claim, and asked for another action thereon.

Sixth. That your petitioner was then informed by office letter of the ..... day of ..... that the former requirement relating to claim ..... would be adhered to, and that no action would be had on the merits of either claim until said amendment so required had been made.

Wherefore your petitioner requests that the examiner in charge of such application be advised that such amendment so required by him to said ..... claim be not insisted upon and directed to proceed to examine both said remaining claims upon their merits.

A hearing of this petition is desired on the ..... day of ....., 19.....

.....,  
*Applicant.*

.....,  
*Attorney for Applicant.*

**No. 35. Petition for Copies of Rejected and Abandoned Applications.**

*To the Commissioner of Patents:*

The petition of ....., a resident of ....., in the county of ..... and State of .....  
....., respectfully shows:

First. That on the ..... day of ....., 19....., patent No. .... issued to one .....

Second. That your petitioner is informed and believes that on the ..... day of ....., 19....., said patentee filed in the United States Patent Office an application for patent for improvement in .....

Third. That your petitioner verily believes that said application has not been prosecuted during the past two years and upward; and he also verily believes that the last action had therein was on or about the ..... day of .....  
....., 19....

Fourth. That said application has therefore become and now stands abandoned.

Fifth. That on the ..... day of ....., 19....., said patentee began suit, in the circuit court of the United States for the ..... district of ....., against your petitioner, which suit is based upon said patent, and the same is now pending and undetermined.

Sixth. Your petitioner is informed and believes that to enable him to prepare and conduct his defense



in such suit it is material and necessary that he be allowed access to and copies of the files of such abandoned case.

Seventh. Your petitioner therefore requests that he or ....., in his behalf and as his attorney, be permitted to inspect and be furnished copies of all or any portion of such case.

.....,
Petitioner.

By .....,
His Attorney.

} ss:
.....
.....

On this ..... day of .....
....., 19....., before me, a notary public in and for said county and State, personally appeared ....., the above-named attorney, who, being by me duly sworn, deposes and says that he has read the foregoing petition and knows its contents, and that the same is true, except as to the matters therein stated on information or belief, and as to those matters he believes it to be true.

.....,
Notary Public.

NOTE—A copy of this petition must be served upon the applicant named in the abandoned application or upon his attorney of record.

A case on the subject-matter of this form.
Marsh Engineering Co., 193 O. G. 510.

No. 36. Preliminary Statement of Domestic Inventor.

} Interference in the United States
v. Patent Office. Preliminary state-
ment of .....
....., of .....

in the county of ....., and state of ....., being duly sworn (or, affirmed), doth depose and say that he is a party to the interference declared by the Commissioner of Patents ....., 19....., between .....’s application for letters patent, filed ....., 19....., serial number ....., and the patent to ....., granted ....., 19....., numbered ....., for a .....; that he conceived the invention set forth in the declaration of interference<sup>1</sup> on or about the ..... day of ....., 19.....; that on or about the ..... day of ....., 19....., he first made drawings of the invention (*if he has not made a drawing, then he should say that no drawing of the invention in issue has been made*); that on the ..... day of ....., 19....., he made the first written description of the invention (*if he has not made a written description of the invention, he should so state*); that on or about the ..... day of ....., 19....., he first explained the invention to others; that he first embodied his invention in a full-size machine, which was completed about the ..... day of ....., 19....., and that on the ..... day of ....., 19....., the said machine was first successfully operated, in the town of ....., county of ....., and State of ....., and that he has since continued to use

the same, and that he has manufactured others for use and sale to the following extent, viz.: (if he has not embodied the invention in a full-size machine, he should so state; and if he has embodied it but has not used it, he should so state).

.....,  
[Signature of inventor.]

Subscribed and sworn to before me this .....  
..... day of .....  
19.....

.....,  
[Signature of justice or notary.]

.....,  
[Official character.]

1. If the party has doubts as to whether the matter of his application is properly involved in the issue as declared, then in lieu of the term "the invention set forth in the declaration of interference" he may say "the invention contained in the claims of my application (or patent) declared to be involved in this interference," and should specify such claims by number.

**No. 37. Preliminary Statement of Foreign Inventor.**

..... } Interference in United States Pat-  
v. } ent Office. Preliminary statement  
..... } of .....

....., of London, in the county of Middlesex, England, being duly sworn, doth depose and say that he is a party to the interference declared by the Commissioner of Patents, .....  
....., 19....., between his application for patent, filed ....., 19....., serial number ....., and the patent of ....., granted .....  
....., 19....., No. ....  
....., for an improvement in .....;  
that he made the invention set forth in the declaration



of interference,<sup>1</sup> being at that time in England; that patents for such invention were applied for and obtained as follows:

Application filed in Great Britain, .....  
 ....., 19....., patent dated .....  
 ....., 19....., No. ....;  
 published the ..... day of .....  
 ....., 19....., and sealed the ....  
 ..... day of .....,  
 19.....; application filed in France .....  
 ....., 19....., patent dated .....  
 ....., 19....., No. ....;  
 published the ..... day of .....  
 ....., 19....., and sealed the ....  
 ..... day of .....,  
 19..... (*If a patent has not been obtained in any  
 country it should be so stated.*)

That such invention was fully described in a magazine published at ....., on the  
 ..... day of .....  
 .., 19....., by ....., en-  
 titled ..... (*see page .....  
 ..... of such magazine*), and in the follow-  
 ing newspapers: ....., of .....  
 ....., 19.....; .....  
 ....., published at ....., on  
 ....., 19..... (*If the inven-  
 tion was never described in a printed publication it  
 should be so stated.*)

The knowledge of such invention was introduced into the United States under the following circumstances: On ....., 19....., the said ..... wrote a letter to ..... residing at .....

....., State of ....., de-  
 scribing such invention and soliciting his services in  
 procuring a patent therefor in the United States.  
 This letter, he is informed and believes, was received  
 by the said ..... on .....  
 ....., 19..... Also on .....  
 ....., 19....., he wrote a letter to the firm  
 of ....., of .....,  
 State of ....., describing such in-  
 vention and requesting their assistance in manufac-  
 turing and putting it on the market, which letter, he  
 is informed and believes, was received by them on  
 ....., 19..... Such inven-  
 tion was manufactured by such firm and described  
 in their trade circulars, as he is informed and verily  
 believes, on or about the .....  
 day of ....., 19..... (*If  
 the invention has not been introduced into the United  
 States otherwise than by the application papers, it  
 should be so stated, and the date at which such papers  
 were received in the United States alleged.*)

.....,  
 [Signature of inventor.]

Subscribed and sworn to before me this .....  
 ..... day of ....., 19....

.....,  
 [Signature of justice or notary.]

.....,  
 [Official character.]

1. If the party has doubts as to whether the matter of his  
 application is properly involved in the issue as declared, then in  
 lieu of the terms "the invention set forth in the declaration  
 of interference," he may say, "the invention contained in the  
 claims of my application (or patent) declared to be involved  
 in this interference," and should specify such claims by number.

ASSIGNMENTS.

No. 38. Of an Entire Interest in an Invention Before the Issue of Letters Patent.

Whereas I, ....., of ..... county of ..... and State of ....., have invented a certain improvement in ....., for which I am about to make application for letters patent of the United States; and whereas ..... of ....., county of ....., and State of ..... is desirous of acquiring an interest therein:

Now, therefore, in consideration of ..... dollars, the receipt of which is hereby acknowledged, I, ....., by these presents do sell, assign, and transfer unto ..... the full and exclusive right to the said invention, as described in the specification executed by me on the ..... day of ..... 19....., preparatory to obtaining letters patent of the United States therefor; and I hereby request the Commissioner of Patents to issue said letters patent to ..... as the assignee, for his interest, for the sole use and behoof of said ..... and his legal representatives.

Executed ..... day of ..... 19..... [SEAL.]

In presence of:
.....
.....



(If assignment, grant, or conveyance be acknowledged as provided for by Rule 185, the certificate will be *prima facie* evidence of the execution of such assignment, grant, or conveyance.)

### No. 39. Of the Entire Interest in Letters Patent.

Whereas I, ....., of .....  
 ....., county of .....,  
 State of ....., did obtain letters  
 patent of the United States for an improvement in  
 ....., which letters patent are  
 numbered ....., and bear date  
 the ..... day of .....  
 ....., 19.....; and whereas I am now the  
 sole owner of said patent; and whereas .....  
 ....., of ....., county of  
 ....., and State of .....  
 ....., is desirous of acquiring the entire in-  
 terest in the same:

Now, therefore, in consideration of the sum of  
 ..... dollars, the receipt of which  
 is hereby acknowledged, I, .....,  
 by these presents do sell, assign, and transfer unto  
 the said ....., the whole right,  
 title, and interest in and to the said letters patent  
 therefor aforesaid; the same to be held and enjoyed  
 by the said ....., for his own  
 use and behoof, and for his legal representatives, to  
 the full end of the term for which said letters patent  
 are granted, as fully and entirely as the same would  
 have been held by me had this assignment and sale  
 not been made.

Executed ..... day of .....  
 ....., 19.....  
 ..... [L. S.]

In presence of:

.....  
.....

(See note under Form 38.)

**No. 40. Of an Undivided Interest in Letters Patent.**

Whereas I, ....., of .....  
....., county of .....,  
State of ....., did obtain letters  
patent of the United States for an improvement in  
....., which letters patent are  
numbered ....., and bear date  
the ..... day of .....  
.....; and whereas .....,  
of ....., county of .....  
....., State of ....., is  
desirous of acquiring an interest in the same:

Now, therefore, in consideration of the sum of  
..... dollars, the receipt of which  
is hereby acknowledged, I, .....,  
by these presents do sell, assign, and transfer unto  
the said ....., the undivided one-  
half part of the whole right, title, and interest in  
and to the said invention and in and to the letters  
patent therefor aforesaid; the said undivided one-  
half part to be held by .....,  
for his own use and behoof, and his legal representa-  
tives, to the full end of the term for which said letters  
patent are granted, as fully and entirely as the same  
would have been held by me had this assignment  
and sale not been made.

Executed ..... day of .....  
....., 19.....

..... [L. S.]

In presence of:

.....  
 .....

(See note under Form 38.)

### No. 41. Territorial Interest After Grant of Patent.

Whereas I, ....., of .....  
 ....., county of .....,  
 State of ....., did obtain letters  
 patent of the United States for an improvement in  
 ....., which letters patent are  
 numbered ....., and bear date  
 the ..... day of .....  
 ....., in the year 19.....; and whereas I  
 am now the sole owner of the said patent and of all  
 rights under the same in the below-recited territory;  
 and whereas ....., of .....  
 ....., county of .....,  
 State of ....., is desirous of ac-  
 quiring an interest in the same:

Now, therefore, for and in consideration of the sum  
 of ..... dollars to me in hand  
 paid, the receipt of which is hereby acknowledged, I,  
 ....., by these presents do sell,  
 assign, and transfer unto the said .....  
 ..... all the right, title, and interest in and to the  
 said invention, as secured to me by said letters pat-  
 ent, for, to, and in the State of .....,  
 and for, to, or in no other place or places; the same  
 to be held by ..... within and  
 throughout the above-specified territory, but not else-  
 where, for his own use and behoof, and of his legal  
 representatives, to the full end of the term for which  
 said letters patent are granted, as fully and entirely



as the same would have been held by me had this assignment and sale not been made.

Executed ..... day of .....  
....., 19.....  
..... [L. S.]

In presence of:  
.....  
.....

(See note under Form 38.)

**No. 42. License—Shop-Right.**

In consideration of the sum of .....  
..... dollars, to be paid by the firm of .....  
....., of ....., in the  
county of ....., State of .....  
....., I do hereby license and empower  
the said ..... to manufacture in  
said ..... (or, other place agreed  
upon) the improvement in .....,  
for which letters patent of the United States No.  
..... were granted to me the  
..... day of .....  
....., in the year 19....., and to sell the ma-  
chines so manufactured throughout the United States  
to the full end of the term for which said letters  
patent are granted.

Signed at ....., in the county  
of ..... and State of .....  
....., this ..... day of  
....., 19.....  
.....,

In presence of:  
.....  
.....

**No. 43. License—Not Exclusive—With Royalty.**

This agreement, made this ..... day of ....., 19....., between ....., of ....., in the county of ..... and State of ....., party of the first part, and ....., of ..... in the county of ..... and State of ....., party of the second part, witnesseth, that whereas letters patent of the United States No. ...., for improvement in ....., were granted to the party of the first part on the ..... day of ....., 19.....; and whereas the party of the second part is desirous of manufacturing ..... containing said patented improvements: Now, therefore, the parties have agreed as follows:

I. The party of the first part hereby licenses and empowers the party of the second part to manufacture, subject to the conditions hereinafter named, at their factory in ....., and in no other place or places, to the end of the term for which said letters patent were granted, ..... containing the patented improvements, and to sell the same within the United States.

II. The party of the second part agrees to make full and true returns to the party of the first part, under oath, upon the first days of ..... and ..... in each year, of all ..... containing the patented improvements manufactured by them.

III. The party of the second part agrees to pay to the party of the first part .....

dollars as a license fee upon every .....  
 ..... manufactured by said party of the second  
 part containing the patented improvements; provided,  
 that if the said fee be paid upon the days provided  
 herein for semiannual returns, or within .....  
 ..... days thereafter, a discount of .....  
 ..... per cent shall be made from said  
 fee for prompt payment.

IV Upon a failure of the party of the second  
 part to make returns or to make payment of license  
 fees, as herein provided, for .....  
 days after the days herein named, the party of the  
 first part may terminate this license by serving a  
 written notice upon the party of the second part;  
 but the party of the second part shall not thereby  
 be discharged from any liability to the party of the  
 first part for any license fees due at the time of the  
 service of said notice.

In witness whereof, the parties above named have  
 hereunto set their hands the day and year first above  
 written at ....., in the county of  
 ..... and State of .....  
 .....

.....  
 .....

In the presence of:

.....  
 .....

*DEPOSITIONS.*

**No. 44. Notice of Taking Testimony.**

....., ....., ....., 19.....  
 In the matter of the interference between the appli-  
 cation of ..... for a .....



..... machine and the patent No. ....  
 ....., granted .....  
 19....., to ....., now pend-  
 ing before the Commissioner of Patents.

SIR: You are hereby notified that on Wednesday,  
 ....., 19....., at the office of  
 ....., Esq., No. ....  
 ..... Street, ....., at  
 .....o'clock in the forenoon, I  
 shall proceed to take the testimony of .....  
 ....., and ....., all of ....  
 ....., as witnesses in my behalf.

The examination will continue from day to day  
 until completed. You are invited to attend and cross-  
 examine.

.....,  
 By .....,  
*His Attorney.*

Signed at ....., in the county  
 of ..... and State of .....  
 ....., this ..... day of  
 ....., 19.....

Witnesses:

.....  
 .....

*Proof of service.*

..... }  
 ..... } ss:  
 .....

Personally appeared before me, a .....  
 ..... (or, other officer) the above-named .....  
 ....., who, being duly sworn, deposes  
 and says that he served the above notice upon .....

....., the attorney of the said .....  
 ....., at ..... o'clock  
 .....of the .....  
 day of ....., 19....., by leav-  
 ing a copy at his office in .....,  
 in the county of ..... and State  
 of ....., in charge of .....

Sworn to and subscribed before me at .....  
 ....., in the county of .....  
 and State of ....., this .....  
 ..... day of ....., 19....

[SEAL.]

[Signature of justice or notary.]

[Official character.]

*(Service may be acknowledged by the party upon whom it is made as follows:*

Service of the above notice acknowledged this .....  
 ..... of .....,  
 19.....

By .....  
*His Attorney.*

**No. 45. Form of Deposition.**

Before the Commissioner of Patents, in the matter of  
 the interference between the application of .....  
 ..... for a .....  
 and Letters Patent No. .....,  
 granted ....., 19:....., to

Depositions of witnesses examined on behalf of ....  
 ....., pursuant to the annexed no-

tice, at the office of ..... , No.  
 ..... Street, ..... ,  
 on ..... , ..... , 19..... Present,  
 ..... , Esq., on behalf of .....  
 ..... , and ..... ,  
 Esq., on behalf of .....  
 ..... , being duly sworn (*or*,  
 affirmed), doth depose and say, in answer to inter-  
 rogatories proposed to him by ..... ,  
 Esq., counsel for ..... , as follows,  
 to wit:

Question 1. What is your name, age, occupation,  
 and residence?

Answer I. My name is ..... ;  
 I am ..... years of age; I am a  
 manufacturer of ..... and reside  
 at ..... , in the State of .....  
 .....

Question 2, etc. ....  
 .....

And in answer to cross-interrogatories proposed to  
 him by ..... , Esq., counsel for  
 ..... , he saith:

Cross-question 1. How long have you known ....  
 ..... ?

Answer 1. ....  
 .....

**No. 46. Certificate of Officer.**

[To follow deposition.]

..... }  
 ..... } ss:

I, ..... , a notary public within  
 and for the county of ..... and



State of ..... (*or*, other officer, *as the case may be*), do hereby certify that the foregoing deposition of ..... was taken on behalf of ..... in pursuance of the notice hereto annexed, before me, at ....., in the city of .....  
 ....., in said county, on the .....  
 ..... day (*or*, days) of .....,  
 19.....; that said witness was by me duly sworn before the commencement of his testimony; that the testimony of said witness was written out by myself (*or*, by ..... in my presence); that the opposing party, ....., was present (*or*, absent or represented by counsel) during the taking of said testimony; that said testimony was taken at ....., and was commenced at ..... o'clock ....  
 ..... on the .....  
 of ....., 19....., was continued pursuant to adjournment on the .....,  
 ..... (etc.), and was concluded on the .....  
 ..... of said month; that the deposition was read by, or to, each witness, before the witness signed the same; that I am not connected by blood or marriage with either of said parties, nor interested directly or indirectly in the matter in controversy.

In testimony whereof, I have hereunto set my hand and affixed my seal of office at ....., in said county, this ..... day of ....., 19....

[SEAL.]

.....,  
 [*Signature of justice or notary.*]

.....,  
 [*Official character.*]

*(The magistrate will then append to the deposition the notice under which it was taken, and will seal up the testimony and direct it to the Commissioner of Patents, placing upon the envelope a certificate in substance as follows:)*

I hereby certify that the within deposition of . . . .  
 . . . . . (if the package contains more  
 than one deposition, give all the names), relating to  
 the matter of interference between . . . . .  
 . . . . . and . . . . ., was taken,  
 sealed up, and addressed to the Commissioner of Pat-  
 ents by me this . . . . . day of . . . .  
 . . . . ., 19. . . .

[SEAL.]

. . . . .,  
 [Signature of justice or notary.]

. . . . .,  
 [Official character.]

*APPEALS FROM THE COMMISSIONER OF PATENTS  
 TO THE COURT OF APPEALS OF THE  
 DISTRICT OF COLUMBIA.*

An intention to appeal does not constitute an appeal, or even a step in that direction. If applicant had done something, though imperfectly, he might have come within the decision in *Alaska Gold Mining Co. v. Keating*, 116 Fed. 561. He is supposed to know the rules, and an appeal not taken within the 40 days refused reinstatement.

Hitchcock, 247 O. G. 965.

See Rule 148.

COURT RULES.

**No. 8. Argument of Causes and the Preparation Therefor.**

1. No more than two counsels shall be heard for each party, appellant and appellee, in the argument of the cause, except by special leave of the Court, upon sufficient reason shown.

2. Only one hour on each side shall be allowed in the argument, unless by special leave the time is extended by the Court before the argument is commenced; but counsel, in order to avail themselves of the opportunity to apply for additional time, must make request therefor to the Court, accompanied by a copy of their printed brief, at least five days before the case is liable to be called for argument. The time may be apportioned between counsel on the same side, at their discretion. In all cases, however, a full and fair opening must be made.

3. For the appellant, there shall be filed with the clerk of the court fifteen copies of his printed brief within thirty days after the record shall have been printed. *Provided, however,* That if such period of thirty days expires in vacation, and prior to September 10th, appellant shall have until said date to file his brief. One copy of appellant's brief shall, upon application, be furnished to each of the counsel on the opposite side; *and provided further,* That at the time of filing his brief the appellant shall serve a copy of the same upon the appellee or his counsel of record in the trial court. The brief for the appellant shall contain, in the order here stated:

(a) A concise statement of the case, presenting succinctly the questions involved and the manner in which they are raised.

(b) Such of the errors as shall be relied upon.

(c) A clear statement of the points of law or fact to be discussed, with reference to the pages of the record and the authorities relied on in support of each point.

(d) Whenever a decision of this Court, that has been published in the official reports of the Court,



shall be cited in a brief, the reference shall include the volume and page of the report wherein the same has been published.

(e) Every brief of more than twenty pages shall contain on its front fly leaves a subject index, with page reference, the subject index to be supplemented by a list of all cases referred to, together with references to pages where the cases are cited.

Senior v. Senior, 24 App. D. C. 160; Cooper v. Sellers, 30 Il. 567.

4. For the appellee, there shall be filed with the clerk fifteen copies of the brief for his side of the case within twenty days from the filing of appellant's brief: *Provided*, That if said period of twenty days expires in vacation, he shall have until the first day of the October Term to file his brief; *and it is further provided*, That if such period of twenty days expires in vacation in cases appealed from the Commission of Patents, he shall have until the first Monday in November. Such brief shall be of like character to that required of the appellant, except that no assignment of error is required, and no statement of the case, unless that presented by the appellant be controverted, or denied to be sufficiently full and complete to present the question for review.

The following sections added to Section 4, June 6, 1919:

(a) No party will be permitted to file a brief after the expiration of the time allowed for that purpose by Sections 3 and 4 of this Rule, without permission of the Court granted for good cause shown.

(b) When a case is called for hearing, if the appellant's brief is not on file, the appeal may be dismissed.

5. Errors not assigned, according to the rule of the Court, will be disregarded, though the Court, at its option, may notice and pass upon a plain error not assigned.

6. When, according to the provision of this rule, the appellee is in default, he will not be heard except upon request of the Court.

7. The appellant in this Court shall be entitled to open and conclude the case; but where there are cross-appeals they shall be argued together as one case, and the plaintiff in the Court below shall be entitled to open and conclude the argument in this court.

8. When a case is called for argument at two successive terms, and at the call at the second term neither party is prepared to proceed with the argument, the appeal shall be dismissed at the cost of the appellant, unless sufficient cause be shown for further postponement.

9. The case shall not be placed on the assignment for hearing until after the time for the filing of the brief for the appellee shall have expired. *Provided*, That parties may, by agreement, expedite the printing of the transcript and the printing of briefs, and have the appeal assigned for hearing at an earlier day.

### **No. 21. Appeals from the Commissioner of Patents.**

1. All certified copies of papers and evidence on appeal from the decision of the Commissioner of Patents, authorized by section 9 of the act of Congress, approved February 9, 1893, shall be received by the clerk of this court, and the cases, by titling and number as they appear on the record in the Patent Office,

shall be placed on a separate docket from the docket of the cases brought into this court by appeal from the supreme court of the District of Columbia, to be designated as the "Patent Appeal Docket;" and upon filing such copies the party appellant shall deposit with the clerk, or secure to be paid as demanded, an amount of money sufficient to cover all legal costs and expenses of said appeal; and upon failure to do so his appeal shall be dismissed. The clerk shall, under this titling of the case on the docket, make brief entries of all papers filed and of all proceedings had in the case.

2. The appellant, upon complying with the preceding section of this rule, shall file in the case a petition addressed to the court, in which he shall briefly set forth and show that he has complied with the requirements of sections 4912 and 4913 of the Revised Statutes of the United States to entitle him to an appeal, and praying that his appeal may be heard upon and for the reasons assigned therefor to the commissioner; and said appeal shall be taken within forty days from the date of the ruling or order appealed from and not afterwards.

If the petition for an appeal and the certified copies of papers and evidence on appeal mentioned in this and the preceding section of this rule shall not be filed and the case duly docketed in this court within forty days (*exclusive of Sundays and legal holidays*) from the day upon which notice of appeal is given to the Commissioner of Patents, the commissioner, upon such facts being brought to his attention by motion of the appellee, duly served upon the appellant or his attorney, may take such further proceedings in the case as may be necessary to dispose of the same,



as though no notice of appeal had ever been given.

3. The clerks shall provide a minute book of his office, in which he shall record every order, rule, judgment, or decree of the court in each case, in the order of time in which said proceedings shall occur; and of this book the index shall be so kept as to show the name of the party applying for the patent, the invention by subject matter or name, and, in the cases of interference, the name of the party with whose pending application or unexpired patent the subsequent application is supposed to interfere.

4. The cases on this docket shall be called for argument on the second Tuesday of January, March, May, and November in each year, and the cases shall be called in regular order as they may stand on the docket. A copy of these rules shall be furnished to the Commissioner of Patents; and it shall be the duty of the clerk of this court to give special notice to the said commissioner at least fifteen days immediately preceding the times thus respectively fixed for the hearing of said cases; the said notice to name the place of the sitting of the court, the titling of the cases on the docket of this court, the respective numbers thereof, and the number of each case as it appears of record in the Patent Office; and thereupon the commissioner shall give notice to the parties interested or concerned by notice addressed to them severally by mail.

5. The clerk shall furnish to any applicant a copy of any paper in any of said appeals on payment of the legal fees therefor.

6. The appeals from the Commissioner of Patents shall be subject to all the rules of this court provided for other cases therein, except where such rules, from

the nature of the case, or by reason of special provisions inconsistent therewith, are not applicable.

7. *Models, diagrams, and exhibits of material forming part of the evidence taken in the court below or in the Patent Office in any case pending in this court on writ of error or appeal shall be placed in the custody of the clerk of this court at least three days before the case is heard or submitted.*

8. *All models, diagrams, and exhibits of material placed in the custody of the clerk for the inspection of the court on the hearing of the case must be taken away by the parties within twenty days after the case is decided. When this is not done, it shall be the duty of the clerk to notify the counsel in the case and the Commissioner of Patents, by mail or otherwise, of the requirements of this rule; and if the articles are not removed within ten days after the notice is given, he shall destroy them or make such other disposition of them as to him may seem best.*

#### **No. 22. Opinions of Lower Court and Commissioner of Patents Made Part of Record.**

Whenever the judgment, decree or order appealed from is based upon or has reference to a written opinion filed in the case by the court below, such opinion shall constitute a part of the transcript to be sent to this court; and such opinion, and also the written reasons or grounds assigned by the Commissioner of Patents in appeals from the Patent Office, shall be printed as part of the record to be printed under Rule 6.

#### **No. 27. Sundays and Legal Holidays.**

That whenever days are mentioned in the foregoing rules as limitations of time, they shall be construed

to exclude Sundays and legal holidays, *but to include Saturday half holidays.*

#### INSTRUCTIONS TO APPELLANTS.

The act of Congress creating the court of appeals of the District of Columbia, approved February 9, 1893, gives to that court jurisdiction of appeals from final decisions of the Commissioner of Patents both in *ex parte cases* and in interference cases.

Where an appeal of either class is to be prosecuted to the court of appeals of the District of Columbia, the first step is to file with the Commissioner of Patents a notice of appeal, together with an assignment of reasons of appeal. This step must be taken within forty days, exclusive of Sundays and legal holidays, *but including Saturday half holidays*, from the date of the decision of the Commissioner of Patents sought to be reviewed.

The next step in the prosecution of such an appeal is to file with the clerk of the court of appeals of the District of Columbia a certified transcript of the record and proceedings in the Patent Office relating to the case in question, together with a petition for appeal, addressed to the court of appeals of the District of Columbia, make a deposit of \$15, and have the appearance of a member of the bar of that court entered for the appellant.

The notice of appeal and reasons of appeal required to be served upon the Commissioner of Patents may be signed by the appellant or by his attorney of record in the Patent Office, but the petition for an appeal that is filed in the court of appeals of the District of Columbia must be signed by a member of the bar of the court of appeals of the District of



Columbia, who should enter a regular appearance in the case in the clerk's office.

After the petition for the appeal, the certified transcript, and the docket fee of \$15 have been lodged in the office of the clerk of the Court of Appeals of the District of Columbia, the clerk will send to the solicitor of record an estimate of the cost of printing the petition, transcript, etc.

When the amount called for is deposited, the clerk will cause the printing to be done under his supervision, and when the printing is completed the case will be put on the calendar for hearing at the next term at which patent appeals are heard.

In interference cases the clerk is authorized to receive printed copies of the evidence, such as have been used in the Patent Office, thus saving to the appellant the cost of reprinting such evidence. When such printed copies are supplied, twenty-five copies must be furnished.

As above stated, the notice of appeal and the reasons of appeal are required to be filed with the Commissioner of Patents within forty days, exclusive of Sundays and legal holidays, *but including Saturday half holidays*, of the date of the decision appealed from, but the petition for appeal and the certified transcript which are to be filed in the Court of Appeals of the District of Columbia are required to be filed in that court within forty days, exclusive of Sundays and legal holidays, *but including Saturday half holidays*, from the time of the giving of the notice of appeal; that is to say, if the decision complained of was rendered, for instance, on the 1st day of July, 1906, the party aggrieved might file his notice of appeal, with the reasons of appeal, at any

time within forty days, exclusive of Sundays and legal holidays, *but including Saturday half holidays*, thereafter; but if he filed his notice of appeal and reasons therefor on the 10th day of July, 1906, he would be required to file his petition for appeal and the certified transcript in the Court of Appeals of the District of Columbia within forty days, exclusive of Sundays and legal holidays, *but including Saturday half holidays*, of the 10th day of July, 1906.

For convenience of appellants and to secure uniformity in practice the following forms are suggested as guides in the prosecution of patent appeals:

**No. 1. Form of Notice of Appeal to the Court of Appeals of the District of Columbia in an Ex Parte Case, with Reasons of Appeal and Request for Transcript.**

IN THE UNITED STATES PATENT OFFICE.

*In re* application of  
 .....  
 Serial No.....  
 .....  
 Filed .....  
 .....  
 Improvements in.....  
 .....

*To the Commissioner of Patents:*

SIR: You are hereby notified of my appeal to the court of appeals of the District of Columbia from your decision, rendered on or about the ..... day of ....., 19....., rejecting my above-entitled application and refusing me a patent for the invention set forth therein:

The following are assigned as reasons of appeal:  
[Here insert in separate counts the specific errors complained of.]

.....,  
By .....,  
His Attorney.

**No. 2. Form of Petition for an Appeal to the Court of Appeals of the District of Columbia in an Ex Parte Case.**

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

*In re* application of  
.....  
Serial No.....  
.....  
Filed .....  
.....  
Improvements in.....  
.....

*To the Court of Appeals of the District of Columbia:*  
Your petitioner, ....., of ....  
....., in the county of .....  
....., and State of .....,  
respectfully represents:

That he is the original and first inventor of certain new and useful improvements in .....

That on the ..... day of ....  
....., 19....., in the manner prescribed by law, he presented his application to the Patent Office, praying that a patent be issued to him for the said invention.

That such proceedings were had in said office upon said application; that on the ..... day of ....., 19....., it was



rejected by the Commissioner of Patents and a patent for said invention was refused him.

That on the ..... day of ....  
....., 19....., your petitioner, pursuant to sections 4912 and 4913, Revised Statutes, United States, gave notice to the Commissioner of Patents of his appeal to this honorable court from his refusal to issue a patent to him for said invention upon said application as aforesaid, and filed with him, in writing, the following reasons of appeal:

*[Here recite the reasons of appeal assigned in the notice to the Commissioner.]*

That the Commissioner of Patents has furnished him a certified transcript of the record and proceedings relating to said application for patent, which transcript is filed herewith and is to be deemed and taken as a part hereof.

Wherefore your petitioner prays that his said appeal may be heard upon and for the reasons assigned therefor to the commissioner as aforesaid, and that said appeal may be determined and the decision of the commissioner be revised and reversed, that justice may be done in the premises.

.....,

By .....

*His Attorney.*

*[To be signed here by a member of the bar of the Court of Appeals of D. C.]*

.....,

*Solicitor and of Counsel.*

**No. 3. Form of Notice of Appeal to the Court of Appeals of the District of Columbia in an Interference Case, with Reasons of Appeal and Request for Transcript.**

IN THE UNITED STATES PATENT OFFICE.

BEFORE THE COMMISSIONER OF PATENTS.

|       |                            |
|-------|----------------------------|
| ..... | } Interference No. ....    |
| ..... |                            |
| ..... | } Subject-matter: Improve- |
| ..... |                            |
| ..... | } ments in .....           |

And now comes ....., by ....  
 ....., his attorney, and gives notice  
 to the Commissioner of Patents of his appeal to the  
 Court of Appeals of the District of Columbia, from  
 the decision of the said commissioner, rendered on or  
 about the ..... day of .....  
 ....., 19....., awarding priority of  
 invention to ..... in the above-  
 entitled case, and assigns as his reasons of appeal the  
 following:

*[Here set out in separate counts the specific errors in the Com-  
 missioner's decision complained of.]*

.....,

By .....,

*His Attorney.*

**No. 4. Form of Petition for an Appeal to the Court of Appeals of the District of Columbia in an Interference Case.**

IN THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

*In re* Interference No. ....

....., }  
Appellant, }  
v. }  
..... }

*To the Court of Appeals of the District of Columbia:*

Your petitioner, ....., of ....  
....., in the county of .....  
....., and State of .....,  
respectfully represents:

That he is the original and first inventor of certain new and useful improvements in .....

That on the ..... day of ....  
....., 19....., in the manner pre-  
scribed by law, he presented his application to the Patent Office, praying that a patent be issued to him for the said invention.

That thereafter, to wit, on the .....  
..... day of ....., 19.....,  
an interference proceeding was instituted and de-  
clared between his said application and a pending application of one ....., serial No. ...., filed .....  
....., for a similar invention.

That the subject-matter of said interference as set forth in the official declaration was as follows:

[Here state the issues of the interference.]

That thereafter, to wit, on the .....  
..... day of ....., 19.....,



the case having been submitted upon the preliminary statements and evidence presented by the parties thereto, the Examiner of Interferences rendered a decision awarding priority of invention to .....

.....

That, pursuant to the statutes and the rules of practice in the Patent Office in such case made and provided, ..... appealed from the said adverse decision of the Examiner of Interferences to the Board of Examiners-in-Chief, and the case having been argued and submitted to said board, a decision was rendered by said board on the ..... day of ....., 19....., affirming (*or*, reversing) the decision of the Examiner of Interferences.

That thereafter, pursuant to said statutes and rules, ..... appealed from the said adverse decision of the Board of Examiners-in-Chief to the Commissioner of Patents, and the same coming on to be heard and having been argued and submitted, a decision was, on the ..... day of ....., 19....., rendered by the commissioner adverse to your petitioner, affirming (*or*, reversing) the decision of the Board of Examiners-in-Chief and awarding priority of invention to the said .....

That on the ..... day of ..... 19....., your petitioner, pursuant to sections 4912 and 4913, Revised Statutes, United States, gave notice to the Commissioner of Patents of his appeal to this honorable court from his decision awarding priority of invention to said ....., as aforesaid, and filed with him, in writing; the following reasons of appeal:

*[Here insert reasons of appeal assigned in notice to Commissioner.]*

That the Commissioner of Patents has furnished your petitioner a certified transcript of the record and proceedings relating to said interference case, which transcript is filed herewith and is to be deemed and taken as a part hereof.

Wherefore your petitioner prays that his said appeal may be heard upon and for the reasons assigned therefor to the commissioner as aforesaid, and that said appeal may be determined and the decision of the commissioner be revised and reversed, that justice may be done in the premises.

.....,

By .....

*His Attorney.*

*[To be signed here by a member of the bar of the Court of Appeals of D. C.]*

.....,

*Solicitor and of Counsel.*

## APPENDIX C

### RULES OF 1870.

#### RULES AND REGULATIONS FOR PROCEEDINGS IN THE PATENT OFFICE

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United States Patent Office,  
July 15, 1870.

The following information and regulations are designed to be in strict accordance with the revised, consolidated, and amended law relating to patents for inventions and designs and trade-marks, approved July 8, 1870, which law, the only one in force on these subjects, is printed in pamphlet form for gratuitous distribution.

Copious forms, to which inventors and attorneys are recommended to conform as nearly as possible, will be found in an appendix.

#### WHO MAY OBTAIN A PATENT

1. Any person, whether citizen or alien, being the original and first inventor or discoverer of any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent for his invention or discovery, subject to the conditions as to public use and abandonment hereinafter named.

2. In case of the death of the inventor, the patent may be applied for by, and will issue to, his legal representatives; and in case of an assignment of the whole, or of any undivided (undivided) interest in the invention, the patent may issue to the assignee of the whole interest, or jointly to the inventor and the assignee of the undivided interest, the assignment being first entered of record, and the application being duly made and the specification duly sworn to by the inventor.

3. Joint inventors are entitled to a joint patent; neither can claim one separately; but independent inventors of separate improvements in the same machine cannot obtain a joint patent for their separate inventions; nor does the fact that one man furnished the capital and the other makes the invention entitle them to take out a joint patent.

4. Although an applicant may have actually made an invention, a patent therefor will not be granted him if the whole or any part of what he claims as new has been, before his invention, patented or described in any printed publication in this or any foreign country, or been invented or discovered in this country, nor if he has once abandoned his invention to the public, nor if it has been in public use or on sale for more than two years previous to his application.

5. If the inventor, at the time of making his application, be-



believes himself to be the first inventor or discoverer, a patent shall not be refused on account of the invention or discovery, or any part thereof, having been before known or used in any foreign country; it not appearing that the same or any substantial part thereof had before been patented or described in any printed publication.

6. Merely conceiving the idea of an improvement or machine is not an "invention" or "discovery." The invention must have been reduced to a practical form, either by the construction of the machine itself, or of a model thereof, or by making a drawing of it, or by such disclosure of its exact character as that a mechanic can and does, from the description given, construct the improvement or a model thereof, before it will prevent a subsequent inventor from obtaining a patent.

## MODE OF PROCEEDING TO OBTAIN A PATENT

### APPLICATION

7. All applications for patents shall be completed and prepared for examination within two years after the filing of the petition, and in default thereof, or upon failure of the applicant to prosecute the same within two years after any action therein, of which notice shall have been given to the applicant, they shall be regarded as abandoned by the parties thereto, unless it be shown to the satisfaction of the Commissioner that such delay was unavoidable.

8. The application must be made by the actual inventor, if alive, even if the patent is to issue or reissue to an assignee; but where the inventor is dead, the application and oath may be made by the executor or administrator.

9. The application must be in writing, in the English language, and addressed to the Commissioner of Patents. The petition and specification must be separately signed by the inventor. All claims and specifications filed in this office (including amendments) must be written in a fair, legible hand, without interlineations or erasures, except such as are clearly stated in a marginal or foot note written on the same sheet of paper; otherwise the office may require them to be printed. All the papers constituting the application must be attached together.

### SPECIFICATION

10. The specification is a written description of the invention or discovery, and of the manner and process of making, constructing, compounding and using the same, in such full, clear, concise, and exact terms, avoiding unnecessary prolixity, as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound, and use the same.

11. The applicant must set forth in his specification the precise invention for which he claims a patent; and in all applications for mere improvements, the specification must distinguish between what is admitted to be old and what is described and claimed to be the improvement, so that the office and the public may understand exactly for what the patent is granted.

12. Two or more distinct and separate inventions may not be

claimed in one application; but where several inventions are necessarily connected each with the other, they may be so claimed.

13. If more than one invention is claimed in a single application, and they are found to be of such a nature that a single patent may not be issued to cover the whole, the office requires the inventor to divide the application into separate applications, or to confine the description and claim to whichever invention he may elect.

14. The specification should describe the drawings (where there are drawings), and refer by letters and figures to the different parts; and having fully described the art, machine, manufacture, composition, or improvement, it should particularly specify and point out the part, improvement, or combination which is claimed as the invention or discovery.

15. The specification must be signed by the inventor, or by his executor or administrator, and must be attested by two witnesses. Full names must be given, and all names, whether of applicant or witnesses, must be legibly written.

16. The applicant must make oath or affirmation that he does verily believe himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvements for which he solicits a patent; that he does not know and does not believe that the same was ever before known or used; and shall state of what country he is a citizen. The oath or affirmation may be made before any person within the United States authorized by law to administer oaths or, when the applicant resides in a foreign country, before any minister, charge d'affaires, consul, or commercial agent, holding commission under the government of the United States, or before any notary public of the foreign country in which the applicant may be, the oath being attested in all cases, in this and other countries, by the proper official seal of such notary.

#### DRAWINGS

17. The applicant for a patent is required by law to furnish a drawing of his invention, where the nature of the case admits of it.

18. Such drawing must be on thick, smooth drawing paper, sufficiently stiff to support itself in the portfolios of the office. It must be neatly and artistically executed, with detached sectional views as to clearly show what the invention is in construction and operation. Each part must be distinguished by the same number or letter whenever it appears in the several drawings. The name of the invention should be written at the top, the shortest side being considered as such. This drawing must be signed by the applicant or his attorney, and attested by two witnesses, and must be sent with the specification. Tracings upon cloth pasted on thick paper will not be admitted. Thick drawings should never be folded for transmission, but should be rolled.

19. The duplicate drawing to be attached to the patent will be furnished by the office without charge, and will be a photo-lithographic copy of the thick drawing.

20. The following rules must be observed in the preparation of the drawings, in order that they may be photo-lithographed:

The paper must be thin Bristol board or thick drawing paper, with a smooth or calendered surface. The outlines must be



executed in deep black lines, to give distinctness to the print. Pale, ashy tints must be dispensed with.

In shading, lines of black ink should be used, and such lines should be distinct and sharp, and not crowded. Brush shadings or shadows will not be permitted.

All colors, except black, must be avoided in the drawing, lettering, and signatures; violet and purple inks must not be used.

No agent's, attorney's, or other stamp must be placed, in whole or in part, within the margin.

The sheet must not be larger than ten inches by fifteen, that being the size of the patent. If more illustrations are needed, several sheets must be used.

21. Copies of drawings of patents issued after January 1, 1869, will be furnished to anyone at the uniform rate of twenty-five cents per sheet of standard size.

22. Copies of drawings of patents issued prior to January 1, 1869, which can be photo-lithographed, will be furnished at twenty-five cents per sheet, when ten or more copies are ordered. Single tracings of such drawings, or less than ten, will be furnished at the cost of making them. One hundred copies or more will be furnished at ten dollars per hundred.

23. Applicants are advised to employ competent artists to make the drawings, which will be returned if not executed in strict conformity with these rules, or if injured by folding.

#### MODEL

24. An applicant, upon filing his specification and drawings, may submit to the Commissioner the question whether he shall deposit a model or specimen of his invention; otherwise a model will be required in every case, except for designs, where the nature of the invention admits of such illustration. Such model must clearly exhibit every feature of the machine which forms the subject of a claim of invention. Models filed as exhibits, in interference and other cases, may be returned to the applicant, at the discretion of the Commissioner.

25. The model must be neatly and substantially made, of durable material. It should be made as small as possible, but not in any case more than one foot in length, width, or height. If made of pine or other soft wood, it should be painted, stained, or varnished. Glue must not be used, but the parts should be so connected as to resist the action of heat or moisture.

26. A working model is always desirable, in order to enable the office fully and readily to understand the precise operation of the machine. The name of the inventor, and of the assignee (if assigned), and also the title of the invention, must be affixed upon it in a permanent manner. When the invention is a composition of matter, a specimen of each of the ingredients and of the composition must accompany the application, and the name of the inventor and of the assignee (if there be one) must be permanently affixed thereto.

27. The model, unless otherwise disposed of, will be returned to the applicant upon demand, and at the expense of the applicant, in all cases when an application has been rejected more than two years; and in any pending case of less than two years' standing, upon the filing of a formal abandonment of the application, signed by applicant.



## COMPLETION OF THE APPLICATION.

28. No application can be examined, nor can the case be placed upon the files for examination, until the fee is paid, the specification, with the petition and oath, filed, and the drawings and model or specimen (when required) filed or deposited. *It is desirable that everything necessary to make the application complete should be deposited in the office at the same time.* If otherwise, a letter should accompany each part, stating to what application it belongs.

## THE EXAMINATION

All cases in the Patent Office are classified and taken up for examination in regular order; those in the same class being examined and disposed of, as far as practicable, in the order in which the respective applications are completed. When, however, the invention is deemed of peculiar importance to some branch of the public service, and when, for that reason, the head of some department of the government specially requests immediate action, the case will be taken up out of its order. These, with applications for reissues, and for letters-patent for inventions for which a foreign patent has already been obtained, which cases have precedence over original applications, are the only exceptions to the rule above stated in relation to the order of examination.

30. The personal attendance of the applicant at the Patent Office is unnecessary. The business can be done by correspondence or by attorney.

31. The applicant has a right to amend, of course, after the first rejection; and he may amend as often as the examiner presents any new references. After a second rejection, and at any time before the issue of the patent, the applicant may draw up special amendments and present the same to the Assistant Commissioner, who may, in his discretion, grant leave to make such special amendments, and allow a reconsideration by the examiner in charge. But such amendments shall first be submitted to the examiner in order that he may indorse thereon his recommendation or objections.

32. All amendments of the model, drawings, or specification, in the case of original applications, must conform to at least one of them as they were at the time of the filing of the application; and all amendments of specifications or claims must be made on separate sheets of paper from the original, and must be filed in the manner above directed. Even when the amendment consists in striking out a portion of the specification, or other paper, the same course should be observed. No erasure must be made by the applicant. The papers must remain forever as they were when filed, so that a true history of all that has been done in the case may be gathered from them. In every case of amendment the exact word or words to be stricken out or inserted should be clearly specified, and the precise point indicated where any insertion is to be made.

33. Whenever, on examination, any claim for a patent is rejected, for any reason whatever, the applicant will be notified thereof, and the reasons for such rejection will be given, together with such information and references as may be useful in judging of the propriety of renewing his application or of altering his specification; and if, after receiving such notice, he shall persist in his claim for a patent, with or without altering his specification, the case will be reexamined.

34. Upon the rejection of an application for want of novelty, the applicant will be furnished with a specific reference (by name, date, and class) to the article or articles by which it is anticipated. If he desires a copy of the cases so referred to, or of the plates or drawings connected with them, they will be forwarded to him, if in possession of the office, on payment of the cost of making such copies.

35. When the rejection of an application is founded upon another case previously rejected but not withdrawn or abandoned, the applicant will be furnished with all information in relation to the previously-rejected case which is necessary for the proper understanding and management of his own.

36. The specification, especially if the claim be amended, must be amended and revised, if required by the examiner, for the purpose of correcting inaccuracies of language or unnecessary prolixity, and of securing correspondence between the description of the invention and the claim.

37. The office will not return specifications for amendment; and in no case will any person be allowed to take any papers, drawings, models, or samples from the office. If applicants have not preserved copies of such papers as they wish to amend, the office will furnish them on the usual terms.

#### DATE OF PATENT

38. Every patent will bear date as of a day not later than six months from the time at which it was passed and allowed, and notice thereof was sent to the applicant or his agent, and if the final fee shall not be paid within that period, the patent will be withheld. No patent will be antedated.

#### WITHDRAWN AND REJECTED APPLICATIONS

39. When an application for a patent has been rejected or withdrawn, prior to July 8, 1870, the applicant will have six months from that date to renew his application, or to file a new one; and if he omits to do either, his application will be held to have been abandoned; upon the hearing of such renewed application, abandonment will be considered as a question of fact.

40. The proper course will be, where the application has been withdrawn, to file a new application; and where it has been rejected but not withdrawn, to file a formal renewal, with or without amendment, as the status of the application with reference to previous action may require.

41. Upon considering such renewed applications of either class, if it be found that applications have been made or unexpired patents have been granted in which the device in controversy has been described or claimed, an interference will be declared between such applications or patents and such renewed application, in order that an opportunity may be given for the production of proof of abandonment or two years' public use, if either exist.

#### APPEALS

42. Every applicant for a patent or the reissue of a patent, any of the claims of which have been twice rejected, and every party to an interference, may appeal from the decision of the primary



examiner, or of the examiner in charge of interferences, in such case, to the board of examiners-in-chief, having once paid a fee of ten dollars. For this purpose a petition in writing must be filed, signed by the party or his authorized agent or attorney, praying an appeal and setting forth briefly and distinctly the reasons upon which the appeal is taken.

43. The examiners-in-chief will consider the case as it was when last passed upon by the primary examiner, merely revising his decisions so far as they were adverse to the applicant.

44. There must be two rejections upon the claim as originally filed, or, if amended (in a matter of substance) upon the amended claim. Decisions of examiners upon preliminary or intermediate questions, or refusals to act, twice repeated, will be reexamined, upon application, by the Commissioner in person.

45. Cases which have been heard and decided by the examiners-in-chief will not be reheard by them except upon the order of the Commissioner.

46. All cases which have been acted on by the board of examiners-in-chief may be brought before the Commissioner in person, upon a written request to that effect, and upon the payment of the fee of twenty dollars required by law. A case deliberately decided by one Commissioner will not be disturbed by his successor. The only remaining remedy will be by appeal, in those cases allowed by law, to the supreme court of the District of Columbia, sitting in banc.

47. The mode of appeal from the decision of the office to the supreme court of the District of Columbia is by giving written notice thereof to the Commissioner; said notice being accompanied by the petition addressed to the supreme court of the District of Columbia, by the reasons of appeal, and by a certified copy of all the original papers and evidence in the case. The reasons of appeal must be filed within thirty days after the notice of the decision appealed from.

48. Printed forms of notice of appeal, of the reasons of appeal, and of the petition will be forwarded on request. The original files in the case cannot be taken from the office to the court, but certified copies of the record and references, to be used as evidence, will be furnished at the usual rates.

## HEARINGS

49. All cases pending before the Commissioner will stand for argument at one o'clock on the day of hearing. If either party in a contested case, or the appellant in an *ex parte* case, appear at that time, he will be heard; but in contested cases no motions will be heard in the absence of the other party, except upon default after due notice; nor will a case be taken up for oral argument after the day of hearing, except by consent of both parties. If the engagements of the tribunal before whom the case is pending are such as to prevent it from being taken up on the day of hearing, a new assignment will be made, or the case will be continued from day to day until heard. Unless otherwise ordered before the hearing begins, oral arguments will be limited to one hour for each counsel.



## MOTIONS

50. Reasonable notice of all motions, and copies of the motion papers and affidavits, must be served upon the opposite party or his attorney.

## INTERFERENCES

51. An "interference" is an interlocutory proceeding for the purpose of determining which of two or more persons, each or either of whom claims to be the first inventor of a given device or combination, really made the invention first.

An interference will be declared in the following cases:

First. When the parties have pending applications before the office at the same time, both or all the parties claiming to be the inventor of the same thing.

Second. When an applicant, having been rejected upon the prior unexpired patent or the prior application of another, claims to have made the invention before the prior applicant or patentee.

Third. When an invention is claimed in a renewed application which is shown or claimed in an application filed or unexpired patent granted prior to the filing of such renewed application.

Fourth. When an applicant for a reissue embraces in his amended specification any new or additional description of his invention, or enlarges his claim, or makes a new one, and thereby includes therein anything which has been claimed in any patent granted subsequent to the date of his original application, as the invention of another person, an interference will be declared between the application and any such unexpired patent, or pending application. If the reissue application claims only what was granted in the original patent, it may be put into interference with any pending application in which the same thing is shown, provided the later applicant claims to be the prior inventor and is not barred a patent by public use or abandonment.

Fifth. When an application is found to conflict with a caveat, the caveator is allowed a period of three months within which to present an application, when an interference may be declared.

Sixth. The office reserves to itself the right, when two applications are pending at the same time, in one of which a device may be described which is claimed in the other, to declare an interference to determine with whom is priority of invention, without reference to the order in which such applications may have been filed.

52. The fact that one of the parties has already obtained a patent will not prevent an interference; for, although the Commissioner has no power to cancel a patent already issued, he may, if he finds that another person was the prior inventor, give him also a patent, and thus place them on an equal footing before the courts and the public.

53. Upon the declaration of an interference each party will be required, before any time is set for the taking of testimony, to file a statement under oath giving the date and a detailed history of the invention, showing the successive experiments, steps of development, extent and character of use, and forms of embodiment. Such statement shall not be open to inspection by the other party, until both are filed, or until the time for filing both has expired. In default of such filing by either party, or if the statement of

either fails to overcome the *prima facie* case made by the respective dates of application, or if it shows that the invention has been abandoned or that it has been in public use for more than two years prior to the application of affiant, the other party shall be entitled to an adjudication by default upon the case as it stands upon the record.

54. Where no testimony is taken by the applicant upon whom rests the burden of proof, or where testimony has been taken by such applicant, but not by the other party, during the time assigned to the latter, the case will be considered closed, and may, at the expiration of the time assigned to such parties respectively, be set down for hearing, at any time, not less than ten days thereafter.

55. In cases of interference, parties have the same remedies by appeal as other applicants, to the examiners-in-chief and to the Commissioner, but no appeal lies, in such cases, from the decision of the Commissioner. Appeals in interference cases should be accompanied with a brief statement of the reasons thereof.

56. When an interference is declared, notice will be given to both parties, or to their attorneys. When one of the parties has filed a caveat or already received a patent, duplicate notices will be sent to the patentee or caveator and to his attorney of record. Where one of the parties resides abroad and has no known agent in the United States, in addition to the notice sent by mail, notice may be given by publication in a newspaper of general circulation in the city of Washington once in a week for three successive weeks.

57. In cases of interference the party who first filed so much of his application for a patent as illustrates his invention will be deemed the first inventor in the absence of all proof to the contrary. A time will be assigned in which the other party shall complete his direct testimony; and a further time in which the adverse party shall complete the testimony on his side; and a still further time in which both parties may take rebutting testimony, but shall take no other. If there are more than two parties, the times for taking testimony shall be so arranged, if practicable, that each shall have a like opportunity in his turn, each being held to go forward and prove his case against those who filed their applications before him.

58. If either party wishes the time for taking his testimony, or for the hearing, postponed, he must make application for such postponement, and must show sufficient reason for it by affidavit filed before the time previously appointed has elapsed, if practicable; and must also furnish his opponent with copies of his affidavits and with reasonable notice of the time of hearing his application.

59. Cases of interference will, when the issue is made up and the testimony taken, be tried before the examiner in charge of interferences. If an interference has been properly declared, it will not be dissolved without judgment of priority, founded upon the testimony or the written concession of one of the parties, unless the invention is found not to be patentable, or to have been abandoned, or that it has been in public use for more than two years prior to the application of either party, or that no interference in fact exists.

60. No amendments to the specification will be received during the pendency of an interference, except as provided in section 61. A second interference will not be declared upon a new application filed by either party during the pendency of an interference, or



after judgment, nor will a rehearing be granted, unless it be shown to the satisfaction of the Commissioner (in person) that the party desiring a new interference or rehearing has new and material testimony which he could not have procured in time for the hearing; or, unless other sufficient reasons be shown, satisfactory to the Commissioner.

61. When an application is adjudged to interfere with a part only of another pending application, the interfering parties will be permitted to see or obtain copies of so much only of the specifications as refers to the interfering claims. And either party may, if he so elect, withdraw from his application the claims adjudged not to interfere and file a new application therefor: *Provided*, That the claims so withdrawn cover inventions which do not involve the devices in interference: *And provided also*, That the devices in interference are eliminated from the new application. In such cases the latter will be examined without reference to the interference from which it was withdrawn.

### REISSUES

62. A reissue is granted to the original patentee, his legal representatives, or the assignees of the entire interest, when by reason of a defective or insufficient specification the original patent is inoperative or invalid, provided the error has arisen from inadvertence, accident, or mistake, and without any fraudulent or deceptive intention: but although the patent has been assigned, the application must be made, and the specification sworn to by the inventor.

63. The petition for a reissue must show that all parties owning any undivided interest in the patent concur in the surrender. A statement, under oath, of the title of the party proposing to surrender must be filed with the application.

64. The general rule is, that whatever is really embraced in the original invention, and so described or shown that it might have been embraced in the original patent, may be the subject of a reissue; but no new matter shall be introduced into the specification, nor in case of a machine patent shall the model or drawings be amended except each by the other; but, when there is neither model nor drawing, amendments may be made upon proof satisfactory to the Commissioner that such new matter or amendment was a part of the original invention, and was omitted from the specification by inadvertence, accident, or mistake, as aforesaid.

65. Reissued patents expire at the end of the term for which the original patent was granted. For this reason applications for reissue will be acted upon as soon as filed.

66. A patentee, in reissuing, may at his option have a separate patent for each distinct and separate part of the invention comprehended in his original patent, by paying the required fee in each case, and complying with the other requirements of the law, as in original applications. Each division of a reissue constitutes the subject of a separate specification descriptive of the part or parts of the invention claimed in such division; and the drawing may represent only such part or parts. All the divisions of a reissue will issue simultaneously. If there be controversy as to one, the other will be withheld from issue until the controversy is ended.

67. In all cases of applications for reissues, the original claim, if reproduced in the amended specification, is subject to re-exam-



ination, and may be revised and restricted in the same manner as in original applications; but if any reissue be refused, the original patent will, upon request, be returned to the applicant.

### DISCLAIMERS

68. Whenever, by inadvertence, accident, or mistake, the claim of invention in any patent is too broad, embracing more than that of which the patentee was the original or first inventor, some material or substantial part of the thing patented being truly and justly his own, the patentee, his heirs or assigns, whether of a whole or of a sectional interest, may make disclaimer of such parts of the thing patented as the disclaimant shall not choose to claim or to hold by virtue of the patent or assignment, stating therein the extent of his interest in such patent; which disclaimer shall be in writing, attested by one or more witnesses, and recorded in the Patent Office.

### EXTENSIONS

69. Power is vested in the Commissioner to extend any patent granted prior to March 2, 1861, for seven years from the expiration of the original term; but no patent granted since March 2, 1861, can be extended. When a patent has been reissued in two or more divisions, separate applications must be made for the extension of each division.

70. The applicant for an extension must file his petition and pay in the requisite fee not more than six months nor less than ninety days prior to the expiration of his patent. There is no power in the Commissioner to renew a patent after it has once expired.

71. Any person who intends to oppose an application for extension may, at any time after such application has been made, give notice of such intention to the applicant. After this he will be regarded as a party in the case, and will be entitled to notice of the time and place of taking testimony; to a list of names and residences of the witnesses whose testimony may have been taken previous to his service of notice of opposition; to a copy of the application; and to any other papers on file, upon paying the cost of copying.

72. The applicant for an extension must furnish to the office a statement in writing, under oath, of the ascertained value of the invention, and of his receipts and expenditures on account thereof, both in this and foreign countries. This statement must be made particular and in detail, unless sufficient reason is set forth why such a statement cannot be furnished. It must be filed within thirty days after filing the petition.

73. The questions which arise on each application for an extension are:

First. Was the invention *new* and *useful* when patented?

Second. Is it *valuable* and *important to the public*, and to what extent?

Third. Has the inventor been *reasonably remunerated* for the time, ingenuity, and expense bestowed upon it, and the introduction of it into use? If not, has his failure to be remunerated arisen from neglect or fault on his part?

Fourth. What will be the effect of the proposed extension upon the public interests?

No proof will be required from the applicant upon the first question unless the invention is assailed upon those points by opponents.

To enable the Commissioner to come to a correct conclusion in regard to the second point of inquiry, the applicant should, if possible, procure the testimony of persons disinterested in the invention, which testimony should be taken under oath. This testimony should have relation to nothing but what is actually covered by the claims of the patent.

In regard to the third point of inquiry, in addition to his own oath, showing his receipts and expenditures on account of the invention, the applicant should show, by testimony under oath, that he has taken all reasonable measures to introduce his invention into general use; and that, without neglect or fault on his part, he has failed to obtain from the use and sale of the invention a reasonable remuneration for the time, ingenuity, and expense bestowed on the same, and the introduction of it into use.

74. In case of opposition to the extension of a patent by any person, both parties may take testimony, each giving reasonable notice to the other of the time and place of taking said testimony, which shall be taken according to the rules prescribed by the Commissioner in cases of interference.

75. Any person opposing an extension must file his reasons of opposition in the Patent Office at least twenty days before the day of hearing.

76. In contested cases no testimony will be received, unless by consent, which has been taken within thirty days next after the filing of the petition for the extension.

77. Service of notice to take testimony may be made upon applicant, upon the opponent, upon the attorney of record of either, or, if there be no attorney of record, upon any attorney or agent who takes part in the service of notice, or the examination of the witnesses of either party. Where notice to take testimony has already been given to an opponent, and a new opponent subsequently gives notice of his intention to oppose, the examination need not be postponed, but notice thereof may be given to such subsequent opponent by mail or by telegraph. This rule, however, does not apply to *ex parte* examinations, or those of which no notice has been given when notice of opposition is served.

78. In the notice of the application for an extension a day will be fixed for the closing of testimony; a day ten days later for the reception of arguments, and for the filing of the examiner's report; and a day five days after this for a hearing; but no case will be set for a hearing more than three weeks prior to the expiration of the patent. Applications for a postponement of the hearing must be made and supported according to the same rules as are to be observed in cases of interference. But they will not be granted in such a manner as to cause a risk of preventing a decision in season.

## DESIGNS

79. A patent for a design may be granted to any person, whether citizen or alien, who, by his own industry, genius, efforts, and expense, has invented or produced any new and original design



for a manufacture, bust, statue, alto-relievo, or bas-relief; any new and original design for the printing of woolen, silk, cotton, or other fabrics; any new and original impression, ornament, pattern, print, or picture, to be printed, painted, cast, or otherwise placed on or worked into any article of manufacture; or any new, useful, and original shape or configuration of any article of manufacture, the same not having been known or used by others before his invention or production thereof, or patented or described in any printed publication, upon payment of the duty required by law, and other due proceedings had the same as in cases of inventions or discoveries.

80. Patents for designs are granted for the term of three and one-half years, or for the term of seven years, or for the term of fourteen years, as the said applicant may elect in his application. If granted prior to March 2, 1861, and unexpired, they may be extended for seven years, in the same manner as patents for invention.

81. The petition, oath, specification, and other proceedings in the case of applications for letter-patent for a design are the same as for other patents.

82. When a work of design can be sufficiently represented by a drawing, a model will not be required.

83. Photographs are received for the illustration of works of design only. One must be pasted upon thick drawing-paper, but in every case where this mode of illustration is employed by an applicant he will be required to deposit in this office the glass or other "negative" from which the photograph is printed, so that exact official copies may be made therefrom when desirable.

#### TRADE-MARKS

84. Any person or firm domiciled in the United States, and any corporation created by the authority of the United States, or any State or Territory thereof, and any person, firm or corporation resident of or located in an foreign country which, by treaty or convention, affords similar privileges to citizens of the United States, and who are entitled to the exclusive use of any lawful trade-mark, or who intend to adopt and use any trade-mark for exclusive use within the United States, may obtain protection for such lawful trade-mark by complying with the following requirements, to wit:

First. By causing to be recorded in the Patent Office the names of the parties, and their residences and place of business, who desire the protection of the trade-mark.

Second. The class of merchandise and the particular description of goods comprised in such class, by which the trade-mark has been or is intended to be appropriated.

Third. A description of the trade-mark itself, with fac-similes thereof and the mode in which it has been or is intended to be applied and used.

Fourth. The length of time, if any, during which the trade-mark has been used.

Fifth. The payment of a fee of twenty-five dollars, in the same manner and for the same purpose as the fee required for patents.

Sixth. The compliance with such regulations as may be prescribed by the Commissioner of Patents.



Seventh. The filing of a declaration, under the oath of the person, or of some member of the firm or officer of the corporation, to the effect that the party claiming protection for the trade-mark has a right to the use of the same, and that no other person, firm or corporation has a right to such use, either in the identical form or having such near resemblance thereto as might be calculated to deceive, and that the description and fac-similes presented for record are true copies of the trade-mark sought to be protected.

85. Such trade-mark shall remain in force for thirty years, and may be renewed for thirty years more, except in cases where such trade-mark is claimed for, and applied to, articles not manufactured in this country, and in which it receives protection under the laws of any foreign country for a shorter period, in which case it shall cease to have force in this country, at the same time that it becomes of no effect elsewhere.

86. No proposed trade-mark will be received or recorded which is not and cannot become a lawful trade-mark, or which is merely the name of a person, firm, or corporation only, unaccompanied by a mark sufficient to distinguish it from the name when used by other persons, or which is identical with a trade-mark appropriate to the same class of merchandise and belonging to a different owner, and already registered or received for registration, or which so nearly resembles such last-mentioned trade-mark as to be likely to deceive the public; but any lawful trade-mark already lawfully in use may be recorded.

87. Five duplicate copies of the proposed trade-mark, in addition to the one accompanying the statement and oath of applicant, must be deposited with each application. Certified copies will be furnished at the usual rates.

88. The right to the use of any trade-mark is assignable by any instrument of writing, and such assignment must be recorded in the Patent Office within sixty days after its execution. The fees will be the same as are prescribed for recording assignments of patents.

#### FOREIGN PATENTS

89. The taking out of a patent in a foreign country does not prejudice a patent previously obtained here, nor does it prevent obtaining a patent here subsequently, unless the invention shall have been introduced into public use in the United States *for more than two years* prior to the application; and *provided*, that the patent shall expire at the same time with the foreign patent, or, if there be more than one, at the same time with the one having the shortest term; but in no case shall it be in force more than seventeen years.

90. When application is made for a patent for an invention which has been already patented abroad, the inventor will be required to make oath that, according to the best of his knowledge and belief, the same has not been in public use in the United States for more than two years prior to the application in this country.

91. An applicant whose invention has been patented abroad should state the fact that a foreign patent has actually been obtained, giving its date, and if there be more than one, of the one having the shortest term.

## CAVEATS

92. Any citizen of the United States, or alien who has resided for one year last past in the United States, and has made oath of his intention to become a citizen thereof, can file a caveat in the secret archives of the Patent Office on the payment of a fee of ten dollars therefor. And if, at any time within one year thereafter, another person applies for a patent for the same invention, the caveator will be entitled to notice to file his application, and to go into interference with the applicant for the purpose of proving priority of invention and obtaining the patent if he succeed. He must file his application within three months from the day on which the notice to him is deposited in the post office at Washington, adding the regular time for the transmission of the same to him; and the day when the time for filing expires shall be mentioned in the notice or indorsed thereon.

93. The caveator will not be entitled to notice of any application pending at the time of filing his caveat, nor of any application filed after the expiration of one year from the date of filing the caveat; but he may renew his caveat at the end of one year by paying a second caveat fee of ten dollars, which will continue it in force for one year longer, and so on from year to year as the caveator may desire.

94. No caveat can be filed in the secret archives of the office unless accompanied by an oath of the caveator that he is a citizen of the United States, or, if he is an alien, that he has resided for one year last past within the United States, and has made oath of his intention to become a citizen thereof; nor unless the applicant also states, under oath, that he believes himself the original inventor of the art, machine, or improvement set forth in his caveat.

95. A caveat need not contain as particular a description of the invention as is requisite in a specification; but still the description should be sufficiently precise to enable the office to judge whether there is a probable interference when a subsequent application is filed.

96. Caveat papers cannot be withdrawn from the office nor undergo alteration after they have once been filed; but the caveator, or any person properly authorized by him, can at any time obtain copies of the caveat papers at the usual rates.

97. When practicable, the caveat must be accompanied by drawings or sketches.

## ASSIGNMENTS

98. A patent may be assigned, either as to the whole interest or any undivided part thereof, by any instrument of writing. No particular form of words is necessary to constitute a valid assignment, nor need the instrument be sealed, witnessed, or acknowledged.

99. A patent will, upon request, issue directly to the assignee or assignees of the entire interest in any invention, or to the inventor and the assignee jointly, when an undivided part only of the entire interest has been conveyed.

100. In every case where a patent issues or reissues to an assignee the assignment must be recorded at the Patent Office at least five days before the issue of the patent, and the specification must be sworn to by the inventor.

101. When the patent is to issue in the name of the assignee the entire correspondence should be in his name.



102. The patentee may grant and convey an exclusive right under his patent to the whole or any specified portion of the United States, by an instrument in writing.

103. Every assignment or grant of an exclusive territorial right must be recorded in the patent Office within three months from the execution thereof; otherwise it will be void as against any subsequent purchaser or mortgagee for a valuable consideration without notice; but, if recorded after that time, it will protect the assignee or grantee against any such subsequent purchaser, whose assignment or grant is not then on record.

104. The patentee may convey separate rights under his patent to make or to use or to sell his invention, or he may convey territorial or shop rights which are not exclusive. Such conveyances are mere licenses, and need not be recorded.

105. The receipt of assignments is not generally acknowledged by the office. They will be recorded in their turn within a few days after their reception, and then transmitted to the persons entitled to them. A five cent revenue stamp is required for each sheet or piece of paper on which an assignment, grant, or license may be written.

#### OFFICE FEES AND HOW PAYABLE

106. Nearly all the fees payable to the Patent Office are positively required by law to be paid in advance, that is, upon making application for any action by the office for which a fee is payable. For the sake of uniformity and convenience, the remaining fees will be required to be paid in the same manner.

107. The following is the tariff of fees established by law:

|  |         |
|--|---------|
| On filing every application for a design, for three years and six months.....  | \$10.00 |
| On filing every application for a design, for seven years.....                 | 15.00   |
| On filing application for a design, for fourteen years.....                    | 30.00   |
| On filing every caveat .....   | 10.00   |
| On filing every application for a patent .....                                 | 15.00   |
| On issuing each original patent.....   | 20.00   |
| On filing a disclaimer .....   | 10.00   |
| On filing every application for a reissue .....                                | 30.00   |
| On filing every application for division of a reissue.....                     | 30.00   |
| On filing every application for an extension.....                              | 50.00   |
| On the grant of every extension.....   | 50.00   |
| On filing the first appeal from a primary examiner to examiners-in-chief ..... | 10.00   |
| On filing an appeal to the Commissioner from examiners-in-chief .....          | 20.00   |
| On depositing a trade-mark for registration.....                               | 25.00   |
| For every copy of a patent or other instrument, for every 100 words .....      | 10.00   |
| For every certified copy of drawing, the cost of having them made.             |         |
| For copies of papers not certified, the cost of having them made.              |         |
| For recording every assignment of 300 words or under.....                      | 1.00    |
| For recording every assignment, if over 300 and not over 1,000 words.....      | 2.00    |
| For recording every assignment, if over 1,000 words.....                       | 3.00    |



108. The final fee on issuing a patent must be paid within six months after the time at which the patent was allowed and notice thereof sent to the applicant or his agent. And if the final fee for such patent be not paid within that time the patent will be forfeited, and the invention therein described become public property, as against the applicant therefor, unless he shall make a new application therefor within two years from date of the original allowance.

109. The money for the payment of fees may be paid to the Commissioner, or to the Treasurer, or any of the assistant treasurers, of the United States, or to any of the designated depositaries, national banks, or receivers of public money, designated by the Secretary of the Treasury for that purpose, who shall give the depositor a receipt or certificate of deposit therefor, which shall be transmitted to this office. When this cannot be done without much inconvenience, the money may be remitted by mail, and in every case the letter should state the exact amount inclosed. Letters containing money may be registered. Post office money-orders now afford a safe and convenient mode of transmitting fees. All such orders should be made payable to the Commissioner of Patents.

110. All money sent by mail, either to or from the Patent Office, will be at the risk of the owner. In no case should money be sent inclosed with models. All payments to or by the office must be paid in specie, treasury notes, national bank notes, certificates of deposit, or post office money-orders.

#### REPAYMENT OF MONEY

111. Money paid by actual mistake will be refunded; but a mere change of purpose after the payment of money will not entitle a party to demand such return.

#### STAMPS .

112. Revenue stamps must be attached as follows:

First. A stamp of the value of fifty cents is required upon each power of attorney authorizing an attorney or agent to transact business with this office relative to an application for a patent, reissue, or extension.

Second. No assignment directing a patent to issue to an assignee will be recognized by this office, nor will any assignment be recorded, unless stamps shall be affixed of the value of five cents for every sheet or piece of paper upon which the same shall be written.

Third. The person using or affixing the stamp must cancel the same by writing thereupon the initials of his name and the date.

#### TAKING AND TRANSMITTING TESTIMONY

113. The law requires the clerks of the various courts of the United States to issue subpoenas to compel the attendance of witnesses whose depositions are desired to be read in evidence in any contested cases in the Patent Office.

In interference, extension, and other contested cases, the following rules have been established for taking and transmitting evidence:

First. That, before the deposition of a witness or witnesses be taken by either party, due notice shall be given to the opposite party, as hereinafter provided, of the time and place when and where such deposition or depositions will be taken, with the names and residences of the witness or witnesses then and there to be examined, so that the opposite party, either in person or by attorney, shall have full opportunity to cross-examine the witness or witnesses: *Provided*, That if the opposite party or his counsel be actually present at the taking of testimony, witnesses not named in the notice may be examined, but not otherwise. And such notice shall, *with proof of service of the same*, be attached to the deposition or depositions, whether the party cross-examine or not; and such notice shall be given in sufficient time for the appearance of the opposite party.

Second. That, whenever a party relies upon a caveat to establish the date of his invention, a certified copy thereof must be filed in evidence, with due notice to the opposite party, as no notice can be taken by the office of a caveat, filed in its secret archives.

Third. That all evidence, etc., shall be sealed up, entitled upon the envelope with the name of the case in which it is taken, and addressed to the Commissioner of Patents by the person before whom it shall be taken, and so certified thereon, and forwarded *immediately upon the close of the examination* to the Patent Office.

Fourth. In cases of extension, where no opposition is made, *ex parte* testimony will be received from the applicant; and such testimony as may have been taken by the applicant prior to notice of opposition shall be received, unless taken within thirty days after filing the petition for the extension: *Provided*, That immediately upon receiving notice of opposition the applicant shall give notice to the opposing party or parties of the names and residences of the witnesses whose testimony has thus been taken.

Fifth. That no evidence touching the matter at issue will be *considered* upon the day of hearing which shall not have been taken and filed in compliance with these rules: *Provided*, Notice of the objection has been given, as hereinafter prescribed (see Rule 118): *Provided also*, That if either party shall be unable, for good and sufficient reasons, to procure the testimony of a witness or witnesses within the stipulated time, it shall be the duty of said party to give notice of the same to the Commissioner of Patents, accompanied by statements, *under oath*, of the cause of such inability, and of the names of such witnesses and of the facts expected to be proved by them, and of the *steps* which have been taken to procure said testimony, and of the *time* or *times* when efforts have been made to procure it; which last-mentioned notice to the Commissioner shall be received by him previous to the day of hearing aforesaid.

114. The notice for taking testimony must be served by delivering a copy to the adverse party or his agent or attorney of record or counsel, as provided in Rule 77, or by leaving a copy at the party's usual place of residence with some member of the family who has arrived at the years of discretion. The notice must be annexed to the deposition, with a certificate duly sworn to, stating the manner and time in which the service was made.

115. The testimony must (if either party desires it) be taken in answer to interrogatories, having the questions and answers committed in writing in their regular order by the magistrate, or,



under his direction, by some person not interested in the issue, nor an agent or attorney of one who is. The deposition, when complete, must be signed by the witness.

116. The magistrate must append to the deposition his certificate, stating the time and place at which it was taken, the names of the witnesses, the administration of the oath, at whose request the testimony was taken, the occasion upon which it is intended to be used, the names of the adverse party (if any), and whether they were present.

117. No notice will be taken at the hearing of any merely formal or technical objection, unless it shall appear to have wrought a substantial injury to the party raising the objection; and even then as soon as that party becomes aware of the objection, he must immediately give notice thereof to this office, and also to the opposite party, informing him at the same time that, unless corrected, he shall urge his objection at the hearing.

118. In contested cases, whether of interference or of extension, parties may have access to the testimony on file prior to the hearing, in presence of the officer in charge; and copies may be obtained by them at the usual rates.

#### RULES OF CORRESPONDENCE

119. All correspondence must be in the names of the "Commissioner of Patents," and all letters and other communications intended for the office must be addressed to him. If addressed to the Acting or Assistant Commissioner, chief clerk, examiners, or any of the other officers, they will not be noticed, unless it should be seen that the mistake was owing to inadvertence. *A separate letter should in every case be written in relation to each distinct subject of inquiry or application, the subject of the invention and the date of filing being always carefully noted.*

120. When an agent has filed his power of attorney, duly executed, the correspondence will, in ordinary cases, be held with him only. A double correspondence with him and his principal, if generally allowed, would largely increase the labor of the office. For the same reason the assignee of an entire interest in an invention is entitled to hold correspondence with the office to the exclusion of the inventor. If the principal becomes dissatisfied, he must revoke his power of attorney and notify the office, which will then communicate with him.

121. All communications to and from the Commissioner upon official business are carried in the mail free of postage.

122. After a second rejection none of the papers can be inspected, save in the presence of a sworn officer; nor will any of the papers be returned to the applicant or agent.

123. Whenever it shall be found that two or more parties whose interests are in conflict are represented by the same attorney, the examiner in charge will notify each of said principal parties of this fact, and also the attorney.

124. Aside from the caveats, which are required by law to be kept secret, all pending applications are, as far as practicable, preserved in like secrecy. No information will therefore be given those inquiring whether any particular case is before the office, or whether any particular person has applied for a patent.

125. But information is given in relation to any case after a patent has issued, or after a patent has been refused, and the



further prosecution of the application is abandoned or barred by lapse of time.

126. The models, in such cases, are so placed as to be subject to general inspection. The specifications and drawings in any particular case can be seen by any one having particular occasion to examine them, and copies thereof, as well as of patents granted, will be furnished at the cost of making them. Copies will be made on parchment, at the request of the applicant, on his paying the additional cost.

127. Even after a case is rejected the application is regarded as pending, unless the applicant allows the matter to rest for two years without taking any further steps therein, in which case it will be regarded as abandoned, and will no longer be protected by any rule of secrecy. The specification, drawings, and model will then be subject to inspection in the same manner as those of patented or withdrawn applications.

128. Information in relation to pending cases is given so far as it becomes necessary in conducting the business of the office, but no further. Thus, when an interference is declared between two pending applications, each of the contestants is entitled to a knowledge of so much of his antagonist's case as to enable him to conduct his own understandingly.

129. The office cannot respond to inquiries as to the novelty of an alleged invention in advance of an application for a patent, nor upon inquiries founded upon brief and imperfect descriptions, propounded with a view of ascertaining whether such alleged improvements have been patented, and, if so, to whom; nor can it act as an expounder of the patent law, nor as counsellor for individuals, except as to questions arising within the office. A copy of the rules, with this section marked, sent to the individual making an inquiry of the character referred to, is intended as a respectful answer by the office.

130. All business with the office should be transacted in writing. Unless by the consent of all parties, the action of the office will be predicated exclusively on the written record. No attention will be paid to any alleged verbal promise or understanding in relation to which there is any disagreement or doubt.

### ATTORNEYS

131. Any person of intelligence and good moral character may appear as the attorney in fact or agent of an applicant, upon filing proper power of attorney. As the value of patents depends largely upon the careful preparation of the specification and claims, the assistance of competent counsel will, in most cases, be of advantage to the applicant, but the value of their services will be proportioned to their skill and honesty. So many persons have entered this profession of late years without experience, that too much cannot be exercised in the selection of a competent man. The office cannot assume responsibility for the acts of attorneys, nor can it assist applicants in making a selection. It will, however, be a safe rule to distrust those who boast of the possession of special and peculiar facilities in the office for procuring patents in a shorter time or with more extended claims than others.

132. Powers of attorney must contain a clause of substitution, to authorize the attorney to substitute for, or associate with, him-

self a second agent; but such powers will not authorize the second agent to appoint a third.

133. A power of attorney must be filed in every case, both by original and associate attorneys, before such attorney will be allowed to inspect papers or take action of any kind; but a revenue stamp need be affixed to original powers only.

134. Attorneys will be expected to conduct their business with the office with decorum and courtesy. For gross misconduct, the Commissioner may refuse to recognize any person as a patent agent, either generally or in any particular case; and for lesser offenses attorneys may be refused the privilege of oral interviews, and be required to transact all business with the office in writing.

135. As members of Congress cannot examine cases, or act without regular powers of attorney, as cases cannot be taken up out of their regular order upon their request, and as the delay in transmitting papers to and from the Capitol involves a loss of time, which would be avoided by communicating directly with the office, applicants are recommended not to add to the sufficiently arduous duties of their representatives by ordering copies or attempting to transact business with the office through them.

#### LIBRARY

136. No persons are allowed to take books from the library except those employed in the office.

All books taken from the library must be entered in a register kept for the especial purpose, and returned on the call of the librarian.

Any book lost or defaced must be replaced by another.

Patentees and others doing business with the office can examine the books only in the library hall.

All translations will be made at the usual rates by the office.

No persons will be allowed to make copies or tracings from works in the library. Such copies will be furnished at the usual rates.

SAMUEL S. FISHER,  
Commissioner.

APPROVED:

J. D. COX,  
Secretary of the Interior.

**APPENDIX D**  
**RULES OF PRACTICE**  
**IN THE**  
**UNITED STATES PATENT OFFICE**  
**REVISED DECEMBER 1, 1879.**

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The following regulations, designed to be in strict accordance with the revised statutes relating to the grant of patents for inventions, are published for gratuitous distribution. Marginal references to corresponding provisions of the revised statutes, and of the rules of 1878, are given for the convenience of the public and of the office.

The observance of the appended forms, in all cases to which they may be applicable, is recommended to inventors and attorneys.

Printed copies of the revised statutes relating to the grant of patents may be obtained on application to the Commissioner.

**CORRESPONDENCE**

1. All business with the office should be transacted in writing. Unless by the consent of all parties, the action of the office will be based exclusively on the written record. No attention will be paid to any alleged oral promise, stipulation, or understanding, in relation to which there is disagreement or doubt.

2. All office letters must be sent in the name of the "Commissioner of Patents." All letters and other communications intended for the office must be addressed to him; if addressed to any of the other officers they will ordinarily be returned.

3. Express charges, freight, postage, and all other charges on matter sent to the patent office must be prepaid in full; otherwise it will not be received.

4. The personal attendance of applicants at the patent office is unnecessary. Their business can be transacted by correspondence.

5. The assignee of the entire interest of an invention is entitled to hold correspondence with the office to the exclusion of the inventor.

6. Where there has been an assignment of an undivided part of an invention, the inventor and the assignee will both be recognized as the proper parties to hold correspondence with the office, and all amendments and other actions in such cases must be signed by both parties; but official letters will be sent in such case to the post-office address of the inventor, unless he shall otherwise direct.

7. When an attorney shall have filed his power of attorney, duly executed, the correspondence will be held with him.

8. A double correspondence with the inventor and an assignee, or with a principal and his attorney, or with two attorneys, cannot generally be allowed.



9. A separate letter should in every case be written in relation to each distinct subject of inquiry or application. Assignments for record, final fees and orders for copies or abstracts must be sent to the office in separate letters.

10. When a letter concerns an application, it should state the name of the applicant, the title of the invention, the serial number of the application (see Rule 31), and the date of filing the same.

11. When the letter concerns a patent, it should state the name of the patentee, the title of the invention, and the number and date of the patent.

12. No attention will be paid to *ex parte* statements or protests of persons concerning pending applications to which they are not parties, unless information of the pendency of such applications shall have been voluntarily communicated by the applicants.

13. Letters received at the office will be answered, and orders for printed copies filled, without unnecessary delay. Telegrams, if not received before 3 o'clock p. m., cannot ordinarily be answered until the following day.

#### INFORMATION TO CORRESPONDENTS

14. The office cannot respond to inquiries as to the novelty of an alleged invention in advance of an application for a patent, nor to inquiries propounded with a view of ascertaining whether any alleged improvements have been patented, and, if so, to whom; nor can it act as an expounder of the patent law, or as counselor for individuals, except as to questions arising within the office.

Of the propriety of making an application for a patent, the inventor must judge for himself. The office is open to him, and its records and models pertaining to all patents granted may be inspected either by himself or by any attorney or expert he may call to his aid, and its reports are widely distributed. (See Rule 216.) Further than this the office can render him no assistance until his case comes regularly before it in the manner prescribed by law. A copy of the rules, with this section marked, sent to the individual making an inquiry of the character referred to, is intended as a respectful answer by the office. Examiners' digests are not open to public inspection.

15. Caveats and pending applications are preserved in secrecy. No information will be given, without authority, respecting the filing by any particular person of a caveat or of an application for a patent or for the reissue of a patent, the pendency of any particular case before the office, the subject-matter of any particular application, unless it shall be necessary to the proper conduct of business before the office, as provided by Rules 95, 102, and 126.

16. After a patent has issued the model, specification, drawings, and all documents relating to the case are subject to general inspection, and copies, except of the model, will be furnished at the rates specified in Rule 209.

#### ATTORNEYS

17. Any person of intelligence and good moral character may appear as the agent or the attorney in fact of an applicant, upon filing a proper power of attorney. As the value of patents depends largely upon the careful preparation of the specifications and claims, the assistance of competent counsel will, in most cases, be

of advantage to the applicant; but the value of their services will be proportionate to their skill and honesty, and too much care cannot be exercised in their selection. The office cannot assume responsibility for the acts of attorneys, nor can it assist applicants in making selections. It will, however, be unsafe to trust those who pretend to the possession of any facilities except capacity and diligence for procuring patents in a shorter time or with broader claims than others.

18. Before any attorney, original or associate, will be allowed to inspect papers or take action of any kind his power of attorney must be filed. No power of attorney purporting to have been given to a firm or copartnership will be recognized, either in favor of the firm or of any of its members, unless all its members shall be named in such power of attorney.

19. Substitution or association can be made by an attorney upon the written authorization of his principal; but such authorization will not empower the second agent to appoint a third.

20. If the principal become dissatisfied he may revoke his power of attorney and notify the office, which will then communicate directly with him, or with such other attorney as he may lawfully appoint. Attorneys will be promptly notified by the examiners in charge of the revocation of their powers of attorney.

21. Parties or their attorneys will be permitted to examine their cases in the attorneys' room, but not in the rooms of the examiners. Personal interviews with examiners will be permitted only as hereinafter provided. (See Rules 147, 148.)

22. Attorneys will be required to conduct their business with the office with decorum and courtesy. Papers presented in violation of this requirement will ordinarily be returned. Complaints against examiners and other officers must be made in separate communications and will be promptly investigated. For gross misconduct the commissioner may refuse to recognize any person as a patent agent, either generally or in any particular case; but the reasons for such refusal will be duly recorded and be subject to the approval of the secretary of the interior.

23. Inasmuch as applications cannot be examined out of their regular order, except in accordance with the provisions of Rule 62, and members of congress can neither examine nor act in patent cases without written powers of attorney, applicants are advised not to impose upon senators or representatives labor which will consume their time without any advantageous results.

#### APPLICANTS

24. A patent may be obtained by any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof, not known nor used by others in this country, and not patented nor described in any printed publication in this or any foreign country, before his invention or discovery thereof, and not in public use or on sale for more than two years prior to his application, unless the same is proved to have been abandoned; and by any person who, by his own industry, genius, efforts, and expense, has invented and produced any new and original design for a manufacture, bust, statue, alto-relievo, or bas-relief; any new and original design for the printing of woolen, silk, cotton, or other fabrics; any new and original impression, ornament, pattern,



print, or picture to be printed, painted, cast, or otherwise placed on or worked into any article of manufacture; or any new, useful, and original shape or configuration of any article of manufacture, the same not having been known nor used by others before his invention or production thereof, nor patented nor described in any printed publication, upon payment of the fees required by law and other due proceedings had.

25. In case of the death of the inventor, the application may be made by, and the patent will issue to, his executor or administrator. In such case the oath will be made by the executor or administrator.

26. In case of an assignment of the whole interest in the invention, or of the whole interest in the patent to be granted, the patent will, upon request of the applicant or assignee, issue to the assignee; and if the assignee hold an undivided part interest, the patent will, upon like request, issue jointly to the inventor and the assignee; but the assignment in either case must first have been entered of record, and at a day not later than the date of the payment of the final fee. The application and oath must be made by the actual inventor, if alive, even if the patent is to issue to an assignee. If the inventor be dead it may be made by the executor or administrator, or by the assignee of the entire interest.

27. If it appear that the inventor, at the time of taking his application, believed himself to be the first inventor or discoverer, a patent will not be refused on account of the invention or discovery, or any part thereof, having been known or used in any foreign country before his invention or discovery thereof, if it had not been before patented or described in any printed publication.

28. Joint inventors are entitled to a joint patent; neither can claim one separately. Independent inventors of distinct and independent improvements in the same machine cannot obtain a joint patent for their separate inventions; nor does the fact that one furnishes the capital and another makes the invention entitle them to make application as joint inventors; but in such case they may become joint patentees, upon the conditions prescribed in Rule 26.

29. The receipt of letters patent from a foreign government will not prevent the inventor from obtaining a patent in the United States unless the invention shall have been introduced into public use in the United States more than two years prior to the application. But every patent granted for an invention which has been previously patented by the same inventor in a foreign country will be so limited as to expire at the same time with the foreign patent, or, if there be more than one, at the same time with the one having the shortest unexpired term; but in no case will it be in force more than seventeen years.

### THE APPLICATION

30. Applications for letters patent of the United States must be made to the commissioner of patents. A complete application comprises the petition, specification, oath, drawings, model, or specimen, when required (See Rules 28, 48, 55, 57, 61), and first fee of \$15.00. The petition, specification, and oath must be written in the English language.

31. No application for a patent will be placed upon the files for examination until it is completed. Every application signed or



sworn to in blank, or without actual inspection of the petition and specification, or altered or partly filled up after being signed or sworn to, will, upon the discovery of such irregularity, at any time before the delivery of the patent, be stricken from the files. The completed applications of each year will be numbered in regular order, the annual series commencing on the 1st of January, 1880. The applicant will be promptly informed of the serial number of his completed application. The application must be completed and prepared for examination within two years after the filing of the petition; and in default thereof, or upon failure of the applicant to prosecute the same within two years after any action thereon, of which notice shall have been duly mailed to him or his agent, it will be regarded as abandoned, unless it shall be shown, to the satisfaction of the commissioner, that such delay was unavoidable. (See Rules 165-167.)

32. It is desirable that all parts of the complete application should be deposited in the office at the same time, and that all the papers embraced in the application should be attached together; otherwise a letter must accompany each part, accurately and clearly connecting it with the other parts of the application. (See Rule 10.)

### THE PETITION

33. The petition is a communication duly signed by the applicant and addressed to the commissioner of patents, stating the name and residence of the petitioner, and requesting the grant of a patent for the invention therein designated by name, with a reference to the specification for a full disclosure thereof.

### SPECIFICATION

34. The specification is a written description of the invention or discovery, and of the manner and process of making, constructing, compounding, and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound, and use the same. It must conclude with a specific and distinct claim or claims of the part, improvement, or combination which the applicant regards as his invention or discovery.

35. The following order of arrangement should be observed when convenient in framing the specification, such portions as refer to drawings being omitted when the invention does not admit of representation by drawings:

(1.) Preamble giving the name and residence of the applicant, the title of the invention, and the statement required by the last clause of Rule 39;

(2.) General statement of the object and nature of the invention;

(3.) Brief description of the drawings, showing what each view represents;

(4.) Detailed description, explaining fully the alleged invention, and the manner of constructing, practicing, operating, and using it;

(5.) Claim or claims;

(6.) Signature of inventor;

(7.) Signatures of two witnesses.

36. The detailed description above referred to must set forth

the precise invention for which a patent is claimed, explaining the principle thereof and the best mode in which the applicant has contemplated applying that principle, so as to distinguish it from other inventions.

37. Where there are drawings the description will refer by figures to the different views and by letters or figures to the different parts.

38. In applications for patents upon mere improvements, the specification must particularly point out the parts to which the improvement relates, and must by explicit language distinguish between what is old and what is claimed as the improvement; and in such cases the description and the drawings, as well as the claims, should be confined to the specific improvements and such parts as necessarily cooperate with them.

39. Every applicant must distinctly state, under oath, whether the invention has been patented to himself or to others with his consent or knowledge in a foreign country, and, if it has been, that, according to his knowledge and belief, the same has not been in public use in the United States for more than two years prior to the application in this country; and he must also name such foreign country and set forth the number and date of the patent.

40. Two or more independent inventions cannot be claimed in one application; but where several distinct inventions are dependent upon each other and mutually contribute to produce a single result, they may be claimed in one application.

41. If several inventions, claimed in a single application, shall be found to be of such a nature that a single patent may not be issued to cover them, the inventor will be required to limit the description and claim of the pending application to whichever invention he may elect; the other inventions may be made the subjects of separate applications, which must conform to the rules applicable to original applications. If the independence of the inventions be clear, such limitation will be made before any action upon the merits; otherwise it may be made at any time before final action thereon, in the discretion of the examiner.

42. When an applicant makes two or more applications relating to the same subject-matter of invention, all showing, but only one claiming, the same thing, those not claiming it must contain disclaimers thereof, with references to the applications claiming it.

43. The specification must be signed by the inventor or by his executor or administrator, and the signature must be attested by two witnesses. Full names must be given, and all names, whether of applicants or witnesses, must be legibly written.

44. The specification and claims and all amendments must be written in a fair, legible hand, on but one side of the paper; otherwise the office may require them to be printed; and all interlineations and erasures must be clearly marked in marginal or foot-notes written on the same sheet of paper. Legal-cap paper with the lines numbered is deemed preferable, and a wide margin must always be reserved upon the left-hand side of the page, both of the specification and of the amendments.

45. The applicant, if the inventor, must make oath or affirmation that he does verily believe himself to be the original and first inventor or discoverer of the art, machine, manufacture, composition, or improvement for which he solicits a patent, and that he does not know and does not believe that the same was ever before known or used; and shall state of what country he is a citizen,



and where he resides.\* An applicant for a reissue must also, in his oath, state that he verily believes the original patent to be inoperative or invalid, either by reason of a defective or insufficient specification or by reason of the patentee claiming as his own invention or discovery more than he had a right to claim as new, and that the error arose by inadvertence, accident, or mistake, and without any fraudulent or deceptive intention.

46. If the application be made by an executor or administrator, the form of the oath will be correspondingly changed. The oath or affirmation may be made before any person within the United States authorized by law to administer oaths, or, when the applicant resides in a foreign country, before any minister, charge d'affaires, consul, or commercial agent holding commission under the government of the United States, or before any notary public of the foreign country in which the applicant may be, the oath being attested in all cases, in this and other countries, by the proper official seal of the officer before whom the oath or affirmation is made.

47. In case the applicant seeks by amendment to introduce any claim not substantially embraced in the statement of invention or claim originally presented and therefore not covered by the original oath, he will be required to file a supplemental oath to the effect that the subject-matter of the proposed amendment was part of his invention and was invented before he filed his original application; and such supplemental oath must be upon the same paper which contains the proposed amendment.

#### THE DRAWINGS

48. The applicant for a patent is required by law to furnish a drawing of his invention where the nature of the case admits of it.

49. The drawing must be signed by the inventor or by his attorney in fact, and attested by two witnesses, and must show every feature of the invention covered by the claims, and when the invention consists of an improvement on an old machine, it must exhibit, in one or more views, the invention itself, disconnected from the old structure, and also, in another view, so much only of the old structure as will suffice to show the connection of the invention therewith.

50. Three several editions of patent-drawings are printed and published: one for office use, certified copies, etc., of the size and character of those attached to patents, the work being about 6 by 9½ inches; one reduced to half that scale, or one-fourth the surface, of which four will be printed on a page to illustrate the volumes distributed to the courts; and one reduction—to about the same scale—of a selected portion of each drawing to illustrate the Official Gazette.

This work will all be done by the photo-lithographic or other analogous process, and therefore the character of each original drawing must be brought as nearly as possible to a uniform standard of excellence, suited to the requirements of the process, and calculated to give the best results, in the interests of inventors, of the office, and of the public, generally. The following rules will

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\*For additional sworn statements which may be embraced in this oath or in a separate oath see Rule 39.



therefore be rigidly enforced, and any departure from them will be certain to cause delay in the examination of an application for letters patent:

(1.) Drawings must be made upon paper stiff enough to stand in the portfolios. The surface of the paper must be calendered and smooth, Indian ink of good quality, to the exclusion of all other kinds of ink or color, must be employed, to secure perfectly black and solid work.

(2.) The size of a sheet on which a drawing is made must be exactly 10 by 15 inches. One inch from its edges a single marginal line is to be drawn, leaving the "sight" precisely 8 by 13 inches. Within this margin all work and signatures must be included. One of the shorter sides of the sheet is regarded as its top, and, measuring downward from the marginal line, a space of not less than  $1\frac{1}{4}$  inches is to be left blank for the heading of title, name, number, and date.

(3.) All drawings must be made with the pen only. Every line and letter (signatures included) must be absolutely black. This direction applies to all lines, however fine, to shading, and to lines representing cut surfaces in sectional views. All lines must be clean, sharp, and solid, and they must not be too fine or crowded. Surface shading, when used, should be open. Sectional shading should be made by oblique parallel lines, which may be about one-twentieth of an inch apart.

(4.) Drawings should be made with the fewest lines possible consistent with clearness. By the observance of this rule the effectiveness of the work after reduction will be much increased. Shading (except on sectional views) should be used only on convex and concave surfaces, where it should be used sparingly, and may even there be dispensed with if the drawing is otherwise well executed. The plane upon which a sectional view is taken should be indicated on the general view by a broken or dotted line. Heavy lines on the shade sides of objects should be used, except where they tend to thicken the work and obscure letters of reference. The light is always supposed to come from the upper left-hand corner, at an angle of forty-five degrees. Imitations of wood or surface-graining should not be attempted.

(5.) The scale to which a drawing is made ought to be large enough to show the mechanism without crowding, and two or more sheets should be used if one does not give sufficient room to accomplish this end; but the number of sheets must never be increased unless it is absolutely necessary.

(6.) Letters and figures of reference must be carefully formed. They should, if possible, measure at least one-eighth of an inch in height, so that they may bear reduction to one-twenty-fourth of an inch; and they may be much larger when there is sufficient room. They must be so placed in the close and complex parts of drawings as not to interfere with a thorough comprehension of the same, and therefore should rarely cross or mingle with the lines. When necessarily grouped around a certain part, they should be placed at a little distance, where there is available space, and connected by short broken lines with the parts to which they refer. They must never appear upon shaded surfaces, and, when it is difficult to avoid this, a blank space must be left in the shading where the letter occurs, so that it shall appear perfectly distinct and separate from the work. If the same part of an invention appear in more than one view of the drawing it must always be represented

by the same character, and the same character must never be used to designate different parts.

(7.) The signature of the inventor is to be placed at the lower right-hand corner of the sheet, and the signatures of the witnesses at the lower left-hand corner, all within the marginal line. The title is to be written with pencil on the back of the sheet. The permanent names and title will be supplied subsequently by the office in uniform style.

When views are longer than the width of the sheet, the sheet is to be turned on its side, and the heading will be placed at the right, and the signatures at the left, occupying the same place and position as in the upright views, and being horizontal when the sheet is held in an upright position; and all views on the same sheet must stand in the same direction.

(8.) As a rule, one view only of each invention can be shown in the Gazette illustrations. The selection of that portion of a drawing best calculated to explain the nature of the specific improvement would be facilitated, and the final result improved, by the judicious execution of a figure with express reference to the Gazette, but which might, at the same time, serve as one of the figures referred to in the specification. For this purpose, the figure may be a plan, elevation, section or perspective view, according to the judgment of the draftsman. It must not cover a space exceeding sixteen square inches. All its parts should be especially open and distinct, with very little or no shading, and it must illustrate the invention claimed only, to the exclusion of all other details. When well executed, it will be used without curtailment or change; but any excessive fineness, or crowding, or unnecessary elaborateness of detail, will necessitate its exclusion from the Gazette.

(9.) Drawings should be rolled for transmission to the office, not folded. No agent's or attorney's stamp, or advertisement, or written address, will be permitted upon the face of a drawing within or without the marginal line.

51. These rules are modified as to drawings for designs. (See Rules for Designs, 81, 82.)

52. All reissue applications must be accompanied by new drawings, of the character required in original applications, and the inventor's name must appear upon the same in all cases of patents granted or assigned since July, 1870; and such drawings, if the original application was filed after July 8, 1870, shall be made upon the same scale as the original drawing or upon a larger scale, unless a reduction of scale shall be authorized by the commissioner.

53. The foregoing rules relating to drawings will be rigidly enforced; and every drawing not artistically executed in conformity therewith will be returned to the applicant; or, at the applicant's option and cost, the office will make the necessary corrections.

54. Applicants are advised to employ competent artists to make their drawings. The office will furnish the drawings, at cost, as promptly as its draftsmen can make them, for applicants who cannot otherwise conveniently procure them. No employes of the patent office, except those regularly assigned to such duty, will make any drawings, whether copies or originals, for applicants, agents, or attorneys.



## THE MODEL

55. In all cases which admit of representation by model the applicant, if required, shall furnish a model to exhibit advantageously the several parts of his invention or discovery.

56. The model must clearly exhibit every feature of the machine which forms the subject of a claim of invention, but should not include other matter than that covered by the actual invention or improvement, unless it is necessary to the exhibition of the invention in a working model.

57. The model must be neatly and substantially made, of durable material, metal being deemed preferable; but when a material forms an essential feature of the invention, the model will be constructed of that material. The model must not be more than one foot in length, width, or height, except in cases in which the commissioner shall admit working models of complicated machines of larger dimensions. If made of wood, it must be painted, or varnished. Glue must not be used; but the parts should be so connected as to resist the action of heat or moisture. Where practicable, to prevent loss, the model or specimen should have the name of the inventor permanently fixed thereon. In cases where models are not made strong and substantial, as here directed, the application will not be examined until a proper model is furnished.

58. A working model is often desirable, in order to enable the office fully and readily to understand the precise operation of the machine.

59. In all cases where an application has been rejected more than two years the model, unless it is deemed necessary that it should be preserved in the office, may be returned to the applicant upon demand, and at his expense; and the model, in any pending case of less than two years' standing, may be returned to the applicant upon the filing of a formal abandonment of the application, signed by the applicant in person. (See Rule 165.) Models belonging to patented cases will not be taken from the office except in the custody of some sworn employe of the office specially authorized by the commissioner, with the written approval of the secretary of the interior.

60. Models filed as exhibits, in contested cases, may be returned to the applicant. If not claimed within a reasonable time they may be disposed of, at the discretion of the commissioner.

## SPECIMENS

61. When the invention or discovery is a composition of matter the applicant, if required by the commissioner, shall furnish specimens of the composition, and of its ingredients, sufficient in quantity for the purpose of experiment. In all cases where the article is not perishable a specimen of the composition claimed, put up in proper form to be preserved by the office, must be furnished.

## THE EXAMINATION

62. All cases in the patent office are classified and taken up for examination in regular order, those in the same class being examined and disposed of, as far as practicable, in the order in which the respective applications are completed. When, however, the



invention is deemed of peculiar importance to some branch of the public service, and when, for that reason, the head of some department of the Government specially requests immediate action, the case will be taken up out of its order. These, with cases remanded by an appellate tribunal for further action, statements of grounds of decisions by primary examiners provided for in Rules 130, and 140, applications for extensions, for reissue, for letters patent for inventions for which foreign patents have already been obtained, and for designs, have precedence over all others in the order enumerated. Action upon such cases in the order indicated will be promptly made by the examiner in charge, to the exclusion of all other business interfering therewith.\*

63. The first step in the examination of an application will be to determine whether it is, in all respects, in proper form. If, however, the objections as to form are not vital, the examiner may proceed to the consideration of the application on its merits; but in such case he must if possible, in his first letter to the applicant, state all his objections, whether formal or otherwise, and until the formal objections are disposed of no further action will be taken upon its merits without the order of the commissioner.

#### REJECTIONS AND REFERENCES

64. Whenever, on examination, any claim of an application is rejected for any reason whatever, the applicant will be notified thereof, and the reason for such rejection will be fully and precisely stated, and such information and references will be given as may be useful in judging of the propriety of prosecuting his application or of altering his specification; and if, after receiving such notice, he shall persist in his claim, with or without altering his specification, the case will be reexamined. If upon reexamination it shall be again rejected, the reasons therefor will be fully and precisely stated. (See Rule 89.)

65. Upon the rejection of an application for want of novelty, the examiner must cite the best references at his command. If patents be cited, their dates and numbers, the names of the patentees, and the classes of invention must be stated. When the reference shows or describes inventions other than that claimed by the applicant, the particular part relied on will be designated as nearly as practicable. The pertinence of the reference, if not obvious, must be clearly explained and the anticipated claim specified. If printed publications be cited, the title, date, page, or plate, and place of publication, or place where a copy can be found, will be given. Where reference is made to facts within the personal knowledge of an employe of the office, the data will be as specific as possible, and the reference must be supported by the affidavit of such employe, which shall be subject to contradiction, explanation, and corroboration by the affidavits of the applicant and other persons. If the patent or other printed matter, plates, or drawings, so referred to, are in the possession of the office, copies will be furnished at cost upon the order of the applicant. (See Rule 171.)

66. Whenever, in the treatment of an *ex parte* application, an adverse decision is made upon any preliminary or intermediate ques-

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\*Note.—If an application is found to contain patentable subject-matter interfering with a caveat, its allowance will be suspended, as hereinafter provided in Rule 196.

tion, without the rejection of any claim, notice thereof, together with the reasons therefor, will be given to the applicant, in order that he may judge of the propriety of the action. If, after receiving such notice, he traverse the propriety of the action, the matter will be reconsidered.

#### AMENDMENTS AND ACTIONS BY APPLICANTS

67. The applicant has a right to amend before or after the first rejection; and he may amend as often as the examiner presents any new references or reasons for rejection. In so amending the applicant must clearly point out all of the patentable novelty which he thinks the case presents, in view of the state of the art disclosed by the references cited or objections made. He must also show how the amendments avoid such references or objections. After such action on all the claims as shall entitle the applicant to an appeal to the board of examiners-in-chief amendment will not ordinarily be allowed. If such amendments are offered good and sufficient cause therefor must be shown, together with the reasons why they were not earlier presented; and, if satisfied on these points, the examiner may admit and consider them. If the examiner shall refuse to admit and consider such amendments an appeal will lie to the commissioner, as in other cases.

68. In order to be entitled to the reconsideration provided for in Rule 66, the applicant must make request therefor in writing, and he must distinctly and specifically point out the supposed errors of the examiner's action. The mere allegation that the examiner has erred will not be received as a proper reason for such reconsideration. This provision does not apply to the case of a demerit for reexamination upon the rejection of a claim under Rule 64.

69. In original applications, which are capable of illustration by drawing or model, all amendments of the model, drawings, or specification or of additions thereto must conform to at least one of them as they were at the time of the filing of the application. Matter not found in either involving a departure from the original invention can be shown or claimed only in a separate application. If the invention does not admit of illustration by drawing or model, amendment of the specification is permitted upon proof satisfactory to the commissioner that the matter covered by the proposed amendment was a part of the original invention; the affidavits prescribed in Rule 47 may or may not be sufficient.

70. The specification must be amended and revised, when required, for the purpose of correcting inaccuracies of description or unnecessary prolixity, and of securing correspondence between the claim and the other parts of the specification.

71. After the completion of the application the office will not return the specification for any purpose whatever. The model or drawing (but not both at the same time) may be withdrawn for correction. If applicants have not preserved copies of such papers as they wish to amend, the office will furnish them on the usual terms.

72. All amendments of specification or claims must be made on sheets of paper separate from the original. Even when the amendment consists in striking out a portion of the specification or of the claims the same course must be observed. Erasures must not be made by the applicant. In every case of amendment the exact



word or words to be stricken out or inserted must be clearly specified, and the precise point indicated where the erasure or insertion is to be made.

73. When an amendatory clause is amended it must be wholly rewritten, so that no interlineation or erasure shall appear in the clause, as finally amended when the case is passed to issue. If the number or nature of the amendments shall render it otherwise difficult to consider the case, or to arrange the papers for printing, or copying, the examiner or commissioner may require the entire specification to be rewritten.

74. When an original or reissue application is rejected on reference to an expired or unexpired domestic patent, which substantially shows or describes but does not claim the rejected invention, or to a foreign patent, or to a printed publication, and the applicant shall make oath to facts showing a completion of the invention before the filing of the application for the domestic patent, or before the date of the foreign patent, or before the date at which the printed publication was made, and shall also make oath that he does not know and does not believe that the invention has been in public use, or on sale, in this country for more than two years prior to his application, and that he has never abandoned the invention, then the patent or publication cited will not bar the grant of a patent to the applicant, except upon interference as provided in Rule 94.

75. When an application is rejected on reference to an expired or unexpired domestic patent which shows or describes, but does not claim, the rejected invention, or to a foreign patent, or to a printed publication, or to facts within the personal knowledge of an employe of the office, set forth in an affidavit of such employe, or on the ground of public use or sale, or upon a mode or capability of operation attributed to a reference, or because the alleged invention is held to be inoperative, or frivolous, or injurious to public health or morals, affidavits or depositions supporting or traversing these references or objections may be received; but they will be received in no other cases, without special permission of the commissioner.

76. If an applicant neglect to prosecute his application for two years after the date when the last official notice of any action by the office was mailed to him the application will be held to be abandoned, as set forth in Rule 165.

77. Applications in interference can be amended only as provided in Rules 104, 124, 125. After notice of allowance of an application for a patent, no amendments will be received, nor will the examiner have any jurisdiction over the application, unless by authority of the commissioner. Amendments not affecting the merits may be made after allowance and after payment of the final fee, on the recommendation of the primary examiner, approved by the commissioner, without withdrawing the application from issue. (See Rule 160.)

## DESIGNS

78. A patent for a design may be granted to any person, whether citizen or alien, in the cases specified in Rule 24, upon payment of the duty required by law, and other due proceedings had, as in other cases of invention or discoveries.

79. Patents for designs are granted for the term of three and



one-half years, or for seven years, or for fourteen years, as the applicant may, in his application, elect.

80. The proceedings in application for patents for designs are substantially the same as in application for other patents. The specification must distinctly point out the characteristic features of the design, and carefully distinguish between what is old and what is believed to be new. The claims also, when the design admits of it, should be as distinct and specific as in the case of other patents. The following order of arrangement should be observed, when convenient, in framing the specification:

(1.) Preamble showing name and residence of the applicant, title of the design, and the name of the article for which the design has been invented.

(2.) Detailed description of the design as it appears in the drawing or photograph, letters or figures of reference being used.

(3.) Claim or claims.

(4.) Signature of inventor.

(5.) Signatures of two witnesses.

81. When the design can be sufficiently represented by drawings or photographs a model will not be required.

82. Whenever a photograph or an engraving is employed to illustrate the design it must be mounted upon Bristol-board, 10 by 15 inches in size, and properly signed and witnessed. The applicant will be required to furnish ten extra copies of such photograph or engraving (not mounted), of a size not exceeding  $7\frac{1}{2}$  inches by 11. Negatives are not required.

83. Whenever the design is represented by a drawing made to conform to the rules laid down for drawings of mechanical inventions but one copy need be furnished. Additional copies will be supplied by the photo-lithographic process at the expense of the patent office. (For Forms to be used in Application for Design Patents see Appendix, Forms 9 and 15.)

## REISSUES

84. A reissue is granted to the original patentee, his legal representatives, or the assignees of the entire interest, when, by reason of a defective or insufficient specification, or by reason of the patentee claiming as his invention or discovery more than he had a right to claim as new, the original patent is inoperative or invalid, provided the error has arisen from inadvertence, accident, or mistake, and without any fraudulent or deceptive intention. In the cases of patents issued and assigned prior to July 8, 1870, the applications for reissue may be made by the assignees; but, in the cases of patents issued or assigned since that date, the applications must be made and the specification sworn to by the inventors, if they be living.

85. The petition for a reissue must be accompanied with a certified copy of the abstract of title, giving the names of all assignees owning any undivided interest in the patent; and in case the application is made by the inventor, it must be accompanied with the written assent of such assignees. If the reissue shall be granted the cost of the abstract of title will be refunded.

86. A reissue will not be granted until the existence of the conditions prescribed therefor by law shall have been duly shown. The affidavit of the applicant will be prima facie evidence as to inadvertence, accident, mistake, fraud, and deceptive intent, subject

to contradiction or confirmation by the records of the office, by the affidavits of employes of the office having personal knowledge of the facts, or by such other affidavits as the commissioner shall, without disclosing the pendency of the application, admit as evidence in the case.\*

87. No new matter shall be introduced into the reissue specification, nor in case of a machine shall the model or drawings be amended except each by the other; but, when there is neither model nor drawing, amendments may be made upon proof satisfactory to the commissioner that such new matter or amendment was a part of the original invention, and was omitted from the specification by inadvertence, accident, or mistake.

88. The commissioner may, in his discretion, cause several patents to be issued for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for each division of such reissued letters patent. Each division of a reissue constitutes the subject of a separate specification descriptive of the part or parts of the invention claimed in such division; and the drawing may represent only such part or parts subject to the provisions of Rule 49. Unless it shall be otherwise ordered by the commissioner all the divisions of a reissue will issue simultaneously; if there be controversy as to one, the others will be withheld from issue until the controversy is ended unless he shall otherwise order.

89. In cases of applications for reissue, an original claim, if reproduced in the amended specification, is subject to reexamination, and the entire application will be revised and restricted in the same manner as original applications.

90. The application for a reissue must be accompanied by a surrender of the original patent, or, if that is lost, by an affidavit to that effect and a certified copy of the patent; but if a reissue be refused, the original patent will, upon request, be returned to the applicant.

91. Matter which is shown and described, and might have been lawfully claimed, in an unexpired patent, but was not claimed by reason of a defect or insufficiency in the specification, arising from inadvertence, accident, or mistake, and without fraud or deceptive intent, can not be subsequently claimed by the patentee in a separate patent, but only in a reissue of the original patent.

### INTERFERENCES

92. An interference is a proceeding instituted for the purpose of determining the question of priority of invention between two or more parties claiming substantially the same patentable invention. The fact that one of the parties has already obtained a patent will not prevent an interference; for, although the commissioner has no power to cancel a patent, he may grant a patent for the same invention to another person who proves to be the prior inventor.

93. Interferences will be declared in the following cases, when all the parties claim substantially the same patentable invention:

(1.) Between two or more original applications.

(2.) Between an original application and an unexpired patent, when the applicant, having been rejected on the patent, shall file

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\*Note.—As to drawings in reissue applications, see Rule 52.



an affidavit showing that he made the invention before the patentee's application was filed.

(3.) Between an original application and an application for the reissue of a patent granted during the pendency of such original application.

(4.) Between an original application and a reissue application when the original applicant shall file an affidavit showing that he made the invention before the patentee's original application was filed.

(5.) Between two or more applications for the reissue of patents granted on applications pending at the same time.

(6.) Between two or more applications for the reissue of patents granted on application not pending at the same time, when the applicant for reissue of the later patent shall file an affidavit showing that he made the invention before the application on which the earlier patent was granted was filed.

(7.) Between a reissue application and an unexpired patent, if the original applications were pending at the same time, and the reissue applicant shall file an affidavit showing that he made the invention before the original application of the other patentee was filed.

(8.) Between an application for reissue of a later unexpired patent and an earlier unexpired patent granted before the original application of the later patent was filed, if the reissue applicant shall file an affidavit showing that he made the invention before the original application of the earlier patent was filed.

94. The notices provided for in Rules 97 and 102 will be sent to all applicants having pending applications showing but not claiming the invention, and if such applicants shall, within the time fixed for filing the statements provided for in Rules 101 and 105, file such statements, together with amendments of their applications duly claiming the invention, they shall be made parties to the interference, but otherwise shall be excluded therefrom.

The notice provided for in Rules 97 and 102 will be sent to all grantees of unexpired patents showing, but not claiming, the invention, and if such patentees shall, within the time limited for filing the statements provided for in Rules 101 and 105, file such statements, together with reissue applications duly claiming the invention, they shall be made parties to the interference; but otherwise they shall be excluded therefrom without prejudice to their right of reissue. (See Rule 74.)

95. Before the declaration of interference all preliminary questions must be settled by the principal examiner, and the issue must be clearly defined; the invention which is to form the subject of the controversy must be decided to be patentable, and the claims of the respective parties must be put in such condition that they will not require alteration after the interference shall have been finally decided, unless the testimony adduced upon the trial shall necessitate or justify such change.

96. Where, however, a party who is required to put his case in a condition proper for an interference fails to do so within a reasonable time specified, the declaration of interference will not be delayed. After final judgment of priority the application of such party will be held for revision and restriction, subject to interference with other applications or new references. (See Rule 93.)

97. When an interference is found to exist and the applications



are prepared therefor, the principal examiner will forward to the examiner of interferences notices of interference for all the parties as specified in Rule 102, which will disclose the name and residence of each party, and that of his attorney, the date of the filing of his application, and, if his case be a patent, its date and number, the date of its application, the ordinals of conflicting claims, and the invention claimed, which shall be clearly and concisely defined, in so many counts or branches as may be necessary in order to include all interfering claims.

98. Upon receipt of the notices of interference, the examiner of interferences will make an examination thereof in order to ascertain whether the issue between the parties has been clearly defined, and whether it is otherwise correct. If he be of the opinion, upon such examination, that the notices are ambiguous in this particular, or are imperfect in any material point, he will transmit his objections to the principal examiner, who will promptly notify him of his decision to amend or not to amend them.

99. In case of a material disagreement between the examiner of interferences and the principal examiner, they shall refer the points of difference to the commissioner for decision.

100. The principal examiner will retain jurisdiction of the case until the declaration of interference is made.

101. When the notices of interference have been settled, the examiner of interferences will add thereto a designation of the time within which the statements required by Rule 105 must be filed, and will institute and declare the interference by forwarding the notices to the several parties to the interference.

102. Notice of interference will be forwarded, by the examiner of interferences, to all the parties, or to their attorneys, or, in case the application or patent in interference has been assigned, to the assignees. When one of the parties has received a patent, a notice will be sent to the patentee and to his attorney of record. When one of the parties resides abroad and has no known agent in the United States, notice, in addition to that sent by mail, may be given by publication in the Official Gazette for such period of time as the commissioner may direct. Whenever it shall be found that two or more parties whose interests are in conflict are represented by the same attorney, the examiner in charge will notify each of said principal parties, and also the attorney, of this fact.

103. Upon the institution and declaration of the interference, as provided in Rule 101, the examiner of interferences will take jurisdiction of the same, which will then become a contested case; but the primary examiners will determine the motions mentioned in Rule 116, as therein provided.

104. An applicant involved in an interference may, before the date fixed for the filing of his statement (see Rule 105), in order to avoid the continuance of the interference, disclaim, over his own signature, attested by two witnesses, the invention of the particular matter in issue, and upon such disclaimer, and the cancellation of any claims involving such interfering matter, judgment shall be rendered against him, and the disclaimer shall be embodied in and form part of his specification. (See Rules 187, 188.)

105. Each party to the interference will be required to file a concise statement, under oath, showing the date of his original conception of the invention, of its illustration by drawing or model,

of its disclosure to others, of its completion, and of the extent of its use. The parties will be strictly held in their proof to the dates set up in their statements. The statement must be sealed up before filing (to be opened only by the examiner of interferences), and the name of the party filing it, the title of the case, and the subject of the invention indicated on the envelope. The statements shall not be open to the inspection of the opposing parties until both shall have been filed, or the time for filing both with any extension thereof shall have expired, nor then, unless they have been examined by the proper officer and found to be satisfactory.

106. If, on such examination, a statement is found to be defective in any particular, the party shall be notified of the defect, and a time assigned within which he must cure such defect by an amended statement; but in no case will any original or amended statement be returned after it has been once filed.

107. If either party to an interference fail to file a statement, or if the statement of either party fail to overcome the *prima facie* case made by the respective dates of application, the other may demand an immediate adjudication of the case upon the record. Where there are more than two parties to the interference, and any of them fail to file their statements, judgment may be rendered upon the record as to such parties, and the interference will proceed between the remaining parties.

108. If any party to an interference fail to file a statement, no testimony will subsequently be received from him to prove that he made the invention at a date prior to his application. The statement can in no case be used as evidence in behalf of the party making it.

109. If either party require a postponement of the time for filing the statements, he will present his motion duly served on the other parties, with his reasons therefor, supported by affidavit, prior to the day previously fixed upon. But the examiner of interferences may, in his discretion, dispense with services of notice of such motion.

110. In case of material error in the statement, arising through inadvertence or mistake, it may be corrected on motion (see Rule 149), upon showing to the satisfaction of the commissioner that its correction is essential to the ends of justice. The motion to correct the statement must be made, if possible, before the taking of any testimony, and as soon as practicable after the discovery of the error.

111. In original proceedings in cases of interference the several parties will be presumed to have made the invention in the chronological order in which they filed so much of their respective applications for patents as clearly illustrates and describes the invention; and the burden of proof will rest upon those who shall seek to establish a different state of facts.

112. A time will be assigned in which the junior applicant shall complete his testimony in chief, and a further time in which the other party shall complete the testimony on his side, and a further time in which the junior applicant may take rebutting testimony, but shall take no other. If there be more than two parties, either patentees or applicants, the time for taking testimony will be so arranged that each shall have an opportunity to prove his case against prior applicants and to rebut their evidence, and also to meet the evidence of junior applicants.



113. If either party fail to take his testimony within the time assigned to him, all junior applicants having duly taken theirs, the case may, on motion duly made and served on such party, be set for hearing at any time not less than ten days after the hearing of the motion.

114. If either party desire to have the hearing postponed, he will make application for such postponement by motion (see Rule 149), and will show sufficient reason therefor by affidavit.

115. If either party desire an enlargement of the time assigned to him for taking testimony, he will make application therefor as provided for in Rule 150 (5).

116. Motions to dissolve an interference which deny the patentability of an applicant's claim, or his right to make the claim, will be submitted to the examiner of interferences before the day fixed for filing the statements provided for in Rules 97 and 102, and will be transmitted by him, with the files and papers, to the primary examiner, who will take jurisdiction of the case for the determination of such motions, and will return the files and papers to the examiner of interferences, with his decision, at the expiration of the time limited for appeal, if no appeal shall have been taken, or sooner if the party entitled to appeal shall file a waiver in writing of his right to appeal; and such decision will be binding on the examiner of interferences unless reversed or modified on appeal. From a decision of the primary examiner on such motion denying the patentability of a claim or the right of an applicant to make it an appeal may be taken ex parte to the examiners-in-chief; but from his decision affirming its patentability or the applicant's right no appeal can be taken.

117. Motions to dissolve an interference upon the ground that no interference in fact exists, or that there has been such irregularity in declaring the same as will preclude the proper determination of the question of priority between the parties, and all other lawful motions except those mentioned in Rule 116, will be made before the tribunal having jurisdiction at the time. Such motions should, if practicable, be made before the taking of testimony, and it must always appear that they are made in good faith, and immediately after the discovery of the grounds on which they are based. If grounds for such a motion are discovered at a time when it cannot be properly made, they may on due notice be urged at the hearing before, and will be disposed of by, the tribunal considering the case, as provided in Rule 120.

118. Appeal may be taken directly to the commissioner from decisions on all motions, except motions to dissolve interferences, denying the patentability of applicants' claims, or their right to make the claims, and other lawful motions involving the merits of the case, which, when appealable, may be appealed to the board of examiners-in-chief. (See Rule 116.)

119. After the interference is finally declared, it will not be determined without judgment of priority, founded upon the testimony, except as otherwise herein provided for.

120. In their decision of the question of priority, or before such decision, the examiner of interferences and the examiners-in-chief will direct the attention of the commissioner to any fact not relating to priority which may have been brought to their notice (by motion or otherwise), and which, in their opinion, amounts to a statutory bar to the grant of a patent to either of the parties for the claim or claims in interference. The commissioner may, be-



fore judgment on the question of priority of invention, suspend the interference, and remand the case to the primary examiner for the consideration of the statutory bar so suggested, subject to appeal to the examiners-in-chief, as in other cases. If the case shall not be so remanded the primary examiner will, after judgment, consider and determine the same, unless it shall have been previously disposed of by the commissioner.

121. A second interference will not be declared upon a new application on the same invention filed by either party, nor will a decision be set aside after judgment, except in accordance with the principles governing the granting of new trials.

122. If at any time during the pendency of an interference the primary examiner discover new references, he may request a suspension of the interference for their consideration *ex parte* until their pertinency shall be determined, when the files and papers will be returned to the examiner of interferences and the interferences dissolved or reinstated in accordance with such determination.

123. The primary examiner may request a suspension of an interference for the purpose of adding new parties; but no new parties will be added after the taking of testimony without the special order of the commissioner.

124. No amendments to the specifications will be received during the pendency of an interference, except as provided in Rule 104.

125. When a part only of the claims of an application are involved in an interference, the applicant may withdraw from his application the claims adjudged not to interfere, and file a new application therefor, if the application can be legitimately divided, and if no more of the devices claimed in one is shown or described in the other than is necessary to an intelligent understanding of the invention claimed in the latter: *Provided*, That no claim shall be made in the second application broad enough to include matter claimed in the first application as amended. (See Rule 42.)

126. When applications are declared to be in interference, the interfering parties will be permitted to see or obtain copies of the interfering claims, and of so much of the specifications as relate thereto.

127. When it shall appear, on motion duly made, and upon satisfactory proof, that by reason of the inability or refusal of the inventor to prosecute or defend an interference, or from other cause, the ends of justice shall require that an assignee of an undivided interest in the invention be permitted to prosecute or defend the same, the commissioner may so order.

#### APPEALS.

128. Every applicant for a patent or the reissue of a patent, any of the claims of whose application have been twice rejected upon grounds involving the merits of the invention, such as lack of novelty or utility, abandonment, public use, or want of identity of invention either in amended or in reissue applications, may appeal from the decision of the primary examiner to the board of examiners-in-chief, having once paid a fee of ten dollars. The appeal must be made in writing, signed by the party, or his duly authorized agent or attorney, setting forth the points of the decision upon which the appeal is taken and duly filed.

129. There must be two rejections of the claims as originally

filed, or, if amended in matter of substance, of the amended claims, and all the claims must be passed upon, and all preliminary and intermediate questions relating to matters not affecting the merits of the invention settled, before the case is appealed to the examiners-in-chief.

130. Upon the filing of the appeal the same shall be submitted to the primary examiner, who, if he find the appeal to be regular in form, shall furnish the examiners-in-chief with a written statement of the grounds of his decision on all the points involved in the appeal, with copies of the rejected claims, and with the references applicable thereto. If the primary examiner shall decide that the appeal is not regular in form, an appeal from such decision may be taken directly to the commissioner as provided in Rule 140.

131. The appellant shall, before the day of hearing, file a brief of the authorities and arguments on which he will rely to maintain his appeal.

132. If the appellant desire to be heard orally before the examiners-in-chief, he will so indicate when he files his appeal; a day of hearing will then be fixed, and due notice of the same given him.

133. In contested cases the appellant shall have the right to make the opening and closing arguments unless it shall be otherwise ordered by the tribunal having jurisdiction of the case.

134. The examiners-in-chief in their decision will affirm or reverse the decision of the primary examiner only on the points on which appeal shall have been taken. (See Rule 128.) If they shall discover any apparent grounds not involved in the appeal for granting or refusing letters patent in the form claimed, or in any other form, they will annex to their decision a statement to that effect, with such recommendation as they shall deem proper. If an appeal shall not be taken from their decision to the commissioner, the primary examiner will, at the expiration of the limit of appeal, resume jurisdiction of the case and proceed therewith in accordance with such decision.

From any judgment of the primary examiner, on points embraced in the recommendation annexed to the decision adverse to the applicant, appeal may be taken on question involving the merits to the board of examiners-in-chief and on other questions to the commissioners, as in other cases.

If an appeal shall be taken from the decision of the examiners-in-chief to the commissioner the commissioner, whenever, in his opinion, substantial justice shall require it, may, either before or after final judgment, remand the case to the primary examiner for consideration of any amendment or action based upon the recommendation annexed to the decision of the examiners-in-chief.

If the commissioner, in revising the decision of the examiners-in-chief, shall discover any apparent grounds for granting or refusing letters patent not involved in the appeal, he will, before or after final judgment, whenever, in his opinion, substantial justice shall require it, give reasonable notice thereof to the parties; and if any amendment or action based thereon shall be proposed, he will remand the case to the primary examiner for consideration.

From decisions of the primary examiner, in cases remanded, as herein provided, appeal will lie to the board of examiners-in-chief, or directly to the commissioner, as in other cases.

135. If affidavits be received, under Rule 75, after the case has been appealed, the application will be remanded to the primary examiner for reconsideration.



136. From the adverse decision of the board of examiners-in-chief appeal may be taken to the commissioner in person, upon payment of the fee of twenty dollars required by law.

137. Cases which have been heard and decided by the commissioner on appeal will not be reopened except by the commissioner; and cases which have been decided by the examiners-in-chief will not be reheard by them, when no longer pending before them, without the written authority of the commissioner.

138. Cases will be regarded as pending before a tribunal until appeal has been taken from its decision, or until the limit of appeal which must be fixed in each case has expired.

139. Cases which have been deliberately decided by one commissioner will not be reconsidered by his successor except in accordance with the principles which govern the granting of new trials.

140. Decisions of examiners upon preliminary or intermediate questions, not involving the merits of the case, once repeated, will be reexamined by the commissioner upon written statements of the points of appeal, and of the grounds of the examiners' decisions, as in other appeals. For appeals of this class no fee is required.

141. In cases of interference parties have the same remedy by appeal to the examiners-in-chief and to the commission as in *ex parte* cases; but no appeal lies in such cases from the decision of the commissioner.

142. Appeals in interference cases must be accompanied with brief statements of the reasons therefor; and both parties will be required to file briefs of their arguments before the day of hearing. Printed briefs are in all cases preferred.

143. From the adverse decision of the commissioner upon the claims of an application an appeal may be taken to the supreme court of the District of Columbia sitting *in banc*. On taking such appeal, the applicant is required, under the rules of the court, to pay to the clerk of the court a docket-fee of ten dollars, and he is also required by law to lay before the court certified copies of all the original papers and evidence in the case. The petition should be filed and the fee paid at least ten days before the commencement of the term of court at which the appeal is to be heard.

144. Immediately upon taking an appeal the appellant must give notice thereof to the commissioner of patents, and file in the patent office his reasons of appeal, specifically set forth in writing.

145. The docket for the trial of cases appealed from the decision of the commissioner of patents will be called on the first day of each session of the supreme court of the District of Columbia in general term. These sessions are held three in each year, and begin, respectively, on the first Monday in January, the third Monday in April, and the fourth Monday in September. (For Forms of Appeals and Rules of the Supreme Court of the District of Columbia respecting Appeals, see Appendix, Forms 29-36.)

#### HEARINGS AND INTERVIEWS

146. Hearings will be had by the commissioner at 10 o'clock a. m., and by the board of examiners-in-chief and the examiner of interferences at 1 o'clock p. m., on the day appointed, unless some other hour be specially designated. If either party in a contested case, or the appellant in an *ex parte* case, appear at the proper time, he will be heard by the examiner of interferences or



the examiners-in-chief; but a contested case will not be taken up for oral argument after the day of hearing, except by consent of both parties. If the engagements of the tribunal having jurisdiction of the case be such as to prevent it from being taken up on the day of hearing, a new assignment will be made, or the case will be continued from day to day until heard. Unless it shall be otherwise ordered before the hearing begins, oral arguments will be limited to one hour for each party. After a contested case has been argued, nothing further relating thereto will be heard unless upon request of the tribunal having jurisdiction of the case; and all interviews for this purpose with parties in interest or their attorneys will be invariably denied.

147. Interviews with examiners concerning applications and other matters pending before the office must be had at such times, within office hours, as the respective examiners may designate, in the examiners' rooms, with the principal examiners, or, in their absence, with the assistants in charge; they will not be had at any other time or place without the written authority of the commissioner.

148. Interviews for the discussion of pending applications will not be had prior to the first official action thereon.

### MOTIONS

149. In contested cases reasonable notice of all motions, and copies of motion-papers and affidavits, must be served as provided for in Rule 150 (2). Proof of such service must be made before the motion will be entertained by the office; and motions will not be heard in the absence of either party except upon default after due notice. Motions will be heard in the first instance by the officer or tribunal before whom the particular case may be pending; but an appeal from the decision rendered may be taken on questions involving the merits of the case to the board of examiners-in-chief; on other questions, directly to the commissioner. In original hearings, on motions, the moving parties shall have the right to make the opening and closing arguments. In contested cases the practice on points to which the rules shall not be applicable will conform, as nearly as possible, to that of the United States courts in equity proceedings.

### TAKING AND TRANSMITTING TESTIMONY

150. The following rules have been established for taking and transmitting testimony in extensions, interferences, and other contested cases:

(1.) Before the depositions of witnesses are taken by either party due notice shall be given to the opposite party, as hereinafter provided, of the time and place when and where the depositions will be taken, of the cause or matter in which they are to be used, and of the names and residences of the witnesses to be examined, so that the opposite party shall have full opportunity, either in person or by attorney, to cross-examine the witness. If the opposite party shall attend the examination of witnesses not named in the notice, and shall either cross-examine such witnesses or fail to object to their examination, he shall be deemed to have waived any objection to their examination based on want of notice thereof. Neither party shall take testimony in more than one place at the

same time, or so nearly at the same time as not to allow reasonable time to travel from one place of examination to the other.

(2.) The notice for taking testimony or for motions must be served (unless otherwise stipulated in an instrument in writing filed in the case) upon the attorney of record, if there be one, or, if there be no attorney of record, then upon the adverse party, and it must give the opposite party reasonable time to reach the place of examination. Such service may be made by delivering a copy of the notice to the adverse party or attorney, by leaving a copy at the usual place of business of the party or attorney with some one in the employment of such party or attorney, or by leaving a copy at the party's usual place of residence with a member of his family, or by transmission by registered letter, or by express, or when it shall be shown, to the satisfaction of the commissioner, that neither of the other modes of service herein prescribed is practicable, by publication in the Official Gazette; and such notice shall, with sworn proof of the fact, time, and mode of service thereof, be attached to the deposition or depositions, whether the opposing party shall have cross-examined or not.

(3.) Each witness before testifying shall be duly sworn according to law by the officer before whom his deposition shall be taken. The depositions shall be carefully read over by the witness, or by the officer in his hearing, and shall then be subscribed by the witness, in the presence of the officer. The officer shall annex to the deposition his certificate showing (1) the due administration of the oath by the officer to the witness before the commencement of his testimony; (2) the name of the person by whom the testimony was written out, and the fact that, if not written by the officer, it was written in his presence; (3) the presence or absence of the adverse party; (4) the place, day and hour of commencing and taking the depositions; and (5) the fact that the officer was not connected, by blood or marriage, with either of the parties, nor interested directly or indirectly in the matter in controversy. The officer shall sign the certificate and affix thereto his seal of office, if he have such seal. He shall then, without delay, securely seal up all the evidence, notices, and paper exhibits, inscribe upon the envelope a certificate, giving the title of the case, the name of each witness and the date of sealing, address the package, and forward the same to the commissioner of patents. If the weight or bulk of an exhibit shall exclude it from the envelope, it shall be authenticated by the officer and transmitted in a separate package, marked and addressed as above provided.

(4.) In cases of extension, where no opposition shall be made, *ex parte* testimony will be received from the applicant; and such testimony as may have been taken by the applicant prior to notice of opposition will be received, unless taken within thirty days after filing the petition for the extension. But upon receiving notice of opposition, the applicant shall immediately give notice to the opposing party or parties of the names and residences of the witnesses whose testimony shall have been thus taken.

(5.) If either party shall be unable to procure the testimony of a witness within the time limited, any motion which he may make for an extension of his time must be accompanied by a statement, under oath, of the cause of such inability, the name of such witness, the facts expected to be proved by him, the steps which have been taken to procure said testimony, and the dates at which efforts have been made to procure it. (See Rule 149.)



(6.) When a party relies upon a caveat to establish the date of his invention, the caveat itself, or a certified copy thereof, must be filed in evidence, with due notice to the opposite party.

(7.) Upon notice given to the opposite party before the closing of the testimony, any official record, and any special matter contained in a printed publication, if competent evidence and pertinent to the issue, may be used as evidence at the hearing.

151. The pages of each deposition must be numbered consecutively and the name of the witness plainly and conspicuously written at the top of each page. The testimony must be taken upon legal-cap or foolscap paper, with a wide margin on the left-hand side of the page, and with the writing on one side only of the sheet.

152. The testimony will be taken in answer to interrogatories, with the questions and answers committed to writing in their regular order by the officer, or, in his presence, by some person not interested in the case, either as a party thereto or as attorney. But, with the written consent of the parties, the depositions may be written out by other persons in the presence of the officer. No officer who is connected by blood or marriage with either of the parties, or interested, directly or indirectly, in the matter in controversy, either as counsel, attorney, agent, or otherwise, is competent to take depositions, unless with the written consent of all the parties.

153. By leave of the commissioner, first obtained, testimony may be taken in foreign countries:

(1.) Such permission will be granted only upon motion duly made. (See Rule 149.)

The motion must designate a place for the examination of the witnesses at which an officer duly qualified to take testimony under the laws of the United States in a foreign country shall reside, and it must be accompanied by a statement, under oath, that the motion is made in good faith, and not for purposes of delay or of vexing or harassing any party to the case; it must also set forth the names of the witnesses, the particular facts to which it is expected each will testify, and the grounds on which is based the belief that each will so testify.

(2.) It must appear that the testimony desired is material and competent, and that it cannot be taken in this country at all, or cannot be taken here without hardship and injury to the moving party greatly exceeding that to which the opposite party will be exposed by the taking of such testimony abroad.

(3.) Upon the granting of such motion, a time will be set within which the moving party shall file in duplicate the interrogatories to be propounded to each witness and serve a copy of the same upon each adverse party, who may, within a designated time, file, in duplicate, cross-interrogatories. Objections to any of the interrogatories or cross-interrogatories may be filed at any time before the depositions are taken, and will be considered and determined upon the hearing of the case.

(4.) As soon as the interrogatories and cross-interrogatories are decided to be in proper form, the commissioner will cause them to be forwarded to the proper officer, with the request that, upon payment of, or satisfactory security for, his official fees, he notify the witnesses named to appear before him within a designated time and make answer thereto under oath; and that he reduce their answers in writing, and transmit the same, under his official



seal and signature, to the commissioner of patents, with the certificate prescribed in Rule 150 (3).

(5.) By stipulation of the parties the requirements of paragraph (3) as to written interrogatories and cross-interrogatories may be dispensed with, and the testimony may be taken before the proper officer upon oral interrogatories by the parties or their agents.

(6.) Unless false swearing in the giving of such testimony before the officer taking it shall be punishable as perjury, under the laws of the foreign state where it shall be taken, it will not stand on the same footing, in the patent office, as testimony duly taken in the United States; but its weight in each case will be determined by the tribunal having jurisdiction of such case.

154. No evidence touching the matter at issue will be considered on the hearing which shall not have been taken and filed in compliance with these rules. But no notice will be taken of any merely formal or technical objection which shall not appear to have wrought a substantial injury to the party raising it; and in case of such injury it must be made to appear that, as soon as the party became aware of the ground of objection, he gave notice thereof to the office, and also to the opposite party, informing him at the same time that, unless it should be removed, he should urge his objection at the hearing.

This rule is not to be so construed as to modify established rules of evidence, which will be applied strictly in all practice before the office.

155. The law requires the clerks of the various courts of the United States to issue subpoenas to secure the attendance of witnesses whose depositions are desired as evidence in contested cases in the patent office.

156. After testimony is filed in the office it may be inspected by any party to the case, but it cannot be withdrawn for the purpose of printing. It may be printed by some one specially designated by the office for that purpose, under proper restrictions.

157. Six or more printed copies of the testimony must be furnished—five for the use of the office, and one for the use of each of the opposing parties. These copies must be filed not less than one week before the day of hearing. They will have wide margins, with the names of the witnesses at the top of the pages over their testimony, and will contain indexes with the names of all witnesses, and references to the pages where their testimony may be found, and also to the pages where copies of papers and documents introduced as exhibits are shown. Printing can only be dispensed with on special application based upon satisfactory reasons, in which case manuscript copies must be furnished—one for the office and one for each adverse party.

158. It is desirable that arguments and briefs in all contested cases should be submitted in printed form, and filed before the hearing. If either party fail to comply with this regulation no extension of time will be granted for the purpose, except upon consent of the adverse parties.

## ISSUE

159. If on examination, it shall appear that the applicant is justly entitled to a patent under the law, a notice of allowance will be sent him, calling for the payment of the final fee, upon the

receipt of which, within the time fixed by law, the patent will be prepared for issue. (See Rules 212, 213.)

160. After notice of the allowance of an application is given the case will not be withdrawn from issue except by approval of the commissioner, and if withdrawn for further action on the part of the office, a new notice of allowance will be given. (See Rule 77.)

#### DATE, DURATION, AND FORM OF PATENTS

161. Every patent will bear date as of a day not later than six months from the time at which the application was passed and allowed and notice thereof was mailed to the applicant or his agent, if within that period the final fee be paid to the commissioner of patents, or if it be paid to the treasurer, or any of the assistant treasurers or designated depositaries of the United States and the certificate promptly forwarded to the commissioner of patents; and if the final fee be not paid within that period the patent will be withheld. (See Rule 169.)

A patent will not be antedated.

162. Every patent will contain a short title of the invention or discovery, indicating its nature and object, and a grant to the patentee, his heirs and assigns, for the term of seventeen years, of the exclusive right to make, use, and vend the invention or discovery throughout the United States and the Territories thereof. But if the invention shall have been previously patented abroad, the term of the patent will expire with the term of the foreign patent. The duration of a design patent may be for the term of three and a half, seven, or fourteen years, as provided in Rule 79. A copy of the specification and drawings will be annexed to the patent and form part thereof.

#### DELIVERY

163. The patent will be delivered or mailed, on the day of its date, to the patentee, unless there be an attorney of record, in which case it will be delivered to him or the patentee, as the attorney may request; but it will not, without a special request to that effect, be delivered to an associate or substitute attorney.

#### CORRECTION OF ERRORS IN LETTERS PATENT

164. Where a mistake, incurred through the fault of the office, is clearly disclosed by the records or files of the office, a certificate, showing the fact and nature of such mistake, signed by the secretary of the interior, countersigned by the commissioner of patents, and sealed with the seal of the patent office, will, at the request of the patentee or his assignee, be indorsed without charge upon the letters patent, and recorded in the records of patents, and a printed copy thereof attached to each printed copy of the specification and drawings.

Where a mistake, incurred through the fault of the office, constitutes a sufficient legal ground for a reissue, such reissue will be made, for the correction of such mistake only, without charge of office fees, at the request of the patentee.

Mistakes not incurred through the fault of the office and not



affording legal grounds for reissues, will not be corrected after the delivery of the letters patent to the patentee or his agent.

No changes or corrections will be made in letters patent after the delivery thereof to the patentee or his agent, except as above provided.

#### ABANDONED, FORFEITED, AND RENEWED APPLICATIONS

165. An abandoned application is one which has not been completed and prepared for examination within two years after the filing of the petition, or which the applicant has failed to prosecute within two years after any action therein, of which notice has been duly given (see Rules 31 and 76), of which the applicant has expressly abandoned by filing, in the office, a written declaration of abandonment, signed by himself, identifying his application by title of invention and date of filing. (See Rule 59.)

Prosecution of an application, to save it from abandonment, must include such proper action as the condition of the case may require.

166. Before an application abandoned by failure to complete or prosecute can be renewed, it must be shown to the satisfaction of the commissioner that the delay in the prosecution of the same was unavoidable.

167. When a new application is filed in place of an abandoned or rejected application, a new specification, oath, drawing, and fee will be required, but the old model, if suitable, may be used.

168. A forfeited application is one upon which a patent has been withheld for failure to pay the final fee within the prescribed time. (See Rule 161.)

169. Where the patent has been withheld by reason of non-payment of the final fee, any person, whether inventor or assignee, who has an interest in the invention for which such patent was ordered to issue, may file a new application for the same invention; but such second application must be made within two years after the allowance of the original application. Upon the hearing of such new application abandonment will be considered as a question of fact.

170. In such renewal the oath, petition, specification, drawing, and model of the original application may be used for the second application, but a new fee will be required. The second application will not be regarded as a continuation of the original one, but will bear date from the time of renewal, and be subject to examination like an original application.

171. Forfeited and abandoned applications will not be cited as references. But when an applicant makes claim to an invention previously claimed by and allowed to another, whose application has become forfeited by reason of the non-payment of the final fee within six months from the date of the letter of allowance, he will be notified that unless he shall file an affidavit, showing that he made the invention before such previously allowed application was filed, his own application will not be passed to issue.

Where more than one such subsequent applicant claims the invention thus previously allowed, each will be required to file the affidavit above mentioned within a reasonable specified time, before an interference can be declared between such later applications.

No notice will be given to applicants, while their cases remain



forfeited, of the filing of subsequent applications. Certified copies of the file in cases of rejected and abandoned applications may be furnished to applicants or to other persons when specifically ordered, but no inspection of such file, except by the applicants or their duly authorized attorneys, will be permitted.

### EXTENSIONS

172. No patent granted since March 2, 1861, can be extended except by act of congress.

173. When a patent has been so extended, subject to the further decision of the commissioner, the subsequent proceedings will be conducted in accordance with the following rules.

174. Any person may oppose an application for extension, but must give notice of such opposition to the applicant or his attorney of record within the time hereinafter named, and furnish him with a statement of his reasons of opposition. After such notice he will be regarded as a party in the case, and will be entitled to notice of the time and place of taking testimony, to a list of the names and residences of the witnesses whose testimony may have been taken before service of his notice of opposition, and to a copy of the application and of any other papers on file, upon payment of the cost thereof. He must also immediately file a copy of such notice and reasons of opposition, with proof of service of the same, in the patent office.

175. If the extension is opposed on the ground of lack of novelty in the invention, the reasons of opposition must contain a specific statement of any and all matter relied upon for this purpose.

176. The applicant for an extension must furnish to the office a statement in writing, under oath, of the ascertained value of the invention, and of his receipts and expenditures on account thereof, both in this and in foreign countries. This statement must be detailed and particular, unless sufficient reasons are shown for a failure to make it so. It must in all cases be filed with the petition.

177. Such statement must also be accompanied with a certified abstract of title and a declaration under oath, setting forth the extent of the applicant's interest in the extension sought.

178. The questions which arise on each application for an extension are:

(1.) Was the invention new and useful when patented?

(2.) Is it valuable and important to the public, and to what extent?

(3.) Has the inventor been reasonably remunerated for the time, ingenuity, and expense bestowed upon the invention, and upon its introduction into use? If not, has his failure to be so remunerated arisen from neglect or fault on his part?

(4.) What will be the effect of the proposed extension upon the public interests?

179. No proof will be required from the applicant upon the first question unless the invention is assailed upon those points by opponents.

180. To enable the commissioner to come to a correct conclusion in regard to the second point of inquiry, the applicant must, if possible, present the testimony of disinterested persons taken under oath. This testimony must distinguish carefully between the

specific devices covered by the claims of the patent and the general machine in which those devices may be incorporated.

181. Upon the third point of inquiry the applicant, having by his own oath shown his receipts and expenditures on account of the invention, must also show, by testimony under oath, that he has taken all reasonable measures to introduce his invention into general use; and that without neglect or fault on his part, he has failed to obtain from the use and sale of the invention a reasonable remuneration for the time, ingenuity, and expense bestowed on the same, and on its introduction into use.

182. In case of opposition to the extension of a patent both parties may take testimony, each giving reasonable notice to the other of the time and place of taking the same. The testimony will be taken according to the rules hereinafter prescribed.

183. Any person desiring to oppose an extension must serve his notice of opposition, and file his reasons therefor, at least ten days before the day fixed for the closing of the testimony; but parties who have not entered formal opposition in time to put in testimony may, at the discretion of the commissioner, be permitted to appear on the day of hearing, and make argument upon the record in opposition to the grant of the extension. In such case good cause for the neglect to make formal opposition must be shown.

184. In contested cases no testimony will be received, unless by consent, which has been taken within thirty days next after the filing of the petition for the extension.

185. Service of notice to take testimony must be made as provided for in Rule 150 (2). Where notice to take testimony has already been given to an opponent, and a new opponent subsequently gives notice of his intention to oppose, the examination need not be postponed, but notice thereof may be given to such subsequent opponent by mail or by telegraph. But this rule does not apply to *ex parte* examinations, nor to those of which no notice is given before service of notice of opposition.

186. In the notice of application for extension a day will be fixed for the closing of testimony, and the day of hearing will also be named. Applications for postponement of the day of hearing, or for further time for taking testimony, must be made and supported in accordance with the rules to be observed in other contested cases; but no postponement will be granted whereby any risk of delaying the decision until the expiration of the patent may be incurred. Upon the closing of the testimony the application will be referred without delay to the examiner in charge of the class to which the invention belongs for the report required by law; and such report shall be made not less than five days before the day of hearing. As this report is intended for the information of the commissioner, neither the parties nor their attorneys will be permitted to make oral arguments before the examiner. In contested cases briefs are deemed desirable, and these should always be filed at least five days before the day of hearing.

#### DISCLAIMERS

187. Whenever, through inadvertence, accident, or mistake, and without any fraudulent or deceptive intention, a patentee has claimed more than that of which he was the original or first inventor or discoverer, his patent shall be valid for all that part which is truly and justly his own, provided the same is a material



or substantial part of the thing patented; and any such patentee, his heirs or assigns, whether of the whole or any sectional interest therein, may, on payment of the fee required by law, make disclaimer of such parts of the thing patented as he or they shall not choose to claim or to hold by virtue of the patent or assignment, stating therein the extent of his interest in such patent. Such disclaimer shall be in writing, attested by one or more witnesses, and recorded in the patent office; and it shall thereafter be considered as part of the original specification to the extent of the interest possessed by the claimant and by those claiming under him after the record thereof. But no such disclaimer shall affect any action pending at the time of filing the same, except as to the question of unreasonable neglect or delay in filing it.

188. Such disclaimers must be distinguished from those which are embodied in original or reissue applications, as at first filed or subsequently amended, referring to matter shown or described, but to which the disclaimant does not choose to claim title, and also from those made to avoid the continuance of interferences, which require no fee, but must, like all other disclaimers, be signed by the applicants in person and duly witnessed. (See Rule 104. For Forms of Disclaimers see Appendix Forms 27, 28.)

### CAVEATS

189. A caveat, under the patent law, is a notice given to the office of the caveator's claim as inventor, in order to prevent the grant of a patent to another for the same alleged invention upon an application filed during the life of the caveat without notice to the caveator.

190. Any citizen of the United States who has made a new invention or discovery and desires further time to mature the same, may, on payment of a fee of ten dollars, file in the patent office a caveat setting forth the object and the distinguishing characteristics of the invention, and praying protection of his right until he shall have matured his invention. Such caveat shall be filed in the confidential archives of the office and preserved in secrecy, and shall be operative for the term of one year from the filing thereof.

191. An alien has the same privilege, if he has resided in the United States one year next preceding the filing of his caveat, and has made oath of his intention to become a citizen.

192. The caveat must comprise a specification, oath, and, when the nature of the case admits of it, a drawing, and, like the application, must be limited to a single invention or improvement.

193. The same particularity of description is not required in a caveat as in an application for a patent; but the caveat must set forth the object of the invention and the distinguishing characteristics thereof, and it should be sufficiently precise to enable the office to judge whether there is a probable interference when a subsequent application is filed. If upon examination a caveat be found defective in this respect amendment will be required. Without compliance with Rules 190, 192, 193 and 195 the caveator will not be entitled to the notice provided for in Rule 196.

194. The oath of the caveator must set forth that he is a citizen of the United States, or, if he be an alien, that he has resided for one year last past within the United States, and has



made oath of his intention to become a citizen thereof, and that he believes himself the original and first inventor of the art, machine, or improvement set forth in his caveat.

195. When practicable, the caveat should be accompanied by full and accurate drawings, separate from the specification, well executed on tracing muslin or paper that may be folded. (See Rule 50.)

196. If at any time within one year after the filing or renewal of a caveat another person shall file an application with which such caveat would in any manner interfere, and if, within the year, the application shall be found patentable, then such application will be suspended, and notice thereof will be sent to the person filing the caveat, who, if he shall file a complete application within the prescribed time, will be entitled to an interference with the previous application, for the purpose of proving priority of invention, and obtaining the patent, if he be adjudged the prior inventor. The caveator, if he would avail himself of his caveat, must file his application within three months from the expiration of the time regularly required for the transmission to him of the notice deposited in the post-office at Washington; and the day when the time for filing expires will be mentioned in the notice or indorsed thereon.

197. The caveator will not be entitled to notice of any application pending at the time of filing his caveat, nor of any application filed after the expiration of one year from the date of the filing or renewal thereof. The caveat may be renewed by the payment of a second caveat fee of ten dollars, and it will continue in force for one year from the date of the payment of such second fee, and so on from year to year for not more than two years. If a caveat be not renewed, it will still be preserved in the secret archives of the office.

198. A caveat confers no rights and affords no protection except as to notice of an interfering application filed during its life, giving the caveator the opportunity of proving priority of invention if he so desires. It may be used as evidence in contests, as provided in Rule 150 (6).

199. There is no provision of law making the caveat assignable, although the alleged invention therein set forth is assignable, and the caveat may be used as means of identifying the invention transferred in an assignment.

200. Caveat papers cannot be withdrawn from the office after they have once been filed; but copies of the papers may be obtained at the usual rates by the caveator or any person duly authorized by him. Additional papers, if containing new matter, must be filed as a separate caveat with another fee. (For Caveat Forms see Appendix, Forms 10,•16.)

## ASSIGNMENTS

201. Every patent or any interest therein shall be assignable in law by an instrument in writing; and the patentee or his assigns or legal representatives may, in like manner, grant and convey an exclusive right under his patent to the whole or any specified part of the United States.

202. Interests in patents may be vested in assignees, in grantees of exclusive sectional rights and mortgagees, and in licenses.

(1.) An assignee is a transferee of the whole interest of the

original patent, or of an undivided part of such whole interest, extending to every portion of the United States. The assignment must be written or printed and duly signed.

(2.) A grantee acquires by the grant the exclusive right, under the patent, to make and use, and to grant to others the right to make and use, the thing patented, within and throughout some specified part of the United States, excluding the patentee therefrom. The grant must be written or printed and duly signed.

(3.) A mortgage must be written or printed and duly signed.

(4.) A licensee takes an interest less than or different from either of the others. A license may be oral, or written or printed and duly signed.

203. An assignment, grant, or conveyance will be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless recorded in the patent office within three months from the date thereof.

204. No instrument will be recorded which does not, in the judgment of the commissioner, amount to an assignment, grant, mortgage, lien, encumbrance, or license, or affect the title of the patent or invention to which it relates.

205. Assignments which are made conditional on the performance of certain stipulations, as the payment of money, if recorded in the office, are regarded as absolute assignments, until canceled with the written consent of both parties, or by the decree of a competent court. The office has no means of determining whether such conditions have been fulfilled.

206. In every case where it is desired that the patent shall issue to an assignee, the assignment must be recorded in the patent office at a date not later than the day on which the final fee is paid. The date of the record is the date of the receipt of the assignment at the office.

207. The receipt of assignments is not generally acknowledged by the office. They are recorded in regular order as promptly as possible and then transmitted to the persons entitled to them. (For Form of Assignment see Appendix, Forms 37-42.)

OFFICE FEES

208. Nearly all the fees payable to the patent office are positively required by law to be paid in advance—that is, upon making application for any action by the office for which a fee is payable. For the sake of uniformity and convenience, the remaining fees will be required to be paid in the same manner.

209. The following is the schedule of fees:

|  |         |
|--|---------|
| On filing every application for a design patent.....                         | \$10.00 |
| On issuing a design patent for three years and six months no further charge. |         |
| On issuing a design patent for seven years.....                              | 5.00    |
| On issuing a design patent for fourteen years.....                           | 20.00   |
| On filing every caveat .....   | 10.00   |
| On filing every application for a patent for an invention or discovery ..... | 15.00   |
| On issuing each original patent for an invention or discovery.               | 20.00   |
| On filing a disclaimer.....  | 10.00   |
| On filing every application for a reissue .....                              | 30.00   |
| On filing every application for a division of a reissue.....                 | 30.00   |



|   |       |
|---|-------|
| On filing every application for an extension.....   | 50.00 |
| On the grant of every extension.....  | 50.00 |
| On filing an appeal from a primary examiner to the examiners-in-chief .....   | 10.00 |
| On filing an appeal to the commissioner from the examiners-in-chief .....   | 20.00 |
| For certified copies of patents or other instruments, except copies of printed patents sold by the office, for every 100 words.....                           | 10    |
| For certified copies of printed patents sold by the office, 10 cents for every 100 words, less the price actually paid for such copies without certification. |       |
| For certified copies of drawings, the reasonable cost of making them.   |       |
| For recording an assignment of 300 words or less.....   | 1.00  |
| For recording an assignment of more than 300 and not more than 1,000 words.....   | 2.00  |
| For recording every assignment of more than 1,000 words....   | 3.00  |
| For uncertified copies of the specifications and accompanying drawings of all patents which are in print:   |       |
| Single copies.....  | 25    |
| Twenty copies or more whether of one or several patents, per copy*.....   | 10    |
| For uncertified copies of the specifications and drawings of patents, not in print, the reasonable cost of making the same.                                   |       |
| For copies of matter in any foreign language, per 100 words..   | 20    |
| For translations, per 100 words.....  | 50    |
| For assistance to attorneys in examination of records one hour or less.....   | 50    |
| Each additional hour.....   | 50    |

210. An order for a copy of an assignment must give the liber and page of the record, as well as the name of the inventor; otherwise an extra charge will be made for the time consumed in making any search for such assignment.

211. No person will be allowed to make copies or tracings from the files or records of the office. Such copies will be furnished, when ordered, at the rates already specified.

212. The money required for office fees may be paid to the commissioner, or to the treasurer, or any of the assistant treasurers of the United States, or to any of the designated depositaries, national banks, or receivers of public money, designated by the secretary of the treasury for that purpose, who shall give the

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\*Note.—For the convenience of the office and of persons desiring printed copies of specifications and drawings, blank orders, or "coupons", have been prepared, which will be sold, on application to the chief clerk, at the rate of 10 cents each, in lots of 20 or more. Stub-books, containing 50 or 100 such orders, can be furnished at the same rate, and the orders printed on postal cards at the same rate plus the cost of the cards.

These orders, whenever presented properly filled up, are good for one copy each of the specification and drawings of any United States patent issue since November 20, 1866, or for a copy of the drawing of any United States patent from the earliest dates. Prior to the date given, the specifications were not printed.



depositor a receipt or certificate of deposit therefor, which shall be transmitted to the patent office. When this cannot be done without much inconvenience, the money may be remitted by mail, and in every such case the letter should state the exact amount inclosed. Letters containing money may be registered. Post-office money-orders now afford a safe and convenient mode of transmitting fees. All such orders should be made payable to the "Commissioner of Patents."

213. The weekly issue will close on Thursday, and the patents of that issue will bear date as of the third Tuesday thereafter. If the final fee in any application is not paid on or before that day, the patent will not go to issue until the following week.

214. All money sent by mail, either to or from the patent office, will be sent at the risk of the sender. In no case should money be sent inclosed with models. All payments to or by the office must be made in specie, treasury notes, national-bank notes, certificates of deposit, or post-office money-orders.

#### REPAYMENT OF MONEY

215. Money paid by actual mistake, such as a payment in excess, or when not required by law, or by neglect or misinformation on the part of the office, will be refunded; but a mere change of purpose after the payment of money, as when a party desires to withdraw his application for a patent, or for the registration of a trade-mark, or an appeal, will not entitle a party to demand such a return.

#### PUBLICATION

216. The "Official Gazette," a weekly publication which has been issued since 1872, takes the place of the old "Patent-Office Report." It contains the claims of all patents issued, including reissues, with portions of the drawings selected to illustrate the claims, and also lists of designs patents, together with decisions of the courts and of the commissioner, and other special matters of interest to inventors.

The Gazette is furnished to subscribers at the rate of \$6 per annum. When it is sent abroad an additional charge of \$2 will be made for the payment of postage. But representatives and senators are each entitled to designate eight public libraries to which it will be sent without charge. Single copies are furnished for 15 cents each.

An index is published annually, which is sent to all subscribers and designated libraries without additional cost.

Printed volumes are issued monthly, containing the entire specifications and drawings of all patents issued during the previous month. These are authenticated by the seal of the office and may be used as evidence throughout the United States. One copy is deposited in each State library, and one copy in the custody of the clerk of each United States district court, for general reference.

217. No persons are allowed to enter the alcoves, or take books from the library, except officers of the bureau and members of the examining corps.

All books taken from the library must be entered in a register kept for the purpose, and returned on the call of the librarian.

Any book lost or defaced must be replaced by a copy of the same. Patentees and others doing business with the office can examine the books only in the library-hall.

Translations will be made only for official use.

Persons will be allowed to make notes or extracts, but not copies or tracings, from works in the library. Such copies will be furnished at the usual rates.

#### AMENDMENTS OF THE RULES

218. All amendments of the foregoing rules will be published in the Official Gazette.

H. E. PAINE,  
Commissioner of Patents.

Approved:

C. SCHURZ,  
Secretary of the Interior.

201-31-1111

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